

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1472 OF 2011

NAGENDER

Appellant(s)

VERSUS

STATE OF NCT OF DELHI & ANR.

Respondent(s)

O R D E R

1. This appeal, filed by the Complainant, is directed against the judgment and order dated 23.04.2010 passed by the High Court of Delhi at New Delhi in Criminal Appeal No. 524 of 2009 whereby the High Court while setting aside the order of the lower Court allowed the Appeal filed by the accused acquitting him of the offence punishable under Sections 302 and 307 of the Indian Penal Code, 1860 (for short 'the IPC').

2. The relevant facts which are necessary for the purpose of deciding this appeal are narrated hereunder:-

i) In the morning of 13.03.2003, at around 9.20 a.m., Kavita - the deceased and her daughter Nikita sustained fire burn injuries at their house in Village Pandwala Kalan, Delhi. At that time, they were alone in the house. Gyanwati (PW-4, the mother-in-law of the deceased who had gone to provide water to her buffalo returned home almost at the same time and noticed the deceased lying in burnt condition in the courtyard. She tried to put off the fire by throwing water on her. In the

meanwhile, Nagender (PW-1) - husband of the deceased also reached there and upon seeing his daughter Nikita in flames, lifted her up and put her in the water tank to put off the fire. Thereafter, he arranged for a Maruti van and he along with his brother Dharmender (PW-5), Sanjay Kumar (PW-7), Gaurav @ Manu (PW-8) and one Love Kumar took the deceased and Nikita to Safdarjung Hospital.

ii) It is the case of the prosecution that on the way to the hospital, the deceased Kavita was crying and insisting that she should be taken to the hospital quickly. When the Maruti van reached near Kapashera, the deceased is claimed to have expressed her desire to make a statement at P.S. Kapashera as she did not expect to survive till the time she reached the hospital. Thus, the Maruti van was stopped at P.S. Kapashera. PW-1 - Nagender and others went inside the Police Station to request the police to record the statement of the deceased, while Dharmender (PW-5) stayed back with the deceased and Nikita in the van. The claim of Dharmender (PW-5) is that at that time the deceased told him that she was set on fire by one Umesh Dutt the appellant-accused before the High Court. The police officials, however, refused to record the statement of the deceased and advised them to immediately take the deceased and Nikita to Safdarjung Hospital and it is alleged that at Safdarjung Hospital, MLCs of the deceased as well as her daughter Nikita were prepared.

iii) It is also the case of the prosecution that on 13.03.2013, Inspector Nirmal Kaur (PW-12) of Crime Against Women Cell, Nanak Pura, New Delhi while on duty, received information about a quarrel involving a woman which is the subject-matter of DD No. 17. On receipt of said information, she made an enquiry from PCR van Zebra 98, which van had visited the spot of occurrence and learnt that the burnt woman had been removed to Safdarjung Hospital. Thus, she reached Safdarjung Hospital and met the deceased who had sustained burn injuries. The deceased, when asked, told her that she and her daughter were set on fire by one Umesh Dutt, who had poured kerosene oil over them and set them ablaze. She also disclosed that aforesaid Umesh was a friend of her husband and he had a quarrel with her husband few days before the incident.

iv) Kavita died on the night intervening 13/14.03.2003 at 12.30 a.m.

v) On 30.12.2003, a case was registered under Section 302 of the IPC against Umesh Dutt - the accused person. After completion of the investigation, charge sheet was filed under Sections 302 and 307 of the IPC and the case was committed to Court of Sessions for trial.

3) The trial Court, after recording the evidence and examining the witnesses, held the accused guilty and convicted him for the offences punishable under Sections 302 and 307 of the IPC and sentenced him for imprisonment for life and RI for 10

years which shall run concurrently.

4) The accused - Umesh Dutt preferred an appeal before the High Court challenging the conviction and sentence imposed upon him.

5) The High Court, after perusing all the facts and the evidence led therein, came to the conclusion that the prosecution case is highly doubtful and it is not safe to rely upon the purported dying declarations of the deceased, has allowed the appeal of the accused and set aside the judgment of the High Court.

6) The original Complainant before the trial Court preferred this appeal.

7) We have heard Mr. Anurag Ahluwalia, learned counsel appearing for the appellant-Complainant, Mr. Kailash Vasdev, learned senior counsel appearing for the State NCT of Delhi and Mr. V. Madhukar, learned counsel appearing for respondent No.2 at length.

8) Learned counsel appearing for the parties have taken us through the judgments of the trial Court, High Court and the evidence adduced in support of their contentions and, in particular, the purported two dying declarations.

9) It appears that the prosecution has examined as many as 24 witnesses and there is no single eye witness as to the occurrence nor there is any witness who might have seen the accused entering or coming out from the house of the deceased.

10) The prosecution case is based solely upon the purported two dying declarations made by the deceased; one in the presence of Dharmender (PW-5) outside P.S. Kapashera and the other in the presence of Inspector Nirmal Kaur (PW-12), CAW Cell, Nanak Pura, Delhi, both of which are oral.

11) We have carefully gone through the testimonies of PW-5 and PW-12. In our opinion, the testimony of PW-5 is doubtful because if the deceased intends to disclose the name of the culprit who had set her and her daughter on fire, it was expected that she should have told the same to her husband on way to hospital and, moreover, there is not even a whisper about the desire of the deceased to make a statement to the police to record her statement. Otherwise also, had the deceased disclosed the name of the accused as the person responsible for her burn injuries to Dharmender (PW-5), under the normal circumstances, he was expected to tell his brother Nagender (PW-1) as well as other persons present in the Maruti van about the dying declaration so made. Therefore, we do not find it safe to rely upon the testimony of PW-5 and the, High Court, has rightly discarded his testimony.

12) With regard to the testimony of Inspector Nirmal Kaur (PW-12), there is no authentic evidence on record to justify her presence to record the statement of the deceased. If the version of PW 12 is true, then she, under the natural course of circumstances, was expected to convey this information to the concerned P.S. whereas as per her version she only

prepared a performa and deposited it in the office. There is no explanation as to why the dying declaration, if it was made, was not reduced into writing. Therefore, in our opinion, the testimony of PW-12 is highly doubtful and the prosecution has failed to establish that the deceased actually made any dying declaration in her presence.

13) Moreover, we find that Dr. Sanjay Kumar Sinha (PW-17), who had given medical treatment to the deceased when she was brought to the hospital in his examination-in-chief, has stated at one place that deceased had told that Umesh Dutt came and threw keroene oil on her and set her on fire, while at another place he has stated that Nagender (PW-1) - father of the child (Nikita) named Umesh came and threw kerosene oil on her and set her on fire. Whereas Nagender (PW-1), who is the husband of the deceased and father of the child (Nikita), in his examination-in-chief has stated that Inspector Nirmal Kaur had told him that his wife had named Umesh Dutt for having set his wife and daughter on fire. Thus, there being contradictions in the two statements, the involvement of accused - Umesh Dutt can be said to be only an after-thought.

14) The correctness of prosecution version is doubted by the fact that there is no evidence on record to establish any motive on the part of the accused to cause death or even set the daughter of the accused on fire.

15) Taking into account all the material available on record, we are of the view that the High Court has rightly acquitted the accused by not relying upon the purported two dying declarations.

16) Hence, we do not find any reason to interfere with the judgment passed by the High Court and we find no merit in the appeal. Accordingly, the criminal appeal is dismissed.

..... J.  
(R.K. AGRAWAL)

..... J.  
(R. BANUMATHI)

New Delhi;  
October 06, 2015.

ITEM NO.106

IN COURT NO.13

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1472/2011

NAGENDER

Appellant(s)

VERSUS

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Date : 06/10/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL  
HON'BLE MRS. JUSTICE R. BANUMATHIFor Appellant(s) Mr. Anurag Ahluwalia, Adv.  
Ms. N. Annapoorani, AORFor Respondent(s) Mr. V. Madhukar, Adv.  
Mr. Sachin Dev Sharma, Adv.  
Mr. Ashok Kr. Upamanu, Adv.  
Mr. Mohit D. Ram, AORMr. Kailash Vasdev, Sr. Adv.  
Ms. Sunita Gautam, Adv.  
Mr. D.S. Mahra, AOR

Mrs. Anil Katiyar, AOR (N.P.)

UPON hearing the counsel the Court made the following  
O R D E RThe criminal appeal is dismissed in terms of the signed  
order.(R.NATARAJAN)  
Court Master(SNEH LATA SHARMA)  
Court Master

(Signed order is placed on the file)