

Mahender Vs. State

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Court : Delhi

Decided On : Nov-01-2013

Judge : Kailash Gambhir

Appellant : Mahender

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: November 01, 2013 + CRL.A. 788/2011 MAHENDER Appellant Through: Mr.Satish Bajaj, Advocate versus STATE Respondent Through: Mr.Sunil Sharma, APP for the State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 374 of the Code of Criminal Procedure 1973 (hereinafter referred to as Cr.P.C), the appellant seeks to challenge the judgment and order dated 12.05.2011 and 13.05.2011, respectively, passed by the Court of Ld. Additional Sessions Judge01(NW), Rohini Courts, Delhi, thereby convicting the appellant for committing an offence under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as IPC) and sentencing him to undergo rigorous imprisonment for life along with fine of Rs. 10,000/- and in default thereof to

undergo further simple imprisonment for a period of one year.

2. One of the most horrifying forms of gender-based violence, a growing phenomenon in India, is acid attack. Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women, for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The acid is used with malicious intent to take revenge, disfigure and harm the person. Some men ego will not allow them to accept rejection and when their advances are spurned they retaliate by throwing acid at the woman. An acid attack is a terrifying experience. Acid melts human flesh and even bones. It causes excruciating pain and terror. The victims are left mutilated and scarred for the rest of their lives. Some suffer permanent disabilities such as blindness and some victims even die as a result of their injuries. The attacks are made possible by the easy availability of cheap acids as cleaning fluid or for use in the cotton industry. Dealing with this cruellest menace, the Honble Supreme Court in a recent case of *Laxmi vs. Union of India and Others* reported in 2012(9) SCALE291 directed the State governments and the Union territories to make appropriate rules for the sale of acid in states and union territories respectively. The Honble Apex Court also directed the government to take appropriate measures for proper treatment, after care, rehabilitation and payment of compensation to the victims of acid attack.

3. The case in hand also relates to one such unfortunate woman who became the victim of such horrifying act at the hands of, none else than her own husband, who could not bear her rejection. In the present case deceased who became a victim of such barbaric act of the offender was just 24 years of age and had a boy child, six years old, from her first husband. She was attacked by accused when she had reached at a place near Petrol Pump, Britannia Chowk, J.J.

Colony, Shakurpur, Delhi. The exact prosecution story as it unfolds in the chargesheet is as under:

On 29.02.2008 on receiving the DD No.17A, IO SI Daya Chand along with Constable Amar Singh went to petrol pump, Britannia Chowk, J.J.

Colony, Shakurpur where no eye witness or complainant met them. In the meantime, PCR control room informed that the injured was removed by PCR van Commander 21 to Bhagwan Mahavir Hospital. IO along with constable Amar singh reached the hospital and collected the MLC of injured Jyoti, w/o Mahender@ Dabhu aged 24 years, r/o. G-23, J.J.

Colony, Shakurpur, Delhi. Doctor had mentioned on the MLC alleged history of 75% acid burn and declared her unfit for statement and result on the nature of injuries as grievous. No eye witness met them at the hospital. IO prepared rukka on DD No.17A and handed over the same to Constable Amar Singh for registration of FIR, who left the hospital. During the investigation, doctor handed over the burnt clothes of injured Jyoti, in a sealed parcel along with sample seal. In the meantime Constable Amar Singh returned back to the hospital and handed over the copy of FIR and original Rukka to the IO. IO along with Constable Amar Singh Nath again went to the place of incident and took into the possession some burnt clothes lying at the spot, which were smelling like acid and turned it into clothes parcels and sealed and seized with the seal of DCS. IO prepared the site plan of the spot and informed the SDM about the incident. SDM, Model Town went to the LNJP hospital and recorded the statement of the injured Jyoti and made inquiries from her. Thereafter IO recorded the statement of the witness and tried to search the accused but the accused could not be traced. On 05.03.2008, accused surrendered himself before the court. The court made inquiries from the police and remanded him to the police custody for one day. Thereafter he was formally arrested and send in the judicial custody where his disclosure statement was recorded. IO prepared the site plan at the instance of the accused and tried to search the acid bottle, which could not be traced. IO recorded the statement of witnesses and deposited the case property to malkhana. On 12.04.2008, IO received the information from the LNJP hospital that injured Jyoti has expired. The offence thereafter was converted from section 307 IPC to section 302 IPC and further investigation was handed over to Inspector Ajay Kumar. Thereafter on 13.04.2008 M.Z.Ansari, Executive Magistrate, Model Town reached the hospital and recorded the statement of the witness in respect to identification of dead body of Jyoti. Executive Magistrate prepared the inquest report and directed for the post-mortem of the deceased Jyoti and prepared scaled site plan of the spot

through draftsman. After the completion of the investigation IO filed the charge sheet before the concerned court.

