

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. L.P. No. 187/2008**

% Date of Order : February 26, 2009

STATE OF NCT OF DELHI Appellant
Through : Mr. Vikas Pahwa, Additional
Standing Counsel with Mr. Piyush
Singh, Adv.

VERSUS

VIJAY KR. DHINGRA & ORS. Respondents
Through : Mr. K.B. Andley, Sr. Adv. with
Mr. Ajit Bidhwi, Adv.
Mr. Mohit Mathur, Adv.

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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.(Oral)

1. Heard learned counsel for the petitioner and the respondents.

2. It is urged by learned counsel for the petitioner that the reasoning of the learned trial judge to discard the dying declaration Ex.PW-3/B made by the deceased to the learned SDM are perverse.

3. Discussing the dying declaration Ex.PW-3/B, the learned trial judge has opined as under:

“At this stage, it is pertinent to mention here that whenever opinion of doctor regarding fitness or otherwise to make a statement of a patient is to be obtained, an application is submitted either by the investigating officer or by the SDM. However, in this case, PW3 – the SDM did not submit any application to the doctor either at 2 p.m. or at 8.30 p.m. to obtain opinion of the doctor. The paper which bears dying declaration Ex. PW3/B has a format of a certificate at the beginning. This format reads as under:

CERTIFICATE

This is to certify that Mrs. Sonia, wife of Sh. Raj Kumar, resident of C-146, Hari Nagar, New Delhi, is medically fit to make statement.

Time: 2 p.m. Medical Officer/Doctor on Duty

Place: Safdarjung Hospital

Date: 28-04-98

This format has been exhibited as Ex.PW3/A. PW3 the SDM has admitted that this format of the certificate is in his handwriting. It is not duty of the SDM to prepare any such format and sent the same to the doctor before recording of statement of a patient. Doctors are well educated and very well known as to what is to be written while issuing such a certificate regarding fitness or otherwise of a patient to make statement. From the factum of drafting of this format, it appears as if the SDM was actually not present in the hospital at the time he drafted it for the doctor with time recorded in it as 2 p.m. PW19 SI M.D. Mehta deposed that the SDM reached the hospital at 02:30/3 p.m. It also appears that the SDM, by preparing the form of certificate expected that the doctor would toe his line and sign the certificate declaring the patient fit to make statement at 2 p.m. However, the doctor did not go by the format. The doctor declared vide his endorsement at 2 p.m. that the patient was unfit to make statement. All this creates doubt in the prosecution version.

Why opinion of the doctor was obtained twice

i.e. at 8.30 p.m and 9.10 p.m to the effect that Sonia was fit to make statement.

A perusal of portion above the portion from where statement of Sonia starts would reveal that for the first time at 8.30 p.m, Dr.Manoj Kumar declared Sonia fit to make statement. By the side of this endorsement is another endorsement in the shape of opinion of another doctor given at 9.10 p.m. that the patient was fit to make statement. There is no explanation as to why opinion of other doctor was obtained at 9.10 p.m. when Dr.Manoj Kumar had already declared Sonia fit to make statement at 8.30 p.m. Recording of statement Ex.PW3/B was complete at about 09.05 p.m. What was the significance of opinion of a doctor obtained at 9:10 p.m. regarding fitness of Sonia to make statement, also remains unexplained. This fact once again creates doubt in the version of prosecution.”

4. Learned counsel for the petitioner draws our attention to the fact that the doctor had certified the patient fit for statement at 8.30 PM and hence urges that the finding of fact recorded by the learned trial judge that the doctor did not certify the patient fit for statement is incorrect.

5. We have perused Ex.PW-3/B and find that the certification in question is not on a printed proforma. It is in the handwriting of the learned SDM, a fact deposed to by the learned SDM, when he appeared as a witness of the prosecution.

6. Thus, it cannot be said that merely because the learned SDM penned the certification in his own hand would be fatal to the dying declaration. We further note that while certifying that the patient is fit for statement, the doctor

concerned has so recorded in his own handwriting.

7. But, the question would still remain whether the dying declaration Ex.PW-3/B inspires confidence.

8. Needless to state, a dying declaration is a piece of evidence required to be considered at a criminal trial. Of course, where a dying declaration inspires confidence the same can be accepted without any corroboration. But, where there is evidence which discredits statements of fact recorded in a dying declaration, the same would cast a doubt on the authenticity of the dying declaration or the voluntary character thereof.

