

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

+ **Crl. Appeal No. 276/2006**

% **Date of Order : January 22, 2009**

NARESH Appellant
Through : Mr. V.K.Raina, Advocate.

VERSUS

THE STATE Respondent
Through : Mr. Pawan Sharma, 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. The appellant was charged for having committed an offence punishable under Section 302 IPC on the allegations that on 25.2.2000 at about 9.00 P.M. at the Jhuggi in Tagore Garden he intentionally or having knowledge that his act would cause the death of his wife Bala, burnt her after pouring kerosene oil on her, resulting in her death on 2.3.2000.

2. On 26.2.2000, at around 1.10 A.M. Ct. Kanwar Singh, duty officer at Deen Dayal Upadhyay (DDU) Hospital informed the duty officer at P.S. Rajouri Garden that one Bala, wife of the appellant, was got admitted at the hospital by her father Ram Chander and that Bala was in a burnt condition. Said information was recorded in the Police Station vide DD entry No.21-A.

3. Copy of the said DD was given to SI Ajay Kumar for investigation, who accompanied by Ct. Udham Lamba reached DDU hospital and learnt that the injured had been referred to LNJP hospital. He informed the Sub Divisional Magistrate (SDM) of the area and requested him to reach LNJP hospital. He also informed the SHO of the Police Station. He then proceeded to LNJP hospital.

4. At DDU hospital where Bala was brought, as recorded in the MLC Ex.PW-5/A, at 11.30 P.M. on 25.2.2000, Dr. Mahipal examined her and noted her condition in the MLC, Ex.PW-5/A. He recorded in the MLC: *"Alleged H/O burns."*

5. At LNJP hospital, at 3.15 A.M. on 26.2.2000 Dr. Khush Aeron recorded at the portion encircled red in Ex.PW-5/A that the patient is unfit for statement.

6. The appellant was also having burn injuries. Ct. Satbir took him to DDU hospital, where he was examined as

per MLC Ex.PW-9/A wherein it is recorded that he was having superficial burns present over the lower 1/3rd of the forearms.

7. In the meanwhile, at 3.20 A.M. on 26.2.2000, the SDM recorded the statement of Ram Chander, father of Bala. The statement is Ex.PW-2/E.

8. He disclosed in his statement that he was a resident of House No.431, Block B, Tagore Garden and that he was employed as a Safai karamchari with the Municipal Corporation of Delhi. He stated that Bala, his daughter, was got married by him to one Babu Lal with whom she obtained a divorce and that she married Naresh in the year 1999. That the marriage was a love marriage and was not with his blessings. That he was annoyed with the said marriage. He stated that after her second marriage, Bala used to come to his house but he never allowed Naresh to come to his house. He stated that because he was against this marriage, he did not give any dowry and that none was ever demanded. He stated that Bala never made any complaint to him regarding her husband and that she never told him about being beaten by her husband. He stated that yesterday i.e. on 25.02.2000, at around 10.00 P.M. Naval, brother-in-law of his son-in-law, who resides in D-Block, Tagore Garden came to his house and informed him that Bala had got burnt, on which he along with

his wife reached the jhuggi of Bala and found her lying in a burnt condition outside the jhuggi. He stated that on his asking Bala told him that Naresh (the appellant) had sprinkled kerosene oil over her and had burnt her. He stated that Bala told him that Naresh came to the jhuggi after consuming liquor and started fighting with her.

9. At 10.05 A.M. on 26.2.2000 Dr. R.B. Ahuja made an endorsement at the point mark 'E' in Ex.PW-5/A that the patient was fit for statement.

10. On Bala being declared fit for statement, the SDM recorded her statement, Ex.PW-10/A. In her statement Bala stated that in January, 1999 she had a love marriage, against the wishes of her parents, with Naresh and that her previous husband was Babu Lal. She stated that yesterday i.e. on 25.02.2000 she was lying in her jhuggi at around 9.00 P.M. and her husband Naresh reached after consuming liquor. She stated that Naresh was unemployed and used to beat her and used to ask her for money to purchase liquor and when she refused to give him money to purchase liquor he used to beat her. She stated that like in the past, even yesterday, he assaulted her in a drunken condition. She stated that she requested him to go to sleep, at which he sprinkled kerosene oil which was lying in a six liters can, half of which fell on her

and half on the floor and with a matchstick set her on fire. That nobody else was present in the house. That at that time he had latched the room from inside. That she opened the latch and went outside and hearing her shrieks neighbours gathered, and that her husband poured a bucket of water over her to douse the fire. That the brother-in-law of Naresh, who was residing in a jhuggi opposite her jhuggi summoned her parents. The police and her parents took her to hospital. She stated that her husband never troubled her over any dowry but was an alcoholic and used to beat her when she would not give him money to buy alcohol.

11. Unfortunatly, Bala could not survive for long and on 2.03.2000 died.

12. On the basis of the statement made by Bala to the SDM, a FIR was registered initially under Section 307 IPC. On her death, the offence punishable under Section 302 IPC was added.

13. The postmortem of Bala was conducted by Dr. D.V.Saharan who opined, vide report Ex.PW-3/A that cause of death was shock as a result of septicemia which is caused due to ante-mortem superficial and deep burns likely to be caused by flames. He specifically recorded that injuries are sufficient to cause death in ordinary course of nature.

14. We eschew reference to formalities of investigation completed at site in the form of preparation of the site plan and seizure of the can and other material at site; we are not noting said evidence because no submission has been urged at the hearing today pertaining thereto. Similarly, we are not noting the evidence pertaining to registration of the FIR and the police swinging into action because no submissions have been urged with reference thereto.

