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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 28, 2009

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Judgment delivered on : February 02, 2009

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CRL.A. 836/2003

SABAR BHATTI

..... Appellant

Through: Ms.Anu Narula, Advocate.

versus

STATE

..... Respondent

Through: Ms.Richa Kapoor, Advocate.

CRL.A. 760/2003

ZARINA

..... Appellant

Through: Ms.Anu Narula, Advocate.

versus

STATE

..... Respondent

Through: Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

: PRADEEP NANDRAJOG, J.

1. At 5.10 AM on 16.8.1999, vide DD No.22/A, Ex.PW-8/D, the duty officer at Police Station Timarpur recorded the receipt of information that a woman had been set on fire after being doused in kerosene oil at Himgiri Enclave.

2. SI Ranbir Singh PW-22, accompanied by Const. Krishan, reached Himgiri Enclave and learnt that the injured

Meenu had been removed to the hospital. SI Ranbir Singh proceeded to the hospital i.e. LNJP hospital.

3. Meenu was admitted at LNJP hospital at 5.45 AM by Victor alias Raju (PW-6), brother-in-law of appellant Sabar Bhatti, a fact recorded in the MLC Ex.PW-14/A. That Meenu was admitted at the hospital was conveyed by Const. Raj Kumar, on duty at LNJP hospital, to his counter-part at PS Timarpur, who made an entry of said information being lodged at the Police Station vide DD No.23/A, Ex.PW-8/C.

4. SI Ranbir Singh PW-22, did not meet any eye witness at the hospital. He obtained a copy of the MLC of Meenu, on which, while noting the history as to how Meenu had sustained the burns, it was recorded:

"alleged H/O homicidal burns. She was set on fire by her husband after pouring kerosene oil."

On the side, it was recorded on the MLC that the said information was given by the patient herself. The doctor who prepared the MLC is Dr.Arun Prashant PW-21.

5. SI Ranbir Singh could not record the statement of Meenu because by the time he reached the hospital she was unfit for making a statement. He returned to the place of

occurrence where he met one Ms.Kamlesh PW-2, and recorded her statement Ex.PW-2/A and made an endorsement Ex.PW-22/A thereon and sent the same through Const. Krishan to the police station where HC Satyawar, the duty officer at the police station recorded the FIR, Ex.PW-8/A at 10.00 AM.

6. The statement, Ex.PW-2/A made by Kamlesh reads as under:

"Statement of Ms.Kamlesh, wife of Sh. Radhey Shyam, r/o Himgiri Enclave, Burari, Delhi, aged 30 years.

I reside with my family at the above noted address. At around 4.45 AM today i.e. 16.8.1999, Sunita, sister of Sabar came to my house and requested me to accompany her because Sabar had burnt his wife Meenu. I immediately reached Sabar's house. Anita, wife of Mahadev, Jamuna wife of Mani Ram, Veena wife of Samuel and husband of Jamuna also reached the spot. Many other persons of the locality had collected at the spot. Meenu was lying quietly covered with a cloth, outside her house. We asked Meenu as to what had happened she responded that Sabar had sprinkled kerosene oil on her and set her on fire....."

7. SI Ranbir Singh PW-22, also met Anita PW-3, Jamuna PW-4, Mani Ram PW-12 and Veena PW-7 at the spot. He recorded their statements Ex.PW-3/A, ExPW-4/A, Ex.PW-12/A and Ex.PW-7/A.

8. Constable/Photographer Joginder Singh PW-16, was summoned to the place of the occurrence on 16.8.1999 itself. He took photographs of the site being Ex.PW-16/A1 to Ex.PW-16/A5; negatives whereof are Ex.PW-16/B1 to Ex.PW-16/B5. SI Ranbir Singh prepared a rough site plan, Ex.PW-22/B, of the site of occurrence and recorded marginal notes thereon. Tirath Raj Singh PW-10, took measurements to scale at the spot and prepared the site plan Ex.PW-10/A to scale. Meenu died the same day i.e. 16.8.1999 at around 9.05 AM, as noted in the death summary Ex.PW-15/A. Her body was sent for autopsy and on 17.8.1999 Dr.Aakash Jhazhi PW-18, conducted the post-mortem and recorded the findings in the report, Ex.PW-18/A. He noted that the deceased had 90% burn injuries i.e. 90% of the body was burnt. He noted that the skin had peeled off from the burnt areas, exposing reddish-white under-surface. Smell of kerosene being present in the scalp was recorded. It is apparent that Meenu had suffered 3rd degree burns.

