SUPREME COURT OF INDIA

State of Punjab

Vs.

Parveen Kumar

Crl.A.No.633 of 1999

(B. P. Singh and Arun Kumar JJ.)

18.11.2004

JUDGEMENT

B. P. Singh, J.:-

1. This appeal by special leave is preferred by the State of Punjab against the judgment and order of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.481-DB/95 dated 11th December, 1998 whereby the High Court allowed the appeal of the respondent herein and set aside his conviction under Section 302 and alternatively under Section 304-B IPC and the sentence of life imprisonment passed against him.

2. We have heard counsel for the parties at length and perused the evidence on record.

3. Apart from the appellant, Praveen Kumar, who was the husband of Geeta Rani, deceased, his father and mother as well as his younger sister were put up for trial before the Sessions Judge, Bhatinda. They were charged of offences under Sections 302, 304B and 498A, IPC. The learned Sessions Judge dis-believing the case of the prosecution as against the remaining accused acquitted them of the charges levelled against them, but convicted only the respondent herein under Section 302, IPC as well as under Section 304B, IPC and sentence the respondent to undergo imprisonment for life under Section 302, IPC without passing a sentence under Section 304-B, IPC.

4. The deceased Geeta Rani was married to the respondent one year three months before the occurrence. The occurrence giving rise to this appeal took place on January 4, 1994 at 5.00 A.M. in which it was alleged that Geeta Rani was set on fire by the respondent herein and the other members of the family, who were the co-accused, had acted in concert with the respondent. It is not in dispute that after the deceased had suffered burn injuries, she was removed to the local hospital at Jaitu by the respondent and his father and was being treated there by the attending physician. On the next day, her uncle Kulwant Kumar, PW-5 who had come to visit her, on coming to know about the occurrence rushed to the local hospital and arranged for shifting Geeta Rani from the hospital at Jaitu to the civil hospital at Bhatinda for better treatment. Accordingly, Geeta Rani was shifted to the civil hospital, Bhatinda where

she was admitted on 5th January, 1994. It is the case of the prosecution that while being shifted to the civil hospital at Bhatinda, deceased had made a dying declaration to her uncle, Kulwant Kumar, PW-5 disclosing the complicity of the respondent and the aforesaid family members.

5. On information being sent by the hospital authorities, Sub-Inspector, Kewal Singh, PW-7 came to the hospital and recorded the statement of Geeta Rani. Even before her statement was recorded by the police, the Tehsildar, an Executive Magistrate, PW-4 Harjit Singh, was requested to record the dying declaration of Geeta Rani and he had accordingly recorded the dying declaration of Geeta Rani Ex.PD between 5.30 and 5.55 p.m. Subsequently, at 8.35 p.m. the statement of Geeta Rani was recorded by Sub-Inspector, Kewal Singh (PW-7) in the hospital, on the basis of which a formal first information report was drawn up. Ultimately, the respondent and the aforesaid 3 members of his family were put up for trial, in which except for the respondent, the others were acquitted. The High Court on appeal has set aside the conviction of the respondent as well.

6. Admittedly, there is no eye witnesses to the occurrence and, therefore, the case rests entirely on the alleged 3 dying declarations. The High Court has rejected the first dying declaration made to Kulwant Kumar, PW-5. The reason given by the High Court is that Kulwant Kumar for the first time stated about the alleged dying declaration made to him at the stage of trial. In his statement under Section 161, Cr.P.C. made in the course of investigation, he had not stated that Geeta Rani had made a dying declaration to him. We find no fault with the reasoning of the High Court so far as rejection of the dying declaration made to PW-5 is concerned.

7. Left with two other dying declarations, the High Court found that these two dying declarations are inconsistent with each other, since the versions disclosed in these two dying declarations are quite different and the role of the accused is also differently described. In the first dying declaration Ext.PD made to the Executive Magistrate, it is stated that on 4-1-1994 her husband came home at about 5.00 A.M. after delivering milk to his customers and questioned the deceased as to why the scooter and furniture, etc. promised to him by her parents had not been supplied. Thereafter, he sprinkled half bottle of kerosene oil on her and lit fire with a match stick. On her alarm all collected and her father-in-law extinguished the fire. None else had asked her anything.

> "It, therefore, appears that so far as this dying declaration is concerned, the allegation is solely against her husband, the respondent herein, and it is alleged that he sprinkled kerosene oil and set her on fire. The second aspect of the matter is that so far as the father-in-law is concerned, she has completely exonerated him by stating that he rushed and extinguished the fire.
>
> If we now turn to the report made to the Sub-Inspector, Kewal Singh (PW-7) on the basis of which the formal first information report was drawn up, which has also been treated as dying declaration Ext.PD, we find that the version given there is quite different. It is stated that on 4-1-1994 her husband and her mother-in-law complained

> to her that her parents have not kept their promise of supplying some articles and, therefore, they will finish her once and for all. At 5.00 A.M. her mother-in-law sprinkled a bottle of kerosene oil on her while her husband, respondent herein, set her on fire with a match stick. Her father-in-law and sister-in-law exhorted them to do away with her by setting her on fire. It was only when she raised hue and cry that her father-in-law extinguished the fire and she was brought to the local private hospital at Jaitu by her husband and father-in-law."

8. It will thus, appear that so far the first dying declaration is concerned, there is no allegation against either the mother-in-law, father-in-law or the sister-in-law and the allegation is solely against the respondent, who is said to have sprinkled kerosene oil on her and set her on fire. In the second dying declaration, the allegation is that the mother-in-law sprinkled the kerosene oil and the husband set her on fire with a match stick. While they were doing so, her father-in-law and sister-in-law were exhorting them to do away with her by setting her on fire.

> "These two versions are quite different and not consistent with each other, except that so far as the respondent is concerned, the act of lighting the fire is ascribed to him in both the dying declarations."

9. Counsel for the State submitted that since the respondent has been named in both the dying declarations, his conviction could be sustained. We are afraid we cannot accede to his request. In the first place, in appeal against acquittal, this Court will not set aside the findings of fact and the order of acquittal recorded by the High Court unless it is satisfied that the findings recorded are wholly unreasonable, perverse, not based on evidence on record, or suffer from serious legal infirmity. The mere fact that on the basis of the same evidence another view is possible, is not a ground for setting aside an order of acquittal. We find that the view taken by the High Court is a possible reasonable view on the evidence on record and, therefore, we will not be justified in setting aside the order of acquittal.

10. While appreciating the credibility of the evidence produced before the Court, the Court must view evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declaration. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in *Thurukanni Pompiah and another v. State of Mysore*[1] *and Khusal Rao v. State of Bombay*[2].

11. The High Court having subjected the dying declarations to close scrutiny, has reached the conclusion that they are not reliable. We entirely agree.

12. We, therefore, find no merit in the appeal and the same is accordingly dismissed.

13. It appears that during the pendency of this appeal, bailable warrants were issued against the respondent. His bail bonds are discharged.

Appeal dismissed.

[1]*AIR 1965 SC 939*
[2]*1958 SCR 552*