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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 289/2016

ANIL PANCHAL

..... Appellant

Through: Mr. R. Sathish with Mr. Bharat Swaroop
Sharma, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Radhika Kolluru, APP.
SI Indervir Singh, PS Karawal Nagar.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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04.01.2018

1. This appeal is directed against the impugned judgment dated 11th January 2016 passed by the learned District & Sessions Judge, North-East District, Karkardooma Courts in Sessions Case No. 44799/2015 arising out of FIR No. 486 of 2012 registered at Police Station (PS) Karawal Nagar convicting the Appellant, Anil Panchal, for the offence under Section 302 of Indian Penal Code (IPC), and the order on sentence dated 15th January 2016 whereby the Appellant was sentenced to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs. 25,000 and in default of payment of fine, to undergo simple imprisonment (SI) for a period of four months.

2. The prosecution case begins with a call being made to the police at PS

Karawal Nagar at around 11.40 pm on 15th December 2012 that at Gali No. 3, Rama Garden near GTB Hospital one lady in a burnt condition is lying on the road. This was noted down as DD No. 67B and entrusted to Head Constable (HC) Vikram (PW-10) who along with Constable (Ct.) Deepak (PW-12) reached the spot. There they came to know that the husband of the lady had taken her to the GTB hospital. The two policemen then reached GTB hospital. Meanwhile, Sub Inspector (SI) Ashwani Kumar (PW-6) had also reached there.

3. The MLC of the lady, i.e., Sunita, the wife of the Appellant, prepared at the GTB hospital, Shahdara shows that she was brought there by the Appellant. It notes the alleged history of her burns on 15th December 2012 (wrongly noted as 16th) at the above mentioned address “at about 9.30 pm as stated by Anil Panchal (husband).” It notes the burns over the face, chest, abdomen, upper limb, lower limb and buttocks. It shows that she was referred to the Burns and Plastic department by the examining Medical Officer (Dr. Mohd. Irshad), and the Senior Resident.

4. At around 12.45 am on 16th December 2012 SI Ashwani (PW-6) recorded the statement of the victim at the hospital. She *inter alia* stated that her marriage with the Appellant took place in 2000; after the marriage she faced harassments at his hands for not bringing dowry but that issue was settled through a *panchayat*. Thereafter they had two children. Even after 12 years of marriage, the Appellant kept telling her that he wished to leave her. He often used to drink alcohol and beat her. In the past few months, he kept repeatedly threatening her that he wished to throw her out but she

refused to leave. He threatened her that if she did not leave, he would burn her. However, keeping the interests of her family in view, she continued living with him. He would keep beating and throw her out of the house but her neighbours would save her. She stated that on 15th December 2012 at around 9.30 pm when she was present in her house, the Appellant returned home in a drunk condition and began quarrelling with her and beating her stating that she should leave the house. When she refused, he took a bottle of kerosene and sprinkled its contents on her and with a view to kill her lit two matches and threw them on her. On the first two attempts when she did not catch fire, she tried to run away but the Appellant pushed her forcefully as a result of which she fell near the bathroom. At that moment he again threw a lit match on her as a result of which her clothes caught fire. She started screaming in agony and the neighbours then came there. Then the Appellant himself took her to the GTB hospital. The date and time of the *rukka* was noted as 3 am on 16th December 2012 and on that basis an FIR No. 486 of 2012 was registered initially under Section 307 IPC.

5. The victim succumbed to her burns on 19th December 2012. Meanwhile, the crime team reached the spot and took photographs. The report of the crime team (Ex.PW-8/A) reveals that the exhibits collected from the spot included the half litre plastic kerosene bottle with around 5 ml kerosene oil, three burnt matchsticks and burnt clothes. These were collected between 2.50 am and 3 am on 16th December 2012.

6. The post-mortem of the victim was conducted on 28th December 2012 by Dr. Neha Gupta (PW-11) who noted, *inter alia* the following external

injuries:

“Ante-mortem flame burns superficial to deep in nature present over face, neck, chest sparing left shoulder, abdomen sparing a patch on left side, both lower limbs sparing soles, dorsal aspect of left upper limb, as patches over ventral aspect of left upper limb, both palms spared, as patches over the back involving about 75% of total body surface area. The burnt surface shows yellowish green patches of pus and erythematous surface. Blackening of skin present. Singeing of scalp and body hair present.”

7. The opinion as to the cause of death was given as under:

“Time since death is about 18 hours and cause of death is shock as a result of ante-mortem flame burns involving about 75% of total body surface area.”

