

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

Judgment Reserved on : January 09th, 2018

Date of Decision : April 27th, 2018

+ CRL.A. 1158/2016

MOHD. RAEES & ANR.

..... Appellants

Through: Mr.V.P.Singh Bidhuri, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S. TEJI, J.

1. The present appeal has been filed by the appellants, namely, Mohd. Raees and Mohd. Anees under Section 374(2) read with Section 482 Cr.P.C. against the judgment dated 20.09.2016 and order on sentence dated 23.09.2016 passed by learned ASJ-05 (West) Tis Hazari Courts, Delhi whereby the appellants have been convicted and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/- each and in default of fine to further undergo SI for one month each for the offence under Section 302/34 IPC; and also to

undergo rigorous imprisonment for two years and fine of Rs.2,000/- each and in default of payment of fine to further undergo SI for one month each for the offence under Section 174A IPC.

2. The factual matrix, as emerging from the record, is that on 26.09.1999, on receipt of DD No.20A, ASI Atiq Ahmed along with Ct.Manoj reached LNJP Hospital where they found one Smt.Meena admitted. Statement of the eye witness Salma Bano was recorded in which she stated that on the fateful day she had gone to meet her sister Meena. Meena told her that her husband Mohd.Raees had called her at H.No.1347, Phatak Baanwala, Chitli Qabar, Chandni Mahal to discuss about a house regarding which litigation was pending in the Court. Salma Bano along with Meena reached H.No.1347 at about 6.30 p.m. Accused Mohd.Raees (husband of Meena), Naseem @ Bhindi and Mohd. Anees @ Chintu were present there. As they entered the phatak, accused Mohd. Raees and Mohd. Anees caught held of Meena; Mohd. Raees exhorted Naseem to fire a gunshot to end the root cause of the litigation. On hearing this, accused Naseem fired a gun shot from a country made pistol on the chest of Smt.Meena due to which she fell on the ground and accused persons ran away from there. On raising an alarm, public persons collected at the spot and Meena was taken to the hospital.

3. On the basis of the statement of Salma Bano, FIR was registered under Section 307/34 IPC. During the investigation, Smt.Meena died on 28.09.1999 and the case was converted into Section 302/34 IPC. Postmortem on the dead body of the deceased

was conducted. Accused Naseem was arrested. Both the appellants were declared Proclaimed Offenders and charge sheet was filed while showing them in column no.2. He was convicted by the trial court and his appeal filed against the conviction was dismissed by this Court. After the arrest of the appellants, supplementary charge sheet was filed against them. Charge for the offence under Section 302/34 and 174A IPC was framed against both the appellants, to which they pleaded not guilty and claimed trial.

4. To prove its case, the prosecution had examined 15 witnesses, namely, Ct.Anil (PW1), Smt.Salma Bano (PW2), Mohd. Nafees (PW3), Insp.Narsi Meena (PW4), Dr.Ajay Singh (PW5), Dr.Prem Kumar (PW6), Ct.Manoj Kumar (PW7), SI Hoshiyar Singh (PW8), Dr.Anil Aggarwal (PW9), ASI Ram Phal (PW10), Insp.Suresh Dabas (PW11), Ct.Subhash Chander (PW12), HC Rajender Singh (PW13), SI Atique Ahmed (PW14), SI Rajesh Kumar (PW15) and Smt.Sameena (again PW15).

5. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed innocence and denied the entire case of the prosecution. Despite opportunity being granted, both the appellants did not choose to lead defense evidence.

6. On appreciation of evidence and material brought on record, the trial court earlier convicted the appellants for the offences charged against them vide judgment dated 07.12.2012. The appellants

preferred an appeal bearing CrI.A. No.380/2013. The said appeal was disposed off by this Court vide order dated 09.12.2015. The judgment and order on sentence were set aside and the matter was remanded back with the directions to the trial court to recall the witness Salma Bano; to re-examine her, and; to proceed further in accordance with law. Thereafter, the trial court re-examined the witness Salma Bano and then passed the impugned judgment of conviction dated 20.09.2016 and order on sentence dated 23.09.2016. Feeling aggrieved of the same, the appellants have preferred the instant appeal.

