

Raj Kumar and anr. Vs. State

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Court : Delhi

Decided On : Feb-10-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34, 498-A; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 161, 313

Appeal No. : CRL.A. 52/1999; CRL.A. 186/1999; CRL.A. 188/1999

Appellant : Raj Kumar and anr.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Rajesh Mahajan, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. It is not in dispute that deceased Sunder was married to Lal Chand and was residing with her husband and her mother- in-law Laxmi in the matrimonial house at 16/280 Trilokpuri, Delhi and that at around 11:20 PM i.e. near midnight on 27.6.1995, suffered grievous burn injuries when she was in her matrimonial house

and was removed to LNJP Hospital by her husband Lal Chand and was admitted at the casualty of the hospital at 11:50 PM.

2. Of the 4 accused sent for trial, it is not in dispute that Lal Chand @ Vinod was the husband of Sunder and Laxmi was her mother-in-law. There is a dispute whether or not the other 2 accused, Raj Kumar and his wife Krishna Devi, who as per the prosecution were the brother-in-law and sister-in-law of the deceased, were as a matter of fact so related. There is also a dispute whether the 2 resided at house No.16/280 Trilokpuri or were residents of House No.2/160 Trilokpuri, Delhi.

3. Vide impugned judgment and order dated 16.12.1998 the accused have been convicted for the offence punishable under Section 302/34 IPC. All 4 have been acquitted for the alternative charge of having committed an offence punishable under Section 304-B/34 IPC. Lal Chand and Laxmi have been acquitted for the charge of having committed the offence punishable under Section 498-A/34 IPC. There is no credible evidence of dowry demand or the deceased being subjected to such cruelty as would compel her to take her life.

4. Vide order on sentence dated 19.12.1998, all 4 have been sentenced to undergo imprisonment for life and pay fine in sum of `5,000/-.

5. A perusal of the impugned judgment makes it evident that the conviction has been sustained on the testimony of Dr.Vinod Chauhan PW-1, who as deposed to by him, had treated Sunder when she was admitted at the casualty of LNJP Hospital and had drawn up the MLC Ex.PW-1/A on which he recorded 'Sunder W/o Lal Chand R/o 16/280 Trilokpuri being brought to the hospital at 11:50 PM on 27.6.1995 and patient informing him: Alleged H/o having been burnt by in-laws, around half an hour back at as above as told by pt. herself. Allegedly the mother-in-law, sister-in-law (Bhabiji, Jethani) and brother-in-law, when they poured kerosene over her and sat(?) her on fire previously she was beaten up by the husband around half hour before the incident. On questioning, in casualty, the B/B made conscious deliberate attempts to dissuade the D.O.D. from taking any statement, and maintained that she herself put her on fire; please note after pt's statement, the husband and the near relatives tried to flee from casualty, when the

husband was caught by the constable on duty as above but the relatives sped away'. It may additionally be noted that the MLC is in 2 pages and after recording as afore-noted it has been written that the patient was conscious and oriented. That the patient had 100% burns and after administering TT injection, the patient was referred to the Burns Ward for detailed medical treatment.

6. We may note at the outset that even if the stated dying declaration is accepted in its totality, it would strike the reader that as per Sunder, it was her mother-in-law, sister-in-law and brother-in-law who poured kerosene oil on her and set her on fire. Qua her husband, as per the statement, he had beaten her around half hour before the incident. It also strikes the reader that what is recorded on the MLC would have 2 limbs. The 1st would be the stated dying declaration of the deceased and the 2nd would be a memorandum of the stated conduct of the husband of the deceased, as allegedly observed and reduced into writing by PW-1.

7. The 2nd, and we may note as independent evidence, the learned Trial Judge has heavily relied upon the testimony of Krishan PW-9 to hold in favour of the guilt of the accused.

8. It would thus be our endeavour to note the relevant evidence and then consider whether the learned Trial Judge has taken into consideration the entire relevant evidence or not. If we find that relevant evidence has been ignored, it would then be our duty to re-appreciate the evidence with reference to the evidence ignored and reach independent conclusions. It would also be our endeavour to note whether relevant circumstances have been taken into account by the learned Trial Judge and if not, it would be our duty to re- appreciate the conclusions drawn by taking into account the relevant circumstance. It need hardly be emphasized by us that a circumstance enwombing a fact is equally relevant as the fact and any conclusion drawn from a fact, ignoring the circumstance enwombing the fact, would be an incorrect conclusion drawn.

