

Ram Singh Vs. State

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Court : Delhi

Decided On : Aug-02-1996

Reported in : 1996IIIAD(Delhi)885; 1997CriLJ372; 63(1996)DLT545; 1996(38)DRJ499

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

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

Appeal No. : Criminal Appeal No. 226 of 1992

Appellant : Ram Singh

Respondent : State

Advocate for Pet/Ap. : K.B. Andley,; P.R. Thakur and; H.J.S. Ahluwalia, Advs

Judgement :

Arun Kumar, J.

(1) Ram Singh, appellant, his wife Hemlata along with their two children Lakhan (aged 5 years) and Pramod (aged 2 years) used to reside at house no.C-I/136, Krishna Vihar, Delhi. Ram Singh worked as a tailor. On 20th March, 1987 at about 8:30-9:00 A.M. Hemlata and her two sons named above got seriously burnt. The Police Control Room was informed about this incident. The Police Control Room passed on the information through wireless to police station Sultanpuri where it

was recorded in the Daily Diary at no.12-A (Ex. Public Witness -4/A). At the Police Station the message was passed on to S.I. Sat Prakash who proceeded to the place of occurrence. The information was also received through wireless by Head Constable Rajpal who was on Ambulance Van duty. He reached the spot before S.I. Sat Prakash and removed Hemlata and her two sons Lakhan and Pramod to Dr. Ram Manohar Lohia Hospital, New Delhi. The MLCs of the three injured persons were prepared by Dr. Munish Chand Gupta, Public Witness -13. According to the M.L.C. of Lakhan, Ex. Public Witness -13/A, he had received 90% burn injuries. The Mlc showed that the patient was brought to the hospital by Head Constable Rajpal in Ambulance Van. The Mlc records alleged history of burns. Smell of kerosene oil from the burns. There were burns over face, neck, upper chest, whole back, lower abdomen, both lower limbs, only an area of about 10% was spared. Lakhan died on the same day at about 12:00 noon. The Mlc of Pramod Ex. Public Witness -13/B again shows that he was brought by Head Constable Rajpal on the Ambulance Van. It shows alleged history of burns. Smell of kerosene from the burns. It was a case of 100% deep burns. There were burns over face, scalp, neck, chest, abdomen, whole back, both lower legs. Pramod died at 2:30 p.m. on the same. day. Hemlata as per her Mlc was brought by Head Constable Rajpal of the Ambulance Van. The Mlc is Ex. PW-13/C. The Mlc records 'alleged history of burn, patient conscious but not giving the details of circumstances of burns'. It was again recorded as a case of 100% deep burns over face, neck, chest, abdomen, whole back, both lower legs. Smell of kerosene from the burns and her clothes was also recorded. Hemlata died on 22nd March, 1987 at 6.15 p.m.

(2) When S.I. Sat Prakash reached the spot he made an endorsement on the D.D. Entry for registration of a case under Section 309 Indian Penal Code Accordingly, an Fir was registered under Section 309 Indian Penal Code He prepared the site plan, got the place of occurrence photographed. He took possession of the stove, one match box and a used match stick. Thereafter he went to the hospital where Hemlata was found unfit for making a statement. On next day, i.e., 21st March, 1987, Dd entry 12-A was recorded in the Police Station Sultanpuri at 1:00 p.m. to the effect that Constable Harnam Singh from Rml Hospital had informed that the doctor had given permission in writing to record statement of Hemlata. It was

