

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

% Judgment reserved on: 18th July, 2011

Judgment delivered on: 29th July, 2011

+ **CRL. APPEAL. 68/2009**

BAIJNATH Appellant.
Through: Mr. Sumer Kr Sethi, Amicus Curie

versus

THE STATE Respondents
Through: Mr. M.P. Singh, APP for State.

CORAM:
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?
3. Whether the judgment should be reported in the Digest?

SURESH KAIT, J.

1. The instant appeal is being filed against the judgment dated 08.12.2008 whereby the appellant has been convicted under Section 307 IPC and vide order dated 10.12.2008, the appellant has been sentenced RI for five years and to pay fine of Rs.30,000/- under Section 307 IPC. The benefit of Section 428 Cr.P.C. has also been given.

2. The facts of this case in brief are that FIR No. 183/2004 under Section 307 IPC, P.S. Janakpuri was registered against the appellant on the statement of the complainant namely Sunita.

3. She has stated that she was a member of committee (chit fit) with one Shashi Bala. In the month of August, 2003, she demanded Rs.10,000/-, being the amount due towards the committee from Shashi Bala. Payment was not made to her, instead, Lakhan Bonu, Kamlesh and others gave beatings to her, in respect whereof, a case was registered.

4 On 28.03.2004, which was a Sunday, Shashi Bala met complainant near the toilet and when the complainant demanded money from Shashi Bala, she gave beatings to her.

5 On 29.03.2004, at about 11:00 PM, she was cleaning the utensils at the handpump in front of her Jhuggi, when appellant Baij Nath, husband of Shashi Bala, came there and as soon as she got up after cleaning the utensils, appellant poured kerosene oil on her and set her ablaze by lighting a matchstick. As a consequence whereof, her clothes caught fire, she raised an alarm and ran inside her Jhuggi, where her husband Bhupesh and brother-in-law (Dewar) Dharamjeet @ Babu put a blanket on her and extinguished the fire. Thereafter, her husband and other people removed her to Kukreja Nursing Home and from there to Safdarjung Hospital. She further stated that, the appellant had set her ablaze with an intention to kill her.

6 On the basis of the aforesaid statement of complainant, Investigating Officer wrote a Tehrir (Ex. PW10/A), pursuant whereof, FIR No. 183/2004 under Section 307 IPC (Ex.PW5/A) was registered in the Police Station Kalyan Puri on 30.03.2001.

7 Sh. V.P. Singh, SDM, Preet Vihar was informed of the incident and he reached Safdarjung Hospital on 30.03.2001 and recorded the statement of the complainant Ex. PW1/A at about 6.40 PM.

8 During investigation, a burnt Blouse (Ex.P-1), Peticot (Ex. P-2) AND Pillow (Ex.P-3) were seized from the Jhuggi of complainant were sealed in a pulanda and taken into possession vide Seizure Memo dated 30.03.2008 (Ex.PW1/C), MLC (Ex.PW4/A) of complainant was obtained from the Safdarjung Hospital after the concerned doctor opined her injuries as grievous. Appellant was arrested on 30.03.2004 vide an arrest memo of even date (Ex. PW6/B) and his personal search was taken vide a personal search memo (Ex. PW6/C).

9 The Confessional statement of appellant (Ex.PW6/D) was recorded but it did not lead to any recovery. Appellant pointed out the place of occurrence and a pointing out memo dated 30.03.2004 (Ex.PW6/A) and a Site plan(Ex. PW10/B) was also

prepared on 30.03.2004. Statement of witnesses including that of Sh. Bhupesh Kumar(husband) and Dharmjeet(Dewar) were recorded under Section 161 Cr.P.C.

10 After the completion of the investigation appellant was sent up to face trial for having committed an offence under Section 307 IPC.

11 The prosecution has examined ten witnesses in all.

12 PW1 Sunita is the complainant/injured. Other two public witnesses Dharamjeet and Bhupesh, dewar and husband of PW1 Sunita have been examined as PW3 and PW6 respectively and their testimony would be discussed at a later stage.

