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

Date of Judgment: 05 October, 2016

+ Crl.A. No.721/2000
KRISHAN KUMAR

..... Petitioner

Through: Mr. Sumeet Verma, Advocate

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

J U D G M E N T

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05.10.2016

GITA MITTAL, J. (ORAL)

1. We have heard learned counsel for the parties in the instant appeal whereby challenge is made to the judgment dated 21.09.2000 passed in SC Case No.87/2/97, which arises out of FIR No.233/94, registered under Section 498A/302/34 of IPC, at Police Station Narela.

2. By the impugned judgment, the appellant – Krishan Kumar stands convicted for commission of offence punishable under Section

498-A read with Section 302 of IPC. By the same judgment, the Trial

Court has acquitted the appellant's mother—Smt. Shanti Devi and sister Smt. Murti Devi from the charges under Section 498-A read with Section 34 of IPC, with which they were charged.

By the consequential order on sentence dated 25.09.2000, the learned Additional Sessions Judge has awarded the sentence of life imprisonment to the appellant and imposed fine of Rs.2,000/- and in default of payment of fine, he was directed to undergo simple imprisonment for further period of six months for commission of the offence under Section 302 IPC. For the offence under Section 498-A, the appellant stands sentenced to undergo rigorous imprisonment for 3 years and also to pay fine of Rs.2,000 and in default of payment of fine, to undergo simple imprisonment for six months. The sentences were directed to run concurrently.

3. We first note certain basic facts which have been established in the evidence before the Trial Court.

4. Marriage between the appellant – Krishan Kumar and Smt. Vidya daughter of Shri Ram Krishan (PW-4) was solemnized on 7th May 1989. From their marriage, the appellant and Vidya were blessed

with one son who was born in the year 1990.

5. So far as in-laws are concerned, the appellant's family consisted of his father – Nathu Ram, his mother – Shanti Devi and sister – Murti Devi, who were all residing in the village Pooth Khurd in Delhi.

6. On 18th August 1994, telephonic information was received by the police post Bawana under the Police Station Narela at about 1.40 AM from Constable Balbir Singh posted at JPN Hospital Delhi that Smt. Vidya wife of Krishan Kumar had been admitted in a burned condition in the hospital by her brother-in-law (*Jeth*) – Ram Kumar. Information was given by Constable Balbir Singh (PW-13) and was logged as DD-9 in the *Roznamcha* and handed over to ASI Harpal Singh (PW-12) for further proceedings.

7. We have been carefully taken through the record by Mr. Sumeet Verma, learned counsel for the appellant and Mr. Varun Goswami, learned Additional Public Prosecutor for the State. The patient – Vidya was brought to the hospital by Sh. Ram Kumar son of Suraj Bhan who had described himself as Jeth (brother-in-law). She was examined in the hospital at 11.25 AM. So far as the admission of the

patient is concerned, we can usefully refer to the testimony of Dr. Sushil Gupta (PW-8), who had first examined her and recorded the MLC No.74957. Dr. Sushil Gupta (PW-8) has endorsed on the MLC form that the patient had herself given the history of the injuries.

We extract hereunder the relevant portion of the history recorded by Dr. Sushil Gupta (PW-8) at the behest of the patient:

*“Alleged history as given to me by patient herself is that patient was **doing kitchen work on stove when there was sudden flare of flame and she got burnt – today morning**. Patient was taken to Hindu Rao Hospital, OPD Card No.22152 of Dr. A.K. Chaturvedi, and from where patient was advised to go to LNJP Hospital but nothing written on card.”*

(Emphasis by us)

8. It is also important to note that Dr. Sushil Gupta (PW-8) had made the following observations so far as the physical and mental status of the patient was concerned, the same is extracted below:

O/E – Pt. Fully conscious, well oriented.

Pulse 92/ml

Burns on chest and back and neck.

Approx. 40% Inpt. Burns.”

