

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

Judgment delivered on: May 12, 2014

**+ CRL.A. 813/2000
LALITA**

..... Appellant

Through: Mr. Sanjay Jain and Mr. Vinay
Arora, Advocates

Versus

The State

..... Respondent

Through: Mr. Sunil Sharma, Additional
Public Prosecutor for the State
with Sub-Inspector Kuldeep Singh,
Police Station Model Town, Delhi.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J

1. By this appeal filed under section 374 of Criminal Procedure Code, 1973 (*hereinafter referred to as 'Cr.P.C.'*), the appellant seeks to challenge the impugned judgment dated 11th December 2000 and order on sentence dated 12th December 2000 passed by the Ld. ASJ whereby the Appellant – Lalita is convicted for committing an offence punishable under Section 302 and 498A of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and was sentenced to undergo imprisonment for life, together with payment of fine of Rs.500/- for the offence punishable

under Section 302 IPC is concerned and for the offence punishable under Section 498A IPC, the appellant was sentenced to undergo Rigorous Imprisonment for a period of one year with fine of Rs.500/- in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The facts germane to the case of the prosecution are that –

"Smt. Meena Kumari was admitted in J.P.N hospital in burnt condition on 10.05.1987 at about 11.50 p.m. I.O of the case (PW 20) reached the hospital and collected MLC of Meena Kumari. In the MLC the alleged history was given as 'being burnt into fire by her mother-in-law, sister-in-law after pouring kerosene oil on her in the house'. When IO had reached the hospital Meena was unfit for statement. However, Om Prakash- husband of Meena was found present. IO again visited J.P.N. Hospital on 11. 05.1987 and at about 12.25 p.m. Smt. Meena was declared fit for giving statement by the doctor. Then IO proceeded to record statement of Smt. Meena in which she implicated her Mother-in-law and Sister-in-law, Lalita for pouring kerosene oil on her and set her on fire due to non-fulfilment of the demand of Rs. 10,000/-.

On the statement of Smt. Meena, IO made endorsement and got a case registered under Sections 498A/307/34 IPC. Thereafter IO moved an application before concerned SDM for recording statement of Meena, SDM reached the hospital and Meena was declared fit for statement at 4.05 p.m. by the doctor. SDM recorded the statement of Meena which was consistent with her earlier statement narrating the same facts."

3. To prove its case the prosecution examined as many as 20 witnesses. After the completion of prosecution evidence, statement of the accused persons were recorded under Section 313 Cr.P.C. wherein the entire incriminating evidence was put to them and in reply they pleaded innocence and false implication at the instance of parents of the deceased. Initially a charge under Section 498A IPC was framed against Om Prakash (husband of deceased), Shanti Devi (mother-in-law of the deceased) and Lalita (Sister in law of the deceased) while the charge under Section 302 IPC was framed only against Shanti Devi and Lalita. Om Prakash and Shanti Devi had died during the pendency of the trial and it was only appellant – Lalita who had faced the trial and was ultimately convicted for both the said offences.

4. On behalf of the Appellant – Lalita, arguments were addressed by Mr. Sanjay Jain, Advocate. The State was led by Mr. Sunil Sharma, learned Additional Public Prosecutor.

5. Addressing arguments on behalf of the appellant, Mr. Sanjay Jain, Advocate vehemently contended that the appellant was not residing at the matrimonial house of the deceased as she got married on 24.11.1986 i.e., much prior to the date of the incident and therefore there is no possibility

of appellant being present in matrimonial house of the deceased on the date of the incident. Learned counsel for the appellant further submitted that husband of the deceased was unemployed and was a drunkard and was thus dependant on his parents for day to day requirements of his family and for spending amount for buying liquor. Learned counsel for the appellant further submitted that the deceased wanted a share in the immovable property, which was in the name of her mother-in-law – Smt. Shanti Devi and on the date of the incident, out of frustration she had burnt herself by pouring kerosene and later falsely implicated the accused persons. Learned counsel for the appellant also argued that the matter was reported to the police by Om Prakash (husband of the deceased) and initially the case was registered under Section 309 of IPC. Learned counsel for the appellant also argued that the police had also recorded the statement of Om Prakash but later on the said statement of Om Prakash was never brought on record by the police. Learned counsel for the appellant also submitted that it was Om Prakash who had informed mother and father of the deceased about the said incident. Learned counsel for the appellant also submitted that the appellant became pregnant sometime in the month of March - April 1987 and this fact can

