

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

Judgment reserved on: February 11, 2010
Judgment delivered on: April 09, 2010

+ **CRIMINAL APPEAL NO.782/2009**

ANIL KUMAR GOYAL

....APPELLANT

Through: Mr. Aman Lekhi, Sr. Advocate with
Mr. Shyamal Kumar, Mr. Rajan K.
Chourasia, Mr. Jaspreet S. Rai,
Mr. Rakesh Kumar, Mr. Rohit Nagpal
& Mr. Vaibhav Vats, Advocates.

Versus

STATE(N.C.T. OF DELHI)

.....RESPONDENT

Through: Mr. Manoj Ohri, APP.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 25.07.2009 in terms of which the appellant has been convicted under Section 302 IPC for committing the murder of his wife Veena Goel (hereinafter referred to as “deceased”) as also the consequent order on sentence dated 30.07.2009.

2. Briefly put, case of the prosecution is that on 15.09.2007, a PCR call was received at P.S. Pandav Nagar intimating that a lady has set herself on fire at House No.79-B, Pocket C, Mayur Vihar. The said information was recorded as DD No.14A dated 15.09.2007 and copy thereof was entrusted to ASI Vijender Singh (PW7) for verification. ASI Vijender Singh immediately proceeded for the spot of occurrence along with Constable Kunwarpal (PW6), where he found that the injured had already been taken to LNJP Hospital by her husband. ASI Vijender Singh left Constable Kunwarpal (PW6) to protect the scene of crime and went to LNJP Hospital and collected the MLC (Ex.PW3/1) of the patient Veena Goel. She was declared fit for statement, so ASI Vijender Singh (PW7) recorded her statement Ex.PW7/A in presence of Dr. Kanav Gupta (PW9). The deceased in her statement Ex.PW7/A implicated the appellant by stating that she was set on fire by her husband Anil Kumar Goyal after pouring kerosene oil on her. Thereafter, ASI Vijender Singh (PW7) returned to the spot of occurrence, where he appended his endorsement Ex.PW7/B on the statement of the deceased and sent it to the Police Station through Constable Kunwarpal for the registration of the case. ASI Vijender Singh (PW7) also requisitioned crime team and got the spot of occurrence photographed. He inspected the place of occurrence and prepared the rough site plan Ex.PW7/C. He also took into possession a half burnt plastic tub Ex.P7, a slightly burnt plastic bucket Ex.P8, a burnt pyjama Ex.P9, a slightly burnt towel Ex.P10, a plastic bottle without lid Ex.P11,

a plastic pipe (spring type) burnt and shrunk Ex.P12 and a piece of saree Ex.P13 from the spot of occurrence.

3. On 15.09.2007 at around 7:50 pm, Head Constable M.A. Khan informed the police station from the hospital about the death of Veena Goel, which was recorded as DD No.23A and the case was converted into a case under Section 302 IPC. On 16.09.2007, the investigation was taken over by the SHO, Inspector M.L. Sharma (PW10). He conducted the inquest proceedings and sent the dead body for post mortem examination. Dr. Ankita Dey (PW8) conducted the post mortem examination on 16.09.2007. On examination, she found the deceased has suffered superficial to deep burns all over the body except genitalia and total burn area was approximately 99 per cent of the body surface area. She did not find evidence of any mechanical injury on the person of the deceased and in her opinion, the cause of death was shock due to burn injuries. The post mortem report is Ex.PW8/A. The SHO arrested the appellant on 23.09.2007 vide arrest memo Ex.PW7/D. He also recorded the statements of the witnesses and on completion of formalities of the investigation, he filed the charge sheet against the appellant in the court.

4. The appellant was charged for the murder of his wife punishable under Section 302 IPC. He pleaded innocence and claimed to be tried.

5. In order to bring home the guilt of the appellant, prosecution has examined 12 witnesses. The material witnesses, however, are PW1

Master Abhishek Goel, PW2 Ms. Samiksha Goel, PW3 Dr. Shilpi, PW12 Dr. Raj Kumari and the two Investigating Officers, namely, ASI Vijender Singh (PW7) and Inspector Mohan Lal Sharma (PW10).

