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

Crl. A. 223/2003

Date of Decision: 19th July, 2013

BHATERI DEVI AND ANR. Appellants
Through Mr. Bharat Bhushan Kaushik,
Adv.

versus

STATE OF DELHI Respondent
Through Ms. Fizani Husain, APP

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Marriages are made in heaven, is an adage. A bride leaves the parental home to the matrimonial home, leaving behind sweet memories there, with a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for

dowry shatters the dreams. In-laws are characterized to be out-laws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.

2. Present is another case of unnatural death of a young lady within one year of her marriage. Prosecution case emanates from the fact that deceased Kiran got married to accused Rajesh on 13th December, 1998. She was harassed on account of dowry and ultimately was burnt. A DD No.11A was recorded at police station. An information was given to SI Prabhu Dayal. On receipt of DD No.11A, he visited the house of injured from where he received another DD No.18A stating therein that injured has already been admitted to Safdarjung Hospital. Therefore, he reached Burn Ward along with Constable Jaipal and collected MLC of Kiran, W/o Rajesh. SI Prabhu Dayal inquired from the doctor about the condition of the injured who declared her unfit for statement. The Investigating Officer came to know about the factum of marriage within a period of seven years. Therefore, he informed SDM on 27th October, 1999 for recording the statement of Kiran. Statement of injured was recorded

by learned SDM who made her endorsement and directed registration of the case. The investigation of the case was referred to SI Prabhu Dayal who went at the spot, prepared the site plan Ex.PW12A and searched the accused persons. Accused Bhateri was arrested on 28th October, 1999. The Investigating Officer recovered one bottle, prepared its pullanda and seized the same vide seizure memo Ex.PW7/C and deposited in the Malkhana. Another DD No. 17A was received regarding death of the injured. The SDM was accordingly informed about the death of Kiran. Post Mortem on the dead body was conducted and the dead body was handed over to the relatives of the deceased. On 8th November, 1999, accused Rajesh was arrested. After completion of investigation, charge sheet was submitted in the Court.

3. Since offence under Section 304B IPC was exclusively triable by the Court of Sessions, as such, the case was committed to the Court of Sessions. Charge for offence under Section 498A/304B read with Section 34 IPC was framed against both the accused. An alternative charge under Section 302/34 IPC was also framed against them.

Another charge under Section 201 IPC was also framed. Both the accused pleaded not guilty to the charge and claimed trial.

4. In order to substantiate its case, prosecution examined 12 witnesses. Both the accused in their statement recorded under Section 313 Cr.P.C. denied the case of prosecution and pleaded their innocence. In support of their defence, they examined three witnesses. Vide order dated 22nd February, 2003, it was observed that charge under Section 302/34 IPC and 201 IPC was not made out, however both the appellants were convicted for offence under Section 498A/ 304B r/w Section 34 IPC.

5. Vide order dated 11th March, 2003, both the appellants were sentenced to rigorous imprisonment for a period of three years under Section 498A IPC and a fine of Rs.1000/- each, in default of payment of fine to undergo SI for three months. They were also sentenced to undergo rigorous imprisonment for a period of seven years for offence under Section 304B IPC. Both the substantive sentences were to run concurrently. They were also granted benefit of Section 428 of the Code of Criminal Procedure. Feeling aggrieved by these orders, the present appeal has been preferred.

6. I have heard Mr. Bharat Bhushan Kaushik, Advocate for the appellant and Ms. Fizani Hussain, learned Additional Public Prosecutor for the State.

