

Punjab-Haryana High Court

Mohan Lal And Ors. vs State Of Haryana on 4 August, 2006

Equivalent citations: 2006 CriLJ 4749

Author: M S Gill

Bench: M S Gill, B Singh

JUDGMENT Mehtab S. Gill, J.

1. This is an appeal against the judgment/order dated 4.1.2003/ 6.1.2003 of the Additional Sessions Judge, Narnaul whereby he convicted Mohan Lal son of Nand Lal, Sat Parkash son of Mohan Lal and Smt. Savitri wife of Mohan Lal under Sections 302/34 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 500/- each, in default to further undergo rigorous imprisonment for one month.

2. The case of the prosecution is unfolded by the statement Ex. PD/4 given by Renu wife of Deepak to Mr. Ajay Tewatia, J.M.I.C., Narnaul on 15.9.2001 at 12.20 P.M. in Civil Hospital, Narnaul. Renu stated that all the members of the family harassed her. A boil had developed under her armpit. After making arrangement of milk etc. for her, her husband went out of station. Her mother-in-law used to say that Renu is telling a lie and she had no problem. Her father-in-law used to ask her to show the boil to him, to which Renu replied that the place where the boil is, it cannot be shown to him. Her Jeth (husband's elder brother) also used to harass her. Her husband did not cause any harassment to her. On that day, her mother-in-law, father-in-law and Jeth confined her in a room and after pouring kerosene oil on her, set her on fire. Her father-in-law remarked that on her failure to show him the place where the boil was, she will die by burning in this manner. They put her on fire at 7.45 A.M. on 15.9.2001. She had been suffering from fever in the morning. Her jeth Sat Parkash and father-in-law Mohan Lal set her on fire. They used to harass her for seeking dowry. She was further asked by the J.M.I.C. as to whether she wanted to say anything else. She replied in negative. On the basis of this statement Ex.PD/4, FIR Ex.PF was recorded on 15.9.2001 at 3.10 P.M. A special report reached the J.M.I.C., Narnaul on 15.9.2001.

3. The prosecution to prove its case, brought into the witnessbox Dr. Alok Jain as PW1, Dr. Ravi Sudhan Sharma as PW2, Mr. Ajay Tewatia, J.M.I.C., Narnaul as PW3, Constable Mahesh Kumar as PW4,

4. Head Constable Jagdish Parshad as PW5, Vinod Kumar as PW6, Babu Lal as PW7, Smt. Soma Devi as PW8, SI Rajender Singh as PW9, Inspector Joginder Nath as PW10 and Constable Surender Singh as PW11.

5. Learned Counsel for the appellants has argued that as per documents Ex.PJ and Ex.PJ/1 which is a letter written by SI Rajinder Singh PW9 to the C.J.M., Narnaul to depute a Judicial Officer to record the statement of the deceased, it has been mentioned that the parents of the deceased and her representatives are saying that the girl is ready to make a statement. It is clear from this that before the dying declaration Ex.PD/4 was made by Renu, her parents had tutored her as to what has to be stated by her. In documents Ex.PD/3, Ex.PD/4, Ex.PD/5 and Ex.PD/6, Dr. Alok Jain PW1 certified on 15.9.2001 at 12.05 PM that Renu was fit to make a statement and it is thereafter that Mr

Ajay Tewatia, J.M.I.C. PW3 recorded her statement at 12.20 PM. Dr. Alok Jain PW1 had also opined on 15.9.2001 at 9.45 AM that she was fit to make a statement. Vide document Ex.PD/1 on an application Ex.PD filed by SI Rajender Singh PW9 to the CJM, Narnaul, Mr Ajay Tewatia, J.M.I.C. was deputed on 15.9.2001 at 10.30 AM to record the statement of Renu. Mr Ajay Tewatia, J.M.I.C. PW3 reached the hospital on the same day i.e. 15.9.2001 at 10.45 AM and got the opinion from Dr. Alok Jain PW1, who opined that patient was unfit to make a statement. It is strange that within 45 minutes Renu was not fit to make a statement. These were only delaying tactics on the part of the parents and relations of Renu. In fact, she was fit to make a statement at 9.45 AM, but her statement was not purposely recorded so that she be briefed by her parents to falsely implicate the appellants. Nothing has been mentioned in the MLR Ex.PA, in column No. 2 as to who brought the deceased to the hospital. Document Ex.PO shows that the deceased was wearing six red colour glass bangles around the wrists of both her hands. This showed that no struggle had taken place. Because if the appellants had first poured kerosene oil on her and then burnt her, some sort of resistance would have occurred from the side of Renu and her glass bangles would have broken. There is no specific allegation qua the demand of dowry in the dying declaration Ex.PD/4. Mr. Ajay Tewatia, J.M.I.C. PW3 in his testimony before the Court has stated that he does not remember as to whether the relations of the injured (Renu) were present inside the room or outside the room when she was admitted. Both the witnesses Babu Lal PW7 and Smt. Soma Devi PW8 are interested witnesses and their testimony should be discarded.