7. Argument advanced by the learned counsel for the appellants is that the incident is dated 26.09.1999 in which three accused persons were roped in, out of which accused Naseem has been convicted and his appeal against the conviction has been dismissed by this Court. Both the present appellants were earlier declared as Proclaimed Offenders and they were tried subsequent to accused Naseem. They were earlier convicted and against the conviction they preferred an appeal bearing CrI.A. No.380/2013, which was decided on 09.12.2015, remanding back the matter to the trial court to re-examine the witness Salma Bano. It is submitted that in the MLC, the deceased herself had informed that she was shot at by her step-son Naseem and had not named any of the appellants therein. The alleged statement of the deceased was recorded on 26.09.1999 vide Ex.PW14/C. It is further submitted that the statement was recorded in the case diary Ex.PW10/E, on which FIR No.162/1999

has been registered. PW14-SI Atique Ahmed had stated that after recording the statement Ex.PW14/A of the witness Salma Bano, he found that the injured Meena was declared fit for statement and he recorded her statement Ex.PW14/C. It is further submitted that in the examination dated 08.02.2011, alleged eye witness Salma Bano had failed to identify both the appellants and had turned hostile, but during her testimony dated 02.04.2016, she changed her track and stated that at the time of alleged incident both the appellants were present at the spot and did not try to save the deceased. After the remanding back of the matter, Salma Bano turned hostile and did not support the case of the prosecution that the deceased was caught held by the appellants, or that the accused Mohd.Raees exhorted anything. It is argued that the deceased was allegedly declared fit for making statement at 10.00 p.m., but none of the doctors (PW5 and PW6) have stated as to who had made the said endorsement on the MLC. Dr.Ajay Singh was examined as PW5, but he was not cross-examined. Dr.Prem Kumar was examined as PW6 and he had stated that on examination of Meena, she was found to be conscious, oriented to time and space. Even ASI Atique Ahmed (PW14) had stated that he had moved an application before the doctor to record the statement of the injured, but the doctor declared the patient fit for statement on the MLC itself. It is further submitted that Salma Bano is the only eye witness of the incident and her testimony is not reliable and trustworthy to base the conviction of the appellants. The trial court has committed an error in convicting the appellants. Reliance has been placed on ***Suresh and Another v. State of U.P. (2001) 3 SCC 673*** to press the contention

that to fasten the liability on an accused on the strength of Section 34 IPC, it should be shown that he had done some act which has nexus with the offence. Such an act need not to be very substantial; it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt; even if it is only a covert act, it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Further reliance has been placed on ***Virendra Singh v. State of M.P. (2010) 8 SCC 407*** to press the contention that under the IPC, a person can also be vicariously responsible for the acts of others, if he had a common intention to commit the acts, or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. On similar point, reliance has also been placed on ***Rajkishore Purohit v. State of M.P. (2017) 9 SCC 483***.

8. Per contra, learned APP for the State has argued that the site plan Ex.PW10/D depicted the correct picture of the incident. Testimony of Salma Bano had duly been corroborated by PW3-Mohd. Nafees who had taken the deceased to the hospital. In the dying declaration, the deceased had clearly given the role of each and every accused involved in the incident. PW6-Dr.Prem Kumar has corroborated that the dying declaration was given by the patient herself in his presence, so no doubt can be created on the same. It is further submitted that PW2-Salma Bano had supported the case of the prosecution-that the deceased was called at the spot by her husband

i.e. accused Mohd. Raees, where all the three accused persons were present and that she was caught held by accused Mohd. Raees and shot at by the accused Naseem. PW15-Sameena, daughter of the deceased had also corroborated the fact that on the day of incident, her mother Meena told her that she was called by the father of PW15 at Chitli Qabar. PW15 had stated that she had seen her mother in the cycle rickshaw held by one person and Salma Bano, and at that time Salma Bano was weeping. She went to hospital and found that her mother had sustained injury on her chest. It is submitted that there is enough evidence on record to convict the appellants and the trial court has not committed any error in convicting them.

