

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

+ **Crl. Appeal No.480/2001**

Reserved on : 04.11.2008

Date of Decision : 17.11.2008

UMESH

..... Appellant

Through : Ms.Charu Verma, Advocate

Versus

STATE OF DELHI

..... Respondent

Through : Ms.Richa Kapoor, APP for the
State.

CORAM :

HON'BLE MR. JUSTICE ANIL KUMAR, J

HON'BLE MR. JUSTICE V.K.SHALI, J

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

J U D G M E N T

V.K. SHALI, J:

1. This is an appeal filed by the appellant against the judgment dated 19th May, 2001 convicting him for an offence under Section 302/498A IPC and sentencing him to life imprisonment and a fine of Rs.2,000/- (in default of payment of fine rigorous imprisonment of one year for an offence under Section 302 IPC) and rigorous imprisonment of two years and a fine of Rs.1,000/- (in default of payment of fine rigorous imprisonment of six months for an offence under Section 498A IPC). The judgment of conviction and order of sentence was passed by

Sh.S.C.Mittal, the then Additional Sessions Judge, Karkardooma Courts, Delhi.

2. Briefly stated the prosecution case against the appellant is that the appellant was married to one Suman (since deceased) about three years prior to the date of incident, which is purported to have been taken place on 28th June, 2000. Suman, the deceased was living with the appellant at his house bearing Gali No.15, First Pushta, Part-II, near Bhagat Ji Ka Mandir, Sonia Vihar, New Delhi. On 28th June, 2000, Suman was admitted with 100% burn injuries to GTB Hospital where MLC was prepared by Dr.M.K.Heera. Since this was a police case, information about the incident was given to the police which was recorded vide DD entry No.61 B (Ex.PW22/A) by the local police and the same was handed over to the ASI Niyaz Mehendi, who along with Constable Harish Mohan went to the spot for the purpose of making inquiry. Another DD entry No.67 B (Ex.PW22/B) was recorded and the copy thereof was again sent to ASI Niyaz Mehendi PW-24 through Constable Arvind Kumar by the police station as he received information that a woman in a burnt condition had been admitted to the Hospital. PW-24 ASI Niyaz Mehendi came to the hospital where he obtained MLC Ex.PW10/A from the doctor. In the MLC (Ex.PW10/A) the doctor had opined that the patient who was admitted at 10.00 p.m. was fit to make the statement. PW-24 ASI Niyaz Mehendi thereafter requisitioned the services of Sh.Sanjeev Mittal, SDM PW-19 for the purpose of recording the statement of the injured Suman.

In this process, considerable time was spent and Sh.Sanjeev Mittal, SDM could come to the hospital only at about 3.30 p.m. whereupon Dr.Mrityunjay (PW-10) who was the doctor on duty examined the patient afresh and certified that Suman was in a fit condition to make the statement. Dr.Mrityunjay, PW-10 has made an endorsement on the MLC Ex.PW 10/A at point 'A' in this regard. Thereafter, the statement of Suman was recorded in a question-answer form which is Ex.PW19/A and is duly signed by Sh.Sanjeev Mittal, SDM as well as ASI Niyaz Mehendi. In addition to this, Right Thumb Impression (RTI) of Suman has been obtained on the said statement which is recorded on one page in token of its correctness. The sum and substance of the statement of Suman was to the effect that she was married to the appellant nearly three years ago from the date of incident and she did not have any issue from the wedlock. She also stated that her husband was in love with another woman by the name Sangita because of which there used to be frequent quarrels between the appellant and his wife Suman, since deceased. In addition to this, she also stated that quarrels also used to take place on account of demand of dowry by the appellant. She further stated that on the date in question, there was a quarrel between the deceased and her husband-appellant at about 7.00-8.00 pm which was on account of the relationship of the appellant with Sangita. That is the reason the appellant poured kerosene on her and thereafter lit her because of which she suffered the burn injuries.

