

Dev Singh Vs. State

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Court : Uttaranchal

Decided On : Jul-14-2010

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

Appellant : Dev Singh

Respondent : State

Advocate for Pet/Ap. : Mr. Prem Kaushal

Disposition : Appeal dismissed

Judgement :

B.C. Kandpal, J.

1. This appeal preferred under Section 374 read with Section 389 Cr.P.C. is directed against the judgment and order dated 15.2.1997 passed by Special Judge/Additional Sessions Judge, Nainital in Sessions Trial No. 515 of 1995 State v. Dev Singh convicting the appellant under Section 302 I.P.C. and sentencing him to undergo imprisonment for life.

2. Brief facts of the case are that a telephonic message was received by the police of Tallital to the effect that the lady had certain burn injuries which were caused by her own husband Dev Singh resident of Stonelay Compound Tallital, Nainital. On receiving this information S.I. Kamal Ram Arya (PW4) rushed to the District

Hospital, Mallital, Nainital and on way he found that the said lady was being taken to the hospital by her husband and the other residents of the locality. He also reached the hospital and had a talk with the said Deepa @ Deika. She told him that her husband Dev Singh poured kerosene oil on her body and set her on fire because he was addict of alcohol and she was pressing him to leave the said habit and due to that reason a murderous attempt was made on her. So on receiving the said information Sri Kamal Ram Arya returned back to the police station and got prepared the check report and registered a case under Section 307 I.P.C. against the accused Dev Singh. In the meantime, Dr. K.K. Bhatt (PW-8) medico-legally examined the injured and sent information to the police with regard to Deepa having been admitted in the hospital in a burn condition. Sri B. Prasad, Naib Tehsildar (PW-6) reached the hospital and recorded the statement of Smt. Deepa (Ex. Ka.4) in the presence of Dr. M.C. Joshi (PW-7), who has given the certificate that patient was fit for giving the statement. Since the said injured died on the next day, the case was altered from Section 307 I.P.C. to Section 302 I.P.C. The dead body of the deceased Smt. Deepa was sent for postmortem and the autopsy was conducted by Dr. Anil Sah (PW-1). He found that the deceased had received 98% burn injuries. PW- 1 has opined that cause of death was on account of shock due to extensive ante mortem burn injuries. The investigation of the case was taken up by Dharmpal Singh (PW-9), who collected the bottle containing kerosene oil and the partly burnt clothes, a match box and a match stick from the place of incident and prepared recovery memo (Ext.Ka. 1). He has also proved the site plan (Ext.Ka.9). After completion of the investigation charge sheet was submitted against the accused.

3. After submission of the charge sheet, case of the accused-appellant was committed to the court of Sessions and the learned Addl. Sessions Judge after hearing the parties framed charge of offence punishable under Section 302 I.P.C. against accused-appellant. The accused pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution produced as many as eleven witnesses. Dr. Anil Sah (PW-1) examined the dead body and prepared post mortem report (Ext.Ka. 1). PW-2 Bishan Singh is the father of the deceased and PW-5 Khim

Singh is her uncle. PW-3 Prem Singh is the witness of recovery of bottle containing kerosene oil. PW-4 S.I. Kamal Ram Arya, who after having talk to the deceased, got prepared check report (Ext.Ka.2). Sri B. Prasad (PW-6) Naib Tehsildar recorded dying declaration of the deceased. Dr. M.C. Joshi (PW-7) was present in the hospital at the time of recording of dying declaration of the deceased by Naib Tehsildar. Dr. K.K. Bhatt (PW-8) attended Smt. Deepa on the said date at about 8.45 a.m. when she was brought to the hospital. Dharmpal Singh (PW-9) is the investigating officer of the case. Sri Narain Singh Negi (PW-10), the other Naib Tehsildar, prepared the inquest report and Constable Guru Prasad (PW- 11) proved the check F.I.R. (Ext.Ka.2).

