

\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 26th April, 2012

+

CRL.A.448/2011

CRL.M.B.547/2012

MANMOHAN SINGH

....Appellant

Through : Mr.Thakur Virender Pratap Singh Charak,
Advocate with Mr.Pushpender Charak
and Ms.Shubhra Parashar, Advocates.

versus

THE STATE (G.N.C.T. OF DELHI)

....Respondent

Through : Mr.Sanjay Lao, APP.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. This criminal appeal under Section 374 of the Code of Criminal Procedure (Cr.P.C.) is filed by the Appellant Manmohan Singh questioning the judgment dated 28.10.2010 and order on sentence dated 30.10.2010 of learned Additional Sessions Judge in SC No.126/2008 by which he was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and also to fine of ₹ 5,000/-.

2. The prosecution alleges that on 20.02.2005 at about 05.00 P.M., the accused poured kerosene on his sister-in-law (Surjeet Kaur) who resided on the second floor of house No.D-208, Shiv Vihar, Chander Vihar, Nangloi, Delhi and lit fire. Daily Diary (DD) entry No.15 (Ex.PW-8/B) was recorded at police post Nihal Vihar, police station Nangloi, Delhi in this regard. On getting information about the incident, Gurdayal

Singh (deceased's husband) reached the spot and took her to ESI Hospital. ASI Dharam Singh to whom the investigation was assigned reached there, and after she was declared fit for statement, recorded her statement in which she stated that on 20.02.2005, Manmohan Singh, her brother-in-law was under the influence of liquor at 05.00 P.M. and told her that he would not spare her life. He picked up a bottle containing kerosene oil and poured its contents on her. Thereafter, he set her on fire with a match stick. Her sister-in-law (Manjeet Kaur) extinguished the fire by pouring water, and the accused fled the spot. The Investigating Officer (IO) after recording the statement reached the spot and seized a bottle containing a small quantity of kerosene from the kitchen. He did not initiate further action and kept the DD No.15 (Ex.PW8/B) pending. On 25.02.2005, he made an endorsement upon it and sent the rukka for registering the case under Section 307 IPC. He recorded the statements of witnesses conversant with the facts.

3. On 26.02.2005, while undergoing treatment, the victim succumbed to her injuries in the hospital and the investigation was taken over by Inspector B.R.Mann who conducted the inquest proceedings and sent the body for post-mortem. Dr.Ashish Jain conducted the post-mortem of the body. On 04.03.2005, on the basis of secret information, the accused was arrested and his disclosure statement was recorded. During investigation, the IO sent the exhibits to forensic laboratory and subsequently, collected its report. After completion of the investigation, the police filed a charge-sheet against the accused, who was duly charged and brought to trial.

4. To prove its case, the prosecution examined seventeen witnesses. The statement made by the deceased to the IO on 20.02.2005 was treated as her dying declaration under Section 32 of Evidence Act. After closure of prosecution evidence the accused was examined under Section 313 Cr.P.C. He denied his complicity in the crime and pleaded false implication by the police in connivance with the deceased's parents. Tarun Kannda appeared as DW-1 in his defence.

5. After appreciation of the evidence and considering the rival contentions of the parties, the accused was convicted and sentenced for the offence under Section 302 IPC. Aggrieved by the impugned judgment, the Appellant has preferred the appeal.

6. Learned counsel for the Appellant argued that the Trial Court did not appreciate the evidence in its true perspective and fell into grave error in relying upon the testimonies of PWs 1, 2, 3, 5 and 17 who were closely related to the deceased and whose presence at the spot was highly doubtful. The deceased, urged the counsel, accidentally caught fire while preparing food in the kitchen and PW-3 (Gurdayal Singh), her husband in his earlier version given to the doctor confirmed it. Subsequently, under the pressure of his in-laws, he changed his version and blamed the Appellant for setting the deceased on fire. The accused who had assisted his brother to stay in his house due to his inability to arrange independent accommodation had no ulterior motive to set the deceased on fire. Counsel referred various discrepancies, improvements and contradictions in the testimonies of the prosecution witnesses to discredit them. The counsel assailed the conduct of the IO who kept the DD No.15 (Ex.PW-8/B) pending for more than four days and did not register an FIR. The

counsel contended that genuineness of the dying declaration itself was in controversy and in the absence of any other corroboration, it cannot be acted upon.

7. Learned APP supported the judgment and urged that it did not call for any interference. The prosecution witnesses categorically proved that it was the accused who set the deceased on fire. Close relationship is not a factor to discard the deceased's relatives' cogent testimony. The accused sustained injuries in the incident and the prosecution established his presence at the spot. For the lapses of the IO, the truthful version narrated by the prosecution witnesses cannot be doubted. Delay in recording the FIR and statements of witnesses, urged the counsel, is not always fatal. The deceased too had no ill will to falsely name the accused in her dying declaration. She was conscious, oriented and able to make a coherent and consistent statement to the IO about the circumstance in which she was set ablaze. He submitted that there is nothing to suspect the true and voluntary nature of the dying declaration.

