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Court : Delhi

Decided On : Dec-18-1987

Reported in : 1988(1)Crimes647; 34(1988)DLT192; 1988(15)DRJ63

Judge : H.C. Goel and; Charanjit Talwar, JJ.

Acts : Indian Penal code, 1860 - Sections 302

Appeal No. : Criminal Appeal No. 40 of 1984

Appellant : Liakat Ali

Respondent : State

Advocate for Pet/Ap. : Swaran Mahajan and; Rupinder Wasu, Advs

Judgement :

H.C. Goel, J.

(1) This is an appeal by Liakat Ali, appellant, against his conviction for the offence punishable under Section 302 of the Indian Penal Code and the order sentencing him to life imprisonment there under passed by the court of Shri T.S. Oberoi, Additional Sessions Judge, Delhi. The appellant used to sell fruits near Moti Cinema, Chandni Chowk, Delhi. The case of the prosecution is that on August 4, 1982 the appellant returned home, being house No. C-136, Jahangirpuri, Delhi late in the night, namely at about 12.30 mid-night. The appellant asked his wife

Aliya deceased to serve food to him. Aliya (old him that no food was available for him at that late hour. The appellant got annoyed thereby. He gave a beating to his wife Aliya deceased. He then sprinkled kerosene oil on her person and set her to fire. On hearing the cries of Aliya, Zain-ul-abdin (Public Witness 1) and Hassan (Public Witness 2), the two neighbours of the appellant, reached the house of the appellant. They found Aliya on fire in a corner of the room of her house and the appellant sitting on a cot in the same room. The house of the appellant is a one-roomed house with a courtyard in front thereof. The door of the court-yard opens in the street. On seeing the said two persons the appellant got up from the cot and joined them in putting off the fire from the person of Aliya. Aliya was then removed to the Jpn Hospital by one Siraj-ul-khan, also a neighbour of the appellant. Dr. D.K. Dewan (Public Witness 4) attended to Aliya in the 'Casualty' or the hospital. The deceased is alleged to have told Dr. Dewan that her husband forcibly sprinkled kerosene on her and lit fire to her. This statement of the deceased was noted down by Dewed in his M.L.C. report Ex. Public Witness 4/A while recording the history of the patient. Aliya was later shifted to the Burn Ward of the hospital. Asi Sukhbir Singh of police post Jahangirpuri on receipt of the information about the case from the constable attached to the Casualty of the hospital reached the hospital. He, however, found Aliya as unfit to make a statement. Liakat All, appellant, had also gone to Jpn Hospital. He was given first-aid in respect of the burn injuries as sustained by him which were declared to be 12% He was also interrogated by the police. A case under Section 307 of the indian Penal Code was first registered against the appellant, which was later converted to the one under Section 302 of the Indian Penal Code on the death of Aliya at about 10.30 pm. on August 5, 1987.

(2) The appellant in his statement under Section 313 Criminal Procedure Code . recorded after the conclusion of the prosecution evidence denied that he had poured kerosene oil on the person of his wife Aliya, or set fire to her. He stated that on August 4, 1982 he returned late in the night at about 11.00 p.m. after being free from his work of sale of fruits. However, before returning: io his home he had gone to the house of his adopted sister one Rani by name where her husband and son-in-law were also present. He got reach tied from her. As he could not go to her house in the morning, having left for his work early in the morning, be was having

his food at Rani's house, that he saw some persons running towards his house. On inquiry he learnt that fire had broken out in his house. He rushed to his house. He then tried to put off the fire himself and in that process sustained extensive burns on his person and became unconscious. The appellant did not lead any evidence in defense.

(3) At the trial of the case Zain-ul-abdin (Public Witness 1) and Hassan (Public Witness 2), the two prosecution witnesses of the occurrence, did not support the prosecution case regarding the main occurrence, namely, that when they reached the house of the appellant they found the appellant sitting on a cot whereas Aliya was on fire in a corner of the room and about Aliya having told them that the appellant bad poured kerosene oil on her and set her to fire. They slated to the effect that when they reached the house Aliya was on fire and the appellant was trying to extinguish the fire. The main or almost the sole evidence of the prosecution against the appellant is the dying declaration of Aliya deceased as recorded by Dr. Dewan (Public Witness 4) in his medico legal report Ex Public Witness 4/A duly proved by him and his statement as Pw 4. The learned Additional Sessions Judge accepted the statement of Dr. B.K. Dewan, Public Witness 4, and took the view that he had correctly recorded the statement of the deceased Aliya at point A to A in his Mlc Ex. Public Witness 4/A. The learned Additional Sessions Judge was also satisfied that this dying declaration of the deceased was convincing and the conviction of the accused appellant could be based on that evidence alone. He also found some support to the case of the prosecution by the statements of Zain-ul-abdin, Pw 1 and Hassan Public Witness 2, which according to him, have both stated that they had first heard noise of a quarrel between the accused and the deceased Aliya coming from their house and it was soon thereafter that they saw some flames coming out of the house of the accused. He also took note of the fact that the deceased was not removed to the hospital by the accused himself and was taken to the hospital by a neighbour one Siraj-ul-kban at the asking of Zain-ul-abdin,PWI. The learned Additional Sessions Judge discarded the suggestion of the defense that it could be a case of either commission of suicide by Aliya or her having caught fire accidentally and held that from the facts and circumstances as brought out on the record the case of the prosecution stood proved beyond a reasonable doubt.

