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

+ CRL.A.182/2010 & CRL.M.(BAIL). 1309/2013

% Judgment reserved on 7th August, 2013.
Judgment delivered on 30th August, 2013.

NITIN KUMAR ARORA Appellant
Through : Mr.Ajay Verma, Adv.

versus

STATE (NCT) OF DELHI Respondent
Through : Ms.Richa Kapoor, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL

G.S.SISTANI, J

1. Present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure and is directed against the judgment dated 31.10.2009 and order on sentence dated 7.11.2009 passed by Additional Sessions Judge, Delhi, whereby the appellant has been convicted to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC, fine of Rs.50,000/- and in default thereof further rigorous imprisonment for two years. A further direction has also been issued that life imprisonment in this case would be complete life imprisonment without any commutation on account of conduct of the convict by the State Government.
2. The version of the prosecution, as noticed by the trial court, is that:
 1. *Accused Nitin Kumar Arora, Sunita, Sapna, Rekha and Poonam were charge-sheeted by the police of PS: Gokalpuri, Delhi for offence punishable U/s 302/307/506/498-A/34 IPC and Section 3*

and 4 of the Dowry Prohibition Act on the allegations that on 20.11.06 DD No.9-A and 10-A were recorded at the police station. DD No.10-A was entrusted to S.I Prakash Roy and DD No.9-A was entrusted to ASI Rajmal regarding that at B-15 Ganga Vihar, Delhi at Deepak Photo Studio, one boy had put acid on one girl. ASI Rajmal reached at the spot and came to know that the injured has been removed to the GTB Hospital. ASI Rajmal alongwith Constable reached at GTB Hospital where the MLC of Smt.Manju Saxena was obtained. Smt.Manju Saxena was declared fit for the statement and she was having burn injuries. The MLC of Khushi (deceased) was also obtained. She was declared unfit for making the statement. She was also having burn injuries with history of acid burn. ASI Rajmal informed the SHO and the Executive Magistrate. The Executive Magistrate came at the spot, inspected the spot and recorded the statements of Smt. Manju Saxena and Smt. Usha Rani i.e. the mother of the deceased. The mother of the deceased Smt. Usha stated that her daughter Khushi was married to accused Nitin Kumar Arora on 31.05.2005 according to Hindu Rites & Ceremonies. After 10-15 days of her marriage, her husband Nitin Kumar Arora, her mother-in-law Sunita and her sister-in-law Sapna were giving beatings to her and were demanding dowry from her. On account of the torture given to her daughter Khushi, she had brought her daughter to her house three months prior to the incident and her daughter was working in the cosmetic shop of Smt.Manju Saxena for ten days and on 20.11.06, she received a phone call from Manju Saxena that husband of Khushi had poured acid on Khushi and he had fled away. She reached at the spot and came to know that Khushi had removed to

the GTB Hospital. She also reached at GTB Hospital and found that her daughter Khushi was getting treatment. On this statement, the Executive Magistrate, Seelampur directed the concerned SHO to take appropriate action. On the basis of the same, the FIR U/s 307/498-A IPC and Section 3 & 4 of Dowry Prohibition Act was registered and investigation was handed over to S.I Prakash Roy. Prakash Roy reached alongwith Lady Constable Leela and Constable Lalit Kumar at the spot. ASI Rajmal told S.I Prakash Roy that he has got Crime Team Inspection and photographs of the spot done. S.I Prakash Roy prepared the site plan and seized the clothes from the spot. Smt. Sunita i.e. the mother-in-law of the deceased was arrested at the instance of Smt. Usha i.e. the mother of the deceased. The other accused persons could not be arrested. On 23.11.06, accused Nitin Kumar Arora surrendered in the Karkardooma Court and he was formally arrested. He was taken into the police custody and his one day police custody remand was given by the Ld. Metropolitan Magistrate. Accused Nitin got recovered one steel jug from his house which was used in pouring acid. On 30.11.06, S.I informed Sh.A.K. Pasi, the Executive Magistrate and got the statement of Smt. Khushi (deceased) recorded who also disclosed regarding the dowry harassment and that she was burnt by pouring acid on her by her husband on 20.11.06. On 17.12.06, Smt. Khushi died in the hospital. Her postmortem was got conducted by Executive Magistrate and the cause of death was given as septicemic shock due to antemortem chemical burn injuries involving 40% of total body area. Thereafter, the offence was converted to Section 302 IPC and the investigation of the case was entrusted to Inspector B.S. Khushwah

who deposited the exhibits in the FSL through the Constable. On 13.01.07, accused Poonam, Rekha and Sapna were granted anticipatory bail.

