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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25th February, 2019
Judgment pronounced on: 22nd April, 2019

+ **CRL.A. 258/2012**

STATE

....Appellant

Through: Ms. Radhika Kolluru, APP for State with SI
P.L. Meena, PS Anand Vihar

versus

DINESH

....Respondent

Through: Mr.J.P. Singh, Adv

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

CRL.A. 258/2012

1. The present Appeal is instituted on behalf of the State under Section 378 of the Code of Criminal Procedure, 1973, (hereinafter referred as "Cr.P.C.") against the impugned judgment dated 21.03.2011 passed by the Court of ASJ, Rohini Courts, Delhi, FIR No. 112/2010, P.S. Aman Vihar, registered under section 302/307/34 of the Indian Penal Code, 1860 (hereinafter referred as "IPC").
2. The brief facts of the case, as distinguished by the learned Trial Court are as under: -

"2. Briefly stated, case of the prosecution is to the effect that Kavita was married to accused Dinesh approximately 10 years before the incident in question. She had three children from such wedlock.

According to Kavita, her husband i.e. accused Dinesh was a drunkard and used to quarrel with her frequently. Kavita was residing at her parental home for last 20-25 days. On 07.04.2010 Dinesh had come at her parental home at about 10.00 PM and quarreled with her. On the fateful day i.e. 08.04.2010, Kavita had come to her matrimonial home at about 7.00 AM. Her father-in-law i.e. accused Ram Prakash told her that she would not be kept anymore and talked of obtaining divorce which resulted in verbal brawl. In no time, Dinesh and his father caught hold of Kavita and accused Prema Devi (mother of Dinesh) lit her by sprinkling kerosene on her. Police learnt about the incident on receipt of DD No.15A. PCR vehicle reached at the spot and she was taken to Sanjay Gandhi Memorial Hospital. Her husband Dinesh also accompanied her. SI Kamal Singh was entrusted with initial investigation. He reached the spot immediately but when he learnt that injured had already been rushed to hospital, he reached there and contacted doctor. Kavita was found to be conscious and oriented and her statement was recorded in the presence of doctor. In her such statement, she categorically leveled allegations against all the three accused persons. Initially, case was registered under Section 307 IPC. Since later on Kavita succumbed to burn injuries, penal section was converted from Section 307 IPC to Section 302 IPC. Police carried out further investigation and recorded statements of other close relatives of Kavita. Some of them also claimed that when Kavita was admitted in the hospital, she had told them also that accused persons had put her on fire. It is in these circumstances that accused persons have been arrested and charge-sheeted.”

3. After investigation was over, charge-sheet against the accused persons was filed before the Court for the offences punishable under Sections 302/34 of the IPC and charges were framed against the accused persons for the said offences. To substantiate the accusation, prosecution examined twenty-eight witnesses in all to prove its case. Statement of accused persons under Section 313 of Cr.P.C was recorded wherein they pleaded their innocence and stated that Kavita had come to their house with a *panni* containing clothes and poured kerosene on herself, people also gathered there but Kavita was adamant and in no time she burnt herself with the help of a matchstick. Respondent-1 further stated that he along with his parents had attempted to save her and in the process he and his father got burnt. They led one witness in their defence.
4. The learned Trial Court, upon analysis, examination, and evaluation of the prosecution evidence and after considering the rival submissions recorded acquittal in favour of the accused persons for the charged offences.
5. Aggrieved by the impugned judgment, Ms. Radhika Kolluru, learned APP argued that the impugned judgment passed by the Trial Court was perfunctory in nature, full of conjectures and surmises and therefore liable to be set aside. She further contended that the impugned judgment was a glaring case of legal defects resulting in grave failure of justice.
6. Learned APP, further submitted that the Trial Court erred in not considering the dying declaration of the deceased and that the dying

declaration is sufficient to convict the accused persons for the offence committed by them.

7. Learned counsel for the State further relied on the MLC of the deceased victim emphasizing that she suffered 90% burn injuries which proves that it is a case of homicidal death and not suicidal death. Learned APP further contended that the Trial Court has given undue importance to the time when the dying declaration was recorded.
8. Learned counsel further contended that the MLC of Dinesh (Ex. PW-21/A) and MLC of Ram Prakash (EX.-PW-21/B) fortifies the case of prosecution that deceased has been burnt alive by accused persons.
9. Learned counsel further contended that the learned trial court has erred in relying on the testimonies of PW5, PW6, PW10, PW11, and PW12 who all are relatives of the deceased in favour of the accused persons, under pressure of safety and future of the children. She further contended that learned trial court failed to take into consideration the earlier statements given by PW5 (mother of the victim) and PW6 (brother of the victim) to the police which points towards the guilt of the accused persons.
10. Learned counsel further contended that the testimony of PW13 (Dr. Brijesh) PW16 (Inspector L.C.Yadav) and PW17 (SI Kamal Singh Meena) are consistent and trustworthy which further finds support from the dying declaration, DD entries, MLC and post mortem report establish the guilt of the accused persons beyond reasonable doubts.
11. Per contra, Mr.J.P. Singh counsel for the Respondents contended that there are serious doubts about the authenticity of the dying declaration

