

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

% *Date of Decision: 14th October, 2009*

+ **CRL. APPEAL No.725/2005**

KASHMIRA @SALIM Appellant
Through: Mr.V.K.Raina, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

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 Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 22.7.2003, the learned Trial Judge has convicted appellant Kashmira @ Salim for the offence punishable under Section 302 IPC and has sentenced her to undergo imprisonment for life.

2. The case of the prosecution is that the deceased Daya Ram and Kashmira (an eunuch) were living together at G-29 Sultanpuri, Delhi. Some differences arose between the two which resulted in frequent quarrels. As a result, on 11.2.2001, Kashmira murdered Daya Ram by setting him on fire.

3. Process of law was set in motion, when at 3.30 PM on 11.2.2001, ASI Noor Mohd. PW-16, posted at the Police Control Room, received information about Municipal No.G-24, Sultanpuri being on fire and recorded the same in the PCR form Ex.PW-16/A. He immediately transmitted the information to PS Sultanpuri, being the police station having jurisdiction over the said place. At PS Sultanpuri, Lady Const. Raj Kumari PW-4 on receipt of the information, made an entry in the daily diary register being DD Entry No. 40 B recording said information. SI C.M. Meena PW-12 and Const. Bhupendra PW-18 were deputed for investigation. On reaching the place they found the fire already extinguished. They saw a dead body lying in a burnt condition in the verandah of the premises on a charpai. They learnt that the dead body was of Daya Ram.

4. SI C.M. Meena met Smt. Bimla PW-6, the owner of the premises G-29 Sultanpuri and recorded her statement Ex.PW-6/A as per which statement, deceased Daya Ram and Kashmira, an eunuch, were living together on the first floor of her house as tenants for 7 months prior to the incident. Kashmira used to tell people that Daya Ram was her husband. Bimla, however learnt that Daya Ram was a widower and his children used to reside nearby at Municipal No. E-5, Sultanpuri. Daya Ram and Kashmira had frequent quarrels with each other which generally took place after both of them consumed liquor. Fifteen days prior to the incident, Daya Ram had left Kashmira,

however on 3.2.2001, on the persuasion of Kashmira, he had returned. The next day i.e. on 4.2.2001, they again quarreled. On this, she i.e. Bimla asked Daya Ram and Kashmira to vacate the premises. While at that time, Daya Ram left the premises, Kashmira promised her that she would vacate the premises by 20.2.2001. At around 11.15 AM on 11.2.2001, Bimla saw Kashmira and Daya Ram coming in a rickshaw. They were both drunk. Later on, at around 3.00 PM or 3.15 PM on the same day, when she was having lunch, her son Manoj PW-10 informed her that the first floor of the house was on fire. She rushed outside and raised an alarm, as a result of which the neighbours collected there. When the neighbours were trying to extinguish the fire, they saw Kashmira jump from the verandah of the first floor and run towards F block. Kashmira's hand was also on fire. Thereafter they saw Daya Ram lying dead on the first floor.

5. SI C.M. Meena made an endorsement Ex.PW-12/A under said statement and sent it to PS Sultanpuri through Const. Bhupendra for the registration of an FIR. He summoned a photographer SI Mahender Chauhan PW-5, who took eight photographs Ex.PW-5/9 to 5/16; negatives whereof are Ex.PW-5/1 to 5/8, of the spot.

6. At PS Sultanpuri, HC Ranbir Singh PW-15 recorded FIR Ex.PW-15/A at 5.45 PM. After the registration of FIR, investigation was transferred to Insp. Banwari Lal PW-17 who

had already reached the spot by then. He filled the inquest papers, got the dead body identified and sent the same to the mortuary of Sanjay Gandhi Memorial Hospital for post-mortem examination to be conducted on the next day. From the spot, he seized a kerosene oil stove Ex.P-1, burnt pieces of rope and ash Ex.P-2, a burnt red and green coloured woolen jersey Ex.P-3, burnt pieces of bedding Ex.P-4, a burnt piece of wood of the bed and ash Ex.P-5 and a burnt quilt Ex.P-6 lying there as recorded in seizure memo Ex.PW-6/B. He prepared a rough site plan Ex.PW-17/B of the spot.

7. At 1.00 PM on 12.2.2001, Dr. Kamal Singh PW-8 conducted the post-mortem on the body and prepared his report Ex.PW-7/A. He opined that the cause of death was hypovolumic shock due to 100% burns and that the time since death was 22 hours. He handed over the wearing apparel of the deceased along with his blood sample and viscera to Insp. Banwari Lal who seized them as recorded in memo Ex.PW-17/D.

8. In the presence of SI C.M. Meena, Insp. Banwari Lal arrested Appellant Kashmira on 14.2.2001 from Sultanpur Majara. The clothes, a black coloured salwar and a kurta and a green coloured jersey which was partially burnt at the sleeve worn by the appellant at the time of her arrest was seized as recorded in the memo Ex.PW-3/D. The same were sent for forensic examination and as per report Ex.PA were opined to be

stained with kerosene oil. Kashmira was sent to Sanjay Gandhi Memorial Hospital where Dr.Amita PW-13, examined her and prepared MLC Ex.PW-13/A. She found two injuries on the person of Kashmira; being a burn mark on the left forearm extending to the dorsal aspect of the left hand and swelling and tenderness over the right ankle joint. She opined that the injuries were recent and could possibly be only a day old.

