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

(i) + **CRL.A. 124/2002**

RAJ BALA

..... Appellant

Through: Mr. Amit Sharma & Mr. Aditya  
Bhardwaj, Advocates

Versus

STATE

..... Respondent

Through: Mr. Vinod Diwakar, Additional  
Public Prosecutor with SI Ajay  
Kumar

(ii) + **CRL.A. 125/2002**

LAXMAN

..... Appellant

Through: Mr. Amit Sharma & Mr. Aditya  
Bhardwaj, Advocates

versus

STATE

..... Respondent

Through: Mr. Vinod Diwakar, Additional  
Public Prosecutor with SI Ajay  
Kumar

(iii) + **CRL.A. 126/2002**

SNEH & ORS.

..... Appellants

Through: Mr. Amit Sharma & Mr. Aditya  
Bhardwaj, Advocates

versus

STATE

..... Respondent

Through: Mr. Vinod Diwakar, Additional  
Public Prosecutor with SI Ajay  
Kumar

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

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**ORDER**  
**08.05.2014**

In the above captioned three appeals, appellants are the husband, mother-in-law, sisters-in-law (*nanad & jethani*) of deceased who are tried in FIR No. 276/1999, under Sections 498-A/304/34 of IPC, registered at police station Dabri, Delhi and vide impugned judgment, they have been held guilty for offence under Section 326/34 of IPC and vide impugned order of 31<sup>st</sup> January, 2002 appellants have been sentenced to rigorous imprisonment for three years with fine of ₹1,000/- each with default clause.

Facts of this case are noted in detail in the opening paragraph of the impugned judgment and need no reproduction. Suffice would it be to note that appellant- *Laxman* was married with one – *Manju* on 21<sup>st</sup> April, 1998 and she had died on 13<sup>th</sup> May, 1999 due to 55% burn injuries sustained on 18<sup>th</sup> April, 1999 at her matrimonial house. As per the prosecution case, *Manju* (hereinafter referred as the ‘deceased’) had infact died in her parental house after being discharged from the hospital. It is the prosecution case that on 18<sup>th</sup> April, 1999, at around 3:00 a.m. (night), appellants had poured kerosene oil over *Manju* and her husband- *Laxman* had put her on fire.

Prosecution relies upon dying declaration (*EX. PW-4/A*) and the alleged history given by deceased to *Dr. Devesh* (*PW-8*). The alleged history recorded in MLC (*EX. PW-8/A*) of deceased reveals that she had disclosed to the doctor that she was set on fire by the appellants. Prosecution had also got examined in evidence parents of deceased (*PW-*

1 & PW-2) and husband's Uncle (PW-6) but their evidence does not incriminate the appellants. This aspect has been taken note of by trial court but while relying upon dying declaration (*EX. PW-4/A*) made to the S.D.M. (PW-4) and the alleged history as given in MLC (*EX. PW-8/1*) of deceased, trial court has convicted appellants for offence under Section 326/34 of IPC.

At the final hearing of these appeals, both sides submitted that since in above captioned three appeals challenge to the common impugned judgment is on identical grounds, therefore, these three appeals can be heard together. Accordingly, these three appeals were heard together and are being disposed of by this common order.

Learned counsel for appellants assails the impugned judgment and order by contending that the dying declaration (*EX. PW-4/A*) and the alleged history in MLC (*EX. PW-8/1*) purportedly given by deceased, is a tutored version and infact the deceased had died accidentally by burning while lighting a lamp. It was pointed out by learned counsel for appellants that the in the night intervening 17<sup>th</sup> & 18<sup>th</sup> April, 1999, the family of appellants were mourning, as father-in-law of deceased had expired at 6:30 p.m. in the preceding evening and his dead body was lying in the house of appellants and thus, there was no occasion for appellants to have slapped the deceased or to have poured kerosene oil on her and set her on fire. It was pointed out by learned counsel for appellants that prosecution has failed to establish that due to dowry demands, the deceased was subjected to cruelty or was burnt by appellants. It was pointed out that appellants have been acquitted by trial court for offence under Section 498-A of IPC and the said acquittal has

attained finality.

It was contended by learned counsel for appellants that stand taken by appellant-husband before trial court at the stage of recording of his statement under Section 313 of Cr.P.C. has not been taken into consideration by trial court. Attention of this Court was drawn to the answer given to the last question put to appellant-husband while recording his statement under Section 313 of Cr.P.C. It would be relevant to advert to the stand taken by appellant-husband before trial court. It reads as under:-

*“Q: Have you anything else to say?*

*Ans: I am innocent. Manju has never been illtreated. No demand of dowry had ever been made by us. The impression of the toe on the MLC as well as the statement allegedly recorded by the SDM are not of Manju. On the date of occurrence my father Rampat had died at about 6.30 p.m. The name of my wife was Saroj Yadav (prior to her marriage). She was a graduate from Maitri College. The original documents to show her educational qualification, her name and her being my wife are Ex.-D1 to D-4. The parents of my wife used to reside in Janakpuri and the distance between my house and the house of parents of my wife was such that it could be covered in 5 minutes on motor cycle. After the death of my father, I had intimated parents of Manju about death of my father. The parents of Manju had come to my house to console me and my other family members. Since the sun had already set, therefore, it was decided by us that the cremation of my father shall take*

