

Surinder Kumar

Vs

State (Delhi Administration, Delhi)

Criminal Appeal No. 321 of 1986

(S. Natarajan, A. P. Sen JJ)

20.01.1987

JUDGMENT

NATARAJAN, J. -

1. In this appeal by special leave against the judgment of the High Court of Delhi in Criminal Appeal No. 109 of 1982 the appellant Surinder Kumar challenges his conviction under Section 302 IPC and the sentence of life imprisonment and fine of Rs. 500 in default of payment RI for 3 months, awarded therefor. The appellant has been found guilty of having committed the murder of his wife Chander Kanta by pouring kerosene over her and setting fire to her at about 7.10 a.m. on October 7, 1979 in a one-room apartment in house No. B. 5/165, Paschim Vihar in New Delhi occupied by them. The conviction and sentence awarded by the Sessions Judge have been confirmed by the High Court, and hence this appeal by special leave.

2. The appellant who had married Chander Kanta on November 26, 1978 was ill-treating her because she had not brought adequate dowry and cash from her parent's house. As per Chander Kanta's statement the appellant was addicted to drinking and gambling.

3. On the day of occurrence PW 3 Sardar Gurbax Singh, the landlord of the house heard the cries of Chander Kanta and rushed out of his room adjoining the tenanted portion. He saw Chander Kanta lying engulfed in flames in the verandah adjoining the leased portion. He rushed to the verandah and alongwith the appellant who was also there he put out the flames. The appellant took Chander Kanta in a taxi to the Ram Manohar Lohia Hospital (previously known as Wellington Hospital). Chander Kanta was examined by PW 7 Dr Sharma and admitted in the hospital. Intimation was sent to the police station about the admission of Chander Kanta in the hospital. At 1.10 a.m. PW 4 Dr Surinder Singh certified that Chander Kanta was fit enough to make a statement. PW 22 Om Prakash SI of Police recorded a statement EX. PW 1/A from Chander Kanta in the presence of PW 4 Dr Surinder Singh, PW 16 Dr J. C. Parida and PW 1 Gulam Chand. On the basis of Ex. PW 1/A, a case was registered against the appellant, under Section 307 IPC. Chander Kanta dies on October 25, 1979 due to septaemia caused by burn injuries and thereafter the case was altered into one under Section 302 IPC.

4. The main evidence in the case is the dying declaration Ex. PW 1/A given by Chander Kanta. The fact of Chander Kanta making the statement has been spoken to by the two doctors PWs 4 and 16 and by the SI of Police PW 22. Besides, PW 2 Sham Sunder and PW 5 Chaman Lal, the brother and father respectively of Chander Kanta have also stated that they went and saw Chander Kanta at the hospital on October 7, 1979 and she told them that it was the appellant who had poured kerosene over her and set fire to her.

5. The dying declarations of Chander Kanta, oral as well as written have been held to be truthful statements by the Sessions Judge and the High Court and constituting adequate evidence to convict the appellant for the offence of murder.

6. The conviction is, however, challenged by the appellant in this appeal and Shri Ranjit Kumar, learned counsel for the appellant sought to assail the findings of the Sessions Judge and High Court on various grounds. The several contentions advanced before us had been raised before the trial Judge as well as the High Court and have been found to be unsustainable. Even so the learned counsel reiterated those contentions and hence we shall briefly deal with them.

7. It was first submitted that Chander Kanta could have sustained the burns due to an accident or due to attempted suicide. If indeed Chander Kanta had sustained the burns in one of the suggested modes it is incomprehensible she would have accused her husband of having set fire to her after pouring kerosene over her. Moreover she was found to have sustained burn injuries on the face, neck, trunk and left lower and upper limbs. Her clothes were found by the Chemical Examiner to contain kerosene oil. Such extensive injuries and presence of kerosene in the clothes would not have been found if the stove had burst and Chander Kanta had sustained the injuries accidentally. As regards the theory of suicide there is no evidence that there was any proximate cause for her to attempt to end her life on that morning.