4. After supplying the copies of the charge sheet to the accused as per law, case was committed to the Court of Sessions. Arguments on the point of charge were heard and charge under section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial. To prove its case, the prosecution had examined 23 witnesses. The statement of accused was recorded by the learned Trial Court under Section 313 Cr.P.C. and the accused pleaded his innocence and false implication. The accused also examined three witnesses in his defence.

5. Addressing arguments on behalf of the appellant, Mr. Satish Bajaj, Advocate strongly contended that the dying declaration being a weak piece of evidence, conviction of the accused cannot be sustained solely on the basis of dying declaration. Counsel for the appellant also argued that in the present case, the dying declaration was not recorded by the SDM himself but by PW-18, SI Daya Chand and therefore, also the same loses its credibility. Counsel for the appellant also submitted that the style and the language used in the alleged dying declaration, resembles the pattern as is normally used by the police in recording the statements of witnesses under Section 161 Cr.P.C. and therefore, there remains no doubt that the said dying declaration was first recorded by the police official and was later signed by the SDM. Counsel for the appellant also argued that the said dying declaration was not even recorded in the question and answer form as per the mandate of Chapter 13-A of Volume -III of the Rules and Orders of Delhi High court dealing with dying declarations and therefore, the said dying declaration lacks its credibility. Counsel for the appellant also argued that the appellant had never married the deceased and in fact no evidence was produced on record by the prosecution to prove the marriage of the appellant with the deceased. Referring to the deposition of PW-16 ASI Nain Singh, counsel for the appellant also submitted that the deceased was carried by him in his PCR van and on her way to hospital, the deceased told him that she was having one child and for the past six months she was contesting a divorce case against her husband. The contentions raised by the counsel for the appellant was that the deceased

herself had admitted the factum of her marriage with Arun and the said marriage of the deceased was still alive and therefore, the allegation of the deceased that she was married with the appellant was palpably false. Counsel for the appellant further argued that the learned Trial Court has ignored the inherent contradictions in the statements of the prosecution witnesses, like PW-18 who was the first person to visit the spot and who took the rukka to the police station, in his deposition, described the place of incident as house No.G-230, J.J.

Colony, Shakurpur, where-from he had also recovered the clothes of the deceased in torn condition, and whereas the deceased and the other prosecution witnesses disclosed Shakurpur Red Light, Ring Road near Petrol Pump opposite Britannia, to be the place of the incident. Counsel for the appellant also argued that the learned Trial Court committed a grave error in not appreciating the fact that if the alleged incident, had occurred at 10.00 a.m. on the ring road outside the petrol pump then it is not possible that at such a busy public place no independent witness was found by the prosecution to support their case. In support of this argument counsel for the appellant further stated that PW-8 also in his deposition confirmed this fact by stating that there were 6-7 public persons present at the spot. Counsel for the appellant also argued that the prosecution also failed to collect any evidence to prove that the acid was found at the spot of the crime or that any bottle was recovered from the accused from which he had allegedly thrown the acid on the deceased. Counsel for the appellant also argued that no motive was attributed against the appellant to commit said crime and even in the dying declaration, the deceased stated that the accused wanted to get divorce from her and she had agreed for the same and therefore, she was called by the accused to go to the advocate for filing divorce petition in the Tis Hazari Courts. The contention raised by the counsel for the appellant was that since no marriage had taken place between the appellant and the deceased, the question of filling the divorce petition to dissolve such marriage cannot arise. Counsel for the appellant also submitted that in fact the deceased herself only poured the acid on her so as to blackmail and pressurise the appellant to agree for the marriage not realising that such act of hers would result into her death. Counsel for the appellant also argued that the appellant had disclosed his entire defence in his statement, recorded under Section 313 Cr.P.C., giving complete details of his

