

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. No. 13/2013

Date of Decision: 16.03.2017

VIKAS GUPTA @ BOBBY Petitioner
Through: Mr.Ajit Sharma, Advocate

versus

STATE Respondent

Through: Mr.Varun Goswami, APP for
State.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE ANU MALHOTRA
GITA MITTAL, J (Oral)

1. By the instant appeal, the appellant assails the judgment dated 17th July, 2012 passed in SC No. 04/2010 arising out of FIR No.462/2010 registered by Police Station Mandawali, holding the appellant guilty of commission of the offence under Section 302 of the IPC with which he was charged as well as the order dated 20th July, 2012 awarding sentence of imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine, ordering simple imprisonment for six months.

2. The facts giving rise to the present appeal are within a narrow compass and to the extent necessary, we note the same hereafter.

3. On 21st September, 2009, telephonic information was received at police station Mandawali at 1555 hours from the duty constable at Lal Bahadur Shastri hospital that one Bharti Gupta,

w/o Vikas Gupta, aged 32 years, r/o B-52, Gali No.5, Mandwali, Delhi, had consumed some unknown poisonous substance and had been brought dead to the hospital. This information was logged as DD No.39B (Ex.PW-18/A) by the duty constable. A copy of the same was handed over to Sub-Inspector Yaad Ram (PW-18) who, accompanied by Ct. Ravinder (PW-12), reached the Lal Bahadur Shastri Hospital.

4. Sub-Inspector Yaad Ram (PW-18) collected the MLC No.7539/09 (Ex.PW-13/A) of the deceased. The MLC notes that the deceased was brought to the hospital at 3:45 p.m. by her husband Vikas Gupta with the alleged history of "*ingestion of some unknown substance*". It is also reported thereon that on naked eye examination, no external fresh injury was seen. The dead body was deposited in the mortuary.

5. After depositing the dead body in the mortuary, SI Yaad Ram (PW-18) returned to the residence of the deceased at house No.B-52, Gali No. 5, Mandawali, Unche Par, Delhi and recorded the statements of the three children being son Himanshu @ Honey, aged 14 years (Ex.PW-2/B); daughters Baby Shamishtha, aged 11 years (Ex-PW18/C) and Baby Kajal, aged 12 years (Ex.PW-18/B). SI Yaad Ram (PW-18) also recorded the statement of Sh.Ram Kishore Gupta (Ex.PW-6/A) father of the deceased.

6. SI Yaad Ram also called the crime team to the spot, which came and inspected the spot. The crime team was led by Inspector Rajesh Sinha, who after the inspection handed over his Inspection Report (Ex.PW-18/D) to SI Yaad Ram. It is noteworthy that in

Ex.PW-18/D, Inspector Rajesh Sinha has noted the information furnished by the Investigating Officer to the effect that the deceased Bharti Gupta had consumed poison at the spot; that one white coloured bottle with the words “Fumicon Dichlor VOS 76% FL” was present as well as some vomited material was lying on the floor. The Crime team had directed the investigating agency to get the stomach wash of the deceased from the hospital, seizure of the said vomitted material and the clothes containing the vomited material and also a forensic science examination of the seized material to be compared with the stomach wash.

7. At the spot, SI Yaad Ram (PW-18) had seized one plastic “*dibbi*” (box) having the label of “*Fumigan dichlorvos 76 percent ECDDVP*”, converted the same into cloth parcel and sealed the same with the seal of ‘YRJ’ and taken into possession vide memo Ex.PW-12/A. The seized articles were deposited in the *maalkhana* of police station Mandawali in sealed condition.

8. SI Yaad Ram (PW-18) made a request for an autopsy (Ex.PW-18/E), prepared the death report of the deceased Bharti (Ex.PW-18/E). On his request, an autopsy was conducted on the body of the deceased by Dr. Vaibhav Aggarwal on 22nd September, 2009 who submitted the post-mortem report No.299/09. Inasmuch as Dr.Vaibhav Aggarwal had left the Lal Bahadur Shastri hospital and was not available at the time of recording the evidence, the post-mortem report was proved in the evidence of Dr.Vinay Kumar Singh (PW-15), who had worked with Dr.Vaibhav Aggarwal and

had seen him signing and writing and was, therefore, in a position to identify his handwriting and signatures.

