

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

Judgment Reserved on: August 27, 2014

% *Judgment Delivered on: September 01, 2014*

+ **CRL.A. 810/2009**

SANDEEP

..... Appellant

Represented by: Mr.G.P.Thareja and Mr.Pawan
K.Bahl, Advocates.

versus

STATE N.C.T. OF DELHI

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Chattar
Singh, ATO/Ng.

AND

+ **CRL.A. 833/2009**

DILBAGH SINGH

..... Appellant

Represented by: Mr.G.P.Thareja and Mr.Pawan
K.Bahl, Advocates.

versus

STATE N.C.T. OF DELHI

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Chattar
Singh, ATO/Ng.

AND

+ **CRL.A. 834/2009**

PRADEEP KUMAR

..... Appellant

Represented by: Mr.G.P.Thareja and Mr.Pawan
K.Bahl, Advocates.

versus

STATE N.C.T. OF DELHI

..... Respondent
Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Chattar
Singh, ATO/Ng.

AND

+

CRL.A. 1029/2014

STATE

..... Appellant
Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector Chattar
Singh, ATO/Ng.

versus

KRISHNA

..... Respondent
Represented by: Mr.G.P.Thareja and Mr.Pawan
K.Bahl, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The present appeals arise pursuant to trials in FIR No.720/2006 registered at PS Najafgarh relating to the death of Praveen Kumari.
2. Pradeep Kumar is the husband of the deceased, Dilbagh Singh, her father-in-law and Sandeep, her brother-in-law who have been convicted for offence punishable under Sections 302/34 IPC in Sessions Case No.107/2008 and vide order dated September 30, 2009 directed to undergo imprisonment for life and to pay a fine of ₹50,000/- each which, if realised, has to be given to the parents of the deceased in equal proportion. Since Krishna, mother-in-law of the deceased could not be arrested initially she was declared a proclaimed offender. She was finally arrested on May 23, 2011 when supplementary charge sheet was filed and she was tried in

Sessions Case No.96/2011 re-numbered as Sessions Case No.6/2012. She has been acquitted by the learned Sessions Judge for offence under Sections 302/34 IPC however, convicted for offence under Section 174A IPC and has been released on the period already undergone and to pay a fine of ₹3,000/- in addition. It may also be noted that Dilbagh Singh, Pradeep Kumar and Sandeep were also charged for offences punishable under Sections 498A/304B/34 IPC however, they have been acquitted of the said charges and no leave to appeal has been sought by the State against the said acquittal.

3. The learned Additional Sessions Judge acquitted Krishna also for the offence punishable under Sections 498A/304B/34 IPC on the ground that the co-accused Dilbagh Singh, Pradeep Kumar and Sandeep have been acquitted so she was entitled to parity.

4. Before adverting to the facts it would be appropriate to note that during the trial in Sessions Case No.107/2008 relating to Dilbagh Singh, Praveen Kumar and Sandeep 21 prosecution witnesses were examined and the defence examined no witness. In Sessions Case No.6/2012 the examination-in-chief of the witness recorded in Sessions Case No.107/2008 was tendered and the 21 witnesses were permitted to be cross-examined by Krishna. Further two more witnesses PW-19 SI Yogender Kumar and PW-20 W/Constable Raj Bala relating to the arrest and filing of the supplementary charge sheet qua Krishna were examined. In addition in Sessions Case No.6/2012 the defence examined ten witnesses.

5. The investigation in the matter was set into motion on receipt of an information on July 23, 2006 recorded vide DD No.24A at PS Najafgarh that a fire had broken out in Gali No.3, Behind Lal Kothi, Surakhpur Road, near

Baba Amar Nath Mandir, Gopal Nagar. SI Amar Pal along with Constable Baljit Singh reached the spot where they came to know that at House No.RZ-200 Gopal Nagar, Phase-II, Praveen Kumari wife of Pradeep Kumar sustained burn injuries in the bathroom and she has already shifted to the hospital. In the casualty of RTRM Hospital Praveen Kumari was brought dead and her MLC was prepared by Dr.Shankar Verma PW-11 and exhibited as Ex.PW-11/A. The MLC notes that Praveen Kumari had been brought to the hospital on July 23, 2006 at 14.10 PM by Dilbagh Singh, father-in-law.

6. The bone of contention in the present case is whether the death of the deceased was a suicide or homicide, but before dealing with the post-mortem report we would like to first note the statements of the relevant witnesses in short.

