

PETITIONER:
DARSHANA DEVI

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 11/10/1995

BENCH:
ANAND, A.S. (J)
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ANAND, A.S. (J)
MUKHERJEE M.K. (J)

CITATION:
1995 SCC Supl. (4) 126 JT 1995 (7) 269
1995 SCALE (5) 695

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

DR. ANAND. J.

The appellant was tried for an offence under Section 302 IPC for the alleged murder of Madan Lal, her husband. The learned Judge of the Special Court, Ferozepur convicted her for the said offence and sentenced her to suffer imprisonment for life vide judgment dated 29.8.1985. Through this statutory appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, the appellant has called in question her conviction and sentence.

The prosecution story in short is that the appellant and deceased were married about 10 years prior to the date of occurrence. They were serving as Government teachers and posted at different places. The couple had a son who was suffering from blood cancer and unfortunately died on 23.7.1984. Through the summer vacations had finished on 22.7.1984, the couple had applied for extension of leave on account of the death of their son and the leave in the case of each one of them was extended upto 31.8.1984, the day of the occurrence. It is alleged that on the night intervening 30-31 August, 1984 at about 2.00 a.m. deceased Madan Lal knocked at the door of his mother, Lachhmi Devi, PW-1, who was living separately alongwith one of the sisters of the deceased, Bimla Devi, PW-2 just across the lane. When PW1 opened the door she found the deceased to be burning and on enquiry he told his mother and sister, PWs 1 and 2, that the appellant had sprinkled kerosene oil on him and set him on fire. Lachhmi Devi, PW-1 rushed him to the hospital where they reached about 2.30 a.m. Dr. Janak Lal Mittal PW-4 started treating him and sent information to the police through rukka Ex.P3. The deceased had suffered extensive burn injuries and was semi-conscious. Shri Rajinder Singh, SHO, Police Station PW-5 arrived at the hospital and made an enquiry from the doctor whether the deceased was in a fit condition to make a statement. The doctor replied in the

negative. The SHO PW-5, thereafter, recorded the statement of Lachhmi Devi PW1, Ex.P1, at about 4.30 a.m. and sent the same to the police station for registration of the case and that forms the basis of the formal FIR Ex. P1/B. It was initially registered under Section 307 IPC but after Madan Lal succumbed to the burn injuries at about 8.30 a.m. in the hospital, the offence was converted into one under Section 302 IPC. When the deceased was brought to the hospital by his wife Jitender Lal, PW-3, A Municipal Commissioner was present at the hospital, as he had taken his elder brother's daughter Radha Rani and admitted her in the emergency ward of the hospital. PW-3 informed the investigating officer that he was lying in the verandah when he heard the deceased saying aloud that he had been burnt by his wife. His statement was recorded by the SHO.

During the course of investigation, SHO PW-5 visited the spot and prepared a rough site plan of the place of occurrence. He took into possession a broken bottle smelling of kerosene oil Ex.M/O/1 from the house of the deceased under seizure memo Ex. P8. A match-box Ex. M/O/4 was also taken into possession from the room vide seizure memo Ex.P9. Some burnt portion of the shirt belonging to the deceased was collected from the lane and seized vide memo Ex. P10. The inquest report was prepared by the SHO PW-5 and the dead body was sent for postmortem examination. The autopsy was performed by Dr. K.K. Singhla and it revealed death due to shock and haemorrhage on account of extensive burns. The viscera of the deceased besides pieces of liver, lung and spleen were preserved and sent for chemical examination. According to the report of chemical examiner, Ex. P12, there was presence of alcohol in the viscera and that the blood-alcohol concentration was 86.25 mg/ml per 100 mls. The report of the chemical examiner also revealed that alcohol was found present in the pieces of liver, spleen, kidney and lungs besides the pieces of stomach, small intestine and large intestines. After completion of the investigation, the appellant was tried and convicted and sentenced as noticed above.

While convicting the appellant, the Trial Court considered the testimonies of Lachhmi Devi, PW-1; Bimla Devi, PW-2; Jitendar Lal, PW-3; Dr. Janak Lal Mittal, PW-4 and Shri Rajinder Singh, Inspector, PW-5. Various seizure memos and the report of the chemical examiner and statements of the police officials whose evidence was of a formal character were also taken into consideration.

According to the evidence of PW-1 and PW-2, relations of the appellant with the deceased were strained and it was on that account that she had burnt the deceased by pouring kerosene oil on him and setting him on fire. The oral dying declaration made by the deceased to his mother, PW-1 and sister, PW-2 as also the statement of the deceased as heard by PW-3 at the hospital were heavily relied upon by the Trial Court in convicting the appellant. The Trial Court rejected the version of the appellant on the ground that it was contrary to the oral dying declaration made to the mother and sister by the deceased while he was still in the state of burning.

