

Raj Bahadur Vs. State

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Court : Delhi

Decided On : Aug-14-1991

Reported in : 45(1991)DLT144; II(1991)DMC381; 1991(21)DRJ340

Judge : Malik Sharief-ud-Din and; V.B. Bansal, JJ.

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

Appeal No. : Criminal Appeal No. 237 of 1987

Appellant : Raj Bahadur

Respondent : State

Judgement :

V.B. Bansal, J.

(1) Raj Bahadur s/o Mehar Bahadur r/o House No. 16/71, Hardhian Singh Road, Delhi was convicted for the offence under Sec. 302 Indian Penal Code vide judgment dated 26th October, 1987 and sentenced to imprisonment for life vide order dated 29th October, 1987 by an Additional Sessions Judge, Delhi for having committed the murder of his wife Smt. Bimla @ Billo.

(2) Being not satisfied with the judgment and order Raj Bahadur filed this appeal.

(3) Before discussing the arguments advanced at the Bar it would be appropriate to mention the necessary facts of the case.

(4) Smt. Bimla @ Billo was married to Raj Bahadur about 14/15 'years prior to 27th February, 1984, the date of incident. They had three children including Master Amit out of this wed-lock. Raj Bahadur was working as a mason and they were residing in House No. 16/89 Hardhian Singh Road, Bapa Nagar Delhi, Om Parkash along with his wife Smt. Prem Lata was residing in another portion of the same house No. 16/18 Bapa Nagar. Hardhian Singh Road, New Delhi and, thus, they were the next-door neighbours of Raj Bahadur and Smt. Bimla.

(5) Dr. R.P.Singh was residing in House. No. 16/71, Hardhian Singh Road, Bapa Nagar. In-laws of Raj Bahadur were residing in House No. 16/71, Hardhian Singh Road.

(6) Raj Bahadur has been in the habit of taking liquor. He used to have quarrel with his wife to whom he even used to give beatings very often.

(7) On 27th February, 1984 Amit was playing in the street where Raj Bahadur came under the influence of liquor and brought Amit to the house while giving beatings. Smt. Bimla @ Billo made a request to Raj Bahadur not to do so upon which he gave abuses and beatings to her. He wanted to go down stairs but was prevented from doing so by her. Raj Bahadur gave beatings to his wife and also gave threats to her of being killed to which she replied that 'It is tatter to kill her instead of giving beatings every day. Raj Bahadur opened the lid of stove and sprinkled kerosene oil on saree of Bimla who was then set on fire by him.

(8) Smt. Bimla caught fire and ran out side while crying upon which her neighbours Om Parkash and his wife came and she was wrapped in a quilt. Many persons collected including R.P.Singh and Smt. Bimla was removed Ram Manohar Lohia Hospital in a taxi.

(9) Smt. Bimla was got admitted in Ram Manohar Lohia Hospital, New Delhi by Dr. R.P.Singh at 9.45. P.M. with alleged history of burns by the stove. Duty Constable Sultan Singh gave information on telephone to Police Post Tank Road, Delhi on

the basis of which Dd No. 23 was recorded at 10.00 P.M. and a copy was given to S.I.Ishwar Singh for investigation. Constable Om Parkash was sent to the spot and

S.I.Ishwar Singh collected the Mlc of Smt. Bimla who was declared by the doctor to be fit for statement. therefore, S.I.Ishwar Singh recorded the statement of Smt Bimla who gave to details mentioned in the earlier paras. He made an endorsement and went to police station where rukka was given to the duty officer at 10.50 P.M. on the basis of which Fir 137 was recorded and the investigation was entrusted to S.I.Ishwar Singh.

(10) During the investigation of this case statements of the witnesses were recorded and it was found that on way to the hospital in the taxi Smt. Bimla had given information to the persons accompanying her that she was set on fire by her husband Raj Bahadur after putting kerosene oil on her. It was also found that while coming out of her house while on flames she was proclaiming that she was set on Fire by her husband which was heard by her neighbour Om Parkash and his wife Smt. Prem Lata. It was also found that she made a dying declaration even to her son Amit before being shifted to the hospital.