(4) Mrs. Swaran Mahajiin, learned counsel for the appellant, submitted that the alleged .dying declaration. Ex. Public Witness 4/A. was not recorded by Dr. Dewan as a formal dying dedaration, viz in question-answer form and even though there may be no bar to treating such a record of the statement of the deceased as a dying declaration. the learned Additional Sessions Judge was net right in convicting the appellant on the basis of the sole evidence of this dying declaration, particularly when the there was no corroboration of the same. It was submitted that the deceased as per the case sheet of the patient as prepared by Dr. Kuldeep Singh (Ex. Public Witness 16/A) which was proved by Mr. Y.P.Gulati, Record Clerk, Jpn Hospital, Delhi as Public Witness 16, had sustained 90% burns or that in any case she had sustained 60% burns even as per the report of Dr. Dewan, Public Witness 4 and the statement of Dr. O.K. Sharma, Public Witness 9 who conducted the post mortem examination on the body of the deceased Aliya and his post mortem examination report Ex. Public Witness 9/A. it would not have been possible for Aliya in such a serious condition to give a coherent statement or in any case Dr. Dewan may not have been able to properly understand what was stated to him by the deceased while telling the circumstances as to how she caught fire and Dr. Dewan might have mis-understood and made an incorrect record of the same. Mrs. Mahajan referred to some other facts and circumstances on the basis of which it was contended that it was not at all safe to base the conviction of the appellant for the heinous offence of murder solely on the alleged dying declaration of the deceased. She submitted that the mouth of the can Ex. P3 from which kerosene oil is alleged to have been poured by the appellant on the head of the deceased was narrow and having a diameter of not more than on inch. It would have taken a .Jairly sufficient time to put some considerable kerosene oil from out of such tin on the head of the deceased and the deceased would have resisted the same and would have been able to get herself released and save herself from being set to fire. It was also pointed out that according to the statement of Zain-ul-Abdin.PW 1, and that of Hassan, Public Witness 2, the door of the house of the accused was open when they reached there and that as such it could have been possible for the deceased Aliya to have run out of the room after getting herself released from the appellant and it could not have been possible for the accused to sprinkle oil and to set her to fire. It was next pointed out that Zain-

ul-Abdil.PW I, has stated that when they reached the house of tile accused they saw the accused trying to extinguish the fire from the person of the deceased and that this conduct of the accused showed that he must not have set fire to the deceased himself. In this connection it was pointed out that the accused-appellant admittedly sustained 12% burn injuries. Mrs. Mahajan next submitted that no kerosene oil was found on the clothes of the accused which was likely to have fallen on his clothes also to some extent while pouring kerosene oil on the head of the deceased against her will. It was also Submitted that in the site plan Ex. Public Witness 17/B as prepared by the Investigating Officer, Si Mababir Singh, Public Witness 17, no marks of struggle are shown. There is no evidence of any broken bangles etc. having been found from the room where the deceased was allegedly set to fire. It was also submitted that Siraj-UI-Hasan who is alleged to have taken the deceased from her house to Jpn Hospital in a scooter rickshaw was not examined by the prosecution and for that an inference should have been drawn against the prosecution that had he been examined he would not have supported the prosecution case. Lastly, it was submitted that the prosecution has not disclosed any motive on the part of the accused to commit the heinous crime of murder of his own wife. There was no prior history of quarrels between the accused and the deceased. Mrs Mahajan also referred to some case law in support of her contention that under such circumstances it was not safe to convict the appellant, solely on the basis of the alleged dying declaration of the deceased, namely, Jagdish Lal Malhotra v. The State, 1984 (1) Cri 108, The State of Maharashtra v. Asaram Mahadu Dwange 1978 Cr. L.J. 1017, The State (Delhi Administration) v. Laxman Kumar, : 1986 CriLJ155 , and Pompiah v. State of Mysore : 1965 CriLJ31 .

