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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 22.05.2012
PRONOUNCED ON: 02.07.2012

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CRL.A.54/2012

SANDEEP BHANDARI Appellant
Through: Mr. A.J. Bhambhani with
Ms. Lakshita and Ms. Bhavita, Advocates.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Sanjay Lao, APP along with
SI Manoj Kumar, PS Prashant Vihar.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

% 1. This appeal is directed against the judgment of the learned Additional Sessions Judge dated 10.09.2010 and the order on sentence dated 13.09.2010 in SC No.200/2007 whereby the appellant was convicted for committing offences punishable under Sections 302 and 201 IPC, and sentenced to undergo imprisonment for life and five years' rigorous imprisonment, besides payment of fine.

2. The prosecution case is that the appellant killed his mother, Kamla, in the late morning of 03.10.2005. The police received first intimation about this at 12.14 noon (Ex.PW-9/A). PW-5, Constable

Naresh Kumar, with the IO, PW-15, SI Sunil Kumar went to the place of incident where PW-1, Bhupinder Singh handed-over the present appellant. The FIR was registered upon the statement of the first informant, PW-1, Bhupinder Singh. The informant, PW-1 was a property broker and had his office at G-7/85, Sector-15, Rohini. He stated that on 03.10.2005 at 12.00 noon, he was present in his office with one Madan Lal, PW-6, who was sitting with him when there was a commotion about 4-5 houses away from his office. He and Madan Lal went to that place, H. No. G-6/63, on the ground floor; a large number of people were gathered in the park beside the house. PW-1 stated that the appellant was also present outside his house with a cup of tea in his hand. PW-1 enquired from the appellant what the matter was and why he was standing outside his house in such condition, as there was a fire in the house; he stated that he had killed his mother and set fire to her body. According to PW-1, the appellant said that he collected quilts, pulled them over his mother and lit them up with fire. PW-1 stated that he, with members of the public tried to douse the fire by pouring water and thereafter called the police. On the basis of this statement, Ex.PW-1/A, the FIR, Ex.PW-2/A was registered at 01.40 PM by Police Station Prashant Vihar. The IO proceeded to collect materials and seized articles. The crime team reached the spot and inspected the place of incident between 01.00 and 01.30 PM the same day; its report, Ex. PW-4/A was placed on the record during the trial. The deceased's body was sent for Postmortem examination. During the course of investigation, the Postmortem Report, Ex. PW-8/A was collected.

3. On the basis of investigation, and the charge-sheet filed, the appellant was charged with committing the murder of his mother and disposing of her body through fire. He pleaded innocence and claimed trial. During the proceedings before the Trial Court, the prosecution relied upon the testimony of 17 witnesses, besides documentary evidence and material exhibits. After considering the submissions on behalf of the parties, the Court concluded that the appellant's guilt had been proved beyond reasonable doubt.

4. The Trial Court's findings were based upon the testimonies of PWs-1 and 6. It was held that these witnesses were residents of the area and had given independent testimony, which pointed to the fact that the accused was present outside the house immediately after the incident occurred. The accused's strange behavior and his statement to PW-1, according to the Court was admissible in law, during the trial. The Trial Court rejected the appellant's contention that the predominant relevance on extra-judicial confession could not be the basis of conviction. The Court also held that the appellant had taken the defense that his mother had been killed by intruders who had broken into the house; however, among the articles recovered, from the deceased were valuable articles and jewelry. The Trial Court also relied upon the recovery of the blood-stained trouser and shirt as admissible, by virtue of Section 27 of the Evidence Act. The Trial Court further held that the injuries on the appellant were simple and in all probability were the result of struggle and fight put up by his mother when he was engaged in the process of killing her.

