

Subhash Chander Vs. State

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Court : Delhi

Decided On : Aug-12-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Indian Penal Code (IPC) - Section 302

Appeal No. : CRL.A. 361/1997

Appellant : Subhash Chander

Respondent : State

Advocate for Def. : Ms Richa Kapur, Adv.

Advocate for Pet/Ap. : Mr S. P. Singh Chaudhary, Adv.

Judgement :

1. The present appeal has been preferred against the judgment dated 12.09.1997 delivered by the Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi in Sessions Case No. 184/1996 which arose out of FIR No. 227/1991 under Section 302 IPC registered at Police Station Bhajanpura. The appellant was charged for having committed the murder of his wife Smt. Reeta, who was a teacher in a public school on the allegation that he had burnt her alive in the intervening night of 16/17th of May, 1991. They had been married for 7-1/2 years and they also had a child by the name of Karan, who was six years of age at the time of the occurrence. The learned Sessions Judge had found the appellant guilty

of the offence punishable under Section 302 IPC and, therefore, by a separate order on sentence dated 15.09.1997, the appellant was sentenced to rigorous life imprisonment and a fine of ` 5,000/- was also imposed and, in default of the fine, he was to undergo one month of rigorous imprisonment.

2. Thirteen prosecution witnesses were examined as well as one defence witness. On going through the impugned judgment, we find that the learned Sessions Judge mainly considered three dying declarations, which are alleged to have been made by the deceased Smt. Reeta prior to her death. The first was the one recorded in the MLC Exhibit PW11/A where the alleged history was given by the patient herself. She had stated that she had a quarrel with her husband in the evening and in the night she poured kerosene oil on herself and set herself on fire. The second dying declaration referred to in the impugned judgment is Exhibit PW13/DA, which is said to have been recorded by ASI Ramjit Singh of Police Station Bhajanpura on 17.05.1991 wherein, once again, it is alleged that the deceased Smt. Reeta had stated that she had prepared tea on the gas stove in her house and when her husband had started taking tea, she poured kerosene oil on herself and set her clothes on fire. It is also indicated in the said statement that an altercation had taken place between her and her husband over some domestic issue prior to the incident.

3. The third dying declaration, which has been referred to as Exhibit PW7/A, is stated to have been recorded by PW7 B. P. Singh, who is stated to be a Sub-Divisional Magistrate, although we find from the testimony of PW7 himself that he was a Link Magistrate connected with one Mr Mishra. The said dying declaration indicates that Smt. Reeta had been commanded by her husband to pour kerosene oil on her clothes and out of fear she poured kerosene oil on her lower clothes and immediately thereafter, her husband came and lit a match stick and set her clothes on fire and thereafter, she got burnt. She also stated that her husband had intentionally set her ablaze. In this statement (Exhibit PW7/A), she also allegedly explained that the earlier statement made by her before the police was given out of fear of her husband as he had warned her while carrying her in an auto-rickshaw that in case she gave a statement against him, the consequences thereof would be even worse. It is recorded in Exhibit PW7/A that the earlier statement

may not be treated as correct and the statement which was being tendered by her on that date, that is, "19.05.1991 at 10:35 pm" may be deemed to be correct.

4. The learned Additional Sessions Judge found the third dying declaration, namely, Exhibit PW7/A to be credible and reliable and, therefore, believing the same, rejected the earlier dying declarations and convicted the appellant for the offence of having committed the murder of his wife Smt. Reeta in the manner indicated above.

5. The learned counsel appearing on behalf of the appellant assailed the authenticity and correctness of the so-called dying declaration Exhibit PW7/A. He submitted that the said dying declaration was not recorded in the manner prescribed by Chapter 13-A of Volume -III of the Delhi High Court Rules and Orders dealing with dying declarations. He further submitted that Exhibit PW7/A does not inspire any confidence inasmuch as the thumb impression of the deceased Smt. Reeta is barely visible, whereas the thumb impression of the same Smt. Reeta on Exhibit PW13/DA is clearly and distinctly visible. Thus, according to the learned counsel for the appellant, there is a serious doubt as to whether the thumb impression on Exhibit PW7/A was at all that of Smt. Reeta. Apart from this, he has also pointed out several discrepancies in the manner in which the said statement was recorded, which we shall refer to below. Consequently, it was his submission that Exhibit PW7/A cannot be considered to be an authentic and correct dying declaration of Smt. Reeta and, therefore, the conviction cannot be based upon it. He further submitted that insofar as Exhibit PW13/DA is concerned, the same was the statement made by Smt. Reeta to DW1 ASI Ramjit Singh and there is nothing which has been brought forth on behalf of the prosecution to assail the authenticity of the said Exhibit PW13/DA. He further submitted that the prosecution knew about the existence of this dying declaration but they did not produce it before the court. It is for this reason that the defence was left with no alternative but to produce ASI Ramjit Singh as a defence witness, who has come to the witness box and has proved the statement of Smt. Reeta, which is Exhibit PW13/DA. Apart from this, the learned counsel for the appellant also submitted that the MLC, which has been proved by PW11 and has been exhibited as Exhibit PW11/A, also contains the endorsement of the doctor who prepared the MLC to