requested that concerned officer along with Magistrate be sent. The Mlc of Hemlata Ex. Public Witness -13/C contains an endorsement Ex. PW-16/A to the effect that the 'patient is fit for statement' signed by Dr. M. Prakash on 21st March, 1987 at 11.35 A.M. It appears from D.D. entry 12-A dated 21st March, 1987 (Ex. Public Witness -4/B) that S.I. Sat Prakash had already left for Rml Hospital for getting the post mortem of deceased children done. S.I. Sat Prakash recorded the statement of Hemlata. The time of recording of this statement of Hemlata by S.I. Sat Parkash is not very clear. However, it appears that it was recorded at about 11.45 A.M. to 12.00 Noon. At 11:35 A.M. she was declared as fit for making the statement and S.I. Sat Prakash while appearing as Public Witness -17 stated in his cross examination that he 'started recording statement of Hemlata in 5/7 minutes'. This should make it that the statement of Hemlata was recorded by the 1.0. between 11.45 A.M. - 12.00 Noon on 21st March, 1987. In this statement, Hemlata implicated her husband stating that her husband had poured kerosene oil on her and on her two sons and then ignited fire which resulted in the burn injuries to three of them. An Executive Magistrate was also called to record the statement of Hemlata. The Executive Magistrate reached the hospital at about 5 p.m. and recorded her statement. In this statement also, Hemlata implicated her husband stating that he had poured kerosene oil on her and her two sons and set on fire which resulted in burn injuries to three of them. She also stated that she was being ill- treated by her husband. Her husband also had quarrel with her a few days earlier on the day of festival of Holi when the sister of her husband and the sister's husband had visited them. The case was converted to under Sections 302/307 IPC.

(3) The post mortem of the body of Hemlata was conducted by Dr. L.T. Ramani, PW-5 on 23rd March, 1987 at 12:30 p.m. According to the post mortem report Ex. PW-5/A, 'there Were third degree burns present all over the body, involving 100% body surface, except a small patch over the right shoulder. Cuticle was blackened and peeled off all over. There was vane sectioncut open on the right ankle. Nails were burnt. Scalp hair were burnt at margins, no smell of kerosene oil was detected in scalp hair (preserved) no other mark of violence seen'. The burns were reported as antemortem, caused by fire. The opinion about death was that it was due to shock resulting from burns. Dr. Ramani who appeared as Public Witness -5

proved the said post mortem report.

(4) There is not a single eye witness of the occurrence. The appellant was not even found at the scene of occurrence when the police arrived. He was arrested on the next day, i.e. 21st March 1987 after the case was converted into one under section 302/307 IPC. The statement of the appellant under section 313 Criminal Procedure Code . shows that he denied any knowledge as to how the incident took place.. He alleged that he has been falsely implicated. The sole basis for implicating the appellant in the present case is the alleged dying declarations made by Hemlata. There are three dying declarations:-

1) an oral declaration allegedly made to her brother and mother by Hemlata when they came to see her in the hospital.

2) the statement of Hemlata recorded by the I.O. on 21.3.1987 at about 11.45 a.m.

3) the statement of Hemlata recorded by an Executive Magistrate on 21.3.1987 after reaching the hospital at 5.00 p.m.

(5) The learned Additional Sessions Judge rejected the first two dying declarations. However, accepting the third dying declaration recorded by the Executive Magistrate, he convicted the appellant under section 302 Indian Penal Code and sentenced him to imprisonment for life. The appellant has come up with the present appeal against the said judgment of the trial court.

(6) Shri K.B.Andley, learned counsel for the appellant has at the outset submitted that for the very reasons for which the trial court rejected the first two dying declarations, the third dying declaration ought to have been rejected. In fact this argument is the sheet anchor of the case of the appellant. Before considering this argument in detail we would like to briefly record that the judgment of the trial court cannot be faulted so far it relates to rejection of the other two dying declarations.