9. We have heard the submissions advanced by learned counsel for the appellants, and by the learned APP for the State, assisted by learned counsel for the complainant. We have also gone through the evidence led by the parties.

10. The case of the prosecution is primarily based upon the testimony of PW2-Salma Bano (also numbered as PW4) who had deposed that on 26.09.1999, she had gone to meet her sister Meena who used to live in Vijay Mohalla. Meena asked PW2 to accompany her to Chitli Qabar where she was to meet her husband Mohd. Raees. PW2 along with Meena started at about 4.00 for going to Chitli Qabar and at about 6.30 p.m., they reached Banwala Phatak, Chitli Qabar. Mohd. Raees, husband of Meena, Nasim and Anees were present there. Mohd. Raees and Anees caught hold of Meena, and accused Mohd. Raees exhorted accused Naseem '*maar isse Goli, Aaj Sare*

Mukadme ki Jad Khatam Kar Dein' (shoot her to end the root cause of the court case). Then accused Naseem fired at Meena with a country made pistol. The bullet hit Meena on left side of her chest. As a result of the bullet fire, Meena fell down and her chest started bleeding. PW2 started shouting and weeping. Raees, Anees and accused Naseem ran away from the spot. Meena was removed to Irvin Hospital by the public. PW2 also followed Meena in a separate rickshaw. Meena remained in hospital for about two days and died. In the hospital, police met her on the day of occurrence, and recorded her statement Ex.PW14/C.

11. During cross-examination, Salma Bano (PW2) had stated that after Meena was shot, she started weeping. At the time of occurrence, Meena was wearing a Burqa. Her statement was recorded by the IO in the hospital. After Meena expired, she accompanied the dead body to her house. She further stated that Mohd. Raees and Anees were behind PW2 on the left side, and accused Mohd. Nasim was in front when they entered the phatak. Meena was 4/5 feet ahead. She admitted that back of Mohd. Raees and Anees were towards her when Meena was fired at. After the occurrence, Anees ran towards Pahari Bhojla, accused Nasim ran towards Daryaganj, and Mohd. Raees followed accused Nasim in Mochi Wali Gali. PW2 did not chase any of the accused. She further stated that none had told her that accused Mohd. Nasim and Mohd. Raees had gone in Gali Mochi Wali, as she herself had observed it. She further stated that inside Phatak Banwala, Meena was at a distance of three steps from her and

she was standing at the corner of the phatak. She stated that police asked her to accompany them to the spot, but she refused to go. However, she had given the details of the occurrence to the IO. She denied that she did not go to the spot because she had not seen the occurrence. She further denied that she was not present at the spot at the time of occurrence. She denied that accused Raees did not exhort; Anees did not caught held of Meena, and; accused Mohd. Nasim did not fire at Meena.

12. In her deposition recorded on 08.02.2011, PW2-Salma Bano failed to identify the accused Mohd. Raees and Anees @ Chintu. She had stated that she knew the deceased Meena whom she treated as her sister. She could not identify the husband of Meena, but she knew his name as Mohd. Raees. The deceased also disclosed the name of her step son as Anees @ Chintu.

13. PW2 was declared hostile by the prosecution and during cross-examination by the learned APP, she had stated that all the three accused persons were residing at the same address i.e. 1347, Phatak Banwala, Dehi. She admitted that in her statement Ex.PW14/A she mentioned the address of the accused persons. She denied that both the accused persons were present in the Court, or that she was not identifying them deliberately. During cross-examination by the defence counsel, PW2 stated that at the time of obtaining her thumb impression on Ex.PW14/A, its contents were not read over to her. She stated that accused persons were not seen by her at the spot on 26.09.1999.

