

Dharambir and Another Vs State

Court: Delhi High Court

Date of Decision: July 26, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 157, 161, 165, 311, 313
Penal Code, 1860 (IPC) â€” Section 302, 34, 498A

Citation: (2011) 6 ILR Delhi 686

Hon'ble Judges: S. Ravindra Bhat, J; G.P. Mittal, J

Bench: Division Bench

Advocate: U.N. Bhachawat, in Criminal A Nos. 122 and 130/1998, Syed Hasan Isfahani and Alok Bhachawat, in Criminal A No. 130/1998, Mahipal Singh and Uday Singh, in Criminal A No. 122/1998, for the Appellant; Lovkesh Sawhney, APP, for the Respondent

Judgement

G.P. Mittal, J.

The Appellants Dharambir, Raghubir Singh and Satbir @ Sattey (the Appellant Ratti Kaur has expired and the proceedings

against her have abated) stand convicted by the judgment and order dated 24.03.1998 and 27.03.1998 passed by learned Addl. Sessions Judge,

Delhi, ("the impugned judgment") for offences punishable u/s 498A and Section 302 Indian Penal Code (IPC) read with Section 34 IPC. They

were sentenced to undergo life imprisonment for the offence u/s 302 IPC and a rigorous imprisonment for 2 years for the offence u/s 498A IPC.

Apart from this sentence, fines were also imposed.

2. First, the facts. Seema (the deceased) was married to Appellant Dharambir about a year and half prior to 30.08.1991. On the night of

30.08.1991 she sustained burn injuries and was removed to Safdarjung Hospital by PW-1 Kishan Kapoor (her immediate neighbour) and PW-2

Mahavir Singh (her brother-in-law) who used to reside in her neighbourhood. Ratti Kaur (now deceased) was Seema's mother-in-law; the

Appellant Dharambir is the husband whereas Appellants Raghubir Singh and Satbir @ Sattey are her Brothers-in-law.

3. According to the prosecution version on 30.08.1991 Seema crossed over to the roof of PW-1 Kishan Kapoor's house, after sustaining burn

injuries. On noticing Seema in this condition PW-1, called PW-2 Mahavir Singh (her brother-in-law) who was living just one house away from his

house. On seeing Seema in that condition PW2 wrapped a Chadar around Seema. Since, the width of the lane where they resided was very

narrow, Seema was put on a cot and was first taken to the Police Station Mehrauli, and then she was removed to Safdarjung Hospital in a PCR

van.

4. Seema was admitted to Safdarjung Hospital at 1:35 A.M. on 31.08.1991 by PW-1, PW-2 and one Ashwani. While giving the history of

sustaining burns, Seema told Dr. Rohit Nayyar (PW-16) that her in-laws were demanding dowry of Rs. 35,000/- from her father and when her

father refused to pay the dowry, her husband, her two brothers-in-law (Raghubir and Satbir) and her mother-in-law poured kerosene oil on her

and set her ablaze. At the time of her admission in the Hospital Dr. Rohit Nayyar found the patient to be conscious but dehydrated; she was found

to be having 100% deep burns.

5. At 1:50 A.M. PW-13 SI Raghunath Singh reached the Hospital and moved an application to Dr. Rohit Nayyar for recording Seema's

statement. After obtaining fitness certificate from the doctor, he (SI Raghunath Singh) recorded Seema's statement Ex. PW-5/A. He made

endorsement Ex. PW-5/B and sent it to the Police Station for registering the case. In the statement recorded by the IO, Seema attributed specific

role to the Appellants, holding them responsible for setting her on fire.

6. Unfortunately, Seema succumbed to her burn injuries on 31.8.1991 at about 5:40 A.M. Dr. B. Swain (PW-6) who conducted postmortem of

Seema, found the extent of burns to be 98%. He did not find any mark of struggle and opined that the cause of death was shock following ante-

mortem burn injuries.

7. The Appellants were charge sheeted for the offences punishable u/s 498A, 302 read with Section 34 IPC. On Appellants' pleading not guilty,

the prosecution examined 16 witnesses.

8. The Appellants were examined u/s 313 Code of Criminal Procedure The factum of Seema being wife of Dharambir and the inter se relationship

between the Appellants and the deceased was not disputed. The Appellants denied having demanded or received any dowry much less Rs.