9. Dr. Sushil Gupta (PW-8) had declared the patient fit to make

statement even at about 8.00 PM. Surprisingly, only the endorsement of fitness has been got proved in evidence and has been exhibited as Ex. PW-8/A.

10. The prosecution has examined SI Harpal Singh as PW-12 who in his deposition has stated that he had proceeded to the LNJP Hospital accompanied by Constable Rajesh Kumar, and found Vidya Devi admitted in the hospital. He had collected her MLC and also claims to have informed Shri S.S. Sidhu, (PW-6) SDM, Kingsway Camp for recording her statement. The prosecution has placed strong reliance on the statement attributed to Vidya as having been recorded by the SDM Shri S.S. Sidhu on the night of 18th August 1994 at 8.15 PM, which is exhibited as Ex. PW-6/A.

11. Sh.Sidhu (PW-6) made his endorsement on the statement directing the concerned SHO, Police Station Narela to register the case against the husband – Krishan Kumar, mother-in-law – Smt. Shanti Devi and sister-in-law (nanad) – Murti Devi under the relevant provisions of the law. The endorsement stands exhibited as Ex. PW-6/B while the statement of the deceased has been exhibited as Ex. PW-

6/A.

12. The SDM had noted that he had interacted with Vidya on her bed and recorded her statement for the reasons that the hands were burnt and it was not possible to put her thumb impression that she had put her left foot thumb impression to mark the statement.

13. Thereafter, SI Harpal Singh (PW-12) made an endorsement (Ex. PW-12/A) and sent the rukka to the Police Station to Constable Rajesh Kumar for registration of the case. FIR No. 233/94 was registered by the Police Station Narela, under Section 307/498-A/34 of the Indian Penal Code. Copy of the FIR was handed over to SI Harpal Singh (PW-12) by Constable Rajesh Kumar alongwith original Rukka.

14. SI Harpal Singh (PW-12) inspected the place of occurrence; got the same photographed and prepared the site plan (Ex. PW-12/B) with correct marginal notes.

15. At the spot, SI Harpal Singh (PW-12) claims to have lifted one kerosene stove containing some kerosene oil, partly burnt clothes and match box alongwith burnt and unburnt match sticks. These articles

were sealed separately in three parcels with the seals of 'HS' and taken into possession vide memo (Ex. PW-12/B). This case property was deposited in the *Malkhana* with the seal intact.

16. The appellant – Krishan Kumar was arrested and his personal search was taken vide Memo (Ex. PW-5/A). SI Harpal Singh (PW-12) also recorded the statement of the photographer Narender Kumar and other statements under Section 161 of Cr. P.C.

17. On 19.08.1994, SI Harpal Singh (PW-12), the Investigation Officer called Shri Ram Krishan father of the injured and recorded his statement under Section 161 of Cr. P.C.

18. The mother of the appellant – Shandi Devi and his sister – Murti Devi were arrested on 20th August 1994 and their personal search was effected vide Memos Ex. PW-12/C and PW-12/D respectively.

19. Unfortunately, Vidya succumbed to her burns and expired on 22.08.1994 in the hospital. Information of her demise was conveyed at 1.05 AM by the duty constable posted at the hospital to the Police Station Narela. The information was reduced into writing by Duty

Officer HC Jai Pal Singh (PW-2) and was logged at DD No.26B (Ex. PW-2/A).

20. Inquest proceedings were conducted on 23.08.1994 by the SDM and the dead body was sent for post-mortem. The post mortem was conducted by Dr. S.K. Khanna (PW-9) on 23.08.1994 at 2.45 PM and the report (Ex. PW-9/A) was handed over to SI Harpal Singh (PW-12) alongwith sealed parcel containing seal of M.A.M. College, Forensic Medicine alongwith a sample seal which was handed over to Duty Officer and taken into possession vide memo Ex. PW-12/E.

