

(2005) 11 DEL CK 0071

In the Delhi High Court

Case No : Criminal Appeal No. 585 of 1999

Kapoor Singh Rana

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 161(2), 162, 313

Evidence Act, 1872 — Section 145, 157, 27, 32, 6

Penal Code, 1860 (IPC) — Section 307, 326, 34

Citation : (2006) 126 DLT 367 : (2006) 86 DRJ 428 : (2006) 1 RCR(Criminal) 943

Hon'ble Judges : Manmohan Sarin, J; Manju Goel, J

Bench : Division Bench

Advocate : Rebecca M. John, for the Appellant; Ravinder Chadha and Jagdish Prasad, for the Respondent

Final Decision : Disposed Off

Judgement

Manju Goel, J.—The appeal arises out of a judgment of conviction u/s 307 of Indian Penal Code (in short `IPC") by the Additional District & Sessions Judge, Delhi in a case in which injury to the victim was caused by throwing acid on her person.

2. The salient feature of this case is that the injured, Sunita Devi, on whose statement the FIR was registered expired before the trial could commence. There is no evidence regarding the cause of her death and, Therefore, there is no effort to relate her death to the injuries suffered by throwing of acid. Apparently there was no eye witness to the actual occurrence. She named the petitioner as the person who had thrown acid on her. The FIR accordingly recorded the name of the accused. The victim could not be examined during trial. The evidence against the accused/appellant is the testimony of the victim's mother who saw the accused leaving the house and claims to have been told by the victim that the appellant had thrown acid on her. Another salient feature of the case is that in

the statement of the mother recorded by the Investigating Officer u/s 161 of the Code of Criminal Procedure (in short `Cr.P.C.`), the name of the accused has not been mentioned. The trial court observed, *inter alia*, that there was no reason why the accused would have been falsely implicated, that there was no reason to disbelieve the testimony of the mother on the material facts deposed by her and that the evidence on record proved the charge against the accused. Hence the conviction.

3. We can now refer to the details of the case. The FIR No.130/94 under Sections 307/34 IPC at police station Saraswati Vihar was registered on 2.4.1994 at 1.40 p.m. on the statement of Sunita Devi. The substance of her statement is as under:

The appellant along with another person came in her house on that day at around 9.30 a.m. when her father was away to his duty and her mother had gone to get her younger brother admitted to school. She was present at the house with her younger sister of only 4 years. That the appellant was known to her and the members of her family as he had an office of security guards where she had been working as telephone operator. The appellant had been visiting her at her residence but by now the office of the security guards had been closed and she had not been going to the office for about one month. The appellant asked her to come to his house as she had been called by his wife. She refused as her parents were not at home and offered to come to his house along with her mother, when her parents would have returned. On this the appellant went to the toilet and in a glass brought something which looked like water and threw the same on her face which caused her severe burns. She screamed on account of the burns. The two left her house closing the main door from outside. The neighbours opened the door and poured water on her. The other man accompanying the appellant threatened her of dire consequences even as they left, and their intentions appeared to be bad. In the meantime, her mother arrived and brought her to the Jaipur Golden Hospital with the help of the neighbours.

4. The statement is Ex.PW-1/A, the endorsement of the police officer is Ex.PW-8/A and the formally recorded FIR is Ex.PW-2/A. The MLC prepared by the Jaipur Golden Hospital is Ex.PW-7/A which recorded that the history of burns by thrown by two boys at 11.00 a.m. today. The diagnosis was burns (15%)". The endorsement on the MLC says that she was fit for statement on 2.4.1994 at 12.50 p.m., i.e., when she made this statement to the police officer. During investigation statement of the witnesses were recorded and other formalities of investigation were completed. From the spot of the offence a bottle of acid was seized and was sent to CFSL, Chandigarh for examination of its contents. The appellant was arrested and he was challaned u/s 307 IPC.

5. He was charged u/s 307 IPC and was tried for the offence. The witnesses produced during trial include the mother of the victim, Satya (PW-1); a neighbour, Smt.Sohna Devi (PW-6); a doctor from the Jaipur Golden Hospital

(PW-9) who treated the victim and the police officers who were involved in this case since the recording of the FIR. The doctor proved that the victim had suffered from Chemical burns on face, chest and upper part of her breast and upper part of her back. Both of her eyes were damaged on account of the burns. According to him the injury was grievous. She was not cross-examined by the accused.

