

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

+ **Crl. A. No.907/2001**

% **Judgment reserved on : 30th May, 2012**
Judgment pronounced on : 4th July, 2012

Smt.Hardeep Kaur Appellant
Through Mr.K.T.S. Tulsi, Senior Advocate with
Mr.Ravinder Singh and Mr.Faraz Khan,
Advocates.

Versus

The N.C.T of Delhi Respondent
Through Mr.M.N.Dudeja, APP for the State.

AND

+ **Crl.A No.822/2001**

Sh.Baljit Singh Appellant
Through Mr.Jitender Sethi & Mr.Rajiv Bansal,
Advocates.

Versus

State Respondent
Through Mr.M.N.Dudeja, APP for the State.

AND

+ **Crl.A No.796/2001**

Arvinder Singh Appellant
Through Mr.Siddharth Luthra, Senior Advocate
with Mr.Rajiv Gaur 'Naseem' and
Mr.Arashdeep Singh, Advocates.

Versus

State of Delhi Respondent
Through Mr.M.N.Dudeja, APP for the State.

CORAM:

**HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

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1. The present appeals are filed by the appellants against the judgment dated September 12, 2001 passed in FIR No.913 of 1997 registered at Police Station Paschim Vihar for the offences punishable under Sections 302/498A/120B/406/34 of Indian Penal Code, 1860 whereby the appellants have been held guilty and convicted for the offences punishable under Section 302 read with Section 120 of IPC and for offence under Section 498A/34 of Indian Penal Code, 1860.

2. The appellants have also challenged the impugned order on sentence by which the appellants have been directed to undergo life imprisonment for the offences under Section 302/120B of IPC with fine of ₹ 10,000/- each and in default to undergo further RI of three months each, further sentenced them to RI of three years under Section 498A/34 of IPC and fine of ₹ 5,000/- each and in default to undergo additional RI of two months each.

3. All the appellants have been convicted by the common judgment and sentenced by a common order as mentioned above, therefore, all the appeals are decided by a common judgment.

4. The appellant Smt. Hardeep Kaur is mother-in-law of Davender Kaur (deceased) who married with the appellant Baljit Singh (husband) according to Sikh rites on November 12, 1997. The appellant Arvinder Singh is the husband of sister of the appellant Baljit Singh.

5. The relevant facts of the case are that on 8th November, 1997, the PCR received a call about setting on fire a woman at B-1-127, Paschiv Vihar. Accordingly, the said information was recorded vide DD No.9A (Ex.PW6/A). The said DD was entrusted to SI Rattan Singh (PW11) who along with Constable Raj Singh (PW5) reached at the spot of incident. There he came to know that the injured already shifted to Safdarjung Hospital by PCR van. Accordingly, PW11 ASI Rattan Singh reached at the hospital. In the hospital, doctor declared Smt. Davender Kaur fit for statement.

6. PW2 Davender Singh, SDM, Vasant Vihar arrived at the hospital at 5.25 pm, who recorded the statement (Ex.PW2/B) of Smt. Davender Kaur in question-answer form. In an answer to the questions, she stated that, *"her name is Davender Kaur and she was married to Baljit Singh about eight years back. Dowry was being demanded. Her parents had given everything in marriage according to their capacity. Her mother-in-law Hardeep Kaur used to give filthy abuses and also beatings. At about 1 pm, she was sitting when her mother-in-law Hardeep Kaur was abusing her and in the meanwhile she brought one can of petrol and*

poured on her and then lit the fire with a match stick and ran away from the automatic door. While screaming, she came out and neighbours extinguished her fire. Her mother-in-law Hardeep Kaur poured petrol and burnt her. At that time only they two were alone there. Her husband had gone to his shop. Her mother-in-law Hardeep Kaur poured petrol and burnt her on account of dowry”.

7. After the usual endorsement by the Area SDM, PW10 B.S. Jaglan, the case was registered against the accused persons including the appellants under Sections 498A/307 of IPC.

8. In the meanwhile, DD No.50B (Ex.PW4/D1) was also recorded at the Police Station Sarojini Nagar on the message of Arvinder Singh (PW18), brother of deceased, that his sister was burnt by her in-laws and was admitted in Safdarjung Hospital and was about to die but the police did not record her statement.

9. The aforesaid DD was entrusted to PW4 SI Dharampal Singh who along with one Constable reached Safdarjung Hospital.

10. At about 4.30 pm PW28 Dr. Sujata Pandey declared her fit for statement vide Ex.PW28/A. Thereafter, PW4 SI Dharampal Singh in the presence of Dr. Rajiv Rajput (PW1) and PW11 SI Rattan Singh recorded the statement (Ex.PW1/A) of Davender Kaur at 5 pm. This statement was to the effect that, *“She was married about 8 years back; that she*

was being harassed by her in-laws on account of dowry; that harassment continued; that today at about 1 pm, her mother-in-law, her husband Baljit Singh and Arvinder Singh poured petrol on her from a can and her mother –in-law lit the fire with a match stick; that she tried to save herself and raised noise; that neighbours came and brought her to the lobby; that her in-laws have burnt her”.

11. On the same date, at about 8.15 pm, an information was received about death of Davender Kaur which was recorded vide DD NO.43B (Ex.PW26/A). On receiving the said DD, PW26 Inspector Jai Singh along with Constable Vijay Bahadur reached at the place of incident. Accordingly, the offence was altered from Section 307 to 302 IPC.

12. Investigation of the case was taken over by Inspector Jai Singh (PW26). The spot was got inspected from the Crime Team. The site plan was got prepared and photographs were also got taken. Ash of burnt clothes, burnt hairs, and burnt plastic can of petrol with writing “GTX”, one matchbox and two burnt match sticks were taken into possession and were kept in a *pulanda* which were sealed with the seal of “JS”.

13. The statements of witnesses were recorded and the case property was deposited at the Police Station Malkhana Moharar. Appellant Hardeep Kaur was arrested on 9.11.1997. Her personal search was taken by PW 23 W/HC Pushpa Kaur.

14. The appellant Hardeep Kaur made a confessional statement to the effect that, *“her son Baljit Singh was married with Davender Kaur in September, 1989 according to Sikh rites; that Davender Kaur had not brought the dowry articles as per their desire; that she along with her son Baljit Singh, daughter Simmi and son-in-law used to beat Davender Kaur on account of dowry; that they all hatched a conspiracy to kill Davender Kaur; that she poured petrol on Davender Kaur and lit the fire with matchstick; that she could arrest her son Baljit Singh, daughter Simmi and son-in-law Arvinder Singh and could point out the place”*.

15. Thereafter, she took the police party to the place of incident i.e. First Floor of Room No.B-1-127, Paschim Vihar and pointed towards the place where they had poured petrol on Davender Kaur and burnt her with matchstick.

16. Inquest proceedings were prepared under Section 174 CR.PC and after the postmortem, the dead body was handed over to the relations of the deceased. Statements of witnesses were recorded by the Investigating Officer Jai Singh.

