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

% *Date of Decision : May 04, 2016*

+ **CRL.A.854/2001**

GAURI SHANKAR & ANR. Appellants

Represented by: Mr.Ratnakar, Advocate

versus

STATE Respondent

Represented by: Mr.Varun Goswami, APP
SI Sachin Yadav, PS Sarai Rohilla,
Delhi

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The appellants did not appear nor counsel appeared in spite of their presence secured throughailable warrants issued and thus non-ailable warrants were issued on April 22, 2016 to secure their presence. The appellants have appeared in Court today with their counsel and since arguments would be heard and decision pronounced today itself we recall the non-ailable warrants issued; which are cancelled.

2. HC Rajbir Singh PW-16 was the first police officer to reach House No.L-267, Shastri Nagar where deceased Manju had suffered burn injuries in a room on the second floor. Her husband Santosh and her in-laws : Gauri Shankar and Rama Devi (the appellants) were present. As deposed to by Rajbir Singh he removed Manju and her husband as also took along with

him Gauri Shankar to JPN Hospital in the PCR Van of which he was the in-charge. At the hospital, Dr.Khem Chand PW-4 recorded MLC Ex.PW-4/A of Manju, in which history of the burn wounds suffered by her was recorded as the result of accidental burn by a burst of stove while Manju was preparing tea.

3. HC Satvir Singh PW-15 was posted as the Duty Officer at PS Sarai Rohilla, within jurisdiction whereof Shastri Nagar fell, and he recorded DD No.19A, Ex.PW-15/A of information being received from the police control room that a husband and a wife had fought at House No.L-267, Shastri Nagar and the wife had been set on fire, copy whereof was handed over to SI Daya Prakash PW-23 who accompanied by Ct.Ram Karan PW-1 reached the house and learnt that the injured lady called Manju had been removed to the hospital. Leaving Ct.Ram Karan to guard the spot he reached the hospital and obtained Manju's MLC Ex.PW-4/A and because she was fit for statement recorded her statement Ex.PW-23/A, in which Manju disclosed that she was residing in the house in question with her family. Her husband returned in the night after attending a marriage function and demanded food and this resulted in a verbal altercation between the two. She put kerosene oil in a kerosene stove when suddenly kerosene oil sprinkled out from the nozzle and fell on her face and front side. She was on fire. She threw her sweater on the sofa. Her husband tried to douse the flames. Somebody rang up the police and she was rushed to the hospital in the PCR Van.

4. Since Manju died after 5 days of the incident, aforesaid two statements, the first recorded in the MLC and the second, which would be the first dying declaration of Manju would be exculpatory of the family members of Manju because the cause of her catching fire is accidental and

not homicidal. With reference to the MLC we are unable to say whether it was recorded on Manju's statement or that of her husband or her father-in-law because the history of the burns has been recorded without throwing any light as to who said said fact to Dr.Khem Chand.

5. Things took a turn when in the evening of the same day after Ex.PW-23/A was recorded, Manju made the statement Ex.PW-22/C to SI Daya Prakash in the presence of Dr.Sandeep Verma PW-22 who made an endorsement Ex.PW-22/A in token of having attested the statement, in which statement Manju stated that excessive drinking habit of her husband was the cause of the matrimonial discord. The previous night he returned home in a drunken condition. Being late night she responded late when her husband knocked the door, which angered him. He began to fight with her and pushed her on the sofa. Her in-laws who resided on the ground floor came up. Her mother-in-law was having kerosene oil in a bottle which she threw on her and her father-in-law exhorted her husband to set her on fire, at which her husband set her on fire.

6. The SDM Sh.G.Sudhakar PW-14 had to be summoned, who recorded Manju's statement Ex.PW-14/A in which she absolved her husband stating that she and her husband used to quarrel on petty issues. The previous night they had a quarrel. Her mother-in-law and father-in-law came from the ground floor to the second floor where she lived with her husband. Abusing her, her mother-in-law poured kerosene on her and her father-in-law lit the matchstick and set her on fire. Her husband tried to douse the fire and threw water on her.

7. Basanti Devi PW-2, the mother of Manju and Kishan Lal PW-3 her brother claimed that in the hospital Manju told them that her mother-in-law

threw kerosene on her and her father-in-law lit the matchstick to set her on fire, a fact which they deposed in evidence.

8. Noting that Manju's statement Ex.PW-22/C was made after Manju's mother and brother had met her, faced with contradictory dying declarations made by Manju, vide impugned decision dated October 11, 2001, Manju's father-in-law and mother-in-law have been convicted for the offence of murder, believing the dying declarations Ex.PW-22/C as also Ex.PW-14/A and discrediting the contents of MLC Ex.PW-4/A and Manju's statement Ex.PW-23/A on the strength of the photographs Ex.PW-10/1 - Ex.PW-10/5, which as per the learned Trial Judge made it apparent that Manju's sweater was not thrown on the sofa, a fact recorded in Ex.PW-23/A. Though not expressly stated in the impugned judgment the reasoning would be that Manju did not tell the truth because her husband and her father-in-law were with her and the photographs belied the statement of fact recorded that she threw her burning sweater on the sofa.

