

Lakhan Lal Vs. State

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Court : Delhi

Decided On : Feb-24-1995

Reported in : 1995CriLJ2699; 59(1995)DLT182

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

Acts : [Evidence Act, 1872](#) - Sections 32(2) and 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307 and 498A; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 62 of 1990

Appellant : Lakhan Lal

Respondent : State

Advocate for Def. : P.S. Sharma, Standing Counsel (Cri.)

Advocate for Pet/Ap. : Avinish Ahlawat, amices Curia

Disposition : Appeal dismissed

Judgement :

S.D. Pandit, J.

1. Appellant Lakhan Lal son of Narayan Singh stands convicted of an offence punishable under Section 302 of the Indian Penal Code and sentenced to life

imprisonment and to pay fine of Rs. 2,000/- and in default to suffer further R.I. for three months, on 18-4-1990 by an Additional Sessions Judge, Delhi. It was held that the appellant Lakhan Lal had committed the murder of his wife Vidhya by setting her on fire.

2. Vidhya was the daughter of PW/1. Buddha Ram. She had given up her education in graduation in Art Faculty in the year 1980 and had taken up a job as a Telephone Operator. In March 1981 her marriage took place with the appellant Lakhan Lal, was an arranged marriage. After the said marriage she joined her husband and started living with him in the joint family of the appellant which consisted of appellant, his parents and sister. But it seems that appellant's sister, particularly, was harassing the deceased Vidhya and appellant's parents were also asking her to get plot of land in order to raise their own house and due to the same there were some disputes between her and her matrimonial family. But, ultimately Vidhya and her husband started living separately and they were living separately for about 2 to 3 years at House No.2/23, Prem Nagar, Kotla Mubarakpur, New Delhi, prior to the death of incident.

3. The incident in question has taken place on 9-12-1986. After Vidhya and her husband Appellant Lakhan Lal started living separately in the rented house at 2/23, Prem Nagar, Kotla Mubarakpur, New Delhi, it seems that the appellant was not doing any work and was not earning anything. Not only he was not earning anything but also he used to return home late at night. Due to this sometimes there used to be some minor frictions and unpleasant incidents between husband and wife Vidhya was always asking him to get himself employed and to earn something and not to remain out of the house till late at night.

4. On the night between 8-12-1986 and 9-12-1986 appellant Lakhan Lal returned home at about 12-00 midnight. At the time Vidhya had expressed her displeasure but nothing serious took place and both of them went to sleep Vidhya had night duty on the next date, i.e. 9-12-1986 and, therefore, she got up late at about 8-00 am. on that day. After she got up she told her husband that he should try to get himself employed and not to remain out of the house till late at night. On her saying this appellant Lakhan Lal became furious and he questioned her as to who

she was to give him such-advice and then he further assaulted her by a fluorescent tube light fitting. He also slapped her and further proclaimed that he wanted to finish her and if she wanted to call her parents she was free to do so. After saying so he went inside the kitchen room.

5. The premises which were occupied by deceased Vidhya and appellant Lakhan Lal were consisting of two rooms, a kitchen room and a drawing-cum-bed room and the entrance to their residence was through the kitchen room. When appellant went into the kitchen room Vidhya followed him and she found that her husband had picked up the kerosene container and then he threw the kerosene from the said container on her body, which fell on the front side of her body, excluding her face and her hair. She was wearing a garden gown and the same had also become wet due to the pouring of kerosene. After he poured the kerosene on the body of deceased Vidhya, she wanted to run away by opening the door but the appellant caught hold of her and prevented her from going out. She had raised shrieks but her husband had put on the radio at a high volume and windows of the premises were also closed. Consequently, her shrieks could not go out. After catching her he drew her into the bedroom and threw her on the bed and then he lighted a match-stick from the match box and threw the same on Vidhya. Her Garden gown immediately caught the fire, the bed sheet which had also become wet due to kerosene also caught fire. The quilt which was there also caught the fire. Vidhya, with her burning clothes, ran out of the premises by opening the door and went to her neighbour who extinguished the fire on her body with the help of another quilt. One of her neighbour went to her parental house which was about 200 to 250 yards away from her house and informed her father, PW/1 Buddha Ram about her catching fire.

