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IN THE HIGH COURT OF DELHI

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Date of Decision: February 26, 2009

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CRL.A.114/2001

SATYA NARAIN & ANR. Appellants
Through: Dr.L.S.Chaudhary, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate.

CRL.A.132/2001

KAMAL KISHORE Appellant
Through: Dr.L.S.Chaudhary, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Appellant Kamal Kishore has been convicted for the offences punishable under Section 302 and Section 498-A IPC.

He has been sentenced to imprisonment for life and pay a fine in sum of Rs.5,000/-; in default of payment of fine to undergo simple imprisonment for six months for the offence of murder. He has been sentenced to imprisonment for three years and pay a fine in sum of Rs.2,000/-; to undergo simple imprisonment for three months in default of payment of fine for the offence punishable under Section 498-A IPC. His parents i.e. the appellants of Crl.Appeal No.114/2001 have been convicted for the offence punishable under Section 498-A IPC and have been sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.2,000/-; in default to undergo simple imprisonment for three months. The sentences imposed upon appellant Kamal Kishore have been directed to run concurrently.

2. Learned counsel for the appellants and the State submit that pertaining to the charge of murder, the fate of appellant Kamal Kishore has to be decided with reference to the three dying declarations made by the deceased Sanjana W/o Kamal Kishore. Whether the convictions of the appellants for the offence punishable under Section 498-A IPC can be sustained would depend upon the second and the third dying

declaration made by Sanjana and the testimonies of her father PW-5 and her brothers PW-4 and PW-6.

3. The reason being that the learned Trial Judge has held that the first dying declaration made by the deceased to Dr.Porag Neog PW-7, which finds a reflection in the MLC Ex.PW-7/A was not voluntarily made by Sanjana and that her dying declaration Ex.PW-22/A made to the investigating officer SI K.P.Malik PW-22, as well as the third dying declaration Ex.PW-10/A made to the Sub-Divisional Magistrate Shri S.K.Singh PW-10 inspired confidence and since the latter two dying declarations inculpated appellant Kamal Kishore as the offender; having poured kerosene oil on Sanjana and set her on fire, it has been held that the charge against Kamal Kishore for having murdered his wife stands established. Pertaining to the charge for the offence punishable under Section 498-A IPC, the learned Trial Judge has held that the dying declarations Ex.PW-10/A and Ex.PW-22/A as also the deposition of the father and brothers of the deceased evidenced that the deceased was treated with cruelty, both mental and physical due to the fact that the appellants were aggrieved by the dowry brought by the

deceased and were desiring more dowry to be given by her parents.

4. It is not in dispute that Sanjana suffered burn injuries in her house at around 9.30 AM on 1.6.1998. At 9.35 AM vide Ex.PW-19/A lady Const.Prabha PW-19, then posted in the police control room recorded the information that an informant had informed on the number 100 that a girl named Sanjana W/o Kamal Kishore had caught fire while cooking food on a stove.

5. Kirori Mal PW-3, a neighbour rushed Sanjana to Safdarjung Hospital where she was admitted, as recorded in the MLC at 10.45 AM on 1.6.1998. Dr.Porag Neog PW-7 attended to her and in the MLC Ex.PW-7/A noted the history of the burns suffered by Sanjana, in the following words: *Alleged H/o sustaining burn injury when the patient was cooking food over a kerosene oil stove when her clothes caught fire.* While deposing as PW-7, Dr.Porag Neog stated that he had recorded the history of how Sanjana had sustained the burn injury as per information given to him by the patient herself. In the MLC it has been recorded that Kirori Mal PW-3 had brought Sanjana and got her admitted in the hospital.

6. The parents of Sanjana were informed of Sanjana suffering burn injuries and being admitted in the hospital. Shyam Sunder PW-4, reached the hospital and met her at 10.30 AM on 1.6.1998, as admitted by him in his deposition in Court.

