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Zahid vs.state

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Court : Delhi

Decided On : Jun-28-2017

Appellant : Zahid

Respondent : State

Judgement :

* + % IN THE HIGH COURT OF DELHI AT NEW DELHI ZAHID CRL.A. 612/2000 Judgment Reserved on: May 02, 2017 Judgment Pronounced on: June 28, 2017 ..... Appellant Through : Mr. Jitender Tyagi, Advocate with Mr.Rajesh Pandey and Mr.Sohit Choudhary, Advocates. Versus STATE ..... Respondent Through : Ms.Radhika Kolluru, APP for State with SI Praveen Kumar. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE VINOD GOEL VINOD GOEL, J.

1. The challenge in this appeal is the impugned judgment and order on sentence dated 11.09.2000 passed by the learned Additional Sessions Judge (in short ASJ) in Sessions Case 3/2000 by which the appellant stands convicted under section 302 of the Indian Penal Code (briefly the IPC) and was sentenced to imprisonment for life. A fine of Rs.5000/- was imposed on him and in default of payment of fine, the convict was to undergo simple imprisonment for two months.

2. The sentence of the appellant was suspended vide order dated 27.05.2002 by this Court. Crl. A. 612/2000 Page 1 of 32 3. Before we proceed with the case we deem it necessary to lay down the relation between the appellant, the deceased

and the material eye witnesses: MUSTAFA SHAHIDA SHAHID daughter (son) (PW-9) SHABANA (PW-1) Wife of PW-9 ZAHID (son) (Appellant) ABDUL GANNI (PW-13) ASLAM (PW-10) NADEEM (DECEASED) 4. PW-9 and PW-1 were married. The deceased was the brother of PW-1 while the appellant is the brother of PW-9. PW-13 is the father of PW- 1, PW-10 and the deceased Nadeem. Mustafa is the father of the appellant, Shahida and PW-9.

5. Briefly put, the case of the prosecution is that on 15.08.99 the appellant came to house of Shahid (PW-9) & his wife (PW-1) and started quarrelling with PW-9 over Rs.600/- which PW-9 had borrowed from him. At that time, Shabana (PW-1) and her deceased brother Nadeem were also present in the house. The Deceased Nadeem intervened to say that since accused owed Rs.700/- to him, he would deduct Rs.600/- from this and return the balance. Thereafter, appellant took the deceased downstairs for a talk and he stabbed him multiple times. The landlord i.e. Habib Ahmed (PW-17) of the house where this incident took place came out after hearing the scream of the deceased and caught hold of the appellant. Ct. Bhamboo Ram (PW- 11), who happened to be patrolling in the area, saw PW-17 holding the appellant who had a knife in his hand from behind and snatched the knife from the appellant. This knife was seized by SI B.P Sharma (PW-18). He also seized the blood stained shirt and pant of the accused and also took samples of the blood lying on the ground at the place of incident. The convict was apprehended by him outside the home.

6. The statement of Habib Ahmad (PW-17) was recorded by S.I. B.P. Sharma. Rukka was given to Ct.Munim Khan who went to police station where Duty Officer Sh.Jai Kishan (PW-7) registered the FIR Ex.PW7/B.

7. After recording the statement of Habib Ahmed (PW-17), SI B.P. Sharma left Ct. Bhamboo Ram to guard the spot. He along with Ct.Munim Khan left for JPN Hospital and collected MLC of victim Nadeem which is Ex.PW3/A. As per the MLC the injuries sustained by the victim were found to have been caused by a sharp-edged weapon. Victim was kept under observation and he was to be operated upon. Sub Inspector B.P. Sharma called the crime team and got the scene of crime photographed through photographer SI Mahesh Kumar. The negative of the

photographs are Ex.PW
to 3 and positive are Ex.PW
to 6. He collected the blood sample lying at the scene of crime with the help of a cotton swab and put it in a plastic vial which was sealed by B.P. Sharma and seized vide Seizure Memo Ex.PW11/A in the presence of constable Bhamboo Ram (PW-11) and Habib Ahmad (PW-17). He also took in possession the Chhurry (knife) Ex.P-1 from Constable Bhamboo Ram, who had seized it from the appellant. Sketch of the Chhurry was also prepared in the presence of constable Bhamboo Ram and PW-17 Habib Ahmad which is Ex.PW11/B. The Chhurry was converted into a Pulanda which is Crl. A. 612/2000 Page 3 of 32 Ex.PW11/C. SI B.P. Sharma also prepared the site plan of the scene of crime which is Ex.PW18/A. S.I B.P Sharma arrested the appellant in the presence of these two witnesses vide Memo Ex.P-A.

