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

+ CRL.A. 896/2004

RANJEET SINGH

Through

..... Appellant

Ms. Aishwarya Rao, Advocate
(Amicus Curiae)

versus

STATE

Through

..... Respondent

Ms.Aashaa Tiwari, APP for the State
with Inspector Attar Singh, SI Arvind
Kumar, PS Rajouri Garden.

AND

+ CRL.A. 619/2005

BALWANT SINGH

Through

..... Appellant

Ms. Aishwarya Rao, Advocate
(Amicus Curiae)

versus

STATE

Through

..... Respondent

Ms.Aashaa Tiwari, APP for the State
with Inspector Attar Singh, SI Arvind
Kumar, PS Rajouri Garden.

Reserved on: 9th January, 2020

Date of Decision: 21st January, 2020

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:-

1. While Crl.A. No.896/2004 has been filed on behalf of appellant-convict Ranjeet Singh, Crl.A. No.619/2005 has been filed on behalf of appellant-convict Balwant Singh. Both the appeals have been filed challenging the judgment dated 24th August, 2004 and the order on sentence dated 26th August, 2004 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 1040/2001 arising out of FIR No.935/2000 registered with Police Station Rajouri Garden, whereby both the appellant-convicts have been sentenced to undergo imprisonment for life with fine of Rs.500/- under Sections 302/34 IPC.

2. It is pertinent to mention that this Court had suspended the sentence of the appellant-convict Ranjeet Singh vide order dated 18th November, 2006 and of appellant-convict Balwant Singh vide order dated 22nd May, 2007. Thereafter, appellant-convict Balwant Singh has been untraceable and notice could not be served upon him or his sureties. Even the non-bailable warrant issued against him could not be executed on account of his non-availability. Consequently, this Court in accordance with the judgment of the Apex Court in *Christopher Raj vs. K. Vijayakumar*, (2019) 7 SCC 398 and *Shankar Vs. State of Maharashtra*, 2019 LawSuits (SC) 1574 appointed Ms. Aishwarya Rao, Advocate (who was already appearing for co-convict Ranjeet Singh) as the Amicus Curiae to represent appellant-convict Balwant Singh vide order dated 21st October, 2019. Also, despite being granted bail in the present case, appellant-convict Ranjeet Singh is presently lodged in jail on account of other cases registered against him.

CASE OF THE PROSECUTION

3. Briefly stated, the case of the prosecution is that on 28th September, 2000, the appellant-convict Ranjeet Singh had gone to the house of his mother-in-law i.e. Ms. Pyar Kaur (PW-1), where after pouring kerosene over his wife Babbal, he burnt her. The appellant-convict Ranjeet Singh was accompanied by his friend and co-convict Balwant Singh. The appellant-convicts fled the spot after the incident.

4. Thereafter, the deceased was taken to the hospital where her statement (PW-6/B) was recorded by SDM Mr. Vijay Khanna (PW-6) after she was declared fit for statement by Dr. Ajay Kumar Dabas (PW-20). During the course of treatment, the deceased succumbed to her injuries in Safdarjung Hospital on 2nd October, 2000.

FINDING OF THE TRIAL COURT

5. The Trial Court convicted the appellant-convicts under Sections 302/34 IPC and held as under:-

44) Ex. PW6/B is the dying declaration of deceased Smt. Babbal which is in question answer form. From the perusal of Ex.PW6/B, it becomes quite clear that the same is reliable, trust worthy and inspires confidence and can be safely acted upon.

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46)It has been alleged in the dying declaration Ex. PW6/B that accused Balwant Singh had come with her husband accused Ranjeet Singh and they got the door opened and thereafter, the accused Ranjeet had sprinkled kerosene on her and then ignited her with a match stick. Deceased Smt Babbal has allegedly made a statement that accused Ranjeet did not want to keep her as his wife and was even threatening her to kill her. Many a times he had threatened to attack her with a knife.

47) After the door had been opened by the deceased Smt Babbal no effort were made by Accused Balwant Singh to dissuade accused Ranjeet Singh from acting in the manner he ultimately did. Accused Balwant Singh even did not make any attempt to save deceased Smt Babbal when accused Ranjeet Singh was attempting to put kerosene on her and igniting her.

48) In the facts and circumstances of the present case, it is difficult to accept the plea of defence counsel that accused Balwant Singh has no role to play in the death of Smt Babbal.