6. PW1 Master Abhishek Goel and PW2 Ms. Samiksha Goel are the son and the daughter of the appellant and the deceased. They have testified that on the fateful afternoon of 15.09.2007, they were watching TV in the sitting room along with their father. The deceased came there and told that she was going for the bath. After sometime, they heard cries of the deceased and rushed to the bath room. The appellant pushed open the door of the bath room and they saw the deceased aflame. Their father, i.e., the appellant put off the fire with their help and the deceased was taken out from the bath room. Thereafter, the appellant took the deceased to the hospital in an ambulance.

7. PW3 Dr. Shilpi was posted on duty at the casualty of LNJP Hospital on 15.09.2007. She testified that Dr. Raj Kumari (PW12) had examined the deceased Veena Goel under her supervision in the casualty of LNJP Hospital. She proved the MLC of the deceased Ex.PW3/1 and stated that at the time of examination, the deceased herself gave the history that she was burnt by her husband about an hour back after pouring kerosene oil on her. PW12 Dr. Raj Kumari has also deposed to the similar effect.

8. PW7 ASI Vijender Singh conducted initial investigation of the case. He has stated that on the receipt of the DD No.14A regarding the incident, he reached at the spot of occurrence along with Constable Kunwarpal where he came to know that the deceased had already been taken to LNJP Hospital by her husband. Thus, he went to the hospital and collected the MLC of the deceased Veena Goel, who was declared fit for statement. He also stated that he recorded the statement of Ms. Veena Goel Ex.PW7/A in presence of Dr. Kanav Gupta (PW9). In the said statement Ex.PW7/A, the deceased stated that when she had gone to take bath in the bath room, her husband appellant A.K. Goel followed her and set her on fire after pouring kerosene oil on her. PW9 Dr. Kanav Gupta has corroborated the testimony of PW7 ASI Vijender Singh to the effect that statement of the deceased was recorded by the Investigating Officer in his presence.

9. The appellant in his statement under Section 313 Cr.P.C. has claimed to be innocent and he took the defence that the deceased was a psychiatric patient and she had committed suicide. In defence, he examined two Doctors, namely, Dr. Rekha Aggarwal (DW1) and Dr. Sushil (PW2) of VIMHANS to establish that the deceased was psychologically disturbed and she had suicidal tendencies.

10. The learned Trial Court, on appreciation of evidence, did not find the testimony of PW1 Master Abhishek Goel and PW2 Ms. Samiksha Goel credit worthy mainly on the ground that they are interested

witnesses, being the son and the daughter of the appellant and found the appellant guilty of murder of his wife on the strength of the dying declarations claimed to have been made in presence of PW3 Dr. Shilpi and PW12 Dr. Raj Kumari at the time of preparation of MLC and also in presence of PW7 ASI Vijender Singh and PW9 Dr. Kanav Gupta in the form of the statement of the deceased Ex.PW7/A.

11. Learned senior counsel for the appellant contended that the learned trial Judge has committed an error in relying upon the purported dying declarations of the deceased ignoring the fact that PW1 Master Abhishek Goel and PW2 Ms. Samiksha who are natural witnesses, being the son and the daughter of the deceased and the appellant, have not supported the case of prosecution and the eye witness account given by them belies the version in the dying declaration. He further submitted that PW1 Master Abhishek Goel and PW2 Ms. Samiksha have also admitted in their cross-examination that the deceased was not psychologically sound and she had suicidal tendency. Earlier also, she had attempted to jump from the roof of the house but was saved by the appellant. This version of PW1 and PW2 also finds corroboration in the testimony of DW1 Dr. Rekha Aggarwal and DW2 Dr. Sushil, who have stated that the deceased was psychologically disturbed and she even took treatment for psychological disorder from VIMHANS, which is apparent from the documents marked "DX" (Ex.DW2/DA) and the OPD receipts Ex.DW2/DB and Ex.DW2/DC. Learned senior counsel also submitted

that the learned Trial Court even has failed to consider that the deceased possibly could not have been in a position to speak as she had suffered almost 100 per cent superficial to deep burns of body surface area and she died within few hours of her admission in hospital on the same day. Learned senior counsel has thus submitted that dying declaration of the deceased is highly suspect, as such, the appellant is entitled to acquittal.

