

**Desh Ram Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jun-10-2005

**Reported in :** II(2005)DMC503; RLW2005(3)Raj2182; 2005(4)WLC625

**Judge :** Shiv Kumar Sharma and; Jitendra Ray Goyal, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302, 304B, 307 and 498A; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** D.B. Criminal Appeal No. 854 of 2004

**Appellant :** Desh Ram

**Respondent :** State of Rajasthan

**Advocate for Def. :** M.L. Goyal, Public Procecutor

**Advocate for Pet/Ap. :** M.K. Kaushik and; Gajanand Yadav, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Shiv Kumar Sharma, J.**

1. This appeal stems from the judgment dated August 2, 2004 whereby dying declaration of Smt. Yashwanti, (now deceased) who sustained hundred percent burn injuries, was accepted by learned Additional Sessions Judge Khetri in

convicting and sentencing the appellant (father in law of Yashwanti) under Section 302 IPC to suffer imprisonment of life and fine of Rs. 5,000/- in default to further suffer six months simple imprisonment.

2. The prosecution story is woven like this:-

On June 18, 2002 Smt. Yashwanti of village Bhaloth PS Buhana having serious burn injuries on her body was admitted that in Emergency ward of General Hospital Narnol. Zulfikar Ali, SHO Police Station Singhana recorded parcha bayan (Exhibit P-18) of Smt. Yashwanti at 8:40 PM. In the parcha bayan Yashwanti stated that four years ago she got married with Surat Singh who was serving in the Army. She gave birth to Sachin, whose age was three years. Her father in law (appellant) and mother in law used to harass and humiliate her for the demand of dowry. They used to persuade her to bring from her parents Scooter and Gandasa Chakki (flour mill). On the date of incident around 4:00 PM her mother in law poured kerosene oil on her and her father in law (appellant) set her ablaze. Thereafter Suraj Bhan took her to Hospital Narnaul (Haryana) and got her admitted. Smt. Yashwanti put her left thumb impression on parcha bayan. PMO. City Narnaul certified that statement was recorded in his presence and Constable Mool Chand of PS Singhana (Haryana) took parcha bayan to Police Station Buhana (Rajasthan) where a case under Section 498A and 307 IPC was registered. At Narnaul Magistrate recorded the statement of Smt. Yashwanti. After few hours Smt. Yashwanti died and the case was converted into one under Section 304B and 498A IPC. After usual investigation charge sheet was filed and in due course the case came up for trial before the Learned Additional Sessions Judge Khetri. Charge under Section 304B and 498A IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 20 witnesses. In the statement under Section 313 Cr. P.C., the appellant claimed innocence. No witness in defence was however examined. When the case was posted for final hearing charge under Section 302 IPC was framed. The said charge was also denied by the appellant. Since, the Counsel for the appellant declined to further cross examine the witnesses the final arguments were heard. Learned Additional Sessions Judge vide impugned judgment even though acquitted the appellant of the charge under Section 304B

and 498A IPC, convicted and sentenced him as indicated herein above.

3. Having closely scrutinised the record we notice that Suraj Bhan (PW.12) who got Smt. Yashwanti admitted in the General Hospital Narnaul, did not support the prosecution case and was declared hostile. In his deposition Suraj Bhan stated that on hearing that Yashwanti got burnt, he rushed to her house and saw her lying in the chowk having burn injuries on her body. She was not speaking. He then took her to the General Hospital Narnaul and got her admitted. The doctor then asked him to bring medicines and when he came back with medicines Yashwanti was no more and police had arrived. Hanuman (PW. 1), the father of Yashwanti deposed that in-laws of Yashwanti never demanded dowry and it was Yashwanti who put herself in fire. Hanuman too was declared hostile. In his cross examination Hanuman stated that Yashwanti was obstinate by nature. After her marriage she used to live with her husband in the family quarter but after the transfer of her husband to border, she had no option but to live in her in-laws house. When her demand to live with her husband was not fulfilled she committed suicide. Other witnesses viz. Sardar Singh (PW.2), Rohtash (PW.3), Nihal Singh (PW.4), Saj Kaur (PW.5), Vinod Kumar (PW.6), Mahesh (PW.7), Pratap (PW.8), Sanjay (PW.9), Mahipal (PW.10) and Hava Singh (PW.11) also toed the line of Hanuman and all of them were declared hostile.

