

Babu Vs. State

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Court : Delhi

Decided On : Dec-01-2014

Judge : Mukta Gupta

Appellant : Babu

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 28, 2014 Judgment Delivered on: December 01, 2014 % + CRL.A.1460/2010 BABU Represented by: Appellant Ms.Inderjeet Sidhu, Advocate. versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for the State with Inspector Keshav Kumar. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Babu is convicted for the offence of murder of his wife Gunjan and directed to undergo Rigorous Imprisonment for life and to pay a fine of `5,000/- and in default of payment of fine to further undergo Simple Imprisonment for a period of one year.

2. Learned counsel for the appellant contends that the deposition of Master Pushkar, son of Babu and the deceased cannot be relied upon being tutored as his statement under Section 161 Cr.P.C. was recorded after three months of the

incident during which period he was staying with his maternal grandparents. Even the dying declaration of the deceased was recorded belatedly after her parents had arrived and is thus a tutored version. There is no allegation that Babu ever demanded dowry or misbehaved with the deceased on that count. As per the FSL report no kerosene was found in the scalp hair which probablises the defence version that the deceased died due to the spilling over of the oil on the body while boiling the milk for the children. Babu was not even present at the time of incident as deposed by DW-1. Thus no case is made out for conviction of the appellant hence he be acquitted.

3. The explanation of the appellant in his statement under Section 313 Cr.P.C is as under:

I am innocent and falsely implicated in this case. On 27.8.09, I was not in my house. I went to my friends house at about 10/11 am as son of my friend was ill. He was in fever. My friend had already visited the doctor at LBS Hospital. The son of my friend become normal after taking the medicine. My friend had stopped me for going to my house back. I have told my wife that it might be that will stay at the house of my friend. I returned back on next day 10/10.30 am. At the time vinod my brother met me at home. Goonja was boiling milk on previous night and stove had thrown the oil upon her. I had telephoned to my jija Ramu. Ramu had told me to come to hospital stating that condition of my wife was stable. I had been asked by my jija not to come at hospital as my in laws were there to beat me.

4. Babu examined two defence witnesses Sanjay DW-1 his friend and Vinod Kumar DW-2 his brother. Sanjay deposed that on September 27, 2009 at about 11.00 AM Babu came to his house as he had called Babu because his son was ill. They talked for considerable time. Thereafter he and his wife went to the clinic along with the child leaving Babu at their room. He requested Babu to stay at his house because if the health of his son deteriorated then Babu could accompany him. His son was normal on the next day. In cross-examination he admitted that he went to the clinic at about 12.00 noon and came back at 2.00 PM on September 27, 2009. The version of Sanjay asking Babu to stay at home is not plausible. The child was not admitted in the hospital thus it was unnatural to detain

a friend at night. DW-2 Vinod Kumar deposed that on the morning of September 28, 2009 when he was sleeping someone opened the door and Goonja was found present at the door wrapped in a chaddar. Goonja told his wife that while boiling the milk on the stove she sustained fire burns. Thus his mother was called by his wife, where after his wife and mother carried Goonja to the hospital. He admitted that Champa Devi who admitted Goonja in hospital was the mother in law of Goonja .

5. The process of law was set into motion when the deceased was taken to the hospital by her mother-in-law Champa Devi and an information in this regard was sent from GTB Hospital to PS Mandawali. The Investigating Officer reached the hospital where Goonja was declared fit for statement. Shri P.K.Jayant, SDM PW-2 was called at the hospital who again sought the opinion regarding Goonjas fitness for making the statement at 4.30 PM when he recorded the statement of Goonja vide Ex.PW-2/A. In her statement Goonja stated that she was married to Babu and had three children i.e.two sons and one daughter. She married around Diwali in the year 2002 and was illiterate. After her marriage her husband had been beating her as he suspected her character. Despite her assuring him that she had no affair with anyone else and she could swear by the three children her husband continued beating her. Whatever money she had for running the house her husband would take away. Her husband did not do any work but her mother-in-law was very good. Her mother-in-law gave her money every month to run the house however, her husband used to snatch the said money as well for drinking liquor after beating her. On that day in the morning at about 4.00-5.00 AM her husband quarrelled with her and thereafter poured kerosene oil on her and burnt her by lighting the matchstick. She was brought to the GTB Hospital by her mother-in-law and sister-in-law who were both very good. Her husband who used to beat her had burnt her. Whatever items were given in the dowry in the marriage have also been sold by her husband for liquor and her husband was the only person responsible in bringing her to the said position. Thus her husband should be given the severest punishment. She further stated that however as a matter of fact her husband had never demanded dowry from her parents after the marriage.

