

Through: Mr. Bhupesh Narula, Advocate
versus
STATE Respondent
Through: Mr. M.N. Dudeja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. The name of the deceased is Kamlesh. The relationship of the accused person with Kamlesh may be noted.
2. Gurucharan Singh, the appellant in Crl.A. No.643/03 is her husband. Bal Saroop and Chandi, who died during trial, were her father-in-law and mother-in-law respectively. Arun, the appellant in Crl.A.No.638/03 is the younger brother of Gurucharan Singh. Geeta, the appellant No.1 in Crl.A.No.123/04 is the wife of Arun. Rani and Nirmala, appellants No.2 and 3 in Crl.A. No.123/2004 are the sisters of Gurucharan Singh. Rampal and Ashok Kumar, the appellants

of Crl.A.No.845/04 and Crl.A.No.596/04 respectively are the husbands of Rani and Nirmala respectively. Manju, acquitted of all charges framed against her by the learned trial judge is the sister-in-law of Kamlesh being the wife of the real brother of Kamlesh.

3. The husband, parents-in-law of Kamlesh, her two sisters-in-law (nanads) and their respective husbands i.e. the two nandois of Kamlesh, her younger brother-in-law, his wife and her sister-in-law Manju i.e. 10 persons were accused in FIR No.171/99, PS Mansoravar Park under Sections 498-A/302/109/34 IPC. Four of them; namely Gurucharan, his younger brother Arun, Arun's wife Geeta and Nirmala, the sister of Gurucharan, were accused in FIR No.149/99 PS Bhajanpura under Sections 498-A/406/506/34 IPC.

4. We note that both afore-noted FIRs were clubbed for trial and charge under Section 302/34 IPC were framed against Gurucharan Singh, Arun, Geeta, Rampal, Rani, Ashok Kumar, Nirmala, Chandi and Bal Saroop. Manju was charged for having committed the offence punishable under Sections 302/109 IPC. All of them except Manju were charged for having committed the offence punishable under Section 498-

A/34 IPC. Gurucharan and his parents were charged for the offences punishable under Section 406/34 IPC. Charge under Section 506/34 IPC was framed against Bal Saroop, Chandi, Gurucharan, Arun and Geeta Devi.

5. Kamlesh and Gurucharan were married on 22.04.1990. Unfortunately, the marriage turned turbulent after about 3-4 years and reached a crescendo in the year 1997 when on 13.01.1997 Kamlesh addressed a communication Ex.PW-9/A to the Crime Branch, Women Cell, Nanakpura informing that her husband, her parents-in-law, her devar Arun, his wife Geeta, her nanad Smt.Nirmala used to harass her for dowry and was compelled to leave her matrimonial house and live with her parents.

6. Surprisingly, in her further complaint she started inculcating Manju, the wife of her deceased brother who was residing with her i.e. Manju's father as an instigator. We note that Manju had lodged a complaint with the police for dowry harassment in which she had named her husband, her parents-in-law and her sister-in-law Kamlesh alleging that Kamlesh used to instigate her brother i.e. Manju's husband to harass Manju to compel Manju's parents to give dowry.

7. On a complaint filed by Kamlesh FIR No.149/99 PS Bhajanpura for the offences punishable under Sections 498-A/406/506/34 IPC was registered against Chandi, Bal Saroop, Gurucharan, Arun, Geeta and Nirmala on 20.03.1999.

8. With the intervention of family friends, the marital discord between husband and wife i.e. Kamlesh and Gurucharan was resolved and Kamlesh who had left her matrimonial house returned with an assurance that she would not be troubled. Unfortunately, the return journey of Kamlesh to her matrimonial house proved dangerous for her.

9. On 13.07.1999 at around 7.00 A.M. Kamlesh suffered burn injuries in her matrimonial house and she was taken to GTB hospital by Saraswati, the wife of the elder brother of Gurucharan. It be noted that Saraswati and her husband reside in the neighbourhood where the matrimonial house of Kamlesh was situated.

10. Information being given at the concerned Police Station i.e. PS Mansarovar Park of a lady being burnt, SI Aishveer Singh PW-25 accompanied by Ct.Narender and Ct.Ramesh Kumar reached the hospital and collected the MLC Ex.PW-22/A of Kamlesh who was found admitted in the

casualty in a burnt condition. The Sub Divisional Magistrate of the area Sh.Prakash Chand PW-19 was requested by SI Aishveer Singh to reach the hospital. This information was conveyed to Sh.Prakash Chand at around 9.00 A.M. on 13.07.1999 and he reached the hospital at around 10.15 A.M. At point 'A' on the MLC Ex.PW-22/A, Sh.Prakash Chand obtained the certification pertaining to the fitness of Kamlesh from Dr.Sanjay Kapil PW-22 and proceeded to record the statement Ex.PW-19/A of Kamlesh.

