

Bishno Devi and ors. Vs. State

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Court : Delhi

Decided On : Mar-14-2008

Reported in : 2008(102)DRJ348

Judge : B.N. Chaturvedi and; G.S. Sistani, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 307

Appeal No. : Crl. Appeal Nos. 695-97/2005 and Crl. M.B. No. 1642/2007

Appellant : Bishno Devi and ors.

Respondent : State

Advocate for Def. : Richa Kapoor, APP

Advocate for Pet/Ap. : H.P. Sharma and; Rajiv Nanda, Advs

Disposition : Appeal dismissed

Judgement :

B.N. Chaturvedi, J.

1. The appellants were tried and convicted on a charge under Section 302 read with Section 34 IPC by a judgment dated 30th July, 2005 of learned Addl. Sessions Judge, Delhi and sentenced to imprisonment for life and a fine of Rs. 1000/- each, in default of payment of fine to undergo imprisonment for one month.

They are in appeal against the aforesaid conviction and sentence.

2. The prosecution case unfolds that on 13th March, 2000 at about 11.30 am a wireless message was received at PS Nangloi that a man had received 90% burns. Accordingly, a DD entry No. 8A was made in this regard and on a copy thereof being marked to SI Rajpal Singh, he proceeded to House No. B-584, Camp No. 2, JJ Colony, Nangloi, Delhi the place of incident. Later at 1.15 pm, a telephonic information from the duty Constable at Safdarjang Hospital, Delhi was received at the police station regarding admission of one Laxman Singh s/o Ghasi Ram r/o B-584, Camp No. 2, Nangloi, Delhi in the hospital with 100% burns which was recorded as DD No. 13A. At the time of admission of Laxman Singh, injured in the hospital the doctor concerned had recorded 'alleged history of sustaining burn injury when his sister and brother-in-law overpowered him, poured kerosene oil and burnt him'. SI Rajpal Singh on learning that the injured had been taken to the Safdarjang Hospital, reached there and obtained the MLC of the injured. He made an application (Ex. PW 23/C) at 2.45 pm on that very day seeking permission from the Chief Medical Officer to record the statement of the injured whereupon the doctor concerned certified the injured fit for statement as reflected from his endorsement on the said application. SI Rajpal Singh thereafter recorded the statement of the injured. The statement so recorded disclosed that on 13th March, 2000 at about 11.15 am while the injured was present at his house, his sister Bishno Devi, accompanied by her two sons, namely, Pappu and Rajesh came there. Pappu gagged him by his hands, while Bishno Devi otherwise caught hold of him and Rajesh poured kerosene oil on his person from a bottle which he had brought with him and set him afire. All the three left the spot after setting him ablaze. On Laxman Singh crying for help, people from the locality reached there and extinguished the fire. He was thereafter removed to Safdarjang Hospital in a PCR van. Apart from making a detailed account of the incident, the injured also mentioned the reason for his being set on fire by the appellants. Laxman Singh succumbed to burn injuries on 15th March, 2000. The case FIR No. 216/2000, which was initially registered under Section 307/34 IPC, was converted into one under Section 302/34 IPC against the appellants.

3. The conviction of the appellants is based on three dying declarations. Apart from the statements of the injured recorded in the MLC by the doctor concerned and subsequent one by SI Rajpal Singh, the deceased had, according to the prosecution, also made an oral dying declaration to ASI Mahender Singh, PW-22 on way to Safdarjang Hospital in the PCR van.

4. Learned Counsel for the appellants was critical of the impugned conviction and sentence on the plea that in view of conflicting versions in regard to persons involved in setting the injured on fire in the second dying declaration and the third one, the learned trial court was not justified in recording the conviction against the appellants. He contended that the injured had died on 15th March, 2000 and there was thus sufficient time for the Investigating Officer to approach the SDM concerned to get the dying declaration of the injured recorded by him. Failure on his part in this regard, he argued, makes the dying declaration recorded by the Investigating Officer questionable. The learned Counsel for the appellants referred to two decisions of this Court in Jaspal Singh and Ors. v. The State (Delhi Administration) page 1 and Jugesh Kumar v. State to enforce his contention that where there are dying declarations more than one and the same suffer from inconsistencies in material particulars, it is unsafe to base conviction on any of such dying declarations.