(7) So far as the alleged oral dying declaration made to her brother and mother by Hemlata it obviously has no semblance of credibility or reliability because even the mother of Hemlata who appeared as Public Witness -1, did not support her son Public Witness -2, who spelled out the alleged dying declaration in his

examination-in-chief. Public Witness -I, Janki Devi, mother of Hemlata has not stated a word about her daughter having told her that her husband poured kerosene oil on her and on her own two children and set them on fire at their residence in Krishna Vihar. On the other hand Public Witness - 2, Ramesh Chand brother of Hemlata, who (is supposed to have) visited Hemlata in the hospital Along with his mother stated that his sister told him in the hospital that her husband had poured kerosene oil on her and her children and set them on fire at her house at Krishna Vihar. There is no proof of fitness of Hemlata to make such a statement. PW-I, the mother of Hemlata does not even say that Hemlata was in a position to talk to them when she visited her in the hospital along with her son. It is also not clear as to when Public Witness - 1 and Public Witness -2 actually visited Hemlata in the hospital. thereforee, this alleged oral statement, of Hemlata implicating the appellant has to be brushed aside.

(8) So far as the alleged second dying declaration recorded by the 1.0. is concerned, it was rejected by the trial court for the reason that the presence of any doctor was not ensured at the time of recording of that statement. The statement was recorded in a hospital which must be full of doctors. (The 1.0. did not obtain any signatures or the thumb impression of the declarant.) There was no attempt even to involve any other witness at the time of alleged recording of the statement. We may note here that the exact time of recording of this statement is not available. Even if we proceed on the basis that the statement was recorded between 11.35 A.M. and 12.00 Noon i.e., soon after a doctor had certified Hemlata as fit for giving statement, the 1.0. should have obtained an endorsement from the doctor on the statement itself. If recording of the statement started within 5/7 minutes after the fitness certificate of the doctor, in all probability the doctor must be around and his signatures ought to have been obtained on the statement. The absence of signatures of the doctor or any nurse or any other witness in the facts and circumstances of the case casts a shadow of doubt on the alleged statement of Hemlata recorded by the 1.0. and we do not consider it fit to accept the said statement as a valid dying declaration in order to convict the appellant. The learned trial court rightly doubted the truthfulness of such a statement and was fully justified in rejecting the same.

(9) This brings us to third dying declaration. The learned counsel for the appellant has raised various points to attack the veracity or reliability of this dying declaration. The prosecution has examined Shri U.C. Sirangi as Public Witness - 14. He had recorded the alleged dying declaration. He was working as the Executive Magistrate at the relevant time. He proved the alleged dying declaration as Ex.PW-14/A. Hemlata is alleged to have stated as under:-

'THAT I am married to Ram Singh for about last 8 years and having two children (sons) aged 5 yrs & 2 yrs. That on holi my husband's sister and her husband came to visit us. They were served meals. My husband's sister said that you did not sprinkle colour on my husband and you are jealous. I replied that he (my husband's sister's husband) did not even greet me. Hence, my husband lost temper with me. Thereafter there was no quarrel between us till burning match. On 20-3-87 while I was at home with my husband and two children at around 8.30 to 9.00 A.M. my husband poured kerosine from a jerry can over me and set fire by igniting match and burning my saree. I was engulfed in fire and my children who were over there sleeping also caught fire and burnt. I cried for help and my husband ran away from there. I lost consciousness. I do not know who brought me to the hospital. I have learnt that my both children have expired due to burns. I hold my husband responsible for the incident. He has also sprinkled kerosine oil over children and burnt them. There were several quarrels between me and my husband over several issues which I can't recollect at the moment. R.C). & explained in vernacular and accepted as correct. Right thumb impression U.C. Shringi of Hemlata Ex.Magistrate Dc Office, Delhi.'

(10) The Executive Magistrate stated that the dying declaration was recorded by him on her narration in his own handwriting. He had explained whatever he was recording to the maker of the statement in vernacular. Nothing was added or subtracted by him. The maker had narrated the incident in Hindi which was translated into English by the witness 'faithfully'. Public Witness -14 further stated that before her statement was recorded, the doctor had declared her fit to make a statement. He had also ascertained from the patient if she was fit to make a statement. The patient affirmed her Fitness and then the statement was recorded. Further the witness stated that. the patient had affixed her right thumb impression

