

\$~

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. No. 140 of 2004

Date of Decision: 2nd September, 2013

1. SWARNA

2. NISHA

..... Appellants

Through: Mr. Vikas Arora, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Fizani Husain, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

:SUNITA GUPTA, J.

1. Appellants are the mother-in-law and sister-in-law of deceased Kiran who have assailed the conviction order dated 17.01.2004 and order of sentence dated 06.02.2004 passed against them by the learned Additional Sessions Judge, Delhi in Session Case No.668/1996 arising out of FIR No.739/1984 P.S. Kalkaji u/s 498A-306 IPC vide which both the appellants were convicted for offence u/s 498A/306 IPC r/w Section 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.2,000/- for

offence u/s 306 IPC and in default of payment of fine to further undergo simple imprisonment for one month. They were also sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one month for offence u/s 498A IPC. Both the sentences were to run concurrently and the convicts were entitled for benefit as provided u/s 428 Cr.P.C.

2. The prosecution case, as culled out from the report u/s 173 Cr.P.C is that, on 13.06.1984, information was received vide DD No. 16 Ex. PW10/A that one lady Kiran was admitted in Safdarjung hospital in burnt condition. On receipt of this D.D., SI Laxmi Chand (PW10) along with HC Parasnath reached the hospital where he collected the MLC of injured Kiran. An application, Ex. PW 10/B was moved by HC Parasnath and vide his endorsement Ex.10/C, the doctor declared her conscious and not under influence. SI Laxmi Chand recorded the statement of Kiran on which she put her thumb mark in token of its correctness. On the basis of this statement, Ex.PW10/D, rukka Ex.PW7/B was prepared and was sent through HC Paras Nath to police station on the basis of which FIR Ex.PW 7/A

was recorded. An application Ex.PW10/E was moved by SI Laxmi Chand with a request to the SDM for recording the statement of the deceased. However by the time SDM reached the hospital, Kiran was declared not fit for statement by the Doctor. Crime team was called at the spot. Photographs of the scene were taken. Site plan was prepared. Further investigation was handed over to Inspector Gajender Singh (PW18), who recorded the statement of witnesses. Injured Kiran succumbed to burn injuries. Her post mortem was got conducted. The accused were arrested. Exhibits were sent to CFSL. Two letters written by the deceased and her admitted handwriting were sent to CFSL. After completing investigation, charge-sheet was submitted against them.

3. The aforesaid two accused were duly put on trial for the offence u/s 498/306 r/w Section 34 IPC. At the trial, the prosecution examined 23 witnesses. Apart from giving their explanation u/s 313 Cr.P.C. that they have been falsely implicated in this case at the instance of PW13 Sudesh Rani as she was interested in getting her son married to accused Nisha to which they were not agreeable, the accused also examined six witnesses in defence. Upon meticulous

examination of the entire evidence, the Trial Court convicted the appellants. The aforesaid judgment has been challenged by the two appellants by way of present appeal.

4. I have heard Sh. Vikas Arora, Advocate for the appellants at great length and also perused the written submissions filed by Ms. Fizani Hussain, learned Additional Public Prosecutor for the State and also the record.

5. Challenging the findings and observations of the Court below, learned counsel for the appellants submitted:

(i) There is wrong narration of facts in the Trial Court judgment that as per the CFSL report, Ex.PW20/B, there was smell of kerosene oil on the clothes of the deceased and poison was found in the viscera whereas as per the CFSL report, no kerosene oil was detected and the viscera report also gave negative report for poison. It was nobody's case that poison was given to Kiran.

(ii) The deceased was suffering from epilepsy even prior to marriage. Although father and uncle of the deceased tried to suppress this fact, however, Anup Rani (PW11) admitted that

the deceased was suffering from epilepsy. Even after marriage, the deceased suffered from epilepsy fits and as such she was given treatment by DW3, Dr. Manjit Singh. Moreover, due to this complication, she had to be aborted. The Doctor has deposed that it is a common complication in epileptic patients that they can meet with accident while driving, cooking or swimming. In the instant case, since the deceased was suffering from epilepsy fits, it was a case of accidental death and not suicide as set up by the prosecution.

(iii) The alleged dying declaration has been recorded by the Investigating Officer of the case and not by the SDM. Reference was made to the progress record where the condition of the patient was reported to be very critical from 3.30 p.m. till 7 p.m. when she died. However there is a certificate at 3.40 p.m. by someone that the patient is conscious and coherent and not under the influence of any drug or intoxication. However, there is no certificate of fitness given by the said person who was neither cited as a witness nor examined by the prosecution. The alleged dying declaration was recorded by the

Investigating Officer. Although it is attested by some person but neither the name of that person is legible nor was he examined. As such, this dying declaration cannot be relied upon. Even otherwise it is inconsistent with the scientific evidence inasmuch as the scalp hair of the deceased was sent to CFSL for detection of kerosene oil but it gave negative report. Even the post-mortem report does not speak about the presence of kerosene oil. No soot was found which was necessary in case the deceased had died due to burn from kerosene oil. It was quite improbable that having received 100% burn injuries, the patient would be in a position to give any statement. In any case, the history given by the patient to the Doctor was as a result of tutoring by her bua Sudesh Rani who accompanied the deceased to hospital. As such, no reliance can be placed on the same.

(iv) No reliance can be placed on the oral testimony of the witnesses who are all related witnesses. Moreover, all the incidents are undated and vague. The statements suffer from material improvements.

(v) There is no cogent evidence available on record that the letters Ex.P1 and Ex.P2 were written by deceased Kiran. Neither any postal receipt nor any envelope has been placed on record. The authenticity of the letters and the copy given for comparison is doubtful inasmuch as the same were produced by the family members of the deceased after one month of the incident. Prosecution has relied upon the report of the hand-writing expert but the hand-writing expert was not examined, as such, the report *per se* is not admissible in evidence. Reliance was placed on *State of Maharashtra vs. Damu*, 2000 (2) JCC (SC) 601 and *Sandeep Dixit vs. State*, 2012 (3) CC Cases (HC) 112.

(vi) Medical and scientific evidence totally improbabilises the oral evidence, hence no reliance can be placed on oral evidence. Reliance was placed on :

Anil Kumar Vs. State of UP, 2004 (3) JCC 1476

State of Karnataka Vs. Papanaika & Ors., 2004 (3) JCC 1670

State of Haryana Vs. Ram Singh, 2002 (1) SCALE 149

(vii) With regard to investigation, it was submitted that same is tainted one. PW10, SI Laxmi Chand was the first person to reach the spot but he nowhere states that the scene of crime was washed. Nothing incriminating was available at the spot. However, after 15 days, PW-20 visited the spot and deposed that a container was found. It is highly improbable that even after 15 days of the incident, the container will be found.

