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CrI.A.No. 294 OF 2000
ITEM NO. 104

COURT NO. 4

SECTION IIA

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

CRIMINAL APPEAL No. 294 of 2000@@
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Muneer Khan & Ors. ..Appellants

Vs.

State of U.P. ..Respondent
(With Office Report)

Date : 15/01/2002 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant Mr. Anis Ahmed Khan,Adv.

For Respondent Mr. U.N. Bhachawat,Sr.Adv.
Mr. Alok Bhachawat,Adv.
Mr. B.S. Banthia,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.

.SP1

Mr. Anis Ahmed Khan, Advocate argued from 3.15 p.m.
to 3.40 p.m. and Mr. U.N. Bhachawat, Sr. Advocate argued
from 3.40 p.m. to 3.45 p.m.

Appeal is allowed in terms of the signed order.

.SP1

(N.K. Goel) (H.K. Bhatia)
Court Master Court Master
(Signed order is placed on the file)

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.PL55

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

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This is a case of bride burning. Mussamad Sharifan Bi @ Savitri died of burns inside her nuptial home. Except her husband all the remaining inmates were arraigned for the offence of murder. The trial court acquitted all of them, but the High Court in an appeal filed by the State reversed the acquittal and convicted all of them and sentenced each one to imprisonment for life. Thus the convicted persons secured a right to prefer this appeal under Section 379 of Criminal Procedure Code.

Deceased is Mussamad Sharifan Bi @ Savitri wife of PW-2 Sukhdeen. His eldest brother Muneer Khan is the first accused, Rozan the 18 year old daughter of Muneer Khan is the second accused (she died during ..2/-

:2:

the trial stage), Sathara Bai wife of Muneer Khan is the third accused, Anar Bai the 20 years old daughter-in-law of Muneer Khan is the fourth accused.

The case against all the above mentioned accused is that all of them together poured kerosene and set Sharifan Bi - deceased ablaze at about 8.00 a.m. on 20.11.1985. She was taken to the hospital. Her dying declaration was recorded by PW-12, Executive Magistrate on the same day at about 11.00 a.m. She died at about 6.00 p.m. on 22.11.1985. The statement recorded by the investigating officer under Section 161 of the Criminal Procedure Code was used by the prosecution as evidence under Section 32 of the Evidence Act as the deceased had died.

This is a case in which two broad aspects have to be highlighted at the outset. The first is this : The husband of the deceased Sharifan Bi, the brother-in-law of the deceased (PW3 Esmile is the husband of the deceased's sister), the brother of the deceased (PW4 Wazir Khan) and even the daughter of the deceased (PW6 Tahira Bi @ Tara) have all said in unison that Sharifan Bi committed suicide. Hence they were all treated as hostile by the prosecution and confronted them with the statement recorded under Section 161 of the Criminal Procedure Code. The ..3/-

:3:

second aspect is that the trial court was not disposed to act on the dying declaration as the solitary piece of evidence for entering a mass conviction of all the accused.

The following is what PW-12, Executive Magistrate has recorded as spoken to by the deceased:

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My Jethani Satara Bi and her daughter Rozan Bi, my husband's elder brother Muneer Khan and Anar Bi wife of Habib poured kerosene and set fire inside my house at 8.00 a.m. today.

.....L.....I.....T.....T.....T.....T.....T.....J

If one goes by the said dying declaration it is apparently evident that the declarant had tried to rope in every other member of her nuptial home, barring her husband. Even the 18 year old daughter and the 20 year old daughter-in-law were also roped in by making a sweeping statement as against all of them in the episode.

It is extremely difficult for us to believe that all those persons would have combined together to perform actual act as attributed to them for murdering the deceased. At any rate this is what the trial court has felt.

The conclusion reached by the trial court cannot be held to be perverse or so unreasonable as ..4/-

:4:

no court would reach such conclusion. Hence it was not proper on the part of the High Court to reverse order of acquittal merely basing on the said dying declaration of the deceased, in the peculiar facts and circumstances of this case. It does not inspire confidence as the true fact. On the other hand the dying declaration has all the trappings of a desire to catch every one of the in-laws against whom she would have been nurturing some grouse.

In the result, we allow this appeal and set aside the conviction and sentence passed on the appellants. The order of acquittal passed by the trial court is restored. If any of the appellants is in jail, we direct him to be released forthwith. Bail bonds will stand cancelled.

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(K.T. THOMAS)@@

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(S.N. PHUKAN)@@

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NEW DELHI@@

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JANUARY 15, 2002 @@

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