7. Challenging the findings and observations of the Court below, learned counsel for the appellants submitted that the evidence of the prosecution witnesses did not establish the guilt of the appellants. Much stress was laid on the history given by the deceased herself to the doctor when she was brought to the hospital wherein she gave the history of sustaining burn injuries after quarrel with her husband by pouring kerosene oil on herself resulting into burn injuries. It was submitted that this history given by the deceased to the doctor was first in point and is to be treated as her dying declaration which has not been considered at all by learned Trial Court. As regards, the second dying declaration recorded by learned SDM, it was submitted that the statement had been recorded by the doctor without obtaining any certificate of fitness from the doctor. As regards the fitness certificate given by the doctor on 27th October, 1999 on the application moved by the Investigating Officer of the case, it was stressed that the date and time is in different hands. As such, it casts

doubt as to whether any certificate of fitness was given by the doctor or not. Moreover, by referring to the dying declaration recorded by the SDM, reference was made to a question where the deceased could not complete her answer and, therefore, it was submitted that no certificate of fitness was obtained for recording her further statement. Moreover, as per the testimony of SDM, she recorded statement of the deceased at 2 p.m. As per the application, the deceased was declared fit for statement at 1:50 p.m. It was impossible for the SDM to reach within 10 minutes from Najafgarh to Safdarjung Hospital in order to record statement of the deceased. As such, no reliance can be placed on the same. Furthermore, the deceased was admitted in hospital on 26th October, 1999 and all her family members were present in the hospital but no complaint was made by them for which no explanation is forthcoming. Reliance was also placed on the testimony of the defence witnesses for submitting that the case of the prosecution that the deceased had gone to her parent's house on 25th October, 1999 when demand of Rs.50,000/- was made and thereafter, she was left at the house of accused persons by her family members, is highly doubtful, inasmuch as, as per the testimony of DW-2 Kapoor Chand,

there was Kuan Poojan at his house on 25th October, 1999 in Haryana and accused Rajesh and the deceased along with other family members had come to his house to attend the function. That being so, since the deceased was not even present in Delhi, there was no question of any demand or her visiting her parent's house. As such, it was submitted that prosecution has not been able to bring home the guilt of accused beyond reasonable doubt and accused are entitled to be acquitted.

8. On the other hand, learned Public Prosecutor referred to the dying declaration made by the deceased before the SDM regarding harassment to her and demand of Rs.50,000/- on which account she was burnt. She also referred to the testimony of other witnesses and the letters written by the deceased regarding continuous harassment meted out to her. It was submitted that order is a reasoned one and does not suffer from any infirmity which calls for any interference.

9. I have given my anxious thoughts to the respective submissions of the learned counsel for the parties and have perused the record. At the outset, it may be mentioned that the entire Trial Court record is not available as only reconstructed record has come. Even the statement

of all the witnesses or the documents are also not available, therefore, reference has to be made to the statement of the witnesses as appearing in the judgment of learned Additional Sessions Judge, correctness of which has not been challenged by learned counsel for the appellant and the statement of few witnesses which is available on record.

10. Before dealing with the factual matrix of the case in hand, it will be in fitness of things to have a glance at the relevant legal provisions.

11. Section 304-B IPC deals with dowry death which reads as follows:-

“304B. Dowry Death- (1) Where the death of a woman by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand of dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

Explanation- For the purpose of this sub-section ‘dowry’ shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

12. In order to attract application of section 304-B, the essential ingredients are:-

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for, or in connection with, demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman “soon before her death”.

13. Section 113B of the Indian Evidence Act, 1872 reads as follows:-

“113B: Presumption as to dowry death-

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purposes of this section ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal code (45 of 1860).”

14. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 91st Report on ‘Dowry Deaths and Law Reform’. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. The 91st Law Commission, recommended for the insertion of new sections in Indian Penal Code, 1860, Indian Evidence Act, 1872 and Criminal Procedure Code, 1973 for tackling the problem of alarming increase in number of cases in which married women die in highly suspicious circumstances. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family are

either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that the truth may not come out of the chains. There would be no other eye witnesses, except for members of the family.

15. To deal with the situation, the Indian Penal Code, 1860; Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 were amended by Criminal Law (Amendment) Act, 1983. The changes made by the amendment were:

- i. Cruelty to a woman by her husband or any relative of her husband made punishable;
- ii. “Wilful conduct” of the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her;
- iii. “harassment” of a woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty;
- iv. the offence to be cognizable, if information relating to the commission of the offence is given to the office-in-charge of a police-station by victim of the offence or a relative of the victim of the offence or in the absence of any such relative, by any public servant authorized in this behalf by the State Government;

- v. No Court to take cognizance of the offence except upon a police report or a complaint made by the victim of the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption.