7. FIR No.720/2006 was lodged on the statement of Dilawar Singh PW-10 who stated that he was the father of Praveen Kumari and in reply to question as to what he had to state about Praveen he stated that there was a demand of dowry by the in-laws. The demand started after one year of the marriage and that his daughter had not committed suicide but she has been burnt alive because he could not fulfil the demand of the in-laws i.e. earrings for the mother-in-law, gold chain for the sister-in-law, computer for brother-in-law and food grains for the father-in-law. Dilawar Singh when appeared in the witness box stated that whenever the deceased visited their house she told them that she was being harassed by her in-laws on account of demand of dowry. Though he made her understand however, the behaviour of the accused persons did not change as they were expecting huge dowry because both the parents of the deceased were teachers. He further stated that

whenever they used to go to her matrimonial home on festivals the accused persons used to insult and abuse them. He reiterated that the accused used to demand four articles from her i.e. earrings for the mother-in-law, gold chain for the sister-in-law, computer for brother-in-law and food grains for the father-in-law. In cross-examination he admitted that the deceased had no issue and was getting no treatment for conception.

8. Roopwati PW-5 the mother of the deceased also deposed in sync with her husband and she was confronted with her earlier statement Ex.PW-5/A wherein the fact that her daughter used to complain her for not bringing the gold chain and earrings was not mentioned.

9. Munshi Ram PW-8 the uncle of the deceased stated that the deceased was not allowed by her in-laws to visit his house and according to him Dilbagh demanded three articles i.e. computer, earrings and golden chain which his brother had not given.

10. The marriage between the deceased and Pradeep was performed on April 04, 2004 and the deceased died an unnatural death on July 23, 2006. The statements made by the parents and uncle were general in nature and the same do not reflect that soon before the death the deceased was subjected to cruelty for demand of dowry. Further since no specific instance of cruelty was proved on record the learned Additional Sessions Judge in Sessions Case No.107/2008 acquitted Dilbagh Singh, Pradeep Kumar and Sandeep for offence punishable under Sections 498A and 304B IPC.

11. As regards Krishna who has also been acquitted for offence under Sections 498A/304B IPC on the ground of parity we find no illegality as neither any specific incident of harassment has been proved nor it has been proved that soon before the death the deceased was subjected to cruelty for

demand of dowry. Further as regards Krishna, it may be noted that none of the witnesses in their statement specifically states that Krishna demanded any particular item or that she harassed the deceased soon before her death for demand of dowry.

12. Coming to the alternative charge under Section 302 IPC it has to be determined whether the prosecution has been able to prove beyond reasonable doubt that the death of the deceased was homicidal and was caused by the Dilbagh Singh, Pradeep, Sandeep and Krishna. Unlike the offence punishable under Section 304B IPC no presumption is available for offence punishable under Section 302 IPC and the onus is entirely on the prosecution to prove that Dilbagh Singh, Pradeep Kumar, Sandeep and Krishna caused the homicidal death of the deceased in furtherance to their common intention.

13. Dr.Deepak Mathur PW-4 who conducted the post-mortem of the deceased in Sessions Case No.107/2008 exhibited his report vide Ex.PW-4/A and it would be relevant to note his testimony in entirety:

“On SA

On 24.7.06 I conducted the post-mortem on the body of Smt.Praveen daughter of Dilawar Singh, 24 years female. On examination one lemonish coloured blood stained cloth was recovered from the mouth and throat of the deceased measuring 53 cm x 20 cm. posteriorly and occluding the pharyngeal lumen.

Externally body was seen in pugilistic attitude with epidermal to dermal burns with peeling of skin at various places all over with redness at the base of peeled off skin, red line of demarcation seen between burnt and healthy area involving whole body except a transverse segment over mid

breasts bilaterally, lower one fourth anterior abdomen upper right side back of right shoulder, entire posterior scalp.

Both the palms and soles show similar burn injury.

Burn injury involving entire anterior scalp, anterior and lateral neck surfaces completely charred. No redness or red line suggesting post-mortem nature of injury.

Total burn surface area approximately 90%.

Internally stomach was found to contain liquid about 50 ML with mucosa healthy. Neck, pharyngeal lumen seen occluded by a cloth extending into the oral cavity. Lungs were congested and brain showed petechial haemorrhages on cut section. Rest of the examination was normal. Time since death was found to be approximately 24 to 28 hours and the cause of death was asphyxia with super added shock following gagging with ante mortem burn injuries.

My detail post-mortem report is Ex.PW4/A which bear my signature.

XXXX By Sh B S Rana, counsel for all the accused.

Nil opportunity given.”