9. At the time of the autopsy, the doctor preserved the samples of the viscera as well as the blood samples of the deceased in a sealed condition which was taken into possession by the Sub-Inspector Yaad Ram vide seizure memo (Ex.PW-12/B) on 22nd September, 2009.

10. The dead body was handed over to the near relatives of the deceased (Mr. Gopal and Mr. Ram Kishore Gupta) vide Ex.PW-7/A who had also identified the dead body of the deceased.

11. It appears that on the next day ie. on the 22nd September, 2009, telephonic information was received by the Police Station Mandawali from the house No.D-68, Mandawali to the effect that *“one boy had given poison”*. This information as logged by SI Nand Kishore (Retd.) (PW-5), who was working as duty officer at the Police Dtation Mandawali. This information was entered in the *Roznamcha* as DD No.18A (Ex.PW-5/D) & was telephonically conveyed to HC Satish.

12. It appears that the three children of the deceased, namely, the son Himanshu @ Honey, and the two daughters, namely, Samishtha and Kajal had been removed by this time by the parents of the deceased Bharti Gupta to their residence at No.D-68, Mandawali, Unche Par, Fazal Pur, Delhi. SI Yaad Ram (PW-18) had also proceeded to these premises and recorded a second statement of the 14 year old son of the deceased - Himanshu @ Honey (Ex.PW-12/A) at 1500 hours.

In this statement, the 14 year old child stated that he was a student of Class VIII; that his father Vikas Gupta used to consume alcohol every day and indulged in abusing and beating his mother; in case of intervention by the children or efforts to protect their mother, their father would beat the children as well; that on 20th September, 2009 their mother had gone to the market, when she returned, their father abused her in dirty language and kept beating their mother the whole night; that in the morning of 21st September, 2009 when their father was beating their mother, she said that in view of the abuse and the daily beating, it would be better if she died; that in the afternoon of 21st September, 2009 at about 2:15 p.m. their father poured pesticide used for killing cockroaches into a glass and gave it to their mother under the pretext that he was offering water to her; that like this their father made their mother drink the pesticide; that when he asked their father to call the neighbours, he was beaten by his father who also locked the door of the house; that their father did not let him call his maternal grandmother (*Nani*); that his mother started foaming and vomiting while their father kept sitting there; when he grabbed his father's phone and rang his maternal grandmother (*Nani*), his father ran away from the spot taking with him some valuable articles from the house; that out of fear and pressure from his father, he had not given this statement earlier; that his father Vikas Gupta had murdered their mother by giving poison to their mother and that the police should take appropriate action thereon.

13. SI Yaad Ram (PW-18) made his endorsement on the above statement (Ex.PW-18/A) which was handed over to SI Nand Kishore (PW-5), who registered FIR No.462/09 (Ex.PW-5/A). The registration of the case was logged as DD No.20 (Ex.PW-5/C) at the police station. After registration of the case, the appellant was arrested vide memo EX.PW-12/C and his personal search was conducted vide Ex.PW-12/D. Investigation of the case was thereafter handed over to Inspector Satish Bhardwaj, SHO, PS Mandawali.

14. On 27th September, 2009, Inspector Satish Bhardwaj (PW-19) took HC Sonu Kaushik, the draughtsman to the spot, who took rough notes at the instance of Himanshu @ Honey. PW-19 also collected the photographs from the Photograph Section of the Crime team. A scaled site plan (Ex.PW-11/A) was prepared by HC Sonu Kaushik (PW-11).

