

(2011) 10 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 713 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Parma Ram @ Prem Singh and another

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 307, 34

Citation : (2012) 1 ShimLC 158

Hon'ble Judges : R.B. Misra, J;Dev Darshan Sood, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dev Darshan sud, J.—This appeal has been preferred by the State against the judgment of the learned Additional Sessions Judge-I, Kangra at Dharamshala dated 29.6.2002 acquitting the respondents who were charged for offences under Sections 307, 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as "the IPC"). The prosecution case is that both the accused-respondents were responsible for causing death of Nirmla Devi by entering her house and setting her on fire on the intervening night of 8/9.4.1997 as a consequence she sustained burn injuries and succumbed to her death at Udhampur hospital on 2.6.1997 where her husband had taken her for medical treatment.

2. The prosecution case, in brief, is that on 13.4.1997 PW5 Dr. Chaman Lal Senior Medical Officer, Civil Hospital, Sujampur informed the police that a patient suffering burn injuries had been admitted in the hospital by her brother Baldev Singh and others. He conveyed this information telephonically as well as by writing to the Station House Officer, Sujampur Teehra. He examined her and issued MLC Ext.PW5/A and records in the certificate that she has been brought to the hospital on 13.4.1997 at around 4 P.M. with multiple burn injuries. He found that she had 3rd and 4th degree burn injuries and percentage of burn was 82%. The injuries were found to be grievous in nature caused within probable duration

of 3 to 7 days. When he examined the deceased, she was found conscious, cooperative, normal speech, memory normal and well oriented to time and place. Her pupils were reacting to light normally, but the patient was in agony. He also obtained the signatures of Nirmala Devi on the certificate at mark "A". At around 4.45 PM on that day, Ext.PW5/B an application was filed by the police asking for his opinion as to whether she was in a fit condition to make a statement. He made an endorsement:

"this is certified that Smt. Nirmala Devi is medically fit to give statement.

Sd/- (Doctor) 13.4.1997, 4.45 PM"

Thereafter, statement Ext.PW6/A was recorded by PW7 Ashok Kumar ASI, who was posted as an Investigating Officer at Police Station Sujanpur Teehra. He received a telephonic message from Dr. Chaman Lal PW5 and immediately rushed to the hospital and moved an application Ext.PW5/ B to seek the opinion of the doctor as to whether the injured was in fit state to make a statement. Thereafter, he recorded her statement Ext.PW6/ A which was admitted to be correct according to what she had stated and she had signed it. This was attested by the Pradhan, PW12 Varinder Gram Panchayat Sujanpur Teehra. He then says that he made an endorsement on the statement and sent it to Police Station Jawalamukhi for registration of the case. At the time when her statement was recorded, her husband Pritam Singh was not present, but other relations were present there. PW12 Shri Varinder, Pradhan of Gram Panchayat Dera was also present there.

3. According to her statement, she was married to Pritam Singh who is serving in the Indian Army and was not present in the house on that day. They had no issue from the marriage and therefore, she had adopted a girl child about three years ago. She was living alone in the house as she does not have any brother-in-law or father-in-law etc. Then she states that she had a dispute with Purvi Ram of the village with respect to some land. On 7.4.1997 she had gone to Purvi Ram and admonished him as to why he was digging her land. He became incensed and told her that she could do what she wanted. He also told her that her husband wanted to perform second marriage because she did not bear any child from him. She says that for the last about three years her husband has been telling her that he wanted to get married again, which was causing great mental anguish to her. On 8.4.1997 at night she was sleeping when Parma Ram accused, his wife came to her house and inquired about her welfare and told her that she could get medicine injected. Then after half/quarter of an hour, two people entered her house and gagged her. She became scared. They set her on fire and she lost her consciousness. When she raised hue and cry, her Tai saas (aunt of her husband) Saina Devi PW-13 wife of Sant Ram came and saw both these persons and saved her. She says that no efforts were made to shift her to the hospital except on 13.4.1997 when her brother brought her there. She says that she has a dispute with Purvi Ram and that both these unknown assailants who were seen by Saina Devi were responsible for causing her serious burn injuries.

