

Court No. - 44

Case :- CRIMINAL APPEAL No. - 1623 of 2019

Appellant :- Ravi

Respondent :- State of U.P.

**Counsel for Appellant :- S.P.S. Chauhan, Smt. Meenakshi
Chauhan, Swati Agrawal Srivastava**

Counsel for Respondent :- G.A.

Hon'ble Siddhartha Varma, J.

Hon'ble Madan Pal Singh, J.

1. Heard Ms. Swati Agrawal Srivastava, learned counsel for the appellant and Amit Sinha, learned AGA for the State and perused the record.

2. The present Criminal Appeal has been filed against the impugned judgment and order dated 2.8.2018 passed by Additional District & Sessions Judge, Court No.1, Aligarh in Session Trial No. 90 of 2006 (State Vs. Ravi) under Section 302 IPC arising out of Case Crime No. 193 of 2005, Police Station- Pisawa, District Aligarh whereby the appellant has been convicted and sentenced to undergo imprisonment for life and with fine of Rs. 25000/- with default stipulation.

3. On 11.8.2005 at about 6.00 p.m., it is stated that one Savitri died as she was burnt. The incident was got reported by her brother Shyoraj Singh on 12.8.2005 at 12:25 p.m. by lodging of a First Information Report.

4. From the perusal of the First Information Report it indicates that Shyoraj Singh was accompanied by his cousin Ranvir and Kuwarpal (Gram Pradhan) as they were visiting the village Detakhurd in District Aligarh, where the sister Savitri of Shyoraj was living in her matrimonial house with Ramesh her husband for the past 14 years. The reason for visiting the house of his sister Savitri was that they had received information from her that her husband had been fighting with her and had not been treating her properly. It has been stated that

when the first informant Shyoraj Singh along with Ranveer and Kuwar Pal Singh reached the place of incident at around 5:00 p.m. then they were told that her sister would go with them later on. However, when they reached the house again at 6:00 p.m. there they found that Ramesh was pouring kerosene on the person of the deceased and after that the friend of the husband of the deceased, Ravi had lit fire by a matchstick. It has been stated in the First Information Report that every effort was made by the three persons who were present to extinguish the fire but every effort came to naught. It has been further stated that Ramesh and his friend Ravi ran away from the place of incident and three persons who were present along with local villagers brought the sister of the first informant to the Medical College in Aligarh at around 9:00 p.m. where she breathed her last. Upon lodging of the First Information Report, investigation followed and the Investigating Officer recovered certain glass bangles and broken bottles of liquor and an empty can of kerosene oil from the place of incident. Also recovered were the clothes which the deceased was wearing. The Recovery Certificate of the recovered substances was exhibited as **Exhibit Ka-8**. Thereafter, panchayatnama was done which concluded on 12.8.2005 at around 3:30 p.m. In the panchayatnama five witnesses were present namely Premveer Singh, Shyoraj Singh, Ranveer Singh, Bramha Singh and Jugendra Singh. Thereafter, the body was sent for postmortem and the same was conducted on 12.8.2008 at 5p.m. Upon the conclusion of the investigation, the police had submitted charge-sheet before the concerned court. Thereafter on 22.3.2006 charges were framed against the husband of the deceased Ramesh and Ravi the friend of the husband under Section 302 of I.P.C. From the side of the prosecution as many as eight witnesses appeared and were examined.

5. Shyoraj Singh-P.W.-1 was the brother of the deceased Savitri and he had in his statement reiterated all the facts stated in the First

Information Report and thereafter in his cross-examination stood firm with what he had stated in the Examination-in- Chief. However upon a question being asked as to whether his hands and those of Ranveer had got burnt alongwith their clothes he had stated that he had not got the hands medically examined and had also not got any medical aid for the burnt hands. He stated that he had not shown them also to the police. He also stated in the cross-examination that he knew Mahesh and had also stated that the accused Ravi was known to him and that Ramesh and Ravi quite often came to his village together.

6. Head Constable Arif Ali -P.W.-2 had proven the chik of the First Information Report. He had also proved the general diary of that date.

7. Dr. Jamana Asmat- P.W.-3 had in his Examination-in- Chief categorically stated that on 11.8.2005, at around 8:50 p.m. the injured was brought to the Hospital by one Mahesh who had informed him that he was the brother of the injured. He had thereafter stated as to in what condition the injured had been brought. Dr. Santosh Kumar- P.W.-4 physician had conducted the postmortem and had proved the report. Ranveer Singh- P.W-5 who was the cousin of the first informant Shyoraj Singh, had stated in his Examination-in-Chief that the deceased Savitri was his cousin (chacheri sister) and that she had been married for the past 14 years and that the matrimonial relationship between the deceased and her husband Ramesh was not very happy and Ramesh had been in fact beating her. He had once again stated as was stated in the First Information Report that kerosene was poured on the body of the deceased Savitri by her husband Ramesh and that the appellant Ravi had put fire on her body. He thereafter stated that he had also raised a hue and cry but nobody from the house had come to save the deceased and when after much efforts they had doused the fire, his sister had got burnt to quite an extent. He has thereafter once again stated that he had taken her to the Medical College. In his cross-examination he had stated that at the