(11) According to the prosecution story a requisition was sent upon which Shri G.C. Pillai Sdm came to the hospital and he also recorded the dying declaration of Smt. Billo when she had, inter alia, stated that her husband was full of drink: and gave her beatings and thereafter kerosene oil was put on her saree and than she was set on fire by him with a match-stick. She had also stated that her husband was a drunkard and that her neigh bout had put quilt around her and she was brought to the hospital.

(12) During the same night some persons brought Raj Bahadur with burn injuries to Ram Manohar Lohia Hospital but he was not admitted there on account of non-availability of accommodation. In these circumstances Dr. R.P.Singh took Raj Bahadur to Jpn Hospital and got him admitted there at 10.15 Pm on 27.2.84. He was found having 18 per cent of burns and was admitted to the bums ward for detailed examination and management.

(13) No vacant bed was available in the burns ward of Ram Manohar Lohia Hospital and so Bimla was shifted to Safdarjung Hospital, New Delhi during the night between 27th and 28th of February, 1984. Smt. Bimla @ Billo died on 28th February, 1984. Investigation Officer took inquest proceedings and the dead body was sent for post-mortem examination.

(14) Dr. A.K.Sen conducted post-mortem examination on 29th February, 1984 and opined that death was due to shock and toxemia resulting from burn injuries.

(15) During the course of investigation Raj Bahadur was arrested and necessary articles were taken into possession from the spot and after getting reports from Cfsi accused was challaned.

(16) During trial plea of the accused was that he was not present in the house at the time when his wife received burn injuries and on coming to know of this fact he rushed to his house and made efforts to save his wife by extinguishing fire and in the process he also received burn injuries. He has denied being a drunkard or that he used to give beatings to his wife or children but produced no evidence in defense. The trial resulted in the conviction and sentence as aforesaid.

(17) Learned counsel for the appellant has submitted that there has not been any reliable evidence on record to show that Smt. Bimla was in a fit condition to make any statement in the hospital and that she made on dying declaration even at the spot or on way to the hospital. She has further submitted that it was an accidental Fire and the appellant made efforts to extinguish the fire and made efforts to save the life of his wife and in that process he also sustained burn injuries. It has, thus, been submitted that there was no cogent and reliable evidence against the appellant and his conviction cannot be maintained. A prayer has, therefore, been made that the appellant may be acquitted.

(18) Learned counsel for the respondent has, on the other hand, submitted that in spite of a number of public witnesses having turned hospital there is sufficient material on record to show that the appellant was a drunkard who had been giving beatings to his wife and children and even on the date of incident after a quarrel with Smt. Bimla she was set on fire by him after putting kerosene oil on her saree

from a stove. He has also submitted that apart from the oral dying declarations made to the neighbours she had made a dying declaration before S.I.Ishwar Singh who was investigating the matter and also before Shri G.C. Pillai, Sdm and independent witness who has recorded her statement after he was found fit for making a statement. He has in this way submitted that the conviction of the appellant is based on sufficient reliable evidence and so prayed that the appeal may be dismissed.

(19) We have given our thoughtful consideration to all these submissions in the light of the evidence on record and have no doubt in our mind that the prosecution has not been able to bring home guilt against the appellant beyond reasonable doubt.

(20) It is the admitted case of the parties that Smt. Bimla @ Billo wife of the appellant was living with him and they had three children out of this wed-lock including Master Amit (Public Witness 4). Smt. Bimla was taken to the hospital with burn injuries by Dr. R.P.Singh (Public Witness O) on 27th February, 1984. She died in Safdarjung hospital. After inquest proceedings, the dead body was sent to the mortuary where post-mortem examination was conducted by Dr. A.K.Sen (Public Witness 10) vide his report Ext. PWIO/A. According to the doctor the deceased was having 97%-98% of burns and the cause of death was shock and toxemia resulting from burn injuries. There is, thus, no dispute that Smt. Bimla died of burn injuries and, thus, not a natural death.

(21) Prosecution has placed reliance upon written dying declarations and also oral dying declaration alleged to have been made by the deceased. We would first deal with the written dying declaration.