Case u/s 307/ 34 IPC was accordingly registered. On 17.4.1997, she was shifted to the Civil Hospital, Hamirpur for treatment and this time, her husband Pritam Singh PW14 was not present. She was treated by PW2 Dr. K.C. Chopra, Medical Officer, Zonal Hospital, Hamirpur. He says that on 17.4.1997 PW16 SHO Karam Chand of P.S. Jawalamukhi had moved an application Ext.PW2/A on which he made an endorsement that she was fit to give statement. Thereafter, statement Ext.PW16/C was recorded by him which was signed and endorsed by the doctor as having been made in his presence. In his evidence PW16 Karam Chand states that when her statement was recorded at around 1.30 PM her husband was not present and only one lady Constable Surindera was present there as also Dr. K.C. Chopra. In this statement she states that on 8.4.1997 she was alone at home. Her husband was not present there as he was posted outside. Her adopted daughter aged about 3-1/2 years had gone to see her Chacha (uncle) Harbhajan Singh and she did not bolt the door as she was expecting her daughter to come home. She kept waiting for her daughter till midnight. On that day, she was not feeling well and Parma Ram and his wife had visited her and at that time she was suffering from high blood pressure. They told her that they would inject some medicine which would give her relief and she accordingly went with them to their house. Parma Ram gave her an injection and then she returned home and went to sleep. At around 2.30 AM past midnight, Parma Ram and his wife Soma Devi came to her house and set her salwar on fire and fled from the scene. She was alone writhing in pain and on hearing her cries, her tai saas Saina Devi wife of Sant Ram rushed to her house and put out the flames. Besides her, no other person came to her house. In the morning Shakuntla Devi, Saina Devi, Salekha Devi visited her, changed her clothes and gave her food daily. Nobody from the family of Parma Ram visited her. She then says that she and her husband had a longstanding dispute with Parma Ram relating to some land and that these are the same persons, who set her on fire. She could not make a complete statement prior to the present one as she was in pain and scared of these people. This is the entirety of the prosecution case against the respondents.

4. We also proceed to consider the other evidence on record. PW3 Baldev Chand, who is brother of the deceased, stated that she was his younger sister and married to Pritam Singh, who is serving in Indian Army for about 24-25 years. They had no issue from this marriage and as such his sister had adopted a girl child about 3-1/2 years ago in 1997. He had visited her house about one month prior to the incident. He stated that she had made a complaint against her husband that she was apprehending danger from her husband, as he has not visited home for the last two years. Prior to this, he used to beat her. He then says that accused were having cordial relations with the deceased. On 12.4.1997, he received a telegram at Faridabad informing him that she had received burn injuries. He rushed to the village next day. He alongwith 8/9 persons i.e. Prem Singh, Murli Ram, Rai Singh etc. rushed to her village and found that her physical condition was not good. There was nobody present with her. The Ward Panch also visited there. On questioning her, she stated that she

was set on fire by someone whose name she has not disclosed. He immediately rushed Nirmala Devi to the hospital at Sujanpur Teehra, where she was admitted. There was nobody from her In-laws side to attend to her in the hospital. Then he states about handing over the burnt clothes to the police. He states that she remained admitted in hospital at Sujanpur Teehra for two days and thereafter she was shifted to the Zonal Hospital, Hamirpur where she remained admitted for two days. She was again referred to Military Hospital, Yol. Kartar Singh and his brother Rai Singh were sent to Pathankot and they brought Pritam Singh husband of the deceased to Military Hospital, Yol. He took Nirmala Devi with him and got her admitted in Military Hospital, Udhampur where she died. He says that the house of the accused is at the distance of 200 yards from the house of the deceased and they are agriculturists by profession. In his cross examination, he says that at the time when the deceased suffered burn injuries, her husband was posted at Madhopur. Her husband Pritam Singh wanted his own son/daughter for which he had already contracted a second marriage with another lady and was living with her. He admits that his sister never disclosed the name of any persons who set her on fire. His younger brothers Rai Singh and Kartar Singh had sent a telegram to Pritam Singh, but despite having received it, he did not attend his wife in Sujanpur Teehra or Hamirpur. He says that her statement was recorded by the SHO in his presence and in the presence of Pritam Singh. No Doctor was present at that time.

5. PW12 Varinder Singh, Pradhan, Gram Panchayat Dera was familiar with Nirmala Devi because she was from his village. Pritam Singh, her husband, was serving in the Army and since they have no children, they adopted one girl child. On 13.4.1997 her brother Baldev Singh informed that Nirmala Devi had suffered burn injuries and she was brought to the Sujanpur Teehra hospital where she has been admitted. He states that statement Ext.PW6/ A was recorded in his presence which was signed by him in token of its correctness. He stated that Nirmala Devi had complained 2/3 months prior to the incident that her co-villagers were harassing her on account of some land dispute and her husband did not care for her and she was residing alone with her daughter. In his cross examination, he says that her husband had contracted second marriage and that she had a land dispute with one Purvi Ram. He stated that Nirmala Devi also told him that her husband was trying to contract a second marriage as she could not bear any children and it was causing mental tension to her. He admits that Nirmala complained to him that whenever her husband used to come home, he used to quarrel with her and did not visit his home very often.