14. This witness was recalled for cross-examination pursuant to an order passed by this Court in CrI.Appeal No.833/2009 when the matter was remanded back and in cross-examination on behalf of Sandeep, Pradeep and Dilbagh Singh he stated as under:

“On SA

XXXXX by Sh G.P.Thareja, Id. Counsel for accused Sandeep, Pardeep and Dilbagh.

It is correct that if kerosene oil is burnt, carbon mono oxide, carbon dioxide and other hydro carbons are emitted. It is correct that molecular weight of oxygen is 32 and of carbon mono oxide is 28. It is correct that carbon mono oxide competes with oxygen for the haemoglobin and has much higher affinity than oxygen. It is also correct that the affinity of the carbon mono oxide is 300 times more than oxygen. It is correct that the low tension of carbon dioxide in respired air displace the normal oxygen load from erythrocyte. It is correct that due to the deficiency of oxygen oral cavity enlarges. It is possible that due to the deficiency of oxygen then gagging substance in the mouth slips down in the cavity. It is correct that medical jurisprudence and toxicology by Modi is an authority in medical jurisprudence. It is correct that some people put a cloth before committing suicide with a view to stifle a cry. It is correct that Modi jurisprudence also expresses same view. It is correct that red lines of demarcation are observed if there are ante mortem injuries on the dead body. It is correct that when kerosene is used on dead body it usually produces diffused superficial bullae with characteristic smell. It is correct that there occurs air hunger when oxygen is deficient. It is likely due to air hunger gagging substance may get blood stains. It is correct that if the size of room is 6 x 5 feet like that of bathroom and the room is bolted from inside then due to emission of carbon mono oxide on the burning of kerosene death may occur in few minutes. It is correct that there is possibility of suicide by the deceased in this case. It is correct that carbon particles were found in nasopharynx only. It indicates that burns were ante mortem in nature and respiratory system was on. The carbon particles were there in the anterior tooth, mouth upto nasopharynx. It is correct that there is possibility of injuries on lips, chin and forehead caused by nails in case of a person is forcibly gagged by a cloth in the mouth. It is correct that there was no visible injuries on the body of deceased on lips, chin and forehead. It is possible for the accused to suffer burn injuries at least on his hands in case of forcible burning of a person with the aid

of kerosene oil in case the accused happens to be nearby the person who has been put to flames.

“On SA

XXX by Sh R.K. Gurjar, Ld. Addl. PP for State

Q. I put it to you that being a doctor you can only say about the condition of dead body and depose regarding the factum of cloth being found inside her mouth and the condition and position of said cloth but you can not say whether the cloth was placed in the mouth of deceased or was pushed inside forcibly?

Ans. It is correct that I can not say.

Q. I put it to you that you had given the opinion suggesting deceased dying due to suicide but I put it to you that there was a possibility of forcibly inserting the cloth in the mouth of deceased by some other person?

Ans. The possibility of some person forcibly inserting the cloth in the mouth of deceased can not be ruled out?

Q. Is it possible for a person to commit suicide by pouring kerosene over himself/herself when a cloth has been forcibly inserted deep inside the mouth of the said person?

Ans. If the cloth is deep inside the mouth near the throat right from the beginning then the said person is not in a position to commit suicide by pouring kerosene over himself/herself.

XXXXXX by Sh G.P. Thareja, Ld. Counsel for accused.

It is possible that deceased will have some injury on the accessible portion (front portion near the gums and tongue and the area around it) of the inside portion of the mouth in case of forcible insertion of cloth in his mouth. Since

I was not the eye witness of the incident, therefore I can not say whether cloth was forcibly inserted in the mouth of deceased or not.

Q. Is it correct that in case of extreme insertion of cloth till the neck the possibility of death before burning is there?

Ans. It is possible that person having a cloth deep inside his mouth till neck will die within 2-3 minutes due to asphyxia or suffocation.

It is correct that even if a person dies due to burn then also if injuries are present inside the mouth, the same will be noticed during the course of post-mortem examination. It is correct that no injuries were noted inside the mouth of deceased in the post-mortem examination.

Q. Is it correct that if cloth is kept by the deceased in the mouth and she commits suicide by burning, due to hunger of oxygen, cloth will automatically slip towards the neck?

Ans. It is correct."

15. This witness again appeared as PW-5 in Sessions Case No.6/2012 when he was cross-examined by the learned counsel on behalf of Krishna as under:

"On S.A.

Examination of chief of this witness recorded on 12.07.2007 in Sessions Trial No.107/08 is adopted. The Postmortem report already Ex.PW4/A is now Ex.PW5/A bearing my signature at point A. (witness is tendered for cross examination)

xxxxxxx by Shri G P Thareja, Ld. Counsel for the accused.