(22) The first dying declaration stated to have been made by the deceased reduced to writing was by doctor in Ram Manohar Lohia Hospital at the time of her admission. We may note that Dr. A. Mittal had prepared the Mlc in respect of Smt. Bimla @ Billo and this doctor has not been examined Prosecution has not proved Mlc even by examine and doctor or a record clerk conversant with the writing and signatures of Dr. Mittal. However, for referring to a document of the prosecution it is open to the accused to place reliance upon that document even in the absence

of its proper proof. A perusal of this Mlc shows that Billo was admitted with alleged history of burns by te stove. It is, thus, clear that the first written declaration made by the deceased to the doctor did not implicate the appellant to be the person responsible for her burn injuries. We may also note at this stage that Dr. R.P.Singh (Public Witness 13) who got her admitted in the hospital has not stated about the making of any declaration, to him on way to the hospital.

(23) Most important document relied upon by the prosecution against the appellant are the statements Ext. Public Witness I I/A recorded by S.I.Ishwar Singh (Public Witness 17) and Ext. Public Witness 17/A recorded by Shri G.C.Pillai. It would be appropriate to discuss these two declarations together.

(24) S.L.LSHWAR Singh (Public Witness 18) has claimed that on 27th February, 1984 at about 10.00 P.M. copy of Dd No. 18 was given to him from Police Post Tank Road upon which he reached Ram Manohar Lohia Hospital and obtained Mlc of Smt. Billo. He has also claimed that she was declared fit for statement by Dr. M.Alam and thereafter he correctly recorded the statement Ext. Public Witness I I/A of Smt. Bimla @ Billo which she signed and it was endorsed by Dr. M.Alam. He has further claimed that he made his endorsement Ext. Public Witness 11/B on the statement of Smt. Bimla and produced the same before Duty Officer, Karol Bagh at 10.05 P.M. Hc Amar Nath(RW II) while working as duty officer at Police Station Karol Bagh is claimed to have registered Fir 137 copy of which is Ext. Public Witness 11/C at 10.50 P.M. on 27th February, 1984. He has denied that the Fir was recorded subsequently and mentioned wrong time after recording the same.

(25) Public Witness 17 G.C.Pillai was working as Sdm Karol Bagh and claimed that on 27th February, 1984 to about 10.30 P.M. at the instance of some police officials he came to Willingdon Hospital where police officials handed over to him Mlc of one Smt. Bimla on which there was already an endorsement of the doctor certifying that the patient was fit for statement. He has claimed having correctly recorded her statement, Ext.PW 17/A which was signed by her. According to Mr. Pillai he completed the recording of the statement at 11.00 P.M.

(26) Apparently considering these statements it can be said that Smt. Bimla @ Billo was fully conscious and fit for statement and it is only thereafter that her statements were recorded by S.I. Ishwar Singh and Mr. G.C. Pillai which she had signed and the statement recorded by S.I. Ishwar Singh was even attested by Dr. M. Alam. The question, however, to be considered is as to whether on scrutiny it can be said that these are the dying declarations of Smt. Bimla @ Billo while fit for making statements.

(27) The case of the prosecution is that Smt. Bimla was declared fit for statement by Dr. Alam before the recording of her statement. Ext. Public Witness 18/B is the endorsement of Dr. M. Alam in this regard. We may note that Dr. M. Alam has not been produced in spite of the fact that a number of opportunities were given to the prosecution to produce him. Dr. Alam was reported to be at Poona but he was not produced. A perusal of this Ext. Public Witness 18/B shows that the writing was 'not Fit for statement' but the word 'not' had been scored off. There is nothing to indicate as to at what time this endorsement was made by the doctor. Submission of learned counsel for the respondent has been that the word 'not' was wrongly written by the doctor who after cutting it had made initials over the cuttings. We cannot be sure as to whether the cutting in this way has the initial of Dr. M. Alam and under what circumstances and at what time the word 'not' was scored. It is a very material piece of evidence and for placing reliance upon the dying declaration it was incumbent upon the prosecution to prove that Smt. Bimla @ Billo was in a fit condition to make statement. It is also pertinent to note that the statement Ext. Public Witness I I/A does not indicate the time at which this statement was written by S.I. Ishwar Singh. During cross-examination it has been stated by Ishwar Singh that he left the hospital at about 10.45 P.M. Public Witness 17 G.C. Pillai was Sdm who has claimed that he reached the hospital around 10.45 P.M. and met the Investigating Officer in the hospital. He has also claimed that he must have taken about 2 to 3 minutes in going to the ward with police officer to see the patient and thereafter he recorded her statement and that Mlc was handed over to him by the 1.0. It is admitted case of the prosecution that S.I. Ishwar Singh (Public Witness 18) had collected the Mlc of Smt. Bimla @ Billo and, thus, it was throughout in his custody. When we consider these two statements together it is obvious that it is S.I. Ishwar Singh who was present in the hospital at the time Mr. G.C. Pillai (Public