(viii) The defence witnesses examined by the appellants have deposed that Kiran was suffering from epilepsy and was prone to accidental death. It was a case of accidental death and not suicide as claimed by the prosecution. There is no reason to disbelieve the testimony of the defence witnesses who are entitled to the same weight and credence as the prosecution witnesses. Reliance was placed on *Munshi Prasad and Ors. vs. State of Bihar, 2001*, (4) RCR (Criminal) 415. Under the circumstances, it was submitted that prosecution has failed to bring home the guilt of the appellants beyond reasonable doubt. As such, appeal deserves to be allowed and appellants be acquitted.

6. Ms. Fizani Hussain, learned counsel appearing on behalf of State, on the other hand, submitted:

- (i) Dying declaration made by the deceased conclusively proves the case of prosecution. History given by the deceased before PW-4 Dr.V.K.Tiwari when she was brought in the hospital is very relevant. She herself gave the history of commission of suicide by pouring kerosene oil over her due to torture by the appellants and because of harassment on account of dowry. This history was given voluntarily, without any possibility of tutoring and when no sedatives were given to her.
- (ii) Thereafter, SI Laxmi Chand recorded her statement when she was declared by the Doctor to be conscious and not under influence. The patient put her thumb mark in token of its correctness. As per the post-mortem report and the MLC, the patient was conscious and coherent. As such, Kiran was conscious when she gave the dying declaration.

- (iii) The most glaring thing about the dying declaration is that only mother-in-law and sister-in-law have been named with specific role whereas there was not even a whisper about the husband or father-in-law. Had the Investigating Officer concocted the dying declaration, he would have roped in the entire family but he recorded only the true version of Kiran. This proves that the dying declaration is genuine, true, trust-worthy and admissible in evidence.
- (iv) There was no possibility of tutoring as Sudesh Rani has deposed that when the Doctor came to attend Kiran in the hospital, she came out. Even DW-4 Praveen Kumar has stated in his cross examination that he was not allowed in the Casualty when Kiran was taken to hospital and he does not know what was stated by Kiran to the Doctor. Moreover, the plea that in taxi, Kiran was tutored by Sudesh Rani to implicate the accused persons is quite improbable as her husband was also present in the taxi.

(v) There was no delay in recording the dying declaration which is trust-worthy, reliable and admissible. Reliance was placed on *Kulwant & Ors V. State of Punjab*, 2004 (9) SCC 257. *Khushal Rao vs. State of Bombay*, 1958 SCR 552; *Kusa & Ors. vs. State of Orissa*, (1980) 2 SCC 207.

(a) Dr. T.D.Dogra (PW6) who conducted the post-mortem examination also deposed that cause of death was shock as a result of 100% ante-mortem superficial and deep burns likely to be caused by flames, as such, the post-mortem report has corroborated the version given by the deceased to Dr. V.K.Tiwari.

(b) The marriage was solemnised on 22.11.1983 and the unfortunate death has taken place on 13.06.1984, i.e., within 7 months of marriage. Presumption u/s 113 of the Evidence Act arises which the accused persons have failed to rebut.

(c) The plea taken by the defence that it was a case of accidental death as the deceased had an epileptic attack

while cooking and got burnt due to gas cylinder, is belied by the photographs inasmuch as in the photos, kitchen is shown to be intact and clean. The site plan shows the place where pieces of burnt clothes were found. In the bathroom, kerosene and match box were not found because as per the seizure memo Ex.19/A, a 5 ltr. can having little kerosene was found in the courtyard near bath room and not inside bath room.

(d) As regards the CFSL report, Ex.PW20/B, which showed that no kerosene was found on burnt clothes, burnt pieces of ribbon and scalp hair, it was submitted that it is a matter of common knowledge that smell of substances like kerosene and petrol does not remain for much time. Even its residue evaporates with the span of time. The incident took place on 13.06.1984. Burnt pieces of clothes were seized on 14.06.1984, scalp hair and ribbon were seized on 22.06.1984. The CFSL report is dated 20.07.1984. Due to difference of more than one month, it could be possible that kerosene might not have been detected on the exhibits but

the same does not hamper the case of prosecution in any manner. As regards the tin/can with little kerosene, the report opined that no opinion could be offered regarding presence of spots of smoke on the tin container.

(e) Dr. T.D. Dogra (PW6) who conducted post-mortem, has deposed in cross-examination that smell of kerosene may or may not persist after death. As regards absence of soot/blackening of the part, reference was made to the testimony of Dr. V.K.Tiwari (PW4), who deposed that it is not necessary that burns caused on any part of the body where kerosene oil is involved should leave a soot residue, i.e., blackening on that part of the body. Even DW3 Dr. Manjeet Singh has deposed that in case of burn by kerosene oil, the smell of kerosene may be there and the body may get blackened by kerosene burning but he has not deposed that it is necessary in every case.

(f) As regards letters Ex.P-1 and P-2 written by the deceased to her father alleging harassment by her mother-in-law and other family members for demanding dowry and

beating, it was submitted that the CFSL report proves that the hand-writing of the deceased on letters Ex.P-1 and P-2 matches with the copy Ex.P-3. Father of the deceased and her bua Sudesh Rani have deposed that letters are in the hand-writing of Kiran. As such, the letters and the testimony of the witnesses also prove the demand of money by the in-laws of Kiran. All the prosecution witnesses have corroborated with each other regarding the demand of Rs.40,000/- by the accused persons and for not fulfilling their demand she was beaten up and tortured by her in-laws including the accused persons.

(g) As regards defence witnesses, it was submitted that DW-2 O.P.Sharma is the clerk from Safdarjung hospital who brought the record pertaining to accused Swarna where she was working as Aaya which showed that on 13.06.1984 Swarna was absent from duty from 12 noon. The incident had taken place approximately at 12 p.m. Thus, instead of supporting the accused, this witness support the prosecution case.

(h) DW-3 Dr. Manjeet Singh who treated Kiran for epilepsy has given a general observation that it is one of the common complications in epileptic patients that they can meet with accident while driving, cooking or swimming. However, in the instant case Kiran had no epileptic attack at the relevant time and bathroom is the place of incident and nobody cooks in the bathroom, as such, the opinion of this witness is irrelevant.

