

(2000) 10 AHC CK 0068

In the Allahabad High Court

Case No : Capital Sentence/Reference No. 2 of 2000 and Criminal Appeal No"s.
137 and 182 of 2000

The State

APPELLANT

Vs

Surya Prasad Verma

RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) CriLJ 2481

Hon'ble Judges : Kamal Kishore, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : Mohd. Abid Ali and Government Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Kamal Kishore, J.—Both the aforesaid criminal appeal as well as the criminal reference arise out of the same judgment dated 15-2-2000 passed by Sri Daya Ram the learned X Additional Sessions Judge, Sitapur confirming the accused Surya Prasad Verma for the offence punishable u/s 302, I.P.C. awarding death sentence to the accused appellant Surya Prasad Verma. Hence all these three members are being dealt with by a common judgment.

2. Feeling aggrieved by the aforesaid judgment passed by the learned Additional Sessions Judge, the accused appellant has preferred both the appeals and a reference has been made for confirming the capital sentence of the accused appellant Surya Prasad Varma.

3. The fact that Kripashanker alias Badkannu and Munna Lal have died as a result of poisoning in the instant case has not been disputed and the same finds support from the post mortem, reports Exhibit Ka 2 and Ka 1 respectively prepared by Dr. Ashok Kumar PW 3 as well as from the viscera report examined by CW 1 Dr. Suresh Chandra Sharma. The accused appellant Surya Prasad Verma has however alleged that he has nothing to do with the crime and he has been

falsely implicated in this case due to enmity with the jailer Sri Prema Mohan Kanchan.

4. We have heard the learned counsel for the parties and have gone through the record.

5. The prosecution has examined Kali Prasad as P.W. 1 and Vishnu Singh as P.W. 2, Mohd. Athar the then Head Warden, Sitapur Jail as P.W. 8 as the eyewitnesses of the occurrence besides examining the doctors and other formal witnesses. The P.W. 1 Kali Prasad has deposed that both, he and his brother Kripa Shankar were imprisoned in barrack No. 2-A of the Sitapur Jail, his bed No. was 34 while the bed No. of Kripa Shanker was 38. He was standing with P.W. 2 Vishnu Singh and others when the prisoner Munna Lal. (deceased) reached there and asked Kripa Shankar to accompany him. Munnal Lal (deceased) was the son of "Sadu" of P.W. 1 and was known to the witnesses since before the occurrence. Munna Lal told Kripa Shanker to drink the liquor since Kripa Shanker had told him that he was feeling pain in his stomach. Kripa Shanker consumed half of liquor and returned it to Munna Lal who also drank it thereafter. Kripa Shanker told Munna Lal that he suspects some foul play. Kripa Shanker fell down there, Munna Lal ran thereafter telling that this poison was handed over to him by the accused Surya Prasad Verma. The P.W. 1, Kali Prasad and P. W. 2, Vishnu Singh and Lalta Prasad were taking Kripa Shanker to hospital when they saw the deceased Munna Lal catching hold the collar of the convict Surya Prasad Verma and was telling that he had administered them poison. Thereafter, Munna Lal also fell down. Both the deceased were brought to the jail hospital, however, there was no doctor in the jail hospital and the compounder advised to send both the deceased Munna Lal and Kripa Shanker to Sadar Hopital, Sitapur where they were declared dead.

6. The WP-2 Vishnu Singh has corroborated the testimony of PW-1 Kali Prasad who has deposed that he saw Munna Lal holding the accused appellant Surya Prasad Verma by catching hold of collar and was telling that the accused has administered poison and thereafter Munna Lal succumbed there.

7. The PW-8 Mohd. Athar, retired Chief Head Warden has further corroborated the testimony of PW-1 Kali Prasad and PW-2 Vishnu Singh when he has deposed that he saw the under control Munna catching hold of collar of the accused appellant Surya Prasad Verma the Warder of Jail and saying that the accused appellant Surya Prasad Verma has administered poison to him and the PW-8 will be a witnesses of this fact. All the three eye-witnesses mentioned above are most natural and probable witness of the fact of this oral dying declaration which is admissible u/s 32 of the Indian Evidence Act. They have been subjected to lengthy cross-examination but nothing material came out in their cross-examination which could discredit the testimony of these eye-witnesses.

8. It has been argued by the learned counsel for the appellant that the alleged oral dying declaration on which the prosecution has based its case should not be relied on as the same cannot be said to be admissible in evidence. This argument

advanced by the learned counsel for the appellant is not tenable.

9. The dying declaration is undoubtedly admissible u/s 32 and not being a statement on oath so that its truth could be tested by cross-examination, the Court has to apply the strictest scrutiny and the closest circumstances to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify her assailant and that he was making the statement without any influence or rancor. Once the Court is satisfied that the dying declaration is true and voluntary, it can be sufficient to base the conviction even without any further corroboration. In order to test the reliability of a dying declaration, the Court has to keep in view the circumstance like the opportunity of the dying person for observation, for example, whether there was sufficient light if the crime was committed at night whether the capacity of the person to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his/her control; the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and the statement has been made at the earliest opportunity and was not the result of tutoring by interested parties, as has been held by the Hon''ble Supreme Court in the ruling reported in K. Ramachandra Reddy and Another Vs. The Public Prosecutor,