relationship with the deceased and how he was being blackmailed by her and ultimately been falsely implicated in the present case. Based on the above submissions, counsel for the appellant submitted that the order passed by the learned Trial Court is not sustainable in the eyes of law and therefore, the same be set aside. In support of his arguments, counsel for the appellant placed reliance on the following judgments: 1. State of Rajasthan vs. Prithvi Raj reported in 1995 Supp (3) SCC 4102. Akbari Begum and Ors. vs. State reported in 2011(3) JCC 18173. Muneer Khan and Ors. vs. State of M.P reported in (2002) 9 SCC 523. 6. Countering the said submissions, Mr. Sunil Sharma, APP for the State, submitted that the conviction of the appellant is based on the dying declaration of the deceased, which finds corroboration from her first statement, proved on record as Ex. PW-12/A, made to PW12 who carried the deceased in a PCR van to the hospital and had also transmitted the first statement by the deceased to the police control room. The contention of the learned APP was that in the very first statement, made by the deceased to the In-charge PCR van, she had named the appellant responsible for pouring acid on her and therefore, there is no reason to disbelieve the said two dying-declarations made by the deceased which fully supports each other. Learned APP further submitted that each and every contention raised by the counsel for the appellant in his final arguments has been dealt with by the learned Trial Court and the reasoning given by the learned Trial Court is based on sound principles of law and on proper appreciation of material available on record. Learned APP also argued that the mere fact that no public witness had come forward to support the case of the prosecution would not create any doubt on the said two dying-declarations made by the deceased which were further corroborated by the other evidence proved on record by the prosecution. Learned APP also argued that there is no reason to disbelieve the place of the incident just because one of the prosecution witness, PW-18, erred in stating the correct spot of the incident. Learned APP also submitted that it is a settled legal position that minor discrepancies or variance in the statements of the prosecution witnesses which do not go to the root of the case or which do not corrode the credibility of the main witnesses, deserves to be ignored. Based on these submissions, Learned APP for the State submitted that the learned Trial Court has passed a well reasoned order and the same may not be interfered by this Court in

exercise of its Appellate powers.

7. We have heard learned counsel for the parties at considerable length. We have also gone through the Trial Court record before taking a final view in the matter.

8. The present case is primarily based on two dying-declarations of the deceased. Firstly, when she was being taken to the LNPJ hospital and secondly, when she gave her statement to the Sub-Divisional Magistrate. In her statement made to the SDM, she had categorically stated that on 29th February, 2008 at about 8.30 a.m. Mahender gave a telephonic call to her that at 10.00 a.m. both of them will go to Tis Hazari to meet their lawyer who was to prepare divorce papers and for that the accused also told the deceased to bring photo and certificate. The call was repeated by Mahender at 10.30 a.m. telling the deceased to come at Telephone Exchange, Ring Road Bus Stand with the papers and when she had reached at the said place, Mahender- accused met her and started enquiring as to why she was taking divorce from him, at which, she had replied that since he had ruined her life after subjecting her to harassment, therefore, she would not like to live with him. On this, she started looking towards other side when Mahender had poured acid on her from a bottle containing acid. She started crying and felt complete darkness in front of her eyes. She could gain a little consciousness to find that she was brought to the hospital by the police. In her this statement, she also disclosed that she was residing with her parents and her first marriage had taken place in the year 2001 with one Mr. Arun and there was a male child aged 6 years born out of the said wedlock. She also stated that after two years of her marriage with Mr. Arun, her marriage ended with divorce. She also stated that on 28th September, 2005 she had married the present appellant Mahender @ Dabbu in a Court and thereafter she started living with Mahender in a rented accommodation. She also stated that just after one year of marriage, Mahender started harassing her and had also thrown her out of the matrimonial home. Thereafter she started residing with her parents. She also stated that Mahender paid repeated visits to her and extended threats by saying that he will physically eliminate her if she dared to take any step to divorce him. She also stated that earlier Mahender used to ask for the divorce but when she gave her willingness then he started extending threats to kill her. A portion of the dyingdeclaration is also in question-answer form. To a

question whether she was in her full senses?., she replied that she was in her full senses. She was also put a question as to whether Mahender was carrying acid when she had met with him?. She replied stating that he was hiding acid in his jacket in a cream colour bottle and he was also carrying divorce papers which he got signed from her few days back. When questioned as to how she knew that it was Mahender who has thrown acid at her?. She replied that when Mahender had thrown something at her then she saw that her clothes and the papers, which she were holding in her hands, got burnt and gradually her eyes got glued and thereafter she felt that Mahender had poured acid at her. The deceased had clearly stated that she was the wife of Mahender and her husband had poured acid at her.

