

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

Judgment Reserved on: February 29, 2016

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Judgment Delivered on: March 17, 2016

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CRL.A. 123/2016

SATISH VERMA

..... Appellant

Represented by: Mr.Chirag Khurana, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Satish Verma has been convicted for the murder of his wife by the impugned judgment dated November 30, 2015 and directed to undergo imprisonment for life and to pay a fine of ₹40,000/- in default whereof to undergo simple imprisonment for a period of six months for offence punishable under Section 302 IPC vide the order on sentence dated December 05, 2015.

2. Two PCR calls were received in the control room, first from mobile No.9891535549 at 13.53 hours wherein the caller stated “*meri biwi mujhe torture kar rahi hain, meine us pe matti ka tel dal diya hain, app aajao nahi to mein use maar kar tihar chala jaounga*” and the second call from mobile No.9211734334 at 1.54 PM i.e. 13.54 hours wherein a lady caller, who told

her name Ambika, stated that her husband was setting her on fire after putting kerosene oil on her. The first call was duly recorded by the computer system as Ex.PW-11/A and second as Ex.PW-8/A. The PCR call received from Ambika was recorded as DD No.27A at PS Karawal Nagar pursuant to which ASI Ashok reached the spot. In the meantime HC Santosh Kumar PW-9 who was posted on PCR vehicle reached the spot and found a lady in burnt condition just outside house No.709 in the gali. Appellant Satish was also present there. HC Santosh Kumar shifted victim lady in the vehicle along with Satish to GTB hospital.

3. Two young girls who were the daughters of Ambika and Satish, named Saumya and Khyati were also found present at the spot crying. When Ambika was admitted in the hospital she was declared unfit for statement and the history was given by the appellant Satish. At the spot ASI Ashok Singh found kerosene oil in a Maaza bottle which was seized besides two burnt and one unburnt matchstick, burnt clothes and slippers just outside the house. ASI Ashok Singh reached GTB hospital and recorded statement of Saumya, daughter of the appellant and the deceased Ambika, who stated as under:

“Statement of Saumya d/o Satish Verma, R/o H.No.709, Gali No.14, Shaheed Bhagat Singh Colony, Karawal Nagar, Delhi: She was living with her mother Ambika Verma and father and was studying in 2nd standard in Sarvda Modern Secondary School, Sadal Pur, Delhi. Her father used to run the doctor’s shop (clinic). She also had a younger sister Khyati who was around two years old. On February 28, 2013 she along with her mother went to the wedding party of her tuition teacher Ruby’s brother and returned back at around 11.00 PM. On returning, Saumya’s father and mother had an altercation. Again on March 01, 2013 her father quarrelled with her

mother. On March 02, 2013 after giving her exam she came home back at around 11.00 AM. On the same day her mother had to go to her grandmother's home along with them. Her mother was waiting for her father who came home at around 1.10 PM. On her mother asking her father about being late, her father used abusive language and threatened her to leave the house or else he would pour kerosene oil and set her on fire. After that her mother stated that she is not going and what could he do. Her father took kerosene bottle from under the stairs, poured on her mother and threw the bottle there only. After that he picked matchbox from the mandir and lit two matchsticks and threw on her mother but she was not burnt. He again lit a matchstick for the third time and threw on her clothes on which her clothes started burning. He kept standing there and did nothing to douse the fire. She stated that her mother was crying for help and came out of the house. On seeing her one person poured water on her and doused the fire and many people gathered there and somebody from the crowd informed the police. Police then took her mother to the hospital. Her father with the intention of killing her mother poured kerosene oil and set her on fire."

4. On the basis of statement of Saumya, FIR No.122/2013 under Section 307 IPC was registered at PS Karawal Nagar. Inspector Arvind Pratap Singh PW-10 who took over the investigation thereafter prepared the site plan, seized the wrist watch, interrogated the appellant and also recorded the statement of eye-witness PW-2 Rajvir. During the course of investigation statements of Bhavna PW-3 and Kanhaiya Lal Verma PW-4 sister and father of the victim Ambika were recorded. Statement of Saumya was also recorded under Section 164 Cr.P.C. wherein she reiterated her earlier version.