14. After the remanding back of the matter to the trial court by this Court vide order dated 09.12.2015 (in Crl.A. No.380/2013), Salma Bano was again examined on 02.04.2016 during which she testified that on the day of incident, she was present with Meena at Chitli Kabar, near Jama Masjid as Meena was called there by her husband Raees. One Naseem was present there. Raees and his son Chintu, present in the Court, were also present there. Accused Naseem fired a shot on Meena with a country made pistol which was wrapped in white cloth. Both the accused persons did not try to save Meena. Somebody was present there who removed Meena to the hospital by a rickshaw. Meena was admitted in LNJP Hospital. Third day of the incident, Meena died in the hospital. All the three accused persons ran away from the spot. Police met her in the hospital and she narrated the incident to the police. Her statement was recorded by the police on which she put her thumb impression. She was shown her statement Ex.PW14/A but she did not identify her thumb impression on it. She further stated that she had correctly conveyed the entire facts in her statement to the police which were fresh in her mind at that time. During cross-examination by the learned Prosecutor, this witness denied that she was deliberately suppressing the role of both the accused persons being under their influence.

15. PW-15 Sameena, daughter of the deceased had corroborated the testimony of PW2-Salma Bano. PW15 deposed that on 22.09.1999, she along with her mother Meena had gone to the house of her bua Saheeda and she had stayed there. On 26.09.1999,

her mother had told her that her father Mohd. Raees had called her at Chitli Qabar to have a talk regarding the house. On the same day, PW15 had gone to Chitli Qabar to buy some articles and at about 6.45 p.m., she saw two cycle rickshaws. On one rickshaw, her mother was sitting with a person and that person was holding her mother, whereas Salma Bano along with one more person was sitting on another rickshaw. At that time Salma Bano was weeping bitterly and was looking hopeless. Both the cycle rickshaws moved towards LNJP hospital. PW15 also reached the hospital and saw her mother having injury on her chest and was bleeding, although conscious. Her mausi Salma Bano told her that her father Mohd. Raees had called her mother at Chitli Qabar and when they reached there, her father Mohd. Raees told his sons to finish the mother of PW15 and then accused Mohd. Raees and his son Anees caught held of her mother, whereas accused Naseem fired at her mother. PW15 further deposed that in the hospital she talked to her mother who also informed the same facts to her, and told that her father Mohd. Raees and accused Anees caught held of her and accused Naseem had fired at her. She further stated that her mother expired after about 2-3 days of the incident.

16. The postmortem on the dead body of the deceased was conducted by Dr. Anil Aggarwal (PW9) who had stated that he had found seven external injuries as well as corresponding internal injuries on the body of the deceased. He proved the postmortem report as Ex. PW9/A. As per the opinion of PW9, the cause of the death was result of excessive bleeding consequent upon injuries to loops of

intestine via injury no.3 and 7. All the injuries were antemortem in nature and around two days old in duration. Injury no.6 was surgical in nature. Injury no.1, 2 3 and 7 were caused by some ammunition fired from a firearm discharged at close range. Injury no.4 and 5 were also produced by the same shot. He opined that injury no.3 and 7 were sufficient to cause death in ordinary course of nature.

17. As per the deposition of the doctor (PW9) and the post mortem report Ex.PW9/A, it is established that the death of the deceased was homicidal in nature, and there is no dispute about the nature of injuries sustained by her and the cause of her death.

