

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

Date of decision: 19th May, 2014

+CRL.A.8/2000

RAJINDER PRASAD & ANR. Appellants
Through: Mr. K.B. Andley, Sr. Advocate
with Mr. M.L. Yadav and Mr.
Hansraj, Advocates
versus

STATE Respondent
Through: Ms. Richa Kapoor, Additional
Public Prosecutor for State with
Inspector Daya Sagar, PS Karol
Bagh.

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CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (Oral)

1. Appellants Rajinder Prasad and Tulsi Prasad have filed this appeal bearing Crl.A.No.8/2000 challenging the judgment and order on sentence dated 30th November, 1999 passed by the learned Additional District and Sessions Judge, Delhi in Sessions Case No.81/97 arising out of FIR No.436/97 u/s 302/34 IPC, PS Karol Bagh, whereby the appellants were convicted u/s 302 IPC and were sentenced to undergo life imprisonment. They were given benefit of Section 428 Cr.P.C.

2. Prosecution case, succinctly stated, is as follows:

3. On 15th July, 1997, on receipt of DD No. 5A at about 2:10 AM, SI Harish Chander Gautam along with Constable Rohtash went to house No. 4925/40, Reghar Pura, Karol Bagh and came to know that the injured had been removed to JPN Hospital. After leaving Constable Rohtash at the spot to preserve the scene of crime, SI Harish Chander went to JPN hospital, where he collected MLC of an unknown injured who was declared 'brought dead'. Post mortem on the dead body was got conducted and the dead body was handed over to the legal heirs of the deceased. Thereafter, SI Harish Chander came to the spot where Yashoda, wife of the deceased Rajender, gave her statement on which endorsement was made vide Ex.PW 5/A and FIR under Section 302/34 IPC got registered. Investigation was handed over to Inspector B.S. Rana, who carried out further investigation in the matter, arrested the accused persons and after completing investigation, submitted the charge sheet.

4. In order to substantiate the charge framed under Section 302/34 IPC against the accused persons, prosecution in all examined 20 witnesses. All the incriminating evidence was put to the accused persons while recording their statements under Section

313 Cr.P.C., wherein they alleged that complainant Yashoda initially made the correct statement to the police. However, subsequently on the instigation of her relatives, she made supplementary statement. They pleaded their innocence and alleged false implication in this case. They did not prefer to lead any defence evidence.

5. Vide impugned judgment dated 30th November, 1999 and order on sentence of the same date, both the accused were convicted under Section 302/34 IPC and sentenced as mentioned above. Challenging the findings of the learned Trial Court, the present appeal has been preferred by the appellants.

6. During the pendency of the appeal, appellant No. 1 had expired on 31st December, 2005. Therefore, vide order dated 25th April, 2014, the appeal qua appellant No.1 stood abated.

7. We have heard Sh. K.B. Andley, learned Senior Counsel for the appellant duly assisted by Sh.M.L. Yadav, Advocate and Ms. Richa Kapoor, Additional Public Prosecutor for the State and have perused the record.

8. It was submitted by learned counsel for the appellant that there is an inordinate delay in lodging the FIR which, in fact, is the result of deliberation and manipulation, inasmuch as, initially the

complainant made a statement before the Police that her husband had fallen from the roof. Besides her, statement of various other persons were recorded, all of whom stated the same facts and did not implicate the accused persons. Subsequently, the complainant had falsely implicated the accused persons. Under the circumstances, it was submitted that the findings of the learned Trial Court are based on conjectures and surmises, which deserve to be set aside.

9. The submissions made by learned Senior Counsel for the appellant has substantial force in view of the voluminous evidence coming on record.

10. Police machinery, in the instant case, swung into action on receipt of DD No.5A Ex.PW16/A recorded at 2:10 AM to the effect that lady constable Sunita from PCR had given information that a person had fallen from the roof of house No. 4925, Gali No.40, Regar Pura, Karol Bagh and police be sent. This DD was entrusted to SI Harish Chander, who along with Constable Rohtash, went to the spot where they came to know that injured had already been removed to hospital. On reaching the hospital, SI Harish Chand collected the MLC of an unknown person, who was declared "brought dead" in the hospital. Dead body and MLC of

Rajinder was sent to mortuary. Thereafter, he came to the spot and recorded the statement of Yashoda Ex.PW5/DA wherein she disclosed that she along with her husband Rajender @ Raju were residing as tenants @ Rs.500/- per month in the house of Tulsi for the last about 1½ years. Tulsi used to indulge in obscene activities with her husband. Both Tulsi and her husband used to consume alcohol. On that day, her husband had consumed alcohol. At about 12:00 AM when she was washing utensils, Raju had come downstairs. At about 1:00 AM when she was sleeping, Lalita, daughter of Padam Chand, came and informed her that Raju had fallen from the roof. She had not heard any noise of quarrel that night. She came downstairs with Lalita and found Raju lying in the street. She asked Rajender to remove Raju to hospital on which Rajender told her that he will be taken to hospital shortly. In the meantime, many persons collected there and somebody informed the police. PCR Van came and removed Raju to hospital. In her presence, no quarrel had taken place with her husband. This statement was attested by SI Harish Chander.