5. As per Bhavna PW-3 her sister had a disturbed matrimonial life from

the very beginning as her brother-in-law had a habit of keeping evil eye on females. There used to be frequent quarrels amongst the couple. Her sister had given birth to two daughters. On March 01, 2013 she had a talk with Ambika who stated that she would also reach their parent's house, however she could not come. When she made a phone call to Ambika on the night of March 01, 2013 she told that Satish had created a ruckus over the issue of Ambika visiting her parents. On March 02, 2013 at around 8.30-9.30 AM she made a phone call to Ambika who told her that her elder daughter had gone to take some examination and after she comes back home Ambika would come to the parent's house after 11.00 AM. When Ambika did not reach at her parent's house she called up at 1.29 O'clock noon when Ambika replied that her husband had not yet reached and she was waiting for him so that she could serve him the lunch and come to her parent's house. At 1.52 O'clock she received a call from Ambika who stated that accused Satish had poured kerosene oil on her and set her on fire. Ambika asked Bhavna to save her. She along with her mother immediately rushed to Ambika's house and also tried to contact 100 number. In the meantime they reached the house of the accused where they found that Ambika had already been taken to GTB hospital and only her two daughters were present just outside the house. She also explained that due to relationship of Satish with one Neelam, coupled with the fact that Ambika could not bear a male child there was a constant quarrel between the husband and wife. Ambika passed away on March 06, 2013 at 3.15 AM where after Section 302 IPC was invoked.

6. During the course of investigation call details and the recorded messages with the PCR control room were also collected. The prosecution examined 11 witnesses whereas appellant Satish examined two defence

witnesses during the course of trial which resulted in the conviction of Satish as noted above.

7. The explanation of Satish in his statement recorded under Section 313 Cr.P.C. was:

“Q. Have you anything else to say?”

Ans. Whatever dispute and quarrels took place between me and my wife Ambika, those were because of intervention of mother of Ambika as she used to instigate Ambika. On the date of incident, that is, on 02.03.2013 Ambika came to my clinic which was about 300 meters distance from our house. Ambika came to me in my clinic at around 1.30 pm. I used to run my clinic in the name “Soumya Clinic”. Ambika asked for/demanded Rs.2,000/- from me saying that she would be going to her parents place as from there she was to visit market with her sister. I gave her Rs.2,000/- and then I asked her what had been prepared for lunch and Ambika told me that she had not cooked food as she would be taking food at her mother’s place and she asked me to take lunch either in hotel or to make my own arrangements. I responded that if Ambika was going to her mother’s house, I would also go to my mother’s house and take food there. On hearing my response, Ambika suddenly became angry and she said to me that I should give all my earnings to my parents and she further said to me till now she had been sparing us and this time she would get all of us arrested. On that issue, there was exchange of hot words between me and Ambika and Ambika then challenged me as to how I would go to mother house when I had already given in writing that I would not visit my mother’s house. Ambika then left the Clinic.

After about ten or fifteen minutes, I received a phone call from Ambika on my mobile phone No.9891535549. Mobile phone called by Ambika was 9211734334. Ambika asked me in that phone call if I had gone to my mother’s place and I replied that I was preparing Ambika then responded and said to me

“Aaj Tujhe Jail Ki Hawa Khilaoongi.” Thereafter, after about ten to fifteen minutes that some person informed me while I was in my clinic and that person said to me “Aap Ki Patni Doctorni Ne Ghar Ke Bahar Hangama Kar Rakha Hai, Bhid Ekathi Kar Rakhi Hai, Aap Ko or Aap Ke Parivar Walon Ko Gali De Rahi Hai.” At that point of time, I was attending upon a patient, namely, Smt.Lalita Pandey and immediately then I left my clinic and at about 70-80 steps ahead there is a road crossing and from there I saw a crowd had collected in front of my house and then I ran and reached my house. I there saw a little fire on the front side clothes of her body and she was trying to put it off, but the flames were increasing. I then rushed inside my house and brought a bucket of water and put it on Ambika. I also rushed inside my house again and brought a bedsheet and covered body of Ambika by bedsheet. I then found my mobile not with me as I had put in on charging in my clinic since I was planning to go my mother’s place from my clinic. I myself assisted in taking Ambika on the stretcher for taking her to GTB Hospital in PCR vehicle and I also accompanied. Someone then gave me my mobile phone as well key of my clinic. I had rather asked public persons present there to take care of my younger daughter who was sleeping inside the house. On the way, police asked me to give call and information to my family people and accordingly I gave a call to my brother. In the hospital, my mother-in-law and brother-in-law reached within about five minutes and they picked up quarrel with me and my mother-in-law tried to hit me by throwing helmet aiming at me, but then thereafter they were forced to go out of the hospital by the hospital authorities. I was taken to police booth for my safety and then ASI Ashok came to me at around 2.45 pm and ASI Ashok then took me from the back side passage of hospital and brought me to PS Karawal Nagar. ASI Ashok assaulted me and I kept on narrating the version of incident as stated and explained above. Thereafter, Inspector Arvind Pratap also interrogated me and I narrated the incident as stated above.

