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

% Date of Decision: 27th January, 2010

+ **CRL A 633/2004**

SHAKUNTALA & ANR. Appellants
Through: Mr.Rajesh Mahajan, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Appellants Shakuntala and her son Sushil Kumar have been convicted for the offence of having murdered Sheela (wife of Sushil Kumar) by setting her on fire at around 5:15 PM on 28.3.1991 in the residential room of her matrimonial house bearing No.281, Purani Dakkhaane Wali

Gali, Chota Bazar, Shahdara.

2. In returning the verdict of guilt, the learned Trial Judge has held that the deceased Sheela who was brought to GTB Hospital at around 6:25 PM on 28.3.1991 made a dying declaration to Dr.R.K.B.Chaudhary who had examined Sheela and as recorded by the doctor on the MLC Ex.PW-8/A she was burnt after kerosene oil was poured on her by her mother-in-law. The learned Trial Judge has further held that the statement Ex.PW-17/A of Sheela recorded by Insp.Dharamvir Joshi PW-18 was the second dying declaration made by her and the same records the fact that on the day of the incident, at around 5:15 PM her mother-in-law quarreled with her. Her husband gave her beating and broke her teeth. Her mother-in-law poured kerosene oil on her and set her on fire. Lastly, the learned Trial Judge has held that the third dying declaration made by the deceased to her parents Malwati PW-1 (mother) and Nathu Ram PW-9 (father), when they reached the hospital on learning about their daughter being set on fire and as told to them and narrated by them in Court also proved that Sheela was burnt in her matrimonial house by the appellants.

3. Thus, we would be noting such relevant evidence as has been brought to our notice which has a bearing upon the vital question: Whether Sheela has truthfully stated the correct

facts about her death or whether she had some motive to falsely state incorrect facts or there is any evidence which destroys the dying declarations made by Sheela; or whether the I.O. has conducted the investigation with oblique motive.

4. The law pertaining to dying declarations is clear. A dying declaration which inspires confidence and is without any blemish can form the basis of a conviction and does not require any corroboration. However, if evidence is brought on record which shows that truth could be somewhat different or casts a doubt on the credibility of the dying declaration, in said circumstance, unless corroborated, it would be unsafe to sustain a conviction on a dying declaration. Further, if a person has made more than one dying declaration, if there is inconsistencies in the dying declarations, said fact has to be treated as indicative of not inspiring the credibility of a purported dying declarations.

5. As noted hereinabove, as recorded in the MLC Ex.PW-8/A, Sheela was brought to GTB Hospital at 6:25 PM on 28.3.1991. She was having 100% burns. She was found to be oriented and as recorded by Dr.R.K.B.Chaudhary the alleged history of the injury was being burnt after kerosene oil was poured on her by her mother-in-law.

6. Examined as PW-6, Dr.R.K.B.Chaudhary stated that

he was the author of the MLC. On being cross-examined he stated: *'I do not remember if anything was disclosed by the patient to me at the time of her medical examination'*.

7. It may be noted that Dr.R.K.B.Chaudhary has not disclosed whether what has been recorded by him in the MLC was told by the patient herself or by somebody else.

8. Information of a lady being burnt was received at the local police station and investigation was entrusted to Insp.Dharamvir Joshi PW-18 who first went to the matrimonial house of the deceased and therefrom to GTB Hospital, where he found Sheela admitted in the casualty ward. He recorded the statement Ex.PW-17/A after obtaining a certification on the MLC by Dr.R.K.B.Chaudhary at 6:40 PM that the patient was fit for statement. In the statement Ex.Pw-17/A Sheela stated that she was a resident of House No.281, Purani Dakkhaane Wali Gali, Chota Bazar, Shahdara, where she was residing with her husband Sushil Kumar from the date she got married i.e. 30th October, 1990 and that her mother-in-law Shakuntala, along with other family members were residing at House No.8/7, Kesari Mohalla, Circular Road, Shahdara that her mother-in-law used to often visit her and today evening had visited her. At around 5:15 PM she had a quarrel with her mother-in-law upon which her husband Sushil gave her a beating and broke her

teeth and her mother-in-law poured kerosene oil on her and set her on fire.

9. Insp.Dharamvir Joshi PW-18 deposed that he recorded the statement Ex.PW-17/A of Sheela and obtained her thumb impressions at point A and B thereon. After making an endorsement on the statement he sent the same for FIR to be registered and summoned the SDM of the area. He deposed that after returning to the spot he prepared the rough site plan Ex.PW-18/B. He summoned a photographer who took photographs. That the SDM conducted a site inspection the next day on receiving information that Sheela had died.

10. On being cross-examined he stated that when he reached the place of the incident he found the door of the window of the room was open. To the specific question: *'It is put to you that from the photographs at the scene the bolting device of the door of top and bottom from inside were in removed condition?'* He answered: *'It is incorrect that none of the kundi was broken. However, the broken device bottom size was little loose and the top bolt was lightly bent.'* On being cross-examined whether the SDM had handed over any report to him and whether he had mentioned said fact in his case diary, he stated that he did not want to go through the case diary. At that stage learned defence counsel showed

photocopy of a paper alleging that it was the copy of the case diary. The learned APP objected to the witness being cross-examined with reference to what was recorded in the inner case diary. The Court recorded that it could see, if required, the case diary. PW-18 thereafter stated that after seeing the case diary he was in a position to state that the SDM had handed over a report to him and the contents thereof were noted by him in the case diary except one word qua which he had left a gap.

11. We may note here and now that the said gap relates to serial No.1 of the inspection report of the learned SDM, where in the inspection report Ex.PW-16/A, against serial No.1 it is recorded: *'1. No incriminating document/suicide note was found at the spot'*.

