

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

% **Reserved on: 13th November, 2013**
Date of Decision: 9th December, 2013

+ **CRIMINAL APPEAL No.898/2012**

LADDAN Appellant
Through: Ms.Rakhi Dubey, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Through: Mr.Sanjay Lao, APP for the State.

CORAM:
HON'BLE MR. JUSTICE P.K. BHASIN
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J:

1. The appellant-Laddan assails the impugned judgment dated 2nd February, 2012 and order on sentence dated 4th February, 2012 passed by the learned Additional Sessions Judge-03 (NE), Karkardooma Courts, Delhi in case FIR No.330/2007 under Sections 307/302 of the Indian Penal Code (hereinafter referred to as 'IPC') whereby the appellant has been convicted for the offence under Section 302 IPC. Vide order on sentence dated 04.02.2012, he has been sentenced to undergo rigorous imprisonment for life and also to pay a fine of

Rs.5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

2. Briefly stated the case of prosecution is that on 17.07.2007, on receipt of DD No.12A, ASI Prem Pal along with Constable Raj Kumar reached GTB Hospital, he collected MLC of one Shahid and recorded his statement wherein deceased Mohd. Shahid stated that he was doing the business of manufacturing *chappals* in partnership with the appellant in the factory situated on the ground floor of House No.119, Gali No.4, Kardampuri, Delhi. He was residing on the second floor of the said house while the first floor was occupied by the appellant and there was some dispute going on between him and the appellant. Appellant used to demand money from him though appellant owed him a lot of money. The appellant used to pressurize him to dissolve the partnership and to sell the aforesaid house which was in their joint name and due to this reason some dispute arose between them. On 17.07.2007, the appellant called him to his room and again brought up the topic of sale of the house. When he refused for the same, the appellant got enraged and started hurling abuses at him and all of a sudden held his hair with one hand from behind. At this, he shrieked with pain and with the other hand, the appellant forcibly put some tablets into his mouth and covered his mouth and nose forcefully. He

felt suffocated and the tablets slid down his throat and the appellant uttered 'Tu makaan nahin bikne de raha tera kaam tamam ker deta hoon'. After swallowing the tablets, he felt terrified. He raised an alarm and on hearing the alarm, workmen, his brother Wasim and nephew Taufiq reached the spot and on seeing them, the appellant fled from there and he disclosed to them that the appellant had forcibly administered poisonous tablets to him. Thereafter, Wasim and Taufiq rushed him to the hospital in a TSR where after recording his statement, ASI Prem Pal got the case registered under Section 307 IPC. He also seized gastric lavage of the deceased. ASI Prem Pal inspected the spot and prepared the site plan at the instance of Wasim. From the spot, he seized one metallic container labelled as 'Aluminium Phosphide 56%' Quick Phos containing three tablets. Subsequently on receipt of DD No.56B regarding death of the deceased, investigation was marked to Inspector Hira Lal. Viscera was preserved by the doctor, blood sample and clothes of the deceased were seized by the police and the dead body of the deceased was sent for post mortem.

3. On completion of investigation, charge-sheet under Section 307/302 IPC was filed. Charge under Section 302 IPC was framed against the appellant to which he pleaded not guilty and claimed trial.

The trial was conducted leading finally to the passing of the impugned judgment and order on sentence.

4. Learned counsel for the appellant contended that the impugned judgment is based on conjectures and surmises. The conviction of the appellant is unjustified and lacks legality. Learned trial Court has failed to appreciate the testimony of the witnesses which point out towards the innocence of the appellant. The prosecution has failed to establish the motive of the commission of the offence. The deceased used to wear a wig, in such a case, the factum of the appellant pulling the hair of the deceased with one hand and forcing the tablets with other hand is doubtful. He also urged that the workmen who were present there at the spot are not made the necessary witnesses by the investigating agency who are independent and only relatives of the deceased who are otherwise also interested witnesses in the case were made the party. It is not possible to administer poison to an adult without taking the assistance of others. Further, only one bruise in the right arm was found on the body of the deceased. In such a case, it is difficult to believe that in a case where someone forcibly tried to put tablets in the mouth of the deceased, he would not have resisted and in the process he would not have suffered more injuries than the one as it was found on him. It is quite improbable that Wasim (PW-2) who was

standing outside his house at the distance of intervention of about 7-8 houses from the house of the deceased, could have heard the noise coming out of the house of the deceased and reached the spot of incident whereas the workers who were present at the ground floor of the same building or the persons who were the neighbours and living in the adjacent houses did not hear any noise, scuffle or heated arguments between the deceased and the appellant.

