

(2006) 01 RAJ CK 0083

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 1149 of 2002

Digpal Singh and
Another

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision: Jan. 30, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 302, 307, 341, 452

Citation: (2006) 3 RLW 1870 : (2006) 2 WLC 724

Hon'ble Judges: Shiv Kumar Sharma, J; Shashi Kant Sharma, J

Bench: Division Bench

Advocate: S.R. Bajwa and V.P. Bishnoi, for the Appellant; R.P. Kuldeep, Public Prosecutor,
for the Respondent

Final Decision: Dismissed

Judgement

Shiv Kumar Sharma, J.

Shocking facts of this case remind us the famous saying "to be born a woman is to be born at risk; On February 19, 1998 Laxmi Kanwar, a Rajput house wife, was subjected to indecent assault by her near relatives Lathi was inserted into her anus and she was burnt alive. She was admitted to the hospital where she died on March 1, 1998. Digpal Singh and Pawan Singh, the appellants herein, along with Ummed Kanwar @ Gajraj Kanwar and Suraj Kanwar, were charged for having committed murder of Laxmi Kanwar before learned Additional Sessions Judge (Fast Track) Ajmer, who vide judgment dated August 19, 2002, while acquitting co-accused Ummed Kanwar @ Gajraj Kanwar and Suraj Kanwar, convicted and sentenced the appellants as under-

Under Section 302 IPC:

Each to suffer life imprisonment and fine of Rs. 3000/-, in default to further suffer three months simple imprisonment.

Under Section 452 IPC:

Each to suffer imprisonment for two years and fine of Rs. 1000/-, in default to further suffer one month simple imprisonment.

Substantive sentences were directed to run concurrently.

2. Briefly stated that prosecution case as it turns out from the evidence on record, is that while Brahma Ram, ASI was on duty at Police Station Manglia was February 19, 1998 two children viz. Vijay Singh and Rinku Kanwar came to the police station at 10.15 AM and informed him that their mother had been belaboured by Pawan Singh and Digpal Singh. After, entering the said information in Rojnamcha, Brahma Ram, ASI, rushed to village Jethana and recorded parcha bayan (Ex.P. 18) of Smt. Laxmi Kanwar (since deceased), wherein she stated that she was resident of village Jethana and her native village was Mahu in District Sikar. Her husband was working in Railways. She had two daughters and one son. Pawan Singh and Digpal Singh @ Lala Bana sons of her father-in-law's elder brother Ganpat Singh were pestering her for last couple of days. At 9.30 AM while she was cooking food in the kitchen both of them entered in her house and dragged her inside a room, where Digpal Singh poured kerosene on her and Pawan after exhorting that she should be burnt to death ignited match stick and put her on fire with an intention to kill her. She raised hue and cry on account of which her son, daughter and other villagers came and extinguished the fire. On that parcha bayan a case under Sections 307, 452 and 341 IPC was registered and investigation commenced. During the course of investigation Laxmi Kanwar died on March 1, 1998 and Section 302 IPC was added. Dead body was subjected to post mortem, statements of witnesses were recorded, the accused was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Ajmer. Charges under Sections 302, 452 alternatively 302/34 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the explanation u/s 313 Cr.P.C. the appellants claimed innocence and stated that the deceased suffered a bad reputation therefore she was disowned by the family and local society. Their family enjoyed sound reputation in the society, therefore they have been falsely implicated in the case. One witness In defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions advanced before us and carefully scanned the material on record.

4. Death of deceased Smt. Laxmi Kanwar was indisputably homicidal in nature. As per postmortem report (Ex.P.7) she received burn injuries and in the opinion of Dr.

R.K. Mathur (PW. 3) the cause of death was septicemia shock as a result of antemortem dry heat burn which was sufficient to cause death in the ordinary course of nature.

5. It appears from the record that Laxmi Kanwar was admitted to female surgical ward of JLN Hospital Ajmer on February 19, 1998, Brahma Ram ASI made written request to Chief Judicial Magistrate Ajmer to record the statement of Laxmi Kanwar u/s 164 Cr.P.C. The CJM directed Mr. Sohan Lal Sharma, Judicial Magistrate No. 1 Ajmer to do the needful. After Dr. O.P. Pancholi certified that Laxmi Kanwar was fit to give statement, learned Magistrate recorded the statement of Laxmi Kanwar u/s 164 Cr.P.C. wherein she stated as under:

Today at 9 AM while she was cleaning house-hold utensils, Lala and Pawan came to her, gave beating to her and pulled her down, they thrust lathi in her anus. She was taken to another room where Pawan, Lala and their ladies were present. Lala and Pawan sprinkled kerosene on her, Pawan then ignited match-stick and set her ablaze. When she raised hue and cry their ladies obstructed her, thereafter she came out of the room and lay down. Police then took her to the hospital.

