

**Ram Dhar Vs. State**

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**Court :** Delhi

**Decided On :** Jul-30-1996

**Reported in :** 1997CriLJ292; 63(1996)DLT555; II(1996)DMC173;  
1996(38)DRJ443

**Judge :** Arun Kumar and; K.S. Gupta, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 32; [Indian Penal Code \(IPC\), 1860](#) -  
Sections 302

**Appeal No. :** Criminal Appeal No. 56 of 1993

**Appellant :** Ram Dhar

**Respondent :** State

**Advocate for Pet/Ap. :** P.K. Behl and; Anil Soni, Advs

**Judgement :**

**Arun Kumar, J.**

(1) Sumitra received burn injuries on 5th December, 1987 at about 1:00 p.m. in her jhuggi at Kathputli Colony, Pandav Nagar, New Delhi. She was aged about 35 years. She had been married to Ram Dhar for about 20-22 years. They had a son named Sonia who was at that time aged about 12 years. She was admitted in Dr. Ram Manohar Lohia Hospital, New Delhi soon after the incident. Asi Hari Singh,

1.0. reached the hospital on the basis of a D.D. entry No.16-A (Ex. Public Witness - 1/D) recorded at Police Station Patel Nagar. The Dd entry shows that Constable Ombir Singh had informed through telephone from Dr. R.M.L. Hospital that a lady had been admitted in the hospital in burnt condition. The Asi recorded the statement of Sumitra in the hospital in which she stated that her husband Ram Dhar, the appellant herein had thrown burning stove on her as result whereof her clothes caught fire. She stated certain other things in her said statement to which we will advert to later on. Ram Dhar the appellant was arrested on the same day.

(2) On the basis of the statement, Fir No-425/87 was registered at Police Station Patel Nagar under Section 307 Indian Penal Code Sumitra ultimately died on 9th December, 1987 as a result of the burns received by her. The appellant was charged and tried for offence under Section 302 Indian Penal Code for committing murder of his wife Sumitra.

(3) The prosecution examined several witnesses including some relations of the deceased as also aneighbour. Various police officers who dealt with the case in their official capacity including the 1.0. were further examined. The doctor who recorded the M.L.C. of Sumitra at the time when she was admitted to hospital, was examined. The doctor who performed the post mortem was also examined. Shri Arun Goel who was the S.D.M., Patel Nagar, New Delhi at the relevant time was examined as Public Witness -17 since he recorded a dying declaration (Ex. Public Witness -17/A).

(4) The prosecution case is based on the dying declarations recorded in this case. The first is in the form of the M.L.C. prepared by Dr. R.K. Gupta, Public Witness - 12. In the Mlc, it is recorded 'alleged history of burns (by her husband according to the patient).' This is recorded on 5th December, 1987 at about 2:30 p.m' i.e., on the arrival of the patient Sumitra in the hospital on the date of occurrence. The second dying declaration was recorded by the 1.0. on 5th December, 1987 at about 4:00 P.M. in the hospital. The third dying declaration was recorded on the next date, i.e., 6th December, 1987 at 12 noon by the S.D.M. of the area.

(5) An interesting feature of this case is that the three near relations of the deceased who were examined as prosecution witnesses, Public Witness -2

Anand, Public Witness-3 Tiggo and PW-4 Sonia have spoken totally against the prosecution version in their examination-in-chief and have thus tried to destroy the prosecution case. Inspire of this, the Public Prosecutor (PP) neither prayed to the court for declaring them hostile and for permission to cross-examine them nor tried to re-examine them after cross-examination by the counsel for the accused. The fate of the case thus really depends on the dying declarations. The Addl, Sessions Judge convicted the appellant on the basis of the dying declarations.

(6) There is no controversy about the fact that Sumitra died on account of burn injuries. The M.L.C. (Ex. Public Witness -12/A) records smell of kerosene on the body of the patient. It further records approximately 80% burns. The post mortem report shows burn injuries. As per this report the areas affected by burn injuries were :

1. Whole of face and neck. 2. Whole of front and neck and trunk. 3. All sides of both upper limbs. 4. All sides of lower limbs. 5. Scalp hairs, eyebrows and eye lashes are hinged. Burns were of dermo-epidermal type (superficial to deep) and there were no signs of infection of wounds. Peeling of skin was present in many places and there is glove like pattern of skin peeling over the hands and feet. Blisters were present over right breast and inner side of right thigh. Bore of blisters were red and raw. They contained serous fluid. There are red lines of demarcation and over both thighs and both upper limbs. Total area of burns is 80%.

