

Mangat Ram Vs. State

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Court : Delhi

Decided On : Jun-03-1994

Reported in : 1994CriLJ3454; 1994(3)Crimes685; 55(1994)DLT552

Judge : Y.K. Sabharwal and; Devinder Gupta, JJ.

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

Appeal No. : Criminal Appeal No. 160 of 1988

Appellant : Mangat Ram

Respondent : State

Advocate for Pet/Ap. : Geeta Mittal and; N.K. Handa, Advs

Judgement :

Devinder Gupta, J.

(1) This is an appeal arising out of the judgment of conviction and sentence passed by Shri J.D. Kapur, Additional District Judge on 22.10.1988 convicting the appellant-accused for an offence under Section 302 of the Indian Penal Code (for short 'the Code) and sentencing him to undergo life imprisonment and to pay a fine of Rs. 1,000.00 and in default 6 months R.I.

(2) The appellant-accused was charged for having committed murder of his wife Smt. Veena on 26.1.1985 by sprinkling kerosene oil on her and then setting her on fire.

(3) The judgment of conviction is based upon three dying declarations alleged to have been made by Smt. Veena the first given to Dr. P.S. Bhandari, PW8, which has been recorded by him in the Medico-Legal Certificate, Ext. Public Witness 8/A; the second is the statement, Ext. Public Witness I/B, made to S.I. Ajit Singh, Public Witness 21, on the basis of which Fir for an offence under Section 307 of the Code was registered; and the third is Public Witness 18/C the statement recorded by Public Witness 18, Shri M.K. Gupta, Metropolitan Magistrate. All the statements are of the same date, namely, 26.1.1985.

(4) The case of the prosecution is that on the fateful day, the appellant-accused came home drunk and started quarrelling with his wife Veena. There was some altercation and thereafter the accused is said to have poured kerosene oil on her and lit fire to her clothes. Public Witness 5 Kishore Lal took her to the hospital in a Rickshaw where Public Witness 8 Dr. P.S. Bhandari attended upon her and recorded Medico-Legal Report, Ext. Pw 8/A. On examination he found deep burns over the whole body except some part of chest and small area in the lower abdomen. According to him general condition was very critical but the patient was conscious oriented, responding to oral commands. The incident is stated to be of about 4.30 to 5.00 p.m. She was examined in the hospital at about 7.10 p.m. on her arrival there.

(5) At about 5.53 p.m. on 26th Jan., 1985 the basis of information received vide D.D. 15, Ext. Pw 17/A, that one woman has been burnt in C-17, Janta Jeevan Camp, Tigri near Madangir, Hc Vikram Singh and Prakash Chand, constables were sent to the place of occurrence who on their way met Pw 21 Si Ajit Singh. On reaching spot they found that Veena had been shifted to the hospital. They then proceeded towards the hospital. After getting certified from the Doctor that Veena was fit, making statement, her statement, Pw I/A, was recorded and on that basis of Ruqa was sent for registration of Fir for an offence under section 307 of the Code. The Inspector thereafter again came to the spot. After completing some

formalities he approached the Metropolitan Magistrate with a prayer to record the statement of Veena. The Metropolitan Magistrate recorded her statement at about 10.05 p.m. Veena succumbed to her injuries on 29.1.1985. Thereafter the Fir was converted for an offence under Section 302 of the Code. The petitioner was arrested on 13.2.1985 and was tried for the aforementioned offence.

(6) Learned Counsel for the appellant has vehemently contended that none of the statements which have been recorded by Dr. P.S. Bhandari, S.I. Ajit Singh and the Metropolitan Magistrate can be said to be voluntary in nature and on the conviction order cannot be sustained. He also contended that the defense set up by the accused was cogent and plausible to which due weight has not been given. It has come in the evidence that Veena was suffering from Tuberculosis and had on so many occasions expressed her anguish over the ailment and wanted to finish her life. In order to get rid of the ailment she appears to have committed suicide and the appellant was wrongly implicated. It is contended that this version of the accused is duly supported by the prosecution witnesses.

(7) We have given our considerable thoughts to the submissions made at the bar but are not persuaded to accept the same.

(8) The time of occurrence is, as noticed above about 5.00 p.m., as is recorded in Ext. Pw 8/A and as it finds place in the statement of Pw 5 Kishore Lal, who took Veena to the hospital. Information was also received by the concerned Police Station through P.C.R. and D.D. 15 was recorded at 5.53 p.m. about the incident. She was medically examined at 7.10 p.m. by Pw 8 Dr. P.S. Bhandari who recorded in Medico-Legal Report the history of the patient as follows:-

'AS stated by the patient, her husband came back to his house in the evening in a drunken state and poured kerosene oil over her. After that he lit her clothes, her clothes caught fire and she got the burn injuries.'

As regards consciousness, the Dr. recorded 'patient oriented responding to oral commands' general condition is critical.

(9) MEDICO-LEGAL report was duly proved by Dr. P.S. Bhandari, Pw 8, in his statement by stating that the patient had narrated the version which was recorded by him in the Certificate. According to him, the tongue was dehydrated, pulse was 162 per minutes, feeble. Cardiovascular system showed tachy cardia and lungs were clear but the patient was responding to oral commands.

(10) After receipt of information from the Police Station on the basis of D.D.15, Ajit Singh reached hospital at about 7.15 p.m. and remained there till 8.20 p.m. He moved application Ext. Pw 21/A seeking permission to record the statement of the patient upon which Dr. Bhandari gave his certificate that the patient was fit for making statement. Statement Pw I/A was then recorded by S.I. Ajit Singh in which Veena stated that:

'TODAY evening my husband came drunk and he started beating me. He then took the container of Kerosene oil and poured Kerosene oil on me. He set me on fire by lighting a match-stick and fled away. Hence I was burnt.'

