

Delhi High Court

Deepak vs State Nct Delhi on 3 November, 2014

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: October 30, 2014

% Judgment Delivered on: November 03, 2014

+ CRL.A.1236/2014

DEEPAK

..... Appellant

Represented by: Mr.Anil Hooda, Advocate.  
versus

STATE NCT DELHI

..... Respondent

Represented by: Mr.Varun Goswami, APP for  
the State with Inspector  
Devender Kumar and Inspector  
Samwar Mal, PS Mundka.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Deepak assails the judgment dated August 02, 2014 convicting him for the offence of murder of his wife Rekha on August 12, 2011 by pouring kerosene oil and setting her on fire after lighting a matchstick and the order on sentence dated August 12, 2014 whereby he has been directed to undergo imprisonment for life and to pay a fine of `20,000/- and in default of payment of fine to undergo further imprisonment for one month. Deepak is also convicted for the offence punishable under Section 498A IPC and has been directed to undergo Rigorous Imprisonment for a period of three years and to pay a fine of `20,000/- and in default of payment of fine to further undergo imprisonment for one month for said offence.

2. Learned counsel for the appellant contends that the present is a case of suicide. There was no harassment caused to the deceased. The parents of the deceased in their testimonies do not allege any kind of harassment towards the deceased either for demand of dowry or otherwise. The neighbour Krishna PW-4 who met the deceased immediately after the incident also deposed that the deceased burnt herself. The deceased survived for 40 days however, no investigation was carried out. The mother of the deceased categorically deposed that the deceased had told her that she had set herself on fire and that she had given statement to the Magistrate out of sheer anger that her husband had set her on fire though she had set herself on fire.

3. No defence evidence has been led by Deepak and his explanation under Section 313 Cr.P.C. is:

"My wife was short tempered and used to have hyper tension and because of this reason she committed suicide by herself by pouring kerosene on her. I was told about my wife setting herself on fire by my daughter Sakshi who was three years old at the time of incident and as on date she is living with my in- laws at Bhiwani Rohilla, Hissar. I took my wife to the hospital after she set herself on fire. Parents of my wife Rekha took her to Soni Hospital, Hissar where all the medical expenses were borne

(incurred) by my father. I have been falsely implicated in the present case."

4. Rekha was admitted at PGI, Rohtak on August 12, 2011 at 10.10 AM. As per the MLC Ex.PW-10/A prepared at PGI, Rohtak the alleged history was noted of "burn at home ??(suicidal) at H.No.231, Baba Haridas Colony, Tikri Border, Mundka Delhi at around 7.30 AM." This information was sent to PS Mundka and recorded vide DD No.21A at 1.35 PM on August 12, 2011. ASI Harpal Singh, who was already on another duty, was asked to go to PGI, Rohtak after finishing the work assigned to him. ASI Harpal went to Tikri Village to search the place but he could not find the CrI.A.No.1236 of 2014 Page 2 of 10 place and thus contacted the In-charge, PGI Rohtak. SI Har Narain informed the place of occurrence as house No.231, Baba Haridas Colony, Tikri Border, Delhi. He went to the place and found Deepak and his family members. They stated that the place of occurrence had been cleaned up and informed him that Deepak had admitted his wife at PGI Rohtak who was shifted to Soni Hospital, Hissar by her parents. Despite the place of occurrence being cleaned up Crime Team was called at the spot and inspection was carried out to find out if there was any clue available however, no clue was found. ASI Harpal Singh along with Ct. Pradeep went to PGI, Rohtak and collected the MLC Ex.PW-10/A and the LAMA Slip (Left against Medical Advise slip). Thereafter they went to Soni Hospital, Hissar where no doctors were available due to odd hours. Thereafter he went to Police Post Hissar and came to know the address of Duty Magistrate Smt.Sunita Goel. He also moved an application before CMO, Soni Hospital, Hissar vide Ex.PW-9/A seeking permission to record the statement of the victim. On the Doctor opining the patient fit for statement he recorded her statement vide Ex.PW-14/X.