6. The incident of acid being thrown on the victim Sunita in the morning of 2.4.1994 is not disputed. The medical evidence confirms that the burns were caused by Chemical. The report of the Chemical Examiner supporting the prosecution case is Ex.PW-8/C. The only question that remains to be determined is who committed the offence ?

7. As stated earlier the victim is dead, the mother of the victim who arrived at the scene immediately after the incident and also brought her to the hospital is PW-1. She states that when on that day she returned from the school at A-Block, Pitampura and was about to enter the gate of her society in which her flat is situated she saw the accused/appellant coming out of the gate of the society in a perplexed condition. As she entered the house she found her daughter crying and asked her as to what had happened on which she had told her that it was Kapoor Singh Rana/appellant who had poured acid on her face and she had become blind. Her narration continued to prove that Sunita was in service at Azadpur as a telephone operator, that she had been handing over the keys to the accused on the closure of the office, that the accused had joined in the celebration of her birthday in January, 1994 at her house that the accused used to visit the house but his behavior was not quite normal on which she had become suspicious and had asked the victim to avoid the accused that the victim left her job in the month of February, 1994 and that the incident took place on 2.4.1994 at around 9.30 a.m. She further stated that on the day of the incident the police arrived at the Jaipur Golden Hospital and took the statement of her daughter which is Ex.PW-1/A which was signed by her daughter. She made her statement on two different dates and there were some minor contradictions in the statement on those two days which she sufficiently explained. The only thing of substance that cropped up in her cross-examination is that her statement u/s 161 Cr.P.C. did not include the fact that her daughter had told her that it was the appellant who had poured acid on her face and had thereafter gone away. We shall advert to this aspect later. There were certain other omissions in the statement u/s 161 Cr.P.C. which were not of much significance. It is not necessary to go into the said details for the purpose of this judgment.

8. PW-6 Smt.Sohna Devi is the neighbour who deposed that she had heard the voice of Sunita and she had pushed open the door of Sunita's house and had poured water. She, however, denies to have seen the appellant going out of the house. The officer who recorded the statement of Sunita is PW-8, ASI Dashrath Singh, who also eventually conducted the investigation. There is nothing worth mentioning in his cross-examination. In the statement u/s 313 Cr.P.C. the

appellant denied to have been seen by PW-1 on the relevant day at the gate of the society. He denies that he has been visiting the victim and says that he has been falsely implicated in the case. There is no evidence in defense.

9. On behalf of the appellant, it is submitted that there is no cogent evidence against the appellant and the appellant has been wrongly convicted. In the first place, it is submitted that the statement on the basis of which the FIR was registered cannot be taken as a substantive piece of evidence and the same could be used only for the purpose of corroboration or contradiction in case the maker of it appeared in the witness box and since the maker of the statement did not eventually appear in the witness box that statement is of no value. Secondly, it is submitted that the statement of PW-1 to the effect that the victim had told her that it was the appellant who had thrown acid on her cannot be relied upon in view of the provisions of Section 162 Cr.P.C. as this statement is in contradiction to the statement u/s 161 Cr.P.C. in which there is no mention of this part of the statement.

10. So far as the value of the First Information Report is concerned, it is settled law that the same cannot be used as a substantive piece of evidence. It can only be used as a previous statement for the purpose of either corroborating its maker u/s 157 of Indian Evidence Act or contradicting him u/s 145 of the Indian Evidence Act. It cannot be used for the purpose of corroborating or contradicting other witnesses. *Sheikh Hasib alias Tabarak Vs. The State of Bihar*, *Harkirat Singh Vs. State of Punjab*, *Madhusudan Singh and another Vs. State of Bihar*,

11. In *Hasib v. State of Bihar* (Supra), the Supreme Court explained the purpose and value of FIR in the following language:

".. The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker u/s 157 of the Indian Evidence Act or for contradicting him u/s 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses....