8. S.I. B.P. Sharma also took into possession the blood stained pant and shirt of the victim and converted the same into Pulanda and sealed the same vide Memo Ex.PW10/D in the presence of PW-11 Bhamboo Ram.

9. The deceased was declared fit for statement on 17.08.1999 by the doctor on duty in JPN Hospital. Sh.B.P. Sharma recorded the statement of Nadeem which is Ex.PW13/A in the presence of his father Abdul Ganni (PW-13). The deceased categorically stated that it was the appellant who had taken him for a talk downstairs and then stabbed him multiple times after which he became unconscious. The deceased succumbed to his injuries on 24.08.1999. The statement recorded by B.P. Sharma was treated as a Dying Declaration. The cause of death was opined as being due to excessive bleeding and shock consequent to injury no.2 and 7 which were caused by a stabbing weapon.

10. Post mortem on the body of victim Nadeem was conducted by Dr.Anil Aggarwal (PW-12) and the Post Mortem Report is Ex.PW12/A. PW- 12 Dr. Anil Aggarwal on examination of the dead body found the following injuries: i. Incise wound 2 x 1.5 cm present on inner back of left wrist. ii. Stitched wound 2 cm in length with 3 stitches on the inner front of lower half of left arm. On opening the stitches the wound was 1.2 cm deep Crl. A. 612/2000 Page 4 of 32 the and

underlying left brachial arterial shows two stitches. iii. Partially healed wound (stitches removed) 5 cm in length at the apex of the axilla. iv. Partially healed wound 1.5 cm in length over front of right side chest 4 cm upper and inner to right nipple and 3 cm outer of mid line. The wound is chest cavity deep but shows sign gulling on inside. There was no corresponding injury to right lung. v. Partially healed wound 4.5 cm in length over front of right side chest with its inner and 3.2 cms below injury no.4. The wound is chest cavity deep but shows sign of gulling on the inside. There was no corresponding injury to the right lung. vi. Stitch exploratory laparatomy wound 23 cm in length vertically placed over mid line of abdomen starting from 2 cm below xiphisternum and ending 8 cms above the pupis. vii. Stitch wound 4.5 cm in length almost vertically placed on the left front of abdomen lying 9 cm outer to injury no.6. viii. Stitch wound 2 cm in length obliquely placed over inner front of right knee. Drainage tube wounds are present as show in the diagram in the original post mortem report. All injuries have also been depicted diagramically in page 2 of the report. 11. With the consent of the appellant and in the presence of learned Metropolitan Magistrate, blood sample of the appellant was obtained by the doctor which was also converted into Pulanda and it was seized Crl. A. 612/2000 Page 5 of 32 by Memo Ex.PW4/A. The articles recovered during investigation were sent to FSL for examination and the report received is Ex.PW8/E1 to Ex.PW8/E3. The scale site plan was prepared by S.I. Mahesh Kumar which is Ex.PW14/A. The autopsy surgeon gave his opinion that the injuries reflected in the Post Mortem Report could be caused by the Chhurry (Ex.P-1). The investigation report under Section 173 of the Code of Criminal Procedure, 1973 (in short Code) was forwarded to learned Metropolitan Magistrate. The case was committed to the Court of Sessions. Learned ASJ framed the charge under section 302 of the IPC against the appellant to which he pleaded not guilty and claimed trial.

12. To bring home the guilt of the accused, the prosecution examined 18 witnesses in all. Statement of the appellant was recorded under Section 313 of the Code in which he stated that he has been falsely implicated in the case.

13. It is important to note that during the course of the trial the following witnesses i.e. PW-1 (Shabana, sister of the deceased and the appellants brothers wife), PW-

9 (Shahid, brother of the appellant), PW-10 (Aslam, brother of the deceased) and PW-13 (Abdul Ganni, father of the deceased) who all were close relatives of the deceased as well as the landlord PW-17 (Habib Ahmed) turned hostile. The learned Trial Court on the basis of the testimony of the official witnesses as well as the medical evidence on record held the appellant guilty for the offence punishable under Section 302 of the IPC.

