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

% *Date of Decision: March 28, 2016*

+ **CRL.A.728/2000**

RAM NIWAS & ANR. Appellants
Represented by: Mr.Anindya Malhotra, Advocate with
Ms.Deepti Gulati and Mr.Aseem
Talwar, Advocates

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP
SI Dharmendra Pratap Singh, PS SP
Badli

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

1. Ram Niwas and his wife Kamlesh : the appellant No.1 and 2 respectively, have been convicted vide impugned judgment dated September 19, 2000 for having murdered late Prahlad, the father of Ram Niwas, and needless to state, the father-in-law of Kamlesh. Vide order on sentence dated September 23, 2000 the two have been sentenced to undergo imprisonment for life.
2. It is the case of the prosecution that both of them burnt Prahlad after pouring kerosene on him.
3. That Prahlad suffered burn injuries at around 7.30 PM on August 12, 1997 on the terrace of his house in village Badli is not in dispute. The issue is : did the appellants set him on fire.
4. Appellant No.1 expired on January 18, 2007, and the order dated

September 18, 2013 records that qua him the appeal is abated. Thus, the present decision decides the fate of Kamlesh.

5. The conviction has been sustained believing the first dying declaration made by Prahlad to Dr.Ravneet Kaur PW-8, who authored the MLC Ex.PW-9/A, in which she recorded that the history of how he suffered burn injuries, as told to her by the patient was that his elder son and daughter-in-law set him on fire as also the second dying declaration, being the statement Ex.PW-11/A made by Prahalad to SI Gurnam Singh PW-11, who reached JPN Hospital after DD No.82B, Ex.PW-1/A, was recorded by the duty Constable at P.S.Samaipur Badli, in which Prahlad stated that his son Ram Niwas and his daughter-in-law Kamlesh set him on fire after pouring kerosene oil on him.

6. SI Gurnam Singh got the FIR Ex.PW-9/A registered on the statement Ex.PW-11/A made by Prahlad and at the spot drew up the rough site plan Ex.PW-11/C and seized a match box containing matchstick soaked in kerosene oil, a purse and partly burnt clothes as mentioned in the seizure memo Ex.PW-6/A.

7. The defence of the two accused was that Prahlad was suffering from schizophrenia used to run away from the house. He used to throw stones on others and would even move around naked when in a state of paranoia and therefore his statements could not be believed and secondly that Ram Niwas was not in the house when Prahlad suffered burn injuries and this was proof of falsness of his statements.

8. Having perused the testimony of Dr.Ravneet Kaur, the author of the MLC of Prahlad, and having perused the testimony of SI Gurnam Singh, who wrote the statement Ex.PW-11/A made by Prahlad to him, learned counsel for Kamlesh frankly concedes that the credibility of their testimony

has not been dented during cross-examination and thus the statements made by Prahlad to the doctor and the police officer as regards the cause of his death would stand the scrutiny of proved dying declarations subject to the answer to the question : whether it proved that Prahlad had suicidal tendencies and was a patient of schizophrenia, the effect thereof on the statements made by Prahlad.

9. Indeed, in the decision reported as (2009) 13 SCC 270 Bawa Ram & Anr. vs. Union Territory Chandigarh, the Supreme Court opined that a statement made by a person having suicidal tendency i.e. not of sound mind always, could not be the basis of a conviction because it would be unsafe to sustain the conviction on the basis of such kind of dying declarations.

10. The motive for the crime is stated to be a dispute between the father and the son concerning partition of the house where Prahlad resided with his two sons, their wives and children.

11. Motive is accepted as a double edged weapon. In the hands of the prosecution to nail the accused. In the hands of the accused, to prove motive of false implication.

12. It is trite that at a criminal trial whereas the prosecution must prove its case beyond reasonable doubt, the standard of defence is akin to one at a civil trial i.e. the preponderance of probability.

13. To establish the deceased suffering from schizophrenia, we find that Surinder Singh DW-2, the record keeper of RML Hospital produced the summoned record of the psychiatry department of RML Hospital bearing No.PSY-3235/97 dated July 4, 1997, recording that one Prahlad Singh, son of Kanwar Singh, a male aged 60 years, resident of village Badli, had been examined by Dr.Basheer as recorded in Ex.DW-2/A. The OPD ticket Ex.DW-2/A was signed by Dr.Basheer. In cross-examination he admitted

that Ex.DW-2/A was a single loose paper but clarified that he brought it from the file and not the entire file. He also said that he had not produced the register in which the number of the OPD card with name of the patient was entered. Dr.Neena Bohra DW-3 deposed that she had worked under Dr.Basheer Ahmed and had seen him write and sign. That Ex.DW-2/A pertained to RML Hospital. That the front page must have been written by some junior resident and that portion A to A appeared to be in the hand writing of Dr.Basheer Ahmed.

