

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

% Date of Decision :17th February, 2010

+ **CRL A. No.176/2006**

ROSHNI Appellant
Through: Ms. Sharadha Bhargava, Advocate

Versus

STATE Respondent
Through: Mr.M.N. Dudeja, A.P.P.

CRL.A.Nos.39-41/2006

BRIJPAL & ORS. Appellants
Through: Ms. Sharadha Bhargava, Advocate

Versus

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

PRADEEP NANDRAJOG, J. (Oral)

1. Appellant Roshni is the mother-in-law of the deceased Sonia. Appellant Sunil is the husband of Sonia. Appellant Brijpal is the father-in-law of Sonia. Appellant Suman is the sister-in-law of Sonia. She is the sister of Sunil.

2. Sonia and Sunil were married to each other in May, 1998. At around 7:00 PM on 31.3.2000 Sonia suffered extensive burn injuries in her matrimonial house, which as per the site plan Ex.PW-20/A, consists of a tin shed and an open space abutting thereto. As recorded in the MLC Ex.PW-9/A, Sonia was admitted in the casualty of Safdarjung Hospital at 8:30 P.M. on 31.3.2000 and as recorded on the MLC, her husband Sunil brought her to the hospital. Further, as recorded on the MLC and as deposed to by Dr.Rajender Kumar PW-9 who was working as a Senior Resident in the Department of Burns, Safdarjung Hospital, the patient informed, as noted in the MLC, pertaining to the history of the burns: that when she was cooking, her mother-in-law Roshni poured kerosene oil on her following domestic violence.

3. Dr.Rajender Kumar PW-9 recorded that the information pertaining to the history of the burns was told by the patient as also by her husband Sunil. He recorded on the MLC that the patient was conscious and oriented.

4. Information about Sonia being burnt was transmitted to Police Station Krishna Nagar where the Duty Constable recorded the same vide DD No.66-B, Ex.PW-6/A. SI Sunil Kumar PW-22 was deputed for inquiry and accompanied by Ct.Sudhrender Singh he reached Safdarjung Hospital and

collected a copy of the MLC Ex.PW-9/A and moved the application Ex.PW-21/A for certification whether patient was fit or not, for making a statement. Dr.Jaswinder Kaur PW-21, a Junior Resident at Safdarjung Hospital, vide endorsement Ex.PW-21/B, on the application Ex.PW-21/A, recording the time on the endorsement as 11:15 PM, certified Sonia to be fit for statement.

5. SI Sunil Kumar PW-22 informed Shri Sanjeev Kumar PW-1, the SDM of the area over the telephone who reached Safdarjung Hospital. On an application scribed in the handwriting of a person whose name has not been brought out with clarity, but signed by Shri Sanjeev Kumar, an application addressed to the CMO of Safdarjung Hospital was moved requiring a certification whether the patient was fit for statement. Dr.Jaswinder Kaur PW-21, vide endorsement Ex.PW-1/B on the application, recording the time 12:00 midnight, certified that the patient was fit for statement. It appears that the application has been scribed by SI Sunil Kumar PW-22 who has deposed that he had moved a second application for certification from the doctor qua the fitness of the patient.

6. Thereafter, Shri Sanjeev Kumar PW-1, recorded the statement Ex.PW-1/A of Sonia in question-answer form. The

statement Ex.PW-1/A is in devnagari script. Translated, it reads as under:-

- “1. What is your name?
A- Sonia.
2. What is the name of your husband?
A- Sunil.
3. Where do you reside?
A- 160, Old Anarkali.
4. How did this mishap take place?
A- Immediately after marriage my husband, mother-in-law, father-in-law and sister-in-law Suman started harassing me on account of dowry. They used to demand a colour television, scooter, washing machine and for not bringing said articles as dowry not only was I mentally troubled but was even physically beaten by them. Today my husband quarreled with me on account of dowry. At around 7:00 PM in the evening I was cooking on the *chulha*. At that time my mother-in-law poured kerosene oil on me from a can. Due to the fire in the chulha, the moment oil fell on my clothes they caught fire. My husband, my mother-in-law, my father-in-law and my sister-in-law Suman stood as silent spectators and none doused the flames. I ran outside. My neighbours doused the fire.
5. Who all are responsible for the incident?
A- My husband, my mother-in-law, my father-in-law and my sister-in-law Suman are responsible for this.
6. When were you married?
A- In the month of May we would have been married for two years.”
7. The SDM directed SI Sunil Kumar to register an FIR and take necessary action. Thereafter, SI Sunil Kumar made