5. In her statement to ASI Harpal Singh, Rekha stated that she was married to Deepak son of Kishan Lal on June 27, 2005 and was residing at House No.231, Baba Haridas Colony, Tikri Border, Delhi. She had three children from the wedlock, the eldest son Ketan aged five years, daughter Sakshi aged three years and younger son Aditya aged 16 months. Her husband did not keep her properly and used to quarrel with her. On August 12, 2011 she was at home along with her husband and children and her mother-in-law and father-in-law had gone outside to some relations. She was in her room when her husband Deepak poured kerosene oil on her and CrI.A.No.1236 of 2014 Page 3 of 10 lit the matchstick. He poured water with the bucket and made her lie on the bed. Thereafter he brought her to PGI Hospital, Rohtak. Her husband used to doubt her and on that day she had gone to clean the terrace when he started abusing her and on her coming downstairs slapped her and then lit her.

6. ASI Harpal Singh PW-14 also filed an application Ex.PW-7/A seeking permission for recording of statement of Rekha under Section 164 Cr.P.C. Accordingly statement of Rekha wife of the appellant was recorded under Section 164 Cr.P.C by the learned Magistrate Smt.Sunita Goel after Rekha was certified fit for making statement by Dr.Haripal Malik. In her statement recorded under Section 164 Cr.P.C. Ex.PW-7/B which was recorded in question answer form Rekha gave the following statement:

"Q1. Do you want to give a statement?"

Ans. Yes.

Q2. Are you giving the statement of your own free Will? Ans. Yes.

(Certified that she is voluntarily giving her statement).

Q3. How did you get burnt?

Ans. My husband burnt me.

Q4. Why did he burn you?

Ans. He suspected me of having an affair with somebody.

Q5. What did he pour on you?

Ans. Kerosene Oil.

Q6. Why did he burn you?

Ans. He would work according to the wishes of his father."

7. On the basis of this dying declaration Ex.PW-7/B and the CrI.A.No.1236 of 2014 Page 4 of 10 observations by ASI Harpal Singh case FIR No.142/2011 under Sections 498A/307/201 IPC was registered at PS Mundka and investigation carried out. The appellant was arrested. Subsequently on the death of Rekha the case was converted to one under Section 302 IPC. Besides recording the dying declarations, statements of the witnesses were recorded.

8. Krishna, a neighbour in her statement under Section 161 Cr.P.C stated that she was called as a neighbourer and when she reached there she found smell in the room. When she removed the sheet she saw Rekha lying in burnt condition on the bed and was not in a position to speak. She only stated "Deepak Ne". In the meantime Deepak called the car and took her to PGI. However, in the witness box Krishna appeared as PW-4 and did not support the prosecution case. She stated that when she reached near Rekha and asked her what had happened Rekha replied "Me khud Jali Hoon Mere Ko Bacha Lo". She denied having said "Deepak Ne".

9. Statements of family members of Rekha were also recorded. Her mother Santosh Kumari PW-1 on whose testimony the learned counsel has stressed had deposed that she had married Rekha to Deepak in the year 2005. After the marriage Deepak used to create problems for Rekha (Tang karta tha). They made all efforts to convince Deepak to mend his ways but he did not do so. Deepak was suspicious about the character of Rekha (Agar wo ache kapde bhi pahan leti thi to shak karta tha). Deepak used to quarrel with Rekha and during her visits to the matrimonial home Deepak never talked to her and even her daughter did not tell her anything with a view to settle her matrimonial life. On August 12, 2011 at about 8.00-8.30 AM on receiving a phone call she along with her husband Shri Kishan reached PGI, Rohtak Rekha was found admitted there with burns and she was not in a CrI.A.No.1236 of 2014 Page 5 of 10 position to speak. They shifted Rekha from PGI, Rohtak

to Soni Hospital, Hissar. In cross-examination she further stated that Rekha never told her about the burning incident and she had never lodged any complaint to the police regarding any harassment by Deepak to the deceased. On re-examination by the learned APP she denied the suggestion that on August 12, 2011 the deceased Rekha had not told her that she set herself on fire by her own.

