

Randhir vs.state

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Court : Delhi

Decided On : May-02-2017

Appellant : Randhir

Respondent : State

Advocate for Pet/Ap. : Mr. Krishan Kumar

Judgement :

\$~1 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

02. d May, 2017 CRL. A. 299/2013 RANDHIR Through : Mr. Krishan Kumar, Advocate with Ms. Sunita Arora and Mr. S.P. Nangia, Advocates. Appellant versus STATE Through : Ms. Radhika Kolluru, APP for State with SI Chandan Singh, PS Naraina, Delhi. Respondent CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE VINOD GOEL G.S.SISTANI, J.

(ORAL) 1. The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the judgment of the Trial Court dated 29.02.2012 and order on sentence dated 12.03.2012 by which the appellant has been convicted under Sections 302/354/450 of the Indian Penal Code, 1860 (IPC) and sentenced to undergo imprisonment for life and also fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for six months for the offence punishable under Section 302 IPC; rigorous imprisonment for five years and fine of Rs.2,000/- and in default simple imprisonment for two months for

the offence under Section 450 IPC; and rigorous imprisonment for two years and fine of Rs.1,000/- and in default simple imprisonment for one month for the offence punishable under Section 354 IPC. CrI. A. 299/2013 Page 1 of 16 2. The case of the prosecution is that on 29.06.2010 at about 2:00 AM, the appellant trespassed into the jhuggi/house bearing No.WZ- 102/193, Indira Park, Ring Road, Naraina, Delhi with the intention to outrage the modesty of Mohini Devi (hereinafter referred as deceased) and committed murder of the deceased. Upon receipt of information from DDU Hospital at Naraina Police Station where the deceased was admitted by MLC No.12389 by her daughter Sonia (PW-3), a DD No.6A was recorded. SI Vinod Kumar (PW-29) recorded the statement of Sonia as deceased was unfit for making the statement.

3. As per the complaint, Sonia (PW-3), daughter of the deceased, had submitted that she along with her father, mother, brother and sister is residing at the given address. Her father Sh. Nathu Paswan (PW-8) is a rickshaw puller and he had gone to the village in Bihar for the last 15 days and the appellant/accused Randhir used to visit the jhuggi, in the absence of her father. On 29.06.2010, after having dinner, the complainant went to the roof of the first floor of the jhuggi to sleep; then about 1.00 AM, she heard loud screaming of the deceased and she immediately went down and the complainant found that accused had caught hold of the deceased and was pouring kerosene oil from plastic bottle and, thereafter, accused suddenly set her mother on fire, using a matchstick and her mother started screaming and tried to catch hold of the accused, but accused fled by jumping from the window of the first floor of the jhuggi. Thereafter, the complainant and her mother screamed for help from neighbours and neighbours rushed to the spot and doused the fire of the deceased with the help of a curtain, but the deceased was burnt severely. The deceased told that appellant CrI. A. 299/2013 Page 2 of 16 tried to sexually assault her and when she protested, appellant put her on fire by pouring kerosene oil on her. The clothes of the deceased were burnt and those burnt clothes were removed and new clothes were put on the body of the deceased. Complainant along with one neighbour Manish (PW-11) took the deceased to Hospital in an auto rickshaw.

4. Crime Team was called and during the investigation, the place of occurrence was identified as the first floor of jhuggi No.109/143 Market, Ring Road, Naraina and site plan of the place of occurrence was prepared and the other recoveries of the articles lying at the spot were recovered. The deceased died and offence under Section 302 IPC was added in the FIR. Accused/Appellant was arrested and thereafter, the charge sheet was filed.

5. To bring home the guilt of the accused/appellant, the State examined 33 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. No evidence was led by the defence.