15. During investigation, the articles which were seized from the spot as well as the viscera and the blood samples preserved by the post-mortem doctor, were forwarded by the SHO, Police Station Mandawali, on 10th November, 2009 through Ct. Ajay to Forensic Sciences Laboratory, Sector-14, Rohini, Delhi. At the laboratory, these samples were assigned to Amit Rawat (PW-20), Senior Scientific Officer, for examination. Upon examination, Amit Rawat (PW-20) gave a report dated 4th May, 2010 (Ex.PW-15/B). The description of the articles examined by Amit Rawat (PW-20) as noted in the said report is in the following terms:

*“DESCRIPTION OF ARTICLES CONTAINED
IN THE PARCEL(S)/EXHIBIT(S)*

Parcel- ‘1’ : Once cloth parcel sealed with the seals of “YRJ”. It was found to contain exhibit- ‘1’, kept in a plastic dibbi.

Exhibit- ‘1’ : Green coloured viscous liquid volume approx. 2 ml.

Parcel- ‘2’ : One sealed wooden box sealed with the seals of “LBSH/DFMT”, labelled as PMR No.299/09 dated 22.09.09, Viscera of Bharti. It was found to contain exhibits ‘2A’, ‘2B’ & ‘2C’.

Exhibit- ‘2A’: Stomach and piece of small intestine with contents, kept in a sealed jar.

Exhibit- ‘2B’: Pieces of liver, spleen and kidney, kept in a sealed jar.

Exhibit- ‘2C’: Blood sample volume approx.28 ml. Kept in a sealed bottle.”

16. Upon examination, Amit Rawat (PW-20) reported the following results:

“RESULTS OF EXAMINATION”

On Chemical & TLC examination, exhibits ‘1’, ‘2A’, ‘2B’, & ‘2C’ were found to contain ‘Organo-phosphorus pesticide (Dichlorovos)’.”

17. The Investigating Officer requested Dr. Vinay Kumar Singh at Lal Bahadur Shastri Hospital for review and subsequent opinion keeping in view the report of the Forensic Science Laboratory regarding the viscera of the deceased and the post-mortem report. After examining the post-mortem report and the Forensic Science Laboratory report (Ex.PW-15/B) Dr. Vinay Kumar Singh gave his opinion with regard to the cause of death opining that the death in the present case had resulted “*due to shock as a result of Organophosphorus pesticide (Dichlorovos)*” poisoning and gave his opinion vide Ex.PW-15/C.

18. After completion of the investigation, the prosecution filed the report under Section 173 Cr.P.C. on 18th December, 2009. The magistrate committed the matter for trial to the Court of Sessions by an order dated 6th January, 2010.

19. The learned Additional Sessions Judge examined the record of the case and by an order dated 20th July, 2010 found a *prima facie* case under Section 302 of the IPC as having been made out against the appellant. The appellant pleaded not guilty and claimed trial. The prosecution examined 21 witnesses including the three children of the appellant in support of its case.

20. The incriminating circumstances were put to the appellant and the appellant was given an opportunity on the 24th of May, 2012 to explain on the same under Section 313 of the Cr.P.C.

21. After considering the evidence led by the prosecution, by the impugned judgment dated 17th July, 2012, the trial Court held the appellant guilty of commission of offence. By the order dated 20th

July, 2012 sentencing him to undergo imprisonment which we have noted herein above.

The appellant has assailed this judgment and order on sentence by way of the instant appeal.

22. We have heard Mr. Ajit Sharma, learned counsel for the appellant as well as Mr. Varun Goswami, learned Additional Public Prosecutor for the State, at length. We have also carefully scrutinized the entire record of the trial court.

23. So far as the circumstances in which the deceased Bharti Gupta had consumed the poisonous substance is concerned, in DD No.39B (Ex.PW-18/A) which was the first information received by the police at 1555 hours (page 183) which was to the effect that the deceased Bharti had consumed an unknown poisonous substance and had been brought dead to the hospital.

