

Charan Singh and anr. Vs. the State

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Court : Delhi

Decided On : Apr-10-1991

Reported in : 44(1991)DLT728

Judge : Malik Sharief-Ud-Din and; P.N. Nag, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 209 of 1987

Appellant : Charan Singh and anr.

Respondent : The State

Advocate for Pet/Ap. : B.G. Singh and; R.K. Bahri, Advs

Judgement :

Malik, J.

(1) Charan Singh and Narayan Singh, two real brothers, appellants herein are aggrieved of their conviction and sentence passed by the learned Additional Sessions Judge on 16th of September, 1987. They were sentenced to life imprisonment under Section 302 Indian Penal Code . with the aid of Section 34 Indian Penal Code . and were also sentenced to three years rigorous imprisonment and the payment of Rs.3000.00 as fine each under Section 435 Indian Penal Code ., in default they are required to undergo six months rigorous

imprisonment each. Both the sentence were, however, made to run concurrently.

(2) The date of incident is 18th of February, 1983 at 3 A.M. The F.I.R. was recorded pursuant to a statement Ex. Public Witness 5/A made by the deceased Prem Kumar before Shri Jage Ram A.S.I. Public Witness . 17 in the hospital where he was admitted by his wife Mrs, Ranjana Kumari. The brief background is that the deceased was residing as a tenant in the house of the father of the appellants situated in Gali Harijan, Chopal, village Dhirpur. The appellants wanted the deceased to vacate the premises and with a view to force him to vacate the house, they occasionally picked up quarrels with him. The prosecution case is that since the deceased did not listen to them they in prosecution of their common intention came with petrol to the place of incident where the deceased was sleeping in his three-wheeler scooter. They are stated to have been accompanied by 3-4 unknown persons and after sprinkling petrol on the deceased they set him on fire resulting in 40% burns on the person of the deceased. The scooter also got burnt. The deceased is stated to have identified the appellants but could not identify other persons who were accompanying them

(3) The deceased died due to toxaemia and septicemia as a result of these burns. This fact is proved by Dr. O.K. Sharma Public Witness . 20. We need not refer to the details of his testimony as neither the injuries sustained by the deceased nor the cause of the death is in dispute.

(4) That there was a long drawn enmity between the appellants and the deceased regarding the house in which the deceased was residing as a tenant, besides being testified to by Public Witness . 7 is amply established also by Dd marked Ex. PW3/A dated 13th August, 19⁸⁰ recorded at the instance of Mrs. Ranjana Kumari. wife of the deceased, and testified to by Public Witness . 3 S.I. Shri Chhotu Ram. Dd marked Ex. Public Witness 10/A dated 19th of July. 1981 recorded at the instance of Prem Kumar and testified to by Public Witness . 10 Asi Attar Singh and also Dd marked Ex. Public Witness 15/A recorded on the night between 29th and 30th November, 1982 at the instance of Prem Kumar and testified to by A.S.I. Ramesh Chand Public Witness . 15. All these three DDs which have been reported at various times by the deceased and his wife show that there was a

constant bickering and enmity between the deceased and Charan Singh who wanted the deceased to vacate the tenanted premises. At one occasion while threatening the deceased he was accompanied by 3-4 so-called scoundrels.

(5) The stand of Charan Singh is that because of enmity he has been involved, that in fact on the date of incident a Barat had come to the place of the incident at 1 A.M. and since the deceased had blocked the road with his three-wheeler and refused to remove the same, some altercation took place between those unknown persons and the deceased but it soon came to an end with the intervention of some good people and that after an hour those unknown persons possibly committed this crime. Another basis which was laid in defense is that the deceased was residing with some nurse in this house, that she had withdrawn Rs. 25,000.00 from the bank which were misappropriated by Prem Kumar and that after she was turned out by the deceased from his house there have been quarrels between the husband of that nurse and the deceased who was demanding the money and other articles of that nurse back from him.

(6) The entire prosecution case rests on the dying declaration made by the deceased at different intervals. The first dying declaration is alleged to have been made by the deceased to his wife Mrs. Ranjana Kumari Public Witness . 7 immediately after the incident when she asked the deceased as to how the incident took place. According to her, on hearing the alarm raised by her deceased husband she rushed to the scene where she found one or two more persons who were trying to extinguish the fire of the scooter. She found her husband also burning and she heard her husband saying that accused Charan Singh and Narayan Singh and 4-5 other persons had poured petrol over him and set him ablaze, It was she who removed the deceased to Irwin hospital where the police recorded statement of the deceased. According to her, when she reached on the spot Public Witness . 8 Jai Prakash was already present. She admits that on that night a Barat had come to the Chopal where the incident took place and she also admits that the deceased had some affair with some nurse. Public Witness . 8 Jai Prakash who was also expected to support the fact of the deceased having made a dying declaration to his wife regarding the circumstances in which he received burn injuries was declared hostile as he refused to subscribe to the prosecution