17. As per the postmortem report, cause of death was due to shock as a result of 100% superficial and burns of deep first, second, third and fourth degree and ante mortem burn caused by flames. On the internal examination, there was noticed extra vacation of blood in the scalp

which was opined by PW9 Dr.Chanderkant as caused by application of blunt force from a blunt object/ material to head against rough and hard surface.

18. After investigation, the police filed the charge-sheet in the Court and thereafter vide order dated 2nd May, 1998 charge for committing offences under Sections 302/120B IPC was framed against the appellants including Satender Kaur. The appellants pleaded not guilty and claimed trial.

19. The prosecution examined 29 prosecution witnesses and the statements of appellants were also recorded under Section 313 Cr.PC.

20. Before proceeding further, we briefly discuss about the witnesses examined by prosecution. PW1 Dr. Rajiv Rajput, who was on duty in Burn Department (ICU) of Safdarjung Hospital, when deceased with 100% burns was admitted there at about 2.30 pm. As the SDM did not reach despite long waiting and the condition of the deceased was critical and she could succumb any time, therefore, her statement (Ex.PW1/A) was recorded by PW4 SI Dharampal Singh.

21. The said statement (Ex.PW1/A) of the deceased has been considered by the learned trial court as one of her dying declaration.

22. PW2 Davender Singh, SDM, Vasant Vihar, had recorded the statement of deceased (Ex.PW2/A) later. The learned trial court

considered this statement also as dying declaration, while, convicting the appellants.

23. PW3 HC Om Prakash deposed that he reached at the place of incident at about 13:27 pm on getting information regarding a lady having been burnt. He removed her to the Safdarjung Hospital in the PCR Van. Her mother-in-law (appellant Hardeep Kaur) also accompanied the deceased in the van. According to him, deceased did not utter anything on the way and was crying. However, when they reached the hospital, she started crying that she was burnt and killed. On his asking, she told that her mother-in-law, husband Baljeet Singh and *Nandoi* Harnam Singh set her on fire after pouring petrol on her.

24. This part of the statement made by the deceased to PW3 HC Om Prakash has also been considered as one of the dying declaration by the Trial Court.

25. PW4 SI Dharampal Singh of Police Station Sarojini Nagar deposed that he had reached the spot on receiving DD No. 50B (Ex.PW4/D1). He informed the SDM, Paschim Vihar, who advised him to contact SDM Punjabi Bagh as the later was not available. He contacted the SDM Sarojini Nagar who advised him to contact SDM Punjabi Bagh, who was still not available. As the SDM had not arrived, he recorded statement

(Ex.PW1/A) of the deceased at 5 pm in the presence of PW1 Dr. Rajiv Rajput and PW11 SI Ratan Singh.

26. PW5 Constable Raj Singh was posted at the Police Station Paschim Vihar and he had accompanied PW11 SI Rattan Singh to the place of incident. As the deceased had already been taken to the hospital, SI Ratan Singh left for the hospital while he remained at the spot. Thereafter, he had taken *rukka* (Ex.PW5/A) to the Police Station Paschim Vihar and got the case registered vide FIR (Ex.PW5/B).

27. PW6 Constable Kailash Chand deposed that he had taken the special report to the senior police officers and to the Area Magistrate on the same day. He denied that he had not taken the copy of the FIR as deposed and that the same was delivered on the next day.

28. PW8 Dr.Sushma deposed that she was on duty at Safdarjung Hospital on 08.11.1997 when at about 02:30PM, she examined Davender Kaur vide MLC Ex.PW8/A. She deposed that Davender Kaur was brought by her mother-in-law (appellant) and the deceased had herself informed to have sustained burn injuries and that she had the fight with her husband and mother-in-law and she had poured petrol on herself in her room and lit on fire and got herself burnt.

29. The learned trial court has considered the aforesaid statement also as one of the dying declaration, while convicting the appellants.

30. PW9 Dr.Chanderkant has proved the postmortem report Ex.PW9/A on the body of the deceased done on 09.11.1997.

31. PW10 B.S. Jalan was the SDM Paschim Vihar and he had made endorsement regarding registration of the case on the statement recorded by PW2 as Ex.PW2/B.

32. PW11 SI Rattan Singh, as stated above, had reached the place of incident along with Constable Raj Singh. In the hospital, he sought the declaration of the doctor as regards to the fitness of the deceased for making statement. He was a witness to the statement Ex.PW1/A recorded by PW4 SI Dharampal Singh in the presence of Dr. Rajiv Rajput. Later on after getting endorsement (Ex.PW2/B) of SDM Punjabi Bagh, PW10 B.S. Jalan as Ex.PW2/B, he prepared *rukka* (Ex.PW5/A) and sent the same through PW5 Constable Raj Singh for registration of the case. After receipt of information regarding death of deceased, PW10 handed over the investigation of the present case to PW26 SHO Jai Singh.

33. PW12 Inspector Davinder Singh had prepared the scaled site plan Ex.PW12/A.

34. PW13 Constable Durgalal had taken the five photographs Ex.P6 to P10 of the place of incident.

35. PW14 Constable Umed Singh had collected the postmortem report along with the seal parcel containing the hair and the sample seal from the hospital and had handed the same to the Duty Officer PW15 HC Brij Lal.

36. PW16 Lady SI Lata Singh had recorded DD NO.9A (Ex.PW16/A) at Police Station Paschim Vihar, on receipt of information from the PCR regarding having been set on fire. Thereafter, she recorded the DD No.14A Ex.PW16/A regarding admission of Davender Kaur (deceased) in the hospital in burnt condition.

37. PW17 SI Dhan Singh deposed that he along with the photographer Hans Raj and R.K. Ken had reached at the spot.

38. PW20 constable Davinder proved the previous incidents between the deceased and her in-laws vide entries Ex.PW20/A and PW20/B of the police record dated 23.10.1994.

39. PW21 Constable Satpal and PW25 Om Prakash were on the duty at Safdarjung Hospital on 8.11.1997. They deposed about the admission of Davender Kaur in burnt condition in the hospital by PCR official namely HC Om Prakash (PW3). They had given the information to Police Station Paschim Vihar regarding the incident which was recorded vide DD No.14 Ex.PW16/B. Constable Satbir also gave the

information about the death of Davender Kaur which was recorded at Police Station Paschiv Vihar vide DD No.43 as ex.PW26/A.

40. PW23 examined W/HC Pushpa Kaur who accompanied Inspector Jai Singh and was a witness to the arrest of appellant Hardeep Kaur vide Ex.PW19/B.

41. PW24 Inspector Meena conducted the investigation from 6.12.1997. He recorded statements of the same witnesses and then formally arrested appellant Arvinder Singh and he had also got sent exhibits to FSL, Malviya Nagar.