14. Mr.Jitender Tyagi, learned counsel for the appellant submits that the judgment of the Trial Court is based on surmises and conjecture. He submits that it being against the facts and law is liable to be set aside. Crl. A. 612/2000 Page 6 of 32 He had raised serious doubts as to the credibility of the Dying Declaration given by the deceased. He had submitted that the deceased never named the appellant in his Dying Declaration but only stated to the Doctor that the brother of his brother-in-law had stabbed him which is not conclusive as to the identity of the appellant as the deceaseds brother-in-law has many brothers. He argued that the deceased remained alive for many days after his statement was recorded and since the deceaseds statement was not recorded in the presence of the concerned S.D.M and it was not in a question-answer format, the same needs to be discarded altogether.

15. Learned counsel for the appellant had further urged that although the Dying Declaration was allegedly recorded in the presence of his father (PW-13) and the I.O (PW-18) yet PW-13 had himself questioned the genuineness of this statement and the prosecution story, therefore, the Dying Declaration cannot be relied upon.

16. The learned counsel for the appellant had further contended that the material witnesses had turned hostile and therefore there was no public witness either to the accused being apprehended by the police or the recovery of the alleged weapon of offence and the seizure of the accuseds blood stained clothes. PW-17 (landlord) on whose statement the F.I.R was registered had stated in his examination-in- chief that the police came to his house and took his signatures and thumb impression on a blank paper and he does not know anything else about the incident.

17. Learned counsel for the appellant had further urged that since the material witnesses had turned hostile, the testimony of PW-15 and PW-18, who were the police officials and allegedly reached the spot Crl. A. 612/2000 Page 7 of 32 after receiving information about the incident and seized the weapon of offence and apprehended the accused, is not corroborated by any other witness. He submits that this creates a serious doubt as to the recovery of the alleged weapon of offence and apprehension of the accused from the place of incident.

18. Learned counsel for the appellant had contended that even though the blood group of the deceased matched with the blood group found on the appellants clothes, the seizure of the appellants clothes by the police is highly doubtful as there were no public witnesses to the same. He submitted that there was also a material contradiction in the statement of PW-11 and PW-18 B.P Sharma regarding the seizure of the appellants clothes. He submitted that PW-11 had stated in his cross examination that that IO had given the appellant a loongi to wear after he seized his clothes while the IO himself stated in his examination-in-chief that he gave the appellant a pant and shirt to wear after seizing his clothes thereby creating a serious doubt as to the alleged seizure of the appellants clothes.

19. Learned counsel for the appellant had also contended that the learned ASJ erred in relying on the examination-in-chief of PW-1 (Shabana) as she had turned hostile and had specifically deposed in her cross examination that she had been tutored by the police before she made her statement before the court, she also stated that her statement (examination-in-chief) before the court was not voluntary.

20. Per contra, learned APP for State Ms.Radhika Kolluru had contended that the prosecution had been able to prove its case beyond any shadow of doubt. She submits that even though all family members of the appellant turned hostile and did not support the case of the Crl. A. 612/2000 Page 8 of 32 prosecution leaving no public witnesses in the present case, the unimpeachable testimony of the official witnesses, Dying Declaration of the deceased given to PW-18 B.P Sharma and the medical evidence on record prove beyond reasonable doubt that the appellant indeed was guilty of the offence under Section 302 of the IPC. She

submits that PW-1 has fully supported the case of the prosecution in her examination-in-chief. But the defence got her cross-examination deferred just to win her over. After about five months when she appeared for her cross-examination she became hostile in order to save her married life as she is married to brother of the appellant.

21. The learned APP while relied on Khujji @ Surendra Tiwari vs. State of Madhya Pradesh (1991) 3 SCC627to contend that the testimony of a hostile witness can be relied upon if the same is carefully scrutinised in relation to the facts and circumstances of the case and is found to be dependable.

22. We have heard the learned counsel for the parties and examined the evidence on record.

23. After hearing the counsel for the parties and going through the impugned judgment, the following issues have arisen for our consideration: i. Whether the dying declaration which was recorded only in the presence of a police officer and was not in a question-answer format is to be discarded altogether?. ii. If and to what extent the testimony of hostile witnesses is to be relied upon?. iii. If in the present case, the medical evidence the official witnesses and testimony of Crl. A. 612/2000 Page 9 of 32 corroborate each other so that the guilt of the appellant is proved beyond reasonable doubt?. 24. We proceed to deal with the first issue. The Honble Supreme Court in a catena of cases has put to rest the controversy that has sought to be created by the counsel for the appellant regarding the credibility of the dying declaration given in presence of a Police official. The Honble Supreme Court in Laxman v. State of Maharashtra, (2002) 6 SCC710while laying down the guidelines to test the credibility of a dying declaration held as under:-