4. The prosecution case rests only on the dying declaration of Yashwanti. As already noticed parcha bayan of Yashwanti was recorded by Zulfikar Ali, SHO PS Singhana (Haryana) at 8:40 PM on June 18, 2002. A look at the endorsment made on parcha bayan (Exhibit P-18) at 10:00 PM by Mahipal Singh (PW.14) Head Constable Police Station Buhana (Rajasthan) demonstrates that initially case under Section 498A and 304B IPC was registered but '304B' was afterwards substituted by '307'.

5. It is significant to note that as per Bed Head Ticket (Exhibit P-24A) Yashwanti was admitted to the Hospital Narnaul at 6:15 PM on June 18, 2002 and died after few hours at 9:10 PM. She had sustained 100% burns and her treatment was started forthwith. Needles containing with ICCOCEL, IMMUNOX, AMIKATIAL, EFFCORLIS, DEXOCORA and ELDERVIT were injected to her body.

6 After Yashwanti admitted to the Hospital, Jagdish Lal ASI of Police Station City Narnaul made a written request to Duty Magistrate Narnaul to record the dying declaration of Yashwanti vide letter Exhibit P-20. Pursuant to it Ramesh Kumar Sharma (PW.18) ACJM Narnaul reached the Hospital at 7:30 PM and recorded the statement of Yashwanti.

7. It is however inexplicable that after the statement of Yashwanti were recorded by the Magistrate then why Zulfikar Ali SHO again noted her parcha bayan at 8:40 PM. It appears that two parallel investigation were on. One commenced by Jagdish Lal ASI and another by Zulfikar Ali (PW. 16) who in his deposition stated that on June 18, 2002 while he was posted as SHO Police Station Singhana (Haryana) he received telephone call of Circle Officer Khetri (Rajasthan) to the effect that Smt. Yashwanti w/o Surat Singh Jat R/o Bhaloth was admitted to the Civil Hospital Narnaul, after sustaining burn injuries. On the direction of Circle Officer Khetri Zulfikar Ali reached the Hospital and noted the statement of Yashwanti at 8:40 P.M. in the presence of Duty Doctor. He then handed over parcha bayan to Constable Mool Chand for delivering it to the Police Station Buhana (Rajasthan). In the cross examination Zulfikar Ali, stated that when he reached the Hospital he found an unknown woman sitting by the side of Yashwanti. Rajendra Kumar Dy. S.P. Khetri (PW.15) deposed that on June 19, 2002 after receiving the case file for investigation he proceeded to Civil Hospital Narnaul and drew inquest report. He then obtained certified copy of dying declaration of Yashwanti from the Court of Additional Chief Judicial Magistrate Narnaul (PW.18) in his cross examination stated that he met Yashwanti for the first time and recorded the statement in the presence of Dr. Alok Jain. He then forthwith forwarded in the sealed cover the dying declaration of Yashwanti (Exhibit P-22) to the Chief Judicial Magistrate Jhunjhunu. Yashwanti put her left thumb impression on the dying declaration. Dr. Alok Jain (PW.19) deposed that although Yashwanti sustained 100% burns she was fit to give statement. In his cross examination Dr. Alok Jain stated that both the hands of Yashwanti were burnt. Dr. Brij Pal Gupta (PW.20) deposed that on June 18, 2002 at 8:40 PM the SHO P.S. Singhana recorded the statement of Yashwanti who was fit to give statement. In his cross examination Dr. Brij Pal Gupta deposed that Yashwanti was admitted to the Hospital at 6:15 PM although he kept her in his observation continuously upto

one hour he did not ask her as to how the incident occurred. He again examined Yashwanti from 8 PM onwards till her death i.e., 9:10 PM. Dr. Brij Pal Gupta categorically stated that in his presence neither police nor ACJM Narnaul did approach Yashwanti. According to Dr. Brij Pal Gupta upper part of neck of Yashwanti became paralysed.