6. Mr. Krishan Kumar, learned counsel for the appellant, submits that the Trial Court has erred in appreciating the facts and judgment is contrary to law. It is contended that the court has not considered the material inconsistencies in the testimonies of Sonia (PW-3), daughter of the deceased, Neelam (PW-7) and Manish Kumar (PW-11). It is strongly urged that the testimony of PW-3, who claims to be an eye-witness, is not trustworthy and truthful. Learned counsel has laboured hard to urge before this court that in the statement made before the Trial Court, PW-3 had stated that the incident took place on the ground floor of the jhuggi while she was sleeping on the roof of the first floor. The State, upon an application filed under Section 311 Crl. A. 299/2013 Page 3 of 16 Cr.P.C. seeking re-examination of PW-3 and PW-33, made a material change in her statement that the jhuggi was in three floors in contrast to her earlier statement, where she had stated that jhuggi was comprising of ground floor and first floor. She also testified that the incident took place on the ground floor and she was sleeping on the roof. Mr.Kumar contends that in view of this material inconsistency, the witness is an unreliable witness.

7. Learned counsel for the appellant further submits that the FSL report does not support the case of the prosecution for the reason that as per the FSL report, there was no smell of kerosene on the hair of the deceased, which was sent for FSL examination. He also submits that finger prints taken from the bottle of kerosene oil also did not show any result. Thus, it is contended that except for the solitary testimony of PW-3, there is no evidence on record to show that the appellant was

present at the place of the incident or that he poured kerosene oil on the deceased and set her on fire. Reliance is placed on a judgment of a division bench of the High Court of Himachal Pradesh in State of Himachal Pradesh v. Manohar Lal, MANU/HP/1187/2012 (paragraphs 29 and 30). Counsel also submits that Dr. Anju Rani (PW-

2) in her testimony had deposed that she did not find any external injuries and thus, it appears that the deceased had committed suicide. Learned counsel also contends that the Trial Court did not consider that PW-7 and PW-11 in their respective testimonies did not depose that they have seen the appellant at the place of the incident.

8. Per contra, learned counsel for the State submits that the testimony of Sonia (PW-3), the 14 years old daughter of the deceased, is crystal clear and she has withstood the test of cross-examination. It is CrI. A. 299/2013 Page 4 of 16 contended that merely because this witness was re-examined and she clarified with respect to the place of the incident that by itself would not make her an unreliable witness. Learned counsel also submits that the appellant has failed to explain the injuries on his body, which are evident from the MLC of the appellant (Ex.PW-27/A). In response to question No.4 of the statement made under Section 313 Cr.PC, the appellant failed to explain the injuries on his body, which included a recent burn injury.

9. Ms. Kolluru further submits that the testimony of PW-3 Sonia is corroborated by the evidence of Neelam (PW-7), who has testified that on hearing the screams of Mohini Devi, she came down stairs and saw that the body of the Mohini Devi was on fire. This witness also testified that appellant had run away from the spot while jumping from the window of the jhuggi. Learned counsel for the State submits that this testimony of PW-7 if read as a whole, would in fact establish the presence of the appellant and she testified in lines of her statement recorded under Section 161 Cr.P.C., where she had stated that when she reached, the appellant Randhir was present. Learned counsel further submits that prior to death of deceased, not only PW-3 witnessed the appellant pouring kerosene oil from the plastic bottle but also lighting a matchstick to set her mother on fire and when she asked her mother

how it had happened, her mother had explained that the appellant was trying to do a wrong act by insisting to sleep with him and when she refused, he set her on fire. Counsel submits that PW-7 has supported the testimony of PW-3 as she was also present in the same jhuggi and when she enquired from the deceased, she had also CrI. A. 299/2013 Page 5 of 16 stated that she was set on fire by the appellant, who ran away from the spot.

10. Learned counsel for the State has also drawn the attention of the court towards the testimony of PW-23 wherein the Doctor has testified that during examination the patient had told him that when she was sleeping at her home, her Devar came and forced her for sex and when she objected, he poured kerosene oil on her clothes and he fired matchstick and threw on her and ran away from there.

11. We have heard learned counsel for the parties, considered their rival submissions, examined the testimonies of the witnesses and the trial court record.

