

Suresh Vs. the State

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Court : Delhi

Decided On : Aug-10-2004

Reported in : 2004(76)DRJ6

Judge : Mukundakam Sharma and; R.C. Chopra, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl A 167/1999

Appellant : Suresh

Respondent : The State

Advocate for Def. : Akshay Bipin, Adv.

Advocate for Pet/Ap. : Charu Verma, Adv

Disposition : Appeal dismissed

Judgement :

R.C. Chopra, J.

1. The appellant challenges his conviction under Section 302 of the Indian Penal Code and sentence of imprisonment for life and a fine of Rs. 500/- imposed upon him vide orders dated 21.10.1998 and 24.10.1998 respectively by learned

additional Sessions Judge, Delhi. According to the prosecution, on 6.3.1997 at about 9.25 p.m., the appellant poured kerosene oil on his wife Kamlesh and put herby on fire as a result of which, she sustained burn injuries and succumbed on 8.3.1997.

2. A charge under Section 302 IPC was framed against the appellant to which he pleaded not guilty and claimed trial.

3. In support of its case, prosecution examined PW-1 Ramji Lal Gupta, a neighbour of the appellant, who was one of the first persons to reach the spot and who found deceased Kamlesh in a badly burnt condition crying in pain. She was saying that herby husband had burnt herby. He informed the Police and with the help of Police Control Room staff, removed herby to Jai Prakash Narain Hospital. PW-2 Geeta, daughter of the appellant, aged about five years, did not support the prosecution case and stated that herby mother had died by committing suicide and the appellant had not burnt herby. PW-3 is a Police photographer. He proved on record the photographs of the spot as well as their negatives. PW-4 Head Constable Mohd. Anis Khan deposed that on 6.3.1997, he was in-charge of the Police Control Room Van. At about 9.15 p.m. on receipt of a call, he had gone to the spot and removed the deceased to Jai Prakash Narain Hospital in a burnt condition. He also stated that the deceased was crying that she had been burnt by herby husband.

4. PW-5 Dr. A.P. Singh had conducted the post-mortem on the body of the deceased. He proved his report exhibit PW-5/A and stated that the deceased had suffered about 85% burns and had died on account of burn injuries. In his cross-examination by learned counsel for the appellant, he stated that a patient with 85% burns is able to speak but the patient cries with pain. PW-6 Hari Chand is the father of the deceased Kamlesh. He did not support the prosecution case and stated that the accused was keeping his daughter well and did not maltreat her. He was also declared hostile and cross-examined by learned APP. In his cross-examination by learned APP, he admitted that when he and his wife PW-7 visited the deceased in hospital, she told them that the accused appellant had burnt her by pouring kerosene oil on her and lighting fire. PW-7 Smt. Roopmati, the mother

of the deceased deposed that when they reached the hospital at about 12.00 in the night, her daughter had told her that the accused had burnt her pouring kerosene oil and lighting the fire.

5. PW-8 Head Constable Naresh Pal proved on record the FIR exhibit PW-8/D. PW-9 Constable Sonu Kaushik had prepared the site plan exhibit PW-9/A. PW-10 Constable Rakesh Kumar had gone to the spot along with the Investigating Officer. PW-11 Head Constable Jai Prakash had recorded the wireless message and transmitted the same to the concerned Police Station.

6. PW-12 Dr. Girish Chand Pandey proved the MLC exhibit PW-12/A which he had prepared at the time of the admission of the injured to the hospital. In his cross-examination by learned counsel for the accused, he stated that the history given in the MLC was given to him by the patient. He denied that at that time, the patient was unable to speak or give the history. PW-14 Manoj Kumar, SI is the Investigating Officer.

7. According to him, he had recorded the statement of the deceased after she was declared fit by the Doctor. The Doctor had also signed the said statement of the deceased. PW-15 Lady Constable Urmila brought with her the control room register and proved the entries exhibit PW-15/A and 15/B. PW-16 Om Prakash, Record Clerk, Jai Prakash Narain Hospital deposed that Dr.Saurabh Kumar Sharma, who had endorsed exhibit PW-8/B had left the hospital and his last address was not known. He had seen him signing and writing and as such, he identified his signatures at point "A".

