

Sarwan Kumar Vs. State

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Court : Delhi

Decided On : Jan-09-2006

Reported in : 2006CriLJ838; 130(2006)DLT188; II(2006)DMC233

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313 and 374; Indian Penal Code (IPC) - Sections 302

Appeal No. : Cri.Appeal No. 248/2001

Appellant : Sarwan Kumar

Respondent : State

Advocate for Def. : Ravinder Chadha, APP and ; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : Mir Akhtar Hussain, Adv

Disposition : Appeal dismissed

Judgement :

Manmohan Sarin, J.

1. This is an appeal under Section 374 of the Code of Criminal Procedure preferred against the judgment dated 27th November, 2000 passed in S.C.No.69/1999 by the Additional Sessions Judge convicting the appellant under

Section 302 of the Indian Penal Code, in case registered vide FIR No.429/1999, Police Station Nand Nagri. By an order of sentence of the same date, the Additional Sessions Judge sentenced the appellant to life imprisonment and a fine of Rs.3,000/- under Section 302 of the IPC and in default of payment of fine, to undergo further rigorous imprisonment for one year.

2. The case of the prosecution, in brief, is that the appellant on 7th July, 1999, poured kerosene oil on his wife Rajni and set her on fire. The appellant got married to Rajni three months prior to the date of incident. Rajni sustained nearly 95% burns and was rushed to the Guru Teg Bahadur Hospital by her mother-in-law. On admission, she was found unfit for statement. However, on 8th July, 1999, the Sub-Divisional Magistrate on being informed by the Investigating Officer that Rajni was in a fit state to give statement, had proceeded to the Hospital and recorded her statement after the Doctor at Guru Teg Bahadur Hospital had certified her as 'fit' to make statement. At about 5.35 to 5.40 p.m., the statement was recorded by the SDM in his own hand.

3. In the event, Smt. Rajni expired on 12th July, 1999. A postmortem was done and an inquest was conducted.

4. The deceased in her statement to the SDM, stated that Appellant i.e., her husband, had poured kerosene oil and snatched the match box from her and set her on fire. She stated that her husband alone was responsible for the incident and no one else was responsible. She stated that her brother-in-law was lying on the Charpoy while her mother-in-law was on the first floor.

5. The above dying declaration implicated the appellant. The Additional Sessions Judge relied on this dying declaration to convict the appellant. It is fairly well settled that dying declaration, if found reliable, does not require corroboration and a conviction can solely be based on it.

6. Counsel for the appellant submits that the prosecution has failed to prove or show any motive of the appellant for the alleged offence. Learned counsel for the appellant, assailing the conviction, urged that there were grave doubts about the authenticity, credibility and reliability of the dying declaration. The dying

declaration, it is urged, was mired with contradictions and controversies. Hence, no reliance should be placed on the same. In the statement under Section 313 Cr.PC, the appellant, who was a Rickshaw Puller by profession, had taken the position that he was at work, when he was informed that his wife had met with an accident and was admitted to the Hospital. The appellant has also relied on the testimonies of DW-1 as also of DW-9.

7. Let us first consider the challenge to the authenticity, credibility and reliability of the dying declaration.

8. Mr.Mir Akhtar Hussain submitted that the time given by the Sub-Divisional Magistrate of recording the dying declaration is 5.40 p.m. on 8.7.1999. The endorsement on the dying declaration as also on the MLC regarding the deceased then being in a fit state of health to make the declaration is also of 5.40 p.m. The SDM in his deposition and cross-examination, has stated that he began recording the statement at about 5.35 p.m. and completed it at 5.40 p.m. Counsel urges that the certification regarding being in a fit mental state and condition, had to be recorded prior to 5.40 p.m. and not at 5.40 p.m., which is the completion time given. Mr.Hussain submits that this raises a doubt as to the reliability, credibility and genuineness of the dying declaration since the certification of being in a fit mental state and condition had not been taken prior to recording of the declaration by the SDM but on completion of the declaration. The plea sought to be taken by the appellant is a hyper technical one. The SDM in the cross-examination inter alias stated as under :

I started recording the statement of injured at 5.35 p.m. It took me about five minutes to record her statement. (Again said) it may be 5 to 7 minutes. I remained for about 4 to 5 minutes with the patient after recording her statement. I left the Hospital thereafter on completion of the statement of the injured. The Doctor opined fit when I started recording her statement, i.e., first question regarding her name and address.

