

Baldeo Singh Vs. State

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Court : Uttaranchal

Decided On : Jun-10-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : Baldeo Singh

Respondent : State

Advocate for Pet/Ap. : Mr. R.P. Nautiyal

Disposition : Appeal dismissed

Judgement :

B.C. Kandpal, J.

1. This appeal, Under Section 374(2) of Cr.P.C. has been preferred against the judgment and order dated 9.12.1996, passed by Sessions Judge, Uttarkashi, in S.T. No. 8 of 1994 State v. Baldeo Singh, convicting accused Baldeo Singh Under Section 302 I.P.C. and sentencing him to imprisonment for life.

2. The brief facts of the prosecution case are that one Narain Puri lodged a first information report on 26.12.1993, at P.S. Kotwali Uttarkashi mentioning therein that on 26.12.1993 at about 9.45 P.M. Bhanu Pratap Singh came to his house and informed him that his daughter Savitri wife of Baldeo Singh has been burnt and the villagers have taken her to District Hospital, Uttarkashi. On this information, he

reached District Hospital, Uttarkashi, and saw that whole body of his daughter was burnt and she was crying. She told him that her husband came in drunken condition to his house and when she expressed her opinion as to why he was wasting his money, her husband started beating her. At that time she was sitting in the kitchen where her husband poured kerosene oil upon her body and set her on fire. She further told him that earlier also Baldeo Singh used to beat her. On the basis of said report, Ext. Ka.1, chick F.I.R. Ext. Ka.7 was prepared and a case was registered against the accused in G.D. report No. 41, at 11.30 P.M. on 26.12.1993, carbon copy of which is Ext. Ka.8. The investigation of the case was entrusted to S.I. Jashwalal. On 27.12.1993 he recorded the statement of Smt. Savitri Devi in the hospital and seized the burnt clothes of the victim and iron jeriken, half filled with kerosene oil along with a matchbox from the place of occurrence and prepared recovery memo, Ext. Ka.10. He also prepared site-plan, ext. Ka.11, of the place of occurrence. He conducted inquest on the dead body of Smt. Savitri Devi on 28.12.1993 and prepared inquest report Ext. Ka.12. The I.O. also prepared Sketch dead body, Ext. Ka.13, Police Form No. 13, Ext. Ka.14, letters to C.M.O. Ext. Ka.15, and Ext. Ka.16.

3. The dying declaration of the victim Smt. Savitri Devi, Ext. Ka.5, was recorded by Sri Chhotey Lal Pasi, S.D.M. on 26.12.1993, at 11.15 P.M.

4. Dr. Y.S. Rana, Medical Officer, District Hospital, Uttarkashi treated Smt. Savitri Devi. According to him whole body of the victim was burnt and it was burnt about 90% from foot to head. She was in critical condition, but she was in sense. He also found that there was acute shortage of water in the body and swelling has started. Information was sent to P.S. Kotwali, Uttarkashi through memo, Ext. Ka.2. The doctor prepared injury report Ext. Ka.3. After the death of the victim Dr. Rajeev Banswal held autopsy on her dead body on 28.2.1993, at 1.20 P.M. and found the following ante mortem injuries on her body

- (1) Lacerated wound 2cm x 1cm on lower portion of right leg.
- (2) There were 90% burn injury marks on the whole body.

(3) There were intensive burnt injuries except lower front portion. The lower abdomen was also burnt. Hair of head were also burnt.

In the opinion of the doctor the death was caused due to 90% burn injuries. Dr. J.K. Singh was also present at the time of post mortem examination and he proved the signatures of Dr. J.K. Singh and also proved the post mortem report, Ext. Ka.4.

5. After completion of investigation, the I.O. submitted charge sheet, Ext. Ka.6, against the accused.

6. The Chief Judicial Magistrate Uttarkashi, vide his order dated 22.2.1994, committed the case to the court of Sessions.

7. The learned Sessions Judge, Uttarkashi framed charge Under Section 302 I.P.C. against the accused, to which he pleaded not guilty and claimed to be tried.

8. The prosecution, in support of its case, examined P.W.1, Narain Puri, P.W.2, Kripal Singh, P.W.3, Vinod Panwar, P.W.4, Budhi Singh, P.W.5, Dr. Y.S. Rana, P.W.6, Dr. Rajeev Banswal, P.W.7, Chhotey Lal, P.W.8, Ashok Kumar, and P.W.9, S.I. Jashawalal.