12. The contentions urged by Mr.Kumar, learned counsel for the appellant, can be summed up as under: (i) The Trial Court has failed to consider the material inconsistencies in the testimonies of PW-3, PW-7 and PW-11; (ii) Sonia (PW-3) is an unreliable witness as she has differently deposed as to the site of the incident; (iii) The FSL Report has not supported the case of the prosecution as no smell of kerosene was detected on the hair of the deceased nor the examination of finger prints showed any results; (iv) PW-2 had deposed that no external injuries were found and hence, the deceased had committed suicide; and (v) Both PW-7 and PW-11 have not deposed with regard to the presence of the appellant at the place of the incident.

13. Since the case of the prosecution was primarily premised on the testimonies of Sonia (PW-3), Neelam (PW-7) and Manish Kumar (PW-11), we deem it appropriate to analyse their testimonies first. CrI. A. 299/2013 Page 6 of 16 14. Sonia (PW-3) had deposed before the Trial Court that she had been residing at WZ-102/193, Jhuggi Indira Market, Ring Road, Naraina, Delhi with her parents in a rented house. Her father had gone to Bihar for the last fifteen days prior to the date of the incident, i.e. 28.06.2010. The appellant, who used to reside in the

nearby jhuggi, used to come to their house and used to address the deceased as bhabhi and her father as brother. On the date of the incident at about 10 PM, PW-3 had gone to the roof of their jhuggi to sleep. At about 2 AM, she heard the noise of her mother calling sonia-sonia. She further deposed that she went downstairs and saw that the appellant had burnt her mother by pouring kerosene oil, which he was carrying in a plastic bottle, and then lit the matchstick and set her mother on fire. PW-3 raised an alarm by calling the name of their uncle Manish (PW-11). On hearing her calls, Manish (PW-11) reached there. Thereafter, the appellant opened the window and fled after jumping out. Her mother had sustained severe burn injuries and a blanket was put by Manish (PW-11) to douse the fire. Upon enquiring as to how the incident had occurred, the deceased replied that the appellant was trying to do a wrong act by insisting her to sleep with him; when she refused, the appellant set her on fire. The deceased was then taken to DDU Hospital in an auto; she was later shifted to LNJP Hospital and the statement of Sonia (PW-3) was recorded by the police. The deceased succumbed to her injuries on 29.06.2010. The witness had also identified the appellant before the Trial Court.

15. During cross-examination, PW-3 stated that she did not state in her statement that the fire was extinguished by putting a blanket on the CrI. A. 299/2013 Page 7 of 16 body of the deceased and voluntarily deposed that she had used the word curtain. She also stated that their jhuggi was built upto the first floor and they were sleeping on the roof of the first floor when she had heard the noise of her mother/deceased from the ground floor.

16. Noticing an ambiguity about the identification of the place of occurrence, the Trial Court had called Sonia (PW-3) for further examination under Section 311 Cr.P.C by an order dated 24.01.2012. Accordingly, PW-3 was further examined when she deposed that their jhuggi is of three floors and her mother/deceased was sleeping on the first floor on the date of the incident while she was sleeping on the roof of the first floor and had seen her mother from the staircase.

17. The next witness Neelam (PW-7) deposed before the Trial Court that she along with her family used to reside at WZ-102/193, Juggi, Indira Market, Ring

Road, Naraina, Delhi in a rented accommodation and deceased as well as her family also reside in the same premises. The appellant used to visit the rented accommodation of the deceased. PW-7 deposed that on 28.06.2010, while they were sleeping on the roof of the jhuggi, at about 2 AM, she heard the noise of the deceased and came downstairs. She saw that the deceased was on fire and the appellant had already fled from the spot after jumping from the window of the jhuggi. PW-7 immediately, put a blanket over the body of the deceased and extinguished the fire with the help of Manish (PW-11). When they asked from the deceased, she replied that she was set on fire by the appellant, who had ran away from the spot. PW-7 then changed the clothes of the deceased; who was then taken by her daughter (PW-3) and Manish (PW-11) to the hospital in a TSR. In her cross-examination, she stated that Sonia (PW-3) was the first to reach the spot and by the time, she had reached, the appellant/accused had slipped away.

