

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

% *Date of Decision : August 31, 2009*

+ **CRL.A. 417/2001**

VIJAY PAL Appellant
Through: Mr. Sumeet Verma, Advocate

versus

THE STATE (GNCT) OF DELHI Respondent
Through: Mr. M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICEINDERMEET 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. Vide judgment and order dated 17.1.2001, appellant Vijay Pal has been convicted for the offence of having intentionally poured kerosene oil on his wife Savitri and setting her on fire resulting in Savitri's death i.e. the offence of murder.

2. The learned Trial Judge has convicted the appellant on the basis of the testimony of her brother Satish PW-1 who deposed that his sister i.e. the deceased made a dying declaration to him when he went to her house. She cried on

seeing him: '*bhaiya – bhaiya tera jeeja ne mere par mitti ka tel dal kar aag laga di hai*'.

3. It is not in dispute that Neelam was removed to the hospital by her brother Satish (PW-1). The said fact is recorded in the MLC Ex.PW-6/B. The MLC records that Savitri was got admitted at Safdarjung Hospital on 3.11.1997. Unfortunately, the time of admission has not been recorded thereon.

4. The fact that Savitri was admitted at the hospital at 1:30 PM is evidenced by DD No.3B dated 3.11.1997, Ex.PW-19/A wherein the Duty Constable at PS Mangol Puri recorded the information that the Duty Officer at Safdarjung Hospital has intimated that a lady who resided in House No.F-456, Mangol Puri was admitted in a burnt condition at the hospital.

5. The only apparent evidence against the appellant is the testimony of Satish PW-1 whose presence with his sister, soon after she suffered burn injuries is not in doubt, evidenced by the fact that he took his sister to the hospital and as deposed to by him he resided at a distance of about half kilometer from the matrimonial house of his sister i.e. was residing at House No.F-878, Mangol Puri.

6. The problem which needs to be addressed is the effect of the testimony of PW-8 Sh.Shiv Charan, the father of Savitri, who also used to reside in the same house in which PW-

1 was residing and the impact of the testimony of Kumari Seema PW-3, the daughter of the deceased and the appellant.

7. Seema PW-3, the daughter of the deceased and the appellant, resiled from her statement recorded by the investigating officer on 3.11.1997 itself in which she had inculpated her father as the one who burnt her mother. While deposing in Court she stated that when her mother was cooking food, the oil in the tank of the kerosene stove got consumed and when her mother poured kerosene oil into the tank, it started springing out from the nozzle and all of a sudden ignited resulting in her mother catching fire. In other words, according to the testimony of Seema, her mother got accidentally burnt. We note that Seema denied having told the police that when her mother was burnt she went to the house of her maternal grandfather and told her maternal grandfather and her maternal uncle that her father had set her mother on fire and that thereafter her maternal grandfather and maternal uncle came to her house.

8. Satish PW-1, the brother of the deceased deposed that he was residing at a distance of half kilometer from the matrimonial house of his sister and that on 3.11.1997 he went to his sister's house after his niece Seema aged about 10 years came running to his house and informed that her father was

threatening to burn her mother. He reached the matrimonial house of his sister and was followed by his father. When he entered the house, his sister cried: '*bhaiya – bhaiya tera jeeja ne mere par mitti ka tel dal kar aag laga di hai*'. He took his sister to the hospital and thereafter the police came and inspected the scene of the crime, lifted a matchbox, a matchstick, burnt clothes and a plastic can from the spot as recorded in the memo Ex.PW-1/A. Burnt clothes and other articles were seized vide Ex.PW-1/B. During cross examination he stated that nobody was present in the house where his sister was burnt when he reached the house.

9. Shiv Charan PW-8, the father of the deceased deposed that he was present in his house on 2.11.1997 (the date appears to be a typographic error) when Seema, the daughter of his daughter, came crying and informed that her father had set her mother on fire. He and his son Satish immediately went to the matrimonial house of Savitri i.e. his daughter and found her speechless and grievously burnt. The appellant was sitting in the house. He and his son removed Savitri to the hospital.

10. Learned counsel for the appellant has urged that Shiv Charan has categorically deposed that Savitri was lying speechless. In any case, counsel urges, that Shiv Charan Singh

has not said that on seeing Satish, Savitri cried out that her husband had set her on fire. Counsel further urges that as per Satish, nobody was present in the house, but as per Shiv Charan, the appellant was present in the house. Learned counsel has drawn our attention to the testimony of Seema who has stated that when her mother caught fire, her father was not in the house. Counsel concludes the submission by referring to the testimony of Shyamwati DW-1, the sister of the appellant, who has stated that 3.11.1997 was Bhaiya Dooj and her brother was in her house in the afternoon when his wife suffered accidental burns.

11. Submissions made by learned counsel for the appellant, at the first instance and at the first blush appear very convincing, for the reason to sustain the conviction of an accused on the solitary evidence of a dying declaration requires the dying declaration to be of an impeccable character, untainted by any blemish and inspiring full confidence. The reason is that the maker of the statement is not available for being cross examined. Law of evidence has recognized cross examination as a strong and an effective tool in favour of the defence for many a times, effective cross examination can totally demolish, what otherwise appears to be a very convincing version disclosed to the Court by a

witness. But, dying declarations have to be treated as admissible evidence due to the necessity of making it so admissible for the reason, what can the prosecution do, if the maker of the statement does not survive. The view in favour of not only making admissible but even acting upon dying declarations is premised on the principle that just before departing from the world to meet the maker i.e. God, a human being would not tell lies and such statements are serene and solemn.

