

State Vs. Surjit Singh and ors.

State Vs. Surjit Singh and ors.

SooperKanoon Citation : sooperkanoon.com/698254

Court : Delhi

Decided On : May-18-2005

Reported in : 120(2005)DLT308; II(2005)DMC12; 2005(83)DRJ168

Judge : Manmohan Sarin and; R.S. Sodhi, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 109, 201 and 302; Code of Criminal Procedure (CrPC) - Sections 161, 173 and 190(1)

Appeal No. : CRLA 148/1982

Appellant : State

Respondent : Surjit Singh and ors.

Advocate for Def. : R.D. Itorara, Adv.

Advocate for Pet/Ap. : Ravinder Chadha, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. By this judgment Criminal Appeal No. 148 of 1982 and Criminal Revision 210 of 1982 are being disposed of since they seek to challenge the judgment and order dated 31.3.1982 of the Additional Sessions Judge, Delhi, in Sessions Case No.

7/79, arising out of FIR No. 469/75, Police Station, Tilak Nagar, Delhi, whereby the learned Judge has acquitted the accused persons of all charges framed against them.

2. Brief facts of the case, as noted by the learned Additional Sessions Judge, are as follows :

'1.

2. Kulwant Kaur (hereinafter to be referred as deceased) daughter of Ujjagar Singh complainant was married to one Kuldeep Singh about 17 years back. She was residing with her in laws at premises No. D-147, Ajay Enclave within the jurisdiction of P.S. Tilak Nagar, New Delhi. On 12-5-75 she was admitted in Willingdon Hospital at about 10.45 a.m. with cent-percent burns on her body. She was got admitted in the hospital by accused, Surjit Singh and Gurdeep Singh. Accused Gurdeep Singh telephoned to complainant Ujjagar Singh about Kulwant Kaur having been burnt. Ujjagar Singh at once sent his wife Niranjan Kaur to the hospital. Meanwhile the constable on duty in the hospital informed police station Tilak Nagar about the admission of Kulwant Kaur in a burnt condition there. On that information accused, Om Parkash S.I. Of police station Tilak Nagar, was deputed to investigate. He went to the hospital, contacted the doctor who declared Kulwant Kaur unfit for making statement. Ultimately Kulwant Kaur died at about 2 p.m. on the same day. Sub Inspector, Om Prakash accused, held the inquest. He recorded statements of accused Surjit Singh and Gurdeep Singh wherein the accused stated that the deceased got burnt accidentally with the flames of a stove over which she was boiling milk. They further stated that they made efforts to extinguish the fire by putting clothes, quilt and other things which were lying nearby. In that process the said accused also got burn injuries on their hands. Ujjagar Singh, father of the deceased, when examined on that date stated that he had received information about burning of his daughter at about 11 a.m. upon which he rushed to the hospital but found that his daughter was unable to speak. He also stated before accused Om Prakash S.I. that he would make further statement after verification of facts.

3. On 13.5.75 Ujjagar Singh went to the police station Tilak Nagar where he met SHO Shiv Inder Singh and stated that just before her death, his daughter Kulwant Kaur had informed her mother Niranjari Kaur that her jaith (i.e. Surjit Singh accused) had sprinkled kerosene oil over her and set her on fire. The said statement of Ujjagar Singh was recorded by Head-constable Sukhdev Singh at police station Tilak Nagar. Thereafter accused Om Prakash S.I. was deputed for further investigation and verification. On the same day Ujjagar Singh sent a written complaint to S.P.(Central District) Darya Ganj, Delhi which was received by SHO P.S. Tilak Nagar on 16.5.75. On the basis of that complaint a case u/s 302 IPC was registered and the investigation was taken up by SHO P.S. Tilak Nagar himself. Since the complainant was not satisfied with the investigation conducted by the local police, he approached higher authorities and the case was consequently entrusted to Crime Branch which took investigation on 16.7.75. During that investigation it was revealed that earlier statement of complainant Ujjagar Singh that was recorded by Head-constable Sukhdev Singh on 13.5.75 was handed over by SHO P.S. Tilak Nagar to accused Om Prakash, S.I., for verification and that during inquest proceedings the said accused tore that statement of the complainant and threw it giving the complainant suspicion about the fairness of the local police. Consequently the complainant made applications to various authorities for transfer of the case to C.I.D. which was eventually received by CID Crimes on 16.7.75.

