

Dev Kumar Juneja Vs. State (Delhi Administration)

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Court : Delhi

Decided On : Sep-18-1996

Reported in : 1996IVAD(Delhi)527; 64(1996)DLT431; 1996(39)DRJ540

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

Acts : [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 99 of 1991

Appellant : Dev Kumar Juneja

Respondent : State (Delhi Administration)

Advocate for Pet/Ap. : I.U. Khan,; R.P. Kathuria and; H.J.S. Ahluwalia, Advs

Judgement :

Arun Kumar, J.

(1) Renu Bala, a young 22 year old girl died on account of a fall from the roof top of a four storey building in the Esi colony, Basai Darapur, Delhi. According to the prosecution she was given a push by the appellant Dev Juneja while the defense version is that it is a case of suicide. The learned Additional Sessions Judge convicted the appellant under section 302 Indian Penal Code for the murder of Renu Bala and sentenced him to imprisonment for life. Dev Juneja has come up in

the appeal against the said judgment.

(2) The question for determination in the present appeal is whether it is a case of suicide or a case of culpable homicide amounting to murder punishable under section 302 Indian Penal Code Fir No.350/87 (Ex.PW11/A) was registered at police station Moti Nagar on 5th October 1987 at 8.05 A.M. on the basis of a statement made by Kailash Chander, father of the deceased girl. This statement is Ex.PW5/B (Rukka) and is reproduced as under:-

'I reside at the address mentioned, above. I settled the marriage of my daughter Renu Bala with Dev Juneja who is resident of C-18, Kotia Feroz Shah Road, Vikram Nagar. This matrimonial proposal had broken. On 2/10/87, at about 9.15 P.M., Dev and his friend Titu came to me. Dev had asked me that they wanted to talk about which I have made statement earlier on 3.10.87. When my daughter Renu Bala had fallen and when she was taken to the Esi hospital by means of a taxi, Renu Bala had told me that she was given a push from the roof by Dev. This was told to me by Renu Bala in the Hospital. I could not get this fact recorded due to the perturbedness and shock of my daughter Renu Bala. Today, I am making my statement in my five senses.'

(3) This statement was given by Kailash Chander in the police station itself. Another statement of Kailash Chander said to have been made before the investigating officer, Si Darshan Singh, on 3rd October 1987 is also on record which does not implicate Dev Juneja. This statement is Ex.PW5/G. There is yet another statement of the said Kailash Chander which was recorded before the Sdm later on the same day, i.e 3/10/1987. It is Ex.PW 5/A. This statement contains a detailed account of the facts leading to the occurrence. It is worth noting that in this statement the needle of suspicion points towards Dev Juneja, though Kailash Chander admits that he had not witnessed Dev Juneja pushing down his daughter.

(4) Broadly the facts leading to the incident are that the marriage of deceased Renu Bala had been settled with the appellant and was to be performed on 10th May 1987. A few days before the marriage the father of the girl went to the house of the would be bridegroom for giving the wedding card. Some-unpleasantness

took place. The marriage was called off. In spite of this it is alleged that telephonic conversation continued between the deceased Renu Bala and the appellant. On 1st October 1987, according to the statement of the Kailash Chander Ex PW 5/A, two boys looking to be Nepalis came to his house in his absence and enquired about him. Only his daughter Renu Bala was present in the house. She turned the boys away. However, while departing the boys threatened to kill her father. On 2nd October 1987 at 9.15 P.M. the appellant and his friend went to the house of Kailash Chander. The appellant introduced the other boy as his friend Titu. The boy wanted to talk something confidential and asked that another person present in the room, namely. Ram Prakash, sister's husband of Kailash Chander, be sent away. Kailash Chander refused to do so saying that Ram Prakash was a member of his family. Thereafter Titu the companion of the appellant referred to some telephonic call given by Renu at his residence. The appellant as well as his friend Titu made it clear that they did not like Renu Bala calling them. Titu also, according to the said statement of Kailash Chander, professed that he was a vagabond and tried to throw his weight around. At this Ram Parkash brother-in-law of Kailash Chander left. Renu told her father that she was going to untie the dog on the roof. Kailash Chander went to ease himself. When Kailash Chander returned, he found that both the visitors had left. He heard a big thud indicating something falling down on the ground. He immediately went down and found that his daughter Renu Bala was lying on the ground. The neighbours had collected. A taxi was called and the girl was removed to the Esi Hospital. Kailash Chander stated that 'I myself had not witnessed Dev Juneja that he had pushed her down. It seems a conspiracy hatched by these persons. I am getting my statement recorded in conscious state, I have witnessed the whole incident from my own eyes. I have heard the statement. It is correct.' Kailash Chander stated that he too had been threatened on telephone a number of times that he would be killed.

