

Surender Singh Vs. State

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Court : Delhi

Decided On : Dec-07-1989

Reported in : 40(1990)DLT238; I(1990)DMC307

Judge : Charanjit Talwar and; Malik Sharief-ud-Din, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 172 of 1986

Appellant : Surender Singh

Respondent : State

Advocate for Pet/Ap. : Geeta Mittal and; G.S.Vashisht, Advs

Judgement :

Charanjit Talwar, J.

(1) Surender Singh, appellant herein, was found guilty of the offence of murdering his wife Amra alias Urmila on 7th July, 1984 and was sentenced to undergo imprisonment for life. By this appeal the appellant has challenged the impugned judgment dated the 7th October, 1986 and the order of sentence passed on 10th October, 1986.

(2) The prosecution case was that the offence was committed by the appellant on the said date at his residence, namely, House No. 3/95, Khichripur, Delhi. There is no eye witness to the occurrence. The pivot of the prosecution case is the declaration made by Urmila to the doctor in the casualty ward of Lok Nayak Jai Prakash Narain Hospital, Delhi at the time of admission. Medico Legal Certificate pertaining to the deceased has been exhibited as Ex. Public Witness . 11/A. It appears from that certificate that Urmila was brought to the hospital by her husband Surender on 7th July, 1984 at 11.30 p.m. At that time Dr.Sanjay Gupta (P.W. 11) and another Doctor Rajesh Sethi were on duty in the casualty ward. Urmila, who was fully conscious and well oriented at the time of examination, told Dr. Gupta that she had been burnt by her husband after he had poured kerosene oil on her. Her statement as recorded in the Medico Legal Certificate is to the following effect :-

'ALLEGED h/o having being burned after pouring kerosene oil by a person named Surender (husband) as stated by the part.'

(3) The above statement has been construed by the trial court as a dying declaration. Coupled with this declaration a few circumstances have led the court to come to the conclusion that it was the appellant who had committed the murder of his wife. In paragraph 12 of the impugned judgment the circumstances which were considered to be vital have been summarised. It is useful to quote that paragraph :- (12) In the instant case I find that the following are the most vital circumstances appearing in the evidence :-

(I)that the accused was residing with his wife alone on the first floor of the house when the occurrence took place and thereforee had the opportunity of committing the crime; (ii) the accused himself in his statement under section 313 Cr.P.C. has not stated the circumstance under which his wife was burnt. He only stated that he took his wife to the hospital in a burnt condition. It was within his knowledge as to how his wife got the burn injuries but he did not disclose the same. It only goes to show that he was not innocent. Had the wife committed suicide in his presence as is alleged he would at once have stated so without any reservation: (iii) the theory that the accused had tried to extinguish the fire .on the person of his wife is not

believable vide reasons discussed by me above. (iv) there is no reason to disbelieve the dying declaration of the deceased as discussed above; (v) there was also motive for committing the crime. The husband had no issue from the deceased and in this regard it was not necessary that there should be such a quarrel between the ' parties which become known to the neighbours or other relations.-This might have caused sufficient frustration in the mind of the accused to do away with the wife. Thus I find that the circumstances in the case taken together led us to the irresistible conclusion that the accused had committed the murder of his wife by putting her on fire and it was not a case of 'suicide'.

(4) Apparently the learned trial court was of the opinion that although there was no quarrel between the husband and the wife, yet the appellant was sufficiently frustrated to murder her as she had not given birth to any child. We may straightaway note that prosecution had not led any evidence in support of the theory that the appellant was frustrated because he was issueless. In fact the evidence was that Surender and his wife Amra alias Urmila were leading a happy married life. Public Witness .10 Balbir Singh, who is the landlord of the house in which the occurrence took place and had removed Urmila to the hospital after the incident categorically stated so. The investigating officer S.I. Roshan Lal (P.W. 16) had made inquiries regarding this aspect of the matter not only from the neighbours at Khichripur but from the locality of Himmatpuri where the couple was residing earlier. He also contacted the brother of the deceased. His investigation revealed that the deceased had no complaint against her husband. His deposition on this aspect may be quoted:-