42. PW26 Insp. Jai Singh had taken over the investigation after death of Davender Kaur. He prepared the site plan Ex.PW26/B. He recorded the statement of the father and brother of the deceased and other witnesses and took into possession hairs, ash of the clothes, match box with two burnt sticks, one can in melted condition from the spot. He had arrested the appellant Hardeep Kaur. He also recorded the statement of PW4 SI Dhanpal and PW3 HC Om Prakash. Thereafter, he arrested appellant Baljit on the next day after he surrendered in the Court.

43. The above discussed witnesses also took into possession the photographs of compromise deeds dated 23.10.1994 as arrived between the deceased and her in-law in a previous incident on which PW11 SI

Ratan Singh's signatures were there. He prepared the inquest report Ex.PW26/D and then formally arrested another accused.

44. PW27 HC Raj Singh was posted as Malkhana Moharar at the Police Station on 8.11.1997 and also on 2.12.1997 when exhibits of the case property were deposited with him. On 28.01.1998, he got sent these exhibits to FSL, Malviya Nagar but these were not accepted there. The entries in this regard were made in Register No.19.

45. PW28 Dr.Sujata Pandey who examined the deceased at 4.20 pm & declared her fit for statement on the application Ex.PW28/A as made by the relations of the deceased.

46. PW29 Dr. Savita Arora had identified the signatures of Dr. Samir Verma on Ex.PW2/A whereby the deceased was declared fit to make statement by Dr. Samir who had left the services of the hospital and his whereabouts were not known. Dr. Savita had seen Dr. Samir signing and writing during the course of his working with her. She also identified handwriting and signatures of Dr. Samir Verma as appearing on the case sheet Ex.PW29/A. On both these exhibits Dr. Samir Verma had declared the deceased to be conscious, oriented and fit for statement.

47. PW22 is the cousin of deceased Davender Kaur and PW7 was a family friend of Harnam Singh. They all deposed about the previous

incident of cruelty on account of dowry and also of the compromise and subsequent allegations of harassment of deceased Davender Kaur by her in-laws on account of dowry.

48. The learned trial Judge came to the conclusion that the deceased was subjected to harassment and cruelty and was burnt by the appellant Baljit Singh, appellant Hardeep Kaur and appellant Arvinder Singh as on the fateful day. She was subjected to beatings, and was ultimately burnt to death.

49. The learned trial Judge has observed in its impugned judgment that from the evidence on record, it is established that there was complicity of these three appellants in commission of the offence. They assaulted the deceased and burnt her with undoubted common intention amongst them to cause her death. Therefore, the case was proved against the appellants Baljit Singh, Hardeep Kaur and Arvinder Singh for offences punishable under Sections 302/120B Indian Penal Code, 1860 and under Section 498A/34 of Indian Penal Code, 1860.

50. The learned trial Judge has further observed that though there were certain allegations of presence of Satinder Kaur also on the fateful day when a sum of ₹5 lac was demanded and deceased was subjected to abusive language and harassment, but as she was not named by the deceased in any of her dying declarations and as there was not much

evidence against her, therefore, she was acquitted by giving her benefit on account of lack of sufficient evidence against her.

51. Mr.Jitender Sethi, learned counsel appearing on behalf of appellant Baljeet Singh – husband of the deceased argued that the first dying declaration Ex.PW8/A recorded in the MLC at about 02:30PM wherein it is mentioned that the statement was given by the informant herself and it states that she had sustained herself burn injuries after having a fight with her husband and mother-in-law in a room by pouring petrol on herself and put herself on fire with match-stick.

52. Learned counsel submitted that this is the first dying declaration and if the same is to be believed to be true, then it is the case of self-immolation and not homicidal death.

53. He further submitted that the next dying declaration is alleged to have been given to PW4 SI Dharam Pal at about 05:00PM, wherein the deceased had stated in the narration form that at about 01:00PM on 08.11.1997, her mother-in-law, husband – Baljeet Singh and brother-in-law Arvind Singh poured petrol from a *can* over her and her mother-in-law lit match stick. On account of burning she started crying, then neighbours came there and took her to the lobby. This alleged dying declaration has been attested by PW1 Dr.Rajiv Rajput.

54. Learned counsel has argued that both the PW1 and PW4 have admitted that at the time of recording of dying declaration her brother and other relatives were present and even they were instructing the police to record the statement in a particular form. PW4 had also admitted that the brother of the deceased was even suggesting replies to the question put to her. Both the PW1 and PW4 had admitted that the deceased was nodding sometimes on the questions asked to her. However, a bare perusal of the Ex.PW1/A does not show that as to what were the questions which were answered by the deceased while nodding her head and as such it is clear that as to how PW4 had understood the meaning of those questions and recorded himself in his own language in a narrative form.

55. Learned counsel submitted that this kind of recording of the dying declaration cannot be believed and not acceptable in criminal jurisprudence. In this regard, he has relied upon the case of **Jagdish Lal Malhotra v. State of Delhi, 1983 Chandigarh Criminal Cases, 558** wherein it has been held in para No.34 as under:-

“(34) We have examined the dying declaration Ext.PW24/A in the light of its essential characteristics and in the light of prosecution evidence itself. That sufficiently goes to show that the statement is surrounded by suspicion and it is absolutely unsafe to base conviction on this alone. We have evidence in this case of Dr. V. Thukral PW 24 that his statement of the deceased

was written by DW 26 Surinder Dev S.I. on his questioning from the patient. We, however, are not taken into confidence as to what those questions were, in what form they were put, what were the suggestions, if any, given and how were the answers given and recorded. It is due to this difficulty that Dr. V. Thukral PW 26 has not been able to depose in respect of the broad feature of the dying declaration and he is content by telling us that "in nut shell what he remembers is that she stated that in the early hours of the morning she had gone to bath room to make water and from her back her husband set her on fire after sprinkling kerosene oil on her body". It is very strange that the words "from her back" have come in the statement for the first time in spite of fact case that this is not to be found in the declaration itself. In any case, if a statement is made on questioning, the proper course to record it would be to record the questions and the replies so as to enable the court to appreciate its evidentiary value. The argument of Shri Sodhi learned counsel for the State that this dying declaration should be assessed in the light of the earlier dying declaration made by her before Dr. R.P. Sharma, PW 25 "that she was burnt by her husband" under the circumstances does not appear to be a sound approach. Why should we look at the dying declaration in isolation of the totality of the circumstances and other evidence of the prosecution particularly when we know that its vital contents are by and large controverted by the prosecution evidence itself."

56. The counsel further submitted that since PW1 and PW4 have categorically stated that the relatives of the deceased were influencing

her in giving replies to the questions put to her by PW4. Therefore, by no stretch of imagination it can be said that the said dying declaration was in fact the statement given by the deceased herself. It is also admitted by PW4 that he had not made any endorsement on the said statement of injured as he was convinced that it was not the statement of the injured Davender Kaur.