6. The post-mortem of the deceased was conducted by Dr.Meghali PW-3 who authored the report Ex.PW-3/A. She noticed superficial to deep antemortem flames burns present on lower half of face, neck, chest, abdomen, genitalia, both thighs, back of both upper limbs, front of left arm, buttocks and back of both legs. The burns had puss and involved 65% of the total surface area. The cause of death was opined to be septicaemic shock as a result infected ante-mortem flames burns involving 65% of the total body surface area.

7. During the course of investigation statement of the Ramesh, father of the deceased was also recorded on the same day who also supported the version of the deceased qua the harassment and deposed in sync with his statement recorded under Section 161 Cr.P.C.

8. Subsequently the statement of the son of the deceased Master Pushkar was also recorded under Section 161 Cr.P.C. Master Pushkar deposed before the Court that Babu who was his father present in the Court had burnt his mother Gunjan by pouring kerosene oil and thereafter his mother was set on fire by lighting the matchstick from the match box. He further stated that Babu used to beat his mother after taking liquor. In cross-examination this child admitted that he was living with his maternal grandparents at Bijnaur and he was told by his maternal grandfather what he has to speak in the court. He denied the suggestion of the defence that at the time of incident he was sleeping and thus did not see anything.

9. Though learned counsel for the appellant has sought to assail the testimony of Master Pushkar on the ground that he has been tutored by his maternal grandparents, however, there is nothing on record to draw such inference. Merely because this witness stated that his maternal grandfather told him what he had to speak in the Court did not mean that the maternal grandfather put the words in his mouth. Obviously the grandfather was bound to tell the child where he was taken on that date and for what purpose. The only suggestion given to this witness is that he was sleeping at that time and had not seen the incident.

10. Even excluding the testimony of Master Pushkar the dying declaration of the deceased, made soon after the incident to the SDM when she was declared fit for

making statement, proves beyond reasonable doubt the offence committed by the appellant. The deceased has been truthful in making the statement. The deceased did not implicate any of her in-laws. She fairly stated repeatedly that none of the in-laws were involved and in fact her mother-in-law and other family members were very good and helping. She was even fair to the appellant when she said that he never demanded dowry after the marriage. The dispute between the husband and wife was that Babu did not earn and whatever money was given to her by her mother-in-law to run the house he would take that money away and spend the same in drinking. Babu not only abused and quarrelled with the deceased on this issue but also doubted her character. There is no suggestion to Ramesh, father of the deceased also that his daughter made the statement to the SDM at his instance before the Court. The version of the deceased is further corroborated by the FSL report which notices the presence of kerosene in the bottle and articles recovered from the spot.

11. The conduct of the appellant in not saving the deceased is apparent from the defence evidence itself. DW-2 Vinod Kumar stated that Goonja herself came to their house and stated that she had been burnt and where after his mother and wife who were the mother-in-law and sister-in-law of Goonja took her to GTB Hospital.

12. It is trite law that conviction can be based solely on the dying declaration without any corroboration. If the court finds that the dying declaration is not the result of tutoring, prompting or imagination and the deceased was not suffering from any infirmity while making the statement, the Court can safely rely on it to base the conviction. In the decision reported in 1992 (2) SCC474Paniben (Smt) vs. State of Gujarat culling out the principles governing the dying declaration the Supreme Court noted:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC104:

1976. SCC (Cri) 376 : (1976) 2 SCR764) (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC552:

1985. SCC (Cri) 127 : AIR 1985 SC416 and Ramawati Devi v. State of Bihar [(1983) 1 SCC211:

1983. SCC (Cri) 169 : AIR 1983 SC164.) (iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC618 1976 SCC (Cri) 473 : AIR 1976 SC1994.) (iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC264 1974 SCC (Cri) 426].) (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC25 1981 SCC (Cri) 645: AIR 1982 SC1021) (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC654 1981 SCC (Cri) 581].) (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC455 1981 SCC (Cri) 364: AIR 1981 SC617.) (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC769 1979 SCC (Cri) 519: AIR 1979 SC1505.) (ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC152 1988 SCC (Cri) 342: AIR 1988 SC912) (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC390 1989 SCC (Cri) 585: AIR 1989 SC1519 .) (xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be

trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC700 1982 SCC (Cri) 334: AIR 1982 SC839.]

13. Consequently, we find no infirmity in the impugned judgement of conviction and order on sentence. Appeal is dismissed. The appellant will suffer the remaining sentence.

14. T.C.R. be returned.

15. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER01 2014 vn

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