

Dhyan Singh Vs. State of Rajasthan

Dhyan Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/766637

Court : Rajasthan

Decided On : Sep-20-2004

Reported in : RLW2005(2)Raj843; 2004(4)WLC585

Judge : Shiv Kumar Sharma and; R.P. Vyas, JJ.

Acts : Evidence Act - Sections 32; Indian Penal Code (IPC) - Sections 120B 302, 304, 304B and 498A; Code of Criminal Procedure (CrPC) - Sections 161 and 374

Appeal No. : D.B. Criminal Appeal No. 27 of 1999

Appellant : Dhyan Singh

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : Biri Singh Sinsinwar,; Harendra Singh Sinsinwar,; Kamlen

Judgement :

R.P. Vyas, J.

1. This Criminal Appeal under Section 374, Cr.P.C., arises out of the judgment and order dated November 19, 1998, passed by the learned Special Judge (Sati Nivaran) & Additional Sessions Judge, Jaipur city, Jaipur, convicting accused appellant Dhyan Singh S/o. Gurubachan Singh for the offence under Section 302,

IPC, and sentencing him to undergo life imprisonment with a fine of Rs. 1,000/-, in default of payment of fine, to further undergo six months' rigorous imprisonment.

2. The police registered a case for the offence under Section 498A and 324, IPC, and proceeded with the investigation. During investigation, Smt. Laxmi Kaur succumbed to burn injuries on 23.5.97 as is evident from Post Mortem Report (Ex.P20) prepared by Dr. H.L. Bairwa and Dr. Vijay Purohit. Thereafter, Section 302, IPC, was also added.

3. According to the prosecution case, on 12.4.97, at about 6.30 P.M., one Mela Singh lodged a report with the Police Station, Manila Thana, Gandhi Nagar, Jaipur, stating, inter alia, therein that three years ago, his daughter Laxmi Kaur, aged 21 years, was married with Dhyan Singh S/o. Gurubachan Singh. After one-and-a-half years, a son was born. He further stated in the report that after some time, her husband Dhyan Singh and mother-in-law Gurubachhani Kaur started to harass her by making a demand for dowry. He also stated that on 10.4.97, at about 11 P.M., after taking liquor, Dhyan Singh S/o. Guru Bachhan Singh poured kerosene oil on his daughter Laxmi Kaur and set her ablaze with a straw of match-box, resulting into her extensive burn injuries. The information of the said incident was given to him by Avtar Singh at 11.30 P.M.. He went to her in-laws' house. It may be mentioned that at Joshi's private clinic, glucose drip was being administered to her. When he contacted to the doctor, the doctor referred the patient to the S.M.S. Hospital, where Smt. Laxmi Kaur was taken in the Maruti car of one Bachhan Singh. It was also stated that the son of Smt. Laxmi Kaur was taken away by her mother-in-law and father-in-law to Delhi, without her consent. In this view of the matter, a pre-plan was already made by her husband Dhyan Singh, father-in-law Guru Bachhan Singh and mother-in-law Guru Bachhani Kaur to do away her daughter by burning and, in order to materialise that plan, his daughter Laxmi Kaur was burnt on 10.4.97, at 11.00 P.M., by her husband Dhan Singh, after consuming liquor.

4. On the basis of the aforesaid report, the Investigating Officer started investigation. He reached the SMS hospital on 11.4.97, at 2.35 a.m. and recorded the statement (Ex.D5) of Smt. Laxmi Kaur under Section 161, Cr.P.C., in which

she stated that 3-4 years ago, she was married with Dhyan Singh and, thereafter, a son was born, who is aged about 2 years. She further stated in her statement before the Police that in the night of 10.4.97, while she was preparing tea on Stove, she received burn injuries as her clothes have caught the fire. When she cried for help, her husband came to save her. After hearing her cry, other persons also came to her room and poured water on her and extinguished the fire. She also stated that she has no problem from her husband and in-laws'. The relevant portion of her statement (Ex.D5) dated 11.4.97 made to the Police reads as under :-

^eSa fnukad 10-4-97 dks jkf= esa ?kj ij LVkodykdj pk; cuk jgh Fkh] ml le; ?kj ij dksbZ ugha Fkk esjk ifr nwljs dejs esa Fkstc eSaus LVkso tyk;k rc vpkud LVkso HkHkd x;k vkSj diM+ksa esa vkx yx xbZ] eSatsj tksj ls fpYykbZ rks esjs ifr Hkkx dj vk;s vkSj vkl ikl ds yxsx Hkh vk;sesjs 'kjhj ij ikuh Mkyk] diM+s lkjs ty x;s] cpkrs le; esjs ifr Hkh dqN ty x;s Aesjs 'kjhj esa vkx vpkud LVkso HkHkdus ls gh yxh gS] eq>s esjs ifr] lkl rFkklqj dh rjQ ls dksbZ ijs'kkuh ugha gS A**