While Mr. Lalit, the learned senior counsel appearing for the appellant submitted that the story of the prosecution suffers from inherent improbabilities as no wife would commit the murder of her husband when the couple had lost their only child only a few weeks before the occurrence and there was no motive whatsoever for the appellant to commit the crime and the fact that both the deceased and the appellant were living together separately from the mother

and sister of the deceased was indicative of the fact that the relations between the mother-in-law and sister-in-law of the appellant were not cordial with the deceased and the appellant. He further submitted that the prosecution had failed to establish that the occurrence took place in the room where the appellant and the deceased were living together because of the absence of any burn marks on the bed or recovery of the burnt bedding from the room. Argued Mr. Lalit, that the alcohol concentration in the blood of the deceased, as reflected from the report of the chemical examiner, showed that the deceased was under the influence of liquor and possibly he received the burn injuries in a manner other than the one suggested by the prosecution. Learned counsel also submitted that the oral dying declaration cannot claim a probative value equal to the dying declaration reduced into writing by a Magistrate and that the oral dying declaration on the record did not inspire confidence and cannot form the basis of conviction.

Mr. Ranbir Yadav, learned counsel for the State, on the other hand submitted that the conduct of the appellant in not taking the deceased to the hospital and not being available on search by the police later on exposes her guilty mind and lends credence to the oral dying declaration. Learned counsel submitted that the oral dying declaration made by the deceased to his mother and sister have received ample corroboration from the statement of the deceased as heard by PW-3 at the hospital and that evidence by itself is sufficient to establish that the appellant had committed the crime.

That the deceased and the appellant were married 10 years prior to the occurrence and their only son died on July 23, 1984 is not disputed. There is also no dispute that the deceased died as a result of extensive burn injuries received by him during the night intervening 30-31 August, 1984. The extent of the alcohol concentration in the blood of the deceased has also been established to be very high by the chemical examiner indicating thereby that the deceased must have been under the influence of liquor at the time when he received the burn injuries. There being no eyewitness of the occurrence, the case rests only on circumstantial evidence and the question before us is whether the circumstances brought on the record connect the appellant with the crime and are compatible only with her guilt and incompatible with the hypothesis of her innocence.

While considering the circumstances, we shall first take up for consideration the alleged dying declaration made to Lachmi Devi, PW-1 and Bimla Devi, PW-2 at one and the same time by the deceased when he knocked at the door of his mother's room at about 2.00 a.m. while in a burning condition. According to PW-1 Lachmi Devi, mother of the deceased, when the deceased knocked at her door and she along with Bimla Devi PW-2 came out and saw Madan Lal in burning condition, "Madan Lal on enquiry told that Darshana Devi accused had sprinkled kerosene oil on him and had burnt him." She went on to add that thereafter she took Madan Lal to the hospital, in a rickshaw which met them on the way to the hospital. PW-2 while deposing about the oral dying declaration made by the deceased, when he knocked at the door at about 2.00 a.m., stated:

"Madan Lal knocked at our door. I and Lachmi Devi came out and saw Madan Lal burnt. Madan Lal had told that Darshana Devi had sprinkled kerosene oil on him when he was lying asleep and had burnt him. My mother took him to the hospital

where he subsequently expired."

There is variance in the statements of the two witness with regard to the exact words allegedly used was not in a fit condition to make a statement after the police had arrived at the hospital at about 3.45 a.m., in response to the police query. We, therefore, find it difficult to believe, as PW3 would like us to, that a patient with extensive burn injuries whose pulse could not be felt and whose blood pressure could not be recorded, was mentally fit and making a coherent statement that he had been burnt by his wife, keeping in view the concentration of alcohol in his blood, so as to be heard so clearly by PW3. It does not appear probable to us that the deceased could have made the statement as is being attributed to him by PW3. Even without the burn injuries, because of the alcohol concentration found in the body of the deceased, he could not be making a coherent. We therefore, find it difficult to rely upon the statement of PW3.

The prosecution has also not been able to establish any motive for the appellant to commit the murder of her husband particularly when the couple had lost their 9 year old only child just a few weeks before the occurrence. According to the investigating officer there were no marks of burning on the bed and through a broken bottle smelling of kerosene was taken into possession from the deceased neither the bed nor the bedding was found to have any burn marks. No burnt article was found in the room nor any such article was seized. Had the deceased been sleeping as deposed to by PW2, when kerosene oil was poured on him and he was set on fire, the bedding could not have remained unaffected by the room by the police either. The burnt pieces of the shirt of the deceased were recovered from the lane between the room of the deceased and his mother. In her statement under Section 313 Cr.P.C. the appellant while denying the prosecution allegations gave the following version:

"I was putting up with my husband Madan Lal in the room facing the house of my mother-in-law at Mansa.

