

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

% *Judgment Reserved on : December 10, 2009*
Judgment Pronounced on: December 17, 2009

+ **CRL.APPEAL No.307/2005**

JASWANT SINGH @BABLOO ...Appellant
Through: Ms.Rakhi Dubey, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. The appellant stands convicted for having murdered Bir Singh, his brother-in-law.

2. The conviction of the appellant has been rendered on the basis of a dying declaration made to ASI Ram Nath PW-18, the first person to rescue the deceased.

3. As per ASI Ram Nath, he was posted as In-Charge of PCR Van 'Commander 98' which was stationed at Makarba Chowk, Jahangirpuri in the intervening night of 1st and 2nd April 2003 and around midnight received wireless information of an accident near GT Karnal Road Depot. On

reaching the spot he found a person badly injured on the pavement of the road who was shouting that his name is Bir Singh and he resided at A-105 Jahangirpuri and that his Saala Babloo had burnt him. The appellant is none other than Babloo, the 'Saala' i.e. the brother-in-law of Bir Singh.

4. Mukesh Chand PW-5, the in-charge of the ambulance van attached to the Centralized Accident Trauma Centre of Babu Jagjiwan Ram Hospital received information from the police control room that an accident had taken place at GT Karnal Road Depot at around midnight of the intervening night of 1st and 2nd April 2003. He rushed to the spot where he found Bir Singh whom he rushed to the hospital where the duty constable informed the local police station.

5. At Babu Jagjiwan Ram Hospital the MLC Ex.PW-6/A prepared by Dr.Chaman Gupta PW-6 recorded that the patient Bir Singh was brought to the hospital by Mukesh PW-5 and that the patient was son of Leela Dhar and was a resident of A-105 Jahangirpuri. The time recorded is 12:45 in the night. Noting the history of the burn injuries, it is recorded that the burn injuries were the result of being set on fire by brother-in-law after pouring petrol on Bir Singh.

6. The investigating officer could not record the statement of Bir Singh who was rendered incapacitated from making a statement as per endorsement on the MLC

recorded at 2:15 AM.

7. Bir Singh could not survive the injuries suffered by him and died on 2.4.2003 itself. The post-mortem report Ex.PW-8/A notes that death was on account of extensive burn injuries resulting in 100% burns.

8. A perusal of the record of the learned Trial Judge and the impugned judgment shows that the case of the prosecution against the appellant was that his sister Anita was married to Bir Singh who used to remain unwell because of ulcers. Anita left him and bore a child, paternity whereof was doubted by Bir Singh. A reproachment was attempted to be worked out. Anita was brought to the house of the elder brother of Bir Singh and in the evening of 1st April 2003 the appellant and his friends had visited the house of the elder brother of Bir Singh. After the appellant and his friends left, Bir Singh came to the house and requested Anita to accompany him to their house. Anita refused. Bir Singh left and was burnt in the night at the pavement near his house. As per the prosecution not only was a dying declaration made by Bir Singh to ASI Ram Nath but even to Mukesh Chand PW-5 as also to Dr.Chaman Prakash PW-6 and Dr.F.Ahmed PW-12 and Dr.Priyanka Vashisht PW-9 who were present at the hospital when Bir Singh was admitted. The prosecution heavily relied upon the MLC Ex.PW-6/A prepared in the handwriting of

Dr.F.Ahmed which records that Bir Singh had sustained the injuries after petrol was thrown on him by his brother-in-law. But, for the reason Mukesh Chand turned hostile and disclaimed having heard any dying declaration by Bir Singh and also having disclaimed ever told the investigating officer that Bir Singh made any dying declaration to him and for the reason neither doctor, examined when the MLC Ex.PW-6/A was drawn up, i.e. Dr.Chaman Prakash PW-6, Dr.F.Ahmed PW-12 and Dr.Priyanka Vashisht PW-9 could state as to on whose statement it was recorded that the patient had sustained the burn injuries after his brother-in-law threw petrol on him, with reference to the testimony of ASI Ram Nath PW-18, who stood his ground, the learned Trial Judge has returned a verdict of guilt. Through the testimony of Meena Devi PW-1 and Leela Wati PW-2, the two elder sisters-in-law of Bir Singh, the prosecution has successfully established the matrimonial discord between Bir Singh and his wife Anita.