5. Learned counsel for the appellant further contended that the Investigating Officer did not find or record any vomit or spit of the deceased at the place of the incident who was reported to have been given poisonous substance by the appellant. In the normal and natural course, the person who is forced to swallow something against his wishes would have ejected/spat or vomited the same, however, nothing of this sort was found out in the present case. The prosecution has not explained the delay in recording the statement of the deceased. On 17.07.2007, the deceased was admitted in the hospital at about 10.45 a.m. and was declared fit for statement, however, his statement was recorded by the police at about 2.30/3.00 p.m, after a lapse of a considerable time which raises suspicion and hits at its authenticity. Various discrepancies exist in the statements of prosecution witnesses regarding the presence of one person Tahir at the place of incident, the

windows and door of the house being closed, educational qualification of the deceased and his interest in selling the premises.

6. It was lastly contended by learned counsel for the appellant that dying declaration of the deceased does not inspire confidence and is liable to be rejected. The recovery of aluminium phosphide tube is planted and further if the appellant wanted to kill someone by poison then he would have administered that poison by which the deceased would have died instantly and not one which would take effect after several hours.

7. Per contra, learned APP for the State submitted that there is no requirement in law that a dying declaration must necessarily be made to the Magistrate. In an appropriate case, it may be permissible to convict a person only on the basis of a dying declaration recorded by the police in the light of the facts and circumstances of the case. The dying declaration of the deceased made before ASI Prem Pal is corroborated in material parts with the declaration made by the deceased before Wasim (PW-2) and Taufiq (PW-3). There is no reason to discredit the testimony of these two witnesses for the mere fact that they are related to the deceased as the related witness does not always mean interested witness. The tenor of the statement made by the deceased established that he was fully conscious and gave a

detailed and cogent statement regarding the cause of his death. There is nothing to show that the dying declaration was a result of any imagination, tutoring or prompting. It was also contended that the contradictions pointed out on behalf of the appellant are not material in nature. The factum that the deceased wore a wig does not suggest that he was bald and that his statement regarding the appellant pulling his hair is false and is to be discarded in toto. Learned APP lastly contended that the motive behind the incident stands proved as a dispute over the property and the business between the deceased and the appellant. The cause of death was opined as shock due to aluminium phosphide poisoning and one aluminium phosphide tube with three tablets was found in the premises belonging to the appellant where the incident had occurred.

8. We have carefully considered the submissions made by learned counsel for the appellant and learned APP for the State.

9. Smt. Nahid (PW-1) has stated that the deceased Mohd. Shahid was her husband and she was residing with her children and her in-laws in the same property (i.e. House No.119, Gali No.4, Kardampuri, Delhi). The appellant-Laddan is her real brother and he was also residing in the same property along with his family at 3rd Floor whereas she was residing at the 4th Floor of the said premises. The

appellant-Laddan was having a dispute regarding money with her deceased husband as well as concerning the house. She went to village of her husband for delivery and was blessed with a son. Her brother-in-law Mohd. Tahir made a telephone call to her that the appellant had administered tablets to her husband. When she hardly covered some distance in *tanga* for going to bus stand, her *jeth* brought her back in the village as she was not in a position to move properly due to her delivery. She was told by her family members that her husband had died. Her condition started deteriorating. The dead body of her husband was brought in the village. After cremating her husband in the village on the third day, she reached Delhi. In her cross-examination by the learned APP, she admitted that she had stated to the police that her husband and her brother had joint business of manufacturing *chappals* on the ground floor of the said premises. The house was in the joint names of her husband and the appellant and also both of them had equal share in the business of manufacturing *chappals*. The appellant was not showing the expenditure and gains of the business to her husband properly and that is why he used to quarrel with her husband. She also admitted that on 17.06.2007, she had gone to her Village Karim Nagar, District Hardoi, UP along with her husband and that she stated to the police that her *devar* Mohd. Tahir

informed her on phone that the appellant-Laddan had administered poisonous tablets. Her husband had left his business and he was not doing any business of shoe making at the time when she left for her village and he was in a search of a new work. She left her house for her village one month prior to the death of her husband. Her husband had closed his business 15 days prior to her leaving for her village. She and her husband had bitterness for her brother so they were not on visiting terms with him. The factory of shoe making was locked and she clarified that the factory of her brother was running, however, the first floor was locked from one side and their business was not running. She denied the suggestion that her husband was upset as Taufiq and Wasim had borrowed Rs.3 lakhs from her husband and admitted that her husband used to wear wig. The dispute arose between her husband and her brother 4-5 months prior to the date of incident.