57. On the another dying declaration which was alleged to have been given orally to PW4 HC Om Parkash, incharge of PCR Van, who had taken the injured to Safdarjung Hospital, Mr.Sethi, learned counsel submitted that the said witness also had sent the information which is recorded as Ex.PW3/DA, wherein he had categorically stated that as per the investigation at the spot, the injured Davender Kaur had burnt herself by closing the door from inside and she was saved by the neighbourers after breaking up of the door. He had also sent an information in that DD that the husband of the deceased was not available as he had already gone to his shop at Connaught Place, New Delhi. This witness had also sent the information at about 02:40PM that the injured was admitted at Safdarjung Hospital with 100% burnt injures and she is being examined by the doctor and had also mentioned, "now she is speaking".

58. Learned counsel further argued that nowhere the aforementioned witness has sent any information to the Police Control Room that a

statement had been made by the injured to him in the PCR van before reaching to the Safdarjung Hospital. Surprisingly, this witness remained silent about it till 08:00PM on the next day i.e. 09.11.2007 when he admitted that the IO came to him with two Sikh gentlemen and then recorded his statement wherein he had stated that a statement was made to him by the deceased.

59. It is asserted that conduct of this witness by not disclosing the dying declaration made to him about 30 hours to any of his officials or to the concerned IO or the police station or even to the Duty Constable clearly shows that he had not given reliable evidence. Moreover, he also did not contradict the injured when she made a statement to the doctor in his presence that she herself burnt by pouring petrol over herself. Thus, it is established that this witness was later on influenced by the prosecution to prove false case against the present appellants.

60. He further argued that other oral dying declaration which were alleged to have been given to PW18 and PW19, brother and father respectively of the deceased, who stated that the deceased disclosed to them that she had burnt by her mother-in-law and brother-in-law and the husband after pouring petrol over her and match stick was lit by her mother-in-law after giving her beatings cannot be relied on in the facts and circumstances.

61. Learned counsel has argued that though as per these witnesses, who had reached the hospital at about 03:00PM as stated by PW19 and also corroborated by DD No.50B the information received at police station Sarojini Nagar, New Delhi at about 03:30PM sent by PW18 that some officers be sent to record her statement, as she was about to die. PW19 (father of the deceased) has admitted that when he alongwith his sons reached the hospital at about 03:00PM, they had asked her daughter about the cause of burn and then she informed them as mentioned above and thereafter they called the police and the SDM.

62. Learned counsel has submitted that this admission on the part of the these witnesses categorically shows that before the police and SDM reached the spot, they had ample time to influence the mind of the deceased and had tutored her in all respects to make an unreliable statement.

63. Furthermore, in the *rukka* which was sent by the IO from Safdarjung Hospital, at about 08:00PM, there is no mention of any dying declaration made either to PW4 SI Dharam Pal or any oral dying declaration made to PW3 HC Om Parkash or any oral dying declaration made to either PW18 or PW19. As such, it is amply clear that by that time no such dying declaration was ever made to any of these persons by the deceased. Learned counsel has relied upon ***Ram Kumar Pandey v. State of M.P. : AIR 1975 SC 1026.***

64. On the last dying declaration, recorded by PW2 SDM which is Ex.PW2/B recorded at 05:20PM and it is in the question-answer form.

65. Learned counsel further submitted that in the said dying declaration, it was categorically stated by the deceased that her husband was not present in the house and it was her mother-in-law, who had poured kerosene on her and then lit the fire.

66. Mr.Sethi, learned counsel appearing on behalf of appellant Baljeet Singh (husband of deceased) has submitted that since the dying declarations are inconsistent; as such no reliance can be placed on any of the dying declarations.

67. To strengthen his arguments on the issue, he has relied upon **Smt.Kamla v. State of Punjab: AIR 1993 SC 374** wherein it has been held as under:-

“5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests. (Vide Khushal Rao v State of Bombay, AIR 1958 SC 22). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all these cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declarations they should be consistent. If a dying declaration is found to be voluntary, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed

between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinizing the contents of various dying declarations, in such a situation, the Court has to examine the same in the light of the various surrounding facts and circumstances.”

68. He has further relied upon ***Mahiboobsab Abbasabi Nadaf v. State of Karnataka : 2007 (7) JCC 2355*** wherein the Apex Court has observed as under:-

Conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.

69. Reliance has also been placed upon ***Brij Kishan v. State : 2010(1) Crimes, 121*** wherein the Division Bench of this Court observed as under:-

‘Where there are inconsistencies in a dying declaration or where there are traces of the maker of the dying declarations being influences, unless corroborated by independent evidence, it would be unsafe to sustain a conviction on such dying declarations.”

70. Learned counsel further submitted that without prejudice to the rights and contention of appellant Baljeet Singh, he submitted that

dying declaration which is recorded by the SDM PW2 which is also the basis of the FIR, does not implicate the appellant in any manner for causing burn injuries to the deceased, as such the involvement of the husband is therefore, not established in the commission of the offence under Section 302 IPC.

71. He humbly submitted that the appellant has already undergone incarceration for about 05 years and the son from his marriage with deceased is living with him and he is also having a daughter aged 10 years from his second marriage. There are no cogent evidence with regard to the offence under Section 498A IPC as whatever has been stated by the witnesses i.e. PW7, PW18, PW19, and PW22 are contradictory to each other as well as have material improvements in their depositions before the Court than what was made before the police and thus, their statement cannot be relied upon.

72. In this regard, reliance has been placed on ***Yudhister v. State of Maharashtra: 1971 CAR SC 250***. Therefore, appellant deserves to be acquitted from all the charges in the instant case.

73. Mr.Siddharth Luthra, learned Senior Advocate appearing on behalf of appellant Arvinder Singh (brother-in-law 'Nandoi' of deceased) has argued that case against the appellant mainly depends upon six

multiple dying declarations, viz three written and three oral made by the deceased.

74. The first dying declaration is orally made before PW3 HC Om Parkash, incharge, PCR Van for the allegation of murder at about 02:15 to 02:20PM implicating three persons viz mother-in-law, husband, and brother-in-law.

75. Learned Senior Advocate argued that this dying declaration was allegedly made by the deceased to PW3 who took her to the hospital from the spot. It is unreliable because PW3 inspite of being a police officer, did not record it in writing anywhere. Rather, in Ex.PW3/DA, he also gave a contrary version of suicide. Ex.PW3/DA further depicts that the deceased was not speaking at all till she was handed over to the doctor. Further, PW3 did not inform anyone regarding this oral dying declaration in spite of meeting doctor and duty constable in the hospital and sending information about the same to his office. In fact the very first time this dying declaration came into existence was that next date i.e. 24 hours later. Thus, this oral dying declaration in all probability was not made at all and was just concocted later on to buttress the prosecution case.

76. The second dying declaration was made by the deceased at 02:30PM to PW8 Dr.Sushma which was reduced into writing on the

MLC Ex.PW8/A for the alleged offence of murder implicating husband and mother-in-law.