3. On the basis of the aforesaid statement, an endorsement was made by the ASI Niyaz Mehandi and the same was sent to the police station through Constable Bhim Singh whereupon FIR No.177/2000 was registered at P.S. Khajuri Khas under Section 307/498A IPC. Investigations of the case were handed over to ASI Niyaz Mehandi. The deceased unfortunately having suffered 100% burns succumbed to her injuries on 3rd July, 2000. FIR No.177/2000 was accordingly converted from 307 IPC to 302 IPC.

4. Investigating officer after recording statement and collecting documents and evidence filed a charge sheet against the appellant for an offence under Section 302/498A IPC. The case was sent to the Court of learned Sessions Judge, Karkardooma Court, Delhi. Whereupon a charge under Section 302/498A IPC was framed against the appellant.

5. The prosecution in support of its case has examined 24 witnesses in all. After recording of the prosecution evidence by the learned Trial Court, entire incriminating evidence which was brought on record was put to the appellant in his statement under Section 313 Cr.P.C. The appellant denied the incriminating evidence against him and took the plea that he has been falsely implicated. Reason for his false implication has not been given by the appellant in the statement under Section 313 IPC. It was further stated by the appellant that he has received burn injuries to the extent of 6% on account of extinguishing the fire on to the

deceased which was alleged to be accidental in the instant case. However, no defence witness has been examined by the appellant.

6. We have heard the learned counsel for the appellant as well as learned counsel for the State. We have also gone through the records. Learned counsel for the appellant has assailed conviction and sentence passed by the learned Sessions Judge, Karkardooma Courts, Delhi primarily on the ground that the dying declaration which is purported to have been made by the deceased Suman is not a correct and truthful inasmuch as the deceased having suffered 100% burn injuries could not have been in a fit state to make the statement so as to give the cause of her death, which can be construed as a dying declaration. A subsidiary argument to this is that the deceased has stated categorically in her so called dying declaration that the appellant had poured kerosene oil on her which is not fortified by the Central Forensic Science Laboratory report. In this regard, learned counsel drew our attention to the report Ex.PW23/A in which the Central Forensic Science Laboratory has detected kerosene on Ex.A1, which was a 'kan' recovered from the spot however, it has been opined by the said Laboratory that no kerosene residue could be detected on Exs.2 to 5 respectively. Exs.2 to 5 were the clothes, hair from the scalp of the deceased, the burnt piece of cloth, etc. where no residue traces of kerosene were found. It was also contended that the appellant had suffered accidental burn injuries and it was the appellant himself who was trying to save the deceased because of which

the appellant had himself received burn injuries which are stated by PW-6 to the extent of 6%. Learned counsel for the appellant in support of her contention of discrediting the dying declaration has relied upon a case titled as P.Mani Vs. State of Tamil Nadu 2006 (2) SCALE 482. On the basis of the said authority, it was urged before us that the deceased was nurturing a feeling against the appellant to the effect that the appellant was having a link with another woman by the name of Sangita and since she had suffered the burn injuries, she had every reason to implicate falsely the appellant in the instant case.

7. The next argument which was raised by the learned counsel for the appellant was that three important witnesses of the prosecution have turned hostile and have not supported the prosecution case. These witnesses are PW-1 Mukesh, relation of the deceased who identified the dead body PW-3 Munni Lal, father of the deceased who stated that the appellant had kept his daughter well and PW-4, Ram Sakhi, sister of the appellant who reached the spot and found the deceased burnt and sitting naked. In fact it was stated by PW-3 Munni Lal that his daughter was kept by the appellant in a manner which did not give her any cause for complaint.

8. Learned counsel for the State has disputed the contention of the appellant and contended that the guilt of the accused has been proved beyond reasonable doubt inasmuch as the dying declaration which has been made as the basis of conviction is consistent, truthful and in

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unequivocal terms and names the appellant as the assailant who had poured kerosene and lit the deceased. It was urged that there was no reason for the deceased to tell a lie. Therefore, there is no infirmity in the judgment of conviction or the order of sentence passed by the learned Sessions Judge, Delhi.