Our only son died on July 23, 1984, which made my husband Madan Lal depressed and the depression continued Madan Lal developed insomnia as a result of which he started taking liquor in addition to intoxicating pills. Madan Lal had developed suicidal tendencies. On the night intervening August 30/August 31, 1984 I heard cries of my husband in the lane. I came in the lane. The clothes on the person of Madan Lal stood burnt and he was restless, in the lane. I rushed him to the hospital. Lachmi Devi PW1 and Bimla Devi PW2 followed us to the hospital where the condition of my husband became more serious. The hospital attendants made me sit in the verandah. After the death of my husband I was placed under arrest by the police under the pressure of my mother-in-law and sister-in-law with whom, my relations were strained since long. Their grouse was that I was hinderence in the way of my husband in giving maintenance to them. My relations with my husband were affectionate. I had written letter Ex. D 7 to my brother

Harbans Lal. I had moved the Education Department that I and my husband may be transferred to one place. I had made allegations therein against my mother-in-law, Madan Lal was talking irrelevant and incoherently when he was being taken to the hospital."

Of course the investigating officer, PW-5 in his statement asserted that the appellant was not available inspite of search but did not take the Court into confidence to state as to when and where he made the search for her. He stated that the appellant had been produced before him on the day of the occurrence itself at about 7.00 p.m. by Com. Balwinder Singh and he placed her under arrest. But, interestingly Com. Balwinder Singh has not been examined by the prosecution at the trial to support this version. According to the appellant she had been arrested from the hospital itself. There is no material on the record which may belie that assertion particularly when it is admitted that she had been formally placed under arrest at 7.00 p.m. on 31st August, 1984 itself. From a careful analysis of the evidence on the record we find that the possibility of the appellant being involved in the crime at the instance of the mother-in-law PW-1 and the sister-in-law, PW-2 as asserted by the appellant in her statement under Section 313 Cr.P.C. cannot be ruled out. PW-2 Bimla Devi had been deserted by her husband. She was living with her mother. Through, she stated in her cross-examination that Madan Lal was not supporting her and her mother, the appellant in her statement under Section 313 Cr.P.C. asserted that her mother-in-law and her sister-in-law considered her to be a hindrance in the way of the deceased giving maintenance to them. The letters written by the appellant to the Education Department and to her brother Harbans Lal, the authenticity of which has not been assailed by the prosecution, support the version of the appellant and show that the relations between the couple were cordial but the mother-in-law was not allowing them to live in peace. She had requested the Education Department through her letter Ex. D7 to post her at the place of posting of her husband so that they could live together. This conduct of the appellant does not show that the relationships between her and her husband were not cordial. Of course in the FIR PW-1, Lachhmi Devi, mother-in-law of the deceased, had stated that the deceased and his wife had strained relations since long and the deceased had been burnt by the appellant because of those strained relations but did not give out any cause for estrangement. At the trial she, however, tried to give the reasons for strained relations and went on to say, voluntarily, during the cross-examination, that the deceased used to object to the visit of some male teachers visiting the appellant at the house. This clearly is an improvement and exposes the extent to which PW-1 could go while making a statement against the appellant. In our opinion, the appellant had no motive to commit the crime and on the other hand the possibility of her being falsely implicated by her mother-in-law, PW1 cannot be ruled out. During the pendency of the trial against the appellant, the mother of the deceased, PW-1, who herself is a widow had engaged a counsel and moved an application for grant of succession certificate regarding the amounts due to the deceased from his employer, the Punjab Government. PW1 admitted during the cross-examination that she had engaged a counsel and moved an application for grant of succession certificate about two and a half months after the death of the deceased. The hot haste in which she

made the application when the case against, the legal heir of the deceased, the appellant herein, had not even proceeded to trial, is quite indicative of her design to grab the money of the deceased. Thus, she stood to gain financially from the conviction of the appellant, as the only son of the deceased and the appellant had already died and the appellant, after conviction, would not be entitled to inherit the property of the deceased. She had thus a reason, to falsely implicate the appellant and her action in claiming the amounts due to the deceased is tell tale.

The prosecution, in our opinion, has failed to establish any of the circumstances to connect the appellant with the crime and has thus not been able to bring home the guilt to the appellant beyond a reasonable doubt. The order of conviction and sentence of the appellant cannot be sustained. The appeal consequently succeeds and is allowed. The conviction and sentence of the appellant is set aside. The appellant is on bail. Her bail bonds shall stand discharged.