

Jitender Singh Vs. State of Delhi

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Court : Delhi

Decided On : Apr-02-2014

Judge : Kailash Gambhir

Appellant : Jitender Singh

Respondent : State of Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: April 02, 2014 + CRL.A. 464/1999 JITENDER SINGH Through: Appellant Mr.M.A. Rahman, Mr. Ali Abbas, Advocates Versus STATE OF DELHI Through: Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State with Mr. Archit Singh, Advocate CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J1 By this appeal filed under section 374 of Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.), the appellants seek to challenge the impugned judgment dated 28.05.1999 and order on sentence dated 29.05.1999 whereby the Appellant - Jitender Singh is convicted for committing an offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as IPC) and the appellant was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- and in case of default, to undergo further rigorous imprisonment for a period of six months.

2. The facts germane to the case of the prosecution are that - That accused Jitender had thrown acid on his own mother, Smt. Maya Devi over some property issue. On 9.8.97 on receipt of DD No.25B for enquiry, HC Sanjay Kumar alongwith constable Tarsem Singh went to the place of occurrence of the incident at House No.D-53 Indira Jheel, Friends Enclave, Sultan Puri, Delhi. Injured was removed to DDU hospital. No eyewitness was found at the spot. The police then went to DDU Hospital. The police then collected the MLC of injured Smt. Maya Devi. Since she was found fit to make statement, her statement was recorded. She stated in her statement that she stayed with her family at the aforesaid address. That her son used to quarrel with her quite often: that he used to ask her to get the house(property) transferred on his name or else he would throw her out of the house. She further stated that on that day at about 8.00 am while she was sitting at the door of her house, accused jitender said that mein tumhe aakhiri baar kehta hun ye ghar mujhe dedo, warna iska natija bura hoga.She asked him to pay the debt that was due on them, he clearly barged away and blatantly conveyed that I wont pay a single penny. He then asked her tujhe abhi maza chakhata hun and filled a jug with tejab(acid) and poured it on his mothers head.She raised an alarm. Her son Satinder and husband came, jitender ran away from there. She was then removed to the hospital. Smt. Maya devi and her husband did put signatures on the statement. The same was attested by HC Sanjay Kumar. He prepared the endorsement and sent the same through Constable Tarsem Singh to the police station to get the FIR registered. FIR was registered u/s 307 IPC by the IO. Thereafter, the FIR was handed over to the SI, R.P. Singh. He went at the spot and prepared a site plan, recorded the statement of the witnesses, seized the steel jug without handle and one black coloured can containing acid and deposited the same in the malkhana. Accused was arrested during investigation. Unfortunately, Smt. Maya devi died on 11.9.97. Thereafter, inquest proceedings were conducted and the body was sent for post mortem. Thereafter, challan was filed Case was committed to court of sessions on 16.12.97. Accused was charged under section 302 IPC to which he pleaded not guilty and claimed trial.

3. To prove its case the prosecution examined as many as 9 witnesses. After the completion of prosecution evidence, statement of the accused was recorded under Section 313 of Cr.P.C. wherein the entire incriminating evidence was put to him

and in reply he pleaded innocence and false implication.

4. On behalf of the Appellant - Jitender Singh, arguments were addressed by Mr. M.A. Rehman, Advocate. The State was led by Ms. Richa Kapoor, learned Additional Public Prosecutor.

5. Addressing arguments on behalf of the appellant Mr. M.A. Rehman, Advocate submitted that there is not even an iota of evidence proved on record by the prosecution against the appellant and yet the learned trial court has found the appellant guilty for committing such a grave offence that too against his own mother.

6. Learned counsel for the appellant further submitted that the entire case of the prosecution is based on the testimonies of two eye witnesses and also on the alleged dying declaration made by the deceased. On the testimony of the two eye witnesses, counsel for the appellant submitted that both these eye witnesses turned hostile and no cognizance can be taken of the statement made by them under Section 161 of Cr.P.C. and thus, the very genesis of the prosecution case stood demolished with the said two eye witnesses turning hostile.

7. So far as the dying declaration of the deceased Maya is concerned, learned counsel for the appellant submitted that the same was recorded by a police official and as per the settled legal position, recording of dying declaration by any police official has to be looked upon with suspicion and doubts. Learned counsel for the appellant also submitted that the Investigating Officer did not take any steps to requisition the services of a Sub-Divisional Magistrate, who could be the only competent officer to record the dying declaration of the deceased.

8. Learned counsel for the appellant further submitted that even the Investigating Officer did not get certification of medical condition of the deceased before recording her statement. Learned counsel further submitted that the alleged dying declaration recorded by the Investigating Officer is totally inadmissible in evidence and based on such an inadmissible document, the appellant cannot be held guilty for committing such a serious offence.