9. Inspector Sandeep Bhayala PW-23, working as the Additional SHO at PS Timarpur, was directed by the SHO to take over the investigation on 16.8.1999 itself. He recorded statements of Victor alias Raju PW-6, Sunita PW-5 and Toni PW-13, mark 6-A, mark 5-A and mark 13-A respectively.

10. It being a case of an unnatural death, the Sub-Divisional Magistrate of the area, Sh.Arun Mishra was summoned by the IO and he recorded statements of the parents of Meenu, namely, Mushtaq PW-9 and Saleema PW-11 being Ex.PW-9/B and Ex.PW-11/A respectively. In said statements they stated that husband of Meenu and her mother-in-law used to harass Meenu for dowry.

11. Being prima facie, a case of homicidal burning, and as per the parents of the deceased demands of dowry being made, a charge-sheet was filed accusing Sabar Bhatti, husband of Meenu of the offences of having murdered his wife by setting her on fire after pouring kerosene oil on her. His mother Zarina was charged with the offence punishable under Section 498-A/34 IPC. Sabar Bhatti was also charged with the offence punishable under Section 498-A/34 IPC.

12. Needless to state the prosecution relied upon the MLC of the deceased on which Dr. Arun Prashant PW-21, had recorded the history of the burns as stated by the patient herself; namely being burnt by her husband after pouring kerosene oil on her. Needless to state, if established, the same had to be treated as the dying declaration of Meenu. The prosecution also relied upon the site plan and the photographs

taken at the spot as also the statements of the various witnesses who were summoned as the prosecution witnesses.

13. PW-2 Kamlesh, deposed that on 16.8.1999 at about 4.55 AM Sunita (PW-5), sister of the accused Sabar came to her house and informed that Meenu had sustained injuries. She reached the house of Sabar and found Meenu lying there in a burnt condition. She stated : "*Meenu asked me to remove her to hospital.*" After so stating, she deposed that she does not know anything beyond this point. Being declared hostile she was cross-examined by the learned APP. She declined having made any statement to the police but admitted that the statement Ex.PW-2/A bore her signatures at point 'X', but went on to state that the statement was never read out to her and that she simply appended her signatures thereon. She denied that on 16.8.1999 when Sunita came to her house she informed her that Sabar had set Meenu on fire. She was confronted with the statements recorded from point 'A' to 'A' and 'B' to 'B' on Ex.PW-2/A, she denied having made said statement. On being cross-examined by counsel for the accused she stated that Meenu was not in a position to speak.

14. Anita PW-3, Jamuna PW-4, Veena PW-7 and Mani Ram PW-12, all deposed that at around 4.30-5.00 AM on 16.8.1999 when they received information of Meenu having

received burns they reached her house and found that Meenu was badly burnt. They all disclaimed anything said by Meenu to anyone of them. They were confronted with their statements recorded under Section 161 Cr.P.C. as they were declared hostile. They denied having made any statement, as recorded by the police, that when they reached the house of Meenu she told her that her husband has set her on fire.

15. Sunita PW-5, sister of appellant Sabar, stated that she was present in her house when her brother-in-law Toni (PW-13) came to her house and informed that Meenu had suffered burns. She stated that she reached the house of Meenu and found her lying in the *gali* outside the house. She stated that she knew nothing further. She was declared hostile. On being cross-examined by the learned APP she denied having made a statement that Meenu had told them that Sabar had set her on fire. She was confronted with her statement recorded by the police where said fact was recorded. She denied that she had said so.

16. Victor @Raju PW-6, deposed that Sabar was his brother-in-law and he reached his house on learning that Meenu had suffered burn injuries and that he found Meenu lying burnt outside the house.

17. Toni PW-13, stated that he was in his house when he learnt of Meenu having suffered burn injuries and on reaching her house he found Meenu lying in the *gali*. He stated that he removed her to the hospital and was helped by Victor @Raju in doing so.

18. Dr. Arun Prashant PW-21, who had recorded the MLC Ex.PW-14/A, deposed that he was on duty at LNJP hospital at 5.45 AM on 16.8.1999 and that Meenu was brought to the hospital in a burnt condition; that he recorded the history as told by the patient of being burnt by her husband after pouring kerosene oil on her. He deposed that smell of kerosene oil was present. He deposed that the patient was conscious and that the pulse rate was 100 per minute. He deposed that as recorded by him in the MLC he had noted bilateral crepts present on the chest of the patient. He explained that this meant that due to burns there was respiratory secretion.

