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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : 30th August, 2013
Judgment Pronounced on : 20th September, 2013

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CRL.A.NO.1465/2010

SUMAN MITTAL & ANR

..... Appellants

Through : Mr.V.Madhukar and Mr.Jayant Pawar, Advs.

versus

STATE & ORS.

..... Respondents

Through : Ms.Rajdipa Behura, Adv. for respondent no.1.

Mr.Dinesh Garg, Adv. for respondents no.2 to 4.

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 parents of deceased, Preeti Sharma (hereinafter referred to as the deceased), under Section 372 of the Code of Criminal Procedure, against the judgment of acquittal dated 17.8.2010, passed by learned Additional Sessions Judge, Delhi, in Sessions Case No.70/08, whereby respondents no.2 to 4 have been acquitted for the offences punishable under Section 498A/304B of the Indian Penal Code.
2. The case of the prosecution, as noticed by the trial court, is as under:
“1. DD No. 5A was registered on 17.04.2000 at PS New Ashok Nagar regarding admission of a lady with 95% burn injuries in Safdarjung Hospital. PW-6 SI Rajbir Singh reached at Safdarjung Hospital and took MLC of injured Preeti Sharma. PW-6 recorded her statement and informed about the occurrence to the SDM and

requested him to record statement of Preeti Sharma. SDM PW-19 Ravi Dadhich recorded statement of injured Preeti. Preeti Sharma died in hospital on 19.04.00. After postmortem dead body was handed over to parents of Preeti Sharma. On 21.04.00 on the recommendation of SDM this FIR No. 69/00 under section 498A/304B was recorded.

2. After registration of FIR, further investigation was conducted by PW-6. From the spot, he seized various clothes in torn condition, a cane of kerosene oil, match box, one match stick and some pieces of broken bangles. PW-6 also recorded the statement of witnesses. Thereafter further investigation of this case was marked to D.I. U. Cell East District. Further investigation of this case was conducted by PW-22 Inspector A.S. Dhaka. He recorded statement of witnesses. Accused Raja was arrested on 06.05.00. Accused Rajesh Sharma and Saroj Devi Sharma, parents of accused Raja were formally arrested as they were granted anticipatory bail by Delhi High Court. After investigation police filed chargesheet against three accused persons under sections 498A/304B IPC.

3. Charges under sections 498A/304B/34 IPC were given to the accused persons to which they pleaded not guilty and claimed trial.”

3. The prosecution has examined 24 witnesses.
4. Mr. Madhukar, learned counsel for the appellants, submits that the impugned judgment rendered by the trial court is contrary to the evidence and the same is not in conformity with the law relating to matrimonial cruelty as contemplated under Section 498A IPC. Counsel further submits that the daughter of the appellants died in unnatural circumstances within seven years of her marriage, she was repeatedly harassed for dowry and

upon her resistance to the same she was subjected to matrimonial cruelty. Counsel next submits that the findings of the trial court, more particularly in paras 34 and 35 of the impugned judgment, are contrary to the facts. Counsel also submits that the deceased was subjected to cruelty on account of dowry a few hours before the incident as Raja, respondent no.2, had demanded money from the mother of the deceased and upon her failure to pay the same he had sought to leave the deceased at her matrimonial home itself. Thus, the respondent no. 2 had sought to make the matrimonial status of the deceased depending upon the fulfilment of the said demand.

5. It is contended by learned counsel for the appellants that the trial court has failed to appreciate that the incident of demand of dowry soon before the death of the deceased has led to the burning of the deceased, which has been deposed by PW-4, mother of the deceased. In her statement the mother had categorically deposed that few hours prior to the incident of burning, respondent no.2 had come to her house and raised a demand of Rs.20,000/-. Since the appellant no.2, father, was not at home she could not arrange for Rs.20,000/- upon which the respondent no. 2 started fighting with Preeti, threatened her with dire consequences and told her that he would not take her till the money was arranged by the appellants. It is further contended that appellant no.2 had pleaded her daughter to stay back but she insisted on going back with respondent no.2.
6. Another argument has been raised by learned counsel for the appellants that the trial court has failed to appreciate that at the time of the incident the deceased was present behind closed doors along with the husband, respondent no.2, and no reasonable explanation is forthcoming from respondent no.2 so as to explain the cause of death of the deceased.
7. It is next contended by learned counsel for the appellants that respondent

no.2, husband, did not suffer any burn injuries to douse the flames which would have resulted in injuries to his hands. It is further contended that there are material contradictions as two versions have been given out by respondent no.2 to the prosecution witnesses i.e. PW-2 and PW-7 immediately after the incident. It is further contended that PW-7, Rahul Jain, who accompanied appellant no.2 to the hospital in NOIDA, was informed by respondent no.2 that cause of injuries sustained was during cooking whereas PW-2, Vir Singh, was informed that the cause of injuries were self-inflicted. It is also contended that respondent no.2 acted in a suspicious manner with regard to the cause of burns sustained by the deceased.