(5) The girl was taken to the Esi Hospital. The Mlc was recorded by Dr. K. Goldar, Public Witness -4 at 11.10 P.M. As per the Mlc, the patient was brought by Kailash Chander, i.e., father of the patient with alleged history of fall from a roof of a four-storey building. The Mlc further records 'but according to the patient she has been pushed from the roof by a person by the name of Dev.' The Mlc further shows that the patient was complaining of chest pain. She was conscious but irritable. Rest of

the description on the Mlc is not very material for present purpose. At 11.15 P.M. Dr. Ajay Kamra, Public Witness -10, C.M.O. in the hospital attended to the patient. He has also made some noting on the MLC. The noting is 'head injury with combined fracture on both bones of left 543 leg.' The Mlc bears thumb marks of both thumbs of the patient. Dr.Ajay Kamra, Public Witness -10 also prepared the death summary because within about 30-40 minutes thereafter the patient was declared dead. Death summary is Ex.PW- 4/DA as well as Public Witness 10/D. In the death summary the same doctor has recorded that there was no obvious clinical sign of head injury except the shock condition. It is also noted that at the time of her arrival in the hospital the patient was conscious and responding to questions. She arrived in a state of shock. Inquest proceedings were conducted on 3rd October 1987 and report is Ex.PW 18/C. In the inquest report the cause of death is noted due to fall from the roof. The post mortem was conducted by Dr.Bharat Singh, Public Witness -1. The post mortem report proceeds with the observation that the 'deceased is alleged to have died in Esi hospital on 2/10/87 at 11.55 P.M. with alleged history of fall from roof'. The following injuries were found on the body of the deceased:-

1.Abrasion with bruise on the left fore arm anterior surface on the lower 3rd size 4' X 1 and half inches bluish in colour. 2. Contusion over the thenar eminence of left hand two and half inches bluish in colour. 3. Compound fracture of left leg bones near the ankle joint with open- wound of a size of 3' X one and half inches bone deep which was covered by blood clot. 4. Bruise around the left ankle. 5. Bruise over the right thenar eminence and wrist joint size 2 and half inches X 1 and half inches bluish in colour.'

(6) The doctor further opined that all the injuries were ante-mortem possible from a fall from a height. Death was due to haemorrhage and shock resulting from the injuries. The post mortem report is Ex.PW 1/A. It will be noted from the above list of injuries that no head injuries are indicated. As per the internal examination by Dr.Bharat Singh the scalp was found normal, skull bones were normal. Brain was pale. It is clear from the initials of Dr.Bharat Singh on the Mlc, Ex.PW4/A as well as the inquest report Ex.PW 18/C that these documents had been sent to him Along with the request for post mortem,

(7) The material witnesses for purposes of deciding the present appeal are PW-I, Dr.Bharat Singh who conducted the post mortem; Public Witness -4 Dr.K.Goldar, who was the first to attend to the patient at the Esi hospital and who is the author of the Mlc (Ex.PW 4/A); Public Witness -5 Kailash Chander, father- of the deceased Renu Bala; Public Witness -8 Deepak Singh, an employee of the Esi hospital known to Kailash Chander and who accompanied Kailash Chander in the taxi which took Renu Bala to the hospital; Public Witness -IO, Dr.Ajay Kamra who also attended to the patient and has made a noting on the MLC; Public Witness - 17, Shri Arun Goel, the Sdm and Public Witness -18, Si Darshan Singh who was the first I.O. in the case. Statement of the appellant was recorded under section 313 Criminal Procedure Code . He denied the prosecution version. However, he did not deny the fact that he had gone to the house of Kailash Chander on 2nd October 1987 at about 9.15 P.M. along with Titu. About this he stated e used to receive embarrassing telephones from Renu Bala and in that connection I had gone to request Shri Kailash Colander to ask Renu Bala to refrain from telephoning us'. The learned Addl.Sessions Judge found that the investigation in the present case was tainted. He was of the view that Si Darshan Singh was in collusion with the accused and he wanted to help him and for that reason he did not mention the name of the accused in the inquest report. However, relying on the Mlc, Ex.PW-4/A and treating it is a dying declaration made by Renu Bala, the appellant was convicted of the offence under section 302 IPC.

(8) In the present appeal the learned counsel for the appellant has vehemently attacked the Mlc in so far as it records that according to the patient she had been pushed from the roof by a person by the name of Dev. According to the learned counsel this portion in the Mlc has been interpolated at the instance of the father of the deceased in order to implicate the appellant. He has urged several grounds in support of this contention. Apart from this it has been urged that the prosecution story is unbelievable for the reason that it is unbelievable and unnatural. For instance it is submitted that nobody . saw the appellant going upstairs in spite of the fact that a crowd had collected after the fall of the girl from the roof nor anybody saw the appellant coming down the stairs or going away. It is submitted that if the appellant had to come down the stairs after pushing the girl from the roof top he would naturally take longer in reaching the ground level where the girl had

fallen as compared to the person falling down. The appellant had to climb down four storeys. If the prosecution version was correct he would have been noticed by the persons who had gathered around Renu Bala which included the father of Renu Bala who could have identified the appellant straight away. Inviting our attention to the motive aspect of the case, the learned counsel for the appellant also urged that there was no motive for the appellant to murder the girl. He had simply gone to her house to make the complaint about the telephone calls allegedly being made by the girl to him which according to him were a cause of annoyance to him.