5. On the same date, i.e., 11.4.97, at 12.30 P.M., the second dying declaration (Ex.P10) of the deceased Smt. Laxmi Kaur was recorded by the Additional Civil Judge (Junior Division) & Judicial Magistrate, First Class, No. 13, Jaipur City, Jaipur, in which she stated that kerosene oil was taken out from stove in a 'lota' by her husband and it was poured on her and, thereafter, he lit her fire with a straw of the match-box. While she started to cry, her husband tried to extinguish the fire, but when he failed, he called his brother Diwan Singh. Diwan Singh came and he poured water from 'matka' (which was duly filled up with water) over her and the fire was extinguished. She further stated that at that time, she and her husband only were present. In the adjacent room, Diwan Singh along with his friends, was watching T.V. She also stated that prior to burning her, there was a quarrel between her and her husband and he was also slapped her. It was also stated by her in her dying declaration, before the Magistrate that she has been burnt by her husband and earlier also, she was threatened and beaten by him. The relevant portion of her subsequent dying declaration statement (Ex.P10) dated 11.4.97 made before the Judicial Magistrate reads as under :-

iz'u &dc; dh ckr gS rqe dSls tyh

mRrj & dy jkr dh ckr gS] vUnktu 9&10cts eSa o esjk ifr /;kuflag ?kj ij vdsys Fks A esjs cPps dks esjh lkl igys ghvius lkFk fnYyh ys x;h Fkh] D;ksafd mudk dksbZ xqtj ej x;k Fkkk A esjs ifrus igys rks LVkso esa ls yksBs esa feV~Vh dk rsy fudkyk A tc og feV~Vh dk rsyfudky jgk Fkk rc eq>s cksyk rq>s tykmaxk A LVkso dejs esa j[kk gqv k Fkk Atc mlus cksyk fd rq>s tykmaxk rks eSa rks le>h fd etkd dj jgk gS A fQjmlus rssy fudkydj esjs ij QSdk vkSj ekfpl tks mlh ds gkFk esa Fkh og tykdj eq>isQasd nh A ml le; eSus lyokj lwV igu j[kk Fkk A

iz'u & fQj D;k gqv k

mRrj & tc eSa fpYykus yxh rks ogh ;kfu esjkifr gh vkx dks lq>kus dh dksf'k'k djus yx x;k vkSj tc mlls ugha cq>h rksmlus vius HkkbZ nhokuh dks vkokt nh A fQj nhokuh vk x;k vkSj mlus ;kfu nhokuh us,d eVdk ikuh dk esjs ij Mky fn;k A ikuh Mkyus ls esjh vkx cq> x;h ij diMs+iwjs ty x;s A nhokuh gekjs ikl ds dejs ess jgrk gS A

iz'u & ml le; vkSj dkSu dkSu ekStwn Fks A

mRrj & gekjs dejs eSaa rks ge nksuksa eSa oesjk ifr gh Fks A ikl ds dejs esa nhokuh Fkk tks vius nksLrksa ls ckr dj jgkFkk] igys eq>s vkokts vk jgh Fkh A esjs gYyk epkus ij nhokuh o nks rhu yM+dsvk;s Fks A

iz'u &fdlus; D;k D;k cksyk

mRrj & tykus ls igys esjk ifr esjs ls yMjgk Fkk vkSj ,d FkliM esjs ekjh Fkh vkSj fQj fudkydj eq>s ij Mkyk tc cksykFkk fd rq>s tykmaxkk A nhokuh ds dqN ugha cksyk mlus rks eq>s ikuh Mkydjcpk;k A

iz'u &vkSj; rqedks D;k dguk gS

mRrj & eq>s esjs ifr us gh tyk;k gS Amlus igys Hkh eq>s /kedh nh Fkh vkSj eq>ls ekjihV dh A