as the same has not been recorded in the presence of the SDM. Learned counsel for the respondents further contended that the dying declaration cannot be relied upon as the deceased was not in a fit state of mind, moreover, no certificate was given by the Doctors stating that the deceased was fit for statement. He further contended that as per the testimony of PW13/the examining doctor, the deceased was administered with injections which proves that the deceased was not in a fit state of mind.

12. The learned counsel further contended that the relatives of the deceased have turned hostile and have failed to support the case of the prosecution clearly suggesting the innocence of the accused persons. Lastly, he stated that Kavita had committed suicide as she lit herself on fire on 08.04.2010, and considering the same, the guilt of the respondents is not proved and thus, the impugned judgement should not be set aside.
13. We have heard the learned counsel for the parties and perused the material on record.
14. At the outset it is relevant to peruse the law laid down by the Apex Court with regard to admissibility of a dying declaration. In ***Atbir v. Government (NCT of Delhi): 2010 (9) SCC 1*** Apex Court held as under:

22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) *The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*

(iii) *Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*

(iv) *It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.*

(v) *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*

(vi) *A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*

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

(viii) *Even if it is a brief statement, it is not to be discarded.*

(ix) *When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*

(x) *If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.*

15. When reliance is placed upon dying declaration, the court must be satisfied that the dying declaration is true, voluntary and not a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind.
16. In ***State of Uttar Pradesh v. Ram Sagar Yadav and Ors.: (1985) 1 SCC 552***, Supreme Court held that if the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. In this context, the observations made in para (13) of the judgment are relevant to be noted:

“It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. (See Khushal Rao v. State of Bombay: 1958 SCR 552; Harbans Singh v. State of Punjab: 1962 Supp. 1 SCR 104; Gopalsingh v. State of M.P.: (1972) 3 SCC 268). There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the court may, for its assurance, look for corroboration to the dying declaration.”

17. In light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. If, after careful scrutiny, the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and

consistent, there shall be no legal impediment to make a basis of conviction, even if there is no corroboration.

18. In this context, let us consider the statement/dying declaration of Kavita and its acceptability. The same is reproduced below:

“Stated that I live at said address with family and I do household work. I was married to Dinesh 10 years back. I have three children. Age of eldest daughter is seven years. My husband takes alcohol which always resulted in quarrel in the house. That for the last approximately 20-25 days, I was living at tenanted house with my mother at parental home at Sector-20, Rohini, Delhi and yesterday i.e. on 07.04.2010 my husband Dinesh came to my parental home at about 10.00 PM and had beaten me up regarding which I had made a call by dialing 100 and today morning I had come to my matrimonial home from my parental home on 08 it was 7.00 AM when my father in law started claiming that I would not be kept and they would obtain divorce and verbal scuffle ensued upon that and my father in law and husband caught hold of me and my mother in law put me on fire by pouring kerosene on me from a bottle and with the help of matchstick, all the three persons had poured kerosene on me and set me on fire with the intention to kill me. Legal action be taken against them. Heard statement which is found to be correct.”

19. PW-17/SI Kamal Singh Meena who recorded the dying declaration, his testimony reads as under: -

“On 08.04.2010 I was posted at PS Aman Vihar. On that day at 8.05 AM on receipt of DD No.15A (already Ex.PW1/A) reached at H.No. A-109, Mangal Bazar Chowk, Delhi along with Ct. Ram Babu. At the spot we learnt that injured was

removed to SGM Hospital by PCR. At that time, I left the Ct. Ram Babu to protect the scene of incident and reached at SGM Hospital. At that time, injured Kavita was admitted in the hospital and was under treatment and her MLC was not complete. At that time Kavita was fit to make statement as per MLC and in presence of Dr. Brijesh, CMO, SGM Hospital, I recorded her statement already exhibited as Ex. PW13/C and obtained her thumb impression at point B and C.

Cross examination of PW-17:

I reached at the spot at about 8.35 AM. It is correct that matrimonial is situated in a thickly populated residential colony. It is correct that since it was morning hours, most of the occupants were inside their respective houses. I did not make any investigation from any occupants of adjacent house. (Vol. No eyewitness was found). I remained at the spot for 20-25 minutes. House was open. Accused Dinesh was not present but other two accused were present. It is correct that I had seen the hands of accused Ram Prakash in burnt condition. I did not send him to the hospital immediately. There were other ladies also in the house at that time. No one revealed their names and addresses at that time. I reached SGM Hospital at about 9.10 AM by my personal motorcycle. I did not meet any family member of the parental side of deceased at the hospital. Ram Prakash and his wife were sent for medical examination in the evening in the same hospital. Dinesh was also treated at the same hospital. This fact, I came to know later on. It is correct that casualty of hospital is always overcrowded and there is lot of noise. There is a room for police officials outside emergency. I did not call anyone from such room at the time of recording of

statement of victim. I remained at hospital till 10.00 AM or so. No family members from the side of parents of deceased could come there by that time.”