9. Learned counsel further raised a doubt about the presence of the appellant at the spot i.e. at the residence at House No.D-53, Indira Jheel, Friends Enclave, Sultanpuri, Delhi, as he was away to his in-laws house at Ghumas Pur, Distt Farukabad and he returned back two days after the date of incident. Learned counsel for the appellant further submitted that the appellant was falsely implicated in the present case at the instance of some of the creditors from whom his mother had taken certain loans. Besides raising the aforesaid contentions on merits of the case, learned counsel for the appellant laid much stress on the sufferings which the appellant and his wife had already undergone due to incarceration of the appellant for a period of about 7 years and upholding the judgment and order on sentence will further ruin him and his entire family. Learned counsel for the appellant pleaded for bestowing mercy as there is none else except him to support his family and further incarceration of the appellant will put his wife and children on the road to starvation.

10. Based on the aforesaid submissions, learned counsel for the appellant urged that the impugned judgment of conviction and order on sentence passed by the learned trial court be set aside.

11. Refuting the aforesaid submissions made by learned counsel for the appellant, Ms. Richa Kapoor, Additional Public Prosecutor for the State vehemently contended that the case of the prosecution is an open and shut case even despite the fact that the two of the prime witnesses had turned hostile. Learned APP further argued that the incident had happened at the residence of the victim where the appellant was also residing and time was around 8.00 a.m. in the morning on 09.08.1997 when the alleged quarrel had taken place between the appellant and his mother. Learned APP further submitted that PW-1 husband of the deceased and other son PW-2 - Satinder Kumar were also present in the house and after the incident, the victim was immediately rushed to the hospital by PW-1 and PW-2. Learned APP also submitted that matter was reported to the police vide DD No.25B at about 10.00 a.m. and immediately thereafter police had reached the residence of victim and by that time, victim was already taken to the hospital. Learned APP further submitted that at the hospital, HC Sanjay Kumar (PW-5) recorded the statement of the victim on which the endorsement was made by him

and rukka was sent to the Police Station for registration of the FIR. Submission made by the learned APP was that there was no delay in the registration of FIR and therefore, there was no possibility of false implication of the appellant either by the victim or the other family members, as within such a short span of time, there arise remote chances of any person to have cooked up a false story to implicate the appellant. Learned APP further argued that PW-1 and PW-2 had turned hostile although in their statements recorded under Section 161 Cr.P.C. they had fully supported the same version as was narrated by the deceased in her first statement and thus, it is quite evident it was later that these witnesses thought to find a rescue for the appellant who is none else but their own family member. Learned APP further argued that even despite the fact of the said prime witnesses turning hostile, the dying declaration of the deceased is a strong piece of incriminating evidence as against the appellant and there is no escape route for the appellant to wriggle out from the same.

12. Learned APP further submitted that no mother would falsely implicate his own son unless the crime is actually committed by him that too in such a veracious manner and this is what had happened in the present case. Learned APP further submitted that the victim was fully conscious and her mental faculties were quite alive as per the MLC report proved on record as Ex.PW-7/A and therefore, even in the absence of any medical certification, one can find that the victim was absolutely medically fit to give her statement to the Investigating Officer. Learned APP also submitted that the said statement was also duly signed by the husband, although in his cross-examination, he took a false stand of appending his signatures on blank papers. Learned APP also argued that at the time of making the said statement by the victim, the case against the appellant was registered under Section 307 IPC and the Investigating Officer did not requisition the services of the Sub-Divisional Magistrate under wrong notion that perhaps the victim would survive. Learned APP also argued that the victim remained in the hospital for about 15 days and during the said period, she almost remained unconscious. Learned APP further submitted that mere fact that the said statement was recorded by the police official, the same by itself would not be enough to disbelieve the last statement of the deceased even in the absence of any certification by the doctor.

13. Learned APP further stated that plea of alibi was also taken by the appellant in his answer to the last question put to him while recording his statement under Section 313 of Cr.P.C., but no defence was adduced by the appellant to prove that he was not present at the time of commission of the crime and he was away from Delhi.

14. Based on the aforesaid submissions, learned APP for the State prayed that the judgment and order on sentence passed by the learned trial court be upheld.

15. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the records of the learned Trial Court.

16. The case in hand depicts the most gruesome and barbaric act of killing a woman by throwing acid on her head by none else but her own son. It is hard to fathom that ones own blood would commit such a ghastly act of killing his own creator that too out of greed to get the property in his own name. A mother who keeps a child for nine months in her womb, who makes all the sacrifices and bears all the pain without any mope or anguish to bring him to life cannot in her wildest dreams imagine that the same child would one day devastate or ravage her sanctity in such a petrified manner for his sheer crude motives, just for a mere property right. It shakes the very basis of humanity, it kills the faith and emotional bonding borne in the relationship of a mother and his son. It is a dismal truth that acid attacks are quite common in our country, no wonder that any man or woman with malicious intent to take revenge, disfigure and harm the person, commit such a sick act, but committing such an offence with none else than your own mother, tarnishes the very creation of the society as a whole. It causes excruciating pain and terror. The victims are left mutilated and scarred for the rest of their lives, and a few relent.