12. Learned counsel for the State, on the other hand, has argued in support of the impugned judgment. He submitted that the prosecution case is based upon the two dying declarations made by the deceased, first dying declaration was made by the deceased at the time of preparation of her MLC Ex.PW3/1, which is proved by PW3 Dr. Shilpi and PW12 Dr. Raj Kumari, who have categorically stated that while giving history of her burns, the deceased told them that she was set on fire by her husband after pouring kerosene oil. Learned counsel further pointed out that the second dying declaration Ex.PW7/A was made by the deceased in presence of PW7 ASI Vijender Singh, which has also been attested by PW9 Dr. Kanav Gupta. All the above witnesses are public servants who had no reason to falsely implicate the appellant, as such their version cannot be doubted. He further submitted that the learned Trial Court was right in rejecting the testimony of PW1 Abhishek Goel and PW2 Ms. Samiksha Goel on the ground that they are not only hostile witnesses who have resiled from their previous statements but they also are interested witnesses, being the son and

daughter of the deceased. Learned counsel submitted that PW1 Master Abhishek Goel and PW2 Ms. Samiksha Goel had lost their mother in the unfortunate incident and it is natural that they do not want to lose their father and as such they have come up with a false version to support the theory of suicide set up by the appellant in his statement under Section 313 Cr.P.C.

13. We have considered the rival contentions and perused the material on record.

14. On perusal of the impugned judgment, it transpires that the learned Trial Judge, while finding the appellant guilty of murder of his wife has given precedence to the dying declaration over the testimony of Master Abhishek Goel (PW1) and Ms. Samiksha Goel (PW2), son and daughter of the deceased and the appellant who claimed that they along with the appellant were watching T.V. in sitting room when the incident took place in the bathroom of their house. Only reason given by the learned Trial Judge for rejecting the testimony of Master Abhishek Goel (PW1) and Ms. Samiksha Goel (PW2) is that that they are interested witnesses being the son and daughter of the appellant and it is natural for them to depose falsely to save their father. The learned Trial Judge apart from this logic, has not even referred to the eye-witness account given by the above two witnesses which in our considered view is a wrong approach.

15. In the matter of **State of H.P. Vs. Mast Ram (2004) 8 SCC 660**, the Supreme Court while dealing with the issue of evidentiary value of testimony of the related witness, inter alia, observed thus:

“11. As already noticed, PW 1 Hans Raj and PW 3 Vijay Kumar are two eyewitnesses who accompanied the deceased on the fateful day. Both the eyewitnesses had stated categorically that they accompanied the deceased while going to the fields to fetch fodder for the cattle. When they were passing through the passage in front of the house of the accused, the accused challenged the deceased and in the meantime fired at him, with the result that deceased Uttam Chand fell down on the ground after having sustained gunshot injuries on his person. The two eyewitnesses were subjected to lengthy cross-examination but nothing could be elicited to doubt the creditworthiness of their testimony. No doubt that PW 1 and PW 3 are relatives but this will be no ground to disbelieve their testimony, if otherwise, inspired confidence. The law on the point is well settled that the testimony of relative witnesses cannot be disbelieved on the ground of relationship. The only requirement is to examine their testimony with caution”.

16. In the matter of **Dalip Singh Vs. State of Punjab, AIR 1953 SC Page 364**, the Supreme Court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not independent witnesses and in order to dispel the same the qualities of independent witnesses were clearly elucidated. In this connection, Vivian Bose, J. speaking for the Court observed as follows:

“25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan*. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

17. From the above, it is apparent that a related witness is as good a witness as any other person and his testimony cannot be thrown away at the threshold for the reason that he is related to one of the parties. The only requirement of law in such a case is to approach the testimony of a related witness with extra care and caution. Master Abhishek Goel (PW1) and Ms. Samiksha Goel (PW2) are not only the son and daughter of the appellant but they are son and daughter of the deceased also. Therefore, it would not be right to infer that they have deposed falsely in favour of the appellant to save him. Master Abhishek Goel (PW1) has stated that at the relevant time on 15.09.2007, he alongwith his sister and father was watching T.V. in the sitting room, when the deceased came and said that she was going to take bath. Sometime later, they heard cries of the deceased and rushed to the bathroom. The appellant pushed open the door of bathroom and they found the deceased aflame. The appellant then put off the fire with their help and rang up someone. Sometime later, ambulance came and the appellant took the deceased to the hospital in the ambulance. His aforesaid version is fully corroborated by