5. Learned counsel appearing on behalf of the appellant argued

that the conviction recorded by the Trial Court is unsustainable in law, contending that since there were no eyewitnesses to the incident, learned counsel stressed that it was incumbent upon the prosecution to prove every circumstance as well as every link in the entire chain of circumstances so as to unerringly and conclusively point to the appellant's role as perpetrator of the crime. In this case, all that the prosecution managed to do during the trial was to rely upon the testimonies of PWs-1 and 6. These witnesses were concededly not known to the appellant. It was highly improbable that the appellant would have confessed to the killing of his mother to such unknown individuals. Learned counsel submitted in this regard that extra-judicial confessions of the kind which the prosecution relied upon in this case were inherently weak pieces of evidence and there had to be substantial corroboration, through other objective material, if a conviction were to be recorded. It was urged that in this case, in fact there was no corroborative material.

6. Learned counsel next submitted that the possibility of PWs-1 and 6 being introduced or planted as witnesses by the prosecution could not be ruled-out. There was no evidence apart from the testimonies of these two despite both of them deposing about a crowd having collected by the time they reached the spot. Learned counsel stressed the fact that these two witnesses were not part of the *res gestae* in the sense that they did not observe or witness any incident integrally connected with the murder. All that they claimed to have seen was the appellant standing outside his home when it was ablaze. In other words, submitted learned counsel, it was the word of the

appellant as against that of PWs-1 and 6. Therefore, the prosecution had to necessarily adduce further convincing and corroborative evidence and could not have rested its case on the testimony of these two witnesses. In this context, learned counsel submitted that PW-1 admitted about his acquaintanceship and knowing the beat constable. The possibility of his being a stock witness therefore, counsel submitted, could not be entirely ruled-out.

7. It was submitted that so far as the recovery of knife and the blood-stained clothes etc. are concerned, by themselves, they are not deemed so incriminating as to lead to conviction. A kitchen knife is a fairly commonplace article found in every home; as far as the clothes of the appellant are concerned, they are not unusual. The reliance on Section 27 by the Trial Court to hold that the appellant disclosed about these articles, in these circumstances, could not be of any avail to the prosecution.

8. It was argued that in a case of this kind where the prosecution entirely rested its theory of circumstantial evidence, the State had to prove existence of some motive on part of the suspect. Here, however, motive was entirely absent and no attempt was made by the State to lead any evidence about previous enmity or otherwise. Since the events occurred in broad daylight, in the middle of a busy residential area, the possibility of involvement of a third-party or parties could not be ruled-out. Learned counsel submitted in this context that the appellant's case that some individuals had broken into the house and were responsible for the crime was corroborated by his suffering injuries. According to the counsel, the Trial Court fell into error in

disbelieving this and not insisting upon any explanation by the prosecution with regard to injuries upon the appellant.

9. Learned counsel sought to urge that even if the Court were to take the entirety of circumstances, both PWs-1 and 6 had deposed before the Trial Court that the appellant was behaving abnormal and was in a “perturbed condition”. Furthermore, argued counsel, the appellant is undergoing psychiatric treatment in jail. The possibility of his not being in his senses as to understand the consequence of his actions could not be ruled-out. In other words, submitted counsel, the Court could have held that the appellant was suffering from a condition which entitled him to the defense provided under Section 84 of the IPC.

10. Learned APP submitted, on the other hand, that the Trial Court has carefully sifted all the evidence and tested the credibility of the witnesses before concluding that the appellant was guilty of the offences he was charged with. It was submitted that nothing could be elicited in the testimonies of PWs-1 and 6 to shake their credibility. Both of them were consistent as to what they observed during the immediate aftermath of the incident when the appellant’s mother was on fire in her house. Although a crowd had gathered when PW-1 rushed to the spot, the fact remained that his independence has not been seriously questioned or shaken during the cross-examination. Learned counsel emphasized that the appellant did not deny having been in the house at the time when his mother was killed. His false defence, however was with regard to some intruders breaking in and killing her. Learned APP submitted that in the cross-examination of

PW-1, suggestion had been put that two persons had stopped the appellant's mother and taken-away Rs.25,000/-. However, no valuables were reported to have been lost; on the other hand, jewelry and gold ornaments were found on the deceased. These pointed to the fact that not only was the appellant aware that he was on trial, that also he was arrayed for an offence which he was responsible for committing, but also that he sought to concoct a story to defend himself.