7. Sub Inspector K.P.Malik PW-22 reached Safdarjung Hospital at around 11.00 AM, the time disclosed by him in his deposition in Court, and found Sanjana admitted in the hospital. He moved an application for recording the statement of Sanjana who was declared fit to make a statement. At around 11.30 AM he recorded the statement Ex.PW-22/A made by Sanjana. The same reads as under:-

“Statement of Smt.Sanjana W/o Kamal R/o S-74/36 Harijan Camp, Khanpur, New Delhi aged 20 years.

I reside at the above-noted address. 5 years back I got married to Kamal S/o Sat Narain. After my marriage everyone in the house used to harass me for not bringing sufficient dowry. I have a daughter aged 2½ years. My husband, my father-in-law Sat Narain, my mother-in-law Smt. Kesari and my sisters-in-law Prem and Rekha used to taunt me and leveling allegations used to beat me to pressurize me to bring household articles saying that “at the time of marriage your mother and father did not give anything and whatever was given was worthless”. Yesterday night my husband had beaten me on the instigation of my father-in-law and mother-in-law. Today morning around 9.30 am, when I was sitting in the house, my husband poured kerosene oil on me; set me ablaze and then fled away. At that time my mother-in-law

was in the house, but she made no efforts to save me. I was brought to the hospital by a neighbour Kirori Mal. Action should be taken against my husband, mother-in-law, father-in-law and both my sisters-in-law.”

8. The Sub Divisional Magistrate of the area viz. Shri S.K.Singh PW-10 was informed about Sanjana being admitted at Safdarjung Hospital and he was requested to reach the hospital and record the statement of Sanjana. He reached the hospital at around 1.00 PM and after obtaining the certification from the doctor that Sanjana was fit for making a statement, recorded Sanjana’s statement Ex.PW-10/A; translated version whereof is as under:-

“Statement of Smt.Sanjana W/o Kamal R/o S-74/36 Harijan Camp, Khanpur, New Delhi.

Is it day or night?	:	This is day time.
What is your name?	:	Sanjana
Name of your husband	:	Kamal
Name of your mother and father	:	Revati and Kishori
How and when did you catch fire?	:	At around 9 O’clock. My husband poured kerosene oil on me, set me on fire and then fled from there.
Who brought you to the	:	My mother in law and a

hospital?		neighbour brought me.
Did you have a fight with your husband?	:	Yes.
Since how many years you have been married.	:	5 years.
Did you have fights with your husband on earlier occasions as well?	:	Yes. On the instigation of my mother-in-law.
For what reasons both of you used to fight.	:	Everyone in the house used to taunt me that my parents had given me nothing. My husband, father-in-law and mother-in-law used to demand dowry.
Where is your husband?	:	He is absconding. Father-in-law is also not here.
Who all were present at the house when you caught fire?	:	Only my husband. Nobody else was there. My sister-in-law was in the neighbouring house. On catching fire I rushed out of the house. The neighbours were present. One of them and my mother-in-law brought me here.
Do you have a child?	:	Yes. I have a daughter aged 2 years.
Where is she?	:	With her paternal grandmother."

9. Sanjana died in the hospital on 10.6.1998.

10. Kirori Mal PW-3 deposed that at around 9.00 AM on 1.6.1998 he was returning to his house and saw Sanjana in flames running out of her house. 5/6 persons of the locality extinguished the fire by pouring water on Sanjana. She fell down. That mother-in-law of Sanjana returned with his wife after purchasing medicine and that he and the mother-in-law of Sanjana took her to the hospital.

11. Relevant would it be to note that Sanjana's mother-in-law viz. Kesar Devi, appellant No.2 in Crl.A.No.114/2001 was present with Sanjana when she was removed to the hospital and was with Sanjana even in the hospital. We are so noting because the first dying declaration of Sanjana as recorded in the MLC has been attacked by learned counsel for the State on the ground that either Sanjana was intimidated by her mother-in-law to speak a lie or under fear of her mother-in-law who was present by her side, Sanjana told a lie to the doctor.

