

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

+ **Crl. A. No. 375/2003**

% Date of Order : March 12, 2009

AMAR SINGH & ANR. Appellants
Through : Mr. Randhir Jain, Adv.
Mr. Deepak Agarwal, Adv.
Mr. Dhananjai Jain, Adv.

VERSUS

THE STATE Respondent
Through : Ms. Richa Kapoor, APP

And

+ **Crl. A. No. 484/2003**

SANJAY & ANR. Appellants
Through : Mr. Randhir Jain, Adv.
Mr. Deepak Agarwal, Adv.
Mr. Dhananjai Jain, Adv.

VERSUS

STATE (NCT OF DELHI) Respondent
Through : Ms. Richa Kapoor, 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?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the appellants and the respondent.
2. Appellant Sanjay is the husband of deceased Bhavna. Amar Singh is the elder brother of Sanjay. Nand Kishore is the younger brother of Sanjay. Kanta is the wife of Amar Singh.
3. All have been convicted for the offence of murdering Bhavna.
4. A perusal of the impugned judgment and order dated 20.5.2003 shows that the learned Trial Judge has convicted the appellants noting seven incriminating circumstances.
5. Circumstance No. 1, as discussed in para 29 of the impugned decision, is the dying declaration, Ex.PW-5/C, made by Bhavna to the learned SDM; held to be inspiring confidence and explaining the earlier two dying declarations made by Bhavna namely Ex.PW-5/A (recorded by the learned SDM) and the dying declaration Ex.PW-10/DA recorded by the investigating officer. Learned Trial Judge has held that the third dying declaration, gave a justification as to why the first two dying declarations should be ignored. In the said third dying declaration, Bhavna has named the four accused as the

ones who set her on fire.

6. Circumstance No.2 as discussed in paras 30 to 32 of the decision, pertains to the defence taken by the accused, barring the husband of Bhavna, that they were not present in the house when Bhavna caught fire. Holding that the said fact was belied from the testimony of the witnesses and in particular the MLC Ex.PW-11/A of the deceased which records that Bhavna was brought to the hospital by her Jeth i.e. Amar Singh, the learned Trial Judge has held that a false defence was projected wherefrom an inference of guilt could be gathered.

7. Circumstance No.3 held established by the learned Trial Judge as per findings returned in paras 33 and 34 of the impugned decision; to the effect that the accused persons did not inform the parents of the deceased immediately after Bhavna had suffered burn injuries has been held to be indicative of their guilt.

8. Circumstance No.4 held established by the learned Trial Judge is that Bhavna did not implicate her mother-in-law; wherefrom the learned Trial Judge has opined that it shows that Bhavna was having no ill-will against any person; meaning thereby Bhavna spoke the truth in the statement Ex.PW-5/C.

9. Circumstance No.5, qua the husband of the deceased is the stated unnatural conduct; being of not attempting to cover the body of his wife which had been rendered naked as her clothes had caught fire and permitting PW-4 to cover her naked body with a sheet. Learned Trial Judge has held that if the husband had not set the wife on fire and had the wife suffered an accidental burn, the natural conduct of the husband would be, to at least, hide the shame i.e. cover the naked burnt body of his wife with a sheet.

10. Circumstance No.6 held incriminating is the report, Ex.PW-10/J, of the expert, which shows that the stove which was seized by the police had no leakage or blockage. We note that pertaining to the report of the expert, the learned Trial Judge has added his personal opinion that considering that the stove was operated due to air pressure by pumping air into the tank of the stove, it was not possible that from the stove in question, huge quantity of kerosene oil could be sprayed. Learned Trial Judge has held that at best a little spray could ensue through the stove in question.

11. Lastly, noting that Bhavna received burns covering 80% of the total body surface, the learned Trial Judge, in para 35 of the impugned decision, has opined that the chance of kerosene falling upon the saree of Bhavna appeared to be

bleak.

12. We note that it is not in dispute that Bhavna suffered burn injuries in her house at around 11.00 PM on 6.8.2001. She was rushed to the hospital by accused Amar Singh, her brother-in-law, who resides in the same building but on the floor above where Bhavna was residing with her husband Sanjay.

13. Information was given to the police of Bhavna receiving burn injuries when DD No.18A, Ex.PW-7/B, was recorded by HC Bijender Singh PW-7, at around 12.45 in the intervening night of 6th and 7th August, 2001.