9. The accused in his statement Under Section 313 Cr.P.C. has alleged that on 26.12.1993 at about 8 P.M. he and his children after taking meal went in their room and after about 15-20 minutes he heard shrieks. At this they went in the kitchen and saw that fire was burning there. He brought a blanket and covered Smt. Savitri with it and extinguished the fire. He further alleged that thereafter other villagers had come there and hired a taxi in order to brought Smt. Savitri to the hospital. He along with other village people came upto the Chungi. Thereafter, he was sent back by Kripal Singh to leave the children at home and after leaving the children at his home when he was going to hospital, the police arrested him in the way. The accused denied the prosecution allegations and alleged that he has been falsely implicated in the case.

10. The accused also examined Sri B.N. Bahuguna, D.W.1 and Sri Hari Om Singh, D.W.2, in his defence.

11. The learned Sessions Judge, after hearing Learned Counsel for the parties and considering the entire material available on record, found the accused guilty of offence Under Section 302 I.P.C. and accordingly sentenced him to undergo life imprisonment vide impugned judgment.

12. Feeling aggrieved, the accused/appellant has preferred this appeal.

13. We have heard Mr. Pankaj Purohit and Mr. R.P. Nautiyal, Learned Counsel for the appellant and Mr. Nandan Arya, learned A.G.A. for the State and perused the record.

14. At the outset, it is to be noted here that out of the witnesses of fact examined by the prosecution, P.W.2, Kripal Singh, P.W.3, Vinod Panwar and P.W.4, Budhi Singh, did not support the prosecution case and they have been declared hostile. Now there remains the testimony of P.W.1, Sri Narain Puri, the informant and father of the deceased Smt. Savitri Devi, and P.W.7, Sri Chhotey Lal, S.D.M., who recorded the dying declaration of the victim. Besides it, there is dying declaration of the victim and other circumstances of the case against the accused/appellant to prove the case of the prosecution.

15. Learned Counsel for the accused/appellant has submitted that the prosecution witnesses did not support the case and the interested statement of P.W.1, Narain Puri, father of the deceased, is not trustworthy. He also pointed out that the victim was admitted in the hospital in a critical condition and she was not in a position to give a statement, therefore, the dying declaration recorded by the S.D.M. is also not trust-worthy, and under these circumstances the conviction of the appellant is not tenable in law.

16. On the other hand learned A.G.A. has refuted the submissions of the defence Counsel and argued that the dying declaration of the victim is true and free from any effort to induce the deceased to make a false statement and it is coherent and consistent, therefore, the learned trial court has rightly made it the basis of conviction. He also submitted that the dying declaration of the deceased is also corroborated by the evidence of P.W.1, Narain Puri, before whom the victim had narrated the whole occurrence when he went to her house and inquired about the

incident. Learned A.G.A., therefore, argued that the learned trial court has rightly believed the dying declaration which also finds support from the deposition of P.W.1, Narain Puri and other attending circumstances of the case. Learned A.G.A. in support of his submissions has cited before us the cases of *Sunder Lal v. State of Rajasthan* reported in : (2007) 10 Supreme Court Cases 371 and *Ranjit Singh and Ors. v. State of Punjab* reported in (2007) 2 SCC (Cri) 604.

17. We have considered the rival submissions of Learned Counsel and we are of the view that the submissions of learned defence Counsel have not substance.

18. Although, P.W.2, Kripal Singh, P.W.3, Vinod Panwar and P.W.4, Budhi Singh, witnesses of fact, did not support the prosecution version, and it appears that they were won over by the defence, but this fact does not affect the authenticity of the prosecution case. P.W.1, Narain Puri, who is complainant and father of the victim, has fully supported the prosecution case. He has stated that accused Baldeo Singh was his son-in-law and deceased Savitri was married to him about 25 or 30 years ago. He further stated that on 26.12.1993 he was at his house at Gyansu when Bhanu Pratap Singh came to him at about 9.30 or 9.45 P.M. and informed that his daughter was admitted in the hospital in critical condition. He further deposed that on receipt of above information, he and his family members went to District Hospital where he saw his daughter Savitri and on inquiry she told that Baldeo Singh came drunk and started beating her and thereafter in the kitchen he poured kerosene oil on her and set fire. When she cried village people came there and brought her to the Hospital. She also stated that she had advised so many times to Baldeo Singh not to take liquor and not to beat her. This witness further stated that thereafter he got the report, Ext. Ka.1 written and handed over it at Police Station. No reason has been assigned to this witness as to why he will falsely depose against his son-in-law. We find that the deposition of P.W.1, Narain Puri is natural and trustworthy. It is settled principle of law that the statement of a close relation of the victim cannot be discarded merely on the ground of his relationship with the victim and if it is found to be reliable and trustworthy, then the same is safe for holding the culprit guilty of the offence.