8. Another leg of the argument of learned counsel for the appellants is that the trial court committed an error in relying upon the dying declaration recorded by the SDM. It is further submitted that the deceased suffered 95% burns and, thus, in the ordinary nature of things she would be incapable or would not be in a position to speak. It is also submitted that the dying declaration bears the thumb impression of the deceased, who was completely burnt.
9. Learned counsel for the appellants also submits that the dying declaration cannot be relied upon as it is not credible for the reason that in the dying declaration the time of the incident has been mentioned as 11.30 p.m. whereas the deceased and respondent no.2 had entered their society complex at 2.00 a.m. (in the night). Further as per the dying declaration the period of marriage between the deceased and respondent no.2 was four months whereas in fact they were married for six months. It is, thus, submitted that the dying declaration does not inspire confidence. Counsel further submits that given the 95% burn injuries, the deceased could not have made any statement to the SDM. Counsel submits that the purported

fitness certificate has overwriting and that too in a different ink, which establishes the collusion between the authorities and respondents no.2 to 4. It is also submitted that Dr. Savita, who signed the fitness certificate, was not examined by the prosecution and PW-13, Dr. Savita, proved her signatures on the fitness certificate. It is next submitted that the dying declaration was not signed by any witness or the Doctor, who signed the fitness certificate.

10. To buttress his argument that the dying declaration is unreliable since the deceased had mentioned the date of incident as 11.30 p.m., reliance is placed on the evidence of PW-12, the chawkidar, to show that the deceased and respondent no.2 had entered the main gate of the flat at 2.00 a.m. (in the night). The evidence of PW-12 reads as under:

“**PW-12** Surinder Nath s/o.Sh.Siddhi Nath aged 41 years, Chokidar, R/o.Jhuggi No.114 Sector 10, Noida U.P. permanent address Village Fulad, PS Paru, Distt. Muzaffarpur Bihar.

On SA.

I am working as guard in AIIMS apartment Vasundhara Enclave Delhi. I know accused Shantanu Raja present in the court, witness correctly identified as in year 2000 he was residing in flat no.28 alongwith his wife. In the night of 16/17 April, 2000 I was on night duty from 8 pm. to 8 am. In that night accused Shantanu along with his wife and entered in the main gate of flats at about 2 am (right) in his car. At about 4 am accused went outside the gate in his car. I did not check the vehicle of accused as I knew accused Shantanu being the resident of society and sticker of the society was affixed on the vehicle. I did not make any entry of the vehicle of accused in the register being the resident of the society. I have brought the original register maintained at the gate for coming and outgoing the vehicle inside the society. The photostate copy of register dated 17-04-00 is Ex.PW-12/A (within 3 pages) original register seen and returned. One copy given to Ld. APP, one copy given to accused persons and one copy retained in judicial file. On the next day i.e. 18-4-00 police recorded my statement.

xxxxxxx by Sh.S.K. Ahluwalia counsel for all accused

In those days the parents of Shantanu was not residing in that flat Vol: Prior to the occurrence they used to reside. I cannot tell when the parents of Shantanu had left the flat before the occurrence. As per the entry of register on 16-4-00 one Bunty Resident of B16 Chander Nagar Ghaziabad has visited at Flat No.28 at 6:05 p.m. Bunty is brother of Preeti. I never heard any complaint of Shantanu with regard to quarrel with his wife. Generally guard used to make entry in the register of the visitors except the resident of the colony. But sometimes visitors reluctant not to make entry in the register then we generally take permission from the resident and thereafter allow the entry of the vehicle. I know Sh.R.K. Mittal who is present in the court today. As per the register entry Mr.R.K. Mittal R/o.B-16, Chander Nagar Ghaziabad had visited in flat no.28 at about 9:45 pm and went from gate at 11 pm on 9-4-00.”

11. Learned counsel for respondent no.1, State, has pointed out that no leave to appeal was filed against the judgment of the trial court.
12. Learned counsel appearing on behalf of respondents no.2 to 4 submits that the deceased and respondent no.2 had a love marriage and they enjoyed a very good relationship. Counsel further submits that the dying declaration of the deceased makes it abundantly clear that respondent no.2 and his family members had no role to play in the death of the deceased. Counsel next submits that the dying declaration is self-explanatory as she had stated that on account of a quarrel with her husband, respondent no.2, on a small matter, since he told her that he would not talk to her, she put herself on fire by pouring kerosene oil. The deceased in her statement had categorically stated that there was no demand for dowry and it was a love marriage of the deceased and respondent no.2 as they were having an affair for the last three years. The deceased also made it clear that her in-laws resided at Bijnor and there was nothing against them.
13. Learned counsel for respondents no.2 to 4 contends that the parents of the deceased and her relations have made false depositions on account of the

fact that they never approved the love marriage between the deceased and respondent no.2 and this forced the deceased and respondent no.2 to get married after running away from their house. Counsel next contends that there is no question of demanding any dowry by respondent no.2 or his family, as respondent no.2 is a well-settled person and carries on the business of property dealing.

