

Jaswant Singh vs State (Delhi Admn.) on 14 September, 1978

Equivalent citations: 1979 AIR 190, 1979 SCR (1) 777, AIR 1979 SUPREME COURT 190, 1979 (1) SCR 777, 1978 CRI APP R (SC) 387, 1978 SCC(CRI) 523, (1979) 2 SCJ 308, (1979) 2 SCWR 112, (1978) ALLCRIC 417, (1979) MAD LJ(CRI) 671, 1978 (4) SCC 85

Author: Jaswant Singh

Bench: Jaswant Singh, P.S. Kailasam

PETITIONER:
JASWANT SINGH

Vs.

RESPONDENT:
STATE (DELHI ADMN.)

DATE OF JUDGMENT 14/09/1978

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
KAILASAM, P.S.

CITATION:
1979 AIR 190 1979 SCR (1) 777
1978 SCC (4) 85

ACT:

Evidence-Circumstantial evidence, value of, in sustaining conviction-Dying declaration not recorded by a Magistrate must be scrutinised closely.

HEADNOTE:

The appellant stood charged for trial under s. 302 of the I.P.C. for having caused the death of his wife by sprinkling kerosene oil and setting her clothes to fire. The Addl. Sessions Judge relying on the dying declaration which was corroborated by the circumstantial evidence of the narration about the incident by the deceased to her parents PW-1 and PW-2 just before her death, found him guilty of the offence with which he was charged and sentenced him to life imprisonment. The appeal preferred by the appellant to the

High Court having proved abortive, the appellant came up before this Court by special leave.

Dismissing the appeal the Court,

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HELD : (1) The circumstantial evidence in order to sustain conviction must be complete and must be incapable of explanation on any other hypothesis other than that of guilt of the accused. [781C-D]

(2) The dying declaration which is not recorded by a Magistrate has to be scrutinised closely, but it is well settled that if the Court is satisfied on a close scrutiny of the dying declaration that it is truthful it is open to the Court to convict the accused on its basis without any independent corroboration. [781D]

Khmushal Rao v. The State of Bombay, [1958] SCR 552; Lallubhai Devchand Shah & Ors. v. The State of Gujarat, [1971] 3 SCC 767; Vithal Somnath Kore v. State of Maharashtra, [1978] 1 S.C.C. 622, referred to.

(3) (a) In the instant case there is no direct evidence regarding the guilt of the appellant and the prosecution case rests wholly on the circumstantial evidence and the dying declarations made by the deceased before the Sub-Inspector Din Dayal and Roshan PW-1 and Phool Vati PW-2. [781B-C]

(b) On a careful consideration of the evidence it is clear that the dying declaration Ext. PW 21/F, the genuineness of which is verified by Dr. Avtar Singh Gill PW-18 is truthful and convincing and it cannot be brushed aside merely on the ground that it was not recorded by a Magistrate especially when it was recorded by Sub-Inspector Din Dayal in the presence of the duty doctor viz. Avtar Singh Gill at the time when the deceased was in great agony and the life in her was fast ebbing away. The testimony of the parents of the deceased viz. Roshan P.W. 1 and Phool Vati PW-2 also lends strong corroboration to the dying declaration. They have categorically stated that the relations between the deceased and the appellant were strained as the latter was ill-treating the former and was carrying on with another woman from Shahdara.

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The dying declaration also receives corroboration from the report of the Chemical Examiner and post mortem report of PW-11 which indicate that the cause of death of the deceased was shock and toxemia due to burns. [781E-H, 782A, E, F]

(4) The evidence in the instant case inevitably points to the conclusion that it was the appellant and the appellant alone who intentionally caused the death of the deceased and the plea sought to be raised by him that the fire was accidental is an after thought and stands refuted not only from the recovery of the bottle containing kerosene oil, burnt match sticks, match box and half burnt clothes of the deceased but also from the fact he did not come with this plea either to PW-4 or PW-5. [782G-H, 783A]

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 346 of 1974.

Appeal by Special Leave from the Judgment and Order dated 23-10-73 of the Delhi High Court in Criminal Appeal No. 118 of 1972.

R. L. Kohli, Amicus Curiae for the Appellant. H. R. Khanna and R. N. Sachthey for the Respondent. The Judgment of the Court was delivered by JASWANT SINGH, J.-This appeal by special leave is directed against the judgment and order dated October 23, 1973 of the High Court of Delhi confirming the judgment and order dated July 29, 1972 of the Additional Sessions Judge, Delhi convicting the appellant under section 302 of the Indian Penal Code and sentencing him thereunder to imprisonment for life for causing the death of his wife.

Briefly stated, the circumstances giving rise to this appeal are : Attracted by the screams emanating from the house of the appellant situate in Basti Chain Sukh Das, Kala Mahal, Daryaganj, Delhi on the afternoon of July 6, 1971, the neighbours namely Murari Lal (P.W. 4), Gulab Singh (P.W.