(i) As regards testimony of DW-5, Anil Kumar who used to live in the neighbourhood of the matrimonial home of the deceased that Kiran never made any complaint to him against her in-laws, it was submitted that being the neighbour, it is quite improbable that he would come to know that demand of Rs.40,000/- is being made by the in-laws and Kiran was being tortured for non-fulfilment of that demand.

(j) DW-6 Dr. Rajesh Bhaskar is not an expert in the field and his opinion is of no relevance.

(k) Dying declaration itself is cogent and is sufficient to convict the appellant. Further, in the instant case, the same finds corroboration from the ocular testimony of the witnesses and medical evidence.

7. 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 provision.

8. Indian Penal Code was amended by Criminal Law Amendment Act, 1983 with a view to deal with menace of dowry deaths. Explanation appended to Section 498A defines cruelty in three parts. Clause (a) of the said explanation itself is in two parts. One is the wilful conduct which is of such a nature as is likely to drive the women to commit suicide and the second part is to cause grave injury or danger to life, limb or health (whether mental or physical) of the women.

9. It is undisputed case of the parties that on 13th June, 1984, deceased Kiran sustained burn injuries and was removed to hospital by her husband Praveen Kumar. It has come in the testimony of PW-4 Dr. V.K. Tiwari that on 13th June, 1984 he was working at

Safdarjung Hospital. He examined Smt. Kiran at 12:35 pm, who was brought by her husband Praveen Kumar Arora at 12.25 pm. He prepared her MLC Ex. PW4/A. She herself gave the following history to him:-

“Alleged history of trying to commit suicide by pouring kerosene oil on her then putting herself on fire. She alleged that her mother-in-law Swarna and sister-in-law Nisha beat her and asked her to die. Thereafter she went to bathroom and poured kerosene oil on herself and put herself on fire around 12:00 noon on 13.06.1984 at her residence. Patient also alleged that they used to torture her previously also for the sake of dowry.”

10. On receipt of DD No. 16, Ex. PW-10/A regarding admission of Smt. Kiran in the hospital in burnt condition, SI Laxmi Chand along with Head-Constable Paras Nath reached the hospital where he collected MLC of injured Kiran. An application Ex. PW-10/B was moved by Head Constable Paras Nath and doctor declared her “conscious and not under influence” vide endorsement Ex. PW10/C.

He recorded her statement which is to the following effect:-

“I got married about seven months ago, since then my mother-in-law Swarna and sister-in-law Nisha gave beatings to me on account of bringing insufficient dowry. Today also, my mother-in-law and sister-in-law gave beatings to me and told me to die. I poured kerosene oil on myself and in order to commit suicide lit the fire.”

11. The history given by the deceased to Dr. V.K. Tiwari at the initial juncture when she was brought to the hospital and, thereafter, when her dying declaration was recorded by the Investigating Office of the case are of great significance.

12. In *Khushal Rao* (supra) which is classic case on dying declaration, it was held as under:-

“11. The Legislature in its wisdom has enacted in s. 32(1) of the Evidence Act that "When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question", such a statement written or verbal made by a person who is dead (omitting the unnecessary words) is itself a relevant fact. This provision has been made by the Legislature, advisedly, as a matter of sheer necessity by way of an exception to the general rule that hearsay is no evidence and that evidence, which has not been tested by cross-examination, is not admissible. The purpose of cross-examination is to test the veracity of the statements made by a witness. In the view of the Legislature, that test is supplied by the solemn occasion when it was made, namely, at a time when the person making the statement was in danger of losing his life. At such a serious and solemn moment, that person is not expected to tell lies; and secondly, the test of cross-examination would not be available. In such a case, the necessity of oath also has been dispensed with for the same reasons. Thus, a statement made by a dying person as to the cause of death has been accorded by the Legislature a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that

the person making the statement was not in expectation of death, not that that circumstance would affect the admissibility of the statement, but only its weight. It may also be shown by evidence that a dying declaration is not reliable because it was not made at the earliest opportunity, and, thus, there was a reasonable ground to believe its having been put into the mouth of the dying man, when his power of resistance against telling a falsehood was ebbing away; or because the statement has not been properly recorded, for example, the statement had been recorded as a result of prompting by some interested parties or was in answer to leading questions put by the recording officer, or, by the person purporting to reproduce that statement. These may be some of the circumstances which can be said to detract from the value of a dying declaration. But in our opinion, there is no absolute rule of law, or even a rule of prudence which has ripened into a rule of law, that a dying declaration unless corroborated by other independent evidence, is not fit to be acted upon, and made the basis of a conviction.”

13. After reviewing the relevant provisions of the Evidence Act and the decided cases in different High Courts in India and Hon’ble Supreme Court, the following conclusion was arrived at in this case:

“16..... (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of

surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. ”

14. In *Laxman v. State of Maharashtra*, AIR 2002 SC 2973: (2002) 6 SCC 710, Hon'ble Supreme Court held that a dying declaration can either be oral or in writing, and that any adequate method of communication, whether the use of words, signs or otherwise will suffice, provided that the indication is positive and definite. There is no requirement of law stating that a dying declaration must necessarily be made before a Magistrate, and when such statement is recorded by a Magistrate, there is no specified

statutory form for such recording. Consequently, the evidentiary value or weight that has to be attached to such a statement, necessarily depends on the facts and circumstances of each individual 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, and where the same is proved by the testimony of the Magistrate, to the extent that the declarant was in fact fit to make the statements, then even without examination by the doctor, the said declaration can be relied and acted upon, provided that the court ultimately holds the same to be voluntary and definite. Certification by a doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can also be established otherwise.

15. In *Koli Chunilal Savji v. State of Gujarat*: AIR 1999 SC 3695, Hon'ble Supreme Court held, that the ultimate test is whether a dying declaration can be held to be truthfully and voluntarily given, and if before recording such dying declaration, the officer concerned has ensured that the declarant was in fact, in a fit condition to make the

statement in question, then if both these aforementioned conditions are satisfactorily met, the declaration should be relied upon.

16. In *Laxmi v. Om Prakash and Ors.*, AIR 2001 SC 2383, it was held, that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired, or if the court entertains grave doubts regarding whether the deceased was in a fit physical and mental state to make such a statement, then the court may, in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act upon it.

17. In *Govindappa and Ors. v. State of Karnataka*, (2010) 6 SCC 533, it was argued that the Executive Magistrate, while recording the dying declaration did not get any certificate from the medical officer regarding the condition of the deceased. It was held, that such a circumstance itself is not sufficient to discard the dying declaration. Certification by a doctor regarding the fit state of mind of the deceased, for the purpose of giving a dying declaration, is essentially a rule of caution and therefore, the voluntary and truthful nature of such a declaration, may also be established otherwise. Such a dying declaration must be recorded on the basis that normally, a person on

the verge of death would not implicate somebody falsely. Thus, a dying declaration must be given due weight in evidence.