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50) Considering all the facts and circumstances of the present case, I am of the opinion that prosecution has been able to prove its case against both the accused persons for the offence punishable U/s 302 IPC read with section 34 IPC. I find both the accused persons guilty for the offence punishable U/s 302 IPC read with section 34 IPC and convict them accordingly.”

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICT RANJEET SINGH

6. Ms. Aishwarya Rao, learned counsel for the appellant-convict Ranjeet Singh stated that since the mother of the deceased – Ms. Pyar Kaur (PW-1) and the sister of the deceased – Ms. Jasbeer Kaur (PW-2) had turned hostile, the conviction of the appellant-convict was unsustainable.

7. She contended that there were material contradictions in the statements of the Doctor (PW-20), the SDM (PW-6) and HC Joginder Singh (PW-5) regarding the sequence, time, the people present and the manner of recording of the dying declaration of the deceased. She pointed out that the SDM (PW-6) had deposed that he had dictated the statement of the deceased to his ‘reader’, whereas Dr. Ajay Kumar Dabas (PW-20) and HC Joginder Singh (PW-5) had stated that the SDM recorded the same in his own

handwriting. According to her, the alleged dying declaration of deceased Babbal was not recorded in the prescribed question answer format and was a verbatim copy of the statement of Ms. Pyar Kaur (PW-1) – mother of the deceased. She emphasised that the Doctor had declared the deceased fit for statement at 3:50 pm on 28th September, 2000, but the SDM had arrived one and a half hour later according to HC Joginder Singh (PW-5) and therefore, it cannot be ruled out that the deceased was not fit to give a statement. Consequently, according to her, the dying declaration (Ex. PW-6/B) was unreliable and the conviction based on the same should be set aside.

8. In the alternative, the learned counsel for the applicant-convict Ranjeet Singh prayed that his sentence be reduced by converting the conviction to Section 304 Part II IPC, as the incident had taken place in the heat of the moment and he had no intention to kill.

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICT RANJEET SINGH

9. Ms. Aishwarya Rao, learned Amicus Curiae for appellant-convict Balwant Singh stated that from the evidence on record, it was apparent that no role had been attributed by any witness to the appellant-convict Balwant Singh and the Trial Court had erroneously convicted him. Consequently, she prayed that the appellant-convict Balwant Singh be acquitted.

ARGUMENTS ON BEHALF OF THE STATE

10. *Per contra*, Ms. Aashaa Tiwari, learned APP for the State stated that HC Joginder Singh (PW-5) had moved an application for recording the statement of the deceased on the date of the incident and Dr. Ajay Kumar Dabas (PW-20) had certified the deceased Babbal ‘fit for statement’. She

further stated that after the certification, SDM (PW-6) had arrived at the hospital at about 3.30 p.m and recorded the statement of the deceased Babbal. She relied upon the testimonies of HC Joginder Singh (PW-5), Mr. Vijay Khanna, SDM (PW-6) and SI Ajay Kumar (PW-23). The relevant portions of their testimonies are reproduced hereinbelow:-

A. HC Joginder Singh (PW-5)

“.....I had moved an application to the incharge burn Wards Safdarjung hospital requesting him for recording the statement of Smt. Babbal. The said application is Ex. PW5/8. The same is signed by me at point A. On my application Dr. Ajay Kr. Dabas had declared the patient fit for making a statement at 3.50 PM.....”

B. Mr. Vijay Khanna, SDM (PW-6)

“XXXXXXXX by Sh. Inderjeet Barnala, Cl. for accd. Balwant.

I had received the phone in my office. I had reached Safdarjung at about 3.35 / 3.40 PM. IO of this case and SHO met me first in the hospital. Dr. Ajay Kr. Dabas's seat was in the burns Ward itself and he was present there. My reader had recorded the statement of Smt. Babbal on my dictation. Dr. Dabas had examined Smt. Babbal in my presence on my request and then he wrote his endorsement Ex.PW6/A and thereafter I got the statement of Smt. Babbal recorded which is Ex.PW6/B. I had enquired from Babbal if she wanted to make statement voluntarily and only when she had answered in the affirmative I recorded her statement..... I started recording the statement immediately at 3.50 p.m....”

C. SI Ajay Kumar (PW-23)

“.....I had informed the SHO and SDM at about 2 PM. SDM arrived at hospital at about 3-30 PM. Reader of the SDM had also come along with SDM....”