(5) So far as the legal position is concerned the law is well settled as regards the evidentiary value of dying declaration. The basic authority on the subject is Khushal Rao v. State of Bombay : 1958 CriLJ106 . Their Lordships held:-

'(1)that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated ; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general

proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence ; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable in the words to the maker of the declaration, stands on a much higher fooling than a dying declaration which depends upon oral testimony which may stirs from ail the infirmities of human memory and human character, and (6) that in order to lest the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night ; whether the capacity of the man to remember the facts slated, had nut been impaired at the time he was making the statement, by circumstances beyond his control ; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties'.

The same principle was reiterated in the case of Thurukami Pompiah and another, (supra) referred to by Mrs. Mahajan. The Court observed as below :-

'dying declaration is relevant and material evidence in the prosecution of the assailants and a truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a dose scruiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is utitrue, the Court may, in all the circumstances of 'the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration,'

(6) After hearing the two sides and giving the matter our anxious consideration in the light of the legal position as stated above we are of the considered opinion that there is no merit in the submissions of Mrs. Swaran Mahajaii. The facts and circumstances as submitted by her individually or taken together do not go to throw any suspicion on the genuineness and reliability of the dying declaration of the deceased as recorded by Dr. Dewan and we are fully satisfied that the learned Additional Sessions judge was right in accepting the same as a fully convincing dying declaration of the deceased and to base the conviction of the appellant there on Dr. Dewan, PW4, has stated that on August 5, 1982 while he was working as the Casualty Medical Officer, Jpn Hospitai, New Delhi, patient Aliiya was brought by Siraj-ul-Khan Public Witness to the Casualty. The patient gave the history slating that she was burnt by her husband who forcibly sprinkled oil on her and lit lire after some quarrel in the family. He has further stated that on examination he found that the patient was conscious and alert and that she was fully oriented and her pulse was of moderate volume. She, according to Dr. Dewan, had about 50-60% burns on her person. He has further stated that he prepared her Mlc which is Ex. Public Witness 4/A which is signed by him and that when the patient Aliya gave her statement she was in a fit state of mind. In the Mlc Ex. Public Witness 4/A it is stated that the patient was brought by Siraj-ul-Khan. The noting at point A to A in Ex. Public Witness 4/A reads as below :

'Alleged h/o sustain burns while her husband forcibly sprinkled kerosene on her and lit after some quarrel. (Pt. 's version)'

(We may note that 'h/o' stands for history of.) Below this note Dr. Dewan recorded the following in the Mlc Ex. Public Witness 4/A :

'O.KS: Pt. conscious, alert oriented. Pulse mod. volume. Burns 50-60%'.

On cross-examination by the defense counsel he stated that the actual statement given by the patient herself had been recorded by him at the portion marked A to A in Ex. Public Witness 4/A. He went on to say that the patient gave that statement immediately after coming to the Casualty when he examined her. He also stated that the above said statement was given by Aliya on his enquiry from her as to how she sustained the burns and that he recorded the portion A to A of Ex. Public

Witness 4/A as was stated to him by the patient. He categorically denied the suggestion that he was told by the Investigating Officer of the case about the history of the patient and not by the patient herself or that he made the noting at point A to A in .Ex. Public Witness 4/A at the instance of the Investigating Officer. The deceased was admittedly examined by Dr. Dewan in the Casualty. Dr. Dewan was normally expected to ask the patient aboutthe cause and the manner in which the pat'.ent Aliya sustained burn. injuries as that is normally recorded while giving the history i.e. the cause of the injuries sustained by the patient. The above said statement of Dr. Dewan thus appears to be absolutely natural and the noting at point A to A in the Mlc Ex Public Witness 4/A clearly appears to be the faithful record of what transpired at the relevant time i.e. what was stated to Dr. Dewan by the patient. The words 'Pt's version' written with brickets and underlined by Dr. Dewan at She end of the portion A to A of the Mlc Ex. Public Witness 4/A are also very significant. Dr. Dewan specifically wrote these words in his Mlc to highlight that his note giving the history of the cause of the patient's sustaining of burn injuries was noted by him on the specific version of the patient herself to him. These words also show that Dr. Dewan was quite conscious of the significance and the implications of his noting down in his Mlc about the cause of sustaining of barns by the patient and about the source of the information in that regard namely, that that version was given to him by the patient herself. Dr. Dewan is a responsible medical officer and is a totally independent person. There is absolutely nothing on the record to suggest that. he could be influenced by anyone in any manner in making the above said entry in his MLC. Dr. Dewan must be credited with full knowledge and understanding of the implication of his recording in his Mlc that the patient's (who had sustained 50-60% burns) attributing the cause of the burns to any person, including her husband was bound to be used as an important piece of evidence against that person, namely the husband of Aliya, whom the cause was attributed and was so recorded by him.