6. Statement Laxmi Kanwar gets corroboration from the testimony of Rinku Kanwar (PW. 1), Vijay Singh (PW. 5) and Maina Kanwar (PW. 10), who are the children of the deceased. Dr. R.K. Mathur (PW. 3), who examined Laxmi Kanwar in the hospital on February 19, 1998 and then performed autopsy on the dead body on March 2, 1998 deposed that cause of death was septicemia, which was sufficient in the ordinary course of nature to cause death. According to Dr. R.K. Mathur there was no possibility to save Laxmi Kanwar's life even after special treatment. He further stated that Dr. Kumkum Singh made an endorsement on memo Ex. P.8 to the effect that there was small tear inside the anus of Laxmi Kanwar, which could have been caused by thrusting lathi inside the anus. In his cross examination he however stated that the tear in the anus could have been the result of disease or constipation. Sh. Sohan Lal Sharma (PW. 8) in his deposition stated that on February 19, 1998 he was posted as Judicial Magistrate No. 1 Ajmer. On the direction of the Chief Judicial Magistrate he had gone to JLN Hospital, where a woman lying on Bed No. 21 in Surgical Ward No. 4, was identified as Laxmi Kanwar by Brahma Ram ASI. He then asked Brahma Ram to leave. After Dr. O.P. Panchori certified that Laxmi Kanwar was in a fit state to give statement, he recorded her statement (Ex.P.17). Since her both hands were badly burnt, she could not put her thumb impression over the statement.

7. Mr. S.R. Bajwa, learned Senior Counsel for the appellants pointed out following infirmities in the prosecution case:

(i) In the Parcha Bayan Laxmi Kanwar stated that she was belaboured by the appellants but no injury was found on her person.

(ii) Sh. Sohan Lal Sharma, learned Magistrate, who recorded the statement of Laxmi Kanwar, deposed that her hands were badly burnt therefore she could not put her thumb impression whereas in the Parcha Bayan (Ex. P. 18) recorded by Brahma Ram, ASI thumb impression allegedly put by Laxmi Kanwar can be seen.

(iii) Dr. O.P. Panchori who had put endorsement about fit mental state of Laxmi Kanwar, was not examined.

(iv) The contemporaneous conduct of the children of deceased at the time of impugned incident negates the manner in which the incident is shown to have been taken place by the prosecution.

(v) Laxmi Kanwar died after about eleven days of the incident because of septicemia shock which could not be attributed to burns sustained by her. It could be caused due to infection developed in the hospital during her treatment.

8. Having travelled through the pages of medical jurisprudence we notice that Septicemia is a condition commonly known as blood poisoning. It is a serious and potentially life threatening condition. It usually arises through escape of bacteria from a focus of infection somewhere in the body (such as a urinary tract infection, gastroenteritis, pneumonia, meningitis or an abscess). Septic shock is a highly dangerous condition in which there is tissue damage and a dramatic drop in blood pressure as a result of replicaemia (the multiplication of bacteria and the presence of bacterial toxin in the blood), In many cases, the toxins are the main cause of trouble because they can damages cells and tissues throughout the body, promote clotting of blood in the smallest blood vessels and seriously interfere with the normal blood circulation. Damage occurs especially to tissues in the kidneys, heart and lungs. The toxins may cause leakage of fluid from blood vessels and a reduction of the ability of the vessels to constrict, leading to a drop in blood pressure.

9. In order to appreciate the submission of learned Senior Counsel that the cause of death of Laxmi Kanwar could be the infection developed during the treatment in the hospital, we have cautiously scanned the testimony of Dr. R.K. Mathur who categorically deposed that cause of death was septicemia shock as a result of antemortem dry heat burn which was sufficient to cause death in the ordinary course of nature and even after the special treatment it was not possible to save the life of the injured. No question was asked from Dr. R.K. Mathur in the cross examination that infection was developed during the treatment in the hospital and it was not the result of burns. We thus find no force in the submission of learned Senior Counsel.

10. It is well settled that "dying declaration" is an important piece of evidence and conviction can be based solely on the dying declaration. The principle on which the dying declaration is admitted in evidence is indicated in legal maxim:

"Nemo moriturus praesumitur mentire" i.e., a man will not meet his maker with a lie in his mouth.

Truth sits on the lips of dying man as said by Mathew Arnold:

The general principle on which this species of evidence is admitted is that they are declarations 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; 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 a Court of Justice.