Samiksha Goel (PW2), daughter of the deceased who has also deposed to the similar effect. Both these witnesses were cross-examined at length by the learned Prosecutor but he failed to shake their credibility. They denied the suggestion of the learned Prosecutor that at the time of incident, they were not at home and when they left home, only deceased and the appellant were present there. Learned Counsel for the State has failed to come out with a convincing plea as to why the testimony of these two witnesses should not be believed. ASI Vijender Singh (PW7), who conducted the initial investigation of this has testified that when he reached at the spot of incident, he noticed that Samiksha Goel (PW2) was crying and on his enquiry, she told him *"Mammi Jal Gayi Hain Aur Papa Unko LNJP Hospital Ley Gaye Hain"*. From this, it is evident that Samiksha Goel (PW2) was present in the house when the Investigating Officer reached there and in her initial version given to the Investigating Officer, she did not implicate the appellant. The Investigating Officer ASI Vijender Singh, in his further cross-examination stated that after recording the statement of the deceased in the hospital, he returned to the spot and found Samiksha Goel (PW2) there but as per record, he did not record the statement of Samiksha Goel (PW2). Once the Investigating Officer had recorded the dying declaration of the deceased Ex.PW7/A implicating the appellant, under the natural course of circumstances, he was expected to enquire from PW2 Samiksha Goel and the neighbours to find out as to how and in what manner the deceased suffered burn injuries but this is not the

case. The perusal of the record reveals that ASI Vijender Singh did not care to examine either Master Abhishek Goel (PW1) or Samiksha Goel (PW2) or the neighbours during the tenure of his investigation and even the subsequent Investigating Officer Inspector Mohan Lal Sharma (PW10), admittedly did not record the statement of above two witnesses till 23.09.2007. There is no explanation on the record as to why no effort was made to record the statement of Master Abhishek Goel (PW1) and Samiksha Goel (PW2) under Section 161 Cr.P.C. for such a long time. This circumstance raise a strong doubt on the fairness of the investigation. Learned counsel for the State has submitted that the learned Trial Court has rightly rejected the testimony of PW1 Abhishek Goel and PW2 Samiksha Goel as both of them are not only related to the appellant but have resiled from their earlier statements given to the police under Section 161 Cr.P.C. We do not find merit in this contention. Though the said two witnesses during their cross-examination were confronted with their purported statements under Section 161 Cr.P.C. Mark A and Mark B, yet prosecution cannot draw advantage from the same because of the fact that PW10 Inspector Mohan Lal Sharma, who allegedly recorded those statements, has failed to prove said two statements by deposing that he actually recorded the statements of the witnesses Mark A and B and those statements contain the true narration of facts detailed by the above two witnesses during investigation. Thus, under the circumstances, we do not find any reason to doubt the correctness of

the version of Master Abhishek Goel (PW1) and Samiksha Goel (PW2) to the effect that when the deceased caught fire, the appellant was present in the sitting room alongwith them which rules out the possibility of involvement of the appellant in the murder.

18. Indeed there is no bar under law to act upon a dying declaration without corroboration yet the rule of prudence demands that the court should scrutinize the dying declaration carefully and satisfy itself that the dying declaration is beyond suspicion. In the matter of **Khushal Rao Vs. State of Bombay, AIR 1958 SC 22** the Supreme Court observed thus:

“17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.”

19. In the instant case, the dying declaration of the deceased as recorded in MLC Ex.PW3/1 and the second dying declaration Ex.PW7/A purportedly made by the deceased in presence of ASI Vijender Singh (PW7) does not find corroboration from the eye-witness account given by Master Abhishek Goel (PW1) and Samiksha Goel (PW2), rather, their

version contradicts the version detailed in the dying declaration. Therefore, we do not find it safe to base conviction of the appellant on dying declaration account which is not corroborated by the testimony of eye witnesses.

