

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 405/2001**

% Date of Order : March 27, 2009

PRITAM SINGH Appellant
Through : Ms. Charu Verma, Advocate

VERSUS

STATE Respondent
Through : Mr. Pawan Sharma, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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. Learned counsel for the appellant has urged the following points:-

A. That as per the stated dying declaration of the deceased, three children were born out of the wedlock and not even a single child has been examined. Thus, counsel urges that best evidence has been withheld by the prosecution and hence benefit thereof should be given to the appellant.

B. In the stated dying declarations Ex.PW-10/A and Ex.PW-18/A, the deceased has stated that when she did

not given money to the appellant, he tried to break the handle of the almirah, but subsequently found the key and opened the almirah. Counsel urges that there is no evidence that the handle of any almirah was broken. Counsel further urges that the site plan Ex.PW-12/A does not show the existence of any almirah in the house. Hence, counsel urges that the dying declarations made by the deceased are untrustworthy. In any case, counsel urges that the dying declarations do not disclose the whole truth.

C. That the FSL report shows that the traces of kerosene oil were not detected on the burnt clothes of the deceased and hence her version that the appellant sprinkled kerosene oil on her is false.

D. That in the MLC Ex.PW-20/A, while recording the history, the doctor has written: *"Alleged h/o sustaining burns at home as told by herself."* Therefrom, counsel urges, it is apparent that the deceased, at the first available opportunity, did not tell the doctor that her husband had set her on fire.

2. Individually and collectively, learned counsel urges that each of the aforesaid is sufficient to overrule the impugned decision which has held that the evidence on record establishes that the appellant set on fire his wife

Guddo Kaur inside the matrimonial house.

3. The impugned decision shows that three pieces of incriminating evidence have been used by the learned Trial Judge to convict the appellant.

4. The first, are two dying declarations Ex.PW-18/A and Ex.PW-10/A. The former is a statement made by the deceased to ASI Ramanand PW-18 on 16.12.1997. The second is a dying declaration made by the deceased on 17.12.1997 to the Sub Divisional Magistrate Sh.R.N. Sharma PW-10. In both, the deceased has implicated the appellant as the one, who, after pouring kerosene oil on her, set her on fire.

5. The second incriminating evidence found by the learned Trial Judge is the conduct of the appellant evidenced to the testimony of Smt.Radha PW-6. Radha is a neighbour of the appellant and the deceased and as per her, she had responded to flames which she saw from the window of the kitchen in the house of the deceased and when she went there, the door was locked from inside, and after repeatedly being knocked was opened after 2 to 3 minutes. The body of the deceased was being attempted to be concealed. The appellant escaped from the spot and was apprehended on 14.12.1997 i.e. the next day when the deceased was burnt in her house. The learned Trial Judge has held that the presence

of the appellant in the house and his strange conduct was an incriminating circumstance.

6. The last circumstance, which is linked to the circumstance No. 2, is the act of absconding. That the appellant absconded and did not bother about his wife has also been used as an incriminating circumstance against the appellant.

7. It is apparent that the submissions urged at the hearing today have to be considered with reference to the two dying declarations made by the deceased and the testimony of PW-6. Needless to state, the effect of the three children not being examined and the value to be attached to the FSL report has also be considered.

8. Before we note the same, it would be relevant to note that the date of the incident is 13.12.1997. The time is around 2.15 PM. Information pertaining to a lady being burnt in her house reached the police for the first time when DD No.29B was recorded at the Police Station at 2.25 PM. SI Suresh Prasad PW-14, then posted at Police Station Mangolpuri, when information was received, left for the spot accompanied by Const. Surender and there from reached Jai Prakash Narain Hospital as the injured had been removed to said hospital. At the hospital he found that the injured named Guddo Kaur was admitted and was unfit for statement. He

obtained the MLC Ex.PW-20/A of Guddo Kaur. Father of Guddo Kaur, namely Thakur Singh PW-7 met SI Suresh Prasad in the hospital whose statement Ex.PW-7/A, was recorded as per which he informed that the appellant was harassing his daughter and used to trouble her for money. Apprehension was expressed by the father that his daughter was probably burnt by the appellant. Making an endorsement Ex.PW-5/A on the statement Ex.PW7/A, SI Suresh Prasad sent the statement through Const. Surender so that an FIR could be registered. At the Police Station, HC Harbhajan Singh registered FIR Ex.PW-5/B. SI Suresh Prasad PW-14 went to the place of the occurrence and prepared a rough site plan Ex.PW-14/A with the assistance of Smt.Radha and noted therein that the residence of the appellant and the deceased consisted of two rooms; one of which was used as a bedroom and the other as a kitchen. In between the two rooms was noted a semi covered open space. Relevant would it be to note that he noted the spot where plastic can, having some kerosene oil was lifted. He identified the spot as Mark 'F' and adjacent thereto was the spot where a stove pump and lid were lying which spot was Mark 'E'. The two spots are at the door of the living room. In the space between the living room and the kitchen was noted the spot Mark 'D' where a matchbox was found lying. Inside the kitchen, the spot where Guddo Kaur

was apparently seen by Radha in a burnt condition was shown as Mark 'A'.