15. Needless to state, the case hinges on the statement recorded by the learned SDM as made by Bala i.e. the statement Ex.PW-10/A.

16. Indeed, learned counsel for the appellant concedes that everything hinges on the said statement. If found truthful and inspiring confidence, counsel concedes that the impugned judgment convicting the appellant cannot be set aside.

17. Learned trial judge has convicted the appellant, believing the statement made by Bala to the learned SDM i.e. Ex.PW-10/A. Needless to state, the same has been treated as the dying declaration of Bala.

18. Learned counsel for the appellant has made a two-fold submission to cast a cloud over the statement made by Bala to the SDM.

19. With reference to the MLC Ex.PW-5/A, recorded at DDU hospital, learned counsel urges that the same categorically records that the patient was conscious and oriented when brought to the hospital at 11.30 P.M. Counsel urges that the doctor has recorded:- *"Alleged H/O burns"*.

20. Submission made is that Bala was conscious and oriented and obviously she informed the doctor that she had suffered burns. That she did not inform the doctor that her husband has burnt her is sought to be projected by learned counsel for the appellant who urges that if Bala had told the doctors so, the doctor would have so recorded on the MLC.

21. The second submission made; which actually is an extended limb of the first submission, is that Ram Chander, father of Bala was in the hospital and his having tutored, induced or motivated Bala, to make a false statement cannot be ruled out.

22. Counsel urges that Bala became unconscious by 3.15 A.M. evidenced by the endorsement made by Dr. Khush Aeron on the MLC at the portion encircled in 'D' where it is recorded that the patient Bala is unfit for statement. From the fact that by 10.05 A.M. the next day, Bala became fit for recording her statement, counsel urges that this shows that Bala was intermittently passing from the state of

consciousness to unconsciousness and that this mental condition of her could make her susceptible to being tutored to say things.

23. We have perused the statement Ex.PW-10/A to satisfy ourselves whether the statement of Bala is truthful and whether there are chances of her being influenced to state falsehood.

24. From the statement of Bala's father recorded by the SDM and as deposed by him in court when he appeared as PW-2, we note that Ram Chander has spoken truthfully and faithfully. If he had a grouse against the appellant, who had married his daughter against his wishes, Ram Chander could have used the opportunity to settle score with the appellant by stating false facts that the appellant used to harass his daughter over dowry. He did not do so. The further truth in the statement of Ram Chander can be gathered when he speaks of his having no concern with the appellant and that the appellant being declared a *persona non grata* in his house. His statement that his daughter used to visit his house but never told anything to him also evidences that Bala was conscious of the fact that having married the appellant against the wishes of her parents, she had to reconcile with her fate and bear the burden of life by herself.

25. As noted above, in Bala's statement to the learned SDM, she also stated that her parents had not consented to her second marriage and that her marriage with the appellant was a dowry less marriage. She spoke the truth when she stated that the appellant never demanded any dowry and on the said account never harassed her. Thus, there is a ring of truth in her statement that the appellant used to beat her whenever she refused to give him money to purchase alcohol. She spoke the truth when she stated that the appellant was drunk when he came to the jhuggi at 9.00 P.M. The said fact is corroborated from the MLC of the appellant wherein it is recorded that the appellant was intoxicated with alcohol.

26. Further corroboration to the statement of Bala can be found when she spoke to the appellant coming near her with a bucket of water to douse the flames after setting her on fire. This explains the superficial burn injuries on the forearms of the appellant.

27. Needless to state, that before the SDM recorded Bala's statement, at 10.05 A.M. the doctor had certified her to be fit for recording the statement.

28. It would not be out of place to note that when the appellant was examined under Section 313 Cr.P.C. a circumstance against him, being his MLC Ex.PW-9/A, wherein

it is recorded that the appellant had superficial burn injuries on his forearms was put to him. He responded by saying: "*It is wrong*". If the appellant had an explanation as to how he sustained the superficial burn injuries on his forearms, the time for explaining the same was when said circumstance was put to him.

29. By denying the same, obviously, the appellant has given a false answer, because the MLC Ex.PW-9/A records the appellant having superficial burns over the lower 1/3rd of the forearms. Obviously, he sustained the said superficial burn injuries when after setting Bala on fire and seeing neighbours assembled, he went near Bala to douse the fire by throwing water on her and as he came close to Bala he suffered the superficial burns.

30. We note that after all incriminating circumstances were put to the appellant, a last question was put to him, as to whether he had something to say. To which the appellant responded, that he was innocent and had tried to extinguish the fire on Bala by pouring the water.

31. This statement made by the appellant corroborates the dying declaration of Bala that after she was set on fire by the appellant and after she unlatched the jhuggi and came out, the appellant tried to douse the fire by pouring

a bucket of water over her.

32. The cause of death of Bala has been noted in the postmortem report; contents whereof have been noted by us hereinabove in para 13. As per the statement of Bala, the kerosene oil can contained six liters Kerosene oil, half of which fell on her when the appellant threw the same and half fell on the floor. What more proof of intention can be attributed to a man to cause death who throws six liters of kerosene oil on a person and sets on fire the said person.

33. Evidence on record shows the wayward ways of the appellant; he was addicted to alcohol. He was without a job. The only source wherefrom he could get money was his wife. Obviously, the wife would refuse money to him for purchasing and drinking alcohol. His addiction resulted in a frustration and anger which found an outlet in him beating his wife. The unfortunate incident in question is an outcome of said mental condition of the appellant. Consequences have to follow.

34. We find no merit in the appeal. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

January 22, 2009/vk