2. After supplying the copies to the accused persons, the case was committed to the court of sessions vide order dated 21/03/07.

3. On 16.08.07, Inspector B.S. Khuswah stated in the Court that he will file the charge-sheet against accused Sapna before Juvenile Justice Board. Vide order dated 16.08.07, after finding prima-facie, my Ld. Predecessor charged accused Nitin Arora for the offence punishable U/s 302 IPC and accused Nitin Kumar Arora, accused Sunita and accused Rakha (sic. Rekha) were also charged for the offences punishable U/s 498-A/34 IPC and U/s 4 of Dowry Prohibition Act read with Section 34 IPC. Accused persons were charged separately to which they pleaded not guilty and claimed trial. On the same day, My Ld. Predecessor has discharged accused Poonam in this case.

3. Mr.Verma, learned counsel for the appellant, submits that the appellant has assailed the judgment and the order on sentence passed by learned trial court on the ground that the same is not sustainable in the eyes of law as the judgment has been passed on the basis of conjectures and surmises and the same is not supported by the facts and circumstances of the case. Counsel further submits that the prosecution has failed to prove its case beyond reasonable doubt and as such the trial court should have given benefit of doubt to the appellant and acquitted him. Counsel next submits that the trial court has failed to appreciate the fact that no reliance should have been placed on the testimony of the witnesses of the prosecution as they are police personnel and their evidence is not corroborated by the evidence of any independent witness.

4. It is contended by counsel for the appellant that the evidence placed on record is grossly insufficient to connect the appellant with the crime. It is further contended that the intention of the appellant was to cause voluntary grievous injury, which is punishable under Section 325 IPC and the appellant had no intention to cause death of Khushi (*hereinafter referred to as the deceased*). Counsel next contends that there was no independent witness to the incident and the prosecution relied upon interested witnesses, who have deposed against the appellant. It is also contended that the trial court has wrongly accepted the version of the prosecution. Mr.Verma further submits that PW-2, Smt.Manju Saxena, on whose evidence strong reliance has been placed by the prosecution, was not an eye-witness and the appellant has been incorrectly named by her.
5. Per contra, Ms.Richa Kapoor, learned counsel for the State, submits that the prosecution has been able to prove its case beyond any shadow of doubt. The presence of the appellant on the date of the incident is proved by the evidence of PW-2, Smt.Manju Saxena, who has testified that the appellant had come to her shop where the deceased was working on the fateful day at 8.30 a.m., the appellant returned after 15 minutes, she heard the cries of the deceased, before she could react the deceased had come upstairs and informed her that the appellant had thrown acid on her entire face, her entire face and body had burn injuries and when the deceased grappled PW-2 some acid drops also fell on her. Ms.Kapoor further submits that the learned trial court has wrongly disbelieved the dying declaration of the deceased solely on the ground that the Executive Magistrate did not take any endorsement of the Doctor on the statement of the deceased nor any endorsement on the MLC was made to show that the deceased was in a fit state of mind to make the statement.