(11) According to Pw 8 when he gave certificate to S.I. Ajit Singh, he had examined the patient and found her to be fit for making statement. Even according to Pw 21 Veena voluntarily made the statement by narrating the incident to him. He also read over and explained the statement to her and then she put her thumb impression. Pw 21 further states that he approached the Metropolitan Magistrate with a written application, Ext. Pw 18/A, praying for recording the statement of Veena.

(12) Shri M.K. Gupta, Pw 18, stated that on receipt of the application he made an endorsement on the same and proceeded to the hospital for recording her statement. Veena was found admitted in general ward. There was a curtain partition. She was identified by S.I. Ajit Singh and after ensuring that nobody including the police was near about, he satisfied himself that she was in a fit state to make statement. Dr. Guru Prasad had also recorded Certificate Ext. Pw 19/A at 10.05 p.m. that the patient was fit for making statement. Veena was there after questioned and her statement was recorded in question and answer form. A specific question was put to her as to whether she was making statement voluntarily to which she responded in the affirmative.

(13) In her statement, Pw 18/C, Veena has narrated almost the same version as that which was been reproduced above except with some more details as to the manner in which incident had taken place and the same may be reproduced hereunder:-

'TODAY evening, I do not know the time, when I was preparing potato dish in my Jhuggi my husband came there drunk after having picked a quarrel with some one and asked me as to what I was preparing while calling me Haramzadi (An abuse). I replied that I was preparing pota to dish. Both of my sons aged 6 years and 4 years respectively were with me at my house. After a short while abusing me as Haramzadi as they were my paramours (actual words being Yaar). I did not say any thing. Thereafter my husband poured kerosene oil from the Can on me and set me on fire and fled away. I cried and one of my neighbours removed me to hospital in rikshaw and scooter. My husband used to pick quarrels with me. He had quarrelled with me a lot even on the day of Sakrant.'

(14) As regards the certificate of fitness at the time when Ext.PW 18 recorded the statement of Veena, the same has been proved in the statement of Pw 19 PyareLal, since Dr. Guru Prasad at this stage was not available and his where abouts were also not known.

(15) Looking at the three statements what can be noticed is that there is absolutely no change in the version of Veena. She is assertive of two facts that her husband had, after giving beating, poured kerosene oil on her and set her on fire by lighting a match stick and thereafter fled away.

(16) Presence of accused appellant on the spot is proved in the statement of Kishore Lal, Pw 5, who admittedly took Veena to hospital. According to this witness accused was sitting with him. Thus, so far as presence of the accused on the spot is concerned, the same stands established. At this stage, conduct of the appellant also deserves to be noticed. Despite the fact that he was present on the spot, no effort was made by him either to extinguish the fire or to take care of his wife or to accompany Kishore Lal to the hospital. He in fact in his statement has taken up a stand that he was not present on the site but was away. His version is that he had all love and affection for his wife who was suffering from

T.B. and used to say that she would finish her life since she was desperate from her life. She was got treated in the hospital and treatment was also given in the Safdarjanghospital. In view of this version of the accused, his conduct becomes all the morerelevant. In case he had so much liking for his wife there is no reason for him not to have taken care of his wife who was in a critical condition.

(17) Dr. P.S. Bhandari, Pw 8, stated that when Veena was brought to hospital he had made the hospital staff to remove her clothes and from clothes he had noticed smell of kerosene oil.

(18) The contention that the statement of Veena is not voluntary and is a manipulated one, cannot be accepted. There is no reason why the Doctor while examining the patient and asking cause for the injuries would be telling lie when he at the first available opportunity happened to enquire from the patient himself the cause of burn injuries. There is no reason to disbelieve the version of Pw 18Shri M.K. Gupta, Metropolitan Magistrate when he recorded the statement ofVeena. There is no material difference in the two versions - one recorded by the Doctor and the other by the Metropolitan Magistrate. Statement of Veena recorded by S.I.Ajit Singh is also same. Pw 18 categorically denied the suggestion made to him that before he recorded the statement he had already come to the know of the statement recorded by the Investigation Officer. Statements of Veena, as reproduced above, in the facts and circumstances has rightly been held to be natural and voluntary and without any pressure.

(19) The defense set up by the accused is nothing but an after thought that Veena was suffering from T.B. or that she herself wanted to finish her life but this will not be in consonance with the circumstances of the case. Kishore Lal who had taken Veena in a rickshaw to the hospital was declared hostile. Moreover, there is apparent contradiction in his statement and that of Pw 3 Rattan Lal, who also states that he was present on the spot when he noticed found Veena coming out of Jhuggi in a burnt condition. According to him, the accused was not present on thespot. Pw 2 Sham Lal is another witness who saw Veena coming out of Jhuggi inflames and testified that the accused was present on the spot and helped oilier persons in extinguishing the fire. In view of this contradictory version of

threewitnesses, the fact that Veena herself tried to finish her life cannot be accepted. May be that Veena was suffering from T.B. but that is no reason to discard the statement made by her in a situation like this when she was about to die having 90% burn injuries. Conviction can be based solely on dying declaration provided it is voluntary. Dying declarations made by Veena in this case is most natural and voluntary and there is no ground to discard the same more especially in view of the statements recorded by the Doctor and the Metropolitan Magistrate. Cogent reasons have been assigned by the Additional Sessions Judge in having convicted the appellant and no interference is called for in this appeal.

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