6. Buddha Ram, father of the deceased, came to her house. It seems that by that time another neighbour had given information to the police and a fire brigade van came and she was removed to Safdarjung Hospital. When she was being admitted in the hospital she gave the history of her burns to the Medical Officer on duty by saying that on that morning after she got up from bed she had altercation with her husband after which her husband poured kerosene on her and set fire to her at about 8.30 am. The Doctor had accordingly recorded the said history in the MLC.

The Doctor had found that she had sustained 65 per cent burns but he had also found that she was quite conscious and oriented. S.I. K.L. Kapoor of Police Station Kotla Mubarakpur reached the hospital. He contacted the Doctor in-charge of the burns ward as to whether Vidhya was in a fit condition to make the statement and on such certification of doctor, he recorded her statement, which has been registered by him as first Information Report No.284-86, initially under Section 307/498A of the Indian Penal Code. Thereafter the Investigating Officer contacted PW/16, Ravi Malik, who was Sub-Divisional Magistrate of South Delhi and requested him to record her dying declaration. Accordingly, PW/16, Ravi Malik came to the hospital. He first contacted the Medical Officer in charge and ascertained from him as to whether Vidhya was in a fit condition to make the statement and when the doctor certified that she was quite fit to make the statement he recorded her statement in question-answer form in Hindi and obtained her thumb impression as she was not in position to sign due to burns on her palms.

7. The investigating officer PW/17 S.I. K.L. Kapoor visited the house of appellant Lakhan Lal and Vidhya. He found there the kerosene lying on the floor in the kitchen room. He also found burnt pieces of her garden gown, burnt quilt and chhadar, which were also smelling of kerosene. He also found the kerosene container with about one litre of kerosene a match box and a match stick. He attached all those articles under various memoranda. He then recorded the statement of witnesses. Though Vidhya was given necessary treatment she ultimately succumbed to her burn injuries on 13-12-1986 and died at about 6.05 am. The appellant was arrested by the Investigating Officer on 20-12-1986 and on completion of necessary investigation he filed the challan against the present appellant in the Court of Metropolitan Magistrate, New Delhi for the offence punishable under Section 302 of the Indian Penal Code.

8. As the offence under Section 302, Indian Penal Code is exclusively triable by the Court of Session, the learned Metropolitan Magistrate committed the appellant to the Court of Session by an order dated 13-3-1987. A charge was framed against the appellant for the offence under Section 302 of the Indian Penal Code on 27-5-87. Appellant has pleaded not guilty to the charge and his defense is of

total denial and false implication.

9. In order to prove its case against the present appellant, prosecution has examined in all 17 witnesses but out of those 17 witnesses there is no direct witness to the incident in question. The accused had examined one witness in his defense. The Trial Court found that the dying declarations of Vidhya were true, genuine, believable and acceptable and he accepted the same and held appellant guilty of the offence punishable under Section 302 of the Indian Penal Code and sentenced him as stated earlier.

10-11. Learned counsel for the appellant urged before us that there is no evidence against the appellant. She contended that the trial court ought not to have accepted the evidence of dying declarations. Dying declarations on which the prosecution are relying are not true and honest and they are also not genuine and therefore, no reliance could be placed on the same. She further contended that prosecution has failed to examine any neighbor of appellant and deceased Vidhya. therefore, an adverse inference must be drawn against the prosecution and the prosecution case must be rejected.

12. As against these, it is contended by Shri P.S. Sharma, Standing Counsel (Criminal), Delhi Administration, that the evidence of dying declaration is quite clear, cogent and consistent and the trial court was justified in accepting the same. He also contended that the trial court rightly accepted the prosecution case and, hence, appellant is guilty of the offence punishable under Section 302 of the Indian Penal Code.