the effect that the alleged history was given by the patient herself and that she had clearly indicated that she had poured kerosene oil on herself and set herself on fire after she had a quarrel with her husband in the evening. Thus, according to the learned counsel for the appellant, upon examining the first two dying declarations, that is, the one recorded in the MLC Exhibit PW11/A and the other which is recorded in Exhibit PW13/DA, it is clear that the appellant has not been implicated in these two statements. It is only in Exhibit PW7/A that the appellant has been sought to be implicated. Once Exhibit PW7/A is held to be unreliable, there is no evidence against the appellant and he is entitled to be acquitted of all charges.

6. We have heard Ms Richa Kapur on behalf of the State. She supported the judgment of the learned Sessions Judge and submitted that the trial court had correctly relied upon the third dying declaration which clearly negates the earlier two dying declarations. She further submitted that insofar as the dying declaration recorded in the MLC is concerned, that was at a point of time when Smt. Reeta's husband i.e., the appellant herein, was present. This fact is clear from Exhibit PW11/A itself, where it is indicated that she was brought by her husband. Therefore, according to her, not much reliance can be placed on the statement given by Smt. Reeta to the doctor, which has been recorded in the MLC. As regards the second dying declaration, that is, Exhibit PW13/DA, she has stated that this also cannot be relied upon because the same was recorded by DW1 at 1:05 am on 17.05.1991, whereas the fitness certificate, as per the endorsement on Exhibit PW11/A, indicates that the same was given at 3 am. Furthermore, she has submitted that the third dying declaration which was recorded by PW7 B. P. Singh was authentic and correct inasmuch as she has clearly explained that she had made the earlier statement to the police under fear and duress.

7. After having considered the arguments advanced by the counsel for the parties and having examined the impugned judgment as also the evidence on record, we are of the view that this case entirely hinges upon the veracity and authenticity of Exhibit PW7/A (i.e., the third dying declaration). If the same is to be believed, then the prosecution could be said to have established its case. However, if the same cannot be relied upon, then it would cause a serious dent in the prosecution case and the appellant would be entitled to get the benefit of the same.

8. The English translation of Exhibit PW7/A reads as under:-

"I reside at the above mentioned address and am employed as a teacher in Adarsh Public Vidhya Niketan, Shiv Mandir Gali Moujpur. My husband Sh. Subash Chand is employed as an accountant in Chhabra Tube Company at Houz Qazi. My marriage was solemnized with Sh. Subhash Chander about 7-1/2 years back. I have a son aged 6 years. On 17.5.91 at about 1.00 A.M my husband asked me to prepare tea and bring the same. When I went inside the kitchen to prepare the tea, my husband asked me to pour kerosene oil on my clothes in threatening and menacing manner. Out of fear, I poured kerosene oil on my lower clothes. Immediately thereafter my husband came lighted a match stick and set my clothes on fire. This I got burnt. About 10 days prior to the incident my husband had demanded a sum of ` 10,000/- from my father and I had refused to do so. My husband consumes wine and even charas. Even on earlier occasion, he often used to beat me severely under the influence of intoxication. I am a teacher in a private school. My husband has intentionally set me ablaze. Even prior to this incident my husband had threatened to eliminate me. The earlier statements made by me before the police was given out of fear and scare of my husband as he had warned me while carrying me in a auto rickshaw that in case I made statement against them, the consequences thereof would be even more than this. My earlier statement may not be treated as correct and the statement which is being tendered by me today i.e. 19.5.91 at 10.35 p.m. may please be deemed to be correct. Two days back my husband had threatened to eliminate my son, Karan. L.T.I.
Rita

Sd/- B.P. Singh S.D.M.