8. Dr. Rakesh Sharma performed autopsy on the dead body of Yashwanti at 3:40 PM on June 19, 2002 vide postmortem report (Exhibit P-17) wherein it was stated that the tongue was protruded out and there were superficial and deep burns present all over the body. The scalp and hair got burnt. Carynx, trachia and both the lungs were congested. Cause of death was shock due to burn injuries.

9. In his explanation under Section 313 Cr.P.C. the appellant stated that since his son was transferred to border he could not keep his wife Yashwanti with him. Yashwanti was obstinate by nature and she kept asking to live with her husband. At the time of incident he and his wife both were at the well. They neither demanded dowry nor burnt Yashwanti.

10. Having scanned the evidence oral and documentary we sum up the salient features of the case thus:-

(i) Information in regard to incident had already reached Rajendra Kumar Dy. S.P. Circle Officer Police Station Khetri (Rajasthan) and he directed Zulfikar Ali, SHO PS Singhana (Haryana) to record the statement of Yashwanti.

(ii) Jagdish Lal ASI PS Narnaul, who could alone tell as to on whose instructions he initiated investigation, was not examined?

(iii) Relevant Rojnamchas dated June 18, 2002 of the Police Stations Khetri, Narnaul, Singhana and Buhana were not produced.

(iv) Yashwanti sustained 100% burns and as per the testimony of Dr. Brij Pal Gupta upper part of her neck was paralysed. According to Dr. Alok Jain her both the hands got badly burnt.

(v) Dr. Brij Gopal Gupta had been throughout with Yashwanti in the Hospital. He got Yashwanti admitted to the Hospital and kept her under his close watch. According to Dr. Gupta neither police nor the ACJM Narnaul approached Yashwanti in his presence.

(vi) According to Dr. Rakesh Sharma who performed autopsy on the dead body, tongue of Yashwanti was protruded out and Carynx trachia and both the lungs were congested.

(vii) At the Police Station Buhana District Jhunjhunu (Rajasthan) parcha bayan of Yashwanti reached at 10 PM on June 18, 2002. Mahipal Singh Head Constable Buhana who made endorsement on parcha bayan had knowledge of the death of Yashwanti that is why he registered a case under Section 304B and 498A IPC but subsequently converted Section 304B into '307' and put his initials.

(viii) There were three parallel investigations one commenced by C.O. Khetri, another by Jagdish Lal, ASI PS Narnaul and third by Zulfikar Ali, SHO PS Singhana.

(ix) As per the testimony of Ramesh Kumar Sharma ACJM dying declaration of Yashwanti was forwarded in sealed cover to CJM Jhunjhunu but Rajendra Kumar Dy. S.P. obtained certified copy of dying declaration of Yashwanti from the Court of ACJM Narnaul.

(x) According to Suraj Bhan who got Yashwanti admitted to the Hospital, Yashwanti was not able to speak.

(xi) All the relatives including the father of Yashwanti did not support the prosecution case and they were declared hostile. According to them Yashwanti being obstinate by nature, herself committed suicide.

(xii) Ramesh Kumar Sharma ACJM who himself did not know Yashwanti, failed to state as to who identified her.

(xiii) Zulfikar Ali SHO stated that at the time when he proceeded to record the statement of Yashwanti one unknown woman was present by her side.

(xiv) Before Zulfikar Ali recorded parcha bayan of Yashwanti at 8:40 PM he did not know that Ramesh Kumar Sharma ACJM had already noted her statement at 7:30 PM.

