

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

+ **Crl. Appeal 440/2012**

% **Reserved on: 11th September, 2012**
Date of Decision : 17th September, 2012

SURAJ CHAUHAN @ BITTOO APPELLANT
Through **Mr. Purnima Sethi, Advocate.**

Versus

STATE ...RESPONDENT
Through **Mr. Sanjay Lao, Advocate.**

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P. GARG

SANJIV KHANNA, J.

Suraj Chauhan @ Bittoo by the impugned judgment dated 18th October, 2011, in FIR No. 191/2008, P.S. Vasant Vihar, stands convicted under Section 302 of Indian Penal Code 1860 (IPC) for murder of his wife Pooja on 30th July, 2008.

2. Prosecution alleges that the appellant had poured kerosene oil on Pooja and burnt her in their residence in Village Basant, New Delhi.

3. There is no eye-witness and the prosecution's case is primarily based upon dying declarations of Pooja. These declarations were made to Head Constable P. Tiwari (PW-19), who had taken the victim to the hospital along with the appellant, and Surender Kumar (PW-4), the Executive Magistrate, who had recorded the dying declaration in the hospital, on 1st August, 2008. The prosecution also relies upon

statement of Pooja, as recorded in the MLC Ex. PW-6/A, wherein it is mentioned that Pooja was admitted with history of burns, when her husband poured kerosene oil over her and set her on fire, after a quarrel.

4. It is not disputed that the appellant was married to Pooja for four years. They had no children.

5. Death of Pooja, as a result of burns, is proved from the testimony of Dr. Shilpi Baranwal (PW-6) who had examined Pooja, on 30th July, 2008 at 6.45 PM. She had stated that Pooja was admitted with alleged history of burns when her husband poured kerosene oil over her and set her on fire following a quarrel. She had examined the appellant on the same day, and at about the same time, as the appellant had thermal burns on his hands which it was stated were caused when he was trying to save his wife. Pooja had 60% thermal burns with facial and respiratory burns at the time of admission. It was stated by PW-6 that the facial burns, as mentioned in MLC Ex. PW6/A, meant that she had burns on her face. Dr. Sarvesh Tandon (PW-17) had conducted post mortem of the dead body of Pooja on 14th August, 2008. He has averred that Pooja had died in the hospital on 12th August, 2008 at 10.20 AM. Pooja had superficial to deep burns all over the body except major parts of lower limbs, external genitalia, buttocks, lower parts of back. The cause of death was ascertained as septicaemic shock due to dry flame thermal ante-mortem, burn injuries which were sufficient to cause death in the ordinary course of nature.

6. Fundamental question is whether the appellant had thrown kerosene and burned the deceased. We have statement of PW-1 Surender, elder brother of the appellant. He had stated that appellant

came home drunk on 30th July, 2008. Thereafter PW-1 heard screams where upon he reached the place of occurrence and found Pooja burning. He poured water on her. Pooja told him that appellant had set her on fire, after pouring kerosene on her. He called police by dialing No. 100 and police took Pooja to the hospital where she subsequently died. He identified the dead body of Pooja in the hospital. Appellant was a habitual drinker who quarreled with his wife and other family members. The appellant was present at the time when PW-1 reached the spot of occurrence. The appellant had stated to PW-1 that he would provide treatment to Pooja and she would be alright.

7. Seema (PW-3) is wife of Surender and appellant's sister-in-law. In her examination in chief, she had stated that she did not know what had happened but after hearing noise, she came out and saw that Pooja was lying in a burnt condition. She, along with her husband, poured water on Pooja. PW-1 then called the police by dialing 100. While lying on the floor, Pooja was saying that she was burnt by the appellant.

8. In cross-examination of PW-1 and PW-3, it was suggested that appellant and PW-1 had a land dispute and they were not on good terms. This allegation was denied by both PW-1 and PW-3. In court no material has been put forth to show that there was a land dispute between PW-1 and the appellant.

9. PW-1, in the cross-examination, had stated that he had not seen the appellant pouring kerosene on Pooja and setting her on fire. Similar statement was also made by PW-3. But they had reached the spot immediately after the "act" and had the occasion to hear the

deceased Pooja. Presence of PW-1 and PW-3 is natural as they were residing in the same building. PW-1 called the police from his telephone number. This is clear from the PCR information Ex. PW2/A which was recorded on 30th July 2008 at 18:01:39. PW-1 had further stated that the appellant had also got injured. Therefore, presence of the appellant at the spot is proved. Presence of appellant was also proved by MLC of the appellant (Ex. PW6/B) which was recorded by PW-6, at about 6.45 PM on the same day.

