

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

% *Date of decision: September 22, 2014*

+ **CRL.A. 746/2014**

MAYADEEN

..... Appellant

Represented by: Mr.S.B.Dandapani, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with Inspector
Bijender Singh, PS Maurya
Enclave.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.B.No.1296/2014 (suspension of sentence)

Since we are finally hearing the arguments in the appeal, the application seeking suspension of sentence pending hearing of the appeal, is dismissed as infructuous.

CRL.A. 746/2014

1. Mayadeen is convicted vide the impugned judgment dated November 18, 2013 for the murder of his wife Manju by burning her and directed to undergo imprisonment for life vide order dated November 30, 2013.
2. Learned counsel for Mayadeen submits that the so called dying declarations are not reliable. The son of Mayadeen and Manju, PW-14 Parveen is not an eye-witness. Mayadeen also suffered burn injuries which were inconsistent to his alleged conduct of murdering his wife. The dying

declarations have not been recorded by the SDM in question answer form. Though no defence evidence is led however, the plea of Mayadeen is of false implication. In his explanation under Section 313 Cr.P.C he stated:

“I am innocent. I have been falsely implicated. On the date of incident I was sitting outside my jhuggi. I asked my wife to prepare some sweet for me on which she got annoyed and went inside in the fit of anger. After sometime I heard her cries. I went inside and saw that my wife was on fire. I tried to save her from fire but I could not save her and I also sustained burn injuries on my person. In order to save myself I ran away from the spot. On the next day I was picked up by the police from my house and the case was planted upon me.”

3. Process of law was set into motion on November 29, 2012 at about 8.05 PM on receipt of DD No.27A at PS Maurya Enclave that one lady was burnt by her husband. SI Kuldeep Kumar PW-28 along with Ct.Parveen went to the spot and found that injured Manju had already been taken to BSA Hospital by PCR officials. SI Kuldeep Kumar reached the hospital and collected the MLC of Manju who was declared fit for statement. Thus SI Kuldeep Kumar recorded the statement of Manju, wherein she stated that she was staying with her husband and four children. She had two sons and two daughters. She was working as a labourer and her parental home was at Chhattarpur. On that day she was present at home. Her husband Mayadeen works as a mason and was not going for work for the last one month. He would drink liquor. He fought with her at around 7.00-8.00 PM and thereafter poured kerosene oil and burnt her by lighting a matchstick. First he burnt from near her feet and thereafter lit her Saree. The first three matchsticks did not lit but third lit resulting in fire and thereafter he ran away. He had burn her inside the jhuggi. The children had been sent to the

other jhuggi hence, there was none to help her. Her husband used to abuse her and on that day stated that he would finish her. She shouted and asked for help but nobody helped her. She did not know who doused the fire. On the basis of this statement FIR No.339/2012 was registered under Section 307 IPC.

4. Subsequently, on December 04, 2012 her statement was again recorded by the SDM Ramphal Singh PW-16 wherein she reiterated her version made in the rukka Ex.PW-1/A. According to her she was married to Mayadeen twenty years ago and had four children. He was drunk at that time and she does not know for what reason he was angry, he poured kerosene oil kept in the home and lit her. Mayadeen was not going to work for the last one month and was addicted to liquor. He had quarrelled and beaten her number of times earlier. Her father-in-law, mother-in-law and sister-in-law used to stay in the village and she held Mayadeen responsible for her state. On December 06, 2012 Manju was declared dead by doctor whereafter Section 302 IPC was added to the case.

5. Dr.Vijay Dhankar PW-21 conducted the post mortem of Manju and noticed infected dermo-epidermal burn injuries all over the body except a few patches on the back of chest, abdomen and right upper limb. He exhibited his post mortem report Ex.PW-21/A and in his opinion the death was due to septicaemia consequent to burn injuries. All burns were ante mortem, recently caused before death and may have been sustained by the flames of fire. On Court question Dr.Vijay Dhankar replied that in his opinion keeping in view the nature of injuries involved, the burn injuries were homicidal because normally in suicidal cases, the face is spared by the victim and is not burnt but in the present case the face was totally charred.

