

**State Vs. RafiuddIn @ Rafe**

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**SooperKanoon Citation :** [sooperkanoon.com/1171197](http://sooperkanoon.com/1171197)

**Court :** Delhi

**Decided On :** Jul-22-2014

**Judge :** Pradeep Nandrajog

**Appellant :** State

**Respondent :** RafiuddIn @ Rafe

**Judgement :**

\$~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 331/2014  
STATE Represented by: ..... Petitioner Mr.Manoj Ohri, APP for the State. versus  
RAFIUDDIN @ RAFE Represented by: ..... Respondent None. CORAM: HON'BLE  
MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

2207.2014 % 1. The State seeks leave to appeal against judgment dated January 28, 2014 passed by the learned Additional Sessions Judge acquitting the respondent Rafiuddin @ Rafe, husband of the deceased Gulfiza for charges under Sections 302/304B and 498A IPC.

2. The prosecution case rests on the dying declaration made by the deceased and the testimony of her family members. An information was received by the PCR which was recorded vide DD No.4 at 1.30 AM on January 19, 2011 that a lady set herself on fire as Ex.PW-12/A. By the time PW-17 SI Mahipal Singh, the Chowki In-charge of Police Post Balli Maran reached House No.5062, Kucha Rehman.

The victim who resided on the first floor had been shifted to JPN Hospital. On the spot he found smell of kerosene oil, articles of kitchen and sewing machine, burnt clothes of injured, empty bottles of kerosene oil and other bottles of oil. Water was scattered around. He called the Crime Team and got the spot photographed.

3. On reaching the hospital SI Mahipal Singh received the MLC of Gulfiza. The doctor declared her fit for statement. He recorded her statement Ex.PW-6/DA bearing the thumb impression of the injured at point X which was attested by him at point Y. He also obtained signatures of Razia and Ruksar, the two sisters of Gulfiza at points A and B and uncle of Gulfiza namely Nasiruddin at point Z.

4. As per Ex.PW-6/DA Gulfiza stated that she was residing with her parents and siblings. She was a fashion designer and had studied upto 8th standard. For the last two-three months her work was not doing well due to which she was very upset. On January 18, 2011 the whole day she was with her three sisters. Her parents had gone to Agra due to the death of her grandfather six days ago. On the night of January 18, 2011 all of them had food together. Around 10.30 PM her sisters went to the other room and she went to her factory. At around 11 o'clock she came back to the house with milk and poured kerosene oil and put herself on fire. On hearing her shrieks her sisters came and put blanket and water on her. They brought her to the hospital. She stated that none was responsible for her death.

5. At about 9.20 PM on January 19, 2011 parents of Gulfiza came to SI Mahipal Singh at the police post and stated that his daughter had concealed the marriage with Rafiuddin but now she has disclosed everything to them and she wants to give another statement. They handed over photocopies of the certificate of marriage of Gulfiza and Rafiuddin, marriage agreement, affidavit regarding date of birth and marriage. He recorded all this information vide DD No.28 and passed the information to SDM, Kotwali. PW-20 Rakesh Sharma. The SDM reached the hospital where the doctor declared Gulfiza fit for statement and he recorded her statement vide Ex.PW-3/A.

6. In the statement Ex.PW-3/A Gulfiza stated that on November 26, 2010 she married Rafiuddin as per Mulsim Rites and Customs. However, she concealed this

fact from her parents and continued to live with them. She would often go outside the house and meet Rafiuddin. Rafiuddin quarrelled with her on one pretext or the other and demanded money from her. By that time she had already given him `1.75 lakhs. On January 18, 2011 at 9o clock Rafiuddin requested her over the telephone to meet him. She went to Baghwali Masjid. There he demanded `50,000/- from her. When she refused to give the money he quarrelled and abused her. She further stated that angered by his conduct she came home and switched off her mobile. After around 20-25 minutes, Rafiuddin came to the first floor of her house and started fighting with her and demanded money again. On refusal he abused her. On this she went to the room in the corner and set down near the gas stove. In the room there was one cane of kerosene oil and in the other machine oil was kept. Both these oils were mixed and used in sewing machines as she was doing the work of fashion designing from the said room. Rafiuddin took kerosene oil bottle and poured it on her back and lit her with a match. She shouted on which her three sisters came and put water and blanket on her. Rafiuddin started running after taking away the mobile phone but her sisters caught hold of him. Rafiuddin assaulted Ruksar and fled away with her Nokia phone. She further stated that her earlier statement given to the police was due to the fear because she had not revealed the factum of marriage to her parents.

7. Since both her hands were bandaged her right toe impression was taken on the statement. The endorsement of the patient being fit for statement has been duly proved by PW-26 Dr.Varsha Gupta, from Department of Burnt and Plastic Surgery, LNJP Hospital. PW-25 Dr.Renu Kumari exhibited the MLC of Gulfiza Ex.PW-21/A which also noted smell of kerosene and that she was 65% burnt on face, neck both arms (exterior and posterior aspect) on chest above breast. Gulfiza died on January 31, 2011.

8. PW-5 Ruksar and PW-6 Razia have supported the version of the deceased Gulfiza as stated by her in Ex.PW-3/A, however they are not the eye witnesses and they only came out after hearing the cries of the deceased Gulfiza. Further the first dying declaration of Gulfiza Ex.PW-6/DA was witnessed by them and they nowhere stated of having found Rafiuddin at the spot or trying to apprehend him.

9. The learned Additional Sessions Judge after evaluating the two dying declarations disbelieved Ex.PW-3/A and for cogent and convincing reasons. Ex.PW-3/A bears the right toe impression of the deceased in the middle of the paper. It is apparent that the toe mark was taken prior and the document was filled in later on. The toe mark is not after conclusion of the statement of the deceased. The first dying declaration Ex.PW-6/DA was made by the deceased to SI Mahipal Singh soon after the incident in the presence of her two sisters who had duly endorsed the same as witnesses. Though the case of the prosecution is that the first dying declaration was made due to the threat of Rafiuddin, however there was no threat to the two sisters. Further by that time Ruksar and Razia did not even know Rafiuddin and the marriage of their sister to him. The possibility of tutoring before recording of the second dying declaration and implicating the respondent after the parents had met the deceased cannot be ruled out. The post-mortem report shows that the burns were only on the front upper portion of the deceased. The learned Trial Court observed that if the dying declaration as mentioned in Ex.PW3/A is to be accepted Rafiuddin is alleged to have poured the kerosene oil from behind and in such a situation the burn injuries would have been on back and not on the front chest, face, neck and arms. Further even the PCR Report Ex.PW-12/A which reached the place of incident immediately records that the deceased had set herself on fire by pouring kerosene oil due to tension of business.

10. Having perused the Trial Court record, we find no infirmity much less any perversity in the impugned judgment acquitting the respondent. Thus leave to appeal is declined.

11. Petition is dismissed. PRADEEP NANDRAJOG, J.

**MUKTA GUPTA, J.**

JULY22 2014 vn

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