5) and one Kishan Lal rushed to the spot. On reaching the first floor of the house, they found the appellant's wife named Kamla, aged 27 years, lying unconscious outside the living room in the courtyard with burns all over her body. Alongwith the appellant who was present there, they covered Kamla with a bed-sheet, put her on a cot and took her downstairs in the street wherefrom she was removed in a tempo to Irwin Hospital, Delhi. At about 5.20 in the evening on that day, constable Baldev Singh (P.W. 7) posted on duty at the Emergency Ward of the said Hospital, rang up the Police Station, Jama Masjid, Delhi, informing it that the appellant had got his wife, Kamla, admitted in the emergency ward of the hospital at about 4.15 or 4.30 P.M. because of some burns sustained by her at her house and requesting that some officer might be sent to the place of the occurrence. On receipt of this information, S.I. Din Dayal (P.W. 21) proceeded to the hospital accompanied by constable Raghubir Singh (P.W. 6). On being informed by the doctor on duty at the hospital that Kamla was unconscious and as such not in a fit condition to make a statement, the Sub-Inspector sent constable Raghubir Singh to the scene of occurrence with instructions to keep a watch over the same, and himself remained in the hospital waiting for an appropriate opportunity to record the statement of Kamla after her revival. He tried several times upto the midnight to have the permission of the doctor on duty to record the statement of Kamla but each time the doctor declared the patient unfit to make a statement. At 7.50 A.M. on the morning of July 7, 1971, the Sub-Inspector again repeated his request to the doctor on duty for permission to record the statement of Kamla but it was only at 10.30 A.M. that Dr. Avtar Singh Gill (P.W. 18) who was on duty at that time gave him the requisite permission which enabled him to record the statement (Exh. P.W. 21/F) of Kamla in the presence of the said doctor. This statement was to the following effect :-

"My husband sprinkled kerosene oil over me and set fire and when later on I had sufficiently been burnt he put a bucket full of water over me. It was about 1 P.M. and I

had not quarreled with my husband Jaswant Singh. I had asked him as to why he had come home late whereupon he got annoyed and beat me. After beating me he sprinkled kerosene oil over me and set fire to my clothes. At the time of setting fire to my clothes he had closed the door from inside."

After completing the necessary formalities, the Sub- Inspector sent 'Rooqa' (Exh. P.W. 10/A) together with Kamla's aforesaid statement (Exh. P.W. 21/F) to his Police Station for registration of the case under section 307 of the Indian Penal Code and himself left for the scene of the occurrence. Shortly after the departure of the Sub-Inspector the parents of Kamla namely Roshan (P.W. 1) and Phool Vati (P.W. 2) enquired of Kamla as to how she had sustained the burns on her body. In reply to their query, Kamla told them that the appellant did not come back to the house from his office on the evening of July 5, 1971 and spent the whole of the night intervening the 5th and 6th of July, 1971 in Shahdara; that on returning to the house on the morning of July 6, 1971, the appellant awakened her and asked her to prepare the meal which she did but the appellant threw it away and beat her; that on her asking the appellant to send her to her parent's house, the appellant abused her, bolted the door of the room from inside, sprinkled kerosene oil on her clothing and set them on fire. After about an hour of this statement, the condition of Kamla deteriorated and she succumbed to her injuries at about 12.25 P.M. Dr. Bharat Singh, Police Surgeon, Delhi (P.W. 11) performed the autopsy on the dead body of Kamla on July 8, 1971. He found superficial burns all over the body from the skull to the toes which according to him were antemortem and sufficient in the ordinary course of nature to cause death. The doctor also found almost full grown dead male foetus in the womb of the deceased. On the basis of the observations made by him, the doctor opined that the cause of the death of Kamla was shock and toximia due to burns.

On arrival of the scene of occurrence after despatching the dying declaration (Exh. P.W. 21/F) to the Police Station, the Sub-Inspector prepared the site plan, got the place photographed by Head Constable Inder Singh (P.W. 3) and seized a few articles from the living room of the appellant's house including a bottle containing some kerosene oil, a match box, some burnt match sticks, some half burnt clothes of the deceased and an unserviceable stove without any kerosene oil vide Exhibit P.W. 8/A which he sent to the Chemical Examiner for examination. After performing the necessary tests, the Chemical Examiner sent a report to the Superintendent of Police, Central District, Delhi inter alia stating therein that the liquid contained in the bottle was kerosene oil and that traces of kerosene oil were present on the half burnt clothes of the deceased. On July 8, 1971, the Sub-Inspector also got the appellant examined by Dr. Obnesh Kaur (P.W. 20) who found the following injuries on his person :-

"(i) Multiple blisters posterior aspect lower 1/3rd left upper arm;

(ii) An irregular superficial torn out blisters unceration on the posterior aspect left forearm upper 1/3rd.

(iii) An irregular superficial burns with minor blisters dorsum (back side of wrist) of left wrist.

(iv) Atorn blister ulceration on the first joint of the left index finger dorsum side."

In the opinion of the doctor, injuries (i) to (iv) were simple burns of more than 24 hours' duration.