13 PW 2 Ct. Shiv Om is a formal witness. He was working as Photographer. On 30.03.2004, he took photographs of the spot i.e Jhuggi No 324, Block No. 18, Indra Camp, Delhi. He has deposed in this regard and has proved the photographs as Ex. PW2/1 to PW2/7 and negatives thereof as Ex. PW2/1A to PW2/7A.

14 PW4 Dr. N. Jatinderan, Senior Resident, Safdarjung Hospital has proved the MLC of the complainant/injured as Ex.PW4/A. He has deposed that MLC was prepared by Dr. Umesh, who had left the Hospital. He further deposed that Dr. Umesh was his batch-

mate, therefore, he was in a position to identify his hand writing and signatures as he had not only studied with him but had also worked with him.

15 PW4 Dr. N. Jatinderan, Senior Resident, Safdarjung Hospital has deposed that as per MLC, patient (Sunita) was having 30% burn injuries on upper back, both buttocks, thighs and legs. He has deposed that Dr. Umesh had opined the injuries as grievous by making an endorsement in this regard at point 'X' on the MLC. He has further deposed that as per the MLC, complainant was brought by her husband with the alleged history of homicidal thermal burns, while the patient was standing in front of her Jhuggi when 3-4 people came from behind and threw kerosene oil over her and lit the match stick, as a consequence of which, her clothes caught fire, resulting injuries to her and according to the patient, one of the persons was Baij Nath(appellant) who was living in her neighbourhood.

16 Testimony of this witness has remained unshattered in his cross examination. In fact, only one question was put to this witness about the address of Dr. Umesh.

17 PW 5 HC Rishi Pal is a formal witness and he had recorded the FIR in question. He has proved the carbon copy of FIR as

Ex.PW5/A by producing the original. He has categorically deposed that the FIR was recorded by him in his own hand writing.

18 PW 7 Ct. Tarun Vikram had accompanied the Investigating Officer to the Police Station and got recorded the FIR. Statement of complainant was recorded by the Investigating Officer in his presence. He is also the witness to the seizure of Blouse, Peticot and pillow, which were in burnt condition. He is also the witness to the arrest of appellant. He has deposed in this regard and has proved the Seizure Memo of burnt clothes as Ex. PW1/C. He has also proved the arrest memo and personal search memo of appellant. He has identified the Blouse, Peticot and pillow in the court as the same which were seized from the Jhuggi of the complainant in his presence. His testimony has also remained unshattered in his cross examination.

19 PW 8 Sh. V.P. Singh is the SDM Preet Vihar who had recorded the statement of complainant stated that he reached the hospital at 5:30 PM. He has deposed that the complainant was in fit mental condition. He recorded her statement in his own hand writing and obtained her thumb impression at three places.

20 He further stated that he completed the recording of the statement of complainant at about 6.40 PM. He has proved his

endorsement below the statement of complainant as Ex. PW8/A. His testimony has also remained unshattered in his cross examination.

21 PW 9 Ct. Sunil was the duty Constable posted at Safdarjung Hospital and has informed about the hospitalization of the complainant in the hospital in burnt condition, to the P.S. Kalyan Puri.

22 PW 10 is SI Raj Kishore Dubey who is the Investigating Officer of the case. He has been cross examined at length but his testimony has also remained unshattered on material points.

23 After the prosecution closed evidence, the statement of appellant was recorded under Section 313 Cr.P.C., wherein the entire incriminating evidence, which had come on record against him was put to him. He denied his complicity in the crime and claimed himself to be innocent. He stated that he was falsely implicated by the interested witnesses. According to him complainant wanted to marry him and when he refused to do so, complainant threatened that she will implicate him in a false criminal case. Subsequently, she poured kerosene oil on herself and set herself ablaze. He has further stated that he had made a

complainant at the Police Station Kalyan Puri on 29.03.2004 in this regard.