6. We have heard learned counsel for the parties, considered their rival submissions and also perused the judgment and the order on sentence passed by the learned trial court. The prosecution in all examined 15 witnesses. The star witness of the prosecution is PW-2, Smt.Manju Saxena; PW-3, Sh.A.K. Pasi, Executive Magistrate, who had recorded the statement of the deceased on 30.1.2006; and PW12, SI Prakash Roy, who had requested the Executive Magistrate to visit the hospital and record the statement of the deceased on 30.11.2006. In our view the aforesaid three witnesses are material witnesses and, thus, it is necessary to discuss and analyse their evidence in detail.
7. In her testimony PW-2 deposed that she was running a Cosmetic shop at C-382, Gokal Puri, Delhi. PW-2 testified that the deceased was working with her at the relevant time. She further deposed that the deceased started working with her 8-10 days prior to the date of the incident. On 20.11.2006 she had come to the shop at 8.30 a.m., when they opened the shop. She identified the appellant, who was present before the Court, and deposed that fifteen minutes later the appellant had visited the shop and thereafter both, the deceased and the appellant, were quarrelling among themselves for sometimes. She had not heard the conversation but had told the appellant not to fight at the shop and in case of any complaint he should go to the mother of the deceased. The appellant had then left the shop. PW-2, thereafter went on the first floor, which was her residence. She left the deceased at the shop to clean the same. She heard the cries of the deceased after fifteen minutes but before she could react the deceased came upstairs and informed her that the appellant had thrown acid on her. PW-2 noticed that her entire face and body had burnt with the acid so also her clothes. The deceased embraced her and some of the acid also fell on her upper left arm. The witness showed the burn marks on the upper left

arm to the Court. Thereafter the neighbours called the Police. Both, PW-2 and the deceased, were taken to GTB Hospital by the Police. She also informed the mother of the deceased over telephone.

8. In her cross-examination, she denied the suggestion that first the husband of the deceased had come to her house and had thrown acid on the face of the deceased.
9. The evidence of PW-3 reads as under:

“PW-3 Sh.A.K. Pasi Tehsildar Cum Ex. Magistrate, Seelampur, Delhi. On SA

On 20/11/06 I was called by SI Prakash Roy at GTB Hospital. I reached GTB Hospital at 1:30 pm. One women namely Khushi w/o Nitin Arora was admitted in Hospital due to acid burn. She was not fit for the statement at that time. I recorded the statement of Usha Rani at 2:10 pm which is already Ex.PW1/A and Manju Saxena at 2:30 pm which is Ex.PW2/A. Both the statement bears my signatures at point X. On the statement of Usha Rani I made my endorsement to the SHO for taking action as per law. My endorsement on Ex.PW1/A is encircled Y. Both the statement also bears my seal under my signatures.

On 30.11.06 I was again called by IO and I reached at GTB Hospital at burn ward I recorded the statement of Khushi at 6:40 pm verbatim as narrated by her. The same was read over to her and her thumb impression was taken at point A on her statement which is already Ex. PW1/C. The statement is signed by me at point X and the thumb impression of Smt.Khushi was attested by me at point X1.

XXXXXX by Sh. Manish Bhadauria advocate amicus curiae for all the accused.

I received the information about the incident at 1 pm. There may be some other persons relations and friends of the deceased present in the hospital but I do not know. I did not go to the place of incident. I have recorded the statement in my own handwriting. I made an attempt to inquire about the injured weather (sic. wheather) she is in position to make the statement from Doctor for

writing her statement. I also made effort to take the statement of deceased between 20/11/06 to 30/11/06. When I recorded the statement of Khushi, no other person was present. I saw on the MLC regarding fitness of the deceased to give the statement and recorded her statement. I did not asked the Doctor to give fitness on the statement.

It is wrong to suggest that on 30/11/06 Doctor had not declared Khushi fit for making statement on her MLC. It is correct that on the statement of Khushi her thumb impression and my signatures appear. There are no other signature. It is wrong to suggest that Khushi did not make any statement and I recorded whatever was narrated by her mother. It is correct that in the statement of Usha Rani there is no mention any specific demand of Dowry. I reached at GTB Hospital on 30/11/06 at 6:30 pm again said 6 pm. I received the information at about 5 pm that the injured is fit for statement. It is wrong to suggest that Khushi was not fit for statement and was unconscious. I helped Khushi in putting her thumb impression. It is correct that Khushi was completely burnt and was not in the position to sit. I remained in the hospital for one hour when I went for recording her statement. The IO was present in the hospital but not in the ward where I was recording the statement. I did not record statement any other person on 30/11/06. I do not know whether IO recorded Statement of any person in my presence. I did not visit the hospital between 20/11/06 and 30/11/06 but I was regularly informed about the condition by IO. The mother of the deceased was in grief position. It is wrong to suggest that I am deposing falsely.”