time of the incident he was present and so were the children of the deceased. However, the father of the accused Ramesh and the brother of the accused reached the place of occurrence about 10 to 20 minutes after the incident. He has also stated that because of the efforts which he had made to douse the fire, his hands and clothes had got burnt but he had not got them medically examined and had also not got any medical aid. He thereafter in his cross-examination had categorically stated that the burnt sister Savitri was taken to the Medical College by Mahesh and that at time when the admission in the hospital had taken place she was not in a position to speak. He had also stated that the First Information Report was not lodged on the very same day but was so lodged on the next date. He had denied the suggestion that he had not seen Ramesh igniting the fire. In the cross-examination he had also not given a serious thought to the suggestion that there was some verbal altercation between the deceased and her husband with regard to staying in Aligarh. He has also denied the suggestion that she had committed suicide.

8. Kunwarpal Singh- P.W-6 was the other eye witness who had accompanied Shyoraj Singh, and was a Gram Pradhan of the village where Shyoraj Singh stayed. He also had stated all the facts as were stated by P.W.-1 Shyoraj Singh and P.W.-5 Ranveer Singh. In the cross-examination he had stated that they had tried to douse the fire by their hands and had also tried to extinguish the fire by putting sacks and mattress etc. on the burning body of his sister. He however stated that sacks and mattresses had not got burnt at all. He had also stated that he had not shown his burnt hands to anyone and that all the other villagers etc. had come on the place of incident after the fire had been extinguished. He has very categorically stated that he along with Shyoraj Sing and Mahesh had taken the deceased to the Medical College. He had stated that he had known Ravi for the past 6-7 years. Upon a question being asked as to whether he was the village

Pradhan of the Village to which Shyoraj Singh belonged he had stated he was the village Pradhan and at that point of time Shyoraj Singh was his immediate neighbour and they used to sit together quite often. He has also stated that Shyoraj Singh had supported him in the election for the Gram Pradhan.

9. The P.W-7 Shyam Singh and P.W.-8 Baldev Prasad were the Investigating Officers and they had got recorded their statements and had given out the manner in which investigation had taken place. After that the statement of the appellant- Ravi was got recorded under Section 313 Cr.P.C. Since Ramesh had gone absconding since 2012 his statement was not got recorded along with Ravi. Thereafter upon completion of the trial when the trial court i.e. Additional District & Sessions Judge Court No.1 Aligarh convicted the appellant for the offence under Section 302 IPC on 02.08.2018, instant appeal had been filed before this Court.

10. Learned counsel for the appellant Ms. Swati Agarwal Srivastava was heard for the appellant. Learned counsel for the appellant made the following submissions.

(i) When the inquest was being got prepared on 12.8.2005 at 3:30 p.m. despite the fact that First Information Report was got lodged at 12:25 p.m. on 12.8.2005 and despite the fact that the first informant Shyoraj Singh and Ranveer Singh, cousin of Shyoraj Singh were the witnesses of the inquest but they did not give their opinion as to how the deceased had got burned and had left it all for the doctor to decide after the postmortem. Learned counsel for the appellant further stated that if the inquest report was looked into, it definitely did not disclose any case crime number. In the same strain the learned counsel for the appellant had stated that since the prosecution case was that, the First Information Report was lodged prior in point of time to the inquest report and since in the First Information Report there were categorical averments with regard to the fact as to how the kerosene was poured

upon the deceased and thereafter fire was put on her shows that the First Information Report was definitely not in existence at the time of the Panchayatnama as the cause for burning was not given in the inquest report by the first informant and the eye witness Ranveer.

(ii) Learned counsel for appellant further stated that the incident had occurred at 6:00 p.m. when three responsible persons namely the brother of the deceased, her cousin and the Gram Pradhan were present on the site and it was natural for them to take her immediately to the hospital. It is the case of the prosecution that the injured was taken to the Medical College, Aligarh at 9:00 p.m. Learned counsel for the appellant therefore states that the entire story of the prosecution thus got falsified and becomes suspicious.

(iii) Learned counsel for the appellant next submitted that there were three eye witnesses, who were present at the place of incident but the person who took the injured to the hospital was the brother of the husband of the deceased i.e. Mahesh and this fact was very clear from the statement of the Dr. Jamana Asmat P.W.-3 and also from the statement of P.W.-6 Kunwarpal Singh. Learned counsel for the appellant thereafter states it was unnatural that the persons who were present at the actual site did not take the injured to the hospital but they waited for somebody else to come and to take the injured to the hospital.