8. We have considered the arguments and have scrutinized the Trial Court records. Before we proceed to decide the case on merits, it is desirable to highlight that cause of death is not under challenge. The post-mortem report (Ex.PW-15/A) reveals that she succumbed to burn injuries sustained by her. What was contended by the Appellant is that the death was not homicidal but was the result of an accident. It is not in dispute that the accused with his parents used to reside on the ground floor and had allowed the deceased and her family to stay in his house on the second floor.

(A) **Initial version :**

9. Surjeet Kaur was taken to ESI Hospital by her husband PW-3 (Gurdayal Singh) on 20.02.2005 at 06.40 P.M. PW-9 (Dr.P.K.Jain) prepared her MLC (Ex.PW-9/A) and in the 'alleged history' given by him (PW-3) he told the doctor that his wife caught fire while preparing food in the kitchen. In his examination, he (PW-3) deviated from his statement and blamed his brother (the accused) for setting her on fire after sprinkling kerosene oil. He did not explain the two conflicting statements. In the cross-examination, he changed his statement and deposed that on inquiry by the doctor, the deceased disclosed the cause of death and he recorded it in English. The doctor however, in his deposition did not substantiate this. PW-5 (Govind Kaur, deceased' mother) admitted in the cross-examination that her daughter had told her in the hospital about her catching fire while she was preparing food. She attempted to explain that she did so under police pressure and that of neighbours for the sake of her children's future. The prosecution failed to offer plausible and convincing justification how in the earliest version given to the doctor, by the accused was not correct or plausible. Since the alleged statement was recorded in the presence of close relatives including her husband, there was least possibility of fear or pressure or undue influence.

(B) Eye witnesses account :

10. The prosecution claimed that the burning incident was witnessed by PW-1 (Gurmeet Kaur) and PW-17 (Tajender Singh) (daughter and son of the deceased, respectively) and PW-17 informed his father about the occurrence. In the court, PW-1 deposed that her uncle (Manmohan) after setting her mother on fire fled the spot. PW-17 (Tajender Singh), denied his presence on the spot and deposed that he was

informed about the incident by her maternal grand-mother in whose house he used to reside and thereafter they all reached the hospital. He entirely contradicted PW-1 that after witnessing the incident, he informed his father. PW-5 (Govind Kaur), deceased's mother introduced a new version improving her statement made to the police under Section 161 Cr.P.C. and deposed that PW-17 (Tajender Singh), went to their house, narrated the occurrence and thereafter reached the ESI Hospital, Moti Nagar. This shows that the material witnesses, who are close relatives of the victim gave an altogether inconsistent version about the incident. Such unnatural conduct of both PW-1 and PW-17 makes their presence on the spot highly suspicious because they did not take the injured to the hospital immediately; they failed to report the matter to the police, and intervene to save the victim. They also failed to apprehend the perpetrator of crime and made vital improvements in their depositions before the Court.

(C) Existence of Dying Declaration :

11. The dying declaration (Ex.PW-8/A) purportedly made by the deceased shrouded in several suspicious circumstances which create a doubt about the genuineness of the document. It was allegedly recorded by the IO (PW-8) after reaching the hospital on 20.02.2005. The material witnesses (PWs-1, 2, 4 and 17) did not divulge the exact time when the IO recorded the dying declaration and if it was recorded in their presence. According to PW-17's testimony, they all reached the hospital at 02-03.00 A.M. on 21.02.2005. This undermines the IO's version that he recorded it at 08.00 P.M. in their presence. The MLC (Ex.PW-9/A) completely demolished his version as the doctor had declared the patient fit for statement at 08.25 P.M.

12. Indisputably, after recording the alleged dying declaration (Ex.PW-8/A), PW-8 did not send the rukka to register the case and remained mum for four days. The deceased's statement disclosed commission of a cognizable offence requiring him to register the case under Section 307 IPC on 20.02.2005 itself. For the unknown reasons, he kept the DD No.15 (Ex.PW8/B) pending and suddenly, without any change in circumstances, sent the rukka for registering the case under Section 307 IPC on 25.02.2005. The victim remained conscious and oriented till she expired on 26.02.2005 at 06.40. A.M. Despite sufficient opportunity to requisition the services of a Magistrate or doctor to record her dying declaration, the IO made no such attempt. He did not in any manner indicate or disclose the existence of the dying declaration to his superior officers. The IO failed to explain the inordinate delay in lodging the FIR. The dying declaration (Ex.PW-8/A) disclosed the commission of a cognizable offence and the perpetrator of the crime. It was his duty under Section 154 Cr.P.C. to lodge the FIR promptly. For ulterior motives, he kept the alleged DD (Ex.PW-8/A) in his pocket which saw the light of the day only on 25.02.2005. The case diaries seen by us reveal that the IO did not record any proceedings worth the name before 25.02.2005. He did not even mention if he visited the hospital and recorded the statement or visited the place of occurrence and seized any article. We summoned the police file to peruse the case diary Section 172(1) Cr.P.C. provides that every police officer making an investigation shall have the duty to maintain a day-to-day diary with the particulars specified in it. The entries in the case diary should be made with promptness, in sufficient details maintaining all sufficient facts in

chronological order. Failure on the part of IO to adhere to Section 172 Cr.P.C. is serious lapse and resulting in diminishing the value and credibility of investigation.