12. The next question is to what extent the testimony of mother of the victim to the effect that the victim had told her that it was the accused who had thrown acid on her could be relied upon. In her statement u/s 161 Cr.P.C. this part has not been taken down. She is confronted with the statement u/s 161 Cr.P.C. in order to assert that there was a contradiction between the statement u/s 161 Cr.P.C. and the statement given in court. The position of law can be obtained from the Criminal Procedure Code itself. Sections 161 & 162 Cr.P.C. read as

under:

161. Examination of witnesses by police.- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions and answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

162. Statements to police not to be signed: Use of statements in evidence.- (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

13. It is important that all the material facts given by a witness during investigation should be recorded u/s 161. But the statement u/s 161 is obtained by the investigating officer on interrogation. Therefore, certain aspects may not find their place in a statement u/s 161 Cr.P.C. In the present case the evidence of the mother of the victim, PW-1, says that she arrived at the spot immediately

after the occurrence. She being the mother of the victim, the natural sequence of events on her arrival at the spot and on finding her daughter in distress will be an enquiry as to what had happened and as to who did it. The natural reaction of the mother would be first to ask as to what had happened and having got the answer to this question would be to ask as to who has done it. Although, the immediate concern will be to get medical aid to the daughter, the mother's anxiety to know these details will be equally urgent. The statement u/s 161 Cr.P.C. makes no mention as to any talk between the two. The translated version of the statement of Satya u/s 161 Cr.P.C. is as under:

"I state that I live at the aforementioned address with my family. Today at around 9.30 AM I was coming back from the school after obtaining the certificate of my child and as I was about to enter the main gate of the apartment I saw Kapoor Singh Rana, appearing nervous, leaving the gate with speed. I know Kapoor Singh Rana for the last 2 or 3 months as my daughter used to work in his office and Kapoor Singh Rana had visited my house several times, sometimes alone and sometimes with his wife. He often used to praise the beauty of my daughter. I used to doubt his intentions. On seeing his behavior I removed Sunita from his employment. Inspire of that Kapoor Singh Rana requested several times that Sunita came back to work which I declined. Today when he was leaving the Ajay Apartment I asked him as to why he had come to the house again despite my forbidding. He left without giving any reply. Another tall, well-built person with white kurta & payjama was following him. He also looked perturbed. I can identify him if he is produced before me. As I came up to my apartment and entered the same I found a few women and as soon as I entered I found my daughter Sunita labouring in the pain of acid burn. With the help of my neighbour I brought her to the Jaipur Golden Hospital where you arrived and recorded the statement of Sunita and where on the advice of the doctor you obtained the clothes on the body of the Sunita including one kameej and banyan and kept them in a pulanda. Thereafter I came back to the Flat No.36, Ajay Apartments where on search one bottle with a little amount of acid was found behind some boxes which was seized by you. Thereafter, the plan of the area was drawn....

14. It is clear that the statement has not been recorded in respect of the important fact of any talk with the daughter altogether. At the same time, it cannot be believed that the mother and the daughter did not talk about this detail at all. Perhaps the investigating officer felt assured with the statement of the victim herself and, Therefore, did not require another witness to give these facts. Obviously, he did not put this question to the witness and, Therefore, the statement u/s 161 Cr.P.C. is lacking in these details. Such omissions as in the present case should not be taken as contradiction. We are fortified in this opinion by the judgment of the Supreme Court in the case of Jaswant Singh Vs. State of Haryana, . The relevant part of the judgment reads as under:

46. Section 161(2) of the Code requires the person making the statements "to

answer truly all questions relating to such case, put to him by such officer ...". It would, Therefore, depend on the questions put by the police officer. It is true that a certain statement may now be used u/s 162 to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872. Previously, the law was as enunciated in *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, as

"omissions, unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness-box

47. Now the Explanation to Section 162 provides that an omission to state a fact in the statement may amount to contradiction. However, the Explanation makes it clear that the omission must be a significant one and 'otherwise relevant' having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

48. Reading Section 161(2) of the Criminal Procedure Code with the Explanation to Section 162, an omission in order to be significant must depend upon whether the specific question, the answer to which is omitted, was asked of the witness. In this case, the Investigating Officer, PW 13 was not asked whether he had put questions to Gurdeep Kaur asking for details of the injuries inflicted on of the persons who had caused the injuries.