35,000/- which was alleged to have been demanded by them. The Appellants claimed that they were ignorant of any dying declaration was

recorded by PW-16 Dr. Rohit Nayyar or PW-13 SI Raghunath Singh. It was the case of all the Appellants that Seema and Appellant Dharambir

were staying separately in their house where the incident occurred, whereas rest of the Appellants were residing separately with their respective

families. The Appellants argued that Seema was frustrated as she could not conceive any child since solemnization of marriage in the year 1990,

and on account of frustration she committed suicide.

9. The Appellant examined DW-1 Khemchand primarily to prove that nobody was present in H. No. 255 on 30.08.1991 at 9:30 P.M. when the

said incident took place. The said witness deposed that Appellant Dharambir who was working as a Driver went to his house after 11:00 P.M.

DW-2 Rambir Singh was examined to prove the plea of alibi put up by Dharambir. By impugned judgment the Trial Court rejected the

Dharambir's alibi plea. It also rejected the dying declaration alleged to be made to PW-1 and PW-2 as they (PW-1 & PW-2) turned hostile.

10. The Trial Court also rejected the dying declaration Ex. PW-8/A recorded by PW-13 on the ground that it was neither recorded in the

presence of the doctor nor was attested by any person, who was present at the time of recording the statement. The Trial Court, however, found

the dying declaration on Ex.PW-8/A (Seema's MLC) by PW-16 Dr. Rohit Nayyar to be reliable, truthful and made by Seema in a fit state of

mind. The Trial Court also found that the allegation of demand of Rs. 35,000/- as dowry was established by the testimony of PW-7 Mahavir Singh

(Seema's father). Thus, the Appellants were convicted and sentenced as aforesaid.

11. We have heard Mr. U. N. Bachawat, learned Senior Counsel assisted by Mr. Mahipal Malik, Mr. Uday Singh, Mr. Syed Hasan Isfahani and

Mr. Alok Bhachawat, Advocates and Mr. Lovkesh Sawhney, learned APP for the State and have perused the record.

12. It is argued by the learned Counsel for the Appellants that Seema had sustained 100% burn injuries and her pulse was 140 as against the

normal pulse of 60 to 90; it is not recorded on the MLC that Seema was oriented and thus there was nothing on the record to show that she was

in a fit state of mind to make a statement. It is contended that Dr. Rohit Nayyar nowhere recorded in the MLC Ex.PW-8/A nor issued any fitness

certificate that the patient was conscious and was in a fit state of mind to make a statement. It is submitted that in the circumstances, the Trial Court

fell into grave error in relying on the dying declaration recorded in the MLC Ex.PW-8/A.

13. The Learned Senior Counsel places reliance on Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, It is urged that a conviction

can be recorded on the basis of dying declaration if the same is truthful and wholly reliable and whenever there is suspicion the Court ought not to

rely on a dying declaration without corroboration.

14. The learned Senior Counsel urges that PW-1 and PW-2 have not only disowned the alleged dying declaration made to them, rather, PW-1

has deposed that the deceased had informed him that there was nobody in the house and, therefore, she asked him to take her to Hospital. This

part of the PW-1's testimony demolishes prosecution's version that the Appellants were responsible for setting Seema on fire.

15. Mr. Bachawat, learned Senior Counsel contended that, Ashwani, who was admittedly one of the persons present at the time of Seema's

admission in the hospital was not examined by the prosecution and, therefore, an adverse inference has to be drawn against him. Further, it is also

argued that the dying declaration was manipulated and that is why the special report was not sent to the learned Illaqa Magistrate as required u/s

157 of the Code of Criminal Procedure (Cr.P.C.).

16. On the other hand Mr. Lovkesh Sawhney, learned APP on behalf of State submits that the dying declaration made by Seema was true,

voluntarily and made without any tutoring; the same was correctly and faithfully recorded by PW-16 Dr. Rohit Nayyar while Seema was in a fit

state of mind to make the statement. It is submitted that the demand of Rs. 35,000/- as dowry stood established from the testimony of Seema's

father (PW-7). Though, argued Mr. Sawhney, there was no need of corroboration to a reliable dying declaration yet, there is sufficient

corroboration to the dying declaration in the shape of PW-7's testimony and thus no interference is called for in the Trial Court's judgment.

