

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

% *Judgment Reserved On: 3rd February, 2010*
Judgment Delivered On: 5th February, 2010

+ **CRL.APPEAL NO.44/2005**

MOOLWATI & ORS. Appellants

Through: Mr.B.S.Sharma with
Mr.Sureshan, Advocates

Versus

STATE Respondent

Through: Mr.M.N.Dudeja, 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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. As noted in the MLC Ex.PW-17/A of Geeta, she was got admitted by her mother-in-law Moolwati at G.T.B. Hospital on 11.8.1992 at 10.25 AM. Geeta was suffering extensive burn injuries, being 90%. She was not oriented and hence not fit for statement.

2. Information was received at Police Station Seema Puri pertaining to Geeta receiving burn injuries and having been brought to the hospital. ASI Dharam Pal PW-18 accompanied by Const. Vijay Kumar went to the hospital and obtained MLC of Geeta as per which she was unfit for statement. As deposed to by ASI Dharam Pal he sent the information of Geeta being admitted at G.T.B. Hospital in a burnt condition to the office of the Sub-Divisional Magistrate of the area and proceeded to the matrimonial house of Geeta at No.1/819, Khera Village. He picked up pieces of burnt cloth from the kitchen of the house as also a bottle emitting smell of kerosene and an electric heater from the kitchen and recorded said fact in the seizure memo Ex.PW-5/A and deposited the said articles in the Malkhana. Further, as deposed to by him, on 12.8.1992 he went to G.T.B.Hospital where he found Geeta to be fit for statement and he recorded the statement Ex.PW-18/A of Geeta who informed that she was residing at House No.1/819, Khera Village and that her husband used to trouble her for dowry. A few months ago a settlement was arrived at pursuant where to she started residing with her husband but dowry demands continued. On 11.8.1992 at around 9.30 AM she went to the kitchen to heat milk for her child and while

sitting when she was stirring sugar in the milk, her mother-in-law threw kerosene at her back from behind and her husband set her on fire. As she ran out, her brother-in-law Yogesh caught her and the other brother-in-law Sanjay poured water on her. She yelled. Neighbours gathered. They took her to Geeta Nursing Home where they refused to admit her. Her mother-in-law brought her to G.T.B.Hospital. On the statement at the portion encircled Ex.PW-6/A he obtained a certification from Dr.Navneet Kaur PW-6 regarding Geeta's fitness. As deposed to by ASI Dharam Pal PW-18 and Dr.Navneet Kaur PW-6, Dr. Navneet Kaur also signed the statement Ex.PW-18/A at the portion encircled Ex.PW-6/A thereon when Dr. Navneet Kaur appeared as a witness of the prosecution.

3. One would have expected ASI Dharam Pal PW-18 to have immediately made an endorsement beneath the statement Ex.PW-18/A and have the same sent to the Duty Officer for FIR to be registered under Section 307 IPC for the reason the statement Ex.PW-18/A shows the commission of a cognizable offence of an attempt to murder. He did not do so.

4. Geeta died around noon of 13.8.1992. This information was received at the police station. ASI Dharam Pal immediately proceeded to the office of the S.D.M. where he got

recorded the statement of Mahavir Singh the father of Geeta before the S.D.M. and making an endorsement Ex.PW-18/B beneath the said statement got registered an FIR under Section 304-B/498-A/34 IPC. Unexplainably, ASI Dharam Pal did not bother, while making his endorsement, to refer to the statement Ex.PW-18/A which he claims to have recorded on 12.8.1992.

5. It is apparent to the reader of the present judgment that the central issue which we need to discuss is whether Ex.PW-18/A i.e. the statement of Geeta was at all recorded on 12.8.1992 as claimed by ASI Dharam Pal or whether the same is a fabricated document.

6. But, before grappling with the question which arises, we note that after the FIR was registered SI Krishan Kumar PW-14 took over the investigation and went to the site and with the assistance of ASI Dharam Pal prepared the site plan Ex.PW-14/A listing therein the place where the kitchen was situated in the house and the spots within the kitchen wherefrom he lifted pieces of burnt cloth, being points 'B' and 'C'; the place where he lifted an empty bottle which was smelling of kerosene, marked as 'D', as also spot marked 'E' wherefrom he picked up the electric heater.

7. It may be noted herein that no stove, much less a kerosene stove was lifted from the spot and that when ASI Dharam Pal was cross-examined no suggestion was given to him that he did not pick up the kerosene stove from the kitchen.

