

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : 4th March 2016

+ BAIL APPLN. 2693/2015
TEJPAL @ LEELU & ANR Petitioners
Through: Mr.Manoj Ohri, Senior Advocate with
Mr.N.S. Jaglan, Advocate

versus

THE STAE (GOVT OF NCT OF DELHI) Respondent
Through: Ms.Meenakshi Chauhan, learned
Additional Public Prosecutor for the
State with Inspector Upender Singh,
Police Station Mehrauli, Delhi.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.2113/2014 under Section 302/34 of IPC, at Police Station Mehrauli, New Delhi.

2. The present case was initially registered under Section 323/342 of IPC on the statement of the victim Kamla. According to her statement, her husband who was employed in Akashvani was admitted in Batra hospital due to heart and breathing problem. It was also stated by the victim that they have a plot near their house, at which her devar (brother-in-law) Tejpal and his family including his wife and his sons

Sainky and Manjeet had taken possession and on 04.11.2014 at about 12 noon, when the complainant went at the plot and asked these four persons to vacate the plot, then all the four persons started quarreling with her. According to her, when she came inside the house, all the above mentioned four persons entered in her house following her and Tejpal (petitioner herein) brought with him a plastic bottle of kerosene oil and his wife Savita asked to murder the complainant. It is also alleged that firstly, Manjeet attacked the complainant with blade on her chest and caught hold of her, and Tejpal poured kerosene oil upon her and Sainky lit a fire by match stick, on the instigation of Savita and thereafter they fled away after setting her on fire. It is further submitted that she came out on the road and extinguished the fire by water and an ambulance came and admitted her in the hospital. It is specifically alleged by the complainant that her devar Tejpal, his wife Savita and their two sons Manjeet and Sanky together with the intention to kill her poured kerosene oil on her and set her on fire.

3. The investigation was conducted and during investigation, it was revealed that there is a plot which belongs to Phool Kumar who has two sons namely Prem Raj and Tejpal @ Leelu. According to an order passed by the Civil Court, Phool Kumar wanted partition of the plot in two equal shares among his two sons by constructing DPC but the victim Kamla wife of Prem Raj disagreed to the same. It was further revealed that at the spot, no offence was found to have been committed but after sometime on receipt of DD No.24A and 25B, ASI – Rajpal alongwith Constable reached at the place of occurrence at

Falsa Chowk, Rajpur Khurd Village, where PCR van had already taken the injured to hospital. During local investigation, the ASI saw that a woman came out on the road from inside of the house in burning position, who extinguished the fire by water on the road. CAT ambulance van came and took the injured lady to hospital. Regarding MLC of the injured Kamla, the doctor opined A/H/O Homicidal burn. The injured had L/E 90% deep thermal burn facial burn and grievous injuries and when doctor declared the patient fit for statement, the statement of the injured was recorded. Thereafter impression of left leg had been taken due to burning of injured's hands. Prima facie, the case was found to be made out under Section 307/34 of IPC. Statement of the injured Kamla was also recorded by Shri Ajit Singh, Executive Magistrate, Saket on 07.11.2014, wherein she disclosed the aforesaid.

4. The injured Kamla (complainant herein) ultimately succumbed to her injuries on 09.11.2014. Her post mortem was conducted and thereafter, Section 302 of IPC was added in the present case.

5. During investigation, the accused Ajay @ Sanky was formally arrested as he was already arrested in another case under Arms Act in Uttar Pradesh. The petitioner herein was arrested only after proclamation were published against him, i.e., on 25.05.2015. Charge sheet was filed on 05.08.2015. Co-accused Savita surrendered before the Court on 29.09.2015. Thereafter supplementary charge sheet was filed on 19.10.2015. However, Manjit @ Meenu is still absconding.

6. Mr. Manoj Ohri, Senior Advocate appearing on behalf of the petitioner contended that the actual incident which was taken place on 04.11.2014 was that at around 11.30 AM, when Shri Phool Kumar and Smt. Mohar Kaur (in-laws of deceased Kamla) were beaten up by Smt. Kamla and her son Ankit regarding a dispute over a plot in the name of her father-in-law situated at Rajpur Khurd Village, Delhi and case under Section 323/452/34 of IPC was registered against the deceased and her son at Police Station Mehrauli, vide FIR No. 2114/2014. After few minutes of the above incident, on arrival of the police, the deceased Kamla was seen coming out of her home in burning condition and on her statement the present FIR has been registered.

7. Learned Senior Counsel for the petitioner contended that the deceased kamla had falsely implicated her brother-in-law and his entire family just because of the plot dispute and out of vengeance. It is further contended that Ankit (son of the deceased Kamla) had also committed suicide due to the guilt of falsely implicating his uncle Tejpal (petitioner herein) and his family whereas the fact is that the deceased Kamla had herself set her on fire. It is further contended that the FIR is registered on the basis of false and tutored dying declaration of the deceased Kamla out of vengeance for the greed of the property. It is further contended that there was no independent eye witness to the incident to support the prosecution case.