6. Thus the case of the prosecution rests on the consistent dying declarations made by the deceased. Nothing could be pointed out by the learned counsel for the appellant to show that the deceased was not in a fit state of mind while being examined by SI Kuldeep Kumar or Shri Ramphal Singh, the SDM.

7. The only objection to the dying declarations made by the deceased to SI Kuldeep Kumar PW-28 and Shri Ramphal Singh, PW-16, the SDM are that they are not in question answer form. A perusal of the dying declaration would show that they are in a language which was natural to the deceased and when the witnesses narrate the incident in their language there is no necessity that it should be stated in question answer form. The issue came up before the Hon'ble Supreme Court in (2003) 2 SCC 473 State of Karnataka vs. Shariff, wherein it was observed:

“22. The other reason given by the High Court is that the dying declaration was not in question-answer form. Very often the deceased is merely asked as to how the incident took place and the statement is recorded in a narrative form. In fact such a statement is more natural and gives the version of the incident as it has been perceived by the victim. The question whether a dying declaration which has not been recorded in question-answer form can be accepted in evidence or not has been considered by this Court on several occasions. In Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517: 1998 SCC (Cri) 1085] it was held as follows: (SCC pp. 521-22, para 9)

It cannot be said that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it

should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon.”

8. The version of the deceased is further corroborated by the contemporaneous documents i.e. the PCR call recorded vide DD No.27A and the testimony of PW-17 Parveen son of Mayadeen and Manju who deposed that on November 29, 2012 at about 7.00-7.15 PM he was on the first floor of the house when he heard noise and quarrel between his father and mother on the ground floor. He reached the ground floor and saw his father Mayadeen abusing his mother Manju and accusing her of having relationship with another person due to which he felt insulted. His father asked him to go upstairs on the first floor. After about 30 minutes he heard the noise of his mother ‘bachao bachao’. When he came down he saw his mother in flames. Many people fathered, someone put water on her and police was called. Thereafter his aunt Bimla changed the burnt clothes of his mother and wrapped her in bed sheet and rushed her to the hospital. Though this witness did not support the prosecution case to the extent of exhortation given by Mayadeen however, his evidence would suggest that

soon before the incident Mayadeen quarrelled with the deceased and directed Parveen to go upstairs whereafter he being alone with his wife, the wife was found to be on flames. The evidence of Parveen that besides Mayadeen and Manju there was none on the ground floor coupled with the sequence of events and the dying declaration unassailably prove that Mayadeen committed the murder of his wife Manju by setting her on fire after pouring kerosene oil.

9. The smell of kerosene was noted by Dr.Meet Kumar PW-12 who declared the deceased fit for making the statement. Even as per the FSL report Ex.PW-10/A traces of kerosene oil were found in the plastic bottle recovered from the spot and the semi burnt charred cloth pieces of the deceased and other burnt clothes.

10. Mayadeen has pleaded that even he received burn injuries which were in consistence with his having burnt his wife. Mayadeen suffered superficial and deep burn over face including ears (left and right), neck anterior surface and left lateral side, right wrist and hand, left arm (Distal half), forearm and hand. There are no burn marks on the palm region of Mayadeen thus apparently the fire injuries are not consistent with his saving the deceased. Further the MLC of Mayadeen Ex.PW-13/A gives history by himself "*being burnt at around 8 PM one day before i.e. 29.11.2012*". It does not state that the injuries were caused while saving the wife.

11. Mayadeen cross-examined both the doctors who deposed that they could not opine whether the injuries could have been accidental, suicidal or had been received while trying to save somebody. Merely because of the presence of injuries on Mayadeen it does not lead to conclusion that he did not commit the offence of murdering his wife. Further the conduct of

Mayadeen running away from the spot which he admitted in his statement under Section 313 Cr.PC is inconsistent with that of innocence.

12. Consequently, while upholding the impugned judgment of conviction dated November 18, 2013 and order on sentence dated November 30, 2013, the appeal is dismissed. The appellant will suffer the remaining sentence.

13. T.C.R. be returned.

14. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 22, 2014
‘vn’