

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRIMINAL LEAVE PETITION No. 740/2014

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Date of decision: 25th May 2015

STATE

.....APPELLANT

Through : Mr. Sunil Sharma, APP for the State
with SI Parmod Kumar,
PS-Patel Nagar

Versus

RATNI DEVI & ANR.

.....RESPONDENT

Through : Mr. L.D. Mual and Mr. S.S. Mual,
Advocates.

CORAM :

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. By the present Leave Petition filed under Section 378(3) of the Code of Criminal Procedure, the State seeks leave to appeal against the judgement dated 16.09.2014, passed by the learned Additional Sessions Judge, in Sessions Case No. 23/2013, whereby the respondents were acquitted of the charges punishable under Section 302/304B/498A/34 of the Indian Penal Code.
2. The facts of this case, as noticed by the learned trial court, are as under:-

“On May 29, 2011 at about 6.45 AM, an intimation was received from Doctor Vivek Singh, RLKC Metro Hospital, near Metro Station Shadipur that one

female named Ritu wife of Sandeep Tanwar aged about 28 years R/o T-541, Mandir Marg, Baljeet Nagar, Delhi had got been admitted in burn condition by her family members against MLC No. 19/2011. The said information was recorded vide DD No. 6A and assigned to SI Narender Samota, consequently, he left for the hospital.

(i). It was alleged that SI Narender Samota had recorded the statement of victim Ritu wherein she alleged that she was married to Sandeep about three years back and had a son aged about two years. It was alleged that after marriage, her husband Sandeep used to harass her on trivial matters. It was alleged that on May 28, 2011, she asked her husband Sandeep to take her to the house of her sister-in-law at Gurgoan on the occasion of birthday party of his nephew. But her husband refused to take her. It was alleged that on May 29, 2011, he asked her to pack her luggage and go to her parent's house, consequently, hot words were exchanged between them on the said point. It was further alleged that she was being harassed by her husband Sandeep and mother-in-law Ratni Devi for the last 6 months, consequently, at about 6 AM, she poured petrol upon her, which was lying in a bottle and ignited herself. It was alleged that she did so due to harassment caused by her husband Sandeep and her mother-in-law Ratni Devi. Her said statement was recorded in presence of Dr. Sandeep Goel and of her parents.

(ii). It was alleged that thereafter SI Narender Samota reached the place of occurrence where SDM, Patel Nagar and Crime Team were called. In the presence of SDM Parmod Kumar, Crime Team inspected the

place of occurrence and spot was got photographed. Exhibits such as matchbox, door-mat, burn hairs, burn clothes were seized from the spot. Exhibits were also lifted from the bathroom. One 7 up plastic bottle having some inflammable liquid probably kerosene oil was also seized.

(iii). It was alleged that since victim was shifted to RML hospital, SI Narender Samota reached RML hospital. SDM Parmod Kumar also reached hospital. But doctor declared the patient unfit to make the statement.

(iv). It was alleged that Om Prakash (father of victim) and Inderjeet (mother of victim) got recorded their statement to the SDM.

(v). It was alleged that Inderjeet in her statement alleged that her daughter was married with the accused Sandeep on April 28, 2008. After three months of marriage, victim told her that her mother-in-law Ratni Devi and husband Sandeep used to harass her and accused Sandeep used to beat her. She also made a complaint that accused Sandeep used to come home after taking liquor and thereafter used to beat her. Accused Sandeep used to beat her at the instance of her mother-in-law. It was further alleged that yesterday i.e. May 28, 2011, there was a function at the house of sister-in-law of victim but Sandeep did not take her. At about 6 AM, she had received a call that victim had sustained burn injury, accordingly, she was being taken to Metro Hospital. Consequently, she along with her family members also reached the hospital. At that time, victim told her that Sandeep

had given a suitcase to her and asked her to go from there i.e. her matrimonial house.

(vi). On the said statement, an FIR for the offence punishable under Section 498A/34 of Indian Penal Code (in short IPC) was got registered and investigation was assigned to SI Narender Samota.