8. Learned Senior Counsel for the petitioner also argued that neither the accused persons nor the applicants were present on the spot

at the time of the first incident of assault given to the complainant, as reported in FIR No. 2114/2014 nor at the time of the second incident of deceased setting herself on fire. The deceased Kamla committed suicide by pouring kerosene oil on herself due to the fear of police action being taken against her son and herself for assaulting her in-laws and to get a counter case registered against the applicants to put them under pressure. It is further submitted that the incident of setting the deceased ablaze herself, took place right in front of the police officials who were present on the spot and even as per the PCR call for the first incident for assaulting Phool Kumar and his wife Smt. Mohar Kaur.

9. It is further contended by the learned Senior Counsel appearing on behalf of the petitioner that the FIR does not mention about any person fleeing from the spot neither did the police bother to investigate whether anyone was present in the house of the deceased or not. The police did not arrest any of the accused persons from the spot nor have they mentioned about their running away from the spot. There is no public independent witness to corroborate the case of the prosecution and except for the dying declaration there is no other substantial evidence against the petitioner. The next contention raised on behalf of the petitioner is that the petitioner herein had been living separately from his wife Savita for the last more than 10 years and their two sons, accused herein, were being taken care of by their mother only. Therefore, it is highly improbable that all the accused persons would have jointly acted in the alleged crime. Lastly, it is

contended that the investigation is complete, charge sheet against the petitioner and Ajay has been filed and supplementary charge sheet has also been filed. It is further contended that the accused Ajay Rathi is a teenager and keeping him in judicial custody will only have a negative impact on his psychology.

10. Ms. Meenakshi Chauhan, learned Additional Public Prosecutor appearing for the State vehemently opposed the contentions raised on behalf of the petitioners and submitted that the petitioners have been charged in a heinous crime against the society and the matter is pending adjudication. It is further contended that the deceased Kamla has specifically narrated the incident in her dying declaration and specifically attributed the role to each of the accused persons. The deceased had narrated in his dying declaration that Tejpal was having a plastic bottle containing kerosene in his hands, Manjeet attacked on her chest with a sharp edged blade, Savita was shouting to kill her, accused Mandeep @ Manjeet caught the complainant and Tejpal brought a plastic bottle having kerosene oil and poured kerosene on her and Ajay Rathee @ Sainky set her afire with a matchstick and after that all the accused persons fled away from the spot. The MLC of the deceased also mentioned 90% deep burns conditions of the deceased and also records the name of the accused persons. Thereafter the statement of the deceased Kamla was also recorded by the learned Executive Magistrate to the same effect.

11. Learned Additional Public Prosecutor also contended that the accused petitioner Tejpal was arrested only after proclamation were

published against him. However, the petitioner – Ajay Rathi was formally arrested as he was arrested in another case under Arms Act in Uttar Pradesh. Therefore, the petitioners ought not be granted bail in this case.

12. I have heard the submissions of learned Senior Counsel appearing on behalf of both the petitioners as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

13. After careful scrutiny of the case, going through the contents of the petition as well as FIR, and the statement of the deceased Kamla, this Court observes that the deceased had made specific allegations while attributing specific role of the accused persons in her dying declaration. She had also made similar allegations before the learned Executive Magistrate, while recording her statement. This Court also observes that there was a property dispute between the two families, and there are two separate FIRs. In the one FIR, it is reported that the deceased Kamla and her son have allegedly beaten Phool Kumar and Mohar Kaur, while in the other FIR, the victim gave her statement leveling the allegation against the accused persons (including the petitioners) of trying to kill her by pouring kerosene oil and setting her ablaze.

14. In the light of the facts and circumstances of the present case, this Court is of the view that the dying declaration cannot form the basis of conviction unless it is corroborated by other evidence. This

Court also observes that the principle underlying admissibility of dying declaration is reflected in the well-known legal maxim: *Nemo moriturus praesumitur mentire*; i.e. a man will not meet his Maker with a lie in his mouth. A dying man is face to face with his Maker without any motive for telling a lie. Therefore, a dying declaration is entitled to great weight. Once the Court is satisfied that the declaration is true and voluntary, it could be the basis of conviction without 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 and not a rule of law.

15. This Court also observes that the charge sheet has been filed in the present case and the reliability of the dying declaration can only be tested during trial and it would be too early to comment upon correctness of the dying declaration at this stage. At present, what this Court has to see is whether the accused /petitioners are entitled to bail in a case in which they have specifically been named by the deceased in her dying declaration and have been attributed their specific role in committing the crime.

16. The State has also filed its status report wherein the apprehension is raised that the accused may not be available for trial if they are granted bail and apart from the said submission, it is submitted that the allegations against the accused persons and his family are very serious as they burnt a helpless woman just for a piece of plot. Though, the matter is pending trial, where the genuineness of

the dying declaration would be adjudged by leading cogent evidence, however, in the facts and circumstances of the present case, this Court is not inclined to grant bail to the petitioners – Tejpal @ Lellu and Ajay Rathi @ Shanky, at this stage. Accordingly, the bail application filed by the petitioners is hereby dismissed.

17. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

18. With aforesaid observations, the present bail application stands disposed of.

MARCH 04, 2016
pkb

P.S.TEJI, J