10. Head Constable P. Tiwari (PW-19) was posted in PCR at Vasant Vihar. On receiving a call, he had reached House No. 143, C Block, Vasant Village and had taken injured Pooja and her husband to the hospital. He has stated that Pooja revealed to him that she was burnt by her husband by pouring kerosene oil. She also informed that her husband was a habitual drinker. In his cross-examination, he confirmed that Pooja had made this statement when she was in the hospital. He denied the allegation that Pooja was not in a fit state of mind and he had falsely implicated the appellant at the instance of the Investigating Officer.

11. Surender Kumar, Executive Magistrate (PW-4), had stated that he had received a call, on 30th July, 2008, at 7.00 PM, from S.I. Sandeep that a lady called Pooja had been admitted in Safdarjung Hospital with burnt injury. She was married for about four years. He visited the hospital at 9.00 PM but the doctors had opined that she was not fit to make a statement. On 1st August, 2008, at about 3.15 PM, he received a message from SI Sandeep that injured Pooja was fit to make a statement in the opinion of Medical Officer. He recorded the statement of Pooja vide Ex. PW4/A. The statement bears thumb

impression of Pooja at point 'A' and signature of PW-4 at point 'B'. He accordingly directed the SHO to make the investigation, vide note Ex. PW4/B. Dying declaration (PW4/A) recorded by PW-4 reads as under:-

“Statement of Mrs. Pooja W/o. Suraj alias Bittoo R/o. Village Basant (sic) who was admitted in SJH Delhi on 30.07.2008 at 6.45 P.M. with 60% burn. Recording of statement begin at 4:25 P.M. after obtaining fitness at 4:15 P.M. Statement is being recorded in my own handwriting and in total isolation.

Q. What is your name?

Ans. Pooja.

Q. When did you get married?

Ans. Suraj and I had been (sic) working together. I belonged to Bengal and had been living here all alone. Five years ago both of us got married in a temple on our own.

Q. How did this incident happen?

Ans. I (-sic?) had been at home at 4:00 O'clock that Suraj came home drunk. When I stopped him, Suraj started quarrelling with me and he poured kerosene oil on me and lit a matchstick. Hearing my screaming, my elder brother-in-law (Jeth) (who lives in our neighbourhood) came and extinguished the fire with water. Meanwhile, my elder sister-in-law (Jethani) also came and my elder brother-in-law informed the Police through his telephone.

Q. Did your husband beat you earlier too?

Ans. Yes. Everyday he would come drunk and after being stopped he would beat me. I request you to take the sternest action against Suraj.

Q. What is the address of your parental house?

Ans. Village Subhash Nagar, Police Station Bethwa, Post Shelugram, District Nadia, West Bengal.

I am making this statement voluntarily without any coercion in my full senses. This statement has been read-over and explained to me and admitting it to be correct; I am putting my right hand thumb impression on it.

Sd/-
(Surendra Kumar)

12. Pooja died on 12th August, 2008. PW-4 instructed SHO to get in touch with parents of Pooja but there was no response from them. Surender Chauhan, elder brother of appellant, requested PW-4 to hand over dead body of Pooja to him. At PW-4's request post mortem was conducted. In cross-examination, PW-4 denied that Pooja was tutored by the brother of the appellant and his wife. He has stated that he had no knowledge of any property dispute. On the question of property dispute, as noticed before, there is no material to establish the same. No details of property or exact nature of dispute has been put forth and set out or put in the cross-examination of PW-1 and PW-3 or in their statement under Section 313 CrPc. Interestingly, PW-3 was cross-examined and it was suggested and accepted by her that the appellant had one son from an earlier marriage who could be 8-9 years, as on 24th July, 2009. Therefore, the property belonging to the appellant would in all likelihood be inherited by him.

13. The Investigating Officer, Sandeep Sharma (PW-24) has stated that he had collected the MLC of Pooja (PW6/A). He also affirmed that doctor had initially opined that Pooja was unfit for statement on 30th & 31st July, 2008. However, she was declared fit for statement on his application Ex. PW24/D by the doctor and thereafter PW-24 recorded her statement (Ex. PW24/A). Parents of Pooja who were residents of Nadiya, West Bengal, were informed through wireless message sent to SSP. On 6th August, 2008, information was received from SSP, Nadiya that their address was incorrect and that there was

no such village by the said name, as stated by Pooja. Thereafter, on 14th August, 2008, Surender Chauhan and Naresh Chauhan, brothers of the appellant identified the dead body in the mortuary. On the basis of affidavit, Surender (PW-1) received the dead body for cremation. On 30th July, 2008, PW-24 had prepared the rukka which was sent through Constable Mahesh. He also recorded statement of Surender and Seema who reached the spot. Photographs were taken and the plastic can was sealed and seized vide seizure memo Ex. PW7/A. Match box was also seized vide Ex. PW7/B. Burnt clothes of Pooja were sealed and seized vide Ex. PW7/E. He had arrested the appellant vide arrest memo Ex. PW10/A on 1st August, 2008, at about 12.30 PM.

