

R-35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 27th August, 2009*

+ **CRL.A. 162/2001**

SAMPAT & ANR. Appellants
Through: Mr. M.L.Yadav, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

PRADEEP NANDRAJOG, J. (ORAL)

1. A short question arises for consideration in the instant appeal which lays a challenge to the judgment and order dated 9.2.2001. The appellants have been convicted for the offence of having poured kerosene oil on Smt.Rajni, wife of Lokesh Kumar and thereafter setting her on fire. The resultant burn injuries have admittedly resulted in the death of the deceased, a finding so recorded in the post-mortem report Ex.PW-11/E of the deceased.

2. The short question is: whether the statement

Ex.PW-4/A made by the deceased and recorded by Sh.I.S.Dahiya PW-14, then working as the SDM Saraswati Vihar, can safely be treated as the dying declaration of the deceased and can it form the basis of the conviction of the appellants?

3. Suffice would it be to note that Rajni was removed to Jai Prakash Narayan Hospital by HC Ram Niwas and was removed from the first floor from House No.M-57, Mangol Puri and was admitted at the hospital at 3:50 PM on 9.7.1998, a fact recorded in the MLC Ex.PW-15/A of the deceased.

4. Rajni was admitted in a burnt condition.

5. As deposed to by HC Ram Niwas PW-8, on 9.7.1998 i.e. the day when Rajni suffered burn injuries, he was in-charge of the PCR van '26' and at 2:55 PM received information from the police control room that the control room was informed about a lady being burnt at House No.M-57, Mangol Puri. He reached the said house and took Rajni to the hospital.

6. Information pertaining to a lady being burnt at M-57, Mangol Puri was also conveyed by the police control room to PS Mangol Puri, where the duty officer recorded the said information vide DD No.14A, Ex.PW-4/D.

7. SI Ramanand PW-17 was handed over a copy of DD No.14A and in the company of Const.Krishan Kumar, he

proceeded to House No.M-57, Mangol Puri to investigate the matter and found that on the first floor of the house, in front of a room, some burnt clothes, a stove, kerosene oil and matchbox was lying. On inquiry he was informed that the injured had been taken to a hospital.

8. Information of Rajni being admitted at JPN Hospital was conveyed to the police station and was recorded by the duty officer vide DD No.16A, Ex.PW-4/D, and was relayed to SI Ramanand who, on receipt thereof, left Const.Krishan Lal at the spot and proceeded to JPN Hospital where he found Rajni admitted in the burns ward and her husband Lokesh was present by her side. Making inquiries from Rajni's husband i.e. Lokesh, he learnt that their marriage was solemnized 4-5 years back and accordingly he informed the Sub-Divisional Magistrate of the area to reach the hospital and record the statement of Rajni.

9. Sh.I.S.Dahiya PW-14, as noted above, was the SDM posted in the area. As deposed to by him, he reached the hospital at 6:10 PM and contacted the doctor on duty, who declared Rajni fit for statement at 6:45 PM. He recorded the statement Ex.PW-4/A of Rajni and obtained her thumb impression thereon and attested the same at point A and thereafter directed the SHO to register a case as per law.

10. Before noting the contents of the statement Ex.PW-4/A, it may be noted that on the MLC Ex.PW-15/A of Rajni, at two points, marked B, signatures of Dr.Rohit with the date 9.7.1998 are to be found containing two endorsements just above the signatures; the first endorsement records the time 6:45 PM and further mentions that the patient is conscious, oriented and fit for statement. The second records, the time 7:10 PM and that the patient was fit till the statement was taken. The signatures of Dr.Rohit at point(s) B on the MLC have been proved by Rattan Singh PW-15, the record clerk of JPN Hospital, who deposed that he was familiar with the writing and signatures of Dr.Rohit and that the signatures at point(s) B on the MLC Ex.PW-15/A are of Dr.Rohit. He also deposed that the MLC was prepared by Dr.Deepa who had signed the same at point A. As per his testimony, both doctors were no longer in the service of JPN Hospital.