It is correct that if kerosene oil is burnt, carbon mono oxide, carbon dioxide and other hydro carbons are emitted. It is correct that molecular weight of oxygen is 32 and of carbon mono oxide is 28. It is correct that carbon mono oxide competes with oxygen for the haemoglobin and has much higher affinity than oxygen. It is also correct that the affinity of the carbon mono oxide is 300 times more than oxygen. It is correct that the low tension of carbon dioxide in respired air displace the normal oxygen load from erythrocyte. It is correct that due to the deficiency of oxygen oral cavity enlarges. It is possible that due to the deficiency of oxygen then gagging substance in the mouth slips down in the cavity. It is correct that medical jurisprudence and toxicology by Modi is an authority in medical jurisprudence. It is correct that some people put a cloth before committing suicide with a view to stifle a cry. It is correct that Modi jurisprudence also expresses same view. It is correct that red lines of demarcation are observed if there are ante mortem injuries on the dead body. It is correct that when kerosene is used on dead body it usually produces the diffused superficial bullae with characteristic smell. It is correct that there occurs air hunger when oxygen is deficient. It is likely that due to air hunger gagging substance may get blood stains. It is correct that if the size of room is 6 x 5 feets like that of bathroom and the room is bolted from inside then due to emission of carbon mono oxide on the burning of kerosene death may occur in few minutes. It is correct that there is possibility of suicide by the deceased in this case. It is correct that carbon particles were found in nasopharynx only. It indicates that burns were ante mortem in nature and respiratory system was on. The carbon particles were there in the anterior tooth, mouth uptill nasopharynx.”

16. The prosecution case rests on circumstantial evidence. There is no eye-witness to the incident. Thus, two important pieces of evidence which would enable this Court to determine whether the deceased committed

suicide or died a homicidal death would be evidence of post-mortem doctor and the place of incident i.e. the bathroom where the deceased was allegedly stated to be set ablaze.

17. Dr.Deepak Mathur has opined the cause of death to be asphyxia with super added shock following gagging with ante mortem burn injuries. As noted in the testimony of Dr.Deepak Mathur, from the mouth and throat of the deceased one lemonish coloured blood stained cloth was recovered. Pharyngeal lunen was seen occluded by a cloth extending into the oral cavity. In cross-examination, Dr.Deepak Mathur deposed that it was correct that some people put a cloth before committing suicide with a view to stifle the cry and the said view was also expressed in Modi's jurisprudence. He also deposed that it was possible that due to deficiency of oxygen the gagging substance in the mouth slips down in the cavity. He also deposed that it was correct that if the size of the room which is 6 X 5 feet like the bathroom and the same was bolted from inside then due to emission of carbon mono oxide on the burning of kerosene death may occur in few minutes. He also deposed that carbon particles were found in nasopharynx only i.e. in the anterior tooth, mouth upto nasopharynx. On the basis of the material before him he stated that there was possibility of the suicide by the deceased in this case. In Sessions case No.6/2012, he deposed that due to deficiency of oxygen oral cavity enlarges and then gagging substance in the mouth slips down in the cavity. Thus, according to Dr.Deepak Mathur, the post-mortem doctor the possibility of suicide cannot be ruled out.

18. It would now be relevant to note the testimony of witnesses with regard to the position of the bath room. None of the witnesses in their examination-in-chief have stated whether the deceased when set ablaze, the

door of the bathroom was bolted from inside or not, which would throw light on whether the deceased committed suicide or died a homicidal death.

19. Constable Baljit Singh PW-3 reached the spot along with Constable Ram Niwas on receipt of wireless message at the place of incident where SI Amar and Constable Ravinder were also present. This witness has not stated anything about the door of the bathroom. Nothing has been elicited from the cross-examination of this witness in the first trial. However, in Sessions case No. 6/2012 when he appeared as PW-2 in cross-examination, he stated that he had remained at the spot about 3½ hours and had seen the place of incident i.e. bathroom. The door of the bathroom was burnt and it was blacken from the rear side. He further stated that he could not say whether the blackening was due to smoke or by burning.

20. SI Udham Singh, PW-12 is the photographer incharge of the crime team, who exhibited the crime team report as Ex.PW-12/A. In the crime team report, there is no mention whether the door was closed or broken open or whether any latch was lying nearby though the place of occurrence has been noted as bathroom at RZ-200, Gopal Nagar-2, Surkhpur Road, Najafgarh. No cross-examination of this witness was done in the first trial. However, when he appeared for cross-examination in Sessions Case No.6/2012 he deposed that he minutely inspected the bathroom. As per his inspection, he did not reach the conclusion that the fire was set after closing the door of bathroom from inside. He however, agreed that the door of the bathroom was blackened from inside. He did not remember whether he had observed whether the bolt of the door was broken from inside or not.