14. SI Sanjay Kumar PW-10, along with Const.Samay Singh PW-8, reached GTB hospital where Bhavna was admitted. SI Sanjay Kumar recorded Bhavna's statement, Ex.PW-10/DA, in which she informed him that she got up at around 12.00 in the night to warm milk for her son aged nine months and when she was lighting the stove, all of a sudden, oil sprayed out, resulting in her clothes catching fire. She further informed that she was married two years back and that nobody was to be blamed for the incident.

15. Since it was a case of a married woman catching fire within less than seven years of her marriage, the investigating officer thought it prudent to summon the Sub-

Divisional Magistrate of the area and have statement of Bhavna got recorded before the SDM.

16. The SDM of the area Mohd. Abid PW-5, came to the hospital on being summoned by the IO and at 5.35 PM on 7.8.2001, after getting the necessary certification from the doctor that Bhavna was fit for statement, recorded her statement Ex.PW-5/A in a question answer form. As per the said statement, Bhavna told the Sub-Divisional Magistrate the same facts as were narrated by her and as recorded in her statement Ex.PW-10/DA.

17. Thereafter, Bhawna desired a further statement to be made. The SDM was re-summoned. At around 8.00 PM on 8.8.2001, he recorded the revised/second statement Ex.PW-5/C of Bhavna, as per which she told the learned SDM that her previous statement made to him was under threat given to her by her two brothers-in-law, her mother-in-law and the wife of her elder brother-in-law, who had threatened harm to her child if she spoke the truth. She went on to state that she had now learnt that her son had been taken by her parents to their house and that she no longer feared for the safety of her child. That her husband was quarrelling with her for a long time. That on the day of the incident, at 10.30 PM, her elder brother-in-law and his wife rebuked her saying that she used

to speak too much. Her younger brother-in-law also started shouting at her. That her elder brother-in-law stuffed a cloth in her mouth to muffle her. The wife of her elder brother-in-law caught her hand. Her younger brother-in-law sprinkled kerosene oil on her. She attempted to yell. They prevented her from yelling. Somebody set her on fire. That the main door was closed. That when she was set on fire, she yelled and her cries attracted the residents of the locality, then her in-laws extinguished the flames.

18. We note that even the second dying declaration recorded by the learned SDM is in question answer form.

19. It is true that Bhavna has given a justification for departing from her earlier two dying declarations; namely that, she feared for the safety of her child and hence was compelled to not disclose the true facts. But, since Bhavna has made three dying declarations, the first two being exculpatory of the appellants and the third being inculpatory of them, the issue requires a deeper consideration.

20. It is not in dispute that Natho Devi PW-1, and Mahesh Kumar PW-4, are the neighbours and had reached the house where Bhavna suffered burn injuries. As noted hereinabove, the learned Trial Judge has referred to the unnatural conduct of the husband of Bhavna when Mahesh

Kumar PW-4, entered the house and on seeing Bhavna naked and in a burnt condition, to hide her shame, covered her body with a sheet.

21. Mahesh Kumar deposed that on 6.8.2001 at about 11.00 PM, when he was present at the second floor of his house, he saw flames in the house of the accused persons, which house was in front of his house. He heard cries of Bachao Bachao. He ran towards the house. He met accused Sanjay and enquired from him as to what was the cause of the fire. He saw Bhavna naked and in a burnt condition. He put a cloth on her. Crucial for the purposes of the present case is to note that he went on to depose: *"On my enquiry, she replied that while she was boiling the milk she catch fire from stoves and she received burn injuries."* (We have reproduced the statement of Mahesh Kumar verbatim and hence the grammatical mistakes.)

22. Natho Devi PW-1, deposed on the same line as Mahesh Kumar. She stated that on 6.8.2001 she was present in her house and at around 10-11 PM heard Bhavna screaming. She came out and enquired from Bhavna as to what had happened. We quote from the testimony of Natho Devi: *"I asked her and she replied that she was lighting a stove and the oil came over her and she lit the match stick*

and burnt herself."

23. We also note that Natho Devi, on being cross-examined, had clarified that she had gone inside the room and had seen a stove as also a milk bhagona (utensil) lying there.

24. It is unfortunate that the learned Trial Judge has not even referred to the testimony of PW-1 and PW-4, the witnesses of the prosecution on said aspect i.e. what was told to them by Bhavna in her house.

