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IN THE HIGH COURT OF DELHI

Judgment reserved on : February 10, 2009

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Judgment delivered on : February 13, 2009

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CRL.A. 644/2004

MOHD. MUNNA KHAN Appellant
Through: Ms. Purnima Sethi, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Chanda was brought by Laik Khan PW-10 to RML Hospital at 7:40 PM on 9.3.2001. She was examined by Dr.Smita Raj PW-6A. Chanda was badly burnt. On the MLC Ex.PW-6A/A, Dr.Smita Raj recorded that kerosene smell was present on the body of Chanda; that she had suffered 80% - 85% burns. Under the column history, it was recorded: "*alleged H-O burns*".

2. Around said time, at 7:36 PM, her husband Munna Khan, the appellant was got admitted by one Jasmine at LBS

Hospital where Dr.A.S.Prasad PW-2, examined Munna Khan and found him with burn injuries being 35% - 40%. He noted that Munna Khan was reeking with alcohol. He dutifully noted the same in the MLC Ex.PW-2/A. He recorded the history of how Munna Khan was stated to have suffered the burn wounds by recording: "*alleged H-O burn by stove as told by Jasmine*".

3. At the hospital where Munna Khan was admitted, apart from Dr.A.S.Prasad PW-2, he was also examined by Dr.S.S.Prasad PW-22, who at the rear of the MLC Ex.PW-2/A, on the diagrams depicting the human body from 3 dimensions, vide endorsement Ex.PW-2/B, recorded that Munna Khan had suffered burn injuries on the front right hand, right side of chest, right thigh lateral side, right foot anterior, left forearm lateral side, right forearm back side, the palms of both hands, middle portion of the back.

4. Somebody informed the police at around 7:18 PM on 9.3.2001 that a woman had been burnt in Jawahar Mohalla near a Masjid. The same was transmitted to PS Trilok Puri, where it was entered vide DD No.24A, Ex.PW-9/A, by ASI Ved Pal Singh PW-9.

5. SI Rajesh Kumar PW-15 accompanied by the additional SHO of the police station, Inspector Prem Soni and two constables left for the spot and learnt that Chanda had been taken to RML Hospital and that her husband Munna Khan had

been taken to LBS Hospital. He proceeded to RML Hospital and found Chanda admitted in the hospital with grievous burn injuries. Chanda was not fit for statement and hence he collected the MLC and informed Sh.K.D.Dogra SDM Preet Vihar about the incident, since it was a case involving a woman being burnt.

6. Kamal Dev Dogra PW-1, SDM Preet Vihar, reached RML Hospital where the doctor on duty, Dr.Mithlesh, vide endorsement Ex.PW-1/A certified Chanda fit for statement. Kamal Dev Dogra recorded her statement Ex.PW-1/B and obtained her thumb mark at point B. In the said statement, Chanda stated that her husband used to quarrel with her and that on 9.3.2001, at around 7:00 PM, in a fit of rage, he sprinkled kerosene oil on her and set her on fire inside their jhuggi.

7. Kamal Dev Dogra made an endorsement, Ex.PW-1/C, on Chanda's statement and directed the police to take necessary action. Needless to state an FIR under Section 307 IPC was registered against the appellant.

8. After visiting RML Hospital SI Rajesh Kumar returned to the place of the occurrence i.e. the jhuggi of the appellant where Chanda had suffered the burn injuries.

9. SI Vikram Singh PW-24, and Const.Taqir were also deputed to go to the spot where Chanda had received burn

injuries. As directed by SI Vikram Singh, Const.Rajesh Kumar PW-1, a photographer was called to the spot who took 10 photographs Ex.PW-7/A1 to Ex.PW-7/A10; negatives whereof are Ex.PW-7/B1 to Ex.PW-7/B10.

10. SI Vikram Singh PW-24, in presence of Laik Khan PW-10, prepared the rough site plan of the spot and seized, vide seizure memo Ex.PW-10/B a burnt chunni (Ex.P-3); a burnt salwar (Ex.P-4); a burnt pillow (Ex.P-2); a school bag (Ex.P-5); a half sleeve shirt (Ex.P-6); a partially burnt pant (Ex.P-7) and a track suit (Ex.P-8). He sealed the same.