'I also made enquiry regarding any quarrel between the deceased and her husband but no evidence came to our notice that there used to be quarrel between the parties. Prior to that incident, the accused was residing in Himmatpuri and I also made enquiry from there and came to know that there was no quarrel between the parties and that they were residing peacefully, I also recorded the statement of the brother of the deceased Jit Singh Negi under section 161 Cr.P.C. He also told me that there used to be exchange of letters after every 15 days between him and his sister Urmila deceased. He also told me that he used to meet her off and on. It is also correct that he told me that the deceased never made any complaint against her

husband to him and that there was no cause of quarrel between them. He told me that she was married about 10 or 11 years ago. I made enquiries from Rup Chand son of Sham Singh, Surinder Singh, Shama Devi wife of Thakur Singh and their names have been mentioned in the body of the Zimini.'

(5) We have carefully scrutinised the prosecution evidence. There is not even a suggestion that the appellant had at any time told anyone that he was frustrated because of having no child or that he was annoyed with his wife for any other reason. The trial court's finding regarding the motive for the crime thus cannot be upheld.

(6) As per the testimony of Public Witness . 10 Balbir Singh, who as we have noticed above, took Urmila after the incident to the hospital; she had told him in the taxi that :

'SHE had resorted to this act of burning herself by putting kerosene oil on her body because she was frustrated for not having any child. Surender accused had also accompanied us and his hands were also got burns while extinguishing fire on the person of the deceased. ..'

(7) Heaver, the declaration made to this witness has been disbelieved by the trial court on the ground that Balbir Singh had not informed anyone including the police officials about it. Whether this witness can be impeached on this score will be adverted to a little later, but for the present we want to highlight that there are two declarations made by the deceased immediately prior to her death which occurred at the hospital at about 1 a.m. on 8th July, 1984.

(8) It seems that after Urmila's examination and her admission to the admission to the Burns Ward of Lok Nayak Jai Prakash Narain Hospital, Delhi, the duty constable at that hospital informed the police control room, who in turn sent a wireless message to Police Station Khichripur, Delhi that

'ONE Amra wife of Surender, aged about 25 years, resident of 3/95, Khichripur, Delhi has been got admitted to the hospital by her husband in burnt condition. Some officer may be sent to conduct the police proceedings.'

(9) On receipt of the above information at about 12.15 p.m. on 8th July, 1984, a D.D. No. 20/A was registered and A.S.I. Atma Ram along with another constable was asked to proceed to the spot. The said report has been exhibited as Ex. Public Witness . 1/A and has been made the basis of the First Information Report. From the hospital, the said A.S.I. Atma Ram, collected the M L.C. of Urmila, who had by then expired. The endorsement made by the doctor regarding the cause of death has been quoted by the A.S.I, in his report (rukka) made to the police station while recommending the registration of the case under Section 302 of the Indian Penal Code. This report was dispatched to the police station at about 1 a.m. on 8th July, 1984.

(10) A.S.I, Atma Ram has been produced as Public Witness . 1. In his testimony he stated that he had collected the M.L.C. not only of the deceased but also of the accused at the same time. He arrested the accused in the hospital and took him to the police station and handed him over to S.I. Santokh Singh However, the M.L.Cs. were handed over by him to S.I. Roshan Lal who had been appointed the investigating officer of the case. In cross examination after admitting that he had arrested the accused, he changed his stand by saying that he had in fact joined him in the investigation. That he had brought him from the hospital on that very night, was admitted by him.

(11) The Medico Legal Certificate of the appellant was not brought on the record by the prosecution although Dr. Rajesh Sethi who had examined him was summoned by the prosecution, as Public Witness . 8, yet no question was put to him by the public prosecutor. He was given up as being unnecessary. The reason recorded by the court for giving up this witness was that as per the prosecution in view of the M.L.C. of Urmila deceased prepared by Dr. Sanjay Gupta there was no need to examine this witness. However, the said certificate has been brought on record by the defense as Ex. D.W. 1/A.