17. One such harsh reality was experienced by Smt. Maya Devi on the morning of 09.08.1997 at 8 a.m., when the deceased was just sitting at the door of her house, her son - the appellant herein started intimidating her to transfer the house in his name or she would be made to face dire consequences. The mother expressed her helplessness by saying that who would pay the debts of the creditors and it

was important that the same should be satisfied first, she asked him to take responsibility, which instigated his son and the appellant started abusing her, and to teach her a lesson, he then poured acid(tezab) over her head. The mother started crying and on her crying, her husband -Hodal Singh and son- Satinder reached and on seeing them, the accused ran away. The victim was immediately taken to the hospital by her husband and the son. The matter was reported to the police vide DD No.25B which was assigned to PW-5 HC Sanjay Kumar who first went to the place of occurrence and not finding the victim there, he then reached the DDU Hospital along with Constable - Tarsem Singh. PW-5 Sanjay Kumar and Constable Tarsem reached the DDU Hospital at 11-1105 a.m. and after reaching the hospital they contacted the doctor who attended the victim. MLC of the victim Maya Devi was collected by the said officials and thereafter, they reached to the patient at about 11.35 a.m. when HC Sanjay Kumar had recorded her statement which was proved on record as Ex. PW-5/A. The said statement was endorsed by the Head Constable Sanjay Kumar vide Ex.PW-5/B and FIR No.735/97 was registered based on the said first statement of the victim. At the end of her statement, victim had appended her right thumb impression and this statement was also duly signed by Hodal Singh, her husband. It was also attested by HC Sanjay Kumar. On perusal of the endorsement as made by HC Sanjay Kumar on the first statement of the victim, one finds that HC Sanjay Kumar had duly referred to the MLC Report and the condition of the victim recorded in the MLC, was satisfactory as she was fit to make a statement. The victim had even duly heard her statement before affixing her thumb impression. This dying declaration has been subject matter of the controversy before the learned Trial Court and before this court as well. The main objection raised by counsel for the appellant was that the police official is not a competent person to record the dying declaration of the victim; the second contention raised was that the police official did not requisition the services of Sub Divisional Magistrate for recording the dying declaration of the deceased and thirdly because the dying declaration was not certified by the doctor about the fitness of the victim.

18. The learned Trial Court has very objectively and comprehensively dealt with this issue and we do not have any kind of disagreement with the reasoning given by the learned Trial Court. The learned Trial Court was right in observing that at

the time of recording the dying declaration of the victim by the police officer, the victim was only a complainant and therefore, the presence of the doctor was not required nor there was any need to requisition the services of the Sub Divisional Magistrate. It is a settled legal position that in all such cases, the same very statement which was recorded as a complaint or statement under Section 161 Cr. P.C. can be considered as a dying declaration if ultimately the victim does not survive as a result of injury sustained by him/her. However, before accepting such a statement of the victim as a dying declaration the same must strictly and carefully be scrutinized to inspire full confidence of the court in its truthfulness and correctness. So far as the facts of the present case are concerned, there was no occasion for the Investigating Officer to have requisitioned the services of SDM or to separately seek certification of the doctor as the Investigating Officer had recorded the complaint of the victim with an impression that she would survive. The litmus test in all such cases is that whether the statement made by the victim inspires confidence of the court or not and such an inspiration or satisfaction of the court also depends upon the other surrounding circumstances proved on record in order to give strength to such statement made by the victim.

19. The spontaneity with which the statement of the victim was recorded by the Investigating Officer, i.e. immediately after she had reached the hospital cannot be construed as a result of any kind of tutoring or prompting of the victim. Another important question here is that as to who would tutor the victim and with what motive?. In the present case, the victim is none else but the mother of the accused and the only person who had reached the hospital along with the victim was none else but their own family members. It is not the case of the accused that her mother was tutored or prompted by his own father and brother or the HC Sanjay Kumar was derived by any malice to falsely implicate the present appellant. The learned Trial Court is right to observe that no suggestion was put to PW-5 Sanjay Kumar that he had recorded the statement of the victim Ex.PW-5/A on his own or that he was influenced by any extraneous considerations. The learned Trial Court is also right in observing that the suggestion given in the cross-examination of HC Sanjay Kumar that thumb impression of Smt. Maya Devi on Ex.PW-5/A was obtained on a blank paper amounts to admission on the part of the accused that thumb impression at point A on Ex.PW-5/A was of the deceased Smt. Maya Devi.