6. In case of more than one dying declarations, Court should satisfy as to which reflects true facts.
7. After completing necessary investigation, a challan was filed against the-accused Dhyan Singh under Sections 498A, 302 and 120B, IPC, in the Court of the Special Judge, (Women Atrocities Dowry Cases) & Additional Sessions Judge, Jaipur City, Jaipur. The accused pleaded not guilty and claimed trial.
8. In order to prove its case, the prosecution, produced as many as 14 witnesses and filed documents Ex.P1 to Ex.P20. In defence, the accused produced four witnesses D.W.1 to D.W.4 and exhibited four documents Ex.D1 to Ex.D4.
9. The Additional District & Sessions Judge, after hearing the learned counsel for the accused-appellant as well as learned Public Prosecutor and perusing the documents & examining the witnesses of the prosecution and the defence, convicted and sentenced the appellant as mentioned above.
10. Against the aforesaid judgment of the learned Additional District & Sessions Judge, the accused-appellant has preferred this appeal.
11. We have heard learned counsel for the accused appellant and the learned Public Prosecutor as well as learned counsel for the complainant and have gone through the impugned judgment, evidence and material available on record.
12. It is contended by the learned counsel for the appellant that there is a discrepancy in the dying declaration statement (Ex.D5) recorded by the Police under Section 161, Cr.P.C. and subsequent dying declaration (Ex.P.10) recorded by the Magistrate. In the dying declaration (Ex.D5) recorded by the Police, she has stated that she received burn injuries, while she was preparing tea on the stove and when she cried, her husband came to save her. During that process, he also received burn injuries on his hand, ear and neck etc. as is evident from his arrest memo dated 25.4.97 (Ex.P18). Apart from that, she stated to the Police, that she has no problem from her husband, as well as her mother-in-law and father-in-law.
13. In the subsequent dying declaration (Ex.P10) recorded by the Magistrate, she has stated that her husband took out kerosene oil from stove in a 'lota' and while

he was taking out Kerosene oil from stove, he told that he would burn her. However, she look it as a joke, but he poured the kerosene oil on her and ignited fire with a straw of match-box which was in his hand. She further stated that when she started to cry, he tried to extinguish the fire and when he failed to extinguish the fire, he called his brother Diwan Singh, who took a 'matka' which was duly filled with water and threw water upon her and extinguished the fire. Lastly, she stated in the dying declaration that she has been burnt to death by her husband. The said statement was recorded when Dr. Sunil Soni declared her fit to give the statement.

14. PW 14 Diwan Singh has stated in his statement recorded before the Magistrate that accused Dhyan Singh is his real brother. On hearing the hue and cry of Laxmi Kaur, he went to the room of Dhyan Singh and saw that Dhyan Singh was extinguishing the fire of Smt. Laxmi Kaur. He picked up a 'Matka' duly filled with water and poured the water over Laxmi Kaur and extinguished the fire. At that lime, some other persons of the locality namely, Narayan Singh, Viodhi Singh and Jagat Singh had reached the place of incident, thereafter, Smt. Laxmi Kaur was taken to the S.M.S. Hospital, Jaipur. In the cross-examinations, he stated that he heard the voice of Smt. Laxmi Kaur' Bachao Bachao'. He stated that he disclosed this fact to the police in his statement (Ex.P15) recorded by the Investigating Officer. When he asked Mrs. Laxmi Kaur as to how the fire took place, she replied that when she was preparing tea for Dhyan Singh, she suddenly received burn injuries by inflammation of the stove tire. He also stated that he saw an iron stove and a 'Bhagoni' (a container for preparing tea) at the place of incident. Similar statements have been given by Avtar Singh (P.W.5) on 2.2.98 and Bachhan Singh vide Ex.P8 dated 17.4.97.

15. Learned counsel for the appellant also contended that there was no intention on the part of the accused Dhyan Singh to burn Smt. Laxmi Kaur as Dhyan Singh also received injuries on his right hand, ear and neck while extinguishing fire and saving Smt. Laxmi Kaur. Had he intended to kill Smt. Laxmi Kaur, he would not have come forward to save her and to invite the burn injuries for himself.

16. Learned counsel for the appellant has referred to the decision in *Laxman v. State of Maharashtra*, 2002 VII AD (S.C.) 1. This case was pertaining to requirement of a certification of doctor as to fit state of mind of deceased while giving the dying declaration. In this case, it was held by their Lordships of the Supreme Court that it is a rule of caution and actually what is to be seen is the truthfulness or voluntariness of the statement. Similarly, there is no specified statutory form of recording such statement. Whereas, in the instant case, the dying declaration was recorded by the Magistrate after Dr. Sunil Soni declared her fit to give the statement.

