



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

Judgment delivered on: 29 April, 2024

+ CRL.A.424/2023, CRL.M.(BAIL) 737/2023

ZULFIKAR @ BOBBY

..... Appellant

Through: Mr.Gautam Khazanchi and Mr. Anuj
Aggarwal, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP with
Insp. Kuldeep Singh and Insp.
Rizwan Khan, PS: Seelampur.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Criminal Appeal under Section 374 of Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred on behalf of the appellant challenging judgment dated 19.02.2021 and order on sentence dated 22.02.2021 passed by learned ASJ-03, North-East, Karkardooma Courts, Delhi, whereby the appellant has been sentenced to undergo rigorous imprisonment (RI) for five years and fine of Rs.2,000/- for offence punishable under Section 306 IPC (in default of payment of fine, to undergo SI for 15 days) with benefit of Section 428 Cr.P.C.

2. In brief, as per the case of prosecution, on receipt of DD No.36B on 25.10.2013, SI Rizwan along with Constable Rakesh reached at MCD Primary School, D-Block, Seelampur, Delhi, wherein it was revealed that a lady had set herself on fire and had been shifted to Lok Nayak Jai Prakash



(LNJP) Hospital by the PCR van. After leaving Constable Rakesh at the spot, SI Rizwan proceeded to LNJP Hospital, wherein injured Ezaz Fatima refused to give her statement. On reaching back at the spot, SI Rizwan met an eye-witness Iftexhar Ali (PW-18), who alleged that Ezaz Fatima along with her son Zulfikar @ Bobby (appellant) had come to the school premises, wherein she set herself on fire in the compound/playground of the school, after taking out a plastic bottle and pouring the contents upon her. The appellant is alleged to have handed over her a lighter. He further alleged that in view of hue and cry, teachers and other staff members assembled at the spot and someone dialed number 100. Accordingly, on statement of Iftexhar Ali (PW-18), FIR No.476/2013 was registered initially under Section 309/114/120B IPC. During the course of investigation, Ezaz Fatima expired on 05.11.2013 and postmortem of the body of deceased was got conducted wherein the cause of death was opined as “*septicemia consequent upon infected burn injuries*”. Section 306 IPC was thereafter invoked after completion of investigation and chargesheet was filed under Section 306/114/120B IPC against the appellant.

3. Charge was framed against the appellant/accused under Section 306 IPC. In support of its case, prosecution examined 34 witnesses. In the statement recorded under Section 313 Cr.P.C., appellant took a stand that he along with his deceased mother had gone to the school premises, wherein his father Razi Hasan (PW- 19) was present. Further, appellant remained standing outside the school while his mother went inside. Thereafter, he heard the cries of his mother, who was screaming that Razi Hasan (PW-19/husband of deceased) with the help of Pyamberaza (PW-16)



and Nade Ali (PW-17) had set her on fire. He also stated that in a bid to save his mother, he also sustained burn injuries. However, no evidence was led in defence.

4. Learned Trial Court, on the basis of evidence led on record, classified the witnesses in the following categories for the purpose of appreciation of evidence:

(a) Eye witnesses/witnesses present at the school :

Madan (PW-3/watchman of School), Nade Ali {PW-17/Assistant Teacher (Primary) in the School}, Iftekhar Ali {PW-18/Primary Teacher (on contract basis) in the School}, Shiv Om Tiwari, (PW-20/Assistant Teacher in the School), Maqsood Ali (PW-22/Contract Teacher in the School), Maneesh Kumar Jayant (PW-24/teacher in the School) and Mohd. Hasan (PW-31/Assistant Teacher in the School).