an endorsement Ex.PW-22/A beneath the written direction given by the SDM to take action as per law, in which endorsement, he also recorded that after Sonia's statement was recorded by the SDM he re-confirmed from her and she told him that she was married to Sunil in May 1998 and was residing with her in-laws and her nanad and that on account of dowry there was an issue, resulting in her being treated with cruelty and that on 31.3.2000 at around 7:00 PM when she was preparing food on the chulha her mother-in-law threw kerosene oil on her.

8. Suffice would it be to state that there would be 3 dying declarations of Sonia; the first would be the one made to Dr.Rajender Kumar PW-9 and as recorded on the MLC Ex.PW-9/A. The second would be the dying declaration made to Shri Sanjeev Kumar PW-1, the SDM and as recorded in the statement Ex.PW-1/A. The third and last would be the dying declaration made to SI Sunil Kumar reflection whereof is in the endorsement Ex.PW-22/A made by SI Sunil Kumar i.e. the rukka sent from the hospital for FIR to be registered.

9. For proving dowry harassment, the investigating officer armed himself with a compromise recorded at the police station on 29.7.1999, being Ex.PW-18/A, as also a confirmatory letter written by the husband and the in-laws of

Sonia on 29.7.1999, mark 'A'. Both the documents referred to a past history of a dispute of dowry and that henceforth Sonia would not be troubled on account of dowry.

10. Sonia who was badly burnt; entire body except sole being affected by the burns, did not survive for long. She died the next day i.e. on 1.4.2000.

11. The body was sent for post-mortem and as per the post-mortem report Ex.PW-3/A, proved at the trial through the testimony of Dr.Alexander PW-3, death was the direct result of the burn injuries.

12. The scalp hair of Sonia were preserved for forensic analysis and were handed over to the investigating officer after the post-mortem which was conducted on 2.4.2000.

13. Reverting a little back on the point of time and narrating the investigation conducted in the late night of 31.3.2000, spanning the early hours of the morning of 1.4.2000, from the spot, the investigating officer lifted a plastic can, some burnt pieces of cloth and seized the same as recorded in the seizure memo Ex.PW-13/A. A photographer was summoned who took various photographs. Rough site plan was prepared and later on converted into a site plan to scale Ex.PW-20/A.

14. In the site plan, 5 spots 'A' to 'E' are listed, being,

where Sonia was stated to be burnt, the place where pieces of bangle were lying, the place where plastic can was lying, the place where burnt clothes were lying and the place where a tawa on which a burnt chapati was lying.

15. Since in her statement Ex.PW-1/A Sonia had inculpated her mother-in-law and by an act of omission, stating that her husband, her father-in-law and her nanad stood as mere spectators, a charge-sheet was filed against the appellants charging them for the offence punishable under Section 302/34 IPC and Section 498-A IPC. However, while framing the charge, only Roshni was charged with the offence of having murdered Sonia. The other appellants were charged for the offence punishable under Section 307/109 IPC. All accused were charged for the offence punishable under Section 498-A IPC.

16. At the trial, Sanjeev Kumar PW-1, the SDM of the area proved that he recorded Sonia's statement Ex.PW-1/A. Dr.Rajender Kumar PW-9 proved the MLC Ex.PW-9/A. SI Sunil Kumar PW-22 deposed of Sonia telling him how she was burnt and his endorsement Ex.PW-22/A. Dr.Jaswinder Kaur PW-21 proved her certification Ex.PW-21/B as also her certification Ex.PW-1/B and stated that at both times i.e. at 11:15 PM and at 12:00 midnight Sonia was fit for statement.