17. In *Mohanlal Gangaram Gehani v. State of Maharashtra*, 1982 Cri.L.J. 630 (2) = AIR 1982 SC 839, it was held by their Lordships of the Supreme Court that when there were more than one statements made by victim, then the first being in point of time must be preferred to his subsequent statement. The relevant portion reads as under :-

'17. Thus, the reason given by the High Court for distrusting the evidence of Dr. Heena is wholly unsustainable. Moreover, the statement of the injured to Dr. Heena being the first statement in point of time must be preferred to any subsequent statement that Shetty may have made. In fact, the admitted position is that Shetty did not know the appellant before the occurrence nor did he know his name which was disclosed to him by one Salim. Therefore, Salim who is now dead, being the source of information of Shetty would be of doubtful admissibility as it is not covered by Section 32 of the Evidence Act. And, once we believe the evidence of P.W. 11, as we must, then the entire bottom out of the prosecution case is knocked out.'

18. In *Smt. Kamla v. State of Punjab*, AIR 1993 SC 374, four dying declarations were made by the deceased revealing glaring inconsistency vis-a-vis naming the culprit. The conviction of the accused was based by the High Court on one of the dying declarations implicating the accused, Against this conviction, the accused filed Criminal Appeal before the Supreme Court. Their Lordships of the Supreme Court, while allowing the appeal of the accused, held that irresistible conclusion is that the dying declarations are inconsistent and in such a situation, it is not

possible to pick out one statement wherein the accused is implicated and base the conviction on the sole basis of such a dying declaration. The relevant portion reads as under:-

'It is well-settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfied various tests. In a case where there are more than one dying declaration if some consistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

19. In *P.V. Radhakrishna v. State of Karnataka*, 2003 (5) Supreme 98, it was held by their Lordships of the Supreme Court that where there are more than one statements in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination.

20. In *Chinamma v. State of Kerala*, 2004 Cri.L.J. 1447, two dying declarations of deceased were recorded; one by the Head Constable and the other by the Judicial First Class Magistrate. The contents of both the dying declarations were highly contradictory. Even motives given in two dying declarations were entirely different. The possibility of deceased being influenced by her parents was not ruled out. In such a situation, their Lordships of the Supreme Court held as under :-

'In first dying declaration deceased stated that she wanted to go to her mother's house, so she dressed up when she was attacked on the head by the appellant/sister-in-law and then the appellant took the kerosene oil which was kept in the room and poured it on her chest. In second dying declaration, deceased was not so sure because she says that she only suspected the appellant as having set her on fire. This is because she had earlier stated in that statement, she became unconscious when her sister-in-law had hit her on the head. Even the motives given in the two dying declarations are entirely different. Such contradictions give

rise to grave suspicion whether the injury suffered by the deceased Was really because of the act of the appellant or was a figment of the imagination of the deceased. It is seen from would certificate given by doctor that when he examined her in first instance the deceased had stated that she suffered the injury due to accidental burning while preparing food for the piglings. Entry made in the would certificate is an entry made in a document regularly maintained and the doctor had no reason whatsoever to make an incorrect entry. No question was asked to the doctor when he was in the witness box as to the correctness of the entry. Therefore, due weight should be given to the contents of would certificate and same cannot be rejected on the basis of the oral evidence given by certain witnesses. Fact that deceased though in spite of protect from her husband had again decided to go to her mother's house on said date, indicated that there may be reasons other than the alleged enmity with the appellant. The conduct of the appellant in being present with the deceased right through the journey to the hospital also indicates otherwise. Medical report shows that all the burn injuries suffered by the deceased were below the neck and on the limbs. Absence of any injury at the back of the head of the deceased as also non-recovery of the firewood which was used in the assault on the deceased indicates that the first part of the dying declaration is not true. Possibility of deceased being influenced by her parents in making the dying declaration cannot be ruled out. Conviction based on dying declaration is liable to be set aside.'

21. In *Leila Srinivasa Rao v. State of Andhra Pradesh*, JT 2004 (3) SC 12, two dying declarations were recorded. In the first dying declaration, the mother-in-law was said to be an accused of unbearable harassment, whereas in the second dying declaration recorded by the Magistrate, after removing all persons from room, after 5 minutes of the first dying declaration, by the Head Constable, the husband was also implicated. In such a situation, their Lordships of the Supreme Court held as under :-

'In the first dying declaration, there is no mention about the appellant having treated the deceased with cruelty or of his having caused harassment to the deceased. In fact, his name does not find place in the relevant portion of the first dying declaration. The first dying declaration was recorded by a magistrate after

taking all necessary precautions. The deceased was in a position to make a statement which was certified by the treating physician who was also present when the statement was recorded. Only 5 minutes thereafter another statement was recorded by the head constable and in that dying declaration allegations have been made against the appellant and fact stated relating to the immediate cause which led the deceased to commit suicide which are attributable to the appellant, though there is a statement that her mother-in-law also used to harass her. The deceased did not in her first dying declaration accuse the appellant of having caused harassment to her, or having ill-treated her, and therefore there is no justification for convicting the appellant even for the offence under Section 498A, I.P.C.'