13. It may be stated that as per the case of the prosecution, there is no direct witnesses to the alleged incident. The prosecution case is principally resting on the dying declaration. There is no dispute over the fact that the deceased Vidhya had sustained burns. It is also not in dispute that her death is due to burns sustained by her on the morning of that fateful day of 9-12-1986. The burn injury could be due to either accidental burning or suicidal burning or homicidal burning. In the instant case it is not the claim of the appellant that the burning in question was accidental. It is the claim of the appellant that the burning in question is suicidal whereas it is the claim of the respondent State that the burning in question is

homicidal.

14. The prosecution is principally relying on the dying declaration in order to prove its case against the appellant and the burning in question was homicidal. It is now well established that a dying declaration should be carefully scrutinized and after the careful perusal of the same if the Court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent then there is no legal impediment basing the conviction on such dying declaration even if there is no corroboration. Dying declaration cannot be ignored when crucial facts are found in it. Truthful and reliable dying declaration should be subjected to the close scrutiny considering that it was made in the absence of the accused who has no opportunity to test its veracity by cross-examination. If the Court finds that the dying declaration is not wholly reliable and the material integral portion of the deceased's version of the entire occurrence is untrue, the Court may in those circumstances of the case consider it unsafe to convict a person on the basis of the declaration alone without further corroboration. (See *Pompiah v. State of Mysore* : 1965 CriLJ31 .

15. In the instant case the prosecution is relying on four dying declarations made by deceased Vidhya. The first dying declaration on which the prosecution is relying is the declaration said to have been made by her to her father, PW/I, Shri Buddha Ram. The Second dying declaration is made by her to the doctor at the time of admission in the hospital. The Third dying declaration is the statement of Vidhya, recorded by PW/I 7 S.I. K.L. Kapoor, which has been registered as the First Information Report and the fourth dying declaration is the one recorded by PW/16, Shri Ravi Mullick, the then Sub-Divisional Magistrate of South Delhi.

16. The first two dying declarations are oral declarations of deceased Vidhya. According to PW/ 1 Buddha Ram after learning that Vidhya had sustained burn injuries he went to her bouse and at that time he saw the accused present there but after some time he disappeared. He has also stated that he had found that the house of his daughter was open, kerosene was lying in the kitchen room and some burnt places of cloth were also lying there. Then he locked the house of his daughter and by that time a fire brigade van came there and Vidhya was removed

to Safdargung Hospital by the said van. On their way his daughter was asked by him as to how it had happened and at that time she had told him that her husband had set her on fire after pouring kerosene oil on her. If the cross-examination of PW/1 is seen it would be quite clear that from the said cross-examination of PW/1, Buddha Ram, it is not possible to infer or hold that he had any animosity towards the present appellant. The evidence given by him regarding this dying declaration is quite natural. It is but natural that the father will ask his daughter as to how she had sustained the burn injuries. No doubt nobody from the fire brigade van has been examined by the prosecution to support his claim but is very pertinent to know that in the cross-examination of Buddha Ram no material is brought out to infer or hold that the said disclosure made by Vidhya to him was over heard or heard by any other occupants of the said fire brigade van. thereforee, when there is no material on record to show that there were other witnesses to the said oral dying declaration the evidence of dying declaration of PW/1 Buddha Ram could not be rejected for non-examination of any witness to support him when the material on record does not show that there was any witness. We are discussing in detail subsequently as to whether the claim of Vidhya that her husband had poured kerosene on her and set her on fire stands supported by the circumstantial evidence on record or not but we do not find any reason to discard the testimony of PW/1 Buddha Ram as regards his claim, that Vidhya had told him that her husband had set her on fire after pouring kerosene oil on her.

