

Raj Narain Vs. State

Raj Narain Vs. State

SooperKanoon Citation : sooperkanoon.com/696520

Court : Delhi

Decided On : Feb-06-1995

Reported in : 57(1995)DLT755

Judge : P.K. Bahri and; S.D. Pandit, JJ.

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

Appeal No. : Criminal Appeal No. 165 of 1990

Appellant : Raj Narain

Respondent : State

Advocate for Pet/Ap. : K.B. Andley and; Mukta Gupta, Advs

Judgement :

P.K. Bahri, J.

(1) This appeal is directed against the judgment dated 10/11/1990 of an Additional Sessions Judge, Delhi by which he convicted the appellant of an offence punishable under Section 302 I.P.C. having intentionally caused the death of one Smt.Asha @ Attri by pouring kerosene oil on her and setting her on fire and order dated 13/11/1990 by which he awarded sentence of rigorous imprisonment for life and a fine of Rs, 2,000.00 and in default to under gorigorous imprisonment for one month more.The facts, as have come out from the evidence, in brief, are that

deceased Asha was married to one Pyare Lal many years ago and three issues have been born from the said wedlock out of whom two were female and one was a boy and she was living with her husband Pyare Lal in a lane near Chowki No.2 and even after the death of her husband she continued to live there.

(2) It is the case that about four years prior to her death, she had started living as wife of appellant. Raj Narain, in the Jhuggi at Shakti Nagar located near the drain. Raj Narain appears to have represented to the deceased that he was an unmarried person but later on it was revealed to the deceased that Raj Narain was a married man and his wife had also come to live with Raj Narain a couple of days prior to the incident in question.

(3) On 17/06/1987, Asha was found in a burnt condition in the said hut and in a Police Control Room van she was brought first to Hindu Rao Hospital but as facilities for treating the burn patients were not available in that hospital, she was removed to Jai Prakash Narain Hospital by Head Constable Madan Chand, PW-10, and she was got admitted in that hospital at 10.15 p.m. The M.L.C, Ex. PW5/A was prepared by PW-5 Dr.V.K-Popli who had recorded in that M.L.C. that the patient had been admitted with alleged history of being set on fire after pouring kerosene oil by Raj Narain (as stated by the patient) and he found that the patient was conscious and was oriented, pulse was 88 per minute, regular, respiration 24/cm general and both pupils were reacting to light and no smell of alcohol/smell of kerosene and he found 95% burns on different portions of the body of the patient. The patient was then got admitted in the ward.

(4) Information to the Police Station Roshan Ara Road was given at 9.12 p.m. by S.I. Tarif Singh of Police Control Room who had been informed by one Raj Narain from a public telephone booth that there had taken place an incident of fire in a hut in Sawan Ashram, Shakti Nagar. Head Constable Rashid Singh was deputed to inquire into the matter who went to the spot on being handed over the copy of the report Ex.PWS/A. Bhalinder Singh, S.I. posted in that Police Station, on receiving the information, had reached the place of occurrence and thereafter, learning that the lady had been removed to Hindu Rao Hospital, had reached there and on getting the information that she had been taken to Jai Prakash Narain Hospital, he

went to the said Hospital and obtained the M.L.C, Ex.PW5/A. The doctor who was treating the patient in the ward had declared the patient unfit for statement at 12 midnight and thereafter the Sub-Inspector had come to the place of occurrence and had made an endorsement Ex.PW8/B and got the case registered vide F.I.R. No-182/87 under Section 309 Indian Penal Code in which he recorded that the enquiries made at the spot revealed that the lady had tried to commit suicide by burning herself.

(5) The F.I.R. was registered at 12.55 a.m. Thereafter, he had taken into possession burnt saree, brassiere and a cotton-wick batti from the spot besides a bottle which contained some kerosene and he had converted them into a sealed parcel. Asha had succumbed to her burn injuries on 18/06/1987 at about 9.45a.m. Information with regard to her death was given to Police Station Roshan Ara Road by Duty Constable Dayal Chand at 10.40 a.m. which was recorded in the Daily Diary, copy of which is Ex.PW9/A.

(6) On 19/06/1987, written complaint, Ex.PWS/A, was given by PW3, RamSaroop, brother of the deceased in which he disclosed that he had come to know from reliable sources that it was Raj Narain who had burnt his sister by pouring kerosene on her and the police had deliberately not registered a case of murder and thus, he wanted proper investigations to be carried out. On 19/06/1987, the Investigating Officer recorded the statements of Constable Parsu Ram, PW-7, who was working as Duty Constable in the Jai Prakash Narain Hospital at the time the lady Asha was got admitted in a burnt condition in that hospital and also recorded the statement of Head Constable Madan Chand, PW-10, who had brought Asha to the said hospital from Hindu Rao Hospital and also recorded the statement of Head Constable Hira Singh who had brought the lady from the spot to Hindu Rao Hospital. Head Constable Hira Singh appears to have died before his statement could be recorded in the Court.