8. The learned counsel then argued that the appellant was not at home when Chander Kanta sustained the burns. Such an argument was raised on the basis of PW 3's interested statement that when he rushed to the help of Chander Kanta, the appellant came from outside and he also joined him in putting out the fire. The statement of PW 3, apart from being at variance with his statement under Section 161(3) CrPC cannot carry weight because the appellant could not have really gone out anywhere at that hour and dramatically made his appearance just at the moment his wife was in flames. It was also urged that the appellant would not have put out the flames if he had really set fire to his wife. This argument overlooks the fact that after the arrival of PW 3 on the scene the appellant could not have remained a passive spectator to the plight of his wife.

9. The dying declaration Ex. PW 1/A was sought to be assailed on various grounds. It was urged that in the MLC PW 7 had made an entry that it was "Alleged history of being burnt while working in the kitchen". PW 7 has stated that this information was given by the person who brought the patient to the hospital viz. the appellant. No doubt he has added that he verified the correctness of the statement from the victim also but we think the Sessions Judge and the High Court were right in refusing to give credence to this part of the statement of PW 7. In her state of shock and pain Chander Kanta could not have made any clear statement. Moreover, she would also have been afraid to reveal the truth in the presence of her husband.

10. It was then argued that PWs 2 and 5 had met Chander Kanta before she gave the statement Ex. PW 1/A and hence they would have tutored her to give a false statement against the appellant. We see no merit in this contention because PWs 2 and 5 had no motive to falsely implicate the appellant in a case of attempted murder. Even assuming that they had tried to poison the mind of Chander Kanta she would not have yielded to their evil advice and falsely accused her husband of setting fire to her.

11. As regards the actual recording of the Ex. PW 1/A it was contended that PW 1 one of the attestors had not known anything about it, as he has deposed that he was not present in the ward when the statement was recorded and secondly the statement itself could not have been recorded on

October 7, 1979 because the doctors have stated in their statements under Section 161(3) CrPC dated October 8, 1979 that the dying declaration was recorded on that day. These contentions have no merit because PW 1's attestation is not very material in the light of the attestations made by PWs 4 and 16. As regards the mistake in the date, the carbon copies of the statements contain the word "Kala" (yesterday) and not the word "Aaj" (today) and the correction proves the mistake. Moreover the appellant had been taken into custody on the evening of October 7, 1979 itself. He would not have been arrested unless Ex. PW 1/A had been recorded at 1.10 p.m. on October 7, 1979 itself.

12. Another criticism that was levelled was that the prosecution has failed to explain why it had failed to have the statement of Chander Kanta recorded by a Judicial Magistrate even though she was alive till October 25, 1979. No doubt the prosecution has laid itself open to criticism in this behalf but the lapse cannot in any way affect the truth of Chander Kanta's statement or the value to be given to it.

13. The recovery of the stove with its lid removed and burnt match sticks from the kitchen of the appellant's house clearly goes to show that the kerosene in the stove had been poured over Chander Kanta and then lighted matchsticks had been applied to her. We have already stated, that it cannot be a case of accidental fire and likewise there was no reason for Chander Kanta to have attempted to commit suicide. The dying declaration clearly sets out that the appellant was in the habit of ill-treating her and that on the morning in question he had abused her and beat her and on top of everything he had also poured kerosene over her and set fire to her.

14. We are, therefore, fully satisfied that the evidence on record conclusively establishes the guilt of the appellant and that he has been rightly convicted under Section 302 IPC. However, insofar as the sentence is concerned, we do not think there was any need to have imposed a sentence of fine of Rs. 500 over and above the sentence of life imprisonment. Hence we set aside that part of the sentence and confirm only the sentence of life imprisonment awarded to the appellant. If the fine amount has been paid it will be refunded to the appellant. Except to the limited extent of modification in the sentence the appeal will stand dismissed.

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