77. Learned Senior Advocate contended that without prejudice to rights of the accused, this dying declaration appears truthful reliable because it is the very first version of the occurrence coming from the mouth of the deceased and it is further corroborated by the independent witnesses on record i.e. Ex.PW3/DA and evidence of PW26, IO Inspector Jai Singh who in his cross-examination dated 22.05.2000 deposed that the door had to be broken open to save the deceased, which gives rise to the inference that the door was bolted from the inside and which further shows that deceased had committed suicide by pouring petrol and setting herself on fire.

78. The third dying declaration is made to PW4 SI D. P. Singh in writing in the presences of PW1 and PW11 at 05:00PM for the allegation of murder implicating mother-in-law, husband and *Nandoi*.

79. Learned counsel further submitted that this dying declaration is completely unreliable because the scribe PW4 himself felt that this is not a voluntary statement of the deceased since the brother of the deceased was putting leading questions to the deceased and even when PW4 asked questions from the deceased, her brother intervened and gave suggestive answers. The evidence of PW4 is also corroborated by

the deposition of PW1 Dr. Rajiv Rajput, who also felt that this is not the statement of the deceased.

80. Again deceased made another dying declaration fourth time, in writing to PW2 SDM Shri Davinder Singh for murder at 05:20PM implicating only mother-in-law.

81. Learned counsel submitted that this dying declaration is again not reliable because though it is recorded by a neutral officer like SDM, but before making it, the deceased had already been tutored and brain washed so as to give a version implicating the accused as per the desire of the relatives of the deceased and specially her brother. Thus, though it may be genuinely recorded by the SDM without any alteration etc. But it does not mean that the deceased had made a truthful statement. Thus even this dying declaration could not be treated as credible and reliable.

82. As far as the last two dying declaration are concerned both the oral dying declaration made at 03:00PM for the offence of murder by the deceased to PW18 Arvinder, her brother and to PW19 Harnam Singh, her father implicating mother-in-law, husband and *nandoi*.

83. Learned counsel further submitted that these two oral dying declarations are not unreliable because firstly, the father and brother of the deceased were vengeful on account of her death and were bent upon

implicating as many persons from the accused side as possible, secondly they made significant improvements during their deposition in the Court. Thirdly, they stated that they reached the hospital and talked with the deceased at 03:00PM; wherein the deceased told them that she has not stated true facts to the SDM. This is inherently impossible because the dying declaration recorded by the SDM was recorded at 05:20PM. Thus, the deceased could never have referred to it, while talking with her brother and father at 03:00PM. Even otherwise, when there are written dying declarations recorded by neutral persons like, doctor, then the oral dying declarations made to the interested witnesses could not be given preference over them.

84. Mr.Luthra, learned Senior Advocate relied upon ***Thurukanni Pompiah & Anr v. State of Mysore, : AIR 1965 SC 939*** wherein the Apex Court has held that if the Court finds that the declaration is not wholly reliable and the material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all circumstances of the case consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

85. He further submitted that applying the ratio of ***Thurukanni (supra)*** to the instant case, when there are multiple dying declarations recorded in suspicious circumstances and having various irreconcilable inconsistencies qua version of incident and assailants etc; viz – the

deceased told to PW6 Dr.Sushma that she set herself on fire after a fight with her husband and mother-in-law; in the dying declaration to PW4 SI Dharam Pal Singh, she stated that petrol was poured on her by her mother-in-law, husband and *nandoi*; in the last dying declaration made to SDM, PW2, she stated that only her mother-in-law had set her on fire.

86. Learned counsel submitted that the irresistible conclusion is, that only the dying declaration should be relied upon which is corroborated by some independent evidence on record. In the present case, only the dying declaration made to doctor is corroborated by the independent evidence i.e. Ex.PW3/DA and the evidence of PW26 IO Inspector Jai Singh who deposed that the door had to be broken open to get the deceased out, which gives rise to the inference that the door was bolted from inside and which further shows that deceased had bolted the door from inside and committed suicide by pouring petrol and burning herself.

87. He further submitted, that the question of law has been settled by the Supreme Court in a three judge bench judgment holding that even if the charge is only under Section 302/498A IPC even then the conviction is possible under Section 306 IPC if the accused is not prejudiced and the evidence produced in the case fulfill the ingredients of the offence under Section 306 Indian Penal Code, 1860 i.e. there has

been cruelty and harassment meted out to the deceased to such an extent which has led her to take the extreme step of committing suicide.

88. Mr.K.T.S.Tulsi, learned Senior Advocate appearing on behalf of appellant Hardeep Kaur submitted that the PW1 and PW4 both stated that while recording her statement in the hospital, the brother of the deceased was putting leading questions. It is on record that to some questions she nodded and to some questions she whispered, but one does not know are all those questions for which she nodded. It has come on the record that violence had erupted outside the hospital and the brother of deceased had instructed her.

89. In the instant case, there are multiple dying declarations. The first was made before PW3 HC Om Parkash, Incharge of PCR Van wherein three persons were blamed, mother-in-law, husband and *nandoi*. Learned Senior Advocate has pointed out that neither the aforesaid PW3 recorded her statement nor transmitted the same to the police station or to any other officer including the IO. The prosecution has suppressed this information. The log book of the PCR recorded that she herself set on fire. He further submitted that PW18 reached at the spot and may have concocted the version. Therefore, the said alleged dying declaration cannot be believed at all.

90. On second dying declaration recorded by Dr.Sushma at 02:30PM learned counsel argued that she blamed two persons viz mother-in-law and the husband of deceased and medium of fire was narrated as petrol.

91. In the third dying declaration being Ex.PW1/A recorded by PW4 SI Dharampal, she blamed mother-in-law; Arvinder Kumar(*Nandoi*); and Baljeet Singh (husband).

92. PW1 Dr.Rajiv Rajput was declared hostile and stated that no such statement under Section 161 Cr. P.C. was recorded by the police.

93. As far as the fourth dying declaration is concerned, the same was recorded by the SDM, PW2 Shri Davender Singh – wherein deceased stated that the mother-in-law poured kerosene oil.

94. PW2 Shri Davender Singh, Vansat Vihar, New Delhi in his cross-examination stated that there were about 10 persons including the police officials where the patient was admitted. Out of them 3-4 were police officials and remaining were the relatives of the deceased. When he entered the room, the patient was crying and they were pacifying her. The brother of the deceased was standing nearby the bed and he was also pacifying her. He could not hear as to what type of conversation was taking place between the patient and her brother.

95. Learned counsel has also referred the statement of PW6 Inspector Jai Singh, who stated in the cross-examination that the door of the drawing room was broken and entry was made in the house after breaking the door to save the deceased. He also came to know that one Mr.Mittal and one another person residing in the neighbourhood also entered the house after breaking open the door.

96. PW13, photographer also deposed that both the doors of the room were bolted from inside and there was no possibility of the access to the room.

97. Mr.Tulsi, learned Senior Advocate has argued that the material seized from the place of incident shows that the deceased herself committed suicide as one plastic *can* in melted condition found on which the word 'Castrol GTX Extra' and one match box along with two burnt match sticks were recovered from near the door of the room in the covered lobby at first floor of the rear portion of the house.