10. Even Krishan PW-3, the father of the deceased deposed on the same lines and in sync with his wife and stated that when he went to meet Rekha at the hospital she replied that "Mein apne aap jal gai." She further told him that there were certain differences (man mutav) with her husband because of which she intended to end her life. Though the parents of the deceased did not support the prosecution case in the witness box but they deposed about the differences between the couple and that Deepak used to doubt Rekha.

11. As noted above in the MLC Ex.PW-10/A at PGI, Rohtak there is already a question mark (?) on the word "suicide" and moreover it is admitted by Deepak that Rekha was admitted in PGI, Rohtak by him and thus who gave the history is not clear. Thus this Court has to analyse the two dying declarations i.e. Ex.PW-14/X and Ex.PW-7/B. Ex.PW-7/B on the basis of which FIR has been registered has been recorded by the learned Judicial Magistrate Smt.Sunita Goel who appeared as PW-7. She deposed that on August 13, 2011 while she was posted as Judicial Magistrate, Ist Class at Hissar, Haryana one ASI Harpal Singh, PS Mundka moved an application Ex.PW-7/A for recording of the statement of Smt.Rekha who was admitted in ICU of Soni Hospital, Hissar, Haryana due to burn injuries. She visited the said hospital where she found Rekha admitted with 70% burn Crl.A.No.1236 of 2014 Page 6 of 10 case. The appellant was identified by ASI Harpal Singh. Doctor certified that Rekha was fit to give her statement and made endorsement to this effect. She conducted the inquiry from Rekha and was satisfied that she was voluntarily giving the statement. Thereafter she took her statement as noted above and her right foot impression. Nothing material has been elicited in the cross-examination of this witness. From the testimony of this witness it is evident that the statement of Rekha was made voluntarily. The other dying declaration was recorded by ASI Harpal Singh PW-14 as noted above which also implicates the appellant and is in sync with this dying declaration.

12. Learned counsel for the appellant has sought to assail these dying declarations on the ground that despite the deceased having survived for 40 days no investigation was carried out with regard to the statement of the deceased "Kisi doosre se chakkar chal raha tha". The deceased had clarified that her husband used to suspect her and thus even if he was under impression that she was involved with someone, no investigation on the fact whether the deceased was having adulterous relations was required to be carried out. The trial is not with regard to the relationship of the deceased but of the fact whether the appellant suspected the deceased which could be even without any basis and the fact whether the appellant committed the murder of Rekha by pouring kerosene oil. The dying declaration was recorded and there is no requirement that if the deceased survives for a longer period then repeated dying declarations are required to be recorded.

13. Legal principles regarding reliance on dying declarations have been laid by the Supreme Court in 1992 (2) 474 Smt.Paniben vs.State of Gujarat which were reiterated in 2007 (10) SCC 168

Shakuntala vs.State of Haryana CrI.A.No.1236 of 2014 Page 7 of 10 as under:-

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164].)

(iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618: 1976 SCC (Cri) 473 : AIR 1976 SC 1994].)

(iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264: 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singhv. State of M.P. [1981 Supp SCC 25: 1981 SCC (Cri) 645: AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654: 1981 SCC (Cri) 581]) CrI.A.No.1236 of 2014 Page 8 of 10

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455: 1981 SCC (Cri) 364: AIR 1981 SC 617].)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769: 1979 SCC (Cri) 519: AIR 1979 SC 1505].)

(ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152: 1988 SCC (Cri) 342: AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390: 1989 SCC (Cri) 585: AIR 1989 SC 1519] .)

(xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700: 1982 SCC (Cri) 334: AIR 1982 SC 839].)"

14. The deceased was a mother of 3 children aged 5 years, 3 years and 16 months so she would not commit suicide on trivial issues. In view of the two dying declarations which were given immediately after the incident on CrI.A.No.1236 of 2014 Page 9 of 10 the first available opportunity by the deceased we find no infirmity in the impugned judgment convicting the appellant for the offences punishable under Sections 302/498A IPC. Though the offence under Section 201 IPC is made out against the appellant however, since there is no conviction on that count and no State leave to appeal has been sought we are not going into that issue.

15. Appeal is dismissed.

16. The appellant will suffer the remaining sentence.

17. T.C.R. be returned.

18. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER 03, 2014 'vn'  
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