

(2014) 07 DEL CK 0165
In the Delhi High Court
Case No : Crl. A. 147/2000

Laxmi		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2014) 07 DEL CK 0165

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Harpreet Singh Popli, Atul Bhuchar and Avantika Yadav, Advocate for the Appellant; Aashaa Tiwari, APP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Laxmi and Sheela have been held guilty for having burnt Rajbala with the common intention of killing her at 1:45 PM on September 20, 1995 at House No. RZ-228, Double Storey, Harijan Colony, Tilak Vihar, Delhi. The verdict of guilt is as per the judgment dated February 28, 2000. Both have been sentenced to undergo imprisonment for life as per the order dated February 29, 2000. The learned Additional Session Judge has accepted the statement Ex. PW-15/B made by Rajbala to ASI Om Prakash PW-15, as her dying declaration. The testimony of Ms. Sunita PW-2 and Kumari Babita PW-3, the two daughters of Rajbala has been believed. The two have been held to be truthful eye-witnesses. Further incriminating evidence has been found in the contents of DD No. 8A, Ex. PW-5/D, recorded by ASI Poonam PW-5, duly corroborated with the testimony of Ct. Ramesh PW-22. The contents of Ex. PW-5/D are to the effect that when Rajbala was brought to the casualty of Deen Dayal Upadhyay Hospital at 2:20 PM, Ct. Ramesh, who was on duty at DDU Hospital was informed that a lady had been admitted at the hospital in a burnt condition. He met Rajbala who told him that Laxmi and Sheela had set her on fire. To put it pithily, the verdict of guilt is based upon two dying declarations made by the Rajbala. Firstly to Ct. Ramesh

and thereafter to ASI Om Prakash as also on the testimony of two eye-witnesses.

2. Sheela and Laxmi urge in the appeal that there are material contradictions in the testimony of Sunita and Babita thereby rendering the percipient evidentiary worth of their testimony highly tainted and possibly suggestive of the fact that their father Ram Kumar had set his wife on fire and the two daughters deposed falsely to save their father and for which Sheela and Laxmi urge that the delay in removing Rajbala to the hospital and the further delay in registration of the FIR needs to be taken note of. Their argument is that this time was used by Ram Kumar to spin a story through the mouth of his daughters. Sheela and Laxmi refer to their conduct of being in their house when the police apprehended them the same evening when Rajbala suffered burned injuries. They urge that if the two had burnt Rajbala, they would not be sitting in their respective homes and would flee from justice. Sheela and Rajbala question the authenticity of Ex. PW-15/B, the dying declaration of Rajbala by urging that Dr. S. Dureja PW-20, who wrote Rajbala's MLC Ex. PW-15/A had categorically deposed that whereas the writing on the MLC was his and he had signed at point "X", the writing encircled in red ink on the MLC was not his handwriting. The writing referred to by Dr. S. Dureja certifies that the patient is fit for statement. And we need to put a clarificatory note here. The portion encircled with red ink on the MLC contains the writing "Ex. PW-15/A" and beneath the same is the signature of the learned Judge who recorded the evidence. It is apparent that there is a discrepancy in what has been recorded as "encircled in red" in the testimony of the witnesses and what has been actually "encircled in red". A mistake has apparently occurred. Instead of encircling in red where it is written "patient is fit for statement" inadvertently the place where the learned Judge wrote the exhibit mark on the MLC and penned his signatures has got encircled in red.

3. We note that no arguments were addressed pertaining to the contents of DD No. 8-A and the testimony relating thereto of ASI Poonam PW-5 and Ct. Ramesh PW-22, but we take it to be a lapse by the learned counsel for Sheela and Laxmi, and since we are dealing with an indictment for murder we shall be dealing with said aspect of the matter also.