14. Learned counsel for respondents no.2 to 4 has placed reliance on the evidence of DW-1 to DW-3 to show that the parents of respondent no.2 were residing at Bijnor. As per the evidence of DW-1, DW-2 and DW-3 the deceased was an acquaintance of respondent no.2 and she had visited their house once or twice; the deceased had informed them of her love; and her parents were interfering in her matrimonial home.
15. We have heard learned counsel for the parties and given our thoughtful consideration to the matter. We have also perused the trial court record, which was summoned. The arguments of learned counsel for the appellants can be summarised as under:
 - The evidence of the parents of the deceased and close relations clearly proves that the deceased was being harassed for demand of dowry, she was subjected to cruelty and harassment by her husband and her in-laws in connection with demand of dowry soon before her death and since the death of the deceased was in unnatural circumstances within seven years of her marriage a presumption under Section 113B of the Indian Evidence Act is against respondents no. 2 to 4 and accordingly Section 304B would be attracted.
 - The dying declaration is neither credible nor trustworthy as Preeti had suffered 95% injuries and she was not in a position to make a statement, which is also evident from the fact that she had made

two factual errors in her statement which she would not have made in case she was in her right senses.

- Doctor has not signed the dying declaration as a witness.

16. Arguments of learned counsel for the respondents can be summarised as under:

- The dying declaration was made before the SDM.
- There was no necessity that the Doctor should have signed the dying declaration as a witness.
- In case there was any tutoring then respondent no.2 would have ensured that there would be no factual error.
- Respondent no.2 made every effort to save the deceased, in the middle of the night he even took help of two of his friends and in case there was anything to hide he would not have done so. Thus the dying declaration is truthful and reliable and consequently the same has been rightly relied upon by the prosecution itself.
- The deceased and respondent no.2 had got married after running away from their house against the wishes of the parents of the deceased and in view thereof there was no dowry and for the same reason being unhappy over the relationship the parents and relations of the deceased have deposed falsely to implicate respondents no.2 to 4.
- Evidence of PW-1, PW-4, PW-5 and PW-20 is unreliable and is exaggerated.

17. Before considering the rival contentions raised by the counsel for the parties it would be useful to recall the principles as laid down by the Supreme Court of India to be followed while considering an appeal against acquittal. While considering an appeal against acquittal, the High

Court has full power to review and consider the entire evidence but only after considering each ground on which the order of acquittal was passed and also giving reasons for not accepting the view expressed by the trial court. The underlying principle is that while reversing the finding of acquittal the High Court must take into account that the presumption of innocence is still available in favour of the accused and in fact would stand strengthened by the judgment of acquittal passed by the trial court. While deciding a leave to appeal filed by the State, in case two views are possible, the High Court must not grant leave if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case the High Court reaches a conclusion that another view can reasonably be taken, then the view which favours the accused should be adopted. Unless the High Court arrives at a definite conclusion that the finding recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective. In the case of *State of Madhya Pradesh Vs. Dal Singh & Ors.* reported at JT 2013 (8) SC 625 the Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant material have been unjustifiably ignored, it would be a compelling reason for interference. In the case of *Rukia Begum Vs. State of Karnataka* AIR 2011 SC 1585 the Apex Court has held that in case two views are possible and the trial court has taken the view favouring acquittal, the High Court should not disturb the finding. In paragraph 8 of the judgment, it was held that:

“8. We have bestowed our consideration to the rival submissions and we are of the opinion that the circumstantial evidence brought against these appellants are not such which lead towards their guilt.

As stated earlier, recovery from these appellants itself has been discarded by the High Court. In our opinion motive alone, in the absence of any other circumstantial evidence would not be sufficient to sustain the conviction of these two appellants. It is worthwhile mentioning here that the trial court on appraisal of the evidence came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt, so far as Rukia Begum and Nasreen are concerned. It is trite that where two views on the evidence are reasonably possible and the trial court has taken a view favouring acquittal, the High Court in an appeal against acquittal should not disturb the same merely on the ground that if it was trying the case, it would have taken an alternative view and convicted the accused. The High court while hearing appeal against the judgment of acquittal is possessed of all the power of appellate court and nothing prevents it to appraise evidence and come to a conclusion different than that of the trial court but while doing so it shall bear in mind that presumption of innocence is further reinforced by acquittal of the accused by the trial court. The view of the trial Judge as to the credibility of the witness must be given proper weight and consideration. There must be compelling and weighty reason for the High Court to come to a conclusion different than that of the trial court. The view taken by the trial court was justified in the facts and circumstances of the case and a possible view and, therefore in our opinion, the High Court erred in setting aside their acquittal.”

