

Bhola Vs. State

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Court : Delhi

Decided On : Jul-18-2013

Judge : Pradeep Nandrajog

Appellant : Bhola

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: July 05, 2013 Judgment Pronounced on: July 18, 2013 + CRL.APPEAL 404 1998 BHOLA Represented by:Appellant Ms.Kamna Vohra, Amicus Curiae versus STATE Represented by: Respondent Mr.Pawan Sharma, Standing Counsel (Crl.) CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

1. Appellant Bhola was sent to face trial on the charge that on July 05, 1995 at 7:00 PM he poured kerosene oil on his wife Gurdevi and set her on fire with the intention to cause her death and thereby committed an offence punishable under Section 302 IPC. Needless to state Gurdevi died due to burn wounds.

2. At the end of the trial, during which 11 witnesses were examined, when the appellant was put the incriminating circumstances appearing against him in the evidence, to the circumstance that his wife Gurdevi was brought at the casualty of Jai Prakash Narayan Hospital New Delhi in an injured condition at about 9:30 PM

on July 05, 1995, the appellant admitted to Gurdevi being admitted in hospital and as regards the rest he stated that he did not know. Relevant would it be to highlight that appellant never stated that Gurdevi was not his wife. When the incriminating circumstance emanating from the testimony of Pandit Mansa Ram PW-1 was put to the appellant that when Gurdevi was on fire appellant was seen running away from the house and was apprehended by the public, the appellant denied the same. To the last question whether appellant had anything to say in his defence he said that he was innocent and was falsely implicated. He denied that he was Gurdevi's husband and claimed that Gurdevi was having a matrimonial problem with her first husband.

3. We have been unconventional in penning our opinion by noting the answers given by the appellant when the incriminating circumstances appearing in the evidence against him were put to him because the same would help in penning a short reasoned judgment.

4. The appellant has been found guilty and has been convicted for murdering his wife. He has been sentenced to undergo imprisonment for life.

5. SI Bhoop Singh PW-9 on receipt of information that a lady had been set on fire in village Pootkalan and had been removed to LNJP Hospital reached the hospital where he found Gurdevi having been admitted by Ct.Mange Ram of PCR-757. As per the MLC Ex.PW-5/A, Gurdevi was brought by the PCR Van at 9:30 PM. Dr.Manish Tomar, the author of the MLC, examined as PW-11, had examined Gurdevi and had rendered immediate medical assistance, and on the MLC recorded that cause of the burn injuries were disclosed to him by the patient herself i.e. being burnt by her husband at her house at 7:00 PM on July 05, 1995 after a quarrel. The husband had poured kerosene on Gurdevi as disclosed by her. It stands recorded in the MLC that the patient was conscious and oriented. The pulse was 80 per minute and smell of kerosene was detected. SI Bhoop Singh PW-9 recorded statement Ex.PW-9/L of Gurdevi in which she disclosed that the appellant, her husband, after a quarrel had set her on fire after pouring kerosene oil on her. Obtaining Gurdevi's thumb impression beneath the statement and making an endorsement Ex.PW-9/A, SI Bhoop Singh dispatched the rukka as

recorded in Ex.PW-9/A at 10:40 PM for an FIR to be registered. Since Gurdevi was alive FIR No.640/1995 Ex.PW-3/A, was registered by ASI Sat Narain for an offence punishable under Section 307 IPC was registered. Thereafter SI Bhoop Singh went to the site and prepared the rough site plan Ex.PW-9/C and took into possession burnt match sticks, burnt clothes of a female which included her brassiere and an underwear as also an empty can. Raju, a photographer was called to the site who took photographs of the scene of the crime.

6. Gurdevi died the next day and on information being received SI Bhoop Singh along with the SHO Ram Gopal Sharma took custody of the dead body and sent the same for post-mortem to the mortuary, where Dr.S.B.Singh PW-4 conducted the post-mortem and prepared the report Ex.PW-4/A recording therein that dermo epidermal burns were present all over the body except the face, a 4 centimeter wide strip in front and back of middle of chest at level of nipples, front of right lower leg and foot, front and back of left lower leg, back of left thigh, front of lower third of left thigh, soles of the feet and back of abdomen.

7. It is not very clear from the evidence as to when and where appellant was apprehended because regretfully SI Bhoop Singh PW-9 who conducted the entire investigation has not spoken a word on the subject except a bald statement that after he apprehended the appellant he drew up the arrest memo Ex.PW-9/J.