9. We have thoughtfully considered the submissions made by the respective parties. There is no dispute about the fact that the entire case of the prosecution is based on the dying declaration of the deceased Suman. It may be pertinent here to refer to the celebrated judgment of the Supreme Court in **Khushal Rao Vs. State of Bombay AIR 1958 SC 22** which lays down that the conviction of the person can be based solely on the dying declaration provided it is subjected to close scrutiny and if it is found reliable. The Court also observed that it is not a rule of law that every dying declaration would require corroboration. While testing the veracity of the dying declaration, it was held that the Court has to bear in mind that the accused did not have the opportunity to cross-examine the deceased. Therefore, the factors which have to be borne in mind while judging the veracity of the dying declaration are the time gap between the time of the incident and the making of dying declaration, the possibility of tutoring, the person who recorded the dying declaration, the consistency in making the dying declaration in case there are more than one, the time and the light available at the time of incident whether the deceased had an opportunity to see and observe the

assailant and whether she or he was in fit mental condition to make the statement. The Court went on to conclude.

(17) Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.

If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities, referred to above or from such other infirmities as may be disclosed in evidence in that case.

10. The Trial Judge has also referred to a number of authorities to the effect that there is no legal impediment in basing a conviction of an accused on the dying declaration if the Court comes to the conclusion that the said dying declaration is truthful consistent and reliable. Reliance in this regard is placed by the learned Sessions Judge on the following authorities:-

“(i) Vithal Some Nath More Vs. State of Maharashtra AIR 1978 SC 519.

- (ii) State of Assam Vs. Maffizuddin Ahmed AIR 1983 SC 274
- (iii) State of Rajasthan Vs. Kishore 1996 (2) JT 595
- (iv) State of UP Vs. Amir Ali 1996 (1) JT 123
- (v) Chandra Narain Yadav Vs. Sahin Jee Yadav & Ors. 1999 (9) JT 365.”

The aforesaid judgments are essentially reiterating the principles laid down by the Supreme Court in **Khushal Rao's case** (Supra).

11. Coming to the facts of the present case, at about 10.00 pm, the deceased Suman was admitted to the GTB Hospital with 100% burn injuries in GTB Hospital. The doctor who has proved the MLC Ex.PW10/A has categorically stated that the patient was fit to make the statement at about 10.00 am. This MLC has been duly proved by Dr.Mrityunjay who had again examined the deceased at about 3.30 on the morning of 29th June, 2000 and found the patient fit to make the statement. It was contended by the learned counsel for the appellant that as Dr.M.K.Heera who had originally prepared the MLC has not been examined therefore, the certification of fitness granted by PW-10 Dr.Mrityunjay loses its significance. We disagree with this submission of the learned counsel for the appellant for the simple reason that non-examination of Dr.M.K.Heera is not fatal to the case of the prosecution inasmuch as MLC has been proved through a different doctor PW-10 Dr.Mrityunjay. No doubt MLC No.PW10/A was originally prepared by Dr.M.K.Heera at about 10.00 pm when the patient was

brought and he declared the patient fit to make the statement, but it is not that certificate of fitness on the basis of which the dying declaration has been recorded. It is after this endorsement that SI Mukesh Kumar had gone to get the SDM who was not available and therefore, he requisitioned the services of Sh.Sanjeev Mittal who could come only at 3.30 am on 29th June, 2000. It is at that time again that the patient was again examined by Dr.Mrityunjay, PW-10 who declared the patient fit to make the statement and it is only after that the statement was recorded.

12. Dr.Mrityunjay, PW-10 has entered into the witness box and stated that the deceased was fit to make the statement. He also stated that the pulse of the patient was 60 per minute though the blood pressure could not be taken. The witness withstood the test of cross examination. The contention of the learned counsel for the appellant that as the patient had received 100% burn injuries, therefore, she could not have been in a fit condition to make the statement is devoid of any merit, inasmuch as a person may suffer 100% burn injuries yet she or he may be in a fit condition to make the statement provided the doctor certifies to that effect. Even in a case of 100% burn injury, there has to be some time gap before the body fluid imbalance is created on account of which the patient may go into coma. A specific question was put to Dr.Mrityunjay, PW-10 in the cross examination as to whether a patient of 100% burn injuries who had suffered damage to spleen, both kidneys, lungs, brain, stomach etc., would be in a position to make the statement. The answer