18. The present appeal filed by the parents of the deceased is to be considered on the touchstone of the law which has been laid down by the Supreme Court. The main thrust of the argument of counsel for the appellants is that the dying declaration, sought to be relied upon by the trial court in arriving at the decision of acquittal of respondents no.2 to 4, is perverse as the dying declaration is unreliable, the same has not been witnessed by the doctor, it contains factual errors and moreover Preeti was incapable of making a statement as she had sustained 95% burns. This submission of counsel for the appellants is without any force. Ex.PW-19/A is the statement of the deceased recorded by PW-19, which reads as under:

“Q. What is your name?
 A. Preeti Sharma.
 Q. What is your husband’s name?
 A. Raja.
 Q. Where do you live?
 A. Vasundara Enclave
 Q. What is your age?
 A. 21 years.
 Q. How old is your marriage?
 A. Four months.
 Q. How do you receive burn injuries?
 A. I had a quarrel with my husband on some small matter yesterday morning. He told me that he will not talk to me. Thereafter I put myself on fire in drawing room putting kerosene oil at 11:30 P.M.
 Q. Any demand of dowry?
 A. No. It is a love marriage. We were having affair for the last three years.
 Q. Where do your inlaws reside?
 A. Bijnaur. There was nothing against them.”

19. In a recent decision reported in *Rafique @ Rauf & Others v. State of U.P.*, reported at 2013 (7) SCALE 708, the Supreme Court considered in detail the provisions concerning the extent of reliance that can be placed upon the dying declaration. Paras 13 to 20 read as under:

“13. In this context when we make reference to the statutory provisions concerning the extent of reliance that can be placed upon the dying declaration and also the implication of Section 162(2) Cr.P.C. vis-à-vis Section 32(1) of the Evidence Act, 1872, we feel that it will be appropriate to make a reference to the decision of this Court reported in Khushal Rao vs. State of Bombay - AIR 1958 SC 22. Justice Sinha speaking for the Bench after making further reference to a Full Bench decision of the High Court of Madras headed by Sir Lionel Leach, C.J., a decision of the Judicial Committee of the Privy Council and ‘Phipson on Evidence’ – 9th Ed., formulated certain principles to be applied to place any reliance upon such statements. We feel that the substance of the

principles stated in the Full Bench decision and the Judicial Committee of the Privy Council and the author Phipson's view point on accepting a statement as dying declaration can also be noted in order to understand the principles ultimately laid down by this Court in paragraph 16.

14. The Full Bench of the Madras High Court reported in *In re, Guruswami Tevar* - ILR 1940 Mad 158 at page 170 (AIR 1940 Mad 196 at p.200) in its unanimous opinion stated that no hard and fast rule can be laid down as to when a dying declaration should be accepted, except stating that each case must be decided in the light of its own facts and other circumstances. What all the Court has to ultimately conclude is whether the Court is convinced of the truthfulness of the statement, notwithstanding that there was no corroboration in the true sense. The thrust was to the position that the Court must be fully convinced of the truth of the statement and that it should not give any scope for suspicion as to its credibility. This Court noted that the High Court of Patna and Nagpur also expressed the same view in the decisions reported in *Mohamad Arif vs. Emperor* – AIR 1941 Pat.409 (J) and *Gulabrao Krishnaje vs. Emperor* – AIR 1945 Nag. 153 (K).

15. The Judicial Committee of the Privy Council while dealing with a case, which went from Ceylon, which was based on an analogous provision to Section 32(1) of the Indian Evidence Act, took the view that apart from the evidence of the deceased the other evidence was not sufficient to warrant a conviction. It was, however, held that in that case when the statement of the deceased was received and believed as it evidently was by the jury it was clear and unmistakable in its effect and thereby, the conviction was fully justified and was inevitable. The Judicial Committee noted that the factum of a murderous attack, though resulted in the cutting of the throat and the victim was not in a position to speak but yet by mere signs she was able to convey what she intended to speak out, and the said evidence was brought within the four corners of the concept of dying declaration, which formed the sole basis ultimately for the Court to convict the accused, which was also confirmed by the Supreme Court of Ceylon, as well as by the Judicial Committee of the Privy Council.

16. The author Phipson in his 9th Ed., of the book on Evidence made the following observations:

".....The deceased then signed a statement implicating the prisoner, but which was not elicited by question and answer, and died on March 20. It was objected that being begun in that form, it was inadmissible:- Held (1) the questions and answers as to his state of mind were no part of the dying declaration; (2) that even if they were, they only affected its weight, not its admissibility; and (3) that the declaration was sufficient, without other evidence, for conviction *R. v. Fitzpatrick*, (1910) 46 Ir. L.T. 173 (M)."

17. After considering the above legal principles, this Court has set down the following six tests to be applied for relying upon a material statement as a dying declaration:

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (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 pieces 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.” (Emphasis added)

18. We also wish to add that as on date, there is no statutory prescription as to in what manner or the procedure to be followed for recording a dying declaration to fall within the four corners of Section 32(1) of the Evidence Act. The presence of Magistrate; certification of the doctor as to the mental or the physical status of the person making the declaration, were all developed by judicial pronouncements. As has been repeatedly stated in various decisions, it will have to be found out whether in the facts and circumstances of any case the reliance placed upon by the prosecution on a statement alleged to have been made by the deceased prior to his death can be accepted as a dying declaration, will depend upon the facts and circumstances that existed at the time of making the statement. In that case it would mainly depend upon the date and time vis-à-vis the occurrence when the statement was alleged to have been made, the place at which it was made, the person to whom the said statement was made, the sequence of events, which led the person concerned to make the statement, the physical and mental condition of the person who made the statement, the cogency with which any such statement was made, the attending circumstances, whether throw any suspicion as to the factum of the statement said to have been made or any other factor existing in order to contradict the statement said to have been made as claimed by the prosecution, the nexus of the person who made the statement to the alleged crime and the parties involved in the crime, the circumstance which made the person to come forward with the statement and last but not the least, whether the said statement fully support the case of the prosecution.