14. Since prosecution's case is primarily based on dying declarations made by the deceased, we would like to highlight the prudent approach adopted by the courts while deciding whether or not their decision can be based on such statements. Section 32(1) of the Evidence Act makes dying declarations by the victim admissible in respect of "any of the circumstances of the transaction which resulted in his death". The words "resulted in his death" most certainly include "caused his death" and have a much wider scope. A dying declaration may be acted upon without corroboration (see *State of U.P. vs. Ram Sagar Yadav* (1985) 1 SCC 552 and the judgments mentioned therein). However, caution and care should be exercised as the accused does not get an opportunity to cross-examine the maker of the dying declaration. Care has to be taken to ensure that the dying declaration is not tutored. It should not be a product of imagination or prompting. The court should be also satisfied that the deceased was in a fit state of mind to make the statement and had an opportunity to observe and identify the

assailant. The statement should be without any rapaciousness or rancor. It should be voluntary (see *State of Rajasthan vs. Wakteng* (2007) 14 SCC 550).

15. In *Atbir vs. Govt. of NCT of Delhi* (2010) 9 SCC 1, the Supreme Court examined its earlier decisions and it was held that dying declarations are entitled to great weight provided they are of such nature as to inspire confidence of the court in its truthfulness. Statement of a person who is on the death bed and is dying is entitled to respect unless they are indications and doubts that the maker may not be saying the truth. In such cases corroboration is required and insisted. Therefore, primary duty of the court is to find whether dying declaration is truthful or not. Once it is convinced that the dying declaration is credible and truthful then it can be acted upon even when uncorroborated. In the said judgment, the following principles were enunciated:

“22. The analysis of the above decisions clearly shows that:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- (viii) Even if it is a brief statement, it is not to be discarded.
- (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

16. Keeping in view the aforesaid, we have examined the dying declarations in the present case which includes oral dying declarations made to PW-1, PW-3, PW-19 and (PW-6) Dr. Shilpi Baranwal’s endorsement in the MLC (Ex PW6/A) that Pooja had stated that her husband had poured kerosene oil over her and after that set her on fire. In addition, we have the dying declaration recorded by the Executive Magistrate (PW-4) in Ex. PW4/A.

17. We do not think that Pooja could be tutored by PW-1, PW-3 or brothers of the appellant. Right from the beginning when Pooja was taken to the hospital in the PCR van, along with the appellant, Pooja had blamed the appellant for pouring kerosene oil and burning her. Her statement has been consistent throughout. As discussed before, these dying declarations are truthful, credible and trustworthy. There was no possibility of any false implication by Pooja at the behest of Surrender or any other person. There was no reason for Pooja to help

PW-1, in case there was any property dispute between the appellant and his brothers. Pooja, in all probabilities, would have helped the appellant if there was any property dispute.

18. It was argued before us that Pooja may have committed suicide and it is not a case of murder under Section 302 IPC. It was suggested and submitted that the appellant had also suffered burn injuries when he tried to save Pooja and hence it is possible that Pooja had committed suicide. In the present factual scenario and in view of repeated dying declarations of Pooja, we are not inclined to accept the said submission. In the statement of the appellant, recorded under Section 313 CrPC, he did not claim that Pooja had committed suicide. MLC Ex. PW6/A recording Pooja's statement, that she was burnt by pouring kerosene oil by the appellant after quarrel, was put to the accused. He answered that his wife may have stated so out of anger. His reply was similar for dying declaration (PW4/A) recorded by the Executive Magistrate. He had stated that his brother Surender and bhabhi Seema were inimical towards him because of property dispute. Further his bhabhi Seema used to provoke and instigate his wife. However, the appellant accepts and admits that he was with the deceased at the time of incident. He did not allege or state that his wife had committed suicide by pouring kerosene oil on herself. It was stated by PW-1 that, post the incident, appellant had stated that he would get his wife treated. This shows that after the act, the appellant may have been impelled to realize his wrong and heinous act. Nevertheless, this is different from stating that the deceased had committed suicide and the appellant had not poured kerosene oil and burn his wife.

19. In view of the aforesaid evidence which is on record, it is clear that the appellant has been rightly convicted, for committing murder of Pooja by pouring kerosene oil and setting her on fire. His conviction under Section 302 IPC and sentence of life imprisonment and fine are accordingly sustained and upheld. The appeal is dismissed.

20. Seema (PW-3) has indicated that the appellant has a son from his first marriage. His whereabouts were not known. Child Welfare Committee will get in touch with Surender (PW-1) and Seema (PW-3) and will take appropriate and required measures as per law to ensure that he is properly educated, taken care and protected. He should not be denied what is due to him. Copy of this judgment will be sent to the Child Welfare Committee.

(SANJIV KHANNA)
JUDGE

(S. P. GARG)
JUDGE

September 17th, 2012
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