11. It was urged that apart from the testimony of PW-1, which was corroborated in all material particulars by PW-6, who had accompanied him to the spot, other evidence in the form of seizure of articles, the Postmortem report as well as seizure of blood-stained clothes and weapon of offence, made pursuant to the disclosure by the appellant incriminated him. These read together with the evidence of PWs-1 and 6 conclusively established the appellant's guilt beyond reasonable doubt. Learned APP highlighted the circumstance that an appellate Court would be slow in disturbing the findings of a criminal court unless it disclosed substantial or compelling reasons. It was emphasized that even if this Court were to take another view, that itself is not a good enough ground to disturb the opinion of the Trial Court; which was a reasonable one, having regard to all the circumstance proved before it.

Analysis and findings:

12. The previous discussion would reveal that the incident in this case leading to the death and burning of the appellant's mother, in Rohini was reported at 12.14 noon time of 03.10.2005 (Ex.PW-9/A).

The incident apparently occurred around 12 noon, according to PW-1, who also claimed that he had caught hold of the appellant. The police reached the spot within half an hour and recorded the statement of PW-1 (Ex.PW-1/A) at 01.15 PM. The FIR (Ex.PW-2/A) was registered at 01.40 PM. Although the police reached the spot and the FIR was registered apparently, the arrest was formally shown to have taken place at 05.30 PM, EX.PW-1/J. In the testimony of PW-1, it was claimed that he heard the commotion at 12 noon and went to the spot. In his statement recorded under Section 161 Cr.PC, at the foot, the approximate time is recorded as 10.30 AM; however, in the body of the statement, the witness had claimed that the incident occurred at 12.00 noon. The witness, therefore, was consistent about the timing of the incident. Furthermore, the Court is conscious of the fact that PW-1's testimony was recorded in the Court in 2008, on 21.04.2008, i.e. more than 2 ½ years after the occurrence. If there is any doubt about the timing of the incident, that stands dispelled by the postmortem report, Ex.PW-8/A. The postmortem was started at 11.25 AM; the opinion given by the doctor is that the time of death was approximately one day before that. Having regard to all these circumstances, it is immediately clear that the police were informed almost immediately about the incident, at 12.14 PM; they reached the spot and recorded the statement of PW-1 without any delay. This aspect assumes significance, in the opinion of the Court, since the prosecution has established that the FIR was lodged at the earliest available opportunity and without any loss of time.

13. Since the deposition of PW-1 is the prosecution mainstay, it

would be necessary to closely scrutinize it. The witness was a property broker, who deposed that around 12 noon on 03.10.2005, PW-6 was sitting with him in the office. Both heard some alarm or commotion about 4-5 houses away, near G-6/63. They went there and were told that someone had set his mother on fire. The witness stated that he found a large number of people had gathered in the park outside the house; they enquired what the matter was. At that time, the appellant was outside the house with a cup of tea. PW-1 enquired what the matter was and why he was standing outside his house when there was a fire in the house. At that stage, he told the witness that he had committed her murder and put her on fire by putting quilts etc. PW-1 further deposed that he enquired from the appellant why he was having tea after killing his mother, to which the latter replied, "*Aur mai kya karta*". PW-1 further deposed that his mother was not maintaining him properly and not arranging a suitable match and that he had killed his mother since he was fed-up. The witness and others tried to douse the fire with water and called the police. The police told him not to allow the appellant to flee. PW-1 also witnessed the arrival of the police, taking of the appellant into custody and seizure of various articles, such as knife, candle, match box and burnt clothes, lifting of blood samples and personal arrest memo and personal search of the appellant. The witness also identified the shirt and pant, marked as Ex.PW-P4/1-2.

14. In the cross-examination, PW-1 stated that his office was at a distance of 400 yards from the house of the appellant and that the entire area was residential. 100-150 people had gathered near the

house, majority of who were women and children. The house where the occurrence took place was a three-storeyed one. He deposed to having reached the spot at 12 noon and called the police, which arrived within 15 minutes.