place on the next day. We had intimated our relations about death of my father. A number of relations numbering around 25/30 had infact reached our house on the date of death of my father (within few hours of his death). I and my wife were residing separately in one room of house No. RZ 603. My mother and my sister-in-law (bhabhi) used to reside separately though in the same house. Food used to be prepared in the same room in which I and my wife used to reside. Women folk, who had come to console were sitting in one room. Manju was also sitting with them in that room (other than my room). Men folk were sitting in 'angan'. Some of the ladies had asked Manju to go to kitchen i.e. my room to prepare tea. Manju had gone to prepare tea. The bulb of my room had fused on that day. She had lit the kerosene lamp which was without chimney (the glass cover). All of a sudden her clothes caught fire accidently from the kerosene lamp. In this manner she had sustained the burn injuries. We had informed the parents of Manju. They had also reached there within a short period/ time. Parents of Manju and Mausai of Manju had come to our house on receipt of information of burning of Manju. All of us had enquired from Manju as to how had she sustained to burn injuries. She had told us including the parents and Mausai of Manju that she had sustained the burn injuries accidently while she was igniting the kerosene lamp. She was removed to hospital by my uncle Jaya Singh, myself, parents of Manju and her Mausai. First of all we had taken her to Chanan Devi

*Hospital. From there she was taken to Safdarjung hospital. Mausi of Manju was instigating and inciting Manju and whatever had been recorded by the doctor on duty in Safdarjung Hospital, the same was told by Mausi of Manju and not by Manju herself. The name of Mausi of Manju is Kailash.”*

Attention of this court was also drawn by learned counsel for appellants to impugned judgment to point out that trial court has dealt with the aspect of deceased being tutored by *Smt. Kailash*- her aunt, while cryptically observing as under:-

*‘The presence of Smt. Kailash at the time of examination of Manju by PW-8 is neither here nor there.’*

It was asserted by learned counsel for appellants that the aspect of deceased being tutored by *Smt. Kailash*- her aunt, has been accepted by trial court but still the alleged history given by deceased to doctor (PW-8) has been erroneously relied upon by trial court. It was pointed out by learned counsel for appellants that merely because deceased had sustained burn injuries on upper portion of her body, it would not rule out the probability of the said burn injuries being sustained by accidental fire and trial court has erred in observing that the sustaining of burn injury by deceased in upper portion of body rules out the accidental fire. Reliance was place upon Apex Court decision in *Muneer Khan & ors. Vs. State of Madhya Pradesh* (2002) 9 SCC 523 to contend that in a similar case, such dying declaration was not relied upon in view of the fact that the ocular version did not incriminate the accused. Thus, it is submitted on behalf of appellants that afore-referred version of appellants is quite probable and so, conviction of appellants for offence in question is unsustainable

and deserves to be set aside.

Learned Additional Public Prosecutor for respondent-State supports the impugned judgment and submits that even if parents of deceased and uncle of husband of deceased have not supported the prosecution case but still on the basis of the dying declaration (*EX. PW-4/1*) and alleged history given in MLC (*EX. PW-8/1*) given by deceased, appellants are liable to be convicted for the offence under Sections 304/34 of IPC and decision relied upon by appellants' counsel does not advance their case and thus, these appeals are without substance and deserve to be dismissed. Lastly, it was submitted that appellants ought to have been convicted for the charged offence i.e. under Sections 304/34 of IPC.

Upon hearing both the sides and on perusal of evidence on record and impugned judgment, it would be appropriate to take note of the fact that while entertaining these appeals, my brother K. S. Gupta, J. (*as His Lordship then was*), had issued notice vide order of 26<sup>th</sup> April, 2002 to appellants to show cause as to why their conviction under Section 326/34 of IPC be not altered to one under Section 304/34 of IPC.

At the time of final hearing of these appeals, learned counsel for appellants had not addressed any meaningful arguments on the aspect of show-cause notice being issued to appellants regarding alteration of their conviction from one under Sections 326/34 of IPC to one under Sections 304/34 of IPC. The contentions advanced on behalf of appellants are on the merits of this case.

Upon in-depth consideration of the evidence on record and the impugned judgment, this Court is of the considered opinion that

conviction of appellants for the offence under Sections 326/34 of IPC is unwarranted on the face of it, as due to burn injuries sustained by deceased in this incident, she had died within few days. The cause of death is the burn injuries which ultimately proved fatal.

Finding the conviction of appellants for the offence under Sections 326/34 of IPC to be unsustainable, impugned conviction and order on sentence is set aside and trial court is directed to rehear this matter in the light of afore-noted submissions of appellants and to decide as to whether appellants are liable to be convicted for the offence under Sections 304/34 of IPC or not. Such a course is being adopted because it cannot be said that in a case of victim dying within few days of the incident, conviction under Section 326/34 of IPC can be recorded. Since show-cause notices to appellants have been issued by my brother K.S. Gupta, J.(as His Lordship then was), while exercising revisional jurisdiction *suo moto*, therefore, this Court is not deciding these appeals on merits to find out whether appellants are liable to be convicted for the offence under Sections 304/34 of IPC while exercising revisional jurisdiction of this Court, as implied acquittal of appellants for the offence under Section 304/34 of IPC cannot be converted into conviction, even if this Court finds appellants guilty of the offence under Sections 304/34 of IPC, particularly when there is no appeal by the State or a petition by the complainant/first informant of this FIR.

The above-captioned three appeals are accordingly disposed of in aforesaid terms. Trial court record be remitted back forthwith. Appellants are directed to appear before trial court on 24<sup>th</sup> May, 2014 to submit to the jurisdiction of the trial court by furnishing bail-bonds to the

satisfaction of trial court to enable the trial court to hear appellants and to expeditiously decide this FIR case on merits afresh. Trial court be apprised of this order forthwith.

**(SUNIL GAUR)**  
**JUDGE**

**MAY08, 2014**  
r/s