17. The incident took place in an urbanized rural area i.e. Mehrauli. Admittedly, PW-1 Kishan Kapoor is Dharambir's and PW-2 Mahavir's

(Appellant's brother) immediate neighbour and the Appellants are Ratti Kaur's sons. It is not disputed that Seema went to PW-1 Kishan Kapoor

(for help), who in turn called PW-2 Mahavir and they removed her to the Hospital. P Ws 1 and 2 did not support the prosecution version that

Seema made a dying declaration to them. They were cross-examined by the learned APP and were confronted with the portion of statement u/s

161 Code of Criminal Procedure, where they stated that Seema made a dying declaration to them. A suggestion by the learned APP that they had

deposed falsely in order to save the Appellants was of course denied by them. It is very natural for a real brother and a neighbor to save the

culprits from possible punishment. Hence they did not support the prosecution and resiled from their earlier statement made to the police. The

Appellants, therefore, cannot take any advantage of any stray statement made by PW-1 that Seema had informed him that she had caught fire

when there was nobody in the house. The non-examination of Ashwani(whose name appeared in the MLC) does not affect the prosecution's case

as quality and not the quantity of evidence has to be considered. Since, the prosecution cited Mahavir and Kishan (out of the three persons) as the

persons who removed Seema to Safdarjung Hospital no motive can be attributed to the prosecution in not citing Ashwani as a witness in the case.

18. The Section 157 of Code of Criminal Procedure enjoins upon an officer in charge of a Police Station to send a report forthwith to the Illaqa

Magistrate empowered to take cognizance of an offence when he has reason to suspect the commission of an offence which he is empowered u/s

156 to investigate. The purpose of sending a copy of an FIR to the Magistrate forthwith is that the prosecution may not be able to concoct facts

and setup a false case against an accused as the FIR contains a brief statement of events. In the case of Munshi Prasad and Others Vs. State of

Bihar, it was held that while it is true that Section 157 of the Code makes it obligatory on the officer in charge of the police station to send a

report of the information received to a Magistrate forthwith, but that does not mean and imply to denounce and discard an otherwise positive and

trustworthy evidence on record. Technicality ought not to outweigh the course of justice - if the court is otherwise convinced and has come to a

conclusion as regards the truthfulness of the prosecution case. Similarly, in the case of Anil Rai Vs. State of Bihar, it was held that where the FIR is

shown to have been promptly recorded delay in sending the copy of FIR to Area Magistrate is not of any consequence.

19. In the instant case Seema was removed to Safdarjung Hospital at 1:35 A.M. on 31.08.1991 and the information about the same was sent to

her parents (who were residents of Gurgaon) by the IO much later. The statement of Seema recorded in the MLC Ex. PW-8/A by Dr. Rohit

Nayyar was part of the official record and we have no reason to disbelieve the same or that the same could have been manipulated. Thus, failure to

send the special report u/s 157 Code of Criminal Procedure was not fatal to the prosecution case.

20. The questions for consideration are whether there was any harassment in connection with the demand of dowry and whether Seema made any

dying declaration to PW-16 Dr. Rohit Nayyar. Firstly, with regard to the demand of dowry, the prosecution relies on the testimony of PW-3,

Mukhtiar Singh, PW-4 Rishi Pal Singh and PW-7 Mahavir Singh. PW-7 Mahavir Singh deposed that he had received a compensation (for

acquisition of his land) of Rs. 5,00,000/- and gave a sum of Rs. 10,000/- twice to his daughter Seema i.e. Rs. 20,000/- in all. He deposed that the

accused persons kept silent for a few days and about a month prior to her death Seema came to his house and asked for Rs. 35,000/- as the said

amount was demanded by all the accused. He deposed that he paid another sum of Rs. 20,000/- to his daughter and sent her back to her in-law's

house and asked her not to come back for more money. Further, he deposed that he could not meet his daughter thereafter. In his cross-

examination PW-7 admitted that he did not inform the Police that he received a compensation of Rs. 5,00,000/-. At the same time no suggestion

was given to the witness that he had received a compensation of Rs. 5,00,000/-. The witness was confronted with his statement made to the police

where his claim that he paid Rs. 10,000/- each on two occasions and Rs. 20,000/- on another occasion was not recorded. However, there was

no cross-examination on the point of demand of Rs. 35,000/- by the Appellants through Seema. Thus, it is established that there was demand of

dowry of Rs. 35,000/- by the Appellants.