which has been given by the witness is to the effect that even if vital organs of a injured are damaged on account of 100% burn injuries even then the patient would be in a fit condition to make the statement provided it is recorded immediately. In the instant case, Dr.Mrityunjay, PW-10 has specifically stated at 3.30 am when he examined the patient although he could not record her blood pressure but he had recorded her pulse rate to be 60 and found her to be in a fit condition to make the statement and immediately thereafter the statement of the deceased has been recorded. There is no material on record which could make the Court to believe that at the time when the statement of the deceased Suman was recorded at about 3.30 am on the early morning of 29th June, 2000, she was not in a fit state to make the statement. The factum of the deceased being in a fit condition to make the statement also gets fortified from the facts firstly PW-10 Dr.Mrityunjay specifically states in his statement that the deceased was conscious and could speak clearly and secondly, she died only after about four days of suffering burn injuries that the death took place. The cause of death is given as shock on account of septicemia. Modi's Medical Jurisprudence and Toxicology, 23rd Edition at page 633 gives it as one of the delayed cause of death in burn cases. This also supports the view of the doctor who conducted the post mortem. There is nothing on record or brought on record which would show that there was any animus in the mind of the deceased to falsely implicate her husband. Nobody from her parent's side met her after the incident rather it was PW-4 Ram Sakhi sister of the appellant

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who brought her to the hospital. As against this, the conduct of the appellant is suspicious. Firstly, PW-4 sister of the appellant specifically says that the appellant was not available at the spot, while the appellant says that he suffered 6% burns while extinguishing the fire of his wife. The very fact that the appellant has suffered burns clearly shows that he was present at the spot. Secondly, the appellant takes more than two hours to shift the deceased to the hospital which is quite nearby despite the deceased having suffered extensive burn injuries which also raises a serious suspicion about his conduct.

13. The next question which arises is whether the dying declaration which has been made by the deceased is reliable, consistent and inspires confidence so as to base the conviction of the appellant on the sole dying declaration of the deceased or not. Admittedly, in the instant case, there is only one dying declaration and therefore, there is no occasion of inconsistency. So far as the reliability of dying declaration is concerned, the same is recorded on only one page where specific questions have been put to the deceased by Sh.Sanjeev Mittal, SDM PW-19. She has replied very graphically that there used to be quarrels between the appellant and herself on account of two basic reasons namely the demand of dowry and the factum of the appellant having relationship with another woman named Sangeeta. It may be pertinent here to mention that incidentally Sangita is the first cousin of the deceased Suman. There was absolutely no justification or reason for the deceased to tell a lie that kerosene was

poured by the appellant and thereafter he lit her. On the contrary, after having poured kerosene and lighting the deceased, it seems that the appellant had awaited for a considerable time so as to ensure that the deceased suffers complete burn injuries so that she is not able to make any statement. It was only after she had suffered substantial burn injuries that he seems to have made a semblance of an effort that he had tried to douse the fire of the deceased because of which he suffered 6% burn injuries on his hands. These injuries which have been noticed by PW-6 in the MLC Ex.PW6/A of the appellant are only superficial in nature.

14. The plea which has been taken by the learned counsel for the appellant is that if the appellant had any intension to burn his wife Suman (since deceased), he would not have suffered burn injuries on account of dousing the flames. The appellant in his statement has not denied the factum that he was not available at home. It is not acceptable that if the appellant was at home and he tried to save her then, how she had 100% burn injuries. He has not been able to give any explanation as to how and in what condition the deceased suffered burn injuries. This was a fact which was specifically within his knowledge and by virtue of Section 106 of the Evidence Act, the onus was on him to discharge the same which he has failed to do. Therefore, this clearly, shows that the appellant on his part tried everything to ensure that the deceased suffered complete burn injuries before she is removed to the hospital. In