11. SI Harish Chander, thereafter took wife of the deceased and some of his relatives to the mortuary where they identified the dead body of the deceased. SI Harish Chander conducted inquest

proceedings. Form No.25.35(1)(B) Ex. PW16/D was filled up where in column no. 20, the apparent cause of death was mentioned as “fall from terrace of third floor under influence of liquor”. An application Ex. PW16/F was moved by SI Harish Chander to doctor for conducting post mortem examination wherein also it is recorded that Raju @ Rajender was sleeping on the terrace of 3rd floor of the house after consuming liquor. At about 1:00/1:30 AM, he had fallen from the roof, as a result of which, he sustained injuries and he was removed by PCR Van to JPN Hospital. The brief history Ex.PW16/G is also to the same effect. When the injured was brought to the hospital and his MLC Ex. PW6/A was prepared, even at that time, the alleged history of falling down from 3rd floor was given.

12. Besides recording statement of Yashoda, wife of deceased, SI Harish Chander recorded statements of various other persons. Ex.PW7/A is the statement of Kari, s/o Sh. Hansibul, resident of 4925/40, Regharpura, Karol Bagh, Delhi and stated that on the night of 14th July, 1997, after taking dinner, he had gone to sleep on the 3rd floor of his house at about 12:30 AM. At that time, Raju was also sleeping on the terrace. Raju had consumed liquor in his presence. He neither noticed any quarrel between Raju and

anybody else nor heard any noise. When Lalita raised hue and cry that Raju had fallen from the roof, then he along with Lalita and Yashoda came down and found Raju lying on the road.

13. PW8 Smt. Sohan Devi is the mother of the deceased. Her statement Ex.PW8/A was recorded. She also stated that she was sleeping on the second floor of her house. At about 1:00 AM, her daughter Lalita came and woke her up by stating that she had heard some noise and when she peeped from the window, she saw Raju lying on the ground. Lalita went to inform Yashoda, wife of Raju. She came downstairs. Lalita and Yashoda followed her. At that time, Rajinder was sleeping on the road while Tulsi was sleeping in his room. Both of them came and Rajinder wanted to remove Raju to hospital, however, somebody informed the police. The police came and removed Raju to the hospital. On that night, there was no quarrel nor did she hear any noise on that day. Raju used to consume alcohol. She did not notice anybody beating Raju on that night.

14. Mukesh is the brother of the deceased whose statement Ex.PW4/A was also recorded by SI Harish Chand and he revealed that a quarrel had taken place between his brother Raju with Tulsi and Rajender on 13th July, 1997 at about 9:00 PM. On that day,

Raju had sustained some minor injuries also but no report was lodged to the police nor was he medically examined. Raju, Rajinder and Tulsi used to consume liquor daily. On the fateful night of 14th July, 1997, at about 1:00/1:30 AM, Yashoda, wife of Raju came and informed that Raju had fallen from the roof. Rajinder and Tulsi were also present who wanted to move Raju to hospital but he told them to wait for the police. Police was informed. PCR Van came and removed Raju to hospital.

15. PW2 Lalita, was also examined by SI Harish Chand and her statement Ex.PW16/J was recorded wherein she stated that on the night of 14th July, 1997 she was sleeping at the second floor of her house. At about 1:00/1:30 AM, she heard some noise. When she peeped from the window, she found Raju lying in the street after having fallen from the terrace of 3rd floor. She did not hear any quarrel or noise on that night. She informed her mother Sohan Devi and thereafter, informed her sister-in-law Yashoda, wife of Raju. Yashoda was also sleeping at that time. She woke her up and informed about Raju lying in the street. Many persons collected there. Somebody informed the police. PCR Van came and removed Raju to hospital. She also stated about the incident of 13th July, 1997, when Raju was abused by Tulsi and was beaten by him,

however, Raju was rescued by her and Nirmala, wife of Tulsi. Both Raju and Tulsi were under the influence of alcohol. Thereafter, both went to their respective rooms. On the night of 14th July, 1997 also, Raju had consumed liquor and was sleeping on the terrace of his house. She also did not hear any noise of quarrel on that day.