(b) Other independent public witnesses :

R.C. Sharma {PW-1/Cluster Resource Centre Co-ordinator (CRCC)}, Ram Kishan Bharti (PW-2/School Inspector), Badar Qureshi (PW-6/relative in whose marriage Razi Hasan had gone), Ali Hasan (PW-7), Hasan Daniyal (PW-11/son of Razi Hasan), Razi Hasan (PW-19/father of appellant), Mukhtiyar Hussain (PW-21/nephew of deceased), Zeeshan (PW-25/fruit & vegetable seller at Amroha), Rashid (PW-27) and Naeem Ahmed (PW-28/Manager of marriage function).

(c) Witnesses of investigation:



Inspector Ravi Kumar (PW-5), Constable Rakesh Kumar (PW-10), Constable Ajeet (PW-12), SI Madan Lal (PW-15) and SI Rizwan (PW-33/IO of the case).

(d) **Witness of medical evidence:**

Dr.Suraj Ohan (PW-4), Dr. Irfan Khan (PW-30) and Dr. Ritu (PW-31 (wrongly mentioned in trial court record)/CCMO, LNJP hospital).

(e) **Formal witnesses :**

W/HC Usha Kumari (PW-8), Constable Jitender (PW-9), HC Nisar Ahmed (PW-13), Constable Mukesh (PW-14), Payamberaza (PW-16/Assistant Teacher at School), Israr Babu (PW-23/alternate Nodal Officer of M/s Vodafone Mobile), Vinod Kumar (PW-26/Nodal Officer MTNL), Sunil Kumar Yadav (PW-29/Photographer,), ACP Anand Sagar (PW-32) and ASI (Retd.) Raghu Raj (PW-34).

5. Learned counsel for the appellant reiterated the contentions raised before the learned Trial Court and submits that investigation was conducted in a biased manner under the influence of Razi Hasan (PW-19/father of appellant). The appellant is stated to have made a call at number 100 immediately on seeing that his mother was in flames, as evident from DD No.36B (Exhibit PW8/4). It is pointed out that FIR was registered after recording statement of PW-18 (Iftekhhar Ali), instead of seeking the version of appellant in case deceased was not in a position to give statement at the time of admission in the hospital. The location of Razi Hasan (PW-19/father of appellant) is further stated to be at Delhi at the time of incident. The relations between Razi Hasan (PW-19) and deceased are stated to be strained, since Razi Hasan had not obtained divorce from the deceased.



The statement of mother of appellant as recorded by SI Rizwan (PW-33/IO of the case) on 27.10.2013, is stated to have been ignored wherein she had named her husband Razi Hasan (PW-19) as the person who had brought the bottle containing inflammable liquid and set her on fire in connivance with his relatives Payamberaza (PW-16) and Nade Ali (PW-17). It is contended that there are material contradictions in the testimony of witnesses examined before the learned Trial Court and statement of PW-3 Madan (Watchman) has been ignored.

Reliance is further placed upon *Shri Ram & Another vs. The State Of Uttar Pradesh*, (1975) 3 SCC 495 and *S. S. Chheena vs. Vijay Kumar Mahajan and Another*, (2010) 12 SCC 190.

6. On the other hand, learned APP for the State supports the impugned judgment and reiterates that testimony of PW-17 (Nade Ali) and PW-18 (Iftekhhar Ali) is trustworthy and clearly reflects that appellant aided the deceased by handing over a lighter despite knowing her intention to commit suicide. It is contended that an attempt has been made by the appellant to save his skin and falsely implicate his father Razi Hasan (PW-19) who was not even present in the school premises at the relevant time being on casual leave. The same is further stated to be corroborated by evidence of R. C. Sharma (PW-1/Cluster Resource Centre Co-ordinator) and PW-2 (Ram Kishan Bharti/School Inspector), Badar Qureshi (PW-6), Ali Hasan (PW-7), Zeeshan (PW-25), Rashid (PW-27) and Naeem Ahmed (PW-28), Razi Hasan (PW-19) and Hasan Daniyal (PW-11). Reliance is also placed upon *Mahendra K.C. vs. State of Karnataka and Another*, (2022) 2 SCC 129.