20. The dying declaration was even attested by PW-13/Dr. Brijesh. In order to appreciate this significant issue, relevant portion of testimony of PW-13/Dr. Brijesh is quoted below:

“On 08.04.2010 I was posted as aforesaid. On that day one Kavita wife of Dinesh was brought to Casualty Department with alleged history of thermal burns at about 8.45 AM. She was examined by Dr. Priyanka who was working as Junior Resident under my supervision. As per her observations on the MLC Ex.PW13/A patient was found to be conscious and oriented (smell of kerosene oil was present). Vitals of patient Kavita were found to be within normal limits at the time of examination. There were superficial to deep burns all over body (around 90 percent). The patient was referred to surgery for further examination and management. I identify the signatures of Dr. Priyanka at point A as I have seen her writing and signing during discharge of my official duties. My signatures are also there on MLC at point B. Simultaneously, at about 8.45 AM statement of patient Kavita was recorded in my presence by SI Kamal Singh. During the recording of her statement, I remained throughout and patient was conscious and oriented.

Cross examination of PW-13:

At 8.45 AM, the patient was brought in casualty. She was made stable within five minutes. Thereafter, her statement was recorded. There is no certificate on Ex. PW13/B that Kavita was fit for making statement. This statement was

recorded in the casualty. Dr. Priyanka and Dr. Samad were also present besides me. It is correct that their signatures are not there on Ex. PW13/B. SI Kamal Singh was also present. No family member from the side of Kavita was present at that time. I cannot tell the exact time taken in recording of statement. The statement was recorded by SI Kamal Singh ad verbatim. SI Kamal Singh made enquiries from her in one go and after hearing her, he then recorded the statement in one go. I was present there throughout.”

21. From the perusal of the above testimonies and the dying declaration of the deceased, it is evident that the dying declaration has been made by the deceased which was recorded by the investigating officer in the presence of Dr. Brijesh and the same is not a fabricated document. However, the time recorded on the dying declaration is of essence and dispute, as it does not match the surrounding circumstances.
22. At this stage, it is relevant to examine whether the dying declaration suffers from any infirmity and what were the surrounding circumstances when the alleged incident took place. In this regard it is relevant to peruse the statement of PW5 (mother of the deceased), PW6 (Ramu), PW11 (Lakhan Singh/relative of deceased), PW12 (Rajender/relative of the deceased) and DW1 (neighbour). The same are quoted below:

PW5 examination in chief:

“...My daughter was having mental problem (use dimag me garbar thi). Many a times, she even used to claimed before me that she would commit suicide. She did not have any problem from the side of

accused persons. They all used to keep her properly and used to take good care of her. She had committed suicide due to mental problem. I learnt that at that time, she had bolted the door of her matrimonial house from outside and put herself on fire. My son-in-law Dinesh had broken the door and tried to save her and his hands got burnt in the process. His father is like devta and they all are innocent and I do not know why police have falsely implicated them. My daughter was very short tempered and bad tempered (bahut hi gussail thi).”

“Earlier, due to burn injuries, she was not able to say anything but when she recovered a bit, she told me after six days that she herself had committed suicide. She also told me that she wanted to apologize to her husband and parents-in-law and wanted to meet them in this regard”.

In her cross examination she deposed as under:

“ It is wrong to suggest that Dinesh was drunken and had affair with someone else. It is wrong to suggest that Dinesh and his parents were interested in Divorce and used to beat her up and my daughter Kavita did not want any divorce and therefore, she had been set ablaze by the accused...”

Xxxx xxxx xxxx xxxx

“...It is wrong to suggest that a day before the incident, accused Dinesh had come to our house and had quarreled with Kavita and had beaten her up...”

PW-6 examination in chief:

“Accused persons, present in Court are not responsible for the death of my sister. My sister had herself committed suicide and died.

Cross examination of PW-6:

I had not stated before the police that Kavita refused to go to out of matrimonial house, she was caught by Dinesh and Ram Prakash and accused Prema Devi put kerosene on her and ablazed her. I had not stated before the police that all these facts were told by my sister Kavita to me when I met her. (confronted with portion A to A of statement Ex.PW6/B) ”

PW-11 examination in chief:

“After that, I never met with the police nor I made any statement before the police.”

