

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

% *Judgment Reserved on: 12th November, 2009*
Judgment Delivered on: 25th November, 2009

+ **CRL.APPEAL NO.676/2001**

JAGMOHAN Appellant

Through: Mr.Dinesh Mathur, Sr. Adv. with
Mr.Shishir Mathur, Advocate

Versus

STATE Respondent

Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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.

1. Jagmohan, husband of late Chander Kanta has been convicted for the offence of having murdered Chander Kanta and for which he has been sentenced to undergo imprisonment for life. He has also been convicted for the offence punishable under Section 498-A IPC and for which he has been sentenced to undergo rigorous imprisonment for three years and pay a fine in sum of Rs.2,000/-.

2. In convicting the appellant for both offences the learned Trial Judge has relied upon the testimony of Kumari Kanchan PW-3 and Kumari Karuna PW-4 aged 10 years and 9 years respectively when their mother was burnt i.e. on 26.4.1997. The two deposed in Court after about one year of the incident. Both of them have deposed that their father used to demand money from their mother and under influence of liquor used to subject her to cruelty. Both of them have deposed that they saw their father pour kerosene oil on their mother and set her on fire. The learned Trial Judge has held that the statement Ex.PW-25/A made by Chander Kanta to SI Yashpal Singh PW-25 was her dying declaration and as per the same the appellant had poured kerosene oil on her and thereafter set her on fire. For the acts of cruelty, the learned Trial Judge has also relied upon the testimony of Chander Kanta's parents i.e. PW-1 and PW-2 as also her brother PW-23. The learned Trial Judge has also relied upon Ex.P-1, a letter proved to be written by Kanta about 15 days prior to 26.4.1997.

3. Briefly stated, the case of the prosecution is that the appellant Jagmohan @ Pappu was married to Smt.Chander Kanta (the deceased) about 13/14 years prior to April 1997. They had 4 children; being, 2 daughters; namely, Kanchan and

Karuna and 2 sons; namely, Devender and Chanderkant. Appellant Jagmohan was a drunkard and used to demand money from the deceased and when the deceased declined, he used to subject the deceased to cruelty. Some 15 days prior to 26.4.1997, the appellant shaved the hair on the head and eyebrows of the deceased and cut her nose with a razor. On 26.4.1997, appellant told the deceased to arrange some money from her parents and at around midnight when the deceased told him that she did not bring any money from her parents, appellant poured kerosene oil on her and set her on fire.

4. Process of criminal law was set into motion when at 12:30 midnight on 26.4.1997 HC Paitu Oraon PW-14, the Duty Officer at PS Chandni Mahal received telephonic information about a lady having been burnt by her husband at House bearing Municipal No.1172, Hawa Mahal, Raquab Ganj, Chandni Mahal, Delhi and recorded DD No.4B, Ex.PW-14/A. A copy of said DD was handed over to ASI Mansa Ram PW-16 who, accompanied by Const.Sanjay Kumar PW-19 went to the place of incident and learnt that the injured lady had been removed to Jai Prakash Narain Hospital. SI Yashpal Singh PW-25 also reached the spot and took over the investigation from ASI Mansa Ram. He went to Jai Prakash Narain Hospital and

collected the MLC Ex.PW-21/A of Chander Kanta which records that the patient was brought to the hospital at 12:50 A.M. by Geeta and HC Joginder and that patient was unconscious and had 100% burns on her person. It stands recorded that the history of the burns as told by Geeta is that the husband of the patient had set her on fire after pouring kerosene oil on her. As per the endorsement Ex.PW-21/B on said MLC, at 1:50 AM on the same day i.e. 26.4.1997 Dr.Shyamanta Baruah declared the patient fit for statement. In the presence of Dr.Shyamanta Baruah, SI Yashpal Singh recorded statement Ex.PW-25/A of the deceased wherein she stated that her husband Jagmohan was a drunkard and spent all his earnings on liquor. He used to tell her to arrange money from her parents, and on her being unable to do so, used to beat her. Even that day, when she declined a similar demand of Jagmohan he poured kerosene on her and set her on fire. After recording said statement SI Yashpal Singh obtained the right thumb impression of the deceased on the same. He made endorsement Ex.PW-25/B under said statement of the deceased and at 2:50 AM sent it through Const.Sushil Kumar PW-20 for the registration of an FIR. FIR Ex.PW-14/B was registered at PS Chandni Mahal for the offences punishable under section 498-A/307 IPC. After having sent for the