24 The appellant has also examined two witnesses in his defence. He has examined his neighbours Kishan Bahadur and Puran as DW1 and DW2 respectively. Both these defence witnesses claimed that they remained with the appellant in his house between 10.30 PM to 12'o'clock midnight and they had tea with him during this period. Thereafter, they went to participate in a Jagran where they were informed that Sunita had received burn injuries. They have further deposed that appellant had a love affair with Sunita and she wanted to marry him.

25 Perusal of the record shows that the testimony of complainant/injured is available before this Court to prove the incident. Testimony of PW 3 and PW 6 is available only to corroborate the fact that on the fateful day, the complainant/injured had sustained burn injuries. Recovery of partially burnt clothes of complainant/injured i.e Blouse, Peticot are there against the appellant to corroborate that on the fateful day, the complainant/injured had sustained burn injuries. Partially burnt pillow also corroborates the fact that complainant/injured had sustained burn injuries on the fateful day.

26 Complainant/injured has been examined as PW 2 and she has fully corroborated the prosecution case as set out in the FIR. She has deposed that she was a member of a Committee (Chit Fund) run by Shashi Bala, to the tune of Rs.10,000/-. In the month of August, 2003, she demanded money of committee (Chit Fund) from Shashi Bala at which she was beaten by the brothers and sister of Shashi Bala namely Lakhan, Bonu and Kamles respectively. Lakhan had also stabbed her with a knife and a case in this regard was pending.

27 She had further deposed that on 28.03.2004, she again had a quarrel with Shashi Bala, wherein Shashi Bala slapped her. On 29.03.2004, at about 11 PM, while she was cleaning the utensils at the handpump, appellant Baij Nath, his wife Shashi Bala and her mother-in-law came there and appellant poured kerosene oil on her and threw a matchstick like substance, as a result whereof, her clothes caught fire and she sustained burn injuries. She ran inside her house and appellant along with other persons fled from there. Fire was extinguished and thereafter, her husband removed her to Kukreja Nursing Home and from there, to Safdarjung Hospital, where her statement Ex.PW1/A was srecorded. She has further deposed that subsequently, her

statement Ex. PW1/B was also recorded by Sh. V.P. Singh, SDM Preet Vihar.

28 The testimony of PW1 remained unshattered in her cross examination. No suggestion was put to her that the appellant had not thrown kerosene oil on her and set her ablaze. Deposition of PW1 is more or less in the line with her statement Ex. PW1/A, recorded by the Investigating Officer, pursuant whereof, FIR was registered. In the FIR also, she had stated that she was member of a Committee (Chit Fund), run by Shashi Bala valuing Rs.10,000/-. In the month of August 2003, when she demanded her dues from Shashi Bala; Lakhan, Bonu and Kamlesh gave beatings to her and in respect of the said incident, a case was registered. On 28.03.04, when she demanded money from Shashi Bala, she was slapped.

29 On 29.03.04, at about 11:00PM, husband of Shashi Bala namely Baij Nath (appellant) came to her Jhuggi while she was cleaning the utensils at the hand-pump in front of her Jhuggi and when she got up, appellant Baij Nath threw kerosene oil on her and set her ablaze by a matchstick, as a consequence whereof, her clothes caught fire; she ran inside her Jhuggi, where her husband and dewar (Brother-in-law) extinguished the fire.

Thereafter, she was removed to Kukreja Nursing Home and from there, to Safdarjung Hospital. Infact, her statement recorded by the SDM Ex.PW1/B is also in line with her deposition before the Court on the material points.

30 PW3 Dharamjeet is dewar(brother-in-law) of the complainant/injured and he has deposed that at about 11:00PM, he was present in the house of Bhupesh and his bhabhi (complainant/injured), was cleaning the utensils. He went outside for urinating and when he came back, he noticed that his bhabhi (complainant/injured) was burning and Bhupesh was dousing the fire. He also helped him to put off the fire. Thereafter, he along with Bhupesh removed the complainant/injured to Kukreja Nursing Home and from there, to Safdarjung Hospital. He has also corroborated with the fact that on the fateful day, complainant/injured had sustained burn injuries.