16. Substantive section 498A IPC and presumptive section 113B of the Indian Evidence Act, 1872 include in their amplitude past events of cruelty. Period of operation of section 113B of the Evidence Act is seven years, presumption arises where a woman committed suicide within a period of seven years from the date of marriage. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical to the woman is required to be established in order to bring home the application of Section 498A IPC. 'Cruelty' has been defined in the *Explanation* of Section 498A as under:

Explanation : For the purpose of this section, "Cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

17. It is to be noted that sections 304B and 498A cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to sec.498-A gives the meaning of cruelty. In sec. 304-B there is no such explanation about the meaning of ‘cruelty’. But having regard to the common background to these offences, it has to be taken that the meaning of ‘cruelty’ or ‘harassment’ is the same as prescribed in the explanation to sec.498-A under which cruelty by itself amounts to an offence.

18. The term ‘dowry’ in sec.304B has the same meaning as in sec. 2 of the Dowry Prohibition Act, 1961. The amended definition makes it clear that even if the demand is long after the marriage, the same could constitute dowry, if other requirements of the section are satisfied.

19. Adverting to the case in hand, it is undisputed case of the parties that death of Kiran has taken place within seven years of her marriage inasmuch as she got married with Rajesh on 13th December, 1998 and she expired on 31st October, 1999.

20. It is also not in dispute that death of Kiran was caused by burns and has occurred “otherwise than under normal circumstances”. It is nobody’s case that her death was accidental one. According to Dr. Sanjeev Kumar (PW3), on 26th October, 1999, Kiran was brought by her mother-in-law Bhateri Devi with history of sustaining burn injuries by pouring kerosene oil over herself resulting into burn injuries. She died on 31st October, 1999 in Safdarjung Hospital. Post-Mortem on the dead body of Smt. Kiran was conducted by Dr. Arvind (PW4), who gave his report Ex. PW4/A. As per report, following injuries were found on the person of Kiran:-

“External examination

- i) Cut down wound was present on lower end of left leg.
- ii) dermepidermal burns superficial to deep infected in nature present all over the body on face, front of chest, back of chest, patches on eyes, about 50% burns were found. Thick purulent discharge was seen on face and front of the chest. There were burnt sign on face.

Internal Examination

Scalp, skull and brain: No effusion of blood was in scalp, skull vault and base were normal. Brain was congested.

Neck & thorax: Trachea/neck structures were intact. Chest vault was normal, lungs showed patchy consolidation changes, heart was normal.

Abdomen and pelvis: Stomach was empty. All viscera were congested. Bladder/pelvis was normal, uterus was empty.”

It was opined that cause of death was septicaemia consequent upon 50% ante mortem, infected flame burns.

21. Even accused persons in their statements recorded under Section 313 Cr.P.C. have not disputed the fact that the deceased had died due to burn injuries. Under the circumstances, it stands proved that death of Kiran has been caused “otherwise than under normal circumstances”.

22. Coming to the next essential ingredient that Kiran was subjected to cruelty or harassment by her husband or relatives of her husband and this harassment was in connection with demand of dowry, the deceased was the best person to depose about these facts. Her statement was recorded by Ms. Varsha Joshi on 27th October, 1999 who was posted as SDM Najafgarh at the relevant time. The

SDM recorded the statement of the deceased in question- answer form. It reads as follows:-

Q. What is your name?

A. Kirna.

Q. How you got burnt?

A. I am burnt by my mother-in-law Bhateri. When I was sleeping in the morning, I was burnt.

Q. Why your mother-in-law burnt you?

A. Money was demanded from me.

Q. Who was demanding money?

A. My husband Rajesh and my mother-in-law Bhateri Devi.

Q. How much money was demanded?

A. Rs.50,000/-.

Q. What for the money was demanded?

A. My husband Rajesh (not decipherable further because her face is burnt and She is on oxygen mask). My husband took loan from my uncle Laxmi. He was demanding money for returning the loan.