(7) Dr. Raj Kumar, Deputy Medical Superintendent, Deen Dayal Upadhyay Hospital, Delhi who conducted the post mortem was examined as Public Witness - 5. He proved his post mortem report (Ex. Public Witness 5/A). The doctor opined that all injuries were ante-mortem and caused by flame. Cause of death in the case was toxemia consequent to burn injuries. On this aspect we may also mention about the statement of Asi Hari Singh, PW-16, the I.O. of the case who stated that the place of occurrence was inside a jhuggi. From the jhuggi he seized one kerosene stove which was empty at that time, one plastic can which was also empty. Both were smelling of kerosene oil. He identified the stove and the can in court which were then exhibited Public Witness -16/C-1 and Public Witness -16/C-2. He also collected a sealed parcel of the clothes of the deceased from the duty

Constable at Dr. Rml Hospital vide memo Ex.PW-13/A. The clothes were sent for report to CFSL. As per the CfsI report, Ex. Pa, the parcel contained partly burnt pieces of cloth and the physico-Chemical method of analysis thereof showed the presence of kerosene residue. This evidence leaves no scope for any doubt that Sumitra died of burn injuries received by her. The accused in his statement under Section 313 of the Criminal Procedure Code . also does not dispute the fact that Sumitra was got admitted to Rml Hospital by Tiggo, her relation, in burnt condition. Thus the fact of Sumitra being burnt is not disputed. Even the close relations of the deceased Public Witness -3 Tiggo (cousin sister), Public Witness -4 Sonia, son, do not dispute the fact of Sumitra having received burn injuries.

(8) The next question is how Sumitra got burnt. According to the defense version, she got burnt while cooking food. In other words, it is suggested that it was a pure accident. On the other hand, the prosecution version is based on Sumitra's own dying declarations, according to which she was burnt by her husband, i.e., the appellant herein.

(9) Before coming to the dying declarations as such we may note here that the version of the deceased emerging from her dying declarations is that her husband was an idler and was addicted to liquor and charas. He was squandering the money which his wife Sumitra used to earn through hard labour. There were frequent quarrels between the husband and wife as a result of which the appellant committed the dastardly act. About their mutual relations the version of the appellant in his statement under Section 313 Criminal Procedure Code . is that Sumitra had illicit relations with a Police Officer S.I. Inder Singh and after the death of Sumitra he got him implicated in the case. Besides this another version of the relations between the two emerges from the statement of Public Witness -2, PW-3 and Public Witness -4. Public Witness -2 is the brother of the deceased who stated that relations between his sister and her husband, the accused were good. There was no cause of complaint. PW- 3, Tiggo is a cousin of the deceased being her maternal uncle's daughter. According to her the burn injuries were received by Sumitra accidentally while pinning the stove on which she was cooking food. Tiggo further stated that Sumitra had no complaint against her husband. The only son of the parties Sonia Public Witness -4 has gone a step further stating that the

appellant was not even present at the jhuggi when the accident took place. He also stated that his father used to keep her mother well and never gave beating to her. His father was not used to taking liquor or/ mal-treated his mother. He stated that his mother caught fire while pinning the stove.

(10) We have already stated that these are prosecution witnesses who deposed contrary to the prosecution case and still no attempt was made to get them declared hostile and to cross examine them. These prosecution witnesses being close relations of the deceased as also the appellant, were obviously trying to save the appellant and their testimony is totally unreliable. Even on the question of nature of relations between appellant and the deceased to the effect that the relations were normal/good, their testimony can be demonstrated to be false. First, the appellant himself stated in his statement under Section 313 Criminal Procedure Code . that his wife Sumitra was having illicit relations with a police officer. If the relations between the husband and wife were cordial, no husband will make such an allegation against his wife. Second, Sumitra had on 1st August, 1986 lodged a complaint against her husband as per Dd entry No. 22-A. This has been proved on record as Public Witness -II/A. In this entry, it is noted that Ram Dhar the appellant had been arrested under Sections 92/93/97 of the Delhi Police Act. The arrest was in pursuance of report no.2()-A. On the basis of it the police reached the spot where Ram Dhar, (the appellant herein) was hurling abuses on his wife Sumitra under the influence of liquor and was bent upon to give heating to her. Lot of persons had gathered. It is further reported that the police tried to pacify Ram Dhar but he continued to hurl abuses. This is an incident of about 15/16 months before the date of occurrence in the present case. This clearly proves the fact that the relations between the appellant and his wife deceased Sumitra were far from cordial. This also shows that the appellant was addicted to liquor and used to quarrel with his wife under the influence of liquor. In fact Public Witness - 10 Mohd. Nayem who is a neighbour of appellant has deposed that there always used to be a quarrel between the appellant and his wife. The appellant often used to be under the influence of liquor and he used to heal his wife frequently. He further deposed about having witnessed the wife of the appellant coming out of the crowd which had gathered around the jhuggi in burnt condition. The accused was also seen there. From this evidence it is clearly established that the relations