11. Learned APP for the State also handed over a list of previous cases/involvements of appellant-convict Ranjeet Singh. She stated that he was involved in a number of serious criminal cases and that was the reason why the near and dear ones of the deceased Babbal had turned hostile. The said list is reproduced hereinbelow:-

S. No.	FIR No.	Sections	FIR Date	Police Station	Status of Case	Status of Accused	Present Status Date	Reward Amount
1.	450/2016	186/353/307/34 IPC & 25/27 Arms Act	06/11/2016	Khyala	Pending Investigation	Judicial Custody		
2.	398/2016	307 IPC	29/09/2016	Khyala	Pending Investigation	Judicial Custody		
3.	574/2016	307 IPC	14/09/2016	Sarai Khawaja	Pending Investigation	Judicial Custody		
4.	376/2016	307 IPC	10/09/2016	Khyala	Pending Investigation	Judicial Custody		
5.	243/2016	307/34 IPC	29/05/2016	Khyala	Pending Investigation	Judicial Custody		
6.	45/2010	186/353/307 IPC & 25/27/54/59 Arms Act	18/03/2010	Khyala	Pending Investigation	Arrested		
7.	264/2009	379 IPC	28/10/2009	Subzi Mandi	Pending Investigation	Arrested		
8.	163/2009	25 Arms Act	04/05/2009	Govind Puri	Pending Investigation	Judicial Custody		
9.	456/2004	25 Arms Act 326 IPC		Rajouri Garden				
10.	935/2004	302/34 IPC		Rajouri Garden				
11.	439/2003	20/4/85 NDPS Act		Hari Nagar				
12.	55/2000	25 Arms Act		Roop Nagar	Pending Investigation			
13.	342/2000	379/356/34 IPC		Patel Nagar				
14.	520/2000	379/356/34 IPC		Patel Nagar				
15.	469/2000	379/356 IPC		Pashchim Vihar (E)	Pending Investigation			

16.	365/2000	379/356 IPC		Moti Nagar				
17.	974/1997	25/54/59 A. Act	13/11/2002	Rajouri Garden	Convicted			

12. Ms. Aashaa Tiwari, contended that the Trial Court committed no error in relying upon the dying declaration of the deceased to convict the appellant-convict Ranjeet Singh.

COURT'S REASONING

THIS COURT IS OF THE OPINION THAT THE DYING DECLARATION OF THE DECEASED WAS VOLUNTARY, CORRECT, TRUTHFUL, INSPIRES FULL CONFIDENCE AND WAS MADE IN A FIT AS WELL AS CONSCIOUS STATE OF MIND. THERE IS NO EVIDENCE TO SHOW THAT SHE HAD BEEN TUTORED, PROMPTED OR THE DYING DECLARATION WAS A RESULT OF HER IMAGINATION

13. Having heard the learned counsel for the parties, this Court is of the opinion that the most material evidence in the present case is the statement/dying declaration (Ex. PW-6/B) of the deceased which was recorded on the date of the incident itself by the SDM – Mr. Vijay Khanna (PW-6). The English translation of the said dying declaration (Ex. PW-6/B) is reproduced hereinbelow:-

*“IN THE COURT OF SDM (RAJOURI GARDEN)
MCD MIDDLE SCHOOL : RAM PURA
MEDICAL FITNESS CERTIFICATE*

It is certified that Smt. Babbal W/o Ranjit R/o 93, T.C. Camp (12½) Raghbir Nagar is medically fit / unfit to make a statement.

*Time: 3:50 PM dated 28.09.2000
Name of M.O: Dr. Ajay Kumar Dabas
Sign of M.O.: Ajay Kr. Dabas*

Statement of Smt. Babbal W/o Ranjit Singh R/o. 305, R- Block, Raghbir Nagar (25 Sq. Yds.)