10. Wasim (PW-2) has stated that he was running a factory of manufacturing *chappals* at Kardampuri (House No.116 , Gali No.4, Kardampuri, Delhi). His younger brother Shahid was residing in House No.119, Gali No.4, Delhi in the same locality. Appellant-Laddan (brother-in-law of the deceased Shahid) was running a joint factory with the deceased Shahid of manufacturing *chappals* in the house where deceased used to reside. On 17.07.2007, it was around

9.40/10.00 a.m., he along with his nephew Taufiq were coming down from the stairs of his house for going to the market. As soon as they came outside their house, he heard noise coming from the house of Shahid. After hearing the noise, he went there along with Taufiq. When he went upstairs along with Taufiq in the house of Shahid on the first floor, he found his brother Shahid was lying and he was in semi unconscious condition. He asked him what had happened, the deceased told him that Laddan had forcibly put some tablets in his mouth. He immediately removed his brother from there and took him to GTB Hospital. At around 1.00 p.m., police reached at the hospital and recorded the statement of his brother Shahid. His brother made statement to the police that he was forced by the appellant-Laddan to consume poisonous tablets. His brother also told the police that the appellant called him in his room and hot words were exchanged between them as his brother was not in a favour of selling the house in question. His brother further told the police that the appellant-Laddan had caught hold of him by his hair and put poisonous tablets forcibly in his mouth. The appellant-Laddan had property/business dispute with his deceased brother. Police prepared site plan in his presence Ex.PW2/A which bears his signature at point A. Police seized one Aluminium Phosphide tube which was lying in the said room and three

tablets were inside the same. The seizure memo of which Ex.PW2/B bear his signature at point A. He identified the dead body in mortuary of GTB Hospital and his statement regarding this as Ex.PW2/C which bear his signature at point A. In his cross-examination, he stated that his brother Shahid shifted to Delhi along with Laddan about ten years back. Shahid had been living with him at House No.119, Gali No.4, Kardampuri Extn. for the last seven years. There are about 7-8 houses between his house and the house of Shahid. There were three storeys in the house in which Shahid used to reside. There was a *chappal* manufacturing factory running from the ground floor. First floor was occupied by Laddan while Shahid used to stay on the second floor. He reached at the place of Shahid at about 10.00 a.m. on the day of incident. It took him 2-3 minutes to climb to the first floor. He had climbed the stairs along with Taufiq who was behind him. When he reached the spot, Laddan was present and no other person was present there except Laddan. He did not call anyone, neither workers nor labourers. After seeing the condition of Shahid, Tahir brought the auto in which Shahid was taken to the hospital. No neighbour accompanied them to the hospital. He along with Taufiq and Tahir took him to the hospital. Laddan did not accompany them. At about 1.00 /1.30 p.m., police was called by the doctor at GTB Hospital. Tahir, his brother

called up his bhabhi, wife of the deceased Shahid at about 2.00/2.30 p.m. in his presence. He admitted that his brother used to wear a wig and also that when they arrived at the spot, deceased was conscious and he told them that he had been poisoned through tablets. He neither vomited on his own nor did they make any attempt to make him vomit. He also admitted that when Shahid was brought to GTB Hospital, he was talking and was conscious. He remained with Shahid throughout till the police reached there. Police arrived at the hospital at about 2.30 or 3.00 p.m., he remained with his brother till his death. He denied the suggestion that he had borrowed Rs.3 lakhs from Shahid and also that his brother Shahid was under some financial crises and had to close his factory. He also denied that when they refused to return Rs.3 lakhs to him, he went under depression and consumed some tablets and denied that Laddan saw Shahid in such condition and was going to take Shahid to the hospital along with few persons.