addition to this, it has also not come on record, that the incident is purported to have taken place between 7-8 then why the appellant remained at home till about 10.00/10.30 pm before he got the deceased admitted to the hospital. What he did during these vital 2½ hours before removing the deceased to the hospital. This raises a serious doubt about his plea that he tried to extinguish the fire. There is absolutely no reason to disbelieve the dying declaration of the deceased Suman wife of the appellant in these facts and circumstances. It is highly unlikely that a wife who got burnt accidentally would implicate her husband who is alleged to have tried to save her. The dying declaration of the deceased can be said to be consisting of two parts. The first part is the factum of her having been burnt by her husband by pouring kerosene. There can be absolutely no doubt about the same and the said fact in our opinion is proved beyond reasonable doubt. The deceased stating in her dying declaration that action be also taken against Sangita does not dilute the reliability of dying declaration. In the facts and circumstances the reliability of dying declaration that appellant had set her on fire is not negated or doubted nor does it require any corroboration about relationship between appellant and Sangita. As a matter of fact, the naming of Sangita by the deceased in her dying declaration shows the motive of appellant in eliminating her. No doubt PW-3 Munni Lal father of the deceased has turned hostile and has not supported the prosecution case but his statement to the SDM (Ex.PW3/A) has been proved. He has been confronted with the portion of the statement wherein he has stated

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that four months prior to the incident his deceased daughter had complained to him that the appellant after being drunk beats her. This lends corroboration to the statement of the deceased that relationship of the appellant with one Sangita who is the cousin of the deceased gave him this motive to commit this ghastly act.

15. So far as the judgment which has been relied upon by the learned counsel for the appellant is concerned that is distinguishable from the facts of the present case. The points of distinction in that case were that there was evidence to the effect that it was a case of suicide whereas in the instant case neither there is any evidence of alleged suicide by the deceased nor this is the defence of the appellant. Therefore, the ratio of said case has no application to the facts of the present case. Moreover, it has been repeatedly held by the Supreme Court that judgment cannot be applied like theorems. The facts of each and every case have to be seen and presence or absence of any vital fact can change the ratio. It has also been held that every observation made in a judgment is not to be applied mechanically. Reliance in this regard is placed on The State Financial Corporation and Anr. Vs. M/s Jagdamba Oil Mills and Anr. AIR 2002 SC 834.

16. Lastly, it was contended that material witnesses have turned hostile which casts doubt on the prosecution story. No doubt PW-1 Mukesh and PW-3 Munni Lal, father of the deceased and PW-4 Ram Sakhi, who is related to the appellant, have turned hostile and their

testimonies cannot be considered. Even if their testimonies are ignored because they have turned hostile, still the dying declaration of the deceased is sufficient to nail the appellant with the commission of the crime.

17. PW-1 has identified the dead body of the deceased so has been done by PW-3, the father of the deceased. PW-3 Munni Lal is not a very reliable witness. However, he immediately after the incident had given a statement before SDM, which is Ex.PW3/A where he has stated that four months prior to the incidence his daughter had complained that the appellant had been beating her after being drunk and he took the name of Sangita. This is the same Sangita who is named in dying declaration. Though the deceased has imputed the motive of her burning to the relationship between the appellant and Sangita, however, even if the motive as perceived by the deceased is not established and if the appellant had burnt her for allegedly some other motive will not negate the reliability of the part of the dying declaration categorically stating before the Magistrate, in a fit state to make the statement, that she had been burnt by her husband.

18. Therefore, in view of the abovementioned facts and circumstances, we are of the considered opinion that the dying declaration which has been made as a sole basis of conviction of the appellant is truthful, reliable and inspires full confidence of the Court and conviction of the appellant can be on the basis of the same.