(12) The argument of the learned counsel for the appellant is that the prosecution tried its best to with hold the said certificate from the court as it did not fit in with the theory propounded by the investigating officer It appears from the record that the defense summoned Dr. Rajesh Sethi but by then he had left the hospital. That

M.L.C. was, therefore not proved by D W 1 O P Shashidharan, record clerk of the hospital. This witness stated that the two M.L.Cs. were prepared one after the other. First M.L.C. was that of the deceased Urmila and the second that of the accused. The argument is that the time of examination shown as 1.30 a.m. in the M.L.C of Surender on 8th July, 1984 cannot possibly be correct as by that time the M.L.Cs. had been collected by A.S.I. Atma Ram, Public Witness . 1, who had apprehended the accused and had taken him to the police station as per the prosecution's own showing. The date and time of examination of Surender in the said hospital is shown as '8.7.1984 at 1.30 a.m.'. The date and hour of arrival in the left hand column, however, is shown as '8th July, 1984 at 8.30 a.m.'. It is axiomatic that both these timings cannot be correct. It is nobody's case that he was examined on 8th July, 1984 at 8.30 a.m. The learned trial court has held that the time of examination was in fact 1.30 a.m. 8th July, 1984. That would mean that from 11.30 p.m. on 7th July, 1984 to 1.30 a.m. on 8th July, 1984 no other patient was examined in the casualty ward. It is urged that examination of husband and the wife by two different doctors was absolutely casual. In fact Dr. Sanjay Gupta was not attending Urmila. therefore, the appellant remonstrated with him. The suggestion put to that doctor was that he had deliberately cooked up the 'dying declaration' of Urmila to teach Surender a lesson.

(13) The authenticity of Ex. Public Witness . 11/A (M.L.C. of Urmila) and of Ex. D.W. 1/A (M.L.C. of Surender) is being challenged by Ms. Geeta Mittal, learned counsel for the appellant. She has submitted that Dr. Sanjay Gupta has not even indicated the burnt portion of the body at the back of the M.L.C. in the printed form. Her case is that no reliance can be placed on the endorsement made by Dr. Sanjay Gupta, which has been construed as a dying declaration. She submits that the safeguards as provided in Chapter 13-A of Rules and Orders of the Punjab High Court (Volume III) as applicable to Delhi, were not complied with by that doctor. Apart from the fact that the M.L.C. itself does not stand the test of scrutiny, as per the said rules, which rules have also been noticed by the Supreme Court in *State v. LaxmanKumar*, : 1986 CriLJ155 , the exact statement made by the deceased has to be recorded. As per Rule 7 of that Chapter the dying declaration as far as possible is to be got attested by one or more out of the persons who happen to be present at that time. The said Rule reads as :-

'7. Recording of a Dying declaration by a police officer or medical officer-Where a dying declaration is recorded by a police officer or a medical officer, it shall so far as possible, be got attested by one or more out of the persons who happen to be present at the time'.

(14) As we have noticed above, it is the prosecution's case that there were two doctors on duty in the Casualty Ward. It has been admitted by Dr Sanjay Gupta that Dr. Rajesh Sethi was also on duty along with him from 9 p.m. of 7th July, 1984 to 9 a.m. of the next day. Apart from the other doctor there must have been nurses or attendants on duty in the ward. It was the duty of Dr. Gupta to have asked Dr. Sethi or a nurse or an attendant on duty in the said ward to attest the statement of Urmila. The statement was expected to be in the exact language used by the declarant. As per the above rule signature or thumb impression of the declarant is also to be obtained in token of the correctness of the statement.

(15) We may note that we have dealt with cases in which all these safeguards have been complied with by the doctors. Ms. Mittal submits that the authenticity of the M.L.C. Ex. Public Witness . 11/A maybe assessed keeping in view not only the defense of the accused but all the surrounding facts. She submits that if the impugned statement had in fact been made by Urmila at the time of admission the duty constable who sent the information to the Police Control Room (D.D. 20/A) would have informed it that the husband had committed the murder. But no such report was made. According to her the words in the declaration 'as stated by the patient' have been introduced latter on the asking of the investigating officer, who had formulated this theory and, therefore, those appear to have been squeezed in.