11. Taufiq (PW-3) in his testimony has stated that on 17.07.2007, he along with Wasim were going from the gali for some work around 10.00 a.m., as soon as they reached near House No.119, they heard noise from the said house. They went inside the house after hearing the noise. On the first floor of the said premises, he saw Shahid was lying on the floor and appellant-Laddan was also present there. Shahid

was saying to them that he had been made to swallow poisonous tablets by Laddan. He along with Wasim took the deceased to GTB Hospital in a TSR. He was admitted there in the emergency ward. Doctor started treatment and the police also reached there. Police recorded the statement of Shahid who told the police regarding tablets being put by the appellant in his mouth forcibly. In the evening, he died in the hospital. Deceased Shahid told the police in his presence that there was a business dispute with Laddan and also property dispute as appellant wanted to sell the property which was objected by the deceased. In his cross-examination, he stated that in the room of the deceased, there were 7-8 workers present. Appellant-Laddan was also present in the room. Shahid was lying on the floor and was speaking to his Mama Wasim (PW-2). He was at a distance of about 2-3feet from them and could hear their conversation. He admitted that Shahid used to wear a wig as he had less hair on his head. Tahir brought the auto, he sat with the driver of the auto and Wasim and Tahir were on the back seat along with Shahid. They were on the first floor when Tahir went to fetch the auto. He also admitted that there was no vomiting lying around Shahid. When they were taking Shahid to the hospital, they did not notice if Laddan was standing there or had left the room and he volunteered that their entire attention was on Shahid. In his

presence, statement of Laddan was recorded by the police at around 2/2.30 p.m. He denied the suggestion that he along with his mama Wasim and Tahir met Shahid in the gali when he was being taken to the hospital by Laddan and also denied that Shahid was not in a condition to speak or that Laddan is falsely implicated in this case.

12. ASI Prem Pal (PW-5) has stated that on 17.07.2007, he was posted as ASI at P.S. Shahdara. On that day, he was on emergency duty from 8.00 a.m. to 8.00 p.m. He received DD No.12A (mark 'X') for investigation. He along with Constable Raj Kumar went to GTB Hospital where he collected MLC of injured Shahid, S/o Abid Khan. He was declared fit for statement on the MLC. He recorded his statement Ex.PW5/A and obtained his left thumb impression at point 'A'. On the basis of the statement, he made endorsement Ex.PW5/B for registration of FIR under Section 307 IPC and sent Constable Raj Kumar for registration of FIR at Police Station Shahdara. Thereafter, he along with Constable Raj Kumar reached at House No.119, Gali No.4, Kardampuri, Delhi where he found Taufiq and other witness at the spot. He interrogated them and inspected the place of incident and prepared the site plan Ex.PW2/A at the instance of Wasim. In the meantime, he received information that the injured had died in the hospital. He passed over the information of death of injured to the

police station. Inspector Hiral Lal reached at the hospital and he handed over investigation to him. In his cross-examination, he stated that he met only Shahid in Room No.149, 1st Floor, GTB Hospital and volunteered that he met Wasim and Taufiq near the entry gate of Room No.149. Doctor was present at that time when statement of Mohd. Shahid was recorded but he did not obtain the signature of doctor on the said statement. He volunteered that when the patient is declared fit to give the statement, doctor normally does not sign the statement. He denied the suggestion that he obtained thumb impression of Mohd. Shahid on statement Ex.PW5/A on point 'A' on a blank paper and later on he recorded statement on his own and stated that statement Ex.PW5/A was recorded by him in his own hand and the statement bear his signature at point 'B'. He also stated that he went on first floor of house, number of workers met him there. He did not remember as to what articles were lying in both the rooms. He volunteered that aluminium phosphide tube was lying there. He seized gastric lavage Ex.PW5/C of Md. Shahid which was handed over by Dr.Yogesh Kumar in GTB Hospital. He also seized the aluminium phosphide tube containing three tablets vide seizure memo Ex.PW2/B.

13. At this stage it would be important to produce the statement of deceased Md. Shahid to PW-5 (ASI Prem Pal) which is exhibited as

Ex.PW5/A:-

“I was doing the business of manufacturing chappals in partnership with Laddan in the factory situated on the ground floor of H.No.119, Gali No.4, Kardampuri, Delhi. I was residing on the second floor of the aforesaid house while the first floor was occupied Laddan and there was a dispute between us. Laddan was demanding money though he owed me a lot of money. Laddan wanted to dissolve the partnership and was pressurizing me to sell the house which was in the joint name and I was against selling the house. This was the reason for discord between us. Today Laddan called me to his room and again brought up the topic of sale of the house. When I refused for the same, he got enraged and started hurling abuses at me. All of a sudden he caught hold of my hair with one hand from behind, at this I shrieked with pain and with the other hand he forcibly put some tablets into my mouth and covered my mouth and nose forcefully. I felt suffocated and tablets slid down my throat and Laddan said if I did not allow him to sell the house, he would finish me.”