(xv) Learned trial Judge acquitted the appellant of the charge under Section 304B and 498A IPC as no case of harassment and demand of dowry was made out.

(xvi) Two teams independently of each other made attempt to collect evidence against appellant. Jagdish Lal ASI, P.S. Narnaul, Ramesh Kumar Sharma, ACJM and Dr. Alok Jain were the members of the first team, that allegedly recorded the statement of Yashwanti at 7:30 PM whereas Zulfikar Ali SHO P.S. Singhana, Rajendra Kumar C.O. Khetri and Dr. Brij Pal Gupta were the members of second team which noted parcha bayan of Yashwanti at 8:40 PM.

11. Learned Counsel for the appellant took us to the evident and canvassed that parcha bayan (Exhibit P-18) and statement (Exhibit P-22) allegedly recorded by SHO and Magistrate were highly suspicious documents. It could not be established from record as to who identified Yashwanti, who was unknown at Narnaul. It was further urged that after sustaining 100% burn injuries Yashwanti was not in a position to speak. Per contra learned Public Prosecutor supported the impugned judgment and contended that the statement of deceased was clear coherent and specific and as per the testimony of Dr. Alok Jain and Dr. Brij Pal Gupta even after sustaining 100% burns, Yashwanti was capable of deposing and was in her senses, therefore her dying declaration did not require corroboration and it was rightly believed by the learned trial judge. Reliance is placed on Suresh v. State of M.P., : 1987 CriLJ775 and State of Rajasthan v. Kishore, : 1996 CriLJ2003 .

12. The admissibility of dying declaration rests on the principles that a sense of impending death produces in a person's mind the same feeling as that of a conscientious and virtuous person under oath 'NEMO MORITURUS PRAESUMUNTUR MENTIRI. The general principle on which this species of evidence is admitted is that they are declaration made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind induced by the most powerful

consideration to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in Court of justice (Per EYRECB in R v. Woodcock 1987 (1) Leach 500).

13. In *State of Punjab v. Gian Kaur*, 1998 Cr LJ 2061 SC the dying declaration of a woman who sustained hundred percent burn injuries was not accepted because of inherent contradiction one of which was that according to the statement her thumbs were completely burnt yet her thumb impression appeared on the statement. In *Darshan Singh v. State of Punjab*, AIR 1985 SC 554 it was held that if the vital organs of the deceased were completely smashed it is impossible that he was in a fit state of mind and body. *State of Rajasthan v. Reja Ram*, : 1999 CriLJ2588 was the case wherein the Supreme Court intended that if the medical evidence showed that the brain functioning of the injured person became impaired because of brain injuries then even if the injured was able to speak something by straining himself, it would be unsafe to place reliance on the dying declaration. In *Ram Manorath v. State of U.P.*, : [1981]3SCR195 it was held that a dying declaration which suffers from infirmity can not form the basis of conviction. In *Rasheed Beg v. State of M.P.*, : 1974 CriLJ361 it was propounded that where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. *K. Ramchandra Reddy v. Public Prosecution*, : 1976 CriLJ1548 was the case wherein it was observed that the Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination.

14. Coming to the facts of the instant case indisputably the offence was committed within the jurisdiction of Police Station Buhana (District Jhunjhunu Rajasthan). The victim Yashwanti was however admitted to the Hospital at Narnaul which was in the jurisdiction of Police Station Singhana (Haryana). The prosecution as already noticed, adduced two sets of evidence. In the first set Jagdish Lal ASI PS Narnaul took Ramesh Chand Sharma ACJM Narnaul to the Hospital where dying declaration of Yashwanti was recorded at 7:30 PM in the presence of Dr. Alok Jain. In the second set Zulfikar Ali SHO PS Singhana on receiving instruction from Circle Officer Khetri (Jhunjhunu Rajasthan) that Yashwanti of village Bhaloth