21. As per the report in the post mortem, Dr. S.K. Khanna (PW-9) had found the following injuries on the body of the deceased: -

“Infected superficial to deep burns on the face, neck, front and back of trunk, both upper limbs (few patches). Area of the body involved in burns was about 60%. There was yellowish-green pus present on the surface of the burns at most places.

1. Two surgical wound one each on inner party of both the anchors.

Internal Examination:

The stomach contained about 300 ml of partly digested food. The liver, the spleen, the kidneys, the lungs and the brain were congested no abnormality was found

in other organs.”

22. The doctor had opined the cause of death is due to toxemia consequent upon burns. The burns were opined to be ante-mortem in nature, about 3 to 5 days old and were caused by fire. A sample of scalp hair was preserved for detection of kerosene oil which was sealed and handed over to the police.

23. On 14th November 1994, Constable Dharamvir Singh (PW-10) collected five sealed pullandas of the case alongwith Form CFSL from HC Mahender Singh, *Moharrer Malkhana* vide R.C. No.140/21 at the Police Station Narela and deposited the same with seals intact in the office of CFSL, Lodhi Road, New Delhi, against receipt.

24. Vide its report dated 24th April 1995 (Ex. PW-11/A) the CFSL has reported the presence of kerosene oil in Ex. No.1, 2 and 4, which have been described thus:

“1. One sealed cloth parcel containing metallic stove having light blue coloured liquid in its tank marked exhibit No.1.

2. One sealed cloth parcel containing partly burnt cloth marked exhibit No.2.

.....

4. One sealed envelope containing hair kept in polythene packet marked exhibit No.4.”

25. After completion of investigation, final report under Section 173 of Cr. P.C. was filed against the accused under Section 498-A/34 of IPC in court. The case was found triable by the court of session and consequently by the order dated 22nd February, 1995, the Metropolitan Magistrate committed the case for trial to the court of competent jurisdiction.

26. On 6th April, 1998, after considering the material on record, the learned Additional Sessions Judge had passed an order framing charges under Section 498A/34 of IPC against appellant – Krishan Kumar, his mother - -Smt. Murti Devi and sister – Smt. Shanti Devi. In addition, charges were framed against the appellant for commission of offence under Section 302 of IPC. The appellants pleaded not guilty and claimed trial.

27. In support of its case, the prosecution examined 15 witnesses. The appellant and his relatives put up a defence that the deceased had got burnt accidentally while using the stove and that the statement which was attributed by the deceased to the SDM was a result of the

tutoring by the father of the deceased. The appellant also examined Shri Jogi Ram as the solitary defence witness (DW-1) in support of his case.

28. After consideration of the evidence on record, by the judgment dated 21.09.2000, the Trial Court acquitted Smt. Shanti Devi and Murti Devi from the offences with which they were charged. On the same evidence however, the Trial Court found the appellant – Krishan Kumar guilty and convicted him for the offence under Section 498-A of IPC. He was additionally convicted for commission of murder under Section 302 of the IPC and sentenced as noted above.

29. We have heard Mr. Sumit Verma, learned counsel for the appellant as well as Mr. Varun Goswami, Additional Public Prosecutor for the State, at length who have carefully taken us through the record.

Conviction under Section 498A of the IPC

30. We may also note the evidence led by the prosecution in support of the charge against the appellant, his mother and sister under Section 498-A of the IPC. To base this conviction, the prosecution has

relied upon the statement Ex. PW-6/A recorded by the SDM. In this statement, the deceased purported to have stated that after one year of the marriage, her husband and her in-laws had started troubling her and would fight with her as well as physically beat her up. She is alleged to have stated that they were repeatedly sending her to her parent's house. Accused persons were taunting her that she had brought insufficient dowry and that she should have brought more money and dowry. She is also alleged to have stated that on 17th August 1994, the accused persons had asked her to bring Rs.1,500/- and when she refused, her husband, the present appellant had declared that he would not keep her and had beaten her. The alleged incident of burning was attributed to the husband on the same night.