4. During investigation complainant besides supporting allegations of the F.I.R. further stated that on receipt of telephonic message he immediately sent his wife Niranjari Kaur in a three wheeler scooter and himself reached the hospital at about 11.30 a.m. and found that his daughter was unable to speak. He further stated that in the hospital when he met his wife Niranjari Kaur, he was informed about the dying declaration of the deceased. During investigation the complainant further stated that earlier accused Surjit Singh had called him once and complained to him about the behavior of the deceased and in March 1975 had threatened the deceased with dire consequences in case she did not mend her ways. He further stated that on 14.5.75 in a Panchayat which took place at the residence of one Shri Nand Kishore Seth, the relations and well-wishers of Surjit Singh accused had requested for pardon. He also stated before the police that one Gopal Singh also

over-heard the dying declaration made by the deceased. Said Gopal Singh as also Niranjan Kaur, wife of the complainant, corroborated the statement of the complainant regarding dying declaration made by her daughter.

5. One Narinder Singh Bindra when examined by the police stated that the deceased was removed in the Willingdon Hospital in his car by accused Surjit Singh and Gurdeep Singh on 12.5.75 and that at that time she was conscious and was speaking something.

6. Earlier the dead-body of the deceased was sent to dead-house Subzimandi, Delhi, where post mortem thereupon was performed by Dr. Acharya on 13.5.75. Accused Om Parkash SI had on 12.5.75 taken into possession one stove, burnt pieces of clothes, lock on hair, burnt gadda, burnt quilt, burnt pillows, burnt bed-sheet and a match box from the house of the accused. Those articles were subsequently sent for Chemical examination from where the reports were duly received.

7. One underwear of the deceased which was also seized during investigation was sent for second opinion to Dr. Bishnu Kumar on 29.10.75 after making further enquiries. The said Doctor Bishnu Kumar vide his report dated 12.1.76 found that it was not possible to say with certainty that the burns found on the body of the deceased were suicidal or homicidal in nature. He however held that those burns did not appear to be accidental. The opinion of the Chemical examiner, CFSL regarding the stove found at the place of incident also showed that the said stove was in perfect burning order. All that investigation revealed that the version of accused Surjit Singh about the deceased having caught fire accidentally was not correct. Consequently accused Surjit Singh and Gurdeep Singh were arrested in the case on 25.2.76.

8. On 5.4.76 Shri R.P. Kochhar, Inspector CID, Crime, who was conducting investigation of this case submitted the report u/s 173 Cr.P.C. to the prosecution branch for scrutiny. Subsequently, on 14.12.76, Inspector Kochhar, under orders of the then Superintendent of Police (Crime) filed a report in the court of the concerned Magistrate for sending the case as untraced.

9. When the said report came up for consideration before Shri M.L. Sahney, Metropolitan Magistrate, Delhi, complainant, Ujjagar Singh, also put in appearance through his counsel. After hearing the learned counsel for the parties, the learned Metropolitan Magistrate decided to take cognizance of the case u/s 190(1)(c) Cr.P.C. against accused Surjit Singh and Gurdeep Singh u/s 302 IPC read with Section 109 IPC and against accused Om Prakash, S.I. U/s 2-1 IPC, vide his order dated 31.1.77. Hon'ble Mr. Justice Prithvi Raj of Delhi High Court vide his order dated 27.5.77 confirmed that order of the Ld. Magistrate.

10. Shri P.K. Jain, the then Chief Metropolitan Magistrate, Delhi, committed the case to the sessions vide his order dated 6.6.78.

11. Shri P.L. Singla, Ld. Addl. Sessions Judge, Delhi on 17.1.79 framed a charge u/s 302/34 IPC against accused, Surjit Singh and Gurdeep Singh, while a separate charge u/s 201 IPC was framed against accused Om Prakash SI. All the three accused persons pleaded not guilty to the charges and claimed trial.'

3. The prosecution, in order to establish its case, examined as many as 36 witnesses. The trial court on the basis of the prosecution's case came to the conclusion that the circumstances relied upon by the prosecution against, Surjit Singh and Gurdeep Singh were :

(i) Dying declaration made by Kulwant Kaur in Willingdon Hospital in presence of her mother, Niranjana Kaur and Gopal Singh (PW-1 and PW-2 respectively).