18. In *State of MP Vs. Dal Singh & Ors.*, 2013 VI AD SC 475, it was held that :-

“14. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in respect of such state of the deceased, is not essential in every case.

Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.....”

19. To the same effects the law laid down in *Kulwant Singh* (supra).

20. The present case requires to be examined in the light of aforesaid settled legal propositions. Learned counsel for the appellant challenged the evidentiary value of the dying declaration recorded by

the Investigating Officer of the case SI Laxmi Chand on the ground that according to him, before recording the statement he had obtained the certificate of fitness from Doctor, Ex.PW-10/C but the doctor nowhere opines that she was fit for statement. Moreover, the doctor, who gave this certificate, was neither cited as a witness nor examined. Furthermore, this certificate was given at 3:40 p.m. However, as per the progress record, the general condition of Kiran was very critical. During 3:30 pm till 6:45 pm, the condition was reported to be very critical and ultimately she expired at 7:00 p.m. If that was so, how her fitness was given at 3:40 pm.

21. Record reveals that in pursuance to an application Ex. PW10/B, moved by Head Constable Paras Nath, for taking the opinion of the doctor as to whether she is fit for statement, there is a noting at 3:40 p.m.:-

“This is to certify that the patient is conscious and coherent and not under the influence of any drug or intoxication.”

22. Thereafter, the statement Ex. PW-10/D was recorded by SI Laxmi Chand which bears the thumb impression of Smt. Kiran at point ‘A’. The mere fact that as per the progress report, the condition

of the patient was critical does not mean that she was not conscious or coherent to make a statement. Rather it was specifically mentioned in the progress record of 3:30 pm that she was conscious. Under the circumstances, there is no discrepancy in the progress report or the certificate Ex. PW-10/C which also certified that the patient is conscious and coherent and thereafter, her statement was recorded by the Investigating Officer of the case. Mere fact that the person who gave this certificate was not examined is of no consequence as in the above noted authorities it was observed that a certification by doctor is essentially a rule of caution and is not mandatory requirement and is not a condition precedent for placing reliance upon a dying declaration.

23. As regards the submission of the learned counsel for the appellant that since the deceased had 100% burn injuries, she would not have been in a position to make a statement, same again is devoid of merit. This precise issue was considered by Hon'ble Supreme Court in *State of MP* (supra) and the question for consideration in that case also was whether 100% burnt person can make a dying declaration or put a thumb impression. Reliance was placed on

MafaBhai Nagarbhai Raval Vs. State of Gujrarat, AIR 1992 SC 2186, where also question arose with respect to whether a person suffering from 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The learned Trial Judge thought that the same was not at all possible as the victim had gone into shock after receiving such high degree burns. The moment the deceased had seen the flame, she was likely to have sustained mental shock. Development of such shock was the ground on which the Trial Court had disbelieved the medical evidence. It was held that the Doctor who had conducted her post-mortem was a competent person and had deposed in this respect. Therefore, unless there existed some inherent and apparent defect, the court could not have substituted its opinion for that of the doctor's. Hence in the light of the facts of the case, the dying declaration made were found to be worthy of reliance, as the same had been made truthfully and voluntarily. There was no evidence on record to suggest that the victim had provided a tutored version and the argument of the defence stating that condition of deceased was so serious that she could not have made such a statement was not accepted, and dying declarations

were relied upon. Similar view was reiterated in *Rambai vs. State of Chhatisgarh*, (2002) 8 SCC 83. In view of the same, the mere fact that Kiran was 100% burnt, no inference could be drawn that she was incapable of making a dying declaration.

24. PW-4 Dr. V.K. Tiwari who examined Kiran and prepared her MLC has deposed that although the general condition of the patient was very critical, her pulse was not palpable, blood pressure was not recordable and local examination revealed that almost her total body from head to toe was burnt, her skin was peeled off on places and had become leathery, the burns appear to be fresh in nature, nature of injury were dangerous to life **but she was conscious and coherent**. He denied the suggestion that when the case sheet Ex. PW-4/C was prepared, the patient was neither conscious nor coherent. He also denied the suggestion that the history of patient was recorded by him at the instance of relatives of the deceased or at the instance of police or that the patient was not in a fit state to give coherent statement. Even certificate Ex. PW10/C states that patient was conscious and coherent. Even the progress report at 3.30 p.m. records that she was conscious. As such, argument of the counsel for appellant that

condition of deceased was so serious that she could not have made such a statement is not acceptable.

25. The challenge to the dying declaration made by the deceased was also made on the ground that it was a tutored version given at the instance of PW-13 Sudesh Rani to name mother-in-law and sister-in-law to be the persons responsible for setting her on fire. This submission again is devoid of merits, inasmuch as, although it is not in dispute that when Kiran sustained burn injuries, she was informed by Praveen Kumar and she reached the spot and accompanied Kiran to hospital but in the taxi besides her, Praveen Kumar was also present. That being so, it is highly improbable that she would tutor Kiran to implicate her mother-in-law and sister-in-law as the culprits. Rather, it has come on record when the statement was made by Kiran to Dr. V.K. Tiwari (PW4), none was present at that time as in pursuance to a specific question as to how many relatives came with Kiran when she came to the hospital, he replied in negative by deposing that he asked the relatives to go out. Under the circumstances, neither in the taxi, there was any occasion for Sudesh Rani to tutor Kiran nor thereafter, inasmuch as, the other prosecution

witnesses have also deposed that when the statement of Kiran was being recorded by the Investigating Officer, all the relatives were asked to go outside. Even Praveen Kumar (DW4) has admitted this fact. That being so, there was no possibility of tutoring the deceased when she made the statement initially before Doctor and then before Investigating Officer of the case. Moreover, even no suggestion was given to Sudesh Rani (PW13) during her detailed cross-examination that she tutored Kiran to implicate the appellants. As such, the plea taken by Praveen Kumar (DW4) in his deposition to this effect does not inspire confidence.