24. The earliest information however in point of time is the noting made at 3:45 p.m. made on MLC No.7539/2009 (Ex.PW-13/A) recorded by an independent person, medical expert, namely, Dr. Kumar Gaurav Gupta when the deceased was rushed that the patient had alleged history of "*ingestion of some unknown substance*". It is most important to note that this information is stated to have been given to the doctor by the son of the deceased, namely, Himanshu @ Honey. It is also important to note that the deceased had been rushed to the hospital by her husband Vikas Gupta, i.e., the appellant which fact is also recorded on Ex.PW13/A. This MLC has been proved by the prosecution in the evidence of Dr. Rakesh Singh (PW-13).

25. We also find that even in the treatment sheet dated 21st September, 2009 of the deceased (Ex.PW-14/A) wherein also the informant is stated to be Himanshu (the son of the deceased), it is recorded that the patient had an “*alleged h/o ingestion of unknown substance*”

26. A perusal of the post-mortem report Ex.PW-15/A shows that Dr. Vaibhav Aggarwal, the autopsy surgeon, has noted as follows:

“V. BRIEF HISTORY AS PER I/O:

*Alleged H/o consuming unknown substance
vide DD No. 39 B dated 21/9/09
P.S.Mandawali. Deceased consumed some
unknown substance after quarrel with her
husband at home, she was brought to LBS
casualty where she was declared brought
dead at 21/9/09 at 03:45 p.m.”*

(Emphasis by us)

27. The doctor has observed that no external injury was present on the dead body. So far as the cause of death is concerned, the doctor had observed that the same would be given once the detailed chemical analysis report of viscera was received.

28. Thus even the investigating officer had informed the doctor that the “*deceased had consumed an unknown substance after a quarrel with her husband at home.*”

29. The circumstances in which the deceased consumed the poisonous substances are also stated by the three children of the appellant and the deceased. Our attention has been drawn by Mr. Ajit Sharma, learned counsel for the appellant, to the first statement of the three children recorded by SI Yaad Ram (PW-18) on 21st September, 2009. The prosecution has proved the statement of

Kajal aged 12 years as Ex.PW-18/B; the statement of Shamishtha aged about 11 years has been proved on record as Ex.PW-18/C and the statement of Master Himanshu @ Honey aged 14 years proved as Ex.PW-2/B.

30. The three children of the deceased have clearly stated that on 20th September, 2009, in the evening there was a dispute between their parents over delay of the mother in returning after purchasing vegetables, that this issue persisted between the parents of the children even in the morning of 21st September, 2009 and the altercation over this matter continued throughout the morning. Finally on 21st September, 2009 at about 2:30 p.m. their mother in anger and a fit of rage consumed poison and that their father, and their maternal grandfather (*nana*) had taken their mother for treatment to the Lal Bahadur Shastri Hospital. These statements were recorded on the very date of the incident. The three children had given separate statements in which they were thus categorical that their mother, had in a fit of rage, herself consumed poison without any participation of their father in the said act.

31. Our attention is also drawn to the statement of Sh. Ram, Kishore Gupta, i.e., the father of the deceased Bharti, recorded by SI Yaad Ram (PW-18) on 21st September, 2009 itself. In his statement Ex.PW-6/A (page 160), Ram Kishore Gupta (PW-6) had also disclosed that the appellant was habituated to consuming alcohol. Over the issues between the deceased and the appellant, in his statement, Ram Kishore Gupta makes no disclosure of the

circumstances in which the deceased had consumed poison on the fateful day.

32. The above narration of facts would show that immediately after their mother had consumed the poison and had been rushed to the hospital, the three children and the father of the deceased had given the completely exculpatory statements on 21st September, 2009. Thereafter, the children of the deceased were removed from their father's house to B-52, Gali No.5, Mandawali by Sh. Ram Kishore Gupta their maternal grandfather (*Nana*) to his own house D-68, Mandawali, Unche Par, Delhi.

33. It is only thereafter that Himanshu, the son of the deceased, made the second statement on 22nd September, 2009 (Ex.PW-2/A) which formed the *rukka* and led to the registration of the FIR. In this statement, the child has taken a complete turn around and as noted above has alleged that his father, the present appellant, made the deceased consume pesticide by a deliberate false representation that it was water that he was offering.