11. The statement Ex.PW-19/A of Kamlesh is in question-answer form and has been scribed in Devnagri script. The translated version of the statement reads as under:-

“Q. What is your name?

A. Kamlesh.

Q. Name of your Husband?

A. Gurucharan.

Q. How many years since you got married?

A. 9 years.

Q. How did you get burnt?

A. In the morning, my mother-in-law Chandi, father-in-law Bal Saroop, sister-in-law (Nanad) Rani, sister-in-law (Nanad) Nirmala, brother-in-law (Nandoi) Ashok Kumar, brother-in-law (Nandoi) Ram Pal, brother-in-law (devar) Arun, Devrani Geeta wife of Arun and husband Gurucharan, gave me beatings. Thereafter, when I went

to my room to sweep the floor, all of them followed me into the room and my sisters-in-law (nanad and devrani) caught hold of me. My husband rushed out and brought kerosene oil in a plastic can and spilt it over me. My elder sister-in-law Rani then set my saree on fire by lighting a match stick. Both my Nandois (brothers-in-law), my parents-in-law and my devar and devrani caught hold of me and by doing so they prevented me from running away. This incident took place at 7:00 AM in the morning. My bhabhi Manju who resides in Uttam Nagar is also an accomplice in the incident. She used to tell the others to finish off the daily duels at once. Even last evening she had visited our house.

Q. Who brought you to the hospital?

A. My jethani Saraswati, brought me to the hospital in a rickshaw.

Q. Why have you been burnt?

A. They burnt me because of inadequate dowry.

Q. What all did they demand for dowry?

A. My mother-in-law and sister-in-law demanded house and land from me.

Q. What does your father do?

A. He does labour work. The land belongs to my grandfather, it must be some 100-200 yards in area.

Q. When did you get married?

A. 12.4.1990.

Q. What was the dowry given in your marriage?

A. All that could be given as per our means was given."

12. After recording the statement Ex.PW-19/A and obtaining the left toe impression of Kamlesh thereon for the

reason her hands were affected by the burns, Prakash Chand handed over the statement to SI Aishveer Singh PW-25, who made an endorsement Ex.PW-25/A beneath the statement and directed Ct. Narender to go and get registered the FIR.

13. Saraswati, the sister-in-law of Kamlesh who had removed Kamlesh to hospital met SI Aishveer Singh in the hospital and he recorded her statement under Section 161 Cr.P.C. and proceeded to the spot where Kamlesh had received burn injuries in the company of Saraswati i.e. he went to the matrimonial house of Kamlesh and with the assistance of Saraswati prepared the rough site plan Ex.PW-25/B. He summoned photographer Ashok PW-10, who took six photographs Ex.PW-10/1 to Ex.PW-10/6; negatives whereof are exhibited as Ex.PW-10/7 to Ex.PW-10/12 of the house where Kamlesh suffered burn injuries. At the spot, SI Aishveer Singh lifted a torn match box, burnt match sticks, two semi burnt match sticks, burnt pieces of clothes, plastic bottle and a plastic tin can as recorded in the seizure memo Ex.PW-21/A.

14. Kamlesh could not survive and died at around 4:15 AM on 14.7.1999 i.e. she died the next day after she suffered the burn injuries.

15. The dead body of Kamlesh was sent to the mortuary of Maulana Azad Medical College where Dr.Yogender Bansal conducted the post-mortem and prepared the report Ex.PW-20/A opining that the death was due to burn shock consequent to burn injuries. He noted that no smell of kerosene was present over the body. He preserved the scalp hair of the deceased and handed over the same to the investigating officer so that the same could be subjected to forensic examination pertaining to the presence of any inflammable material on the scalp hair.

16. SI Mukesh Kumar PW-11, a draftsman was taken by SI Aishveer Singh to the matrimonial house of Kamlesh on 26.7.1999, where with the assistance of SI Aishveer Singh he prepared the site plan to scale Ex.PW-11/A.

17. In the site plan he marked the spots 'A' to 'I' as under:-

- "A. Shows the place where Smt.Kamlesh W/o Gurcharan was stated to be burnt.
- B. Shows the place where burnt clothes, were lying.
- C. Shows the place where burnt saree, was lying.
- D. Shows the place where burnt cloth/ash, were lying.