8. SI Krishan Kumar not only recorded the statements of various witnesses but even collected a complaint Ex.PW-1/A made by the deceased to the Crime Against Women Cell. He also collected a *Panchayati* compromise Ex.PW-1/B dated 9.2.1992 as per which Geeta and her husband had agreed for Geeta to return to her matrimonial house. He also took possession of a letter Ex.PW-1/C written by the deceased to her father.

9. At the trial Dr.Navneet Kaur PW-6 stated that the endorsement Ex.PW-6/A on the statement of Geeta was made by her on 12.8.1992 and that whatever was stated by the injured was correctly recorded by ASI Dharam Pal.

10. ASI Dharam Pal deposed having recorded the statement Ex.PW-18/A of the deceased. He deposed that he effected the recoveries as entered into the Memo of Recovery Ex.PW-5/A. He also proved a writing Ex.PW-18/C addressed by

him to the Duty Officer bearing the date 14.8.1992 with an over-writing over the date 14th to convert it into 13th.

11. Since something turns on Ex.PW-18/C, we may note its contents. While addressing the same to the Duty Officer, ASI Dharam Pal has written that on 11.8.1992 on receipt of information from the hospital that Geeta, wife of Satya Prakash, resident of 1/819, Khera Village was admitted by her mother-in-law at 10.25 AM he went to G.T.B. Hospital and collected Geeta's MLC who was unfit for statement. On 12.8.1992 the doctor certified Geeta fit for statement. He tried to contact the S.D.M. by personally going to his office and over the telephone but could not meet him. He recorded the statement of Geeta. On 13.8.1992 Geeta died.

12. Since learned counsel for the appellants had not disputed that through the testimony of Mahavir Singh PW-1 and the documents Ex.PW-1/A, PW-1/B and the letter Ex.PW-1/C it stands established that the deceased was being harassed by her husband and mother-in-law in her matrimonial house, we are not noting the testimony of Mahavir Singh and the contents of the three documents. But we note the argument of learned counsel for the appellants, being that, the *Panchayati faisla* PW-1/B is dated 9.2.1992 i.e. about six months prior to the date of

incident. Learned counsel urged that with the *Panchayati* settlement all disputes were over and there is no evidence that after February 1992 the deceased was harassed on account of dowry by the appellants.

13. The exhibits seized from the kitchen on the date when Geeta received burn injuries were sent for forensic examination and as per the report Ex.PW-16/A, kerosene was detected on the burnt clothes and the bottle which were lifted from the kitchen by ASI Dharam Pal.

14. With respect to the statement Ex.PW-18/A, three persons namely, Yogesh, the brother-in-law of the deceased, Smt. Moolwati, the mother-in-law of the deceased and Satya Prakash, the husband of the deceased were sent for trial.

15. Believing the testimony of ASI Dharam Pal and Dr.Navneet Kaur, the learned Trial Judge has held that Ex.PW-18/A is the dying declaration of the deceased and in view of her statement it was apparent that appellant No.1 Moolwati and appellant No.2 Satya Prakash i.e. the mother-in-law and the husband of the deceased have joined together to set her on fire. As regards Yogesh, the learned Trial Judge has held that from the statement of the deceased it could be that Yogesh caught her to rescue her or it may be otherwise. Thus, benefit

of doubt has been given to Yogesh. Learned Judge has noted that there was no allegation of dowry harassment against Yogesh. Learned Judge has further held that as stated by the deceased the moment Yogesh caught her the other brother-in-law Sanjay doused the flames by pouring water on her. Thus, it could be that Yogesh caught the deceased to facilitate Sanjay dousing the fire on her.

16. The reasoning given by the learned Trial Judge qua Yogesh is sound and we concur with the same.

17. Qua the appellants, the only issue which needs to be decided is whether the statement Ex.PW-18/A was made by the deceased or whether the same was fabricated.

18. As noted above, the fulcrum of the argument of learned counsel for the appellants was that if the statement was indeed recorded as claimed on 12.8.1992 the FIR ought to have been got registered immediately inasmuch as the statement revealed the commission of a cognizable offence. That the FIR was registered on 13.8.1992 and that too on the statement made by the father of Geeta before the S.D.M. was highlighted to urge that it was obvious that even till the time when the FIR was registered no such statement existed.

Learned counsel urged that it is a case of the deceased either committing suicide or receiving accidental burns in the kitchen.

19. It may be noted that when examined under Section 313 Cr.P.C. appellant Moolwati simply admitted that Geeta suffered burn injuries and died on 13.8.1992. She did not state as to in what manner Geeta suffered burn injuries. When examined under Section 313 Cr.P.C. appellant Satya Prakash stated that he was not in the house and does not know how Geeta suffered burn injuries. With respect to the statement of Moolwati we may note that as per Geeta's MLC Ex.PW-17/A Moolwati had brought Geeta to G.T.B. Hospital.