(iv) Learned counsel for the appellant stated that howsoever much the incident was proved but definitely the entire story of the prosecution was absolutely unbelievable inasmuch as that when someone was pouring kerosene on the sister of the first informant then the brother of the deceased Shyoraj Singh and the other two eye witnesses Ranveer Sing and Kunwarpal Singh who were present at the site ought to have rushed to save the deceased. Learned counsel for the appellant further submitted that when the brother of the deceased was present along with two well known acquaintances then when the kerosene was being

poured upon the deceased then she also could have had the courage to run up to them and get herself saved, but that also did not happen.

(v) Learned counsel for the appellant further submitted that the entire case of the prosecution gets falsified when the P.W.-1, 5, and 6 state that they had tried to extinguish the fire at the time of the incident and thereafter they also got burnt but they did not show the burn injuries on their hands either to the police or to any doctor etc. She therefore states that the entire story of the prosecution gets falsified.

(vi) Learned counsel for the appellant further states that nowhere had the motive surfaced in the entire case and therefore, the essential ingredient for constituting the offence of murder under Section 302 IPC was absent.

(vii) Learned counsel for the appellant further stated that two sons namely Arau and Manish who were 11 years and 7 years of age and a daughter who was five years of age were present but they never came into the witness box. Also the father-in-law and the brother-in-law of the deceased who were witnesses of fact never appeared in the witness box. The appellant is in jail since 21.09.2017.

11. Per contra, Sri Amit Sinha, learned AGA for State opposed the appeal and vehemently supported the judgment of the trial court and he submitted that the three depositions of the eye witnesses could not be easily ignored and they had to be taken into consideration while deciding the instant appeal.

12. Learned counsel for the State categorically stated that Sheoraj Singh was the brother of the deceased and there was no occasion to disbelieve his testimony. In the same strain he submitted that Ranveer Singh the cousin of Shyoraj Singh was also a very reliable witness and whose statement could not have been ignored. In the same strain he submitted that Kunwarpal the Gram Pradhan of the village where

Shyoraj Singh stayed was also a responsible person and his eye witness account also could not be ignored in any manner whatsoever. He argued that the argument that the FIR was an ante timed one had no basis as the First Information Report accompanied the dead body when it reached the Doctor for Post mortem. Learned counsel for the State further submitted that it mattered little if the case crime number was not mentioned on the inquest report. He also submitted that the argument of the appellant that the two eye witnesses i.e. Ranveer Singh and Shyoraj Singh who were witnesses of the inquest report did not mention about the cause of burn in the inquest report also was of no consequence.

13. Having heard the learned counsel for the appellant Ms. Swati Agrawal Srivastava and learned AGA Sri Amit Sinha, we are of the view that the appeal deserves to be allowed.

14. If one looks at the inquest report, definitely we find that the P.W.-1 Shyoraj Singh and P.W. -5 Ranveer Singh were witnesses of the inquest and they had also claimed themselves to be eye witnesses but they did not give any opinion with regard to the cause of death and in fact they had stated that the cause of death would be as would be decided by the doctor after the postmortem was conducted.

15. We are of the view that when the deceased was being put on fire allegedly by her husband Ramesh and the appellant Ravi then the natural response of the deceased would have been upon seeing her own brother that she would have rushed towards him and that she was definitely not a helpless puppet in hostile presence. We are also of the view that when three healthy men i.e. the brother of the deceased Shyoraj Singh and P.W.-5 Ranveer Singh along with Kunwarpal Singh (PW-6) were present then they also ought to have rushed to save the deceased from getting burnt. We also do not believe the story of P.W.-1, P.W.-5 and P.W.-6 that they tried to extinguish the fire and yet they did not get any burn injuries on their hands when they say that they

had not burnt their hands. It is not a believable story as they have neither shown the burn injuries to any police personnel nor had they shown them to any doctor and if they had tried to extinguish the fire by which the deceased was being put to death then definitely they would have got burns which would have been substantial and would have been noticed also by the Investigating officers.

16. We also find that there is no recovery of any sacks and mattresses which allegedly were used to douse the fire. What is more, we find that absolutely no motive in the entire prosecution story had been given. The fact that the injured was taken to the hospital by the brother of husband of the deceased also falsified the prosecution story. This fact was not even mentioned in the FIR. The children, and the in laws who were present also did not come to the witness box.

17. The appellant is accordingly acquitted from the charges tried against him. The judgment and order dated 02.08.2018 is quashed and is set-aside.

18. Thus, for all the reasons stated above, the instant Appeal is accordingly, allowed.

19. The Appellant – Ravi shall be set free from the jail forthwith, provided he is not wanted in any other case. Bail bonds shall stand discharged if the appellant is on bail subject to compliance of Section 437-A of Cr.P.C.

20. Copy of this order be sent by the Registrar (Compliance) to be sent the Chief Judicial Magistrate concerned for necessary action.

Order Date :- 15.5.2025

Akbar

(Madan Pal Singh,J.) (Siddhartha Varma,J.)