

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D No. 154 of 2019 (O&M)

Reserved on : 30.8.2019

Date of decision : 3.9.2019

Sanjay and another Appellant

versus

State of Haryana ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Keshav Pratap Singh, Advocate, for the appellants.
Mrs. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal has been instituted by appellants Sanjay and Sunil, against judgment dated 21.1.2019 and order dated 24.1.2019, passed by learned Additional Sessions Judge-cum-Judge Special Court for Heinous Crime against Women, Hisar, in Sessions Case No. 85-SC of 2017. They were charged with and tried for the offence punishable under Sections 302, 304-B, 328 and 498-A read with Section 34 of the Indian Penal Code. They were convicted and sentenced under Sections 302 read with Section 34 and 328 read with Section 34 IPC. They were acquitted of the charges framed against them under Sections 304-B and 498-A read with Section 34 IPC. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo life imprisonment and to pay fine of ₹ 5,000/- each and in default of payment of fine, to undergo further imprisonment for a period of two months. They were also convicted and sentenced under Section 328

read with Section 34 IPC to undergo rigorous imprisonment for five years and to pay fine of ₹ 2,000/- each and in default of payment of fine, to undergo further one month imprisonment. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 12.4.2017, a telephonic message was received in the police station regarding the admission of Anjali wife of Sanjay Sharma due to consuming of poisonous substance in General Hospital, Hisar. However, Assistant Sub-Inspector Jai Singh could not reach the hospital due to busy schedule. On 13.4.2017, a message was received to the effect that Anjali died during treatment in PGI, Agroha. Assistant Sub-Inspector Jai Singh along with EHC Subhash reached Medical College, Agroha, where Yogesh, the brother of deceased Anjali was found present. He recorded his statement to the effect that he was in the business of property dealing. Anjali was his youngest sister. The marriage of Anjali was solemnized with Sanjay, resident of village Badhawar as per Hindu rites about three years ago. At the time of marriage, sufficient dowry articles were given. From the wedlock of his sister, one daughter was born. The in-laws of his sister harassed her and gave beatings for bringing insufficient dowry. Accused Sanjay was having illicit relations with Reena wife of Sunil, brother of Sanjay. Anjali saw both of them in compromising condition. Anjali told this fact to him and other family members. On 12.4.2017 at about 5.00 P.M., Sanjay and Sunil took his sister Anjali on motorcycle no. HR-80-7386. They threw her in front of their house and fled away from the spot. She was vomiting at that time. They took her to General Hospital, Hisar, from where she was referred to PGI, Agroha. On 12.4.2017, Anjali told that she saw Reena and Sanjay in

compromising position. She objected for that. Upon which, Reena, Sanjay and Sunil gave beatings to her. They took her in the fields and forcibly administered some poisonous substance to her. They caused the death of Anjali. FIR was registered. The post-mortem examination was conducted. The motorcycle was also got recovered. The investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined 16 witnesses in support of its case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Yogesh deposed that they were four brothers and sisters. Anjali was married with Sanjay. Her in-laws never demanded dowry. She was not harassed for bringing insufficient dowry. She used to remain in depression and due to mistake, she consumed some poisonous substance in place of medicine. She became unconscious and fell down on the ground, due to which, she received some injuries and later on, she expired. Accused Sanjay and Sunil have never beaten her. They were not at fault. Accused persons never administered poison to his sister Anjali. He was declared hostile and cross-examined by the learned Public Prosecutor. He denied the

statement, Ex.P1. However, he admitted his signatures on Ex.P1. According to him, his signatures were obtained on blank papers by the police. He had not given statement, Ex.P2, to the police. He admitted his signatures on recovery memo, Ex.P3. According to him, his signatures were obtained on blank papers. He had also denied the contents of statement Ex.P4. According to him, he had not given the statement, Ex.P4. He had admitted his signatures on recovery memo, Ex.P5, however, voluntarily told that police had obtained his signatures on blank papers. At the time of recording his cross-examination by the learned Public Prosecutor, a CD, Ex.P6, was taken out. The audio-video CD was played and shown to the witness in the Court. The Court put five questions which were answered by the witness. The same are reproduced hereunder:-

“Q1. Whether in the CD, the video is of your sister namely Anjali ?

Ans. Yes.

Q2 Whether you were present at the time of preparing of CD ?

