
(1992) 01 RAJ CK 0020
In the Rajasthan High Court
Case No : Criminal Appeal No. 159 of 1986

Ram Dulari Douli	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

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

Citation : (1992) 1 RLW 50 : (1992) 1 WLN 76

Hon'ble Judges : Milap Chandra Jain, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Milap Chandra Jain, J.—This appeal has been filed against the judgment of the Additional Sessions Judge, Nohar (Sri Ganganagar) dated April 17, 1986 by which the accused appellant has been convicted u/s 302, I.P.C. and sentenced to undergo life imprisonment and to pay fine of Rs. 200/- failing which to further undergo simple imprisonment for two months. The facts of the case giving rise to this appeal may be summarised thus.

2. The deceased Pushpa daughter of Sita Ram PW 1 was married with Subhash, resident of Bhadra (Sri Ganganagar). In the morning of May 16, 1984, she received serious burns. She was seen by Dr. Mahavir Prasad PW 2 of the Government Hospital, Bhadra. He sent Note Ex.P/8 to the S.H.O., Bhadra, intimating about her admission in the hospital in serious condition. The later requested the former to examine her medically and to intimate whether she was in a position to give her statement vide his letter Ex. P/9. It was returned with the note on its back "she was admitted in the hospital at 12.45 p.m. She has extensive deep burns...she is semi conscious, ... she is speaking and she can give statement". The same day, the S.H.O., Bhadra Richpal Singh PW4 recorded her statement Ex. P/1 at 1.20 p.m. On its basis F.I.R. Ex.P/18 was registered at 1.30 p.m. u/s 307, I.P.C. The S.H.O. requested Damodar Mishra PW 6 Munsif cum

Judicial Magistrate, Bhadra for recording her statement u/s 164, Cr.P.C. vide letter Ex.P/19. He recorded her statement Ex.P/20 at 1.50 p.m. the same day. In both these statements Ex.P/1 and Ex.P/20, she disclosed that the accused appellant Ram Dulari Douli had poured kerosine oil and set fire by lighted match stick on her body. On May 23, 1984, she died in the Government Hospital, Bhadra and her post-mortem examination was conducted by Dr. Mahavir Prasad PW 2. After necessary investigation, a challan was filed u/s 302, I.P.C. against the accused Douli in the court of the Munsif and Judicial Magistrate, Bhadra who committed her to the court of the Additional Sessions Judge, Nohar and charge u/s 302, I.P.C. was framed against her. The prosecution examined Sita Ram PW 1 (father of the deceased Pushpa), Dr. Mahavir Prasad PW 2 who attended her in serious condition, Dr. Brij Mohan PW 3 who certified on May 16, 1984 that she was in a fit position to give her statement and conducted post-mortem examination after her death on May 23, 1984, the investigating officer Richpal Singh PW 4, A.S.I. Surajbal PW 5 who drew the F.I.R. Ex.P./18 on the receipt of the statement Ex.P./1 of Pushpa and Sri Damodar Mishra PW 6, Munsif and Judicial Magistrate, Bhadra who recorded her dying declaration Ex.P./20. The prosecution has also tendered and proved 20 documents. In her statement recorded u/s 313, Cr.P.C. the accused appellant Douli @ Ram Dulari admits that she resides with her parents, her in-laws do not keep her and on May 18, 1984 Dr. Brij Mohan PW 3 examined her sister Pushpa (not deceased) and brother Dharam Chand and found burns on their person. The remaining prosecution evidence has either been denied or stated to be false. In her defence she has produced her brother Dharam Chand D.W.1 and cousin Om Prakash DW 2.

3. It has been contended by the learned Counsel for the accused appellant that the deceased Pushpa committed suicide, her death was not homicidal and after receiving serious burn injuries she became unconscious and was not in a position to give statements Ex.P/1 and Ex.P/20. He further contended that the dying declaration Ex.P/1 and Ex.P/20 are not consistent, they do not inspire confidence, they are suspicious documents, they are not voluntary and there is no evidence on record to corroborate them. He also contended that bed head ticket has not been produced and no kerosine oil was found on her burnt cloths on chemical examination. He further contended that the accused appellant Douli is lean and thin lady of 45 kilograms in weight and deceased Pushpa was a healthy and stout woman having weight of 65 kilograms, it was highly improbable for the appellant to have set fire on the deceased Pushpa and no motive has been proved. He lastly contended that the learned trial Judge has not properly appreciated the evidence on record and he has wrongly discarded the evidence of the defence witnesses Dharam Chand D.W. 1 and Om Prakash D.W. 2. He has placed reliance on Balak Ram Vs. State of U.P., , K. Ramachandra Reddy and Another Vs. The Public Prosecutor, , Kishore v. State of Rajasthan 1988 Cri. L.J. 376 and S.D. Soni Vs. State of Gujarat,

4. The learned Public Prosecutor duly supported the judgment of the learned Additional Sessions Judge, Nohar.

5. It is well proved from the overwhelming oral and documentary evidence on record that deceased Pushpa died due to deep and extensive burns on her body. It is not the case of either party that she received these burns in an accident.