case on this aspect. He, however, admits that the incident had taken place and the wife of Prem Kumar had reached the scene of the incident and she had asked from Prem Kumar as to how the incident took place. He also says that the reply of Prem Kumar was that he was not aware as to how the incident took place. It is thus clear from the testimony of Jai Prakash that Mrs. Ranjana Kumari P.W. 7 reached the spot immediately after the incident and she did put a question to the deceased as to how the incident took place. In our view, it is also quite natural for her to be attracted to the scene on hearing the alarm raised by her husband. It is also quite natural and probable for her to have asked the deceased as to how the incident took place. In our view, therefore the mere fact that Jai Prakash does not subscribe to it by itself is not sufficient to discredit the testimony of Public Witness . 7 Mrs. Ranjana Kumari wife of the deceased. She, being the wife, her natural instinct would be to make sure that those who have committed the offence are brought to book and she would not screen the real culprits and involve any innocent person. The fact that the deceased and his wife was having quarrel with the appellants, it is argued, has prompted Public Witness . 7 to involve the present appellants does not appeal to us. A close perusal of the testimony of Public Witness . 7 Ranjana Kumari would show that she is essentially a truthful witness. She has truthfully accepted the suggestion of the defense that on that night a Barat had come to the Chopal and that her deceased husband was having an affair with some nurse. In normal course unless a wife is a truthful witness she would not say these things about her deceased husband.

(7) The next dying declaration made in the series is appearing in the Mlc Ex. Public Witness 18/A prepared by Dr. Sudha Aggarwal in the Casualty. In this dying declaration it is depicted that he has been burnt by Charan Singh by sprinkling petrol and by lifting him on fire. It is specifically mentioned therein that this alleged history has been told by Prem Kumar patient himself. This dying declaration was proved by Shri K.K. Chhibber, Record Clerk of Jpn hospital examined as Public Witness . 18 & 19 According to him, Dr. Sudha Aggarwal had since left the hospital and her present whereabouts were not known.

(8) Next in series is the statement Ex. Public Witness 19/B made by the deceased before Dr. Ajay Gupta in the intensive care ward in which Dr. Ajay Gupta clearly

stated that the patient told him that while he was sweeping in his scooter two persons poured petrol on him and burnt him. This certificate was also proved by aforesaid PW. K.K. Chhibber as Dr. Ajay Gupta had also left the hospital and his present whereabouts were not known. The evidence regarding fitness certificate on the MLC is proved to be in the handwriting of Dr. Achala Seth by the same witness, though he could not identify the doctor who gave certificate on the dying declaration recorded by Shri M.S. Rohilla Metropolitan Magistrate. The fourth dying declaration in the series is the one recorded by Public Witness . 17 A.S.I. Jage Ram which is marked as Ex. Public Witness 5/A. It is this dying declaration on which the FIR was in fact based. The contents are as under :

'Outside at the aforesaid address for the last three years Along with my children. I had taken this house from Charan Singh S/o Shri Lakhi Ram on a rent of Rs. 100.00 (one hundred only). I ply three wheeler scooter bearing No. DHR-4348. Charan Singh who works as Home Guard had brought the burglars to my house several times previously also and picked up the quarrel. He had threatened me to the effect that in case I did not vacate the house, he would get me murdered Today, I was sleeping in three wheeler scooter bearing No. DHR-4348 whereon Charan Singh, his brother Narayan Singh s/o Lakhi Ram and 3/4 more persons caught hold of me. They sprinkled petrol and set me on fire. Where there was fire (1) raised alarm as a result whereof a number of people came out and extinguished the fire of my clothes. I have well recognised Charan Singh and Narayan. I can identify the remaining persons if confronted me. I am complainant against them, since my scooter has also burnt. My wife also witnessed this occurrence. She got me admitted to the hospital. I have heard the statement and the same is correct.'

(9) The last dying declaration has been made before Shri M.S. Rohilla, Metropolitan Magistrate, and is marked as Ex. 'PW 6/B which is as under :

'Q.What is your name, father's name and address Ans. Prem Kumar son of Dhanpat Rai, resident of Dhirpur. Q. Are you in a position to speak or not Ans. I can speak a little bit, I am feeling much pain. Q. In case questions are put to you, would you reply Ans. Yes. Q. What have to you to say Ans. In the night after 2

A.M., exact time not being known, as I was not having watch, six persons were present outside. Out of them two caught hold of me tightly, one poured petrol, Charan Singh put the match-stick. He wants to get the house vacated. My mouth was pressed. Because of the arrival of the chowkidar all fled. I raised hue and cry as a result whereof people collected They extinguished the fire. Thereafter, they brought me to the hospital in a vehicle. Narayan Singh, the brother of Charan Singh, who resides in front side was also present with them. I can identify the remaining 2/3 persons if they are confronted me. I do not know their names. names. Q. Have you anything more to say Ans. I may kindly be saved. Charan Singh had attacked me 4-5 times, having called the burglars. Q. Anything more Ans. That is all.'