Ans. Yes, I was present there and the recording was prepared by my friend Rakesh through mobile and I was standing near at that time.

Q3. Whether in audio video CD, there is voice of your sister ?

Ans. Yes.

Q4. Whether the conversation in the audio video CD is same, which was recorded at that time ?

Ans. Some contents are same and some are different.

Q5. On asking of the court that what are the different contents, you observed after watching the CD ?

Ans. Witness is not able to explain.”

PW1 Yogesh also denied the contents of dowry articles Ex.P7. According to him, he had not given the list, Ex.P7, to the police. His signatures were obtained by the police on some blank papers. In his cross-examination by the learned defence counsel, he deposed that he had wrongly stated in the examination-in-chief that the voice in CD was of his sister. The CD was again played. He deposed that the voice was not of his sister.

7. PW2 Bindu Sharma has not supported the case of the prosecution. According to her, Anjali used to remain in depression and due to mistake, she consumed some poisonous substance in place of medicine. After consuming, she became unconscious and fell down on the ground due to which she received some injuries and later on she expired. She was never beaten by accused Sanjay and Sunil. She was declared hostile and cross-examined by the learned public prosecutor. She denied the contents of statement, Ex.P11. In her cross-examination by the learned defence counsel she deposed that accused Sanjay and Sunil never harassed or maltreated Anjali. She had consumed poison by mistake in place of medicine as she was under depression, due to that she fell down and suffered some injuries.

8. PW3 Keshav also denied the allegation of the prosecution for demand of dowry. He denied the contents of statement, Ex.P12. He was confronted with the statement, Ex.P12. In his cross-examination by the learned defence counsel, he deposed that Sanjay and Sunil never harassed or maltreated his cousin Anjali. She had consumed poison by mistake in place of medicine as she was under depression due to that she fell down and suffered injuries.

9. PW4 Purshotam deposed that accused Sanjay and Sunil never harassed or maltreated deceased Anjali for demand of dowry. She was kept

properly by them. She had consumed some poisonous substance in place of medicine due to depression. He was declared hostile by the learned Public Prosecutor and cross-examined. He denied the contents of statement, Ex.P13. He was confronted with statement, Ex.P13. In his cross-examination by the learned defence counsel, he deposed that accused Sanjay and Sunil never harassed or maltreated his niece Anjali. She had consumed poison by mistake in place of medicine as she was under depression due to that she fell down and suffered some injuries.

10. PW5 Ravinder Sharma is the father of deceased Anjali. He also did not support the prosecution case. He was also declared hostile by the learned Public Prosecutor and cross-examined. He denied the contents of statement, Ex.P15. In his cross-examination by the defence counsel, he deposed that accused Sanjay and Sunil never harassed or maltreated his daughter Anjali on account of dowry. His daughter Anjali told him that she had consumed poison by mistake in place of medicine as she was under depression due to that she fell down and suffered some injuries. The police had obtained his signatures on some blank papers.

11. PW6 Rameshwar Dass had prepared site plan, Ex.P18.

12. PW10 ASI Jai Singh deposed that on 12.4.2017 he was posted as I.O. He could not reach the hospital on 12.4.2017. He went to the hospital on 13.4.2017. He moved application, Ex.P19, for taking medical report of deceased from the doctor. He received bed head ticket of deceased from the record. He recorded statement of PW1 Yogesh son of Ravinder Sharma vide Ex.P1. He read over the statement to him and he put his signature at point-A. He attested the statement, Ex.P1. He made endorsement, Ex.P20, on the basis of which FIR was registered. The post-mortem was got conducted. He

along with SI Ishwar Singh reached at the residence of complainant Yogesh.

The Investigating Officer prepared the rough site plan of place of occurrence on the pointing out of complainant Yogesh. The Investigating Officer lifted vomiting stained soil from the spot and converted the same into sealed parcel with the seal of BS and taken into possession vide recovery memo Ex.P23. In his cross-examination, he deposed that it took about 45 minutes in recording the statement of PW1 Yogesh. They also tried to join independent witness but people present at the spot showed their helplessness.

13. PW12 Dr. Harish Aggarwal had conducted the post-mortem examination. Copy of the post-mortem report is Ex.P26. The cause of death of Anjali was aluminum phosphide, which was sufficient to cause death in ordinary course of nature. In his cross-examination, he deposed that injury no.1, as mentioned in the post-mortem report, was caused due to light blunt force. He tendered his evidence by filing affidavit, Ex.PW12/A.

