

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

% Judgment reserved on : 10.07.2009
Judgment delivered on: 20.07.2009

+ **Crl. Appeal No.54/2001**

BALRAM SINGH Appellant
Through : Mr. Sumeet Verma, Advocate

VERSUS

STATE Respondent
Through : Ms. Richa Kapoor, Advocate

CORAM :-
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

- (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.

1. The appellant was charged for the offence of having murdered his wife by pouring kerosene oil over her at Jhuggi No.86, Rajiv Gandhi Camp at around 5:00 PM on 25.12.1996 and thereafter setting her on fire resulting in her death.

2. Vide impugned judgment and order dated 23.10.2000 the appellant has been held guilty. Vide order dated 6.11.2000 he has been sentenced to undergo imprisonment for life.

3. Police was informed of the deceased being burnt at her Jhuggi when DD No.22-A, Ex.PW-20/F was recorded at PS Sarojini Nagar at 17:15 hours on 25.12.1996.

4. SI Ram Singh PW-10 was entrusted with the duty of visiting the spot and conducting investigation. He reached the spot and finding no eye-witness and upon learning that the injured lady named Durgawati, wife of the appellant, had been removed in a PCR Van to Safdarjung Hospital proceeded to the hospital and found Durgawati admitted in the burns' ward in an injured condition.

5. Inspector Shakuntala PW-18, then posted as SHO PS Sarojini Nagar received information of Durgawati being burnt when she was on patrolling duty. She reached Safdarjung Hospital and immediately contacted Mr.Sharad Chauhan PW-1, then posted as the Sub-Divisional Magistrate of the area, and requested him to reach Safdarjung Hospital.

6. SI Ram Singh PW-10 penned an application, Ex.PW-10/B, addressed to the Chief Medical Officer Safdarjung Hospital, seeking permission to record the statement of the injured lady, on which, as recorded thereon, the doctor on duty recorded that the patient, Durgawati was fit for statement. Under his signatures the doctor on duty wrote the time when fitness was certified being 6:15 PM on 25.12.1996.

7. Sharad Chauhan PW-1, the SDM of the area, in a

question answer form, recorded the statement Ex.PW-1/A of Durgawati in which she informed that for the last four years she and her husband were having a fight because of his desire to have sex with her and her resistance on account of the presence of their daughter, aged 12 years in the Jhuggi. She disclosed that in the evening, her husband poured kerosene oil on her and set her on fire and while so doing, said that he was ready to suffer imprisonment which would be maximum for six months. As noted on the statement Ex.PW-1/A the same was recorded by PW-1 at 6:50 PM.

8. SI Ram Singh PW-10 also recorded the statement Ex.PW-10/C of Durgawati, which is substantially the same as her statement Ex.PW-1/A recorded by the Magistrate. After making the endorsement, Ex.PW-10/A, on Durgawati's statement Ex.PW-10/C he forwarded the same for FIR to be registered. As recorded on Ex.PW-10/A, the statement and the endorsement was forwarded at 7:30 PM from Safdarjung Hospital to the police station.

9. At the hospital the doctor on duty prepared the MLC Ex.PW-7/A of Durgawati, noting there-in the history of the burn injuries as told by the patient herself as being the result of her husband pouring kerosene oil over her and setting her on fire. It may be noted that the MLC notes the time of Durgawati being admitted at the hospital at 6:45 PM.

10. Returning back to the jhuggi where Durgawati was burnt, SI Ram Singh summoned the crime team as also the photographer. Inspector Mir Singh PW-20 also reached the jhuggi and took over further investigation.

11. Inspector Mir Singh PW-20 seized a kerosene oil can, a matchbox and burnt matchsticks besides burnt clothes from within the jhuggi, as recorded in the memo Ex.PW-16/A. He prepared the rough site plan Ex.PW-20/A, recording therein the spots where the can was lifted; the spot where matchbox was lifted, the spot where partly burnt matchsticks were lifted and the spot from where burnt clothes were lifted.