between the deceased and her husband were not normal and there used to be frequent quarrels between them. We have got the version of both the parties to marriage about their mutual relationship. The evidence of husband and wife is the best evidence on the point.

(11) This brings us to the dying declarations. As already noted, the first dying declaration in the case is in the form of the Mlc recorded by Dr. R.K. Gupta who attended on Sumitra on her being admitted to the hospital. In the Mlc Ex. Public Witness -12/A3, he has noted that Sumitra was brought to the hospital by Tiggo who appeared as Public Witness -3. On the Mlc it is recorded on the margin : 'patient is fit for statement.' This statement is signed by the doctor and time given is 3:35 P.M. On the MLC', it is noted : 'alleged history of burns (by husband according to the patient)' Dr. R.K. Gupta appeared as Public Witness -12. He reiterated that according to the patient she was burnt by her husband. He went on to depose : 'On examination, patient was found conscious, well oriented. Vital signs were normal. Kerosene smell was present. There were 80% burns which included hair, face, front chest, abdomen, both upper limbs, both lower limbs.' He proved the Mlc as exhibit Public Witness -12/A which was in his own hand and which bore his signature. The note regarding patient fit for statement was also stated to be in his hand. The doctor was cross examined. He denied the suggestion that the alleged history of patient as mentioned in the Mlc was written at the instance of Constable Ombir Singh. He was clear and unambiguous in stating that the patient was conscious and well oriented. He denied the suggestion that patient was not able to speak when she was brought to the casualty. This declaration by the patient herself and recorded by a doctor who also certified her to be fit to make a statement and who withstood the cross examination on this aspect is a vital piece of evidence in the present case. The fact that patient was not in a fit condition to make the statement and the unequivocal statement of the patient that her husband had burnt her leaves no scope for any ambiguity on the point. The doctor could not be labeled as an interested witness by any stretch of imagination. He has no personal interest in the matter. Moreover, this version of crime is the first version coming from Sumitra, the victim of the crime herself. Her condition and the nature of injuries sustained by her suggest that she would not be falsely implicating her husband. Her statement is directed against her husband

and normally a woman will not implicate her husband in such a serious matter, unless what she states was true. The record further shows that she had no opportunity to talk to any one except Tiggo, her cousin who brought her to the hospital, since the accident and till the time of making the statement. Tiggo as Public Witness -3 has tried to save the appellant, therefore, her statement is contrary to the stand of Sumitra taken in the said declaration. The possibility of the declarant having been tutored by anyone is ruled out. The incident took place in broad day light and inside the jhuggi of the parties. therefore, there was no possibility of any mistake about the identity of the accused especially when the accused happened to be the husband of the declarant. This declaration coupled with the background of strained relations between the parties as noted hereinbefore lends support to the view that the appellant is responsible for the crime.

(12) The second declaration is the statement of Sumitra recorded by 10 Hari Singh, PW-16 in the hospital. This is soon after the first statement referred to above. The second statement is exhibit Public Witness -1/A. On the margin of the statement, Dr. U.K. Ghosh has certified that the statement was recorded in his presence. The 10 has stated as PW-16 that he had read over the statement to Sumitra after recording the same. She had accepted the same to be true and put her right hand thumb impression on the statement as point 'A'. The 10 had also stated that he had obtained the certificate from the doctor that Sumitra was fit to make a statement. Doctor Ghosh was the Doctor-Incharge of the Ward. He was brought by the 10 from his room to the Ward where patient Sumitra was admitted. The doctor told the 10 to record her statement immediately because the patient may die. According to the 10, Sumitra herself made the statement which he recorded as Public Witness -1/A. This statement we would like to reproduce in its entirety :-

'Is stay at the above mentioned address and earn my livelihood through labour etc. I got married to Ram Dhar around 20 years back. My husband Ram Dhar does not do any work and drinks a lot. He used all money earned by me for drinking. On 5/12/87 at around 1.00 clock in the afternoon, he started beating me and asked me for money to drink. I refused to give money. He started beating me badly and

hit me with legs and hands. At that time I was about to cook my food on stove. I was about to cook 'Khichari' on stove. However I tried to stop him but still he got hold of burning stove and put it on me. The kerosene oil of stove also fell on my clothes and my clothes caught fire. In the process, my jhuggi also got burnt. He at that time took money from my 'banian' and ran away. I was admitted to the hospital by Smt. Tiggo who is daughter of my mamaji. I have been burnt by my husband and I want that action should be taken against him. The fire was extinguished by neighbours by pouring water on me.'