When PCR police had arrived, some public persons on being asked by PCR police had told them that Ambika had

herself put on fire. On the next date, my signatures were taken by the police on some blank papers. On one blank paper my signatures were taken on the side of the paper in longitudinal situation and on the second paper signatures were taken on both sides in the bottom and then I was produced in Court. As regards jewellery and other valuable of Ambika, we had a bank locker in United Bank of India, which was just in front of house of my in-laws and that locker was in the name of Ambika and she alone used to operate it.

I had once invested Rs.30,000/- in a LIC Policy taken in the name of my daughter Somya may be somewhere in the year, 2008. Because of some doubt in the genuineness of that policy claim that I had to cancel it and a cheque for Rs.28,000/- around was received by me in my name and it is only on that occasion, to get that cheque encashed, that I had opened a bank account in that above said United Bank of India. Ambika had account in that bank since very long and I used to deposit money in that account of Ambika because I never felt any such situation to not to deposit my money in the account of Ambika. I myself had met all hospital expenses of my both children when they were born in St.Stephen's hospital. I always got my daughters as well Ambika whenever they felt sick treated from St.Stephen's Hospital because I used to have my comfortable earnings around Rs.40-50,000/- a month.

In one incident of 16.01.2012 which was a verbal exchange of words between me and Ambika at the instigation of her mother Ambika left my house and I had to take my children to my parents place so as to get them a proper care. Ambika and her mother then gave a complaint in PS Karawal Nagar on 20.01.2012. Matter was then taken to mediation centre, Nand Nagri. Police officials there advised me to earn a compromise and looking into the condition of my children I signed the papers whatever was recorded in those papers. Ambika and her parents got recorded in those proceedings that I would not keep any concern with my parents family. I had a deep love for my both daughters as there births were celebrated and I have

photographs of those functions. Every birthday of my both daughters used to be celebrated also and I can produce that evidence. I used to even celebrate birthday of Ambika, which was 8th of January.”

8. Learned counsel for the appellant contends that Saumya was not present at the spot. In case she had been present, she would have made efforts to save her mother. The incident never took place inside the house as there were no blackening marks in the house. The PCR calls cannot be read against appellant being confessional statements as held in the decision reported as AIR 1966 SC 119 Aghnoo Nagesia vs. State of Bihar. Reliance is also placed on the decision reported as AIR 1973 SC 2773 Kali Ram vs. State of Himachal Pradesh and AIR 1984 SC 1622 Sharad Birdichand Sarda vs. State of Maharashtra. Statements of the witnesses were contrary as to 5 or 3 matchsticks being found from inside the house. Appellant and deceased were married for 13 years, thus there was no chance that the appellant could have done such an act. The mobile phones were not seized nor sent to FSL to find out whether they had smell of kerosene oil. Investigating officer conducted the investigation in a biased manner and thus complaints were made against him. In case the appellant had burnt the deceased he would not have accompanied her to the hospital. PW-9 HC Santosh Kumar stated that the victim had immolated herself. The alleged eye-witness Rajvir PW-2, lived in another lane and thus could not have witnessed the incident at the appellant's house. No finger prints were lifted from the plastic bottle.

9. Learned APP for the State contends that the decision in Aghnoo Nagesia (supra) has no relevance to the facts of the case as the statement

made by Satish to the PCR was not a confessional statement as at the said time he was not an accused and was thus not hit by Section 25 of the Evidence Act. Saumya was aged 7 years at the time of incident and thus not in a position to save her mother. The incident having taken place at the house after school hours, so she was a natural witness. Even the Police officers and other witnesses who reached the spot found the two girls present and weeping. The case of the prosecution is based on the statements of eye-witnesses whose testimony could not be discredited during cross-examination. The photographs and testimony of the witnesses reveal that incident of burning took place inside the house. The discrepancy in the number of matchsticks recovered is immaterial.

10. In the deposition before the Court the learned Trial Court asked questions to Saumya PW-1 to ascertain her capacity to depose. She rationally answered the questions including the exact age of her younger sister and other particulars. She deposed in sync with the statement on the basis of which FIR was registered and one recorded under Section 164 Cr.P.C. She clarified in cross-examination that she used to go to the school at 7.00 AM and if it was an examination she would get free by 12.00 O'clock and on other days she would be free by 1.00 O'clock and then reach home. On March 02, 2013 she had reached home at 12.00 noon after completing her examination. She denied that by the time her father reached home, her mother had already received burn injuries or that her mother had herself poured kerosene oil and set herself on fire. Though various suggestions have been given to this witness, however she has not been confronted with any portion of her previous statements to show that there was any improvement or contradictions in her deposition.