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registration of the FIR, SI Yashpal Singh returned to the place of occurrence, prepared a rough site plan Ex.PW-25/C thereof at the instance of the daughter of the deceased and got the site photographed. He recorded the statements of the daughters of the deceased and seized a plastic can, burnt and partly burnt clothes and one matchbox lying at the spot as recorded in seizure memo Ex.PW-3/A.

5. At 8:10 AM on 26.4.1997 Chander Kanta expired and DD No.14B, Ex.PW-14/C with respect to the same was recorded at PS Chandni Mahal. FIR which was earlier recorded only for the offence punishable under sections 498-A/307 IPC was converted to offences punishable under sections 498-A/302 IPC. SI Yashpal conducted the inquest proceedings and prepared the inquest papers Ex.PW-25/D and after getting the dead body duly identified, sent it for the conduct of post-mortem. He recorded statements of Banwari Lal PW-1 and Pradeep Kumar PW-23, the father and the brother of the deceased respectively. He seized the letter Ex.P-1 vide memo Ex.PW-25/F, handed over by Banwari Lal stated to have been written by the deceased 15 days prior to the incident in which she complained to her parents about the appellant subjecting her to torture.

6. On the same day i.e. 26.4.1997, Dr.S.B.Singh PW-8 conducted post-mortem on the body of the deceased and prepared his report Ex.PW-8/A. The external injuries noted in the post-mortem report read as under:-

“Dermo-epidermal-burn injuries present all over the body except right palm, inner half of back of right forearm and hand and both soles of feet. Skin was peeled off. At most of the places exposing red and white base. Blackening of the unpeeled skin was present due to deposition of soot particles. Line of redness was present at margins of burn injuries. All body hairs were burnt and singed. Smell of kerosene was present over the body.

Approximately 95% of the total body surface area was burnt.”

(NB: Underlining has been emphasized)

7. The appellant was arrested and put to trial. Needless to state, the prosecution hinged its case on Ex.P-1, the handwritten note of Chander Kanta penned two weeks prior to the date of the incident and the testimonies of her two daughters, the testimony of Geeta and the testimony of the parents and the brother of the deceased.

8. Kumari Kanchan PW-3 deposed that she was aged 11 years and the deceased Chander Kanta was her mother. That her father used to harass her mother for bringing money from her parents. He used to gamble and often used to beat her and

her siblings. He had often shunted them out of the house in the middle of the night. Her father shaved the head and eye-brows of her mother and injured the nose of her mother with a razor. Her mother wrote about this in letter Ex.P-1 which she handed over to her maternal grandmother. On 25.4.1997 her father demanded money from her mother and when her mother refused, he poured kerosene oil on her mother and set her on fire by lighting a match stick. Her aunt (Tai) Geeta removed her mother to the hospital.

9. Kumari Karuna PW-4 deposed that she was aged 10 years and the appellant was her father and Chander Kanta was her mother. Appellant had set her mother on fire on 25th April. That day, appellant came home and enquired from her mother whether she brought money. When her mother denied, appellant, after pouring kerosene on her mother set her on fire. Even prior to this, the appellant and her mother used to quarrel and once appellant had shaved the head and eye-brows and had cut the nose of her mother with a razor. On cross-examination she admitted that one Sartaj used to visit their house when appellant was not there and that her mother often went with Sartaj and appellant had to bring her back. Appellant used to object to this. On one occasion her mother took her

siblings and her to Noida and they stayed there with Sartaj for about 4 days. 10-15 days prior to her mother being burnt, her mother had consumed poison but was saved when her sister Kanchan made her mother vomit the poison.