6. PW13 Smt. Saina Devi was declared hostile because she did not support the prosecution case. She stated that about 3/4 years ago, during midnight when she got up and came out for urinating, she heard the cries of Nirmala Devi. She came back to her house and switched on the light and noticed that it was 3 O'clock in the morning. Thereafter she proceeded to the house of Nirmala Devi, where she found Nirmala Devi who was crying for help and crying that she should be saved. She asked her about the assault and was informed by her that

she does not know who had set her on fire. She goes to the extent of saying that the deceased never disclosed about the number of assailants or their gender. In cross examination by the Public Prosecutor she denied that the accused in Court were the persons responsible for the incident. However in cross examination by the defence, she says that Nirmala Devi's husband used to quarrel with her as she could not bear a child. He remarried and has children from the second marriage. She also states that in case the accused were present at the place of occurrence, she would have recognized them. She says that Nirmala Devi deceased had no dispute with any of the litigants.

7. PW14 Pritam Singh who is serving in the Indian Army also stated on similar lines. He says that two accused were thrashing her and she wrote 2/3 letters to him. When he came on leave, he told her that these things are normal in land disputes, she should not be worried. In April 1997, he received a telegram asking him to come home, but he could not get leave from his Commandant. On 16th April, his brother-in-law Rai Singh and cousin came to him at Madhopur and told him that his wife has been burnt with acid and she has been admitted in the hospital at Hamirpur. At that time he was in a forward area and his brother-in-law telephoned him from his Unit at Madhopur. He was granted five days leave and he returned to Madhopur and from there he came to Hamirpur with his brother-in-law and cousin. He found the police present in the hospital at Hamirpur who informed him that his wife has not made any statement. He asked them to accompany him and went to his wife who was lying in a naked condition under a mosquito net. He asked her to tell the truth and promised that he will not let her die. He had adopted a daughter who was present there. He then says that the deceased disclosed that Soma Devi and her daughter-in-law came to her house in the night, asked her to accompany them where Prem Chand injected some medicine due to which she felt uneasy. When she returned home around 12 AM and went to her bed, both the accused came to her house. Soma Devi stood on the door and Prem Chand entered the room. Thereafter, Soma Devi also entered the room. Both of them gagged her mouth and set her on fire. On hearing her cries, Saina Devi rushed to her and on seeing her burning she rushed to the house of Harbhajan and called him, but he did not accompany her. Saina Devi returned and found his wife totally naked and covered with a sheet. He says that all this was disclosed to him by his wife. Thereafter, she was taken to Military hospital, Yol. After three days, she was referred to military hospital, Pathankot, where, after four days, she was referred to the Command Hospital, Udhampur where she remained for 27/28 days and ultimately died on 2.6.1997. In his cross examination, he says that he had no litigation with anyone but had a land dispute with two persons namely Prem Chand and Dhani Ram. There was some sort of dispute with the respondents. He admits his second marriage and also admits that he has a son from the second marriage. He stated that this marriage was performed by him after two months of the death of his first wife Nirmala. Parma Ram accused and he are distant cousins. The girl adopted by him was found abandoned by him in the forest.

8. It is in these circumstances, we are called upon to examine the legality of the judgment of the learned trial Court. Both statements Ext.PW6/A, which is the first having been made on 13.4.1997, and Ext.PW16/C which was made on 17.4.1997, are to be judged for veracity. "Nemo moriturus praesumitur mentire-a man will not meet his Maker with a lie in his mouth." This is the maxim which allows a dying declaration to be treated as a substantive piece of evidence.

9. In *Sharda Vs. State of Rajasthan*, the Supreme Court holds:

24. In the case in hand, the conviction of the appellant is based on the last dying declaration. Ext.P-18, said to have been recorded in the presence of the Executive Magistrate. The principle on which dying declarations are 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."

It is indicative of the fact that a man who is on the death-bed would not tell a lie to falsely implicate an innocent person. This is reason in law to accept the veracity of her statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Besides, if the dying declaration is to be completely excluded in a given case, it may even amount to miscarriage of justice as the victim alone being the eyewitness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

25. Though a dying declaration is entitled and is still recognized by law to be given greater weight age but it has also to be kept in mind that the accused has no chance of cross examination. Such right of the cross-examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the Court insists that the dying declaration should be such which inspires full confidence of the Court of its correctness. The Court has to be on guard that such statement of the deceased was not as a result of either torturing, prompting or 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 assailants. Once the Court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration.