9. Pertaining to the testimony of PW-1 it may be noted that he has deposed of being posted at the casualty of LNJP Hospital on 27.6.1995 and having rendered initial medical aid to Sunder and having recorded the MLC Ex.PW-1/A upon

information given to him by Sunder. He has deposed to having witnessed what he wrote on the MLC by way of a written memorandum of what he saw. He has additionally deposed that he could detect strong smell of kerosene from the body of Sunder. He additionally deposed that after he recorded the MLC, the relatives of the patient attempted to flee and managed to flee.

10. Relevant would it be to note that when he was cross- examined as to what language was spoken by the patient, he replied that he did not remember. He admitted that he did not obtain the thumb impression or signatures of the patient on the MLC. He admitted that the patient did not disclose the name of bhabiji, jethani or brother-in-law and that he could not identify any relative present in the casualty, he clarified that when he asked the patient 'Kya hua' she narrated the facts which he recorded in the MLC. He stated that it would be difficult for him to answer as to for what duration of time a patient with 100% burns would remain conscious. He stated that the patient was with him for about 15 minutes. In the MLC, the pulse, blood pressure and rate of breathing of the patient has been recorded. It stands noted that the patient was administered a tetanus injection and was referred to the burns ward.

11. Since it was highlighted during argument by learned counsel for the State, we must fairly note that from the cross- examination of the doctor, nothing emerges on basis whereof a motive could be attributed to the doctor for him to be recording false facts in the MLC or for him to depose falsely.

12. Krishan PW-9 deposed that somewhere around 11:00 PM on 27.6.1995 having left his house 16/233 Trilokpuri he had reached near House No.16/280 Trilokpuri and saw a blaze in the house and heard cries of 'bachao-bachao'. He raised a noise. People gathered and pushed open the door of the house and at once saw a lady burning and the 4 accused present in Court standing inside the room. That he knew the accused because the lady who was burning named Sunder Wati was his real sister-in-law. That he had also seen Sunder Wati burning from a window of the room and had even then had seen the 4 accused inside the room. We may note that since his deposition was at slight variance with his statement recorded by the investigating officer under Section 161 Cr.P.C., Krishan

was declared hostile by the learned Public Prosecutor and upon being cross-examined, attributing the same to be a memory loss, he stated that when he first heard the noise he knocked at the door and when the same was not open he climbed on a staircase and peeped through a window and saw Sunder Wati burning and crying for help and the 4 accused watching by standing on the side and that as people gathered and pushed open the door, somebody splashed water to douse the flames which had engulfed Sunder Wati.

13. Relevant would it be to note that Krishan did not depose having informed Sunder Wati's parents of his having seen Sunder Wati being burn as deposed to by him. It would also be relevant to note that on being cross-examined he admitted that Lal Chand was the only son of his parents and that only Lal Chand, his mother and the deceased used to live in the house in question. It is also relevant to note that during cross- examination he stated that Sunder Wati lost senses and became unconscious when she fell on the ground after water was poured on her. He stated that Sunder Wati was removed in a taxi to the hospital and relevant would it be to note that he did not say that he accompanied the deceased in the taxi. It is also relevant to note that he denied the suggestion that there used to dispute between the deceased and the accused on account of the habit of the deceased to visit his house. Relevant would it be to note that suggestions were put to the witness that he was deposing falsely and that he never witnessed anything as deposed by him; which he denied.

14. Prem Wati PW-4, the mother of Sunder Wati deposed that her daughter was married to Lal Chand and along with Lal Chand and his mother used to reside in the house in question and that initially everything was fine after the marriage but thereafter `20,000/- and a colour television was demanded. That on the 27th of the month a phone call was received in the house of her neighbour from her elder son-in-law (Krishan whom we note is PW-9) giving information that Sunder had been burnt and she should immediately go and make inquiry. Thereupon she and her son Vinod went to the house of Lal Chand and learnt that Sunder had been taken to LNJP Hospital. Upon reaching the hospital she saw her daughter lying unconscious and later on her daughter expired. That her statement Ex.PW-4/A was recorded by the S.D.M.

15. Since learned counsel for the defence had made a submission pertaining to a suggestion given to the witness, it may be noted that appellant Raj Kumar and his wife Krishna had given a suggestion to her that being distant relatives of Lal Chand, they were falsely implication; a suggestion which she denied.

16. Relevant would it be to note that as per Prem Wati, PW-9 had given her information of what had happened, a fact not deposed to PW-9. Relevant would it be to note that Prem Wati has not deposed that when she went to her daughter's matrimonial house she had met PW-9 there. Nor does she depose that when she reached the hospital she met PW-9 there. It assumes importance that as per PW-9 and PW-4, the real sister of the deceased was married to PW-9. We have noted as aforesaid as the facts would be relevant to discuss the conduct of PW-9 with reference to his claim of having witnessed the deceased burning and the 4 accused standing by in silence and the door not being opened in spite of being knocked by him, and what he did or did not do subsequently.