Q. Where you were sleeping when burnt?

A. In my mother-in-law's room. She told me your husband is not here, you sleep in my room only.

Q. Who brought you to the hospital?

A. My mother-in-law Bhateri kept me sitting for 3 hours after my burning then she brought me hospital.

Q. Who is responsible for your burning?

A. My husband and my mother-in-law.

23. It has come in the statement of the SDM that on receipt of telephonic information from the Investigating Officer of the case that Kiran has been declared fit for statement, she reached hospital and

recorded statement of Kiran, Ex.PW11/A at 2:00 p.m. She ascertained the fitness from the doctor and thereafter recorded her statement in Burn-Ward. According to her, she did not get the statement attested from the doctor because same was not the practice. She obtained right thumb impression of Kiran on the statement as upper portion of her body was burnt and she was unable to sign. In pursuance to specific question that when she put a question to Kiran “Kisliye paise maang rahe the?”, she replied “mera gharwala...” and thereafter she mentioned in Bracket that ‘not decipherable further because her face is burnt and she is on oxygen mask’ and that whether she took fresh permission from the doctor to record her further statement, she stated that after few words she took rest and then spoke, therefore, she did not take further permission to record her statement. When the statement was recorded, none from the family of the deceased was present because the SDM deposed that parents or relatives of the deceased did not meet her in the hospital. She denied that she recorded the statement of Kiran without permission of the doctor. The factum of taking permission of the doctor and fitness was mentioned by her in the brief facts Ex.PW11/E which she put up for post-mortem

along with inquest papers. There is no reason to cast any doubt upon the statement recorded by a totally independent person, i.e., the SDM. All due precautions were taken by her after ensuring that the witness was fit to make statement. She was cross-examined at length but nothing fruitful could be extracted from her statement which would show that Dying Declaration was tainted one. Her statement was recorded in question-answer form. The mere fact that certification of doctor was not taken on the statement is of no consequence, inasmuch as, certification by doctor is only a rule of caution and the absence of certificate of fitness by the doctor would not be sufficient to discard the dying declaration. There is no substance in the submission of learned counsel for the appellant that after having been declared fit for statement at 1.50 p.m, the SDM could not have reached the hospital to record her statement at 2 p.m because there is nothing on record as to where SDM was at that time when she received information about Kiran having been declared fit for statement. Mere fact that she was posted as SDM, Najafgarh, no inference can be drawn that she was present in her office and, therefore, could not reach the hospital. The statement made by the deceased is candid,

coherent and consistent and there is no reason to disbelieve the same. Whole declaration was spontaneous which set out correct version of events leading to victim being set on fire. She did not unfairly implicate anybody who did not participate in the crime. In ***Laxman Vs. State of Maharashtra***, (2002) 6 SCC 710, Hon'ble Supreme Court has enumerated the circumstances in which the dying declaration can be accepted. The observations made in para 3 are reproduced as under:-

“The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of

mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

24. In *Pani Ben Vs. State of Gujarat* (1992) 2 SCC 474, the principle relating to authenticity of a dying declaration were observed as follows:-

“Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration which could be summed up as under:-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [*Munnu Raja v. State of MP*, 1976 SCC (Cri) 376].
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [*State of UP v. Ram Sagar Yadav*, (1985)1 SCC 552; *Ramawati Devi v. State of Bihar*, (1983) 1 SCC 211].

- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. [**K. Ramachandra Reddy v. Public Prosecutor**, (1976) 3 SCC 618].
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence (**Rasheed Beg v. State of MP**, (1974) 4 SCC 264).
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [**Kake Singh v. State of MP**, (1981) 1 Supp. SCC 25].
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [**Ram Manorath v. State of UP**, (1981) 2 SCC 654].
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. [**State of Maharashtra v. Krishnamurti Laxmipati Naidu**, (1981) SCC (Cri) 364].
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [**Surajdeo Ojha v. State of Bihar**, (1979) SCC (Cri) 519].
- (ix) Normally the court in order to satisfy itself whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. [**Nanhau Ram v. State of MP**, (1988) SCC(Cri) 342].

- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [*State of UP v. Madan Mohan*, (1980) 3 SCC 390].”

25. Applying the aforesaid ratio of law, there is no occasion to disbelieve the dying declaration in the facts and circumstances of the present case.

26. Much emphasis was placed by the learned counsel for the appellant on the history recorded by Dr. Sanjeev Kumar (PW3) when Kiran was brought by her mother-in-law Bhateri Devi in hospital, on the MLC Ex.PW 3/A wherein the patient claimed to have set herself on fire by using kerosene oil on account of some dispute with her husband.

27. *Amit Kumar & Anr. vs. State of Punjab*, (2010) 12 SCC 285 was also a case where injured had told the doctor who prepared the case history that she had set herself on fire. On facts, it was found that the whole record was made subsequently by the doctor who was making repeated entries with regard to previous history at different stages. As such, this statement was not relied upon and conviction was based on subsequent dying declaration wherein deceased had named the appellants.

28. *Rakesh & Another vs. State of Haryana* , (2013) 4 SCC 69 again was a case u/s 498A/302 IPC. In that case also, while recording history of patient, doctor noted that it was accidental fire while cooking food which had caused the burn injuries. It was held that in view of categorical statement made by deceased in her dying declaration to the contrary, reference made by doctor while recording history of patient would not affect prosecution case.

29. In the instant case, it has come in the statement of the deceased before the SDM that her mother-in-law kept her sitting for three hours after her burning and only thereafter, she was brought to the hospital. The fact that the patient was brought to the hospital by her mother-in-law Bhateri Devi finds corroboration from the testimony of Dr. Sanjeev Kumar who prepared MLC Ex.PW3/A of Kiran. Keeping in view the fact that the deceased was burnt by her mother-in-law only, who made her to sit in the house for three hours and thereafter it was she who accompanied her to the hospital, therefore, possibility of tutoring her to give such a history cannot be ruled out. On the very next day, when her statement was recorded by a totally independent witness, Ms. Varsha Joshi SDM when there was no possibility of

tutoring, at that time she has given a candid version as to who set her on fire and what was the reason for the same. That being so, if the learned Additional Sessions Judge did not take note of this history given by the deceased, the same is of no consequence. As per this dying declaration, her husband and mother-in-law were responsible for burning and in fact it was her mother-in-law who had set her on fire and there was no reason to disbelieve this dying declaration. It further becomes clear that a sum of Rs.50,000/- was demanded by the appellants in order to repay the loan of her uncle Laxmi. This dying declaration is sufficient to implicate both the appellants, however, other ample evidence is available on record to prove that the deceased was being subjected to harassment and cruelty on account of constant demands of dowry.

30. As reflected from the judgment, PW-1 Shanti Devi, is the mother of the deceased Kiran and it has come in her deposition that at the time of marriage of her daughter on 13th December, 1998 with Rajesh, sufficient dowry was given, however, she was continuously harassed for insufficient dowry by her husband and mother-in-law. The demand was so excessively raised that her daughter was not

allowed to live continuously for five months in the matrimonial home. After assurance was given, the deceased was taken on 10th September, 1999 to her matrimonial home but again she was harassed and she came back on 25th October, 1999. She was informed by her daughter that she might be put to death in case demand of Rs. 50,000/- is not met. She took assistance of her brother-in-law and thereafter deceased was again sent to the matrimonial home on 25th October, 1999. The deceased was set on fire on 26th October, 1999.

31. PW-5 Laxmi Chand is the uncle of the deceased who was informed that mother-in-law and husband of deceased have demanded Rs.50,000/- otherwise they would kill her. He visited the matrimonial home of the deceased and requested them not to torture her. He further deposed that on 25th October, 1999 in his presence, Kiran was given beatings and was turned out and was asked to bring Rs.50,000/-. With great persuasion, he left Kiran in her matrimonial home. On the next morning the news of her burning was given to him. He also proved letters written by deceased to him which are Ex.PW5/A to Ex.PW5/C. In cross-examination it had come that all the relatives had helped in the marriage of Kiran as her father had already expired. He

further deposed that 50 sarees and 50 karwas were demanded by the accused persons besides Rs.50,000/- on 25th October, 1999 on the occasion of “Karva Chowth” and she was thrown out of the house. He persuaded the in-laws of the deceased to keep her.