34. In the witness box, when his statement was recorded on 17th September, 2010, Himanshu @ Honey has stood by the second statement which he gave on 22nd September, 2009 claiming that the first statement was not true and that he was giving the second statement as his grandparents had told him to narrate the true facts. A perusal of the cross-examination of the son of the deceased would show that in his cross-examination he had stated that he had not told the doctors that his father had given the pesticide substance to his mother.

35. Mr.Ajit Sharma, learned counsel for the appellant has contended that the witness had actually spoken the truth in his statement recorded by the police on 21st September, 2009 and his turn around on 22nd September, 2009 was a result of tutoring by his grandparents. There appears to be substance in this submission inasmuch as on 22nd September, 2009, the child has stated that his father ran away from the spot when his maternal grandfather was informed. This is falsified by the record of the Lal Bahadur Shastri hospital where the MLC (Ex.PW-13/A) notes that the deceased had been brought by her husband (the appellant) to the hospital. The earlier statement Ex.PW-2/B recorded on 21st September, 2009 given by the child clearly stated that his father and grandfather had removed the deceased to the hospital

36. Furthermore, on the 21st September, 2009, the child Himanshu @ Honey has also clearly informed the doctor that his mother had consumed some poisonous substance which fact has been noted by the doctor on the MLC (Ex.PW-13/A). The same fact has been informed by the investigating officer to the doctor who had conducted the post-mortem on 22nd September, 2009.

37. These very observations apply to the statement made by the daughter of the deceased as PW-3 on the 22nd September, 2009 and in the witness box.

38. The prosecution, thus, has established on record that the death of the deceased resulted on account of her having ingested Organo-phosphorus pesticide (Dichlorovos) poison. It is in the evidence of the post-mortem Dr.Vinay Kumar Singh (PW-15) that

this pesticide which the deceased had consumed, had an offensive smell. It is not the prosecution's case that anybody compelled the deceased to consume the poison. On the contrary, the prosecution has attempted to establish through the testimony of the children, that the deceased was made to drink poison in a glass, as if it was water. It is, thus, obvious that after the initial sip itself, both the offensive taste and smell of the liquid contained in the glass, would have immediately disclosed the deceased that it was not water which she was drinking, if the appellant had attempted to dupe her under the pretext that he was offering water to her. It is unbelievable that the deceased would have voluntarily consumed full glass of offensive tasting and smelling substance under such a false belief. This is only possible if she consumes it herself in the fit of anger. This fact stands established from the first statements of the children of the deceased, who were the only eye-witnesses to the incident.

39. The MLC records this very disclosure by Himanshu, son of the deceased to the doctor. The marginal note on the post mortem report Ex.PW-15/A also states that the history disclosed by the investigating officer was that the deceased had consumed some unknown substance after quarrel with her husband at home. No allegation was made that the same had been offered to her by the husband.

40. The marginal note on the post mortem report and the MLC shows that the deceased had been rushed to hospital by her husband, the present appellant with the alleged history of ingestion

of some unknown substance. The appellant alleges that all these circumstances proved on the record establish that the appellant could not have been held guilty for commission of the offence with which he was charged. We find substance in these submissions.

41. We extract hereunder the material explanation given by the appellant when the evidence regarding the commission of the offence was put to him under Section 313 of the CrPC:

“Q.17 It is further in evidence against you that PW-2 Himanshu Gupta, your son and PW-3 Baby Samishtha, your daughter, both have deposed that you used to drink daily and pick up quarrel with deceased Bharti Gupta. They have also stated that on 20.09.2009, their mother had gone to market to purchase vegetables and she became late and when she returned, you were under influence of liquor and started abusing her and beating her. What you have to say?”

Ans. It is incorrect.