9. The learned Trial Judge has referred to various judgments of the Supreme Court on dying declarations.

10. There is no need to make a cornucopia of judgments on dying declaration and suffice it to note that a conviction can rest on a dying declaration, but it is the duty of the Judge to appraise the attending circumstances under which the dying declaration was recorded and a blemish which discredits or casts a shadow on the dying declaration should be enough to reject the dying declaration for the reason the maker of the statement, being dead, is not available to the accused for being cross examined. In the case of multiple dying declarations the Court has to be more circumspect and especially when a statement which is exculpatory

shifts to one which is inculpatory.

11. For the moment ignoring MLC Ex.PW-4/A and Manju's statement Ex.PW-23/A in respect of which an argument may arise that since her husband and father-in-law were present Manju were coerced not to tell the truth, we focus on Manju's statement Ex.PW-22/C and Ex.PW-14/A. In the former she stated that as she and her husband fought her in-laws who resided on the ground floor came up. Her mother-in-law threw kerosene on her and her father-in-law exhorted her husband to set her on fire and her husband set her on fire. In the statement Ex.PW-14/A she simply spoke of a quarrel between her and husband and her in-laws coming up. She spoke of her mother-in-law pouring kerosene oil on her. Further events she spoke at variance with Ex.PW-22/C. Role assigned to the father-in-law was of lighting the matchstick and setting her on fire. No role was assigned to the husband. In the statement Ex.PW-22/C role assigned to the father-in-law was of exhorting her husband and he setting her on fire after lighting the matchstick.

12. The contradiction in the last two dying declarations are apparent to discredit Manju's versions.

13. It would be useful to look at other available evidence to find out the truth. Humans may speak lies but not dead bodies. Who says dead humans tell no tales. They do. Through their dead bodies. Manju's dead body speaks through the post-mortem report Ex.PW-12/A authored by Dr.Aakash Jhanjee who conducted the post-mortem on the dead body of Manju on December 05, 1999 at 1:30 PM. External injuries recorded are as under:-

“Infected dermo-epidermal burn injuries were present all over the body except front of left arm, front of upper

half or left forearm, perineum, front of lower half of both legs, both feet and both soles and scalp region. Skin was peeled off from the burnt areas leaving dirty yellowish greed under surface onto which foul smelling puss was adherent at places. Granulation tissue formation was present at the margins of burnt areas at places. Eye-brows, eye lashes and axillary hairs were burnt and singed at places. Degloving of left palm present. No smell of kerosene found on the body. Approximate area of burns around 80% to total body surface area.”

14. The photographs Ex.PW-10/1 to Ex.PW-10/5 show a kerosene stove on the floor. It is a pump operated kerosene stove where air is pumped into the kerosene oil tank to generate a pressure for the kerosene oil to spray out from the nozzle where a burner is fixed. It is this place where the matchstick is lit if the stove has to be lit. If the pressure is too much, the oil sprays like a jet and would fall on a person or an object nearby.

15. If Manju was operating the stove, as disclosed by her in her statement Ex.PW-23/A, it would obviously be that she was in a squatting posture and it is in this context that the post-mortem report assumes importance. Dermo-epidermal burn injuries are not to be found on the front of left arm, front of upper arm or left forearm, perineum (lower abdomen), front of lower half of both legs. It shows that the spray of the kerosene oil fell on Manju when she was in a squatting position. We wonder as to how the learned Trial Judge has inferred from the photographs Ex.PW-10/1 to Ex.PW-10/5 that the same negate Manju's statement recorded in Ex.PW-23/A that she threw her burning sweater on the sofa. We can clearly see the upholstery of the sofa burnt. The learned Trial Judge had noted that the sofa was burnt but has opined that the extent to which it was burnt ruled out the possibility of it

being burnt when a burning sweater was thrown. This is a matter of opinion, but the matter of fact is that the sofa was burnt. The reasoning of the learned Trial Judge appears to be that if a burning sweater falls on a sofa, both would be burnt to ashes, or at least the sweater and a part of the upholstery and the seat of the sofa where the burning sweater fell. But the reasoning overlooks that in her statement Ex.PW-23/A Manju has said that her husband tried to douse the fire and thus dousing the flames on the burning sweater on the sofa. Surely, the husband would not have allowed the fire to engulf the one room tenement in which the family resided, serving as the living room, bed room and the kitchen for the family.

16. Appellants are clearly entitled to a benefit of doubt, but before terminating our opinion we also record incriminating weightage sought to be projected against the appellants by learned APP who draws our attention to the statement of Master Bunty PW-8, the elder son of the deceased who deposed that his dadi poured oil on his mother and her dada set her on fire. But he has said that he was sleeping in the room and his younger sister told him that his father has quarrelled with his mother and his dadi had poured oil on her mother and dada had set her on fire. He said that nothing happened in his presence and his sister Neha told him of what had happened when his uncle Raju woke him up.

17. We find that the learned Trial Judge has rightly not relied upon the testimony of the child witness, whose testimony is extremely shaky.

18. The appeal is allowed. Impugned judgment dated October 11, 2001 convicting appellants is set aside. Order on sentence dated October 11, 2001 is also set aside.

19. Being on bail, bail bonds and surely bonds furnished by the appellants

are discharged.

20. TCR be returned.

21. Copy of this decision be sent to Superintendant Central Jail Tihar for updataion of the jail record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 04, 2016

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