9. It is not in dispute that the first dying declaration purportedly made by the deceased to the investigating officer namely Ex.PW-19/A records that the daughter, Ritika, of the deceased was playing with a generator at the house and innocently picked up a matchbox and lit a matchstick. Some kerosene/petrol which was spilled caught fire. The deceased, as a mother would naturally do, instantly proceeded to rescue the daughter and as a result thereof caught fire. In the said statement, the deceased has clearly stated that the fire was accidental and was the result of the attempt made by her to save her daughter.

10. We notice that a purported second dying

declaration is an oral dying declaration claimed to be made to PW-11, the brother of the deceased. As per this dying declaration, as disclosed by her brother, the deceased told her brother that she had made the first dying declaration thinking about her child and had wrongly disclosed the facts; that the true facts were that her brother-in-law Vijay Kumar and wife of Vijay Kumar namely Rani had set her on fire.

11. We note that this is the statement of the deceased recorded in Ex.PW3/B.

12. Harbans Singh PW-2, a neighbour, residing in House No. C/147, Hari Nagar, New Delhi; the house where the deceased caught fire being No. C/146 Hari Nagar, New Delhi; deposed that on the day of the incident i.e. 28.4.1998 at about 8.15 AM he was cleaning his Van near his house and at that time the father-in-law of the deceased namely Sh.Om Prakash Dhingra was standing near him. He saw Vijay Kumar and Rani going to a temple and were having articles of worship in their hands. He went on to depose that after 10-15 minutes thereafter from the house of Om Prakash he heard cries: "Aag Lag Gai, Aag Lag Gai". On hearing the same, Om Prakash Dhingra ran towards his house and he followed him. On reaching the second floor of the house they found Sonia on fire. Om Prakash Dhingra immediately put a blanket and

requested him i.e. PW-2 to make arrangements to take Sonia to the hospital. One or two persons of the locality reached. He i.e. PW-2, Om Prakash and a person from the locality brought down Sonia in a bed sheet and removed to the hospital in his Van. He deposed that Vinod Kumar Dhingra, a son of Om Prakash Dhingra, accompanied them to the hospital. He stated that on the way to the hospital Sonia told that she caught fire while saving her daughter.

13. We note that the learned trial judge has extensively dealt with the deposition of PW-2. With reference thereto a finding has been returned that the accused Vijay and Rani who purportedly did the ghastly act as disclosed in Ex.PW-3/B were not present in the house when the unfortunate incident took place.

14. It is not of no significance that before the statement Ex.PW-3/B was made, the deceased had interacted with her brother PW-11 and hence the possibility of the deceased being tutored cannot be ruled out.

15. It is urged by the learned counsel for the State that the generator which has been referred to in the statement Ex. PW-19/A had not caught fire.

16. It is not stated by the deceased in the statement Ex.PW-19/A that the generator caught fire at the time when

an inflammable liquid (may be kerosene or petrol) was being filled in the tank of the generator. She had deposed that her daughter was playing near the generator and innocently lit a matchstick.

17. Anyone who has been using generators would be conscious of the fact that while pouring the petrol or kerosene in the tank of the generator, small droplets spill out, and if a child accidentally lights a matchstick near the generator, the oil spills around the generator do inflame. The possibility of this happening cannot be ruled out. This explains the generator not catching fire. Be that as it may, what is relevant is the fact that the unequivocal testimony of PW-2 clearly establishes that Vijay Kumar and Rani were not in the house when the deceased caught fire.

18. We need not pen down a lengthy judgment except to note that everybody is presumed to be innocent and a finding of acquittal returned by a Court of Sessions reinforces the presumption of innocence. There would always be two rival view points on an issue. Inherent in the task of judicial administration is the acceptance of one out of the two rival and competing view points.

19. So long as the view taken is a reasonable and a probable view and so long as no piece of evidence or

circumstance is ignored and so long as no irrelevant evidence or circumstances is taken note of in the discussion, the appellate court would not interfere with the findings returned by a learned trial judge.

20. Noting that the possibility of the deceased being tutored cannot be ruled out; also noting the fact that the testimony of PW-2 shows that Vijay Kumar and Rani were not present in the house; further noting that the father-in-law and Vinod, the younger brother-in-law of the deceased, immediately responded to her cries; further noting that PW-2 deposed that he heard the shrieks “Aag Lag Gai, Aag Lag Gai” and not “Aag Laga Di, Aag Laga Di”, we see no reason to interfere with the impugned decision.

21. No case is made out to grant leave to appeal. The petition seeking leave to appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

February 26, 2009
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