(13) We find nothing unnatural or abnormal about this statement. In the background of facts about the sour relation between the two, the statement of Sumitra given to the 10 is most natural and appears to be true. Merely because the statement has been recorded by the 10 is no ground to reject the same if otherwise it appears to be reliable and trustworthy. The 10 in this case had associated the doctor on duty who was in charge of the Ward. He took precaution to have the opinion of the doctor about the patient being fit for making the statement before recording the same. The statement is consistent with the statement earlier given by Sumitra to the doctor who attended on her initially which is exhibit Public Witness - 12/A. In Charipalli Shankararao vs . Public Prosecutor, : AIR 1995 SC777 , High Court of Andhra Pradesh, a dying declaration recorded by the Head Constable was accepted.

(14) The third dying declaration is the one recorded by the S.D.M. of the area on 6th December 1987 at 12 noon. In the third declaration also the version of the crime as given by Sumitra is the same. In support of the third declaration Shri Arun Goel, the S.D.M. concerned was examined as Public Witness -17. He stated that the 1.0. had taken him to the ward and had identified the injured. He had also verified her identity from the medical record maintained at the hospital through the duty doctor. He has deposed to the fact that he had asked the doctor to certify if the patient was fit to make the statement. The duty doctor certified to this effect. He made his own inquiries from the injured by talking to her and felt satisfied that she was in a position to make the statement. Thus he independently satisfied himself about the fitness of Sumitra to make the statement. Then he proceeded to ask Sumitra about the circumstances leading to her getting burnt. She narrated the

incident in Hindi. The witness has stated that he was not fluent in writing the statement in Hindi, therefore, he recorded the statement in English by himself translating whatever Sumitra stated without adding anything from his side. He had ensured that Sumitra was making her statement voluntarily. He proved the statement as EX.PW 17/A which is in his own hand. Sumitra had put her right hand thumb impression on the statement at point 'A'. He signed the statement at point 'B'. The certificate given by the doctor on the statement was marked as Public Witness 17/B.

(15) The tenor of the cross-examination shows that it was being suggested that the S.D.M. never went to the hospital to record the statement of the lady and that he recorded the statement in the office on the basis of her earlier statements. He has denied all the suggestions. It is significant to note that in cross-examination the witness stated 'I was transcribing her statement sentence wise and also recorded the same sentence wise and it is not that she had first narrated her statement and then I recorded the statement as a whole'. The witness denied the suggestion that he had translated the statement which had already been recorded by the police. He also denied the suggestion that the patient was not in a position to make the statement.

(16) The first question which was raised on behalf of the appellant against this statement is that there is no endorsement by the S.D.M. that after recording the statement he had explained the same to the maker of the statement and she had accepted it as correct. This objection to our mind has no force. We have reproduced the exact statement of the S.D.M. on this point wherein he stated that he translated each and every sentence spoken by the witness each time. The witness did not translate the entire statement in one go. therefore, there was no need to finally again recount the entire statement before its maker and ask for its correctness. If the entire statement had been first heard in Hindi and thereafter translated by the S.D.M., need for explaining it to the maker could be there. When every sentence uttered by the maker is translated every time, there is no such need. The next objection by the counsel for the appellant about this declaration is that the same ought to have been recorded in question-answer form by the S.D.M. and since it is not in that form it should be rejected. This submission again has no

merit. No doubt the Supreme Court has expressed that it is preferable to have the declaration in the question-answer form in such cases yet the Supreme Court has also ruled that the requirement that dying declaration be recorded in question-answer form is not absolute. A dying declaration, therefore, if otherwise reliable and trustworthy, need not be discarded merely on the ground that it is not recorded in question-answer form. Ganpat Mahadeo Mane vs . State of Maharashtra; and Padmaben Shamalbhai Patel vs . The State of Gujarat. : [1991]1SCR88