20. Men may lie, but circumstances do not lie. Who says dead bodies cannot speak. They do.

21. The dead body of Geeta has spoken through the post-mortem report Ex.PW-11/A which has been proved at the trial by Dr.N.K.Aggarwal PW-11 who conducted the post-mortem on Geeta's dead body on 14.8.1992. He has noted therein the following ante-mortem injuries:-

“Sufficient to deep burn present all over the body except front abdomen, back of abdomen, perineal area and medial aspect of both thighs, covering an area of 80-85% of total body surface area.....”

22. Now, where a person commits suicide and pours kerosene oil on the body, the front portion of the body would be soaked in oil and not that the rear portion of the body would be soaked in oil and the front would be unaffected by the oil. Further, as noted in the decision reported as 1999 SCC (Cr.) 352 Pavan Kumar Paras Nath Tiwari Vs. State of Gujarat a strong indication of a person committing suicide by fire is to look at the palms. If the palms are not burnt they would suggest that the victim has made no attempt to stamp out the fire which would mean that the person concerned had desired to be burnt. But, when a person is set on fire the first reaction is to try and stamp out the fires using the hands i.e. the hands receiving burn injuries.

23. The injuries on the person of the deceased Geeta show extensively being burnt at the upper portion of the back and the hands. The front abdomen and at its back i.e. the lower back portion of the deceased was unaffected by the fire.

24. The statement Ex.PW-18/A tells us that according to Geeta she was sitting and mixing sugar in the milk when her mother-in-law threw kerosene on her. Interestingly the back of the abdomen has not been affected by the burns. Do they not

tell us that Geeta was sitting and that the kerosene did not trickle to the lower back? We think they do.

25. The burn injuries on Geeta rule out her committing suicide.

26. The argument that Geeta was accidentally burnt has to be thrown into the dustbin for the reason no kerosene stove was lifted from the kitchen. An electric heater has been lifted from the kitchen and as noted in the memo Ex.PW-5/A. No suggestion has been given to ASI Dharam Pal during cross-examination that there was a kerosene stove in the kitchen which he did not lift.

27. Dealing with the argument advanced by learned counsel for the appellants and as noted above, it is unfortunate that ASI Dharam Pal has acted negligently in not ensuring that immediately after he recorded the statement Ex.PW-18/A he got the FIR registered. His laxity has been explained by him not only when he deposed in Court but even with reference to his writings Ex.PW-18/C, contents whereof have been briefly noted in para 11 above. It is apparent that ASI Dharam Pal was a lowly placed officer. In Delhi, serious crimes are investigated by Sub-Inspectors and Inspectors. He was not well-versed with the procedures of law. Aware of the fact that Geeta was

married in April 1990 and the crime had been committed within a year and a half of the marriage, he went about chasing the S.D.M. for the reason when a woman dies an unnatural death within seven years of her marriage, as per rules notified in Delhi, the inquest has to be by the S.D.M. of the area concerned. As recorded by him in Ex.PW-18/C he could not contact the S.D.M. and by that time 13th arrived and Geeta died. Only after Geeta died could he get in touch with the S.D.M. and he dutifully produced Geeta's father before the S.D.M. and got recorded his statement Ex.PW-1/E and after making an endorsement thereunder forwarded the same for FIR to be registered.

28. Dr.Navneet Kaur PW-6 has got nothing to do with the police. She is a doctor at G.T.B. Hospital and we see no reason why she would be telling a lie.

29. We return a finding that the statement Ex.PW-18/A is the truthful dying declaration of Geeta. We find substantial corroboration to her dying declaration when we notice the injuries sustained by her as recorded in her post-mortem report. The injuries show that Geeta was sitting when kerosene oil was thrown at her back and she was set on fire. The FSL report Ex.PW-16/A show that residues of kerosene were

detected on the burnt clothes lifted from the spot. Geeta catching accidental fire is completely ruled out since no kerosene stove was found in the kitchen and on the contrary an electric heater was the instrument for heating and cooking food.

30. The argument that with the Panchayati faisla in April 1992 everything came to an end is not accepted by us for the reason within hardly four months of the community decision, Geeta had been burnt.

31. We find no merit in the appeal.

32. The appeal is dismissed. Appellant No.2 is still in Jail. Appellant No.1 has been granted bail on 11.8.2006. Thus, we cancel the bail bond and surety bonds furnished by appellant No.1 and direct that she should surrender to suffer the remaining sentence.

33. Copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to appellant No.2.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 05, 2010

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