19. In this context, we can also make a reference to a decision of this Court reported in *Cherlopalli Cheliminabi Saheb and another vs. State of Andhra Pradesh* - (2003) 2 SCC 571, where it was held that it was not absolutely mandatory that in every case a dying declaration should be recorded only by a Magistrate. The said position was reiterated in *Dhan Singh vs. State of Haryana* – (2010) 12 SCC 277 wherein, it was held that neither Section 32 of the Evidence Act nor Section 162(2) of the Cr.P.C., mandate that the

dying declaration has to be recorded by a designated or particular person and that it was only by virtue of the development of law and the guidelines settled by the judicial pronouncements that it is normally accepted that such declaration would be recorded by a Magistrate or by a doctor to eliminate the chances of any doubt or false implication by the prosecution in the course of investigation.

20. In a recent decision of this Court reported in *Sri Bhagwan vs. State of U.P.* – 2012 (11) SCALE 734, to which one of us was a party, dealt with more or less an identical situation and held as under in paragraphs 21 and 22:

“21. As far as the implication of 162 (2) of Cr.P.C. is concerned, as a proposition of law, unlike the excepted circumstances under which 161 statement could be relied upon, as rightly contended by learned senior counsel for the respondent, once the said statement though recorded under Section 161 Cr.P.C. assumes the character of dying declaration falling within the four corners of Section 32(1) of Evidence Act, then whatever credence that would apply to a declaration governed by Section 32 (1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 Cr.P.C. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such.

22. Keeping the above principle in mind, it can be stated without any scope for contradiction that when we examine the claim made on the statement recorded by PW-4 of the deceased by applying Section 162 (2), we have no hesitation in holding that the said statement as relied upon by the trial Court as an acceptable dying declaration in all force was perfectly justified. We say so because no other conflicting circumstance was either pointed out or demonstrated before the trial Court or the High Court or before us in order to

exclude the said document from being relied upon as a dying declaration of the deceased. We reiterate that having regard to the manner in which the said statement was recorded at the time when the crime was registered originally under Section 326 IPC within the shortest time possible within which it could be recorded by PW-4 in order to provide proper medical treatment to the deceased by sending him to the hospital, with no other intention pointed out at the instance of the appellant to discredit contents of the said statement, we hold that the reliance placed upon the said statement as the dying declaration of the deceased was perfectly justified. Having regard to our above conclusion, the said submission of the learned counsel for the appellant also stands rejected.”

20. Applying the settled position of law to the facts of this case, the submission made by learned counsel for the appellants that since the Doctor on duty did not witness the dying declaration, thus, the same is not credible, is without any force. It is not mandatory that the Doctor on duty should have been a witness in the dying declaration provided the dying declaration is held to be reliable and trustworthy.
21. We may notice that PW-13, Dr.Savita Arora, has proved the MLC, Exhibit PW-13/A, and the fitness certificate given by Dr.Savita, Exhibit PW-13/B. It may further be noticed that this witness was not cross-examined with regard to the credibility of the fitness certificate. The evidence of PW-13 reads as under:

“PW-13: Dr.Savita Arora, Specialist Plastic Surgery, Safdarjung Hospital New Delhi on sa:

I have been deputed by the MS to testify on behalf of Dr.Rajender Kumar and Dr.Swati. Who have left the services of the hospital.

I have seen MLC No.280118 dt. 17.4.00 at 06.45 AM, the same is in the handwriting of Dr.Rajender Kumar who's handwriting and signatures I identify being conversant with the

same as he was my junior. The MLC is Ex.PW13/A which bears his signature at point A. It reads as under:

That alleged history of sustaining burn injury, when she poured kerosene oil on her body set herself on fire after quarrel with her husband. Time of burn was 2 AM on 17.4.00. Time of admission was 6.45 AM on 17.04.00. She was brought by her husband Raja. History was given by herself. General condition was critical. She sustained 95% thermal burns. The MLC is in the handwriting of Dr.Rajender and is Ex.PW13/A and his signature circled at point A.

I have also perused the endorsement made by Dr.Swati on the application of the IO with regards to status of fitness of the patient.

Fitness for the statement was given by Dr.Swati at 1.15 PM on 17.04.00. I am conversant with her handwriting. She had worked under me. Her endorsement is Ex.PW13/B in encircled portion with her signature at point A.

Xxxxxxx by Shri S.K. Ahluwalia, Counsel for the accused persons

It is correct that the permanent address of the Doctor's are in the administrative Branch. I have not checked the address. The MLC and other report were not prepared in my presence. I have no personal knowledge of these MLC and other report. The history was given by the patient herself."