14. PW13 PSI Ishwar Singh deposed that on 13.4.2017 he visited the place of occurrence. He prepared the rough site plan, Ex.P27, at Shiv Nagar 12 Quarter, Hisar. Motor-cycle was taken into possession vide recovery memo Ex.P3. On the same day, he visited the second place of occurrence and prepared rough site plan, Ex.P28 on pointing out of PW1 Yogesh. He lifted vomiting stained earth. The same was converted into sealed parcel with the seal of BS. He deposed that on 14.4.2017, PW1 Yogesh (complainant) had handed over to him one compact disc Ex.P6 and list of dowry articles, Ex.P7. The same were taken into possession vide recovery memo Ex.P5, which was attested by PW1 Yogesh. On the same day, he arrested accused Sanjay and Sunil. Accused suffered disclosure

statements, Ex.P27 and Ex.P28, respectively. The accused got demarcated the place of occurrence vide memo Ex.P29. The accused denied earlier disclosure statements and suffered fresh disclosure statements, Ex.P30 and Ex.P31, respectively. These were attested by Constable Vijay and Constable Jugbir. He prepared memo of demarcation, Ex.P32. In pursuance of disclosure statement, accused Sanjay got recovered dowry articles from his house. He also prepared rough site plan of place of recovery Ex.P34. On 1.6.2017, he moved application Ex.P35 before the doctor concerned at Government Hospital, Hisar for seeking opinion regarding injuries on the person of the deceased. In his cross-examination, he deposed that motor-cycle was parked in the street outside the house. The distance between Hisar and Khedar was about 30-35 kilometers. No certificate under Section 65-B of the Indian Evidence Act was produced by Yogesh on 14.4.2017 regarding the genuineness of compact disk. He did not sent the CD to any forensic lab for its testing.

15. PW15 Vinod Kumar has produced report of the chemical examiner, Ex.P17.

16. PW16 Dr. Alkesh, Medical Officer, District Civil Hospital, Hisar, had produced the original MLR of deceased Anjali. Copy of bed head ticket is Ex.P38. On 1.6.2017, on the application, Ex.P35, he gave opinion, Ex.P40, that these type of injuries cannot occur during pain of ingestion of poison. On 13.4.2017, patient Anjali was referred to M. A. M. C. Agroha. His affidavit is Ex.PW16/A.

17. The Chemical Examiner Report is Ex.P17, according to which, contents of the exhibits no. 1 and 2 gave positive test for aluminum phosphide. Exhibit 1 was soil and the exhibit 2 was pulanda containing a

green salwar, one duppata magenta colour with black lining and one printed colourful shirt.

18. According to PW12 Dr. Harish Aggarwal, the cause of death of Anjali was aluminum phosphide, which was sufficient to cause death in ordinary course of nature. This opinion was given after going through the post-mortem report, Ex.P26, and Chemical Examiner Report, Ex.P17.

19. PW16 Dr. Alkesh had given his opinion, Ex.P40. According to him, these types of injuries cannot be made during pain of ingestion of poison.

20. PW1 Yogesh has lodged the report, Ex.P1, on 13.4.2017 to the effect that his sister Anjali was married with appellant Sanjay three years ago. She was harassed and maltreated for bringing insufficient dowry. The accused have administered poison to her and thereafter threw her in front of his house and fled away. She told that on 12.4.2017, she saw her husband Sanjay in compromising condition with Reena, wife of accused Sunil. When she objected to this, she was taken to the fields and forcibly administered Celphos tablets. The accused had thrown her at 12 Quarter road near house. On seeing the people of locality, they fled away from the spot after leaving the motor-cycle. She was taken to the hospital. Police recorded the statement of PW1 Yogesh on 13.4.2017. The motor-cycle was taken into possession. PW1 Yogesh put his signatures on the statement.