5. Learned Addl. P.P. on the other hand referring to evidence on record, including the third dying declaration, argued that apart from the deceased having made a statement as to the circumstances leading to the incident resulting into his death, spelling out of motive in commission of the crime adds to confidence and trustworthiness of the said dying declaration. She contended that the deceased had a clear opportunity of identifying his assailants and could not have erred in that regard. There is also no reason for his falsely implicating the appellants who were his real sister and her sons. She pleaded that dying declaration Ex. PW 24/A was recorded by the Investigating Officer after the doctor concerned had certified the injured to be fit to make the statement. Oral dying declaration made to ASI Mahender Singh, PW-22, she pointed out, was consistent with the third dying declaration Ex. PW 24/A. She argued that the discrepancy in mentioning 'brother-in-law' instead of 'sons' in the MLC is not so serious as to make the dying

declaration recorded by the Investigating Officer liable to be discarded. She submitted that the dying declaration Ex. PW 24/A being a truthful version, the same could very well form the basis for conviction of the appellants without any further corroboration. To lend assurance to her plea on admissibility and acceptability of the dying declaration Ex. PW 24/A, two decisions of the Supreme Court in Surinder Kumar v. State (Delhi Administration, Delhi) 1987 SCC 181 and Harbans Singh and Anr. v. The State of Punjab : AIR 1962 SC439 were relied upon.

6. We have heard Mr. H.P. Sharma, Adv. for the appellants and Ms. Richa Kapoor, Addl. P.P. for the State. We have also scrutinized and evaluated the evidence on record.

7. The conviction of the appellants primarily rests on the third dying declaration Ex. PW 24/A, recorded by SI Rajpal Singh, PW-24. The oral dying declaration made first in point of time to ASI Mahender Singh, PW-22 was found to be consistent with the dying declaration Ex. PW 24/A. Discrepancy in the second dying declaration recorded by Doctor Mohit Goel, PW-2 vide Ex. PW-2/A, where instead of 'sister and sons' 'sister and brother-in-law' found mention, was ignored by the learned trial court noticing that the primary concern of Doctor Mohit Goel, PW-2, who recorded the history of burn was to 'give right treatment and not to pin point the culprit'. The learned Trial Judge felt that the contradiction was not a material one specially when all the three dying declarations are otherwise corroborative of each other in material respects.

8. Before proceeding to examine evidential worth of the three dying declarations, it would seem essential to notice the contents of respective dying declarations. The first dying declaration, an oral one, finds mention in the statement of ASI Mahender Singh, PW-22 who affirmed that on his inquiring about the manner he had sustained burn injuries the deceased told him that 'he had been burnt by his sister and her sons'. The second dying declaration is recorded by the doctor concerned in the MLC Ex. PW 2/A. It reads thus:

alleged h/o sustained burn injury when his sister and brother-in-law overpowered him, poured kerosene oil and burnt him.

9. The third dying declaration Ex. PW 24/A is recorded in Hindi. Its English translation by the learned Trial Judge is at pages 2 and 3 of the impugned judgment. It runs as under:

that I (Laxman Singh aged 40 years) live in H. No. B-584, Camp No. 2, JJ Colony, Nangloi, Delhi with my family as a tenant. That I work as a die fitter. My elder sister named Bishno Devi resides with her family in H. No. L-1028, Mangol Puri, Delhi. That I had procured her certain loan which she did not return on the due date. That whenever I asked her to repay the money my sister Bishno Devi and her sons Pappu and Rajesh abused me and quarrelled with me. That yesterday i.e. on 12.3.2000 when I was present in my house at about 12 noon, my 'Bhanja' Pappu came to my house. I asked him to pay back the money. Upon this Pappu grappled with me and abused me. Residents of the locality and my wife Sunita intervened and Pappu thereafter left for his house in Mangol Puri. At about 5 PM in the evening (on that very day) I went to the house of my sister in Mangol Puri to ask for the return of the borrowed money and to complain against the behavior of Pappu. My sister and her sons abused me and threw me out without giving any money. Today my wife had left for her job in the morning and the children had gone to school. I had not gone to my factory as my factory was closed now-a-days. I was at home when at 11.15 AM my sister Bishno Devi accompanied by her sons named Pappu and Rajesh came to my house. Pappu pressed my mouth. My sister Bishno Devi caught hold of me. Rajesh poured kerosene oil from the bottle he had brought Along with. I was set on fire. They left the house. Upon my making noise, people from the locality came and extinguished the fire on my body. PCR vehicle brought me from my house to Safdarjang hospital. My sister Bishno Devi and my nephew Pappu and Rajesh had poured kerosene oil on my body and set me on fire so as to kill me. I want legal action against them.