6. Learned Counsel for the State has argued that the dying declaration Ex.PD/4 inspires confidence. Mr. Ajay Tewatia, J.M.I.C. PW3 has categorically stated in his statement before the Court that before recording the statement of Renu, he told everyone except the doctor and nurse to leave the room. No delay has been caused qua the recording of the dying declaration from the side of the complainant party, but as Renu was not fit to make a statement, thus her statement was recorded at 12.20 PM after Dr. Alok Jain PW1, opined at 12.05 PM on 15.9.2001 that she was fit to make a statement. On the basis of this statement, FIR Ex.PF was registered on the same day at 3.10 PM. The special report reached the Ilaqa Magistrate on the same day i.e. 15.9.2001, though the time has not been mentioned in the FIR. The truthfulness of the dying declaration cannot be doubted on this score also that the FIR has been recorded promptly. The dying declaration Ex.PD/4 has been recorded by a non interested witness, a Judicial Officer, Mr. Ajay Tewatia, J.M.I.C. PW3. Before recording of the statement, he (PW3) went through the formalities of taking the opinion of doctor, thereafter he (PW3) himself verified as to whether Renu was in a fit state of mind to give a statement and it is thereafter, that after he was satisfied, he recorded the dying declaration. The dying declaration Ex.PD/4 gets corroboration from the statements of Babu Lal PW7 and Smt. Soma Devi PW8. We have heard learned Counsel for the parties and perused the record with their assistance.

7. The entire case hinges on the dying declaration Ex.PD/4, given by Renu (deceased) to Mr. Ajay Tewatia, J.M.I.C. PW3. While going through the sequence of events on that day, it comes out that the occurrence had taken place on 15.9.2001 at 7.45 AM in the area of Narnaul city. Ruqa Ex.PT was received at 8.40 AM on 15.9.2001 in Police Station City Narnaul by SI Rajender Singh PW9, sent by the doctor regarding admission of Renu wife of Deepak in General Hospital, Narnaul being in a burnt condition. This was sent through the Ward Attendant. SI Rajender Singh PW9 along with HC Daya Ram and Constable Sajjan Singh left for General Hospital, Narnaul after receiving the ruqa, as