17. The prosecution has brought on record the M.L.C. which was prepared when the deceased Vidhya was admitted in the hospital by the Medical Officer on duty. The document is exhibited as Exhibit PW/18/B. The said M.L.C. contains the following material:

'Patient alleged that after awakening at about 8.00 am, on 9-12-1986 she had an altercation with her husband. After the attraction her husband poured kerosene on her and put her on fire. She rushed to her neighbours where a quilt was wrapped around her to put out the fire. This occurred around 8.30 am. on 9-12-1986 at her residence at 2/23. Thyag Raj Nagar, New Delhi.'

This M.L.C. is brought on record by examining PW/18, B.R. Batra. This document is prepared by Medical Officer on duty in discharge of his duty as a public servant. According to him this M.L.C. is signed by Dr.G. bids was and he had identified the signature and handwriting of Shri G.Biswas on the same. It has come in his cross-examination that Dr.G. bids was has left the hospital and his whereabouts are not known. therefore, in view of the provisions of Section 32(2) of the Indian Evidence Act the said M.L.C. is admissible in evidence and becomes relevant. It must be mentioned here that during the cross-examination of PW/1. Buddha Ram there is no suggestion to him that he tutored Vidhya to make a false statement against the present appellant. The endorsement on the said M.L.C. clearly shows that Vidhya was quite conscious and oriented and this dying declaration in M.L.C. was made immediately on her admission in the hospital and within two and a half hours of the incident. The subsequent discussion would clearly show that her husband had altercation with her in the morning and he had poured kerosene on her and set fire to her clearly stands corroborated by the circumstantial evidence on record.

18. The third dying declaration is the statement recorded by PW/17, S.I. K.L. Kapoor, which is registered as First Information Report in this case. PW/17 S.I. K.L. Kapoor has stated that after reaching the hospital he had contacted the Doctor in-charge of the concerned ward and had obtained the permission of the doctor for recording the statement of Vidhya and the doctor had certified that she was in a fit condition to make the statement and he accordingly recorded the said First Information Report. He has produced application given by him to doctor and which bears endorsement of doctor giving him permission. It has come in his evidence that at the time of the said recording of the First Information Report her father was not present, there and nobody else was present there. The said dying declaration incorporated in the First Information Report is in consonance with the dying declaration recorded by PW/16, Shri Ravi Mullick, Sub-Divisional Magistrate. There are no circumstances on record to infer and hold that the said First Information Report given by deceased Vidhya was on account of some deliberations or prompting. Similarly, there is no material on record to show that the contents of the said dying declaration are false or incorrect. It is the settled law that merely because the said dying declaration is recorded by PW/17, S.I. K.L.

Kapoor, the same could not be rejected. The head-note of the case Ramawati Devi v. State of Bihar : 1983 CriLJ221 reads as under '

'Dying declarations recorded before the Police Officer - admissible and can be relied for conviction - it need not be recorded before the Magistrate.'

19. In a subsequent case Surinder Kumar v. State : 1987 CriLJ537 it has been held that the dying declaration before the police could be accepted when there is nothing on record to suggest that it was tutored one and no motive to falsely implicate the accused. It was also further observed in the same case that merely because the statement was not recorded by a Magistrate does not affect the truth in the dying declaration. If the contents of the said dying declaration, contained in the First Information Report, marked as Exhibit PW/2/B, are carefully read then it would be quite clear that the version given by her in the same must be true and correct. It shows that she had love and attachment for her husband and she had not tried to make any exaggerated statement in the same.