18. The argument advanced by the learned counsel for the appellants is that in the MLC Ex.PW6/A, the deceased herself had given her history that she was shot at by her step son Naseem, but she had not mentioned the names of either of the appellants Mohd. Raees and Mohd. Anees, which creates doubt about the alleged role of the appellants in the commission of the crime, particularly since, in the testimony of PW2-Salma Bano recorded on 02.04.2016, she has deposed that the appellants had not played any role in the incident, and she had turned hostile. It was further argued that though in the MLC Ex.PW6/A, endorsement regarding fitness of the deceased was made, but none of the doctors (PW5 and PW6) have stated who had made the said endorsement. Though PW6-Dr.Prem Kumar had stated that he had examined the deceased and the MLC was prepared by Dr. Alimuddin under his supervision, but he had not stated as to who had given the fitness certificate of the patient. PW6 had also stated that

the patient was conscious and oriented at that time and her dying declaration Ex.PW14/C, and it was prepared in his presence.

19. So far as the fitness of the deceased to make the dying declaration is concerned, MLC Ex.PW6/A of the deceased shows that she was in a fit state of mind. She was conscious and oriented. PW6-Dr.Prem Kumar was the doctor who had examined the patient Meena. He had deposed that the patient was conscious, oriented to time and space at the time of recording her statement. He had also stated that the dying declaration of the deceased was recorded in his presence. The dying declaration Ex.PW14/C of the deceased was recorded by SI Atique Ahmed (PW14). PW14 had stated that Meena was in a fit state of mind, and he had taken the opinion of the doctor on her MLC. The non-examination of the doctor who had given the endorsement that the patient was fit for statement is not fatal to the case of the prosecution, when it has been stated by the doctors (PW5 & PW6) that the patient Meena was examined in their presence and she was in a fit state of mind at that time. Both the said witnesses/Doctors are independent witnesses, and there is no reason, not to believe their testimonies.

20. The next point of consideration is whether the dying declaration Ex.PW14/C made by the deceased Meena, recorded by PW14-SI Atique Ahmed was a voluntary statement, or a tutored one. The law regarding dying declaration is well settled that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. While relying upon a dying declaration, the

court is to satisfy itself that the declaration was true and voluntary, on which basis conviction can be founded without any further corroboration. In the case of ***Laxman v. State of Maharashtra*** AIR 2002 SC 2973, it was held :

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit

mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by

the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

21. Further, in the case of ***Ravi Kumar alias Kutti Ravi v. State of Tamil Nadu (2006) 9 SCC240***, it was observed that :

“5. Section 32 of the Indian Evidence Act, 1872 is an exception to the general rule against hearsay. Sub-section (1) of Section 32 makes the statement of the deceased admissible which is generally described as ‘dying declaration’. The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that the conscientious and virtuous man under oath.

The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and mind is induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must be exercised in considering the weight

to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be on guard to see that the statement of the deceased was not the result of either tutoring or prompting or a product of imagination. The court has also to see and ensure that deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on dying declaration 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 the rule of prudence.”

22. A perusal of statement Ex.PW14/C shows that the deceased had narrated the entire incident attributing the role of each and every accused. In Ex.PW14/C, the deceased had stated that she was having a dispute with regard to house no.888 with her husband Mohd. Raees. On that day, her husband had called her at Banwala Phatak, Chitli Qabar and she along with her sister Salma Bano went to Banwala Phatak and they reached there at about 6.30 p.m. When they entered the phatak, her husband Mohd. Raees and her step-sons

Naseem and Anees were present there. She was caught held by accused Mohd. Anees and Mohd. Raees; her husband Mohd. Raees exhorted accused Naseem to shoot her to end all the disputes, and; then accused Naseem fired gun shot at her with a country made pistol.

23. There is no reason to doubt the dying declaration made by the deceased just before her death, and that too on the day of the incident itself. The statement of the eye witness Salma Bano (PW2) was also recorded by the IO on the same day, and that too prior to the recording of the dying declaration Ex.PW14/C of the deceased. The deceased has made the same statement as was made by the witness Salma Bano. The dying declaration of the deceased appears to have been made in a fit state of mind. Having received a gun shot injury in her chest, the deceased would have known that she was not likely to survive and that her end is near. At that moment, she would not have lied about who shot her; why she was shot, and; how she was shot. At that solemn moment, she would have only spoken the truth, having seen the writing on the wall that she will not survive long. There was no hope and, consequently, no motive for her to lie at her last moments in this world. Thus, we accept the dying declaration as reliable which, even otherwise is duly corroborated as discussed above.