7. Learned Trial Court convicted the appellant and observed that the presence of PW-19 Razi Hasan is not supported by the witnesses during investigation and deposition before the Court. Learned Trial Court was of the considered opinion that there has been no bias in conduct of investigation and on an earlier occasion, the appellant and his mother had also made a false call at PS: Usmanpur regarding setting her ablaze by Razi Hasan (PW-19). Court further took note of the fact that three witnesses, namely, Shiv Om Tiwari, (PW-20), Maqsood Ali (PW-22) and Maneesh Kumar Jayant (PW-24), who were posted in the School at the relevant time, had turned hostile and did not support the prosecution version against the appellant and discarded the statement of Madan (PW-3) as being full of contradictions. However, relying upon testimony of Nade Ali (PW-17) and Iftekhar Ali (PW-18/complainant), appellant was convicted. Further, presence of Razi Hasan (PW-19) at the scene of crime on 25.10.2013 was not accepted.

Learned Trial Court concluded that though the deceased was carrying a plastic bottle, from which she poured the contents over her, the action of appellant in providing a lighter made a clear case of instigation, provocation, incitement or encouragement on his part. As such, the appellant provided the cannon fodder in abetting the deceased to set herself on fire and commit suicide.

8. It may be observed that people tend to behave differently in similar situations and an act of suicide may be resorted to due to hypersensitivity of an individual to discord and differences which happen in day-to-day life or other myriad of reasons.



9. To bring a case within the purview of ‘abetment to suicide’ under Section 306 IPC, there must be a commission of suicide and in the commission of said offence, the person who is alleged to have ‘abetted’ the commission of suicide must have played an active role by instigation or engage with one or another person in any conspiracy for doing that thing or intentionally aid by any act or illegal omission.

There must be a criminal intent (*mens rea*) when carrying abetment which could be by way of encouragement, intentional incitement in the form of verbal threats, provocation, persuading, commanding or encouraging someone to commit suicide through acts or omissions. There has to be some proximate active role in the act of instigation or aiding or doing or omitting to act.

10. As per statement given by the deceased, which was recorded after registration of FIR, Razi Hasan (PW-19/husband) had called her at the School, since there had been some settlement regarding *Talaq*. She further stated that Razi Hasan (PW-19) had brought the bottle containing the oil and put her on flames and was aided by Nade Ali (PW-17) and Payamberaza (PW-16) who were also present at the aforesaid time. Further, her son (appellant Zulfikar @ Bobby) had saved her.

However, on investigation, aforesaid version implicating Razi Hasan (PW-19) along with Nade Ali (PW-17) and Pyamberaza (PW-16) put forth by the deceased could not be corroborated since Razi Hasan (PW-19) was not found to be present in the school premises at the relevant time. In view of above, relying upon statement of Iftekhhar Ali (PW-18) and other



witnesses examined by the Investigating Agency, appellant was chargesheeted.

11. It may be noticed that abetment by appellant is alleged not by way of instigating, urging, provoking or inciting to do an act but is sought to be inferred by way of **‘aiding’** the deceased by providing a lighter which was taken by deceased from the appellant. It also needs to be kept in perspective that appellant did not remain a silent spectator but immediately intervened to put down the flames with his shirt, which has been seized during investigation and also sustained some burn injuries in the process. Further, the deceased categorically exonerated the appellant of playing any role in the incident and if alive, would have been the best witness in favour of the appellant.

12. It may also be observed that as per evidence on record, deceased Ezaz Fatima and Razi Hasan (PW-19), after marriage had strained relations for several decades since Razi Hasan (PW-19) had re-married without obtaining divorce from the deceased. Further, it is also revealed from the statement of witnesses that Nade Ali (PW-17) and Iftekhar Ali (PW-18) are closely related to Razi Hasan (PW-19), and also other witnesses present in the school at the relevant time were working in the school and reporting to Razi Hasan (PW-19) being the supervisory authority, as Principal of the school. As such, influence of Razi Hasan (PW-19) over Nade Ali (PW-17), Iftekhar Ali (PW-18) and other witnesses working in school is apparent. Also, given the fact that Ezaz Fatima (deceased) made allegations of setting her on fire by Razi Hasan (PW-19) and Nade Ali (PW-17) in her statement



to the IO recorded on 27.10.2013, it gives sufficient ground to said witnesses to implicate the appellant owing to animosity.