10. In substance in his first dying declaration the deceased accused his sister and her sons as being involved in causing burn injuries on his person. He did not specify the name of his sister and her sons. In the second dying declaration also the deceased omitted to name his particular sister. In this view of the matter the first two dying declarations would turn out to be vague ones. It is only in his third dying declaration vide Ex. PW 24/A that the deceased had made mention of the

name of his sister and her two sons. Thus, as far as the identity of the persons, who had set the deceased on fire is concerned, the third dying declaration Ex. PW 24/A would simply be in the nature of a clarificatory statement to the first dying declaration.

11. Though the deceased in his first two dying declarations stated his sister to be one of those who had set him on fire, his both the declarations were no good from prosecution's point of view, as identity of that particular sister remained unascertainable. Similarly, in the absence of names of sons of his sister, who acted as accomplices, in terms of the first dying declaration, their identity could not have been fixed. SI Rajpal Singh, PW-24 thus could not be said to have exceeded his brief as Investigating Officer by recording the third dying declaration Ex. PW 24/A, to seek necessary clarifications from the deceased with respect to the identity of his 'sister' and her 'sons' and while doing so he acted wise by finding the motive on the part of the deceased's sister and her two sons in committing the crime.

12. From the MLC Ex. PW 2/A it is gathered that though at the time of his admission in the hospital at 12.45 pm on 13th March, 2000 general condition of the deceased was critical but he continued to be well oriented. The incident had taken place around 12 noon on 13th March, 2000 and the deceased was immediately rushed to the hospital without undue loss of time. It was on way to hospital that the deceased made his first dying declaration to ASI Mahender Singh, PW-22. The fact that the deceased inspire of being in a critical state on account of burns continued to be well oriented even at 12.45 pm when he was admitted in the hospital makes one believe that prior to his admission as well in the hospital while being removed in the PCR van he was in a position to make the statement, as he did, in regard to the persons who were involved in causing burns on his person. Endorsement of the doctor concerned at Mark 'A' on Ex. PW 23/C declaring the deceased fit for statement, makes it evident that at the time when the third dying declaration Ex. PW 24/A was recorded by the Investigating Officer, the deceased continued to be in a fit state of mind to make that statement.

13. From the said three dying declarations it is gathered that so far as involvement of appellant Bishno Devi in commission of the crime is concerned, there is no inconsistency therein. In the second dying declaration, unlike in the first and third dying declarations, instead of involvement of appellants Rajesh and Pappu @ Gyaneshwar, there is mention of 'brother-in-law' acting as accomplice of appellant Bishno Devi in setting the deceased on fire. Except on identity of other person/s who joined hands with appellant Bishno Devi in putting the deceased on fire, the manner in which the incident took place, is more or less similarly described in the second dying declaration as well. As in the third dying declaration, the second dying declaration also carries mention of overpowering and dousing of deceased in kerosene oil before being set on fire. As observed earlier the third dying declaration Ex. PW-24/A is rather in the nature of a clarificatory statement on the part of deceased inasmuch as he for the first time disclosed the names of his sister and her two sons while giving a detailed account of individual role played by respective appellants in setting him on fire as also the reason for doing so. There is ample evidence on record to sustain the finding that the deceased was doused in kerosene oil and set on fire at his residence. He was removed to Safdarjang Hospital in a PCR van by ASI Mahender Singh, PW-22. From the spot SI Rajpal Singh, PW-24 had picked up a match box Ex. P-1 containing 18 unburnt matchsticks, pieces of burnt clothes and skin Ex. P-2 of the deceased and a plastic bottle containing blue liquid (approximately 2 ml) Ex. P-3 vide seizure memo PW 10/A. The CFSL report Ex. PW-24/PX establishes that kerosene oil was detected in the plastic bottle Ex. P-3 and on burnt pieces of clothes and skin Ex. P-2 of the deceased. This apart, testimony of Doctor Chandrakant, PW-5, who conducted postmortem examination on the dead body of deceased Laxman Singh, also reveals that there was smell of kerosene oil from the scalp of the deceased. Thus, the deceased receiving 100% burns on his being put on fire after being doused in kerosene oil, at his residence is clearly proved beyond doubt.

14. In a case where truthfulness of the dying declaration cannot be doubted the same alone can form the basis of conviction without any corroboration. (see Ravi v. State of T.N. 2004 (10) SCC 776. However, before accepting a dying declaration for conviction the court is to be satisfied that 'the statement of the deceased was not as a result of either tutoring or prompting or a product of

imagination' and further that the deceased was in a fit state of mind while making the statement and had a clear opportunity to observe and identify the assailant. (see Muthu Kutty v. State).