12. We may further note here and now that the first word 'No' is overwritten. In a different pen, upon the original word which can possibly be read as 'In' or 'One'. We shall be dealing with this aspect of the matter a little later.

13. Sh.K.K.Siam PW-16, the SDM concerned stated that when he went to the spot he found no incriminating document/suicide note. The door appeared to have been locked from inside at the time of the incident. The main door had two locks and their appearance at the time of his visit was

as shown by him in his inspecting note Ex.PW-16/A.

14. On being cross-examined he admitted that there was a overwriting on Ex.PW-16/A and that the overwriting was on the first word at entry vide serial No.1 in the inspection report. To the question whether the word 'One' had been changed into 'No' by overwriting, he stated that the initial word written by him was 'In' and that he later on corrected the same by writing 'No'.

15. To the question what was the need to mention that he did not find any suicide note or incriminating document (for the reason one normally mention what one finds and not what does not find) he stated that in some cases he found suicide notes and for said reason he wrote that in the instant case he found none.

16. The photographer who was summoned to the spot i.e. the place where Sheela suffered burn injuries appeared as PW-14 and stated that photographs Ex.P-1 to Ex.P-7, negatives whereof are Ex.P-8/1 to Ex.P-8/7 were taken by him.

17. We may note that the photograph Ex.P-1 pertains to the door of the room where Sheela suffered burn injuries. It shows that 2 latched are extended across the edge of the door evidencing that the same were locked and the door had to be pushed open.

18. Being relevant it is to be noted that vide serial No.4 on Ex.PW-16/A, a fact referred to by Sh.K.K.Siam PW-16, it is recorded: *'The main door has two locks and their appearance at the time of my visit is as follows:-'*. Thereafter, the door has been shown by drawing a rectangle. A latch on the upper left side door and a latch on the left side bottom have been depicted in small rectangles and it has been recorded on both latches that there are marks of forcible opening. We may clarify that the said notation pertains to the part of latch which is protruding beyond the boundaries of a door. The same evidences that when locked, the portion of the latch which projects beyond the boundary of the door and gets inserted on the hinge affixed to the door frame has marks of forcible opening.

19. Since Sheela died the next day, her body was sent to the mortuary of GTB Hospital where Dr.L.K.Barua PW-13 conducted the post-mortem and prepared the report Ex.PW-13/A, as per which the deceased died due to hypovolumic shock following 100% burns. He noted smell of kerosene on the scalp hair and the body.

20. It may be noted that in the post-mortem report of the deceased and as deposed to by Dr.L.K.Barua he found no injury on any part of the body except the burn injuries.

21. Relevant for us to note is the fact that neither in the post-mortem report nor in the testimony of the doctor is the fact that any tooth much less the teeth of the deceased was/were broken or that there was any injury evidencing that the deceased was beaten.

22. The parents of Sheela namely her mother Malwati PW-1 and her father Nathu Ram PW-9 deposed that since her marriage, their daughter was being harassed by her in-laws. Her husband demanded money to start some work. On 28.3.1991 they learnt that Sheela was burnt. They went to GTB Hospital where Sheela informed that Sushil Kumar had beaten her and had broken her teeth and that her mother-in-law had poured kerosene oil on her and set her on fire.

23. Malwati PW-1 has added a fact by stating that as told by Sheela, her husband i.e. Sushil Kumar had caught hold of Sheela when her mother-in-law poured kerosene oil on her and set her on fire.

24. From the facts noted hereinabove the following strikingly emerges:-

A. The post-mortem report of the deceased rules out that the deceased was beaten and her tooth/teeth were broken.

B. The photograph Ex.P-1 and the site inspection

report Ex.PW-16/A evidences that the door of the room in which Sheela suffered burn injuries was latched and had to be pushed resulting in the hinges affixed to the door frame getting loose and leaving marks of forcible opening on the part of the latches which protrude beyond the edges of the door at the top and towards the left.

C. On the inspection note Ex.PW-16/A there is a overwriting on the first word of the recording at serial No.1, where either the word 'One' or the word 'In' has been changed to 'No' and the entry at serial No.1 is made to read: 'No incriminating document/suicide note was found at the spot'.

D. The investigating officer has deliberately, while noting the contents of Ex.PW-16/A in the case diary omitted two writings the first word of the entry at serial No.1 in the note of inspection Ex.PW-16/A.

25. From the last two points noted hereinabove, it is apparent that the investigating officer has not conducted a fair investigation. Deliberately, the first word of the evidence pertaining to the inspection note at serial No.1 has been omitted to be noted in the case diary. This means that the original writing of 'One' or 'In', being deliberately not recorded by the investigating officer to enable him to give a direction to the investigation as per his wishes and not to ascertain the

truth, cannot be ruled out.

26. Taking note of the said fact it assumes importance that Ex.PW-16/A i.e. the note for inspection is suggestive of the fact that the main door was latched inside and had to be pushed open. This suggests that Sheela had locked the door from inside. The fact that Sheela claims to have been beaten by her husband and her tooth/teeth broken, soon preceding her burning, is falsified from her post-mortem report, indicates a motive on the part of Sheela to nail her husband and her mother-in-law, who probably were troubling her for dowry.

27. The cumulative circumstances aforetoed casts not only a serious doubt in the fairness of the investigation and preparation of contemporaneous records but even a doubt whether Sheela has been telling the truth; requiring the appellants to be granted the benefit of doubt.

28. The appeal is allowed. The impugned judgment and order dated 12.8.2004 is set aside. The appellants are acquitted of the charge of having murdered Sheela.

29. Since the appellants are in jail, copy of this order be sent to the Superintendent Central Jail Tihar for necessary action and to be made available to the appellants.

30. Needless to state, if not required in custody in any

other matter, the appellants shall be released forthwith.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 27, 2010
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