(9) In the entire case there are only two things against the appellant. First and foremost is the Mlc of deceased Renu Bala Ex.PW 4/A recorded by Dr.Goldar Public Witness -4 in which it is noted that according to the patient she had been pushed from the roof by a person by the name of Dev. The second is the statement of the father of the deceased. Ex.PW 5/B is his statement dated 5th October 1987 on the basis of which the Fir was registered. Then there is his statement in Court as Public Witness -5.

(10) Before dealing with the aforesaid two pieces of evidence against the appellant we would like to dispose of the argument regarding investigation in 545 the present case having not been properly conducted. Si Darshan Singh, Public Witness -18 was the investigating officer who reached the Esi hospital on the basis of Dd entry no.2A, Ex.PW 18/A recorded by the duty officer at police station Moti Nagar. The Dd entry was recorded at 12.10 in the night between 2nd and 3rd October 1987. As per the Dd entry the duty constable at the Esi hospital telephonically informed that one Renu Bala who was admitted in the hospital in injured condition, had expired. Si Darshan Singh says as Public Witness -18 that on reaching the hospital he collected the Mlc of Renu Bala Ex.PW 4/A. He recorded the statement of Kailash Chander (Ex.PW 5/G), father of Renu Bala in the presence of Sho Satbir Singh of police station Moti Nagar. There is lot of controversy about this alleged statement of Kailash Chander. The statement was brought on record by the prosecution and the appellant in fact wanted to rely on the same because the statement really goes in favor of the appellant. However, Public Witness -5, Kailash Chander, to whom that statement is attributed, stated in

very clear terms that Si Darshan Singh had obtained his signatures on a blank paper on the pretext of making out a receipt for purposes of receiving the dead body of Renu Bala. The blank signed paper has been converted into his statement according to Kailash Chander. Apart from this controversy about the statement Ex.PW5/G, the following acts or omissions on the part of Si Darshan Singh show that he did not conduct the investigation in an impartial and fair manner and was in fact colluding with the accused:- 1. The Mlc clearly implicates the appellant, still no Fir was got recorded by the Investigating Officer. 2. Inspire of the Mlc being in his possession he prepared the inquest report projecting it to be a case of fall from roof. Against the column about the cause of death he stated that it was on account of fall from the roof. There is yet another column in the Mlc (Col.21) requiring information about any rumours or circumstances tending to show that the deceased killed himself. This column he answered in the affirmative suggesting that it was a case of suicide. 3. Obviously he held back the Mlc from the father of the deceased and did not let him know that it was recorded in the Mlc at the instance of the patient that she had been pushed from the roof by Dev. 4. Kailash Chander, father of the deceased alleged that while his statement was being recorded before the Sdm on 3rd October 1987, the I.O. did not allow him to make the statement in the manner in which he wanted to do so. 5. Prosecution has brought on record certain recoveries from the spot like the recovery of a chain and a chunni of the deceased which according to the prosecution were not recovered in the first instance by the I.O., i.e. Si Darshan Singh. These are alleged to have, been discovered subsequently. In fact it is on record that a couple of days after the registration of the Fir, the I.O. was changed at the instance of the A.C.P. of the area to whom the father of the deceased apparently made a complaint in this behalf. So far as the role of Si Darshan Singh is concerned, we agree with the trial court that he did not conducted the investigation in a proper and fair manner and from his conduct it appears that he was colluding with the appellant.

(11) From the side of the appellant a grievance is made out that the prosecution had indulged in padding. It has tried to introduce alleged recoveries of the chain and the chunni, said to be belonging to the deceased. It is further alleged that false witnesses have been introduced. About the recovery of chain and chunni these articles are shown to have been produced before the I.O. who took over the

investigation from Si Darshan Singh by the father of the deceased with the Explanation that he found the golden chain worn by the deceased on the roof subsequently. Similar way is shown about the recovery of the chunni of the deceased. The recovery memos about these articles are equally vague. This leaves doubt in our mind about the veracity and reliability of the alleged recoveries. Further some of the witnesses produced by the prosecution particularly Public Witness -16 and Public Witness -21 appear to be result of padding. A bare perusal of the evidence of these witnesses shows that they had no concern with the facts and events involved in the case and have been introduced as witnesses in a bid to strengthen the prosecution case. These facts coupled with role played by Si Darshan Singh suggest that the investigation in this case was not conducted properly and fairly. But this alone cannot be a sufficient ground to acquit the appellant. As a matter of law defective investigation does not necessarily mean that the prosecution case be thrown to the winds. Acquitting an accused merely on the basis of defective investigation and in spite of there being, cogent evidence against him on record will tantamount to playing into the hands of the investigating officer. In *Karnel Singh vs . State of M.P. : 1995 CriLJ4173* it was observed:- 'Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designed defective.'