13. In the aforesaid background, evidence of PW-3 (Madan) which has been completely ignored by the learned Trial Court by simply observing the same to be full of contradictions needs to be initially examined as he was the first witness who met the appellant and deceased at the entry gate of the school.

14. It is well settled that in criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court by the party calling him, the evidence cannot be treated to be completely washed off the record. It needs to be analysed whether as a result of such cross-examination and contradictions, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony before the Court. If the credit of witness is not completely shaken as a whole, the reliable part of the testimony can be accepted with due caution and care in the light of other evidence on record, which the Court finds it to be creditworthy and can be acted upon. Only in case the whole of the testimony of the witness is impugned and witness stands totally discredited, the evidence of such witness should be discarded in *toto*.

15. It may further be observed that the statement before the Investigating Officer under Section 161 Cr.P.C. can be used for contradiction after compliance with Section 145 of the Indian Evidence Act i.e. by drawing the attention of the maker to the parts of the statement intended for contradiction. The duty lies on the Trial Court for ensuring that the part of the police statement with which the witness is intended to be contradicted



is brought to the notice of the witness under cross-examination, which must be reflected by reproducing the said part. By this process, the contradiction is brought on record which is further proved when the Investigating Officer is examined in the Court and his attention is brought to the passage marked for purpose of contradiction. The statement cannot be contradicted by simply reading the entire statement under Section 161 Cr.P.C. to the witness and inquiring him if the same is correct as has been done in the present case while recording statement of PW-3 (Madan). The witness has to be pointed out each portion of the statement with which the witness is intended to be confronted with, after duly recording the same in his cross-examination, in case the prosecution intends to discredit the witness after calling him in evidence.

16. It may be noticed that PW-3 (Madan) in his deposition made before the Court stated that he was present at the main gate of the school and at aforesaid time Nade Ali (PW-17) was present in the classroom. Further, he stated that he knew the deceased and appellant prior to incident, who had come to the school gate. He further testified that he stopped the appellant who was carrying a carry bag containing a green colour bottle and had informed them that Headmaster (Razi Hasan) was not in school since they wanted to meet him. However, appellant with his mother forcibly entered the school wherein appellant poured some liquid from the bottle on the body of his mother and set her on fire. Further, on hearing the cries, the staff of school rushed towards the injured but appellant pushed the teachers away.



PW-3 (Madan) was cross-examined on behalf of learned APP for the State since he deviated from his statement recorded under Section 161 Cr.P.C., wherein he stated that deceased had taken the lighter from the appellant while in his examination-in-chief, he alleged that lighter was with the appellant and he had lit up his mother. It may be noticed that the manner in which the witness was contradicted during cross-examination on behalf of learned APP for the State appears to be contrary to the provisions of law, since the entire statement under Section 161 Cr.P.C. (Ex.PW3/1) was read over to the witness without specifying any specific contradiction, with reference to statement under Section 161 Cr.P.C. with which the prosecution intended to place reliance. The only portion with which the witness was specifically confronted was with reference to the role of the appellant, as stated above. In view of above, since any other contradiction by the prosecution does not appear to have been brought on record in accordance with law, the testimony of PW-3 on other aspects cannot be ignored.