31 PW6 Bhupesh is the husband of complainant/injured Sunita and he has corroborated the statement of PW1 Sunita to the effect that she was member of a Committee (Chit Fund) run by Shashi Bala to the tune of Rs.10,000/-. He has also corroborated regarding the earlier quarrel. He has also corroborated PW3 Dharamjeet that he was present in the Jhuggi and PW1 Sunita

was present near the hand-pump outside his jhuggi. Sunita came inside the Jhuggi in burnt condition. He extinguished the fire and removed her to Kukreja Nursing Home and from there, to Safdarjung Hospital. He has corroborated the burning incident.

32 Learned Counsel for the appellant has vehemently contended before the learned Trial Judge that PW1 is not a trustworthy witness. She had taken different stand during the investigation as well as while deposing in the Court. While, PW1 Sunita was admitted in Safdarjung Hospital, she told the doctor that she was standing in front of her Jhuggi, when 3-4 persons came from behind and threw kerosene oil on her and lit her with the matchstick. Thus, her clothes caught fire, as a result whereof, she sustained burn injuries and one of the persons amongst them was Baij Nath, (the appellant), who was her neighbourer. However, in the FIR, she stated that at about 11:00PM on 29.03.2004, she was cleaning utensils at the hand-pump in front of her Jhuggi and when she got up after cleaning the utensils, appellant Baij Nath came there and threw kerosene oil on her and set her ablaze by a matchstick. On the same day, at about 06:40PM, when her statement was recorded by the SDM, she took a different stand. In her statement Ex.PW1/B, recorded by the SDM, she stated that on 29.03.04, at about 11:00 PM, she

was standing in the corner of the gali after cleaning the utensils and was watching Jagran, when Baij Nath (appellant) came there from behind and threw kerosene oil on her and set her ablaze by a matchstick. However, while deposing in the Court, she stated that on 29.03.04 at about 11:00PM, when she was cleaning the utensils at the hand-pump, appellant Baij Nath, his wife Shashi Bala and mother-in-law came there; appellant Baij Nath poured kerosene oil on her and set her ablaze by a matchstick like substance, resulting in burn injuries to her.

33 Learned counsel for the appellant has vehemently contended before the learned Trial Judge that in view of the different versions of complainant/injured regarding the incident, number of assailants and their names, the complainant/injured is liable to be disbelieved and her testimony is liable to be discarded as a whole.

34 The learned Trial Judge heard the arguments of learned counsel for the appellant and in the light of material available on record he found no force in his contentions. He did not find substantial variance in the statements of complainant/injured, made during the different stages of investigation as also in her deposition in the Court. Her testimony has remained consistent

so far as role played by the appellant is concerned. She has not introduced the name of appellant as an afterthought. Even in the MLC, she had categorically named the appellant. In all her statements, she has taken a consistent stand that on 29.03.2004 at about 11:00PM, while she was cleaning the utensils at the hand-pump in front of her Jhuggi, appellant came there and threw kerosene oil on her and set her ablaze by lighting a matchstick. It has also come in evidence, more particularly, in the cross-examination of PW1, PW3 and PW6 as also in the statements of DW1 and DW2, that on the fateful day, a Jagran was being held near the place of incident. Accordingly, if in the statement before the SDM, complainant/injured has stated that at the time of incident, she was watching the Jagran after cleaning the utensils, will not make much difference. Even in her statement before the SDM, she has stated that after cleaning the utensils at the hand-pump, she started watching Jagran when appellant came there and set her ablaze. Minor variance in the statement of a witness recorded at the different stages of investigation and trial would not be sufficient enough to discard the whole testimony of such a witness. Testimony of PW1 has remained consistent with regard to the manner in which incident had taken place and the involvement of the appellant. The

learned Trial Judge was of the view, PW1 Sunita is a trustworthy and reliable witness and her testimony is liable to be accepted.