(vii). After taking permission from the senior police officers, accused Sandeep Tanwar was arrested.

(viii). It was further alleged that victim was declared fit to make statement on June 01, 2011. Accordingly, SDM Parmod Kumar reached the hospital and recorded the statement of victim and same is Ex.PW1/C.

(ix). In her statement, victim alleged that she was married on February 28, 2008 and after 2-3 months of the marriage, her husband and mother-in-law started harassing her and her husband Sandeep used to beat her. He also used to take liquor and used to return home late in night and also used to pick up a quarrel with her. It was becoming his habit to beat her. But no family members used to intervene to save her. It was alleged that on May 28, 2011, there was a birthday party of the son of her sister-in-law at her house at Gurgaon but accused did not take her in the said function. It was alleged that on May 29, 2011 at about 5AM when he returned to home, he started quarrelling with her and asked her to pack her belongings/suitcase and asked her to go from his house but she refused and came in the courtyard. It was alleged that at that time, accused had picked up a green colour bottle and poured kerosene oil upon her and then brought a match box from the window of

bathroom and threw an ignited match stick upon her. When she raised alarm, family members came down but by that time, she had already burnt. It was stated that she did not know that the said bottle was containing kerosene oil as the said bottle was lying for the last three months and she came to know that it was containing kerosene oil only when accused poured kerosene oil upon her. It was alleged since her husband used to smoke, he used to keep matchbox in the window of bathroom. It was stated that her husband Sandeep and Dever Manoj took her to the hospital and on the way, they asked her to state that she had been burnt accidentally

(x). On her statement, Section 307 IPC was added.

(xi). It was alleged that on June 06, 2011, victim succumbed to her injuries, consequently, Section 302 IPC was added. Body was sent for post-mortem. Co-accused Ratni Devi was arrested on July 01, 2011. Section 304B IPC was also added.

(xii). Supplementary statement of parents of the victim and other witnesses were also recorded.

After completing investigation, challan was filed against both the accused persons for the offences punishable under Section 302/304B/498A/34 IPC.”

3. To bring home the guilt against the respondents, the prosecution examined 24 witnesses in all. Statements of the respondents were recorded under section 313 of Code of Criminal Procedure by the learned Trial Court, wherein they pleaded not guilty to the charges and claimed trial.

4. According to the prosecution, **PW1** Pramod Kumar (the then SDM who recorded the statement), **PW2** Om Prakash (father of the deceased), **PW3** Inderjeet (mother of the deceased), **PW7** Jugal Kishore (brother of the deceased), **PW11** Nitu Rawat (friend of the deceased), **PW8** Dr. Sandeep Goel (proved the MLC and first dying declaration) are material witnesses. The statements of the respondents were recorded under section 313 of Code of Criminal Procedure. The respondents pleaded innocence and false implication.
5. Mr. Sunil Sharma, APP for the State arguing against the acquittal submits that the judgment and order of acquittal passed by the learned Trial Court are contrary to the law and based upon surmises and conjectures. The counsel submits that the first dying declaration of the deceased recorded on the fateful day i.e. 29.05.2011 was a result of tutoring by the husband and brother-in-law of the deceased that she poured petrol upon her and set herself on fire. Counsel points out that this dying declaration cannot be relied upon as on the day of incident, the deceased was not fit for making any statement and no petrol was found at the spot of incident.
6. The Learned Counsel for the State further submits that the dying declaration dated 01.06.2011 which has been recorded in the presence of SDM is a reliable piece of evidence which has been corroborated by other evidences on record and is

sufficient to convict the respondents and that the Trial Court erred in not relying upon the same.