9. The PCR Form-1 wherein the first dying-declaration recorded was proved on record as Ex. PW-12/A1 in the deposition of PW-12 Head Constable Devi Dutt, 2091, PCR, North West Zone, PCR, Delhi. PW-12 in his cross-examination stated that he had received a call from Mobile No.9891847761 informing him that acid was thrown on a lady near Petrol Pump, Britannia Chowk, J.J.

Colony, Shakurpur, Delhi on 29th February, 2008 at about 11.08 a.m. This witness further stated that the said message was transmitted to PCR van and a PCR van reached the spot at about 11.16 a.m. on the same day and then Incharge PCR van transmitted the message to the Police Control Room that they were proceeding towards hospital with the said lady. The said witness also deposed that after the lady was admitted in LNJP Hospital, Incharge PCR van gave back information to the Police Control Room informing that the injured had informed him that her husband had poured acid on her. He also informed the Police Control Room that doctor had disclosed that the injured had received 75% burn injuries. There is no reason to disbelieve the statement of PW-12 and the PCR Form No.1, proved on record as Ex. PW-12/A1, which also records the first dying-declaration of the deceased. The testimony of PW-12 also remained unrebutted as the defence did not choose to cross-examine the said witness. Similarly, the second dying- declaration which was recorded before the SDM and was proved on record as Ex. PW-15/A in the deposition of PW-15 also remained unchallenged as the appellant did not choose to cross-examine the said material witness. PW-15 in his

deposition categorically deposed about the fitness of the victim to give her statement. He also deposed that her statement was recorded in his presence and under his directions, on the questions as were put by him to her. He also deposed that the deceased Jyoti had put thumb impression at point C and had signed at point D on Ex. PW-15/A. The defence utterly failed to rebut or challenge the testimonies of the said two important witnesses, who proved on record, the said two dying-declarations as Exs. PW-12/A and PW-15/A.

10. In the present case the appellant has made an attempt to impeach the credibility of the said dying-declarations. The first contention raised by the counsel for the appellant was that the dying-declaration (Ex-PW15/A) was recorded in a manner which resembles the style of police. Noticeably, the SDM was candid that he did not record the dying declaration himself. He was categorical that the said dying-declaration was recorded in his presence and even he had put questions to her. The question is whether a dying declaration can be discarded for this reason alone?. Section 32 Indian Evidence Act, 1872(hereinafter IEA) provides that for a statement to be admitted as a dying declaration it is essential that firstly, a person making the statement is no more alive and secondly, the statement shall relate either to the cause of death or any circumstance of the transaction which resulted into the death of the person. It is pertinent to mention here that apart from these two essentials, the section has not laid down any other essential, i.e. if the person making the statement is dead and the statement relates to the cause of death, then it is admissible as a dying declaration as per section 32 IEA, irrespective of the fact that it is in oral or in writing or whether the person making the statement was or was not in the fear of death at the time of making the said statement. The law does not provide that a dying declaration should be made in any prescribed manner or in question and answer form. Once the said two essentials are complied, it must be borne in mind that the admissibility is statutorily recognized in the terms of section 32 IEA. The settled legal position is that the dying-declaration can be either oral or in writing and the same can be made before any person. The principles governing the dying-declaration were eloquently summed up long back by the Honble Apex Court in the matter of Paniben vs. State of Gujarat reported in AIR 1992 SC1817 The same were reproduced as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the medical opinion cannot prevail. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (xi) 11. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

The two-fold reason for its admission are, firstly, the necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The Honble Supreme Court in the matter of Muthu Kutty vs. State by Inspector of Police, Tamil Nadu reported in (2005) 9 SCC113 held as under:

The general principle on which this species of evidence is admitted is that they are declarations 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 mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in *R. v. Wood Cock* (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain: "Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire?. What is the world should make me now deceive, Since I must lose the use of all deceit?. Why should I then be false since it is true That I must die here and live hence by truth?." (See *King John*, Act 5, Sect.4) 12. There is no requirement of law that dying-declaration must necessarily be made to a Magistrate or even to a Police Officer as in many situations the presence of either of them may not be feasible, however, wherever it is possible keeping in view the facts and circumstances of each case the dying-declaration should preferably be recorded by the Magistrate and not by an IO or Police Officer himself. As a matter of prudence, where the IO records the dying-declaration himself, such dying declaration cannot be taken to be free from suspicion, although it is not a rule of law..