8. Significantly, in her cross-examination, response to a specific question by the defence, PW-11 clarified as under:

“It is true except burn injuries no other injury mark was noticed on the body of victim. Post-mortem report in this case has not mentioned which part of the body was suffering the degree of the burn injury, first, second, third and fourth degree burns. Vol. But the report mentions that injuries were superficial to deep in nature which is also a type of classification of burns. Deep burns are covered under third to fourth degree. It is not necessary that person having suffered third to fourth degree burns will not be in a position to speak or hear. IT depends upon the body surface area covered by injuries.

9. The Appellant was arrested at around 6 am on 16th December 2012 itself. His disclosure statement was recorded (Ex.PW-6/H). PW-6 also met Sudha Sharma (PW-1), who called the police first, and recorded her statement.

10. On 19th December 2012, the two sons of the Appellant, i.e., Aman Panchal (PW-2) and Deepak Panchal (PW-3) were produced and their statements were recorded under Section 161 Cr PC.

11. After the charge sheet was filed on 26th March 2013 the charges were framed against the Appellant for the offence of murdering his wife by intentionally setting her on fire after pouring kerosene oil on her on 15th December 2012 at around 9.30 pm in their house thereby committing the offence under Section 302 IPC.

12. The prosecution examined 16 witnesses. In his statement under Section 313 Cr PC, the stand taken by the Appellant was that he was not an alcoholic; that he took alcohol once in a fortnight or a month as he was a driver; that he never quarrelled with his wife and “never assaulted her”. As regards what happened on 15th December 2012, he gave the following answer:

"I had returned from my elder brother's house on 15th December 2012 around 7.30/8.00 pm. I had gone to my elder brother's house around 4.00 pm. I had not been working for last 15 days before 15th December 2012. I had taken leave from my employer as construction work was going on at my house no. A-128, Rama Garden, Karawal Nagar, Delhi – 94. Masons were working at the second floor on that day (15th December 2012) on that day when I left for the house of my elder brother they had left by the time I had returned home. I had brought vegetables from the market while coming to my house. My both sons and wife were present in the house at that time. My father had reached my house around 7.00 pm from my elder brother's house. My father was already present at the house of my elder brother when I reached there. My father was dropped by my nephew on that day at my house. I had left my brother's house before my father left (my brother's house) and I was the first to reach my house. I had already left for buying vegetables from the market before my father was dropped at my house by my nephew. My father was sitting on the ground floor along with my both sons when I returned from the market. Thereafter, my father asked me to sit on the second floor as he did not want to remain on the ground floor because of presence of my wife. I along with my father went to the second floor. My sons

continued to sit on the ground floor taking dinner and watching TV.”

13. He further denied that any bottle containing kerosene oil seen kept in the kitchen. His categorical statement was as under:

“There was no kerosene oil bottle in our house as kerosene oil was not used by us even for cooking. My wife was using LPG for cooking.”

14. He denied that the victim could have made a statement since she was unconscious. He further stated that “the doctors had not declared for making her statement.” While denying the seizures from the house, he stated:

“There was no kerosene oil bottle, no burnt pieces of cloth and nothing else at the site of occurrence. I had lifted my wife from the door (delhij) of the kitchen and taken her to hospital.”

15. He denied the photographs taken (Ex.P9/1 to 11) as not being of his house. He claimed that this is a false case and he had been implicated by the police. He further stated:

“One of our neighbours namely Ms. Sudha had called at number 100 on hearing shouts and coming to know about the condition of my wife Sunita.

16. The stand of the Appellant, therefore, was that he was at the critical time on the second floor of the house along with his father. Importantly, he did not dispute that his wife suffered burns that he had taken her in that condition to the GTB hospital. He also did not dispute the fact that PW-1 did give a call to the police.

17. As it transpired down the PW-1, who had earlier told the police that she had heard a quarrel just before she heard the victim's shouts, resiled from the said statement while deposing in the Court. She now stated that the younger

son of the Appellant had come to her house and informed her that his mother had received burn injuries and his father was taking her to the hospital. While she did inform that she had called the police, she gave the time at 11.45 pm. PW-1 was confronted with her previous statement to the police, but resiled from it.