26. It has come in the testimony of SI Laxmi Chand (PW10) that there was bandage all over her body including fingers and hands, as such, he got affixed her right thumb impression on the statement. Efforts were also made to get her statement recorded from SDM but by the time SDM reached the hospital, she was declared unfit for statement. As such, the SDM could not record her statement. It is evident from the two dying declarations made by the deceased to doctor and the Investigating Officer of the case that in both the statements, she has named only her mother-in-law as well as sister-in-

law to be the person responsible for giving her beatings and instigating her to die, as a result of which, she committed suicide by pouring kerosene oil over herself. She also alleged harassment to her on account of dowry by them. She did not rope in any other family member. Furthermore, the history was given by deceased Kiran to Dr. V.K. Tiwari without any delay in as much as the incident took place at about 12 p.m., she was brought to hospital at 12.25 p.m. as per MLC. Immediately at 12.35 p.m. she herself gave the history to Doctor implicating the appellants. There is no reason to disbelieve the testimony of the Doctor who recorded the history as he is totally an independent and disinterested witness and recorded the history in usual course of his duties. Thereafter DD No. 6A was recorded at 1:45 p.m. informing that Kiran with 100% burnt had been admitted in hospital. Vide DD No. 16A at 2:25 p.m., PP Madangir, Duty Officer, PS Kalkaji informed PP Madangir to send IO to hospital. On receipt of information at 3:00 p.m., SI Laxmi Chand (PW10) reached hospital, sought permission of the Doctor as to whether she was fit to make statement. The certificate was given at 3:40 p.m., then he recorded her statement on which rukka was prepared at 4:10 p.m. and

FIR was registered at 4:40 p.m. As such, there was no delay in recording dying declaration.

27. The dying declaration made by the deceased is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives or the investigating agency. That being so, it can be acted upon and can be made the basis of conviction. However, her statement finds corroboration from the oral testimony of the prosecution witnesses.

28. PW-1, Madan Lal is the uncle of the deceased. He has deposed that Kiran got married with Praveen Kumar on 22nd November, 1983 at Chandigarh. At the time of marriage, accused Swarna, the mother of the bridegroom raised an issue regarding non-giving a sum of Rs.501/- in the 'shagan' which led to heated arguments. In the marriage, dowry articles comprising of ornaments, clothes, furniture, utensils, washing machine, steel almirah etc. were given. He further deposed that his sister Raj Rani fell ill and remained admitted in Safdarjung Hospital for about 2½ to 3 months from February, 1984. Swarna was working as Class IV employee in Safdarjung Hospital. Whenever he used to visit his sister Raj Rani to see her in the

hospital, Swarna used to meet him and used to make complaint about items of dowry, which were given in the marriage. According to her, the articles were substandard and insufficient dowry was given. She also made complaint about Kiran regarding her inefficiency in household work. However, he used to ignore her complaints by telling her that in due course Kiran would improve. He also narrated one incident when he has sent his wife Pushpa Rani to Madangir, i.e., her matrimonial home to invite Kiran to live with them for 4-5 days. Kiran came to his house and she narrated her pathetic tale about being harassed by her mother-in-law and sister-in-law that they were not providing her meals, they had been beating her and were not even providing her suitable place to sleep in. She also informed that earlier a maid servant was there to do the domestic job, however, the maid servant had been relieved and she was required to do all the domestic work including that of the maid servant. She further told him that a demand of Rs.40,000/- is being made to open a shop. She also requested him not to send her back to her in-laws' house as she was being beaten quite off and on. Thereupon, he sent her to Chandigarh at the residence of his father. 2-3 days later, accused Swarna and her

husband Madan Lal came to his Mother Dairy Stall at West Patel Nagar and enquired about Kiran. He informed them that he has sent Kiran to Chandigarh as her life was in danger at their place. Then they went away. 4-5 days thereafter, his sisters Sudesh and Anup Rani brought Kiran with them and informed him that Kiran was not allowed entry in the matrimonial home by saying that it was his wife who had taken Kiran along with her and Kiran would be allowed the entry in the house only when his wife take her back and not otherwise. Thereupon he sent his wife to go along with Anup Rani and Sudesh Rani to leave Kiran in her in-laws' house. They did so and left Kiran with her in-laws. After 10-15 days, i.e., 13th June, 1984, at about 1:30 pm, son of Sudesh came and informed that Kiran had received burn injuries. He informed his brother Kishan Lal, father of Kiran at Chandigarh about the incident and he immediately rushed to Safdarjung Hospital. He enquired from Kiran as to what had happened to her. However, Kiran was demanding water and the doctor did not allow him to provide water to Kiran. He went on stating that grievance of Kiran was mainly against her mother-in-law

and sister-in-law regarding their dissatisfaction about the dowry, demand for further dowry and her harassment.

29. PW-2 Pushpa was the wife of Madan Lal who was partly examined on 9th February, 1987. Her further statement was deferred but she could not be examined thereafter as it has come in the statement of the Investigating Officer that she has died.

30. PW-5 Krishan Lal is the father of the deceased, who also corroborated the testimony of PW-1 by deposing that at the time of marriage of his daughter Kiran with Praveen on 22nd November, 1983, he spent more than Rs.1 lac in dowry articles. Her daughter used to inform him that her mother-in-law Swarna and sister-in-law Nisha were not pleased with the dowry and they were harassing her. He met Kiran at the house of his sister and at that time also, she informed him that she was beaten by her mother-in-law and sister-in-law and she received injury on her hand and they were insisting that she should bring more dowry from her father. He further deposed that in May, 1984, Swarna and Praveen came at Chandigarh and demanded Rs.40,000/- in order to open a shop in Delhi. He told them that he cannot spare so much money for investment in Delhi,

however, he could arrange for a shop in Chandigarh. Swarna and Praveen quarrelled with him and returned to Delhi. Thereafter, his sister informed him that Kiran was being harassed and beaten at her in-laws' house. Her daughter used to write many letters to him from Delhi. He handed over letters Ex. P1 and P2 to Sudesh, who handed over the same to the police. He also produced the copy book containing writings of Kiran Ex. P-3.

31. PW-11 Anup Rani is another bua of deceased Kiran and she also deposed that Kiran used to tell her that she was being harassed by the accused persons and demand of Rs. 40,000/- was being made.

32. PW-13 Sudesh Rani is another bua of deceased Kiran and in fact she was instrumental in getting the marriage of Kiran arranged with Praveen. She was residing near the matrimonial home of the deceased. According to her, Kiran came to her and complained that accused persons used to quarrel with her on account of bringing less dowry. She also made a complaint that she was not allowed to wear clothes given to her by her in-laws and that she was being harassed and she would not survive.

33. Learned counsel for the appellant challenged the testimony of these witnesses on the ground that they are all relations of the deceased and as such, are interested witnesses. This mere fact is no ground to disbelieve their testimonies.