16. PW16 SI Harish Chander seized blood, earth control and chappals of the deceased from the spot. According to him, wife of the deceased returned back from the mortuary and then she made a statement again which is Ex.PW5/A, on which he made his endorsement Ex.PW16/C and got the case registered. In this statement Ex PW5/A, which culminated in registration of FIR, for the first time, she alleged that on the night of 14th July, 1997, at about 12:00 AM, she as well as her husband Raju were sleeping. Tulsi and Rajinder came and strangulated her husband. When her husband raised alarm, she rushed to rescue him, however, she was pushed by Rajinder and Tulsi and they threw Raju from the 3rd floor of the house as a result of which, Rajinder died. Even prior thereto, many a times, they used to quarrel with her husband and they even tried to molest her.

17. When she appeared in the witness box, she deposed to the same effect. As regards her earlier statement, she tried to give an explanation that at the time of recording her statement Ex.PW5/DA by the police, her mental condition was disturbed seeing the condition of her husband. According to her, her statement Ex.PW5/DA was recorded by the police at about 4:20 AM on 15th July, 1997 while statement Ex.PW5/A was recorded much later, at about 2:00 PM on 15th July, 1997.

18. In criminal trial, one of the cardinal principles is registration of earliest information as FIR. As observed by Hon'ble Supreme Court in *Lalita Kumari vs. Govt. Of Uttar Pradesh and Ors.*, (2014) 2 SCC 1, the object sought to be achieved by registering the earliest information as FIR is inter alia twofold:- One, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc., later. In case there is delay in lodging the FIR, the Court looks for plausible explanation for the delay in lodging the report. The reason is obvious. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even

make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming to the police or before the Court, the Court always views the allegations with suspicion and looks for satisfactory explanation. If no such explanation is found, the delay is treated as fatal to the prosecution case.

19. In *Thulia Kali v. The State of Tamil Nadu*, (1972) 3 SCC 393, it was held that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

20. In *Ram Jag and Ors. v. The State of UP*, (1974) 4 SCC 201, the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive for implicating the accused and/or when plausible explanation is offered for the same. On the other hand, prompt filing

of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution.

21. In the case of ***Jai Prakash Singh v. State of Bihar & Anr.***, (2012) 4 SCC 379, the Supreme Court held:

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

22. Adverting to the case in hand, there is inordinate delay in lodging the FIR inasmuch as, as per the rukka, the incident had taken place on 15.07.1997 at 02.10 AM but FIR was registered only after 2 PM i.e. after about 12 hours of incident. This delay assumes significance because after the incident, when police arrived at the spot, complainant made a statement Ex.PW 5/DA wherein she did not raise her suspicion on anybody and according to her, it was an accidental death as her husband had fallen from the terrace of the third floor of house while he was sleeping. The explanation furnished by the complainant that she was mentally

disturbed and was not in fully conscious state of mind, does not appear to be convincing in view of the fact that no such explanation was given by her when she made statement Ex.PW5/A to the police. Such explanation is forthcoming for the first time in her deposition in the Court which seems to be an after-thought. Moreover, under the circumstances, there is delay in lodging the FIR which has not been satisfactorily explained. Besides her, statements of several other persons were recorded, all of whom had stated that the deceased was under influence of liquor and had fallen from 3rd floor terrace of the house. Moreover, complainant Yasoda is closely related to deceased, being his wife. Although, there is no rule of law that conviction cannot be based on the testimony of close relative of deceased provided it is cogent, credible, reliable, trustworthy and inspires confidence. Keeping in view the fact that in her initial statement, Ex.PW 5/DA she did not level any allegation against anybody including accused persons but in her subsequent statement Ex.PW 5/A, she implicated both the accused, her testimony requires corroboration.

23. As seen above, statement of Lalita Ex. PW 16/J was recorded before registration of FIR wherein she did not level any allegation against any of the accused. Even during the trial of the

case, she had maintained the same stand which was taken by her when her statement was recorded by the police and deposed that on 14th July, 1997 at about 12:00 PM, she was sleeping in her room on the second floor. At about 1:00/1:30 AM, she heard the voice (*dham*). She woke up and saw from the window that Raju @ Rajender who used to sleep on the terrace of the 3rd floor had fallen down in the gali from 3rd floor. She woke up her mother Sohna Devi and went upstairs to wake up her sister-in-law Yashoda and told her that Raju had fallen down. They came down the street. Somebody informed the police and the police came and removed Raju to hospital. She went a step further by deposing that she did not notice any quarrel of deceased with anyone even on 13th July, 1997. Accused Tulsi was landlord of the deceased but no altercation has taken place between Tulsi and deceased in her presence on 13th July, 1997 at about 9:00/10:00 PM. Both the accused Tulsi and deceased Raju used to consume liquor. Since the witness did not support the case of prosecution, as such, she was cross-examined by learned Public Prosecutor for the State and in cross-examination, she has denied having stated to the police that on 13th July, 1997 at about 9:00/10:00 PM, accused Tulsi had come to her room and when deceased Raju was going upstairs

accused Tulsi started abusing him and when Raju asked him not to abuse him, accused Tulsi put him down on the bed in her room or that in the meantime, wife of Tulsi, namely, Nirmala came there and they separated them.