14. Dying Declaration made by a person who is dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in case in which cause of death comes into question is relevant under Section 32 of the Indian Evidence Act, 1872 and is also admissible in evidence. Though dying declaration is indirect evidence being specie of hearsay, yet it is an exception to the general rule against admissibility of hearsay evidence. To attract the

provisions of Section 32 of the Act, the prosecution is required to prove that this statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in Sub Section (1) to (8) of Section 32 of the Indian Evidence Act.

15. In **Atbir vs. Government (NCT of Delhi)**, (2010) 9 SCC 1 after an elaborate consideration of several decisions, the following proposition has been laid down by the Hon'ble Supreme Court with regards the admissibility of a dying declaration:-

“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. It is a settled law that dying declaration can form the sole basis of conviction without any corroboration if it inspires confidence and is found reliable. Though dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason that the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court

must be further satisfied that the deceased was in a fit state of mind. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction on it without any further corroboration. The dying declaration is only a piece of evidence and like any other evidence, must satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the Court is satisfied that it is 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 basis of conviction, even if there is no corroboration. That being, however, so said, the present case stands on a much better pedestal as in the case before us, the declaration made by the deceased Shahid to ASI Prem Pal (PW-5) stands corroborated in its material parts with the statement made by Wasim (PW-2) and Taufiq (PW-3) that the deceased had informed them that the appellant pulled his hair from behind and forced poisonous tablets in his mouth. The reliance placed by the learned counsel for the appellant on **Meera vs. State of Rajasthan**, *AIR 2004 SC 1879* and **Sanjay & Ors. vs. State**, *2011 IV AD(Delhi) 461* is misconceived and does not apply to the facts of the present case.

17. We also find no substance in the contention of learned counsel for the appellant that as the statement was recorded by the Investigating Officer on which FIR was recorded and the same could not be treated as a dying declaration and was inadmissible evidence. We observe that at the time of recording the statement, ASI Prem Pal (PW-5) did not possess the capacity of an Investigating Officer as the investigation had not commenced by then. A dying declaration can be oral or in writing or any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced into writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity, it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is, however, no requirement of law that a dying declaration must necessarily be made to a Magistrate and that the declaration so recorded by the police officer cannot be acted upon. Consequently, what evidentiary value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each case. As we have already observed above that the evidence of PW-2 and PW-3

clearly corroborate the testimony recorded in the dying declaration. We do not find any material on record on the basis of which the testimony of these witnesses can be disbelieved. Although, a suggestion was made by the counsel for the appellant that both these witnesses had borrowed a sum of Rs.3 lakhs from the deceased which they have failed to return. The deceased as a result of which and his jobless state had gone into depression and committed suicide. This fact, however, was not proved by the appellant by producing any witness. Both these witnesses have in their cross-examination denied of having borrowed any money from the deceased. Even, Nahid (PW-1), the wife of the deceased has denied the suggestion made to her in her cross-examination that her husband was upset as Taufiq and Wasim had borrowed Rs.3 lakhs from him. It also does not appeal to us that the deceased had himself consumed poison and the appellant was trying to take him to the hospital. Both Wasim (PW-2) and Taufiq (PW-3) had stated in their testimonies that they reached the house of the appellant after hearing the noise of the deceased where the deceased was found lying on the ground and the appellant was standing next to him. These witnesses had stated that the deceased informed them about the appellant poisoning him. Had the deceased poisoned himself, there was no reason for him to raise hue and cry post

consuming the poison. Also, he would not have been found at the house of the appellant. The bottle containing aluminium phosphide with three tablets too was seized by the police vide seizure memo Ex.PW2/B from the said premises which was proved by the statement of Wasim (PW-2).