- E. Shows the place where burnt ash, were lying.
- F. Shows the place match sticks, were lying.
- G. Shows the place where match box, was lying.
- H. Shows the place where 'plastic dibba' having kerosene oil smell, was lying.
- I. Shows the place on table where plastic bottle having kerosene oil smell, was lying."

18. Since much turns on the site plan in the context of the credibility of the dying declaration i.e. the statement Ex.PW-19/A recorded by Shri Prakash Chand PW-19, it would be useful if we pen profile the site plan to scale Ex.PW-11/A.

19. The house i.e. matrimonial house of the deceased is divided into six near equal rectangular portions. Back to back three rectangular portions are at the rear of three equal rectangular portions in the front. The three rectangular portions in the front consist of one rectangle, being a room, towards the western boundary of the plot. It opens into an open space having a tin shed covering half space forming the rectangular block in the centre. Point 'G' has been marked in this place from where the match box was lifted. Towards the east is the third rectangular block consisting of a store towards the south and a bathroom towards the northern side. Point 'B'

has been marked in this bathroom where burnt clothes were lifted as recorded in the site plan.

20. The three rectangular portions at the rear towards the northern boundary of the plot, consist of a living room towards the western boundary and in this room point 'E' has been marked where from burnt cloth was lifted.

21. The centre rectangular space consists of three portions. Two portions abutting the northern boundary of the plot are the two kitchens. The remaining space is covered by sheets and has been shown as a verandah. Points 'G', 'H' and 'I' have been marked in the said central rectangular block. Point 'G' is at the door connecting the room on the third rectangular block towards the eastern boundary. From this spot a match box was lifted. Spot 'H' and 'I' are at the door of one out of the two kitchens, being the kitchen abutting the room where the spot 'E' has been marked. From the said two spots i.e. spot 'H' and 'I', a plastic can and a plastic bottle were seized as recorded in the site plan.

22. The most important to be noted is the description of the third rectangular block at the rear, abutting the northern

boundary, in which spots 'A', 'D' and 'F' have been marked. About 1/3rd portion thereof towards the front is the landing of the staircase where from the flight of steps lead up to the first floor above. Remaining portion admeasures 262 cm x 280 cm. This would mean 9'3" x 8'6" = 80 sq.ft. (approximately). In this room a diwan measuring 125 cm x 186 cm, an iron box measuring 110 cm x 63 cm, and a table measuring 46 cm x 92 cm and a small dressing table, measurement whereof has not been noted, are lying along the walls of the room. In the remaining floor area, points 'A', 'D' and 'F' have been marked, which as per the site plan are; Point 'A' being the place where Kamlesh was burnt, Point 'D' being the place where from burnt cloth and ash were lifted and point 'F' being the place where from match sticks were lifted.

23. With reference to this room, where Kamlesh was statedly burnt, as noted above, the total area of the room is approximately 80 sq.ft. out of which approximately 45 sq.ft. space has been consumed by the diwan, the iron box, the table and the dressing table in the room; meaning thereby, the vacant remaining floor area is about 35 sq.ft.

24. At the trial, Prakash Chand PW-19 who had recorded the statement Ex.PW-19/A of Kamlesh proved the said statement and stated that he had scribed the same. He stated that he obtained the certification of fitness pertaining to Kamlesh from the doctor on duty before recording the statement. Dr.Sanjay Kapil PW-22 who had treated Kamlesh and had prepared her MLC Ex.PW-22/A not only proved the MLC but additionally proved that the certification at point 'A' on the MLC was in his hand. Thus, the prosecution successfully established that Kamlesh was fit for statement when her statement Ex.PW-19/A was recorded.

25. Needless to state, in respect of the offence punishable under Section 302 IPC, the learned Trial Judge has relied solely on the said statement of Kamlesh, for the reason independent thereof, there is no other incriminating evidence against the accused pertaining to Kamlesh being burnt. We clarify that the other evidence pertains to Kamlesh being troubled for dowry and said evidence would be noted by us while dealing with the issue of motive and the charge pertaining to the offence punishable under Section 498-A IPC.

26. We may note at this stage that the various exhibits which were seized at the spot by SI Aishveer Singh as recorded in the seizure memo Ex.PW-21/A as also the scalp hair of Kamlesh were sent to the Forensic Science Laboratory to ascertain whether any kerosene oil or any other inflammable material could be detected thereon. The report submitted by the Senior Scientific Examiner, which we note has remained unexhibited at the trial, but is available at page 551-552 of the Trial Court Record, records that no inflammable oil or residues thereof could be detected on any of the exhibits i.e. burnt cloth pieces and burnt material, the plastic bottle and the plastic container as also the broken match box pieces and the burnt match sticks which were lifted from the spot. No inflammable oil or residue thereof could be detected on the scalp hair of Kamlesh.