11. The sealed parcel in which the articles seized vide Ex.PW-10/B was sent to the Forensic Science Laboratory, where residues of kerosene were detected on all the items, as per report dated 25.6.2001 Ex.PW-24/F.

12. Chanda died on 15.3.2001. The offence punishable under Section 302 was added in the FIR.

13. The body of Chanda was sent for post-mortem to Lal Bahadur Shastri Hospital where Dr.L.C.Gupta PW-18 conducted the post-mortem and penned his report Ex.PW-18/A, recording that Chanda had died due to shock resulting from septicemia which was triggered due to the extensive burns which she had suffered being 80%.

14. Baby Sayara PW-4, the youngest daughter of Chanda aged about 10 years on the date of the incident, Ayub Khan PW-

5, Bansi Lal PW-6 and Laik Khan PW-10 told the police that the appellant, in a drunken condition, had quarreled with Chanda and that in a fit of rage after throwing kerosene on Chanda had set her on fire. We may clarify that Baby Sayara disclosed aforesaid fact to the police, claiming that she had seen the incident. The others informed the police of said fact as told to them by Chanda.

15. Armed with the aforesaid material and the statements of afore-noted persons, a charge sheet was filed indicting appellant of the offence of murdering his wife. The offending act alleged against the appellant was of pouring kerosene oil on Chanda and there after setting her on fire. The doctors who had examined Chanda and Munna Khan were examined and proved the two MLCs noted hereinabove. Relevant for the purposes of the present decision is the testimony of Dr.S.S.Prasad PW-22, who categorically deposed that the injuries on the person of Munna Khan cannot be caused while saving a burning person.

16. Baby Sayara PW-4, deposed that on 9.3.2001, in evening she was playing with children opposite her house. She returned home and around same time the appellant returned home and quarreled with her mother. He poured kerosene oil on her mother. She told the appellant not to do so, but he threatened her to run away or else even she would be set on

fire. She ran out and saw smoke coming out of the jhuggi. People gathered and her mother was taken to the hospital. She was cross examined. Indeed, nothing of substance has emerged in the cross examination to discredit Baby Sayara.

17. Ayub Khan PW-5, deposed that the deceased was his sister and was married with one Naushad Khan about 20 years back. Naushad Khan went missing and his sister married Munna Khan i.e. the appellant about 6 years back. That after the marriage, his sister and the appellant started living in a jhuggi at Jawahar Mohalla and that the youngest daughter Sayara used to live with them. The two other daughters of his sister used to live with him. The appellant was addicted to liquor and did not have a regular job. As told to him by his sister, the appellant used to beat her. On 9.3.2001 he received information that his sister was burnt. He went to the hospital and met his sister who told him that after pouring kerosene oil on her, the appellant set her on fire. He deposed that his sister told him that the appellant was drunk and that she was preparing meals in the jhuggi when she was set on fire. The witness was cross examined. Indeed, at the hearing held on 10.2.2009, Ms.Poornima Sethi learned counsel for the appellant conceded that nothing was brought out to discredit the witness.

18. Bansi Lal PW-6, deposed that Chanda was his spoken sister and had contracted a second marriage with the appellant.

She had three children from her first husband, all of whom were living with their maternal uncle. He deposed that on 9.3.2001 while passing the jhuggi of the appellant at around 6:00 PM he saw the appellant quarrelling with Chanda. In the evening he learnt that Chanda had been set on fire. The next day he went to the hospital and Chanda told him that the appellant had set her on fire. In cross examination he deposed that he met Chanda only once and that he spoke to her for about 10 minutes.

19. With respect to the deposition of PW-6, learned counsel for the appellant drew our attention to his statement that all the daughters of Chanda from her previous marriage used to live with their uncle, meaning thereby, Baby Sayara could not be an eye witness as claimed by her.

20. Laik Khan PW-10 deposed that Chanda was his cousin and was married to the appellant. On 9.7.2001 at around 6 or 7 PM he was present in his jhuggi and heard a noise that Chanda was burnt. He rushed to Chanda's house and found her burnt. He took her to the hospital and on the way Chanda told him that the appellant had burnt her. The witness was cross examined. Indeed, nothing was pointed to us with reference to his cross examination to discredit the appellant.

21. Kamal Dev Dogra PW-1, deposed that he was working as the SDM of Preet Vihar and on being informed by the police

that Chanda was admitted in the hospital he reached there and vide endorsement Ex.PW-1/A Dr.Mithlesh declared Chanda fit for statement and that he recorded the statement Ex.PW-1/B of Chanda.