per document Ex.PT. SI Rajender Singh PW9 moved an application Ex. PH to the Medical Officer, General Hospital, Narnaul regarding fitness of Renu to make a statement. Dr. Alok Jain PW1 on the same day i.e. 15.9.2001 at 9.45 AM opined that she was fit to make a statement. SI Rajender Singh PW9 thereafter moved an application Ex.PD before the CJM, Narnaul for deputing a Magistrate for recording the statement of Renu. Vide Ex.PD/1, the C.J.M., Narnaul deputed Mr Ajay Tewatia, J.M.I.C. PW3 to proceed to the hospital and to record the statement of Renu. On receiving the directions, Mr Ajay Tewatia, J.M.I.C. PW3 left for the hospital at 10.30 AM. As per Ex.PD/2, he reached the hospital at 10.40 AM. Thereafter he took the opinion of Dr. Alok Jain PW1 regarding the fitness of Renu to make a statement. He opined that patient was unfit to make a statement. Mr Ajay Tewatia, JMIC PW3 also put questions to the patient but she did not respond. As Renu was unfit to make a statement, he disposed of the application and went back to the courts. At 11.50 AM on the same day i.e. 15.9.2001, a second application was moved by the police and the C.J.M. directed Mr. Ajay Tewatia, J.M.I.C. PW3 to proceed to the hospital and record the statement of Renu. He reached the hospital at 12.00 noon and took opinion Ex.PD/3 of Dr. Alok Jain PW1, that the patient was fit to make a statement. This opinion was given on 15.9.2001 at 12.05 PM. Mr. Ajay Tewatia, J.M.I.C. PW3 apart from Dr. Alok Jain, Vidya Devi Nurse and Bhoja Ram Driver, all other persons were directed to leave the room. Thereafter, he asked Renu to tell her name and then asked her as to what she wanted to say. It is thereafter that statement of Renu Ex.PD/4 was recorded. In the dying declaration, she stated that the entire family members used to harass her. A boil had developed on her armpit and her husband after making arrangement of milk for her, went out of station. Her mother-in-law used to say that she is telling a lie and there is no problem with her. Her father-in-law asked her to show the boil and Renu replied that the place where the boil has developed, cannot be shown. Her Jeth also used to harass her. She further stated that her husband did not harass her. Her mother-in-law, father-in-law and Jeth had confined her in a room and poured kerosene oil on her and set her on fire. Her father-in-law then stated that if she did not show the place of boil, then she would die like this. She was put on fire at 7.45 AM. She had fever in the morning. She further stated that her Jeth Sat Parkash and father-in-law had put her on fire. They used to harass her and were demanding more dowry. After recording her statement by Mr. Ajay Tewatia, J.M.I.C. PW3, Dr. Alok Jain PW1 endorsed, that the patient remained fit during her statement. After reading the statement out to Renu and she admitting it to be correct, she put her thumb mark on it. Thereafter, Mr. Ajay Tewatia, J.M.I.C. PW3 appended his signatures on the statement.

8. It is clear from the sequence of events that all precautions were taken by Mr. Ajay Tewatia, J.M.I.C. PW3 before recording the dying declaration and thereafter also. He (PW3) took the opinion of Dr. Alok Jain PW1 before recording the statement and after recording the statement, the dying declaration was read over to Renu and it is thereafter that she put her thumb impression. During the recording of the dying declaration of Renu, Mr Ajay Tewatia, J.M.I.C. PW3 in endorsement Ex.PD/4 and in his statement before the Court stated, that no relation of the injured was present in the room when he recorded her statement. He (PW3) has further stated in his testimony that apart from Dr. Alok Jain PW1, Vidya Devi Nurse and Bhoja Ram driver of his official car, no other person was present in the room. All the persons present there in the room were directed by him to leave. It is clear from the statement of this witness (PW3) that Renu was not tutored or prompted. There is a ring of truth in the dying declaration. Allegations of demand of dowry have been made. In all fairness deceased has stated that her husband did not harass her. The bangles found on the wrists of

the deceased as per document Ex.PO, does not conclude that no struggle had taken place. It is not a case of the prosecution that a struggle had taken place. Renu has not mentioned in her dying declaration that she tried to run away or tried to resist. In fact, she has mentioned that she had fever in the morning. There was no likelihood of her putting up a struggle due to the fever. It is not difficult for the appellants who were three in number, to douse her with kerosene oil and then set her on fire.

9. Babu Lal PW7 and Smt. Soma Devi PW8 have corroborated the dying declaration Ex.PD/4 and stated that there was a demand of dowry i.e. a Scooter, Colour T.V. , Fridge and some other articles. As they did not have the means to provide these articles, they refused to do so. Babu Lal PW7 has stated in his testimony that when the dying declaration Ex.PD/4 was recorded by Mr. Ajay Tewatia, J.M.I.C. PW3, they were not present.

10. Occurrence had taken place on 15.9.2001 at 7.45 AM. Statement of Renu (deceased) was recorded at 12.20 PM and FIR Ex.PF came into existence on the same day at 3.10 PM. The special report reached the Ilaqa Magistrate on the same day. There is no delay in lodging of FIR. This itself also goes a long way in proving the case of the prosecution.

11. As per the reasons given above, we do not find any infirmity in the judgment of the trial Court. Appeal is dismissed.