8. After the close of the prosecution evidence, the appellant was examined under Section 313 Cr.PC. He denied the prosecution case in toto and pleaded that after the occurrence, he had tried to extinguish the fire, which was accidental and had taken place when the deceased was lighting fire in the stove for boiling milk. According to him, his hands also got burnt while extinguishing fire. He also stated that the deceased was unable to speak after the incident.

9. The learned Trial Judge after careful scrutiny of the evidence on record and considering the submissions made on behalf of the appellant found the appellant

guilty. He relied upon various dying declarations made by the deceased before her death in which, she had categorically stated that the appellant, her husband had poured kerosene oil on her and thereafter put her on fire. He held the appellant guilty under Section 302 IPC and sentenced him accordingly.

10. Learned counsel for the appellant has vehemently argued that the dying declaration exhibit PW-8/B and the earlier oral dying declarations allegedly made by the deceased are not reliable and trustworthy. According to her, in the absence of some corroboration, it would not be safe to hold the appellant guilty on the basis of the dying declarations alone. Learned counsel for the State, on the other hand, has submitted that in case a dying declaration is found reliable and trustworthy, an accused can be convicted on the basis thereof and there is no bar in law to convict an accused on the basis of a dying declaration only. According to him, the deceased was burnt inside the four walls of her house by her own husband and as such, there could not be an eye witness to the incident. Learned counsel for the State submits that in view of four dying declarations made by the appellant before her death, which are wholly reliable and trustworthy, the prosecution case stands proved against the appellant beyond reasonable doubt.

11. After examining the evidence on record and considering the submissions made by learned counsel for the parties, this Court finds that the case of the prosecution in regard to the pouring of the kerosene oil on the body of the deceased by the appellant and thereafter putting her on fire may not have been supported by any eye witness but it is immaterial for the reason that the incident had taken place inside the four walls of the appellant's house where no eye witness or public witness could be present. Soon after the incident the deceased started raising hue and cry upon which, PW-1 Ramji Lal Gupta, a neighbour, reached there and saw her burning. He extinguished the fire and then put a bed cover over her body as she had become almost naked because of the burning of the clothes. The deceased told PW-1 in no uncertain terms that she had been burnt by the appellant, her husband. Thereafter, while the deceased was being taken to hospital in the Police Control Room Van, she made a dying declaration before PW-4 Head Constable Mohd. Anis Khan and reiterated that she had been burnt by her husband. After reaching the hospital, MLC exhibit PW-12/A was

prepared by Dr. Girish Chand Prabhat before whom also, the deceased gave the history in regard to her burning by saying that she had been burnt by her husband. PWs 1, 4 and 12 have fully supported the prosecution case and proved these dying declarations on record. Nothing could be brought out in the cross-examinations of PWs 1, 4 or 12 to show as to why they should depose falsely in regard to the dying declarations made before them by the deceased. These witnesses had no enmity with the appellant. In fact, PWs 4 and 12 were official witnesses and they did not know even the deceased or her husband. Not only these three dying declarations but a fourth dying declaration exhibit PW-8/B is also proved on record on the basis of which, the FIR was registered. This dying declaration was recorded by the I.O. PW-14 and it was attested by the Doctor on duty. In this dying declaration also, the deceased categorically stated that the appellant had poured kerosene oil on her and then put her to fire. This Court finds no good grounds on record to discard any of these four dying declarations. All these dying declarations are consistent, cogent and point to the guilt of the appellant and as such, are sufficient to hold that the appellant had put the deceased on fire after pouring kerosene oil on her.

12. The Apex Court in the case of "Panchdeo Singh Vs . State of Bihar" reported in : 2002 CriLJ973 while considering the question as to whether a dying declaration can be relied upon or not without corroboration categorically held that if there is some infirmity in the dying declaration and the Court feels hesitant in upholding its credibility the Court ought to look for some corroboration but if it is otherwise, the question of requirement of corroboration would not arise. It was held that dying declaration which allures confidence of the Court would be a sufficient piece of evidence to sustain conviction. The basic principle is that a dying declaration which allures the satisfaction of the Court in regard to its credibility and trustworthiness can be acted upon without looking for corroboration. In another judgment titled "Smt. Laxmi v. Om Prakash and others" reported in : 2001 CriLJ3302 , his Lordship Hon'ble Mr. Justice R.C. Lahoti (now Hon'ble Chief Justice of India) summed up the question of the admissibility and the probative value of a dying declaration in the following words :

"One of the important tests of the reliability of the dying declaration is a finding arrived at by the Court as to satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded. The statement may be brief or longish. It is not the length of the statement but the fit state of mind of the victim to narrate the facts of occurrence which has relevance. If the Court finds that the capacity of the maker of the statement to narrate the facts was impaired or the Court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement the Court may in the absence of corroborative evidence lending assurance to the contents of the declaration refuse to act on it."