17. It is also pertinent to note that on cross-examination on behalf of *Amicus Curiae* for the appellant, PW-3 (Madan) admitted that Nade Ali (PW-17) was in Room No.3 and was the first one to reach the spot where the deceased had put herself on fire. The version put forth by PW-3 (Madan) is of immense significance since he was posted at the gate of the school and was the first person to meet the deceased and appellant. He did not whisper a word if Iftekhar Ali (PW-18) had met the deceased and the appellant, prior to commission of suicide by the deceased, as deposed by Iftekhar Ali (PW-18). Further, according to PW-3, at the relevant time



Nade Ali (PW-17) was in the classroom and reached only after the deceased set herself on fire. In view of aforesaid deviant position given by PW-3 (Madan), testimony of Iftekhar Ali (PW-18) and Nade Ali (PW-17) relied by prosecution appears to be untrustworthy and casts doubt if the incident had occurred, as alleged by them. The testimony of PW-3 (Madan) to aforesaid extent could not have been ignored by learned Trial Court as it strikes to the root of the prosecution version.

18. Further, examination-in-chief of Nade Ali (PW-17) relied by prosecution reveals that he also deposed contrary to his statement recorded during investigation under Section 161 Cr.P.C. and aggravated the role of the appellant by deposing that at the time of incident appellant Zulfikar @ Bobby took out the lighter from the pocket of his pant and lit the deceased on fire and thereafter, started shouting “*meri maa ko mere papa ne aag laga di*”. However, the witness on cross-examination was duly confronted with his statement recorded under Section 161 Cr.P.C., wherein he alleged that deceased had taken the lighter from the hand of appellant Zulfikar @ Bobby and had lit herself. As such, it is obvious that a deliberate attempt has been made by Nade Ali (PW-17) to aggravate the role of the appellant, which puts a question mark on his veracity. The witness being related to Razi Hasan (PW-19) is also an interested witness and his testimony needs to be considered with caution.

19. It may also be noticed that conduct of Iftekhar Ali (PW-18) also appears to be unnatural, as he stated that deceased took a lighter from the appellant and lit herself and he simply walked away to his classroom. Iftekhar Ali (PW-18) thereafter, claims to have returned to the spot when



PCR had removed the deceased to Hospital. The presence of Nade Ali (PW-17) and Iftekhar Ali (PW-18) prior to the deceased setting herself on fire stands refuted by PW-3 Madan and the aforesaid contradiction goes to the root of the prosecution case. In view of above, the testimony of PW-17 & PW-18 does not appear to be above shadow of doubt and cannot be relied for convicting the appellant.

20. It cannot be ruled out that deceased aged about 60 years set herself in flames, without realizing that the same could be fatal as burns suffered by her, were about 40%. Also, it cannot be ignored that the appellant who was aged about 24 years at the relevant time made efforts to douse the flames and no whisper of allegation or role has been attributed to him by the deceased. Rather, deceased corroborated in her statement given to police that appellant had made efforts to save her. It may be too far-fetched to assume that despite carrying the inflammable liquid, deceased planned that lighter would be handed over only by the appellant, who is her son.

21. Since the case of prosecution has not been supported by any of the independent witnesses, but is only based upon the testimony of Nade Ali (PW-17) and Iftekhar Ali (PW-18), who are interested witnesses under influence of Razi Hasan, it may not be safe to convict the appellant. The improvements made by the witnesses as discussed above are material and go to the root of the prosecution version. Intentional aiding and complicity are the gist of the offence of abetment which have not been proved beyond reasonable doubt, in view of serious infirmities in the testimony of witnesses.



22. For the foregoing reasons, prosecution has failed to bring home the charge against the appellant beyond reasonable doubt. The judgment of conviction and order on sentence passed by the learned Trial Court is accordingly set aside and appeal is allowed. Appellant is acquitted and be released forthwith in case he is not required in any other case, subject to his furnishing personal bond in the sum of Rs.10,000/- (Rupees Ten Thousand Only) under Section 437A Cr.P.C. before Superintendent Jail.

Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the learned Trial Court as well as appellant through Superintendent Jail for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

APRIL 29, 2024/R/sd