"to speak only the 3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is

on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and correctness. The Crl. A. 612/2000 Page 10 of 32 and any adequate method the dying declaration had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, is not acceptable. A dying declaration can be oral or in writing of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to Crl. A. 612/2000 Page 11 of 32 be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore

the voluntary and truthful nature of the declaration can be established otherwise. (Emphasis supplied) 25. The Honble Supreme Court in State of Karnataka v. Shariff, (2003) 2 SCC473while dealing with a case where the dying declaration was recorded by the I.O in the absence of the S.D.M as was done in the present case held as under: 21. It is true that PW11and PW14were the police personnel and a Magistrate could have been called to the hospital to record the dying declaration of Muneera Begum, however, there is no requirement of law that a dying declaration must necessarily be made to a Magistrate. In Bhagirath v. State of Haryana [(1997) 1 SCC481:

1997. SCC (Cri) 3

AIR 1997 SC234 on receiving message from the hospital that a person with gunshot injuries had been admitted, a head constable rushed to the place after making entry in the police register and after obtaining certificate from the doctor about the condition of the injured took his statement for the purposes of registering the case. It was held that the statement recorded by the head constable was admissible as dying declaration. Similar view was in Munnu Raja v. State of M.P. [(1976) 3 SCC104:

1976. SCC (Cri) 3

(1976) 2 SCR764 wherein the statement made by the deceased to the investigating officer at the police station by way of first information report, which was recorded in writing, was held to be admissible in evidence. (Emphasis supplied) taken Crl. A. 612/2000 Page 12 of 32 26. The Honble Supreme Court in Shariffs case (Supra) also dealt with the effect of a dying declaration not being in a question answer format and held as under: form can be accepted 22. The other reason given by the High Court is that the dying declaration was not in question-answer form. Very often the deceased is merely asked as to how the incident took place and the statement is recorded in a narrative form. In fact such a statement is more natural and gives the version of the incident as it has been perceived by the victim. The question whether a dying declaration which has not been recorded in question-answer in evidence or not has been considered by this Court on several occasions. In Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC517:

1998. SCC (Cri) 1085]. it was held as follows: (SCC pp. 521-22, para

9) It cannot be said the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question- answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the that unless Crl. A. 612/2000 Page 13 of 32 dying declaration, the certificate of a medically trained person is insisted upon. (Emphasis supplied) 27. The Honble Supreme Court in Atbir v. Govt. (NCT of Delhi), (2010) 9 SCC1after going through all authoritative pronouncements on dying declarations summed up the law relating to dying declarations as under: 22. The analysis of the above decisions clearly shows that: (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. Crl. A. 612/2000 Page 14 of 32 the eyewitness affirms (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 deceased was not in a 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. that 28. The Honble Supreme Court again in Surinder Kumar v. State of Punjab, (2012) 12 SCC120held as under: 19. Insofar as the case before us is concerned, we may only note that there is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question- answer form. There may be occasions when it is possible to do so and others when it may not be possible to do so either because of the prevailing situation or because of the pain and agony that the victim might be suffering at that point of time. (Emphasis supplied) 29. The MLC of the deceased which is Ex PW3/A reflects that the deceased was brought to the JPN Hospital at 8:10 PM on 15.08.1999. PW-16 Dr.Ashok Kumar, who was posted as the Junior Resident in Crl. A. 612/2000 Page 15 of 32 JPN Hospital, when the deceased was brought to the Hospital testified that the deceased himself gave the history of being stabbed by the brother of his brother-in-law. This history is recorded in the MLC of the deceased. The deceased was declared fit for statement on 17.08.1999 as reflected in his MLC (Ex PW3/A). The I.O B.P Sharma recorded the deceaseds statement on 17.08.1999 in the presence of the deceaseds father PW-13 Abdul Ganni.

30. The Dying Declaration upon which strong reliance has been placed by the learned ASJ was recorded by S.I B.P Sharma (PW-18) on 17.08.1999 after the doctor on duty at the JPN Hospital had declared the deceased fit for statement. This was recorded in the presence of the deceaseds father Abdul Ganni (PW-13) and his thumb impression had also been taken however in his statement in the Trial Court as PW-13 he denied the contents of the Dying Declaration. The deceased in this declaration had categorically stated that it was the appellant who had stabbed him several times after which he became unconscious.