18. The two other witnesses who turned hostile, were the two young sons of the Appellant. Aman (PW-2) who was around 10 years when his deposition was recorded, maintained that his parents led by a normal usual happy life and his father would come home after taking liquor once in a week and he never saw his father fighting with his mother or assaulting her. As regards what happened on the fateful day that is what PW-2 had to state in the Court:

“The date of incident I do not recall but that was Saturday and it was winter and it was raining. It was around 9 or 9.30 pm that my mother Sunita while in the kitchen and carrying hot tea tray caught fire in her wearing saree. She was carrying tea to be served to my father Anil and my grandfather, Shri Jagdish Prasad who had come to our house and both my father and grandfather were on the roof of the house. My mother Sunita raised hue and cry and I then called my father who reached the place of incident. My father Anil tried to put off the fire of my mother Sunita and when he was unable to control that fire by his hands and arms, he wrapped a blanket around my mother. On the date of incident, my father had not brought any liquor quarter with him and he and my grandfather Jagdish Prasad were sitting together. My father took my mother to GTB Hospital in a private car.”

19. Even in his cross-examination, PW-2 maintained that his father was on the second floor when his mother caught fire; when she started shouting the Appellant had taken her to the hospital.

20. As far as the other son, Deepak (PW-3) was concerned, he too turned hostile. He too stated that his father and his grandfather Jagdish Panchal were in the second floor of the house in a room; his mother was preparing tea in the kitchen; she caught fire and that when he and his brother Aman gave a call to his father and that fire was in flames, his father then put a blanket around her body and took her to the hospital in an auto rickshaw. He too maintained in his cross-examination that his father had never assaulted his mother and had never given any such threat to kill her. Importantly he stated that “It is a fact that food used to be cooked on a LPG gas stock in our house. On the date of incident also, it was LPG gas stove in our kitchen.”

21. As far as scientific evidence is concerned, the evidence of Dr. Kavita Goyal (PW-16) is significant. Of the exhibits seized and sent to the FSL, Rohini, which were examined by her, were Ex.B-1 (the kerosene bottle) and Ex.B-4, the burnt clothes of the deceased. In her deposition PW-16 stated that she found both Ex. B-1 and B-4 contained kerosene on gas chromatography examination.

22. The trial Court, on analysis of the evidence, concluded that the prosecution has been able to prove the case against the Appellant beyond all reasonable doubt. The trial Court disbelieved the defence of the Appellant that it was an accident. It was noted that if the Appellant had tried to save the victim “there would have been some residue of kerosene oil on his T-shirt also.” It was concluded that he was the only one who could have brought the kerosene oil into the house and this was with a view to kill his

wife by carrying out his threat.

23. As regards dying declaration of the victim, the trial Court concluded that with Dr. Neha Gupta (PW-11) confirming that a person having suffered 3rd to 4th degree burns would be in a position to speak or hear depending upon the body surface area covered by the injuries, there was no occasion to doubt the recording of the dying declaration of the victim by the IO (PW-6).

24. The trial Court also noted that father of the Appellant, Jagdish Panchal, who was present in the house did not come downstairs; he did not help his son to remove his wife to the hospital; he did not visit the hospital to see her condition. The only inference was that he knew of the Appellant's designs to kill his wife.

25. The trial Court also noticed that information was received in the PS only around 11.45 pm whereas the victim had suffered at around 9.30 pm. It was established that the Appellant removed the victim to the hospital only at 11.45 pm and till then she was kept alive in the hospital. This also made the intentions of the Appellant clear. He did not immediately rush her to the hospital.

26. This Court has heard the submissions of Mr. R. Sathish, learned counsel for the Appellant and Ms. Radhika Kolluru, learned APP for the State.

27. Mr. Sathish first submitted that the trial Court ought not to have discarded the truthful versions of the two young children who clearly stated that their father was in the second floor while their mother caught fire while

preparing tea.

28. A careful perusal of the statements of both sons, PW-2 and PW-3, show that there are internal inconsistencies. PW-2 states that his mother while in the kitchen and “carrying hot tea tray” caught fire in her wearing saree. It is not clear at all how her saree could have caught fire while she was carrying tea in a tray. Normally the stove would not be still alight after the preparation of tea and pouring of the tea into cups and placing them on a tray. It is unlikely that the victim would have kept stove on for no reason even after the preparation of tea was complete. This appears not to be at all believable. PW-3, the other son states that while his mother was preparing tea in the kitchen she caught fire. How this is possible is not explained. It was perhaps too much to expect the young sons aged 10 years and 8 years respectively to explain in detail how their mother caught fire.