7. Further the Learned counsel for the State also submits that if the respondents had tried to douse the fire they would have sustained some injury which could possibly be sustained by them but there is no explanation why they did not suffer any burn injury. There is absolutely no injury which is suggestive of this fact that they had tried to save the deceased while putting off the fire.
8. The Learned Counsel for the state submits that deceased used to share her woes and plight with PW11 Neetu Rawat, an independent witness who deposed that the deceased had made a complaint to her that her husband used to fight with her and beat her after consuming liquor and further she deposed that her mother-in-law used to torture and harass her for the purpose of dowry.
9. The next contention raised by learned counsel for the State is that the Trial Court has wrongly reached a conclusion that a period of 13 minutes is not sufficient to influence a person. Elaborating his argument further, the counsel submits that the alleged incident took place around 6:00 AM in the morning and the time on MLC is 6:13AM, hence, the deceased was taken to the hospital within 13 minutes of the incident. This time period of 13 minutes is sufficient for tutoring of the deceased.

10. The learned counsel for the State further submits that the Trial Court has wrongly inferred that if a person wants to kill another person, he would try to pour as much kerosene as he could. However, on the other hand if a person intends to commit suicide than he will pour very less quantity of kerosene on himself. Elaborating his argument further, the counsel submits that in the present case, it is true that 2/3 of the liquid was found in the bottle and only 1/3 was poured, but the reasoning given by the learned Trial Court looks perverse that use of less quantity of kerosene oil suggests that it is a case of suicide and not murder.
11. On the basis of aforesaid submissions, it has been strongly urged by the counsel for the State that the impugned judgment be set aside as it has caused a grave miscarriage of justice.
12. On the other hand, Mr. L.D. Mual Advocate appearing for the respondents strongly refuted the aforementioned submissions and argued in favour of the impugned judgment passed by the learned Trial Court and contended that the acquittal of the respondents is justified and the impugned judgment does not call for any interference.
13. We have carefully considered the rival contentions of both the parties in detail and perused the testimonies of the witnesses as well as the relevant record.
14. Learned Trial Court while passing the impugned judgment has observed that the present case rests mainly on the dying

declarations made by the victim Ritu. The first dying declaration was recorded before erstwhile investigation officer SI Narender Samota on May 29, 2011 but prosecution intended not to consider this dying declaration on the ground that it was made under the influence of Appellant Sandeep Tanwar and his brother.

15. Regarding second dying declaration (Ex. PW1/C) the learned Trial Court observed that it was made to PW1 Pramod Kumar (SDM), wherein she alleged that appellant Sandeep Tanwar had poured kerosene oil on her and took match box from the bathroom window and threw an ignited stick upon her, thereafter she raised an alarm and after hearing the alarm other family members came there.
16. The learned Trial Court has found that there are material contradictions between both the dying declarations of the deceased as in her first dying declaration the deceased claimed that she had committed suicide by pouring petrol upon her after quarrel with appellant Sandeep Tanwar as she was being harassed by both the appellants for the last six months.
17. On careful examination of the testimony of PW3 Smt. Inderjeet (mother of the deceased), the learned Trial Court has observed that PW3, in her examination in chief deposed that she did not know any PW11 Neetu Rawat and her daughter had only one friend Anita, which casts a serious doubt over the claim of PW 11 in which she claimed that she was the only

well wisher of the deceased. Surprisingly, PW11 in her cross examination stated that she did not remember when the deceased had died and did not even visit the hospital to meet her which poses a serious doubt on the testimony of PW11.

18. It has been repeatedly held by the Apex Court that a dying declaration is admissible in evidence yet the Courts must scrutinise the dying declaration with care and caution as the person who has made such a statement is not available for cross-examination.
19. In ***Kushal Rao Vs State of Haryana AIR 1958 SC 22***, it has been held by the Apex Court that:

“15..... It cannot be laid down as an absolute rule of law that a dying declaration cannot be the sole basis of conviction unless it is corroborated. But where the dying declaration itself is attended by suspicious circumstances and has not been recorded in accordance with law and settled procedures and practices, it may be necessary for the court to look for corroboration of the same.”

20. The Apex Court in the case of ***Shakuntala Vs. State of Haryana AIR 2007 SC 2709*** has taken into consideration its various decisions and culled out the principles governing dying declaration. It would be useful to reproduce para 9 of the judgement.