4. Process of law was set into motion when DD No. 16, Ex. PW-8/A was recorded at 2:15 PM by the duty officer P.S. Tilak Nagar that lady Ct. Babita at the Police Control Room had informed that a person who did not give his name rang up the Police Control Room that a lady had been burnt at W-56, Tilak Nagar. Copy of DD No. 16 was handed over to H.C. Rajkumar PW-8, for inquiry and accompanied by Ct. Shailender Kumar he went to House No. 228, Double Storey, Harijan Colony, Tilak Nagar and learnt that the injured had been removed to the hospital by her husband. He saw signs of a fire near the kitchen of the house. He left Ct. Shailender and went to DDU Hospital and found Rajbala admitted in the hospital. In the meanwhile, Rajbala had been taken to DDU Hospital by her husband Raj Kumar PW-4. She was admitted at the hospital at 2:20 PM as recorded in the MLC EX. PW-15/A. Said information was conveyed to P.S. Tilak Nagar by Ct.

Ramesh and was recorded in DD No. 8/A at 2:40 PM in the daily diary register by ASI Poonam. Copy of DD No. 8/A was handed over to ASI Om Prakash who proceeded to DDU Hospital. He met H.C. Rajkumar at the hospital who handed over to him copy of DD No. 16. He found Rajbala admitted in the hospital in a burnt condition and obtained copy of her MLC Ex. PW-15/A. He claims that the doctor declared her fit for statement and he recorded Rajbala's statement Ex. PW-15/B. He made an endorsement Ex. PW-15/C beneath the statement and dispatched the same, as recorded in Ex. PW-15/C, from the hospital at 4:00 PM for FIR to be registered. At the police station, as per DD No. 9-A, FIR No. 684/95 for an offence punishable u/s 307/34 IPC was registered at 4:15 PM. Further investigation was immediately taken over by SI S.S. Yadav PW-23 who went to Rajbala's house. He prepared the rough site plan Ex. PW-23/A. He summoned a photographer who took three photographs Ex. PW-16/A to Ex. PW-16/C of the scene of the crime. From the photographs one can make out that the semi burnt clothes of Rajbala are lying outside the bathroom and the matchbox is lying about two feet away. From the spot he picked up a match box Ex. P-4 containing unburnt matchstick, one burnt matchstick and recorded the same in the memo Ex. PW-6/A which was witnessed by Ct. Shailender PW-6. He also picked up half-burnt clothes Ex. P-2 having a print in red and black colour which he recorded in the memo Ex. PW-6/B. He also picked up a plastic can Ex. P-1 of 5 litre capacity containing one litre kerosene oil and recorded said fact in the seizure memo Ex. PW-6/C. He called Ct. Geeta PW-13 to the spot and proceeded to the residence of Sheela and Laxmi. He apprehended the two from their house. Rajbala died at around 6:00 PM the same day and this information was conveyed to SI S.S. Yadav who went to the hospital and completed the inquest proceedings Ex. PW-14/B-1 to B-11. Bheem Singh and Rajkumar, two relatives of Rajbala identified her dead body. He got conducted the post mortem and handed over the dead body to the family members.

5. Since Rajbala died, the offence of murder was added in the FIR.

6. SI S.S. Yadav recorded the statements of Sunita and Babita, the two daughters of Rajbala, as also that of Ram Kumar the husband of Rajbala. The exhibits were sent for forensic examination.

7. In her testimony Ms. Sunita PW-2 deposed that she knew the accused since they were distantly related to them. Her mother Rajbala had strained relations with Laxmi because she had seen Laxmi in a compromising position with a Nepali boy. She deposed that on September 20, 1995 she was present in her house at 1:45 PM and so was her sister and her brother. Laxmi and Sheela came to their house and abused her mother. They gave fist blows to her. There were other ladies with them who left. Thereafter Sheela told Laxmi that her mother would leak out their secrets and defame them and hence should be done to death. Laxmi rushed to the kitchen and brought a can, Ex. P-1 containing kerosene and poured kerosene on her mother. Her mother made an effort to run. Sheela caught her mother and then went to the kitchen and returned with a match box.

She lit a matchstick and threw it on her mother who caught fire. Sheela and Laxmi ran away. Her mother started screaming. Some ladies from the neighbourhood came. Their father who was away from the house also came. She deposed that she could identify the clothes worn by her mother when she was set on fire. When shown the burnt pieces of clothes after the sealed parcel bearing seal of CFSL was opened, she said that these were not the clothes worn by her mother at the time of incident.