10. Banwari Lal PW-1, the father of the deceased Rani Devi PW-2, the mother of the deceased and Pradeep Kumar PW-23, the brother of the deceased deposed in line with the deposition of Kumari Karuna and Kumari Kanchan pertaining to the appellant physically torturing his wife on the issue of money to be given to him for purchasing liquor. They deposed that the deceased was being given petty money and food stuff for her survival. All three stated that the appellant had shaved the eyebrows and the head of the deceased a few days prior to 26.4.1997 and that Ex.P-1 was in the handwriting of the deceased which records the fact that the deceased had been subjected to immense cruelty by the appellant.

11. Geeta PW-5, who admittedly is the elder sister-in-law (*jethani*) of the deceased turned hostile and deposed that to her knowledge the deceased and the appellant never quarreled. Pertaining to what transpired in the night of the fateful day, she deposed that at 11:45 PM she heard cries from the house of the appellant and the deceased which was at a distance of 50 paces

from her house. When she reached the house of the appellant and the deceased, the deceased was burnt and thus she took her to the hospital. On the way, the deceased wanted to say something, but could not.

12. It may be noted here that the learned Public Prosecutor has not questioned Geeta with reference to the recording contained in the MLC Ex.PW-21/A that Geeta had told the doctor that the patient had sustained burn injuries when her husband, after pouring kerosene oil on her, burnt her.

13. SI Yashpal Singh PW-25 deposed that after he reached the hospital from the doctor on duty he obtained the endorsement Ex.PW-21/B on the MLC Ex.PW-21/A, certifying that the patient was fit for statement and thereafter recorded the statement Ex.PW-25/A of Chander Kanta.

14. In his examination under Section 313 Cr.P.C. the appellant stated as under:-

“It is a false case. I have not committed any offence. I never had asked my wife on the point of money. She herself committed suicide by pouring kerosene oil. On the day of occurrence my two daughters had gone to their Tai’s house to see the T.V. and my son was present in the house. My wife quarreled with me and threatened to set on fire. I did not take it seriously thinking that she was joking and I went out of the room and went into the courtyard to take a bath. While I was still going in the courtyard to take a bath my son Devender and another son Chanderkant came to me and stated that my wife

had set herself on fire. I rushed into the veranda in the rear side where she had gone to cook food. I saw that she was burning with fire. I wrapped a bed-sheet around her and extinguished fire from her person. I also sustained burn injuries on my both hands and feet in that process. I was helped by one person Mukesh Kumar to extinguish the fire. My bhabhi Smt. Geeta also came there. She took her to the hospital whereas I went to my in-laws house to inform them. I along with my mother-in-law and father-in-law came to the hospital to see her. I remained in the hospital through out the night whereas my parents-in-law left for their house at about 3 or 4.00 AM to refresh themselves and to come again to the hospital. At about 6.00 AM one Ct. came there and on being asked by him I accompanied him to PS Chandni Mahal he had told me that my statement was to be recorded and so I accompanied him to the PS. In the noon time I was taken to the JPN hospital for medical examination/treatment and thereafter I was brought back to the PS and was arrested in this case. My wife had illicit relations with one person namely Sartaj. She used to meet him and eloped with him on a number of occasions. I used to bring her back sometimes from guest house and sometimes from other places where she used to stay with the said Sartaz. She used to say openly that she wanted to reside with said Sartaz. She used to say that either she will stay with Sartaz or she will commit suicide. She committed suicide on that account.”

15. In his defense, the appellant examined his son Devender as DW-1. Devender was examined on 11.9.2000 and on that day he was aged 10 years. He deposed that on the night of the incident his sisters were in the house of his *Tai* watching television when his father returned at around 10:00 PM. His mother picked up a quarrel and threatened to burn herself. His father went to take a bath and his mother set

herself on fire. His parents used to quarrel for the reason his mother had once eloped with Sartaj.

16. Pertaining to the statement Ex.PW-25/A made by the deceased to SI Yashpal Singh PW-25, no doubt, if voluntarily and correctly made by the deceased soon before her death, since the same records a statement of fact pertaining to the death of the maker of the statement, the same undoubtedly has to be treated as a dying declaration of the deceased. Thus, the first and foremost question to be posed and answered is, did the deceased make any such statement as is claimed by SI Yashpal Singh.