1. *Your name and address:* *Babbal, 305, R Block, Raghbir Nagar, Aged 35 Years.*
2. *When and where the accident took place:* *Today at about 10-11 AM at House No. 93 (12½ sq. yds.) TC Camp Raghbir Nagar*
3. *How did the accident take place:* *Today at about 9.30 AM, I came to my house bearing No.93. At about 10 AM, Ranjit R/o. 305, R. Block, Raghbir Nagar and Balwant who is brother of Mohan Lal and resides in the neighbourhood came over there. They got opened the door.*
4. *At that time who all were with you and what did they do?* *Ranjeet caught hold of me and poured kerosene oil (half) from a can lying nearby on my person and set me afire with the help of a match stick as Ranjit did not want to keep me in his house as his wife and he had been threatening to do away with me for the last few days. He has also threatened to kill me with a knife. Therefore, Ranjit has set me afire by way of pouring kerosene oil on me with an intention to kill me. Legal action may be initiated against Ranjit.*

My marriage took place with one Ashok about 14-15 years ago and out of the said wedlock, a boy namely Sunny was born to us presently aged about 10-12 years.

I was married to Ranjit about 4 years ago with our sweet will. My first husband namely Ashok has expired many years ago. Ranjit and Balwant fled from the spot.

How did you come there?

After sustaining burn injuries, my mother Pyar Kaur removed me to DD Hospital where MLC was prepared and they referred me for Safdarjung Hospital. In the meantime, I went to Khetrupal Hospital, Bali Nagar for getting a good medical treatment from where I was sent to Safdarjung Hospital.

Why were you burnt?

As Ranjit had got some other woman. He had not been liking me for the last one month and repeatedly threatened to do away with me.

RTI of Babbal

*Statement before me
Sd/- Illegible
28.09.2000”*

(emphasis supplied)

14. Perusal of the aforesaid statement reveals that the deceased had categorically named appellant-convict Ranjeet Singh as the person who poured kerosene oil on her and set her on fire on 28th September, 2000. The deceased had also stated that the appellant-convict Ranjeet Singh had been threatening her as he did not want to keep her as his wife.

15. However, before placing reliance on the dying declaration of deceased Babbal (Ex. PW-6/B), it is essential to determine if the same was truthful,

inspired confidence and was made in a fit state of mind. In order to determine the said fact, the testimony of Dr. Ajay Kumar Dabas (PW-20) has to be considered. The relevant portion of his statement is reproduced hereinbelow:-

“...I had given the endorsement on the application of H.C. Joginder Singh by giving my opinion ‘patient is fit for statement’ and she was fit for statement at 3.50 P.M. on 28.9.2000. The application of the H.C. Joginder Singh is Ex. PW5/B and my endorsement is Ex. PW20/A and it is signed by me at point B. I had also issued a medical fitness certificate pertaining to the fitness of Smt. Babbal at the time of recording the statement of Smt. Babbal by SDM. The medical fitness certificate is Ex. PW6/A and which contained the statement of Smt. Babbal and same is Ex. PW6/B. After recording the statement of Smt. Babbal by the SDM Smt. Babbal had put her RTI at points X and D and both the thumb impressions are attested by me at point Y and Z. I had also given the endorsement on the medical fitness certificate and the same is Ex. PW6/A.

XXXXXXX by Sh. Inderjeet Barnala, counsel for accused Balwant.

.....There was no crowd in the burn ward when I had given the fitness of Smt. Babbal.....SDM concerned was present near the bed of Smt. Babbal. Other police officers were also present near the bed of Smt. Babbal when I gave the certificate of fitness at 3.50 P.M. It took about 15-20 minutes in recording the statement of Smt. Babbal by the SDM. I was present when the statement of Smt. Babbal was being recorded. Her statement was recorded by the SDM in his own hand-writing.....Smt. Babbal was lying on the bed when her statement was recorded by the SDM. No relatives of Smt. Babbal were present at that time. Smt. Babbal narrated the whole of the incident to the SDM and then he recorded the statement in one sequence. (Ek dum). It is wrong to suggest that at the time of recording the statement of Smt. Babbal I was not present at the spot.....”

(emphasis supplied)

16. Perusal of the aforesaid statement proves that Dr. Ajay Kumar Dabas (PW-20) has withstood the test of cross-examination and supported the case of the prosecution. His version is corroborated by the testimony of SDM Mr. Vijay Khanna (PW-6), who has deposed as under:-

“.....I in order to satisfy myself again contacted the Dr. and he told me that the patient Smt. Babbal was fit to make a statement. I again obtained the endorsement of Dr. Ajay Kr. Dabas before recording the statement of Smt. Babbal and the endorsement of Dr. Dabas which has been signed by him is at point A. The endorsement is Ex.PW6/A.....”