21. While appearing as PW1 Yogesh Kumar has not supported the case of the prosecution in its entirety. He was declared hostile. However, when in the Court, the audio-video CD was played and shown to him, he admitted the video to be of his sister. He also admitted that he was present when the CD was prepared by his friend Rakesh through mobile. He was

standing near at that time. He recognised the voice of his sister. The Court also put a question whether the conversation in the audio video CD was same, which was recorded at that time, to which he answered that some contents were same and some were different. Ex.P6 was handed over by him to PW13 PSI Ishwar Singh. As per PW13 PSI Ishwar Singh on 14.4.2017, PW1 Yogesh had handed over to him one compact disc Ex.P6 and list of dowry articles, Ex.P7. The same were taken into possession vide recovery memo Ex.P5. It was attested by PW1 Yogesh. Though PW1 Yogesh has denied his statement, but he has admitted his signatures on Ex.P1. He denied his statement by stating that the police has obtained his signatures on the blank papers. Similarly, PW2 Bindu Sharma, PW3 Keshav, PW4 Purshotam and PW5 Ravinder Sharma father of the deceased, have not supported the case of the prosecution, but admitted their signatures on Ex.P11, Ex.P12, Ex.P13 and Ex.P15, respectively. PSI Ishwar Singh, who appeared as PW13, has also deposed that recovery memo, Ex.P5, was attested by PW1 Yogesh.

22. Learned counsel for the appellants have vehemently argued that no certificate as per Section 65-B of the Indian Evidence Act was produced by the prosecution. But the fact of the matter is that Video CD was prepared by Rakesh with his mobile phone. He was not holding any authority. Thus, no certificate was required to be produced by him. The Video CD was played in the Court and PW1 Yogesh has admitted the contents of the same.

23. The genesis of the occurrence is that Anjali had seen her husband with Reena wife of Sunil in compromising position. She objected to that. Upon which, Reena, Sanjay and Sunil, husband of Reena, gave beatings to Anjali and took her to the fields and forcibly administered her

some poisonous substance. The accused had thrown her in front of the house of PW1 Yogesh. On seeing the people, they fled away from the spot leaving the motor-cycle. The motor-cycle was got recovered from the spot. The police has lifted vomiting stained soil from where Anjali was dropped in front of the house and her clothes. The police also visited the spot where she was administered poisonous substance. According to Chemical Examiner Report, Ex.P17, contents of the exhibits no. 1 and 2 gave positive test for aluminum phosphide. Exhibit 1 was soil and the exhibit 2 was pulanda containing clothes of the deceased. Deceased Anjali was shifted to hospital by the complainant party. They had to explain the manner in which she has died. According to the witnesses, she was suffering from depression, however, no evidence was placed on record regarding her treatment. The witnesses though have resiled from their statements but have admitted their signatures on the statements. It is not the case of the appellants that Anjali had gone to her parents' house, rather she was administered poison and thereafter thrown by her husband Sanjay and Sunil in front of the house of the complainant. She could not travel the long distance after taking poison from her matrimonial house to her parents' house. As per opinion, Ex.P40, of PW16 Dr. Alkesh, the injuries could not occur during pain of ingestion of poison. In fact, she was administered beatings and thereafter administered poison by the appellants.

24. Their Lordships of Hon'ble the Supreme Court in Bhagwan Singh vs The State of Haryana, AIR 1976 Supreme Court 202 have held that where the Court gives permission to the Prosecutor to cross-examine his own witness, thus characterising him as, a hostile witness, that fact does not completely efface his evidence. The evidence remains admissible in the trial

and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. Their Lordships have held as under:-

“8. We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the Prosecutor to cross examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 I.P.C. There is, therefore, clear abetment by the appellant of the offence under Section 161 I.P.C. And the ingredients of Section 165-A I.P.C. are established against him.”

25. Their Lordships of Hon'ble the Supreme Court in State of Uttar Pradesh vs. Chet Ram and others, AIR 1989 Supreme Court 1543 have held that entire evidence of hostile witness does not get excluded or rendered unworthy of consideration because he is declared hostile. Their Lordships have held as under:-

“13. PW-5, in our opinion, has been wrongly declared a hostile witness to the prosecution. He has deposed that he too went to Kishori's house on hearing her alarm and that PW-3, who had gone ahead of him had scaled over the wall and entered the house and opened the front door and thereafter he and Behari went inside the house and noticed the three respondents fleeing from Kishori's house to their house by jumping over the partition wall. The only reason why PW-5 had been declared hostile was that he had failed to say that besides seeing the respondents running away, he had seen them also attacking Kishori. In the very nature of things PW-5 could not have seen the actual attack on Kishori or the removal of her jewels because he had entered the house only after PW-3 had gone inside and opened the front door. Naturally, by the time PW-5 went inside the house, the attack must have been over and as such, he would have been able to see only the respondents running away to their house. Except that he had not seen the actual attack on Kishori, PW-5's evidence is in line with the evidence of PW-6 in all aspects. In fact he has also stated that Buddhi and Puttu were carrying a knife and sooja respectively and that a lantern was burning in Kishori's house on that night. The High Court has unfortunately failed to advert to any of these matters and has been carried away only by his stray statement in cross-examination that Kishori was unconscious when he reached the house. The High Court has brushed aside his entire evidence, which fully corroborates PW-3, merely on the ground he had been declared a hostile witness. The High Court has failed to bear in mind that merely because a witness is declared hostile, his entire evidence does not get excluded or rendered unworthy of consideration.”

