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

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**CRL.A.294/2001**

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Date of Decision : March 16, 2009

SIMON & ORS. .... Appellants

Through: Ms.Seema Gulati, Advocate.

versus

STATE ..... Respondent

Through: Ms.Richa Kapoor, 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? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

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

1. Vide impugned judgment and order dated 13.2.2001, the appellants have been convicted for the offence of murdering Sonia. Appellant Martin has additionally been convicted for the offence punishable under Section 498-A IPC.

2. The conviction has been sustained for the offence punishable under Section 302 IPC on the dying declaration Ex.PW-8/1 made by Sonia to the Sub Divisional Magistrate.

3. Martin has been convicted for the offence punishable under Section 498-A IPC on the basis of the testimony of the parents of Sonia viz. John Morrison PW-2 and Bimla Morrison

PW-4.

4. It is not in dispute that Sonia and Martin were married in the year 1995 and Sonia breathed her last on 7.11.1997. It is also not in dispute that at around 11:30 PM on 3.11.1997 Sonia received burn injuries in her matrimonial house at Dhobi Basti, Hari Nagar Ashram, New Delhi.

5. Sonia was initially removed to Jiwan Nursing Home, a place where she was employed, thereafter she was removed to Safdarjung Hospital.

6. The MLC of Sonia, a marked document, marked as 'Mark A' shows that one Usha (PW-3) brought Sonia to the hospital and while recording the history as to how the patient sustained the burn injuries, records that the patient sustained burns while cooking on kerosene oil stove when her clothes accidentally caught fire.

7. The statement Ex.PW-8/1 of Sonia was recorded by the Sub Divisional Magistrate Shri Krishna Kumar PW-8 on 4.11.1997 sometimes immediately after 10:55 AM. PW-14 Dr.Faridul Hussain, vide his endorsement Ex.PW-14/A, immediately preceding the dying declaration, certified Sonia fit for statement.

8. The statement of Sonia is in question-answer form and translated version thereof reads as under:-

“Q. What is your name?

A. Sonia.

Q. Where do you live?

A. Sunlight Colony, Dhobi Basti.

Q. How many members are there in your family?

A. Father-in-law, mother-in-law, brother-in-law and my husband Martin who does not do any work.

Q. When did this incident occur?

A. At 11:30 PM.

Q. How did it occur?

A. My mother-in-law and brother-in-law caught hold of me, Martin poured kerosene oil and my father-in-law set me afire.

Q. Who removed you to the hospital?

A. I was removed to the hospital by Usha who is called as Bari Bahu.

Q. Did the quarrels occur earlier also?

A. Yes, I was harassed by my husband after the third day of the marriage on the ground of more dowry.

Q. When did the last quarrel occur?

A. It occurred 2/3 days earlier before the festival of Diwali and he made bluish marks on my body.

Q. In the morning you told that you were engulfed in fire by chance?

A. I was helpless as I thought that my family members were present over there.

Q. Do you want any legal action against the accused persons?

A. Yes, all the accused persons may be confined to the jail.”

9. Martin had received burn injuries on his hands evidenced by his MLC Ex.PW-13/DA.

10. Parents of Sonia, John Morrison PW-2 and Bimla Morrison

PW-4 have deposed about Sonia's marriage with Martin on 26.12.1995 and dowry given by them and that after a few days of the marriage Sonia told them that she had been beaten by her husband under influence of liquor and that on a particular day (date, month and year not disclosed) their daughter told them that her husband was demanding Rs.35,000/-. That Sonia was kept by them in their house for about 5 months and sent her back because her in-laws requested that Sonia be sent with her husband. That Sonia started working in Jiwan Nursing Home. That after about a week of her going back to her matrimonial house, Sonia was set ablaze by her husband, her father-in-law, her mother-in-law and her brother-in-law.

