

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

% *Date of Decision: July 15, 2014*

+ **CRL.A. 1272/2010**

SHAILENDER Appellant

Represented by: Ms.Inderjeet Sidhu, Advocate

versus

STATE OF DELHI Respondent

Represented by: Mr.Varun Goswami, APP with
Insp.Sudhir Kumar, PS Bhajanpura

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Charged for having poured kerosene oil on his wife and thereafter setting her on fire in the matrimonial home at the mid-night of the intervening night of 22nd and 23rd April, 2008, thereby causing the death of his wife, vide impugned judgment dated September 06, 2010 the appellant has been convicted for the offence punishable under Section 302 IPC and vide order on sentence dated September 15, 2010 has been sentenced to undergo imprisonment for life and pay fine in sum of ₹10,000/-; in default of payment of fine to undergo SI for six months.

2. To establish its case the prosecution has led evidence of an eye witness Manish Kumar PW-3, the son of the appellant and the deceased. Three dying declarations, first made to Suresh Kumar PW-1, the father of the deceased; the second made to Dr.Rashmi Bhardwaj PW-8 who recorded the MLC Ex.PW-8/A of the deceased; and the third being the statement Ex.PW-26/A made by the deceased to ASI Rajpal Singh PW-26 on basis

whereof the FIR was registered, were pressed into aid and have been proved.

3. Process of law commenced when Ct.Anuradha PW-5, recorded a DD entry, Ex.PW-5/A, at the police control room on 00:30 hours on April 23, 2008 recording that a caller had informed her that at House No.B-73, Bhajanpura a husband and a wife had caught fire. The said information was conveyed to PS Bhajanpura where the Duty Officer, ASI Krishan Dutt PW-11 recorded DD No.29A, Ex.PW-11/A, and informed ASI Rajpal, PW-26 over the telephone of said information and handed over a copy of the DD entry to HC Ravinder Kumar PW-16 with a direction to proceed to the spot and hand over the copy of the DD entry to ASI Rajpal Singh.

4. In the meanwhile, Manju, the wife of the appellant had been removed to Lok Nayak Jai Prakash Narayan Hospital by her father in an ambulance driven by Y.K.Jain PW-14. As recorded in the MLC Ex.PW-8/A, Manju was admitted in the casualty at 01:10 hours on April 23, 2008. She was conscious and oriented. Her pulse was 100 per minute. Dr.Rashmi Bhardwaj PW-8 examined her and noted that the patient was conscious as well as oriented and told her that her husband had set her on fire after putting kerosene over her at their residence.

5. In the cross examination of Dr.Rashmi Bhardwaj she admitted that Manju was accompanied by her father. She denied the suggestion that she did not author the MLC.

6. We simply need to highlight that no serious attempt has been made to discredit the testimony of Dr.Rashmi Bhardwaj concerning what she wrote contemporaneously in the MLC of the deceased. There is no reason to attribute any motive to Dr.Rashmi Bhardwaj to record false facts.

7. Manish Kumar PW-3 the son of the appellant and the deceased has deposed that when he was sleeping in his house he rose from the slumber on

hearing a quarrel between his parents. His father brought a can of kerosene oil from the kitchen and poured the oil on his mother and set her on fire. His mother cried for help but his father gagged her mouth. He came out of the house from the gate near the stairs and rushed to the house of his maternal grandfather and told him said fact. His maternal grandfather accompanied him back.

8. Manish Kumar's paternal grandfather is Suresh Kumar who has deposed as PW-1. As per him his daughter Manju was married to the accused 12 years back. The accused and his wife initially lived happily but after a year or two the accused started harassing his daughter after consuming alcohol. He used to beat his daughter and in the year 2007 his daughter had lodged a complaint with the police.

