

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 1st September, 2009*
Judgment Delivered on: 7th September, 2009

+ **CRL.A.416/2001**

SUDHIR Appellant
Through: Mr.Parminder Singh Goindi,
Advocate.

versus

STATE Respondent
Through: Mr. M.N.Dudeja, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Vide impugned judgment and order of sentence dated 5.9.2000, the appellant Sudhir had been convicted for having committed murder of deceased Reema. He had been sentenced to undergo life imprisonment.

2. Version of the prosecution is that the deceased Reema along with her five children and father-in-law was residing in house bearing no. 10-A, Part V, Karan Vihar, Sultanpuri. Her husband was living separately because of differences between the couple.

Reema, to earn her livelihood was working as an Assistant in the office of an advocate. The accused Sudhir, a friend of her husband was known to her. He had an evil eye on her and used to visit her house. She i.e. Reema discouraged his advances and a few days prior to the incident, she categorically asked him to stop visiting her. Upon this the accused threatened her.

3. On 19.12.1996 at around 3 AM in the morning, some person knocked at the door of her house. When she went to open it no one was found there. She returned back to her room and thereafter went to the toilet. The toilet was open to the sky and did not have a roof. On entering the toilet, she saw the accused hiding himself; he immediately poured petrol, which he had brought in a plastic can, upon her and lit her with a match. She i.e. Reema tried to save herself and ran out of the toilet shouting cries of 'Bachao-Bachao'. Her elder son Raj Kumar woke up on hearing her cries and found his mother in flames. The accused was also present there. Hue and cry was raised. The accused, however, managed to flee. Reema along with her son went to the police station where the police personnel i.e. ASI Dharam Singh PW-13 along with Const. Raj Kumar PW-5 removed her to the RML hospital.

4. At 4.45 AM, the deceased was declared fit for statement and her statement Ex.PW-13/A was recorded by PW-13 wherein she had specifically named the accused as the culprit of the aforesated

event. Endorsement Ex.PW-13/B was made on this statement and rukka was taken by PW-5 for registration of the FIR. FIR Ex.PW-1/A was registered by HC Surjit Singh PW-1 which was initially for the offence punishable under Section 307 IPC. The Investigating Officer i.e. PW-13 informed the SDM Vinay Bhushan PW-8 who reached the hospital. He i.e. PW-8 recorded the statement Ex.PW-8/A of the deceased after she had been certified fit for giving a statement. This certificate of fitness was obtained at 5.30 PM and is evidenced in the MLC Ex.PW-5/A of the victim. The MLC further depicts that the patient had been admitted into the hospital with 100% superficial burns.

5. Statement of Raj Kumar PW-9, the son of the victim was recorded. He was an eye-witness and he corroborated the version as given by the victim in her statements Ex.PW-13/A and Ex.PW-8/A. A subsequent statement of PW-9 Ex.PW-9/A under Section 164 of the Cr.P.C. was also recorded by Sh.Ramesh Kumar PW-11, the Metropolitan Magistrate. From the spot, the burnt gadda, quilt and clothes of the deceased i.e. her chunni, salwar and shawl which were seized and sealed.

6. The accused was arrested on the following day i.e. 20.12.1996. His personal search vide memo Ex.PW-5/C was conducted. A railway ticket Ex.P-1 dated 19.12.1996 in the name of the accused evidencing his journey from Nizamuddin Railway

Station, Delhi to Agra was recovered which was taken into possession vide memo Ex.PW-5/B.

7. The deceased succumbed to her injuries on 24.12.1996. The offence was converted from an offence punishable under Section 307 IPC to an offence punishable under Section 302 IPC. The post-mortem Ex.PW-7/A on the deceased was conducted by Dr.K.L.Sharma PW-7 who had opined that death was due to septicemia caused by the burn injuries. He had recorded the percentage of burns as 90%; they had spread all over the body from upper side downwards i.e. the scalp hair, face, neck, upper point of the chest and upper extremities, abdomen, thighs and portion of the legs.

8. The scaled site plan Ex.PW-3/A was prepared by SI Manoj Singh PW-3 on 17.3.1997.

9. The aforesaid stated two dying declarations i.e. Ex.PW-13/A and Ex.PW-8/A coupled with the testimony of the eye-witness PW-9, the recovery of the railway ticket evidencing the fact that the accused was in Delhi on 19.12.1996 and had left for Agra on the same day; were the cumulative circumstances which had led the Trial Court to sustain the conviction of the accused.

