

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

% **Judgment delivered on: 20th March, 2020**

+ **CRL. A. 713/2019**

STATE

...Appellant

Through: Mr. Ashish Dutta, APP for State.

versus

KRISHAN KUMAR

...Respondent

Through: Mr. Zeeshan Hashmi, Mohd.
Adil, Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant appeal is arising from the Judgment dated 29.08.2018 passed by the learned Additional Sessions Judge, (EAST)-SPL. JUDGE (NDPS), Kakardooma, Delhi in Session Case No. 387/2016 emanating out of FIR No. 113/2011 registered under Sections 498A and 302 IPC at P.S. Gazipur, Delhi, whereby the respondent/accused was acquitted from the charges levelled against him.

2. The brief facts stated are that on receiving DD No. 41B on 11.04.2011 at 12:40 PM, SI Harpal Singh reached to LBS Hospital where he met with injured Poonam w/o Krishan who was admitted

vide MLC No. 5254/11 with alleged history of intake of acid. Thereafter, IO, SI Harpal Singh requested the concerned SDM, Preet Vihar to visit the hospital. SDM Hukam Singh reached to LBS hospital and met with injured Poonam and recorded her statement Ex.PW2/A.

Statement

Smt. Poonam W/o Sh. Krishan , R/o. A-141, Harijan Basti, Kondli, Delhi in front of S.D.M, Preet Vihar Colony, L.M. Bandh, Shastri Nagar, Delhi at LBS Hospital, Khichari Pur, Delhi, dated 11.04.2011 at 4:45 PM.

Q1. What is your name and narrate the incident?

Answer. My name is Poonam w/o Krishan and she resides at above given address. Her mother got her married from her residence E-13, Kondli with Krishan S/o Bal Krishan resident of A-141, Harijan Basti, Kondli, Delhi on 28.11.2005 as per the Hindu Rites and Customs and dowry was given as per their wishes but no vehicle was given due to which accused used to quarrel with her on daily basis and also used to threaten to kill her brother. Accused used to quarrel with her after taking liquor. Accused was not giving money to meet out the house hold expenses. She has a son who has not been enrolled in any school by the accused. She is being threatened through outsiders too. After beating her at the Matrimonial house accused used to send her to her parental house. The parents of accused avoid their presence in such incident. Accused threatens her to go away from his matrimonial house otherwise she would be killed. Every day accused used to quarrel on one pretext or other. On 11.04.2011 at about 12:30 PM accused made her to ingest acid and ran away. Her husband is responsible for this incident. Legal action be taken against him and maximum punishment be awarded to him. The above statement is read over to her and her statement is based on the voluntariness.

Sd/

(Hukam Singh, SDM)

3. After recording statement of Poonam, statement of complainant was marked to SHO PS Gazipur for necessary action. On basis of complainant's statement, an FIR, FIR No.113/11 was registered under Sections 498A/328 IPC against the accused in PS Gazipur. Investigation of the case was handed over to SI Harpal Singh and accused was arrested on 04.05.2011. SI Harpal Singh collected MLC of the victim. The victim Poonam was discharged from LBS hospital on 21.04.2011. Thereafter, the victim Poonam got herself admitted in LNJP Hospital and got medical treatment from LNJP Hospital on 27.04.2011 at 10:08 AM. She died on 23.09.2011 at about 5:45 PM. IO SI Harpal (Retd.) consequently handed over further investigation of the case to ASI, Bhagwat Dayal and on direction of SDM he got conducted postmortem of deceased Poonam and dead body of Poonam was handed over to her elder brother Lalit Kumar. On 20.05.2012 he collected the post mortem report of deceased Poonam and thereafter, sections 498A and 302 IPC were also added in FIR and he handed over the file to MHC(R). On 13.07.2012, further investigation was handed over to Insp. Ram Dhan and on 28.04.2013 accused Krishan Kumar was arrested from house no. A-141, Kondli, Delhi.

4. After completion of investigation, chargesheet was filed and Charges were framed under Sections 498A/302 IPC against accused on 16.01.2014 to which he pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case, examined 14 witnesses i.e., ASI Jai Prakash (PW1), Hemant Kumar (PW2), Lalit Kumar (PW3), Smt. Kanti Devi (PW4), Smt. Manju (PW5), Retired SI Harpal Singh (PW6), SI Bhagwat Dayal (PW7), Retired Inspector

Ramdhan Singh (PW8), Sh. Hukam Singh (PW9), Dr. Rakesh Singh (PW10), Dr. Mohit Chauhan (PW11), Ct. Yogesh (PW12), Dr. Niranjana Kansakar (PW13) and Dr. A.K. Kakar (PW14). Thereafter, prosecution evidence was closed.