27. To prove dowry demand and subjecting Kamlesh to cruelty on account of non fulfillment of the dowry demand, the star witnesses of the prosecution at the trial were Rajesh Kumar PW-4, the brother of Kamlesh; Bhim Singh PW-9, the father of Kamlesh and Satyawati PW-23, the mother of Kamlesh.

28. Briefly noted, all three deposed that Kamlesh was subjected to extreme harassment on account of dowry demand by her in-laws. The parents-in-law and Gurucharan, the husband of Kamlesh were specifically indicted by all as the prime demanders of dowry. Arun, Geeta and Nirmala were also named by them with instances when the said three acted against Kamlesh. Specific instances when Gurucharan demanded money as also when he gave beating to Kamlesh on account of dowry demand not being met were highlighted by the parents and brother of Kamlesh. The three witnesses highlighted that Kamlesh used to tell them that her husband, her in-laws, her devar Arun, her devarani Geeta and her Nanad Nirmala used to specifically harass her on account of not bringing adequate dowry. The complaint Ex.PW-9/A dated 13.1.1997 made for the first time by Kamlesh to a statutory authority was proved by Bhim Singh PW-9 who identified Kamlesh's signatures on the complaint. All three stated that when they met Kamlesh in the hospital after she was burnt, she told them that all the persons charged for the offence of murdering Kamlesh were involved in Kamlesh being burnt and that the role of each was as per the statement Ex.PW-19/A

made by Kamlesh before the learned Sub Divisional Magistrate.

29. We need not note any other evidence as learned counsel for the parties concede that the fate of the instant appeals would rest upon the view which would be taken by this Court pertaining to the statement Ex.PW-19/A made by Kamlesh to Prakash Chand PW-19, the Sub Divisional Magistrate of the area concerned. Additionally, with respect to the other offences of which the accused were charged, counsel concede that the issue needs to be decided with reference to the testimony of the parents and the brother of Kamlesh; the contents of her complaint Ex.PW-9/A made to the Crime Against Women Cell on 13.1.1997.

30. Vide impugned judgment and order dated 15.7.2003, noting that Chandi and Bal Saroop, the parents-in-law of Kamlesh died during the trial, her husband Gurucharan, both Nanads i.e. Rani and Nirmala, their husbands i.e. Ashok Kumar and Rampal, her devar Arun and devarani Geeta have been convicted for the offence punishable under Section 302/34 IPC. Manju, the bhabhi i.e. the wife of the deceased brother of Kamlesh has been acquitted of the offence

punishable under Section 302/109 IPC for the reason there was no evidence of her abetting the crime. The sole statement in the dying declaration Ex.PW-19/A of Kamlesh that even Manju was an accomplice has been found to be insufficient evidence to convict Manju; obviously for the reason Manju was not stated to be present in the house when Kamlesh suffered burn injuries.

31. Pertaining to the offence punishable under Section 498-A/34 IPC; noting that the parents-in-law of Kamlesh were dead, Gurucharan, Arun, Geeta and Nirmala have been convicted for the offence punishable under Section 498-A/34 IPC. The sole surviving accused pertaining to the offence under Section 406/34 IPC i.e. Gurucharan, the husband of Kamlesh, has been acquitted. All accused charged for the offence punishable under Section 506/34 IPC have been acquitted.

32. Pertaining to the convictions for the offence punishable under Section 302/34 IPC, all accused so convicted have been sentenced to undergo imprisonment for life. The four accused who have been convicted for the offence punishable under Sections 498-A/34 IPC have been sentenced

to undergo imprisonment for three years and pay a fine in sum of Rs.1,000/-; in default of payment of fine to undergo rigorous imprisonment for one month.

33. With respect to the statement Ex.PW-19/A of Kamlesh, a perusal of the impugned judgment shows, that two points have been urged before the learned Trial Judge to impress upon the Court that the statement Ex.PW-19/A could not be believed. It was firstly urged that in view of the fact that Kamlesh was severely burnt it is highly improbable that she would have been fit when Prakash Chand PW-19 reached the hospital to record her statement. It was highlighted that as per Dr.Sanjay Kapil, who had initially treated Kamlesh, he had treated her only for about 15 minutes. It was pointed out that the learned Sub Divisional Magistrate had concluded the recording of the statement at 10:55 AM as stated by him. It was thus urged that it was doubtful whether the statement in question, was the one which was made by Kamlesh. It was urged that the Sub Divisional Magistrate has colluded with the parents of Kamlesh who had reached the hospital by the said time, to record a false version.