13. PW-1 Ramji Lal Gupta, a neighbour and a public witness was subjected to cross-examination by learned counsel for the appellant. He, however, stuck to his guns that the deceased was crying and telling everybody that the appellant had put her to fire.

He mentioned the name of one other neighbour Anil also, who has not been cited as a prosecution witness. It is not at all material for the reason that it is the quality of the evidence and not the quantity that matters in a criminal trial. It also came out in the testimony of this witness that he had been hearing from others in the area that the appellant used to ill-treat the deceased which circumstance is also relevant when read with the dying declarations of the deceased made before this witness and others. PW-2 Geeta, the daughter of the deceased was given a suggestion in her cross-examination that the appellant had taken the deceased to the hospital but on the way, PW-1 had met them and forcibly taken the injured from him and then removed her to the hospital. This plea is absolutely unbelievable and ridiculous and shows that the defense was groping in the dark to somehow create a defense for the appellant. It is falsified by PW-4 Head Constable Mohd. Anis Khan, who had reached the place of incident along with Police Control Room Van and had removed the deceased to the hospital. He also stated that when he reached the spot, the appellant was not present there and in his cross-examination, he emphatically stated that on her way to the hospital, the deceased was not unconscious and PW-1 was with them. In the cross-examination of the mother of the deceased-PW-7, by learned APP, it came out

that the deceased used to tell her that the appellant was ill-treating and beating her. She also stated that the deceased had told her that after the quarrel, the appellant had poured kerosene oil on her and put her on fire. PW-4, SI Manoj Kumar, who had recorded the written dying declaration of the deceased, was very categorical that the patient was fit for giving statement when he recorded her statement and the Doctor had also attested the dying declaration to verify that the patient was making the dying declaration. The testimonies of PWs 1,4,6,7,12 and 14 are categorical that up to the time of making of dying declaration exhibit PW-8/B before PW-10, the deceased was in a fit state of mind and was narrating to everybody as to how she had received the burn injuries. She had no reasons to spin a false story against the appellant.

14. It is also stands established on record through the testimonies of PWs 6 and 7 that the appellant was not having cordial relations with his wife- since deceased. That appears to be the reason for the commission of this ghastly offence. PWs-6 and 7, parents of deceased, have also stated that the deceased had told them also that the accused had burnt her by pouring kerosene oil on her and lighting the fire. PW-6 had initially not supported the prosecution case but in his cross-examination by learned AP on 6.5.1988, he admitted that after the occurrence, he had met the deceased, in the hospital and on inquiry, she had told him that the appellant had burnt her. PW-7, who is the mother of the deceased, also stated that when she met the deceased in the hospital, she told her that the accused had burnt her by pouring kerosene oil on her and lighting fire. She also deposed that the deceased used to tell them that the accused was ill treating and beating her. The testimonies of PW-6 and 7 lend sufficient corroboration to the dying declarations made by the deceased at the spot, while being taken to hospital and on reaching the hospital and leave no scope for any doubt in regard to the genuineness of dying declarations.

15. The dying declaration exhibit PW-8/B, which was recorded by the Investigating Officer, PW-14, is also satisfactorily proved on record and can be safely acted upon for the reason that it was attested by Dr. S.K. Sharma, whose signatures have been identified by PW-16 as Dr. S.K. Sharma had left the hospital and his present whereabouts were not known. The evidence on record proves that while

making this declaration also, the deceased was conscious and in a fit state of mind. This dying declaration was recorded without any delay and as such, the possibility of somebody tutoring the deceased also stands overruled. It was a detailed dying declaration in which the name of PW-1 even was mentioned. The deceased had suffered over 80% burns on her body and was suffering extreme bodily pain and as such, this statement is squarely covered within the definition of "dying declaration".

