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(2013) 07 DEL CK 0601

Delhi High Court

Case No: Criminal A. 1060 of 2011

Shakuntala	APPELLANT
Vs	
State (G.N.C.T. of Delhi)	RESPONDENT

Date of Decision: July 17, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 428
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 304, 326

Citation: (2013) 5 ILR Delhi 3792 : (2013) 3 JCC 1985

Hon'ble Judges: S.P. Garg, J

Bench: Single Bench

Advocate: R.K. Dikshit and Ms. Nandita Rao, for the Appellant; M.N. Dudeja, APP., for the Respondent

Final Decision: Disposed Off

Judgement

S.P. Garg, J.
Shakuntala (the appellant) challenges correctness of a judgment dated 03.01.2011 of learned Additional Sessions Judge in Sessions Case No. 68/2009 arising out of FIR No. 480/2008 PS Jahangir Puri by which she was held guilty for committing offence punishable u/s 304 Part-I IPC. By an order dated 10.01.2011, she was sentenced to undergo RI for seven years with fine Rs. 5,000/-. Allegations against the appellant-Shakuntala were that on the night intervening 25/26.09.2008 at about 01.30 A.M. she poured acid on her husband Rattan Lal at jhuggi No. A-408, behind ITI, K Block, Jahangir Puri. Daily Diary (DD) No. 5B (Ex. PW-9/A) was recorded at PS Jahangir Puri at 02.29 A.M. after getting information from Duty HC Umed Singh, Babu Jagjivan Ram Memorial Hospital (in short BJRM Hospital) that Rattan Lal''s wife had poured acid on him and he was admitted at BJRM Hospital. The investigation was assigned to ASI Vijender

Singh who with Const. Devender went to the spot. He recorded Rattan Lal''s statement in the hospital after declared fit to make statement. In his statement (Ex. PX), Rattal Lal disclosed to the Investigating Officer that at 01.30 A.M. his wife Shakuntala poured acid on him. He also attributed motive for causing burn injuries with acid by her. ASI Vijender Singh lodged First Information Report for commission of offence u/s 326 IPC. Rattan Lal succumbed to the injuries on 28.09.2008. Post-mortem examination was conducted on the body. During investigation, statements of the witnesses conversant with the facts were recorded. Shakuntala was arrested. The exhibits were sent to Forensic Science Laboratory and report was collected. After completion of investigation, a charge-sheet was submitted against the appellant-Shakuntala for committing the offence u/s 304 Part-I IPC. She was duly charged and brought to Trial. The prosecution examined sixteen witnesses to prove her guilt. In her 313 statement, she pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant guilty u/s 304 Part-I IPC and sentenced her. Being aggrieved, she has preferred the appeal.

2. The appellant''s counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon hearsay evidence. It ignored the vital discrepancies and contradictions in the testimonies of the prosecution witnesses without valid reasons. In her 313 statement, the appellant specifically disclosed as to how and under what circumstances Rattan Lal sustained burn injuries in the bathroom. However, the defence version was not given any weightage. The Investigating Officer did not make sincere efforts to record victim''s statement u/s 164 Cr.P.C. by SDM/ MM. He did not associate doctors or nurses on duty while recording the alleged dying declaration of the victim. It is unclear that the victim was in a fit state of mind to make statement (Ex. PX). The prosecution witnesses have given inconsistent version regarding lock put outside the jhuggi where the incident occurred. Dying declaration recorded by the Investigating Officer is not reliable and cannot be acted upon. The prosecution did not establish appellant''s motive to pour acid upon her husband. Recovery of the articles is doubtful. The appellant did not flee the spot and was present in the hospital. The mattress was not found burnt. The source from where the acid was procured could not be established. Learned APP for the State urged that testimony of PW-1 (Naveen), PW-3 (Chandu) and PW-10 (Islam) coupled with dying declaration (Ex. PX) recorded by the Investigating Officer at the first instance are sufficient to establish the guilt of the accused.