(12) This brings us to the statements of Kailash Chander, the father of deceased Renu Bala. There are in all four statements on record which are imputed to Kailash Chander. The first statement is Ex.PW5/G, purported to have been made by him before Si Darshan Singh, the investigating officer on 547 3rd October 1987. This is purportedly his first statement after the occurrence. In this statement Kailash Chander does not implicate the appellant at all. Rather this statement exonerates the appellant. The second statement of Kailash Chander (Ex.PW 5/A) was recorded on the same day before the Sdm of the area. In this statement Kailash Chander has alleged that the appellant was conspiring against him and his daughter. He has of course stated that he himself had not witnessed the appellant

pushing her daughter down. The third statement of Kailash Chander (Ex.PW 5/A) was recorded on 5th October 1987 which actually is the basis of the FIR. In the third statement for the first time Kailash Chander introduced the fact that his daughter Renu Bala had told him in the taxi on the way to the hospital that Dev (appellant) had pushed her from the roof. He adds that she had said so in the hospital also. His Explanationn for not stating this fact earlier is perturbedness and shock on account of death of Renu Bala. The last statement of Kailash Chander is his testimony in Court as Public Witness -5. In the said statement Kailash Chander has tremendously improved upon the version given by him in Ex.PW-5/B which was the basis of the FIR.

(13) The learned counsel for the appellant has vehemently urged that Kailash Chander has tried to improve upon his statement at every stage. He has not stuck to any of the versions given by him earlier. From the first statement which totally exonerates the appellant he travelled to the opposite stating that the appellant is responsible for the death of his daughter and that he had pushed her from the roof as told to him by his daughter Renu Bala. We have carefully perused the four statements of Kailash Chander referred to above and we are of the considered opinion that the statements make out Kailash Chander to be an unreliable witness. So far as the first statement of Kailash Chander made before Si Darshan Singh is concerned, we agree with the view taken by the trial court that the same does not appear to be a correct version given by Kailash Chander. We have already observed that Si Darshan Singh appears to have been colluding with the accused and the statement Ex.PW5/G appears to be a result of the collusion. therefore, this statement has to be ignored. But the same cannot be said of the statement of Kailash Chander recorded before the S.D.M. on 3rd October 1987. In this statement also Kailash Chander nowhere states that his daughter Renu Bala had told him in the taxi or till her death that she had been pushed from the roof by the appellant. Here we have to note the fact that the Mlc of Renu Bala Ex.PW 4/A was recorded on 2nd October 1987 about 11.10 P.M. This time is recorded on the Mlc itself. The Mlc first notes 'brought by Kailash Chander with alleged history of fall from roof of a four storey building but according to the patient she has been pushed from the roof by a person by the name of Dev'. Thus the Mlc contains two versions. According to Kailash Chander, father of the patient, it was a case of fall

from the roof of a four storey building while according to the patient it was a case of push from the roof 548 by the appellant. It is in evidence of Public Witness -4 Dr.Goldar as well as Public Witness -10 Dr.Ajay Kumra that she was not unconscious. She was in a state of shock. She was irritable. It is further in evidence of the doctor as well as of Kailash Chander, Public Witness -5 that Kailash Chander was present when the doctor examined the patient. As Public Witness -5 Kailash Chander further stated that Renu Bala had stated before the doctor in his presence that she had been pushed by the appellant. He also admitted that before Renu Bala had said so he had told the doctor that she had fallen from the roof. This shows that Kailash Chander falsely stated in his statement Ex.PW-5/B (basis of FIR) that Renu Bala had told him in the taxi on the way to hospital that she had been pushed from the roof by the appellant. If Renu Bala had told her father in the taxi that the appellant had given her a push from the roof there was no reason for Kailash Chander not to tell the doctor in the hospital that she had been pushed by the appellant from the roof of a four storey building. Thus Kailash Chander's own statement in Court as Public Witness -5 belies his earlier statement Ex.PW-5/B.

(14) The next question which arises for consideration is that at least after hearing his daughter telling the doctor about push by Dev (appellant), why did he not mention this fact in his statement made before the Sdm on 3rd October 1987. The Explanationn of Kailash Chander for this is that Si Darshan Singh did not let him do so. This Explanationn we are unable to accept. Kailash Chander is an educated man and was in Govt. service. He had three close relations of his accompanying him at the time when he went to make the statement before the SDM. The presence of Sdm in the room where his statement was recorded is fully established from the statement of Sdm himself as Public Witness -17, the statement of Kailash Chander Public Witness -5, the statement of Si Darshan Singh, Public Witness -18 etc. Still the question remains why the fact about his daughter having been pushed from the roof was not mentioned by Kailash Chander before the SDM. The only possible Explanationn can be that in his state of anxiety and shock about what had happened to her daughter, what his daughter told the doctor about push by Dev did not register with him. Either he did not hear his daughter talking this to the doctor or in has own state of shock and anxiety the

statement did not register in his mind. Otherwise there is no reason why Kailash Chander would not mention this important fact before the Sdm in his statement. Whether it was a case of suicide or it was a case of homicide committed by the appellant was the most important and crucial question and the father of the victim could not be expected to remain silent on this. Here we must note that in his statement to the police on 5.10.1987 for purposes of Fir he did not refer to the statement of Renu Bala before the doctor. He referred to her alleged statement to this effect made in the taxi on the way to the hospital. The partisan role of Si Darshan Singh also comes into play. It appears that Mlc which was collected from the hospital by him was not brought to the notice of Kailash Chander by Si Darshan Singh. He held it back from the father in order to help the appellant. Ultimately the matter went out of his hands inasmuch as the Sdm himself directed him to register an Fir in view of the allegations in the Mlc as well as in view of the statement of Kailash Chander recorded before him. The statement of Kailash Chander recorded before the Sdm falls short of accusing the appellant of pushing Renu Bala from the roof. However, the statement makes clear allegations of conspiracy and involvement of the appellant in the crime.

