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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: September 18, 2014

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CRL.A. 320/2012

GOLU @ PANKAJ @ SANJAY

..... Appellant

Represented by: Mr.S.K.Sharma, Advocate with
Mr.Rahul Sharma and Mr.Puneet
Relan, Advocates

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP
Insp.Kailash Bisht, TI/GK and
Insp.Raman Kumar, P.S.Govindpuri

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Golu @ Pankaj has been convicted by the learned Trial Judge for having burnt Rahul – offence of murder. The judgment is dated January 31, 2012. Vide order on sentence dated February 02, 2012, Golu has been sentenced to undergo imprisonment for life and pay a fine in sum of ₹1,000/-; in default to undergo simple imprisonment for a period of one month.
2. The learned Trial Judge has relied upon the testimony of Kunti PW-3, Rakesh PW-4, Sheru PW-5 and Chanda PW-6 to rest the verdict of guilt against Golu.
3. Case of the prosecution is that Golu along with juvenile co-accused Suraj (who faced trial before the Juvenile Court) had acted in concert to burn Rahul. Whereas Suraj poured kerosene on Rahul, Golu lit the matchstick.
4. Kunti PW-3 is Rahul's sister. Rakesh PW-4 is Rahul's brother-in-

law. Sheru PW-5 is Rahul's brother and Chanda PW-6 is Rahul's mother.

5. None of them claimed to be eye witnesses. All of them claimed to have heard Rahul's dying declaration, or if we may say, contemporaneous utterances of Rahul when he was seen by the four on fire.

6. The place of the occurrence is a slum cluster named Nehru Camp, Govind Puri, Kalka Ji, New Delhi. The four witnesses and Golu @ Pankaj @ Sanjay are related to each other and so is juvenile co-accused Surjan.

7. In the words of Kunti PW-3, on hearing that Rahul was burnt she went to the spot where Rahul was sitting, and what transpired was: *'We saw that my brother Rahul was burning and when we asked how it happened he immediately said "mujhe lambu Sanjay ke ladke Suraj ne jala dala" (I have been burnt by Suraj S/o Lamby Sanjay). My mother took Rahul to the hospital with my brother-in-law Rakesh and I made a call at 100 hundred'*.

8. But relevant would it be to note that as per Kunti, Golu @ Pankaj present in Court was not the Golu referred to by her brother Rahul.

9. In the words of Rakesh PW-4, on hearing that Rahul was burnt he went to the spot where Rahul was sitting, and what transpired was : *'My mother-in-law Chanda had also come to the spot along with my sister-in-law Kunti and my brother-in-law Sheru and lot of other person from the locality had gathered the spot. I along with my mother-in-law Chanda wrapped Rahul in blanket and took Rahul to Safdarjung Hospital in TSR. My mother-in-law on the way had asked Rahul how he got burned and he told that Suraj S/o Sanjay Lambu had poured kerosene oil on him and Golu had lightened him with fire. I can identify the accused Suraj is shown to me (accused Suraj is facing trial before the JJB). The witness has pointed out towards accused Golu present in the court today, however, he says that he*

cannot clarify whether the accused Golu present in the Court is the same Golu who was named by Rahul.'

10. But relevant would it be to note that as per Rakesh, he was not sure whether the Golu referred to by Rahul was Golu @ Pankaj.

11. In the words of Sheru PW-5, on hearing that Rahul was burnt he went to the spot where Rahul was sitting, and what transpired was : *'Suraj had threatened one day prior to the incident, my brother that he will kill him. My brother Rahul had told on the spot itself that he was burned by the son of Sanjay Lambu and Golu had alighted him with fire. I can identify the accused if shown to me'.*

12. But relevant would it be to note that as per Sheru, accused Golu present in Court was not the one named by his brother.

13. In the words of Chanda PW-6, on hearing that Rahul was burnt she went to the spot where Rahul was sitting, and what transpired was : *'I asked my son Rahul how he got burned. He told that Shashi (Tauji of accused Suraj) tied his hand behind and put a cloth in his mouth. Suraj then poured petrol on his body and Golu had lighted the match and burnt him (witness states that accused Golu present today is not the same Golu who was named by her son Rahul.) Then I along with my son-in-law Rakesh took Rahul to Safdarjung Hospital in TSR. On our way to the hospital in the TSR, Rahul again told that he was burnt by Suraj and Golu and Shashi'.*

14. But relevant would it be to note that as per Chanda, the accused Golu present in Court was not the one referred to by her son.

15. Kunti, Rakesh, Sheru and Chanda claimed to have reached the spot where they saw Rahul burnt. All speak in sync that they were present together when they responded to the information received that Rahul was

burnt. As per Kunti, Rahul only said that Suraj had burnt him, as per Rakesh, Rahul said nothing at the spot but on the way in the TSR said that Suraj had poured kerosene oil on him and Golu had set him on fire. As per Sheru, at the spot itself, Rahul said that son of Sanjay Lambu and Golu had set him on fire. As per Chanda, Rahul said at the spot that Shashi had tied his hand behind and put a cloth in his mouth, than Suraj poured petrol on his body and Golu lit the match.

16. In Rahul's MLC Ex.PW-1/A the alleged history of how Rahul received the burn injuries has been disclosed by Chanda and Rakesh, the mother and brother-in-law of Rahul and we find the history recorded in the following words: *'Thermal burn by pouring kerosene oil over his body by Suraj (neighbour) and lighted by Golu (maternal uncle son) outside his house.'*

17. It is thus urged by learned counsel for the State that notwithstanding the four witnesses of the prosecution not supporting the case of the prosecution that appellant Golu, who concededly is the son of Chanda's brother i.e. would be the maternal uncle's son if reference to him is made by Rakesh, would be the one who set Rahul on fire by lighting the matchstick after Suraj doused him with kerosene oil.

18. Kunti PW-3 during cross-examination has said that she saw Golu and Suraj near Rahul when Rahul was burning. It is not unnatural in India for people around together around a victim. Kunti has categorically deposed that at the spot Rahul only said that Suraj had set him on fire. In her cross-examination she has said that Golu was also standing nearby, and so were many others, the locality being a slum where the incident took place. Chanda has given a totally different version as how Rahul caught fire, and

as told by Rahul. Sheru has given a version as told by Rahul differently than Kunti and Chanda. Rakesh has given a fourth version of Rahul not saying anything at the spot, but on the way in the TSR saying that Suraj poured kerosene oil on him and Golu lit the fire.

19. It is settled law that a statement made by a deceased person, which has to be treated as the dying declaration must be without a blemish, and if any doubt arises, benefit has to be given to the accused.

20. As did others, possibility of appellant Golu also gathering, as a part of the crowd, around Rahul cannot be ruled out and he being friendly with Suraj, Rakesh, Sheru and Chanda, albeit with different versions of what they heard being said by Rahul, adding a twist to what Rahul possibly said by implicating appellant Golu. It is possible that the pangs of their conscious compelled them to claim in Court that Golu referred to by Rahul was not the appellant.

21. We are constrained under the circumstances to give the benefit of doubt to the appellant.

22. The appeal is allowed. The judgment and order dated January 31, 2012 for the offence of having murdered Rahul is set aside and so is the order on sentence dated February 02, 2012. Since the appellant is in jail he shall be set free forthwith unless required in some other case.

23. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 18, 2014

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