31. The Dying Declaration finds corroboration in the history which he gave to PW-3 Dr. Dass Gupta and PW-16 Dr. Ashok Kumar at the JPN Hospital. PW-3 and PW-16 deposed that deceased had stated that he had been stabbed by the

brother of his brother-in-law even though these witnesses stated that the deceased was not in a position to give a complete statement to the police at that time. However, on 17.08.1999, the doctor on duty in the Hospital found the deceased fit to make a statement. After a careful scrutiny of the dying declaration and the circumstances in which it was given on 17.08.1999, we find that the fact that the concerned S.D.M was not present and that the same is not in a question answer format does not dent its credibility at all. In light Crl. A. 612/2000 Page 16 of 32 of the guidelines laid down in Atbirs case (supra) by the Honble Supreme Court we find that the declaration was made after the concerned medical officer on duty in the hospital had declared the deceased fit to make a statement, the deceased categorically stated that the appellant had taken him downstairs for a talk and then stabbed him multiple times. This finds corroboration from the testimony of PW-11 Ct. Bhamboo Ram who was the Police official patrolling the area and saw the appellant with a knife in his hand being held by PW-17 Habib Ahmed while the deceased was lying in an unconscious condition on the ground. Therefore we find no reason to doubt the credibility of the dying declaration given by the deceased.

32. Coming next to the second issue, in this case all family members of the appellant, deceased and the landlord (PW-17) had turned hostile leaving only the testimony of the official witnesses and medical evidence on the basis of which the learned Trial Court convicted the appellant. Before analysing the law on the said subject we deem it appropriate to discuss the testimony of the hostile witnesses.

33. PW-1 Shabana (sister of the deceased/sister-in-law of the appellant) in her examination-in-chief had supported the prosecution case and testified that the appellant had come to her home to demand money which the appellants brother Shahid (PW-9) had taken from their sister Shahida. When the deceased intervened, he took him downstairs for a talk after which she heard the deceased screaming and went downstairs along with PW-9 Shahid and found the deceased lying in a pool of blood while PW-17 Habib Ahmed (landlord) was holding the appellant who had a knife in his hand. Thereafter a police official came at the spot and snatched the knife from the appellant. Crl. A. 612/2000 Page 17 of 32 34. It is important to note here that the examination-in-chief of PW-1 was recorded on

01.02.2000 in which she supported the prosecution case, however learned defence counsel got her cross-examination deferred. She was cross-examined on 25.07.2000 i.e. after a gap of about 6 months. In her cross-examination she turned hostile and did not support the case of the prosecution. It is evident that during this time she was won over by the appellant and became turncoat.

35. Section 309 of the Code prior to amendment in 2013 provided that in every enquiry or trial, the proceedings shall be held as expeditiously as possible, in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined unless the court finds adjournment of the same beyond the following day to be necessary for the reasons to be recorded. The order dated 01.02.2000 shows that the appellant was represented by Rais Ahmed, Advocate. He was representing him prior to 01.02.2000 and post 01.02.2000 also. However, purposely when Rais Ahmed was appearing, one Ms. R.K Siddique, Advocate also filed her Vakalatnama for the appellant and she requested for adjournment on the ground of her being engaged in the case on that day. Record reveals that subsequently she never appeared and Rais Ahmed and A.K Singhal appeared for the appellant thereafter.

36. PW-1 in her cross-examination chose not to support the prosecutions case and stated that she was not present in the house when this incident took place and had no idea what had happened on the fateful day. The statement of PW-1 Shabana in her examination-in-chief bears a ring of truth and is reliable and trustworthy of acceptance. Crl. A. 612/2000 Page 18 of 32 Examination-in-chief of PW-1 Shabana is corroborated by PW-3 Dr. Dass Gupta and PW-16 Dr. Ashok Kumar, who recorded the history of injury as disclosed to them by the deceased that he had been stabbed by the brother of his brother-in-law (Jija Ji) in Mandawali Area, and the Dying Declaration stating that the appellant had stabbed the deceased. In the similar facts, the Honble Supreme Court in Selvaraj v. State, (2015) 2 SCC662while laying down the scope of relying on the examination-in-chief of a witness after the witness has turned hostile in his cross-examination held as under: the cannot testimony be the same (statement 19. It is settled principle of law that benefit of reasonable doubt is required to be given to the accused only if