36 Learned Counsel for the appellant has also contended before the learned Trial Judge that no independent public witness was examined by the prosecution, thus, it would not be safe to base the conviction only on the basis of testimony of interested witnesses. Infact, only testimony of PW1 Sunita is available with the prosecution to prove the incident. PW1 has also admitted that on the fateful day, a Jagran was being held near the place of incident. Thus, lot of public persons might have witnessed the incident. Inspite of this, no public person was joined with the investigation. Accordingly, it would not be safe to rely on the sole testimony of interested witness.

37 Learned Trial Judge did not find any force in this argument either. It is well settled that in a place like Delhi, it is hard to find any independent witness with regard to a crime. Everybody is busy in his own affairs and public persons are reluctant to become witness as in metropolitan towns like Delhi, specially in a case of crime of serious nature. Accordingly, in this case, even if no independent witness has been examined by the prosecution, would not mean that testimony of PW1 Sunita,

which otherwise is trustworthy and reliable, can be brushed aside and ignored. Mere non-joining of independent witnesses would not be fatal to the prosecution case. Reliance is placed on a judgment of this Court dated 22.7.2008 passed in **Crl. Appeal No. 610 of 2001 titled Ramesh @ Ramoo Vs. State** whereby it has been held as under:

“ That leaves us with the submission of the counsel for the Appellant which is, that no independent public witnesses were joined in the investigation. To our mind this attains importance if we otherwise disbelieve the testimony of the witnesses produced before us or we find that the evidence placed before us is otherwise weak. While it may be a wholesome practice to join general public in criminal investigation the ground realities may be different. It is well known that public at large do not wish to get involved in criminal cases because of the travails of a trial. In this case, we find that the testimonies of Shri Nathi (PW4) the father and the brothers Ramesh (PW12) and Suresh (PW13) have substantially a ring of honesty and truth in them. Their testimony cannot be disregarded merely because no public witnesses were joined in the investigation. What is of great importance that the witnesses should be independent. Merely because the witnesses are related, his or her testimony cannot be disregarded only because the testimony relied upon is that of a relative. There is no such rule of law which requires

that a testimony of a relative of the deceased should be excluded.”

38 Learned counsel for the appellant had next contended before the learned Trial Judge that PW1 Sunita was in love with the appellant and she was pressurizing him to marry her and when appellant refused her proposal, she implicated him in this case by taking advantage of the fact that she sustained burn injuries of her own. He has further contended that appellant was present in his Jhuggi between 10:30PM to 12:00 O'clock midnight. He was in the company of DW1 and DW2, who had come to the Jhuggi of appellant and had tea with him during this time. Both remained with the appellant in his Jhuggi between 10:30PM to 12:00 AM. DW1 and DW2 are the independent witnesses and there is no reason to disbelieve them.

39 With regard to the above contentions, I have perused the testimony of DW1 and DW2 carefully and I am of the view that they have deposed in favour of the appellant being his friends. PW1 Sunita was married to PW6 Bhupesh and was living with him in her matrimonial home, they also had children from this wedlock. No material has come on record to show that PW1 and PW6 were having strained relations. Even DW1 and DW2 have not deposed that relationship between PW1 and PW6 was

strained or there used to be quarrel between them. It is highly improbable that PW1, who was happily married with PW6 and was bearing children, would have asked appellant to marry her. It is also highly improbable that DW1 and DW2 would have visited the house of appellant in the odd hours at night in order to have tea with him, more so, when Jagran was going on in the area and infact, they had gone to attend the Jagran. The defence propounded by the appellant appears to be sham and concocted one.