19. The other plea of the appellant is that the prosecution case is that she was poured with kerosene by the appellant, however, the report of the Central Forensic Science Laboratory shows that no traces of kerosene were found on the cloths of the deceased, hair removed from the scalp of the deceased as well as the burnt clothes. Therefore, the theory that the deceased having been drenched with kerosene and then burnt, falls flat. We do not agree with the plea of the learned counsel for the appellant that the absence of traces of kerosene on various exhibits namely hair from the scalp of the deceased, burnt mattresses and burnt clothes will negate the prosecution version based on the dying declaration that the deceased was burnt by the appellant after pouring kerosene on her. It is on account of the fact that merely pouring some kerosene on some of the clothes of the deceased will not leave traces of kerosene because the kerosene only ignites the fire and expedite the burning. Retention of kerosene on the clothes also depends on the type of clothes and to the extent the clothes are burnt. Since no traces of kerosene were found on the hair from the scalp of the deceased and burnt clothes, the reliability of the dying declaration of the deceased cannot be doubted so as to require further corroboration. The photographs of the room where the incident of burning took place also reveals that it had only one gas stove. The room also had a can of kerosene. No kerosene stove was found and recovered from the place of incident nor it is the defence of the appellant that the deceased was burnt accidentally while using kerosene stove. What was found in the room was a can of kerosene with an open lid. In these facts

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and circumstances the dying declaration of the deceased that she was burnt by her husband by pouring kerosene on her does not require any further corroboration nor the dying declaration can be rejected on the plea that traces of kerosene were not found on various exhibits which were the scalp of the deceased, burnt mattresses and burnt clothes. Another relevant factor is that the deceased was burnt at about 7 pm and she was removed to the hospital only after about 2½ hours. This also emerges from the evidence on record that she had 100% burns. If the deceased had 100% burns and the clothes were also charred there was no probability of any traces of kerosene remaining on the body of the deceased and her clothes. In these circumstances the veracity of the dying declarations in this case cannot be doubted nor it can be rejected on the ground and premise that it required further corroboration. The learned Additional Public Prosecutor has also relied on Mathura Das & Ors v. State, 104(2003) DLT 147 by a Division Bench of this Court holding that absence of kerosene smell on the clothes etc or the body becomes immaterial on account of considerable time gap between the incident and the examination of exhibits by the Central Forensic Science Laboratory. The learned Public Prosecutor has also relied on Mange Ram & Anr v. State, 42 (1990) DLT 273, however, the said case is distinguishable as in the case relied on, the dispute was whether the burnt injuries received by the deceased were intentional or incidental. The appellant in the present case is silent as to how the deceased got

burnt injuries though he is stated to be present there and he tried to extinguish the fire.

20. The last contention of the learned counsel for the appellant is that three material witnesses namely PW-1 Mukesh, who identified the dead body, PW-3 Munni Lal, father of the deceased and PW-4 Ram Sakhi, sister of the appellant have not support the prosecution case. Therefore, a reasonable doubt is created, the benefit of which ought to be given to the appellant.

21. The testimony of PW-1 is relevant only to the extent that he had identified the dead body and rest of the testimony can simply be ignored inasmuch as he has admittedly turned hostile and the reasons for witnesses turned hostile are not far to seek. PW-3, father of the deceased has also turned hostile and in fact has given a positive statement in favour of the appellant that his daughter, Suman (since deceased) was kept in a good condition by the appellant. The question which needs consideration and adjudication is not as to whether she was kept in a good condition or bad condition, the question was as to whether she was being subjected to harassment on account of demand of dowry and the consequent torture. The deceased has herself made a statement that because of dowry there used to be frequent quarrels. There is no reason to disbelieve the statement of the deceased as has been stated hereinabove. In the light of this, the testimony of PW-3 Munni Lal loses its significance except to the extent of having made a previous statement

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Ex.PW3/A so as to give motive of the appellant. This statement Ex.PW3/A is a statement recorded by the SDM immediately after the incident and in this statement, he denies having told SDM that four months prior to the incident his daughter had told him that after being drunk beat her and would take the name of Sangita. This statement is signed by PW-3 Munni Lal. There is no reason to disbelieve the correctness of this statement recorded by the SDM. It is well possible that PW-3, father of the deceased knowing fully well that his daughter has named Sangita who happened to be Munni Lal's sister's daughter, hence a close relation on account of which the entire episode has taken place may not have wanted to further precipitate and spoil his relations with his sister and brother-in-law and therefore, was taking this soft stand qua the appellant. In any case his testimony is not relied upon by the Court either below or by us.