9. Needless to state, the can, the kerosene stove, the lid and the matchbox etc. were seized vide seizure Ex.PW-7/C.

10. A few days later, a draftsman PW-12 was taken to the spot and he prepared the site plan to scale Ex.PW-12/A. At this stage we may note that in the site plan to scale Ex.PW-12/A, no almirah has been shown, but in the rough site plan prepared by PW-14 i.e. Ex.PW-14/A, the position of the almirah has been shown at the space in between the kitchen and the living room.

11. We note that in the MLC Ex.PW-20/A of Guddo Kaur it has been recorded by the doctor concerned that kerosene smell was noticed by the doctor from the body of the injured and that though conscious, the patient was not speaking properly.

12. It is apparent that Guddo Kaur remained unfit for making any statement evidenced by the fact that for the first time, her statement could be recorded by ASI Ramanand PW-18 who substituted for the investigating officer as PW-14 was on leave. ASI Ramanand went to JPN hospital and moved an application seeking certification from the doctor on duty whether the patient was fit for statement. We find that on the MLC Ex.PW-20/A, Dr.Kapil has certified that the patient is fit

for statement at 9.20 AM.

13. The statement Ex.PW-18/A is in Hindi. Its translated version reads as under:

"I reside at the above mentioned address along with my children and husband. I was married to Pritam Singh about 10 years back. After the marriage, I was blessed with three children. My husband is an alcoholic. He always demands money to buy liquor. He does not have any regular work and he seldom does any work. He wants money to buy intoxicants. My father regularly helps me and he has also given a house to me to live in. He keeps on demanding money from me. My father had given money to him several times. On 13/12/97 at about 2½ P.M. my husband and I were present in the house. My husband demanded money from me to buy liquor but I did not give him money. Thereupon, he broke off the handle of the almirah because he could not find the key. Later on, the key was found. Subsequent thereto, he turned the children out of the house, poured kerosene oil on my person and set me on fire by way of applying matchstick. After sustaining burn injuries I started smarting but he kept on watching me. Subsequent thereto, he had put a quilt on my person, gagged my mouth, and gave me fist blow as well. On seeing the fire my neighbours had opened the door and then Radha alongwith other people had come inside the house.

Thereupon my husband had fled from there. My husband Pritam Singh intentionally set me on fire with the motive to eliminate me. Legal action may be taken against him. My husband keeps on demanding money from me and harasses me as well. I do not want to live with my husband."

14. In view of the statement of the deceased, recorded by ASI Ramanand, he thought it prudent to inform the SDM. On next date i.e. on 17.12.1997 Sh.R.N. Sharma PW-10, the SDM concerned, went to the hospital. Dr.Nirupama made an

endorsement on the MLC Ex.PW-20/A certifying at 10.30 AM on 17.12.1997 that the patient is fit for statement.

15. The statement Ex.PW-10/A of Guddo was thereafter recorded. It is in Devnagri script. It is in question answer form. The translated version thereof reads as under:

“Smt. Guddo w/o Pritam Singh R/o Mangol Puri, Delhi made the following statement (dying declaration):-

Q. What is your name?

A. Guddo/Jeet Kaur.

Q. What is your husband's name?

A. Preetam Singh.

Q. When did your marriage take place?

A. In 1985.

Q. How many children do you have?

A. 3 children.

Q. Where do you live?

Ans. At my parents house situated at Mangol Puri.

Q. What does your husband do?

Ans. He sells vegetables.

Q. What had happened that day?

Ans. My husband had demanded money from me but I declined to give it to him. Then he had broken off the handle of the Almirah and ransacked the clothes kept therein. He had sent the children out of the house. Then he had found the key and taken out the money from the almirah. He had poured kerosene oil from the can and the stove on my person and then set me on fire on sustaining burn injuries, I had started smashing but he did not douse the fire. I had extinguished the fire with my hands. I had fallen down on being somewhat unconscious. On my falling down, he gave me blows on my back, gagged my mouth and thereby tried his level best to eliminate me. Even on one previous occasion when I had been blessed with third child, he had tried to eliminate me by way of setting me on fire. On raising alarm by me, Radha and other people had come inside the house. Subsequent thereto, police had also reached there and I was removed to hospital.