Witness 17) reached there and it was he who had shown the Mlc to Mr. Pillai. It has clearly been admitted by Public Witness 17 that he had not contacted any doctor to ascertain whether Smt. Bimla was fit to make a statement and he placed reliance only on endorsement Ext. Pw 18/B on her MLC. As already discussed this endorsement does not prove on record that Smt. Bimla was actually fit to make a statement.

(28) We are supported in this conclusion by yet another document available on file produced by the prosecution itself. There is a writing in respect of the bum injuries of Smt. Bimla and at 10.30 P.M. injection Morphine 15 mg. state was prescribed besides other medicines. There can possible be no dispute that in the case of a patient having 100% burn injuries the medicines are prescribed to be administered immediately. Morphine is stronger than Pathedine and a judicial notice can be take that a patient given Morphine injection would not have normal alertness and so it would be difficult to give full credence to the statement of the doctor that the patient was Fit to make a statement.

(29) Public Witness 17 G.C. Pillai has clearly stated that he was not very much conversant with Hindi and that he had put different questions to Smt. Bimla to which she replied and that he had translated her statement in English himself. We are not aware what were the questions put to her and to what extent the answers were suggested while putting the questions. We are, thus, deprived of an opportunity to know as to what were the questions and what were the answers to those questions. Supreme Court of India and High Courts have on a number of occasions observed that it is appropriate that the statements of the injured are recorded in their own language so as to know as to what was the actual statement made. In any case, when the statement was recorded by way of putting questions it was all the more necessary to have written the questions and answers in the manner in which they were put to the injured. It has, however, not been done in the instant case. A perusal of the dying declaration EXT. Public Witness 17/A indicates that there are cuttings regarding material facts. First writing is that kerosene oil was taken from bottle but the word 'bottle' was scored and then writing is about stove. It was first written that he tried to put out fire which has been scored. In the earlier part of the writing it is written that he used to beat me daily

and was full of drink. However, a line has been inserted before the last line to the effect that my husband is a drunkard and used to beat me. There is no Explanationn for all these doubts. We may also note that if S.I. Ishwar Singh, Investigating Officer was in the hospital till 11.00 P.M. he could not hand over the rukka to Duty Officer at 10.50 P.M. for the registration of a case. Considering all these facts, we are clearly of the view that the prosecution has not been able to prove beyond reasonable doubt that Smt. Bimla @ Billo was fit to make statement and that she made these dying declarations.

(30) Prosecution has also placed reliance upon the oral dying declaration stated to have been made by the deceased. Om Parkash (Public Witness 1) and his wife Smt. Prem Lata were residing in the room adjacent to the room of the accused. They are the persons who came immediately on hearing alarm and Bimla was wrapped in a quilt them. According to the prosecution Smt, Bimla has made a dying declaration in their presence to the effect that she was set on fire by her husband. These two witnesses, however, did not support the prosecution and were cross-examined by the Additional Pp after getting permission to do so. Nothing material has come in their crossexamination. Prosecution has also placed reliance upon the statement of Dr. R.P.Singb who was residing in the neighborhood of the appellant and who had removed the injured to the hospital. He, too, has not supported the prosecution and his statement shows that Smt. Bimla made no dying declaration in his presence.