24. So far as the contention of the counsel for the appellants that witness Salma Bano turned hostile, and had not attributed the roles to the appellants as per the case of the prosecution when she was

further ordered to be examined on 02.04.2016 is concerned, we do not find any merit in the same.

25. From the testimony of Salma Bano (PW2) recorded on 02.04.2016, though it is apparent that she had not described the role of the appellants on the day of the incident, but the fact cannot be ignored that in her statement made to the police which was the basis for the registration of the FIR, she had specifically stated that the appellants/accused persons Mohd. Raees and Anees caught held of Meena, and on the exhortation of accused Mohd. Raees, accused Naseem fired a gun shot at the deceased. Similar statement was made by PW2-Salma Bano when she was examined before the trial court on 10.11.2000. Even in her further examination on 02.04.2016, she had stated that at the time firing a gun shot by accused Naseem at the deceased, both the appellants Mohd. Raees and Anees were present at the spot. From the testimony of PW2-Salma Bano, it has duly been established that she was present at the spot at the time of the incident, and the presence of all the accused persons at the spot at that time has also been duly established. Even the appellants have not raised any objection with regard to presence of PW2-Salma Bano at the spot at the time of the incident. The possibility of PW2-Salma Bano being won over subsequently is evident in this case. She had no reason to falsely implicate the appellants in the first place. Her statement-on the basis of which the FIR was recorded, was nearly identical with the dying declaration of the deceased. Pertinently, PW2-Salma Bano had deposed at the trial of Naseem on 10.11.2000, and she had narrated

the entire incident-including the culpable role played by the two appellants herein. That testimony of PW2-Salma Bano was believed qua Naseem and he was convicted by the trial court and his appeal also dismissed by this Court. She turned hostile qua the appellants only on 08.02.1011. Pertinently, she is also related to the accused Mohd. Raees being the estranged husband of her deceased sister, and the accused Mohd. Anees being her sister's step sons. Yet she failed to identify them in the Court on 08.02.2011. Interestingly, it was not the defence of the accused that they are not Mohd. Raees and Mohd. Anees, and they have been falsely identified as the said persons. The hostile testimony of PW2-Salma Bano is also at cross purposes with the testimony of PW15-Sameena-Daughter of the deceased. Thus, the statement of PW2 recorded on 08.02.2011-insofar as she turned hostile, appears to be completely unreliable. It is, even otherwise, falsified by other evidence led by the prosecution. Thus, we reject the hostile testimony of PW2-Salma Bano and accept her testimony recorded on 10.11.2000 in the trial against Naseem-which was adopted as the examination in chief in the present trial.

26. The decisions relied upon by the appellants, and taken note of in para 7 above do not get attracted in the facts of this case. They do not advance the case of the appellants. Consequently, reliance placed on these decisions is misplaced.

27. In view of the above discussion, we are of the view that the prosecution had successfully established the guilt of the appellants beyond reasonable doubt. As noticed above, the appeal filed by co-

accused Naseem against his conviction has already been dismissed by this Court. Keeping in view the testimony of PW2-Salma Bano, PW15-Sameena, the dying declaration Ex.PW14/C, the testimonies of the two doctors PW5 and PW6, and the post mortem report of the deceased, we are of the considered opinion that there is sufficient evidence on record to convict the appellants for the offences charged. The appellants have failed to make out any ground in support of the present appeal. The appeal lacks any merit and the same deserves dismissal.

28. Consequently, the present appeal is dismissed. The conviction and sentence of the appellants is sustained.

P.S. TEJI, J

VIPIN SANGHI, J

APRIL 27, 2018

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