It would be clear from the foregoing that the SDM has explained that he commenced recording of the statement at 5.35 p.m. and the Doctor's opinion was taken when he started recording the statement. The fact that the Doctor signed it

upon completion of the statement and recorded the time as 5.40 p.m. is of no consequence.

9. The next ground taken by the learned counsel for the appellant in impugning the dying declaration is the interpolations in the recording regarding fitness of the deceased to give the dying declaration in the MLC. The time of admission shown in the MLC was 5.15 p.m. on 7.7.1999. At the time of arrival in the Hospital, she was found fit for her statement. An endorsement to this effect is signed by Dr. Sandeep. There is another endorsement on the MLC, which has been marked as Exhibit PW-10/A at point 'A'

Fit for statement

Sd/- Dr... (illegible)

Senior Surgeon

5.40 p.m.

8.7.99

There is an overwriting on the numeral '5' in the time 5.40 p.m. It is also on this certification on which reliance has also been placed by the prosecution regarding deceased being in a fit state to make the dying declaration apart from the endorsement made on the dying declaration itself, i.e., Exhibit PW-9/A. There is yet another endorsement on the MLC of which notice may be taken in the following words:

6.30 p.m. Patient evaluated. Heavily sedated for abnormal behavior. Unfit for statement.

The endorsement regarding the deceased being in a fit state to make the dying declaration in the MLC was made by Dr. Sandeep Bansal, PW-10. He proved the said endorsement as Exhibit PW-10/A at point 'A'. He was cross-examined regarding what is referred to as the interpolations or overwriting of the numeral '5' regarding time. He candidly stated that there was overwriting but it was due to a mistake and the same had been corrected at once so he did not make his initials

on the writing. He stated that he did not put his initials since he had signed just above the overwriting. He denied the suggestion that no particular time had been mentioned under his signatures. He also denied that he had not examined the patient before giving his opinion. The Explanationn given by Dr. Sandeep Bansal is a candid one which inspires confidence. Besides, endorsement regarding deceased being in a fit state apart from the MLC has also been made by the said Doctor on Exhibit PW-9/A at point 'X'. The endorsement on dying declaration Exhibit PW-9/A regarding fit mental state and condition is without any corrections. We are of the view that the grounds sought to be urged regarding alleged discrepancy in time regarding recording of the dying declaration or the alleged interpolation are devoid of merit and stand duly explained by the concerned witnesses. No cloud can be cast on the dying declaration by the alleged grounds. The reliability and credibility of dying declaration is not affected by the said grounds. The judgment relied on by the appellant namely Joseph v. State of Kerala : 2003 CriLJ813 would not advance the appellant's case.

10. Learned counsel for the appellant had also urged that the endorsement regarding fitness of the deceased to make the dying declaration appears on the dying declaration Exhibit PW-9/A as well as on the MLC Exhibit PW-10/A. He questions the authenticity of the certificate of fitness due to its unusual location i.e left hand side margin at the corner of PW-9/A. According to him, it raises suspicion and doubt. Besides, he submits that these signatures do not tally with the signatures of Dr. Bansal on the MLC.

11. Learned counsel for the State during the course of submissions clarified that at the time of admission, the deceased was dealt with by the Casualty Department and thereafter, she was shifted to the Surgery Ward. The endorsement on the dying declaration PW-9/A regarding fitness had been made by Dr. Bansal at point 'X' and the same had been proved by the SDM stating that he had got the said endorsement by the concerned Doctor, who was present. While it is true that the said endorsement was not proved by Dr. Bansal since the SDM had proved the same, Dr. Bansal in his statement duly proved the endorsement regarding fitness made by him on the MLC Exhibit PW-10/A at point 'X'. We do not find any significant difference in the signatures of Dr. Bansal in Exhibit PW-9/A or Exhibit

PW-10/A, so as to warrant any inference of fabrication.