3. I have carefully considered the submissions of the parties and have examined the relevant materials. It is not under challenge that Rattan Lal and Shakuntala lived together at jhuggi No. A-408, K Block, Jahangir Puri. It is also not in controversy that at the time of incident on the night intervening 25/26.09.2008 only the victim and Shakuntala were present inside the jhuggi. In her 313 statement, she admitted that on 25.09.2008 her husband Rattan Lal came at the jhuggi at night. She did not claim if anybody else was present that night inside the jhuggi. It is also not disputed that Rattan Lal sustained burn injuries due to acid on his body. She however pleaded that on that night Rattan Lal came

drunk at the jhuggi and had sexual intercourse with her. After the sexual intercourse, she went inside the bathroom to pass urine. Rattan Lal who was naked and under the influence of liquor, came in the bathroom; tried to pull her and abused her. In the process, the plastic can lying on the shelf in the bathroom fell down and the acid fell on him. Rattan Lal kept abusing her and tried to throw the acid on her. Some acid fell on her clothes. With great difficulty, she managed to escape, came out of the jhuggi and went to the police station after locking the door of the jhuggi from outside. She was falsely implicated thereafter by the police. The defence was taken for the first time by the appellant in her 313 statement only. No such question was put in the cross-examination of any prosecution witnesses examined before the Court. The appellant did not produce any witness from the neighbourhood in defence to substantiate her defence. She alleged that the appellant had come to the jhuggi that night after consuming liquor and was under its influence when he sustained burn injuries. MLC (Ex. PW-14/A) was made/written when Rattan Lal went to BJRM Hospital on 26.09.2008 at 02.15 A.M. It (MLC) does not reveal if there was smell of alcohol or the victim was under the influence of alcohol. No such suggestion was put to PW-14 (Dr. Seema) in the cross-examination. PW-15 (Dr. Amit Sharma) who conducted post-mortem examination on the body also did not find any alcohol. It falsifies the appellant''s plea that the victim was under the influence of alcohol at the time of occurrence. When the victim had sexual intercourse with her (the appellant) with her consent as alleged, there was no occasion for the victim thereafter to follow her in the bathroom where she had gone to pass urine and to pick up quarrel with her without any apparent reason. She did not elaborate as to what had prompted the victim to quarrel with her in the bathroom. She was medically examined on 26.09.2008. MLC (on record) shows that no injuries due to acid were found on her body. The defence version inspires no confidence and deserves outright rejection. Had the victim sustained injuries due to fall of acid accidentally, natural conduct of the appellant would have been to raise alarm and to take him to the hospital at the earliest. She was not expected to close the door of the jhuggi and to run to the police station as alleged. This conduct is quite unreasonable and unjustified.

4. PW-10 (Islam) lived in a jhuggi adjacent to the appellant''s jhuggi and run a shop selling DVDs at C Block, Jahangir Puri. He deposed that on the night intervening 25/26.09.2008 at about 01.30 A.M. on hearing cries, he came out of the jhuggi and saw Rattan Lal coming out of his jhuggi. He was naked and was shouting that his wife Shakuntala had poured tejab on her. He then ran to BJRM Hospital. He was shouting that his wife had locked him after pouring acid on him. He further deposed that quarrels used to take place between the accused and her husband and she suspected him (Rattan Lal) of having illicit relation with other woman. In the cross-examination, he fairly admitted that acid was not poured in his presence. He himself did not open the door of the jhuggi. He came to know from others that the accused used to suspect her husband having illicit relation with another woman. Over all testimony of this witness reveals that from the victim himself, he came to know that Shakuntala, his wife, had poured acid on him. Presence of the witness at the spot being neighbour is quite natural and probable. It was

natural for him to come out of jhuggi after hearing the cries at odd hours. He saw Rattan Lal running naked towards BJRM Hospital. Material facts deposed by him remained unchallenged in the cross-examination. PW-3 (Chandu) in his testimony also spoke about his presence that time. MLC (Ex. PW-14/A) corroborates his version as Rattan Lal admitted himself in the hospital at 02.15 A.M. PW-3 (Chandu) another witness living in the neighbourhood also deposed on similar lines. He also stated that at about 01.30-02.00 A.M. on the night intervening 25/26.09.2008, he came out of his jhuggi after hearing Rattan Lal''s screams and saw that he (Rattan Lal) was running out of his jhuggi and was naked that time. He had burn injuries on abdomen due to acid and was shouting ''Shakuntala ne mere uper tejab dal diya''. In the cross-examination, he admitted that the acid was not thrown upon the victim by the appellant in his presence. He elaborated that the police came at the spot at 03.00 A.M. and by the time the injured had already gone to the hospital. Rattan Lal himself ran to the hospital alone. He explained that he could not get any opportunity to help him as he went running. In the absence of any prior animosity, the credibility of this independent witness cannot be doubted. He had no ulterior motive to falsely implicate the accused who was living with her husband in his neighbourhood. His presence at the spot was not challenged in the cross-examination.