11. Relevant would it be to note that when cross-examined both admitted that as on the date of the incident i.e. 3.11.1997, the father-in-law, the mother-in-law and the brother-in-law of Sonia were residing separately from Martin and Sonia.

12. The father of Sonia admitted during cross-examination that neither the mother-in-law nor the father-in-law nor the brother-in-law of Sonia ever asked him to give any money, vehicle or an article.

13. Usha PW-3, the person who had removed Sonia to the hospital deposed that she had got Sonia employed as a sweeper in Jiwan Nursing Home where she was working as a

mid-wife and that on the intervening night of 3<sup>rd</sup> and 4<sup>th</sup> November 1997 at around 12.00 midnight Sonia's brother-in-law came to her and told her that Sonia had been admitted in Jiwan Nursing Home. She went there and found Sonia in a burnt condition and that the doctor referred her to Safdarjung Hospital.

14. Relevant would it be to note that in cross-examination, she stated that at Jiwan Nursing Home, Sonia told her that she had burnt herself and that she should be excused and pardoned for that act. We are a little surprised that the learned Public Prosecutor chose not to cross-examine Usha with respect to the said testimony, for the reason, technically speaking, it could be urged on behalf of the appellants that this was the first statement made by Sonia to an independent person and has to be treated as her first dying declaration.

15. Be that as it may, with respect to the dying declaration Ex.PW-8/1 made to the learned SDM, the learned Trial Judge has held that the same inspires confidence. Noting the law on the subject that a dying declaration is a substantive evidence and needs no corroboration, the learned Trial Judge has convicted the appellants for the offence of murdering Sonia.

16. With reference to the testimony of parents of Sonia, as noted above, learned Trial Judge has convicted Sonia's

husband for the offence punishable under Section 498-A IPC.

17. It is no doubt true that the photographs Ex.PW-6/1 to Ex.PW-6/6 taken soon after the incident shows a cooking gas stove and a cooking gas cylinder in the house; thereby ruling out the possibility of any kerosene oil stove being used for cooking purposes. Not only that. No kerosene oil stove was recovered from the house. Thus, the history of Sonia receiving burns as recorded in her MLC viz. that her clothes caught fire when she was cooking on a kerosene oil stove cannot be accepted and to that extent it must be held that Sonia stated said fact out of fear or compulsion; in any case, the said statement of Sonia was incorrect.

18. The question still arises, whether Sonia's statement Ex.PW-8/1 inspires confidence.

19. It is to be noted that in the statement, Sonia has stated that she was residing along with her husband, her father-in-law, her mother-in-law and her brother-in-law in the same house. The said statement is falsified with reference to the testimony of the parents of Sonia, who as noted above, admitted in cross-examination that neither the father-in-law nor the mother-in-law nor the brother-in-law of Sonia were residing with her and her husband.

20. Not only that, Shri Daya Chand PW-1, the co-owner of

the house a room whereof was taken on rent by Martin, has clearly deposed that he let out a room to Martin and that only Martin and his wife were residing in the said room. Similarly, PW-5, a neighbour as also a tenant in the same house, deposed that Martin had taken a room on rent and was residing along with his wife.

21. It is thus apparent that the statement of Sonia that her in-laws were residing with her in the same house is incorrect; is contradicted by the testimony of PW-1, PW-2, PW-4 and PW-5; two of whom are the parents of Sonia.

22. Prosecution has led no evidence that on the date of the incident the parents-in-law of Sonia and her brother-in-law were present in the house. This casts a serious doubt whether Sonia at all correctly told the Sub Divisional Magistrate that her mother-in-law and her brother-in-law caught hold of her and Martin threw kerosene oil on her followed by her father-in-law setting her on fire.

23. We note that in her dying declaration recorded before the learned Sub Divisional Magistrate, Sonia has attributed specific roles to the four accused persons; the presence of 3 out of 4 in the house is highly doubtful.