6. The question for consideration in this appeal is whether the death of Pushpa was homicidal or suicidal and who caused it if it was homicidal. Admittedly, the prosecution has not produced any eye witness. It has relied upon her oral dying declaration made to her father Sita Ram PW 1 in the Government Hospital, Bhadra and the written dying declarations Ex.P/1 recorded by the S.H.O., Bhadra Richpal Singh PW 4 and P/20 recorded by Sri Damodar Mishra, Munsif cum Judicial Magistrate, Bhadra. In her statement recorded u/s 313, Cr. P.C. the accused appellant has said nothing on this aspect of the case. She has produced her brother Dharam Chand D.W.1 and cousin Om Prakash D.W.2. They have deposed that the deceased Pushpa told them that she had herself set fire on her body.

7. The first objection raised against the said oral and written dying declaration is that Mst. Pushpa (deceased) was not in a fit condition to give them. Sita Ram PW1 has deposed that Pushpa was in a fit condition when she gave the said oral dying declaration to him and the S.H.O. asked the doctor before him whether Pushpa was in a position to give her statement, the latter gave reply in affirmative and her statement Ex.P/1 was recorded by the S.H.O. in his presence. In the cross-examination, she has disclosed that his daughter Pushpa was painfully groaning that fire had been set to her. Dr. Mahavir Prasad PW2 has deposed that on May 16,1984 he was posted as Civil Assistant Surgeon in the Government Hospital, Bhadra, on that day, he intimated the S.H.O., Bhadra on that he had seen Pushpa wife of Subhash resident of Ward No. 8, Bhadra, she had received 70% burn injuries, she was unconscious and the attendant of the patient had been advised to go to Civil Hospital, Hissar for treatment vide his letter Ex.P/8. The note given on it shows that it was received by the Police Station, Bhadra at 10.40 a.m. Thereon, the S.H.O. sent letter Ex.P/9 to the Medical Officer, Government Hospital, Bhadra to know whether Pushpa was in a fit condition to give her statement. This letter was returned in original with the following reply on its back:

Smt. Pushpa w/o Subhash age 22 Yrs. Mahipal Agrawal RIO Bhadra.

admitted in the Hospital at 12.45 dated 15.5.84. She has extensive deep burns on her person about 75% of her body surface area burnt (except both legs below knee joint. Buttock few area. Back of Abdomen, perineum scalp in partially burnt).

Her injury is greivous in nature caused by Bum. She is in severe agony of pain. General condition is poor. She is semi-conscious. Pulse, B.P. not recordable. She is speaking. She can given statement.

Dr. Mahavir Prasad PW 2 admits that this note was written by him and it bears his signature, Dr. Brijmohan PW 3 is the Incharge Medical Officer of the

Government Hospital, Bhadra. He has also deposed that the letter Ex.P/9 was received from the S.H.O., Bhadra, the said note was written in his presence by Dr. Mahavir Prasad PW 2, it bears the signature of Dr. Mahavir Prasad and also his signature. In their statements on oath, both these doctors have stated that Smt. Pushpa was in a fit condition to give her statement and her statement was duly recorded in their presence by the Magistrate. The S.H.O., Bhadra Richpal Singh PW 4 has deposed that Pushpa was in a fit condition to give her statement and, accordingly, he recorded her statement Ex.P/1 faithfully. Munsif cum Judicial Magistrate, Bhadra Sri Damodar Mishra PW 6 has deposed that he went to Government Hospital, Bhadra at 1.40 p.m. on May 16, 1984 to record the dying declaration of Smt. Pushpa and at that time she was in a position to give her statement. In the cross-examination, he has disclosed that he duly enquired from the doctors of the Government Hospital about her condition to give her statement and they told that she was in a position to give her statement. The dying declaration Ex.P/20 recorded by him mentions that Dr. Mahavir Prasad PW 2 and Dr. Brij Mohan PW 3 were also present at that time. Nothing damaging could be elicited out in the cross-examination of the aforesaid prosecution witnesses particularly Dr. Mahavir Prasad PW 2, Dr. Brij Mohan PW 3, Richpal Singh PW 4 and Damodar Mishra PW 6. There is no reason to doubt or disbelieve their testimony. They are independent witnesses. Their testimony is corroborated from the statements of the defence-witnesses Dharam Chand D.W.1 and Om Prakash D.W.2. They have not said that Mst. Pushpa was not in a fit condition to give her statement or she remained unconscious in the Govt. Hospital, Bhadra from the time of her admission till her death. On the contrary, they stated in their examination-in-chief that they enquired from her as to why she set fire on her body and she replied that she was tired with her life. In *Suresh v. State of M.P.* 1987 S.C. (Criminal) 254, the deceased Lachhi Bai had received 100% burns of second degree and it has been observed in paras 6 and 7 as follows:

The only point that has been urged by the learned Counsel appearing on behalf of the appellant is that the dying declaration which was recorded by Dr. Bhargava should not be relied upon inasmuch as at the time when the dying declaration was stated to have been recorded by her, Lachhi Bai was sinking and was unable to make any statement. Our attention has been drawn by the learned Counsel to the post mortem report of Dr. Bhargava. It is submitted that in view of the serious injuries sustained by Lachhi Bai on account of the burns, she must have been in an unconscious state at the time her dying declaration was stated to have been recorded.

We are unable to accept the contention. Dr. Bhargava had examined Lachhi Bai. According to her Lachhi Bai was in a fit state of health to make a declaration. Indeed, her evidence is that when she recorded the dying declaration of Lachhi Bai, she was capable of deposing and was in her senses. She further stated that when she was recording her dying declaration, "she had started going into coma."

8. It has been observed in *State of U.P. v. Chet Ram* 1989 S.C.C. (Criminal) 388

as follows:

The entire edifice of suspicion raised by the High Court has its foundation on the stray answer of PW 5 in cross-examination that when he was at Kishori's house, he found her lying unconscious. As already stated, even if his statement was a truthful one, Kishori could have overcome her momentary loss of consciousness and regained her consciousness within a few minutes and thereafter told PW 8 at her house and later PW 6 at the Police Station as to who her assailants were and how the occurrence had taken place. Once it is held that Kishori would have been fully conscious when she made the statement under Ex.Ka-3 then it merits acceptance as her dying declaration, it is needless to say, does not require any corroboration as in the case of an accomplice or a confession vide *Khushal Rao Vs. The State of Bombay*, . Mr. Garg referred to the decisions in *Madman Meher v. State of Orissa* 1981 SCC (Cri) 362 and *Darshan Singh alias Bhasuri and Others Vs. State of Punjab*, to contend that since Kishori had sustained 16 external injuries and several internal injuries as well, she could not have made the statement Ex.Ka-3 and hence the statement cannot be believed and acted upon as dying declaration. There is no merit in the contention because the observations of this Court in the two cases mentioned above were rendered under circumstances vastly different. In the former case, the doctor had ruled out the possibility of the victim being conscious and making a statement while in the latter, it was noticed that the vital organs had been smashed. Such is not the case here and on the contrary the medical evidence fully supports the prosecution case.

9. It is thus well proved from the evidence on record that the deceased Pushpa was in a position to give her statement when her said dying declaration Ex.P/1 and Ex.P/20 were recorded. The facts of *Balak Ram Vs. State of U.P.*, and *S.D. Soni v. State of Gujarat* 1991 (2) Crimes 4 revied upon by the learned Counsel for the accused-appellant are quite different and distinguishable. The first case was not a case of burning but it was a case of poisoning. In the second case, the investigating officer made a note in his police diary about the dying declaration and did not even get it signed by the declarant and attested by two witnesses. In the instant case, on the basis of the statement Ex.P/1, the case was registered u/s 307, I.P.C., it is attested by Sita Ram PW 1. Her signature and thumb impression could not be taken as her hands were badly burnt.