19. The important piece of evidence available on record is the dying declaration of the deceased. P.W.6, Sri Chhotey Lal Pasi, S.D.M. Bhatwari has recorded the dying declaration on 26.12.1993. He had received information from Kotwali Uttarkashi. He came to District Hospital where Smt. Savitri was admitted. He inquired from the doctor whether she was in a fit position to give statement, then the doctor told that she was in a fit position to give statement. This witness himself also found that she was able to give statement. Therefore, he recorded her statement at 11.15 P.M. He also deposed that he got certificate of Dr. Y.S. Rana on the statement, which was in his own handwriting. He proved statement Ext. Ka.5. P.W.5, Dr. Y.S. Rana has proved in his deposition that before recording the statement of the victim he had examined her and found her in a fit condition to give statement. A certificate to this effect has been noted in the begging of the statement. After close of her statement this witness also noted a certificate at the end of the statement that the condition of the patient Smt. Savitri Devi during recording her statement remained general. Therefore, it is quite clear that the victim was in a fit condition to give statement and she gave her statement in a conscious state, therefore, the dying declaration, Ext. Ka.5, recorded by the S.D.M. is an authentic document and the same can be made basis for recording the conviction of the accused/appellant.

20. Perusal of dying declaration, shows that Smt. Savitri Devi had stated that at the time of incident her husband Baldeo Singh was drunk, he quarrelled with her and poured kerosene oil upon her and set fire. She further stated that he burnt her at about 8.00 P.M. in the night. Two children were at home. He pushed her in another room, poured kerosene oil upon her and set fire by burning matchstick. He used to take liquor daily. Quarrel takes place daily. Some time he used to beat her and asked her to throw her out of the house. She also stated that village people have brought her to hospital. Therefore, we find that the accused/appellant Baldeo Singh has committed the murder of his wife Smt. Savitri Devi by pouring kerosene oil upon her and setting fire at her. The dying declaration is fully supported by the deposition of P.W.1, Narain Puri, before whom Smt. Savitri had narrated the whole incident.

21. We have also gone through the ruling cited on behalf of learned A.G.A. and found that these rulings are fully cover to the facts of present case. In the case of *Sunder Lal v. State of Rajasthan* reported in : (2007) 10 Supreme Court Cases 371, (supra) the Hon'ble Apex Court in paragraph-8 has held as under

8. 10. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') which deals with cases in which statement of relevant fact by a person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen, it must be the evidence of the witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it; if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 [of the Evidence Act]. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eyewitness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. These aspects have been eloquently stated by Eyre, L.C.B. in *R. v. Woodcock*. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of Dauphin Lewis explain:

This extract is taken from *Sunder Lal v. State of Rajasthan* : (2007) 10 SCC 371, at page 375:

Have I met hideous
death within my view,
Retaining but a quantity of life,
Which bleeds away
even as a form of wax,
Resolveth from his figure
against the fire?
What in the world should
make me now deceive,
Since I must lose the use of all deceit?
Why should I then be false
Since it is true
That I must die here,
and live hence by truth?

(See *King John*, Act V, Scene iv.)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim 'nemo moriturus praesumitur mentire -- a man will not meet his Maker with a lie in his mouth'.

11. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and

serene when he is dying that the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

12. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the ^deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben v. State of Gujarat* SCC pp. 480-81, paras 18-19

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. See *Munnu Raja v. State of M.P.*

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. See *State of U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar*.

(iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. See *K. Ramachandra Reddy v. Public Prosecutor*.

- (iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. See *Rasheed Beg v. State of M.P.*
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. See *Kake Singh v. State of M.P.*
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. See *Ram Manorath v. State of U.P.*
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. See *State of Maharashtra v. Krishnamurti Laxmipati Naidu*.
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. See *Surajdeo Ojha v. State of Bihar*.
- (ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. See *Nanhau Ram v. State of M.P.*
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. See *State of U.P. v. Madan Mohan*.
- (xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. See *Mohanlal Gangaram Gehani v. State of Maharashtra*.
13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court

that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. See Gangotri Singh v. State of U.P., Goverdhan Raoji Ghyare v. State of Maharashtra, Meesala Ramakrishnan v. State of A.P., State of Rajasthan v. Kishore and Muthu Kutty v. State.