(15) At this stage we may reproduce the relevant portion of the statement of Kailash Chander recorded before the Sdm (Ex.PW-5/A):- 'Yesterday on 2.10.87 at 9.15 P.M. Dev Juneja and his friend came to my house and they sat near me. Dev Juneja started saying that had to tk mutually, I asked as to who was accompanying them? He answered that that man was his friend namely Titu. My brother-in-law (sister's husband) Ram Parkash was also sitting with me. They asked me to send my brother-in-law out of the room. I had told that that man was my man and also that they might talk with me in his presence. Titu told me that my daughter Renu had made a telephone call at his residence requesting to call his wife over the telephone. Titu asked over the telephone. Titu asked her not to make any telephone call at his residence in future whereas, Dev said that they had come with full preparation, Dev further added that his friend knows some higher authorities. Whereupon Titu replied that he was also a vagabond but he had now left all his wickedness after marriage. In the meantime, my brother-in-law (sister's husband) Ram Parkash left from there. My daughter Renu Bala had told she was going to untie the dog on the roof. I also left for urinating. When I turn up after

urinating the said boys were not present there. A thudding sound (Dharam) was listened to the effect that girl had fallen down. I immediately went down stairs, and found that my daughter Renu Bala was there and some persons were also getting down. The neighbours had also collected over there. The girl was lying in the house of the neighbours and I removed Renu Bala to the Esi Hospital through a Taxi. I myself had not witnessed Dev Juneja that he had pushed her down. It seems a conspiracy hatched by these persons. I am getting my statement recorded in conscious state, I have witnessed the whole incident from my own eyes. I have heard the statement. 'It is correct.' I have been threatened on telephone a number of times earlier too to the effect that they would kill me.'

(16) While appearing as Public Witness -5, Kailash Chander has not only elaborated the entire incident but has indulged in embellishing it with certain facts which clearly appear to be afterthoughts. Some elaboration of facts is understandable but not embellishments. He stated in Court that Dev used to threaten him and his daughter Renu Bala on telephone and also used very filthy language while talking on telephone. Such allegation he had never made before. About the incident of 2nd October 1987 he stated in Court as under:-

'ON 2.10.87 at about 9.15 P.M. accused Dev Kumar present in the Court along with his friend Titu whose name was revealed by Dev Kumar to me there had come at my house. Both of them have entered in my house which was in the 4th floor of the building. Dev Kumar had seated on one sofa in my drawing room and Tiru had seated on another sofa in my drawing room. One of them had told me to put off the television. At the time my Jija Ram Parkash was also sitting in the drawing room. Dev Kumar had told me to send Ram Parkash outside the room. Titu and Dev Kumar had told me that they wanted to have some talk with me. I had told them that Ram Parkash was my Jija and whatever they wanted to have discussed with me they should discuss in his presence. Titu had told me there that my daughter had talk to him on telephone. He had also told me that my daughter was telling him to arrange for a talk of his wife with her on telephone. I had told him that I should have made complaint to them because I was receiving the telephone. Titu told me that he was brother of Dig and he had also said Usne Badde Badde Kand Kiya HAI. He has also told that his brother was Dig and hence he has been saved.

He had also told that when his engagement ceremony had taken place after that his father-in-law had come to know that the was a man of bad character and then his father-in-law had broken the engagement. But after that he had told to his father-in-law that in case he will not marry his daughter with me, I shall be kidnapping his daughter. He had also told me that after that his father-in-law had agreed for the marriage of his daughter with me (objected by OC). Dev Kumar Juneja had told me that he had come with full preparation and his men were standing up to the gate. When Dev Kumar was talking to me during that time I had noticed that he had also given some signal to my daughter Renu Bala but I could not follow that signal. After some time Renu Bala told me that she shall be going on the roof to untie the dog. Whenever earlier Dev Kumar had visited my house 3-4 times he had always talked with my daughter Renu Bala on the roof of my house. My daughter Renu Bala had gone on the roof to untie the dog and I went to latrine. I came out from the latrine after 5-7 minutes it was about 10.20 P.M. My Jija Ram Parkash had gone from there at about 10.15 P.M. When I had gone to latrine at that time Dev Kumar and Titu were in the drawing room but when I came out from the latrine I did not find them there. At that time I heard a noise indicating that some thing had fallen down from the roof. I suddenly came outside and I found several persons collected on the ground and they were saying that Ladki Gir Gai : Ladki Gir GAI. I immediately came down stairs and saw that Renu Bala was lying in injured condition on the ground. With the help of Partap Singh I picked up Renu Bala from there and out her in the house of Partap Singh. After that I went to bring a taxi. I brought a taxi and Renu Bala was put in that taxi and I along with Renu Bala and one Deepak went in that taxi to the hospital. At that time one boy whose name I do not remember had also gone with us. The taxi was brought in Esi hospital and there Renu Bala was admitted. When I have produced Renu Bala before the doctor, she was admitted in the hospital and her treatment had started. She was administered Glucose and bandages were put on her wounds. When she was being treated I was outside. After some time I went to see Renu Bala. I had caught hold the hand of Renu Bala, at about 10.30 P.M. - 10.40 P.M. On the next day he continued - After about 5-7 minutes from the time when Renu Bala was produced before the doctor by me, she had told to the doctor that Mujhe Dev Ne Chat SEDHAKKADIYA. She had said so to the doctor in the presence. But before