18. Manish Kumar (PW-11) deposed that on 28.06.2010 at about 2 AM, he was sleeping in his jhuggi. The deceased along with her children were also residing in the same jhuggi. He heard the call of Sonia (PW-3), he opened the gate and asked what happened, to which, Sonia (PW-3) informed that her mother/deceased was burning in fire. PW- 11 put a blanket upon the deceased and extinguished the fire and later took the deceased to the DDU Hospital. As Manish (PW-11) was resiling from his previous statement to the police, he was cross- examined by the APP before the Trial Court. Thereafter, PW-11 resiled from what he allegedly stated before the Police in his statement (Mark PW-11/A) and hence, did not depose anything pertaining to the cause of ignition of the body of the deceased.

19. We may also note that Nathu Paswan (PW-8) (husband of the deceased) has deposed that the appellant Randhir, who used to live in the nearby jhuggi, was also a permanent resident of his village in Bihar. Due to this, he used to visit the jhuggi of PW-8. PW-8 further deposed that the appellant used to address him as brother and his wife/deceased as bhabi. The deceased had complained to him about the bad intentions of the appellant against her and on one occasion, PW-8 had himself seen the appellant tease his wife. Thereafter, the appellant was prohibited from visiting their house. MEDICAL EVIDENCE²⁰ In the present case,

the medical evidence is of great significance. The appellant was medically examined by Dr. Atul Gupta (PW-1), who had CrI. A. 299/2013 Page 9 of 16 found that there was one [f]lame burn on the left side of chest in an area of 10X7cm with singeing of body hair. PW-1, during cross-examination further stated that the burn was fresh (about 3 days old) and the same was not mentioned in his report (Ex.PW-1/A) as there was no visible sign of healing with the naked eye and therefore, the same could be inferred. The same is borne from the MLC of the appellant (Ex.PW-27/A).

21. Dr. Satya Pal (PW-23) was working in the Department of Burns and Plastic Surgery at LNJP Hospital on 29.06.2010 at about 4:55 AM, when the deceased was referred to him. He deposed that during examination, the patient told him that when she was sleeping at her home, her devar Randhir came and forced for sex. When the deceased objected, her devar Randhir poured kerosene oil on her clothes and he fired a matchstick and threw to her and ran away from there. The deceased caught fire and sustained 100% TBSA with facial and genital flame burn. During cross-examination, he stated that due to passage of time in 100% burn injuries, patient cannot be mentally fit. He further voluntarily deposed that when he had recorded the statement, the deceased was mentally fit. The same is also borne from the Burn Assessment Record (Ex.PW-23/A), wherein the description of incident is as under: Alleged h/o accidental homicide flame burn, at around 1 AM, on 29/

at home, as told by pt. herself. A/c to her, when, she was sleeping at home, (Debar) Randhir A/M came and, h/o force the sex, there was dispute between them. Debar Randhir poured kerosene oil on her clothes And he fire match stick and through [sic: threw]. to her and ran away from there. She caught fire and sustained 100% TBSA c facial and genital flame burn. CrI. A. 299/2013 Page 10 of 16 22. The Death Summary (Ex.PW-4/D) was also prepared by PW-23 and reiterates the same. Both Burn Assessment Record (Ex.PW-23/A) and the Death Summary (Ex.PW-4/D) state that at the time of admission, the deceased was conscious.

23. Having analysed the evidence on record, we are of the view that the Trial Court was correct in coming to a finding of guilt against the appellant/accused. In

the present case, the deceased had herself made a dying declaration to Dr.Satya Pal (PW-23) stating that her devery/brother in law Randhir had forced her to have sexual intercourse and upon denying the same, the appellant had doused her with kerosene oil and set her ablaze and then fled. When Neelam (PW-7) had reached the spot of the incident, she had enquired from the deceased and the same response was given, i.e. that she had been set on fire by the appellant, who had ran away. PW-3 also bears witness to the same.