20. Coming to the defence evidence, DW1 Dr. Rekha Aggarwal is a Consultant Gynaecologist. She had deposed that Mrs. Veena Goel was her patient in Maan Hospital in the year 1990. Veena Goel also visited her clinic for treatment on 02.12.2006. She further deposed that on that visit, she was insisting for blood transfusion and she appeared to be psychologically very very disturbed and needed psychiatric treatment. Dr. Rekha Aggarwal (DW1) has proved the prescription given to the patient on 02.12.2006 as Ex.DW1/DB. DW2 Dr. Sushil from VIMHANS, New Delhi appeared on behalf of Dr. L.K.Malhotra, Sr. Neurologist, VIMHANS and he proved OPD Card Ex.DW2/DA and OPD receipts Ex.DW2/DB and Ex.DW2/DC pertaining to Veena Goel (deceased). He identified the handwriting and signature of Dr.L.K.Malhotra on the said OPD Card. Perusal of the OPD Card Ex.DW2/DA indicates that patient Mrs. Veena Goel of Mayur Vihar was diagnosed for having suicidal tendencies. From this documentary evidence, it appears that the deceased was psychologically disturbed and she had suicidal tendencies. This inference also finds support from the testimony of Master Abhishek Goel (PW1), who in his cross-examination stated that the deceased had been unwell since her childhood and she had been getting treatment from various doctors

including Dr. Rekha Aggarwal (DW1) and doctor at VIMHANS. PW1 also admitted that as per the opinion of doctors, the deceased was mentally unstable and she had suicidal tendency. He further admitted a suggestion that even prior to occurrence, the deceased had tried to jump from the roof of the house. PW2 Samiksha Goel, daughter of the deceased has also deposed to the similar effect. She has stated in her cross-examination that her mother was very sick for the last about 1½ years and she was having some mental problem. She also corroborated the version of her brother PW1 Master Abhishek Goel by stating that once the deceased attempted to commit suicide by jumping from the roof of the house but was prevented by the appellant. Cumulative effect of this evidence is that the deceased was psychologically disturbed, as such, a possibility cannot be ruled out that she committed suicide by setting herself on fire, as is the version of PW1 and PW2.

21. Even the Investigation of this case has not been conducted in a fair manner. Though the occurrence took place on 15.09.2007 and Master Abhishek Goel (PW1) and Samiksha Goel (PW2) were available to the police, there is no explanation forthcoming on record as to why these two witnesses were not examined at the earliest and why the recording of their statements was deferred till 23.09.2007. There is another intriguing factor. Perusal of record reveals that the prosecution, alongwith the report under Section 173 Cr.P.C., placed on record the MLC Death Summary of the deceased prepared by Dr.

Younis Bhardwaj. As per this Death Summary, the date and time of admission of the patient in the hospital is mentioned as 15.09.2007 at 12:10 p.m, whereas the MLC Ex.PW3/1 records that the deceased was brought to the hospital by Cats Ambulance on 15.09.2007 at 12:55 p.m. which obviously cannot be correct if the deceased was admitted in the hospital at 12:10 p.m. This circumstance also raise a doubt against the correctness of prosecution story and a possibility of manipulation of MLC and the dying declaration Ex.PW7/A cannot be ruled out. Further, as per the MLC Death Summary, on physical examination, the deceased had suffered 98% burns of total body surface area including the facial burns. She died on the same day at 06:10 p.m. In view of the fact that the deceased had suffered facial burns also, a possibility cannot be ruled out that she was not in a position to speak. This circumstance also compounds the doubt against the correctness of the dying declarations placed on record. In view of the circumstances discussed above, we do not find it safe to rely upon the dying declarations of the deceased, which are not corroborated, rather contradicted by the eye-witness account given by Master Abhishek Goel (PW1) and Samiksha Goel (PW2).

22. The result of above discussion is that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. We, therefore, find it difficult to sustain the impugned judgment of conviction. We, accordingly accept the appeal and set

aside the conviction of the appellant under Section 302 IPC and acquit him, giving him the benefit of doubt.

23. The appellant is in jail. He may be released forthwith, if not required in any other case.

24. The appeal is disposed of accordingly.

AJIT BHARIHOKE, J.

APRIL 09, 2010
pst/akb

A.K. SIKRI, J.