10. On behalf of the accused it has been argued that both the dying declarations are suspect. The first dying declaration Ex.PW-13/A is in the narrative form and running into two pages; it is

difficult to imagine that a person who has sustained 100% burns would be in a position to give her entire family history before disclosing the cause of her death; this casts a doubt on the said version. Attention has been drawn to the second dying declaration Ex.PW-8/A; it is argued that the stamp of the SDM has been embossed beneath the writing on the first page of the document thereby establishing that this page had already been stamped by the SDM and the contents had been written thereafter casting a doubt on the manner in which this dying declaration had been recorded. It is further submitted that on the second page of this document the signatures of the victim Reema are running over the punctuation mark (Puran Viram) and both these cumulative factors show that the stamp of the SDM and the signatures of the victim had been obtained on blank papers and thereafter the contents of the purported dying declaration had been written. No credence can be placed upon these dying declarations which are liable to be discarded. The testimony of the eye-witness PW-9 is also suspect as he has made material improvements in court qua his versions recorded under Sections 161 and 164 of the Cr.P.C. It is further submitted that if the grandfather, an elder male member of the family was in the house, why he did not accompany the victim to the police station is not answered. The victim had reached the police station wearing only a shawl; it appears that the victim had

intimate relations with the accused and it could well be a case that a third person i.e. the grandfather had committed the offence in protest of this relationship between the victim and the accused.

11. We have perused the record.

12. There is no doubt to the proposition that a dying declaration is an important piece of evidence and a conviction can be based solely on a dying declaration. The court has however to keep in mind that though a dying declaration is entitled to a great weight, the accused has no right of cross-examination and for this reason the courts have always insisted 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 the 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 with a clear opportunity to observe and identify the assailant.

13. We have to test the two dying declarations on this anvil.

14. The first dying declaration Ex.PW-13/A was recorded by the Investigating Officer ASI Dharam Singh. This document runs into two pages and the version of the prosecution has been elicited from this statement. The information as disclosed in this document was in the special knowledge and in the know-how of the victim herself. There is no other third person who could have disclosed these facts

as have been mentioned therein. In fact, the version of the prosecution had been unfolded from this statement. Reema had specifically mentioned herein that on the fateful day i.e. 19.12.1996 at 3 AM the door of her house was knocked; she went to open it and found no one there. She thereafter went to the toilet where she found the accused hiding himself. He immediately poured petrol upon her and lighted her with a match. She was enflamed; she ran out of the toilet into the chowk where her elder son Raj Kumar who was sleeping in room came out. He saw the accused, who was also present. The accused had fled. She thereafter accompanied by her son went to the police station. This document further recites that this version has been appended in the presence of PW-9 and has been signed by him at point 'C'. It was this statement which had formed the basis of the rukka for the registration of the FIR.

15. ASI Dharam Singh PW-13 has on oath deposed that he had obtained the MLC of the injured and she was declared fit for statement. He recorded her statement Ex.PW-13/A and thereafter read over the same to her and after being satisfied with the same, Reema had signed at point 'A'. He has deposed that her son Raj Kumar had also signed the said statement and he made endorsement at point 'C' endorsing that this statement had been given by his mother in his presence. In his cross-examination, PW-13 has admitted that he does not remember the name of the doctor

who had declared the patient fit for statement; the doctor was not present by the side of the deceased when he recorded this version.

16. It is worthwhile to note that the incident had occurred at about 3 AM, the victim had walked a two kilometer distance to the police station along with her son to lodge her complaint. This has been admitted by PW-9 in his cross-examination. MLC of the victim shows that she had been admitted by PW-13 at 4.30 AM; the rukka had been sent by PW-13 at 5.35 AM i.e. within a span of one hour; almost forthwith keeping in view the fact that in this intervening period after administering first aid to the victim, the patient had been declared fit for statement and thereafter her statement was recorded which was the basis of the rukka. This is too short a time span for any manipulation as has been contended by the learned defence counsel. Moreover, there also appears to be no reason as to why the victim would name Sudhir specifically.

17. The second dying declaration Ex.PW-8/A had been recorded by the SDM PW-8 at 5.30 PM. This is recorded in a question-answer form and fully corroborates the version as contained in Ex.PW-13/A. In this statement also Reema had stated that Sudhir was known to her as he used to come to their house as he was a friend of her husband; the accused had threatened her as she had discouraged his advances. On 19.12.1996 when she went to her toilet the accused who had hidden himself came out and poured petrol upon

her body and thereafter lit her with a match. This was at 3 AM in the morning. She shouted for help and the neighbours collected. Her son Raj Kumar came out of the room and with his assistance she went to the police station to report the matter.

18. Vinay Bhushan PW-8 has on oath deposed that he reached RML hospital at about 4.45 PM where he found the Addl.SHO already present. He i.e. PW-8 along with his reader went to the Burn Ward of the RML hospital and on reaching the ward he asked the reader to call the doctor. The doctor came in the burn ward. MLC of the victim was seen by the doctor as also by PW-8. The doctor examined the victim Reema in his presence and declared her fit for statement. He thereafter recorded the statement of Reema on her instructions and in his own handwriting in question-answer form. After the process of recording of statement was complete, it was read over and its contents were explained to Reema before her signatures were obtained on this statement. PW-8 has further deposed that at that time injured Reema was fully conscious and was capable of distinguishing between right and wrong and she had made her statement voluntarily. In his cross-examination, this witness has deposed that he has recorded the statement with a ball pen and it took about 30-35 minutes in recording her statement. The deceased Reema had signed at point X by using a ball pen. He denied the suggestion that the signatures at point X on the

statement were not of Reema or that this version of Reema had been recorded at the police station and her signatures were forged.