22. It has also been argued by learned counsel for the appellants that the victim had suffered 95% burn injuries and, thus, she would not be in a fit state to give the statement and there were two factual errors in the dying declaration, firstly, with regard to the time of incident and, secondly, the duration of marriage.
23. Since Dr.Rajender Kumar, who was working as a Junior to PW-13, Dr.Savita Arora, had left the service of the hospital, PW-13 has proved the MLC, Exhibit PW-13/A, prepared by Dr.Rajender. PW-13 has also proved the endorsement made by Dr.Savita on the application moved by

the IO, i.e. Exhibit PW-13/B regarding the patient being fit to make a statement. The statement was recorded by the SDM of the area, PW-19, who has specifically stated that just before the recording of the statement of Preeti, he had ensured from the Doctor on duty regarding condition of Preeti, who was declared fit for statement on 1.15 p.m. on 17.4.2000. Thus this submission made by counsel for the appellants is also without any force.

24. It would be useful to refer to a recent decision of the Supreme Court *Surinder Kumar Vs. State of Punjab*, reported in 2013 (1) RCR (Criminal) 191, wherein the Apex Court has considered various decisions where the courts have accepted the dying declaration although the burn injuries were 90% and even 100%. Relevant paragraphs of the judgment are reproduced below:

“Discussion and conclusion:

15. The only submission before us was that the dying declaration given by Kiran Bala should not be accepted. The reasons given for this were that she had 90% muscle deep burns and as per the post-mortem report the superficial skin had peeled off. It was argued that with such a high degree of burns, it cannot be said that Kiran Bala was in a condition to make a statement and secondly she could not have signed the statement or even affixed her thumb impression. It was submitted that the dying declaration is a very detailed one and it is not expected that a person in that condition could make such a detailed dying declaration.

16. We are not at all impressed by any of these submissions. There are a large number of decisions that have been cited before us by learned counsel for the State where persons with 90% burns have given a dying declaration and that has been accepted. For example, in *Amit Kumar v. State of Punjab*, (2010) 12 SCC 285 the victim had 90% burns and yet her statement was accepted. This Court noted, inter alia, that the victim did not unfairly implicate anybody who had not participated in the crime. This Court relied on ten principles governing a dying declaration as mentioned in *Paniben v. State of Gujarat*, (1992) 2 SCC 474 to conclude that there was

no reason to disbelieve the dying declaration given by the victim in that case.

17. Similarly, in *Govindappa v. State of Karnataka*, (2010) 6 SCC 533 the victim had 100% burn injuries and yet she was found to be in a fit state of mind to give her statement and affix her left thumb impression on the statement. The dying declaration was accepted by this Court on the evidence of the doctor that the victim was in a position to talk.

18. In *Sukanti Moharana v. State of Orissa*, (2009) 9 SCC 163, the victim had 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface and yet her dying declaration was accepted after considering the principles laid down in Paniben.

19. In *Kamalavva v. State of Karnataka*, (2009) 13 SCC 614, reference was again made to Paniben. It was noted that the doctor who was present at the time of recording the dying declaration had attached a certificate to the effect that it was recorded in his presence. This Court rejected the technical objection regarding the non-availability of a certificate and endorsement from the doctor regarding the mental fitness of the deceased. It was held that the view taken by this Court in numerous decisions is that this is a mere rule of prudence and not the ultimate test as to whether or not the dying declaration was truthful or voluntary.

20. In *Satish Ambanna Bansode v. State of Maharashtra*, (2009) 11 SCC 217, the victim had 95% superficial to deep burns and after referring to Paniben, her dying declaration was accepted by this Court.

21. Insofar as the case before us is concerned, we may only note that there is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question-answer form. There may be occasions when it is possible to do so and others when it may not be possible to do so either because of the prevailing situation or because of the pain and agony that the victim might be suffering at that point of time.

22. It is also not obligatory that either an Executive Magistrate or a Judicial Magistrate should be present for recording a dying declaration. It is enough that there is evidence available to show that the dying declaration is voluntary and truthful. There could be

occasions when persons from the family of the accused are present and in such a situation, the victim may be under some pressure while making a dying declaration. In such a case, the Court has to carefully weigh the evidence and may need to take into consideration the surrounding facts to arrive at the correct factual position.”