12. Circumstances surrounding an event throw light on the event and whenever Judges have encountered grey areas or the penumbral areas, with reference to the surrounding circumstances, Courts have found illumination and light.

13. Satish, the brother of the deceased and Shiv Charan her father, reside at a distance of about half kilometer from the matrimonial house of the deceased. Both claim to have gone to the house of the deceased on being summoned by Seema. Seema has categorically deposed that she has not gone to call her maternal uncle. We find truth in the statement of Satish and Shiv Charan for the reason how else could they know that Savitri was burnt. No suggestion has been given to the two during cross examination that some third person informed them that Savitri was burnt. Seema was aged 10 years when

her mother got burnt. Her maternal grandfather resides in the same colony in which Seema resided with her parents. The distance between the two houses was half kilometer. It was natural for Seema to rush to her maternal grandfather's house and summon a rescue for her mother. It is apparent that Seema has tried to save her father and has been influenced by him.

14. No doubt, Shiv Charan has said that his daughter was lying speechless when he reached her house. Shiv Charan has deposed on 13.10.1998 and as disclosed in his statement was aged 65 years as on 13.10.1998. He deposed after nearly a year of the incident. Parts of his memory failing him are in the realm of a possibility.

15. We have stated hereinabove that Courts have looked to circumstances and enwombing facts for guidance and to look with clarity in areas where shadows fall and appear to be in darkness. As the saying goes: men may lie but circumstances seldom do.

16. Who says that dead bodies do not speak! They do. Savitri's body has spoken. What has been uttered is recorded in the post mortem report Ex.PW-5/A, proved through the testimony of Dr.G.K.Chaubey PW-5, the doctor who conducted the post-mortem. He not only proved the post-mortem report

Ex.PW-5/A, on being cross examined he stated that the burn injuries were not possibly the result of accidental burns. He justified his opinion by stating that the burns noted by him on the body of Savitri were superficial to deep and covered 90% of the body; the deep burns could not be the result, if a little kerosene oil fell on the body of Savitri. He stated that the same evidenced much more than a little quantity of oil falling on Savitri. The post-mortem report has a very telling fact recorded therein being smell of kerosene oil on the scalp hair and soot particles present in the larynx. Kerosene oil is a hydrocarbon. It is apparent that the body of Savitri was wrenched with a large quantity of kerosene oil, for had it not been so, soot particles would not be found present in the larynx of Savitri.

17. After the post-mortem of Savitri skin tissue and scalp hair remnants were handed over to the investigating officer for forensic evaluation and as per FSL Report Ex.PW-20/B, analyzed by gas liquid chromatography, kerosene oil residues were found on the scalp hair of the deceased.

18. This i.e. presence of kerosene oil on the scalp hair of the deceased and presence of soot particles in the larynx of the deceased categorically and unequivocally tells the Court that kerosene oil was poured on the skull of Savitri which could

not have happened if what Seema deposed in Court was correct. The said telling evidence rules out a case of kerosene oil accidentally spilling on the body of Savitri. We note that the accidental spilling as claimed to have been seen by Seema is when the kerosene oil sprayed out from the nozzle of the stove when her mother was cooking. This is just not possible keeping in view the post-mortem report of the deceased and the FSL Report.

19. It is not the case of the appellant that his wife committed suicide.

20. It has to be noted that as per Satish he reached first and was soon followed by his father. There is truth in his statement. Both, Satish and his father, were present in their house when Seema informed to her mother being burnt. The natural reaction of both father and son would be to run to the house of Savitri. Being younger in age, Satish would obviously outpace his father and would run the half kilometer distance to his sister's house before his father could do so. Thus, Satish hearing the words of his sister and his father not hearing the same is explainable.

21. We are guided, in the instant case, by the circumstances aforementioned i.e. what is recorded in the post-mortem report of the deceased and the FSL Report to break

the deadlock, which resolves in favour of the prosecution and against the accused.

22. Since precedents are the ammunition in forensic legal battles fought by lawyers in Courts we note only one decision where the deposition of prosecution witnesses who gave false evidence to support the accused was rejected on the issue of an oral dying declaration on the basis of documentary evidence. The decision is reported as 2008 (1) SCC Cri. (486) Vikas & Ors. Vs. State of Maharashtra.

23. Before concluding we may highlight that in the instant case there is not one, but two pieces of incriminating evidence against the appellant. The first is the oral dying declaration of the deceased which has been proved through the testimony of her brother and the second is the post-mortem report of the deceased and the testimony of PW-5 as also the FSL Report. The two documentary evidences and the testimony of PW-5 categorically rule out the burn injuries being accidental. It is thus not a case of the dying declaration alone being the material available with the Court. Thus, the authorities which relate to the law pertaining to whether should convictions be sustained when the dying declaration is the only evidence are not applicable in the facts of the instant case.

24. The appeal is dismissed.

25. The appellant has been admitted to bail. The bail bond and the surety bond furnished by the appellant are cancelled. The appellant shall surrender and suffer the remaining sentence.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

AUGUST 31, 2009
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