34. In *Hiralal & Ors. vs. State, Govt. of NCT of Delhi*, (2003) 8 SCC 80, Hon'ble Apex Court observed that 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. Perhaps to meet a situation of this kind, the legislation enacted section 304B IPC and Section 113-B of the Evidence Act. Since such like incidents normally take place within the matrimonial home, it is either the girl herself who is subjected to such harassment/torture who could depose about the harassment meted out to her or the members of the family. Even her close relations do not come to know about this happening unless they are told by the victim or any demand is directly

made by the husband or his relative. That being so, it will be only the close relatives of the deceased who, at best can come to know about harassment meted out to the victim.

35. *Vajresh Venkatray Anvekar vs. State of Karnataka*, 2013 (1) AD (SC) 274: (2013) 3 SCC 462, was also a case under Section 498A and 306 IPC. The Additional Sessions Judge had refused to rely upon the evidence of parents, brother and brother-in-law of the deceased primarily on the ground that they are interested witnesses. Commenting upon such an observation, it was observed by Hon'ble Supreme Court that this approach is very unfortunate. When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. It is common knowledge that independent witnesses like servants or neighbours do not want to get involved. In fact, in this case, a maid employed in the house of the Appellant who was examined by the prosecution turned hostile. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. Witnesses are prone to exaggeration. It is for the trained judicial mind to find out the truth. If the exaggeration is of such nature

as to make the witness wholly unreliable, the court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable.

36. The appellants have examined DW-5 Anil Kumar who used to reside in the neighbourhood of the accused persons in order to depose that Praveen Kumar and his wife were living happily. He met wife of Praveen Kumar once or twice but she never made any complaint to him either against her husband or any member of his family. The appellant does not get any benefit from the testimony of this witness because as stated above, the neighbours hardly come to know about such demands or ill-treatment, more particularly, so in the instant case when the marriage itself lasted hardly for seven months. The observations made by the Hon'ble Supreme Court in ***Randhir Singh Vs. State of Punjab***, (2004) 13 SCC 129 in this regard may be reproduced with advantage:-

“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.”

That being so, even if no complaint was made by the victim to DW-5 Anil Kumar that does not mean that the victim was not subjected to any harassment or torture by the accused persons.

As regards the submission that the statement of the witnesses suffered from exaggeration, this aspect was also considered by Hon'ble Supreme Court in *State of MP* (supra), where it was observed that so far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence. The Court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. "Exaggeration per se does not render the evidence brittle. But it can be one of the factors against

which the credibility of the prosecution's story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. *"Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions."* The omissions which amount to contradictions in material particulars, i.e. which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited.

37. The marriage took place on 22nd November, 1983, whereas the incident took place on 13th June, 1984. The witnesses came to be examined after considerable delay as PW5, Krishan Lal, father of the deceased was examined in the year 1988, PW11, Anup Rani in the year 1992-93 and PW13, Sudesh Rani in 1994. As such, due to lapse of time, some discrepancies are bound to occur but on material aspect of the matter their testimony is cogent and convincing and the mere

fact that they are close relations of the deceased is no ground to discard their testimony.

38. It has further come in the statement of Sh. Krishan Lal that Kiran used to write letters to him. After her death, two letters Ex.P1 and Ex.P2 written by the deceased and her admitted handwriting in the form of a copy Ex.P-3 was handed over to the Investigating Officer of the case. The same were sent to CFSL and report was given by Dr. S.L. Mukhi, Sr. Scientific Officer opining that the handwriting evidence points to the writer of admitted writings marked A1 to A8 being the person responsible for writing the questioned writings marked Q1 to Q5 and Q4A. In the letters Ex.P1 and Ex.P2, the deceased has narrated her pathetic tale about beatings given to her and demand of money by the accused persons.

39. Learned counsel for the appellant, however, submitted that there is no convincing evidence to prove that the letters Ex.P1 and P2 were written and sent by the deceased to her father, inasmuch as, the envelopes have not been produced. Moreover, the comparison was made with a copy Ex.P-3. Authenticity of that copy is doubtful. The admitted hand writing of the victim was not taken from her school

record or any other authentic source to prove that the letters were written by her. Moreover, Sh. S.L. Mukhi, Sr. Scientific Officer, who gave the report, has not been examined. The report per se is not admissible in evidence under Section 293 Cr. P.C. In *State of Maharashtra* (supra) and *Sandeep Dixit* (supra), it was held by Hon'ble Supreme Court and this Court that the opinion of handwriting expert is only his opinion, therefore, without examining the expert in the court as the witness, no reliance can be placed on his report. It is true that in the instant case, Dr. S.L. Mukhi who gave the report opining that letters Ex.P1 and Ex.P2 are written by the same person who has written the copy Ex.P3 has not been examined by the prosecution and the report given by him has been tendered in evidence by the Investigating Officer in his deposition. From this, at best, it may be stated that not much evidentiary value can be attached to the letter Ex. P1 to P-2 relied upon by the prosecution but in view of the discussion made above, there is ocular evidence in the shape of testimony of father, uncle and two buas of the deceased regarding cruelty and harassment to the deceased. Above all, the victim was the best person to tell about her pathetic tale and in her statement before

the doctor as well as Investigating Officer, she has stated that she used to be tortured for dowry and used to be given beatings. Under the circumstances, prosecution had succeeded in establishing that the deceased was subjected to cruelty on account of dowry and as such, the essential ingredients of Section 498A IPC were duly fulfilled.

40. The question which now arises for consideration is whether the case for conviction under Section 306 IPC has been made out. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and with fine.

41. Section 107 IPC defines “Abetment” which reads as under:-

“107. **Abetment of a thing**—

A person abets the doing of a thing, who -

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.”

42. Section 113A of the Evidence Act, 1872 reads as under:-

“113A. Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

43. While explaining the application of Section 107, 113A in regard to an offence falling under Section 306 Indian Penal Code in *Ramesh Kumar Vs. State of Chhatisgarh*, (2001) 9 SCC 618, it was held as under:-

“12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven

years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression - "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says - "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

44. In order to attract the applicability of Section 306 IPC, the prosecution must, *inter alia*, establish that the deceased committed suicide and she has been subjected to cruelty within the meaning of

Section 498A IPC. [*Harjit Singh vs. State of Punjab*, (2006) 1 SCC 463].