10. We have seen that all the three eye witnesses namely PW-1 Kali Prasad, PW-2 Vishnu Singh and PW-8 Mohd. Athar have corroborated one another and have supported the case of prosecution regarding the oral dying declaration in material particular. It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law, nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. Thus Court must not look out for corroboration unless it comes to the conclusion that the dying declaration suffered from any infirmity by reason of which it was necessary to look out for corroboration, as has been held by the Hon''ble Supreme Court in the ruling reported in Munnu Raja and Another Vs. The State of Madhya Pradesh,

11. All these three witnesses of fact of dying declaration are the most natural and probable witnesses. As the oral dying declaration has been corroborated by the testimony of these witnesses also and we see no reason to disbelieve the oral dying declaration, which has been corroborated by the testimony of these witnesses. Hence such dying declaration can safely be made basis for conviction as held by Hon''ble Supreme Court in the ruling reported in Shabir Mohmad Syed

and Others Vs. State of Maharashtra,

12. It has been further argued by the learned counsel for the appellant that since the deceased are alleged to have died as a result of consuming liquor which contained Sodium Cyanide, the deceased Munna Lal was not in conscious stage to make dying declaration, hence this dying declaration should not be relied on. This argument advanced by the learned counsel for the appellant is also not tenable.

13. The expert Dr. Anup Kumar Srivastava has been summoned before this Court, who has deposed that the effect of Sodium Cyanide and Potassium Cyanide is almost the same and the person can remain alive for some time even after taking Cyanide. The expert witness Dr. Anup Kumar Srivastava examined before this Court has also been subjected to cross-examination by the learned counsel for the appellant but nothing came out in the cross-examination of this expert witness, which could discredit the case of prosecution regarding the dying declaration. Dr. Ashok Kumar as P.W. 3 who has conducted post mortem on the dead body of both the deceased and has deposed that the deceased could have died on 30-1-1987 at 5.51 p.m. Thus, the testimony of the eye-witnesses examined by the prosecution, finds support from the medical evidence also and their testimony cannot be discarded since the same finds support from the medical evidence as has been held by the Hon''ble Supreme Court in the ruling reported in Shamu Balu Chaugule Vs. State of Maharashtra, The same view has been followed by the Hon''ble Supreme Court in the subsequent ruling also, as reported in Gauri Shanker Sharma etc. Vs. State of U.P. etc.,

14. Thus the case of the prosecution finds support from the medical evidence and testimony of Dr. Ashok Kumar PW-3 and the expert Dr. Aunp Kumar Srivastava examined before this Court, hence we find that the case of the prosecution regarding dying declaration etc. finds support from the medical evidence also. Thus, we find no reason to disbelieve the oral dying declaration, which has been amply corroborated by the testimony of the witnesses as well as medical evidence.

15. It has been contended on behalf of the appellant that the convict appellant had no motive to commit the crime, hence he is liable to be acquitted. Proof of the motive satisfies the judicial mind about the likelihood of the authorship, but its absence only demands deep forensic search and cannot undo the effect of evidence otherwise, sufficient. Motives of man are often subjective, submerged and un-amendable to easy proof that Courts have to go without clear evidence thereon if other clinching evidence exists as was held by Hon''ble Supreme Court in the ruling reported in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, . In the instant case, the occurrence took place during broad day light at about 5.51 p.m. and there is direct evidence of the witnesses on the point. Moreover, it has been held in the ruling, reported in Chaman Lal Vs. State, that want of ample proof of motive for murder does not by itself improbabilise the charge. It is well settled that where the direct evidence regarding the assault is

worthy of credence and can be believed, the question of motive becomes clear and can be proved. Sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the implicit reliance is placed, then the question whether there is any motive or not becomes wholly irrelevant, i as was held in the ruling, reported in Molu and Others Vs. State of Haryana, Thus, the contention of the learned counsel for the appellant to the contrary is not tenable.

16. Under these circumstances, we find that the Court below has rightly found the convict Surya Prasad Verma the only accused as guilty for the offence punishable u/s 302 I.P.C.

17. In the instant case the occurrence took place on 30-1-1987 while the charge was framed on 7-5-1991. The evidence in this murder trial was being recorded since 16-9-1993. The recorded evidence was concluded and the case was fixed for argument on 22-10-1999. The judgment awarding death sentence to the accused appellant Surya Prasad Verma was passed by the learned Additional Sessions Judge on 15-2-2000 and since then the accused appellant Surya Prasad Verma is detained in jail in solitary cell as the convict who has been awarded death sentence. Thus, long time has lapsed since the occurrence took place during the month of January, 1987. In the case of like nature in which as much as seven persons were murdered, it has been held by the Hon''ble Supreme Court in ruling reported in 1998 Cri LJ 578 Vikram Singh v. Raj Singh that in view of long lapse of time the death sentence is liable to be commuted to imprisonment for life.

18. In view of the aforesaid ruling of the Hon''ble Supreme Court, we find that the sentence of death of the accused appellant Surya Prasad Verma is liable to be commuted to imprisonment for life.

19. The appeal is hereby dismissed with the modification that accused appellant Surya Prasad Verma shall undergo imprisonment for life for the offence punishable u/s 302 I.P.C. The convict appellant is already under custody, he shall undergo the sentence of life imprisonment accordingly. The criminal appeal No. 137 of 2000 and Criminal Appeal No. 182 of 2000 of the accused appellant is dismissed with the aforesaid modification in sentence and the Criminal Reference No. 2 of 2000 for confirming death sentence is hereby rejected.