17. As per SI Yashpal Singh, from the doctor on duty he obtained the endorsement Ex.PW-21/B on the MLC of the deceased, certifying her to be fit for statement.

18. A perusal of the said endorsement shows that the word '*unfit*' has been first written and then scored off and above the said word, the word '*fit*' has been written. In other words, the sentence, '*Pt. is unfit for statement*' has been converted to read '*Pt. is fit for statement*'. It assumes significance to note that Dr.Shyamanta Baruah, the author of the endorsement has not been examined. It also assumed significance to note that Dr.Sandeep Dhuriya, the doctor on duty who has prepared the

MLC after examining the patient has clearly recorded that the patient is unconscious. It is also equally important to note that it stands recorded in the MLC that the patient was admitted at the hospital at 12:50 AM. The endorsement Ex.PW-21/B records the time 1:50 AM. The time difference between the patient being brought to the hospital and the condition recorded as unconscious and the endorsement certifying the patient fit is a mere one hour. The cumulative of the trinity of circumstances i.e. the patient being recorded as unconscious at 12:50 AM; the patient being badly burnt (nearly 100%); there being a cutting on the endorsement Ex.PW-21/B and the doctor concerned not being examined compels us to doubt the veracity of the stand of SI Yashpal Singh that Chander Kanta was in a fit condition to make any statement.

19. The issue has another angle to be looked into. Chander Kanta was having an affair which was more than platonic with Mohd.Sartaj. This fact has been proved by the admissions made by Kumari Karuna, a star witness of the prosecution. Her testimony also establishes and so does Ex.P-1 that the appellant had subjected Chander Kanta to extreme cruelty about 15 days prior and Chander Kanta had even attempted at suicide. Thus, even if Chander Kanta was fit to

make a statement, there is a possibility of her falsely implicating the appellant as she has a motive to do so. We may note that in the decision reported as 2006 (2) SCALE 482 P.Manjiv vs. State of Tamil Nadu, the Supreme Court had spoken a word of caution with respect to dying declarations requiring the trier of the fact to guard against a motive in a dying declaration.

20. Since the learned Trial Judge has overlooked the afore-noted features pertaining to the statement Ex.PW-25/A, we conclude by holding that the reliance by the learned Trial Judge on the said statement as a dying declaration of the deceased, duly proved, is wrong.

21. Having perused the testimony of Kumari Kanchan PW-3 and Kumari Karuna PW-4, no doubt, nobody can urge that at a first reading of their testimony as also their cross-examination, the two young girls have to be doubted. For, it can always be urged, and indeed very powerfully, that being daughters of the appellant and the deceased, they were neutral persons and would have no motive to speak against their father. The incident having taken place at around midnight further establishes the fact that they were present in their house; indeed, young girls aged 9 years and 10 years are expected to be with their parents at the middle of the night. We note that

the incident took place between 12:00 midnight to 12:30 midnight.

22. But, there are certain features of the instant case, which unfortunately have been overlooked by the learned Trial Judge, which compels us to doubt the truthfulness of what has been deposed to by the two young girls. Further, a reason why the two young girls did so is also plausible and emerges from the evidence brought on record.

23. The feature which has remained unnoticed by the learned Trial Judge is the fact that the body of the deceased has spoken something which has not been heard. What has the body spoken and how? The body has spoken through the post-mortem report Ex.PW-8/A and the testimony of Dr.S.B.Singh PW-8. As noted above in para 6 above, in the post-mortem report it has been clearly recorded that the entire body of the deceased except *right palm, inner half of back of right forearm and hand and both soles of feet* were burnt. While being cross-examined, Dr.S.B.Singh admitted: *It is correct that right palm and back of the right forearm and hand were not burnt.*

24. Though apparently insignificant, the same conveys much. A similar dead body had spoken on an earlier occasion which stands narrated in the decision reported as 1999 SCC

(Cri.) 352 Pavankumar Parasnath Trivari vs. State of Gujarat. It

was noted and simultaneously observed as under:-

“It may be indicated here that Mr.Sushil Kumar, the learned counsel for the appellant has also submitted that both the palms of the deceased were not burnt. Such a fact indicates that she had committed suicide because in that event, the palms were not likely to be affected. In a case of homicidal burning by pouring kerosene oil on the body by another person, the palms along with the other parts of the body will get burnt.”