24. Principle of law is that a dying declaration is a substantive evidence and if it inspires confidence can be safely

relied upon. The corollary of the same principle would be that if there is a doubt with respect to a dying declaration, the same cannot be relied upon unless corroborated in material particulars.

25. What would cast a doubt on a dying declaration?

26. Evidence which disproves statement of fact made in a dying declaration would obviously cast a doubt on a dying declaration.

27. As in the instant case, where a dying declaration names the persons, whose presence and hence involvement is disproved by evidence on record, the dying declaration would have to be treated with suspect.

28. If we remove the dying declaration as an incriminating evidence, we have no evidence against the mother-in-law, the father-in-law and the brother-in-law of Sonia.

29. Qua her husband, the only other incriminating evidence left with is his presence in the house.

30. Now, Martin, the husband of Sonia has not denied his presence in the house. In fact, on being examined under Section 313 Cr.P.C. he has stated that he had tried to save Sonia by extinguishing her flames and in the process had suffered burn injuries on his hands.

31. We note that in the MLC Ex.PW-13/DA of Martin, it

has been recorded that Martin has suffered burn injuries on his hands while trying to save his wife Sonia when she accidentally caught fire while cooking on kerosene oil stove.

32. There is a desert of lies in the said MLC insofar the cause of Sonia catching fire has been recorded as while she was working on the kerosene oil stove. But we have no other piece of evidence against Martin.

33. The position therefore, which emerges is, that the dying declaration of Sonia suggest an animus against her in-laws; she has falsely inculpated her father-in-law, mother-in-law and her brother-in-law, who admittedly were not residing with her in her matrimonial home and whose presence in the house at the time when Sonia caught fire is doubtful.

34. Thus, it would be unsafe to rely upon the said dying declaration even with respect to her husband. In the decision reported as P.Mani Vs. State of Tamil Nadu 2006 (2) SCALE it was held:-

“14. Indisputably conviction can be recorded on the basis of dying declaration alone but therefor the same must be wholly reliable. In a case where suspicion can be raised as regard the correctness of the dying declaration, the court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on records suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying

declaration is of impeccable character would depend upon several factors: physical and mental condition of the deceased is one of them.”

35. Pertaining to the offence punishable under Section 498-A IPC, we note that only reference to an alleged dowry demand, is a reference to a sum of Rs.35,000/- stated to have been demanded by Martin. We note that as per the parents of the deceased, the said demand was conveyed to them by their daughter. We note that no particulars of the day, month or even the year in which the demand was raised have been disclosed.

36. There is evidence through the testimony of the parents of Sonia that the husband of Sonia used to physically ill treat her. Thus, the charge against Martin under Section 498-A IPC is not capable of being sustained with reference to any demand of dowry, but the charge succeeds on account of physical cruelty inflicted by him upon Sonia.

37. Before concluding, we note that the father-in-law of Sonia had died during the pendency of the instant appeal. Unfortunately, her husband Martin could not obtain bail pending hearing of the appeal and has remained in judicial custody for about 11 years and 5 months. The brother-in-law and mother-in-law of Sonia were admitted to bail and have served a prison term of about 5 years.

38. It is unfortunate that due to docket explosion, this Court is unable to timely dispose of the criminal appeals.

39. The appeal stands disposed of substantially allowing the same. The impugned judgment and order dated 16.2.2001, convicting the appellants of the offence of having murdering Sonia is set aside. The appellants are acquitted of the charge of having murdering Sonia.

40. The conviction of the appellant Martin is sustained for the offence punishable under Section 498-A IPC. The relatable sentence is maintained.

41. Since Martin has suffered judicial custody for a term which is in excess of the sentence imposed under Section 498-A IPC, he is directed to be set free forthwith unless required in judicial custody in some other case.

42. The other appellants who are on bail, their bail bonds and surety bonds stand discharged.

**PRADEEP NANDRAJOG, J.**

**ARUNA SURESH, J.**

**MARCH 16, 2009**

*Dharmender*