98. In the statement of the appellant Hardeep Kaur, she stated that the deceased was in depression and her name was mentioned in the complaint made before CAW Cell by her sister-in-law *Bhabhi*.

99. Learned counsel has also doubted that the deceased was in a fit condition to make any statement; whereas it is mentioned that she was 100% with deep burn and was not able to speak and the answers were

repeated and dictated by her brother present over there on the basis of her alleged whispering and nodding.

100. The statement was recorded by SDM at 05:25 PM, however, thereafter, she changed her version within 25 minutes as per the statement recorded by PW28 Dr.Sujata Pandey at 04:20PM. Finally, the deceased died at 07:30PM, which proves that she was not in a fit condition and position to make her statement.

101. Learned Senior counsel has submitted that the learned Trial Court has failed to appreciate the law on dying declarations. In case of multiple dying declarations, the Court cannot pick and choose one or more dying declaration and discard the other for convicting the accused persons. The dying declarations have to be consistent and in the absence of consistencies in them, none of the dying declarations can be relied upon.

102. He submitted that learned Trial Court has further failed to appreciate that the deceased had stated before Dr.Sushma as recorded in the MLC Ex.PW8/A that after she fought with her husband and mother-in-law, she poured petrol on her and set herself on fire.

103. Learned Trial Court has also failed to appreciate that dying declarations recorded thereafter were all tutored one as the father and brother of the deceased were present in the hospital all along. PW1

Dr.Rajiv Rajput has clearly stated in his cross-examination that the brother of patient was trying to help the patient in replying to the questions put by the police officials to the patient. He further admitted that several persons were standing outside and violence had also erupted.

104. It has also been established that there was a big crowd. There was tension at the time of recording the statement of patient. It has also been established that brother of the patient was instructing the police to record the statement of police in accordance with the statement made in Ex.PW1/A. This establishes that statement was neither recorded in a correct manner nor it was a voluntary statement, therefore, such type of statement cannot be considered as a dying declaration for convicting the appellants.

105. Moreso, the appellant (mother-in-law of the deceased) shifted the deceased in injured condition to the hospital and same has been corroborated in her statement recorded under Section 313 Cr. P.C. and thereafter, appellant was arrested from the hospital itself.

106. Further, he humbly submitted that the appellant has crossed the age of 70 years and has already been incarcerated for around 08 years. The instant case is for suicide; hence, appellant may be acquitted from the charges framed against her.

107. On the other hand, Mr.M.N.Dudeja, learned APP has submitted that the appellant Hardeep Kaur in her statement under Section 313 Cr. P.C. stated that their neighbor Mr.R.S.Mittal informed her about the smoke coming from the first floor and she alongwith him broke open the door and in the meanwhile, police arrived. The deceased burnt herself in the room which was having an automatic lock. PW26 at one place stated that he came to know that one Mr.Mittal and another person entered the house after breaking open the door and they extinguished the fire. Her statement was recorded, but the fact remains that there was no statement of Mr.Mittal recorded nor he was sighted as a witness by the prosecution. It appears that Mr.Mittal has been falsely introduced. If there was Mr.Mittal, in the neighbourhood, as alleged by the appellant, who allegedly informed her; then he could have conveniently examined without any difficulty in support of the defence of the accused persons, but no evidence in defence has been led by the appellants.

108. Learned APP further submitted that the deceased was beaten and then burnt. It find corroborations from the medical evidence of PW9 Dr.Chander Kant, who conducted the postmortem and deposed that there were 100% superficial and deep anti-mortem burnt covering whole body, charring of skin in the scalp region anteriorly, in the middle of parietals region, both frontal region, front of forehead, nose and both

upper and lower lips, part of neck right side and both thighs. Skin was peeled off at places revealing varia of vital reactions. On internal examination of deceased, witness noticed that there was extra vasation of blood in middle of forehead region i.e. frontal region of 3.3 cm X 2.8 cm size; right side of frontal region size 4.2 cm X 3.8 cm.

109. He also noticed that extra vasation of blood with separation in fifth rib at the junction of right costo-condral junction. He opined the death was caused due to shock as result of 100 superficial and deep ante mortem burnt caused by flames. Internal extravasation of blood in skull was caused by application of blunt force from blunt object like due to hitting head against the rough and hard surface.

110. During cross-examination, this witness denied that there was other reason other than use of fire and which resulted in extravagation of blood in head. He also explained that the extravagation of blood is whenever there is a force applied on tissues.

111. Learned APP further submitted that the deceased has narrated the whole incidence before the Doctor/IO/SDM and same has been corroborated further by brother and father of the deceased

112. He has also argued on the conduct of appellant Baljeet Singh that as per the statement, he was at his shop at Connaught Place, New Delhi, where he received information about the incident. He also stated

that he later on reached at the hospital. But it is matter of record that he neither reached at the hospital nor at home. On receipt of the information he also did not visit the hospital, but went underground. As, his mother Hardeep Kaur had been arrested, this would have made him to surrender before the Court on the next day. Appellant, Arvinder Singh was also evading arrest after the incident and could be arrested only after a couple of days.

113. Learned APP further submitted that learned Trial Judge after considering the statement of witnesses and material on record had come to the conclusion that the deceased was subjected to cruelty and harassment on account of dowry demand by the appellants and even on the fateful day, she was subjected to beating on this count by the appellant and thereafter, it ultimately led to her death by burning.

114. On the aspect of dying declaration, learned APP has fairly conceded that in case of ***State of M.P. v. Santosh Kumar : 2009 (6) SCC 484*** the Apex Court has held that there were three dying declarations and each of them was giving a different version. No clear answer as to which of the three versions is believable; therefore, in such a situation, the conviction was set aside.

115. However, in case of ***Lakhan v. State of MP : 2010 (8) SCC 514*** it has been held by the Apex Court as under:-

“20. In view of the above, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under a tutoring/duress/prompting; it can be the solid basis for recording conviction. In such eventuality no corroboration is required. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”

116. Learned APP further relied upon ***Jaishree Anant Khandekar v. State of Maharashtra: 2009 (11) SCC 647*** wherein there were five dying declarations having some deviations, but all of them were consistent in material particulars.

117. In ***Abrar v. State of Uttar Pradesh: AIR 2011 SC 354*** the Full Bench of the Apex Court held that minor discrepancy *inter-se* cannot be a ground to acquit the accused.

118. Whereas in ***Mangesh v. State of Maharashtra : AIR 2011 SC 637*** there were two dying declarations and were consistent in regard to

the names of the accused persons and accordingly, accused were convicted.

119. In ***State of Rajasthan v. Permender Singh : 2009 (7) SCC 320*** in all the dying declarations the respondent was specifically named and the role played by him had been categorically described.