(Jhun-jhunu) after sustaining burn injuries was admitted to the Hospital Narnaul, rushed to the Hospital and recorded parcha bayan of Yashwanti at 8:40 PM in the presence of Dr. Brij Pal Gupta. Strangely Jagdish Lal ASI kept Zulfikar Ali SHO in dark and did not inform him that ACJM Narnaul had already recorded the statement of Yashwanti at 7:30 PM. Three parallel investigations appear to have commenced. First under the leadership of Jagdish Lal ASI, second was controlled by Rajendra Kumar Dy. S.P., who was Circle Officer Khetri (Jhunjhunu) and third under the guidance of Zulfikar Ali, SHO PS Singhana. Since, Rajendra Kumar C.O. Khetri directed Zulfikar Ali SHO to proceed to Hospital Narnaul for the purpose of recording the statement of Yashwanti, it may be presumed that FIR had already been lodged at Police Station Buhana which alone could disclose the origin and genesis of the occurrence.

15. The questions that remained unanswered in the instant case are these:-

(a) Why the C.O. Khetri himself even after the knowledge of the incident did not rush to Hospital Narnaul to get the statement of Yashwanti recorded ?

(b) Why Jagdish Lal ASI who alone could have explained as to on whose directions he proceeded to Hospital and made arrangements for recording the statement of Yashwanti, was not examined ?

(c) When the Statement of Yashwanti was already recorded at 7:30 PM by the ACJM Narnaul then why this fact was not brought to the notice of Zulfikar Ali SHO? And why the parcha bayan was again recorded at 8:40 PM by the SHO ?

(d) If ACJM Narnaul recorded the statement of Yashwanti then why Dr. Brij Pal Gupta who continuously attended Yashwanti from the moment she was admitted to the Hospital and till her death, deposed that Police and ACJM Narnaul did not approach Yashwanti in his presence ?

(e) Except Suraj Bhan who took Yashwanti to the Hospital no other person knew Yashwanti at Narnaul. When the statement of Yashwanti got recorded by the ACJM and the SHO Suraj Bhan was not present then who was the person who identified and introduced Yashwanti to the ACJM and the SHO?

(f) Who was that unknown lady in whose presence Zulfikar Ali SHO recorded the statement of Yashwanti ?

(g) After the upper part of Yashwanti's neck became paralysed, her tongue was protruded out her scalp and hair got burnt, carynx, trachia and both the lungs became congested then how could she speak ?

(h) How could she put her left thumb impression on the dying declaration when both her hands were badly burnt ?

(i) When the dying declaration was forwarded by the ACJM Narnaul in a sealed cover to the Chief Judicial Magistrate Jhunjhunu then how Rajendra Kumar Dy. S.P. got the certified copy of dying declaration from the Court of ACJM Narnaul ?

(j) Why Rojnamchas dated June 18,2002 of the Police Stations Buhana, Narnaul, Khetri and Singhana were not produced by the prosecution ?

(k) When Yashwanti had clearly died at 9:10 PM then why at 10 P.M. case only under Sections 498A and 307 IPC was registered at P.S. Buhana ?

(l) When the incident occurred within the jurisdiction of P.S. Buhana, then why P.S. Singhana was permitted to proceed with the investigation Why the Police Officers of Police Station Buhana did choose not to attend Yashwanti ?

(m) How and in what manner Yashwanti who was given high doses of seductive could speak ?

(n) How the appellant who was 72 years of age on the date of incident, could overpower a young woman and set her ablaze?

16. These unanswered questions do go into the root of the matter and create doubt about the genuineness of alleged dying declarations. The said dying declarations in our opinion can not be acted upon and made the basis of conviction of the appellant. The infirmities noticed by us escaped attention of learned trial Judge. Form the evidence collected at the trial charge under Section 302 IPC is not made out against the appellant beyond reasonable doubt.

17. For these reasons we allow the appeal and set aside the impugned judgment of the learned trial judge. We acquit the appellant of the charge under Section 302 IPC. The appellant who is in jail shall be set at liberty forthwith if not required to be detained in any other case.

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