31. On this aspect, the prosecution has also examined PW-4 father of the deceased – Ram Kishan (Page 8). We have carefully perused the statement of PW-4 and we find that in his testimony he makes merely a generalized statement without any specific demands after the marriage. He refers to quarrels which '*used to take place*' between the deceased and her husband and that whatever they '*used to give*' to his daughter on her arrival she '*used to give*' to the accused persons. He

was unable to give any specific date, time or demand with regard to the allegations of the dowry. This witness has also referred to a statement by the deceased with regard to the alleged incident on the night of 17th August 1994 in which Krishan Kumar, the present appellant, allegedly poured kerosene oil and set her ablaze by lighting a match stick. However, this witness has claimed that he met the deceased Vidya first time in the hospital on 19th August 1994. There is no evidence that the deceased had conversation with her father and consequently we are not taking this statement into consideration.

32. Furthermore, so far as the attribution of dowry demands to the appellant and his relatives are concerned, there is no specific instance of the same at all. We may note that in the statement attributed to the deceased by PW-6 Shri S.S. Sidhu, SDM (Ex. PW-6/A) and the statement made by PW-4 Shri Ram Kishan as recorded by SDM on the night of 18th August 1994 at 8.15 PM, while the deceased Vidya is alleged to have told the SDM that her in-laws did not help in extinguishing the fire, Shri Ram Kishan PW-4 in his statement (Ex. PW-4/B) had stated that the deceased had told him that the other family members of in-laws of his daughter had tried to extinguish the

fire and rescue her. This is certainly an extremely pertinent and important facet of the matter and clearly suggests the efforts to pad up the case by the prosecution so as to establish the guilt of the appellant for commission of the offences.

33. The learned Trial Judge has completely disbelieved the allegation to support the charge of 498-A of IPC against Smt. Shanti Devi and Murti Devi, however on the same evidence and on the same allegations, it has held the charge having been proved against the appellant. In our view, there is no material at all to support the culpability of the appellant for commission of the offence under Section 498-A of IPC.

Challenge for conviction under Section 302 of the IPC.

34. The prosecution case against the appellant mainly rests on the statement attributed to the deceased as having been recorded by Shri S.S. Sidhu, SDM (PW-6/A) on the night of 18th August 1994, wherein she has stated that her husband poured kerosene over her and set her afire with a match stick. In this statement, the deceased has also alleged that the other family members who were present in the house,

did not help in extinguishing the flame. She adds that however her husband, i.e. the present appellant subsequently helped in dousing the flames.

35. The veracity of the aforesaid statement has to be tested against two statements of the deceased available on record. We find two very important pieces of evidence on record. These are two identical statements made by the deceased Vidya disclosing the circumstances in which she suffered burns. The first statement wherein the deceased has explained the circumstances in which she caught fire, is to be found in the testimony of DW-1 Jogi Ram, who reached the house while shortly after the deceased had caught fire. This witness had accompanied the appellant firstly to Hindu Rao Hospital and thereafter to JPN Hospital to which she was referred.

36. DW1 Jogi Ram was a resident of the same village as the appellant and has stated that the accused persons were his neighbors. DW-1 had proved that he was resident of house No.247 at Village Pooth Khurd, which was about 3-4 houses away from the house of the appellant. He had also testified that the appellant and his deceased

wife Vidya were residing separately from the family members in different portions of the same house. The witness categorically stated that he had never heard any complaint against the accused persons regarding demand of any dowry. With regard to the alleged incident of burning of the deceased, the witness stated that on 17th August 1994, he had seen a large number of public persons gathered in the house of the accused and that when he went inside, he saw that she had caught fire from stove. The burnt victim was removed to the hospital.

37. Shri Jogi Ram claimed that he as well as Shri Rama Nand had accompanied the deceased Nanad to Irwin Hospital which is known as JPN Hospital. The father of the deceased reached the hospital only on the next day at about 10 AM.