15. PW-6 deposed that he was operating an STD booth from his shop at G-14/90, Sector-15 Rohini. He corroborated the statement of PW-1 that he was with the latter at 12 noon when he heard the commotion and went to the house where they found the accused in a perturbed condition. This witness also stated that the accused confessed to killing his mother and setting her body on fire and attempts to douse the fire. PW-1 informed the police and handed-over the accused to the latter. The witness further mentioned about the visit of the crime team and a photographer; inspection of the scene of crime, its photographing etc. In cross-examination, he stated that only one statement under Section 161 Cr.PC was recorded by the police on the day of the incident. He stated that PW-1's statement was also recorded the same day. This witness too corroborated PW-1's version that the police was informed by the latter and that they arrived at the spot within 15 minutes. He further stated that 50-60 persons had gathered at the spot when both reached there and that the house in which the occurrence took place was a three-storeyed one. PW-6 remained at the spot till 02.30 PM.

16. PW-8, Dr. Upender Kishore of Safdarjung Hospital conducted the postmortem on 04.10.2005. He deposed that burnt pieces of cloth had stuck to the thigh, face, upper chest of the deceased Kamla's body and her left hand was charred to the bone. PW-8 further stated that

heat rupture was present on the front of the chest, abdomen and thigh blackening of body was present and her hair was singed and there was no smell of kerosene. The external ante-mortem injuries in the body as also the subsequent opinion of the doctor about the weapon of offence and the request of the IO is extracted below:

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External ante mortem injuries:-

- (1) *incised wound of size 6x2cms x bone deep present in the middle of head over the forehead and extended to the back.*
- (2) *incised wound of size 5 cm x 1.5 cm x bone deep present over the right side parietal region starting from the hair line.*
- (3) *incised wound of size 4 x 1.5 cms x bone deep present over the right temporo parietal region parallel to injury no.2*

Internal examination:-

Extravasation of blood at the injury no.1, 2, 3 on the scalp present. Brain oedematous and congested, massive extravasation of blood and bruising of the muscle seen in the neck region with fracture of hyoid bone present. All internal organ congested, stomach was empty, no abnormal smell was found.

Opinion:-

Cause of death in this case was Asphyxia as a result of manual strangulation. Injury No. 1 to 3 produced by sharp cutting object/weapon. All injuries are Antemortem in nature. The burns wound was postmortem. I also preserved burnt piece of cloth and hair blood in guaze piece. Time since death one day. My detailed report is Ex.PW-8/A which bears my signature at point A.

I also gave subsequent opinion on the weapon of offence. On the request of IO Ram Mehar Singh PS Prashant Vihar alongwith sealed parcel which set to contain a knife sealed with 3 seals showing RS in white cloth of dated 5.12.05.

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17. The account of PWs-1 and 6 about the circumstances in which they observed the incident and what they heard from the accused is consistent in all material particulars. As noticed earlier, the incident was reported almost simultaneously after its being seen, by PW-1; his statement too was recorded immediately without any loss of time. These external factors are very material as they diminish and if not altogether, rule-out the possibility of false implication since ordinarily that phenomenon occurs if there is some delay in reporting the incident and registering the FIR. There is no doubt that neither PW-1 nor PW-6 are eyewitnesses to the incident, yet, they heard a commotion and rushed to the spot. That they were residents, or occupants of the premises in the area has not been disputed by the appellant. PW-1 has his office a few houses away from the appellant's house; PW-6 manages the shop nearby. Both witnesses were known to each other. By all accounts, they are independent. The appellant's attempt to cast a slur on their independence, by suggesting that they were known to the police officials, is not substantial because both witnesses mentioned that they were acquainted with the beat constable. That by itself cannot lead to the inference that the

statements are due or result of an afterthought. It is not unusual for small businessmen to be aware of local police officers and Constables. Their acquaintance with such authorities cannot be by itself lead to the conclusion that they were stooges of police or stock witnesses. In fact no such suggestion was made to the witnesses.