17. Sonia's parents were examined as PW-10 and PW-11. Her mother Smt.Prem was examined as PW-10, her father Bhim Singh was examined as PW-11. Both deposed to dowry demands after their daughter was married. The demands being in the form of demand for a colour television, a scooter, a washing machine and cash. Both deposed that on 27.7.1999 Sunil had thrown acid on Sonia. The MLC Mark 'B' at GTB Hospital where Sonia was treated on 27.7.1999 was brought on record.

18. Relevant would it be to note that in her deposition Smt.Prem PW-10 stated that after the incident which took place in July 1999 and the settlements (evidenced by Ex.PW-18/A and document Mark 'A'), there was no problem. She stated that after 10/15 days of the incident which took place in July 1999 her son Titu went to Sonia's house where Sonia told him that everything was fine. On the eve of Holi she went to the house of Sonia and Sonia told her that she was being well taken care of and that she had no grievance against any family members.

19. The scalp hair and the various exhibits lifted from the place of the crime which were sent for forensic analysis were opined as per FSL report Ex.PW-23/A with residue of kerosene oil on all the exhibits including the scalp hair of

Sonia. The report was proved at the trial.

20. The learned Trial Judge has returned a finding of guilt against Roshni for both offences she was charged of. Brijpal, Sunil and Suman have been acquitted of the charge punishable under Section 307/109 IPC. They have been convicted for the offence punishable under Section 498-A IPC.

21. In sustaining the conviction of all the accused for the offence punishable under Section 498-A IPC, the learned Trial Judge has relied upon the testimony of the parents of Sonia as also the statement of Sonia in her dying declaration Ex.PW-1/A that she was being harassed for dowry.

22. Acquitting Brijpal, Sunil and Suman for the offence punishable under Section 307/109 IPC the learned Trial Judge has reasoned that the charge of abetment requires aiding, assisting or instigation, none of which was proved.

23. Roshni has been convicted for the offence punishable under Section 302 believing the testimony of PW-1, PW-9 and PW-22.

24. Arguing the appeal on behalf of Roshni, learned counsel for the appellant urges that the MLC Ex.PW-9/A gives a very brief description of how Sonia was set on fire, detailed description is emerging in Sonia's statement Ex.PW-1/A. Counsel urges that as per the said statement, Sonia does not

state that her mother-in-law lit any matchstick. Counsel states that Sonia has only stated that when she was cooking on the chulha her mother-in-law poured kerosene oil on her and her clothes caught fire. Thus, counsel urges that the possibility of Roshni intending only to scare Sonia and do no more, by the act of throwing kerosene, cannot be ruled out. Second contention urged is that there is a blemish in the dying declaration of Sonia wherein she states that she was cooking; it is urged that the site plan prepared does not show the presence of any cooking material.

25. Let us extract what Sonia has stated about her being set on fire:-

“At around 7:00 PM in the evening I was cooking on the *chulha*. At that time my mother-in-law poured kerosene oil on me from a can. Due to the fire in the chulha, the moment oil fell on my clothes they caught fire.”

26. Are we to read statements made by ordinary persons applying the linguistic skills of Keats or Tennyson? The answer is no, for the reason Evidence Act guides us that with respect to considering whether a fact is proved, the Court has to consider the matters before it and probablize the same as a prudent man would probablize under the circumstances of the case.

27. Linguistics, technical hair splitting, semantic's and

syntactical analysis of statements has not to be resorted to, especially when the maker of the statement is a humble citizen of this country. That apart, Section 39 of the Indian Penal Code defines the word 'voluntarily' as under:-

“39. “Voluntarily” – A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.”

28. Suffice would it be to state that apart from intending to cause an effect, if a person employs means knowing or having reasons to believe that the effect actually produced is likely to be produced when those means are employed, law treats the act as a voluntary act and equates the act at par if the effect was intended to be caused by the act.

29. He who sees a person doing an activity near fire, if throws kerosene oil on that person, would certainly be expected to know and have reasons to believe that the likely effect of his act would be the person working near the fire catching fire.