5. After the evidence of the prosecution was over, statement of the accused-appellant was recorded under Section 313 Cr.P.C. He denied all the allegations of prosecution and claimed innocence and false implication. In defence the accused produced Sri A.P. Arya (DW-1).

6. The trial court having considered the entire evidence on record and hearing learned Counsel for parties found guilty accused-appellant Dev Singh of the offence punishable under Section 302 I.P.C. and convicted and sentenced him to undergo imprisonment for life, vide impugned judgment and order dated 15.2.1997.

7. Feeling aggrieved by the aforesaid impugned judgment and order, accused-appellant Dev Singh has preferred the present appeal before this Court, which has been placed before us for disposal.

8. Heard Mr. R.S. Sammal, Advocate with Mr. Prem Kaushal, learned Counsel for the appellant, Mr. S.S. Adhikari, learned A.G.A. for the State/respondent and perused the record.

9. It is to be noted here that in the present case there is no eye-witness account of the occurrence and the conviction has been based mainly by relying upon the dying declaration (Ex.Ka.4) of Smt. Deepa (deceased) by the trial court.

10. Learned Counsel for the appellant has challenged the authenticity of dying declaration being weak type of evidence and argued that the dying declaration alone could not have been made the basis for conviction.

11. Now, this Court has to see as to whether the court below was justified in convicting the appellant on the basis of dying declaration (Ex. Ka.4) made by Smt. Deepa (deceased). The dying declaration (Ex. Ka.4) of Smt. Deepa, recorded by B. Prasad, Naib Tehsildar (PW-6) is reproduced below:

Today in the morning I asked my husband why did he consume liquor, then my husband Dev Singh told that she had ruined his house and who is she to object. By saying this he poured kerosene oil upon me and set me on fire with matchbox. I was on fire and I gripped my husband who also sustained burns on his body. This was second marriage of my husband. His first wife had died and out of wedlock from first wife there were two boys and one girl. I was married only 28 days ago. My father's village is Ragodi which is ahead of Daniya, and is in District Almora.

12. PW-4 S.I. Kamal Ram Arya has stated in his statement that on 18.8.1995 at about 7.00 a.m. a telephonic message was received to the effect that a lady had certain burn injuries which were caused to her by her own husband Dev Singh, resident of Stonelay Compound, Tallital, Nainital. On being received this information, he rushed to the District Hospital, Mallital, Nainital, and on the way he found that the said lady was being taken to the hospital by her husband and the other residents of the locality. He also reached the hospital and talked to the lady (Smt. Deepa). She told him that her husband Dev Singh poured kerosene oil on her body and set her on fire, because he was addict of alcohol and she was pressing him to leave the said habit and due to this reason a murderous attempt was made on her.

13. PW-6 Sri B. Prasad, Naib Tehsildar (PW-6) who had recorded the dying declaration of the deceased on 18.8.1995 at 10.15 a.m., has categorically stated that after being satisfied that the patient was in a fit state of mind for making the statement, he recorded her statement. The statement was read-over to Smt. Deepa (deceased) and she approved the same by putting her thumb impression below the statement. He categorically stated that whatever was stated by the

deceased had been correctly recorded by him and none was present at the time of recording the statement of the deceased except himself and Dr. M.C. Joshi. The doctor again certified at the end of the statement that the victim remained in a fit state of mind throughout her statement.

14. PW-7 Dr. M.C. Joshi has stated in his statement that he was present in the hospital when the dying declaration was being recorded by Naib Tehsildar Sri B. Prasad (PW-6). He gave a certificate on dying declaration (Ext.Ka.4) to the effect that Smt. Deepa was in fit mental state to give statement and she remained in fit mental state throughout the period of recording dying declaration. Both the certificates are on record as Ext.Ka.6 and Ext.Ka.7.