(10) We may note that whereas the dying declaration made to Shri Jage Ram Public Witness . 17 marked Ex. Public Witness 5/A is signed by Prem Kumar the dying declaration recorded by Public Witness . 6 Shri M.S. Rohilla, marked Ex. Public Witness 6/B, bears the thumb impression of the right foot of the deceased. This has been explained by Public Witness 6 Shri M S. Rohilla that at the time when he recorded the statement the bands of the deceased were bandaged and the doctor refused to remove the bandage. We may also note that this dying declaration Ex. Public Witness 6/B was recorded at 5 P.M. on 18th of February, 1983, the date of incident, while the dying declaration recorded by Public Witness . 17 Jage Ram marked Ex. Public Witness 5/A was recorded in the early morning hours of the same day.

(11) According to Shri Bawa Gurcharan Singh, learned counsel for the appellant, the dying declaration made to Public Witness . 7 Mrs. Ranjana Kumari should not be acted upon as she is an interested witness. We have already disposed of this objection. We find that she cannot be characterised as an interested witness and in view of her over all statement which is partly getting support from the testimony of Jai Prakash Public Witness . 8 we find nothing unreliable in what she says. The fact that she is also inimical towards the accused has been referred to by Shri Bawa Gurcharan Singh to highlight the possibility that due to enmity she is interested in involving the accused in this crime. We may note that she has in fact no enmity and bears no grudge. The fact is that it were the appellants who bore an

enmity and have been constantly abusing and quarrelling with her and her deceased husband. If the appellants had not started pressurising them to vacate the house, there was no reason for her or her deceased husband to otherwise pick up a quarrel with them.

(12) Next Shri Bawa Gurcharan Singh urged that there is material discrepancy between various dying declarations recorded on different occasions. We may note that two of the dying declarations Exts. Public Witness 18/A and 19/B have been recorded by the doctors in the hospital. The doctors are not expected to be inquisitive about these matters and to question in detail. They have, therefore, recorded what they were told by the deceased about the cause of sustaining the burn injuries. In Ex. Public Witness 18/A (MLC) (Charan Singh appellant has been clearly named.. In Ex. Public Witness 19/B two persons have been referred. These, however, do not represent the detailed version of the statement made by the deceased, the detailed versions are reflected only in the statement made by the deceased to his wife Public Witness . 7 Mrs. Ranjana Kumari, in Ex. Public Witness 5/A the statement made by the deceased before Asi Jage Ram Public Witness . 17 and also the detailed statement recorded by Public Witness . 6 Shri M.S. Rohilla, Metropolitan Magistrate marked Ex. Public Witness 6/B.

(13) A close perusal of all these three statements would show that in material particulars they are quite consistent with each other. In all these statements the deceased has talked about the six persons including Charan Singh and Narayan Singh appellants who are responsible for the commission of this crime. In both Ex. Public Witness 5/A and Ex. Public Witness 6/B there is a mention that earlier also Charan Singh had attacked him along with a few burglars. There is no reason, therefore, to doubt the truthfulness of these dying declarations. It is true that the "dying declaration Ex. Public Witness 5/A has been recorded by Asi Jage Ram Public Witness . 17 who is investigating officer of this case but in view of the fact that this dying declaration is quite consistent with the statement of Public Witness . 7 Mrs. Ranjana Kumari and the dying declaration Ex. Public Witness 6/B recorded by Public Witness . 6 Shri M.S. Rohilla, the argument that Ex. Public Witness 5/A should be approached with utmost caution has no relevance on the facts of the present case. Assuming, though not granting, that Public Witness . 17 Asi Jage

Ram being the investigating officer was interested in making out a case against the appellants, then in that event he would not have approached the Magistrate immediately after recording the statement. The very fact that he approached the Magistrate and on the same day the Magistrate is brought on the spot and asked to record the dying declaration of the deceased shows that he was very honest in dealing with the case and the effort has been all through to bring the real culprits to book. Had he been interested in any way he would not have approached the Magistrate. That petrol was sprinkled on the person of the deceased is also borne out by the report of the C.F.S.L. who after examining the jersey recovered from the person of the deceased has reported that it smells of petrol.