25. As far as the submission made by learned counsel for the appellants that the dying declaration cannot be relied upon since it contains two factual errors with regard to the time of the incident and duration of marriage is concerned, the Supreme Court in the case of *State of Madhya Pradesh v. Dal Singh and Others*, reported at JT 2013 (8) SC 625, where the victim had suffered 100% burn injuries, dealt with a similar argument where two contradictions were made in the dying declaration, firstly, as to who had put the kerosene oil on the victim and, secondly, who had lit the fire. The Apex Court has held that since the patient was suffering from great mental and physical agony it is not expected a person to give an exact version of the incident. Para 26 of the judgment reads as under:

“26. The contradictions raised by the defence in the two dying declarations, as regards who had put the kerosene oil on her, and who had lit the fire have been carefully examined and explained by the trial court. Furthermore, in such a state of mind, one cannot expect that a person in such a physical condition, would be able to give the exact version of the incident. She had been suffering from great mental and physical agony. Upon proper appreciation of the evidence on record, the trial court had found the dying declarations to be entirely believable, and worth placing reliance upon, but the High Court on a rather flimsy ground, without appreciating material facts, has taken a contrary view. In our opinion, as the defence did not put any question either to the executive magistrate, or to the I.O., or to the doctors who had examined her or conducted the post-mortem, with respect to whether any part of the thumb had skin on it or not, as in both the dying declarations, ridges and curves had been clearly found to exist, we do not see any reason to dis-believe the version of events provided by the executive magistrate and the I.O., who had recorded the dying declarations. No suggestion was

made to either of them in this regard, nor was any explanation furnished with respect to why these two independent persons who had recorded the dying declarations, would have deposed against the respondents accused. In the event that both of them had found the deceased to be in a fit physical and mental condition to make a statement, there exists no reason to disbelieve the same. In light of such a fact-situation, the concept of placing of a thumb impression, loses its significance altogether.”

26. Another decision rendered in the case of *Rakesh and Another v. State of Haryana*, reported at 2013 (4) SCC 69 the Supreme Court has held that even when there was wrong description of names in the dying declaration, the dying declaration still be held to be reliable.
27. Accordingly, we are of the view that in case a wrong time was mentioned or it was stated that the deceased and respondent no.2 were married for four months instead of six months, this by itself would not make the dying declaration unreliable. Moreover we find the factual errors made by Preeti to be rather insignificant having regard to the nature of the statement made by her.
28. The argument raised by learned counsel for the appellants that the dying declaration does not bear the signature of the attending Doctor as a witness is not acceptable to this Court as a fitness certificate was given by the concerned Doctor and, thus, in our view it is not necessary that the Doctor should have been a witness.
29. As far as the submission of the counsel for the appellants with regard to the demand of dowry soon before the death of the deceased is concerned, the same has been discussed by the trial court in the following manner :

“36. In view of the proposition of law laid by Apex Court, it has to be seen whether prosecution has been able to prove that deceased Preeti was subjected to cruelty or harassment in connection with demand of dowry soon before her death. It is a case of love marriage where deceased had run away from her house and has

married with accused Raja against wishes of her family. It is was within four months of marriage, deceased set herself on fire and thereafter succumbed to burn injuries. As already discussed, regarding the alleged demand of dowry made by accused Raja and other two accused persons, PW1, PW4, PW5 and PW20 have made consistent allegations of dowry demand against all three accused. Statement of PW1 is silent regarding any specific dowry demand made by accused persons to the parents of the deceased. PW4 and PW5 have deposed that accused Rajesh and Saroj used to ask their daughter to bring cash money from her parents in dowry. PW4 Raj Kapoor has made specific allegations that in December, 1999, he had given Rs.50,000/- to accused Rajesh Sharma when he had come to his house along with accused Raja and his daughter. PW-4 and PW-5 have nowhere alleged that for the alleged demand of dowry, if either in their presence, Preeti was harassed and tortured by either of the accused persons or if Preeti had ever told that she is being harassed or tortured by accused persons for demand of dowry. Except the alleged incident which took place on 16.04.00 in their house, which as per prosecution, was only witnessed by complainant PW-5 and neither PW4 nor PW-20 was present there at that time.

35. As already discussed, PW-3 Smt Reeta Singh who is neighbourer of the parents of the deceased Preeti has deposed that the mother of Preeti had told her that accused Raja and his mother used to torture her daughter for dowry but statement of PW-5 who is mother of the deceased is silent if Preeti had ever told her that her harassment and torture for demand of dowry either by accused Raja or his mother accused Saroj . Statement of PW-3 is contrary to the statement of PW-4 hence is not credible and not worth reliance.

37. PW-20 has deposed exaggerated version of entire story, starting from marriage of the deceased with Raja and till her death on 18.04.00. As already discussed, PW20 has alleged that accused Rajesh had told him that for getting money, he has hatched conspiracy to extract money from them. As per PW20, he had paid Rs.250/- to each guest who appeared in the marriage. The statement of PW-20 roping Rakesh and Sushila, uncle and aunty of accused Raja in the demand of dowry is contrary to the statement of PW-4 and PW-5. PW-20 has further deposed that on 17.04.00 when he reached at ICU ward Safdarjung Hospital, attendants of

neighbourer patient of UP had told him that accused Raja had come there with some police officials and some other persons and had taken thumb impressions of Preeti on some papers and Preeti was semi conscious and murmuring in low voice “ Mujhe Jala Diya, Mujhe Jala Diya”. This statement of PW-20 is in contradiction to the Statements made by PW-4 and PW-5 who were also present in the hospital at that time. PW20 does not stop here. He has further made allegations against first IO HC Rajbir Singh and against IO Inspector A.S. Dhaka (PW22) and SDM Ravi Dadhich (PW19) for not acting fairly and being in collusion with accused persons. Regarding all these allegations, there is not a single whisper in the statement of PW-4 and PW-5. Because of these massive improvements made by PW-20 in his statement vis a vis statement of PW-4 and PW-5, his testimony is not found credit worthy.”