13. However, reverting back to the facts of the present case, here the statement of the deceased was recorded by the Police Officer not only in the presence and direction of the SDM but also on the questions put by the SDM. Although, we do not approve the mode adopted by the SDM while recording the dying declaration of the victim, but merely because the IO had penned down the said statement would not give any ground to the appellant to raise any suspicion over the same.

14. A dying declaration as per section 32 IEA can be in any form, however the Court has to see whether the dying declaration was actually made. On this aspect there is no quarrel. It is not the case of the defence that the deceased did not make the dying declaration Ex.PW-15/A. It is also not the case of the defence that the prosecution has concocted the said dying declaration or that the dying declaration penned down by the police officer is not the true version of the declaration made by the deceased. Further considering the fact that the defence

itself did not cross-examine PW-15 as well as PW-19, on the said aspect, we are not persuaded to give any weightage to the contention raised by the counsel for the appellant that since the same was recorded in a style identical with the style of police can therefore the credence and credibility of the said dying declaration becomes questionable.

15. We cannot be oblivious to the fact that the SDM in his deposition also stated that before recording the statement of the deceased, he had consulted a doctor and the doctor had certified that the deceased was fully conscious and in proper frame of mind at the time of making her statement under section 32 IEA. As already said above, the testimony of PW-15, SDM remained unchallenged and un rebutted as no question even worth the salt was put to him by the defence in his cross-examination to challenge his credibility and impartiality in recording the dying declaration of the deceased. The defence has to make out a very strong case, otherwise, impartiality and independence of the Magistrate cannot be easily questioned. The Honble Apex Court in Harjit Kaur Vs. State of Punjab, 1999 (3) RCR (Cri) 700, took a view that Sub Divisional Magistrate being an independent witness holding high position has no reason to do anything which was not proper and genuineness of dying declaration recorded by him cannot be easily doubted and conviction recorded on that basis cannot be faulted with. The germane portion of the judgment is extracted below:

Whatever impression could be taken was taken by the S.D.M. The medical evidence in this case does not disclose that she could not have put her thumb mark on the Dying Declaration. We fail to appreciate how this circumstance can create any doubt regarding the evidence of this witness or genuineness of the Dying Declaration. P.W. 7 was an independent witness and was holding a high position and had no reason to do anything which was not proper or correct. Except a bare suggestion made to him that the Dying Declaration was manufactured by him after her death, we do not find anything in his cross examination as would create any doubt regarding truthfulness of what this witness has deposed. We fully agree with the finding recorded by the courts below that the Dying Declaration was voluntarily made by Parminder kaur and that it was correctly recorded by P.W.-7.

16. Further a dying declaration made by a person on the verge of his death has a special sanctity. It is for this reason the requirements of oath and cross-examination are dispensed with. It has been held by the apex court in the matter of Narain Singh and Anr. Vs. State of Haryana reported in AIR 2004 SC1616 that:

A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death.

17. In the light of the above legal position, there is no reason to disbelieve the said dying-declaration made by the deceased, one before Incharge, PCR van proved on record as Ex. PW-12/A1 and the other dying-declaration made by the deceased before the SDM, proved on record as Ex. PW-15/A. Both the said dying-declarations were made by her truthfully and voluntarily without being tutored or prompted by any person and there is no reason for this Court to raise any suspicion over the same. The contention raised by the counsel for the appellant with regard to his challenge to the said two dying-declarations has no merit and deserve an outright rejection.

18. The next argument on which counsel for the appellant laid much stress was that the appellant was never married to deceased and the deceaseds marriage with her previous husband Mr. Arun was still alive, and therefore, the deceased describing the appellant as her husband in the said two dying-declarations is palpably false and her such apparent falseness renders the said dying-declarations as highly doubtful and unreliable. Counsel for the appellant also argued that the prosecution failed to collect any material to show that the deceased was divorced by her previous husband and she got married with the appellant or any proof to show that after such marriage they stayed together.