15. PW-8 Dr. K. K. Bhatt has stated that he provided first aid to the injured Smt. Deepa when she was brought to the hospital. He also informed the police regarding the statement of the lady so given to him alleging that the burns injuries were caused to her by her husband Dev Singh. He proved his report (Ext.Ka.8) while disclosing the fact that kerosene smell was present on the body of Smt. Deepa when she was attended by him for first aid. This witness has nowhere mentioned in his report (Ext.Ka.8) that Smt. Deepa was not in a fit condition to speak. Moreover, she died next day i.e. on 19.8.1995 at 1.50 p.m. as is evident from post mortem report (Ext.Ka. 1) and thus she remained alive for 19 hours after the occurrence.

16. In the present case, the deceased received burn injuries in her house at the hands of her husband. The deceased has categorically stated in his statement before PW-4 S.I. Kamal Ram Arya that she was set ablaze by her husband for the reason that her husband was addict of alcohol and she was pressing him to leave the said habit. She reiterated her statement before PW-6 B. Prasad, Naib Tehsildar, in her dying declaration. She has also stated that when her husband poured kerosene oil and set her on fire, she gripped her husband who also sustained burns on his body. There is nothing on record that immediately before recording of her statement on 18.8.1995 at 10.15 a.m. any one had an occasion to tutor her. It has come in the evidence of PW-6 B. Prasad, Naib Tehsildar, who recorded the dying declaration, that whatever was stated by the deceased had

been correctly recorded by him and none was present at the time of recording the statement of the deceased except himself and PW-7 Dr. M.C. Joshi. There appears to be no exaggeration in the dying declaration which would show that the injured was tutored by any one.

17. Further, from perusal of the statement of PW-6 B. Prasad, Naib Tehsildar, who recorded the dying declaration of the deceased, it is clear that at the time of making statement on 18.8.1995 at 10.15 a.m., Smt. Deepa was in a fit condition to make dying declaration. PW-6 has also proved the dying declaration (Ext.Ka.4) recorded by him as well as the written dictation of the S.D.M. (Ext.Ka.5). This dying declaration is duly proved by PW-6 Naib Tehsildar B. Prasad who has no interest in false implication of the accused supported by the statement of Dr. M.C. Joshi (PW-7), in whose presence it was recorded by Naib Tehsildar, and Dr. M.C. Joshi remained present there throughout the period of recording her statement. PW-7 gave certificate on dying declaration (Ext.Ka.4) regarding mental state of the injured Smt. Deepa before and after recording of her statement. Further, dying declaration recorded by PW-6 Naib Tehsildar gets corroboration from the oral declarations of the deceased recorded by PW-4 Ram Kamal Arya and PW-8 Dr. K.K. Bhatt respectively. PW-4 has stated that Smt. Deepa told him she was set on fire by her husband with the intention to kill her. PW-8 Dr. K.K. Bhatt has also stated on oath that Smt. Deepa told him at the time of her first aid that her husband set her body on fire.

18. In the present case, the motive for committing the crime is also there as is emerged from perusal of the dying declaration. Smt. Deepa (deceased) stated in her dying declaration that her husband Dev Singh was addict of alcohol. When she objected to his consuming liquor, the accused committed this crime by setting her on fire with intention to kill her.

19. In view of the above, we find the dying declaration to be reliable, unambiguous and untainted. It is well established that if the dying declaration is reliable, the same can be basis for conviction without further corroboration. Therefore, we are of the view that the learned trial court has rightly convicted the accused-appellant on the basis of dying declaration (Ex.Ka.4).

20. For the reasons stated above, we do not find any merit in this appeal. The appeal is liable to be dismissed.

21. The appeal is dismissed. Conviction and sentence awarded by the trial court against accused-appellant Dev Singh, under Section 302 I.P.C., is affirmed. The appellant is on bail. His bail is cancelled and sureties discharged. Registry is directed to send the lower court record back to the trial court to make the accused-appellant served out the sentence awarded against him.

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