the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in in their cross-examination, examination-in-chief outright discarded provided in examination-in-chief supporting prosecution) is corroborated from the other evidence on record. In other words, if the court finds from the two different statements made by the same accused (sic witness), only one of the two is believable, and what has been stated the cross-examination is false, even if the witnesses have turned hostile, the conviction can be recorded believing the testimony given by such witnesses in the examination-in-chief. However, such evidence is required to be examined with great caution. in
37. PW-9 Shahid, who is the brother of the appellant, and PW-10 Aslam, who is the brother of the deceased, chose not to support the prosecutions case even though they had stated in their statements under section 164 of the Code that it was the appellant who had taken Crl. A. 612/2000 Page 19 of 32 the deceased downstairs for a talk after which he was apprehended with a knife and the deceased was lying unconscious on the ground.

38. PW-13 who is the father of the deceased categorically denied in his statement made before the learned ASJ on 10.08.2000 the contents of the Dying Declaration which was recorded in his presence and he also deposed that two unknown persons had stabbed his son.

39. PW-17 Habib Ahmed, who is the landlord of the house where the incident took place and on whose complaint FIR No.2
was recorded, denied all the contents of the statement he made to the police on the fateful day and stated that the police came to his house and took his thumb impression on a blank paper.

40. The learned ASJ relied on the examination-in-chief of PW-1 while discarding her deposition after she turned hostile when she was cross- examined. The contention of the appellant was that the learned ASJ erred in relying on the examination-in-chief of PW-1 as she had categorically stated in her cross-examination that her deposition in her examination-in-chief was tutored and was not voluntary. The Honble Supreme Court in Bhajju v. State of M.P., (2012) 4 SCC327while dealing with the admissibility of the testimony of a hostile witness

held as under: 37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has the case of Crl. A. 612/2000 Page 20 of 32 been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases: (a) Koli Lakhmanbhai Chanabhai v. State of Gujarat [(1999) 8 SCC624:

2000. SCC (Cri) 13]. , (b) Prithi v. State of Haryana [(2010) 8 SCC536: (2010) 3 SCC (Cri) 960]. , of (c) Manu Delhi) [(2010) 6 SCC1: (2010) 2 SCC (Cri) 1385]. and (d) Ramkrushna v. State of Maharashtra [(2007) 13 SCC525: (2009) 2 SCC (Cri) 427]. Sharma v. State (NCT (Emphasis supplied) 41. The Honble Supreme Court in Attar Singh v. State of Maharashtra, (2013) 11 SCC719again while dealing with the admissibility of the testimony of a hostile witness held as under: 16. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused. (Emphasis supplied) 42. PW-1 in her examination-in-chief had supported the prosecution story and the learned ASJ chose to rely upon it as the same was corroborated by all other official witnesses. Her examination-in-chief Crl. A. 612/2000 Page 21 of 32 is corroborated by the testimony of PW-11 Ct. Bhamboo Ram who the learned Trial Court termed as the most crucial witness in this case. PW-11 had testified that he was patrolling in the area when he saw one person (PW-17) holding a boy (appellant) from behind while the boy had a knife in his hand. He snatched the knife from the appellants hand and thereafter other police personnel (PW-15 &

18) arrived at the spot. PW-1 in her examination-in-chief had also stated that after the appellant had taken the deceased downstairs for a talk after which she heard scream and rushed downstairs to see PW-17 holding the appellant from behind while the deceased was lying unconscious on the ground, then a police official came and snatched the knife from the appellants hand.

43. PW-1s testimony in her examination-in-chief finds further corroboration from the deposition of PW-18 who was the IO in the case and PW-15. Both these witnesses reached the place of incidence after receiving information about the incident. They both had deposed that after reaching the place of incident they saw PW-11 with a knife in his hand and they also saw PW-17 whose statement PW-18 recorded there.