10. The relevant portion of the evidence of PW-12, SI Prakash Roy, reads as under:

“..... On 30.11.2006, I went to the hospital to know about the condition of the deceased. The doctor has informed that she is fit for statement. Hence, I immediately informed to Sh.A.K. Pasi, Executive Magistrate in this regard. He came to the GTB Hospital and recorded statement of deceased Khushi at about 6:45 pm.”

11. In the cross-examination PW-12 has stated that the Doctor had not declared in writing that the injured was fit for statement.

12. The trial court has found the evidence of PW-2 trustworthy and reliable. We see no reason to differ. A careful reading of the evidence of PW-2 would show that on the fateful day the deceased was working at her shop. The shop was opened at 8.00 a.m. and soon thereafter the appellant had arrived. A quarrel had taken place between the appellant and the deceased. Thereafter the appellant had left the shop only to return thereafter in fifteen minutes. She heard cries of the deceased and before she could react the deceased came upwards and informed her that the appellant had thrown acid on her. She had noticed that her entire face and body were burnt with acid, so were her clothes and the some acid had also fallen on her upper arm.
13. We find that the evidence of this witness remained unshaken in the cross-examination. PW-2 was also removed to the hospital along with the deceased and her MLC was prepared. She also had burn injuries from the acid. As per the MLC, Exhibit PW-9/5, left arm (liberal aspect) and left hand (medial 1 ½ aspect has burn marks). This witness had also shown the burn marks to the Court at the time of her examination.
14. The submission of learned counsel for the appellant that the evidence of this witness is to be discarded as she is an interested witness is without any force. In fact this witness is an independent witness as there is nothing to suggest that she had any enmity with the appellant. Simply to say that since PW-2 did not witness the incident she is not a reliable witness is without any force as PW-2 had witnessed the quarrel between the deceased and the appellant and in fact she had spoken to the appellant and advised him not to fight at the shop and in case of any complaint he should visit the mother of the deceased. PW-2 had seen the appellant prior to this incident. The appellant was known to this witness as he used to come to her house where the deceased was living as a tenant. Thus we

find the evidence of this witness trustworthy and reliable and the same can safely be relied upon to convict the appellant. This witness has explained during her testimony as to how she sustained burn injuries at the time when Khushi grappled with her. Khushi as well as PW-2 were removed to the hospital and MLC of PW-2 supports the testimony of PW-2 that she suffered burn injuries. Therefore, the presence of PW-2 at the spot of the incident is not a matter of doubt. It may also be noticed that the appellant had visited the shop of PW-2 fifteen minutes prior to the actual incident and had quarreled with Khushi. PW-2 had not only heard the appellant and Khushi quarrelling but she had also met the appellant and advised him to sort out the matter with the mother of Khushi. In this backdrop, there is no element of doubt that the appellant had returned and poured acid over Khushi as told by Khushi to PW-2. This witness has not been cross-examined on the aspect that she was not told by Khushi that appellant had thrown acid on her.

15. The trial court has not relied on the dying declaration of the deceased on the ground that there was no material on record to show that Khushi was declared fit by the Doctor for making the statement and as to whether she was fully conscious when the statement was record. We are unable to endorse the view taken by the trial court.
16. In the case of ***Paparambaka Rosamma v. State of A.P.***, reported at (1999) 7 SCC 695, the Apex Court has taken a view that since the certificate of the Doctor was not to the effect that the patient was in a fit statement of mind to make the statement the dying declaration cannot be accepted by the Court to form the sole basis for conviction. Another three Judge Bench in the case of ***Koli Chunilal Savji v. State of Gujarat***, reported at (1999) 9 SCC 562, has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the

dying declaration of the deceased could not be ignored merely because the Doctor had not made the endorsement that the deceased was in a fit statement of mind to make the statement. Since the decisions in the aforesaid two matters were somewhat contrary, the matter was referred to the Constitution Bench. In the case of *Laxman v. State of Maharashtra*, reported at (2002) 6 Supreme Court Cases 710. Paras 3 and 5 read as under:

“3. 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 death bed 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 promoting 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 in 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 is 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.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjeet Kaur v. State of Punjab* case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in *Paparambika Rosamma and Ors. v. State of A.P.* (at SCC P. 701, para 8) to the effect that

"...in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially

when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this court in ***Paparambaka Rosamma and Ors. v. State of A.P.*** must be held to be not correctly decided and we affirm the law laid down by this court in ***Koli Chunilal Savji and Anr. v. State of Gujarat*** case.”

17. Applying the aforesaid law laid down by the Constitution Bench to the facts of this case we may notice that PW-3 has testified that on 30.11.2006 he was called by the I.O. when he recorded the statement of the deceased at 6.40 am as narrated by her. The statement was read over to her and a thumb impression was taken at point ‘A’. The statement of the deceased has been marked as Exhibit PW-1/C. He had also attested the thumb impression of the deceased at point X-1.
18. In his cross-examination PW-3 had deposed that he had made an attempt to enquire from the Doctor if the injured was in a position to make statement. He also deposed that he had seen the MLC regarding fitness of the deceased. He also deposed that “I saw on the MLC regarding fitness of the deceased to give the statement and recorded her statement”. He denied the suggestion that the deceased was not fit for statement or was unconscious. The evidence of the Executive Magistrate is duly corroborated by the evidence of PW-12, SI Prakash Roy, who has categorically testified that on 30.11.2006 when he visited the hospital to enquire about the condition of the deceased the Doctor had informed him that she was fit to make the statement hence he immediately informed the Executive Magistrate to come to the hospital and record the statement at about 6.45 pm.

19. During cross-examination, he deposed that the Doctor had not declared in writing that the injured was fit for the statement. In the dying declaration the statement made by the deceased to the Executive Magistrate with regard to the appellant visiting the shop and throwing of acid is on the lines of the statement made by PW-2, Smt. Manju Saxena. It may be noticed that when Khushi was admitted in the hospital on 20.11.2006 she was unfit to make a statement. PW-3 had visited the hospital but her statement could not be recorded as she was unfit to make the statement. The I.O., PW-12, had called the Executive Magistrate on 30.11.2006 only when he learnt from the Doctor that she was fit to make the statement. From the evidence of PW-3, the Executive Magistrate, and PW-12 it is clear that the deceased was in a fit state of mind and she was conscious when her statement was recorded. Simply because there was no fitness certificate or no endorsement of the Doctor on the MLC or on the statement it cannot be said that she was not in a fit state of mind or that her statement cannot be relied upon. It may also be noticed that the statement made by Khushi was on the same lines as made by PW-2 which also lends credibility to the status of Khushi as recorded by the Executive Magistrate.
20. The submission of learned counsel for the appellant that the appellant had no intention to cause death of his wife and, thus, only a case under Section 325 is made out is also without any force and the same is liable to be rejected.
21. In the case of *State of Madhya Pradesh v. Ram Prasad*, reported at AIR 1968 Supreme Court 881, one, Ram Prasad, was living with his mistress at Munar. There were frequent quarrels between them. One day he put kerosene oil on her and set her on light. His mistress was extensively burnt. The appeal filed by the State in a case, which was tried by the

Court of Session under Section 302 IPC, the person was convicted by the Session Judge under Section 324 IPC, the High Court convicted him under Section 304 Part II and sentenced him to four years rigorous imprisonment. Paras 8 and 10 read as under:

“(8) The question then arises, what was the offence which Ram Prasad can be said to have committed? The offence of causing injury by burning is a broad spectrum which runs from s 324 causing- simple injury by burning through S 326, namely, causing grievous injury by burning to the two major offences, namely, culpable homicide not amounting to murder and even murder itself. The Sessions Judge chose the lowest end of the spectrum which is surprising enough, because the burns were so extensive that they were certainly grievous by all account. The High Court placed the offence a little higher, namely, culpable homicide not amounting to murder. We think that the matter goes a little further than this. As death has been caused the question has to be considered in the light of homicide to determine whether the action of Ram Prasad calls within culpable homicide not amounting to murder or the higher offence of murder itself. Here we see that death has actually been caused by the criminal act; in other words, there has been homicide and since it is not accidental or suicidal death, responsibility for the homicide, in the absence of any exceptions or extenuating circumstances, must be borne by the person who, caused it. The High Court has apparently stopped short by holding that this was a case of culpable homicide not amounting to murder. The question is whether the offence falls in any of the clauses of S. 300 Indian Penal Code. In this connection it is difficult to say that Ram Prasad intended causing the death of Mst. Rajji although it might well be the truth. That he set fire to her clothes after pouring kerosene oil is a patent fact and therefore the matter has to be viewed not only with regard to the firstly of S. 300, but all the other clauses also. We do not -wish to consider the second and the third clauses, because the question then would arise what was the extent of the injury which Ram Prasad intended to cause or knew would be caused to Mst. Rajji. That would be a matter of speculation. In our opinion, this matter can be disposed of with reference to clause fourthly of S. 300. That clause reads as follows :-

..... culpable homicide is murder..... if the person committing the act knows that it is so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death, and commits' such act without any excuse for incurring the risk or causing death or such injury as aforesaid."

It is obvious that there was no excuse for Ram Prasad to have taken the risk of causing the death or such bodily injury as was likely to cause death. The question therefore arises whether Ram Prasad knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, so as to bring the matter within the clause. Although clause fourthly is usually invoked in those cases where there is no intention to cause the death of any particular person (as the illustration shows) the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death. In the present case, Ram Prasad poured kerosene upon the clothes of Mst. Rajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within 4thly of S. 300, Indian Penal Code. In other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder.

(10) We accordingly allow this appeal, substitute the conviction under S. 302 of the Indian Penal-Code in place of the conviction under S. 304 Part II and sentence Ram Prasad to imprisonment for life.

22. The case in hand is somewhat similar to the case of *State of Madhya Pradesh* (supra), however, the only difference is that in the said case kerosene oil was thrown on the victim and then set a light, whereas in the present case the acid was thrown on the deceased. It cannot be said that the appellant was not aware that in case he throws a jug full of acid it would not cause death of Khushi.
23. We may notice that in a study conducted by Cornell University in January, 2011, 153 acid attacks were reported in the media from the year 1999 to 2010.
24. Taking note of the recent trend, the Supreme Court of India in the case of *Laxmi v. Union of India and Others*, [2013(9) scale 291] (Decided on 18.7.2013) was forced to issue following directions with regard to over the counter sale of acid. Relevant paras read as under:

“7. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:

- (i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.
- (ii) All sellers shall sell acid only after the buyer has shown:
 - a) a photo ID issued by the Government which also has the address of the person.
 - b) specifies the reason/purpose for procuring acid.

- (iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.
- (iv) No acid shall be sold to any person who is below 18 years of age.
- (v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs.50,000/-
- (vi) The concerned SDM may impose fine up to Rs.50,000/- on any person who commits breach of any of the above directions.

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:

- (i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.
- (ii) A person shall be made accountable for possession and safe keeping of acid in their premises.
- (iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

9. The concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.”

- 25. Throwing of acid on helpless victims, mostly women, is on the rise, which is a dastardly and cowardly act and the same is to be controlled with an iron hand. It sometimes leaves them disfigured, blind and, as in this case, even death.
- 26. The facts of the case at hand would show that the appellant had visited the shop of the deceased and left after quarreling with her only to return with a jug of acid. The burns by the acid have resulted into the death of the

deceased. Thus, it cannot be said that there is any error in the judgment of the trial court. We find no ground to interfere in the same. Accordingly, appeal is dismissed.

G.S.SISTANI, J

G.P. MITTAL, J

AUGUST 30, 2013

msr