this statement of Renu Bala given to the doctor I had told to the doctor that Renu Bala had fallen down from the roof. This I had told to him then I had produced Renu Bala for treatment and admission in the hospital. When Renu Bala had given the above noted statement to the doctor after that the doctor had inquired from as to who was Dev. After I had told to the doctor there that marriage was settled with Dev Kumar of my daughter. When I had caught hold the hand of my daughter Renu Bala at about 10.30 P.M. - 10.40 P.M. then she had told me that she should be saved by me. After that I requested the doctor with folded hand that my daughter be saved anyhow. Doctor had told me that I should have faith on God and her condition was serious. After that Renu Bala told me that she was going and was having difficulty in breathing. After that Renu Bala had told me by saying Dev Ne Dhaka Diya Dev Ne Dhaka Diya Dev Ne Dhka DIYA.'

(17) The allegations contained in the above quoted statement made by Kailash Chander in Court were never there in his previous statements. This clearly shows that he is unreliable. He has indulged in fabricating evidence. We are of the view that Kailash Chander is not a reliable witness and it is not safe to convict the appellant on the testimony of such a witness.

(18) We may notice here that in the natural course of events any father would first ask his child who suffers such a fall from height as to how it happened. There is nothing to show that Kailash Chander asked such a question from his daughter Renu Bala. This only shows that immediately after the fall Renu Bala may be in such a state of pain, agony and shock that she may not be in a position to talk. Even while being taken to the hospital in the taxi she must not have talked because at that stage also if she would have been in a position to talk, her father who accompanied her in the taxi, would have first asked this question. It is only after being admitted in the hospital that the doctor on duty must have managed to make Renu Bala talk. At that time she might have felt a little secure in the sense that she was getting medical attention and in her incoherent state she must have stated what is contained in the MLC about the appellant. In *Prakash and another vs. State of Madhya Pradesh* : 1992 CriLJ3703 , the Supreme Court had occasion to observe as under in relation to the ordinary course of human behaviour:- 'In the ordinary course, the members of the family including the father were expected to

ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants.'

(19) Public Witness -8 who had accompanied Kailash Chander and Renu Bala in the taxi to the hospital stated in his evidence that during the journey in the taxi or in his presence Renu Bala had not said anything and she remained unconscious. This again belies Public Witness -5.

(20) Law on the question of variance between different statements of a witness at different stages is that small variations or omissions will not justify a finding that the witness is a liar and his testimony should be discarded. However, vital omissions merit consideration and if on vital points it appears to the Court that the witness has tried to improve the case such a witness will have to be discarded. We find support for this view from -

1. Surajmal vs . State, : 1979 CriLJ1087 .. Matadin & Ors. vs . State of U.P., : 1979 CriLJ1027 . 3. Namdeo Daulata etc. vs . State of Maharashtra, : AIR 1977 SC381 . 4. Randhir vs. State 1980 Cri.L.J. 1397.

(21) As already noticed Kailash Chander, Public Witness -5 has admittedly made three statements, one before the Sdm, second before the police on the basis of which the Fir was recorded and the third is his statement recorded in Court. At least on two vital points we find there is variance in his statements. In the statement before police (Ex.PW5/B) which is the 'basis of the Fir he stated that his daughter Renu Bala had told him in the taxi on the way to the hospital t hat Dev had pushed her from the roof. He does not mention this vital piece of evidence in his statement before the SDM. His Explanationn for the omission is that Si Darshan Singh did not allow him to say this. Similarly in the statement recorded in Court as Public Witness -5 Kailash Chander has not said that 553 Renu Bala had told him in the taxi on the way to hospital about Dev having pushed her. Here he

relies on her statement to this effect before the doctor. Another vital omission of a very significant fact is that in his statement before the Court Kailash Chander said while referring to the visit of Dev in his house on the fateful night that Dev had given some signal to his daughter which he could not follow and after which his daughter went to the roof. By this he was suggesting that on asking of Dev, Renu Bala had gone to the roof and Dev had followed him. This fact he never stated in any of his statements made prior to this. This leads us to conclude that we cannot rely on the evidence of Kailash Chander. Public Witness -5.