12. Sudesh Kumar PW-5, a photographer took photographs Ex.PW-5/A1 to Ex.PW-5/A5. Needless to state, the photographs pertained to Jhuggi No.86, Rajiv Gandhi Camp.

13. The appellant was apprehended and on noticing that his hands had burn injuries, he was examined at Safdarjung Hospital and as recorded in his MLC Ex.PW-17/A was found with burn injuries over both hands.

14. So deep and life threatening were the burn injuries suffered by Durgawati that she died the very next day. The post-mortem report Ex.PW-6/A notes charring of the skin at many places. The depth of the charring being deeper than the skin tissue. It notes 100% burns i.e. save and except the sole of the foot, the entire body was affected by the burns. Internal

examination revealed presence of soot particles in the larynx.

15. Unfortunately, the doctor who prepared the MLC of the deceased had left service by the time evidence was recorded and hence Dr.R.K.Srivastva PW-7 proved the MLC of the deceased as he was a colleague of Dr.Manoj Gupta i.e. the doctor who had recorded the MLC and with whose handwriting Dr.R.K.Srivastva was familiar with.

16. Thus, the author of the MLC as also the doctor who gave the fitness certificate on Ex.PW-10/B could not be personally examined.

17. It would be evident to a reader of the decision that the case of the prosecution hinged on the three dying declarations of the deceased; being the dying declaration recorded on the MLC Ex.PW-7/A, the dying declaration Ex.PW-1/A recorded by the SDM and the dying declaration Ex.PW-10/C recorded by the investigating officer. All the three are inculpatory of the appellant.

18. Holding that there was no reason for the deceased to be telling a lie about the cause of her death and that the dying declaration recorded by the SDM was in question-answer form and inspired confidence for the reason the SDM concerned who was examined as PW-1, deposed that at around 6:30 PM on receiving information from the SHO that one Durgawati wife of appellant had been admitted in the

burns ward of Safdarjung Hospital he reached there by 6:45 PM and after ascertaining from the doctor that the patient was fit for statement, recorded the statement Ex.PW-1/A in his own hand and in a question-answer form. He deposed that he obtained the toe impression of the left foot of Durgawati at the point Mark 'B' on the statement.

19. As noted hereinabove, the MLC of the deceased records that she was admitted at the hospital at 6:45 PM. As noted above, Ex.PW-10/B containing the certification by the doctor that Durgawati was fit for statement, notes the timing 6:15 PM. Picking on the discrepancy of time Shri Sumeet Verma, learned counsel for the appellant vehemently urged that if the deceased was brought to the hospital, as recorded in the MLC Ex.PW-7/A at 6:45 PM, where was the occasion for the deceased to be certified fit for statement at 6:15 PM. Thus, counsel urged, that the certificate of fitness is a suspect document. Counsel urged that since the doctor concerned was not examined as a witness, the possibility of the IO fabricating the fitness certificate cannot be ruled out.

20. The second submission urged by learned counsel was that the deceased had a motive to falsely implicate the appellant, for the reason, she stated, as recorded in her statement Ex.PW-1/A, that the appellant and she were having a quarrel for the last four years. Thus, learned counsel urged

that there is every possibility of the deceased, who committed suicide, falsely implicating the appellant.

21. Thirdly, counsel urged that by not examining the doctor who gave the fitness certificate as claimed by the prosecution, it would be unsafe to assume that the deceased was fit for statement, for the reason as recorded in her MLC, the deceased was badly burnt; having 100% burns. With reference to the post-mortem report of the deceased, learned counsel urged that the same evidences third degree burns sustained by the deceased. Counsel urged that under the circumstances it is highly improbable that the deceased would be in a fit condition to make any statement.

22. Lastly, counsel urged that the fact of the appellant having burns on his hands was proof of the fact that the deceased set herself on fire, as stated by the appellant in his statement under Section 313 Cr.P.C., and that the appellant sustained burn injuries on his hands while attempting to save his wife.

23. We propose to deal together with the first and the third submission of the learned counsel, for the reason, though apparently not interlinked, as would be evident from our discussion, the two submissions somewhat overlap each other.