11. Though a dying declaration is entitled to a great weight, the Court has to satisfy itself that the dying declaration is of such a nature as to inspire full confidence in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, prompting or a product of imagination. The court has to be further satisfied that the deceased was in a fit state of mind and had a clear opportunity to observe and identify the assailants. If the court finds that the declaration was true and voluntary it can convict the assailant on the basis of declaration of the deceased and no further corroboration is required.

12. In [Vakati Lavakishore and Another Vs. State of Andhra Pradesh](#), it was held that where a dying declaration was made by the deceased while in conscious state and was recorded by the Magistrate and contained cogent and consistent version that accused poured kerosene upon the deceased and set him on fire, non examination of the concerned doctor is not fatal to the prosecution case and the dying declaration cannot be discarded on the sole ground that the Magistrate did not put a direct question whether the deceased was capable of giving a statement.

13. In *State of Rajasthan v. Bhup Ram* 1997 (1) Crimes 62, their Lordships of the Supreme Court indicated that dying declaration would not go bad merely because the Magistrate did not record it in the form of questions and answers. It is axiomatic that what matter is the substance and not the form. Questions put to the dying man would have been formal and hence the answers given are material. Criminal courts may evince interest in knowing the contents of what the dying person said and the question put to him are not very important. Normally that part of the statement which relates to the circumstances of the transactions which resulted in his death gets the sanction of admissibility. Hence it is improper to throw such statement over board on a pedantic premise that it was not recorded in the form of questions and answers.

14. In [Om Parkash Vs. State of Punjab](#), the Apex Court observed that though there were serious burn injuries on the person of the deceased, a house wife, but as she survived for about 12 days, it cannot be said that merely because of the burn injuries, she was not in a position to make any statement.

15. It has been held by the Supreme Court in [Najjam Faraghi @ Nijjam Faruqui Vs. State of West Bengal](#), that a time gap between the statement and death does not destroy the evidentiary value of the statement. The statement does not lose its credibility if the declarant chances to live longer than anticipated.

16. Bearing these principles in mind we proceed to consider the factual scenario of the case which may be summarised thus:

(i) On February 19, 1998 at 10.15 AM Vijay Singh and Rinku Kanwar went to Police Station Mangliawas and orally informed that their mother Laxmi Kanwar (deceased) was given beating by Pawan Singh and Digpal Singh (appellants).

(ii) Brahma Ram, ASI rushed to the house of Laxmi Kanwar and found her lying having burn injuries on her person. Brahma Ram recorded parcha bayan of Laxmi Kanwar and admitted her in the hospital.

(iii) In the hospital Sohan Lal Sharma, Judicial Magistrate, recorded the statement of Laxmi Kanwar, wherein she stated that appellants poured kerosene on her and set her ablaze. Before recording statement Dr. Panchori certificate that Laxmi Kanwar was in a fit state to give statement. Dr. Panchori was however not examined by the prosecution.

(iv) Laxmi Kanwar died on March 1, 1998 and cause of her death was septicemia shock as a result of antemortem dry heat burn which was sufficient to cause death in the ordinary course of nature.

(v) According to Dr. R.K. Mathur it was not possible to save the life of Laxmi Kanwar even after special treatment, Tear was found in the anus of Laxmi Kanwar which according to Dr. Mathur, could be caused by inserting lathi or some other disease or constipation.

(vi) The appellants in their explanation u/s 313 Cr.P.C. stated that Laxmi Kanwar earned a bad reputation therefore she was disowned by the family and local society.

17. Having closely scanned the material on record, we find ourselves unable to agree with the submissions of learned senior counsel. The dying declaration of Laxmi Kanwar in our opinion was true and voluntary and it inspires confidence. It gets corroboration from the testimony of Rinku Kanwar, Vijay Singh and Maina Kanwar. The prosecution has established that at the time of recording statement by the Magistrate, Laxmi Kanwar was in a fit state of mind. Non examination of Dr. Panchori, thus is not fatal to the prosecution case. Dying declaration of Laxmi Kanwar would not go bad merely because the Magistrate did not record it in the form of questions and answers since contents of the statement relate to the circumstances of the transactions which resulted in her death. Sh. Sohan Lal Sharma, learned Magistrate categorically deposed that since Laxmi Kanwar's both hands were badly burnt, she was not in a position to put her thumb impression on her statement. In view of this deposition, we see infirmity in the dying declaration of

Laxmi Kanwar which did not bear her thumb impression. Motive of appellants behind the crime is hidden in their explanation u/s 313 Cr.P.C., according to which Laxmi Kanwar earned a bad reputation and was disowned by the family and local society.

18. For the reasons state above, we do not find any merit in the instant appeal and it accordingly stands dismissed. The conviction and sentence of appellants under Sections 302 and 452 IPC are confirmed.