16. Learned counsel for the appellant has faintly argued that in view of the statement of PW-2 Geeta, the daughter of the deceased, a doubt is created in the prosecution story as she has stated that the deceased was not burnt by the appellant. The testimony of PW-2 cannot be relied upon firstly for the reason that she being a child witness, was vulnerable to tutoring and as such, possibility cannot be ruled out that she was trying to save her father at the instance of the relatives and others. Moreover, there is a serious contradiction in her statement on the question as to whether the deceased had committed suicide or had died due to accidental fire. Initially, she deposed that the deceased had committed suicide by burning but after 3-4 lines, she snatched on to the story that she had caught fire by an accident from the stove and the appellant had tried to extinguish the fire. One very important factor that came out in her cross-examination is that according to her also, the appellant had run away from the spot which conduct is totally inconsistent with the defense plea that the deceased had died on account of an accidental fire. Had the fire been accidental, the natural conduct of the appellant would have been to remain with the deceased and take her to hospital immediately to save her life. PW-2, therefore, cannot be relied upon to hold that the prosecution case in regard to the killing of the deceased by the appellant suffers from any doubt.

17. The dying declarations proved on record inspire confidence. It is established that the deceased made these dying declarations when she was fully conscious and in a proper state of mind. Trustworthiness of these dying declarations is beyond the scope of any doubt. Accordingly, this Court has no hesitation in holding that the appellant had burnt his wife after pouring kerosene oil on her as a result of which she died. This Court fully agrees with the findings arrived at by

learned Trial Judge.

18. Learned counsel for the appellant has also contended that no case under Section 302 IPC is made out and at the most, the prosecution allegations make out a case under Section 304 of the IPC. According to her, the appellant never intended to cause the death of the deceased and at the most, his intention was to cause grievous injuries to her. The post mortem report exhibit PW-5/A reveals that the deceased had suffered about 85% burns. All the injuries were ante mortem in nature. According to PW-5 Dr. A.P. Singh, who had conducted post mortem on the body of the deceased, the death was due to septicemia consequent upon burn injuries.

19. The law is well settled that intentional causing of a bodily injury which is likely to cause death is covered by Section 300 IPC. The intention to cause death is not an essential ingredient of Clause (2) of Section 300 IPC if the intention is of causing such bodily injury which offender knows is likely to cause death. Even in terms of Clause (3) of Section 300, an injury, which is sufficient in the ordinary course of nature to cause death, makes out an offence under Section 300 IPC. The degree of probability of causing death resulting from the intended bodily injury determines whether the offence is covered or not by Section 300 IPC and as such, even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder and not culpable homicide not amounting to murder punishable under Section 304 IPC. In "Virsa Singh v. State of Punjab" reported in : 1958 CriLJ818 , the essential ingredients required for covering a culpable homicide within the definition of murder were discussed in detail and clear guidelines were issued as to how to deal with the question as to whether a culpable homicide is a murder or a culpable homicide not amounting to murder. If the probability of causing death by a particular injury is high, the act is imminently dangerous and is committed by the offender without there being any excuse for incurring the risk of causing death, it can be held without any hesitation that the causing of death is a murder punishable under Section 302 IPC and not culpable homicide not amounting to murder punishable under Section 304 IPC. In a judgment of the Apex Court in "Abdul Waheed Khan @ Waheed and Ors. v.

State of Andhra Pradesh" reported in : [2002]SUPP1SCR703 , the distinction between a "murder" and "culpable homicide not amounting to murder" was examined in detail and it was categorically held that the "intention to cause death" is not an essential requirement of Clause (2) of Section 300 IPC. It was observed that the intention of causing a bodily injury coupled with the offender's knowledge that such injury is likely to cause the death of the victim is sufficient to bring the killing within the ambit of Section 300 Clause(2) IPC.

20. In view of the nature of the injuries caused by the appellant to the deceased by way of pouring kerosene oil on her body and putting her on fire, we have no hesitation in concluding that the appellant intended to cause her death and otherwise also had knowledge that these injuries would be sufficient in the ordinary course of nature to cause death. The likelihood of death on account of these injuries was extremely high and since the appellant intended to cause these injuries, the offence stands covered under the definition of culpable homicide amounting to murder punishable under Section 302 of the IPC. We are, therefore, unable to agree with the submissions made by learned counsel for the appellant that no offence under Section 302 IPC is made out and the conviction of the appellant should be converted to Section 304 IPC.

21. In view of the foregoing reasons, we find no merit in the appeal. The impugned conviction and sentence is upheld.

22. The appeal is dismissed.