34. The second point urged before the learned Trial Judge, noted in para 33 of the impugned decision, is that as per Kamlesh's statement, 9 people had taken part when she was burnt. It was urged that Kamlesh being the 10th person in the room, with reference to the dimensions of the room in Ex.PW-11/A, it was impossible that Kamlesh was set on fire as stated by her. It was highlighted that the vacant floor space in the room was merely 35 sq.ft. in which 10 persons could barely squeeze in and it was just not possible for 6 to catch hold of Kamlesh and the others to set her on fire and that too when none received even the faintest of burn injury. In this connection, as a limb of the same argument, it was urged that as per Kamlesh, after her husband threw kerosene oil on her and Rani set her saree on fire, her two nandois, her parents-in-law, her devar and devarani i.e. 6 persons caught hold of her thereby preventing her from running away was belied from the two facts. Firstly that none of the said six persons had any burn injuries on them. It was urged that had 6 persons continued to catch hold of Kamlesh when she was set on fire they would have suffered, if not more, at least superficial burn injuries. This not being so, it was obvious that none of them

had participated in the crime as claimed by Kamlesh. Secondly it was urged that the site plan Ex.PW-11/A lists the points 'A' to 'I' where Kamlesh was burnt; burnt clothes, burnt ash, burn match sticks, match box and plastic can and bottle respectively were lifted. With reference to the said places where burnt clothes and ash were lifted, it was highlighted with reference to the site plan that it is apparent that having received burn injuries at point 'A', being the room in the 3rd rectangular portion of the house as shown in the site plan, it is apparent that Kamlesh ran to point 'E' which was the room opposite the open court yard as also to point 'B', where in the bath room, burnt clothes were lifted. It was thus urged that it is apparent that on catching fire, Kamlesh ran helter skelter and was not prevented from running as stated by her in her statement Ex.PW-19/A.

35. On the issue of Kamlesh being fit for statement, in the light of the testimony of PW-22 and the certification on the MLC of Kamlesh as also the testimony of Prakash Chand, the learned Trial Judge has returned a finding that the same establishes that Kamlesh was fit for statement at 10:25 AM when the learned Sub Divisional Magistrate commenced

recording her statement and that she continued to remain in a fit condition till around 11:00 AM when the learned Sub Divisional Magistrate completed the recording of her statement Ex.PW-19/A.

36. Mr.Bhupesh Narula, learned counsel for the appellants assisted by Ms.Rakhi Dubey made some attempt to urge to the contrary while arguing the appeals, but noting the testimony of PW-22; the MLC Ex.PW-22/A of Kamlesh gave up a the challenge to Kamlesh's consciousness when her statement Ex.PW-19/A was recorded.

37. We thus concur with the view taken by the learned Trial Judge that there is sufficient evidence to hold that Kamlesh was fully conscious when her statement Ex.PW-19/A was recorded and that whatever she spoke was correctly recorded by the learned Sub Divisional Magistrate who had no motive to falsely record something not spoken of by Kamlesh.

38. Noting that there was evidence of Kamlesh being harassed for dowry, the learned Trial Judge has held that the motive for the crime was established i.e. non-fulfillment of the lust of the accused to satisfy the desire for wealth flowing to

them from the parents of Kamlesh and hence the foundation for the crime. Referring to various decisions of the Supreme Court that a dying declaration needs no corroboration if the Court is satisfied that the maker of the dying declaration was conscious when the statement was made, the learned Trial Judge has held that there was nothing on record to disbelieve the statement Ex.PW-19/A. The result is the conviction of the appellants for the offence punishable under Section 302/34 IPC.