12. Mr.Hussain next submitted that as per the MLC, the deceased had suffered 100% burns as recorded in the MLC. PW-12 Dr.Gaurav Vinod Jain, who conducted the postmortem also found that burns were present over 95% of the body surface. As for external injuries found, he reported as under:

superficial deep infected burns were present over 95% of the body surface sparing the scalp and parts of soles. Finger tips were burnt. Singeing of scalp hair were present, the facial, pubic and axillary hair were also burnt. No other external injury was present.

He also deposed that the forearms including the fingers and the thumb were in burnt condition.

13. Learned counsel for the appellant submits that with over 95% burns and the fingers and thumb having been burnt including finger tips, the thumb impression of the deceased could not have contained ridges and lines as they appear in Exhibit PW-9/A. He submits that as confirmed by the Doctors in case the tips are burnt, then lining and ridges of the thumb do not appear in the thumb impression. He submits that all these factors raise doubts and cast a cloud on the authenticity, reliability and credibility of the dying declaration. He submits that a mere perusal of Exhibit PW-9/A shows that ridges, curves and lines were there. Reliance was placed by the counsel on the judgment reported at State of Punjab v. Gyan Kaur and Anr. : 1998 CriLJ2061 . In the cited case, the dying declaration had been recorded by the Assistant Sub-Inspector of Police. As per the medical evidence, the deceased had 100% burns. The thumb mark of deceased appearing on the dying declaration had clear ridges and curves. The High Court found evidence of the Doctor not reliable as he failed to satisfactorily explain how such a thumb mark could appear on the dying declaration when the deceased had 100% burns over her body. The Doctor conducting the postmortem had deposed that there were 100% burns over her body and both the thumbs were burnt. The Supreme Court upheld the judgment of the High Court giving the benefit of doubt to the respondent- accused. The Supreme Court accordingly had dismissed the appeal.

14. We find that the cited case is distinguishable from the facts of the present case. In the cited case, there were 100% burns while in the present case, though MLC mentions 100% burns, the Doctor conducting the postmortem reported burns at 95% of body surface. Unlike in the cited case, the dying declaration in the present case has been recorded not by a Police Officer, but by a Sub-Divisional Magistrate in his own handwriting. The SDM being a responsible independent Officer, not only recorded the dying declaration in his own handwriting but had also obtained the certification of a Doctor regarding the fitness of the deceased to make the statement. The SDM clearly deposed that on receiving the call from the Investigating Officer that the injured was in a fit condition to make the statement, he reached the Hospital at about 5.30 p.m. where he met the Investigating Officer. He contacted the Doctor, who opined the patient as 'fit' to make the statement. The SDM thereupon, recorded the statement in his own handwriting and obtained the right thumb impression of the deceased at point 'A' and attested the same under his signatures. Based on the statement made by the then injured, now deceased Rajni, he directed the SHO, PS Nand Nagri to register a case. The dying declaration Exhibit PW-9/A is a clear, unambiguous, categorical document. The deceased clearly answered the questions put. She stated that her name was Rajni and she had been married about three months ago. On asking as to how she caught fire, she stated that Sarwan, her husband, had poured kerosene oil on her, snatched the match box from her and set her on fire. Her brother-in-law Pradeep was lying on the Charpoy while her mother-in-law was on the first floor. She clearly stated that her brother-in-law and mother-in-law were not involved in setting her on fire. She also stated that there used to be quarrels with her husband, who used to beat her after being drunk but there was no dispute as to the dowry. A perusal of the dying declaration as aforesaid, would show that there was no wavering, no uncertainty in the mind of the deceased. She had clearly stated how the incident had taken place. The dying declaration as made, inspires confidence.