10. The second objection against the dying declarations Ex.P/1 and Ex.P/20 is that they were not voluntary as they were given by Mst. Pushpa after tutoring by her uncle, father and their relations, they do not inspire confidence and there is no evidence on record to corroborate them. It is correct that Pushpa's father Sita Ram PW 1 was present when her statement Ex.P/1 was recorded by Richpal Singh PW 4 and also when her dying declaration Ex.P/20 was recorded by Sri Damodar Mishra PW 6. Another relative Sugan Chand was also present at that time. In his cross-examination, Sita Ram PW 1 has categorically denied that Pushpa was tutored in the hospital by him, his brothers and his brother-in-law

Hari Ram before giving her statement Ex.P/20. He has also denied that he along with other relatives tutored Pushpa in the Vivekanand Hospital [private hospital where she was first taken) for giving her statement. Om Prakash D.W. 2 admits that he was in the Government Hospital, Bhadra when her statement Ex.P/20 was recorded and he did not tell to the Magistrate and the doctors present that previously Pushpa had disclosed to him that she herself set fire on her body. Dharm Chand D.W. 1 and Om Prakash D.W. 2 do not say that Pushpa was tutored by his father Sita Ram PW 1, uncle and other relations. Thus there is no evidence on record to prove that Pushpa was tutored before she gave statements Ex.P/1 and Ex.P/20. By mere presence of Sita Ram PW 1 and other relations, it cannot be said that they tutored Pushpa before her statements Ex.P/1 and Ex. P/20 were recorded. There are other facts and circumstances on record to show that the dying declarations Ex.P/1 and P/20 were voluntary, natural and true. In her dying declaration Ex.P/20 she also disclosed that Veenu (daughter of the accused appellant Douli) also set fire on her body along with her mother Douli (accused-appellant). This fact was not disclosed in her previous statement Ex.P/1. If she would have been tutored, she would have also named Veenu in her earlier statement Ex.P/1. In her statement Ex.P/1 and P/20, she disclosed that the accused appellant Douli has sprinkled kerosine oil on her body and, thereafter, set fire with an ignited match stick when she was cleaning utensils in the Kitchen. It has further been disclosed in the statements Ex.P/1 and P/20 that she went upstairs when she started burning. The site was inspected by the investigating officer Richpal Singh PW4 and site plan Ex.P/2 and site inspection Note Ex.P/12 were prepared. They show that some cleaned and some uncleaned utensils and a plastic jeriken having a little quantity of kerosine oil were found in the kitchen. It is also stated in site inspection note Ex.P/12 that kitchen was having smell of kerosine oil at that time and on the roof burnt portions of Sari of Pushpa emitting smell of kerosine oil were found. Pushpa disclosed in her statement Ex.P/1 that she never had any trouble from her husband and mother-in-law. Dharam Chand D.W. 1 and Om Prakash D.W. 2 admit in their cross-examination that the relations of deceased Pushpa with all members of the family of her in-laws except accused-appellant Douli were cordial. Pushpa has further disclosed in her statement Ex.P/1 that her sister-in-law (Nanand) Douli (accused-appellant) used to quarrel with her and in the early morning of the day of occurrence she abused her and said that she was a "DAKAN". Dharam Chand D.W. 1 and Om Prakash D.W. 2 admit in their cross- examination that the accused Douli used to quarrel with the deceased Pushpa. All these facts leave no manner of doubt that the statements Ex.P/1 and Ex.P/20 were voluntarily given by the deceased Pushpa and they were true.

11. Admittedly, Pushpa's husband and her mother-in-law had gone to Calcutta on April 27, 1984, on the day of occurrence they were not in their house and Dharam Chand D.W.1 and his two sisters, namely, Puspa (not deceased) and the accused Douli were only present there at the time of the occurrence. Dharam Chand D.W.1 has deposed that he and his sister Pushpa tried to extinguish the

flames which were coming from the body of the deceased Pushpa and, as a result thereof, they received burns. These dying declarations find corroboration from their injury report Ex.P/11 proved by Dr. Brij Mohan P.W. 8. It is well proved from the evidence on the record that the deceased Pushpa ran to the roof of the house immediately after fire set on her body. If she would have herself did so, she would not have ran away to the roof of the house. If the deceased Pushpa would have committed suicide by setting fire on her body, the accused appellant Douli would have also tried to extinguish the fire as her brother Dharam Chand D.W.1 and sister Pushpa did. There is nothing on the record to indicate that such an attempt was made by the accused-appellant Douli. This conduct on the part of the accused appellant Douli strongly supports the prosecution case that she poured kerosine oil and set fire on the body of the deceased Pushpa.