18. We are also not satisfied with the contention that the statement of these witnesses is to be disbelieved for the reason that they are related to the deceased. It is a settled law that related witness does not always mean interested witness. As was held by the Supreme Court in **Namdeo vs. State of Maharashtra, (2007) 14 SCC 150:-**

“37. Recently, in *Harbans Kaur v. State of Haryana* [(2005) 9 SCC 195 : 2005 SCC (Cri) 1213] the conviction of the accused was challenged in this Court, inter alia, on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negating the contention this Court said: (SCC p. 198, para 7)

“7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.”

38. From the above case law, it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness

with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

19. Also in **Dalip vs. State of Punjab**, *AIR 1953 SC 364*, the Supreme Court held :-

“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. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

20. We further, do not see any delay in recording the statement of the deceased. As per MLC of the deceased Ex.PW11/A, he was declared fit for statement at 10.45 a.m., however, as per ASI Prem Pal (PW-5), the information regarding the deceased having got admitted in GTB Hospital was received at 12.30 p.m. by him through a wireless

recording of DD No.12A (Ex.PW7/A) when he was present in the area of Shahdara. He reached the GTB Hospital within half an hour after receiving the aforesaid DD. He met Shahid at about 1.45/2.00 p.m. and his statement was got recorded within 5-7 minutes after inquiring from him. Even if some delay exists, it stands explained by the testimony of ASI Prem Pal (PW-5). Further, there is no presumption under law that in each case, some delay is pointed out by a party in recording the declaration the Court must presume that it was made as a result of tutoring, prompting, connivance, malice or ill will.

21. The contradictions between the testimonies of various witnesses as pointed out by the counsel for the appellant with regard to the fact as to who called and informed Smt.Nahid (PW-1) about the death of her husband, about educational qualification of the deceased or as to who accompanied PW-1 to her home in the month of December, 2006 or as to what work PW-2 and PW-3 were involved in are not material in nature when the testimonies of all these witnesses are cogent and uniform in material parts. It is settled law that the evidence of witnesses cannot be brushed aside merely because of minor contradictions. Serious contradictions and omissions which materially affect the case of prosecution have to be understood in clear contradiction to mere marginal variation in the statement of witnesses.

The prior may have effect in law upon the evidentiary value of the prosecution case, however, latter do not adversely affect the case of prosecution. So far as the fact with regard to the deceased wearing wig is concerned, all the witnesses have stated about the fact of the deceased used to wear a wig, however, that does not go on to suggest that the deceased was bald. In fact, Taufiq (PW-3) has stated in his cross-examination that Shahid used to wear wig as he has less hair on his head. Thus, in such a case, it cannot be stated that the appellant could not have pulled the hair of the deceased and forced him to consume the poisonous tablets and also that the statement of the deceased and so also of PW-2 and PW-3 is falsified on the simple fact of the deceased wearing a wig. The testimonies of these witnesses cannot be belied for the fact that no traces of vomit were found near the deceased when PW-2 and PW-3 saw him lying there in the house from where he was taken to the hospital and also for the fact that none of the witnesses tried to force him to spit or vomit what was forcibly fed to him. We cannot also impute any infirmity in their statement for the reason that PW-2 and PW-3 did not try to apprehend the appellant-Laddan from the place of incident even though according to them, he was present there when they reached the said place. The Court is not to discard the testimony of the witnesses for the reason that they failed

to act in a particular manner. Taufiq (PW-3) has stated in his cross-examination that they did not notice whether the appellant was present there when they were trying to take the deceased to the hospital as their attention was on Shahid (deceased). Clearly, in such situation, the Court does not expect a person to act in complete mathematical and scientific terms and to follow a particular code of conduct. In the situation where the attention of these witnesses was focused on taking the deceased to the hospital, no infirmity can be imputed if they failed to apprehend the appellant from the spot. Otherwise also, mere absence of vomit or an attempt of these witnesses to force him to do so cannot be taken against the prosecution case as they took prompt action in taking the deceased to the hospital for medical treatment. Not every person reacts in the same way to all situation and law is not to penalize those who fail to follow a particular conduct.

22. The post mortem of the deceased was conducted by Dr. Atul Gupta (PW-12) where it was mentioned:-

“External antimortem injuries

One bluish bruise was present in an area of 5 x 5 cm, 9 cm below right acromion process on posterolateral aspect of right arm.

Internal Examination

All the organs were congested.

In the neck blackish fluid was seen in larynx, trachea and esophagus.

In the lungs blackish fluid was seen in primary and secondary bronchi. Petechial haemorrhage was seen in left lower lobe. Weight of both the lungs was 600 gms.