22. Learned Trial Judge has held that the dying declaration of Chanda as also her MLC coupled with the deposition of Chanda's daughter, Laik Khan, Bansi Lal and Ayub Khan establishes that the appellant had burnt Chanda after pouring kerosene oil on her. As a consequence Chanda suffered 80% burns and died as a result thereof on 15.3.2001. The result is the conviction of the appellant for the offence punishable under Section 302 IPC. The defence of the appellant that burn injuries on him establishes that he tried to save Chanda has been negated with reference to the testimony of Dr.S.S.Prasad PW-22 who has categorically stated that the burn injuries on the appellant could not be caused if the appellant was trying to save Chanda.

23. Ms.Poornima Sethi, learned counsel for the appellant did not dispute that the evidence establishes that Chanda had suffered burn injuries inside the jhuggi and that there was kerosene oil on her body. Learned counsel urged that Ayub Khan PW-5 had categorically deposed that Chanda had told him that when she was set on fire, Chanda was cooking meals. Thus, counsel urged that Chanda may have caught fire while

cooking meals. The possibility of her being in the process of putting kerosene oil inside the tank of the stove could not be ruled out. As noted above, with reference to the testimony of Bansi Lal PW-6, who stated that all three daughters of Chanda born to her from her first husband used to live with their uncle, learned counsel urged that the same establishes that Baby Sayara the youngest daughter of the deceased was a planted witness.

24. As the saying goes, men may lie but circumstances do not lie. The CFSL report Ex.PW-24/F and the seizure memo Ex.PW-10/B are enough to unerringly point towards the guilt of the appellant and rule out his innocence.

25. The seizure memo Ex.PW-10/B shows that the police seized a burnt chunni (Ex.P-3), a burnt salwar (Ex.P-4), a burnt pillow (Ex.P-2), a school bag (Ex.P-5), a half sleeve shirt (Ex.P-6), a partially burnt pant (Ex.P-7) and a track suit (Ex.P-8), all of which, as per FSL Report Ex.PW-24/F had residues of kerosene on them.

26. What does this show? It shows a liberal sprinkling of kerosene oil. Surely, the school bag, the shirt, the pant, the track suit and the pillows were not worn by Chanda. What has happened is evident. The appellant who was dead drunk poured kerosene all over his wife and in the process some kerosene fell on him. Part of it got sprinkled on the clothes lying in the jhuggi.

When he set Chanda on fire even he got burnt.

27. The theory of the appellant suffering burn wounds in his attempt to save Chanda receives a further dent from the fact that Laik Khan had taken Chanda to the hospital. It is so recorded in the MLC Ex.PW-6A/A. Had appellant been the saviour of Chanda, he and not Laik Khan, would have taken Chanda to the hospital. The MLC of the appellant shows that he suffered burn injuries on the front right hand, right side of chest, right thigh lateral side, right foot anterior, left forearm lateral side, right forearm back side, the palms of both hands, middle portion of the back. Indeed, the same cannot be the result of the consequences of an attempt by the appellant to save Chanda. Further, in the MLC of the appellant while recording the history of his burn wounds, it has not been recorded that he suffered the same while attempting to extinguish the flames on his wife. It is recorded that the appellant has got burnt by stove as told by Jasmine. Now, Jasmine is the person who took the appellant to the hospital. She has obviously uttered at the behest of the appellant who obviously did not say that he received the burn injuries while trying to save his wife.

28. Even if we ignore the evidence of the eye witnesses, the afore-noted features are enough to hold against the appellant.

29. That Baby Sayara was living with her mother is

evidenced by the fact that a school bag Ex.P-5 having kerosene oil thereon was seized from the jhuggi along with other items. To whom else, other than Baby Sayara, the school bag could have belonged? Merely because one witness deposed that all the three daughters of Chanda used to live with their uncle, does not discredit the testimony of the young girl that she used to live with her mother and the appellant.

30. Indeed, learned counsel for the appellant made no submissions that the Sub Divisional Magistrate was lying. Nothing has been shown to us to discredit the testimony of Ayub Khan, Bansi Lal and Laik Khan.

31. We find no merit in the appeal.

32. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 13, 2009
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