8. On bring cross-examined she said that she did not know the name of the Nepali boy with whom Laxmi was having illicit relations. She said that she was 15 years old when her mother died. She said that besides her Babita and Shyama, her sisters, were present in the house. She said that they were all studying in Rajkiya Ucham Madhyamik Vidhyalaya in Tilak Nagar. Their school time was from 7:30 AM to 1:00 PM. Being the last working day, it was a holiday. Her younger brother Shiv Kumar had gone to school. Shiv Kumar used to study in the same school. There was no holiday for Shiv Kumar since his school was different. Her father was not at home and had gone to work. She said that after entering the room the accused persons bolted the same from inside. She and her sisters did not try to save their mother because they were threatened by the accused. Laxmi had dragged her mother to the kitchen. She did not see her mother bleed. She said that she knew one Prithi Singh but denied that her mother had any illicit relationship with Prithi Singh. She said that the police came to their house after about two hours of her mother being removed to the hospital. Her statement was recorded at about 4:00 PM or 5:00 PM. She and her sister and some neighbours accompanied the police to the house of Laxmi and Sheela to nab them.

9. Relevant would it be to note that a suggestion was given to her that her mother committed suicide because she was fed up with her father.

10. Kumari Babita PW-3 deposed that Sunita was her elder sister. Her mother's name was Rajbala. She knew Laxmi and Sheela. Her mother had seen Laxmi in a compromising position with a Nepali boy and this was the reason for the strained relationship between her mother and Laxmi. On September 20, 1995 she and her sisters Sunita and Shyama were in their house. At about 1:45 PM Laxmi and Sheela, along with some women, came to their house and abused them. Other ladies went away. Laxmi and Sheela remained in the house. They gave beating to her mother. Sheela said that her mother would not keep quite till she was finished. Laxmi dragged her mother towards the kitchen and picked up a kerosene can and tried to pour kerosene oil on her mother who tried to run away but Sheela caught her. Laxmi poured kerosene oil on her mother. Sheela picked up a match box and lit a matchstick and threw the same at her mother who caught fire. Thereafter the two ran away. People collected at the spot. Her father also arrived and removed her mother to the hospital.

11. During cross-examination she said that the other ladies who entered the house remained inside the room for about five minutes and that two out of those women whose names were Ramwati and Sushila also gave beating to her

mother. Laxmi and Sheela also gave beating to her mother, inflicting fist blows. Her mother's started bleeding from the lower lip. Her statement was recorded by the police at 1:45 PM and so was the statement of her elder sister. Burnt clothes were taken into possession by the police at 2:30 PM. She and her sister did nothing because they were too frightened. Her brother was not present in the house and was away to school. She said that their school was not closed on the day of the incident. She denied that their mother had illicit relations with one Prithi Singh. She denied that she and her sister accompanied the police to trace Laxmi and Sheela.

12. Ram Kumar PW-4 deposed that he was Rajbala's husband and on September 20, 1995 had left his house at 9:00 AM for his office. His son came to his office in the afternoon and told him that two/three women were fighting with his wife in the house and thus he came home and found his wife on the ground floor in a burnt condition. He removed his wife to DDU hospital at about 3:00 PM or 5:00 PM.

13. On being cross-examined he said that the name of his son who came to his office was Shiv Kumar. He denied the suggestion that that Laxmi had told him that his wife was having illicit relations with Prithvi Singh. He said that prior to the incident there was no quarrel between his wife and the accused. He said that by and large the relations were cordial.

14. ASI Poonam PW-5, Ct. Shailender PW-6, H. Ct. Raj Kumar PW-8, Ct. Geeta PW-13, ASI Om Prakash PW-15, Ct. Ramesh PW-22 and SI S.S. Yadav PW-23 deposed facts concerning the reporting of an offence, the registration of the FIR, the investigation conducted at the spot, the statements of the witnesses recorded, the seizure memos drawn up and the accused being apprehended; narratives whereof we have recorded in paragraphs 4 above. Dr. S. Dureja PW-20 the author of Rajbala's MLC Ex. PW-15/A deposed that he had not written what was encircled in red ink on Ex. PW-15/A. As clarified by us in para 2 above, the writing was to the effect that the patient was fit for statement.