In another above cited case of Ranjit Singh and Ors. v. State of Punjab reported in (2007) 2 SCC (cri) 604, the Hon'ble Apex Court in para-13, has held that

13. It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if 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.

22. In the instant case we find the dying declaration wholly reliable and there exists no suspicion as regards its correctness. There is also corroborative evidence of P.W.1, Narain Puri, before whom Smt. Sabaitri had narrated the whole incident when he had met her soon after the incident.

23. The other attending circumstances of the case also fully corroborate the prosecution version. The incident is said to have taken place on 26.12.1993 at about 8.00 P.M. and at about 9.45 P.M. father of the deceased was informed by Bhanu Pratap Singh about the incident. Thereafter he reached the District Hospital, where the victim was admitted and there she narrated the whole incident to him. The informant lodged the F.I.R. of the incident in the night of incident at about 11.30 P.M. Therefore, it is quite clear that no delay has been caused in lodging the F.I.R. Promptness of the F.I.R. rules out the possibility of false implication.

24. The another circumstance while give strength to the dying declaration of the deceased is that the deceased was married with the accused about 25-30 years ago and from their wedlock two children were born and the deceased has blamed her husband that he always used to drink liquor and do marpit with her and she often adviced him not to waste money on the liquor. On the day of occurrence also the accused was drunk and when the deceased advised him not to take liquor and save money, he did marpit with her and ended her life by setting fire on her after pouring kerosene oil upon her. From the side of defence no reason has been shown as to why deceased would falsely implicate her husband. There is also no suggestion from the defence side as to why the deceased would have ended her life by herself setting fire upon her, leaving behind her two children. This also not the case of defence that some one else has set fire upon the deceased. Therefore, the deceased had no reason as to why she would tell a lie against her husband and spoil. It is always assumed that 'a man will not meet his maker with a lie in his mouth'.

25. The medical evidence also fully corroborates the prosecution case. P.W.6, Dr. Rajeev Banswal, who conducted autopsy on the dead body has found 90% burn injury marks on the whole body of the deceased and in his opinion the cause of death was due to these burn injuries.

26. Learned Counsel for the appellant also argued that the accused set fire upon the deceased due to the quarrel ensued at the spot and there was no intention of the accused to commit the murder of the deceased. Therefore, the act done by the accused/appellants comes under Section 304 Part-I instead of under Section 302 I.P.C. In support of this argument, Learned Counsel has cited before us the case of Balkar Singh v. State of Uttarakhand reported in (2010) 2 SCC (Cri) 548.

27. We again do not find any force in the above submission of Learned Counsel for the appellant. The facts of above cited case also do not apply to the facts of instant case. In the cited case there was old enmity between the accused and the deceased and some conversation took place between the accused and the deceased on the point of supply of wine by the deceased to the accused and when the deceased did not pay any heed to the request of the accused and the accused

felt insulted then he fired first shot in the air and thereafter indiscriminately fired shots upon the tractor moving at a high speed. However, in the instant case the quarrel took place between husband and wife and the wife was repeatedly making requests to the accused not to waste money on consuming liquor and at the time of occurrence also she had requested the accused not to waste money on the liquor. Thereupon the accused beated her and pushed her in another room where he first poured kerosene oil upon her and then set fire at her by burning a matchstick. The accused/appellant had full knowledge that by setting fire upon the deceased, she would be killed. There was not sudden quarrel between the accused and the deceased, earlier also quarrel took place between them so many times on the point of consumption of liquor by the accused. Therefore, the deceased was an obstruction in the way of accused as she was preventing him for taking liquor hence accused wanted to remove the obstruction of his way forever. The accused was perturbed with the deceased, therefore, he intentionally committed the murder of the deceased by pouring kerosene oil upon her and then setting fire at her by burning a matchstick. In our opinion the offence committed by the accused is fully covered Under Section 302 I.P.C. We do not find any infirmity in the view taken by learned Trial Court.

28. Therefore, in view of the observations made by Hon'ble Apex Court noted above, as well as the dying declaration of the deceased corroborated by the evidence of P.W.1, Narain Puri and the circumstances of the case, we are in full agreement with the decision taken by the learned trial court, holding the accused/appellant Baldeo Singh guilty of murder of his wife Smt. Savitri Devi. Hence, the appeal lacks merit and is liable to be dismissed.

29. The appeal is dismissed. The conviction and sentence awarded against the accused/appellant by the trial court is upheld.

30. The accused/appellant is on bail. His bail bonds are cancelled and sureties discharged. He be taken into custody forthwith in order to serve out the sentence awarded against him by the trial court.

31. Let the record be transmitted to the trial court for compliance.