26. Their Lordships of Hon'ble the Supreme Court in Paramjeet Singh @ Pamma vs. State of Uttarakhand, AIR 2011 Supreme Court 200 have held that evidence of hostile witness need not to be rejected en bloc but should be considered with caution. The Court should look for corroboration. Their Lordships have held as under:-

“17. The fact that the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide : State of Rajasthan v. Bhawani & Anr.,(2003) 7 SCC 291)

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22. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”

27. The same principle has been reiterated by their Lordships of Hon'ble the Supreme Court in Shyamal Ghosh vs. State of West Bengal, AIR 2012 Supreme Court 3539, where Their Lordships have held that the statement of hostile witness that supports the prosecution can be relied upon. Their Lordships have held as under:-

“33. It was contended that some of the witnesses had turned hostile and have not supported the case of the prosecution. In this regard, reference has been made to

PW13 and PW23. PW13 admitted that he was a rickshaw puller of rickshaw No. 4. He also stated that he was not examined by the police. It was at that stage that the learned prosecutor sought permission of the Court to declare him hostile, which leave was granted by the Court. This witness stated that there were 10 rikshaw pullers at Nandan Kanan and he used to park his rikshaw from 7.00 a.m. to 10.00 a.m. at that stand, while in the afternoon, he used to park his rikshaw at the Sodhpur Railway Station. He denied having seen the accused persons loading the gunny bags into the Maruti Van and also receded completely from his statement made under Section 161 of the Cr.PC. The other witness is PW23 who was a witness to the recovery of the Maruti Van. According to this witness, the Maruti Van was parked in his parking lot. However, on 30th November, 2003 Manik Das had taken out the vehicle from the parking and again returned at mid night. With regard to his signature on the seizure memo which he accepted as Exhibit 13, he took up the plea that he was made to sign blank papers.

The mere fact that these two witnesses had turned hostile would not affect the case of the prosecution adversely. Firstly, it is for the reason that the facts that these witnesses were to prove already stand fully proved by other prosecution witnesses and those witnesses have not turned hostile, instead they have fully supported the case of the prosecution. As per the version of the prosecution, PW23 was witness to the recovery of the Maruti Van along with PW24, PW25 and PW26. All those witnesses have proved the said recovery in accordance with law. They have clearly stated that it was upon the statement of Manik Das that the vehicle had been recovered. Other witnesses have proved that the said vehicle was used for carrying the gunny bags containing the mutilated parts of the dead body of the deceased.

Firstly, PW13 is a witness who was at the railway station rickshaw stand along with other two witnesses namely PW9 and PW11 who have fully proved the fact as eye-witnesses to the loading of the gunny bags into the Maruti van. Secondly, even the version given by PW13 and PW23 partially supports the case of the prosecution, though in bits and pieces. For example, PW23 has stated that the driver of the Maruti Van was Manik Das and also that he had taken out the vehicle from the parking lot at about 9.30 p.m. on the day of the incident and had brought it back after mid-night. He also stated that this car was being driven by Manik Das. Similarly, PW13 also admitted that other rickshaws were standing at the stand. This was the place where PW9 and PW11 had seen the loading of the gunny bags into the Maruti Van. In other words, even the statements of witnesses PW13 and PW23, who had turned hostile, have partially supported the case of the prosecution. It is a settled principle of law that statement of a hostile witness can also be relied upon by the Court to the extent it supports the case of the prosecution. Reference in this regard can be made to the case of Govindaraju @ Govind v. State by Sriramapuram P.S. & Anr. [(2012) 4 SCC 722].”