15. Examined u/s 313 Cr.P.C. Laxmi claimed innocence and false implication. She said that a false case was foisted upon her in collusion with the police because she and her sister Sheela had a quarrel with Rajbala. Same is the stand taken by Sheela.

16. In defence, Laxmi and Sheela examined one Berra Singh DW-1 who deposed that Rajbala had committed suicide on the second floor. He saw her roll down the staircase in flames. She had herself put herself on fire when she was alone. He said that he saw Rajbala rolling down the stairs when he was standing under a mulberry tree.

17. Learned counsel for the appellants urged that Sunita and Babita had contradicted each other on material points and thus the testimony of the two of being eye witnesses to the crime had to be disbelieved. Five contradictions were pointed out: (i) whereas during cross-examination Sunita said that after entering

the room and bolting the same from inside the accused started abusing her mother for a pretty long time, it was only the accused who gave beating to her mother, Kumari Babita, during cross-examination said that after entering the room, and while abusing their mother even Ramwati and Shushila gave fist blows to their mother apart from accused Laxmi and Sheela; (ii) whereas Sunita said that her mother did not bleed when she was being beaten, Babita said that her mother's started bleeding from the lower lip; (iii) whereas Sunita said that her statement was recorded by the police at about 4:00 PM or 5:00 PM, Babita said that police recorded her statement at 1:45 PM; (iv) whereas reason given by Sunita to explain her conduct of not trying to rescue her mother was that the accused threatened them, reason given by Babita was that she and her sister was too frightened to intervene; and (v) whereas according to Sunita she and her sister with some neighbours went with the police to the house of Laxmi and Sheela, as per Babita she and her sister did not accompany the police to nab the accused.

18. The five discrepant statements in the testimony of the two sisters are no contradictions in the eyes of law. These are natural variations when two young girls, barely in their teens see a horrifying incident of their mother being set on fire and narrate the same after a year. One sister only remembering that the accused came with few other women and started abusing their mother followed by the other women leaving and the accused staying back to beat and then set their mother on fire and the other sister remembering that two out of the other women also inflicted fist blows on their mother would not mean that the two sisters are contradicting each other. One sister remembering seeing blood oozing from a cut lip of the mother and the other not so remembering would not mean that the two are contradicting each other. We do not find any contradictions in the reason given by the two sisters not to intervene when their mother was being beaten. Babita said that she and her sister were too frightened to intervene. Sunita said that the accused had threatened them. The words used by Sunita are: "We did not try to save my mother because we were threatened by the accused." It has to be kept in mind that the two witnesses deposed in vernacular and what we find in the judicial record is a translation of what they said. The word "were" in the sentence is an insertion in hand, and obviously by the learned Judge who corrected the transcript. The witness may have said that we did not try to save my mother because we felt threatened by the accused and the learned Judge while making the correction could possibly have made an error while correcting the transcript. Be that as it may, it is apparent that when eight or nine women enter a house and start abusing the lady of the house and two and may be four assault the lady of the house, the children would obviously be overawed and would be stricken by fear. These traumatised children when narrating the incident would have slight variations. Similar would be the position of Sunita stating that when she went with the neighbours to search for Laxmi and Sheela even Babita was present with them and Babita telling that she did not accompany the police. As regards the discrepancy of Sunita deposing that her