Q. When did this incident take place?

Ans. Saturday Noon, 13th instant.

Q. What do you want:

I want divorce. The custody of my children be entrusted to me and other legal action may be taken against him. I do not want to live with him anymore. He has subjected me to great harassment. He has not given anything to me since our marriage. I take each and everything from my parents.

Do you want to say something else:

Deterrent punishment may be awarded to him just to teach him a lesson."

16. The deposition of Radha PW-6 reads as under:

"On 13.12.97 I was not doing my work that day. When I was coming from upstairs to down stairs after putting my clothes for drying. I saw fire flames in House No.1075 from small window of Jali. No body was in Gali due to winter season. I knocked at the door, the door was closed from inside. I called in the name of Guddo several times. After two or three minutes in disturbed condition the accused present in the court opened the door. Accused was concealing Guddo who was burning with quilt. I asked the accused to stay where Guddo was lying inside the room by the side of door. The face of the injured and her chest were burnt and smokes was coming from the clothes of the deceased and quilt. The injured was in some senses and was semi-conscious. The accused escaped from the spot with the pretext to telephone to some one and did not come back. The accused was a liquor addict. Accused also gave her beating to take money from her. Others might have come there. After half an hour police also came there and police took her to hospital. The police took into possession burnt quilt, Canny, Stove. Scaled site plan was also prepared on my point out."

17. Guddo Kaur died as a result of the burn injuries, having developed septicemia.

18. It is no doubt true that neither doctor who certified the patient fit for statement on 16.12.1997 nor the doctor

who certified the patient fit for statement on 17.12.1997 were examined and notwithstanding the fact that even the doctor who recorded the MLC was not examined and the MLC has been proved with reference to the testimony of a Record Clerk of the hospital who was familiar with the handwriting of Dr.Bharat Singh who prepared the MLC as also Dr.Nirupama; in view of the law laid down in the decision reported as AIR 2003 SC 209 Shanmugam @Kulandaivelu vs. State of Tamil Nadu merely because the doctors concerned have not been examined to prove the endorsements made by them certifying Guddo Kaur fit for statement, does 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. The testimony of the two witnesses is sufficient to hold that Guddo Kaur was fully conscious when her statements were recorded.

19. It is not a case where the prosecution attempted to withhold the doctors concerned. We note that in the list of witnesses Dr.Bharat Singh, Dr.Kapil and Dr.Nirupama have been cited as the witnesses of the prosecution, but could not be examined as they had left employment in the hospital concerned.

20. A perusal of the two dying declarations of the deceased shows a consistency, with minor variations, which are the result of the same fact being narrated twice on two different dates by the maker of the statement. Indeed, at the hearing today, nothing has been pointed out to us which discredits the two dying declarations with reference to each other.

21. In the dying declarations the maker thereof has given a graphic description of what happened on the fateful day i.e. 13.12.1997.

22. The submission made by learned counsel for the appellant that the maker of the statement, in both the statements, spoke about the handle of the almirah being broken but no almirah has been shown in the site plan, needs to be dealt with reference to the two dying declarations and the rough site plan of the scene of occurrence as also the site plan to scale and the photographs of the place of occurrence which were taken soon after the incident.

23. Indeed, in both the dying declarations, the deceased has spoken about the presence of an almirah in the house and the appellant breaking the handle thereof.

24. It is true that in the site plan to scale, the almirah has not been shown. But, it appears to be an oversight. We say so for the reason, in the rough site plan prepared by PW-

14 i.e. the rough site plan Ex.PW-14/A, the place where the almirah was seen has been shown. Further, in the photograph Ex.P-9, which was taken by the photographer on the day of the incident, an almirah can be seen. Not only that. Clothes are lying scattered on the floor. It shows that the almirah was ransacked. This corroborates the statements in the dying declarations that the appellant was desperate for money. It is apparent that when Guddo Kaur refused to give him money, the appellant knowing that there was some money in the almirah, at least he suspected it to be so, ransacked the almirah.

25. It may be noted that in both dying declarations, Guddo Kaur has stated that the handle of the almirah was broken because the appellant could not find the key, but later on, he was able to find the key.

26. Far from the evidence pertaining to the scene of the offence discrediting the maker of the dying declarations, we find corroboration thereto.