(ii) Extra judicial confession made by accused, Surjit Singh and Gurdeep Singh, on 13.5.75 first in the dead-house, then before complainant Ujjagar Singh (PW-6) and his family members on the same day and lastly on 14.5.75 at the residence of the complainant.

(iii) Recovery of stove (in working order) lock of hair from the spot where lot of kerosene oil was also noticed lying on the ground.

4. Analysing the aforesaid circumstances, the trial court held that the dying declaration of Kulwant Kaur purportedly made to her mother, Niranjana Kaur, and Gopal Singh, PW-1 and PW-2 respectively was not worthy of credence. It held that

Niranjan Kaur and Gopal Singh stated that they had reached Willingdon Hospital on 12.5.1975 and went together inside the Emergency Ward where Kulwant Kaur stated that her jaith, Surjit Singh, had put kerosene oil over her body and burnt her.

5. The trial court, analysing the evidence on record regarding the circumstances relating to the dying declaration, noticed that according to the MLC, PW-8/A, Kulwant Kaur was admitted to the hospital at 10.40 a.m. when she was not in a position to speak. She had been administered morphin injections of potency 1.0 mg. and could certainly not have been conscious. Even otherwise, she was declared unfit to make statement. The pulse was feeble and blood pressure was not recordable. In such a situation it was not possible for Kulwant Kaur to make a statement to PW-1 and PW-2. Further, Gopal Singh, PW-2, is not related to the complainant. He resides at Gali No. 2, Punjabi Basti, Karol Bagh, New Delhi. In the application, Ex. PW-6/A, moved by complainant, Ujjagar Singh, on 13.5.1975 to S.P. (Central District), Daryaganj, Delhi, in connection with burning of his daughter he does not name Gopal Singh having reached the hospital to accompany Niranjan Kuar. Yet another application, Ex.PW-6/B, dated 23.(sic).1975 given to the Lt. Governor, Deputy Commissioner, IG, Police and Deputy Minister for Railways regarding the incident does not mention the name of Gopal Singh in it. Even otherwise, Gopal Singh in his deposition does not support his statement dated 2.5.1975 under Section 161 Cr.P.C. regarding the material particulars. He was, therefore, not considered a credible witness.

6. The next circumstances dealt with by the trial court is the extra judicial confession purportedly made by the accused, Gurdeep Singh, on 13.5.75 to PW-25, Hari Singh, who is the elder brother of the complainant, Ujjagar Singh. According to this witness, he had informed Ujjagar Singh at about 11.30 a.m. on 13.5.1975 that Surjit Singh and Gurdeep Singh had confessed their guilt. This does not find mention in the application, Ex. PW-6/A nor in Exs. PW-6/C to PW-6/L. Nor is there any mention of the extra judicial confession in the statement under Section 161 Cr.P.C. of Ujjagar Singh. Further, even the so-called extra judicial confession made by the accused persons to Ujjagar Singh, PW-6, did not find favor with the trial court since the aforesaid confession is stated to have been

made in presence of PW-5, Davinder Singh, and PW-2, Gopal Singh. None of these witnesses state that such a confession had been made by the accused to Ujjagar Singh. The trial court, therefore, held that the prosecution had not been able to establish the circumstance of extra judicial confession.

7. Dealing with the next circumstance, namely, recovery of one stove in working order and lock of hair from the spot as also kerosene oil noticed on the floor, merely, rules out any mishap on account of stove burst but it does not rule out the possibility of Kulwant Kaur having committed suicide or even an accidental fire. The court held that according to Dr. Bishnu Kumar, PW-20, it was not possible to say whether the burns received by Kulwant Kaur were suicidal or homicidal in nature. In any even of the matter, the court held that there was no positive evidence led by the prosecution to show that the death of Kulwant Kaur was homicidal.

8. With the aid of counsel for the State, we have been taken through the entire evidence and the record. We have, with great care, analysed the same and find that the reasoning advanced by the trial court and its appreciation of the evidence cannot be faulted with. It is needless here to burden this judgment with the extensive analysis of deposition and material available on record since the same has been dealt with by the trial court exhaustively with which we are in full agreement. In that view of the matter, Criminal Appeal No. 148 of 1982 as also Criminal Revision No. 210 of 1982 are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com