statement was recorded by the police at about 4:00 PM or 5:00 PM and Babita deposing that her statement was recorded at 1:45 PM we find no contradiction of a kind which discredits the two girls. Now, the question of the police recording Babita's statement at 1:45 PM does not arise because the first police officer who could reach the house was H. Ct. Raj Kumar and Ct. Shailender Kumar. They had gone to the house of Rajbala after DD No. 16 was recorded at P.S. Tilak Vihar at 2:15 PM. Under no circumstances they could reach the house at 1:45 PM. H. Ct. Raj Kumar went to the hospital on being told that Rajbala had been removed to DDU hospital and in the meanwhile when Ct. Ramesh conveyed information at the police station, recorded vide DD No. 8-A at 2:40 PM that Rajbala had been got admitted at the hospital in a burnt condition ASI Om Prakash PW-15 left for the hospital and after recording Rajbala's statement Ex. PW-15/B he despatched the rukka from the hospital at 4:00 PM. FIR was registered at 4:15 PM. SI S.S. Yadav PW-23 took over the investigation and reached the house of Rajbala. It is apparent that young Babita got influenced by the likely time when the first police personnel reached their house, which was around 2:30 PM, for the reason DD No. 16 was recorded at 2:15 PM at P.S. Tilak Nagar and remembering said time said that her statement was recorded by the police at 2:15 PM.

19. Before we reflect upon the testimony of Sunita and Babita further we would be obliged to deal with another argument concerning the defence point that Ram Kumar could possibly be the accused and he having set his wife on fire. The argument was that whereas Sunita deposed that even her brother was in the house but during cross-examination said that their brother Shiv Kumar was in school, Sunita categorically said that her brother had gone to the school. It was argued that Ram Kumar had said that when he was in office his son had come to his office and told him that some women were fighting with his wife in the house and thus he returned to his house.

20. Sunita and her sister Babita deposed in Court on September 05, 1997 and gave their age as 16 years. The date of the incident is September 20, 1995. The two were 14 years of age as of said date. Both have stated that it being the last working day, their school was closed. It is not unusual for a school to declare holiday for children on the last working day of a term, on which day the teachers and non-academic staff complete the records maintained by the school. Sunita has said during cross-examination that their school time was 7:30 AM to 1:00 PM. It means that the school in which they were studying had a morning shift. In Delhi, due to paucity of buildings, schools, and especially those established by the Government, run into shifts. It is a general practice in Delhi that morning shift is reserved exclusively for female students and the evening shift for the boys. The incident took place around 1:45 PM. Whereas Shiv Kumar had left for the school to attend classes at the second shift and thus the two sisters slightly confusing themselves of his being in the house cannot be ruled out. There is no evidence as to at what distance was the school from their house. Ram Kumar has categorically deposed that his son came to his office and told him that some women were fighting with his wife in the house. He has stated that his son was

studying in a Government school in Tilak Nagar. The evidence may be slightly blurred on the subject of the manner and circumstances in which Shiv Kumar reached the office of Ram Kumar. But that hardly matters for the reason undisputedly Ram Kumar reached his house and took Rajbala to the hospital. MLC Ex. PW-15/A records that Ram Kumar, husband of Rajbala had brought her at the hospital at 2:20 PM. The aforesaid factual aspects were brought to light by Laxmi and Sheela during arguments in the appeal to urge that Shiv Kumar's claim that he was in the office is false. According to them he was in the house. He had set his wife on fire. He did not inform the police. He waited in the house to cook up a story and make his daughters speak lies. He removed his wife to the hospital at 2:20 PM. The facts aforesaid form the backdrop of the contention urged.

21. DD No. 16 has been recorded at 2:15 PM. It records that an unknown person had informed the police of a lady being burnt in Tilak Nagar. Sunita and Babita have not said that they saw the time when their mother was burnt by looking at a watch. It is apparent that the two young girls spoke from memory. MLC Ex. PW-15/A records that Shiv Kumar had brought Rajbala to Deen Dayal Upadhyay Hospital at 2:20 PM. He had to arrange for a conveyance to shift his wife to the hospital and then removed his injured wife to the hospital. The fact that he got his wife admitted at the hospital at 2:20 PM would mean that he would have removed him from the house at around 2:00 PM. It takes time to cover the distance from the house to the hospital. It takes sometime to shift the injured from the vehicle on to stretcher and take the injured inside the casualty room. It takes a few minutes for a doctor to attend to the patient and then author the MLC. The version of Sheela and Laxmi that Shiv Kumar set his wife on fire and then delayed removing her to the hospital has no factual foundation for the structure to be built.