29. For this, it was important to understand where in the kitchen the stove was placed and whether the victim caught fire while sitting on the ground or while standing and preparing the tea. It would not have been possible for her saree to catch fire, if she had already finished preparing the tea, had poured the tea into cups and was carrying the tea cups in a tray, as is sought to be suggested by PW-2.

30. The incident happened inside the house. At that time the Appellant was present. According to him, his two sons and his father, Jagdish Panchal, were also present. According to both the Appellant and PW-3, the victim was only using an LPG stove. There is no indication that there was any burst of the LPG cylinder. How the victim's saree caught fire has been left

unexplained.

31. The defence of the Appellant was that of alibi. He stated that he was on the second floor with his father while his wife was on the ground floor when her saree was caught fire. In other words, the Appellant pleaded alibi by making it appear that he was on the second floor with his father and therefore did not see how his wife caught fire.

32. It is trite that if an accused pleads *alibi* the burden is on him to prove it. There were only two ways of proving the *alibi*. Either examine himself or his father who was supposedly with him in the second floor when the accident happened. However, for some reason, the Appellant has chosen not to examine either himself or his father as defence witness. The fact remains that the Appellant has no evidence to support of the plea of *alibi* and as such the plea has, therefore, to be rejected.

33. The statements made by PW-2 and PW-3 in this regard do not inspire confidence at all. Both were young children and both of them have admitted that they are living with their uncles prior to their being examined. It is probable that they were pressurized to resile from the earlier versions made to the police.

34. The second reason is that there are inherent inconsistencies and improbabilities in the evidence of these two young children as regards their mother getting burns.

35. Mr. Sathish then focussed on the dying declaration and submitted that

there was no certification by the doctor who attended the victim that she was in a fit state to make a statement.

36. We have the evidence of Dr. Badri Narayan Sharma (PW-7) who working as CMO in the GTB hospital on 16th December 2012 and he stated that under the supervision of Dr. Mohd. Irshad recorded the condition of the victim. He stated that “she was fit for statement at that time. Dr. Mohd. Irshad had prepared the MLC.” He too confirmed in his cross-examination about his having actually seen the preparation of the MLC by Dr. Irshad. This is to be seen also along with the evidence of Dr. Neha Gupta (PW-11) who conducted the post-mortem and stated that even if the patient suffered third to fourth degree burns, she will not be disabled for speaking or hearing as it depends upon the body surface area covered by injuries. If in this context, the dying declaration is perused, it appears to be natural and probable. There was no need at all for PW-6 to falsely create evidence. The dying declaration was recorded at the earliest opportunity 16th December 2012 itself. There was no suggestion to him that he somehow fabricated that document.

37. While certification by the doctor about the fitness of the victim to make a statement would certainly help, a dying declaration is definitely a strong piece of evidence. In any event in the present case, the dying declaration has also been corroborated by the medical and forensic evidence. At one stage Mr. Sathish sought to suggest that the victim suffered burns while sitting on the floor and preparing the tea. However, this is completely contradicted by the post-mortem report which shows that the victim suffered extensive burns

on her face, upper limbs, front and rear chest and importantly in the lower limbs including buttocks. There was no question, therefore, of such burns having been suffered by the victim while sitting on the floor. She was clearly standing. This is also consistent with the kerosene being poured on her and her being set on fire.

38. The defence has no explanation whatsoever for the important forensic evidence and that the victim's clothes had kerosene. The burnt clothes were not found in the kitchen but in the front room. There was no occasion for there to be kerosene on her clothes when in fact kerosene was not used in the kitchen as has been confirmed by both the Appellant and his son, PW-3.

39. The medical and forensic evidence corroborates what is stated in the dying declaration about kerosene being poured on the victim by the Appellant. As already noticed, this was an incident that took place inside the house. The evidence of the two young sons in this context does not inspire confidence. There were two adults in the house i.e., the Appellant and his father. The father could have been examined by the Appellant but for some reasons, he was not.

40. The conduct of the Appellant, as rightly noted by the trial Court, is more consistent with the case of the prosecution of his having planned to commit the murder of his wife by bringing kerosene oil into the house, and then pouring it on her and setting her on fire. There is a delay in taking the victim to the hospital and the explanation for this also is not forthcoming from the Appellant.

41. When the entire evidence is carefully perused, the Court finds that the conclusions drawn by the trial Court suffer from no legal infirmity. The Court finds no ground having been made out for interfering with the impugned judgment and the order on sentence of the trial Court.

42. The appeal is dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

JANUARY 04, 2018

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