19. Undoubtedly, it is the failure on the part of the prosecution having not collected any evidence to clearly establish the factum of marriage of the deceased with the appellant or with regard to the fate of her previous marriage with a person named Mr. Arun. However, this lapse on the part of the prosecution cannot affect the credibility of the said two dying declarations made by the deceased unequivocally

referring the appellant as her husband.

20. PW1- Sukhram, father of the deceased, in his cross-examination clearly stated that her first husband had left her and she was having a boy child from that marriage. He also deposed that no divorce had taken place and her daughter got married with the accused Mahender which was her second marriage. He also deposed that her daughter was kept well for two years by accused Mahender after her marriage but thereafter, the disputes arose between them. PW2- Ms. Amarjeet Kaur, mother of the deceased, in her examination-in-chief categorically deposed that it was the second marriage of her daughter with the accused, Mahender and she was having one boy child aged about 6-7 years from her first marriage. The deposition of PW-2 remained unrebutted as she was not cross-examined by the accused. In her dying-declaration made before the SDM, the deceased categorically stated that she got married with the accused Mahender @ Dabbu on 28th September, 2005 and after the marriage she started residing with him in a rented accommodation. She also gave a detailed narration of facts as to how she was being subjected to harassment by her husband Mahender and how she was called at the Telephone Exchange, Ring Road, Bus Stand where acid was thrown at her by her husband, Mahender. Thus it clearly establishes that the deceased and the accused had entered into a matrimonial relationship.

21. Further in the present case this Court is not looking at as to whether the first husband of the deceased had divorced her or not or in what circumstances the present accused had married the deceased during the subsistence of her first marriage. The legality and validity of the second marriage of Mahender with the deceased is not an issue before this court. It is not uncommon that many such marriages take place during the subsistence of previous marriage of one of the party and in some rare cases marriages are not dissolved by taking recourse to law but through dubious methods of signing some stamp papers and getting the same attested from a Notary Officer/Oath Commissioner. It is, therefore, difficult to ascertain the validity of marriage in such cases.

22. However, after taking into account the testimonies of PW-1 and PW-2 read in conjunction with the two dying-declarations made by the deceased, there does not

remain any iota of doubt that the accused was the husband of the deceased and they had entered into matrimonial relationship and started living together as husband and wife, though their marriage may not be legal in the strict sense. Thus the question before the court is whether the word husband as used in the dying declaration would mean only a husband from a lawful marriage or any person who ostensibly reside with a woman as her husband?. We believe that it would be inappropriate to construe the expression "husband" as only a person who enters into a valid marriage and not a person who enters into a marital relationship and under the colour of such proclaimed or feigned status of husband subjected a woman to such cruel act. In the present case, the strict interpretation of word husband in this case might result into injustice to the deceased who became the prey of a barbaric act of the offender, whereas the liberal interpretation will serve the ends of justice, and according to the rule interpretation when strict interpretation defeats the purpose of law and liberal interpretation serves the purpose of law, then the liberal interpretation shall be followed. Thus the mere fact that the marriage of the accused and deceased was not a legally valid marriage would not help the accused to escape the liability in the present case. We, therefore, do not find any force in the contention raised by the counsel for the appellant that the deceased could not have married to the appellant during the subsistence of her previous marriage.

23. Another contention raised by the counsel for the appellant was that PW18-Constable Amar Singh, in his deposition described the place of incident as House No.G-230, J.J.

Colony, Shakurpur, Delhi while the other police officials have described the place of incident as Shakurpur Red Light, Ring Road near Petrol Pump opposite Britannia, and therefore, this contradiction on the part of the PW-18 is enough to disbelieve the story set up by the prosecution. This PW-18 in his examination-in-chief did disclose the place of occurrence being House No.G-230, J.J.

Colony, Shakurpur, Delhi but none of the other witnesses have disclosed the said place of occurrence and they were consistent and uniform in disclosing the place of incident as Shakurpur Red Light, Ring Road near Petrol Pump opposite

Britannia. One of the first and prime witnesses of the incident was PW-8 Sanjay. This PW-8 only telephoned at No.100 (PCR) through his Mobile No.9891847761. He in his deposition clearly stated that he saw one lady crying and when he reached the red light F Block Shakurpur, he found that somebody had poured acid on the lady. He also deposed that the police vehicle came within 15 minutes of his making call and removed that lady from the spot. This telephone number of PW-8, Sanjay, is also duly recorded in the original PCR Form No.1 proved on record as Ex. PW-12/A1. In this PCR Form also the place of incident is disclosed as J.J.