15. The similarity between the above observations and the facts in the present case is apparent. Even in this case the investigating officer was not questioned as to whether he put these questions to PW-1. It appears to us that the investigating officer did not put any question relating to the identity of the culprit as the victim herself had given out the same. This explains the omission and the same can not be looked upon as contradiction. We are unable to discard the testimony of mother of the deceased on this aspect simply because the statement u/s 161 Cr.P.C. has failed to record this part of the sequence of event.

16. The second objection to the statement of the mother about the involvement of the appellant is that it is hearsay. Suffice it to say that the statement is a part of the *res gestae* as codified in Section 6 of the Indian Evidence Act. It has come to be a rule of exception to the hearsay evidence. A fact or a statement of fact or opinion, which is so closely associated in time, place and circumstances with some act or event, which is in issue, that it can be said to form a part of the same transaction as the act or event in issue, is itself admissible in evidence. The justification given for the reception of such evidence is that the light that it sheds upon the act or event in issue is such that in its absence, the transaction in question may not be fully or truly understood and may even appear to be meaningless, inexplicable or unintelligible. The testimony of the mother in respect of what the victim told her immediately on her arrival at the spot can, Therefore, safely be read in evidence.

17. Apart from the evidence that the victim had given the name of the appellant

to her mother another piece of evidence on record is that the mother had seen the appellant leaving the place when the mother was entering the gate of the society. This part of the evidence is very important. Although witness PW-6 has not supported the prosecution case in respect of the accused being seen at the spot immediately after the incident, the testimony of the mother in this respect cannot be faulted. PW-6, the neighbour, came to the house on hearing the shrieks of the victim by when the culprit had already left. The mother, PW-1, had arrived soon after the incident and saw the appellant at the gate. The testimony of PW-1, Therefore, cannot be said to have been contradicted by PW-6.

18. There is no suggestion of any kind raising any doubt on the truthfulness of PW-1. There is no reason why PW-1 would try to implicate the appellant and save the real culprit. We find her a truthful witness. We have no hesitation to accept her testimony.

19. On behalf of the appellant it is submitted that testimony of PW-1 is not corroborated and the evidence is not sufficient to convict the appellant. It is a well settled principle of law that it is not the quantum of evidence that matters. If the evidence of the prosecution is sufficient to convince the court about the culpability of the accused he can be convicted even on the testimony of one witness. The rule of corroboration, as it is commonly said, is a rule of prudence only, not a mandatory rule for acceptance of any evidence.

20. The trial court has not discussed the details of the legal question involved in this case and what is the clinching evidence in the matter. Nonetheless, the trial court on examining the witnesses and on reading the total evidence on record came to the conclusion that the appellant was guilty of the offence. We see no reason to differ with the opinion of the trial court. We, Therefore, uphold the conviction of the appellant.

21. The petitioner has been convicted u/s 307 IPC. Counsel for the appellant made an all out effort for getting the appellant acquitted. No effort, however, was made to argue that the offence committed was not an attempt to murder but causing grievous hurt. Nonetheless, it is the duty of this court, even at this stage, to examine what offence is committed by the appellant and what should be the appropriate punishment to be imposed on him. The burns were caused on the face causing loss of eye sight and also disfigurement. The burns were, however, only 15%. There is no evidence that the appellant committed the offence with the intention of causing death or with the intention of causing such bodily injury as would have led to death in the ordinary course. Usually when acid is thrown on the face of someone the intention behind the act is to cause disfigurement rather than to cause death. There is nothing on record to show that the appellant had any knowledge that he was likely to cause death by his act. Under these facts & circumstances the ingredients of the offence u/s 326 for causing grievous hurt by means of any corrosive substance are found. We accordingly convict the appellant u/s 326 of the IPC.

22. The punishment for causing grievous hurt u/s 326 can also go up to life as in the case of an offence of attempt to murder punishable u/s 307 IPC. Undoubtedly, the damage caused by the offence to the victim was severe. Yet we feel that the sentence of imprisonment for life is not warranted in the case. Instead we think it appropriate to impose a sentence of imprisonment for seven years along with fine of Rs.30,000/- and in default of payment of fine simple imprisonment for a period of one year. We further direct that fine, if recovered, be paid to the victim's mother, Satya. The appellant shall be entitled to adjustment of the period already undergone by him in custody during investigation and trial as provided u/s 428 Cr.P.C.

The appeal stands disposed of in the above terms.