(7) PW-10, Head Constable Madan Chand, had disclosed to the police that infact Asha had made a dying declaration while being taken to the hospital that she was burnt by Raj Narain, her husband, after he had poured the kerosene oil on her. PW7 Parsu Ram claimed to be present with the doctor when the said dying

declaration was allegedly made by the deceased.

(8) The dead body of Asha was sent to Mortuary on 18/06/1987 at about 11.20 a.m. It is recorded at Ex.PW12/F that the body and the death summary had been received at 3 p.m. on 18/06/1987 but surprisingly, the inquest papers were not sent along with the dead body by the Investigating Officer and rather, the inquest papers came to be prepared on 19/06/1987 and were delivered to the doctor at 10.40 a.m. on 19/06/1987. The Investigating Officer had not explained in his statement in Court coming as PW-15 as to why the dead body was sent to the Mortuary for post-mortem examination on 18/06/1987 and why the inquest papers were not prepared before sending the dead body for post-mortem. Normally, before sending the body to the Mortuary, the Investigating Officer was supposed to have carried out the inquest proceedings and prepared the inquest papers but in this case we find that application seeking the post-mortem was also prepared on 19/06/1987 and so also the brief facts, Ex.PW12/B and also the inquest report Ex.PW15/D.

(9) If we go through these brief facts, Ex.PW12/B and the application for postmortem, Ex.PW12/F, we find that there is no mention that the lady had made any dying declaration to the doctor or to any other witnesses and what is recorded is that certain inquiries had revealed that Asha was staying illegally with Raj Narain and Raj Narain had brought his wife from the village to stay with him and on 17/06/1987, Asha and Raj Narain had a fierce quarrel and in that course. Raj Narain set her on fire after pouring kerosene oil on Asha. There is no reference to any dying declaration made by the deceased in these documents.

(10) It appears that on receipt of the complaint Ex.PW3/A from Ram Saroop, who also in that complaint had not made any reference to the dying declaration of the deceased implicating the appellant, that the Investigating Officer thought it fit to convert the case from Section 309 to Section 302 I.P.C. on 19/06/1987. In the complaint, Ex.PW3/A, Ram Saroop, PW3, had disclosed that he had come to know from some reliable source that his sister had been burnt by Raj Narain. He had not disclosed the name of any such source from which he got this information. Even in his testimony in Court as PW3, he did not mention the name of any person

who had given him this information that his sister had been burnt by Raj Narain. He had mentioned in cross-examination that one child, soon after the occurrence of 17/06/1987, had come to his house and informed his wife about his sister being burnt by Raj Narain and on coming back to his house from his job, he went to the hospital on the next day in the morning and by that time his sister had already died. According to him, he was not interrogated by the police in the hospital and there after he had got drafted this complaint from some unknown persons and had given this complaint to the S.H.O. The complaint does not bear any date. It is only in the testimony of the Investigating Officer that it was revealed that this complaint was given on 19/06/1987.

(11) The learned Additional Sessions Judge has brought home the offence to the appellant on the basis of the dying declaration recorded by PW5, Dr.V.K.Popli in the M.L.C. and also the dying declaration proved by PW7 Parsu Ram and PW10, Head Constable Madan Chand.

(12) It is the settled law that if a dying declaration had been made by the deceased and the contents of the dying declaration are shown to be truthful, then conviction can be brought home to a particular accused on the basis of such dying declaration. But in the present case, we find that there are a number of suspicious circumstances which make us to doubt the veracity of the said dying declaration and also the factum whether the said dying declaration was at all made by the deceased or not.

(13) If we look to the M.L.C, Ex.PW5/A, we find that Dr.Popli had not mentioned that the patient was fit for statement. The alleged history recorded by him (portion 'A' to 'A') bears his initial at point 'B' on which the date does not appear to be 17/06/1987 at all. We also find that after recording the words alleged history of setting on fire after pouring kerosene oil', there appears to be a full-stop and in the gap between the word 'oil' and full-stop, the word 'by' had been written and thereafter name of Raj Narain stands written and in the line below it, which appears to have been inserted later on in small letters, the words have been recorded as 'as recorded by the patient'. If the M.L.C. had been prepared at once, there is reason for the doctor to have put his initial at point 'W' and give a date which is not

17/06/1987 and in all probability it looks like 18/06/1987.

(14) It is pertinent to mention that in case this alleged dying declaration had been there in the M.L.C. when this M.L.C. was handed over to the Investigating Officer on 17/06/1987 itself, there is no reason why the Investigating Officer would not have got registered the case under Section 302 I.P.C. because this dying declaration itself recorded in the M.L.C. disclosed the commission of a cognizable offence and there could be no question of the Investigating Officer having any doubt about the dying declaration at that stage. But what we find is that Investigating Officer has not mentioned about this dying declaration appearing in the M.L.C. in the rukka Ex.PW8/A on the basis of which the case was registered and also does not find mention in the subsequent documents referred by us above.