8. Pandit Mansa Ram PW-1 deposed that appellant Bhola was a tenant under him in a building where he i.e. Mansa Ram was residing and on the day of the incident as the sun was setting he heard noise. As he came out of his room he saw 200/250 people having assembled. He heard the crowd say: jal gai jal gai. He saw the appellant running away and at his instance was apprehended by the people and brought to the house. He informed the police and when the police came he handed over the appellant to the police. Appellants wife was removed to the hospital by the police. When he enquired, appellant informed him that his wife had committed suicide after pouring kerosene over her body and due to fear he was running away. Mansa Ram denied having seen appellant set his wife on fire. He was declared hostile and confronted with his statements made to SI Bhoop Singh under Section 161 Cr.P.C. to the effect that he had seen appellant quarrel with his

wife on a money matter and appellant set his wife on fire and he i.e. Pandit Mansa Ram extinguished the fire.

9. The line of cross-examination adopted by the appellant was a plea of alibi. To the suggestion put that the appellant was working at the factory at the time of the incident and was called to his house by one Sh.Krishan, Mansa Ram denied the same.

10. Ct.Naresh Kumar PW-2 who had accompanied SI Bhoop Singh when information was received at the police station of a lady being burnt in Village Pootkala deposed that in his presence the doctor declared Gurdevi fit for statement and that SI Bhoop Singh recorded Gurdevi's statement and after FIR was registered when he took the rukka to the police station. He deposed that in presence a can, burnt match sticks and a match box were seized as per memo Ex.PW-2/A. ASI Sat Narain PW-3 deposed having recorded the FIR Ex.PW-3/A. Dr.S.P.Singh PW-4 deposed having conducted the post-mortem of Gurdevi and having prepared the post-mortem report Ex.PW-4/A. L.R.Chauhan PW-5 Record Clerk of LNJP Hospital produced the record and proved MLC Ex.PW-5/A, stating that it was prepared by Dr.Manish Tomar. SI Manohar Lal PW-6 deposed having prepared the site plan to scale Ex.PW-6/A. Raju, a photographer, examined as PW-7 deposed having taken photographs of the scene of the crime which were collectively exhibited as Ex.PW-7/A. ACP Ram Gopal Sharma PW-8, then working as the SHO of the concerned police station, deposed that he prepared the inquest papers and sent the body of Gurdevi for post-mortem. SI Bhoop Singh PW-9 deposed that as he reached the hospital after receiving information of a woman being burnt in Village Pootkalan he found Gurdevi admitted at LNJP Hospital. As recorded in the MLC Ex.PW-5/A she was opined fit for statement. He recorded Gurdevi's statement Ex.PW-9/A and got FIR Ex.PW-3/A registered. Site plan Ex.PW-9/C was prepared by him. Scene of the crime was got photographed. Articles lying at the scene of the occurrence, being a lady suit, one pantie, a brassiere, one match box, two burnt match sticks and a can of oil were seized as per memo Ex.PW-2/A. Appellant was arrested on July 06, 1995 vide memo Ex.PW-9/J.

He recorded the statement of Pandit Mansa Ram. Dr.M.S.Chopra PW-10, Chief Medical Officer deposed that Ex.PW-5/A was prepared by Dr.Manish Tomar who had left the hospital. Dr.Manish Tomar PW-11 deposed having examined Gurdevi at LNJP Hospital and having authored Ex.PW-5/A. He stated that she was conscious, oriented and that her pulse was normal. Patient herself told him that her husband had burnt her after a quarrel in their house.

11. In view of the testimony of Dr.Manish Tomar PW-11 and the testimony of SI Bhoop Singh PW-9, believing that Gurdevi had made dying declarations to both of them, the appellant has been convicted.

12. From the testimony of Pandit Mansa Ram PW-1, notwithstanding he having resiled from his earlier statement made to the Investigating Officer i.e. SI Bhoop Singh, of he having witnessed the appellant and his wife having a quarrel over money, and saw appellant set his wife on fire and he having doused the flames, we have on record evidence that as the crowd gathered shouting jal gai, jal gai the appellant attempted to run away but was apprehended by the crowd. As we have noted above, the line of cross-examination adopted to confront Pandit Mansa Ram was to suggest that the appellant was working in the factory when his wife caught fire and one Krishan Ji had informed him of said fact.

13. The testimony of Pandit Mansa Ram brings home the point that the appellant was present in his house in the company of Gurdevi and appellants conduct of fleeing from the house is not the conduct of a husband whose wife would be on accidental fire or having attempted a suicide.

14. Now, a person can suffer burn injuries after kerosene falls on the body followed by a flame being lit, only in three possible ways. Firstly it could be accidental, secondly suicidal and thirdly homicidal. If a wife catches fire accidentally or attempts a suicide, the normal reaction of a husband would be to douse the fire and rush the spouse to a doctor.