(16) The further argument qua the other M.L.C. Ex. D.W. 1/A is that the prosecution wanted to suppress the fact that the hands of the appellant herein were also burnt while trying to extinguish the fire. As per this M.L.C. only the left hand was burnt, although Dr. Sanjay Gupta in his cross examination admits that Surender's both hands were burnt. Public Witness . 10 Balbir Singh has also admitted that both the hands of the husband were burnt. Apart from the confusion of timings given in his M.L.C. the submission is that the case sought to be made

out against the appellant is full of contradictions and suppression of facts. It is submitted that the investigating officer Public Witness . 16 S.I. RoshanLal admits that the statements under Section 161 of the Criminal Procedure Code of only those witnesses were recorded who corroborated the prosecution version.

(17) It is argued that the prosecution's case has to be rejected because of clear mala fides. We noticed at the outset that there is another declaration on the record which was made by Urmila to Public Witness . 10 Balbir Singh in a taxi while she was on her way to the hospital. This witness has been named in the inquest proceedings. His statement Ex. Public Witness . 10/A identifying the dead body was recorded by S.I. Roshan Lal in the hospital while conducting those proceedings. He was produced by the prosecution to prove: (1) that the accused and his wife were his tenants; (2) that he had removed the injured to the hospital in a taxi; and (3) that he had identified the dead body. It was in his cross examination that he admitted the couple were leading a happy married life. This fact is corroborated by the investigating officer himself. The dying declaration made to him was also brought out in the cross examination. This witness did admit in his re-examination by the prosecutor that he had never disclosed about the said declaration to anyone including the police officials. He, however, insisted that the police only recorded his statement regarding the identification of the body. The investigating officer, however, said that he had recorded the statement of the witness under Section 161 of the Criminal Procedure Code as well. The witness was, however, not confronted with that statement.

(18) We are of the view that if there had been a statement the prosecutor would have sought the permission of the court to cross examine the witness and have got him declared hostile. The version of the witness that the police did not record any previous statement seems to be correct as the Investigating officer himself admits that he only recorded the statements of those witnesses who corroborated the prosecution version. The investigating officer also admitted that :

'It is correct that some of the persons of the mohalla told me that they heard the noise of Bachao Bachao and when they went to the house, they found that her husband was trying to extinguish the fire and he also got burns on his hands while

doing so. Balbir Singh, Sarwan Singh and two more persons were those who told me so. The statements of Balbir Singh and Sarwan Singh were recorded under Section 161 Cr.P.C. This particular aspect which they told me I had mentioned in the body of the Zimini.'

(19) We are of the view that the investigation has not been fair and impartial in the present case. The investigating officer took pains to record only the statements of those witnesses who were supporting the theory that it was Urmila's husband who had burnt her. He saw to it that no other statement which by implication could suggest that Urmila had committed suicide was recorded. Under these circumstances it is difficult to straightaway reject the dying declaration made to him (P.W. 10 Balbir Singh) by the deceased. At any rate, as we have noticed above, the safeguards provided in the Rules have not been adhered to by Dr. Sanjay Gupta. thereforee, the dying declaration contained in Ex. Public Witness . 11/A cannot be believed unhesitatingly. The facts and circumstances on record go to show that it is unsafe to act solely on the dying declaration recorded by Dr. Sanjay Gupta.

(20) We have already noticed that the evidence about the motive for the crime cannot be upheld. The other circumstances which have been read against the appellant to our mind, have to be held to be neutral. We may add that in no circumstance the accused can be held guilty simply because he has not been able to prove his innocence. It is for the prosecution to prove the case. The tests regarding the circumstantial evidence have been reiterated by the Supreme Court in Ashok Kumar Chatterji v. State of Madhya Pradesh, : 1989 CriLJ2124 . Those tests are :-

'(1)the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cummulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of Explanationn on any other

hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence'

(21) After carefully going through the record of the case, we hold that the evidence produced does not satisfy any one of the above tests.

(22) The result is that the appeal is allowed. The impugned judgment dated the 7th October, 1986 and the order dated the 10th October, 1986 are set aside. The appellant, if not required in any other case, be set at liberty forthwith.

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