The Statement under Section 313 Cr.P.C. of Accused Krishan Kumar was recorded. Thereafter, defence evidence was closed.

6. After concluding arguments, Court below acquitted the accused from charges framed against him. Aggrieved from impugned Judgment State preferred present appeal.

7. Ld. APP, Ashish Dutta on behalf of the State has submitted that Court below misread evidence on the record and reached to wrong conclusion.

8. Ld. APP further submitted that Hukam Singh PW9 has proved the Dying Declaration Ex. PW2/A of deceased Poonam and as per the dying declaration it was the accused who kept on beating and harassing deceased Poonam at matrimonial house and at last on 11.04.2011 he forcefully administered acid in mouth of the deceased and ran away.

9. Ld. APP further submitted due to administration of acid into mouth of the deceased, deceased died on 23.09.2011.

10. Ld. APP further submitted that prosecution has proved its case on account of ocular evidence of PW2 to PW4 as well as dying declaration Ex. PW2/A, as such, the judgment dated 29.08.2018 be set aside and accused be convicted.

11. Per contra, Ld. Defence Counsel has submitted that prosecution failed to prove its case beyond reasonable doubt.

12. Ld. Defence Counsel has submitted that Court below has rightly appreciated evidence on the record and further submits that appeal of the Appellant be dismissed with costs.

13. Reliance placed by Ld. Defence Counsel on judgments in *Bhagwan Kaur Vs. Krishan Sharma & Ors* AIR 1973 SC 1346, *Beere Gowda Vs. State of Karnataka* (2010) 11 SCC 771, *State of Himachal Pradesh Vs. Jeet Singh* AIR 1999 SC 1293, *Shanmughan Vs. State of Kerala* AIR 2012 SC 1142, *State of Himachal Pradesh Vs. Rajiv Jassi* AIR 2016 SC 2241, *Vishal Yadav Vs. State of U.P.* 2014 SCC Online Del 1373, *Sukhar Vs. State of U.P.* AIR 1999 SC 3883 and *Paniben Vs. State of Gujrat* AIR 1992 SC 1817.

14. Instant case of the prosecution is based on ocular evidence as well as on dying declaration Ex.PW2/A. Prosecution has examined PW2 Hemant Kumar, brother of the deceased, PW3 Lalit Kumar, brother of the deceased, PW4 Kanti Devi, mother of the deceased and PW5 Manju, sister-in-law of the accused. PW2, PW3 and PW4 are witnesses pertaining to marriage between deceased Poonam and accused Krishan Kumar. They deposed that demand of dowry of motorcycle and harassment was meted out to the deceased in her matrimonial home.

15. On the contrary, PW2 Hemant Kumar during his cross-examination has admitted that he was on visiting terms in house of the accused after marriage of deceased Poonam. The said admission is reproduced as under: -

“...I was on visiting terms to the house of accused after the marriage of Poonam.”

Similarly, PW3 Lalit Kumar too admits during the cross examination that he too was on visiting terms with accused and said admission is reproduced as under: -

“..After marriage of Poonam, I used to visit her matrimonial home after a gap of about one week and sometime one month and Poonam also used to come to our home.

...I was on talking terms with accused”

Similarly, PW4 Kanti Devi too admits during the cross examination that she too was on visiting terms with accused and said admission is reproduced as under:

“...After her marriage, I used to visit her matrimonial house on a gap of about one week, 3-4 days.”

16. PW2 Hemant Kumar in examination-in-chief has deposed that on date of the incident i.e. 11.04.2011 Manju PW5 visited their house and informed them that deceased had consumed acid. The said examination-in-chief is reproduced as under: -

“...On 11.04.11, I was present at my house. Bhabhi of accused Krishan Kumar came to our house and informed me that my sister Poonam had consumed Tezab.”

The prosecution did not declare PW2 Hemant Kumar to be a hostile witness and statement of the PW2 remains unrebutted on record.

17. PW4 Smt. Kanti Devi also admits presence of PW5 Manju and mother of the accused in LBS, Hospital, said admission during cross examination on behalf of PW4 Kanti Devi is reproduced as under: -

“...I directly went to the LBS hospital. Mother and sister-in-law (bhabhi) of accused were also present in the hospital.”

18. The statement of PW2, PW3 and PW4 establishes factum of the marriage that took place between accused Krishan Kumar and deceased Poonam as per Hindu Rites and Customs on 28.11.2005 and they were on visiting and good terms till 11.04.2011 in absence of any complaint on behalf of aforesaid witnesses and deceased Poonam.