Cross examination of PW-11:

I had not stated to the police that Dinesh used to complaint that Kavita does not do the household job nor she used to give real acceptance to her husband.”

PW-12 examination in chief:

“I had visited the hospital where Kavita was admitted and she was not in a condition to say anything. I do not know anything else about this case.

Cross examination of PW-12:

I had not stated before the police that due to the reason that accused had relation with some other girl, all the accused persons had ablazed her. (confronted with Portion D to D of the statement Ex.PW12/C where it is so recorded) ”.

23. The Respondents examined one witness, DW-1, Mohd. Parveen Khan, who is their neighbour. In her deposition she had stated that she had seen the deceased entering the house with a *panni*. Her statement is also reproduced below:-

*“All the accused present in court today are my neighbourer and they are residing in my neighbourhood opposite my house. On 08.04.2010 I was present in my house and was standing at the door of my house. Kavita (wife of accused Dinesh) was not living with the accused persons at that time. Kavita had come at about 7.30-8.00 AM at the house of accused persons. I had seen her coming. She was carrying one *panni* and such *panni* was containing oil. She entered the house of accused and straightway went to the first floor of the house. Then I saw her pouring oil on herself. Then she came down and at that time she had already lit herself. At that time, no one else was there at the first floor as accused were already at the ground floor. She was tried to be saved by accused and in the process, her husband and father-in-law who are present in court got burnt. People had also collected at the spot. Kavita was residing separately for last two months and had come that day in the morning.”*

24. The statement of these witnesses who are relatives and neighbour of the deceased depicts that the deceased was short tempered and had suicidal tendencies. It has emerged on record that on the date of the incident the deceased was carrying one *panni* containing some liquid and she poured the same on herself and lit herself.
25. To elucidate the case before us, it is imperative to verify the medical records. The deceased was taken to SGM Hospital on 08.04.2010 and

was examined by Dr. Priyanka, under the supervision of PW13/Dr. Brijesh. MLC was prepared and the same is reproduced below:

“Deep dermo-epidermal burns present all over body, except for palms of both hands, soles of both feet, small part of anterior pelvic region. Skin is peeling off at places, exposing greenish base with foul smell. Face is not burned, scalp hair are signed at places. All body hairs signed at places. Total burn area is about 90% of total body surface area. Death is due to septicemia, consequent upon burn injuries. All injuries are antemortem and could be possible by flames of fire. Time of death as per death summary.”

26. Considering the MLC of the deceased it becomes evident that the victim suffered 90% burn injuries. The deceased had burns all over her body except her face and palms, which distinctly indicate that she had not raised her hands to protect herself. Natural reaction of any person would be to try to protect oneself if kerosene oil is being poured on them. On the other hand, Respondent1 (Husband of the deceased) and Respondent-2 (father-in-law to deceased) had burns on their hands and thighs (as proved through their MLC), signifying that they had tried to diffuse the fire rather than lighting it. The examining doctor also opined that these injuries can possibly be received while trying to save the deceased from fire.
27. Thus, we are of the considered opinion that the deceased must have walked in with a determined mind, as pointed above, there was a per-existing marital discord, there is a possibility of some heated exchange

between the parties which led the deceased to take the extreme step of lighting herself on fire.

28. There is no direct evidence to establish that the Respondents either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. Prosecution has not placed anything on record which ascertains that there was any instance of cruelty or harassment done by the respondents. Moreover, PW5 (mother of the deceased), PW6 (brother of the deceased), PW11(relative of the deceased) have all deposed in favour of the respondents. These aforementioned reasons go on to prove that there had been no prior incident to showcase that the deceased was treated with cruelty at her matrimonial house.
29. Moreover, from the testimony of DW-1 it stands established that Kavita came to the house carrying oil in a *panni*, she had further deposed that 'I saw her pouring oil on herself. Then she came down and at that time she had already lit herself. At that time, no one else was there at the first floor as accused were already at the ground floor.' This establishes the fact that Kavita had put fire on herself, and that none of the Respondents were responsible for this act.
30. Further, there was no evidence or recovery of any container which would have been used to store the kerosene oil at the spot of the incident, in the report of the crime team. They had found matchbox, broken bangles, burnt hair and clothes.
31. The prosecution has thus been unable to convincingly prove its case beyond reasonable doubt. Considering the chain of events and material evidence on record we are of the view that the Respondents were not

responsible for the incident, on the contrary they had tried to save the deceased by trying to diffuse the fire.

32. In our view, therefore, the chain of circumstances as recited above coupled with the law laid down by the Apex Court, unerringly leads to one conclusion that is the innocence of the Respondents. The present appeal is hereby dismissed. The order of acquittal against the Respondents is therefore upheld.

SANGITA DHINGRA SEHGAL, J

SIDDHARTH MRIDUL, J

APRIL 22, 2019/SU