“9. Though a 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 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 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 after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. 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.

*This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in **Smt. Paniben v. State of Gujarat AIR 1992 SC 1817** :*

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.

iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye- witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

21. In ***Mehiboobsab Abbasabi Nadaf v. State of Karnataka*** (2007) 13 SCC, having noticed multiple dying declarations the Apex Court held:

7. Conviction can indisputably be based on a dying declaration. But before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In

this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.

22. In **Anoop Singh v. State of M.P. (SC) 2008 (3) RCR (Crl.) 602**, it was held that:

“13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declaration but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

23. In a recent judgment by the Delhi High Court in **Criminal Appeal No. 3/2000 titled Manoj Kumar Verma Vs. State**, decided on 22.05.2014, it was observed by the court:

“.....the dying declaration made by the deceased must represent a truthful version of the incident and in a case where there are more than one dying declaration then there should be consistency, particularly on the material facts in all the dying declarations. If there

are intrinsic contradictions and inconsistencies in multiple dying declarations and there are suspicious circumstances which surrounds such multiple dying declarations then it is for the prosecution to clear all such doubts with the help of other corroborative evidence otherwise it may not be safe to act upon such inconsistent and discrepant dying declarations particularly where such discrepancies are on the material aspects.”

24. The courts have always favoured a dying declaration recorded by a Magistrate, preferably in question and answer form after obtaining fitness certificate from the doctor. These safeguards are insisted because of an inherent flaw of admitting hearsay evidence without the maker being subjected to cross-examination to test his veracity. By virtue of Section 32 of the Indian Evidence Act, a statement made by any person is admissible when it relates to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in case in which the cause of that person's death comes into question. A dying declaration is admitted in evidence as a rule of necessity. It is believed that a dying man does not lie while leaving this world but then all safeguards have to be complied with to ensure that the dying declaration is voluntary, truthful and has been made without tutoring and in a fit state of mind.
25. Applying the aforesaid principles of law to the facts of the present case, we are of the view that there are contradictions in the dying declarations made by the deceased Ritu. First dying

declaration made by her to SI Narender Samota must be believed as her true dying declaration because in the light of the facts and circumstances of the present case it appears to be voluntary, truthful and consistent which has been made without tutoring and in a fit state of mind. Further, SI Narender Samota has no motive to falsely depose that deceased Ritu disclosed this fact to him. Here, it is pertinent to mention that deceased was brought to the hospital by none-else but her husband and it is apparent from the MLC Ex. PW6/B wherein the time mentioned is 6.13 AM and the alleged incident took place around 6.00 AM in the morning. This by itself is suggestive of the fact that the respondent made sincere efforts to save the life of his wife. Hence, it cannot be ruled out that the second dying declaration appears to be improved, tutored and prompted.

26. The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more conceivable. In *Arulvelu and Anr. vs. State* 2009 (10) SCC 206, while referring with approval the earlier judgment in *Ghurey Lal Vs. State of Uttar Pradesh*, (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept

in mind by the High Court while entertaining an Appeal against acquittal. The principles are:

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

27. While deciding the present case the court must further take into account the presumption of innocence of the accused and the acquittal by the Trial Court adds to the presumption of his innocence. In ***Ramanand Yadav v. Prabhunath Jha* 2004 Cri LP 640**, this Court observed;

"There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of 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. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

28. In our view, the learned Trial Court has given valid and substantial reasons for disbelieving the prosecution version of the case. We agree with the observations made by the learned Trial Court and are unable to be persuaded by the observations made by the learned counsel for the State to take a different view than the one taken by the learned Trial Court.
29. It is well settled law of justice that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. We are of the view that the learned Trial Court has given detailed reasons for disbelieving the prosecution case and we are not inclined to take a different

view. We find no infirmity in the judgment of the learned Trial Court. The acquittal recorded by the Trial Court is based on reasons and thus, there are no grounds to grant leave to appeal. Consequently the appeal is dismissed.

G.S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 25, 2015
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