21. HC Ajit Singh, PW-13 was also the member of the crime team, who had taken the photographs and exhibited the same along with their negatives

Ex.PW-13/P1 to P7 and positives as Ex.PW-13/P8 to P14. Again this witness was not cross-examined in the first trial. When he appeared in the Sessions Case No.6/2012 he stated that he took photographs as per the directions of the Investigating Officer SI Amar Pal who remained present at the spot. He had observed the bathroom of which he had taken the photographs, however he did not recollect whether bathroom door was wooden and the same had turned black from inside due to fire. He also did not recollect whether the latch of the bathroom door was broken. He volunteered that the door was already opened when he reached at the spot.

22. PW-20 SI Amar Pal Singh, the initial Investigating Officer, who reached the spot, stated that on reaching the spot, he got to know that Parveen Kumari had got burnt due to fire and was taken to hospital by her father-in-law Dilbagh Singh. He went to the hospital, collected the MLC and then came back to the spot after intimating to the senior police offices and the SDM. He stated that he got the spot inspected and photographs were taken. On the directions of the SDM, he collected half-burnt sari, a left-foot bathroom slipper, matchbox, which was lying in the bathroom, a plastic can in which some kerosene oil was there, broken pieces of bangles lying on the floor of the bathroom and seized and sealed the same vide Ex.PW3/A. Nothing has been elicited from this witness in the first trial. In cross-examination in Sessions Case No.6/2012 he has stated that he inspected the bathroom where the incident had taken place. He did not notice whether the latch of the door of the bathroom was broken from inside or not.

23. Similarly PW-21 Constable Ram Niwas, who had reached the spot immediately, stated that at the spot he noticed that the walls of the bathroom were blackish due to some fire, some burnt clothes were lying there, the

door was found in burnt condition and some broken bangles were lying at the floor of the bathroom. He also noted the match box lying on the washing machine and a plastic can in melted condition out of which there was a smell of kerosene. Again nothing has been elicited from this witness in cross-examination during first trial. In cross-examination in Sessions Case No.6/2012 this witness has admitted that the door of the bathroom had turned black due to smoke from inside but it was clean from outside. He also stated that the match box was lying on the washing machine in the said bathroom and there were half burnt clothes and broken pieces of bangles, half burnt chappal of left foot, half burnt plastic cane and one match box lying in the bath room.

24. From the evidence of all these witnesses, the facts which emerge are that the incident took place in the bathroom when the door was closed as the inner side of the bathroom had been burnt. A perusal of the photographs and the site plan would show that the size of the bathroom was not one which would have accommodated as many as 5 persons i.e. 4 accused and the deceased. The said bathroom had a washing machine, plastic buckets, soap cases etc. lying there. From the photographs and testimony of witnesses the fact that all the four accused in furtherance of their common intention committed the murder of the deceased in the bathroom is ruled out. Further from the version of Dr.Deepak Mathur the possibility of the deceased committing suicide is not ruled out.

25. It is well settled that when two views are possible, the view in favour of the accused has to be adopted. Thus there is no evidence on record to base the conviction of Dilbagh Singh, Pradeep and Sandeep for offence punishable under Sections 302/34 IPC and the learned Additional Sessions

Judge in Sessions Case No.6/2012 rightly acquitted Krishna for the charge under Section 302/34 IPC. As noted above, no charge for offence under Section 306/34 IPC was framed against the accused nor is there any evidence on record that any act of the accused abetted the deceased to commit suicide which abetment had a proximate and live link with the death of the deceased.

26. Consequently, the conviction of Dilbagh Singh, Pradeep Kumar and Sandeep for offence punishable under Sections 302/34 IPC is set aside. Sandeep is on bail. His bail bond and surety bond are discharged. Dilbagh Singh and Pradeep Kumar are in custody. Superintendent, Tihar jail is directed to release them forthwith, if not required in any other case.

27. CrI.As.810/2009, 833/2009 and 834/2009 are disposed of. As regards CrI.A.1029/2014, the acquittal of Krishna is upheld and the appeal is accordingly dismissed.

28. TCR be sent back forthwith.

29. Copies of the judgment be sent to Superintendent, Tihar Jail for compliance and record.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 01, 2014
‘vn’/v mittal