9. The kalandara Ex.PW-19/A proved by HC Kiran Pal PW-19 establishes a bickering between Manju and the accused.

10. Proceeding ahead with the testimony of Suresh Kumar, he deposed that on the intervening night of April 22, 2008 and April 23, 2008 his grandson Manish came to his house at around 12:15 in the mid-night and told him that his father had burnt his mother. He immediately went to the house of his daughter. His daughter was lying outside in a burnt condition and told him that her husband had set her on fire. Somebody had made a call to the police. An ambulance reached. He took his daughter to LNJP Hospital in the ambulance where she died in the afternoon.

11. ASI Rajpal Singh PW-26 has deposed that he reached House No.B-73 where HC Ravinder Singh met him and he received DD No.29A, Ex.PW-11/A at 12:32. He proceeded to LNJP Hospital and found Manju, wife of Shailender, admitted in Burn Ward No.20. He collected Manju's MLC on which it was endorsed that Manju was fit for statement. He recorded

Manju's statement Ex.PW-2/A and sent the same for FIR to be registered.

12. In the statement Ex.PW-2/A it is recorded that the appellant had set Manju on fire.

13. We find from the record that appellant's MLC was collected by the Investigating Officer and filed along with the challan, but no attempt was made to prove the same. It records appellant suffering superficial to deep burns on his face, left arm and on the lateral side of the left hand. He was brought to the hospital in the same van which was driven by Y.K.Jain PW-14.

14. The site plan Ex.PW-3/A would record that the matrimonial house of the appellant and the deceased had a kitchen, a bedroom, a living room, a bath and a toilet with a utility area where a washing machine was kept. Manju was burnt in the utility area and not the kitchen. There are two exits. One directly on to the street from a main gate in front of the utility area and the other through a side gate which opens on to the street from the toilet-cum-bathroom block and the adjoining staircase.

15. The learned Trial Judge has believed the testimony of Manish Kumar PW-3. The learned Trial Judge has believed the dying declarations made by the deceased.

16. Learned counsel for the appellant had questioned the verdict of guilt and the submissions advanced yesterday before us are:-

(a) The burnt clothes of the deceased though seized were not sent for forensic examination. Counsel urged that if the same were sent for forensic examination and no kerosene oil was detected thereon, evidence exculpatory of the role alleged against the appellant would have surfaced.

(b) Kerosene oil was not detected on the scalp hair of the deceased which were sent for forensic examination after they were preserved by the doctor

who conducted the post-mortem of the deceased. Counsel urged that the same evidences that no kerosene oil was thrown on the deceased.

(c) There was evidence of past acrimonious matrimonial relationship and that PW-3 has been residing with his maternal grandfather and thus could be manipulated by his maternal grandfather.

(d) Munni Devi PW-4, a neighbour who rushed to the house of the deceased when she heard a commotion and saw fire has not deposed that she saw Manish PW-3 walk out of the house. As per her testimony the main gate of the house was locked. Therefrom learned counsel urged that it had to be inferred that Manish did not go to call his maternal grandfather as claimed by him.

(e) Manish's claim of having witnessed his mother being set on fire was negated by the site plan as per which spot 'F' was in the bedroom where Manish was sleeping with his younger brother Ankit. Spot 'A' was the place where Manju was set on fire. It was the utility area. A person at spot 'F' could not see spot 'A'.

17. In his statement under Section 313 Cr.P.C. the appellant admitted a kalandara being registered against him. He denied harassing Manju. He denied beating her but admitted that he used to drink, but occasionally. He admitted being present in the house when Manju caught fire. But how? We note in his own words by re-producing what he said by way of his explanation. It reads as under:-

"I did not set on fire my wife after pouring kerosene oil upon her. The fire was accidental fire as on the said date, my wife prepared the food on a electric heater and I and my wife had taken the dinner. At that time there was no electricity and hence we forgot to switch off the heater and we went to bed without turning it off. When were sleeping electricity came and heater became on and due to this curtain caught fire and fire spread in the house and due to this my wife sustained burn

injuries. I also sustained burn injuries in the said accidental fire.”