15. Notwithstanding Pandit Mansa Ram not supporting the prosecution that he rescued the victim Gurdevi, the exhibits seized at the spot by SI Bhoop Singh in the form of the burnt clothes of a lady have a story to tell of their own. A brassiere

and a lady's underwear were seized. Now, if Gurdevi committed suicide, why would she strip herself nude? On a theoretical presumption, if Gurdevi accidentally caught fire it is possible that to save herself she stripped herself naked. But then in said circumstance her husband had nothing to fear and would obviously rescue her. The undergarments of Gurdevi being lifted along with the burnt clothes are strongly indicative of the fact that Gurdevi was set on fire and to save her life she stripped herself naked. Dr. Manish Tomar PW-11 has recorded in the MLC Ex. PW-5/A that kerosene smell was noticed by him when Gurdevi was brought to the casualty. It is obvious that kerosene oil had either accidentally fallen or was made to fall on Gurdevi. Which one out of the two was the possibility? 16. The post-mortem report gives the answer.

17. The nature of burns recorded in the post-mortem report i.e. dermo-epidermal burns present all over the body except the face, a 4 centimeter white strip in front and back of middle of chest at level of nipples, front of right lower leg and foot, front and back of left lower leg, back of left thigh, front of lower third of left thigh, soles of the feet and back of abdomen are clearly indicative of the fact that kerosene oil was splashed on Gurdevi and this explains the nature of the burns and they being spread over the body.

18. Thus, Gurdevi suffering accidental burn wounds or attempting to commit suicide stand ruled out. The only remaining possibility which stands is that it was a case of homicide.

19. That apart, no motive has been alleged against Dr. Manish Tomar for making a false recording of facts in the MLC Ex. PW-5/A. In fact, not even a suggestion was given to the doctor with respect to the contents of the MLC. The MLC records the first dying declaration of Gurdevi and in view of the testimony of Dr. Manish Tomar, we concur with the view taken by the learned Trial Judge that we have before us the dying declaration of the deceased which is truthful and has to be believed.

20. With respect to Gurdevi's statement Ex. PW-9/A there may be an issue because we find that the endorsement to the effect that the patient is fit for statement, being the endorsement Ex. PW-5/B on the MLC Ex. PW-5/A, is in a different handwriting. The signatures are not those of Dr. Manish Tomar.

Unfortunately nobody examined Dr.Manish Tomar on said point. The Record Clerk of LNJP Hospital L.R.Chauhan who appeared as PW-5 has wrongly deposed that Ex.PW-5/B is in the handwriting of Dr.Manish Tomar. The portion circled Ex.PW-5/B contains the writing that the patient is fit for statement and bears a signature which is distinct and different from that of Dr.Manish Tomar. The handwriting to fill up the various columns of the MLC proforma is different from the writing constituting Ex.PW-5/B. But, notwithstanding said blurring of evidence, we have no reason to discard the testimony of SI Bhoop Singh and his claim that he recorded Gurdevi's statement Ex.PW-9/A for the reason as deposed to by Dr.Manish Tomar the author of Ex.PW-5/A, a fact recorded in the MLC, Gurdevi was conscious and oriented. It is in this connection we need to highlight that as recorded in the MLC, Gurdevi was brought to the hospital at 9:30 PM. The rukka was dispatched from the hospital at 10:40 PM. Gurdevi died the next day. The thumb impression on Ex.PW-9/A is very clear. The lines of the ridges can be seen by the naked eye. The relevance of said fact is that if a person is burnt accidentally or is set on fire, the normal impulsive reaction is to stamp out the fire with the palms and in the process the epidermal layer of the skin gets burnt, with blisters forming immediately and thus the ridges of the fingers including the thumb not capable of leaving a thumb impression.

21. Lastly, and for which we go back to the opening part of our judgment. Not adopting the line of cross-examination that Gurdevi was not his wife and on the contrary suggesting to Pandit Mansa Ram that at the time of the incident he was not in his house and one Kishan Ji had summoned him from the factory where he was working, when examined under Section 313 Cr.P.C. the appellant stated that Gurdevi was not even his wife. No attempt was made to bring home the plea of alibi. But what is important is that petitioners presence in the house was established by Pandit Mansa Ram and is his highly incriminatory conduct of attempting to run away.

22. The appeal is dismissed.

23. The bail bond furnished by the appellant when he was admitted to bail pending hearing of the appeal is cancelled. The appellant shall surrender and suffer the

remaining sentence.

24. Copy of this order be sent to the Superintendent Central Jail Tihar and the Trial Court record be returned. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE JULY 18 2013 mamta

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