(15) Learned counsel for the State has contended that the doctor had no reason to record any wrong dying declaration in the M.L.C. which he prepared in the normal course of his duties and she has referred to Suresh v. State of Madhya Pradesh, : 1987 CriLJ775 in support of her contention that once a dying declaration has been recorded by a doctor in the normal course of his duties, the Court should accept the said dying declaration for bringing home the offence to the accused. We have gone through the aforesaid judgment and find that in that case Dr. Bhargava, who examined the deceased Lachhibai had declared her to be fit for making the statement and thereafter had recorded her dying declaration and had also mentioned in her M.L.C. that at the fag end of her giving the dying declaration, the lady was lapsing in coma. The statement of Dr. Bhargava in that case was accepted by the Additional Sessions Judge and also by the High Court and the Supreme Court had mentioned that there was no reason to doubt the statement of Dr. Bhargava that she had recorded the said dying declaration as given by Lachhibai, the deceased in that case.

(16) It depends on the facts of each case to see whether the dying declaration had in fact been made by the deceased. It is only when the Court comes to the conclusion that there is no reasonable doubt that a particular dying declaration had been made by the deceased and the contents of the dying declaration are truthful

that without seeking any further corroboration, the Court can bring home the offence to the accused.

(17) In the present case, we have reason to doubt about the recording of this dying declaration in the M.L.C. on 17/06/1987. We have already given our reasons for disbelieving the doctor totally that the deceased had given such a dying declaration when he had prepared the M.L.C. on 17/06/1987 because the crucial words in the dying declaration i.e. name of Raj Narain and the words 'stated by the patient appear to have been inserted in this M.L.C. later on at the behest of The police. There is no earthly reason if this dying declaration had appeared in the M.L.C, which M.L.C. was perused by the Investigating Officer before getting the case registered, why no reference has been made to this dying declaration in the rukka itself, the basis of the F.I.R, or in the inquest papers, particularly the brief facts prepared by the Investigating Officer on 19/06/1987.

(18) It is also significant to mention that this Investigating Officer had not recorded the statement of PW7, Parsu Ram, duty constable and Head Constable Madan Chand, PW10 on 17/06/1987 or on 18/06/1987. In case there had been any dying declaration made in their presence by the deceased, the Investigating Officer would have recorded their statements on 18/06/1987 at least. It is only when that written complaint, Ex.PW3/A was given by PW3, brother of the deceased on 19/06/1987 that the Investigating Officer went all out to see that case is made out under Section 302 I.P.C.

(19) Now coming to the contents of the dying declaration, it has been mentioned categorically that she was burnt by Raj Narain by pouring kerosene on her. In the post-mortem report, the doctor who had performed the post-mortem had not mentioned that there was any smell of kerosene coming from the body when he performed the post-mortem. Rather, PW-12, Dr. George Paul, categorically stated that he found no smell of kerosene coming from the scalp hair of the deceased or from any other portion of the dead body. The burnt Saree and bra of the deceased which were sent for examination to C.F.S.L. also did not have any trace of kerosene in them as per C.F.S.L. report, Ex.PW15-E.

(20) Dr. V.K. Popli, PW5, in M.L.C. had recorded in one sentence that there was no smell of alcohol/smell of kerosene. If we read that sentence, which is in one line, the inference would be that there was no smell of alcohol and kerosene but in Court, Dr. Popli has stated that there was smell of kerosene coming from the body of that lady. There is again doubtful fact as to whether the body of the lady was giving smell of kerosene at the time she was examined by Dr. Popli and the said M.L.C. was prepared.

(21) As far as history of this lady is concerned, it must be remembered that she had deserted her three children whom she kept separate from her when she started living with the appellant although she was not legally married with the appellant but she had an assurance that the appellant was unmarried person but it came to her as a shock that the appellant was having a wife and she had come to live with the appellant and that is why she had gone to her brother, PW3, Ram Saroop and expressed her anguish in that manner and she wanted the advice of her brother as to what she should do. If these facts are kept in view, there is all the possibility that Asha must have been totally frustrated in being betrayed by her lover, appellant, in concealing the factum of his marriage from her and made her live with him as his wife for quite a few years and this could be the motive for her to commit suicide and falsely name the appellant as the person who brought her to such a plight that she had to end her life.

(22) It is also pertinent to mention that not even a single witness from the neighbourhood has been examined by the Investigating Officer who could have deposed that at the time of burning of Asha whether Raj Narain, appellant, was present near about or not. The presence of Raj Narain at the time of the incident at the spot has not been established by the prosecution in any manner.

(23) Learned Counsel for the petitioner has urged that it was Raj Narain who had given telephonic message for summoning the police to the spot. We do not know whether Raj Narain who gave the message to the police was the appellant or some other Raj Narain because the Investigating Officer had not collected any evidence to show that it was the appellant. Raj Narain, who had given the telephonic call. Be as it may, examining these facts as have appeared in this

case,we have lingering doubt about the deceased having made any such dying declaration and also with regard to the truthfulness of the contents of the said dying declaration.

(24) In view of the above, we allow this appeal and set aside the judgment and order of conviction and the sentence of the appellant passed by the Additional Sessions Judge and we acquit the appellant of the charge under Section 302 I.P.C.and direct his release from the jail forthwith if not required to be detained in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com