24. Though there is no bar in relying upon the dying declaration without corroboration, that is not the case in the present matter. The dying declaration is duly corroborated with the testimony of the eyewitness, i.e. Sonia (PW-3). PW-3 had deposed that upon hearing the cry of her mother/deceased, she came downstairs and it was in front of her that the appellant lit the deceased by lighting a matchstick; then the appellant ran away after jumping out of the window. Upon enquiry, the deceased had informed that as she had denied the request of the appellant to sleep with him, the appellant had set her on fire. [See Sham Shankar Kankaria v. State of Maharashtra, (2006) 13 SCC165(paragraph 8); Lakhan v. State of M.P., (2010) 8 SCC514CrI. A. 299/2013 Page 11 of 16 (paragraphs 8 - 19); and Rishi and Anr. v. The State, 147 (2008) DLT410(paragraphs 22 - 26)].

25. Even though PW-7 cannot be said to be an eyewitness as the appellant had already fled when she arrived, she bears witness to the reason given by the deceased as to her cause of death, i.e. being ignited by the appellant. Additionally, PW-8 has also deposed that the appellant had an evil eye for the deceased.

26. Coming to the testimony of Manish (PW-11), the same is neither here nor there. PW-11 had turned hostile and nothing has come in his testimony barring the fact that he had doused the flame and taken the deceased to the Hospital. However, the same does not open the room for benefit of doubt in the face of other clinching evidence against the appellant/accused.

27. The testimony of PW-3, daughter of the deceased, remains reliable and truthful. The inconsistency in respect of the site of the incident does not go to the root of the matter as (1) the site has been established by the testimony of other prosecution witnesses and (2) PW-3 had clarified about the site in her further

evidence recorded on 15.02.2012. The dying declaration of the deceased is corroborated by the oral testimony of PW-3. This is further corroborated by the medical evidence (Ex.PW-1/A) to the effect that there were fresh burn injuries on the body of the appellant. No explanation has come forth in this regarding. The reply of the appellant in his statement under Section 313 Cr.P.C. is as under: Ques:4 You were examined by PW1-Dr.Atul Garg, who gave his opinion, which has been proven as Ex.PW1/A, bearing his signatures at point A, same is further in evidence against you. What do you have to say?. CrI. A. 299/2013 Page 12 of 16 I do not know. Ans.

28. In the absence of any reliable explanation to the origin of the burns on the body of the appellant, the same further corroborates the case of the prosecution.

29. Accordingly, in view of the dying declarations of the deceased made to PW-23, PW-3 and PW-7, corroborated by the oral testimonies and the medical evidence, no infirmity can be found in the order of conviction of the Trial Court.

30. We also do not find any force in the submission of Mr.Kumar that the FSL Report (Ex.PW-31/A) contradicts the case of the prosecution as no residue or smell of kerosene was found on the scalp hair sent to the FSL. No doubt no residue of kerosene was detected on the scalp hair (labelled as exhibit 12), the same cannot be a conclusive factor. There is always a possibility of the articles losing kerosene residue and smell over a long period of time. In *Puran Chand v. State of Haryana*, (2010) 6 SCC566 the Apex Court rejected a similar contention that no traces of kerosene were found on the clothes of the deceased, observing as under: 14. Lastly, a point was raised by the learned defence counsel that on the half burnt clothes of Santosh, there were no traces of kerosene and, therefore, the whole story of burning her by pouring kerosene on her body has to be disbelieved. It is to be seen that the seizure of these clothes was proved by Mam Chand (PW-8). He spoke about the seizure of an empty can, smelling of kerosene oil, a match box with 4 or 5 burn match sticks, a quilted bed (probably meaning 'mattress'), smelling of kerosene from it which was semi burnt and some sample of soil. According to him, they were packed in the parcels separately and sealed. On this backdrop, when the recovery memo is seen, it mentions one empty tin box, match

box, two burnt match sticks, earth which CrI. A. 299/2013 Page 13 of 16 was put in plastic Dibbi, clothing of the deceased Santosh of light blue colour, bed sheet (Bichhona) with marks of fresh burns. The witness, however, has not referred in his Examination-in-Chief to the cloth parcel (Exhibit