17. Vinod PW-6 deposed substantially in sync with his mother but contradicted his mother, who as noted above, admitted that accused Raj Kumar and his wife Krishna did not live in the same house, by deposing that even the 2 resided in the same house which was the matrimonial house of his sister.

18. SI Mahipal Singh PW-13, who proceeded to the hospital when information was recorded at the police post Trilokpuri at 12:15 AM in the intervening night of 27th and 28th June 1995 as per DD No.27 and had conducted spot proceedings at the scene of the crime stated that information of Sunder Wati being admitted in a burnt condition at the hospital was transmitted to the Sub Divisional Magistrate Sh.K.K.Dahiya and that the SDM and the SHO had visited the spot at around 8:30 AM and when the SDM reached the spot, Vinod (PW-6), Krishan (PW-9) and Prem Wati PW-4 were present but stated that the SDM did not record their statements at the spot but examined only Vinod and Prem Wati in his office.

19. Sh.K.K.Dahiya, the Sub Divisional Magistrate PW-10 deposed that he recorded the statements Ex.PW-4/A and Ex.PW-6/A of Prem Wati and Vinod. Relevant would it be to note that K.K.Dahiya has not recorded any statement of Krishan and also relevant would it be to note that by the time he had recorded the

statements Ex.PW-6/A Sunder had already died in the morning.

20. It may be noted that as per the FSL report Ex.P-X, no kerosene oil could be detected on Ex.1 i.e. the scalp hair of the deceased.

21. It may also be noted that in the post-mortem report Ex.PW-7/A it stands recorded that soot was present in the trachea of the deceased.

22. 2 witnesses were examined in defence. Om Chand DW-1 R/o 17/278 Trilokpuri deposed that he reached the matrimonial house of deceased upon hearing noise and saw smoke coming out from the window grill and Lal Chand and his mother attempted to extinguish the fire with the help of mohalla people. Lal Chand and mohalla people, including him removed the deceased to Irwin Hospital. The deceased was crying and groaning with pain demanding water and by the time they reached Yamuna bridge she became unconscious. As per Jwala Prasad DW-2, R/o 17/272 Trilokpuri, Delhi cries of the deceased attracted him and when he reached the spot he saw Lal Chand and his mother outside the house and entered the same when the door was pushed open by the mohalla people and after the flames engulfing Sunder were doused she was removed to the hospital.

23. We note that there exists in the judicial record, filed along with the charge-sheet, at page 319 of the trial court record, a death summary obtained by the investigating officer after Sunder died at around 4:50 AM on 28.6.1995. Unfortunatley, the said documents has escaped the attention of all, probably for the reason it was not exhibited, but the contents thereof throw much light and are relevant to be noted.

24. We have already noted herein above that in the MLC Ex.PW-1/A of Sunder it stands recorded that after administering a tetanus injection, Dr.Vinod Chauhan had referred the patient to the Burns Ward. The death summary bears the signatures and name one one Dr.Biswas and records that Sunder was admitted at ward No.20 under the charge of Dr.R.B.Ahuja at LNJP hospital and she died at 4:50 AM. It stands recorded that when she was admitted at the burns ward the patient was critical, was breacthing heavily and under the caption "SHORT HISTORY" it stands recorded: "Informant Self. Alleged h/o getting burnt while she

was cooking food on the stove. There was a sudden outburst of flame and she got caught in the fire."

25. It is important to note that during cross-examination Dr.Vinod Chauhan PW-1 stated that the duration during which he examined and treated the patient and also when he recorded the MLC, it took him 15 minutes. It is thus apparent that Sunder had reached the burns ward in a little over 15 minutes of being brought to the casualty of the hospital and in this context it assumes importance of the facts, as noted herein above, being recorded in the death summary of the deceased pertaining to the history told by her of the manner in which she received burn injuries.

26. Now, the author of the death summary has not been examined, but is a document filed by the prosecution and the accused would have every right to rely upon the said document, and just as it can be argued that why would Dr.Vinod tell a lie, it could also be argued why would the doctor who authored the death summary lie in writing by recorded incorrect facts?

27. It is not unknown to law that people, horrified by events and overcome by emotions, lie for the heck of it. What led Dr.Vinod to record what he did has to be appreciated in the context of what stands recorded in the death summary of the deceased and we feel that this takes us straight into the lap of the law relating to appreciation of testimony pertaining to dying declarations.