13. Probably, after coming to know the patient's death occurred on 26.02.2005 at 06.40 A.M., to save his skin, the I.O become active and FIR came to be recorded after due deliberation and consultations. This was clearly ante dated to give it the colour of a FIR recorded on 25.02.2005. The police file reveals that on 25.02.2005 itself, the IO allegedly recorded the statements of all relevant witnesses i.e. Karam Singh, Govind Kaur, Tajender Singh, Gurdayal Singh, Gurmeet Kaur, Constable Ashok Kumar, Manjeet Kaur and Constable Subhash Singh under Section 161 Cr.P.C. He did not offer any explanation for delay in recording their statements despite their availability earlier. He also did not say and what prompted him to record it in a hurry only on 25.02.2005. PW-2 (Karam Singh), PW-3 (Gurdayal Singh) and PW-5 (Govind Kaur) contradicted PW-8 and categorically refuted IO's version of recording their statements on 25.02.2005. The contradictory and inconsistent versions deposed by the prosecution witnesses casts serious doubt that the alleged dying declaration (Ex.PW-8/A) recorded by the I.O. is a genuine document. Certainly, the delay in lodging the FIR will play an important role especially if it appears that there are indications of fabrication. This would be an important factor to doubt the prosecution case.

14. In the case of '*Mehraj Singh (L/Nk.) v.State of U.P.*' (1994) 5 SCC 188, the Supreme Court has held :

XXXX

XXXX

XXXX

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of

appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story....”

15. Earliest reporting of the occurrence with all its vivid detail gives an assurance regarding truth of its version. Deliberate delay in lodging the complaint/FIR is always fatal. It appears that the IO was deliberately marking time with a view to give a particular shape to the case. All the circumstances lead to one and only one conclusion that this dying declaration is not a genuine document and no sanctity can be attached to it. The Supreme Court in the case of ‘*State (Delhi Admn.) v. Laxman Kumar*’, (1985) 4 SCC 476 disapproving the practice of recording dying declaration by the investigation officer held :

XXXX	XXXX	XXXX
<i>“We may also add that although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of the Indian Evidence Act in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor. As observed by this Court in ‘Munnu Raja v.State of M.P.’ the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged....</i>		

28. We also find that under the relevant Rules applicable to Delhi area, the investigating officer is not to scribe the dying declaration. Again, unless the dying declaration is in question and answer form it is very difficult to know to what extent the answers have been suggested by questions put. What is necessary is that the exact statement made by the deceased should be available to the court. Considered from these angles, the dying declaration in question is not acceptable. The High Court obviously lost sight of all these aspects when reversing the conclusion of the trial court with regard to the document and agreeing to act upon it.”

16. The so-called dying declaration in this case is full of infirmities and it is not safe to record conviction without corroboration. Initially, a futile attempt was made to implicate the accused's old parents who had no role to play and even were not present at the scene of crime. No motive was assigned to the accused for setting the deceased on fire without any provocation. It emerges from the Trial Court record that the accused had permitted his brother to stay in his house as he was unable to arrange any accommodation due to his weak financial position. It is not believable that deceased's family members would allow the accused to abuse them from morning under the influence of liquor and would not raise any objection and inform PW-3 (Gurdayal Singh). The injuries suffered by the accused remained unexplained. PW-4 (Manjeet Kaur), accused's wife demolished the prosecution case and testified that the deceased had told her that she sustained burn injuries accidentally while cooking food. The IO did not collect any incriminating article at the spot. Neither did he summon the crime team nor did he photograph the scene of incident. No independent witness from the neighbourhood was associated

to strengthen the prosecution case. No telephone calls were collected to corroborate the witnesses.

17. Various factors highlighted above go to show that the prosecution failed to establish the accusation against the Appellant. The Trial Court while analysing the evidence of the witnesses did not notice that there were lot of exaggerations and improvements. It also did not consider the impact of inordinate delay in lodging the FIR and the delay in recording the statements of material witnesses without any plausible explanation. The role of the IO in the entire investigation conducted in a casual manner is highly deplorable. He appears to have been actuated with malice. This Court is of opinion that the role of the IO should be thoroughly investigated, and suitable action in that regard should be initiated. The Police Commissioner of Delhi is therefore, directed to initiate, after going through the police file necessary departmental action within 4 weeks. The matter shall be listed before this Court after 10 weeks, on 6th August, 2012 to report compliance.

18. In the light of above discussion, the impugned judgment cannot be sustained. The appeal deserves to be allowed and the accused is acquitted. Order dasti. The Registry shall directly communicate a copy of this order, forthwith, to the Commissioner of Police.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

April 26, 2012/tr

Crl.A.448/2011

Page 11 of 11