32. PW-6 Suresh, cousin brother of the deceased, PW-9 Mahavir and PW-10 Mahinder, brothers of the deceased have also deposed regarding the harassment and cruelty meted out to Kiran on the point of demand of Rs.50,000/-. PW-10, Mahender also identified three letters written by his sister Kiran vide Ex.PW-5/A to Ex.PW-5/C. He also brought letters Ex.PW-10/DX1 to PW10/DX10. Although the letters are not available on record but in para-20 of the judgment, it is recorded that in letter Ex.PW5/A the deceased has mentioned as to how she was treated inside her matrimonial home by her mother-in-law and brother-in-law. They were calling her by the name of ‘Natni’, ‘dayan’, ‘Kangli’ etc. She was beaten several times by her mother-in-law and sister-in-law. Besides that, it was also written that there was persistent demand of Rs.10,000/- from her. She was turned out of the kitchen by her mother-in-law several times. In letter Ex.PW5/B, she disclosed that her mother spent sufficient amount on her marriage still

her in-laws were demanding money. She was harassed so much by beating and abusing that she was unable to bear any further. She was threatened that her family members will be liquidated. Similar facts were mentioned in letter Ex.PW5/C written by Kiran to her sister. Under the circumstances, the statement of the deceased that she was being harassed and was treated with cruelty and there was demand of Rs.50,000/-, due to non fulfilment of which, she was set on fire find corroboration from the ocular testimony of witnesses coupled with the letters written by the deceased. Mere fact that the witnesses are close relations of deceased is no ground to discard their testimony. Under the circumstances, it was rightly observed that the prosecution had established that deceased was subjected to cruelty or harassment by her husband and mother-in-law in connection with demand of dowry.

33. Coming to the last ingredient that such cruelty or harassment should have been meted out to woman “soon before her death”, at the outset it may be stated that the words “soon before her death” do not necessarily mean immediately before her death. In ***Kamesh Panjiyar***

@ *Kamlesh Panjiyar vs. State of Bihar*, 2005 CrI.L.J.1418, it was observed by Hon'ble Supreme Court as under:-

“‘Soon before’ is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113B of the Evidence Act. The expression ‘soon before her death’ used in the substantive section 304B, IPC and section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression ‘soon before’ is not defined. A reference to expression ‘soon before’ used in section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term ‘soon before’ is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ‘soon before’ would normally imply that interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

34. In the instant case, as seen above, ample evidence has come on record to prove that on 25th October, 1999 itself the demand of Rs.50,000/- was made and the deceased was turned out of her house.

She went to her parent's house. It has come in the statement of PW-6 Suresh that the deceased came to his house along with Shanti Devi and Mahavir, mother and brother of the deceased respectively. Kiran told weepingly that she was turned out of the house by her husband and mother-in-law and was also been given beatings by them. She was pacified and was asked to go back to her husband's house. Even at that time, she was telling that she would be killed if she goes there. However, he along with his father Laxmi Chand, brother Rakesh, Shanti Devi, Murti Devi and Mahavir went to the house of Rajesh and took Kiran with them. In their presence also Kiran was beaten, however, they requested not to turn Kiran out of the house but they were not agreeable to keep Kiran with them. However, they left Kiran over there and next day, the untoward incident had taken place. Under the circumstances, it also stands proved that 'soon before her death' Kiran was subjected to cruelty and harassment by her husband and mother-in-law.