11. It is apparent that the fitness of Rajni and her consciousness to make the statement and her continuous consciousness during the time taken for recording the statement stands authenticated and established in the form of the two endorsements under the signatures of Dr.Rohit as penned in the MLC Ex.PW-15/A of the deceased.

12. The statement Ex.PW-4/A of Rajni recorded by the

SDM is in question answer form and is in Devnagri script. Briefly noted, as per the statement, Rajni disclosed that she was married about 7 years back and was blessed with a child (a son) aged 2 years and that she was an expectant mother, having an unborn child in her womb. That today i.e. on 9.7.1998 she was resting on the first floor of her house and her in-laws, Sampat and Shanti (the accused) who reside in the same house on the ground floor came up with a 10 liter can containing kerosene oil. Her mother-in-law caught her hand. When she tried to yell, her mother-in-law stuffed a cloth piece in her mouth. Her father-in-law sprinkled kerosene oil on her and set her on fire. That in the morning she had a quarrel with her mother-in-law at a water tap. Her husband was not present in the house and had gone for work. On being set on fire, she ran out and neighbours rescued her. Angoori a neighbour, poured water on her to douse the fire. Her husband reached after 15-20 minutes. Police was informed over No.100 and she was removed to the hospital in a police van. That her statement was given voluntarily and while she was fully conscious.

13. The husband of the deceased; namely, Lokesh appeared as PW-13 and deposed that on 9.7.1998 he was away to work and returned home at 3:00 PM and saw a crowd

in their street outside his house and saw his wife lying burnt on the roof. He enquired as to what had happened, to which she replied that the accused had burnt her. He reported the matter to the police. The police arrived and took his wife to the hospital.

14. We may note that Rajni died on the 11th day of the incident i.e. she died on 20.7.1998. In between, on 10.7.1998 i.e. next day of the unfortunate incident, a male child, who could not survive, was born to her.

15. As per the impugned judgment, the learned Trial Judge has convicted the appellants on the basis of the dying declaration of the deceased i.e. her statement Ex.PW-4/A, for the reason the learned Trial Judge has found no blemish in the same and has rejected the defence that the deceased committed suicide and falsely implicated the appellants.

16. The defence of the appellants is disclosed in their answer to question No.12, which is the last question put to the accused, being whether they had anything else to say. Both responded in unison in the same words stating:-

“Rajni and Lokesh were residing at my house since six months as a tenant. They had stolen the ownership documents of my house No.M.57 Mangol Puri Delhi. On demanding the papers from them deceased Rajni and her husband Lokesh threatened me of dire consequences and to teach a lesson for life and to implicate in some false case. In order to grab my house the deceased Rajni and her husband

Lokesh conspired and deceased Rajni set herself on fire which was witnessed by some of the neighbourers. Lokesh has tutored the statement and at the instance of Lokesh police had falsely implicated me in this case. I am innocent. At the time of incident I was not present at my residence and later on I came to know about the incident that Rajni had set herself on fire.”

17. It would be relevant to note that to prove the defence that Rajni committed suicide, the appellants examined Meena DW-1 who deposed that she resided at House No.M-40, Mangol Puri and at around 2:30 PM heard noise and she came out of her house. She saw Rajni in a burnt condition. Husband of Rajni reached after 5-10 minutes. Police also came. Accused Sampat reached at about 3:30 PM and that there used to be a dispute between Lokesh who was a tenant of the accused and the accused. The dispute pertained to the title of the house. Lokesh used to threaten the accused that he would teach them a lesson. That after the incident, Lokesh left the house and having got remarried was residing elsewhere.

18. Kamla DW-2, deposed on the same lines as DW-1.

19. Prem DW-3, deposed that appellant Shanti had come to her house on the day of the incident at 12:00 noon and remained with her till 5-5:15 PM.