22. At this stage we need to highlight the shifting currents of the defence. To Sunita and Babita suggestions were put that their mother had committed suicide since she was fed up with their father. In line with said argument a defence witness has been examined. It cannot be the defence version that Shiv Kumar set his wife on fire and at the same time that Rajbala committed suicide. The falsity in the version of the defence witness is apparent from the fact that he claims to have seen Rajbala rolled down the stairs while on fire from the second floor of the building. Rajbala's MLC does not evidence any injuries due to fall. Besides, the photographs Ex. PW-16/A to Ex. PW-16/C show that the place where Rajbala suffered burn injuries was inside her house.

23. The contention urged that in the statement of Sunita and Babita they had said that there were other women present with the accused when they entered the house and Kumari Babita named two: Ramwati and Sushila and thus the Investigating Officer was obliged to contact said women and record their statements u/s 161 Cr.P.C. and thereafter examine them as witnesses, is noted and rejected by us for the reason there was no necessity for the Investigating

Officer to duplicate witnesses.

24. The two young girls, Sunita and Babita have withstood the test of cross examination and we find no reason not to believe their percipient evidence.

25. It may be true that the prosecution has been negligent in not proving the endorsement on the MLC Ex. PW-15/A where it is recorded that the patient was fit for statement. But we have no reasons to disbelieve the testimony of ASI Om Prakash that Rajbala was fit for statement. How was ASI Om Prakash to know that two ladies named Laxmi and Sheela lived nearby and Laxmi had an issue with Rajbala concerning Rajbala spreading in the neighbourhood that she had seen Laxmi in a compromising position with a Nepali boy. That apart, before ASI Om Prakash entered the scene, the first police personnel to have met Rajbala was Ct. Ramesh PW-22, on duty at the casualty of the Deen Dayal Upadhyay Hospital. He has deposed that on being informed that a lady had been admitted at the hospital in a burnt condition, he went to the casualty and met Rajbala who told him that two ladies named Laxmi and Sheela had set her on fire. How was Ct. Ramesh to know that the two ladies named Laxmi and Sheela lived nearby and Laxmi and Sheela had set her on fire?

26. Information conveyed by Ct. Ramesh was noted in DD No. 8A by ASI Poonam PW-5, has proved said fact. The only question put in cross examination to ASI Poonam was whether she was aware of any action being taken against Ramwati, to which she replied that she had no knowledge.

27. No doubt Sunita has not been able to identify the clothes her mother were wearing at the time of incident, but this fact stands proved from the photographs Ex. PW-16/B and Ex. PW-16/C, as also from the testimony of Ct. Shailender PW-6 who seized the same from the spot.

28. Rajbala's MLC Ex. PW-15/A has been proved by Dr. S. Dureja PW-20, the author thereof. We ignore the writing on the MLC that the patient is fit for statement which Dr. S. Dureja said is not in his handwriting. But, the part of the MLC recorded by Dr. S. Dureja records that the patient was fully conscious and was responding to verbal commands. This means that at the time Rajbala was examined by Dr. S. Dureja she was fully conscious and was responding to verbal commands. Medical jurisprudence guides us that a patient who has suffered burn injuries starts losing consciousness after sometime when bilateral creps occur due to loss of body fluid (oozing from the burnt capillary of the skin and muscle tissue). As per the MLC Rajbala was admitted at the hospital at 2:20 PM. DD No. 8A has been recorded at the police station at 2:40 PM. The first dying declaration made by Rajbala to Ct. Ramesh has been established on a standalone basis. It corroborates Rajbala's dying declaration Ex. PW-15/B. The omission by the prosecution to prove the writing on the MLC when Rajbala was shifted to the burns ward and the doctor there certifying her fit for statement has thus to be overlooked in the teeth of overwhelming clinching evidence.

29. We find no merit in the appeal. The appeal is dismissed.

30. Bail bond and surety bond furnished by Sheela and Laxmi are cancelled. The two shall surrender to suffer the remaining sentence.

31. TCR be returned.