24. PW4 Mukesh is the brother of deceased. According to him on 13th July, 1997, there was a quarrel between Raju and Tulsi at about 9:00 PM in the gali. Tulsi had given beatings to Raju, due to which he sustained injuries on his face. However, matter was not reported to the police. On 14th July, 1997, he was informed by his sister-in-law Yashoda that accused Tulsi and Rajender had pushed Raju from the roof. When he went to the spot, he saw his brother lying in the gali. He called the police who removed his brother to hospital. He went on stating that accused persons had thrown his brother from the roof on account of quarrel between his brother and Tulsi on 13th July, 1997. In cross-examination, he admitted that on the intervening night of 14-15th July, 1997 his Bhabhi Yashoda came to him and informed that accused persons have thrown deceased Raju from the roof. However, he admitted that this fact was not stated by him to the police. As such, it is a material improvement in his statement.

25. PW7 Kari and PW8 Smt. Sohan Devi have reiterated the statements Ex.PW7/A and PW8/A made by them before the police.

26. The cumulative effect of the aforesaid evidence led by the prosecution reveals that prior to registration of FIR, it was the case of prosecution, as revealed from the statement of various persons recorded at the spot including the complainant, that the deceased consumed liquor and had fallen from the terrace of 3rd floor of his house, as a result of which he sustained injuries which proved fatal.

It was only later on, that after delay of about 12 hours, the wife of the deceased changed her stand and made a statement implicating both the accused persons who were then arrested. In fact, her testimony that on hearing alarm of her husband she went to the terrace and saw both the accused quarrelling with her husband and when she tried to rescue him, she was pushed by the accused persons and they lifted her husband and threw him in the gali, does not find support from the remaining witnesses, inasmuch as, according to PW2 Lalita, on hearing the voice of '*dham*', she woke up and peeped from the window and saw from the window that Raju @ Rajender had fallen down in the gali from 3rd floor terrace. Thereafter, she woke up her mother and sister-in-law Yashoda and informed them that Raju had fallen down from the roof. It is only

after the information was given by Lalita that Sohan Devi and Yashoda went downstairs and found Raju lying in the gali. To the same effect is the testimony of PW8 Sohan Devi. In fact, she went a step further by deposing that at that time accused Rajinder was sleeping in the gali while Tulsi was sleeping inside the house. None of the witnesses heard any quarrel between the deceased or accused persons. The conduct of the accused is also worth noting, inasmuch as, it has come on record that when the deceased was found lying in the gali, the accused persons offered to take Raju to hospital, however, brother of the deceased Mukesh informed the police and thereafter PCR van came and removed him to hospital. If the accused persons had committed the crime, they would not have been found present at the spot. Throughout the police proceedings, they were available at the spot and when Yashoda subsequently made the incriminating statement against the accused persons, they were immediately arrested.

27. The result of the aforesaid discussion is that testimony of Yashoda alone was not sufficient to convict the accused persons. Same does not find corroboration from other material on record. As such, prosecution cannot be said to have established its case beyond reasonable doubt.

28. Moreover, evidence available on record reflects that two set of evidence are forthcoming. It is the golden rule of criminal jurisprudence that if two views are possible on the same set of evidence, the view favourable to the accused has to be preferred.

29. In ***Kali Ram v. State of Himachal Pradesh***, AIR 1973 SC 2773, Hon'ble Supreme Court observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

30. Similarly, in ***Sharad Birdhichand Sarda vs. State of Maharashtra***, (1984) 4 SCC 116, it was held as under:

"Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence."

31. Similar view was laid down in ***Sujit Biswas v. State of Assam*** (2013) 12 SCC 406; ***State of U.P v. Awdhesh***, (2008) 16 SCC 238; ***Ranjitham v. Basavaraj***, (2012) 1 SCC 414 and ***Rajkumar Singh v. State of Rajasthan***, (2013) 5 SCC 772.

32. In view of this legal position, since two sets of evidence are available, one pointing to the guilt of accused and the other to their

innocence, the accused are entitled to benefit of doubt. That being so, the findings of the learned Trial Court cannot be sustained. In fact, the material evidence coming on record has not been appreciated by the learned Trial Court in correct perspective.

33. Under the circumstances, the appeal is allowed. The judgment and order of sentence dated 30.11.1999 are set aside. The appellant is accordingly acquitted of the offence alleged against him. Vide order dated 5th September, 2000, the sentence of the appellant was suspended and he was ordered to be released on bail. His bail bonds are cancelled and surety is discharged.

Information be sent to the Superintendent Jail. Copy of the judgment along with the Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

MAY 19, 2014

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