24. It is no doubt true that the MLC of the deceased

records that she was admitted at the hospital at 6:45 PM. It is equally true that the certification by the doctor on Ex.PW-10/B, pertaining to the fitness of Durgawati records the time as 6:15 PM. At first blush, anyone would come to the conclusion that how could the doctor certify a patient fit for statement 30 minutes prior to the patient being admitted in the hospital. But, human beings commit errors. Therefore, it needs to be considered whether the time 6:15 PM on the certification is an error or the time 6:45 PM on the MLC is an error. If any one of the two is an erroneous recording of time, said fact would rule out either one of the two being a created or a fabricated document. Only if the conclusion reached is that neither timing recorded is erroneous, only then one would have to conclude that either one of the two is a fabricated or an interpolated document.

25. As noted in para 4 above, when SI Ram Singh PW-10 reached the spot where the deceased was burnt i.e. her jhuggi at Rajiv Gandhi Camp, pursuant to DD No.22-A recorded at 5:15 PM, he learnt that the lady i.e. Durgawati who was burnt had been removed in a PCR Van to Safdarjung Hospital. The person who removed her to the hospital was ASI Hari Chand PW-2 who deposed that on 25.12.1995 he was posted as a driver of a PCR vehicle and at 5:10 PM received information that a woman had set herself on fire at the Rajiv

Gandhi Camp and that he reached the place within 2 or 3 minutes. He stated that his van was stationed at Safdarjung Enclave. SI Ram Singh PW-10 has deposed that the jhuggi cluster at Rajiv Gandhi Camp is near Delhi Police Public School. The said school is in Safdarjung Enclave on Ch.Jhandu Singh Marg. The distance between the slum cluster and Safdarjung Hospital is hardly 2 kilo-meters. As per ASI Hari Chand, the PCR van reached the jhuggi cluster in 2 or 3 minutes. Same would be the time for the van to reach Safdarjung Hospital. At the most, 5 to 10 minutes would be needed to place the injured on a stretcher and carry her to the van from the jhuggi. It is apparent that the deceased was brought to Safdarjung Hospital around 5:30 PM or latest by 5:35 PM. This would be the place where the van was stationed outside the casualty of the hospital. The patient had to be removed from the van and carried to the burns ward inside the casualty of the hospital. This would take another 3 to 5 minutes. The doctor on duty had to be informed to attend to the patient. Safdarjung Hospital is a government hospital and even the casualty is always over-crowded. The interns present at the casualty attend immediately to the patient and experience shows that the senior resident doctor or the doctor on duty does take anything between 5 to 10 minutes to attend to the patient. The senior resident or the doctor on duty does not sit down to

write the MLC, but proceeds to examine the patient and prescribe the immediate medical treatment which has to be given, and thereafter starts writing the MLC. Thus, the actual time when an MLC is scribed normally happens to be 30 to 45 minutes after a patient is admitted at the casualty. It quite happens, that while filling the column pertaining to the time on the MLC, the doctor looks up the time, either on his/her wrist watch or in the wall clock in the casualty. Little realizing that the patient was actually brought 30 to 45 minutes earlier, the time which gets recorded is the one noted by the doctor while scribing the MLC.

26. This appears to have happened in the instant case. This explains for the discrepancy in the time as recorded in the MLC and on the application seeking fitness of the patient for recording her statement.

27. In the decision reported as AIR 2003 SC 209 *Shanmugam vs. State of Tamil Nadu* it was held that omission to examine a doctor who has certified a patient fit for statement is not fatal and that as long as the magistrate recording the dying declaration has recorded that he had obtained the fitness certificate from the doctor it would be safe to believe the testimony of the magistrate that the patient was certified fit for statement to be recorded. The said decision held that the contrary view taken in the decision reported as

AIR 1999 SC 3455 Rosamma vs. State of A.P. was no longer good law in view of the decision reported as AIR 2002 SC 2973 Laxman vs. State. The same view has been reiterated in the decision reported as 2008 CrL.L.J. 2062 Sher Singh & Anr. vs. State of Punjab.