(7) Now, coming to the circumstances as referred to by Mrs. Mahajan; as pointed out by us already above, it is a settled law that there is no legal requirement that a dying declaration must necessarily be recorded in a formal manner i.e. in question-answer form. A dying declaration recorded in an informal manner and as a narrative is fully admissible and is a relevant piece of evidence. So far as the

present case is concerned, obviously Dr. Dewan was not called in to record a formal dying declaration of the patient. He recorded the same while noting down the history of the case of the patient, which was a part of his normal duties while preparing the Mlc of the patient. Thus, recording of the dying declaration of the patient in the manner as done by Dr. Dewan as per his note at point A to A in Ex. Public Witness 4/A was the normal and natural way of recording of the statement of the patient by him at the relevant lime and circumstances. Thus, the fact that the dying declaration in question is not a formal dying declaration recorded in question-answer form does not in any manner go to reduce the evidentiary value of the declaration in question. As regards the question as to whether Aliya was in a fit state of mind so as to give a clear statement to Dr. Dewan about the manner in which she sustained burns; Dr. Dewan has clearly stated in his evidence as Public Witness 4 that on examination he had found that the patient was conscious, alert and she was fully oriented and her pulse was of moderate volume. He has also made a note about the same in his Mlc Ex. Public Witness 4/A which thus corroborates his statement as Public Witness 4. Dr. Dewan was not challenged in his cross-examination about this part of his statement. No question was put to him in his cross-examination suggesting to him that the patient Aliya had sustained burns of a higher intensity or extent than 50-60' in as stated by Dr. Dewan. Dr. Dewaii in his cross-examination also stated that the general condition of the patient as per the Mlc indicated that her condition was not poor. The opinion of Dr. Dewan that Aliya had suffered 50-60% burns is also corroborated by the statement of Dr. G.K. Sharma, Pw 9, who conducted the post-mortem examination report Ex. Public Witness 9/A wherein Dr. Sharma also gave the approximate area of burns of the deceased as about 60%. The entry in the case sheet of the patient Ex. Public Witness 16/A as prepared by Dr. Kuldeep Singh wherein the burns of the patient were stated as 90% has no evidentiary value as Dr. Kuldeep Singh, the author of the case sheet, was not examined as a witness by either side. The prosecution thus did not have the occasion and the opportunity of questioning Dr. Kuldeep Singh in this regard. Had Dr. Kuldeep Singh come in the witness box the prosecution might have been able to get the position clarified from him e.g. error of judgment in that regard. In the absence of Dr. Kuldeep Singli's having come in the witness box no evidentiary value could be attached to the said entry in the case

sheet Ex. Public Witness 16/A which was only formally proved by the statement of Mr. Y.P. Gulati, Record Clerk, Jpn Hospital. It may also be stated here that Dr. Dewan, Public Witness 4, on being questioned if a patient with 90% burns can speak has stated that that depended on the depth of the burns, namely as to whether they were superficial or deep burns involving the respiratory and vocal cords. Dr. Dewan was not challenged about the correctness of this answer of his even. That being so, it appears that a patient with more than ('0% burns or having burns even to the extent of 90% may even be in a position to give a statement, depending on the nature and depth of the burns. Nothing could be pointed out to us at all that Aliya had sustained burns of such nature or depth that she could not be in a position to give a statement or a clear and coherent statement when she was brought to the Casualty and was examined by Dr. Dewan. As regards the submission of Mrs. Mabajan that the mouth of the Can Ex. P3 from which kerosene oil was poured on the head of the appellant was narrow having a diameter of not more than 1', we do not think that the mouth of the Can having a diameter of I' can be considered to be so narrow from which kerosene cannot be poured on a person quite fast. As regards the fact that the door of the room where the deceased was put to fire was open and the deceased had the opportunity of running out of the room, nothing can really be made out of that. It all depended on the persons concerned, namely the assailant and the victim as to how strong each of them was in bodily health and state of mental alertness and how a victim acts and reacts in a situation like the present one. The appellant could have overpowered the deceased who must not have been able to get herself released from his clutches and run out of the room before kerosene oil was poured on her head and she was put to fire. Next, the fact that no kerosene oil was found on the clothes of the accused is also no circumstance to throw any doubt about the reliability or the convincing nature of the dying declaration in question as it was not necessary that kerosene oil must have also fallen on any of the clothes of the accused. Further the non-showing of any mark of struggle between the deceased and the appellant in the site plan Ex. Public Witness 17/B was also wholly immaterial. Mrs. Mahajan was unable to explain as to what marks of struggle should have been found at the scene of occurrence besides suggesting about the broken glass bangles. There is nothing on the record to show that the deceased