at point 'A' (as Ex. Public Witness -14/A). In cross examination, the witness could not tell the name of the doctor who had declared the patient fit to make the statement. He admitted that he did not obtain any endorsement on the statement itself from the doctor that the patient was fit to make a statement. No doctor was examined by the prosecution in support of the fitness of Hemlata to make statement. Public Witness -14 admitted that he knew Hindi. He stated that he recorded the declaration in English because he was able to record faster while doing so in English. He further states that he took about half an hour to record the statement of the patient. He admitted that he did not look into the Mlc before recording the statement which means that he was not relying on the endorsement on the Mlc of the patient about her fitness to give statement. It was put to the witness that the patient was not in a position to affix her right thumb impression on the statement because her thumb was completely burnt. The witness denied the suggestion This dying declaration has been attacked by the learned counsel for the appellant on various grounds which are:-

(a)The patient did not disclose the cause of injury to the doctor who prepared her Mlc in the first instance as per the noting on the Mlc itself. This shows that she was reluctant to give out the factual position. The suggestion is that why would she do so later on, i.e. the next day.

(b) Public Witness -14 who recorded the dying declaration admits that he did not look at the Mlc of the patient before recording the dying declaration. This rules out the report of the doctor about fitness to make statement contained on the MLC. Public Witness -14 stated that some doctor orally told him that the patient was fit to make a statement which is wholly unreliable. In normal course if the doctor was present, he would have been present throughout the recording of the statement which fact would have found mention on the statement itself. In any case, there should have been an endorsement that the patient was fit to make a statement. The hospital must be full of doctors and nurses. None was got involved by the Executive Magistrate to certify the fitness of the patient. This casts a shadow of doubt on the reliability of the statement of Public Witness -14 that a doctor had orally stated to him that she was fit to make a statement.

(c) The alleged dying declaration has been recorded after a long delay. Delay may be considered from the point of view of the date and time of the incident as also from the point of view of the witness having been certified as fit to make a statement at 11.30 A.M. on 21st March 1987 by a doctor as per endorsement on her MLC. The Io has stated while appearing as Public Witness -17 that he immediately sent for a Magistrate to record the statement of Hemlata after she was certified as fit to make a statement at 11.35 A.M. It is unbelievable that a Magistrate would be available only at 5 P.M. and not before.

(d) If the Io had sent for the Magistrate immediately after 11.35 Am where was the need for him to record the statement mark 'A' which is the alleged second dying declaration?

(e) As per the MLC as well as the post mortem report, Hemlata has received third degree burns all over the body involving 100% body surface. Cuticle was stated to be blackened and peeled off all over. Cuticle, as per Butter Worths Medical Dictionary, is the epidermis, an external membranes skin overlapping the free surface of epithelial cells. In simple terms it is the upper-most layer of body skin. If it was blackened and peeled off all over the body how could there be a thumb impression on the alleged third dying declaration recorded by the Executive Magistrate. He has drawn our attention to the alleged thumb impression of Hemlata at point 'A' on Ex.PW-14/A. The thumb impression shows the ridges clearly. The argument is that the patient in such a condition cannot give a thumb impression much less such a clear impression. The second argument in this context is that such a patient who is admitted to the surgical ward of a public hospital is bound to be receiving some treatment. It is a matter of common knowledge that such a patient is given morphine or pethidine in order to reduce his/her suffering. These medicines affect the mental thought process and render the patient incapable of making a coherent or intelligible statement. Public Witness -13, who attended on Hemlata in the Casualty Deptt. when she was first brought to the hospital states that Hemlata had received 100% burns. Medically 100% burn injuries fall under third degree and it means that there are burns injuries all over the body. He adds 'in the present case I did not give any sedative or pain killer. The patient was crying with pain. The patient was able to talk.' He referred the