38. In cross-examination, the witness explained that the appellant's house was a single storied house, consisting of three rooms.

39. What is most important to note is that DW-1 has specifically stated that the deceased Vidya had told him that her clothes had caught fire accidentally while working on stove in the kitchen.

40. This testimony of defence witness is corroborated by the testimony of Shri Ram Kishan (PW-4) – father of the deceased, who has stated in the cross examination that he was told by his daughter that she had been got admitted in the hospital by a neighbor accompanied by her husband. He has also stated that the son of the appellant and the deceased was residing with his own father (i.e. the appellant).

41. This statement attributed to the deceased by DW-1 finds corroboration in the statement made by the deceased to the doctor, who has recorded the MLC (Ex. PW-8/A) at LNJP Hospital at around 11.25 AM when the deceased was admitted to the hospital. The patient was found fully conscious and well oriented by the doctor who has clearly noted that the patient herself had given the history.

42. Vidya had told the doctor that she was doing kitchen work on the stove when there was sudden burst of flame of fire in which she got burnt that morning. The patient was conscious enough to inform the doctor that she was first taken to Hindu Rao Hospital where the OPD Card No. 22152 of Dr. A.K. Chaturvedi, where she was advised

to go LNJP Hospital. The patient had suffered 45% superficial burns which unfortunately got infected and she died due to *toxemia consequent upon burns*.

This statement has been recorded by completely independent person.

43. Even DW-1 Jogi Ram had no concern with the matter and was clearly an independent neighbor having no personal interest. He has testified the cause of death as disclosed by the deceased to him. No suggestion even has been given to this witness by the prosecution that he was tutored. His testimony with regard to the statement made by the deceased regarding the circumstances in which she was burnt remains completely unchallenged.

44. The evidence shows that there is material on record that Shri Ram Kishan (PW-4) father of the deceased arrived at hospital at about 10 AM on the next date. So far as the statement attributed to the deceased by PW-6, Shri S.S. Sidhu is concerned, was allegedly made at 8.15 PM on 18th August 1994 wherein she alleged that at around mid night, on the intervening night of 17th/18th August 1994, the

present appellant had sprinkled kerosene on her and set her on fire with a light of the match stick; that none of the other persons present in the house helped in extinguishing the fire; however, later, her husband helped her in extinguishing the flames.

45. The appellant has led evidence to the effect that the deceased was first taken to Hindu Rao Hospital wherein she was examined by Dr. A.K. Chaturvedi's Unit vide OPD No. 22152. Further she was not admitted there and referred to JPN Hospital. Deceased Vidya made the statement to the doctor who examined her and recorded the MLC No. 74957.

46. The question which arises for decision is as to whether the statement attributed to the deceased as having been made to the SDM at 8.15 PM (Ex. PW-6/A), can be termed as the only truthful dying declaration and the conviction of the appellant can be based thereon?

47. Unfortunately, the learned Trial Court which has completely overlooked the two statements made by the deceased to two separate independent witnesses, her neighbor and the doctor.

48. In this regard, Mr. Sumeet Verma, learned counsel for the appellant has placed reliance on the pronouncement of judgment of Supreme Court in *State of A.P. vs. Guvva Satyanarayana, 2008 (12) SCALE 808*, wherein also the deceased was alleged to have made a dying declaration to the doctor explaining the circumstances in which she sustained burns and a subsequent statement to the Metropolitan Magistrate. The Trial Court had disbelieved the statement attributed to the deceased by the doctor and had based the conviction of the respondent on the premise of the statement recorded by the Metropolitan Magistrate. This conviction for the offence under Section 302 of IPC was set aside by the High Court holding that the second dying declaration was not free from suspicion. We extract hereunder the observations of the Supreme Court so far as the record of the hospital and the statement made by the deceased to explain the circumstances in which she suffered fatal burns:-