(17) The next submission on behalf of the appellant was that the three dying declarations are contradictory and ought to have been rejected. This submission is contrary to the record. A bare perusal of the three dying declarations shows that they are consistent on the point that Sumitra was burnt by her husband. She has tried to give more details about the incident in the dying declaration recorded by the 1.0. which is EX.PW I/A. In the M.L.C., i.e. the first dying declaration there was no need or occasion to give details of the incident. The details have been given by Sumitra in the declaration made before the 1.0. wherein she has stated that her husband was addicted to liquor and charas. She used to earn and he was wasting her hard earned money in drinking. On the date of incident he demanded money from Sumitra for liquor which she refused whereupon he started abusing her and also gave fist blows and kicked her. At that time she was preparing meal on the stove. Her husband Ram Dhar saying that he would finish her threw the burning stove on her as a result whereof her clothes caught fire. These are the details of incident given by Sumitra to the 1.0. The third dying declaration is more or less on the same lines and we find no inconsistency so far as the main question is concerned. Every time a person is required to make a statement he/she cannot make the statement in exactly same words. There is bound to be some variation in details. What is to be seen is the substance of the statement and not details. We find that in substance all the three dying declarations referred to the same fact, i.e. the appellant burning his wife Sumitra through the medium of a burning stove. The three versions given by the deceased about the main incident are consistent. There are no contradictions, therefore, we find no hesitation in accepting the same.

(18) It is settled law that a conviction can be based on a dying declaration if the Court is otherwise satisfied about it. No corroboration is required if dying declaration is found to be reliable. A dying declaration need not be discarded simply because it is recorded by a police officer. In *Smt. Durgo vs . State*, : 43(1991)DLT554 , this court did not find fault with the failure of the I.O. to get a Magistrate to record a dying declaration. All the relevant judgments on the point are unanimous that what is important is the nature and substance of the dying declaration and its reliability rather than its form. The court has to be satisfied about its reliability, clarity besides that the maker was in a fit condition to make the same and was not making it due to any extraneous influence. Having felt satisfied about the reliability of the dying declarations in this case, we feel no reason to differ with the decision of the learned Additional Sessions Judge in convicting the appellant.

(19) Before concluding we would like to make it clear that this is a case in which presence of kerosene oil on the clothes and the body of Sumitra, the victim of the crime, is established. Public Witness -12, the doctor who first examined her in the hospital and recorded the M.L.C. EX.PW 12/A has said that the patient was smelling kerosene oil. To the same effect is the Cfsi report. In a case of accidental burn injuries, the possibility of presence of kerosene on the body of the victim is generally ruled out. When a lady is cooking food and her clothes catch fire from a lighted stove, the chances of presence of kerosene on her clothes or her body are fairly remote. Thus in cases of accidental burning normally there will be no kerosene smell emanating from the body or clothes of the victim unless it is a case of stove falling on the body of the victim accidentally spilling kerosene on her in the process. From this it follows that when there is evidence of presence of kerosene oil on the clothes or on the body of the victim it is normally a case of burning at the hands of somebody. In the facts of the present case, the theory of accident does not appear to be probable. In this view we are supported by a judgment of the Supreme Court in *Ashok Kumar vs . State of Rajasthan*, : 1990 CriLJ2276 .

(20) When accident is ruled out, the dying declarations gain credibility. Another relevant factor here is that the presence of the accused at the time of the incident is established on record. Even though his son Sonia, Public Witness -4 stated that

he was not present at the time, this sole statement has to be discarded in view of other clinching evidence to the contrary which is available on the record. As per the accused also it is not that he was not present at the house at the time of the incident. He was arrested from the spot. If it was suggested that the accused was not present at the spot, a further question would have arisen as to where he was and how he came to know about the burning of his wife. The statement of the accused under section 313, Criminal Procedure Code . shows that the accused does not dispute his presence at the scene of occurrence. This leaves only three persons present at the scene of occurrence, Sumitra - the victim; appellant her husband and their son - Sonia, Public Witness -4. Sumitra's version is before us. Sonia's version has already been discarded. It is motivated with the sole desire to save his father. He is a young boy who appears to have been tutored by his maternal uncle Public Witness -2 with whom he started residing after this crime. The version of the accused as given in his statement under section 313 Criminal Procedure Code . is that Sumitra was having illicit relations with a police officer and the police officer has implicated him. This version does not dispute the death of Sumitra due to burn injuries.

(21) The result of the above discussion is that we find no merit in this appeal. The same is dismissed. The impugned judgment of the learned Additional Sessions Judge, Delhi is affirmed.

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