be well ascertained from the jail records and also interim bail order passed by the court was in her favour. Learned counsel for the appellant also argued that the deceased never gave any dying declaration and the three dying declarations allegedly made by the deceased are fully surrounded by suspicion and doubts. Learned counsel for the appellant also argued that the dying declaration which was alleged to be made by her to the SDM is only a carbon copy and original of the same was not produced by the police. Learned counsel for the appellant also submitted that the fitness of the deceased was never certified by any doctor and therefore also, the alleged dying declaration so recorded by the SDM is not free from doubts. Learned counsel for the appellant also submitted that even the alleged dying declaration recorded by the Investigating Officer Giriraj Singh is surrounded by suspicious circumstances and the same also did not record any certification of fitness of the doctor. Learned counsel for the appellant also argued that no doctor was examined by the prosecution to prove the fact that she was actually examined by the doctor before recording of an alleged dying declaration by the SDM.

6. Learned counsel for the appellant also laid much stress on his argument that for the reasons best known to the Sub-Divisional

Magistrate, the post mortem examination of the deceased was dispensed with. Learned counsel for the appellant also invited attention of the court to the deposition of Sub-Divisional Magistrate (PW-8) who accepted in his cross-examination that the post mortem of the deceased should have been carried out to ascertain the exact cause of her death. The contention raised by learned counsel for the appellant was that the deceased had received 30% burn injuries, as per the Death Summary Report (Ex.PW-16/A) and in the absence of post mortem report, there was no evidence on record to prove that the said 30% injuries were sufficient in the ordinary course of nature to cause her death or was there some other reason which ultimately led to her death. Learned counsel for the appellant also placed reliance on the Modi's Medical Jurisprudence, wherein the view taken is that burn injuries more than 50% can result in the death of the victim. Learned counsel for the appellant also submitted that the appellant had surrendered before the court herself and her conduct during her incarceration in jail remained good and satisfactory throughout. Learned counsel for the appellant also submitted that the appellant has in fact reared up the two daughters of the deceased and got them married besides taking care of her own family.

7. Based on the above submissions, learned counsel for the appellant strongly pleaded for acquittal of the accused and for setting aside the impugned judgment and order on sentence passed by the learned trial court. In support of his arguments, learned counsel for the appellant placed reliance on the following judgments:-

- a) *Abdul Gani Bandukchi & Ors. Vs. Emperor, AIR (30) 1943 Cal.465;***
- b) *In re. : Mallappa Shivlingappa Chanage , AIR 1962 Mys. 82;***
- c) *Moti Singh & Anr. Vs. State of U.P., AIR 1964 SC 900;***
- d) *DOD Ram & Anr. Vs. State of Haryana, (Crl. A. No.178 of 2008, decided by Hon'ble Supreme Court on 30.10.2013);***
- e) *Crl. A. No. 320/1999, Raghubiri Devi vs. State (GNCT of Delhi), decided by Delhi High Court on 25.11.2013;***
- f) *Vinod Kumar vs. State, 181 (2011) DLT 790 (Del)***
- g) *Crl. A. No. 454/2010 titled as Rahis vs. State (NCT) of Delhi, decided by Delhi High Court on 5.5.2010 (Division Bench)***

8. Per contra, Mr. Sunil Sharma, Additional Public Prosecutor for the State strongly contended that the present appellant alongwith her mother committed a very heinous crime of burning the bride who was just about 22-23 years of age. Learned APP further argued that the learned trial court has critically and objectively discussed each and every aspect of the

case before reaching a final conclusion to hold the appellant guilty for the offence punishable under Section 498A/302 IPC. Learned APP further argued that the deceased was facing abuses at the hands of her in-laws and this fact is well established by the complaints made by her to the police official and the injuries suffered by her on a previous incident, as per the MLC report proved on record as Ex.PW-13/A dated 11.1.1987. Learned APP also submitted that the post mortem of the deceased was not carried out pursuant to the request made by the mother of the deceased – Sita Devi and this aspect has been duly clarified by the Sub-Divisional Magistrate (PW-8) in his court deposition. With regard to such request made by Sita Devi seeking waiver of post mortem, Learned APP also argued that the post mortem examination also loses its significance in view of the fact that the cause of death was as a result of the burn injuries suffered by the deceased and it is not the case of the defence that the deceased had suffered some injuries other than the burn injuries. Learned APP also submitted that this is a case of multiple dying declarations made by the deceased and there can be no reason to disbelieve these dying declarations. Learned APP pointed out that the first dying declaration was made to Dr.K.S. Rathoria which was recorded in MLC proved on record