22. In *Nallam Veera Satyanandam and Ors. v. The Public Prosecutor, High Court of A.P.*, JT 2004 (3) SC 18, decided on 14.9.2000, burn injuries were received by the deceased. The deceased was brought to the hospital. Her first statement was recorded by the Magistrate. After 10 minutes, Police official came and recorded another statement. No precaution was taken by the police official for sending relatives out or to find if patient was fit to make statement, in the first statement, before the Magistrate, the cause of burn injuries was given as fire by accident, whereas in the second statement, she claimed of setting herself on fire due to unbearable demand of dowry. Then, in such a situation, it was held by their Lordships of the Supreme Court that the second statement is not acceptable. If first statement is accepted, no case under Section 304B is proved. In this case, the Court found cogent evidence relating to offence under Section 498A. Hence, conviction there-under was confirmed. It was also held by their Lordships of the Supreme Court that each dying declaration has to be considered independently. Rejecting first dying declaration on ground of second statement, in which maker inculcates the accused, was improper. In case of more than one dying declarations, the Court should satisfy as to which reflects true facts.

23. Lastly, learned counsel for the appellant has contended that in the totality of the circumstances, it cannot be said that the appellant did intend to cause the death of victim, as he himself has tried his best to save her and in that process, he also received burn injuries on his person. He also contended that after some days

of the incident, some superadded secondary infection ante-mortem in nature developed on the burns, which was sufficient in the ordinary course of nature to cause her death as is evident from the Post Mortem Report dated 23.5.97 (Ex.P20), In these circumstances, learned counsel argued that the case of the appellant at the most falls in the category of culpable homicide not amounting to murder and his conviction deserves to be altered from Section 302, IPC to Section 304, Part II, IPC.

24. On the other hand, learned counsel for the respondent and the complainant have supported the impugned judgment. Learned counsel has referred to a decision given in *Paras Ram v. State* (D.B. Criminal Appeal No. 326/2000), decided on 14.9.2000. In this case, accused broke open the back door of the house of the prosecutrix, entered in the house, caught hold of her and took her to 'Chappar', where he poured kerosene from a cane lying nearby and set her on fire and then escaped from the back door. But, here, in the case in hand, the accused tried to save the prosecutrix by extinguishing fire as is evident from her own statement (Ex.D5) and, during that process, the accused also received burn injuries on his right hand, neck, ear etc. So, this authority is of no assistance or help to the learned counsel for the respondent.

25. We have given our anxious consideration to the above arguments and have gone through the case laws cited at the bar.

26. In fact, the accused has tried to save her and in that process, he also received burn injuries. Apart from that, in the first dying declaration statement (Ex.D5), she has completely exonerated her husband by saying that she received burn injuries while preparing tea on the stove. However, in the subsequent dying declaration statement recorded by the Magistrate, she has named her husband as the main accused, who took out kerosene oil in 'lota' from the stove and burnt her, but that 'lota' has not been recovered. It may be mentioned here that the victim died after some days of the occurrence due to septicaemic shock as a result of ante-mortem burns.

27. It may be observed that in the first statement the victim speaks truth, but, in the subsequent statements, the victim tries to correct the version previously

inaccurately uttered by him. Apart from that, he subsequently also tries to remove the lacunae left in the previous version, in order to make his statement worthy digestable.

28. It may also be observed that the Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. Where there are more than one statements in the nature of dying declaration, one first in point of time must be preferred.

29. From the above facts and circumstances, we are inclined to think that all that the appellant thought was to inflict bums to Smt. Laxmi Kaur and to frighten her, but, unfortunately, the situation slipped out of his control and it went to the fatal extent. Since the appellant made an attempt to save Smt. Laxmi Kaur and he himself sustained serious bum injuries, we are of the view that the appellant would not have intended to inflict the injuries which Smt. Laxmi Kaur sustained on account of his act. Thus, we are persuaded to alter the conviction of the accused appellant from the offence under Section 302, IPC to Section 304, Part II IPC.

30. For these reasons, we allow the appeal in part and alter the conviction of appellant Dhyan Singh from the offence under Section 302, IPC to Section 304 Part II, IPC and impose the sentence of seven years rigorous imprisonment on the appellant and to that extent we set aside the impugned judgment dated November 19, 1998 of the learned Special Judge (Sati Nivaran) & Additional Sessions Judge, Jaipur City, Jaipur in Sessions case No. 65/98. Since the appellant Dhyan Singh has remained in confinement for seven years and nine months, he shall be set at liberty forthwith, if not required to be detained in any other case.