19.5.91"

Upon reading the above statement, we find that it has been indicated that the said statement was recorded on 19.05.1991 at 10:35 pm. When we try to verify this with the deposition of PW7 B. P. Singh, we find that the two cannot be reconciled. This is so because PW7 revealed in his cross-examination that the investigating officer had come to him before lunch on 19.05.1991 between 9 to 11 am. He further stated that he reached the hospital at about 12/12:30 noon and that Smt. Reeta's statement was recorded within 15-20 minutes. This clearly shows that, according to PW7, the statement of Smt. Reeta was recorded on 19.05.1991 between 12 to 1 pm at the latest. Whereas, the so-called dying declaration (Exhibit PW7/A) itself indicates that the statement was recorded at 10:35 pm on that date. Furthermore, according to PW7, the doctor had written that the patient was fit for statement on the MLC and it is then that he recorded the said statement Exhibit PW7/A. Going by the deposition of PW7, the said statement must have been recorded prior to 1 pm on 19.05.1991. Therefore, the doctor's endorsement that the patient was fit for statement should also have been prior to 1 pm on 19.05.1991. However, when we examine the MLC Exhibit PW11/A, we find that the endorsement on 19.05.1991 to the effect that the patient was fit for statement bears the time of 10:30 pm. Therefore, this aspect also does not match with the testimony of PW7.

9. We also observe that PW7 in his testimony stated that at the time of recording the statement neither any doctor nor any nurse was present near Smt. Reeta. However, PW13, SI Pratap Singh had stated that they met the doctor before going to the bed of Smt. Reeta. Lady doctor, Chitra Lekha had identified the patient Smt. Reeta and that the said doctor Chitra Lekha along with other doctors were present in the ward. This also belies and contradicts the testimony of PW7, who, as we have pointed out above, stated that neither any doctor nor any nurse was present near Smt. Reeta at the time when her statement was recorded.

10. There is another reason as to why we cannot believe PW7 and that is that he had in his testimony stated that while he was going to the hospital, he had checked the file of the case in the vehicle. At that point of time, he had seen only one statement of Smt. Reeta recorded by the police in the police file and that was

recorded in the hand of one Hari Om. We do not find any such statement available on record. Only two inferences can be drawn from the same. Either that PW7 never saw the case file and never noticed the statement recorded in the handwriting of Hari Om or that a statement had been written by one Hari Om and which has been held back by the prosecution. Either way, this causes a serious dent in the prosecution case.

11. Furthermore, PW7, as pointed out above, on the one hand, stated that at the time when the statement was being recorded, there was no doctor or nurse present and on the other hand, he has stated that the doctor had given an injection to the patient but he did not know whether it was pethidine or fortwin. It is obvious, if there was no doctor present, then there would be no question of a doctor having given an injection and, therefore, it is clear that PW7 has, once again, contradicted himself.

12. Considering the testimony of PW7 in totality, we do not find him to be a credible witness at all. Consequently, the veracity and authenticity of Exhibit PW7/A, on which the learned Additional Sessions Judge has placed sole reliance, is extremely doubtful, to say the least. We also notice that the language used in Exhibit PW7/A also does not seem to be the natural language of the deceased Smt. Reeta but that of a police officer. It has been admitted by PW7 that Exhibit PW7/A was scribed by PW13 SI Pratap Singh on his dictation. This, too, is contrary to the rules referred to above which require that the dying declaration should be recorded in the exact language of the declarant. It is for these reasons that we cannot place reliance upon Exhibit PW7/A. Once that falls to the ground, the other two dying declarations become meaningless because in any event, those dying declarations, even if we were to believe them, only go towards proving the innocence of the appellant. On the other hand, if we disbelieve those dying declarations, there is nothing left in the case.

13. We also want to record that this case has been handled in a most shoddy manner on the part of the prosecution at the trial stage as even the post mortem report has not been proved nor has the post mortem doctor been examined. Even the investigation has been much below par. As an example, there has been no

seizure of any incriminating material from the scene of crime. In fact, in our view, there has been virtually no investigation, what to speak of a scientific investigation.

14. As a result, we are left with no alternative but to give the benefit of doubt to the appellant and to acquit him of all charges. The impugned judgment and /or order on sentence are set aside. The appellant is on bail. Consequently, his bond stands cancelled and the surety stands discharged. The appeal is allowed.

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