30. We have also carefully examined the testimonies of the appellant, PW-1, PW-4, PW-5 & PW-20. As per the testimony of PW-4, after the marriage in the year 1999 respondent no.2 used to visit their house along with the daughter and used to demand money in dowry. The parents of the respondent no.2 also used to ask the deceased to bring cash from her parents. No exact date or any specific demand has been shown to have been made. It has also been deposed that in the year 1999 a sum of Rs.50,000/- was given to the respondent no.2 besides jewellery and other dowry items at the time of marriage. It may be noticed that the date of incident in this case is 17.4.2000. According to this witness on 15.4.2000 in his absence the respondent no.2 had come to his house at midnight and demanded Rs.20,000/- and this is the incident of demand of dowry soon before the death of Preeti. The mother of the deceased has deposed on the similar lines and given the reason for demand of Rs.20,000/- as it was to be re-paid to one Gurpreet Singh Dhara. PW-10, Gurpreet Singh Dhara has admitted that he has given Rs.20,000/- to respondent no.2, but he had never asked respondent no.2 to return the money, although respondent no.2 had offered to return the money, but he did not accept the same by

saying that it may be treated as a wedding gift.

31. In the case of *Amar Singh v. State of Rajasthan*, reported at 2010 (3) Apex Court Judgments 258 (S.C.), it has been held as under:

“23. PW2 (father of the deceased) has not stated in his evidence before the Court that Jagdish and Gordhani, in any way, subjected the deceased to any harassment or cruelty. PW4 (mother of the deceased), however, has stated that the deceased used to complain about the demand of a Scooter by Girdhari and harassment by her mother-in-law Gordhani, but PW-4 has not stated what was the exact act of Gordhani by which the deceased felt harassed. The evidence of PW-5 (brother of the deceased) is that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and they were demanding a Scooter or Rs.25,000/- for a shop and that when the deceased came home one month prior to her death, she complained that her mother-in-law and all other in-laws used to torture her and taunt her that she did not bring anything, but PW5 has not described the exact conduct of the mother-in-law and other in-laws on account of which the deceased felt tortured and taunted. On the other hand, the evidence of PW4 is clear that Amar Singh used to taunt her that she has come from a hungry house. Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the deceased but there was no such evidence in the case of Jagdish and Gordhani. A prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh's family.

24. In *Kans Raj v. State of Punjab and Others*, 2000 (2) Apex Court Journal 221 (S.C.) : 2000 (5) SCC 207, this Court cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence

relating to dowry deaths. In the aforesaid case, this Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

25. We, therefore, do not find any substance in the contention of Dr.Singhvi that the High Court should have sustained the conviction of Jagdish and Gordhani and we accordingly dismiss this appeal.”

32. In the present case, the mother and father of the deceased have not been able to establish that any specific demand of dowry was made by respondents no.2 to 4 either soon after the marriage or soon before the incident. The alleged demand of Rs.20,000/- a day before the incident is not found to be reliable and, thus, it cannot be said that there was any live link between the demand of dowry and death of Preeti, more particularly, in view of the dying declaration of Preeti.
33. The testimony of PW-20 is most unreliable, although he is the uncle of the deceased, but he has given details of payments made and monies spent which have not even been stated by the mother and father of the deceased. It may also be noticed that although the parents of the husband (respondent no.2) i.e. respondents no.3 and 4 were staying at Bijnor even they were not spared in making allegations, which shows that the testimonies of PW-1, PW-4, PW-5 and PW-20 are not reliable; and more particularly when their own daughter has given her husband and her in-laws a clean-chit.
34. The submission of learned counsel for the appellants that since the victim died within seven years of her marriage and that too under unnatural circumstances as she was being harassed for dowry soon before her death, the case would squarely be covered by Section 304B of the IPC is also without any force. There is no evidence to support this submission of

counsel for the appellants and the trial court has rightly relied upon the dying declaration of the deceased in which she has given a clean chit to respondent no.2 and her in-laws.

35. Another argument, which has been raised by learned counsel for the appellants, is that respondent no.2 did not take appropriate steps to save the life of Preeti. We may notice that respondent no.2 was with Preeti, he took her to the hospital and made all efforts to save her including calling up his friends in the middle of the night to seek their help. Thus, it cannot be said that respondent no.2 did not make any effort to save his wife.
36. For the reasons aforesaid, we find no infirmity in the view taken by the trial court and in fact this is the only view which is possible. It is most unfortunate that young daughter of the appellants died within four months of her marriage with respondent no.2; but taking into consideration the evidence on record and the dying declaration which we find credible and trustworthy, we find no reason to differ from the view taken by the trial court. The appeal is without any merit and the same is dismissed.

G.S. SISTANI, J

G.P. MITTAL, J

SEPTEMBER 20th, 2013
msr/ssn