45. The fact that the deceased had died unnatural death is not in dispute. It is also not in dispute that the death has taken place within seven years of marriage. However, there is a serious dispute as to whether it was an accidental death or it was suicide. As per the prosecution case, as proved from the history given by the deceased to Dr. V.K. Tiwari (PW4) and dying declaration made to SI Laxmi Chand (PW10), the deceased committed suicide by pouring kerosene oil over her and then setting herself on fire. However, it was strenuously argued by learned counsel for the appellant that the deceased was suffering from epilepsy even prior to marriage and due to that reason she was prone to accidental death while cooking, driving etc. Reliance was placed on the testimony of DW-4 Praveen Kumar, who has deposed that after marriage, he along with Kiran had gone to Chandigarh on 25th November, 1983 and returned back to Delhi on 29th November, 1983. After 2-3 days when they were sleeping, Kiran started crying and shouting at about 1/1:30 a.m. He found that Kiran had urinated and spoiled the bed. Doctor was called

and then they came to know that Kiran was suffering from epilepsy. Thereafter, they started getting Kiran treated for epilepsy from Safdarjung Hospital where his mother was working. Father of Kiran was called to Delhi and enquiry was made from him, who confirmed that Kiran was suffering from epilepsy prior to her marriage and she was getting Homoeopathy treatment. DW3 Dr. Manjeet Singh was examined to prove that he examined Kiran and as per the OPD card, Ex. DW3/A, she suffered from grandmal epilepsy. As per the discharge slip Ex.DW3/B the patient was aborted on 12th May, 1984 due to epilepsy. He further deposed that it is one of the common complications in epileptic patients that they can meet accident while driving, cooking or swimming. They can get burnt while cooking or drown while swimming. It was submitted that although the father and the uncle of the deceased tried to suppress the fact that the deceased was suffering from epilepsy, however, her bua, Anup Rani admitted that she was suffering from epilepsy. As such, it was submitted that due to the fact that Kiran was suffering from epilepsy, she was prone to meet an accidental death while cooking.

46. It was further submitted that the case set up by the prosecution that Kiran committed suicide by pouring kerosene oil over herself, is contrary to the scientific evidence coming on record inasmuch as when the exhibits were sent to FSL, it gave negative report and no kerosene oil was detected. Emphasis was also laid on the fact that DW-3 Dr. Manjeet Singh and DW-6 Dr. Rajesh Bhaskar have deposed that in case of burn by kerosene oil, the smell of kerosene remains and the body gets black by kerosene burning. However, in the instant case, no smell of kerosene or soot was found. Since the ocular evidence is contrary to the medical and scientific evidence, as such, prosecution has failed to prove that it was a case of suicide.

47. Per contra, it is the case of prosecution that it stands proved from the dying declaration of the deceased herself that she poured kerosene oil and then set herself on fire. There is no reason to doubt the dying declaration made by the deceased. Furthermore, there is no evidence to show that Kiran met with an accidental death. As per the photographs, kitchen was shown to be intact and clean. Therefore, the defence theory that deceased had epileptic attack while cooking and got burnt is belied by record. As regards, the CFSL report,

Ex.PW20/B which could not detect kerosene oil, it was submitted that since the exhibits were examined after a difference of more than one month, it was quite possible that kerosene may not have been detected as smell or residue of kerosene does not remain on anything for such a long time. However, the Investigating Officer who had visited the spot had deposed that there was smell of kerosene. The traces of kerosene could not be found in the bathroom as the place of incident was washed. As such, it was submitted that it was a clear case of suicide and having been proved that the deceased was subjected to cruelty within the meaning of Section 498A, offence under Section 306 IPC stand duly proved.

48. There is force in the submission of learned Public Prosecutor for the State that as regards the submission that it was an accidental death as the deceased was suffering from epilepsy and was, therefore, prone to sustaining burn injury while cooking or drown while swimming, although it is proved from the testimony of Dr. Manjeet Singh DW3 that Kiran was suffering from epilepsy for which she was being administered treatment in Safdarjung Hospital and as per the opinion of doctor, such patients are prone to accidental death but it

had to be established that in the instant case, the deceased met with accidental death. It is pertinent to note that although the witnesses examined by the prosecution were extensively cross-examined, however, even no suggestion was given to any of the prosecution witnesses that the burn injuries sustained by the deceased was due to accidental fire while cooking and not due to commission of suicide by pouring kerosene oil. It is only for the first time that such plea had seen the light of the day when statements of accused persons were recorded u/s 313 Cr.P.C. and then Praveen Kumar, husband of the deceased deposed so in his statement. As such, this plea is completely an afterthought and is not even substantiated by any other material available on record. It is the case of appellants themselves that except for Kiran, no other member of the family was present in the house as according to Praveen Kumar, his mother, i.e., appellant Swarna who was working as 'Aaya' in Safdarjung hospital had gone for her duty in the morning. His father had also gone to his work. His sister Nisha had gone for learning typing work in private college in Madangir. He himself had gone to market to purchase vegetables. According to him, when he returned from market, he found that there

was lot of noise in the Gali. He went inside the house and found Kiran lying in burnt condition. As such, nobody is a witness to the incident of burning. It is not in dispute that Kiran did sustain burn injuries but question is whether it was due to pouring kerosene oil by her over herself and then setting fire or whether while cooking food, she felt giddiness and caught fire as deposed by Praveen Kumar. At the cost of repetition, it may be mentioned that for first time it has come in the statement of DW4, Praveen Kumar that on inquiry Kiran informed him that while cooking, she felt giddiness and caught fire. No such case was set up when prosecution witnesses were examined. At that time, only plea taken was that since Kiran was suffering from epilepsy, she was prone to accident and since Sudesh Rani wanted her son to be married with Nisha to which the family members were not agreeable, hence, at her instance, accused have been falsely implicated in this case. In fact, in the entire evidence led by the prosecution, no plea has been taken by the appellants as to how the deceased sustained burn injuries. Mere plea that due to epilepsy, she was prone to accidental death does not *ipso facto* lead to any conclusion that she sustained burn injuries from gas/stove etc. In the

absence of taking any such plea coupled with the fact that as per the photographs, the kitchen was found absolutely neat and clean and there were no signs that the deceased sustained injuries while cooking, the plea of accidental death cannot be sustained. On the other hand, there is a consistent statement of the deceased made to the doctor as well as to the Investigating Officer of the case that due to beatings given to her by both the appellants and on their instigation that she may die, she poured kerosene oil on herself and then set on fire. She also alleged that she was also being harassed on account of dowry by them.