19. The parents of Meenu were examined as PW-9 and PW-11. Both deposed of dowry demands being raised. Both gave particulars of the instances when demands towards dowry were raised and made good by them. Relevant would it be to note that when confronted with their respective statements recorded by the SDM i.e. Ex.PW-9/A (statement of Mushtaq) and Ex.PW-11/A (statement of Saleema) they admitted that the

specific instances of demands and payment of dowry stated by them in their deposition in court were not to be found in the statements made by them before the learned SDM and that they never stated said facts before the learned SDM.

20. It was argued before the learned Trial Judge that all the public witnesses; namely PW-2 to PW-4, PW-5 to PW-7 and PW-12 & PW-13 categorically stated that when they reached the house of Meenu she had not uttered a word. Thus, it was urged that where-from could Meenu be in a conscious and oriented condition, to tell the doctor, PW-21, the history of the burns. It was urged before the learned Trial Judge that as admitted by PW-21, bilateral crepts were present which meant that due to burns there were respiratory secretion. It was thus urged that the physical condition of Meenu was such that she could not be in a conscious state.

21. Brushing aside the afore-noted submissions, learned Trial Judge has held that there was no reason for Dr.Arun Prashant PW-21, to depose falsely or to falsely implicate anybody. The result is that the MLC Ex.PW-14/A has been treated as the dying declaration of the deceased pertaining to the recording of the fact therein that the patient had disclosed the fact that her husband had poured kerosene oil on her and set her on fire. Believing the testimony of the parents of the

deceased the learned Trial Judge has held that the same evidences that Meenu was harassed for dowry and hence the charge under Section 498-A IPC stands established.

22. At the hearing of the appeals, learned counsel for Sabar Bhatti, Ms.Anu Narula re-urged the same very submissions which were made before the learned Trial Judge pertaining to the death of Meenu.

23. It is a sad state of affairs in this country that the public does not join in a police investigation; and if joins in the police investigation, normally turns hostile. Cases are replete in law journals of public witnesses turning hostile and the prosecution suffering. If citizens do not shoulder the public responsibility of truthfully disclosing the commission of an offence which they have seen, where-from can the police bring the truth on record?

24. But, truth has the uncanny habit of some-how or the other oozing out.

25. In the instant case, truth has emerged in the statement of Kamlesh PW-2, who, in her deposition stated: *"Meenu asked me to remove her to hospital"*. It means that Meenu spoke to Kamlesh. Her turning turtle and there-after deposing that she knew nothing about the incident because

Meenu was not in a position to speak is totally belied from the earlier sentence spoken by her and as noted above. We note that PW-2 Kamlesh was cross-examined by the learned counsel for the accused and not even a suggestion has been given to her that Meenu never requested her to remove her to the hospital. Now, if Meenu could request to be removed to the hospital, it was natural for her to have told as to how she was burnt. It was natural for Kamlesh to have asked Meenu as to how did she sustain the burn injuries.

26. Truth has further emerged when PW-5 Sunita, PW-6 Victor and PW-13 Toni, have stated that they found Meenu lying in a burnt condition in the *gali*. It means that Meenu had the energy to run out of the house; to be rescued by somebody. The area is a crowded area. From the deposition of the eye witnesses it is apparent that they reached the house of Meenu within minutes of the incident. Obviously, Meenu was in a condition to speak and must have spoken. Indeed, they truthfully disclosed to the police when their statements were recorded under Section 161 Cr.P.C. that Meenu had, in their presence, stated that Sabar had burnt her. In this connection we may add that PW-22 SI Ranbir Singh has categorically deposed that he correctly recorded the statement Ex.PW-2/A made by Kamlesh. His testimony on said point has not been

challenged, in that not even a suggestion has been put to him that he did not correctly record the statement of Kamlesh.

27. Humans may lie but circumstances seldom do. The photographs Ex.PW-16-A1 to 16-A5 and the site plan Ex.PW-10/A tell their own story.

28. The residence of Sabar is a single room ad-measuring 13'10" x 10'9". The place where Meenu was set on fire has been marked at point '1' which corresponds to the photograph Ex.PW-16-A2. It is inside the room. The place mark '5' which corresponds to the photograph Ex.PW-16-A1 is outside the room, on an open place at a distance of about 16 feet from the place where Meenu was burnt. A burnt *chatai* can be seen. The place where Meenu was found by the neighbours is mark '7'. It is on the street outside the house being at a distance of about 30 feet from the place where Meenu was burnt. The family had no kitchen and the cooking was done in the open. A stove has been shown in the site plan at point mark '4'. The same is outside the room. The plastic can containing residues of kerosene oil was at the point mark '3' inside the room. This means that Meenu was set on fire inside the room and she ran out with the hope that she would be rescued.