35. In view of the discussion made above, prosecution was able to prove that the death of Kiran had occurred within seven years of her marriage. It was an unnatural death. It has also come on record that

at the time of marriage, dowry was given according to the capacity of her mother. Assistance was rendered by other relatives also as her father had already died. However, immediately after the marriage, harassment started with the result that the deceased had to move in her parent's house for a period of 4-5 months and she was thereafter sent back. On 25th October, 1999, again she was sent in order to bring Rs.50,000/-. However, her relatives brought her back to her matrimonial home. Even at that time, she was reluctant to come back and had informed them that in case she would be sent back, the accused persons would kill her but her relatives took her to her matrimonial home and left her there. Ultimately on the very next day, she was set on fire by her mother-in-law. Under the circumstances, the definite conclusion can be drawn that there was evidence of torture to the deceased, immediately preceding her death on account of dowry.

36. Once prosecution has been able to establish aforesaid ingredients, the presumption against the accused arises as enjoined under Section 113-B of the Indian Evidence Act. Of course, it is rebuttable presumption, but onus lies on the accused to discharge it.

37. The appellants examined three witnesses in their defence. DW-1 Ashok Kumar who was the mediator in the marriage of Rajesh with Kiran. According to this witness, there was no talks of dowry demand in this marriage. He never heard anything adverse regarding the marriage. No complaint was made by the brothers of the deceased to him. In cross-examination, the witness could not say if on 25th October, 1999 Kiran went to her mother and told that accused and his mother were demanding Rs.50,000/- from her, otherwise they would kill her. DW-3 Ram Chander is the neighbour of the accused who used to supply milk to him. According to him, he never heard that there was any quarrel between the accused persons. It may be mentioned that such type of demands or harassment normally takes place within four corners of the house. Even the parents or relatives of the girl do not come to know about these facts unless they are informed either by the girl herself or demand is made directly from them. That being so, possibility of these facts coming to the knowledge of neighbours is very remote.

38. *In Hiralal & Ors. Vs State (Govt of NCT) Delhi*, (2003) 8 SCC 80, Hon'ble Apex Court observed that crimes that led to dowry deaths

are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family, other members of the family are either guilty associates in crime or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye-witnesses, except for members of the family. Perhaps to meet a situation of this kind, the legislation enacted section 304B IPC and Section 113-B of the Evidence Act.

39. Similar plea was taken in *Randhir Singh Vs. State of Punjab*, 2004 (13) SCC 129, observations made by the Hon'ble Apex Court are reproduced as under:-

“9. Great stress was laid on the victim's statement having no family discords before a person, however, close he or she may be. Merely because the deceased had not told close friends about the demand of dowry or harassment that does not positively prove the absence of demand dowry. The said circumstances had to be weighed along with the evidence regarding demand of dowry. If the evidence regarding demand of dowry is established, is cogent and reliable merely because the victim had not stated before some persons about the harassment or torture that would be really of no consequence.”

40. This being the situation, the mere fact that DW-1 Ashok Kumar or DW-3 Ram Chander did not hear any kind of quarrel between Kiran and her family members is of no consequence.

41. By examining DW-2 Kapur Chand, the appellants have tried to take a plea of *alibi*, inasmuch as, this witness has deposed that sister of accused Rajesh was married with him. On 25th October, 1999, there was Kuan Poojan at his house in Haryana on the occasion of the birth of his son. Accused Rajesh, his wife Kiran and wife of Jai Bhagwan attended the function in Haryana. While deceased Kiran and wife of Jai Bhagwan returned back to Delhi on the same day, accused Rajesh stayed back as he wanted to purchase a buffalo. It was rightly observed by learned Additional Sessions Judge that by examining this witness, appellant Rajesh has tried to take the plea of *alibi*. However, when the prosecution witnesses were examined, no suggestion was given to any of the witnesses that accused Rajesh and deceased Kiran had gone to attend the function of Kuan Poojan in Haryana at the house of this witness on 25th October, 1999. Under the circumstances, alleged function of Kuan Poojan in Haryana appeared to be

afterthought. Moreover, he was close relative of the accused persons. That being so, no reliance can be placed on his testimony.