21. Now, turning to Seema's dying declaration recorded in MLC Ex. PW-8/A; we may say that criticism regarding her fitness and truthfulness of

the dying declaration is ill-founded. It is noteworthy that Paparambaka Rosamma's case (supra) relied by the Appellants' counsel was overruled

by a five Judges Bench of the Supreme Court in Laxman Vs. State of Maharashtra, . In the case of Laxman (supra) the Supreme Court held as

under: -

Normally, therefore, 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 eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion

will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration

is not acceptable.

22. After the decision in Laxman's case (supra) a fitness certificate with every dying declaration has become immaterial. What is required to be

seen is whether the person recording/ hearing the dying declaration is satisfied that the person making the dying declaration is mentally fit.

23. In this case the condition of Seema is recorded to be critical, her pulse was 140 per minute. It is further recorded that she was conscious and

gave her history herself implicating the Appellants. During the trial PW-16 Dr. Rohit Nayyar was recalled for cross-examination u/s 311 Code of

Criminal Procedure at Appellant's instance. Dr. Rohit Nayyar was frank enough to admit that the pulse of a normal person varies from 60 to 90

per minute and whenever the patient loses fluid or supply of blood, the pulse rate goes up; further he also stated that whenever blood pressure

decreases, blood supply to brain decreases. The witness stated that he had not recorded the patient to be oriented but had recorded her to be

conscious, which would mean that she was not disoriented. A suggestion was given to Dr. Rohit Nayyar that Seema did not make any statement

and that he recorded patient's history on IO's instructions. It is not suggested as to how Dr. Rohit Nayyar, who was working as a Senior Resident

Doctor in Safdarjung Hospital was under influence of the IO. Thankfully, it was not suggested to the doctor that Seema's parents or any of her

other relations were present due to which Seema made the statement after tutoring.

24. PW-16 Dr. Rohit Nayyar was a senior doctor, who at the relevant time was doing his super specialization (which he completed) and joined

Batra Hospital in 1994. We see no reason to doubt or disbelieve the dying declaration (of Seema) as recorded by him.

25. The reception of dying declaration in evidence is an exception to the non-admissibility of hearsay evidence. It is believed that truth sits on the

tongue of a dying man; he wouldn't lie for he is to meet his Creator. In the case of Laxman (supra) the Supreme Court observed that the situation

in which a man is on his death bed is very solemn and serene, and this in fact is the reason, to accept the veracity of his statement in law. It is for

this reason that the requirements of oath and cross-examination are dispensed with. It was added that since the accused would not have any

opportunity of cross-examination, the court insists that the dying declaration should be of such a nature so as to inspire full confidence of the Court

in its truthfulness and correctness. In Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh, the sanctity of a dying declaration

was highlighted as under: -

A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make

any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the

causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it

does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same

passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the

dying declaration is true and free from any embellishment, such a dying declaration, by itself, can be sufficient for recording conviction even without

looking for any corroboration.

26. The dying declaration Ex.PW-5/A recorded by PW-13 SI Raghunath Singh was rejected by the Trial Court primarily on the ground that the

statement of Seema was not recorded in question answer form; doctor was not present throughout to vouch that Seema was fit while her statement

was being recorded by PW-13 and that the ridges of the thumb were visible on the declaration Ex.PW-5/A in spite of the fact that Seema

sustained 98% burns and thus it was not possible that the ridges would be visible while obtaining a thumb impression.

27. There is no universal rule that the dying declaration recorded by a police officer is unreliable. The superior courts have consistently held that the

dying declaration, once it is found to be true and recorded while the deceased was in a fit state of mind to make the statement, is sufficient to base

conviction of an accused even without any corroboration. In *Betal Singh v. State of M.P.*, 1996 SCC (Cri) 624, the Supreme Court took the view

that it would not be right to reject every statement recorded by a police officer. We would like to extract para 14 of the said judgment hereunder: -

It is true that in *Munnu Raja and Another Vs. The State of Madhya Pradesh*, this Court has struck a note of caution that the investigating officers,

who are naturally interested in the success of the investigation, ought to be discouraged in recording the dying declarations, during the course of

investigation. However, in *Dalip Singh Vs. The State of Punjab*, this Court noticed the above observation and pointed out that it is not meant to

suggest that such dying declarations are always untrustworthy. Their Lordships observed: (SCC p. 335, para 8)

We do not mean to suggest that such dying declarations are always untrustworthy, but what we want to emphasize is that better and more reliable

methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the police officer may be

relied upon if there was no time or facility available to the prosecution for adopting any better method.