9. Statements of Manoj PW-10 and one Bille PW-11 were recorded under Section 161 Cr.P.C. and both implicated the appellant.

10. After the completion of the investigation, appellant Kashmira was put to trial. The prosecution examined 20 witnesses. Eschewing reference to the formal and procedural witnesses, we note only the testimonies of the relevant witnesses who have been found to be trustworthy by the learned Trial Judge resulting in the conviction of the appellant.

11. Smt. Bimla PW-6 deposed that appellant Kashmira and deceased Daya Ram were living on the first floor of her house G-29 Nangloi for seven months prior to the incident. Kashmira used to dress up as a female and claimed that she was the wife of Daya Ram. The two often consumed liquor and quarreled with each other. After one such quarrel, a week prior to the incident, Daya Ram had left the house. However, at around 11.00 AM on 11.2.2001, when she i.e. Bimla was in her courtyard she saw Daya Ram and Kashmira together, going to

the first floor. After sometime Daya Ram came down, bought liquor and again ascended to the first floor. At about 3.00 PM, when she i.e. Bimla was sitting inside her house, her son Manoj noticed that their first floor was on fire and informed her. She collected the neighbours and when they were all trying to extinguish the fire, she saw Kashmira jump over the railing of the verandah to a neighbours house; her hands were burnt. On the first floor they found the dead body of Daya Ram in a burnt condition lying on a charpai. The neighbours managed to extinguish the fire and thereafter informed the police of the incident. On being cross-examined she stated that on the day of the incident Kashmira did not go for her work.

12. Manoj PW-10 deposed that Kashmira and Daya Ram were living together as tenants on the first floor of his house. At about 3.00 PM on the day of the incident, when he was playing outside his house, he saw smoke coming from their first floor. He raised an alarm. His mother and the neighbours collected there and started extinguishing the fire. During this time, he saw Kashmira jump from the railing of the first floor into the courtyard and run away.

13. Bille PW-11 deposed that at about 3.00 PM on 11.2.2001, he heard some noises from outside his house. He rushed out and noticed smoke coming from the first floor of the adjoining house i.e. house of Bimla. After sometime he saw Kashmira jump down from the railing of the said first floor

premises and thereafter run away. After Kashmira ran away, he went to the first floor and saw the dead body of Daya Ram lying on a charpai. In cross-examination he stated that when Kashmira was escaping, she was heavily drunk and her hand had burn injuries thereon.

14. Kamaldeep PW-3, the son of the deceased deposed that the deceased Daya Ram was his father and was residing with appellant Kashmira for the last 7/8 years.

15. Vide impugned judgment and order dated 22.7.2003, the Trial Judge convicted appellant Kashmira on the basis of the testimonies of PW-6, PW-10, PW-11 and PW-3. The Trial Judge noted thirteen circumstances proved by the prosecution against the appellant, and held that these circumstances formed a complete chain ruling out the innocence of the appellant. The circumstances noted are:-

- i. Accused and the deceased living together in the premises in question.
- ii. Frequent quarrels between the accused and the deceased after consumption of liquor.
- iii. Consumption of liquor by the accused on the day of the incident.
- iv. Presence of the accused at the time of detection of fire in the premises in question by the PWs.
- v. Act of the accused in escaping from the place of incident.

- vi. Act of the accused in not raising any noise/alarm at fire having broken out.
- vii. Act of the accused in not trying to put out the fire.
- viii. Accused having burns on his left hand at the time of escaping.
- ix. Recovery of clothes worn by the accused having burn marks.
- x. Burn injuries on the left hand of the accused at the time of arrest.
- xi. Presence of Kerosene oil in the belt/clothes of the person of the deceased.
- xii. Presence of kerosene oil on the jersey and the bed sheet recovered from the spot.
- xiii. Presence of kerosene oil on the clothes of the deceased.

16. At the hearing of the appeal today, learned counsel for the appellant very fairly concedes that the testimony of PW-6, PW-10 and PW-11 is without blemish. Counsel concedes that in view of the testimony of said three witnesses as also the fact that even the hands of the appellant received partial burns it is apparent that any reasonable person would conclude that the appellant burnt the deceased. Learned counsel concedes that the injury on the ankle of the appellant as recorded in the MLC of the appellant, being swelling and tenderness in the right ankle indicates, as deposed to by PW-6, PW-10 and PW-11 that the appellant jumped from the first floor and fled. Learned

counsel has urged only one submission, being that, the appellant being drunk, was entitled to the benefit of Section 85 and Section 86 of the Penal Code.

17. We see no scope for the applicability of either Section as both Sections come into play when the accused is administered an intoxicant without his/her knowledge or against his will. No evidence has been shown to us that the appellant was intoxicated against her will or was intoxicated without her knowledge.

18. We have carefully perused the testimony of PW-6, PW-10 and PW-11. Indeed, we find no blemish in their testimony. We may additionally note that as per the report Ex.PA submitted by the Forensic Science Laboratory, the clothes worn by the appellant which were seized when she was arrested were detected with the presence of kerosene oil which further corroborates the use of kerosene by the appellant.

19. We find no merit in the appeal which is dismissed.

20. Copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

OCTOBER 14, 2009
DK