12. Shyam Sunder PW-4, the brother of Sanjana deposed that on hearing about his sister being burnt he reached the hospital at 10.30 AM on 1.6.1998. He met his sister Sanjana in the hospital who told him that her husband Kamal Kishore had

set her on fire after pouring kerosene oil on her. That she told him that Kamal Kishore used to beat her accusing her of not bringing anything from her parents. That she told him that even her parents-in-law used to instigate her husband. They used to tell her that neither at the time of marriage nor at the time of *gauna* (a custom in certain communities in north India of sending the bride after a few years to her matrimonial home) anything worthwhile was given by her parents. That Sanjana told him that her in-laws used to tell her that she had not brought any dowry. They used to remind that she should bring dowry from her parents.

13. We note that Shyam Sunder did not divulge the details or the particulars of any demands towards dowry. The learned Public Prosecutor made a request to cross-examine Shyam Sunder. The request was allowed. Cross-examining Shyam Sunder and confronting him with his statement recorded by the police under Section 161 Cr.P.C., the learned Public Prosecutor questioned Shyam Sunder whether the facts disclosed by him to the police and as recorded in his statement under Section 161 Cr.P.C. were correct. Shyam Sunder gave evasive replies and to many questions just kept mum. On

22.5.1999, when he was under cross-examination by the learned Public Prosecutor, vide an order of even date, Shyam Sunder was sent to judicial custody for four days inasmuch as the learned Trial Judge opined that he should exercise his power under Section 349 Cr.P.C.

14. Deviating a little, we are pained at the conduct of the learned Trial Judge who has ignored the procedure to be followed and as contemplated by Section 349 Cr.P.C. The said provision reads as under:-

“349. Imprisonment or committal of person refusing to answer or produce document. – If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal he may be dealt with according to the provisions of section 345 of section 346.”

15. Needless to state, power of committing a witness to the custody of an officer of the Court for any term not exceeding seven days can be exercised under Section 349 Cr.P.C. only after giving a reasonable opportunity to a witness to enable him to state reasons as to why he was not answering a question and if no reasonable excuse is found by the Court for not answering the questions, after recording reasons as to why the witness should be committed to the custody of an officer of the Court, the witness can be committed to the custody of an officer of the Court. The procedure aforesaid has not been followed. Poor Shyam Sunder had to spend four days in jail.

16. Produced from jail in Court on 26.5.1999 and further cross-examined by the learned Public Prosecutor, he denied that it was incorrect that the accused had demanded a gold chain and a ring. He denied that what was recorded by the police under Section 161 Cr.P.C. was as disclosed by him to the police.

17. Kishori Lal PW-5, the father of Sanjana deposed that he had got his daughter married about 8/9 years ago and that after 5 years of the marriage Sanjana was sent to her matrimonial house. He deposed that the behavior of the appellants with Sanjana was cordial and that his daughter was

ill-tempered. The witness deposed in Hindi. We note his deposition in his own words: *Sanjana ke sath mulzaman ka vayavahar theek tha. Ladki ka vayavahar kharab tha. Sanjana jab aati thi to kehti thi yeh na diya vah na diya. Yeh pahele ladka kehta tha baad mein saas sasur kehne lage. Kisi cheej ka naam na bataya yan na diya. Sanjana marne se pehle chait ke maah mein gaon mein mela lagta hai us mele mein aayi thi. Kuch shikayat na kari.* The witness was declared hostile and on cross-examination refuted the suggestion made by the Public Prosecutor that the in-laws of Sanjana were not happy with the dowry given by him. To quote he deposed: *Yeh galat hai ki shaadi mein jo daan dahej diya us par mulzaman khush na they. Us samay khush thai. Yeh galat hai ladki mere paas raksha bandhan par aayi. Yeh galat hai ladki raksha bandhan par aayi aur usne dahej maangney ki baat batayi.* However, to further questions whether his daughter was troubled by his in-laws, he replied in the affirmative. When questioned as to what was the cause of troubling his daughter, he responded that because he was a poor man.