40 In the light of above discussions, learned trial Judge is of the view that the prosecution has succeeded in proving that on 29.03.2004 at about 11:00PM, appellant threw kerosene oil on the complainant/injured and thereafter, set her ablaze with a lighted matchstick, causing her burn injuries. As per MLC Ex.PW4/A, complainant/injured had received 30% burn injuries over upper back, both buttocks, thighs and legs, which were opined as grievous.

41 Learned trial Judge has dealt with the question that arises for consideration as to whether act of the appellant in setting PW1 Sunita on fire after pouring kerosene oil on her person, would fulfill the ingredients of section 307 IPC or not. Section 307

IPC provides that whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, will be guilty of attempt to murder.

42 In my view, the intention and knowledge on the part of appellant has to be gathered from the circumstances in which injuries are caused. In the instant case, appellant appears to have set PW1 Sunita ablaze in a pre-planned manner. He had come to the Jhuggi of PW1 Sunita in the odd hours of night and without any sudden and grave provocation; poured kerosene oil on her person and thereafter, set her on fire with a lit matchstick. It is not a case where a quarrel had taken place between the appellant and injured all of a sudden and in a fit of rage, appellant set the victim ablaze. Every person is expected to know that in case he sets another person on fire, it may have disastrous consequence as the burn injuries may result in the death of such person. Therefore, the ingredients of offence under section 307 IPC are squarely met in this case.

43 In the light of above discussions, I find no infirmity in the judgment dated 08.09.2008 passed by the learned Trial Judge while holding the appellant guilty under Section 307 IPC, therefore, I confirm the same.

44 Learned Amicus Curie Mr. Sumer Kumar Sethi, alternatively, submits that the appellant has undergone almost three years and eight months of his sentence out of five years. The remaining portion of sentence is only one year and few months. He further submits that the family of the appellant comprises of an old and ailing father of about 77 years of age who is suffering from various ailments and further, in the month of September, 2010, he suffered a paralysis attack and since then he has been bed ridden. Mother of the appellant has already expired.

45 The appellant has four minor children (two daughters and two sons). The eldest daughter age 13 years of who suffers from Tuberculosis in her ankle (Bone disease) and cannot walk properly. She has to be treated and carried for taking her to hospital.

46 Wife of the appellant is working as a labourer and is earning Rs.2,000/- per month. However, now she has to take care of her father-in-law and four children. There being no other male member in the family who can take her daughter to the hospital for treatment, it is extremely difficult for her to manage the family.

47 He submits, the family of the appellant is in a grave misery and is on the verge of collapsing. Admittedly, the appellant has been working as an asset in the Jail in various departments as Carpenter, food section. His jail conduct has been exemplary and no adverse report has ever been recorded against him in Jail. The Nominal Roll dated 07.07.2011 is on record and as per the said Nominal Roll the appellant has already undergone 03 years 09 months and 01 day in Jail as on 05.07.2011.

48 Learned counsel for the appellant further prays that keeping in view the family circumstances of the appellant, the sentence of the appellant be modified and he should be released on the period already undergone.

49 The offence committed by the appellant is of a serious nature and the Court should not become lenient in such types of cases. While accepting the prayer of the appellant, the Court certainly has to take a practical view and while taking all the facts and circumstances into view and the families current condition. If the conscious of the Court is priced by the circumstances as narrated in the present case, the Court may take the view otherwise.

50 Keeping in view the extreme circumstances of the family of the appellant into view, I am of the opinion that a lenient view is required in the instant case. The appellant has already undergone 02 years, 08 months and 05 days as on 05.07.2011, meaning thereby that till date he has undergone 03 years, 09 months and 11 days in jail. Therefore, I modify the order of the sentence and order that the appellant be released forthwith on sentence already undergone, if not required in any other case. However, the appellant shall deposit the fine amount of Rs.30,000/-, if not deposited already. His personal bond and surety bond stand cancelled.

51 No order as to costs.

52 Criminal Appeal No.68/2009 is partially allowed in above terms.

SURESH KAIT, J

JULY 29, 2011

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