In the stomach about one liter of blackish fluid was present. Wall of the stomach was normal.

Viscera was preserved for chemical analysis under saturated solution of common salt. Clothes were preserved in a sealed pullanda. Four clothes were preserved namely one gray pant, one blue shirt, one white banian, one brown underwear.

Blood on gauze of the deceased was sealed in an envelope.

All the articles were sealed with the seal of AK. Sample seal was provided for all the articles.”

23. In the post mortem report, initially the cause of death was withheld till the report of chemical analysis of viscera from CFSL. After examination of the CFSL report and post mortem report Dr. Atul Gupta (PW-12) opined the cause of death was shock due to aluminium phosphide poisoning. Further Jitender Kumar, Senior Scientific Assistant (PW-13) who took up the examination of the sample proved the FSL report as Ex.PW13/A, according to which Exhibit-‘1’ grey colour powder, kept in a metallic container labeled as ‘ALUMINIUM PHOSPHIDE 56%’ Quick Phos, Ex-‘2’ dirty coloured liquid approx. 1 ml, kept in a vacuum container stated to be gastric lavage and Ex-‘3A’ stomach and piece of small intestine with contents kept in a sealed jar

were found to contain 'Aluminium Phosphide', Ex.-'3B' pieces of liver, spleen and kidney kept in a sealed jar and Ex.-'3C' blood sample brown coloured liquid vol.4 ml approx. kept in a sealed glass bottle were found to contain 'phosphide'. Thus, from the said two reports, it was proved that the deceased died due to aluminium phosphide poisoning.

24. It was urged before us that the doctor who prepared the MLC was not examined and hence the statement of evidence of the deceased, in his absence cannot be relied upon. We are not satisfied with this contention. Although Dr.Yogesh was not examined, Dr.Ravinder Singh (PW-11) was examined who has stated that he had seen MLC C-4051/07 of the patient Mohd. Shahid dated 17.07.2007 (Ex.PW11/A) prepared by Dr.Yogesh. The signature on the MLC was also identified by PW-11 to be that of Dr.Yogesh. He further stated that Dr.Yogesh had left the hospital and his whereabouts were not known to him. He identified his signature and he had seen his handwriting and signature. In his cross-examination, he reiterated that the deceased was examined at about 10.45 a.m. by Dr.Yogesh. He was conscious, oriented and was fit for making statement and his condition was declared fit for statement at specified column at encircled portion 'X' on the MLC Ex.PW11/A. MLC is an authentic record of injuries

which is prepared in regular course of business by the doctor and can be relied upon by the Courts, even when the doctor who prepared the MLC is not examined in the Court and record is proved by any of the doctor. Any person who alleges why the record of injuries maintained by the hospital was not authentic and was tampered with has to prove, how tampering was done. It cannot be expected from the hospital to keep track of the doctor after he leaves the hospital. Neither is the doctor expected to keep the hospital informed about his whereabouts. Merely because the doctor who prepared the MLC is not personally examined, the MLC cannot be disbelieved. Proving of MLC by a colleague doctor, who identifies the writing and signature of the doctor who examined the patient or by an administrative staff of the hospital who identifies the signature of the doctor is sufficient and good proof and MLC cannot be doubted unless the tampering in the MLC be proved by the person alleging the tampering.

25. As regards non-mention of name of the appellant in MLC is concerned, it may be mentioned that there is no rule of law that MLC must contain the name of the accused. The primary duty of the doctor is to treat the patient and not to find out who had caused the injuries.

26. Mere absence of the name of the appellant from the DD too would not be fatal to the case of the prosecution. DD entry is in the

nature of a primary information to the police officer and sets the police machinery in action. It is not expected to be a detailed and a complete record of the incident with the details of all the accused, witnesses or evidence. It is settled principle of law that a DD entry is a cryptic recording of information received at the police control room/police station and likewise the FIR is not an encyclopedia and does not contain the minute details pertaining to the incident in respect whereof the information is received.

27. In view of the aforesaid discussion, we do not find any merit in this appeal and the same is hereby dismissed. The judgment dated 02.02.2012 is affirmed and the order on sentence dated 04.02.2012 is maintained.

A copy of this judgment be delivered to the appellant through concerned Superintendent Jail.

(VED PRAKASH VAISH)
JUDGE

(P.K. BHASIN)
JUDGE

December 09, 2013
gm