39. Before proceeding to analyze the evidence pertaining to the statement Ex.PW-19/A a glaring fact which has been ignored by the learned Trial Judge needs to be noted. In the statement Ex.PW-19/A Kamlesh has stated that her Bhabhi Manju was also an accomplice in the incident. The learned Trial Judge has ignored the fact that Manju had lodged a complaint against her in-laws and her late husband in which she had inculpated Kamlesh as an accomplice. It is apparent that Kamlesh has used the unfortunate incident of her being burnt to settle scores with Manju meaning thereby that the consciousness of Kamlesh was used by her to seek vengeance on whomsoever she so desired. Another glaring fact to be

noted is that Rani and Nirmala i.e. the two married sisters of Gurucharan reside with their husbands in their own matrimonial house, address whereof was furnished by the investigating officer in the challan filed. Keeping into account that Kamlesh received burn injuries in her matrimonial house at 7:00 AM on a Tuesday i.e. a working day, the probability or otherwise of said four persons i.e. the nanads and the nandois of Kamlesh in the matrimonial house of Kamlesh required a microscopic examination. In view of the past acronym a possible motive did exist for Kamlesh to falsely implicate innocent members of the family of her husband.

40. Having perused the decision of the learned Trial Judge, we note that after noting the contentions urged that it was not possible for 10 people to fit into the room where Kamlesh suffered burn injuries and the fact that the burnt pieces of clothes and ash were lifted from three different rooms in the house, shows that Kamlesh ran helter skelter and was not held down as claimed by her, we find that the learned Trial Judge has failed to deal with the said submission in the manner it was expected to be dealt with. The learned Trial Judge has brushed aside the submission by recording:

'However, as per the dying declaration, 9 persons had entered the room, not to stand there comfortably but to commit the offence. Hence, this does not refute or negate version of the deceased, nor render it as factually incorrect or impossible'.

41. In offences inviting extreme penalty of imprisonment for life or death, it is expected that every point urged would be dealt with by razor sharp precision and sound logical reasoning and not on the ipsit dixit of a Judge.

42. We refer once again to the pen profile of the room in which Kamlesh was set on fire. We refer to paras 19 to 23 herein above. The room in which Kamlesh received burn injuries, ad-measures 9'3" x 8'6" i.e. approximately 80 sq.ft. It has a diwan ad-measuring 125 cm x 186 cm, an iron box ad-measuring 110 cm x 63 cm, a table ad-measuring 46 cm x 92 cm and a small dressing table, measurements whereof have not been recorded. The said four articles are kept along the walls of the room. It is apparent that of the 80 sq.ft. area in the room, approximately 45 sq.ft. place has been consumed by the said four articles, leaving unoccupied only 35 sq.ft. of floor area.

43. The normal cage of a lift ad-measures 6' x 6' i.e. has an area of 36 sq.ft. Experience tells us that if 10 adults enter such a space, no space is left for free movement of hands. Everyone has to stand erect.

44. Is it possible that 9 persons squeeze themselves into an area of 35 sq.ft. and set on fire Kamlesh, the 10th person inside the room, in the manner claimed by Kamlesh? If yes, is it possible that none of them suffered even minor burn injuries?

45. We refer back to the statement of Kamlesh which we have noted in para 11 above. She claims that when she was in her room sweeping the floor, all accused, 9 in number, followed her. Her nanand and devrani caught her. Her husband rushed out and brought kerosene oil in a plastic can and spilled it over her. Her elder sister-in-law Rani set her saree on fire. Her nanad, her parents-in-law, her devar and devrani caught her and by doing so prevented her from running away.

46. If this is the manner in which Kamlesh was burnt, it is apparent that there was jostling inside the room with

Kamlesh attempting to ward off the assault and she being pinned down and even after she was set on fire, she was continued to be caught hold of.

47. Thus, the learned Trial Judge has totally gone off, at a tangent, when the argument urged before the learned Trial Judge has been negated, by holding that 9 persons had entered the room not to stand their comfortably, but to commit the offence. The learned Trial Judge lost sight of the fulcrum of the argument, which was that 10 persons cannot even comfortably fit into the 35 sq.ft. area; what to talk of 9 committing the offence in the manner alleged by Kamlesh.

48. It is obvious that the learned Trial Judge has been swayed by emotions and has rendered emotive conclusions and not reasoned conclusions, as are required by law.

49. It is highly improbable that in the vacant space ad-measuring 35 sq.ft., 9 persons could have participated in the commission of the crime as claimed by Kamlesh and none of them would receive even the slightest burn injury.

50. That Kamlesh has run helter skelter in her house shows that her statement that she was prevented from saving

herself and even after she was set on fire 6 accused continued to catch hold of her, is prima facie belied from the scene in the house. The scene in the house tells its own story of truth. The story told is that Kamlesh ran from the spot 'A' where she was set on fire or caught fire, to spot 'B', 'C' and 'D'. The said spots are in three different rooms. It is obvious that Kamlesh was not pinned down to any particular place.