30. It is preposterous to believe the intention of Roshni was to simply scare Sonia. Knowing that her daughter-in-law was cooking on a chulha, Roshni certainly knew, in any case,

was expected to know that her daughter-in-law would flare up like a ball of fire if kerosene oil was thrown on her. Everybody knows that kerosene is a highly flammable chemical.

31. We find no blemish in the statement of Sonia. It inspires confidence. We say so for the reason notwithstanding her husband fighting with her in the evening and her grouse against her father-in-law and her sister-in-law, she said nothing to inculcate them falsely. She had a golden opportunity to falsely implicate them. She did not do so. It speaks volumes for the credibility of her dying declaration.

32. On the issue that no food stuff has been picked up from the place of the crime and this would suggest that Sonia falsely stated that she was cooking food on the chulha, suffice would it be to note that as recorded in the site plan to scale Ex.PW-20/A, at the spot mark 'E' a tawa on which a roti was kept was seen by the investigating officer at the said spot. It is obvious that Sonia was cooking chapattis.

33. On the issue of dowry harassment, the learned Trial Judge has trivialized an important facet, by glossing over the statement of Smt.Prem PW-10. Her statement that after July 1999 everything was settled and that even when she visited the house of Sonia on the eve of holi, Sonia told her everything was fine is not a trivial statement and has to be given due

weightage.

34. The learned Trial Judge could not have, without giving good reasons, simply brushed aside said part of her testimony by treating as if Smt.Prem had been won over by the accused.

35. It may be that, having given in writing undertakings to the police that they would not trouble Sonia (Ex.PW-18/A and the writing dated 29.7.1999 mark 'A'), her in-laws stopped troubling her, till the patience of her husband broke and he demanded dowry in the evening of 31.3.2000.

36. Whatever may be the reason for the other family members to desist from demanding dowry, the testimony of Smt.Prem establishes that there were dowry demands by all till July 1999 and in late July 1999 Sunil threw acid on his wife. The said act attracted police intervention. Sonia's in-laws had no option but to give in writing that Sonia would not be troubled. May be under fear, but there is evidence that till the festival of Holi which is celebrated in the month of March, till March 2000, no overt act to trouble Sonia was done save and except an incident which Sonia refers to as between her and her husband in the evening of 31.3.2000.

37. It is settled law that where two views are possible, the benefit of the view favourable to the accused has to be

given.

38. Thus, with respect to the offence punishable under Section 498-A IPC, the father-in-law and the sister-in-law of Sonia have to be given the benefit of doubt.

39. It is true that Sunil, Sonia's husband, rushed her to the hospital and has made no attempt to influence Sonia to make any particular statement, but the fact that he had a fight with Sonia in the evening, a few hours preceding to his mother pouring kerosene oil on Sonia, it is apparent that the greed of dowry was being nurtured in his mind and in all probability after July 1999 till 31st March 2000 he raised no issue under threat or fear. It cannot be glossed over that in late July 1999 he committed the heinous act of throwing acid on his wife. Evidence suggests that he had not reformed himself. He was holding the devil inside him. He never threw out the devil or killed the devil inside him.

40. Thus, Sunil must suffer the consequence of harassing and treating with cruelty Sonia for dowry i.e. for the offence punishable under Section 498-A IPC.

41. To bring the curtains down, Crl.A.No.176/2006 filed by Roshni is dismissed. Her sentence is maintained.

42. Crl.A.No.39-41/2006 is allowed vis-à-vis appellant Brijpal and appellant Suman. They are acquitted of the charge

punishable under Section 498-A IPC. Both of them are on bail. Bail bond and surety bonds furnished by them are discharged.

43. Said criminal appeal is dismissed in so far it relates to Sunil. Since Sunil is on bail. His bail bond and surety bonds are cancelled. Sunil shall suffer the remaining sentence imposed upon him for the offence punishable under Section 498-A IPC.

44. Since Roshni is in jail, copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to Roshni.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 17, 2010
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