22. As regards, PW-4 he is not an eye witness. She has admittedly came to the spot after the deceased had already received 100% burns. She has admittedly taken the deceased to the hospital and she has every reason to testify in favour of the appellant and therefore, her statement also is of no significance, so far as the prosecution case is concerned. The prosecution case entirely rest on the dying declaration of the deceased which we find to be truthful and reliable. Therefore, it can be a basis of conviction of the appellant without requiring much corroboration. So far as the remaining witnesses are concerned, most of

them are formal witnesses who have proved various documents of investigation and it is not necessary to dwell on the same as no plea assailing any of these documents had been raised by the learned counsel for the appellant during her submission.

23. No other point has been urged before us by the learned counsel for the appellant except that judgment of **Jugesh Kumar Vs. State 2007 (3) JCC 1867** has been cited on the question of delay in recording of dying declaration. So far as the said judgment is concerned, that is not applicable to the facts of the present case although it was contended that there was a delay in recording of dying declaration in the instant case also but this is not borne from the record. The deceased Suman was brought to the Hospital at about 10.00 p.m. and she was declared fit at that point of time. SI Mukesh Kumar PW-12 thereafter made efforts to procure the services of SDM Mr.Sanjeev Mittal in which he was successful only around 3.30 a.m. on the early morning of 29th June, 2000. At that point of time, PW-10 Dr. Mrityunjay who was the doctor on duty again examined the patient and found her to be fit and thereby the dying declaration was recorded. Thus the certification of fitness having been given by the doctor at 3.30 am of the early morning of 29th June, 2000 and the dying declaration having been recorded immediately thereafter clearly shows that there was hardly any delay in recording the dying declaration as against seven day's delay in case which has been relied upon by the learned counsel for the appellant.

The learned counsel for the State has cited number of other authorities which are as under:-

“Shakuntala Vs. State of Haryana AIR 2007 SC 2709, State of Uttar Pradesh Vs. RamSagar Yadav and Ors. AIR 1985 SC 416, Lallubhai Devchand Shah & Ors. Vs. The State of Gujarat AIR 1972 SC 1776, The State of Madras Vs. M/s Lateef Hamid & Co. AIR 1972 SC 1781, Khushal Rao Vs. State of Bombay AIR 1958 SC 22, Messrs, Crown Aluminum Works Vs. Their Workmen AIR 1958 SC 30 (V 46 C 5) and Vithal Somnath More Vs. State of Maharashtra AIR 1978 519”

24. We have gone through these authorities which also reiterates the ratio of **Khushal Rao’s(supra)**. The principle which has been enunciated in all these authorities is twofold that a conviction can be based on the sole dying declaration provided it is reliable and truthful and in case it is not fully reliable or there are some points on which some doubt is there, then it can be relied upon with corroboration. In the present case, we are of the considered opinion that dying declaration is not only truthful, reliable, unambiguous and very categorical that she was set ablaze by her husband/appellant. In our view, the said dying declaration is free from any infirmity and therefore, does not require any corroboration.

25. No other point has been urged before us nor any other authority has been cited.

26. In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that the learned Session Court was perfectly justified in holding that the guilt of the accused for an offence under Crl.A.480/2001

Section 302 and 498A IPC is proved beyond reasonable doubt that he poured kerosene on his wife on the date of incident and set her ablaze because of which she suffered 100% burn injuries and succumbed to it. It is also proved that the fact of pouring kerosene and setting her ablaze with a view to demand dowry constituted an offence as envisaged under section 498 A IPC and he has accordingly been rightly convicted and sentenced. No such point has been urged before us which would persuade us to make a modification on the quantum of sentence. Accordingly, we uphold the sentence of life imprisonment and a fine of Rs.2,000/- (in default of payment of fine rigorous imprisonment of one year for an offence under Section 302 IPC) and rigorous imprisonment of two years and a fine of Rs.1,000/- (in default of payment of fine rigorous imprisonment of six months for an offence under Section 498A IPC).

27. The appeal, therefore, stands dismissed.

28. Copy of this order be sent to the Superintendent, Central Jail, Tihar, New Delhi for communication to the appellant, and for its compliance.

(V.K.SHALI)
JUDGE

(ANIL KUMAR)
JUDGE

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