25. We may only supplement by bringing out the logic in the aforesaid conclusions drawn by the Supreme Court. Firstly, when a person holds a can containing kerosene oil in one hand or both and then pours kerosene oil on self, depending upon whether the can or the container containing the kerosene oil is held by one or both hands, one or both hands would not have kerosene oil being poured on the hand or the hands. But when somebody else were to sprinkle kerosene oil, the natural reaction of the victim would be to defend by bringing both hands in front in a defensive action. In this situation, kerosene oil is bound to fall on the hands. More so, as in the instant case where it is proved that a large quantity of kerosene oil is poured on the body of the victim. The evidence of excess kerosene oil used in the instant case is proved by the fact, as recorded in the post-mortem report, nearly 100% of the body was burnt; there

was charring/blackening of the unpeeled skin and soot was detected in the trachea and stomach. All of them cumulatively show that a large quantity of kerosene oil was used. The second and the more powerful logical reason is the natural reaction of every person to preserve the self. If any part of the body catches fire, the instinctive reaction is to try and stamp out the fire with the use of the hands. This defensive/preventive action of self preservation would result in the hands showing burn injuries. But where a person commits suicide and lifts a can containing kerosene oil with one hand and after pouring kerosene oil on oneself sets oneself on fire, the hand with which the can was lifted would remain unaffected; the other would not be so. Being voluntarily burnt and the fire being self induced, the unaffected hand would not react to any instinctive defensive/protective action.

26. The aforesaid fact which seemingly looks trivial and hence escaped the notice of the learned Trial Judge, looked at as aforesaid is not a trivial fact but is a fact of considerable significance and importance. The same very strongly probablizes the deceased having committed suicide; in any case dents the strong proof required at a criminal trial with reference to the standard to be achieved by the prosecution.

27. Having noted and said as aforesaid, we proceed to answer as to why the two daughters who are expected to be neutral towards their parents have deposed against their father.

28. From the testimony of the parents of the deceased and even from the testimony of her brother it emerges that the appellant was so addicted to alcohol that he was ignoring the basic needs of his children in the form of even providing them with food. Obviously, the children were mature enough to understand that their plight was due to the wayward habits of their father. Further, they were a witness to their father beating their mother under influence of alcohol. Now, the incident has admittedly taken place somewhere past midnight. It is a time when children are deep in slumber. It is apparent that the children rose from the slumber either when they heard their parents fight or when their mother caught fire and there was commotion in the house. If latter was the cause for the two young girls to awake, it can well be argued that on seeing their mother on fire and their father nearby, the two young girls instinctively formed an impression that it was their father who was the culprit and allowed their imagination to speak as if it was a reality. The mind is very fertile. It can connect past and current events and supply the omissions as if the omission was

actually seen by the narrator of the fact. This could be the one possible reason as to why the two young girls deposed against their father.

29. In the teeth of the post-mortem report and the fact that the right hand palm as also the inner back of the right forearm of the deceased has remained unaffected by the fire, with reference to the decision of the Supreme Court in Pavankumar's (supra); noting the totality of the facts and circumstances herein above noted, we conclude by holding that the facts of the instant case warrant a benefit of doubt to be granted to the appellant pertaining to what happened on 26.4.1997 and accordingly we proceed to acquit the appellant of the charge of having murdered his wife. But, in the teeth of the testimony of the daughters of the appellant, his parents-in-law and his brother-in-law, we convict him for the offence punishable under Section 498-A IPC and maintain the relatable sentence thereto.

30. The appeal is partially allowed. The conviction of the appellant for the offence of murder is set aside and he is acquitted of the said charge. The conviction of the appellant for the offence punishable under Section 498-A IPC is affirmed. Noting that by the time the appellant was admitted to bail he

had already undergone an actual sentence of 4 years, 2 months and 10 days as on 7.7.2001, i.e. a sentence much in excess of 3 years rigorous imprisonment, the maximum sentence contemplated for the offence punishable under Section 498-A IPC, we discharge the bail bond and surety bonds furnished by the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 25, 2009
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