was wearing glass bangles. Even otherwise if a woman wearing glass bangles and is put to fire either in a homicidal attempt or in a case of commission of suicide, in either case the bangles are likely to get broken as the victim is likely to strike her person in all directions out of pain and agony. Next, the fact that the appellant admittedly sustained 12% burns on his hands and some other parts of his person could not be suggestive of the last that he himself must not be the assailant. In many cases of commission of murder by setting fire to the victim the assailants are found to have suffered burns on their hands etc. In most of such cases it so happens because the assailants try to create evidence in their favor on the crime coming to the notice of others or otherwise and in some such other cases, although rare, they may realise the mistake but only when it is too late. Next, we fail to understand as to how the non-examination of Siraj-ul-Hasan who according to the prosecution took Aliya debased to the hospital in a scooter rickshaw was any circumstance which went against the case of the prosecution. He is not a material witness and was given up as not being traceable. It was open to the defense to have taken steps to get him examined if the appellant really thought that he was a material witness and could throw some light on the case. .In the absence of any such steps having been taken by the defense nothing could be made out by simply contending why he was not examined by the prosecution, the last circumstance as submitted by Mrs. Mahajan is the absence of motive on the part of the accused-appellant for the commission of the offence. It is a well settled law that it is not necessary that motive for She commission of the offence must always be established by the prosecution in order to succeed in the conviction of the accused person, !n the present case Dr. Dewan (P.W. 4) noted in the dying declaration namely, the note at point A to A in the Mlc Ex. Public Witness 4/A to the effect that the deceased had told him that the appellant had sprinkled kerosene on her and lit fire after some quarrel. Zainul-abdin (Public Witness 1) has also stated that on the relevant date and time he had heard a quarrel going on between the accused (as identified by him in the court) and his wife. It is thus clear that a quarrel took place between the appellant and his deceased wife and after that only Aliya was set to fire. The appellant was obviously angry and had quarrelled with his wife i.e. the deceased. The ghastly act thus appears to have been committed by him in a fit of severe anger. It may also be stated here that the

appellant himself in his statement under Section 313 Criminal Procedure Code . stated that he had taken liquor at the house of one Rani some time before returning to his house in the mid-night. That might also have contributed to some extent for the appellant not having complete control over himself which led to the quarrel and later the ghastly act. It may also be stated here that the appellant in his statement under Section 313 Criminal Procedure Code . has in a way taken the plea of alibi, inasmuch as he has stated that he was not present in his house at the time when Aliya caught fire and that he reached there on learning about the fire having broken out in his house. Even though the appellant was not bound to prove this part of his statement and the prosecution was to stand on its own legs. the case of the prosecution can nevertheless be judged keeping this version of the appellant also in mind. A part of the dying declaration that the deceased had stated that a quarrel had taken place between the appellant and the deceased prior to the appellant's pouring kerosene oil on her and set her to fire stands corroborated from the testimony of Zain-ul-abdin, Pw 1, who has also clearly stated that he had first heard the noise of the quarrel between the appellant and Aliya taking place in their house and it was little thereafter that he saw flames of fire coming from their house. This evidence thus clearly belied the version of the appellant that he was not present at the house when Aliya caught fire and Aliya had already caught fire before he actually reached the spot. This circumstance thus clearly goes to support the case of the prosecution. Lastly, the trial court was also right in considering the fact that the appellant did no' accompany his wife to the hospital and she was removed to the hospital by one Siraj-ul-Hasan on the asking of Public Witness I, Zain-ul-abdin, and Public Witness 2, Hassan, was also a slight circumstance of the conduct of the appellant which went against him. As regards the case law cited by Mrs. Mahajan it would suffice to say that all the four cases cited by her are based on facts which are entirely different from the facts of the present case and none of those cases is of any help to the case of the appellant. In conclusion, we find no force in the appeal and the same is hereby dismissed and we affirm the conviction and sentence of the appellant as passed by the learned trial court.

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