18. Mahendra Kumar PW-6, the brother of Sanjana deposed that Sanjana was his sister and that she died on
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10.6.1998. He did not depose about any harassment to his sister at the hands of her in-laws or any dowry demands being raised by them.

19. This then is the evidence which needs to be analyzed and discussed.

20. Sanjana was blessed with a daughter who was aged about 2 years when Sanjana died. Her mother in law had just returned to the house after Sanjana had suffered the burn injuries and along with Kirori Mal PW-3 had removed her to the hospital. She was presumably by her side, urges learned counsel for the State, when PW-7 recorded the MLC of Sanjana. Counsel urges that Sanjana was intimidated by her mother-in-law, who fearing for her daughter, spoke a lie to the doctor and wrongly told him that she had sustained the injury when her clothes accidentally caught fire while cooking food. Learned counsel urges that the cooking stove was in a perfect condition and had no leakage and thus where was the possibility of kerosene spilling on to the clothes of Sanjana.

21. Now, it is nobody's case that kerosene oil got spilled from the stove. This is not the defence projected. The question is whether, while cooking food on the kerosene oil stove,

Sanjana got burnt accidentally or her husband Kamal Kishore, after dousing her with kerosene oil set her on fire.

22. The MLC of the deceased does not record that smell of kerosene oil was noticed by the doctor.

23. It is normally expected that where smell of kerosene oil is sniffed by the doctor who is attending a burn patient, in the MLC said fact is recorded. The absence of said fact being recorded in the MLC Ex.PW-7/A has thus to be kept in mind. By no means are we intending to convey that this fact concludes the controversy for the reason there may be cases where the kerosene oil, accidentally spilled or deliberately thrown on the victim is of negligible volume and got inflamed when the victim was set on fire and thus smell of kerosene could not be detected by a doctor.

24. Ordinarily, as held in the decision reported as AIR 1982 SC 839 Mohan Lal Ganga Ram Gehani vs. State of Maharashtra where two contradictory statements are made by a victim who no longer survives to depose in Court, in the absence of proof of being threatened or there being nothing to impinge upon the veracity of the first statement, the statement made

first in point of time has to be preferred over the subsequent statement.

25. As held in the decision reported as 2007 (3) JCC 2355 Mehiboobsab Abbasabi Nadaf vs. State of Karnantaka, where there are more than one dying declarations made by the deceased, extra care has to be taken to see as to which dying declaration inspires confidence. The one which inspires confidence has to be accepted. If none inspires confidence, each has to be discarded.

26. The dying declaration Ex.PW-22/A records that apart from the husband, father-in-law and mother-in-law even the sisters-in-law viz. Prem and Rekha used to harass Sanjana for bringing inadequate dowry. The statement Ex.PW-7/A does not refer to Rekha or Prem. The second difference is that in Ex.PW-22/A the deceased has referred to her husband beating her last night on the instigation of his parents; no such fact has been disclosed in the second dying declaration Ex.PW-7/A. The third discrepancy is that in the statement Ex.PW-22/A, Sanjana has stated that her mother-in-law was in the house when she caught fire and made no effort to save her, but in the statement Ex.PW-

7/A she has stated that only her husband was present in the house when she was set on fire.

27. The testimony of Kirori Mal shows that the mother-in-law of the deceased had just returned after buying medicines when Sanjana was on the road and was seen in flames by the residents.

28. Discrepant or mutually contradictory statements in successive dying declarations have always roused the suspicion of the Courts. In the decision in Mehiboobsab's case (supra) the Supreme Court held (para 7) that consistency in the dying declaration is a relevant factor for placing full reliance there upon. It was held that where the deceased had taken contradictory and inconsistent stand in different dying declarations, none could be safely relied upon.

