

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

+ **CRL. A. No.1104/2010**

**Date of Decision : 18.04.2011**

**SUNITA**

**..... Appellant**

Through: None

Versus

**STATE OF NCT OF DELHI & ORS.**

**..... Respondents**

Through: Mr.Navin Sharma, APP

**CORAM :**

**HON'BLE MR. JUSTICE V.K. SHALI**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ?                               | YES |
| 3. | Whether the judgment should be reported in the Digest ?               | YES |

**V.K. SHALI, J. (oral)**

1. This is a Criminal Appeal under Section 372 of Criminal Procedure Code filed by the appellant /complainant against the judgment dated 15.04.2010 passed by the Court of Ms. Mamta Tayal, learned Additional Sessions Judge, South West District, Dwarka in respect of FIR No. 439/05 registered by PS Dabri, under Section 307/498A/324/406/34 IPC, acquitting both the accused of the said offence.
2. Briefly stated, the facts of the prosecution case, are that on 10.06.2005 at about 9 PM, when the appellant/complainant Sunita was cleaning her room, suddenly her husband and her mother-in-law, who are the accused persons, came there and assaulted her physically. Accused Devender poured

kerosene oil on her while accused Maan Kumari threw burning match stick on her. The match stick is alleged to have landed on her dupatta which she immediately threw on the floor. As a consequence of this, the dupatta got burnt. The accused persons ran away from the spot. It is alleged that, in the meantime, the brother of the appellant who had gone to get some food, came back and poured water on her which saved her life. PCR was informed about the incident by the complainant and her brother. The local police came to the spot but the complainant refused to make any statement as she wanted to wait for her father to come. The appellant/complainant was sent to DDU Hospital for medical examination and on the next day after the arrival of her father, she made a statement to the Police on the basis of which the aforesaid FIR was recorded.

3. The matter was investigated and a charge sheet under Section 307/324/34 IPC was filed. The charges were framed against both the accused persons. The prosecution in support of its case examined nine witnesses. The prominent among them being the appellant as PW-1 and her brother Virender as PW2. Rest of the witnesses were formal in nature and were mostly police officials, apart from the Medical Officer, who conducted the medical examination. PW-3 is Constable Hari Singh. PW-4 is Doctor Roshan Singh Patel, who was a Junior resident at DDU Hospital at the relevant point of time.

He had examined the appellant vide MLC (Ex.PW-4/A). PW-5 is ASI Sri Niwas, the Duty Officer who recorded the FIR (Ex.PW-5/A). PW-6 is HC Parminder Kumar in whose presence, accused Devender was arrested. PW-7 is Shiv Singh, uncle of the complainant, Sunita. PW-8 is ASI Satyawar, the first Investigating Officer. PW-9 is ASI Maharaj Singh, the final Investigating Officer.

4. After conclusion of the prosecution evidence, the statement of the accused persons was recorded under Section 313 of Cr.P.C. whereby they denied the allegations made against them. The accused persons did not adduce any evidence. The learned Additional Sessions Judge, after hearing the arguments, acquitted both the accused persons of the offence committed under Section 307/324/34 IPC. The ground on which the judgment of acquittal was passed was that the learned Additional Sessions Judge, came to the conclusion that the prosecution story was highly doubtful on account of various inconsistencies and improbabilities. Broadly speaking, these improbabilities and inconsistencies which weighed with the learned Additional Sessions Judge for acquitting both the accused persons are as under :-

- (i) The learned Sessions Judge, firstly did not find the testimony of the PW1 complainant/appellant to be trustworthy on the ground that she had lodged the

FIR belatedly after 24 hours. The reasons which were given for the delay in lodging of the FIR were not found to be reasonable and plausible. The appellant had stated that although the incident had taken place on 10.06.2005, but she did not make any statement to the PCR or to the local police because she wanted her father to arrive, it has been stated by the learned Additional Sessions Judge that although the father of the appellant arrived in the morning on 11.06.2005, yet the FIR was lodged by her after a lapse of almost 12 hours which gave considerable time to the appellant to think, deliberate and interpolate and then lodge a report.

- (ii) The story of the appellant that the mother-in-law of the appellant threw a burning match stick on her after pouring the kerosene oil, which landed on her dupatta was considered to be highly improbable. It is stated that when the burning match stick was thrown on her from the front, it should have landed on the front upper portion of the body of the appellant and thus the middle of the dupatta or the shirt of the appellant ought to have got burnt while as the dupatta got burnt only from both the ends. The explanation

purported to have been given by the appellant that as the burning match stick had landed on the dupatta, she immediately threw the same on the floor because of which the other end of the dupatta also got burnt, was not found to be plausible and convincing.

- (iii) The Seizure Memo, according to the appellant, was purported to have been prepared on 10.06.2005 while as it is common record that the various articles by way of kerosene bottle, clothes, etc. were seized on 11.06.2005 itself. Curiously, the said Memo is purported to have been prepared on 11.06.2005. Similarly, Constable Hari Singh had stated that he had gone to the spot on 10.06.2005 and did not accompany the Investigating Officer on 11.06.2005 while as the Seizure Memo which admittedly was prepared on 11.06.2005 bears his signatures which shows that he was present at the time of preparation of Seizure Memo. These facts clearly show that there is some inconsistency between the seizure of the kerosene bottle and the clothes which, according to the appellant, have been seized on 10.06.2005 but the Seizure Memo reflects that they have been actually seized on 11.06.2005. The said inconsistencies are also

appearing with regard to the presence of Constable Hari Singh on 11.06.2005 who states that he was not accompanying the police party on 11.06.2005, yet his signatures are present on the documents dated 11.06.2005.