9. The fate of the appellant turns upon the testimony of ASI Ram Nath and though not used by the learned Trial Judge the MLC Ex.PW-6/A as also the testimony of the three doctors who had treated Bir Singh, as also the testimony of Mukesh Chand PW-5. We note that primacy of evidence has to be to the testimony of ASI Ram Nath.

10. ASI Ram Nath deposed as under:-

"In the night intervening 1-2 April 2003, I was posted as in charge of PCR Van Commander 98 and was present at Makarba Chowk, Jahangir Puri. At about 12 midnight, I received call of an accident near GTK Depot, Karnal Road. When I reached the spot I saw one person with burn injuries was lying near patri on the road. That person was shouting loudly that his name is Bir Singh and that he was resident of A Block 105, Jahangir Puri. He was also shouting that "Sala" Bablu had burnt me while bringing him here. In the meantime CATS Alpha Ambulance reached the spot on which Mukesh was driver. Bir Singh was put in that ambulance and was taken to hospital and I on my van went to inform persons at the address disclosed by Bir Singh. At his residence mother and wife of Bir Singh was informed about occurrence. His brother was also there and then I reached the spot. Local police was already there. I pointed out the place of occurrence to local police. From the spot two match box, one cap, one pair of shoes in which socks were kept were lifted by the local police. Crime team was also summoned."

11. Questioning the conduct of ASI Ram Nath and hence casting a doubt whether at all he had reached the spot and heard anything from Bir Singh, learned counsel for the appellant urged that the conduct of ASI Ram Nath is unnatural because he was expected to rush Bir Singh to the hospital and not leave him on the pavement and go about informing Bir Singh's family members that Bir Singh had suffered burn injuries. With reference to the MLC Ex.PW-6/A of Bir Singh, it was urged that the same shows that Bir Singh was declared unfit for statement at 2:15 AM in the night, wherefrom, counsel urged that it could be inferred that Bir Singh was not fit to make any statement. Drawing sustenance from the testimony of Mukesh Chand PW-5 who

deposed that he heard not a word from the mouth of Bir Singh, counsel submitted that it was an obvious case where ASI Ram Nath was not speaking the truth. In any case, urged the counsel, that benefit of doubt had to be given to the appellant.

12. ASI Ram Nath reaching the spot as claimed by him stands corroborated by the testimony of Meena Devi PW-1 and Leela Wati PW-2, both of whom have deposed that at around 12:00 midnight police came to their house and informed that Bir Singh was found burnt on the pavement. Now, no other police officer except ASI Ram Nath has claimed to have visited the house where Meena Devi and Leela Wati were residing with their husbands. The house bears municipal No.A-105 Jahangirpuri, Delhi.

13. Aforesaid fact throws light on another very important fact. How did ASI Ram Nath know that Bir Singh was residing at House No.A-105 Jahangirpuri, Delhi? The answer has to be: through the mouth of Bir Singh. We note that no suggestion has been given to ASI Ram Nath that he learnt about the residential house of Bir Singh through somebody else. This means that Bir Singh was in a position to speak when ASI Ram Nath met him.

14. The submission that the conduct of ASI Ram Nath of not taking Bir Singh in the PCR van to the hospital and instead going to his house is unnatural conduct ignores the

testimony of ASI Ram Nath that soon after he reached the spot where Bir Singh was lying injured the CATS ambulance reached and took Bir Singh to the hospital. It is apparent that an ambulance having reached the spot, ASI Ram Nath took the correct decision to send the victim to the hospital in the ambulance and not the PCR van and he proceeding to the house of Bir Singh in the PCR van. That Bir Singh was declared unfit for statement at 2:15 in the night when the investigating officer reached the hospital is no ground to infer that soon after he was burnt, Bir Singh was not fit to make a statement. Medical jurisprudence guides us that there is a time gap between a person suffering burn injuries and being rendered unfit to make a statement even in cases of 100% burns.