49. The authorities relied upon by learned counsel for the appellant instead of helping him rather helps the prosecution, inasmuch as, in all these authorities, it was held that when oral evidence is credible and cogent, if medical evidence is contrary, same is inconsequential. It is only when the medical evidence totally improbabilise the oral evidence, adverse inference can be drawn. PW4 Dr. V.K. Tiwari although admitted that kerosene oil has its own characteristic odour, however, went on stating that it is not necessary that a burn caused on

any part of the body, where kerosene oil is involved should leave a soot residue, i.e., blackening on that part of body.

50. Even DW3 Dr. Manjeet Singh has stated that the smell of kerosene may be there and the body gets black by kerosene burning. As such, even he does not say that it is necessary that in case of burn by kerosene oil, smell of kerosene must remain on the body or there must be blackening on part of the body. DW-6, Dr. Rajesh Bhaskar has deposed that in case the burns are caused by kerosene oil, there remain black deposits on the body. However, it was only his opinion and when specific questions were put to him that as per Parikh's Medical Jurisprudence and Toxicology, even in case of high burns flame injuries, kerosene smell and black soot may not be found, the witness could not give any concrete answer. Furthermore, he admitted that he has not done any specialization in examination of burn injuries but merely spent 1 ½ years in Extensive Care Unit while tackling the burn cases in routine. As such, he was not a specialized in the field who could depose about these facts.

51. As regards, FSL report, which gave negative report for detection of kerosene on the exhibits, it is a matter of record that the

incident took place on 13th June, 1984, the burnt pieces of clothes were seized on 14th June, 1984, the scalp hair and ribbon were seized on 22nd June, 1984. Thereafter, the same were sent to CFSL and the report is dated 22nd July, 1984. Due to lapse of more than one month, the possibility of non-detection of kerosene on the exhibits cannot be ruled out. Similarly, tin/can with little kerosene was seized later on and was sent to CFSL in order to detect the presence of spots of smoke but no opinion could be given as per report Ex. PW-20/C.

Puranchand Vs. State of Haryana, (2010) 6 SCC 566 was also a case of bride burning by pouring kerosene and setting on fire. There were multiple dying declarations. Defence contention was that on deceased's half burnt clothes, no traces of kerosene were found, hence prosecution story is not credible. It was held that said contention does not exonerate accused as there is a possibility of articles losing Kerosene residues due to long interval of time when seized articles reached FSL, yet the mattress being thick did have kerosene residue. In any case, fact that dying declaration found to be voluntary, truthful and unblemished, clinches issue against accused.

52. Under the circumstances, the mere fact that while examining the exhibits, i.e., Ribbon and scalp hair of deceased, kerosene could not be detected is not sufficient to arrive at the conclusion that it was not a case of suicide by pouring kerosene oil over herself and then setting on fire. Dying declaration of Kiran has been found to be voluntary, truthful and unblemished. Moreover, PW18 ACP Gajinder Singh and PW21 SI Harbhajan Singh have deposed that when they visited the spot, the place of occurrence was washed and cleaned but there was smell of kerosene in the bathroom. It is pertinent to note that testimony of SI Harbhajan Singh in this regard goes un-rebutted and unchallenged as he was not cross-examined at all by the appellants.

53. Under the circumstances, it stands proved that the deceased committed suicide within seven months of her marriage coupled with the untrammelled evidence about the cruelty meted out to the deceased and the same fully establishes the guilt of the appellant of abetment to the deceased to commit suicide as well as cruelty under Section 498A of India Penal Code.

54. All the allegations of cruelty are also fully established. The appellants have not been able to rebut the presumption under Section 113 A of the Evidence Act. The evidence disclosed that the conduct of the appellant viz-a-viz the deceased coupled with consequential demand of money from PW5, the father of the deceased fully established the case of prosecution that the deceased was forced by the appellants to take the extreme decision of committing suicide by pouring kerosene oil on herself and setting herself on fire and thereby, the charge of abetment under Section 306 as well as Section 498A IPC stood proved.

55. In this respect the decision reported as *Thanu Ram vs. State of Madhya Pradesh*, (2010) 10 SCC 353 can also be usefully referred to. In para 26, the Court has explained the legal position as under:-

“26. In the Explanation to Section 113-A it has also been indicated that for the purpose of the said section, the expression "cruelty" would have the same meaning as in Section 498-A Indian Penal Code. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A Indian Penal Code, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 Indian Penal Code.”

56. In the light of the above conclusion, there is no infirmity in the order of conviction which calls for interference.

57. As regards, the quantum of sentence, leniency was prayed on the ground that the accused persons have suffered rigors of trial for the last 30 years. Swarna initially remained in jail for 1½ months and after conviction she remained in jail for one year. Now, she is 74 years of age, as such, she be released on the period already undergone. As regards, appellant Nisha, it was submitted that she was aged about 18 years of age at the time of incident. She has since been married and has three children. She also remained in jail for substantive period. As such, both deserves to be released on the period already undergone.

58. As regards appellant Swarna is concerned, learned Public Prosecutor for the State did not oppose for her release on the period undergone keeping in view her age, however, as regards appellant Nisha, any leniency was strongly opposed.

59. *Ashabai and Anr. vs. State of Maharashtra*, (2013) 2 SCC 224, was a case u/s 302/498-A/34 IPC where mother-in-law and sisters-in-law were convicted. The appeal abated against mother-in-

law as she expired. As far as sisters-in-law were concerned, it was observed that in spite of stringent legislation 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.

60. The punishment prescribed u/s 306 IPC is up to 10 years and fine. However, learned Additional Sessions Judge while awarding the sentence, sentenced the appellant to undergo rigorous imprisonment for five years and fine of Rs.2000/-. The appellants were also to undergo rigorous imprisonment for two years and fine of Rs.2000/- for offence under Section 498A IPC.

61. So far as the appellant Swarna is concerned, keeping in view her age coupled with the fact that the State is also in favour of taking a lenient view as she has already undergone a period of about 1-1 ½ years in jail, as such, the sentence qua her is modified to the extent that she is sentenced to the period during which she remained as under trial in this case, however, the fine is enhanced to Rs.20,000/-

for offence u/s 306 IPC and Rs.10,000/- for offence under Section 498A IPC, in default of payment of fine, she has to undergo simple imprisonment for six months and three months respectively. She is granted four weeks' time to deposit the fine with the trial court.

62. However, as regards Nisha is concerned, no leniency in sentence is warranted qua her. As such, she is to serve the remainder of the sentence imposed upon her.

63. The appeal is disposed of accordingly.

64. Copy of the order along with Trial Court record be sent back.

**SUNITA GUPTA
(JUDGE)**

SEPTEMBER 02, 2013

rs