51. As noted above, another very important fact has been lost sight of by the learned Trial Judge; probably for the reason the attention of the learned Trial Judge was not drawn to the said fact. The said fact is that Kamlesh received burn injuries at 7:00 AM. The accused Rani and Nirmala are the sisters of her husband. They were married when the crime took place. Their husbands are Rampal and Ashok Kumar.

52. We note that there is no evidence led by Rampal or Ashok Kumar as to where they were residing. But being the sons-in-law of the family it is expected that they would not be residing in the same house in which the deceased was residing.

53. The site plan Ex.PW-11/A shows that the matrimonial house of the deceased had only 3 living rooms, a store, a bathroom and two kitchens with sufficient open space inside the house. It is difficult to believe that the husband of Kamlesh and Kamlesh herself, her parents-in-law, her devar and his wife as also her two married sisters-in-law (nanads) and their husbands would be living in so less accommodation.

54. Truth, it is said, has an insidious habit of oozing out. The memo of parties of the impugned judgment, which we note is a reflection of the charge sheet filed, shows Rampal as resident of House No.234, Mallu Pura, Muzzafar Nagar, UP. His wife Rani is also shown as a resident of the said house. Ashok Kumar has been listed as a resident of House No.236, B-Block, Kachhi Colony, Gagan Vihar, Loni, Ghaziabad. His wife Nirmala is shown as a resident of the said house. Thus there is evidence on record to show that Rampal, his wife Rani as also Ashok Kumar and his wife Nirmala were not residing in the same house as that of deceased Kamlesh.

55. Now, it assumes further importance that the date 13.7.1999 happens to be a Tuesday. It is highly improbable that the married nanads of Kamlesh and their husbands would

travel all the way to Kamlesh's matrimonial house before 7:00 AM to commit the crime. We note that there is no evidence that the two married daughters with their husbands had stayed overnight in the house where the deceased was residing with her husband and her in-laws.

56. The four-fold facts i.e. (i) the nandois and nanads of Kamlesh being residents of different houses situated far away from the matrimonial house of Kamlesh and would not be expected to be in Kamlesh's matrimonial house before 7:00 AM on 13.7.1999; (ii) the fact that only 35 sq.ft. space area was available in the room where Kamlesh caught fire makes it highly improbable that 9 persons participated in the commission of the crime as claimed by Kamlesh; (iii) that Kamlesh ran helter skelter establishes her not being pinned at a single spot and (iv) no kerosene or residue thereof being detected on any of the burnt clothes or any other material lifted from the room makes it highly improbable that Kamlesh was set on fire in the manner claimed by her.

57. We concede to the submission urged by learned counsel for the State that all the accused have falsely stated when questioned under Section 313 Cr.P.C. that the deceased

caught accidental fire, for the reason the place where Kamlesh was set on fire or caught fire is not the kitchen outside whereof the plastic can and the plastic bottle have been seized, but is the room where she probably slept with her husband. The question of Kamlesh catching accidental fire in the said room is totally ruled out.

58. But we do not know as to who did what! Having found serious improbability in the version of Kamlesh we have no other material on which we can segregate the role of the accused.

59. Before proceeding further, we may note that there is evidence of Kamlesh having a grouse against each and every member of the family. We note that she was an accused in a complaint lodged by her Bhabhi Manju and that is the reason why she has even inculpated Manju whose involvement is obviously an act of vengeance. There is thus evidence that Kamlesh used the unfortunate incident to give vent to her motive and implicate even innocent persons against whom she bore a grudge.

60. In the decision reported as 2006 (3) SCC 161 P.Mani Vs. State of Tamil Nadu the Supreme Court cautioned that where a motive surfaces for false implication in a dying declaration, the eyebrows of the Court should rise and should not fall unless independent corroboration is found to a dying declaration. It was highlighted that where motive for false implication is found it would be unsafe to sustain a conviction on an uncorroborated dying declaration.

61. The fact that married sisters-in-law and their husband who were not even residents of the same house have been inculpated in an offence which took place at 7 O' clock in the morning, coupled with the fact that it is difficult to expect that 9 persons could have acted in the manner as claimed by Kamlesh in a small area of 35 sq.ft. and lastly on account of the fact that Kamlesh has used the unfortunate incident to make a motivated statement, we are compelled to hold that in the absence of any corroborative evidence it would be unsafe to rely upon the statement Ex.PW-19/A i.e. the dying declaration of Kamlesh.