(22) Having held that Kailash Chander, Public Witness -5, father of the deceased is not a reliable witness, we are left with Ex.PW-4/A, the Mlc of Renu Bala which contains her version about the push by Dev from the roof as the only piece of evidence against the appellant. This statement was made by Renu Bala at about 11.10 P.M. on 2nd October 1987 when she was brought to the hospital and was attended to by Dr.Goldar, Public Witness -4. The Mlc is recorded in the hand of Dr.Goldar who has also signed the same and proved it as Ex.PW 4/A while appearing as a witness in the case. The learned counsel for the appellant has given various reasons to suggest that this document is not reliable and that it cannot be treated as a dying declaration. i) First he submitted that the words in the Mlc that 'according to the patient she has been pushed from the roof by a person by the name of Dev' have been inserted later on. In other words the suggestion is that there is interpolation in the Mlc to this extent. To make good this argument the learned counsel urged that if these words were there in the Mlc right from the beginning the case against the appellant would have been registered immediately the Mlc was collected by the I.O. from the hospital. As per the evidence of the I.O. Si Darshan Singh he collected the Mlc soon after reaching the hospital on the night between 2nd and 3rd October 1987. The case was registered on 5th October 1987 after the endorsement of the Sdm dated 4th October 1987. ii) Next point urged in this connection by the learned counsel for the appellant is that according to Dr.Goldar Public Witness -4, Kailash Chander father of Renu Bala was present when the Mlc was recorded. Father also says so in his statement as Public Witness -5. This would mean that the father knew about appellant having given a push to his daughter as per the version of his daughter. Still he did not say anything about it before the Sdm in his statement Ex.PW-5/A which was recorded

subsequently. From this the conclusion sought to be drawn is that the allegation about push by Dev is not there in the Mlc as originally recorded. iii) The learned counsel referred to several documents to show absence of allegation of push by the appellant and case being made out 554 about fall from roof. The documents relied upon for this purpose are-

(A) the inquest report Ex.PW 16/C dated 3rd October 1987, no where the cause of death is shown to be push by Dev, Every where it is recorded: fall from the roof. (b) death summary as Ex.PW-4/DA (c) Ex.PW 18/B, a note prepared by the I.O. (d) Ex.l8/A which is a copy of Dd entry recorded at police station Moti Nagar recording reason about admission of Renu Bala in the hospital on account of injuries due to fall from roof and she having expired. (e) post mortem report Ex.PW I/A, dated 4/10/1987.

(23) We are unable to accept the contention raised on behalf of the appellant that the incriminating line has been inserted in the Mlc subsequently. For this the most important fact is that 3 bare perusal of the document does not leave scope for such an argument. The entire document is written in a very consistent, free flowing manner. No gaps have been left even at other places so as to suggest that some place was left to make insertion of incriminating lines in the document possible. The doctor who recorded the Mlc as Public Witness -4 and testified about the correctness of the entire contents of the document has withstood the test of cross-examination. There can be no doubt that lines in question must have been written in the Mlc by the doctor in the normal course. The father of the girl did not give this information to the doctor. Rather according to the father the girl had fallen from the roof. The doctor himself did not know the name of the appellant nor he would have any motive to introduce his name in the MLC. Thus it was Renu Bala alone who could have made this allegation before the doctor at the time of recording of the Mlc and it was at her instance only that the lines were recorded in the MLC. The Mlc is initialled by Dr.Bharat Singh who conducted the post mortem on the body of Renu Bala. therefore, this Mlc must be in existence on that date, i.e. 4th October 1987. The Mlc bears a Serial number of the hospital. In fact it is signed by another doctor also, i.e. Dr.Ajay Kamra, Public Witness -10. There is no scope even for substitution. Thus we have no doubt about the existence of the incriminating lines

referred to above in the Mlc as it originally stood. We have also no doubt that those lines must have been recorded at the instance of Renu Bala, the patient. The question would remain that if those lines were uttered by Renu Bala in the presence of his father on 2nd October 1987 why the father concealed this vital information till his statement made on 5th October 1987 on the basis of which the Fir was recorded. There also in fact the father (Kailash Chander) stated that about push by Dev being told to him by the daughter in the taxi on the way to hospital. He did not refer to the statement of his daughter made before the doctor in the Esi hospital at the time of recording of the MLC. In view of the partisan role played by Si 555 Darshan Singh we are sure that he must not have allowed Kailash Chander to see the MLC. The effort must have been there on the part of Si Darshan Singh not to register an Fir against the appellant and he succeeded in this effort till he was compelled to register an Fir on the basis of an endorsement of the Sdm of the area. The I.O. was colluding with the appellant and, therefore, was avoiding to register an Fir against him. This also explained the manner in which the inquest report was prepared where everywhere the cause of death was shown as fall from roof and the appellant was completely saved.

(24) So far as the death summary is concerned that is not a document which must contain the history of the case. The death summary essentially deals with the treatment of the patient after his/her admission in the hospital. The doctor recording the death summary need not refer to the statement regarding cause of death. So far as recording the Dd entry Ex.PW-18/A is concerned, it was recorded on the basis of report of the policeman on duty in the hospital who would not have known about this assertion in the MLC. The post mortem report again is not concerned as to who caused the injuries. It is concerned with the nature of injuries and whether they are sufficient to cause death. The inquiry about who caused the injuries is not relevant for purposes of a post mortem report.