44. The Honble Supreme Court in Girja Prasad v. State of M.P., (2007) 7 SCC625while dealing with the trustworthiness of the testimony of a Police official held as under:

25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base the conviction solely on the evidence of the touchstone of Crl. A. 612/2000 Page 22 of 32 complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence. (Emphasis Supplied) 45. Therefore we find that PW-1s examination-in-chief is corroborated by the testimonies of all the witnesses present at the place of incident on the fateful day and the learned ASJ was correct in relying on the

examination-in-chief of PW-1.The presence of the appellant and his arrest from the spot of incident is also proved beyond any shadow of doubt by the testimony of the official witnesses and the same is also corroborated by the deposition of PW-1 in her examination-in-chief. The fact that all relatives of the appellant who were incidentally also the relatives of the deceased turned hostile raises a suspicion that this was done in order to save the appellant from criminal liability as he is the brother of PW-9 Shahid and PW-10 is the brother of the wife of appellants brother and PW-13 is the father-in-law of his brother Shahid. It appears that PW-10 & PW-13 want to save the matrimonial life of PW-1 who is daughter of PW-13 and sister of PW-10. Crl. A. 612/2000 Page 23 of 32 46. The last issue which remains to be decided is that whether the evidence on record establishes the guilt of the appellant beyond reasonable doubt?. In order to deal with this issue we first deem it appropriate to analyse the medical and forensic evidence on record.

47. B.P Sharma PW-18 seized the knife allegedly used in the commission of the crime. He also seized the appellants blood stained clothes and the blood lying at the scene of crime and sent all these articles for forensic examination. As per FSL report the blood group found on the knife, shirt and pant of the appellant matched the blood sample taken from the scene of crime.

48. The MLC Ex PW2/A of the appellant was prepared on 16.08.1999 and he was found to have suffered an incised wound on the right index finger (2.5 cm deep). PW-2 Dr. M.L Mandal proved the same in his examination-in-chief and this MLC was not disputed in his cross- examination by the defence/appellant. In his statement under section 313 of the Code of he was unable to explain this cut incised wound on his right index finger. In fact the appellant had only stated that he had been falsely implicated in the case and did not offer any explanation to the incriminating evidence that was put to him. In such a situation when the appellant has failed to offer any explanation to the incriminating evidence put to him in his statement under section 313 of the Code, the court can draw an adverse inference against the appellant. The Honble Supreme Court in Rajkumar v. State of M.P., (2014) 5 SCC353after analysing the law on this subject held as under: 22. The accused has a duty to furnish an explanation in his statement under Section 313 Cr PC regarding any incriminating material that Crl. A. 612/2000 Page 24 of 32

has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr PC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide Ramnaresh v. State of Chhattisgarh [(2012) 4 SCC257: (2012) 2 SCC (Cri) of Haryana [(2012) 10 SCC464: (2013) 1 SCC (Cri)

AIR 2013 SC912 and Raj Kumar Singh v. State of Rajasthan [(2013) 5 SCC722: (2013) 4 SCC (Cri) 812].) (Emphasis supplied) , MunishMubar v. State 382].

49. The deceaseds Post Mortem Report (Ex.PW12/A) was prepared by PW-12. Dr. Anil Aggarwal (PW-12) testified that the death was due to excessive bleeding and shock consequent to injuries No.2 and 7 and these injuries were caused by a weapon which could be used for stabbing someone. He had also stated that these injuries could have been inflicted by the knife that was seized by the I.O.

50. We have also discussed hereinabove the testimonies of the PW-11, PW-15 and the I.O PW-18 who were present at the scene of crime and their testimonies have established that the appellant was apprehended from the place of incidence along with a knife and taken to the police station where his blood stained clothes were seized. The presence of the appellant at the place of incidence is further corroborated by the testimony of PW-1 in her examination-in-chief.

51. Therefore in light of the Dying Declaration recorded by PW-3 and PW-16 when the deceased was brought to the hospital followed by the Crl. A. 612/2000 Page 25 of 32 deceaseds statement on 17.08.1999, forensic evidence and deposition of the material witnesses, we find that the prosecution had proven its case beyond any reasonable doubt. It clear from the evidence discussed above that the appellant had a quarrel with the deceased over the issue of money in the presence of PW-1. The appellant then took the deceased downstairs for a talk alone where he stabbed him repeatedly till the deceased became unconscious. The landlord of the house (PW-17) and PW-1 came out after hearing the scream of the deceased and PW-17 apprehended the appellant and PW-11 also reached the spot at the

same time and snatched the knife from the appellants hand and thereafter other police officials also arrived and arrested the appellant.

52. On careful examination of the evidence, we are satisfied that the prosecution has been able to prove its case beyond reasonable doubt. There is no perversity in the appreciation of evidence by the learned Trial Court. No grounds are made out for interference in the judgment of the trial Court. Accordingly, the appeal is dismissed.