patient to the Surgical Deptt. for further treatment after giving injections of tetnus toxide. The condition of the patient described by Dr.Gupta, Public Witness -13 is at the time when he attended to her when she was brought to the hospital. We are on the condition of the patient on the next day, i.e., 21st March 1987 at 5.00 p.m. In this connection our attention has been invited to a death certificate issued by Dr.K.K. Pandey in the hospital. This certificate is dated 22nd March 1987 The doctor says 'an urgent veinious cut down was done and I/V fluid started. Call for dying declaration was sent. All other measures were taken. However, the patient's condition continued to deteriorate and finally she succumbed to the burn injuries on 22/3/1987 at 6.15 p.m.'. The certificate is Ex.PW-15/A. On the basis of this it is urged that Hemlata could not have been in a physical or mental state to make a valid declaration at the time the alleged third dying declaration was recorded.

(f) the dying declaration was not recorded in question and answer form as required.

(g) the dying declaration is not in the language of the maker specially in the background of admission of the Executive Magistrate that he knew Hindi.

(h) apart from these factors the learned counsel for the appellant has also drawn our attention to the fact that kerosene oil is alleged to have been poured on the three victims by the appellant from a Jerry Can. No Jerry Can was found by the 1.O. when he reached the scene of occurrence from where he took possession of several other items. It was also pointed out that the stove allegedly used as a weapon of offence was found at its place as per the photographs of scene of occurrence. This belies the allegation that the stove was used to burn Hemlata and her two sons.

(11) We have given our careful consideration to the above said points and objections raised by the learned counsel for the appellant qua the third dying declaration. We find ourselves unable to accept the view of the learned trial Judge in relying on the third dying declaration. We are of the considered view that the third, dying declaration is also wholly unreliable and untrustworthy and it is not safe to base the conviction of the appellant in the present case on such a document. The point which impresses us most in this connection is the alleged

thumb impression of Hemlata on the dying declaration. The post mortem as well as the evidence of the doctor who conducted the post mortem and the M.L.C. as also the statement of the doctor who recorded the M.L.C. clearly and in most unambiguous manner establish that it is a case of third degree deep 100% bps all over the body. The doctor in his post mortem report has taken care to mention that except a patch over the right shoulder the entire body surface was burnt. He stated that cuticle was blackened and peeled off all over which means the upper layer of the skin all over the body was damaged and peeled off. When such a minute examination has been made in which a patch on the right shoulder is shown as not burnt, there could be no doubt that the upper layer of the skin on the entire body was burnt and peeled off. A patient in such a condition cannot make a thumb impression. The presence of the alleged thumb impression on the third dying declaration thus casts a doubt on the prosecution case and this dying declaration has to be rejected. The appellant cannot be convicted solely on the basis of such a document.

(12) Another very strong reason for rejecting the third dying declaration is the doubt about the fitness of the patient for making the statement. It will not be correct to base fitness of the patient on the M.L.C. because it records the fitness at 11.35 a.m. It cannot be said that till 5.00 p.m. when the alleged dying declaration was recorded the deceased Hemlata continued to be fit. This has to be seen in the background of the Death Certificate, Ex.PW-15/A, which records that the patient's condition continued to deteriorate. If the fitness is taken on the basis of alleged oral statement of a doctor that will be highly doubtful in the absence of even the name of the doctor having been mentioned or any doctor having been examined in the court to that effect. The fact that even a nurse or other independent person was not involved further destroys the credibility of the statement of the Magistrate about the fitness of patient to make a dying declaration. One cannot lose sight of the fact that the hospital must be full of doctors and nurses. It is surprising that the Executive Magistrate could not find even one to help him out. For these reasons alone we are satisfied that the conviction of the appellant cannot be based on the so called third dying declaration.

(13) In view of this we need not go into the other questions raised by the learned counsel for the appellant to attack the third dying declaration.

(14) For these reasons we set aside the finding of conviction recorded by the learned Addl. Sessions Judge in this case. The appeal is allowed. The appellant is acquitted of the charge under section 302 Indian Penal Code and is ordered to be set at liberty forth with unless required to be defamed in connection with any other case.

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