11. The testimony of Saumya is corroborated by that of Rajvir Singh PW-2, a neighbour and fruit vendor by profession. He deposed that Satish Verma was resident of H.No.709 and his house is situated just in front of Satish Verma's house being H.No.704/8, Gali No.14. On March 02, 2013 at around 2.00 O'clock when he was present in his house he heard shrieks coming from the house of Satish. He came out of his house and saw wife of Satish namely Ambika Verma on flames present just outside her house. Satish was present in his house at that time along with his two daughters. Ambika was crying and raising shrieks. He and other locality people put water on the body of Ambika. He then went inside the house of Satish to pick up a blanket so as to cover Ambika but could not find one. In the meantime PCR arrived and Ambika was removed to GTB hospital. Police officials also took Satish along with them. Thereafter mother, brother and sister of Ambika arrived and at 5.00 O'clock. The Police took photographs of the scene. They also seized one matchbox, 3 matchsticks, 1 bottle, pair of slippers, some clothes half burnt and a wrist watch from the scene of crime. He identified all the articles. In cross-examination he clarified that he had one more house in gali No.16 and denied that he was residing in the other house and not in house No.704. He denied suggestion of the defence that he was stock witness or informer of the Police.

12. Therefore, though Rajvir Singh did not witness who lit the fire, having reached immediately on hearing shrieks of Ambika he noticed Satish inside the house with the two daughters, thus belying the version of Satish that at the time of incident he was in his clinic and on receiving the information reached his house.

13. Bhavna Sharma PW-3 deposed in sync with the statement as noted

above. She also deposed about the call made to her on March 02, 2013 by Ambika at 13:52 hours wherein she informed that Satish had poured kerosene oil on her and was setting her on fire and pleaded to save her, where after she along with her mother immediately reached the house of Ambika.

14. Call records of mobile No.9582071004 of Bhavna have been exhibited as Ex.PW-10/A1 along with the certificate under Section 65-B of the Indian Evidence Act as Ex.PW-10/A2. The call record reveals a call made by mobile No.9211734334 of Ambika to that of Bhavna at 13.52.54 hours on March 02, 2013, the call duration being 14 seconds. This evidence on record corroborates the version of Bhavna that Ambika made a dying declaration to her sister Bhavna.

15. As regards the call made by Satish to PCR at 13.53 hours we may note that though the recorded conversation was exhibited however no voice sample of Satish were taken and got compared to find out that the voice was that of Satish. Thus the said call cannot be used as an incriminating call against Satish Verma.

16. To prove his defence that Ambika immolated herself Satish examined two defence witnesses i.e. Lalita Pandey DW-1 and Smt.Santosh DW-2.

17. DW-1 Lalita Pandey stated that she was at the clinic of Satish at around 1.30- 1.45 PM on March 02, 2013 and while he was examining her blood pressure 2-3 people came to his clinic shouting that his wife had created a scene and he should pacify her. She reached at the spot along with Satish Verma and saw his wife on flames. Satish took water from the neighbouring house and put water on her. Though this witness claims that

she was a regular patient of Satish she could not produce any treatment slip. She further stated that 2-3 persons who came did not enter the clinic and stood outside only. She did not know which was Satish's house.

18. DW-2 Smt.Santosh stated that she heard noise in the gali at around 1.45 – 2.00 PM when she was inside her house. When she came out she saw Satish running from kali Mandir side and by the time he reached in front of her house she saw wife of Satish in flames in the gali. Satish brought water and put it on the victim and thereafter a blanket. This witness stated that besides Satish she did not see anybody else coming running from the gali from where Satish was coming. Thus DW-2 is not a witness as to how Ambika was put on fire and also belies the version of DW-1 Lalita Pandey who stated that she reached the spot along with Satish Verma.

19. Learned counsel for the appellant has strenuously argued that the alleged incident took place outside the house in the gali as the matchsticks were found in the gali. A perusal of the site plan Ex.PW-10/B would reveal that house of Satish and Ambika was a one room house. The door of the room opened in the gali. Bottle with kerosene oil in it was found inside the room though the matchsticks were found in the gali. As per the site plan it is clear that even a step out of the room would have brought Ambika in the gali. Thus nothing turns out on the matchsticks being found in the gali or the number of matchsticks in the testimony of the witnesses differing.

20. In view of the statements of Saumya, the daughter of the deceased and the appellant, who witnessed the incident, Rajvir Singh who corroborated Saumya's version along with the dying declaration made by Ambika to her sister Bhavna PW-3 and the explanation of Satish being false we are of the

view that the prosecution has proved beyond reasonable doubt the offence committed by Satish.

21. Consequently, the appeal is dismissed upholding the impugned judgment dated November 30, 2015 and order on sentence dated December 05, 2015.

22. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

23. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MARCH 17, 2016
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