25. If we read the testimony of PW-1 and PW-4 it dawns upon us that soon after she suffered the burn injuries, in the house itself, Bhavna told the people who had gathered there that she had suffered an accidental burn injury.

26. Where was the time for the mother-in-law, the two brothers-in-law and the wife of the elder brother-in-law to threaten Bhavna in the interregnum?

27. Had the learned Trial Judge posed this question, the answer would have emerged, that the contemporaneous statement of Bhavna made immediately after she caught fire was that she had caught fire accidentally. This statement is obviously without any threat, coercion and influence.

28. Under the circumstances, it becomes doubtful whether the third statement made by Bhavna to the learned

SDM after nearly 48 hours of the incident has to be accepted.

29. It is not out of place to note that in the interregnum i.e. after the first two dying declarations were made by Bhavna, her parents met her in the hospital and the possibility of being tutored by her parents cannot be ruled out.

30. That the accused took a false defence becomes relevant as a circumstance only when the prosecution has been able to prove its case. A false defence can be used as a link evidence to complete the chain of circumstances. Under no circumstances, can at a criminal trial, the prosecution be relieved of the burden of proving its case by cogent and clear evidence. That Amar Singh took a false defence of not being present in the house is thus neither here nor there.

31. Pertaining to the conduct of the husband of the deceased in not attempting to cover Bhavna's naked body with a sheet and the conduct of not informing the parents of Bhavna cannot assume disproportionate weightage to be given while evaluating the evidence.

32. We need not cite judgments, except to record that different persons react differently in given hostile circumstances. There cannot be a uniform rule to evaluate the conduct of a person who faces a hostile circumstance. A

husband may get perplexed on seeing his wife burnt and his faculties deserting him is always a possibility. That while rushing an injured to the hospital, somebody or all forget to inform a near and dear one is not conduct of a kind which is highly incriminating.

33. That Bhavna did not inculcate her mother-in-law in the third dying declaration and hence the same is suggestive of truth is nothing but surmises and conjectures.

34. That the stove did not have a leakage and there was no sign of a blast, as an incriminating evidence used by the learned Trial Judge ignores the fact that the stove pump was operated on the principle that where air is pumped into a tank containing kerosene oil, the resultant pressure ejects the oil at the head of the burner in the form of a fine spray. The kerosene oil evaporates and if struck with a matchstick, results in a flame being created. The nozzle where from the oil sprays is the place where the flame is lit and carbon accumulates resulting in the nozzle getting choked. A pin is normally used to remove the carbon. The pin is attached at one corner of a stick like object. When the pin is inserted in the nozzle, the spray of the kerosene oil is disrupted. The flame dies. But, when the needle is removed, the possibility of oil spraying and suddenly catching fire cannot be ruled out.

In fact, the learned Trial Judge has himself not ruled out the said possibility.

35. The post-mortem report does not record; much less the doctor who conducted the post-mortem has deposed that from the nature of burns suffered by Bhavna it was highly improbable that the cause of fire was accidental.

36. The finding returned by the learned Trial Judge is nothing but his perception and understanding of the post-mortem report. No medical text has been cited by the learned Trial Judge to form the opinion so formed by him.

37. Before concluding, we may only note that all other circumstances are nothing, but add on circumstances, and that the fate of the case of the prosecution hinged upon the dying declaration of Bhavna made to the learned SDM at the second instance. If found truthful, the same would have been inculpatory of the appellants. If not found truthful, the first two dying declarations being exculpatory of the appellants, would have pointed towards their innocence.

38. It becomes the duty of a court to carefully scrutinize the dying declarations if there are more than one.

39. In the instant case, the deposition of Natho Devi PW-1, and Mahesh Kumar PW-4, shows that both of them reached the house immediately when the deceased caught

fire. What was told to them by the deceased virtually forms a part of the same transaction. So close and proximate is the time of the statement of Bhavna as heard by the two witnesses, to the point of time when she caught fire, it rules out the possibility of anyone threatening Bhavna to state incorrect facts.

40. The appeals are allowed. Impugned judgment and order dated 20.5.2003 convicting the appellants is set aside. The sentence imposed upon the appellants vide order dated 21.5.2003 is set aside. The appellants are acquitted of the charge of having murdered Bhavna.

41. All appellants except Sanjay are on bail. The bail bonds and surety bonds are discharged. Sanjay is directed to be set free, if not required in custody in any other case.

42. Dasti.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

March 12, 2009
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