12. The dying declaration Ex.P/20 was recorded in the form of questions and answers by Shri Damodar Mishra P.W.6 Munsiff cum Judicial Magistrate, Bhadra. In this connection, observations made in para No. 8 of *Kishanlal Seth v. Jagannath* 1990 S.C.C. 460 4B8 may be quoted here. They ran as follows:

In *Khushal Rao Vs. The State of Bombay*, it is held that a dying declaration properly recorded by a competent Magistrate as far as practicable in the words or the maker stands on a much higher footing than a dying declaration which depends upon oral testimony.

13. There is no question of any suspicion in the dying declaration Ex.P/1. It was recorded by Richpal Singh P.W.4 even before the F.I.R. was registered. It has been observed in *State of Punjab v. Amarjeet Singh* 1989 S.C.C. (Cr.) 58 para 24 as follows:

As to the legality of the dying declaration, this case is on a better footing. It was recorded before investigation commenced. Even the FIR was issued later. The ASI did not record the dying declaration in the capacity of an investigating officer. A dying declaration recorded under similar circumstances has been accepted by this Court in *Munna Raja v. State of Madhya Pradesh*. Chandrachud, J. as he then was speaking for this Court observed at p. 767: (SCC p. 107, SCC (Cri) p.379, para 9)

In regard to the second dying declaration, Ex.P. 14, the main objection of the learned Counsel is that it was made to the investigating officer himself and ought therefore be treated as suspect. In support of this submission, reliance was placed on a judgment of this Court in *Balak Ram v. State of U.P.* The error of this arguments consists in the assumption that the dying declaration was made to an investigating officer. The statement, Ex.P. 14, was made by Bahadur Singh at the Police Station by way of a first information report. It is after the information was recorded, and indeed because of it, that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House Officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the

statement. The judgment on which the counsel relies has therefore no application.

14. It is also correct that in the subsequent dying declaration Ex.P/20, Pushpa has said that her nanad Douli and her daughter Veenu set fire on her body and thus introduced the name of Veenu also. This addition does not go to Minder the dying declaration Ex.P/20 doubtful so far it goes to connect the accused appellant Douli with the crime when it is otherwise well established. Admittedly Veenu was present in the house at that time. She was about 8 years old. She might be with her mother at that time.

15. The dying declaration Ex.P/1 and Ex.P/20 run as under:

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4-Jh ikykjke , - ,l- vkbZ-

5-Jh lqxu pUn fj"rsnkj iq= ctjaxyky

6-Jh lhrkjke iq= Jh ctjaxyky

7-lqJh in~ekofr ulZ

it has clearly been mentioned in both of them that Douli [accused-appellant] had sprinkled Kerosine oil and set fire on the body of the deceased Pushpa. These two dying declarations are natural, true and reliable and they clearly connect the accused- appellant Douli with the said crime beyond any manner of doubt.

16. It is correct that the report Ex.P/15 of the State Forensic Science Laboratory does not show that kerosine oil was found on the piece of burnt saree of the deceased Pushpa. From this negative fact, it cannot be said that kerosine oil was not used in her turning. The defence witnesses Dharam Chand D.W.1 and Om Prakash D.W.2 themselves say that kerosine oil was used by Pushpa in burning herself.

17. It is also correct that the prosecution did not get summoned bed head ticket of the deceased Pushpa from the Government Hospital, Bhadra. It is the admitted case of the parties that Pushpa had died due to burn injuries. It is not the case of the defence that it is mentioned in it that Pushpa committed suicide. The accused could have taken steps to summon it.

18. There is no force in the contention of the learned Counsel for the accused appellant that accused-appellant Douli being lean and thin could not have set fire on the body of the deceased Pushpa, being strong and stout. It is clear from the dying declaration Ex.P/1 and Ex.P/20 that kerosine oil was sprinkled on her body while she was cleaning utensils in the kitchen. The post-mortem report Ex.P/10 indicates that kerosine oil was poured on the back side of her body. The pouring of kerosine oil and igniting of a match stick would not have taken much time. Besides this, the deceased Pushpa would not have anticipated such an action on the part of her nanad Douli.

19. As observed above, the relations in between the deceased Pushpa and the accused appellant Douli were strained and the later used to abuse and maltreat

the former. This provided motive for committing the said crime.

20. The facts and circumstances of the case in K. Ramachandra Reddy and Another Vs. The Public Prosecutor, are quite different and distinguishable. In it, the occurrence took place in the night, and the deceased did not tell the names of the assailants on three previous occasions. Thus there is no force in the appeal.

21. Accordingly, the appeal is dismissed.