Sanjay and ors. Vs. State

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Court : Delhi

Decided On : Mar-24-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Code Of Criminal Procedure (CPC) - Section 161

Appeal No. : CRL.A.NO.22/1999

Appellant : Sanjay and ors.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Advs.

Advocate for Pet/Ap. : Mr.N.Hariharan, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

1. Of the 3 appellants, appellant No.1 Sanjay expired during pendency of the appeal while he was in Bangalore on 25.8.2009.

2. The appeal continues qua appellant No.2 and 3 and qua Sanjay it is apparent that proceedings have abated and none desire to prosecute the appeal on behalf

of Sanjay for the sake of his reputation and honour. But, since the facts are intermingled, we shall be referring to the 3 appellants as and when necessary.

3. Vide impugned judgment and order dated 5.11.1998 Sanjay, his mother Satya Devi and his sister Baby have been convicted for the offence of having murdered Hukam Chand, the husband of Baby. The conviction has been sustained on the basis of the stated dying declaration Ex.PW- 16/B purportedly made by the deceased and recorded by ASI Hem Raj PW-16 on 13.5.1997.

4. The only issue which we have to decide is whether the learned Trial Judge has correctly held that Ex.PW-16/B inspires confidence and has to be accepted.

5. As disclosed by HC Dharambir PW-18, while on duty at the Police Control Room he received a PCR call at 12:20 midnight of the intervening night of 29th and 30th April 1997 regarding a person burning in House No.519, Gali No.11, Nehru Nagar which information was transmitted to PS Anand Parbat and was noted vide DD No.49B at 12:20 midnight. As deposed to by ASI Hem Raj PW-16 on receipt of DD No.49B, accompanied by Const.Bijender Singh left for House No.519, Gali No.11, Nehru Nagar and learnt that a boy named Hukam Chand had been received by a PCR van to DDU Hospital. Indeed, as deposed to by HC Prem Singh PW-17, Incharge of a PCR van, when he received same information over his wireless he went to the spot and got admitted Hukam Chand at DDU Hospital. There is complete corroboration to what we have noted up till now with reference to the MLC Ex.PW-1/A proved at the trial by Dr.S.L.Gupta PW-1 who was familiar with the writing of Dr.Vanshika, a Junior Resident at the casualty as per which MLC HC Prem Singh had brought a male who was in a burnt condition in the hospital at 2:00 hours in the night and whose name was Hukam Chand. The patient was disoriented and unconscious. He was not fit for making any statement and thus as deposed to by ASI Hem Raj he returned to the police station as nobody gave him any information of what had happened.

6. Hukam Chand, as deposed to by Dr.S.L.Gupta PW-1 was referred to R.M.L.Hospital, a fact recorded on the MLC Ex.PW-1/A, where he remained admitted till 5.5.1997 but could never make a statement being always found unfit, a fact deposed to by ASI Hem Raj. On said day i.e. on 5.5.1997, Hukam Chand

was admitted at Dr.Rehmani Nursing Home, a fact proved by Dr.Mohd.Rias of Dr.Rehmani Nursing Home. It was in this hospital that the prosecution claims Hukam Chand became not only conscious and fit for statement on 13.5.1997 and as deposed to by ASI Hem Raj PW-16 he recorded the statement Ex.PW-16/A of Hukam Chand. As per Dr.Mohd.Rias PW-11, not in writing, but orally he had declared Hukam Chand fit for statement. As per the statement Ex.PW-16/B Hukam Chand has stated that he was a resident of House No.519, Gali No.11, Nehru Nagar and was aged 30 years. As per the statement he i.e. Hukam Chand was in the business of welding iron boxes. Pertaining to his work he had gone to Rohtak and on 28th April, 1997 had returned from Rohtak to his house in the night at 10:30 where he learnt that his wife Baby and his father had a quarrel and police had to intervene to resolve the same, but his wife had left the matrimonial house. On enquiry he learnt that his wife had gone to the house of her sister Neetu at Prem Nagar and thus he immediately left for the house of his sister-in-law No.2087/3A-12, Gali No.20, Prem Nagar where in spite of his persuading her, his wife refused to return home and thus he returned to his house. Next day on 29.4.1997 at around 11:00 PM in the night he returned to Neetus house at Prem Nagar and once again requested his wife to return to her matrimonial house, but she remained adamant. He threatened her (maine use dhamkaya) at which his mother-in-law Satya Devi picked up a plastic can lying nearby and sprinkled kerosene oil on him. His wife caught him. His mother-in-law exhorted that he should be finished that day at which his brother-in-law Rajesh set his clothes on fire. His sister-in-law and co-brother Jitender who were present doused the flames by throwing water over him and he ran to his house where police came and removed him to the hospital.

7. It may be noted that Hukam Chand died on 20.6.1997 and the FIR which was registered for the offence of attempt to murder was converted into that of murder.