20. The dying declaration recorded by PW/16, Shri Ravi Mullick is in question-answer form. The said dying declaration is Ex. PW/16/A, in the said dying declaration Vidhya has stated that she was set on fire by her husband. On the previous night they had quarrelled because the husband had come late at night and as she had asked him as to why he was coming late every day and on that account there was a quarrel. In the morning at 8.00 am. she woke up from her sleep as she had night shift on that day. On her awakening and was scolded by her husband by questioning her as to who she was to ask him as to where he was going and why he was returning late. Then he said that he was going to finish her and then he took the fluorescent tube light fitting and gave her beating and he also gave a slap on her face and then dragged her inside the kitchen room and then he poured kerosene from the kerosene canister on her from front side. Due to the pouring of kerosene, except her hair and face, all her front body had become wet. At that time she was wearing a garden suit. Though she had raised shrieks but as her husband had kept the volume of the radio very high and the windows were closed, they could not be heard. She wanted to run away from the main door but her husband caught hold of her and dragged her into the bedroom and then he

threw her on the bed and then set her afire by using a match stick. She ran out of the house and her fire was extinguished by using a quilt. This version of her in the dying declaration at Exhibit PW/16/A gets corroboration by the attachment of articles in her house under the memoranda's marked Exhibits P/2/C to P/2/K. Under the memo marked Exhibit P/2/C burnt pieces of garden suit of red-purple colour were found outside the door of her house and they were smelling of kerosene. Under Exhibit PW/2/D a tin canister of five litres capacity containing about one litre of kerosene lying in the kitchen room was found and the lid of the said canister was near the canister itself and both of them were attached under that memo. The match-box bearing the name Varsha Delux was found lying on the floor of the bedroom near the bed and it was attached to the memo Exhibit P/2/E. The fluorescent tube light fitting rod was lying near the bed and it had bent and it was attached under the memo Exhibit P/2/F. Under the memo Exhibit P/2/G and Exhibit PW/2/H the partly burnt bed-sheet and partly burnt quilt were attached from the bedroom., Similarly, under the memo Exhibit P/2/I the half burnt Dunlop mattress was seized. Under the memo Exhibit P/2/K kerosene oil collected in a bottle from the floor of the kitchen has been seized.

21. The existence of all these articles in the bedroom and kitchen give the necessary corroboration and support to her dying declaration. It must be remembered that if Vidhya had wanted to commit suicide by pouring kerosene on her and if she had gone to the kitchen and poured kerosene on herself then she would have set herself on fire there only. Nobody who intends to commit suicide by fire will lie down on the bed and then set fire to the clothes which were made wet by pouring kerosene in the kitchen.

22. PW/16 Ravi Mullick has deposed that he had recorded the dying declaration after verifying from the doctor as to whether she was in a fit mental condition to make the said dying declaration and after satisfying himself from the doctor he had proceeded to record the statement. His evidence also clearly shows that at the time of recording of dying declaration there was no one else present there except he himself. It must be also mentioned here that the M.L.C. was clearly showing that Vidhya was quite conscious and she was oriented. It must be remembered that she was alive for four days after the date of incident. The incident had taken

place on 9-12-1986 at about 8.15 am. and she met with her death on 13-12-1986 in the morning.

23. When her father had secured a separate house for her and when Vidhya and her husband were living there together her father could not have any grudge against her husband, i.e. the present appellant. No doubt it has come in his cross-examination there used to be some frictions between Vidhya and her husband because her husband was not earning and was not taking up any job. When Vidhya herself was earning, it was natural for her to expect that her husband should not remain idle and he should also earn. Consequently, some petty quarrels are bound to take place between husband and wife. It has been brought out in the cross-examination of her father that no complaint was lodged either by Vidhya or he himself before the police regarding the said quarrels. That fact itself shows that her father as well as Vidhya did not want to entangle the present appellant. They had all the attachment for him and because of Vidhya's love and attachment for him she had not lodged the complaint with the police. That conduct of her indicates or shows her attachment to her husband and it could not be taken as showing that her claim is false.