18. Even though PWs-1 and 6 were not witnesses to the incident, the fact remains that they reached the spot immediately, upon hearing the commotion. In a sense, they were witnesses to the events which occurred immediately after the incident. Their testimony, therefore, assumes significance and relevance by virtue of Section 6 of the Evidence Act, which reads as follows:

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6. Relevancy of facts forming part of same transaction -

Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

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19. Section 6 embodies the rule of admission of evidence relating to

what is known as *res gestae*. The essence of that doctrine is that facts which though not in issue are so connected with and are part of the transaction, are as relevant as facts in issue. In this case, the consistent version of PWs-1 and 6 is that the accused/appellant told or confessed to them about having committed the crime. Though there is no corroborative material as to motive, the account narrated by these two witnesses, in their statements under Section 161 Cr.PC as well as in the deposition before the Court, is that the appellant claimed that his mother was not maintaining him appropriately and was not finding a suitable match. These led him to kill her and set her on fire after piling quilts upon her. The depositions of PWs-1 and 6 pertained not only to the confession but also to the conduct of the appellant which was abnormal; he appeared to have been behaving strangely which led them to ask him what happened. The account given by them in Court as to what led them to question the appellant appears to be entirely genuine since the appellant was sipping tea even after being aware that his mother was on fire. This underlines the fact that the witnesses did not exaggerate him or concoct a story.

20. Although an argument was made on behalf of the appellant that an extra-judicial confession by itself cannot lead to conviction, there is no thumb-rule in this regard. Yet, there are circumstances which corroborate the prosecution story about the appellant being the perpetrator of the crime. In the disclosure statement, Ex.PW-1/L, the appellant mentioned that he had strangled his mother with his bare hand and then stabbed her. The disclosure statement was recorded on 03.10.2005. There is external corroboration of this in the postmortem

report, which cites the cause of death as manual strangulation. The manner of killing and the cause of death (which was mentioned as having happened on 03.10.2005 at the time of the arrest, but was subsequently revealed during the day), stood corroborated and constituted a “fact discovered” and, therefore, admissible under Section 27 of the Evidence Act.

21. Furthermore, there is also corroboration in the postmortem report and the testimony of PW-8 about the fact that burnt pieces of cloth were adhered to the deceased’s body. In his extra-judicial confession to PWs-1 and 6, the appellant had mentioned that he had pulled quilts and other such clothes on his mother before setting the body on fire. This fact was not known to the witnesses and was in fact corroborated by the postmortem report.

22. The appellant’s counsel had, during the course of hearing, argued that even if the entirety of circumstances are to be taken into consideration, and the facts held to be proved, his conduct and behavior was so abnormal as to have led the Court to investigate the matter further as to his mental capability. Learned counsel had emphasized the fact that the appellant is undergoing medical treatment for his mental or psychiatric condition during the period of detention in jail. This Court is of the opinion that as the plea of insanity was not entered during the trial, there is no objective evidence apart from the witnesses’ testimony about his strange and unaccountable behavior. By itself this cannot be safe to conclude that at the time of the murder, the appellant had lost his senses as to be entitled to the defense of insanity under Section 84 IPC.

23. In view of the foregoing reasons, this Court is of the opinion that the prosecution had established conclusively and beyond reasonable doubt that the appellant and none else was responsible for the commission of his mother – Kamla's murder on 03.10.2005. The Trial Court's findings are sound and do not call for interference. We would, however, at this stage, having regard to the submissions of the appellant's counsel, direct the concerned Jail Superintendent to have the appellant evaluated for psychiatric treatment. Having regard to the views and report so received, further action and proceedings in accordance with law shall be taken.

24. The appeal is without merit and is accordingly dismissed but subject to the directions given to the Jail Superintendent in the immediately preceding discussion. A copy of the judgment shall be transmitted for due compliance to the Jail Superintendent, who shall submit an Action Taken Report within six weeks. The matter shall be listed for formal compliance on 16.08.2012. The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J

S.P.GARG, J

JULY 02, 2012