28. Their Lordships of Hon'ble the Supreme Court in Attar Singh vs. State of Maharashtra, (2013) 11 Supreme Court Cases 719 have held that it cannot be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in cross-examination, there is no ground to reject his testimony in toto. The Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of statement of hostile witness inspires confidence, it can be relied upon. Their Lordships have held as under:-

“14. We have meticulously considered the arguments advanced on this vital aspect of the matter on which the conviction and sentence imposed on the appellant is based. This compels us to consider as to whether the conviction and sentence recorded on the basis of the testimony of the witness who has been declared hostile could be relied upon for recording conviction of the appellant-accused. But it was difficult to overlook the relevance and value of the evidence of even a hostile witness while considering as to what extent their evidence could be allowed to be relied upon and used by the prosecution. It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well-settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this Court in the case of Syad Akbar vs. State of Karnataka reported in (1980) 1 SCC 30 whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety.

15. Similarly, other High Courts in *Gulshan Kumar vs. State* (1993) CrL.L.J. 1525 (Del.) as also *Kunwar vs. State of U.P.* (1993) CrL.L.J. 3421 (All) as also *Haneefa vs. State* (1993) CrL.L.J. 2125 (Ker) have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in *State of U.P. vs. Chet Ram* reported in AIR 1989 SC 1543, (1989) CrL.L.J. 1785; it was held that if some portion of the

statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of Shatrughan vs. State of M.P. (1993) Cr.L.J. 120 (MP) that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in Sat Paul vs. Delhi Administration AIR 1976 SC 294.

16. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.

17. While examining the instant matter on the anvil of the aforesaid legal position laid down by this Court in several pronouncements, we have noticed that the support rendered by the daughter Mangibai approving the incident should be accepted as reliable part of evidence in spite of she being a hostile witness. The witness Mangibai's evidence pushes the accused with his bag to the wall and the accused is obliged to explain because her evidence shows that the accused was the only person in the company of the deceased soon before the death. The defence of the accused that Nagibai's injury was a result of fall is ruled out by medical evidence and the details

available of the location in the panchnama of offence. The courts below thus have rightly drawn some support from the reports of the chemical analysis since all the articles of the victims and clothes of the accused are found having blood stains of human blood group A. This was in view of the fact that the results of the analysis for determination of the blood group of the victim and accused were conclusive when blood sent to phial was analysed. Thus, the evidence of the daughter of the deceased coupled with other material as also evidence of other witnesses i.e. Ramesh, Khandu, Bhatu and Makhan, provided a complete chain and the prosecution successfully proved that the incident occurred in the manner and the place which was alleged.”

29. Their Lordships of Hon'ble the Supreme Court in Shafhi Mohammad vs State of Himachal Pradesh 2018 (2) SCC 801, have held that requirement of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in position to produce such certificate being in control of the said device and where electronic evidence is produced by a party not in possession of device, Sections 63 and 65 of the Evidence Act can certainly be invoked. Thus, requirement of certificate under Section 65B(4) of the Evidence Act is not always mandatory. Paras 5 and 14 of the judgment are extracted below:-

“5. An apprehension was expressed on the question of applicability of conditions under Section 65B(4) of the Evidence Act to the effect that if a statement was given in evidence, a certificate was required in terms of the said provision from a person occupying a responsible position in relation to operation of the relevant device or the management of relevant activities. It was submitted that if the electronic evidence was relevant and produced by a

person who was not in custody of the device from which the electronic document was generated, requirement of such certificate could not be mandatory. It was submitted that Section 65B of the Evidence Act was a procedural provision to prove relevant admissible evidence and was intended to supplement the law on the point by declaring that any information in an electronic record, covered by the said provision, was to be deemed to be a document and admissible in any proceedings without further proof of the original. This provision could not be read in derogation of the existing law on admissibility of electronic evidence.

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14. The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B (4) is not always mandatory. ”

30. The contents of Ex.P6 are required to be treated as dying declaration under Section 32 of the Indian Evidence Act. She has attributed

the cause of death to the appellants of forcibly administering poison to her.

She was admitted in the hospital on 12.4.2017, where she died on 13.4.2017. She orally told PW1 Yogesh and her relatives the manner in which, she was administered poison and thrown in front of her parents' house by the appellants. Her oral statement is required to be treated as dying declaration.

31. The trial court has correctly appreciated the evidence brought on record by the prosecution and found the accused guilty. No interference is called for in the well reasoned judgment and order recorded by the learned Court below. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

3.9.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No