Smt. Maya Devi was also found fully conscious and oriented as per the opinion given by the doctor in the MLC proved on record as Ex.PW-8/A and it was proved on record that the statement of the victim was recorded by HC Sanjay Kumar after having obtained the said MLC wherein her such condition was recorded. The said statement of the victim was also duly signed by PW-1 Hodel Singh, father of the accused but in his cross-examination he took a stand that his signatures were obtained on blank papers by the HC Sanjay Kumar. The learned Trial Court is right in observing that this false plea was taken by PW-1 Hodel Singh in order to save the accused, his own son.

20. Its a trite law that once the court is satisfied that dying declaration made by the victim was true and voluntary without being tutored or prompted , the conviction of the accused undoubtedly can be based on such a dying declaration even without further corroboration. The principles governing dying declaration are fairly well settled. They were eloquently summed up by the Honble Supreme Court in the matter of Paniben vs State of Gujarat, AIR 1992 SC1817 which reads as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (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. (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the

medical opinion cannot prevail.

21. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

In *Anil Kumar vs. State*, 2014 I AD (Delhi) 531, the Honble Supreme Court held as under:

It will also be useful here to refer to the judgment of the Supreme Court in the case of *State of Haryana v. Mange Ram & Ors*, reported in MANU/SC/1125/2002 : AIR 2003 SC558 wherein the Apex Court took a view that under Indian law, for dying declaration to be admissible in evidence, it is not necessary that the maker of the statement at the time of making his statement should be under the shadow of death. Relevant parts of the same is reproduced as under: That is not what Section 32 of the Indian Evidence Act says. That is not the law in India. Under Indian Law, for dying declaration to be admissible in evidence, it is not necessary that the maker of the statement at the time of making the statement should be under shadow of death and should entertain the belief that his death was imminent. The expectation of imminent death is not the requirement of law.

16. The concept of dying declaration was also extensively discussed by the Constitution Bench of the Supreme Court in the case of *Laxman v. State of Maharashtra*, reported in MANU/SC/0707/2002 :

2002. 6 SCC710 wherein it was held as under:

The justice theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many

circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the

voluntary and truthful nature of the declaration can be established otherwise.

22. Applying the aforesaid settled principles to the facts of the present case, we have no hesitation in affirming the view taken by the learned Trial Court that the said dying declaration recorded by the Investigating Officer and proved on record as Ex.PW-5/A was a genuine last statement made by the deceased uninfluenced by any kind of prompting, tutoring or any other external pressure and the same was also recorded when the Investigating Officer had satisfied himself about the medical fitness of the victim from the MLC.

23. The plea of alibi taken by the accused was not proved by him as no evidence was led by him in this regard. The learned Trial Court is right in discoursing that for proving a plea of alibi, the same must be proved with absolute certainty so as to completely exclude the possibility of presence of a person at the spot of the crime. No evidence was adduced by the accused to prove that he was not present at that time of commission of crime.

24. The two prime witnesses, who later turned hostile were none else but the father and brother of the accused and it is quite explicable as to why they had turned hostile. Their initial statements recorded under Section 161 Cr. P.C. were in complete conformity and consonance with the last statement made by the victim and therefore, their position at the time when the crime was committed and after the death of the victim had completely distorted. After the death of Smt. Maya devi, it is quite palpable that they would try to find a rescue for their family member who is well alive and has a family comprising of one child and his wife, and most importantly who is none other but her own son. Certainly, the father after having lost his wife would not like to loose his son and this reason is sufficient to have made him turned hostile at the time of his court deposition. However, we find the other circumstantial evidence including the dying declaration made by the deceased sufficient enough to do absolute justice at least to the soul of the victim who was killed by her own son in such a brutal, inhuman and barbaric manner. We do not see any reason to sympathise with a man, who had the audacity to devastate his own creator, his mother. No doubt that presently he has his wife and children to be taken care of, but we cannot be oblivious of the fact that all the

circumstances strictly support the malicious and horrific intent of the accused and leave no iota of doubt that it was him who committed the offence. It is solely the accused who created this destiny for himself 17 years ago.

25. In the light of the above discussion, we do not find any illegality or perversity in the judgment and order of sentence passed by the learned Trial Court holding the appellant guilty for committing an offence punishable under Section 302 IPC and awarding him sentence to undergo rigorous imprisonment for life.

26. Finding no merit in the appeal filed by the appellant, the same is dismissed.

27. The appellant is on bail. His bail bonds and surety bonds are cancelled. He is ordered to be taken into custody forthwith.

28. A copy of this order be sent to Jail Superintendant for information.

29. It is ordered accordingly. KAILASH GAMBHIR, J SUNITA GUPTA, J APRIL02 2014 pkb

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