15. Why should ASI Ram Nath make a false statement? He had no animosity against the accused. He had no axe to grind. We note that the statement of ASI Ram Nath was recorded by the investigating officer on the day of the incident itself which rules out ASI Ram Nath being manipulated by the investigating officer.

16. Mukesh PW-5 the in-charge of the CATS ambulance van has not supported the case of the prosecution and neither could Dr.Chaman Prakash PW-6, Dr.Priyanka Vashisht PW-9 and Dr.F.Ahmed PW-12, throw light on whose information it was recorded on the MLC

Ex.PW-6/A which is in the handwriting of Dr.F.Ahmed that Bir Singh had sustained burn injuries when his brother-in-law poured petrol on him. But, the fact of the matter is that the MLC Ex.PW-6/A does record the said fact.

17. It is obvious that somebody told Dr.F.Ahmed of said fact and that is why he recorded the same on the MLC.

18. Now, only two persons could have stated said fact. The first is Bir Singh himself i.e. the patient himself or Mahesh Chand PW-5 the in-charge of the CATS ambulance whose name has been recorded in the MLC as the person who had brought Bir Singh to the hospital. Interestingly, in the MLC the name of Bir Singh's father i.e. Leela Dhar, his age being 20 years and he being a resident of A-105 Jahangirpuri, Delhi has been recorded. Wherefrom said information came to the knowledge of Dr.F.Ahmed? It had to be Bir Singh informing them said particulars or Bir Singh having given information of said particulars to Mahesh Chand on the way to the hospital and Mahesh Chand, in turn giving the said information to the duty doctor i.e. Dr.F.Ahmed when he recorded the MLC Ex.PW-6/A. It is in the aforesaid circumstance we have noted herein above the relevance of the MLC Ex.PW-6/A as a corroborative evidence to the testimony of ASI Ram Nath.

19. It was urged that in Northern India the word 'Saala' is also used as an abuse and thus it is possible that Bir

Singh's utterances 'Saala mujh ko petrol daal kar jala diya hai' heard by ASI Ram Nath could be an abuse to the person who committed the dastardly act and that since the appellant happened to be the 'Saala' i.e. the brother-in-law of Bir Singh, the police roped him in the crime. Lastly, it was urged that there is no evidence that the appellant is also called Babloo.

20. To appreciate the two submissions it may be highlighted that as per ASI Ram Nath, Bir Singh was shouting that 'Saala Babloo had burnt him'. Thus, it is not a case where the deceased had said that 'Saala had burnt him'. The word 'Saala' has been used as an abuse and not with reference to the relationship while giving the name of the assailant being Babloo.

21. Thus, the first of the two submissions noted in the one but preceding para is without any factual basis. As per ASI Ram Nath the deceased Bir Singh was saying that 'Babloo had burnt him'. The use of the word 'Saala' before the word 'Babloo' clearly shows that it was used as an abuse.

22. That the appellant is nick-named Babloo stands established by the testimony of Meena Devi PW-1 who has referred to the accused 'Babloo' as also 'Jaswant Singh'. Her first reference to the accused in her statement is in the following words: *'On a Tuesday the date was First (1st), I do*

not know the month, about 10 months ago accused Babloo (Jaswant Singh) present in Court came to our house'. It is apparent that appellant Jaswant Singh is also known as Babloo. We note that Meena Devi has not been cross-examined on her statement that appellant Jaswant Singh was also called 'Babloo'.

23. We concur with the view taken by the learned Trial Judge that the testimony of ASI Ram Nath is credible and proves the dying declaration made by Bir Singh pertaining to the cause of his death to ASI Ram Nath. We have found additional corroboration to the truthfulness thereof with reference to the MLC of the deceased.

24. The post-mortem report of the deceased establishes that Bir Singh was burnt to death after an inflammable substance was thrown on him and thereafter he was set on fire evidenced by the fact that his trachea contained soot mixed with mucus.

25. The appeal is dismissed.

26. Since the appellant is in jail, a copy of this judgment be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J.

DECEMBER 17, 2009

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Crl.Appeal No.307/2005

SURESH KAIT, J.