62. In the decision reported as AIR 2005 SC 97 State of Maharashtra Vs. Sanjay D. Rajhans the evidence established

that the wife died not an accidental death. The version given by the wife in her dying declaration inculcating her husband i.e. her death being homicidal was found to be improbable. Her husband who was present by her side gave a version of the wife dying a suicidal death, which was found to be equally false. The Supreme Court concluded, in para 17, that where the version of homicide set up by the prosecution as well as the version of suicide set up by the accused (both) appear to be highly improbable and do not inspire confidence in the light of the Court to believe either version, the Court is left with no option but to return a verdict of not guilty by giving the benefit of doubt to the accused.

63. This takes care of the submission advanced by learned counsel for the State that the version of the accused that the deceased caught accidental fire in the kitchen is false and hence an adverse inference needs to be drawn against them.

64. It is true that at 7:00 AM family members are expected to be in the house and for said reason one may possibly hold that the in-laws of the deceased, her husband, her brother-in-law and sister-in-law were present in the house.

It is equally true that none of them came to the rescue of the deceased. But, it would not be permissible for us to draw an inference of guilt against the said 6 persons or any of them, for the simple reason, may be one, may be two, may be three or may be all participated in what may have happened. We cannot theorize or speculate. In this connection it is important to note that the site plan Ex.PW-11/A shows two kitchens in the house suggestive of the fact that two messes were being run, meaning thereby there is some evidence that probably Kamlesh and her husband were conceptually living separate from the parents-in-law, the brother-in-law and his wife of Kamlesh.

65. We reiterate that the law declared by the Supreme Court in Sanjay D. Rajhans's case (supra) requires benefit of doubt to be extended to the husband, the brother-in-law (devar), his wife and the parents-in-law of the deceased (who have since died).

66. We clarify: where the version of the prosecution becomes doubtful and no other clear version emerges, it would not be permissible for a Court to render speculative reasoning based on the moral worth of the conduct of the accused. We

hasten to add a caveat. If there is otherwise unimpeachable incriminating evidence, conduct of a person as an incriminating evidence can be put in the weighing scales, to ascertain where the scales rest.

67. It is settled law that such dying declarations which inspire confidence are sufficient, on proof of the dying declaration being made, to sustain a conviction. But, where a doubt arises in the mind of the Court with respect to the contents of a dying declaration or where the dying declaration does not inspire confidence and especially where there is evidence of a motive to falsely implicate the accused persons, it would be unsafe to return a finding of guilt on the basis of such dying declarations, and in such cases, it would be the duty of the Court to look to some corroborative evidence and if none is found, to give benefit of doubt to the accused.

68. As regards the commission of the offence punishable under Section 498-A IPC, against such of the accused who have been convicted, having perused the testimony of PW-4, PW-9 and PW-23 i.e. the parents and the brother of the deceased as also having perused her complaint Ex.PW-9/A made to the crime against Women Cell on

13.1.1997, we are satisfied that the prosecution has satisfactorily brought home that Kamlesh was physically beaten and was treated with mental and physical cruelty on account of dowry demands by her parents-in-law, her husband, her devar as also her devrani and one nanad Nirmala. The conviction of said four persons for the offence punishable under Section 498-A IPC cannot be faulted.

69. Thus, we dispose of the appeals setting aside the conviction of the appellants for the offence punishable under Section 302/34 IPC. We dismiss the appeals filed by Gurucharan, Arun, Geeta and Nirmala pertaining to their conviction for the offence punishable under Section 498-A/34 IPC. We sustain their convictions for the offence punishable under Section 498-A/34 IPC and maintain the sentence imposed on them.

70. We note that Gurucharan is still in jail. We note that Arun was admitted to bail when he had served a sentence of 5 years and 1 month. Geeta was admitted to bail when she had served a sentence for 5 years and 2 months. Nirmala was admitted to bail when she had suffered a sentence of 6 years and 6 months.

71. Each one of them having served a sentence in excess of the maximum period prescribed i.e. of 3 years, we hold that as a result of dismissal of the appeals filed by Gurucharan, Arun, Geeta and Nirmala pertaining to their conviction for the offence punishable under Section 498-A/34 IPC, Arun, Geeta and Nirmala need not suffer further sentence by surrendering. As regards Gurucharan, he having remained in jail for nearly 10 years we direct that he shall be set free, unless required in some other case.

72. Bail bonds and surety bonds furnished by appellants Arun, Geeta, Rampal, Rani, Ashok Kumar and Nirmala stand discharged.

73. Copy of this order be sent to the Superintendent, Central Jail, Tihar for release of Gurucharan and to be made available to Gurucharan.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 08, 2010

'nks/dharmender/mm'