120. In the case at hand also, there is no consistency in the dying declarations. She was in a deep pain as she was having 100% burnt injuries. Therefore, in the instant case, she could not narrate the whole incident. Initially, she made allegations against her mother-in-law and husband. Thereafter, on receiving some medication in the hospital, she felt some comfort and narrated the correct version of the incident. Therefore, the statement of the deceased could not be brushed aside.

121. To sum up, learned APP has submitted that there is no merit in these appeals and same may be dismissed.

122. We have heard learned counsels for the parties and gone through the evidence on record.

123. Learned counsels appearing on behalf of the three appellants have mainly stressed that when more than one dying declarations are there, and if there is no consistency in them, in that case, the accused are entitled for benefit of doubt.

124. In the present case, the alleged first dying declaration though not written made before PW3 HC Om parkash, Incharge, PCR Van at about 02:15 to 02:20PM. We find that PW3 neither reduced it into writing nor conveyed to PCR officials, IO or the SHO of the concerned police station. Therefore, we are of the considered opinion that the statement of PW3 cannot be relied upon and such type of statement cannot be considered as reliable for conviction.

125. As the second dying declaration is concerned, which is recorded on MLC Ex.PW8/A by PW8 Dr.Sushma wherein the deceased alleged that she herself sustained burn injuries after having a fight with her husband and mother-in-law in a room by pouring petrol on herself and put herself on fire with a match-stick. The said information conspire confidence as it was without any influence from any corner and the learned counsel for the parties could not bring any material or record on the record that PW8 had recorded false statement of the deceased.

126. We are conscious that the settled proposition of law is that, as discussed above, if there are more than one dying declarations, and there is no inconsistency in them, then none of the dying declaration can be relied upon. However, we are also conscious that if in the multiple dying declarations, some names are consistent, then there is no point not to believe the names consistently figuring in the dying declarations.

127. As the case of appellant Arvinder Singh is concerned, the deceased did not mention his name before PW8 Dr.Sushma. Therefore, she has not recorded his name in the MLC Ex.PW8/A. However, his name emerged in the dying declaration orally made to PW3 HC Om Parkash and same has been discarded by us because of the fact that the brother of the deceased and the SHO concerned, themselves contacted to PW3 and thereafter, recorded her statement. Had the deceased disclosed any such type of information, he was duty bound to transmit the same to the PCR and the police station, which he failed to do so. Therefore, we are of the considered opinion that the deceased did not make any statement before PW3 HC Om Parkash.

128. The name of the appellant Arvinder Singh is also mentioned in the third dying declaration made at 05:00PM to PW4 SI Dharam Pal Singh, the said statement was recorded in the presence of PW1 and PW11 which is Ex.PW1/A; wherein the PW4 himself felt that this was not a voluntary statement of the deceased since the brother of the deceased was putting leading questions to the deceased. Even when PW4 asked questions from the deceased, he intervened and gave suggestive answers. The deposition of PW4 is also corroborated by the deposition of PW1 Dr.Rajiv Rajput, who also felt that it was not the true statement of the deceased. Therefore, we are of the considered view

that the dying declaration should be free from any duress, pressure or influence, which is missing in the present case, as discussed above.

129. The fourth dying declaration recorded at 05:20PM by PW2 Sh.Davender Singh, SDM which is Ex.PW2/B. The said statement recorded much later and by that time, the deceased had been tutored and brain washed so as to give the version implicating the appellants as per the desire of her relatives and especially of her brother.

130. Though, the statement recorded by PW2/SDM may be genuinely recorded, but after going through the evidence on record, we of the opinion that the statement recorded by the SDM was not free from pressure, therefore, we discard this statement also, as it cannot be treated as credible or reliable.

131. The fifth and sixth oral dying declarations made by the deceased at 03:00PM to PW18 Arvinder Singh and PW19 Harnam Singh, brother and father respectively of deceased in the hospital.

132. After going through the deposition of the above two witnesses on record, we are of the opinion that firstly; they were bent upon to implicate persons of their choice and secondly; they made significant improvements during their evidence in the Court. They deposed that they had reached in the hospital at 03:00PM where the deceased told them that she did not tell the true facts to the SDM. This was inherently

impossible because the dying declaration recorded by the SDM was at 05:20PM, thus, the deceased never could refer it while talking with her brother and father at 03:00PM. Even otherwise, when there were written dying declarations recorded by neutral person like Doctor, then the oral dying declaration made to interested witnesses cannot be given preference over them.

133. The only fact remains with us is to consider that, whether the statement made before PW8 Dr.Susham, which is recorded on MLC Ex.PW8/A was true and free from any duress, pressure and influence?

134. The deceased was admitted by her mother-in-law i.e. appellant Hardeep Kaur and she was arrested from the hospital itself. At that point of time, the deceased narrated as to what actually happened with her wherein she clearly stated that a quarrel took place with her husband and mother-in-law and thereafter, she set herself ablaze.

135. Therefore, we are of the considered opinion that the statement recorded in the MLC seems to be true because of the fact that the deceased first set the mattress on fire and thereafter, poured petrol upon her body and set herself also on fire. This fact of quarrel corroborates with the deposition of PW22 and PW7, as before this incident, there was some matrimonial dispute arose on account of dowry between the deceased and her husband, appellant Baljeet Singh,

wherein a compromise deed was recorded on 23.10.1994 in the police station. It proves that the appellant Baljeet Singh and Hardeep Kaur, husband and mother-in-law of the deceased respectively used to torture and harass the deceased, therefore, on the date of the incident also they both fought with the deceased; thereafter, husband left the house for his shop at Connaught Place, New Delhi and appellant Hardeep Kaur started performing *pooja* on the ground floor.

136. In case of ***Jagdish Lal Malhotra (supra)*** it has been observed by their Lordships that if the statement is surrounded by suspicion and it is absolutely unsafe to base conviction and such statements are not taken into confidence as to what those questions were, in what form they were put, what were the suggestions, if any, given and how were the answers given and recorded.

137. Nowhere it is mentioned that deceased has given oral statement to PW4 HC Om Parkash, Incharge of PCR Van before reaching to Safderjung Hospital. This witness also remained silent till 08:00PM on the next day i.e. 09.11.2007 when he admitted that the IO came to him along with two Sikh gentlemen and then recorded his statement wherein he had stated that a statement was made to him by the deceased.

138. This witness did not disclose about such dying declaration made to him for about 30 hours to any of the officials or to the concerned IO or the police station or even to the Duty Constable, which clearly create suspicion, therefore, his statement does not inspire confidence.

139. We note, it was categorically stated by the deceased that her husband was not present in the house and it was her mother-in-law who had poured kerosene on her and then lit the fire. This statement of the deceased also does not inspire confidence because she made statement before PW8, the doctor of MLC wherein she stated that there was a quarrel with her husband and mother-in-law, thereafter, she poured petrol on her body and set herself on ablaze.

140. The law has been settled in **Smt.Kamla (supra)** wherein their Lordship of the Apex Court have observed that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declarations they should be consistent. If a dying declaration is found to be voluntary, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the Court has to examine the nature of the inconsistencies; namely whether they are material or not.