29. No doubt, the mother-in-law of the deceased was present when she made the statement to the doctor as noted in the MLC Ex.PW-7/A, but at the same time it cannot be ignored that when she changed her version and as disclosed in the second and the third dying declaration viz. Ex.PW-10/A and Ex.PW-22/A, her brother had met her. As noted above, her brother met Sanjana at around 10.30 AM. The two statements

were recorded at around 11.30 AM and 1.00 PM. The possibility of Sanjana being prompted or tutored by her brother cannot also be ruled out.

30. Thus, the submission of learned counsel for the State pertaining to the circumstance under which Sanjana made the statement before the doctor is neither here nor there. Be that as it may, we prefer to follow the rule of prudence and note the changed versions as to the facts disclosed by Sanjana in Ex.PW-10/A and Ex.PW-22/A and take guidance from the law laid down in Mehiboobsab's case (supra).

31. It would not be out of place to mention that Ex.PW-19/A i.e. the PCR form filled up by PW-19 records that an informant has informed that Sanjana had suffered burns while cooking food on a stove. Though the evidentiary value and weightage of said information is small, but in the instant case becomes significant for the reason Kirori Mal PW-3, a resident in the neighbourhood who had removed Sanjana to the hospital has not stated that Sanjana told him that her husband had set her on fire. Kirori Mal is an independent person and would have been the best witness to said fact. We further note that the prosecution has led no evidence to show that the appellant fled

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his house at around 9.00 – 9.30 AM. There is a ring of truth in the statement of the appellant Kamal Kishore when he was examined under Section 313 Cr.P.C. that he had already left for his work when his wife caught fire.

32. We accordingly hold that the charge against Kamal Kishore of having poured kerosene oil on Sanjana and thereafter set her on fire is not proved on the evidence brought on record.

33. Pertaining to the offence punishable under Section 498-A IPC; to sustain such a charge it is essential that clear and cogent evidence must be brought on record by the prosecution to prove that the husband or the relative of a woman subjected her to such cruelty which fulfills the requirement of Explanation 'a' or 'b' of Section 498-A i.e. the willful conduct of the husband or the relatives was of a nature as would likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health (mental or physical) of the woman or the woman was harassed with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security.

34. From the evidence sought to be brought on record, it is apparent that the prosecution sought to bring the case within the ambit of Explanation 'b' to Section 498-A IPC.

35. We have rejected the dying declarations Ex.PW-10/A and Ex.PW-22/A which even otherwise do not throw much light on the issue pertaining to cruelty; there being general reference to the husband beating Sanjana and his parents instigating him. No particulars of a demand have been disclosed therein. PW-6 has thrown no light on the issue. The other brother and the father of the deceased viz. PW-4 and PW-5 have half-heartedly deposed to the acts of cruelty against Sanjana. The hesitant nature of the deposition of both the witnesses is evident from their depositions. No particulars of the nature of the demand, the date of the demand and the manner in which the same were raised have been disclosed. In fact, the father of the deceased appears to have disclosed the truth evidenced by his statement that Sanjana was a little ill-tempered and that it was Sanjana who had a grievance that her parents had not given her enough dowry.

36. Poverty appears to be the problem. The young girl thought that her parents could have done more for her. She

conveyed her feelings to her father, as disclosed by the father in the following words: *Sanjana jab aati thi to kehti thi yeh na diya vah na diya*. Evidence suggests that Sanjana was the one who wanted her parents to give her more.

37. The evidence pertaining to cruelty is shaky and does not measure up to the required standards which have to be achieved at a criminal trial.

38. The appeals are allowed. Impugned judgment and order dated 01.02.2001 is set aside. The appellants are acquitted of the charges framed against them. Their conviction and the sentences imposed are set aside. The appellants are on bail. Their bail bonds and surety bonds are discharged.

39. Copy of the order be sent to Superintendent, Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 26, 2009
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