18. The explanation given by the appellant as to how his wife caught fire is patently false.

19. As noted by us above, the place where Manju caught fire is the utility area in the house where a washing machine was kept. The photographs and in particular the photograph Ex.PW-17/1 shows the washing machine in a partly burnt condition. As per the site plan, the house had a kitchen which was adjacent to the bedroom and in front of the kitchen was the utility area. The heater for cooking food would obviously be in the kitchen and not in the utility area. The explanation by the appellant that after his wife prepared food on the electrical heater the electricity went off and hence they forgot to switch off the heater and went to bed and that when they were sleeping electricity came and the heater started heating and probably a curtain caught fire which spread in the house due to which his wife sustained burn injuries and hence it is a case of accidental fire is unbelievable. Further, we find no suggestion given to the Investigating Officer that a heater was lying in the utility area which was not seized deliberately by the Investigating Officer.

20. No kerosene stove has been seized. No suggestion has been given to the Investigating Officer that he had seen a kerosene stove which he deliberately did not seize. The seizure memo Ex.PW-18/A records the burnt clothes of Manju, a can of kerosene oil, a matchbox and a burnt matchstick being seized from the spot.

21. If appellant's explanation as to how his wife caught fire is opined to be untrustworthy, that by itself would be sufficient to nail the guilt of the appellant.

22. But, in this case we have more incriminating evidence. Firstly there

being no seizure of a kerosene stove from the house and the admitted implement to cook the food being a heater, it assumes significance that kerosene oil can was found in the house. Further, if a house has a kitchen as well as a utility area, cooking would be done in the kitchen and not in the utility area. Appellant's version that his wife caught fire when the coil of the heater heated is unbelievable for the reason the heater could not be in the utility area. That kerosene oil was used is proved from the post mortem report Ex.PW-7/A of the deceased which has been proved by its author Dr.Jatin PW-7, wherein it is recorded that soot particles were embedded in tracheal mucosa. This shows that kerosene oil was the flammable liquid used. It is unfortunate that the burnt clothes of the deceased though seized by the Investigating Officer were not sent for forensic examination, but it is settled law that a lapse during investigation, unless fatal to the case of the prosecution, cannot be used to belittle other credible evidence led by the prosecution. That kerosene oil was not detected on the scalp hair of the deceased is neither here nor there for the reason there is no presumption in law that whenever an assailant pours kerosene oil on the victim the kerosene oil has to be poured on the head.

23. It is true that there is evidence of past acrimony between the appellant and his wife, but that would not mean that from said fact itself a motive has to be inferred against appellant's wife. The fact that there was past acrimony between the two would be indicative of the fact that in a fit of rage, the appellant set his wife on fire and for which finding we once again re-emphasize the false explanation given by the appellant as to how his wife caught fire.

24. Muni Devi PW-4 may have said that when she came out of her house on hearing the commotion the house was locked, but that would not mean

that in view of said statement made by her, Manish – the son of the appellant and the deceased could not have gone to call his grandfather. We have already noted that the site plan Ex.PW-3/A shows that there are two entries into the house. One from the main gate and the other from the side next to the staircase and the toilet block. Thus, Manish could have exited the house from the side gate. Besides, Suresh Kumar, the father of the deceased has deposed on oath that it was Manish who came to his house and told him of what had happened. That Suresh Kumar reached the house of the deceased and accompanied her to the hospital has not been challenged by the appellant. Thus, Suresh Kumar's statement that it was Manish who summoned him to his house cannot be disbelieved.

25. The totality of the evidence compels us to accord our approval to the view taken by the learned trial judge.

26. The appeal is dismissed.

27. Since the appellant is in custody we direct the Registry to send two copies of our decision to the Superintendent, Central Jail, Tihar. One for the jail record and the other to be supplied to the appellant.

28. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 15, 2014

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