WWW.LIVELAW.IN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 700 OF 2021
(Arising out of S.L.P.(Crl.) No. 3319 of 2021)

PRAMILA **Appellant(s)**

VERSUS

THE STATE OF UTTAR PRADESH **Respondent(s)**

O R D E R

Leave granted.

The appellant is the married sister-in-law (*Jethani*) of the deceased, and aggrieved by her conviction under Section 302, 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act sentencing her for life with a default stipulation.

The deceased died in the matrimonial home on 16.07.2008 in about one and a half years of the marriage suffering 95% burn injuries. PW-2, the younger brother of deceased aged about 11 to 12 years is the sole eye witness.

Shri Tripurari Ray, learned counsel appearing on behalf of the appellant, submitted that she had taken a specific defence in her statement under Section 313 Cr.P.C. that she resided in her matrimonial home, which was separate and at a distance. The appellant, according to PW-2, is stated to have stuffed cloth in the mouth of the deceased after which she was set on fire by other accused. This crucial allegation was never put to the appellant under Section 313 CrPC thus depriving her of a valuable opportunity

Signature Not Verified
Digitally Signed by
Rachna
Date: 2021.07.28
18:19:03 IST
Reason:

LL2021SC342

WWW.LIVELAW.IN

of defence which vitiates her conviction. It is next submitted that PW-2 is not a reliable eye-witness inviting attention to certain contradictions in his evidence. In addition, reliance has been further placed on the evidence of DW-3 in support of the separate mess and residence of the appellant from her parental home.

Shri Sandeep Singh, learned counsel appearing for the State, submitted that PW-2 was a reliable witness. He is the brother of the deceased. There is no reason to disbelieve him and nothing has been elicited in the cross-examination to discredit his reliability as a witness including his presence. The allegation that the deceased was set on fire is fully corroborated by the medical evidence. The matrimonial residence of the appellant was not at such a distance so as to make her presence improbable, merely being 40 to 50 steps away.

We have considered the submissions. Apart from the appellant, the husband of the deceased namely Pramod, his brother Neetu and mother have also been made accused. The appellant is the wife of another brother of the husband of the deceased namely Mappal – who is not an accused.

Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the Courts have regularly held that where a child

LL2021SC342

WWW.LIVELAW.IN

witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the Court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW-2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.

The evidence of a child witness and the manner of its consideration has been dealt with in *State of M.P. vs. Ramesh,* (2011) 4 SCC 786, as follows:

> **"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."**

The allegation that the appellant stuffed cloth in the mouth of the deceased was serious and specific against her. We are of the considered opinion that in absence of any question having been put to her in this regard under Section 313 CrPC the appellant has been seriously prejudiced in her defence. It has repeatedly been held that the procedure under Section 313 CrPC is but a facet of the principles of natural justice giving an opportunity to an accused to present the defence. The burden of proof on an accused

LL2021SC342

WWW.LIVELAW.IN

in support of the defence taken under Section 313 CrPC is not beyond all reasonable doubt as it lies on the prosecution to prove the charge. The accused has merely to create a doubt. It will be for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused. The mere fact that the house of the appellant was at near quarters cannot ipso facto lead to a conclusion with regard to her presence in her parental home at the time of occurrence. It is a fact to be established and assessed from the evidence on record.

In *Janak Yadav v. State of Bihar,* (1999) 9 SCC 125, it was observed as follows :

> "5. Section 313 CrPC prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecution's evidence. That opportunity is a valuable one and cannot be ignored. It is not a case of defective examination under Section 313 CrPC where the question of prejudice may be examined but a case of no examination at all under Section 313 CrPC and as such the question whether or not the appellants have been prejudiced on account of that omission is really of no relevance…."

According to PW-2, the appellant stuffed cloth in the mouth of the deceased, thereafter others tied her up and set her on fire leading to 95% burns. Events happened in continuity as is evident from the deposition of PW-2, where he states that after the deceased had suffered burn injuries he had seen the entire scenario including the room where the burnt articles were kept including that he was a witness to his sister being put in a vehicle while being taken to the hospital. He then states that the deceased in

LL2021SC342

WWW.LIVELAW.IN

that condition was speaking. At no stage has the witness deposed that the cloth was taken out from her mouth. It stands to reason that if cloth was stuffed in the mouth of deceased she would have been unable to speak.

PW-8 the Doctor who examined the deceased when she was brought to the hospital did not depose that the deceased was unable to speak. He only said that she was in a serious condition. The witness deposed that there was no cloth recovered from the mouth of the deceased. At this juncture the evidence of PW-5 the doctor who performed the post-mortem the very next day is relevant. He states that the mouth of the deceased was closed, the jaws were shut, no cloth was present in the mouth but burnt cloth was present on the whole body starting from the wrist. More crucially he states that all the 32 teeth were intact. Blisters were present at various parts of the body but he does not talk about any blister being present in the mouth. The discussion and reasoning by the trial court that absence of any cloth in the mouth was irrelevant because if the deceased suffered hundred per cent burns the cloth naturally could not be available, suggesting that it would have been burnt also is completely fallacious.

We have already noticed no injuries of any nature have been found inside the mouth neither has the cloth been found. PW-5 has further deposed that all the 32 teeth were intact. In the aforesaid background, we are not sure and satisfied that the evidence of PW-2 attributing a specific role to the appellant is of such a sterling quality so as to inspire confidence in the court to base the conviction on the sole evidence of a child witness. The appellant

LL2021SC342

WWW.LIVELAW.IN

was a daughter-in-law like the deceased herself. The nature of the evidence makes it highly unlikely that she would have engaged in such actions. The benefit of doubt in the circumstances has to be given to the appellant.

We, therefore, set aside the judgment under appeal and give the benefit of doubt to the appellant. She is directed to be released forthwith unless wanted in any other case.

The Appeal stands allowed.

Pending application(s), if any, shall stand(s) disposed of.

.....J.
(NAVIN SINHA)

.....J.
(R. SUBHASH REDDY)

New Delhi;
28th July, 2021.

LL2021SC342

WWW.LIVELAW.IN

ITEM NO.16 Court 9 (Video Conferencing) SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3319/2021

(Arising out of impugned final judgment and order dated 08-04-2019 in CRLA No. 1319/2010 passed by the High Court of Judicature at Allahabad)

PRAMILA Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH Respondent(s)

Date : 28-07-2021 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. Tripurari Ray, Adv.
Mr. Susheel Tomar, Adv.
Mr. Sanjeev Malhotra, AOR

For Respondent(s) Mr. Vishwa Pal Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands allowed in terms of signed order.

Pending application(s), if any, shall stand(s) disposed of.

(NEETA SAPRA) (DIPTI KHURANA)
COURT MASTER (SH) COURT MASTER (NSH)
(Signed order is placed on the file)

LL2021SC342