15. Coming specifically to the question of there being ridges and lines on the thumb impression, Dr. Sandeep Beniwal, PW-14 when cross-examined, deposed that even in such burnt condition, thumb impression can be taken. He also denied the suggestion that lining of thumb impression would not come on paper if the thumb was burnt completely. He stated that lining of thumb will appear on some

part of the thumb even in that condition. Dr. Gaurav Vinod Jain, Senior Resident, who conducted the postmortem, had also deposed that lines of thumb impression can come in case of superficial burns. Further, that in case, the tips are in burnt condition, then lining of thumb impression does not appear. In the present case while it is stated that fingers and thumbs were not burnt and finger tips were burnt, there is no categorical statement that tips of the thumb were also burnt. Accordingly, it is possible that in the absence of the tips of the thumb being burnt or the thumb being partially burnt, lines and ridges would partly appear. Moreover, as noted, considering the fact that the dying declaration had been duly proved by a responsible, independent and disinterested Officer, who recorded it in his own hand and as also by the endorsement made by the Doctor, the objection sought to be raised regarding thumb impression not being that of the deceased on account of the presence of the ridges and lines despite 95% burns pales into insignificance. The learned Additional Public Prosecutor has rightly pointed out that in the declaration, the deceased did not implicate any member of her in-law's family even though she could have easily done so. The deceased attributed the crime to her husband only and stated that her mother-in-law and others had no hand in it besides there was no demand for money. These factors are further supportive of the reliability of the dying declaration. We accordingly hold that the dying declaration implicating the appellant is reliable and credible and the objections sought to be raised are without any merit.

16. It may also be noted that the attendant circumstances and the mass of other evidence also supports deceased having been burnt with kerosene oil. Kerosene oil, match box and matchsticks were recovered from the site and the scalp and hair of the deceased were singed and kerosene oil was found in the scalp.

17. Let us now consider the evidence sought to be canvassed by the appellant in his favor which, he states, has been wrongly ignored. Mr. Hussain submitted that the deceased apparently out of discord, had committed suicide. To canvass this view, he relies on the death summary Exhibit PW-11/A on page 149 of the Trial Court record where it is noted that 'Rajni, 20 year old female was admitted in the emergency on 7.7.1999 with alleged history of burns sustained by pouring kerosene over herself.' Rather, neither the MLC nor any other document supports

the death summary, which obviously was prepared after death. There is nothing on record from where the Doctor making the death summary could have recorded or concluded that deceased was admitted with history of pouring Kerosene over herself. Accordingly, no reliance or credence can be placed on this. It may also be noted that PW-7 Premwati, who had turned hostile and sought to support the appellant, claimed that Rajni's mother poured the kerosene oil on Rajni and then, forcibly sent her with Sarwan to the matrimonial home. This appears to be an absurd proposition that the mother of the deceased had poured kerosene oil on her at her house and then sent her to the in-laws' house without change of clothes or otherwise.

18. The appellant next placed reliance on the statement of DW-1, her neighbour Rajo. Rajo claimed to be a tenant living on the ground floor of the same house. She stated that she heard the noise and shouting and came out and found that Rajni, wife of the appellant was coming out in flames and crying for help. She deposed that at that time, Sarwan was not in the house and only the mother of the appellant and his younger brother were present. She claims to have accompanied the appellant's mother and brother in taking Rajni/deceased to the Hospital. Learned ASJ in the impugned judgment, has analyzed her evidence and rightly concluded that Rajo was not a witness to be trusted. She claims to have accompanied the deceased to the Hospital but there is no mention of it in the MLC or in any statement recorded by the Police. She had not seen the appellant leaving the house either. She claimed that she had never seen or witnessed any quarrel between the appellant and his wife, which is not even the appellant's own case. She also deposed that the appellant's wife used to often leave the home for couple of days without her whereabouts being known. Learned ASJ has rightly reached the conclusion that she was not present at the time of the incident and had not accompanied the injured to the Hospital. He rightly observed that she claimed to have extinguished the flames of the deceased along with others but did not ask the injured, who was then speaking to her, as to how she caught fire. This was an unnatural conduct. We are of the view, as rightly held by the learned ASJ, that appellant's plea of alibi on the basis of her statement can be given no credence. Learned Trial Judge has noted that the deceased's wayward behavior of leaving house and disappearing for days, though being a married woman, could have

exasperated the Appellant providing the motive.

19. In view of the foregoing discussion, we find that as rightly held by the learned Additional Sessions Judge, the prosecution has proved its case beyond reasonable doubt. No ground is made out for interfering with the judgment of the Trial Court. The appeal has no merit and is accordingly dismissed.

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