8. There is no evidence of the distance between House No.519, Gali No.11, Nehru Nagar where Hukam Chand lived and as per his statement ran back to after he was set on fire and House No. 2087/3A-12, Gali No.20, Prem Nagar where he was allegedly set on fire, but during arguments we were informed by learned counsel that the two are separated by a distance of about 5 to 6 kms. It would strike

anybody as a striking fact that how Hukam Chand would have run for such a long distance if he was so badly burnt that by the time he was removed to the hospital he had become unconscious. But we have a clue.

9. As deposed to by Jitender PW-14, the co-brother of Hukam Chand, whose name find a mention in Hukam Chands statement and to whom Hukam Chand has ascribed the role of a savior, has deposed that he, after dousing the fire on Hukam Chand, had left him i.e. Hukam Chand near his house at Zakhira.

10. We cut through the useless evidence which has not bearing on the issue and straightaway note what Jitender PW- 14 has to deposed as also what Neetu PW-13 have to depose. Before doing that we highlight that in the statement Ex.PW-16/B Hukam Chand has stated that he had gone to Neetus house to bring back his wife and that when he threatened his wife Baby to return home as Baby was acting stubborn, when his mother-in-law threw kerosene oil on him, Babu caught him and his brother-in-law Sanjay set him on fire, but immediately Jitender and Neetu doused the flames by throwing water on him. As per the statement Jitender and Neetu would have seen what had happened. We ignore that the two have not told the police that the accused had set on fire Hukam Chand as there may be a good argument that after all Neetu was the sister of Baby and Jitender was the son-in-law of the family and thus hid the truth, notwithstanding that the person burnt was also the son-in-law of the family. But it would be useful to note what Jitender and Neetu have deposed.

11. Both of them have deposed that Baby had a domestic quarrel with her in-laws and thus on 28.4.1997 had come to the house of niece of Hukum Chand and started staying there and that Hukam Chand i.e. the deceased and Sanjay i.e. accused No.1 had tried to resolve the matter on 28.4.1997 and once again on 29.4.1997 Hukam Chand had come to the house of his niece and a dispute arose when he started beating Baby at 10:30. They tried to pacify him and left. At 12:30 midnight Hukam Chand knocked at the door of their house and cried for help. They poured water on him. Jitender PW-14 further deposed that he left Hukam Chand outside his house near Zakhira.

12. Relevant would it be to note that both of them were declared hostile and were confronted with their statements recorded under Section 161 Cr.P.C. as per which it stands recorded that Baby had come to their house on 28.4.1997 and that she was in their house on 29.4.1997 when a quarrel ensued and during the quarrel, Satya Devi sprinkled kerosene oil on Hukam Chand, Baby caught him and Sanjay set him on fire, facts which they denied.

13. Now, by giving a twist and introducing an imaginary niece in whose house Hukam Chand was burnt, is apparently and demonstrably an attempt of the two to shift the scene of the incident outside their house. It assumes importance that as per Hukam Chand his wife Baby was in the house of Jitender and Neetu and it was in this house that he was burnt.

14. Let us also note the testimony of Parmal Dass PW-3 as per which his daughter-in-law Baby had quarreled with him and gone to her sisters house. The police had to be summoned to amicably resolve the matter. The following day his son went to Neetus house and returned in a burnt condition at 11:45 PM and on enquiry told him that those persons had burnt him. He was abusive.

15. It assumes importance that Parmal Dass did not tell ASI Hem Raj PW-16 that his son, in an abusive language, had told him that those persons had burnt him. Who would be those persons? Obviously the ones who were being abused by Hukam Chand.

16. From the testimony of Parmal Dass, Jitender and Neetu emerges the fact that Baby and her husband Hukam Chand had quarreled. The quarrel had assumed serious dimensions evidenced by the fact that police had to intervene on 28.4.1997. Baby left her matrimonial house and went to Neetus house and in late night Hukam Chand went to convince Baby to return. She did not. He endeavored to patch up on 29.4.1997. Baby remained adamant. Passions heated up. To this extent there is complete corroboration to the dying declaration of Hukam Chand. But what happened thereafter is in conflict.

17. In the dying declaration of Hukam Chand, when he threatened Baby, his mother-in-law poured kerosene oil on him. Baby caught him and Sanjay set him on

fire.

18. Now, the facts stated in the dying declaration of Hukam Chand of the events which took place on 28.4.1997 and the current events which took place on 29.4.1997 were in the knowledge of all the family members and thus anybody could have told the said facts to the police who could then easily manage to record a dying declaration.

19. Admittedly Hukam Chand was picked up by the PCR van from outside his house in Nehru Nagar and it is obvious that whatsoever be the place where he was burnt, he reached his house. There is conscious omission in the dying declaration of Hukam Chand to record how he reached his house. We find it strange that ASI Hem Raj PW-16 did not get Hukam Chands statement recorded before a learned Sub- Divisional Magistrate. It assumes importance that Hukam Chand died on 20.6.1997. As per post-mortem report cause of death was septicemia. There was enough time available to get Hukam Chands statement recorded before a Sub-Divisional Magistrate.