28. It is apparent that since the SDM had reached the hospital soon after the IO reached the hospital the fitness certification given by the doctor on the application Ex.PW-10/B was treated by the SDM as good evidence of the patient being fit for statement, besides the self observation by the SDM that, indeed, Durgawati was in a fit condition to make a statement.

29. That the patient had suffered 100% burns and the burns were third degree burn do not by itself show that the patient was not fit for making any statement. The MLC Ex.PW-7/A does not record that the patient was delirious or unconscious. It does not record that the blood pressure was too high or too low. Medical Jurisprudence guides us that a patient suffering from burns starts losing consciousness when bilateral crepts start occurring due to loss of fluid in the blood. The MLC of the deceased does not record the onset of bilateral crepts.

30. We see no reason why the doctor on duty, the Sub-Divisional Magistrate of the area and the investigating officer would all collude to independently record the same fact i.e. the

deceased telling them at different points of time that she had been set on fire by her husband.

31. The post-mortem of the deceased shows presence of soot in the larynx. It evidences that the deceased inhaled sufficient quantity of smoke containing heavy particles of carbon. Kerosene oil is a hydro-carbon i.e. is rich in carbon. Smell of kerosene was detected from the scalp hair. The extent of the heat generated by the fire stands exposed in the MLC which notes that at many places the skin had charred. It is apparent that a large quantity of kerosene was poured on the body of Durgawati.

32. Well, she could have poured sufficient quantity of kerosene oil on herself. But if this was so we wonder what would have happened when, after dousing herself with kerosene, Durgawati picked up the matchbox and lit the first match-stick. We visualize Durgawati being engulfed in a ball of fire. Kerosene is a very volatile liquid and is highly combustible. The inevitable consequence of such event happening would be the match-box flaring in the hand of the deceased and the burnt match-stick with which she ignited herself, perishing at the very instance of the fire.

33. But, the burnt match-stick and the match-box used have survived. The photographs Ex.PW-5/A-1 to A-5 and in particular the photograph Ex.PW-5/A-1 shows the match-box

lying on the floor adjacent to the can containing kerosene oil as also the presence of burnt match-sticks around the ashes on the floor, which ashes have to be the result of the clothes of Durgawati being burnt.

34. The site plan Ex.PW-12/A i.e. the site plan to scale which conforms to the rough site plan Ex.PW-20/A shows that the burnt match-sticks and the used match-box were found lying on the floor at a safe distance from the spot where Durgawati was burnt and where ash of her clothes had fallen.

35. Whenever a husband sets his wife on fire and the wife so speaks, there obviously has to be something in the mind of the husband which has motivated him to do so. The two most frequent motives for husbands to set their wives on fire, as stand recorded in various judicial opinions are either the greed for dowry or the anger of the husband towards the wife on account of some reason. For, if everything is fine between a married couple, we see no reason why a husband would set his wife on fire. Thus, when Durgawati told the reason why her husband used to quarrel with her and set her on fire, it does not lead to the conclusion that Durgawati had a motive to falsely implicate her husband.

36. That the appellant had burn injuries on his hands does not establish his innocence. There could be two reasons to explain the burn injuries on the hands of the appellant. It

has to be noted that the burn injuries are superficial. The same could be the result of preventing Durgawati whose instincts would compel her to rush outside the jhuggi when she was set on fire. Upon the appellant so doing, his hands would obviously suffer superficial burn injuries. The second could be the fact, as happens very often: self-realization at the spur immediately after committing a ghastly act; the self-realization being 'O my God, what have I done' accompanied by an instant action by way of reaction to attempt to undo the wrong. By which time, unfortunately, the damage has been done and the situation would be of crying over spilt milk.

37. We find truth and credibility in the dying declaration of Durgawati and find no embellishment therein. We concur with the view taken by the learned Trial Judge. Thus, we dismiss the appeal.

38. The appellant is on bail. His bail bond and surety bond are cancelled. The appellant is directed to surrender and suffer the remaining sentence.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

July 20, 2009
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