On completion of the investigation, the appellant was proceeded against in the Court of the Judicial Magistrate 1st Class, Delhi who committed him to the Court of Session at Delhi for trial under section 302 of the Indian Penal Code. The Additional Sessions Judge, Delhi who tried the appellant held that the appellant was guilty of the offence with which he was charged and sentenced him to imprisonment for life. The appeal preferred by the appellant to the High Court having proved abortive, he has come up in appeal to this Court by special leave, as already stated.

We have heard counsel for the parties and gone through the record.

The short question that arises for determination in this case is whether the prosecution has succeeded in bringing home the offence under section 302 of the Indian Penal Code to the appellant. It is true that in the instant case, there is no direct evidence regarding the guilt of the appellant and the prosecution case rests wholly on the circumstantial evidence and the dying declarations made by the deceased before S.I. Din Dayal and Roshan (P.W. 1) and Phool Vati (P.W. 2). It is also true that the circumstantial evidence in order to sustain conviction must be complete and must be incapable of explanation on any other hypothesis than that of the guilt of the accused. It is also true that the dying declaration which is not recorded by a Magistrate has to be scrutinised closely, but it is well settled that if the Court is satisfied on a close scrutiny of the dying declaration that it is truthful, it is open to the Court to convict the accused on its basis without any independent corroboration. (See *Khushal Rao v. The State of Bombay*; *Lallubhai Devchand Shah & Ors. v. The State of Gujarat* and *Vithal Somnath Kore v. State of Maharashtra*. In the instant case, on a careful consideration of the evidence on the record, we are satisfied that the dying declaration (Exh. P.W. 21/F), the genuineness of which is verified by Dr. Avtar Singh Gill (P.W. 18), is truthful and convincing and it cannot be brushed aside merely on the ground that it was not recorded by a Magistrate especially when it is to be remembered that it was recorded by S.I. Din Dayal in the presence of the duty doctor Avtar Singh Gill at a time when the deceased was in great agony and the life in her was fast ebbing away. It is well recognised that when the words are few, they are seldom spent in vain. It would also be well at this stage to recall the statement made in cross-examination by Shri Yashpaul, Link Judicial Magistrate, Jama Masjid, Delhi to the effect that when he reached the Hospital to record the statement of the deceased but could not do so as she had expired before his arrival, he was informed that a police officer had already recorded her statement. The testimony of the parents of the deceased namely, Roshan (P.W. 1) and Phool Vati (P.W. 2) also lends strong corroboration to Exhibit P.W. 21/F. They have categorically stated that the relations between the deceased and the appellant were strained as the latter was ill- treating the former and was carrying on with another woman from Shahdara who used to visit his (the appellant's) house every now and then; that the deceased often used to complain to them about the misbehavior and cruel conduct of the appellant towards her and used to send oral and written messages imploring them to take her away from the matrimonial house; that they sometimes spoke to the appellant about his alleged misbehavior when he would assure them that he would behave properly in future and that hoping that things would improve in due course, they advised the deceased to stick to the matrimonial house. It is also in

evidence that when on hearing the screams of the deceased, the neighbours arrived at the spot, they found her lying unconscious outside her living room with burns all over her body. From the aforesaid dying declarations, it stands established beyond doubt that the appellant who had been ill-treating the deceased and was carrying on with another woman from Shahdara got enraged and caused the death of the deceased by sprinkling kerosene oil on her clothing and setting them on fire after closing the door of his living room from inside so that succour does not reach her when she raised a protest about the appellant's absence from the house throughout the previous night. The dying declarations also receive corroboration from the report of the Chemical Examiner which shows that the traces of kerosene oil were found on the half-burnt clothes of the deceased recovered from the living room by S.I. Din Dayal vide Exhibit P.W. 8/A and the fact that the inside portion of the door of the room was found burnt as also from the statement of Dr. Bharat Singh, Police Surgeon, Delhi (P.W. 11) that on the basis of the appearances met with by him on post mortem examination of the dead body of the deceased, he came to the conclusion that the cause of death of the deceased was shock and toximia due to burns.

The plea sought to be raised on behalf of the appellant that the fire was accidental seems to be an after thought and is negated by the fact that no cooking material was found in the living room where the incident appears to have taken place as also by the fact that the primus stove recovered and seized from the living room vide Exhibit P.W. 8/A was admittedly unserviceable. That the appellant committed the ghastly crime is also proved from the recovery of the bottle containing kerosene oil, burnt match sticks, match box and half-burnt clothes of the deceased as also from the fact that he did not suggest either to Murari Lal (P.W. 4) or to Gulab Singh (P.W. 5) at the stage of cross-examination that on their arrival at the scene of occurrence on hearing the screams on the afternoon of July 6, 1971, he gave out that the incident was accidental. Thus the evidence inevitably points to the conclusion that it was the appellant and the appellant alone who intentionally caused the death of the deceased. Accordingly we see no reason to interfere with the findings concurrently arrived at by the courts below.

In the result, the appeal fails and is dismissed.

S.R.

Appeal dismissed.