20. From the evidence on record and even from the dying declaration of Hukam Chand it has clearly emerged that Hukam Chand was extremely annoyed at his wife not returning to their matrimonial house. His persuasion has failed on 28.4.1997 and even on 29.4.1997. His animosity towards his in-laws would be obvious.

21. Law is clear. If a motive emerges to falsely implicate somebody in a dying declaration, such a dying declaration would lack in inspiring confidence. (See (2006) 3 SCC 161 P.Mani v. State of Tamilnadu)

22. We find that the learned Trial Judge has trivialized the testimony of Parmal Dass PW-3 who stated that when his son returned home in a burnt condition he said in an abusive language that those persons had burnt him, by dealing with the argument that why would Parmal Dass not tell this fact to the police, by reasoning as follows:-

"According to the witness, on 29.4.1997 his son came to him in burnt condition only with a underwear without any pant and shoes and on enquiry deceased told him that those people had burnt him. No specific names were disclosed by the deceased and therefore, Parmal Dass might not have made any statement before the police. It shows truthfulness on the part of Parmal Dass that he did not falsely implicate the accused by making statement on the date of incident."

23. This is convoluted reasoning. It is also a judicially dishonest reasoning. It ignores, deliberately if we may say so, the testimony that while saying they had burnt him the deceased was abusing the said they. Commonsense and instinct would have guided Parmal Dass that those who were being abused were the they. It is unfortunate that since the learned Trial Judge could not have reasoned if he had noted said fact, he has chosen to ignore the same.

24. Parmal Dass is obviously a person who has a score to settle.

25. Now, it was expected of the learned Trial Judge to have found an answer to the question as to how come the deceased reached 5 to 6 kms away from the place where he received burns. Who helped him in cover the distance and what were the contemporaneous utterances of Hukam Chand when he reached his house. The contemporaneous utterances were not what Parmal Dass has claimed to be. The inference which has to be drawn in criminal jurisprudence has to be the one giving a benefit of doubt to the accused and has to be that Hukam Chand never implicated anybody.

26. It was also expected of the learned Trial Judge to find out as to who stayed with Hukam Chand at R.M.L.Hospital till 5.5.1997 and who removed him to Rehmani Hospital. It was also expected of the learned Trial Judge to find out who took Hukam Chand to R.M.L.Hospital to DDU Hospital on 30.4.1997.

27. Surely, these questions were relevant and would have thrown light as to who was the person in constant touch with Hukam Chand and therefrom one would be in a position to know whether Hukam Chand could be tutored.

28. The deceased, as per his dying declaration was burnt in the house of Jitender and Neetu. Jitender admits having taken the deceased from his house to the house of the deceased, but claims that the deceased had reached his house in a burnt condition. Is it not possible that when the deceased quarreled with Baby in Jitenders house, it was Jitender who, in a fit of rage, threw kerosene on the deceased and set him on fire and immediately repented; to undo what he did, doused the flames and left his co-brother outside his fathers house and thereafter contrived with the Investigating Officer to get scribed a statement which was never made by Hukam Chand? The way the evidence has emerged, possibility of this cannot be ruled out when we keep in mind the fact that deceased, appellant Sanjay and his mother Satya Devi are residents of a house at Patli Gali, Jullahan, Sadar Bazar and would under normal circumstances would be expected to be in their house at 11:30 PM in the night.

29. It is settled law that at a criminal trial the evidence must be of such unimpeachable character and quality that the only inference would be that of the guilt of the accused and innocence ruled out.

30. It assumes significance that as per Dr.Mohd.Rais he orally certified Hukam Chand fit for statement. ASI Hem Raj PW-16 has admitted during cross-examination that he never moved any application before the doctor concerned to obtain a certificate that Hukam Chand was fit for statement. The prosecution has not proved any certification given in writing by any doctor to prove that Hukam Chand was fit for statement. The admission of ASI Hem Raj that he never filed any application to obtain any certification qua fitness of Hukam Chand and the testimony of Dr.Mohd.Rais that he orally declared the patient fit for statement is no evidence, at least is not creditworthy evidence to hold that the prosecution has established Hukam Chand being fit for statement on 13.5.1997 and this fact coupled with the further fact that till he died on 20.6.1997 no attempt was made to get Hukam Chands statement recorded before the Sub-Divisional Magistrate compels us to grant benefit of doubt to the appellants.

31. The appeal is allowed. Impugned judgment and order dated 5.11.1998 convicting the appellants is set aside and the appellants are acquitted of the

charge of having murdered Hukam Chand. The order on sentence dated 6.11.1998 is set aside. Noting that appellant Sanjay has died during the pendency of the appeal, we discharge the bail bonds and surety bonds furnished by the appellants at the time they were granted bail by this Court.