53. The appellant shall surrender within 2 weeks from the date of pronouncement before the concerned SHO. Order on Compensation to the Legal Heirs of the Victim 54. Learned ASJ awarded imprisonment for life to the appellant and imposed a fine of Rs.5000/- and in default of fine, he directed the appellant to undergo rigorous imprisonment for two months. Even this meagre fine has not been ordered to be paid to the legal heirs of the deceased by the Trial Court. In the recent times, the victimology and rehabilitation has taken roots in the criminal administration of justice of our country. The law is also codified in this aspect and Crl. A. 612/2000 Page 26 of 32 Section 357 and 357A of the Code deals with the subject. Furthermore the codes of law in this country are well guided by the Honble Supreme Court. Considering the mandate, this court proposes to deal with the aspect of granting compensation to the victims.

55. In this case deceased Nadeem suffered fatal injuries. He was aged about 20 years at the time of incident.

56. By a catena of decisions of the Honble Supreme Court in the reported cases of Kawal Pati vs. State of U.P., 1995 (3) SCC600 Supreme Court Legal Aid Committee vs. State of Bihar, 1991 (3) SCC482 Chairman Railway Board vs. Chandrimadas 2000 (2) SCC465 Nilabati Behera vs. State of Orissa, 1993 (2) SCC746 Khatri vs. State of Bihar, 1981 (1) SCC623and Union Carbide vs. Union of India, 1989 (1) SCC784 it is held that victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. 57. To understand the powers and jurisdiction of this court, it would be profitable to advert to section 357A of the Code in order to award compensation or to merely recommend to the District Legal Service Authority, Delhi, the amount of

compensation payable to the legal heirs of the deceased. Section 357A of the Code reads as under:-

"357A. Victim compensation scheme.(1) Every State Government in co-ordination with Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered lose or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Crl. A. 612/2000 Page 27 of 32 the cases end Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority, shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

58. This section 357A of the Code came up for interpretation before the Honble Supreme Court in Ankush Vhivaji Gaikwad vs. State of Maharashtra, (2013) 6 SCC770 and the Apex Court has held that under Section 357-A of the Code the

court is empowered to direct the Crl. A. 612/2000 Page 28 of 32 State to pay compensation to the victims in such cases where compensation awarded under Section 357 of the Code is inadequate or the case ends in acquittal or discharge. The relevant Para of the judgment reads as under:-

"in a criminal 42. The amendments to the Criminal Procedure Code brought about in 2008 focused heavily on the rights of victims trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively. 62. While the award or refusal or compensation in the particular case may be within the Courts discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons is for awarding/refusing compensation. axiomatic involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a for any exercise that introduced due to It Crl. A. 612/2000 Page 29 of 32 conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family. 59. Recently, in Suresh Vs. State of Haryana, MANU/SC/1091/2014, decided on 28.11.2014, the Honble Supreme Court has held that the objet and purpose of Section 357A, which was incorporated by

amendment Act No.5 of 2009 is to enable the court to direct the State to pay compensation to the victims where the compensation under Section 357 of the Code was not adequate or the case ended in acquittal or discharge. The relevant Paras of the judgment read as under: - 12. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr. PC vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to pay compensation the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The the State victim where to direct the to Crl. A. 612/2000 Page 30 of 32 vs. State provision has received the attention of this Court in several decisions including Ankush Shivaji Gaikwad of Maharashtra. 14On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation be determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.. 60. In view of the judgments of the Apex Court in Ankush (supra) and Suresh (supra), this court can direct the State Government to pay compensation to the victims and legal heirs. The Government of NCT of Delhi has notified Delhi Victims Compensation Scheme, 2015. Since the incident is of 15.08.1999 and appeal is of the year 2001 and it will take time if the inquiry is conducted by this Court for assessing the quantum of compensation payable to the legal heirs of the deceased, therefore, we dispense with the inquiry as to capacity of the appellant to pay the compensation to the legal heirs of the deceased.

61. Let the Delhi State Legal Services Authority to conduct a proper enquiry under Section 357A of the Code for the purpose of identifying Crl. A. 612/2000 Page 31 of 32 legal heirs of the deceased Nadeem and pay them due compensation as per the rules within two months from the date of receipt of copy of this order. Copy of this order be also sent to Member Secretary, Delhi State Legal Services Authority. VINOD GOEL, J.

G.S.SISTANI, J.

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