

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

% *Date of Decision :11th March, 2010*

+ **Crl. A. No. 760/2007**

JAI PRAKASH Appellant
Through: Ms.Charu Verma, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, APP

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. The appeal has been reaching for hearing for the last two days and Ms.Anu Narula, learned counsel for the appellant has not been appearing to argue the appeal. Today also, learned counsel does not appear. We have requested Ms.Charu Verma, Advocate who is present in court and is on the panel of Delhi High Court Legal Services Committee to assist us.

2. Learned counsel has consented to render assistance to the court.

3. We express our gratitude to learned counsel and appoint her as an Amicus Curiae on behalf of the appellant. The fee of learned counsel is fixed in sum of Rs.7500/- to be paid by the Delhi High Court Legal Services Committee.

4. Vide impugned judgment and order dated 27.09.2007, while acquitting the appellant and his brothers of the offence punishable under Section 498-A IPC; further acquitting the brothers of the appellant for the charge of the offence punishable under Section 302 IPC, the appellant has been convicted for the offence of having murdered his wife.

5. Appellant's mother, Smt.Kalawati who was accused No.4, died during trial and hence proceedings against her abated.

6. It is not in dispute that late Leelawati was married to the appellant and she suffered burn injuries in her matrimonial house at around 10:30 P.M. on 16.01.1995. That the appellant was with his wife and even he suffered burn injuries and both were removed to Ram Manohar Lohia Hospital by ASI Suresh, In-charge of the PCR van, are facts which are not in dispute being even noted on the MLC of the appellant and his wife.

7. The conviction of the appellant has been sustained with reference to the testimony of SI Narain Singh PW-6 and

the testimony of Sh.Virender Kumar PW-9, posted as the SDM of the area, both of whom claimed that Virender Kumar recorded, in his own hand, the statement Ex.PW-4/A of Leelawati i.e. the deceased. As per the said statement, Leelawati implicated the appellant as the person who poured kerosene oil on her and then set her on fire.

8. With reference to the police officers who reached the house and deposed that the floor of the room where Leelawati suffered burn injuries was washed, the learned trial Judge has found further incriminating evidence in the form of the accused having attempted to destroy the evidence. Lastly, as deposed to by SI Narain Singh PW-6, the appellant refused to make any statement to him when SI Narain Singh found him admitted at the hospital, has been held to be indicative of the guilt of the appellant.

9. At the outset we may note that the manner in which the learned trial Judge has recorded evidence leaves much to be desired, for the reason there is utter confusion with respect to Ex.PW-4/A.

10. We note that Leelawati's mother, Smt.Shakuntala was examined as PW-4 and while deposing as PW-4 she stated that her statement Ex.PW-4/A was recorded by the learned SDM. The said statement has been scribed two days after

Leelawati died and Sh.Virender Kumar PW-9, the SDM concerned, was on leave on said day. Sh.Vijay Kumar PW-10 was the Link SDM and it was he who recorded the statement of Shakuntala. When SI Narain Singh PW-6 appeared as a witness he deposed that he was the officer who went to the spot and therefrom to the hospital, since DD No.63-B pertaining to a lady being burnt was assigned to him, he reached the hospital and called the SDM who recorded the statement Ex.PW-6/A of Leelawati. Unfortunately, the exhibit mark put on the statement of Leelawati is Ex.PW-4/A. Thus, two statements, one of Leelawati and the other of her mother have been given the same exhibit mark.

11. The confusion surfaced, but unfortunately the Judge did nothing to rectify the error, when Virender Kumar PW-9 stated that he scribed Leelawati's statement Ex.PW-4/A in his own hand but later on went on to state that the statement Ex.PW-4/A was scribed by Sh.Vijay Kumar, SDM. It is apparent that the witness attempted to clarify that one out of the two statements Ex.PW-4/A was scribed by him and the other with the same exhibit mark was scribed by Sh.Vijay Kumar. We would have expected the learned trial Judge to have corrected the error by exhibiting Shakuntala's statement as Ex.PW-6/A for the reason PW-6 had referred to the said statement and in

his statement referred to it as Ex.PW-6/A, but on the document the exhibit mark put was Ex.PW-4/A.

12. Be that as it may, on the question whether Leelawati's statement Ex.PW-4/A needs to be believed as a credible statement, we find that her mother Shakuntala admitted during cross-examination that before the SDM met her daughter, she had spoken to her daughter. She further admitted that after the SDM recorded the statement of her daughter he told her that her daughter was repeatedly changing her statements. It assumes significance to note that on the MLC Leelawati the history of the burns suffered by her is of catching fire accidentally. It also assumes significance that the back portion of Leelawati is unaffected by fire; the burn injuries are on the front of the body.

13. It is apparent that Shakuntala had accessed her daughter Leelawati before the learned SDM met Leelawati.

14. Murari Lal PW-1, the father of Leelawati stated that when he and his wife met their daughter in the hospital, his daughter told him that her husband Jai Parkash, her mother-in-law Kalawati, her brother-in-law Ramesh and sister-in-law Santosh had burnt her.

15. There is an apparent contradiction in what Murari Lal has deposed qua the dying declaration of the deceased

and what has been scribed in the statement Ex.PW-4/A as also what has been deposed to by Shakuntala.

16. No doubt the learned SDM claims to have honestly written what Leelawati told him, but we cannot ignore that according to Shakuntala, mother of Leelawati, the SDM had told her that her daughter was repeatedly changing her statements.

17. That the appellant never left the company of his wife and evidenced by his MLC is the fact that his hands were superficially too deeply burnt, evidencing attempt made by him to rescue his wife. That water was found spilt on the floor is possibly the result of the appellant dousing the flames on his wife by pouring water thereon.

18. It may be true that the appellant volunteered to tell nothing to the police at the hospital, but two pieces of evidence pertaining to his conduct which leans towards his innocence i.e. of attempting to douse the flames on his wife by his own hands and not flee, more than outweigh the negative conduct.

19. Noting the fact that in the dying declaration of the deceased it has been recorded that the appellant had set her on fire; noting that same is the version of mother of the deceased as claimed by her that her daughter told her so, a

variation with respect to what PW-1 claims his daughter having told him; coupled with the fact that Shakuntala has categorically admitted that the SDM told her that her daughter was repeatedly changing her statements, we are of the opinion that in the facts and circumstances of the instant case benefit of doubt has to be given to the appellant, more so for the reason, Leelawati had spoken with her mother before the SDM recorded her statement. Lastly, we may note that on the MLC of Leelawati with reference to the history of the alleged burns, it has been recorded that the patient caught fire accidentally.

20. The appeal is allowed. The impugned judgment and order dated 27.09.2007 convicting the appellant is set-aside. Giving appellant the benefit of doubt, we acquit him of the charge framed against him.

21. Since the appellant is in Jail, we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar for necessary action.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

MARCH 11, 2010
'nks'