(25) The learned counsel for the appellant next submitted that the Mlc contains two versions about the cause of injuries - one of the father about fall from roof and the other of the patient about push by the appellant. According to him this is most unnatural way of recording an M.L.C. Normally while recording Mlc if the patient is in a position to talk, the doctor would like to know the facts from the patient rather

than from those accompanying the patient. This argument does not cut any ice. The father who brought the patient to the hospital only knew about fall of his daughter from roof and, therefore, told this to the doctor. Thereafter the doctor must have made inquiries from the patient and the doctor recorded the patient's version also. There is nothing unnatural in this. Then it was urged that how could patient allow her father's version to come on record when she was giving a different version? As already observed the girl was in a state of utter shock and was wreathing in pain. She might not have even noticed what her father had told the doctor. Thus we reject the argument that the Mlc has been interpolated or that the incriminating lines in the Mlc have been added subsequently.

(26) Now it remains to be seen whether the incriminating lines in the Mlc can be treated as a dying declaration to lead to the conviction of the appellant. The trial court treated the same as a dying declaration and based the conviction of the appellant thereon. The learned counsel for the appellant attacked the incriminating lines on both the grounds, i.e. the manner of recording the same and treating the same as a dying declaration and secondly whether the same can be treated as reliable, trustworthy statement to base the conviction of the appellant.

(27) So far as the question of manner of recording of the statement is concerned, we must note that the statement has been recorded by a doctor. Not only the doctor recording the statement but the other doctor who came there within five minutes as per endorsement contained on the Mlc itself, opined that the patient was conscious and was in a position to talk though incoherently. therefore, the statement satisfies the test that the patient was in a position to make the statement. The declaration was recorded by a doctor which is perfectly in order. The Mlc bears two thumb marks of the patient, i.e. the person making the incriminating statement. This has also been testified to by PW-4, the doctor who recorded the document. therefore, we are not impressed by the attack of the learned counsel against this document based on the manner of recording of the incriminating statement.

(28) The real question is about the veracity of the incriminating material. In this behalf the law is settled that the dying declaration has to be carefully scrutinized

and the Court has to be satisfied about its genuineness, truthfulness and reliability. The manner and circumstances in which it was given must inspire confidence. The approach of caution is required particularly in view of the fact that it is neither a statement on oath nor the person against whom the statement is made gets an opportunity to cross-examine the maker of the statement. In *K.Ramchandra Reddy vs . The Public Prosecutor : 1976 CriLJ1548* , it was opined that - 'The Courts have to apply the strictest scrutiny of the closest circumspection to the statement before acting upon it. While get so lemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied with the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour.'

(29) We are of the view that the dying declaration in the present case does not satisfy the aforesaid tests. The dying declaration does not appears to be reliable in view of the other evidence on record. An important fact to be noted in this connection is that if the appellant had given push to Renu Bala from the roof top, she would have hit the ground much sooner than the appellant who had to climb down four flights of stairs to reach the ground level. It is in evidence that immediately after the fall so many people collected around and if the father of the girl came out after hearing the sound of fall on ground. It is unimaginable that nobody would notice the appellant coming down the stairs and quietly disappearing. The girl never became unconscious and she would have been the first to tell the persons who had collected at the spot about push having been given by Dev. In these circumstances Dev, the appellant could not have quietly escaped from the scene. We are conscious of 557 the fact that it was night time and none else except Renu Bala could have seen Dev pushing her. In normal course there could be no eye witness. However, we do not feel that the appellant can be convicted solely on the basis of the said alleged dying declaration. Secondly, if the appellant had followed Renu Bala to the roof. Kailash Chander who was around and had only gone for the purpose of urinating, would have not

missed this fact. It is significant to note that Kailash Chander did not implicate Dev till 5th October 1987 when he lodged the FIR.

(30) Renu Bala's statement about Dev in the Mlc Ex. Public Witness 4/A does not inspire confidence. It appears to be borne out of rancour. Her marriage with the appellant had been fixed. The cards for the marriage had been printed. Thus the biradari (brotherhood) and friends would have known about the proposed marriage. The breaking of the marriage at this stage would have left bitterness in the mind of the girl. In our society it is the girl whose marriage is broken, who is looked down upon and there is not even a whisper in this respect so far as the boy is concerned. Renu Bala must have felt rejected and dejected. She might have felt that she would have to face this ignominy. This could have left a feeling of bitterness and rancour against the appellant in the mind of Renu Bala. On the other hand the appellant could hardly have any motive to be driven to such an extreme step. He had gone to the house of the deceased on the fateful night along with his friend only to tell the girl as well as her father that the girl should not make telephone calls to him or his friends. The marriage was over and this was not expected on the part of the girl. At best the telephone calls were a source of annoyance to the appellant's side. This could not be a motive enough to take the extreme step of killing the girl. Besides this the shifting stand of her own father robs the dying declaration of the sanctity it ought to enjoy.

(31) For all these reasons we are of the view that it is not justified to base the conviction of the appellant solely on the said dying declaration. In any case in the facts and circumstances of the case, the appellant is entitled to the benefit of doubt. We accept this appeal. The conviction of the appellant is set aside. The appellant is on bail. His bail bond is ordered to be cancelled.

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