5. The Site Plan is purported to have been prepared on 11.06.2005 while as the police party is stated to have visited the premises on 10.06.2005. If the police party is stated to have visited the spot on 10.06.2005, then there was absolutely no justification for preparation of the Site Plan on the next date. All these facts and the inconsistencies made the learned Additional Sessions Judge suspicious and doubtful about the prosecution's case so far as the attempt to murder or causing grievous hurt to the appellant in furtherance of the common intention of the accused persons is concerned. Accordingly, they have been acquitted of both these charges.
6. The appellant on being aggrieved by the said judgment preferred the present leave to appeal against the judgment dated 15.04.2010 passed by the learned trial court.
7. I have heard the learned counsel for the appellant with regard to the leave to file the present appeal. It has been contended by the learned counsel for the appellant that the learned trial court has failed to appreciate the evidence adduced by the

appellant in order to bring the guilt of the accused persons home for this serious offence of attempt to murder under Section 307 read with Section 324/34 IPC which essentially was stated to be committed by the respondents on account of appellant's having brought inadequate dowry.

8. It is also contended by the learned counsel for the appellant that the learned trial court has grossly erred in appreciating the facts of the case and applications of law.
9. I have carefully considered the submissions made by the learned counsel for the appellant and have gone through the impugned judgment as well as the record.
10. I find myself unable to accept the contention submitted by the learned counsel for the appellant. In my considered opinion, the learned Additional Sessions judge has rightly found holes in the prosecution story so far as the case of the appellant is concerned with regard to the proof of offence of attempt to murder and causing grievous injury in furtherance of their common intention. Apart from the infirmities and inconsistencies pointed out by the learned Additional Sessions Judge, I feel this is a case which is totally false and frivolous because, it has been set up by the appellant against her in-laws with a view to teach them a lesson. Admittedly, in the instant case, the allegation has been made by the appellant against the respondents that her husband

Devender Singh had poured kerosene on her while as her mother-in-law lit a match stick and threw it on her. The appellant has further stated that the match stick had landed on her dupatta which she threw off on the floor. Even if a person on whom burning match stick has been thrown, throws away the dupatta, still it would not be the end of the matter because admittedly in the instant case, the appellant has stated that her husband had poured kerosene on her. If that be so, as soon as the flame or the burning match stick landed on the dupatta of the appellant, it would have engulfed not only the dupatta, but almost the entire body of the appellant in flames instantaneously. It is common knowledge that if kerosene is thrown on a person or on a thing then within a fraction of a second, in case a burning match stick comes into contact, with any part of the cloth doused in kerosene, the entire object on which the kerosene has been thrown would instantaneously catch the fire. While as in the instant case notwithstanding the fact that kerosene having been poured on the appellant, she very conveniently stated that after the burning match stick landed on her dupatta, she threw it off which is highly improbable and accordingly, belies her story.

11. It is also the case of the appellant that the fire was doused by her brother by pouring water on her. It is common knowledge that kerosene fire cannot be doused by water. It

can only be doused by sand or by wrapping up the object of fire with a blanket etc. Therefore, this plea of the fire having been doused by her brother with the help of water is highly improbable.

12. Another factor which has weighed with the learned Sessions Judge and rightly so, is that although the incident is purported to have taken place on 10.06.2010, yet the conduct of the appellant is neither contemporaneous nor matching with the situation in which she was placed. The appellant admittedly did not raise any alarm or shout for her help which would have been the most natural reaction of a person, if he or she has been set on fire. Not even a single person in the neighbourhood has known about this fact much less testified about the same. Therefore, this also raises doubts regarding the genuineness of the claim of the appellant. The learned Sessions Judge has also discarded the testimony of the witness nos. PW-3, 4, 5 and 6 which clearly shows, that it is a story which has been cooked up by the appellant though it may be in connivance with her brother to teach the respondents a lesson with whom she was apparently having matrimonial dispute.

13. These facts coupled with the observations made by the learned Sessions Judge clearly show that the story of the prosecution is not only highly improbable but also seems to

be full of holes inasmuch as there are not only contradictions and inconsistencies but also a serious doubt about the genuineness and correctness of the allegations levelled by the appellant.

14. In view of the above, I find myself in total agreement with the judgment of the learned Sessions Judge, so far as the acquittal of the accused persons in the instant case is concerned. The guilt of the accused persons admittedly has to be proved beyond reasonable doubt, meaning thereby not even a single fact should be available on record which will be incompatible with the innocence of the accused, which is not the case in hand.
15. For these reasons, I do not find it to be a fit case in which the Court may grant leave to appeal against the judgment dated 15.04.2010 passed by the learned trial court. I accordingly dismiss this leave to appeal as being without any merit.
16. File be consigned to the record room.

**V.K. SHALI, J.**

**APRIL 18, 2011**  
**MA**