20. The appellants also sought to draw sustenance from the testimony of Angoori Devi PW-2 about whom the deceased had made a mention of, in her dying declaration; being the

lady who doused the flames on her burning body by pouring water on her.

21. Angoori Devi PW-2, deposed that on the day of the incident she was taking tea at the first floor of her House No.39, Mangol Puri and saw Rajni set herself on fire. That after setting herself on fire, Rajni sat in a tub of water lying nearby. Rajni started crying and sought help. She went to the house of Rajni and removed the clothes of Rajni. Lokesh, husband of Rajni came after 10 minutes and rang up the police. Thereafter, Rajni was removed to the hospital and Sampat came in a rickshaw soon thereafter.

22. Angoori Devi was declared hostile and was cross examined by the learned APP. She was confronted with her statement recorded by the investigating officer under Section 161 Cr.P.C. wherein it was recorded that the deceased told her that the appellants had poured kerosene oil on her and set her on fire. But, she stuck to her version.

23. It is urged by learned counsel for the appellant that the testimony of Angoori Devi establishes that Rajni committed suicide. Counsel further urges that the testimony of DW-1 and DW-2 prove the motive for Rajni to do what she did. Motive being to cause injury to herself so that the appellants are implicated and sent to jail to facilitate the

grabbing of the property of the appellants by Lokesh. Counsel urges that Rajni has referred to the appellants as her in-laws, a fact which is incorrect. Counsel submits that the fact of the matter is that the appellants were the landlords of Lokesh, the husband of Rajni and that Lokesh had stolen the title documents of their property and was harassing the appellants to give him a share in the property. Lastly, learned counsel submits that pertaining to dying declarations, chapter 13A of the Delhi High Court Rules contains rules applicable to dying declarations and rule 3 thereof, requires the Magistrate who records the dying declaration to certify the fitness of the maker of the statement to make the statement.

24. A statement by a person who is dead or cannot be found can be proved as a dying declaration if it relates to the cause of his death as per the mandate of Section 32 of the Evidence Act. The statement Ex.PW-4/A of Rajni, contents whereof have been noted in para 12 above, is clearly a dying declaration. It is settled law that a dying declaration needs no corroboration. However, the rule of prudence has to be followed. In that it is the duty of the Court to carefully look at the dying declaration and the attendant circumstances to rule out any suspicion or motivation or pressure brought upon the maker of the statement and if any is found, unless

corroborated, not to return a finding of guilt on the sole evidence of such dying declaration.

25. Pertaining to certifications by doctors qua the fitness of the patient to make a dying declaration in the context of proof thereof, in the decision reported as 1998 (VIII) AD (SC) 426 Koli Chunilal Savji Vs. State of Gujarat it was held that mere absence of an endorsement by a doctor that the patient was fit, is not fatal to a dying declaration if otherwise there is evidence on record that the patient was fit for statement. The principle thereof can be extracted to deal with the submission that Rule 3 of Chapter 13A of the Delhi High Court Rules requires the Magistrate who has recorded the dying declaration to certify the fitness of the maker of the statement to make the statement. The rule is a salutary rule intended to bring on record a contemporaneous fact i.e. the fitness of the maker of the statement, which fact would be used at a later stage. But, an error by the Magistrate to not so record i.e. not penning down the fitness certificate, would not mean that the Court cannot look to other evidence to satisfy itself that the maker of the statement was fit when the statement was recorded. In the instant case the fitness of the maker of the statement stands proved through the testimony of PW-15 who has identified the signatures of Dr.Rohit at

point(s) B on the MLC Ex.PW-15/A where, the fitness of Rajni has been recorded twice. Firstly at 6:45 PM when she commenced making her statement and secondly at 7:10 PM when she concluded her statement. That apart, Sh.I.S.Dahiya PW-14, the SDM who recorded the statement has categorically deposed that Rajni was fit for making a statement and that he had obtained the certificate of fitness from the doctor on duty. In the decision reported as AIR 2003 SC 209 Shanmugam @ Kulandaivelu Vs. State of Tamilnadu it was held that merely because the doctor concerned has not been examined to prove the endorsement made by him certifying that the patient was fit for statement, would not detract from the credibility of the deposition of the SDM and the investigating officer that they dutifully obtained the necessary certification from the doctor and that the certifications made on the MLC of the deceased to said effect were in their presence.