29. As noted above, PW-21, the doctor who examined Meenu at the hospital deposed that smell of kerosene was present on the body. The post-mortem report Ex.PW-18/A also notes kerosene oil present in the scalp. Obviously, it cannot be a case of Meenu suffering accidental burns. Kerosene oil cannot be present in the scalp of a person who suffers an accidental burn. Besides, the stove is outside the room and the place where Meenu received burn injuries is inside the room. It has to be either a case of Meenu attempting to commit suicide or being burnt by somebody. The appellants have not urged that Meenu committed suicide. Besides, a person who attempts to commit suicide takes all measures to ensure the success of his/her mission. Why would Meenu set herself on fire and go about helter and skelter seeking help?

30. The facts noted herein above negate that Meenu suffered accidental burns or committed suicide.

31. Pertaining to the plea that by the time she was examined bilateral crepts had surfaced on the chest of Meenu, meaning thereby, due to burns there were respiratory secretion; suffice would it be to state that in the MLC the pulse rate recorded is 100 per minute. This means that at that point of time the body organs of Meenu were still functioning fairly normally. The loss of body fluids due to secretion had not

achieved such proportions that Meenu would presumably be unconscious.

32. A person who is grievously burnt or suffers 3rd degree burns, suffers bilateral crepts, but at what stage goes into coma is difficult to say. It is basic knowledge that as the body loses fluids and oxygen is lost, the heart pumps faster and faster to send oxygen to the vital organs of the body. The pulse rate of a patient affords a good index of the condition of the patient.

33. As noted above truth has emerged in the deposition of PW-2 Kamlesh, who has categorically deposed that Meenu had asked her to be removed to the hospital. This means that Meenu was fully conscious when the neighbours had gathered. Her pulse being 100 when she was examined by PW-21 shows that by that time she had not become very critical. We see no reason to suspect the testimony of PW-21 to the effect that he recorded in the MLC, as told to him by Meenu, that Sabar had set her on fire.

34. One last circumstance may also be noted. Meenu received burn injuries at around 4.45 AM. It is no earthly hour for a person to get up and start cooking. Sabar, her husband is expected to be in the house at 4.45 AM. Where was he when

the unfortunate incident took place? Indeed, if he was not guilty, his conduct, as husband, had to be to immediately rush his wife to the hospital. That Meenu was found lying on the street and her husband Sabar was nowhere to be seen is also a circumstance which points the finger of guilt towards Sabar.

35. We find no infirmity in the impugned judgment vis-à-vis the finding returned against Sabar of having murdered his wife Meenu who died due to internal haemorrhage resulting from shock occasioned by the burns.

36. Pertaining to Zarina and the conviction of Sabar for the offence punishable under Section 498-A IPC, we notice that the learned Trial Judge has simply gone by the deposition of the parents of Meenu as recorded in Court, ignoring the vast improvements made by them vis-à-vis the statements made by them before the learned Sub-Divisional Magistrate, in which statements they gave no particulars of the dates when demands were made and the amounts ostensibly paid by them as dowry demands.

37. Indeed, Ms. Richa Kapoor, learned counsel for the State did not seriously dispute that there were improvements of a material nature in the depositions of the parents of Meenu.

38. Insofar as Zarina and Sabar have been convicted for the offence punishable under Section 498-A IPC, the appeals have to succeed. Insofar as Sabar Bhatti has been convicted for the offence punishable under Section 302 IPC, his appeal has to be dismissed.

39. Crl.A.No.836/2003 is partially allowed. Impugned judgment and order dated 10.11.2003 convicting Sabar Bhatti for the offence punishable under Section 498-A IPC is set aside and he is acquitted of the said charge. The appeal pertaining to his conviction for the offence of murder is dismissed and the charge having been established is upheld.

40. Crl.A.No.760/2003 filed by Zarina is allowed. Her conviction for the offence punishable under Section 498-A IPC is set aside. She is acquitted of the said charge.

41. We note that Zarina is on bail. Her bail bond and surety bond stand discharged.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

FEBRUARY 02, 2009
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