26. It is also 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. In this regard, we may profitably quote the following para from *State (Delhi Administration) Vs. Laxman Kumar and Others*,

"40. We have also come to the conclusion that the High Court failed to take into account one material aspect while appreciating the evidence of the prosecution witnesses. It is a fact that Sudha had been burnt and according to the medical opinion that was to the extent of 70%. As the evidence shows, Sudha was in her senses and was capable of talking at the time when she was being removed to

the hospital or even after she had been admitted as an indoor patient. The two sisters or their respective husbands had no apprehension that Sudha would not live. In case Sudha came round, she was to have lived in the family of her husband. No one interested to the welfare of Sudha was, therefore, prepared to make a statement which might prejudice the accused persons and lead to the straining of relationship in an irreparable way. Therefore, the silence or avoidance to make a true disclosure about the cause of fire particularly so long as Sudha was alive, cannot be overemphasized and adverse inference drawn by the High Court from the conduct of the sisters was indeed not warranted in the facts of the case."

27. In the light of the aforesaid discussion, we are of the considered opinion that Ext.P-18 cannot be treated as wholly trustworthy as it is shrouded by many doubts. On the other hand, for the reasons recorded hereinabove, Exts. D-3 and P3 are more reliable and credible. Going by the same would fully establish that the deceased had not implicated in the same anyone much less the appellant. (at pp. 90-91)

10. In *Sanjay Vs. State of Maharashtra*, the Supreme Court was considering the factum of two dying declarations, one exonerating the accused and second implicating him. On the facts, the Court ruled:

"16. In our opinion in view of the different dying declarations it would not be safe to uphold the conviction of the appellant and we have to give him the benefit of doubt. It cannot be said in this case that the prosecution has proved the appellant's guilt u/s 306, I.P.C. of abetting the suicide beyond reasonable doubt." (at p. 1369)

11. Similarly in *State of U.P. Vs. Kishanpal and Others*, the Court affirmed the principle of law on this point. This case involved multiple dying declarations and the Court held that if dying declaration is found to be reliable, then there is no need for corroboration by any witness and conviction can be sustained on its basis alone even in case there are consistent multiple dying declarations. The Court reiterated the principle in *Narain Singh v. State of Haryana*, (2004) 13 SCC 264 and *Babu Lal and Others Vs. State of Madhya Pradesh*, to hold that dying declaration made by a person, who was on the verge of his death has a special sanctity and the shadow of impending death which by itself is a guarantee that the person will speak the truth.

12. Adverting to the decision in *Muthu Kutty and Another Vs. State by Inspector of Police, Tamil Nadu*, the Court re-affirmed the principle of law that a dying declaration can form the sole basis for conviction, if it is truthful and that the Court must be satisfied that the deceased was in a fit state of mind to make this declaration which if the Court finds it true and voluntary. There can be no bar to reject this declaration. The Court in *Muthu Kutty's* case holds:

"15. 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 *Smt. Paniben Vs. State of Gujarat*,

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja and Another Vs. The State of Madhya Pradesh*,

(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 Uttar Pradesh Vs. Ram Sagar Yadav and Others*,

(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 and Another Vs. The Public Prosecutor*,

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg and Others Vs. State of Madhya Pradesh*,

(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 Alias Surendra Singh Vs. State of Madhya Pradesh*,

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath and Others Vs. State of Uttar Pradesh*,

(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*, 1980 Supp. SCC 455).

(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 *Surajdo Ojha v. State of Bihar*, 1980 Supp SCC 769).

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental

condition to make the dying declaration look 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* , 1988 Supp SCC 152).

(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. Vs. Madan Mohan and Others*,

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani Vs. State of Maharashtra*,

We now advert to the facts of the present case. We find that two dying declarations Ext.PW6/A and Ext.PW16/C are at total variance. We find that the statements given by the deceased have not been corroborated by PW13 Saina Devi though the deceased states that the assailants were seen and identified by this witness. We also find that her brother Baldev Singh PW5 also states that her relations with the accused were very cordial, but we find that in the first statement Ext.PW6/A she named Purvi Ram and in the second statement Ext.PW16/C she suddenly changed her stand and named both the respondents as persons responsible for causing her death. It has also come in the evidence of the witnesses that the husband of the deceased wanted to re-marry as she could not bear any children and for this reason she was feeling tense. The entire narration of the witnesses as also the dying declarations is in a topsy-turvy manner. We have been unable to ascertain, who is this Purvi Ham or if she had some dispute with Prema Nand and his family, why she went to their home and admittedly got an injection administered. To say that the prosecution has miserably failed to bring home the guilt of the accused would be, but stating the obvious. We therefore find no merit in this appeal, which is accordingly dismissed. Bail bonds furnished by the respondents shall stand discharged.