(emphasis supplied)

17. The contention of the appellant-convict Ranjeet Singh regarding the contradictions in the sequence, time, people present during and manner of recording of the dying declaration of the deceased Babbal is of no help as the said contradictions are minor and immaterial. It is relevant to note that both Dr. Ajay Kumar Dabas (PW-20) and SDM Mr. Vijay Khanna (PW-6) are independent witnesses who have nothing to gain from deposing falsely. They have both consistently stated that no family member of the deceased was present when the statement of the deceased was recorded. Even the alleged contradiction regarding whether the SDM recorded the statement of the deceased himself or his ‘reader’ did upon his dictation is a minor contradiction and is not fatal to the case of the prosecution. The Supreme Court in **A. Shankar vs. State of Karnataka (2011) 6 SCC 279** has held as under:-

“22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction,

creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.”

(emphasis supplied)

18. Further, the contention that there was ambiguity regarding certification of the deceased by the Doctor is contrary to facts and untenable in law. Dr. Ajay Kumar Dabas (PW-20) had not only certified deceased Babbal to be in a fit state of mind to make a statement, but he had also signed each page of the statement of the deceased and deposed that the deceased had made the dying declaration in his presence. In any event, the Supreme Court in ***Laxman vs. State of Maharashtra*** (supra) has held that a medical certificate by a doctor is just a rule of caution and not a prerequisite for recording a dying declaration. The relevant portion of the same is reproduced hereinbelow:-

“3.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.....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.”

19. Consequently, this Court is of the opinion that the statement/dying declaration of the deceased (Ex. PW-6/B) was voluntary, correct, truthful, inspires full confidence and was made in a fit as well as conscious state of mind. There is no evidence to show that she had been tutored, prompted or the statement/dying declaration was a result of her imagination.

THOUGH THE DYING DECLARATION OF DECEASED BABBAL WAS IN QUESTION ANSWER FORMAT, YET THE SUPREME COURT HAS HELD THAT DYING DECLARATION NEED NOT BE RECORDED IN QUESTION ANSWER FORMAT

20. The contention of learned counsel for appellant-convict Ranjeet Singh that the dying declaration of deceased Babbal was not in prescribed question and answer format is contrary to facts inasmuch as the SDM had recorded the statement in question answer format itself. In any event, the Supreme Court in ***Ram Bihari Yadav Vs. State of Bihar & Anr., (1998) 4 SCC 517*** has held that dying declaration need not be recorded in question answer format. The relevant portion of the said judgment is reproduced hereinbelow:-

“9.This Court did not lay down, in any of the aforementioned cases, that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the

maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability.....”

(emphasis supplied)

THE CONTENTION THAT THE DYING DECLARATION OF DECEASED BABBAL WAS A VERBATIM COPY OF HER MOTHER’S STATEMENT IS CONTRARY TO FACTS INASMUCH AS SDM MR.VIJAY KHANNA (PW-6) HAD RECORDED THE STATEMENT OF MS. PYAR KAUR AFTER RECORDING THE DYING DECLARATION OF DECEASED BABBAL

21. The contention that the dying declaration of deceased Babbal was a verbatim copy of her mother’s statement is contrary to facts inasmuch as SDM Mr. Vijay Khanna (PW-6) had recorded the statement of Ms. Pyar Kaur after recording the dying declaration of deceased Babbal. The cross examination of SDM Mr. Vijay Khanna (PW-6) on this aspect is reproduced hereinbelow:-

“I recorded the statement of Smt. Babbal first of all. Statement of Pyar Kaur was recorded outside the burn ward in the Safdarjung hospital.....Immediately after recording the statement of Babbal I recorded the statement of her mother Smt. Pyar Kaur.....”

(emphasis supplied)

IT IS SETTLED LAW THAT IF THE DYING DECLARATION OF THE DECEASED INSPIRES CONFIDENCE, IT CAN BE RELIED UPON TO CONVICT THE ACCUSED PERSON EVEN IN ABSENCE OF CORROBORATION.

22. It is settled law that if the dying declaration of the deceased inspires confidence, it can be relied upon to convict the accused person even in absence of corroboration. A Constitution Bench of the Supreme Court in **Laxman vs. State of Maharashtra AIR 2002 SC 2973** has held as under:-

“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 the deathbed 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 always to 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.....”

HOWEVER, THE DYING DECLARATION IN THE PRESENT CASE IS CORROBORATED BY MLC AS WELL AS RECOVERY OF KEROSENE CAN.