24. Learned counsel for the appellant had drawn our attention to the original dying declaration and the last two sentences of her dying declaration were brought to our notice and it was urged before us that those two lines are having less space and some small lettering. It must be mentioned here that when Shri. Ravi Mullick was in the witness box he was cross-examined on this point to elicit his Explanation for the same. But if the said writing is taken into consideration it would be quite clear that the said writing is made by one and the same pen and in the same ink. The last two sentences do not look to have been written by separate pen or subsequently and the ink of the whole writing does show that it is written at one time. If the thumb impression of Vidhya on the said dying declaration is considered, it would be quite clear that the impression shows that it comes on the portion of the last sentence of her dying declaration. The last sentence in her dying declaration is not written over her thumb impression but the thumb impression is over the last line. thereforee, that circumstance also clearly shows that the last sentence must have been there before obtaining her thumb impression on the

dying declaration. It is quite possible that the said last two sentences being the concluding portion might have been written in small letters as the said dying declaration is quite lengthy. We do not find any suspicion in the said dying declaration Ex.PW/16/A.

25. Learned counsel for the petitioner, Ms. Avinish Ahlawat argued that no neighbour of the appellant and Vidhya has been examined to support the claim of Vidhya and no radio was attached from the house where the incident in question took place and therefore, her dying declaration should not be accepted. It is true that none of Vidhya a neighbour had been examined by the prosecution. But it must be mentioned here that this is not the case that Vidhya's neighbours were interrogated and their statements under Section 161 of the Code of Criminal Procedure were recorded and in spite of that prosecution has not examined any of them. Hence, there is no question of drawing adverse inference under Section 114(g), of the Evidence Act See *Srichand v. State of Maharashtra* : 1967 CriLJ414 .

26. Unfortunately, now a days there is a tendency amongst general public to keep themselves away from the Court. They think that crime are like civil disputes in-between parties and they should not involve themselves. This kind of apathy of general public is indeed unfortunate. But, it is there everywhere. Hence, we are unable to accept the contention of learned counsel for the appellant that since no neighbour has come forward to depose, the dying declaration of Vidhya should be rejected. Similarly, the failure of the Investigating Officer to collect one of the corroborative circumstances viz. the attachment of radio could not be also weighed against the truthful version of Vidhya. It must be remembered that in the cross-examination of Vidhya's father, two brothers and the witnesses of the memoranda of attachment of other articles in the house, there is no suggestion that there was no radio in the house of Vidhya. When Vidhya was working and they were only husband and wife living together and being urban living people it is quite possible and natural to have at least a transistor radio in the house. It must be remembered that it has not come positively on record that there was no radio in Vidhya's house. Hence, the negligence and lethargy on the part of the Investigating Officer to seize the radio could not be used to reject her dying

declaration.

27. Thus we find that the dying declaration made by Vidhya in her First Information Report as well as in Exhibit PW/16/A are quite plausible and acceptable and the trial court was quite justified in believing and accepting the same. We do not find any reason to suspect the genuineness of the said dying declarations and to doubt the said dying declarations.

28. It must be further mentioned that there is no material on record to infer that there was any reason or ground for Vidhya being frustrated and there was likelihood of committing suicide. If her whole dying declaration is read it would be quite clear that she is not making any serious allegation against her husband except the last incident and the tone of her dying declaration clearly indicates and shows that she had love and attachment towards her husband. Her marriage had taken place only in the month of March 1981 but it seems that they started living separately on account of harrassment of Vidhya at the hands of her sister-in-law and other in-laws within a short period of their marriage. No doubt it has been brought in the statement of her father and it is also an admitted fact that she had no issue but there is no material brought out in the statement of the father, that Vidhya was very eager to get a child and that she was consulting medical experts in that respect and she was expressing displeasure for not getting a child. thereforee, from the material on record it is very difficult to hold that there is even slightest possibility of Vidhya having committing suicide.

29. In view of her dying declaration it is quite clear that her burns are homicidal and they are not suicidal. We have already pointed out above that from the material on record it is also not probable that the burns in question could be suicidal. Thus, we hold that the deceased has met with homicidal death due to burning.

30. We, thereforee, hold that the present appeal deserves to be dismissed and the order of sentence and conviction passed against the appellant will have to be confirmed. Consequently, the appeal is dismissed. The judgment and order of conviction and sentence passed by the trial Court are maintained.