26. It is true that the appellants are not the in-laws of Rajni. But in India, out of sheer respect for elders and especially of people with a rural background, close associates are referred to as parents, uncles, aunts, in-laws etc. Thus, Rajni referring to the appellants as her saas and sasur does not discredit her statement Ex.PW-4/A.

27. The theory of the appellants that Rajni committed

suicide to implicate the appellants so her husband could grab their property stands disproved by the fact that when Lokesh, husband of Rajni appeared as PW-13 on 10.7.2000 he disclosed his address as resident of village Patla District Ghaziabad UP. He deposed that on the day of the incident he was residing at House No.M-57, Mangol Puri. Even DW-1 Meena, stated that after the incident, Lokesh left the house. Truth has the uncanny habit of oozing out and revealing itself. If Lokesh had wanted to grab the house of the appellants, what better opportunity was available to him being that of the appellants being taken into custody by the police and lodged in judicial custody i.e. Tihar Jail. He did not do so. He left the house. The reason is obvious. The memory of his wife would have haunted him in the house. It proves that Lokesh and Rajni did not have any evil eye on the house of the appellants.

28. The theory of Rajni committing suicide to falsely implicate the appellants is ruled out from the fact that if this was the desire and intention of Rajni, she would have yelled and cried to the neighbours that the appellants have set her on fire. As per the defence witnesses i.e. DW-1 and DW-2, Rajni did nothing of that sort. Rajni only cried for rescue and this attracted persons in the neighbourhood. By no means are we believing the defence witnesses, but for the moment, we

only want to bring home the point that the contemporaneous conduct of Rajni does not show a scheming mind.

29. DW-1 and DW-2 have spoken utter lies. If Rajni had to commit suicide, she would not cry for help. Every person desires to achieve the object towards which he acts. Every person takes the precautions required to be taken to accomplish the object of an act. A person who commits suicide takes necessary precautions to achieve the desired end i.e. death. A person who attempts to commit suicide would not run helter-skelter crying for rescue.

30. The motive for the crime has been disclosed by Rajni i.e. a tiff with appellant Shanti Devi in the morning. It may sound most imprudent or unnatural for a person to set his adversary on fire over a trifling matter. But, the over-crowded city of Delhi has defied rational behaviour. Two out of three incidents of homicide being dealt with by us have been triggered over the most trivial issues such as the victim not lending a paltry sum of Re.1/- to the accused or the victim taking just a few seconds to remove his chair or stool from a public street and the accused wanting to move further ahead in the twinkling of the eye.

31. We see no reason why Sh.I.S.Dahiya would be recording incorrect facts. We see no reason why the deceased

would tell a lie. It is not the case of the appellants that the deceased suffered accidental burn injuries. They allege that the deceased committed suicide. Why should she do so? In her poverty, she was happy with her husband who was earning enough to enable the two to live happily with their son. She was an expectant mother. Her pregnancy was eight months old. Only a compelling circumstance of extreme pain or hardship would have compelled her to take not only her life but even the life of the unborn child in her womb. No such compelling circumstance of extreme pain or hardship has been brought on record. None has seen the light of the day.

32. The dying declaration of Rajni is without any blemish and needs no corroboration.

33. The appeal is dismissed.

34. The appellants have been admitted to bail pending hearing of the appeal. The bail bond and surety bonds furnished by them are cancelled. The appellants are directed to surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

AUGUST 27, 2009

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