19. Ex.PW-8/A has been perused. We have scrutinized this document not only with a naked eye but with a magnifying lens. The first page of the said document supports the submission of the learned defence counsel and it appears that the stamp of the SDM Vinay Bhushan had been embossed on a blank paper as contents of this first page appear to have been written over this stamp. This is explainable by the fact that the SDM well knew the purpose for which he was going to the hospital i.e. for recording the statement of a burn victim and he was accompanied by his reader. He or his reader must have stamped a blank page and the statement was thereafter written by the SDM in the question-answer form as per the instructions of Reema. No cross-examination has been effected of this witness on this controversy which is now sought to be raised and which has been explained above. There appears to be no discrepancy on the second page of the document. The signatures of the victim Reema have been scribbled and have appeared over the punctuation mark; it is obviously because that Reema did not have a firm grip of the pen while she was scribbling her signatures; this was for the reason that she had suffered more than 90% burns and her upper extremities had got burnt. This document further clearly certifies that the statement of Reema had been taken by the

SDM in his own handwriting after the doctor had certified that her she was fit for giving statement at 5.30 PM on 19.12.1996 at the RML hospital at Bed No.25 Ward No.2. The MLC corroborates this version; the patient had been declared fit for statement on 19.12.1996 at 4.45 AM and thereafter again at 5.30 PM.

20. The scrutiny of the aforestated two dying declaration i.e. Ex.PW-13/A and Ex.PW-8/A show that the cause of death, the circumstances and the manner in which the victim had been attacked by her named assailant i.e. by Sudhir are on the same parameters. There is no discrepancy pointed out in either of these two versions of the dying victim. Investigating Officer as also the SDM have both categorically deposed that the patient had been declared fit for statement before her statement was recorded. The Investigating Officer had recorded the first dying declaration of the victim at 4.45 AM. The second dying declaration had been recorded by the SDM after 5.30 PM. These certificates of fitness are evidenced in the MLC Ex.PW-5/A. There was a span of almost 12 hours in the recording of the two dying declarations but both of them are consistent and corroborative of one another on all scores. They are fully reliable.

21. In this case, the doctor who had declared the patient fit for statement had not been examined. The non-examination of the doctor, in these circumstances, would however not affect the

evidentiary value to be attached to such a dying declaration. This has been held by Supreme Court in Shanmugam alias Kulandaivelu vs. State of Tamil Nadu AIR 2003 SC 209.

22. PW-9 Raj Kumar was the eye-witness in the instant case. His version is fully corroborative of the aforesaid two dying declaration. He has on oath deposed that the accused Sudhir was a friend of his father and used to visit their house. He was paying Rs.300/- to Rs.400/- for taking meals in their house. He had made demand of Rs.5000/- from his deceased mother and when his mother did not fulfill his demand, the accused threatened her. On the day of incident between 3.00 AM to 4.00 AM the accused came with a can in his hand. He i.e. PW-9 was sleeping at that time. Accused crossed over the boundary wall and entered the bathroom where he attacked his mother. In cross-examination, he has stated that one railway ticket had been seized in his presence vide seizure memo Ex.PW-5/B from the accused. He was confronted with his statements recorded under Section 161 and 164 of Cr.P.C.; although there are improvements to the effect that in his earlier versions he had not stated that the accused was paying Rs.300/- to Rs.400/- for having meals in their house or that he had demanded a sum of Rs.5000/- and on non-payment of this money his mother had been threatened; yet these improvements are not material in nature and would not affect the otherwise credible version of PW-9.

23. Testimony of a child witness has to be scrutinized carefully and if found reliable and trustworthy, the court can place reliance upon such a version. Before examining PW-9 the court had tested his competence by putting a preliminary round of question and it was only thereafter he was put into the witness box. PW-9 has passed the test of reliability.

24. The site plan Ex.PW-3/A corroborates the versions given by the victim in her two dying declarations as also the ocular testimony of PW-9. The incident had taken place in the toilet. After Reema had been put on flames, she rushed out into the chowk which is shown as the open space in Ex.PW-3/A. Her cries for help were heard by her son who was in the room adjacent to the chowk; he rushed out to save her. PW-9 had witnessed the incident from point 'E' on Ex.PW-3/A which is just outside the room. The boundary wall has a height of about 2.30 meters i.e. about 8 feet; the accused had scaled the boundary wall and had jumped into the toilet which was open to the sky and did not have a roof and was hiding there when Reema entered it.

25. The railway ticket Ex.P-1 recovered from the accused and seized vide memo Ex.PW-5/B evidenced that the accused was in Delhi on 19.12.1996 which is the date of the incident and on the same day he had, in the late evening, travelled from Nizamuddin Railway Station to Agra. He was admittedly a resident of Agra. He

has admitted in his statement under Section 313 Cr.P.C. that this railway ticket had been recovered from his person. He, however, had no explanation to offer as to what he was doing in Delhi on 19.12.1996 when he was otherwise a resident of Agra.

26. In our view, the judgment of the Trial Court calls for no interference. We concur with the same. Appeal is without any merit. It is dismissed. The appellant is reported to be on bail. His bail bond and surety bond are cancelled. He is directed to surrender forthwith to suffer his remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

7th September, 2009
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