(14) At this stage, we may take up for consideration the next contention of Shri Bawa Gurcharan Singh that while appreciating dying declarations the ability of the deceased to identify the assailants has to be taken into consideration. His contention is that there was no light around and it was dark: as testified to by P..W. 17 A S.f. Jage Ram. We are not impressed with the argument. When the deceased has consistently stated that he did identify the appellants and while we have found this testimony to be trustworthy there is no question of disbelieving the fact that he had identified the appellants. The deceased is so truthful that he has very frankly admitted that the other persons accompanying the appellants at the time of the commission of this crime could not be identified by him but he can do it if they are brought before him.

(15) The next point urged by Shri Bawa Gurcharan Singh is that it being the common case of the parties that a number of people had reached the spot and extinguished the fire it must be assumed that those people were Public Witness .8 Jai Prakash, Public Witness . 2 Sunder Singh and D.W.3 Puran Chand as also Joginder Singh. Chowkidar, who first informed the police about this burning incident. We have already discussed the testimony of Jai Prakash Public Witness . 8. The suggestion that D.W.2 and D.W.3 should be assumed to be the persons who were also present is based on imaginary grounds. As far as the chowkidar is concerned, his presence though admitted but it is not clear as to at what stage he arrived at the spot. The accused persons were at liberty to examine him but they have not done so. Keeping in view the consistent stand of the

deceased in 'all the dying declarations we find no reason to suspect that he has been tutored by his wife who took him to hospital and remained with the deceased all through. If she were to tutor the deceased, she would make sure that at the time- the deceased made the statement Ex. Public Witness 18/A and Ex. Public Witness 19/B that the names of both the appellants are introduced by the deceased. In our view therefore, the sum and substance of the dying declarations clearly establish that the appellants along 'with some other unknown persons were responsible for the commission of this crime and the prosecution has sufficiently established the motive, the appellants had in committing this crime. Jage Ram Public Witness 17 had no knowledge about the earlier background between the parties which was within the exclusive knowledge of the deceased and his wife and the very fact that the deceased and has given out the background regarding the enmity between him and the appellants in his dying declaration made to him clearly shows that the dying declaration Ex. Public Witness 5/A recorded by Jage Ram represents the true version of the statement made by the deceased.

(16) In this case thus the conviction of the accused/appellants depends entirely on the reliability of the dying declarations aforesaid- The settled law is that the dying declaration is admissible under Section 32 of the Evidence Act. In dealing with the dying declarations the Courts have to apply the strict scrutiny and the closest circumspection to the statement before acting upon it. Thus, in dealing with the dying declarations the Court has to bear following things in mind. It has to satisfy that the deceased was in a fit state of mind to make the statement, that the deceased had a clear opportunity to identify and observe his assailants, and that he was making the statement without any influence. If these requirements are satisfied a conviction is justified even without any further corroboration. The Supreme Court in K. Ramachandra Reddy and another v. The Public Prosecutor, : 1976 CriLJ1548 has made the following observations as to how the Court should approach a case which entirely rests on dying declarations

:(1)It has observed it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

- (2)that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;
- (3)that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;
- (4)that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of the surrounding circumstances and with reference to the principle governing the weighing of evidence;
- (5)that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers and as far as practicable, in the words of the maker of the declaration stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character; and
- (6)that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.
- (17) In the present case we are of the view that the dying declarations made by the deceased Prem Kumar fully stand the test of the law laid down on the subject, each one of them in particular Ex. Public Witness 5/A, Ex. Public Witness 6/B and the dying declaration made before Public Witness .7 Mrs Ranjana Kumari are consistent and have been made at the earliest possible opportunity. In our view, the dying declarations in the present case fully stand the test of law, the dying declaration Ex.P.W. 6/B recorded by Shri M.S. Rohilla, Metropolitan Magistrate is in the form of questions and answers and before recording the same, apart from seeking a certificate from the doctor, he has personally made sure that the

deceased was in a fit and conscious condition to make the statement. In all these statements the deceased has named the appellants as the persons who are involved in the commission of this crime. In our view, the dying declarations are truthful and satisfy the tests prescribed in this connection and there is no reason not to act upon the same. The trial Court, in our view, has rightly based the conviction on these dying declarations.

(18) As far as the applicability of Section 34 Indian Penal Code . is concerned, it is obvious from the statement of the deceased that Narayan Singh appellant was also present at the time of the commission of this crime. He came along with the other appellant with a purpose. He knew that they were carrying petrol with a view to set the deceased on fire. He ran away from the spot along with the other accused. He has given no Explanationn about his presence at the scene which leads to an irresistible inference of a prior concert about the commission of this crime in furtherance of common intention of all. Section 34 Indian Penal Code . will be attracted if it is established that the criminal act has been done by any one of the accused persons in pursuance of the common intention In this case. we are satisfied about it and the prosecution has established this fact. in our view. thereforee, Narayan Singh is equally guilty of the commission of this crime. In these observations we are fortified by the observations made by the Supreme Court in the case of State of U P. v. Iftikhar Khan and others : 1973 CriLJ636 . We find no merit in this

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