(31) The only witnesses tallied upon by the prosecution are Ram Singh (Public Witness 3) and Amit Kumar (Public Witness 4). Public Witness 3 Ram Singh is the uncle of Smt. Bimla who has claimed that on the date of incident at about 9.30 P.M. while present in his house he heard alarm upon which he came out and met Bimla on the way on a cot at the chowk and she informed him that she was set on fire by Raj Bahadur. During crossexamination he has claimed that he told the police in the hospital about the aforesaid dying declaration made to him by Smt. Bimla but his statement was not recorded in the hospital. He was confronted with his statement recorded by the 1.0. during cross-examination where he had claimed that the dying declaration was made to him by Smt. Bimla in the taxi on way to the hospital. He has, thus, changed the place at which the said dying

declaration was made to him by Smt. Bimla. As already referred to Dr. R.P.Singh has contradicted Ram Singh. (Public Witness 3) when he has stated that Smt. Bimla made no dying declaration on way to the hospital from the place of incident. It also pertinent to note that the case of the prosecution has been that kerosene oil was put on her saree before Bimla was set on fire and it was not the statement purported to have been made to Ram Singh by her.

(32) Amit Kumar (Public Witness 4) was aged about 11 years and son of the appellant and Smt. Bimla (deceased). Admittedly, he has been residing with his maternal grand mother and maternal uncles. According to him on the date of incident (wrongly mentioned by him as 28th February, 1984 instead of 27th February, 1984) he was present at the house of his maternal grand mother at about 9.30 P.M. when on hearing noise he came out and came to know about the burn injuries of his mother. He went on to state that on reaching near her in the gali his mother Smt. Bimla told him that Raj Bahadur has set her on fire. His maternal uncle Hukam Kishore was present in Court at the time of the recording of the statement. He has also claimed that his two 'mausis', namely, Sharda and Usha also came at the spot and the statement was made by his mother Smt. Bimla in their presence also. According to him police did not record the statement of his two mausis. He has also claimed that S.I. Ishwar Singh reached the spot about 5 minutes after the taking away of his mother and he had narrated all the facts to S.I. at that time. There is no reason to disbelieve this witness and if all the facts were disclosed to him by Amit Kumar there is no Explanation as to why to the I.O. did not record his statement and made the said statement as the basis of the FIR. There is no Explanation as to why Sharda and Usha who were available at the spot were not examined and why they have not been cited as witnesses. The case of the prosecution has been that the accused had put kerosene oil on Bimla and only thereafter she was set on fire. This claim, however, made by her in the dying declaration recorded by S.I. Ishwar Singh and G.C. Pillai stands contradicted from the statement of Amit Kumar when he has not stated that he was told by his mother that Raj Bahadur had set her on fire and there is no mention of kerosene oil being poured on her. He was emphatic in his claim that his mother did not tell him that kerosene oil was poured on her before she was set on fire.

(33) May be that on the day of incident a quarrel took place between Raj Bahadur appellant and his wife Smt. Bimla @ Billo as is stated by Prem Lata (Public Witness 2) and Amit Kumar (Public Witness 4). That however, would not be sufficient to hold that it was Raj Bahadur appellant who caused burn injuries to Smt. Bimla resulting in her death. We may also note that the appellant sustained 20% burns and he was removed to the hospital almost simultaneously with Smt. Bimla. The appellant was taken to Jpn Hospital since no bed was available in Rml Hospital as stated by Dr. R.P.Singh and he was admitted in Jpn Hospital at 10.15 P.M. with 18% burns. There is nothing improbable in the claim of the appellant that the injuries wer sustained by him while making efforts to extinguish the fire of his wife. The possibility of Smt. Bimla @ Billo setting herself on fire after a quarrel with the appellant is highly probable and, thus, cannot be ruled out.

(34) Considering all the facts and circumstances as discussed above, we are clean of the view that the appellant is entitled to get the benefit of doubt. The appeal accepted. Conviction and sentence of the appellant are set aside. Giving him the benefit of doubt Raj Bahadur is acquitted. He is in custody. He shall be released forthwith, if not required in any other case.

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