141. The case in hand has multiple statements of the deceased as well as other witnesses. Therefore, none of the statements inspire confidence; except one which the deceased made firstly before the concerned doctor and same was recorded on the MLC itself. A conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereon. In this case, the deceased herself had taken contradictory and inconsistent stands in different dying declarations. Therefore, they should not be accepted on their face value. In such a situation, the statements have inconsistencies and where there are traces of maker of dying declaration being influenced unless corroborated by independent evidence, it would not be safe to sustain conviction on such dying declarations.

142. The first dying declaration appears truthful and reliable because it is the very first version of the occurrence coming from the mouth of the deceased and it is further corroborated by the independent evidence on record i.e. Ex.PW3/DA and evidence of PW26, IO Inspector Jai Singh who in his cross-examination dated 22.05.2000 deposed that the door had to be broken open to save the deceased, which gives rise to the inference that the door was bolted from the inside and which further shows that deceased had committed suicide by pouring petrol and

setting herself on fire. On the similar fact, PW13 photographer also deposed that both the doors of the room were bolted from inside and there was no possibility of the access to the room.

143. Moreover, PW4 himself also felt that this was not the voluntary statement of the deceased since the brother of the deceased was putting leading questions to the deceased and even when PW4 asked questions to the deceased, her brother intervened and give suggestive answers. This fact has been corroborated by the deposition of PW1 Dr.Rajiv Rajput that this was not the statement of the deceased.

144. The oral dying declaration made before the brother and father of the deceased is absolutely unreliable because firstly, the father and brother of the deceased were vengeful on account of her death and were bent upon implicating as many persons from the accused side as possible; secondly, they made significant improvements during their deposition in the Court; and thirdly, stated that they reached the hospital and talked with the deceased at 03:00PM; wherein the deceased told them that she has not stated true facts to the SDM. This is inherently impossible because the dying declaration by the SDM was recorded at 05:20PM. Thus, the deceased could never have referred to it, while talking with her brother and father at 03:00PM.

145. In view of above discussion, and legal position, we are of the considered opinion that the appellants are entitled to acquittal from the charges for the offences punishable under Section 302/120B Indian Penal Code, 1860. However, their conviction under Section 498A/34 Indian Penal Code, 1860 is duly proved and accordingly maintained for the reasons that cruelty committed on the deceased earlier also and same has been corroborated by the deposition of PW22 and PW7 and the compromise deed dated 23.10.1994 recorded in the police station. Even on the fateful day, appellants – Hardeep Kaur and Baljeet Singh, mother-in-law and husband respectively had quarreled with the deceased and subjected her to harassment and cruelty on account of dowry by both the appellants mentioned above. There are certain allegations of demand of a sum of ₹ 5.00 lacs. Therefore, she has been subjected to abusive language and harassment. Appellant Arvinder Singh has already spent 08months and 29 days incarceration and earned remission to the tune of 25 days as per Nominal Roll dated 28.05.2012. Therefore, we sentence him to the period already undergone.

146. Since, we have come to the conclusion that a quarrel took place between the deceased and the appellant Baljeet Singh and Hardeep Kaur, consequent thereto, deceased set herself ablaze and committed suicide because of the quarrel. After the quarrel, none had pacified the

deceased. Husband left for shop and mother-in-law started *pooja* on the ground floor. The deceased might have come under shock and immense pressure, therefore, under the compelling circumstances, she ended her life. Therefore, we are of the opinion that the appellants mentioned above, have abated her to commit suicide.

147. Accordingly, both the appellants namely Hardeep Kaur and Baljeet Singh, mother-in-law and husband respectively, are held guilty for the offence punishable under Section 306/34 Indian Penal Code, 1860. As the law has been settled in ***Dalbir Singh v. State of UP* : MANU/SC/0320/2004 = AIR 2004 SC 1990** wherein the Full Bench of the Apex Court has observed as under:-

*"16. This question was again examined by a three Judge Bench in **Gurbachan Singh v. State of Punjab: 1957CriLJ1009** in which it was held as under:*

"In judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to

each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangarabonia Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.

18. The facts and circumstances of the present case may now be examined in the light of the principle discussed above. The trial Court and also the High Court have recorded a clear finding and with which we are in complete agreement, that the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour T.V., a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven year old daughter on several occasions. It was in such circumstances that Vimla took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one year old. The letter written by Vimla just before taking such an extreme step speaks volume about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC

have been established by the prosecution. These features of the prosecution case were sought to be established by the prosecution in order to substantiate the charge under Section 498A IPC and also for showing that the accused had a motive to commit the crime of murder for which he was actually charged. The cross-examination of the witnesses show that every effort was made to demolish the aforesaid aspect of the prosecution case, namely, that neither any demand of dowry was made nor any gifts or presents or money was received by the accused at a subsequent stage and that Vimla had not been subjected to any kind of harassment or ill-treatment. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 Cr.P.C. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with Section 233 (2) Cr.P.C. wherein he admitted that Vimla committed suicide. He also admitted that the scooter and colour T.V. were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29.3.1991 and was released from jail after the decision of the High Court on 20.3.1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period already undergone (as under-trial and after conviction) would meet the ends of justice.

19. For the reasons mentioned above, Crl. Appeal No.479 of 1999 filed by Dalbir Singh is dismissed. Criminal Appeal No.480 of 1999 filed by State of U.P. is partly allowed and he is

convicted under Section 306 IPC and is sentenced to the period already undergone.”

148. We are conscious that the charge under Section 306 Indian Penal Code, 1860 has not been framed against the appellants; however, it is settled proposition of law that after going through the evidence on record, if the bigger offence are not proved and the Court find that accused can be convicted for the minor offences, in that eventuality, there is no legal bar to convict them for the minor offence without there being a formal charge to this effect. Therefore, we convict both the above mentioned appellants for the offences punishable under Section 306/34 Indian Penal Code, 1860.

149. As per the Nominal Roll, appellant Baljeet Singh has already spent around 04 years 11 months and 19 days as per Nominal Roll dated 28.05.2012 in incarceration and earned 03 months and 22 days remission; appellant Hardeep Kaur has spent around 07 years, 07 months and 12 days incarceration, as per Nominal Roll dated 26.05.2012 and earned remission of 11 months and 25 days.

150. Consequently, we modify the impugned judgment and order on sentence both dated 12.09.2001 and convict both the appellants mentioned above for the offences punishable under Section 306/ 498A/

34 Indian Penal Code, 1860. All the convicts are sentenced to the period already undergone by them in custody for the abovesaid offences.

151. Since, all the appellants are on bail, their bail bonds are cancelled and surety stands discharged.

152. Copy of order be sent to the Jail authorities for information.

153. All these three appeals are partially allowed & stands disposed of.

154. Trial Court Record be remitted back.

155. No order as to costs.

SURESH KAIT, J.

ANIL KUMAR, J.

JULY 04, 2012

Rd/Mk