4) with some partially burnt pieces of clothes. The FSL report suggests that kerosene residues were detected in Exhibit 5, which was a plastic bag containing a partially burnt coloured check cotton gadda, It clearly suggests that no kerosene residues could be detected on Exhibits 1, 2, 3, 4 or 6. From this, the learned Counsel urged that particularly, the parcel Nos. 1, 3 and 4 were bound to carry kerosene residues if the prosecution story was truthful. However, it is to be seen that the mattress did have kerosene residues. While this incident has taken place on 15.12.1997, parcels seems to have been sent only on 29.12.1997 i.e. after about 14 days of the incident, which reached the FSL Laboratory on 31.12.1997. The FSL report bears a date 5.6.1998. There is thus the possibility of the articles losing the kerosene residues due to the long interval of time, yet it has to be noted that the mattress which undoubtedly a thick material, did have the kerosene residues. Ordinarily, there was no reason for the mattress having the kerosene residues unless kerosene was poured on the same. It is again to be noted that even the plastic container, containing kerosene, was also found not having any kerosene traces. Therefore, this circumstance will not help the accused as some kerosene traces have been found on the mattress where Santosh was sleeping. Even if we ignore this circumstance, the fact of the matter is that the dying declaration has been found by us to be voluntarily truthful and unblemished. That would clinch the issue against the accused.

15. The appreciation by the Trial Court and the Appellate Court on the overall circumstances and their finding of conviction is correct. The appeal has no merits and it deserves to be dismissed. It is accordingly dismissed. (Emphasis Supplied) CrI. A. 299/2013 Page 14 of 16 [Also see Mahesh v. State, MANU/DE/4011/2013 (paragraphs 29 and 30); and Swarna and Nisha v. The State (NCT of Delhi), 204 (2013) DLT151(paragraphs 50 and 51)].

31. In the present case, the date of the incident are the wee hours of 29.06.2010 and the scalp hair were taken on 01.07.2010 [Seizure Memo (Ex.PW-29/B)]. and sealed in a paper and then wrapped in a khakhi envelope. The same were received by the FSL on 31.08.2010, while the report bears the date of 03.02.2011, i.e. after 7 months from the date of the incident. The said time gap, opens the possibility of the articles losing the residue of kerosene.

32. We may also note that the clothes of the appellant were seized after his MLC, vide Seizure Memo (Ex.PW-21/G), and were preserved in better casing (first polythene and then a card board box). FSL found residue on kerosene oil on them. This may be owing to the factor that polythene bags are better at preserving the residue than paper. Again no explanation is forthcoming in the statement of the appellant/accused under Section 313 Cr.P.C.

33. The reliance of Mr.Kumar on Manohar Lal (Supra) is also misplaced as the judgment is shy of any details as to the date of the examination of the articles by the FSL and even otherwise, there was no other reliable piece of evidence before the High Court of Himachal Pradesh, which is not the case before us.

34. The final contention of the learned counsel for the appellant was that as there were no other external injuries on the body of the deceased as deposed by PW-2. We find no merit in the same in view of the other evidence on record. Crl. A. 299/2013 Page 15 of 16 35. To conclude, none of the contentions urged by the learned counsel for the appellant persuade us to take a different view than the Trial Court. The prosecution has been able to prove its case beyond reasonable doubt in view of the dying declarations of the deceased corroborated 36.

37. 38. by oral and medical evidence on record. The appeal is accordingly dismissed. Trial Court record be returned along with copy of this judgment. In view of the foregoing order, Crl.M.B. 743/2017 seeking interim suspension of sentence is rendered infructuous and accordingly, dismissed. MAY02 2017 // sk G. S. SISTANI, J.

VINOD GOEL, J.