23. It is also pertinent to note that a can containing about 1/4th level of kerosene was seized from the place of incident vide seizure memo Ex. PW-18/C. Even the MLC (Ex. PW-21/A) of the deceased mentions that there was smell of kerosene when she was examined. Consequently, the dying declaration of deceased Babbal (Ex. PW-6/B) is corroborated by her MLC as well as recovery of kerosene can.

THE FACT THAT THE MOTHER AND SISTER OF THE DECEASED HAD TURNED HOSTILE IS INCONSEQUENTIAL INASMUCH AS EVIDENCE ON RECORD IS ENOUGH TO PROVE THE CASE OF THE PROSECUTION.

24. Further, this Court is of the opinion that the fact that the mother and sister of the deceased had turned hostile is inconsequential inasmuch as, evidence on record is enough to prove the case of the prosecution. In fact, keeping in view the criminal antecedents of the appellant-convict Ranjeet Singh, there is a strong likelihood of them deposing under fear. In a similar case where the parents of the deceased had turned hostile, the Supreme Court in *Anjanappa vs. State of Karnataka, 2013 (13) SCALE 608* while confirming the High Court's conviction order, has observed as under:-

“15.....It is sad that even parents did not stand by their daughter. We do not understand how a woman, particularly a mother, turned her back on the daughter. Possibly these witnesses were bought over by the appellant. Such conduct displays greed and lack of compassion. If they were threatened by the appellant and were forced to depose in his favour it is a sad reflection on our system which leaves witnesses unprotected. The reasons why witnesses so frequently turn hostile need to be ascertained. There is no witness protection plan in place.....”

THERE IS EVIDENCE ON RECORD TO PROVE THAT THE APPELLANT-CONVICT RANJEET SINGH HAD INTENTION AS WELL AS MOTIVE TO KILL THE DECEASED BABBAL

25. This Court is of the view that there is no evidence on record to prove that the appellant-convict Ranjeet Singh had burnt the deceased Babbal in the 'heat of the moment'. On the contrary, the deceased had mentioned in her dying declaration (Ex. PW-6/B) that the appellant-convict Ranjeet Singh wanted to "do away" with her as he liked some other woman and he had

been threatening her for about a month prior to the date of the incident. This proves that the appellant-convict Ranjeet Singh had intention as well as motive to kill the deceased Babbal. Consequently, the conviction of the appellant-convict cannot be reduced to Section 304 part II IPC.

SINCE NO ROLE HAS BEEN ATTRIBUTED TO APPELLANT-CONVICT BALWANT SINGH BY ANY OF THE WITNESSES OR THE DECEASED BABBAL IN HER DYING DECLARATION, HIS CONVICTION IS SET ASIDE.

26. As far as the involvement of appellant-convict Balwant Singh in the present case is concerned, this Court is in agreement with the contention of the learned Amicus Curiae that no role has been attributed to appellant-convict Balwant Singh by any of the witnesses or the deceased Babbal in her dying declaration. Even though the deceased had mentioned in her dying declaration that appellant-convict Balwant Singh had come with appellant-convict Ranjeet Singh, yet she had not stated that he had aided or abated the appellant-convict Ranjeet Singh in any manner whatsoever. The fact that he was present at the place of incident and went away with appellant-convict Ranjeet Singh is not sufficient to draw an inference about his “common intention” with appellant-convict Ranjeet Singh. Consequently, in absence of any evidence to show that appellant-convict Balwant Singh had common intention to burn the deceased, his conviction under Section 302 IPC read with Section 34 IPC is unsustainable and is accordingly set aside.

CONCLUSION

27. In view of the aforesaid, this Court sets aside the judgment of the Trial Court qua appellant-convict Balwant Singh and he is acquitted of the

offence punishable under Sections 302/34 IPC. Consequently, CrI.A.619/2005 is allowed and non-bailable warrant issued against Balwant Singh stands cancelled.

28. The conviction and order on sentence passed qua appellant-convict Ranjeet Singh is confirmed and CrI.A.896/2004, being bereft of merit, is dismissed. This Court places on record its appreciation for the services rendered by Ms. Aishwarya Rao, Amicus Curiae. A copy of the judgment be supplied to the appellant-convict Ranjeet Singh through the concerned Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JANUARY 21, 2020

rn/js