27. That the children of the deceased and the appellant were not examined, in our opinion does not mitigate or dilute the case of the prosecution. They were not the eye-witnesses to the incident. In both dying declarations, the deceased has informed the police that the appellant had turned out the children from the house and thereafter

committed the drastic act.

28. We note that PW-6 has stated that she had to knock at the door several times and that the door was opened after 2 to 3 minutes. We may note that on being cross-examined, PW-6 stated that the children of the deceased were seen by her outside the house. In fact, she volunteered that it was usual practice of the appellant to send the children outside whenever he used to beat his wife.

29. That kerosene oil was not detected on the clothes of the deceased by the expert at the Forensic Science Laboratory is neither here nor there.

30. It makes no difference, for the reason, where quantity of oil poured is less, presumably, the whole of it would be consumed by the fire and no residual traces of kerosene oil would be noted.

31. The MLC of the deceased categorically records that smell of kerosene was noted by the doctor who prepared the MLC after examining the patient.

32. This submission made by learned counsel that in the MLC it has not been recorded that the injured told the doctor that her husband set her on fire, is neither here nor there, for the reason it has been recorded on the MLC that the injured sustained burns at home. It has been recorded in the MLC that though conscious, the patient was not speaking

properly. It is apparent that Guddo Kaur was muttering a few words of being burnt. It is also of no significance to note that for two days Guddo Kaur remained unfit and her statement could not be recorded.

33. The two site plans i.e. the rough site plan and the site plan to scale as also the photographs of the scene of occurrence, throw much light as to what happened in the house. The place where the can containing the kerosene oil and the place where a stove was recovered shows that the deceased ran helter skelter within the two rooms and the open space in between. It shows that somebody was chasing somebody before ultimately setting somebody on fire.

34. Now, Guddo Kaur could have suffered burns only under three eventualities; namely (a) accidentally, (b) she set herself on fire, and lastly (c) somebody else set her on fire.

35. Learned counsel for the appellant does not dispute the fact that the site plan and the photographs rule out a case of accidental fire. Thus, it is either a case of Guddo Kaur herself doing the act or somebody else doing the act.

36. If Guddo Kaur set herself on fire, she would not be running helter skelter in the house. Every person is presumed to desire the accomplishment of his/her acts. He/she who commits a suicide, takes the basic precautions of seeing that the end of the act is achieved.

37. But, what is relevant in the instant case, which breaks the deadlock between the rival views i.e. that Guddo Kaur could have possibly set herself on fire or somebody else set her on fire, is broken by the testimony of PW-6.

38. No motives have been attributed to the PW-6. She is a neighbour. Her presence at the spot is natural. She says in her testimony that when she saw flames from the window of the kitchen she went to the house is a believable fact. It inspires confidence. She deposed that she had to knock at the door several times and it was only after two or three minutes that the door was opened and thereupon the appellant fled from the house, shows the guilty conduct of the appellant, who ran away and did not attempt to rescue his wife. Had Guddo Kaur attempted to commit suicide, the conduct of the appellant who is a husband, would be to remove her to the hospital and not run away.

39. We concur with the view taken by the learned Trial Judge that the testimony of PW-6 points the unerring finger of guilt towards the appellant and linked with the two dying declarations of the deceased, constitute sufficient evidence to infer his guilt and rule out his innocence.

40. That the appellant was arrested from outside JPN hospital on 14.12.1997 and that the dying declarations of the deceased were recorded on 16.12.1997 and 17.12.1997 is

neither here nor there. That the appellant went to the hospital is explainable. The possibility of his wanting to threaten his wife not to make any inculpatory statement qua him could be one of the reason. The other could be an act of remorse. But, what is relevant is that the appellant never returned to his house in the night. He just did not bother even about his minor children.

41. Post offence conduct of an accused is relevant and admissible under Section 8 of the Evidence Act.

42. We note that when examined under Section 313 Cr.P.C., the appellant stated that he had left his house at 5.00 AM and he was not present in his house at the time when his wife suffered burns. Consciously, the appellant did not disclose the time when he came to his house, much less the time when he learnt that his wife had caught fire and was in the hospital. The natural conduct of every husband, who learns about his wife being on fire, would be to rush to the place, if not to render any help at least to comfort her.

43. None of the submissions urged have impressed us for the reasons noted herein above.

44. We find no merit in the appeal.

45. The appeal is dismissed.

46. The appellant is on bail. The bail bond and surety bond are cancelled. The appellant is directed to surrender

and suffer the sentence imposed. Needless to state, the sentence is to undergo imprisonment for life.

**(PRADEEP NANDRAJOG)
JUDGE**

**(ARUNA SURESH)
JUDGE**

**March 27, 2009
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