Colony, Shakurpur near Petrol Pump and ahead of Britannia. PW16- ASI Nain Singh in his deposition also disclosed that he had received information from the Control Room that one lady got burn injuries as somebody had thrown acid on her at or near Shakurpur Red Light, Ring Road near Petrol Pump opposite Britannia and on receiving this information, he immediately reached the spot with the staff and saw one lady lying there in a burnt condition. PW19- SI Dayachand in his examination-in-chief also deposed that he had received D.D. No.17A on 29th February, 2008 in respect of the said incident that somebody has thrown acid on a girl at Petrol Pump, Britannia, J.J.

Colony, Shakurpur and he along with Constable Amar Singh reached at the spot. In the light of the said testimonies of these witnesses, there remains no dispute with regard to the spot of the crime and one reckless and irresponsible statement of PW-18 will not lead us to disbelieve the entire prosecution version. The contention raised by the counsel for the appellant has no force and the same is liable to be rejected out rightly.

24. Another contention raised by the counsel for the appellant was that there was no motive which could be attributed to the appellant for committing the said crime and in the absence of any motive on the part of the appellant, his alleged act of throwing acid on the deceased should not be believed. This contention raised by the counsel for the appellant is also devoid of any force as motive on the part of the appellant is well reflected in the dying declaration of the deceased proved on record as Ex.PW-15/A The deceased in her dying declaration clearly stated that the appellant used to threaten her even to the extent of physically eliminating her if

she dared to take divorce from him. Even before putting acid on her, the appellant had again enquired from the deceased as to why she was interested to take divorce from him, at which, the deceased explained that since he had ruined her life, she was no more interested to live with him. These statements are sufficient enough to show the state of mind of the appellant and the reasons for his taking such step of pouring acid at the deceased. We, therefore, do not find any force in the argument of the counsel for the appellant that no motive was attributed by the prosecution against the appellant for committing the said crime. Even otherwise as per the settled legal position where positive evidence against the accused is clear, cogent and reliable, it becomes immaterial whether motive on the part of the accused has been proved by the prosecution or not. In the facts of the present case, the said two dying declarations made by the deceased are sufficient enough to nail the accused. Here, it would be worthwhile to reproduce the following paragraph from the recent judgment of the Apex Court in the case of Amitava Banerjee @ Amit @ Bappa Banerjee Vs. State of West Bengal, reported in AIR 2011 SC2913 as under:

Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

25. Dealing with the last contention raised by the counsel for the appellant was that the prosecution failed to join any independent witness although the alleged crime was committed at a busy public place. Undeniably, there should always be an endeavour on the part of the prosecution to persuade any member of the public to come forward to join as a witness if any crime takes place in the presence of such a public man, as the evidence of a public person being totally independent witness has more reliability than other witnesses having some interests to support the case of the prosecution. However, we cannot shut our eyes to the fact that very rarely public men come forward to give evidence. Due to lack of proper safe

guards for the witness protection, it is usually seen that people are reluctant to join the investigation as a witness. In such scenario we cannot give any weightage to the argument of the counsel for the appellant that the prosecution story should not be believed because of non-joining any public witness to prove the case of the prosecution. Here, it would be worthwhile to reproduce the following paragraph from the recent judgment of the Apex Court in the case of *Gian Chand & Ors. vs. State of Haryana* reported in 2013(9) SCALE544 wherein the Court dealt with the issue of non-examining the independent witness:

The prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether -in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties.

26. It has also been held by the Honble Apex Court in the matter of *Girdhar Shankar Tawade vs. State of Maharashtra* reported in AIR 2002 SC2078 as under:

It is well settled that dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence.

27. In the light of the aforesaid discussion we find our self fully satisfied that the said two dying declarations were made by the deceased voluntarily and truthfully, free from any kind of tutoring or prompting, and they were duly recorded by the Incharge, PCR van and the SDM. The learned Trial Court has rightly convicted the appellant for the offence committed by him under Section 302 IPC.

28. There lies no merit in the present appeal. Hence, the order on conviction and sentence dated 12.05.2011 and 13.05.2011 respectively passed by the learned Sessions Judge is upheld. The present appeal accordingly stands dismissed.

29. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance. KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

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