Q.18 It is further in evidence against you that PW2 & 3 have also stated that you continued beating Bharti till next day i.e. 21.09.09. you again started quarrel with Bharti and at around 2:15 p.m. Their mother being fed up with you uttered words that “isse acha hai ki main mar jaon” on which you gave insecticide (used for killing cockroaches) mixed in water to their mother and since said insecticide (used for killing cockroaches) mixed in water to their mother and since said insecticide after mixing with water was still transparent like water, she consumed the same as a result of which jhag started coming out of her moth and she started vomiting. What you have to say?”

Ans. It is incorrect. I never gave any insecticide to Bharti at any point of time. Rather at the time when she consumed insecticide, I was not present at home.

I came at the spot later on and on finding Bharti in the intoxicated condition, I rushed her to hospital for her treatment. The allegations levelled against me is false and totally baseless. Deceased Bharti was fed up and used to remain tense as my daughter Kajal was not being given by my father-in-law and mother-in-law as she was very lucky to them. My wife used to make various request to them to return her to us as she might be very lucky for us but they were adamant not to return her. On 20.09.09, my wife went to her parental home to take our daughter kajal being very lucky but they flatly refused and they scolded her not to come again for this purpose. I used to work with my inlaws at their kite shop for the period from January, 2009 upto 20.09.2009 and I have also been given a sum of Rs.20,000/- by my father in law. I also used to take the payment during this period from time to time. My relation with my wife were very cordial. The demonstration with dead body was also held on 22.09.09 by my inlaws, other people including the Leaders of Political parties in the mohalla and also at the Police Station after that police came in action and a DD no. 18A was made and after that the statements were recorded and the false FIR was registered in which I have been falsely implicated by the police.

xxx

xxx

xxx

Q. 24 Do you want to say anything else?

Ans. I am innocent and have been falsely implicated in this case. I never gave any insecticide to Bharti at any point of time. Rather at the time when she consumed insecticide, I was not present at home. I came at the spot later on and on finding Bharti in the intoxicated condition, I rushed her to hospital for her treatment. The allegations levelled against me is false and totally baseless. Deceased Bharti was fed up and

used to remain tense as my daughter Kajal was not being given by my father-in-law and mother-in-law as she was very lucky to them. My wife used to make various request to them to return her to us as she might be very lucky for us but they were adamant not to return her. On 20.09.09, my wife went to her parental home to take our daughter kajal being very lucky but they flatly refused and they scolded her not to come again for this purpose. I used to work with my inlaws at their kite shop for the period from January, 2009 upto 20.09.2009 and I have also been given a sum of Rs.20,000/- by my father in law. I also used to take the payment during this period from time to time. My relation with my wife were very cordial. The demonstration with dead body was also held on 22.09.09 by my inlaws, other people including the Leaders of Political parties in the mohalla and also at the Police Station after that police came in action and a DD no. 18A was made and after that the statements were recorded and the false FIR was registered in which I have been falsely implicated by the police.”

42. On a conjoint readings of the DD No.39B; the MLC No.7539/09 EX.PW-13/A; the marginal note on the post mortem report dated 22nd September, 2009, which is corroborated by the first statement dated 21st September, 2009 (Ex.PW-2/B) of Master Himanshu @ Honey, and statement dated 21st September, 2009 (EX.PW-18/C) of the daughter of the deceased, namely, Samishtha, it has to be held that the prosecution has failed to establish beyond reasonable doubt that the appellant had duped the deceased Bharti Gupta into consuming a poisonous substance more specifically

Organo - phosphorous pesticide (Dichlor VOS) leading to her death.

43. In view thereof, the judgment dated 17th July, 2012 as well as the order of sentence dated 20th July, 2012 awarding sentence of imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine, ordering simple imprisonment for six months are not sustainable and are hereby set aside and quashed.

44. By our order dated 2nd February, 2017 we had granted interim suspension of sentence to the appellant. In view of the above, the bail bonds submitted by him and on his behalf shall stand discharged.

GITA MITTAL, J

ANU MALHOTRA, J

MARCH 16, 2017
SV