14. The testimony of the two witnesses has been held by the learned Trial Judge to be not establishing the defence because Dr.Neena Bohra did not categorically say that she identified the writing and the signatures of Dr.Basheer Ahmed on Ex.DW-2/A. She only said that the writing and the signatures appears to be of those of Dr.Basheer Ahmed. As regards the testimony of Surinder Singh, in the absence of the full file being produced and there being an omission in recording the number of the OPD card in the OPD Register, which was not produced, the learned Trial Judge has opined that therefrom credibility to Ex.DW-2/A could not be given.

15. The plea of alibi pleaded by Ram Niwas and attempted to be made good through the testimony of Kuber DW-4 has been negated on the reasoning that Kuber who claimed that Ram Niwas was employed by him as a driver to drive his truck could not be believed because he did not produce any record to show having employed Ram Niwas or having paid him a salary of Rs.1700/- per month. As deposed to by Kuber, Ram Niwas was plying his truck at the time Prahlad suffered burn injuries.

16. Now, from the testimony of Kuber it emerges that he was a petty contractor having one truck and some equipment to dig earth. Apart from employing Ram Niwas he had employed one Rehman who used to operate

the equipment to excavate soil. We take judicial notice of the fact that such kind of petty employers do not maintain any record of their business activities. Why should Kuber, who is not related to Ram Niwas nor alleged to be a friend of Ram Niwas speak lies? The answer awaits. Therefore, Kuber has to be believed and the reason given by the learned Trial Judge overlooks the reality of life.

17. We see no reason to draw the inference drawn by the learned Trial Judge with reference to testimony of Surinder Singh and Dr. Neena Bohra. The two are government servants working in JPN Hospital. Why should the two lie? Why should the two fabricate documents? The answer awaits. The two have to be believed. Merely because Surinder Singh did not produce the register in which the number of OPD card was entered is no reason to disbelieve the witness. In fact, the learned Trial Judge ought to have deferred recording Surinder Singh's testimony by directing him to produce the register. Besides we find that Lilu PW-4 the son of Prahlad i.e. the brother of Ram Niwas has deposed that his father used to drink and sometimes lose his mental balance. He deposed that initially his father was being treated by a quake and later on in the psychiatry department of RML Hospital. This testimony of Lilu has not even been challenged by the prosecution. Unfortunately, the learned Trial Judge has just not referred to Lilu's testimony on this aspect.

18. In his testimony Lilu has deposed facts in sync with his statement recorded under Section 161 Cr.P.C. till when he deposed as to what happened after he heard cries of his father from the terrace above the first floor. He deposed that his father told him that he suffered the burn injuries accidentally. Declared hostile at this stage, Lilu was confronted with his statement Ex.PW-4/B recorded under Section 161 Cr.P.C. and he denied

having told the police that his father told him that Ram Niwas and his wife had set him on fire.

19. The portion of Lilu's statement recorded by the police during investigation with which he was confronted with, if read properly by the learned Trial Judge would make it clear that at the very first instance Lilu told the truth, being that, when his father told him that Ram Niwas and his wife had set him on fire, he told his father point blank as to why he was lying, to which his father said that he did the act to frame the two i.e. Ram Niwas and his wife. We reproduce the statement of Lilu. It is in vernacular. Translated into English it reads : *I asked my father as to how he got burnt. His father responded that Ram Niwas and his wife had set him on fire. I responded as to why he was telling a lie because it was he (Lilu) who had opened the door of the terrace to which his father responded that he had to frame them.* The actual words used in the last part of the sentence are : *Maine to unko karana hai.*

20. From the contemporaneous statement of Lilu it is apparent that when Prahlad told him that Ram Niwas and his wife had set him on fire, Lilu immediately responded why was he (Prahlad) lying and for the query confronted him with the fact that he i.e. Lilu had responded to his shriek and had immediately reached the terrace and opened the door, meaning thereby, he did not see any one run away. Confronted with said fact Prahlad said that he wanted to fix Ram Niwas and his wife.

21. The post mortem report Ex.PW-12/A of Prahlad records burn injuries all over the body except head, face, right forearm, both legs including soles of the feet, highly suggestive of the fact that a person either splashed kerosene oil on himself and set himself on fire or kerosene oil accidentally fell on the person while he was lighting a kerosene lamp.

22. It also assumes importance to note that Salim PW-2 saw Prahlad sitting on a *chabutra* (cemented platform) outside his house in the company of Lilu and he brought a three wheeler in which Prahlad was removed to the hospital and that Prahlad was crying requesting him not to tell anyone as to how he was burnt. He did not say that Lilu told him that Prahlad had told him that Ram Niwas and his wife had burnt him.

23. The evidence on record probabilizes that Ram Niwas was not at home and that Prahlad was prone to suicidal tendencies. Ex.DW-2/A records :- *'beating others, giving abuses to others and so many times made suicidal attempts to die and several times tried to ran away from the house.'*

24. Noting that the appeal abates as regards Ram Niwas, we give the benefit of doubt to his wife Kamlesh and acquit her of the charge of having acted in concert with her husband to murder her father-in-law.

25. Bail bond furnished by Kamlesh is discharged.

26. Copy of this order be sent to the Superintendent Central Jail Tihar for updation of his records.

27. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 28, 2016

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