28. In *Paras Yadav v. State of Bihar*, 1999 SCC (Cri) 104, the Supreme Court again placed reliance on the statement of deceased Shambhu

Yadav recorded by Sub-Inspector for conviction of the accused.

29. We are not inclined to subscribe to the reasoning given by the Trial Court as stated earlier, in *Laxman* (supra) the controversy regarding

obtaining a certificate of fitness from the doctor was set at rest and it was held that it is for the eye witness to decide whether the maker of the

statement was conscious or in a fit state to make the statement or not. In this case the testimony of PW-13 that he (PW-13) had obtained the

fitness certificate from the doctor was not shaken in cross-examination despite a lengthy and searching cross-examination. Nothing could be

brought out in PW-13's cross-examination to show that Seema was not conscious and fit to make the statement Ex.PW-5/A.

30. In *Laxman* (supra) it was observed that there was no requirement of law that the dying declaration must necessarily be made to a Magistrate or

it should be recorded in a specified format. Therefore, it was immaterial if the statement was not recorded by the IO in question answer form.

31. Of course, more value is attached to the dying declaration recorded by a Magistrate or by a doctor attending to the patient for the reason that

they are not likely to be influenced by any extraneous circumstances. In this case an attempt was made by PW-13 to have the statement recorded

by the SDM. PW-13 deposed that "the SDM showed his inability as he was not having any arrangement of the conveyance". This part of PW-

13's testimony was not challenged in cross-examination. Admittedly, Seema was in a critical condition and ultimately succumbed to burn injuries at

5:40 A.M. Since, the SDM had expressed his inability to reach the Hospital in the dead of night for the reason as stated above, it was PW-13's

duty to record Seema's statement.

32. Admittedly, Seema's parents had not yet reached Delhi and were not by Seema's side when her statement was recorded. A suggestion was

given to PW-13 that Seema's statement was falsely recorded as Appellants had strained relations with their brother Mahavir Singh (PW-2). No

evidence was produced by the Appellants to show the said constrained relationship, in fact no suggestion was given to PW-2 Mahavir Singh in his

cross-examination rather PW-2 Mahavir Singh did not support the prosecution version in order to save the Appellants as has been observed by us

earlier. Thus, we are of the view that the dying declaration Ex.PW-5/A recorded by PW-13 was wrongly rejected. In the circumstances of the

case PW-13 was exhibited to have recorded the statement, which he did after obtaining a fitness certificate from Dr. Rohit Nayyar (PW-16).

33. The statement Ex.PW-5/A narrates the details of the incident. It corroborates PW-7 Mahavir's testimony regarding demand of Rs. 35,000/-.

It further corroborates a dying declaration on the MLC Ex.PW-8/A regarding demand of Rs. 35,000/- by the Appellants as also setting Seema on

fire by the three Appellants and deceased Ratti Kaur. The dying declaration Ex.PW-5/A goes a step further and gives the details of the role of

each of Appellants and the beatings given to her for non-meeting the demand of Rs. 35,000/-

34. There may be stray cases where even a dying person may lie or falsely implicate a person in a case. In those cases the maker of the statement

must have had a motive to falsely implicate a person which can be either on account of any enmity or ill will. In this case the deceased got married

to Appellant Dharambir just one and half year before the incident. The Appellants have taken up the plea that Seema was depressed and wanted

to take the extreme step of committing suicide. It is not understandable why she would falsely involve her husband, two of her brothers-in-law and

her mother-in-law and not other relations (not even the other brother-in-law i.e. PW-2 Mahavir).

35. We are convinced that the dying declaration was truthfully made and correctly and faithfully recorded by PW-16 Dr. Rohit Nayyar. The same,

by itself, is sufficient to base Appellants conviction, although the same also finds corroboration from PW-7 Mahavir i.e. Seema's father and the

dying declaration Ex.PW-5/A recorded by PW-13.

36. We do not find any error or infirmity in the impugned judgment and order. The Appeals are without any merit and have, therefore, to fail. The

same are accordingly dismissed.

37. The Appellants were granted bail pending hearing of the appeals. They are directed to surrender before the Trial Court on 16.08.2011 to

serve the remainder of the sentence, failing which steps shall be taken by the Trial Court for their arrest. The Registry is directed to send a copy of

the judgment to the Trial Court immediately for compliance of the said directions.

38. The appeals are disposed of in above terms.