42. The result of the aforesaid discussion is that the accused persons failed to rebut the presumption under Section 113-B of the Evidence Act. Under the circumstances, the learned Additional Sessions Judge rightly convicted the appellants for offences under Section 498A and 304 B IPC.

43. As regards Section 201 IPC, there was no evidence. As regards Section 302 IPC, it is not required to dwell on this aspect since State has not preferred any appeal in this regard. As such, there is no infirmity in the order dated 22nd February, 2003 which calls for any interference.

44. Coming to the quantum of sentence, it was submitted by learned counsel for the appellant that the appellant has almost served half of the sentence. Bhateri Devi is more than 60 years of age, as such, a lenient view be taken and appellants be released on the period already undergone by them in custody. This submission was opposed by the learned Public Prosecutor for the State on the ground that

keeping in view the fact that it was a crime against woman, no leniency is warranted.

45. In ***Guru Basavaraj***, 2012 (8) SCC 734, Hon'ble Apex Court expressed its concern on imposing of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society. Reference was made to ***State of Karnataka vs. Krishna.***, 1987 SCC (Cri) 198: (1987) 1 SCC 538, where it was held:-

“Considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal judicial system.”

46. In ***Sevaka Perumal vs. State of Tamil Nadu***, 1991 SCC (Cri) 724: (1991) 3 SCC 471, it was emphasised that undue sympathy resulting in imposition of inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.

47. In ***Alister Anthony Pareira vs. State of Maharashtra***, (2012) 2 SCC 648: (2012) 1 SCC (Cri) 953, it was held that sentencing is an important task in relation to criminal justice dispensation system.

“84.....One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

It has been further opined that:

“85. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

48. Recently, Hon’ble Apex Court in *Rattiram vs. State of M.P.*,

(2012) 4 SCC 516 though in a different context, has stated that:

“.....The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries.....it is the duty of the court to see that the victim’s right is protected.

There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social

order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored. In **Siriya vs. State of M.P.**(2008) 3 SCC (Cri) 422 : (2008) 8 SCC 72, it has been held as follows:

“13. 7.....Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order” should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that “State of criminal law continues to be-as it should be- a decisive reflection of social consciousness of society”. Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence bases on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.”

49. ***Asha Bai & Anr vs. State of Maharashtra***, (2013) 1 SCC (Cri)

943 was also a case u/s 302/34 & 498-A/34 IPC. Mother-in-law and sister-in-law were convicted. It was held that in spite of stringent legislature to curb crimes against women, cases related to bride burning, cruelty, sexual harassment, rape, abetment to suicide by married women etc. have increased. Deterrent punishment can effectively deal with the problem. In crime against women, committed by other woman, leniency in sentence is unwarranted.

50. Dealing with the unfortunate tradition of demand of dowry from the girl's parents at the time of marriage despite the same being a

criminal offence, a two-Judge Bench in *State of H.P. v. Nikku Ram and others*, (1995) 6 SCC 219 has expressed its agony thus: -

“Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was : “यत्र न्यायस्तु पूज्यन्ते रमन्ते तत्र देवता:” [“*Yatra naryastu pujoyante ramante tatra dewatah*”] (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.”

The aforesaid passage clearly reflects the degree of anguish of the Hon’ble Supreme Court in regard to the treatment meted out to the women in this country.

51. In view of the aforesaid, keeping in view the fact that a young bride was done to death within one year of her marriage out of greed of dowry, there is no ground for taking a liberal view. Even otherwise, the sentence prescribed u/s 304 B of Indian Penal Code is minimum seven years which may extend to imprisonment for life. The learned Additional Sessions Judge has already taken a lenient view by imposing minimum sentence of seven years. That being so, the submission of learned counsel for the appellant for releasing the

appellants on the period already undergone is against the letter and spirit of the Act. The punishment imposed upon the appellants by learned Additional Sessions Judge, even otherwise, cannot be termed to be too harsh which warrants any interference.

52. The result of aforesaid discussion is that the appeal is devoid of merit. As such, same is dismissed.

**SUNITA GUPTA
(JUDGE)**

July 19, 2013
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