“To add to the vulnerability Ex.P/12 was record of the case maintained by the hospital. When the doctor examined the deceased she was unconscious. The doctor noted that the deceased had stated to have sustained burns around 9 p.m. at her residence. She was given some treatment and referred to the resident medical officer. Here again, the doctor noted that the deceased

alleged to have sustained burns accidentally at her residence. It was further noted that she was conscious and coherent. It is, therefore, established that she was conscious when she was admitted to the hospital at 11.45 p.m. on 11.04.1994. If the accused had poured kerosene and set her on fire, she would have stated the same in normal course to the doctor.”

49. The statement attributed to the deceased as having been recorded by the SDM (Ex. PW-6/A), cannot be relied upon to form the basis of conviction of the appellant for commission of offence under Section 302 of IPC with which the appellant alone has been charged. The statement attributed to the deceased as having been recorded by the SDM - Shri S.S. Sidhu (PW-6) contains a noting by him that she was identified by her husband Krishan and that she was declared fit for statement by doctor at 8.00 PM on 18th August 1994. The Trial Court has disbelieved the allegations of dowry demands and therefore, the statement attributed by the SDM to the deceased is certainly not a truthful accounts of the facts and circumstances of the case. Further, this testimony is a weak piece of evidence as it is not in a question-answer form. There are no witnesses to the statement, there is no endorsement by any doctor or ancillary staff of the hospital, who would have been present in the hospital when the SDM claimed to

have visited her.

50. We may also note one important aspect which is the conduct of the appellant in the present case. The appellant has himself taken the deceased to the hospital at the earliest and has remained present with her. Even the SDM (PW-6) has not noted that he got the deceased identified by the husband. This would not be the conduct of somebody who is responsible for the homicidal attempt on a person.

51. We may also note that so far as the presence of kerosene oil in the CFSL report is concerned, the dying declarations given by deceased to Jogi Ram (DW-1) as well as to the doctor on the MLC form, state that she got burns from the stove. This explains the presence of the kerosene residue on the cloth pieces and hair.

52. So far as commission of offence under Section 302 is concerned, the statement made by the deceased to the neighbor DW-1 Jogi Ram as well as statement made by the deceased to Dr. Sushil Gupta (PW-8) as recorded in the MLC No. 74957 on 18th August 1994 at the LNJP Hospital are admissible in evidence as statements by a person under Section 32 of the Indian Evidence Act, 1872. The

statements have been made voluntarily when the deceased was conscious and fit to make statement and relate to the circumstances in which the transactions/which resulted in her death occurred and are therefore, admissible under Section 32 of the Indian Evidence Act.

53. There is no reasoning at all to disbelieve these statements which are natural and also explained a plausible circumstance in which burns could have been received by the deceased. The Trial Court has not even referred to these important piece of evidences. In the facts and circumstances of the case, the earlier statement of the deceased deserves to be considered, as it reflects that there was no tutoring of the deceased and that it was made to two independent persons who have no connection with the husband or in-laws of the deceased. It is evident that the prosecution has not proved the statements because of the reason that they did not support the case propounded by it.

54. It is well settled that if on consideration of the entire material placed on record, two views are possible; the view in favour of the accused persons has to prevail.

55. In view of the above discussion, the judgment dated 21.09.2000

passed by Trial Court finding the appellant guilty of offence under Section 498-A and under Section 302 of IPC is clearly unsustainable in law and is therefore set aside and quashed.

56. As a result, the order on sentence dated 25.09.2000 is also set aside.

57. Perusal of the order dated 24.11.2006 reveals that the sentence of the appellant was suspended during pendency of the present appeal. Accordingly, his bail bonds are cancelled and the sureties are discharged.

58. The appeal is allowed in terms of the aforesaid discussion.

GITA MITTAL, J

P.S.TEJI, J

OCTOBER 05, 2016

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