5. The police machinery came into motion when PW-12 (HC Umed Singh) informed on phone to the Duty Officer at PS Jahangir Puri that one Rattan Lal was admitted in the hospital and had complained that his ''wife'' had poured ''tejab'' on him. DD No. 5B (Ex. PW-9/A) records this fact. It corroborates the version given by PW-3 and PW-10. PW-16 (SI Vijender Singh) recorded victim''s statement (Ex. PX). MLC (Ex. PW-14/A) reveals that at the time of admission the patient was conscious and oriented. It is not in dispute that after sustaining burn injuries, the victim had run towards BJRM Hospital and had got himself admitted. It is not the appellant''s case that the victim was unconscious or was not fit to make statement. PW-16 (SI Vijender Singh) lodged First Information Report u/s 326 IPC. Since the injuries sustained by the appellant were not sufficient to cause death in the ordinary course of nature, it appears that PW-16 did not consider it fit to record his statement u/s 164 Cr.P.C. from SDM. He made endorsement (Ex. PW-16/A) and lodged First Information Report at 03.40 A.M. without inordinate delay. The version given by the victim in Ex. PX cannot be suspected. SI Vijender Singh had no ulterior motive to fabricate statement (Ex. PX). In Ex. PX, the victim categorically named his wife Shakuntala to have poured acid upon him as a result of which he sustained burn injuries on his body. He also attributed motive to her for pouring acid. Rattan Lal succumbed to the injuries and died on 28.09.2008. Post-mortem on the body was conducted by PW-15 (Dr. Amit Sharma). Vide post-mortem report (Ex. PW-15/A) the cause of death was opined as shock due to burn injuries consequent to ante-mortem corrosive burns.

6. In State of Karnataka Vs. Shariff, , the Supreme Court categorically held that there was no requirement of law that a dying declaration must necessarily be made before a Magistrate. Hence, merely because the dying declaration was not recorded by the Magistrate in the instant case, that by itself cannot be a ground to reject the whole

prosecution case. It is equally true that the statement of the injured, in the event of his death may also be treated as FIR/ dying declaration. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly it can base its conviction without any further corroboration. In this case, the deceased had no ulterior motive to falsely implicate his wife and to exonerate the real culprit. There is no inconsistency in the version narrated and deposed by PW-3, PW-10, PW-12 & PW-16 regarding the complicity of the accused in the incident.

7. In Paras Yadav and others Vs. The State of Bihar, , the Supreme Court held that lapse on the part of the Investigation Officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. The Supreme Court further held that a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement.

8. Discrepancies/contradictions highlighted by appellant''s counsel are not material to discard the prosecution case in its entirety. At the time of occurrence, only the appellant and the victim were together inside the jhuggi. It was imperative for the appellant to establish u/s 106 Evidence Act as to how and under what circumstances, the victim sustained burn injuries. The appellant''s conduct is unreasonable. Instead of taking him to the hospital without delay to provide medical aid, she locked the door of the jhuggi from outside and allegedly went to the police station. The appellant''s false implication at PW-1 (Naveen)''s instance as alleged is not believable. PW-1 (Naveen), victim''s son from the previous marriage lived separate with his ''mausi'' at Bhalaswa Dairy. He deposed that the appellant quarreled with his father on his providing money for their maintenance. PW-1 (Naveen) or his relative were not present at the spot and had came to know about the incident only after the victim sustained injuries. There are no allegations that PW-1 (Naveen) instigated the victim to make statement (Ex. PX). The findings of the learned Trial Court whereby the appellant was convicted u/s 304 Part-I IPC are based upon sound reasoning and do not call for interference and are affirmed.

9. The appellant was sentenced to undergo RI for seven years with fine Rs. 5,000/-. She is to undergo SI for six months in default of payment of fine. It is informed that she has no issue and is in custody from the very beginning. Nominal roll dated 10th January, 2012 reveals that she has already undergone three years, three months and thirteen days incarceration as on 10th January, 2012. She also earned remissions for four months and five days. Her over all jail conduct is satisfactory. She is not a previous convict and is not involved in any other criminal case. Considering the facts and circumstances of the case and the mitigating circumstances, in the interest of justice, the order on sentence is modified and the substantive sentence of the appellant is reduced to six years with fine Rs. 2,000/- and failing to pay the fine to undergo SI for one month. She will be entitled to

benefit u/s 428 Cr.P.C. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith.