

(2023) 06 DEL CK 0117
In the Delhi High Court
Case No : Criminal Appeal No. 677 Of 2019

Anil Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304A, 307, 436
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 65B

Citation : (2023) 06 DEL CK 0117

Hon'ble Judges : Mukta Gupta, J; Poonam A. Bamba, J

Bench : Division Bench

Advocate : Adit Subramaniam Pujari, Aditi Tiwari, Maitreya Subramaniam, Shubhi Gupta

Final Decision : Dismissed

Judgement

Poonam A. Bamba, J

1.0 Vide this appeal, the appellant challenges the judgment dated 15.01.2019 passed by Ld. Addl. Sessions Judge, Special Judge (NDPS), Dwarka Courts, Delhi, ("impugned judgment" in short) whereby the appellant was convicted for the offence u/Ss 302/307/436 The Indian Penal Code, 1860 ("IPC" in short) in FIR no. 121/2015, Police Station Palam Village; and order on sentence dated 28.01.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life u/S. 302 IPC along with fine of Rs.1,00,000/-, in default of payment of fine, to undergo rigorous imprisonment for 03 months; the amount if deposited shall go to the family of deceased in equal proportion, the appellant was further sentenced to undergo rigorous imprisonment for 12 years u/S. 307 IPC along with fine of Rs.50,000/-, in default of payment of fine, to undergo rigorous imprisonment for 02 months; and the appellant was further sentenced to undergo rigorous imprisonment for 04 years u/S. 436 IPC along with fine of Rs.25,000/-, in default of payment of fine, to undergo rigorous imprisonment for

01 months.

2.0 Briefly stating, the prosecution case is that on 28.02.2015 at about 03:20 a.m., an information was received at PS Palam Village regarding the fire in house no. F-140, Sadh Nagar Part-II, Palam Colony, New Delhi, which was recorded vide DD No. 6A /Ex.PW36/A. On receipt of the same, SI Sandeep Kumar/PW-43 along with Ct. Ram Niwas/PW-19 reached the spot at about 03:35 a.m., where Insp. Akhilesh Kumar Mishra/PW-44, the then SHO, was also present along with the staff. There was fire in the building and fire brigade staff was trying to douse the fire and the CAT ambulance was shifting the injured persons from the spot. Initially, as the possibility of short circuit was not ruled out by the in-charge of the fire brigade, SI Sandeep Kumar (PW-43) prepared rukka (EX. PW43/A) and got the FIR (Ex. PW36/C) registered through Ct. Ram Niwas (PW-19) for the offence under section 304A IPC. CCTV footage of the nearby houses including the house of Sh. Shashi Kant Thakur (PW-26) and Sh. Anil Kumar (PW-35) were checked by HC Bharat Lal (PW-20) and Ct. Kapil (PW-21). In the said CCTV Footage, one person was seen carrying some object in a polythene in his hand out of which some liquid was dropping. The CCTV footage was taken in pen-drive and the same was shown to Sh. Vijender Singh Ahlawat (PW-8), owner of the building under fire; and on seeing the same, he identified the person in the CCTV footage as Anil Kumar the appellant, son-in-law of one of his tenants in the building namely Smt. Kailash (deceased). CCTV footage was also shown to Smt Mamta (PW-7), daughter of Smt Kailash (deceased) and on seeing the same, she also identified the person in the footage as her husband namely Anil/the appellant. It was further revealed that the appellant had set ablaze the building by throwing petrol as he wanted to take revenge from his mother-in-law Smt. Kailash as he believed that she was the reason behind his strained relations with his wife Smt Mamta (PW-7). In the incident, four persons namely Smt. Kailash, Sh. Jagdeep, his wife Ms. Indu and son Akshay lost their lives and Ms. Mamta (PW-7), Sh. Ritesh Aggarwal (PW-9), Sh. Sheetladin (PW10), Ms. Shweta (PW-11) and Ananya Aggarwal sustained severe burn injuries. Accordingly, Sections 436/307 and 302 IPC were added in the case.

2.1 It is further the case of the prosecution that on the same day, i.e. on 28.02.2015, Dr. Amitosh Kumar (PW-11) along with Sh.U.S.Thakur (PW-13) and Sh. R.K.Meena of CFSL, CBI (PW-25) inspected the scene of crime and examined the electric fittings, junction-boxes and burnt vehicles. SI Sandeep Kumar (PW43) prepared site plan (Ex.PW8/A) at the spot at the instance of Sh. Vijender Singh Ahlawat (PW8), owner of premises no. F-140, Sadh Nagar Part-II, Palam Colony, New Delhi. On the same day, the spot was also inspected by SI Khajan Singh, in-charge Mobile Crime Team and HC Ashok Kumar (PW42) took photographs (Ex.PW42/A-1 to Ex.PW42/A-10). The appellant/accused Anil was arrested by SI Sandeep Kumar (PW43) on 28.02.2015 and was interrogated. Disclosure statement (Ex. PW20/C) of the appellant/accused was recorded in which he disclosed that he had brought petrol from Vaibhav Filling Station, Vikaspuri, New Delhi on 18.02.2015 in a bottle and he confessed that he had set

ablaze the building by pouring the said petrol. Further investigation of the case was taken up by Insp. Akhilesh Kumar Mishra (PW-44) and during investigation pursuant to disclosure, on 01.03.2015, the appellant led the police party to Vaibhav Petrol Filling Station, Vikaspuri, New Delhi. Insp. Akhilesh Kumar Mishra got prepared the site plan. Thereafter, the appellant led the police party to his house at RZ-426A, Gali No. 31A, Sadh Nagar Part-II, Palam New Delhi and took out a plastic bottle of coca-cola from behind the shoe rack. The appellant also took out a bag from under a bed of his room and produced the same before Insp. Akhilesh Kumar Mishra (PW-44) stating that he had brought petrol in bottle in the said bag. The appellant also took out one cap, one brown colour jacket, one brown colour pant and Grey color shoes and stated that he was wearing the same at the time of incident. Insp. Akhilesh Kumar Mishra (PW-44) lifted sample of swab from the ground floor of the burnt house, some burnt clothes and some burnt plastic from the place of occurrence sealed and seized the same vide seizure memo Ex.PW20/D-5. On 02.03.2015, a team of CFSL consisting of Sh.U.S.Thakur (PW-13), Sh. Abhey H.Gangvir (PW-14), Sh. Dhan Singh Badothya (PW-22) and Sh. Ravinder Kumar (PW-23) visited and inspected the spot, collected samples and also took photographs. On 03.03.2015, postmortem on the body of the deceased Indu was conducted by Dr. A.Arthy (PW38) wherein cause of death was opined as 'shock due to ante mortem burnt injuries involving 70% of total body surface area'. On 05.03.2015, Insp. Akhilesh Kumar Mishra (PW-44) seized the CCTV footage of 18.02.2015 of about 8.00 p.m. from Vaibhav Filling Station, Vikaspuri, which was provided by Sh. Gaurav Garg (PW27) and Sh. Manish Kumar (PW28). PW-44 also seized the duty roster dated 18.02.2015 of employees of Vaibhav filling Station. Insp. Akhilesh Kumar Mishra (PW44) also seized the DVR of CCTV Camera from Sh. Shashi Kant Thakur (PW26). On 07.03.2015, Insp. Akhilesh Kumar Mishra (PW44) had also seized the hard disc of CCTV Camera from Sh. Anil Kumar (PW35). Hard disc and DVR were sent to FSL Rohini and the same were examined. After completion of investigation, the charge sheet was filed.

2.2 As per the post mortem report Ex. PW38/A (Mrs. Indu), Dr. A. Arthy, Junior Resident and as per the post mortem reports of Jagdeep, Akshay and Kailash, (Ex. PW45/A, Ex. PW45/B and Ex. PW45/C, respectively), Dr. Narayan Dabas Senior Resident, reported and opined as under:

"Post Mortem Report - Ex.PW38/A

Name of the deceased :Mrs. Indu

EXTERNAL GENERAL APPEARANCE

.....present over the burnt area.

Body: Eyes: eyelids were burnt and closed,

POST MORTEM CHANGES

Hypostasis was elicited only at the back of both lower limbs due to extensive

burn injury;

EXTERNAL EXAMINATION

Dermo-epidermal burn injuries were present over front and back of head and neck involving ears, lips and eyes; back of chest, front of abdomen on left side;

back of abdomen; both upper limbs; lower half of front of right thigh; outer third of front of left thigh; front and back of both legs and dorsum of both foot. De-gloving of both hand was present. Blackening was present over dorsum of left foot. Multiple bullae was present over front of right thigh. Superficial layers of burnt skin were peeled off at places revealing inflamed, edematous and reddish base. Red line of demarcation was present separating the burnt and unburnt skin.

Scalp hairs were burnt and singed off no mechanical injuries were present. No smell of any inflammable substance could be appreciated. The total area of flame burn injuries was approximately 70 % of total body surface area

INTERNAL EXAMINATION

.....

OPINION:

Cause of death is shock due to ante-mortem burn injuries involving 70 % of total body surface area. Burn injuries are fresh in duration and caused by flames of fire."

"Post mortem Report - Ex.PW45/A

Name of the deceased :Jagdeep

GENERAL EXAMINATION

.....

- Black soot stains were present over the all over body. Charring was present over the face and upper limbs at several places.
- White fine froth mixed• with black soot particles was present over the nostrils and oral cavity.
- Line of the redness and blisters with red base were present at the junction of charring and superficial burn (suggestive of antemortem burn].
- Total burnt surface area was 55%.
- Syneing of the scalp, eyelid and eyelashes hair, axillary hair was present .
- Heat ruptures were present over the upper limbs at several places.

EXTERNAL EXAMINATION:

External Injuries :-

1. Superficial to deep burn injuries with reddish base and blisters around were present head, neck, lower limbs and upper limbs.

INTERNAL EXAMINATION.

.....

CHEST (THORAX)

....

2. Oesophagus Black soot particles present throughout the length of oesophagus. Mucosa was cherry red in colour.

....

4. Lungs : Both the lungs were soft, congested and ballooned. Frothy fluid with blackish soot particles oozed out on cut section. Lungs were Cherry red on cut section.

.....

OPINION:

1. TIME SINCE DEATH: 8-10 hours prior to the conduct of the post-mortem examination.

2. The cause of death: Deceased died due to complications of antemortem burn injuries sustained.

....."

"Post mortem report - Ex.PW45/B

Dead body of: Akshay

GENERAL EXAMINATION

...

- Post Mortem Staining: Could not be appreciated due to burn injuries.

- Condition of eyes: Charred due to burn injuries.

...

- Charring was present all over the body except part of left lower limbs.

- Line of redness with blisters around were present over the non charred area of left lower limb .

- Total burnt surface area was 100% .Heat fracture over the head and ruptures over the face body at several places were present.

EXTERNAL EXAMINATION: External Injuries :-

1. Superficial to deep burn injuries with reddish base and blisters around were present head, neck, lower limbs and upper limbs

INTERNAL EXAMINATION.

A-HEAD

A- Scalp/ Skull/ Brain, Meninges & Vessels/ Base of skull: Scalp and Subscalp was burnt. Heat fracture were present over the skull at several• places. Brain was partially burnt and in a cooked state.

.....

2. Oesophagus: black soot particles present throughout the length of oesophagus. Mucosa was congested.

...

a. Contents: Contained scanty brownish fluid mixed with blacksoot particles.

.....

OPINION:

1. TIME, SINCE DEATH: 8-10 hours prior to the conduct of the post-mortem examination.

2. The cause of death: Deceased died due to complications of antemortem burn injuries sustained.

..."

"Post mortem report - Ex.PW45/C

Dead body of: Kailash

GENERAL EXAMINATION

...

- Post Mortem Staining: Could not be appreciated due to bum injuries.

- Condition of eyes: Charred due to bum injuries.

...

- Charring was present all over the body exposing undelying muscles at several places.

- Total burnt surface area was 100%.

- Syngeing of the scalp, eyelid and eyelashes hair, axillary hair was present.

- Heat ruptures were present over the face, neck, thorax, abdomen and thighs.

EXTERNAL EXAMINATION:

External Injuries :-

1. Deep burn injuries with charring were present all over the body.

INTERNAL EXAMINATION.

....

B-NECK

...

...White fine froth mixed with black soot particles was present upto the terminal bronchioles in the airways.

2. CHEST (THORAX)

...

2. Oesophagus : Black soot particles present throughout the length of oesophagus Mucosa was cherry red in colour.

.....

ABDOMEN Abdominal wall: NAD

.....

- a. Contents Contained scanty brownish fluid mixed with blacksoot particles.

.....

OPINION:

1. TIME SINCE DEATH: 8-10 hours prior to the conduct of the post-mortem examination.

2. The cause of death: Deceased died due to complications of antemortem burn injuries sustained.

..."

2.3 Injured Sitladeen, son of Ram Lal, Shweta Agarwal, Anya Agarwal, Ritesh Agarwal and Mamta (PW-7) were examined vide MLCs Ex. PW41/A, 41/B, 41/C, 41/D and 41/E, respectively, which mention date and time of arrival as 28.02.2015 at 5:30 am and record as under:

"Ex.PW 41/A

MLC of Sitladeen

....

Thermal burn as mass casualty observed when sudden fire occurred in the building and sustained injury

Patient conscious, ... vitals stable.

8% thermal burns involving both forearm and hands

Nature of injury: thermal burns (dangerous)

Ex. PW 41/B

MLC of Shweta Agarwal

...

Thermal burn as mass causality. When sudden fire occurred in building and sustained injury

L/E thermal burn sustained involved both forearm and hands

Nature of injury: thermal burns (dangerous)

Ex. PW 41/C

MLC of Anya Agarwal

...

Thermal burns when sudden fire occurred in the building and sustained injury On examination patient conscious ... vitals stable

I/e thermal burn sustained involved both hands and legs

Nature of injury: thermal burns (dangerous)

Ex. PW 41/D

MLC of Ritesh Agarwal

...

Thermal burns when sudden fire occurred in the building and sustained injury On examination patient conscious ... vitals stable I/e thermal burn sustained involved

Nature of injury: thermal burns (dangerous)

Ex. PW 41/E

MLC of Mamta

...

Thermal burns when sudden fire occurred in the building and sustained injury On examination patient conscious ... vitals stable I/e thermal burn sustained involved

Nature of injury: thermal burns (dangerous)"

3.0 Vide order dated 09.02.2017, the appellant/accused was charged for offences punishable u/Ss. 302, 307 & 436 IPC.

4.0 The prosecution examined 45 witnesses in support of its case.

4.1 The appellant chose not to lead any evidence, in his defence.

5.0 Ld. Counsel for the appellant argued that CCTV footage was taken from the house of PW-26 Shashi Kant Thakur, who lived in house no. F-135/2, Gali No. 38, Sadh Nagar II, Palam Colony, New Delhi. Two site plans (Ex.PW-8/A and Ex.PW-17/A) of the place of incident were drawn by the police but none of these site plans describes position of the neighbouring houses and therefore, it is not known how far the CCTV was from the spot. Even otherwise, site plan Ex.PW18/A is not exhibited through the relevant witness and is inadmissible; and the other site plan Ex.PW8/A shows the place of incident on both the sides of the road. Ld. Counsel for the appellant submitted that if the entire case of the prosecution is based on CCTV footage, the location of the said CCTV was extremely relevant, which has not been proved and therefore, is of no consequence. Reliance was placed on the judgment of the Hon"ble Supreme Court in *Tori Singh vs. The State of Uttar Pradesh*, 1962 SCR (3) 589. Ld. Counsel also argued that there is no certificate under section 65B Indian Evidence Act in respect of the pen drive (Ex.PX), and no explanation as to how the said pen drive came into the hands of the witness, PW-8 Vijender Singh Ahlawat, has come on record.

5.1 Learned counsel also argued that the CCTV footage itself was not proved properly and therefore, the appellant"s identification through photographs (Ex. PY) which allegedly stood extracted from one DVR containing a hard drive (Ex. PW18/B), are not admissible as even the malkhana register and the road certificate have not been exhibited with respect to PW18/A. Ld. Counsel further argued that the said CCTV footage allegedly shows the appellant walking with a polythene with a liquid dripping, which according to the case of the prosecution is petrol allegedly used at the place of incident. It is also the case of the prosecution that petrol worth Rupees Fifty was purchased by the appellant which would have been around 700 ml; and 200 ml of petrol was recovered from the appellant's house and some petrol was dropped. In view of the same, it is highly unlikely, a fire of this proportion would have been caused with such a small quantity of petrol.

5.2 Ld. Counsel further argued that though two FSL reports i.e., Ex.PW18/A dated 22.11.2016 and Ex. PW18/B dated 24.01.2017 have been filed, only one road certificate is filed. Same renders these reports doubtful and reliance in support was placed upon the judgment of this court in *Saifulla vs. State (Delhi Administration)*, 1993 (25) DRJ; 248 and *Rajesh Jagdamba Awasthi vs. State of Goa*, (2005) 9 SCC 773.

6.0 Per contra, the Ld. Prosecutor submitted that motive of the appellant has clearly come out in the testimonies of PW1 Simran, PW7 Mamta and PW8 Vijender Singh Ahlawat. It has come in the testimonies of PW-1 and PW-7 that the appellant used to quarrel with PW-7 and even blamed PW-7's mother for the rift between them. PW-1 has stated that about three days prior to the incident,

the appellant had threatened to blow up the whole family by lighting a matchstick. PW-7 has also deposed that ten days prior to the incident, the appellant had told her that he will set her mother ablaze by pouring petrol on her. Further, even PW-8, the owner of the said house, has stated that the appellant used to quarrel with PW-7 Mamta because of which, she used to come to her mother's place. Ld. Prosecutor further argued that PW-1 Simran and PW-7 Mamta have deposed that video clips of CCTV footage were shown to them by the police in which they had identified the appellant carrying something in the polythene bag, out of which something was dripping and when he returned his hands were empty. Even in the photographs Ex.PY (Colly.),PW-1 Simran, PW-7 Mamta and PW-8 Vijender Singh Ahlawat duly identified the appellant as the person seen in those photographs. Ld. Prosecutor submitted that the appellant himself in his statement u/S. 313 Cr.PC has admitted his presence near the place of incident on 28.02.2015 at around 03:00 a.m., which corroborates the testimonies of these witnesses.

6.1 Ld. Prosecutor further argued that FSL team consisting of PW-12 V. B. Ramteke, Senior Scientific Officer, PW-13 U. S. Thakur, SSA Biology, PW-14 Abhey H. Ganvir, SSA (Photo) PW-16 Dr. Amitosh Kumar, Senior Scientific Officer Grade-II, Physics, PW-22 Dhan Singh Badothyia, Lab Assistant, Chemistry, PW-25 R. K. Meena, Lab Assistant and PW-40 Dr. Subrat Kumar Choudhary Senior Scientific Officer, Grade-II (Physics) inspected the building where the incident had taken place. Vide their Report Ex.PW12/A, they came to the conclusion that the cause of fire could be use of any inflammable material and cause of fire as electrical short circuit was ruled out.

6.2 Ld. Prosecutor further argued that after his apprehension, the appellant on 01.03.2015 had pointed out the petrol pump from where he bought petrol on 16.02.2015 at about 08:00 pm. Vide CCTV footage of camera installed at the petrol pump at Vikaspuri, Amit Chauhan (PW-29) was seen giving petrol in a bottle to the appellant. PW-29 Amit Chauhan has deposed that on the request of the appellant, he had given petrol in a bottle to him. Further, the appellant got recovered, a plastic bottle from behind the shoe rack in his house and the same was seized vide seizure memo Ex.PW20/D2.

6.3 Ld. Prosecutor further argued that PW38 Dr. A. Arthy and PW45 Dr. Narayan Dabas had conducted the post-mortem of the deceased persons and have opined the cause of their death as burn injuries; PW41 Dr. Suvashis Dash proved MLCs of all the injured persons; as per their MLCs, they suffered thermal burns; as per the FSL report Ex.PW44/A, the Coca-Cola bottle recovered at the instance of the appellant, was found to be containing petrol.

6.4 Ld. Prosecutor submitted that in the light of foregoing facts, circumstances and evidence on record, the present appeal deserves to be dismissed.

7.0 We have duly considered the submissions made by both the sides.

8.0 PW-1 Simran, daughter of the appellant deposed that in February 2015, she

along with her mother and sister Neetu was residing at her naani Smt. Kailash Rani's house at house no. 140 gali no. 38 Sadh Nagar, Palam, New Delhi, as her father used to quarrel with/beat her mother and threaten her, as he disliked them. Because of which, police used to visit their house on regular basis and that even neighbours can verify this fact. She further stated that about three days prior to the incident (i.e. 28.02.2015), her father had threatened to blow up the entire family by lighting as he always used to say that her naani was responsible for the quarrel between him and his wife. Whereas, her naani always intervened and pacified their quarrel. She also deposed that on 28.02.2015, she woke up at about 3 am on noticing too much light outside her window and saw a bike burning in the parking area of their building. She immediately rushed to the above floors and informed them by ringing their bells and thereafter, jumped on the roof of the other house. Her statement was recorded by the police. Next day, she was shown CCTV footage wherein she saw her father carrying something in the polythene bag and something was dripping out of the same; and that when he went towards the parking area there was something in the polythene bag but when he returned, there was no polythene bag in his hand. As the CD could not be played, PW-1 was shown photographs (Ex. PY colly). On seeing those photographs, PW-1 identified her father in the same. She has stood by her deposition in cross examination and stated that they came to reside with her naani on 12.02.2015. She categorically denied that her father never threatened her mother and naani with dire consequences and that she has wrongly identified the person in photographs as her father. She rather explained that she could identify her father from the clothes he was wearing.

9.0 Testimony of PW-1 is corroborated by PW- 7 Smt Mamta, wife of the appellant and mother of PW-1. PW-7 deposed that she got married to the appellant about 20 years ago and has two daughters Simran (PW-1) and Geetu and one son Rajender. Appellant used to not only quarrel with her but also beat her mercilessly and then she used to come to her mother's house. About 20 days prior to the incident, she was beaten up by the appellant on which she came to stay with her mother. About 10 days prior to the incident, appellant called her and threatened her to kill her mother by setting her ablaze by pouring petrol. On 28.02.2015 while she was sleeping with her daughters and mother in the stilt area of the premises, at about 3:15 am, her daughter woke her up and told that there was lighting of fire. She then rushed towards the first floor and sustained burns. An ambulance removed her to the Safdarjung Hospital and she was admitted there. She also stated that in this incident, her mother Smt Kailash and three other residents of the building succumbed to fire injuries and some other residents sustained burn injuries. She also stated that during investigation she was shown video clip by the police in which her husband/appellant was seen coming towards the building carrying something in the polythene and was seen going back empty handed. She also stated that about one and a half years ago, when she visited appellant at Tihar Jail at the asking of her nanads Veena and Soma, the appellant asked her not to depose against him in court and threatened

her; she had then made a complaint (Ex. PW7/A) in the court. CD could not be played even during examination of PW-7 and she was also shown photographs Ex. PY colly. She also identified appellant in the said photographs. She even stated that when the appellant visited her in hospital, he was wearing same clothes except cap.

9.1 PW-7 also stood by her testimony in her cross examination. She stated that though she had taken divorce from the appellant, on the insistance of her father and other well wishers and for the sake of her children, she started living with the appellant with the hope that he will mend his ways. But things did not improve. She also stated that she had got registered a case against appellant for beating her but could not provide details of the same. She stated that in the photographs (Ex. PY colly), she could identify the appellant from his clothes which belong to him. Nothing of substance could be extracted in her cross examination so as to impeach her testimony.

9.2 Testimony of PW-7 about being asked not to depose against the appellant and being threatened if she did so, is also corroborated by Ex. PW7/A the complaint dated 23.01.2018 made to the court in that regard. Ex. PW7/A mentions that the appellant pleaded with them to get him out of jail and not to depose against him, otherwise, he would get them killed/implicated in false cases. The complaint also mentions that he used to keep calling them over phone through various persons insisting upon them to visit him in jail. Vide this complaint/letter, a request was also made to the court for providing protection from the appellant.

10.0 Testimonies of PW-1 and 7 are further corroborated by PW-8 Vijender Singh Ahlawat. PW-8 deposed that he is the owner of house no. F140, Sadh Nagar, Part II Palam Colony, New Delhi and that there are six flats in the said building and two rooms in the parking area on the ground floor. In the year 2015 all the flats and rooms in the stilt area were let out. Smt Kailash (deceased) was tenant in two rooms in stilt parking area. He himself resided in the opposite house bearing no. F142, Sadh Nagar.

10.1 PW-8 further deposed that on 28.02.2015 at about 3:15 am, one of his neighbours woke him up reporting about fire in his aforesaid building house no F140. He came out and saw fire; due to said fire in the building, four of his tenants died and vehicles in the parking area were burnt including that of his son Arvind (who lived in Australia) i.e., car bearing no. DL 9CQS 4535. He also stated that during investigation, a video clip was shown to him by the police in which he saw one person coming inside their gali at about 3:04am carrying something in the polythene in his hand, from which some liquid was dripping and on seeing the same, he had recognized that it was the appellant who was already known to him. On seeing photographs Ex. PY (colly) during his deposition, PW-8 identified the appellant in the same. He further stated that the appellant used to quarrel with his wife Mamta (PW-7) who had been residing with her mother Kailash for about 20 days since prior to the incident. PW-8 duly identified the appellant in

the court. PW-8's testimony also remained unimpeached.

11.0 PW-26 Shashi Kant Thakur r/o F-135/2, gali no 38, Sadh Nagar-II, Palam, New Delhi deposed that he got installed CCTV cameras outside his house for security purposes. On 28.02.2015, HC Bharat Lal (PW-20) and Ct. Kapil (PW-21) of PS Palam visited him and asked him to show CCTV footage of 28.02.2015 of around 3:05 am recorded by his cameras. On checking the same, one person was seen carrying polythene in his hand and some liquid appeared to be falling from the same and he was going towards RZF-140; and the said person was seen returning after sometime without any polythene in his hand. He identified the appellant to be the same person as seen in the CCTV footage. He stated that even otherwise, the appellant was known to him as he resided in their locality and used to drive TSR. PW-26 further deposed that HC Bharat Lal (PW-20) took the said CCTV footage in his pendrive. On 05.03.2015, SHO/IO Inspector Akhilesh Kumar Mishra (PW-44) took the DVR containing CCTV footage from him and sealed and seized the same vide seizure memo Ex. PW 26/A. He also stated that he was responsible for the supervision of the CCTV camera and no other person had access to it without his permission and the DVR, till the time it was seized, was not tampered with; and that he had issued a certificate under Section 65B, Indian Evidence Act (Ex. PW26/B). In his cross examination, PW-26 stated that they used to hear the quarrel between the appellant, his wife and his mother in law, which was talked about in the locality though he admitted he had not heard appellant extending threat to kill his wife and mother in law. He also stated that he had not seen the incident but was woken up with the commotion outside and after seeing the incident, he checked his CCTV. Nothing of significance could be extracted in cross examination of PW-26 to shake his testimony.

12.0 PW-35 Anil Kumar who also lived in the same gali in house no. 786, Sadh Nagar-II, Palam, Delhi, deposed that building RZF-140, Sadh Nagar in the same street is opposite to his house at some distance and that he had got installed CCTV cameras outside his house for security purposes. On 28.02.2015 HC Bharat Lal (PW-20) along with Ct. Kapil (PW-21) visited his house and asked him to show CCTV footage. HC Bharat Lal took the footage (in pen drive), in which one person was seen moving and thereafter light of fire was seen. He also stated that the CCTV camera in his house was installed by Electronic Security System Services and Sh. Vinod Sharma was the proprietor of the same. At the request of the police officials including that of Inspector Akhilesh Kumar Mishra (PW-44) he called Vinod Sharma (PW-30) to his house; and as requested by the police, hard disk from the DVR was taken out and was handed over to the police which was seized vide seizure memo Ex. PW30/A and he gave certificate regarding non tampering of the hard disk (Ex. PW35/A). In his cross examination, he stated that he had no personal knowledge of the case.

12.1 Testimony of PW-35 is corroborated by PW-30 Vinod Sharma who deposed that he is the proprietor of Electronic Security System Services. On being called

by Anil Kumar, on 07.03.2015, he visited his house no. 786, Gali no. 38 Sadh Nagar-II, Palam Delhi and being an expert in dealing with security system i.e., CCTV camera fire alarm system etc, at the request of police, he had taken out hard disk from DVR at Anil Kumar's house which was sealed and seized by the police (Ex. PW30/A). He had given a certificate regarding non tampering/damage of the hard disk. In his cross examination, he also stated he had no personal knowledge about the case and was concerned only with the taking out of the hard disk and handing over of the same to the police.

13.0 PW-29 Amit Chauhan deposed that he has been working since 2005 at Vaibhav Filling Station Vikaspuri, New Delhi and his duty is to fill petrol/fuel in the vehicles. On 18.02.2015 at about 8 pm, while he was on duty, one person requested him for giving petrol in a bottle which he was carrying. He filled the petrol in the same. Later, he came to know the name of the said person as Anil Kumar/appellant. He duly identified the appellant. In his cross examination, though he admitted that they do not give petrol in can/bottle, he explained that when someone pleads a lot they give 100-200ml petrol on humanitarian grounds. Identification of the appellant by PW-29 could not be shaken.

14.0 PW-28 Manish Kumar deposed that he was working as Manager at Vaibhav Filling Station, Vikaspuri for last 6-7 years. On 05.03.2015, IO Inspector Akhilesh Mishra (PW-44) visited their petrol pump and asked them to show the footage of 18.02.2015 in which at about 8:03 pm their employee Amit Chauhan (PW-29) was seen giving petrol to a person in a plastic bottle. He also identified appellant as the same person (duly identified) who is seen in the CCTV footage taking petrol from Amit Chauhan (PW-29). He also deposed that duty roster of their employees of 18.02.2015 was seized by the IO vide seizure memo Ex. PW 28/A. PW-28 also stated that at the request of the IO he had called Gaurav Garg, Technician (PW-27) working as Executive Technician in Godrej who took out two hard disks from the DVR which were handed over to the IO, who sealed and seized the same vide seizure memo Ex. PW27/A. He also stated that he gave certificate under Section 65B Indian Evidence Act, (Ex. PW28/B) and stated that till the time DVR was seized the same was not tampered with. PW-28 was not cross examined with respect to identification of the appellant by him in the CCTV footage.

14.1 Testimony of PW-28 that the hard disk pertaining to cameras installed at Vaibhav Filling Station, Vikaspuri was taken out and was handed over to the Inspector Akhilesh Mishra, is corroborated by PW-27 Gaurav Garg Executive Technician in Godrej and Boyce Manufacturing Limited. He has stated that he had taken out two hard disks and had handed over the same to the manager who in turn had handed it over to the IO (PW-44). He also stated that he had issued certificate under Section 65B Indian Evidence Act regarding the hard disk (Ex. PW27/B) and that till the time DVR was handed over to the manager, the same was not tampered with.

15.0 PW-18 Sh. V. Lakshmi Narashimhan, Assistant Director Physics, FSL, Rohini,

Delhi deposed that on 20.05.2015 he had received three parcels containing three hard disks of "WD" and one DVR, sealed with the seal of SS which were assigned to him for examination. Seal of the said parcels was found intact and tallied with the specimen seal as per the forwarding letter (FSL Form). The parcels could not be examined and were resealed and returned. On 16.12.2016, three sealed parcels were again received for examination with seals intact and tallied with specimen seal, which were found containing three hard disks of "WD" and DVR. No tampering was found and the image of the person at relevant duration was grabbed from the relevant file in DVR. Hard copy of the same was prepared and marked photograph 1 to photograph 6 (Ex. PY colly) and provided along with report (Ex.PW18/B). Remaining two hard disks were returned unexamined. In his cross examination he explained that the report was prepared by his subordinate in his presence and the same was signed by him.

16.0 It is noted that the appellant vide his statement under Section 313 Cr.P.C has admitted the facts as have come in the testimonies of PW-1 and PW-7. He has admitted that he was married to PW-7 Mamta and she took divorce in 2002. He also admitted that PW-7's mother Kailash (deceased), was residing in two rooms in stilt parking area on the ground floor at House No. F-140, Sadh Nagar, Part-II, Palam Colony, New Delhi and that there are 6 flats, in which other families were residing.

16.1 It is also noteworthy that when the incriminating evidence was put to the appellant by way of Questions no. 19 and 53, the appellant in reply in his statement under Section 313 Cr.P.C, admitted his presence in the gali/at the place of incident at about 3 am and that he was carrying a bag. The relevant questions and his answers thereto read:

"Q19. It is further in evidence against you that on the same day i.e. 28.02.2015, PW-20 HC Bharat Lal and PW-21 Ct. Kapil had checked the CCTV footage of the nearby houses including the house of PW-26 Sh. Shashi Kant Thakur and PW-35 Sh. Anil Kumar and in the CCTV Footage of the houses of these PWs, you were seen in the footage of dated 28.02.2015 at around 3.05 a.m. and the footage was taken in pen-drive and was shown to PW-8 Sh. Vijender Singh Ahlawat and on seeing the same, he identified you in the footage carrying some object in a polythene in your hand and some liquid was dropping. What do you have to say?

A.I am a driver by profession and on 28.02.2015, I was called by Sh. Vijay Singh Ahlawat to drive his car for going to a party. I went to his house on 28.02.2015 at about 3.00a.m. and I was carrying my clothes in a bag. I was not carrying any polythene containing any liquid.

Q53. Do you want to say anything else?

A. I am innocent... I am a driver by profession and I used to drive the vehicle of parties on daily wages basis. One Sh. Vijay Singh Ahlawat is known to me and is residing in a building opposite to the place of incident of this case. I had gone to Sh. Vijay Singh Ahlawat on his asking several times for the purpose of driving his

Alto car on daily wage basis. On 28.02.2015, I was asked by Sh. Vijay Singh Ahlawat to come in the morning at around 3.00 a.m. as he had to take me as a driver for 2-3 days. On 28.02.2015 I had taken my clothes in a bag and had reached at the house of Sh. Vijay Singh Ahlawat at around 3.00 a.m.”

16.2. Though the appellant explained his presence at the time of incident at the spot by stating that he was called by one Vijay Singh Ahlawat to drive his Alto car. He however chose not to examine Vijay Singh Ahlawat or lead any other evidence in that regard, in his defence. It is a settled position of law that admission made by an accused in his statement under Section 313 Cr.P.C can be used for proving his guilt as much as the evidence given by the prosecution witness (Hate Singh vs. State AIR 1953 SC 468). Further, a coordinate bench of this court in Janki Dass vs. State, (1994) 54 DLT 99 (DB) also noted that statement under Section 313 Cr.P.C can be taken into consideration in judging not only the innocence but also guilt of the accused and admission made in statement under Section 313 Cr.P.C can be made the basis of conviction. It is also significant to note that though the appellant tried to explain his presence at the place of incident by stating that he was called by one Vijay Singh Ahlawat for driving his Alto car, this defense was not put to any of the witnesses in their cross-examination; and was taken for the first time in his statement u/s 313 Cr.P.C. From the same, it is apparent that the said defence was taken as an afterthought which exposes its falsity. Same amounts to another link in the chain of incriminating circumstance against the appellant (Ramanand alias Nandlal Bharti V. State of Uttar Pradesh, 2022 SCC OnLine SC 1396).

17.0. The appellant admittedly was present at the place of incident at the relevant time i.e., 3.00 am on that fateful day i.e. 28.02.2015. He was carrying a bag in his hand. Vide testimonies of PW-1 Simran, PW-7 Mamta and PW-8 Vijender Singh Ahlawat, the appellant was seen coming towards the house no. 140 and was seen returning from the place of incident empty handed. It has also been proved that the appellant bought petrol from Vaibhav Filling Station, Vikaspuri, New Delhi, in a plastic bottle on 18.02.2015 ; said bottle was got recovered by the appellant from behind the shoe rack in his house ; and as per FSL report Ex. PW-44/A, the said bottle still contained some petrol. As per Ex. PW-12/A Crime Inspection Report, the cause of fire has been opined as use of inflammable material, ruling out electrical short circuit. PW-1, PW-7 and PW-8 woke up with the light caused by huge fire. Thus, it has been proved beyond reasonable doubt that the appellant nursed a grudge against his mother-in-law Smt. Kailash as he thought that she was responsible for the rift between him and his (ex) wife PW-7. To take revenge from his mother-in-law, he used petrol to put on fire, the house, in which she lived, which resulted not only in her death but also of three more residents of that building and caused burn injuries to five residents including PW-7 Mamta.

18.0 In view of the above, the appellant has failed to demonstrate any illegality in the impugned judgment. Considering the enormity of the gruesome act of the

appellant, we find no reason even to interfere with the sentence awarded to the appellant.

19.0 Appeal is accordingly dismissed.

20.0 Copy of the judgment be uploaded on the website and be also sent to the Superintendent Jail concerned for updation of record and intimation to the appellant.