15. It is to be noticed that at the time of being doused in kerosene oil and set on fire the deceased had a clear opportunity of identifying the appellants, who were none else but his real sister and her two sons. At the time when the deceased made the oral declaration to ASI Mahender Singh, PW-22 as also at the time of his admission in Safdarjang Hospital none of his family members or relatives was present. Even at the time when SI Rajpal Singh, PW-24 recorded his third dying declaration Ex. PW-22/A there is no indication that anybody else other than SI Rajpal Singh was present. The deceased was consistent in making his three statements in so far as the manner in which he sustained the burns on his person. All the declarations, thus, appear to be true and voluntary and not as a result of tutoring, prompting or imagination. In Ranjit Singh and Ors. v. State of Punjab where more than one dying declaration was made and there were inconsistencies therein in regard to the roles ascribed to accused persons and an argument was raised on behalf of the appellants that in view of inconsistencies neither of the dying declarations or any part thereof could be accepted to record finding of conviction, it was ruled:

It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards correctness or otherwise of the said dying declaration, the Courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the Court shall lean more towards the first dying declaration than the second one. We, however, are not in a position to persuade ourselves to accept the submissions of the learned Counsel for the appellants that we should not accept any of the dying declarations at all or any part thereof.

16. Thus, merely because the second dying declaration made before Dr. Mohit Goel, PW-2 makes mention of 'brother-in-law' in addition to 'sister', instead of

'sons', the oral dying declaration, as deposed by ASI Mohinder Singh, PW 22 and the third dying declaration Ex. PW 24/A, identifying appellants Rajesh and Pappu @ Gyaneshwar are not liable to be rejected on account of aforesaid inconsistency.

17. There was no contest to the legal position from appellants' side that dying declaration recorded by a police officer is equally admissible. The third dying declaration Ex. 24/A recorded by Investigating Officer thus could not be questioned simply on the ground that instead of getting the same recorded by SDM concerned the Investigating Officer proceeded to record the same himself. No doubt Laxman Singh succumbed to burns on 15th March, 2000, his general condition was critical at the time of his admission in the hospital and the chance of his survival in view of 100% burns was very remote. The Investigating Officer in his wisdom did not take the risk of losing time as inspire of dying declaration made to the doctor concerned, the identity of person/s involved in commission of crime was yet not certain and he had to question the deceased in that regard. No circumstance could be brought out in the course of cross examination of SI Rajpal Singh, PW-24 which could lead to find that the dying declaration Ex. PW 24/A did not contain true or voluntary statement of the deceased or that it came out as a result of tutoring, prompting or imagination. The two decisions of this Court in Jaspal Singh & Ors. (supra) and Jugesh Kumar (supra) referred to by learned Counsel for the appellants dealt with cases where more than one dying declarations recorded were found to be inconsistent and contradictory in material respects creating doubt in regard to truthfulness thereof, which is not the case in the present matter. These decisions are thus really of no help in questioning the truthfulness of the dying declaration Ex. PW 24/A.

18. On behalf of appellants Rajesh and Pappu @ Gyaneshwar a plea of alibi was set up by leading evidence in defense to the effect that on the relevant date and time they were present at their respective place of work. Learned trial court has adequately dealt with the defense evidence so produced to find the same unacceptable and we find no infirmity in the view so taken by the learned trial court in rejecting the defense plea of alibi of the said appellants.

19. To conclude, we, in view of evidence available on record, find no reason to be in doubt regarding complicity of the appellants in causing the death of Laxman Singh by setting him on fire. Clearly, 100% burns resulting into death of Laxman Singh did not happen on account of his accidentally catching fire. Statements of witnesses from neighborhood, who rushed to the spot on hearing cries for help, bear testimony to burns being caused to Laxman Singh at his house while he was alone there. Incriminating materials seized by the police from the spot also lead to the same conclusion. The first and third dying declarations, apart from even second one to an extent, unerringly point to the appellants' complicity in commission of the crime. Shorn of blemish of extraneous factors like tutoring, prompting or malice etc. dictating the tenor of the dying declaration Ex. PW 24/A and the same being truthful and voluntary, made by the deceased with no evidence of impairment of his vital mental faculty, the appellants being perpetrators of the crime stands clearly established beyond doubt.

20. In the ultimate analysis, we find no merit in the appeal, hence dismiss the same.

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