19. PW5 Manju emerges as a material witness in the facts and circumstances of the present case.

PW5 deposed that she was present at her home i.e. house no. A-141 on 11.04.11 at about 12 noon, she was present at her house at the ground floor and son of the deceased Poonam came and informed that deceased Poonam had consumed acid. The said cross-examination is reproduced as under:-

“...On 11.04.2011 at about 12.00 noon, I was present at my home at the ground floor and Yash, son of Poonam came to me and informed that Poonam had consumed tezab.”

PW5 Manju has not been declared hostile and her statement is corroborated with the statement of PW2 Hemant Kumar. PW2 during the cross-examination has admitted that at time of the incident accused was not present at home and deceased Poonam had consumed acid and she immediately took her to hospital. The said admission is reproduced as under: -

“...Deceased Poonam was my devrani and we were residing as joint family. Accused Krishan was out of house at the time of incident and on that day

he had left the house at about 10.30 a.m. Yash, the son of deceased informed me that his mother had consumed tebab. I immediately rushed to the room of Poonam (deceased) and thereafter went to the house of mother of deceased and informed Hemant about the same and then came back and took her to hospital.”

20. The statement of PW5 Manju is corroborated with the MLC Ex.PW10/A wherein it indicates that the deceased Poonam was brought to the hospital with the history of intake of acid. The MLC Ex.PW10/A does not disclose forceful administration of acid on her person.

21. The statement of PW5 indicates that on date of the incident i.e. 11.04.2011 accused was not present at the house. However, deceased Poonam ingested acid in absence of accused Krishan Kumar.

This factum is corroborated with statement of PW4 Smt. Kanti Devi and during her cross-examination she has admitted that mother and PW5 Manju sister-in-law of the accused were present in LBS hospital.

It is further corroborated with statement of PW9 Hukam Singh when he had recorded the statement of deceased Poonam no injury was found on her body.

22. The prosecution failed to examine the material witness to the incident i.e. Yash, minor son of the deceased.

The whole controversy arises whether deceased was administered acid forcibly or she has taken it herself by mistake of fact.

As per statement of PW5 Manju, on receiving the information from Yash that deceased ingested acid, she took deceased to LBS hospital immediately after the incident. The MLC Ex.PW10/A does not show any external injury found on her body soon after the incident and PW9 Hukam Singh too did not find any injury on person of the deceased at the time of recording her statement Ex.PW2/A. Had there been forcible administration of acid, there would have been external injuries on other parts of the body.

23. Non-finding of the external injuries on body of the deceased indicates that it is a case of the mistaken fact and nothing else. However, her statement Ex.PW2/A was recorded which was later on converted into dying declaration.

Dying Declaration:-

24. Dying Declaration becomes relevant under Section 32(1) of Indian Evidence Act as the same is based on the principal of '*nemo moriturus proesumitur mentiri*' which is an exception to the general rule of inadmissibility of hearsay evidence.

25. In *Atbir v. Govt. (NCT of Delhi)* (2010) 9 SCC 1, the Apex Court has laid down the following guidelines with regard to admissibility of Dying Declaration :-

- 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 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.*

26. The dying declaration Ex.PW2/A indicates the accused at 12:30 PM administered acid to the deceased and ran away.

This part of the dying declaration does not disclose the manner of administration of the acid on her person.

Moreover, it also does not disclose the place of the incident i.e. room and floor of the house where she was forcibly administered with the acid by the accused.

Later part of dying declaration indicates that her husband is responsible for the incident, which means that her husband accused Krishan Kumar was not present at time of the incident.

PW5 Manju too has specifically stated that accused was not present in the house at the relevant time of the incident. Had there been forcible administration on her person of the deceased, there would have been external injury on the mouth and other parts of the body of the deceased.

Non-examination of son of the deceased, Yash, definitely creates suspicion whether it is a case of forceful administration of acid on person of the deceased or it is a case of mistaken fact of self consumption of acid, particularly when other material factors does not corroborate with manner of the incident.

27. As discussed above, view taken by the Court below in impugned judgment dated 29.08.2018 is upheld. We find no merit in the Appeal to interfere with the impugned judgment and why the Appellate Court take contrary view only on the ground that another view too is possible. Reliance is placed on the judgment of the Apex Court in *K. Prakashan vs. P.K. Surenderan (2008) 1 SCC 258*.

28. The appeal is accordingly dismissed. Trial court record be sent back along with certified copy of this Judgment.

I.S.MEHTA, J.

SIDDHARTH MRIDUL, J.

MARCH 20, 2020