28. The debate of dying declarations being made admissible in evidence was fought by the protagonists and the antagonists by the former pleading for its admissibility on the ground of necessity and urging that why should a relevant evidence be excluded merely because the exponent thereof was no longer available to be brought before the Court. The antagonists had argued that oral statements have a meaning if made under oath and by their very nature, dying declarations could never be under oath. Secondly, they had urged that cross-examination was a very potent tool in the hands of the defence and was probably the only means to test the credibility of the maker of the statement and since the declarant of the statement could not be subjected to a cross- examination, the right of the accused should not be diluted. Finding merit in both pleas and no area

of commonality, the Courts relied upon the test of prudence and crafted principles of accepting dying declarations and needless to state law makes admissible a dying declaration but requires strict proof and purity of evidence of such unimpeachable character that a judicial conscious is satisfied not only qua the contents of the declaration but even the truth thereof.

29. At the outset it strikes us that there is a complete hiatus between the contents of the MLC Ex.PW-1/A and the contents of the death summary of the deceased. It also assumes importance that Dr.Vinod PW-1, the author of the MLC Ex.PW- 1/A remained evasive as to the language in which the deceased had conversed with him. The twin do cast a serious doubt on the acceptability of the stated dying declaration of the deceased.

30. We ignore the statement of PW-9 who stated that the deceased fell unconscious in her house when the flames engulfing her were doused and we also ignore the testimony of DW-1 as per whom the deceased lost consciousness when the taxi in which she was being transported to the hospital had reached the Yamuna bridge. But, the hiatus between the MLC and the death summary of the deceased continues to remain striking.

31. The impugned judgment has no where referred to the death summary and thus we have been constrained to juxtapose the contents thereof with the contents of the MLC Ex.PW-1/A.

32. The feeble attempt of learned counsel for the State to quizzingly pose the question of there being a possibility of the doctor who drew up the death summary being managed needs to be set at rest by noting that as per PW-1 the moment he recorded the MLC of the deceased the relatives tried to flee away and the husband of the deceased was apprehended by the duty constable. We do not think that there is even an iota of evidence to show that the accused could manage Dr.Biswas.

33. We must highlight that criminal jurisprudence guides us that whenever a reasonable doubt arises in a judicial mind, benefit thereof must be to the account of the accused.

34. The learned Trial Judge has dealt with the conduct of PW- 9, in para 30 of the impugned judgment, with respect to the plea urged that as per the testimony of PW-9 as also the testimony of his mother-in-law Prem Wati PW-4 and his brother-in-law Vinod PW-6 he i.e. Krishan PW-9 was the husband of the real sister of the deceased. If indeed he saw what he claimed to have seen, the argument would be that why would he disappear from the scene of the crime, and if he did not, why would he not tell the police and the SDM of what he had seen. Indeed, if what he saw is correct, it would be highly incriminating evidence against the accused for where a daughter-in-law of the family is burning and her husband and her mother-in-law as also 2 relatives standing by in silence, what further conduct of guilt could be inferred. This incriminating conduct is not the inference which a trained legal mind would draw, but would be a commonsense inference which even a layman with ordinary commonsense would infer.

35. We find that the evidence on this issue is fairly inchoate. As per PW-4 and PW-6 they have not deposed that when they received information from PW-9 over the telephone and they reached the matrimonial house of their daughter, they found PW-9 at the spot. However, SI Mahipal Singh PW-13 has deposed that when the SDM and the SHO had visited the matrimonial house of the deceased somewhere around 8:30 AM on 28.6.1995 Krishan was present.

36. Now, there is greater likelihood of Krishan to be present in the morning at the matrimonial house of the deceased for the reason the deceased had died by the time the SDM and the SHO had visited the house and he being the husband of the real sister of the deceased and a resident of a house nearby would be expected to be at the scene of the crime. We find it extremely strange that if he had seen what he claimed to have seen the previous night, so lethally incriminating was what he had witnessed, that he not having instinctively told the same to the SDM and the SHO and if this was so, it remains a mystery as to why would the SDM not record his statement but would record the statements of Prem Wati and her son Vinod.

37. The reasoning of the learned Trial Judge is with reference to the suggestion given to Krishan, contents whereof we have briefly noted in para 13 above i.e. the suggestion given to Krishan that due to the deceased visiting his house, there

used to be quarrel in her matrimonial house. The innuendo behind the suggestion is obvious. That the in-laws of the deceased, who was a young woman, did not like her visiting and meeting her brother-in-law for obvious reasons. Of course, Krishan had denied the suggestion. The learned Trial Judge has used the suggestion to build an argument, in para 30 of the impugned decision, that since the in-laws of the deceased were intolerant of his even meeting the deceased, on account of such grave suspicion he may have thought it prudent to walk away, lest an issue would be raised on his presence.

38. The reasoning, to our mind is strained reasoning, and is totally loaded against the accused and is reasons for the sake of giving reasons. It has no logic to stand on. Assuming Krishan having a reason to walk away in the night because he sensed that his being around would cause annoyance to the in-laws of his wife's sister and the possibility of the in-laws being further inimical towards his wife's sister, the cause would vanish on the death of his wife's sister, for there was then nothing to fear by way of retribution to the young unfortunate girl, who suffered a very untimely death. As per the prosecution and as recorded in the death summary of the deceased she had died by 4:50 AM on 28.6.1995. The SDM and the SHO had visited the scene of the crime at around 8:30 AM. Information of the death was available with the police and would have been known to the near relatives of the deceased. It does not stand to logic and reason that Krishan would have withheld such vital information to himself and indeed we are constrained to return a finding that there is a complete disconnect between what Krishan claims to have seen and his contemporaneous conduct. Highlighting the point that Sunder received burn injuries at around 11:30 PM in the night, notwithstanding Krishan being a resident of the nearby area, probability leans against his being present at the house of the deceased, as claimed by him, and the greater probability is that as the news spread in the locality, Krishan who lives 50-60 houses away learnt about his sister-in-law being burnt and has contrived a self-created version to implicate the 4 accused.

39. There is something to be said more in favour of Raj Kumar and his wife Krishna Devi. There is no evidence of them being related to the deceased and the other 2 co-accused save and except the suggestion given by their counsel to Prem

Wati that the 2 are distant relations of accused Lal Chand and his mother. Now, assuming that the said suggestion has to be treated as an admission by the 2 of they being related to Lal Chand and his mother, at the highest the admission would be that the 2 were distant relatives. That would not make them the real brother-in-law or the real sister-in-law of the deceased, but certainly there would be scope of an argument that they may be on very strong personal visits in the house and in common and loose parlance may be referred to by the deceased as 'Bhaiya' and 'Bhabhi'. But then it assumes importance that the 2 were not residents of the same house, not only on account of the admission made by Prem Wati but the fact that as per the charge-sheet it stands shown that they are residents of a different house. What would they be doing in the house of the deceased at 11:30 in the night i.e. the time of the incident is also a circumstance in their favour? Surely not to burn the deceased.

40. Law requires that if there are traces of a motive to falsely implicate anybody, such a dying declaration needs to be discarded. If we look at the dying declaration claimed to have been made to him by PW-1 a motive in the form of Sunder's husband beating her and her possible retaliatory reaction is emerging, but we need not delve much on the issue for the reason we have found a complete hiatus in what is recorded in the MLC of the deceased and what stands recorded in her death summary and that in our opinion would be sufficient ground to extend the benefit of doubt to the accused.

41. It may be noted that when examined under Section 313 Cr.P.C., Lal Chand and Laxmi stated that after dinner they were at the terrace and upon seeing smoke and flames they came down and found the deceased engulfed in flames and with the help of mohalla people doused the fire. It is true that they stated that the deceased caught fire while heating milk/food, but it is apparent that this statement made by them was obviously their opinion and cannot be used as a false justification as to how the deceased caught fire. It needs to be noted that the date was 27th June of the year 1995. This is time when pre-monsoon showers strike Delhi and the weather is fairly daunting; it is hot and humid and it is not uncommon for people and especially in the slum areas to be sitting on the terrace of their house. It is possible that as they rushed down, the deceased told them that while

heating milk/food there was sudden outburst of flame and thus believing this to have been seen by them, they stated so when examined under Section 313 Cr.P.C. It is in this context that what stands recorded in the death summary of the deceased becomes important.

42. To bring the curtains down, it needs to be highlighted that the learned Trial Judge has not even bothered to note that in the stated dying declaration of the deceased she had ascribed no role to her husband qua her death. She had ascribed the role to her mother-in-law, sister-in-law and brother-in-law. She had only said that half-an-hour prior thereto her husband had beaten her. It is unfortunate that qua the husband of the deceased the learned Trial Judge has overlooked such a vital fact.

43. Extending the benefit of doubt to all the accused, the appeals are allowed. The impugned judgment and order dated 16.12.1998 convicting the appellants for having murdered Sunderwati is set aside and the appellants are acquitted of the charge of having murdered Sunderwati.

44. Needless to state, the order on sentence dated 19.12.1998 is also quashed. The appellants are on bail and hence we discharge the bail bond(s) and the surety bond(s) furnished by them.

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