as Ex.PW-20/B and the second dying declaration (Ex.PW-20/C) was recorded by the Investigating Officer Sub-Inspector Giriraj and the third dying declaration was made by the deceased before the Sub-Divisional Magistrate – Ramesh Tiwari (PW-8). Learned APP further submitted that in last two dying declarations the deceased had clearly named her mother-in-law and the present appellant responsible for her burn injuries as both of them had poured kerosene oil on her and then burnt her. In the first dying declaration also, the deceased had clearly stated that it was her mother-in-law and sister-in-law who had poured kerosene oil on her. Learned APP further submitted that the fitness of the deceased duly certified by the doctor was duly recorded in the last two dying declarations. Learned APP also argued that although the first dying declaration which was recorded in the MLC (Ex.PW-20/B) was not believed by the learned trial court as the same was not proved by summoning the doctor who had recorded the dying declaration, but the last two dying declarations were believed to be truthful and genuine as the same were recorded by the Investigating Officer and the Sub-Divisional Magistrate after she was declared medically fit for making her statements. Learned APP also submitted that in both the said dying

declarations the present appellant as well as mother-in-law were clearly named being responsible for pouring kerosene oil on her and then setting her ablaze. Learned APP also argued that the deceased had also made an oral dying declaration to her mother – Sita Devi (PW-2) who gave the same account of the burning of the deceased by the mother-in-law and Lalita and her deposition also remained unchallenged in her cross-examination. Learned APP also argued that even Darshan Singh, adopted father of the deceased also gave the same statement, which further corroborates the said dying declarations made by the deceased before the Investigating Officer and Sub-Divisional Magistrate.

9. Learned APP also argued that the prosecution has also established a clear motive on the part of the appellant and the mother-in-law of the deceased for committing such a heinous act, the same being the deceased not bringing sufficient dowry in the marriage and repeated demands of her in-laws to pay more and more money. Learned APP also referred to the complaint which was lodged by the deceased to Dowry Cell against all the accused persons and the mother-in-law got agitated as the police insisted Shanti Devi to produce the present accused Lalita before the police. Learned APP thus submitted that it was in order to avenge their

humiliation and also to prevent the appearance of the appellant –Lalita before the police, the deceased was turned to death by her mother-in-law and sister-in-law just one day before their appearance before the police.

10. Based on the above submissions, Learned APP for the State submitted that it is an open and shut case and there is no illegality or any kind of perversity in the impugned judgment and order on sentence passed by the learned trial court.

11. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the record of the learned Trial Court.

12. The case in hand relates to an unfortunate death of young daughter-in-law Meena who died due to burn injuries within a period of five years from her marriage with Om Prakash. The incident had occurred on 10.5.1987 at about 9.30 pm. The deceased was married to Om Prakash on 6th February 1982. Two daughters were born out of the said wedlock and they were aged four and half years and one and half years respectively when the said crime had taken place. As per the complaint dated 13.4.1987 lodged by deceased Meena Kumari with the Commissioner of Police, it was alleged that the deceased was being subjected to harassment

for dowry demands. She had also alleged that the mother-in-law and father-in-law had raised a demand of Rs.10,000/- so as to enable her husband to open a shop and for not paying the said amount, she was thrown out of the matrimonial house and after spending six months at the parental house, she brought Rs.10,000/- after forcing her mother to pay the said amount. It was also alleged that even with the said payment of Rs.10,000/- the business could not be run and therefore the shop was closed. It was also alleged that their kitchen was separated by the in-laws and her husband was not doing any work and because of no earnings, her family started starving. This led to raise of further demand by mother-in-law, sister-in-law and her husband for VCP and to satisfy this demand, mother of deceased took a loan of Rs. 5,000/- from the bank and gave them the VCP, where after demand of TV was also raised and mother of the deceased even made a colour TV available to them which she took on instalments. Not satisfied with the demands, fresh demand of Rs.10,000/- was again raised, which could not be satisfied by her mother due to which her husband – Om Prakash started beating her at the instigation of his sister. On 22.12.1986, the deceased was beaten by parents-in-law alongwith the sister-in-law after she was locked into a room alongwith

the children. It was further alleged that if she did not bring the said amount of Rs.10,000/- then she would be killed by them. She also alleged that during the day time, she was beaten by mother-in-law and sister-in-law while during night, her husband used to fight with her after consuming liquor and he even used to beat the children. She also alleged that she used to go to her parental house after she was extended threats of being killed but there also, they will go and fight to harass her family members. She further alleged that just two days back, i.e. on 10.4.1987 all four of them had beaten her and thereafter father-in-law had brought the police and police officials had lifted her from the house where she was reprimanded and then sent back to the matrimonial home. She also complained that she was severely beaten by mother-in-law and both the sisters-in-law but the police had not taken any action to apprehend them. She also alleged that they used to beat her daily but yet no action was taken against them. After levying these allegations she made a request that she should be saved from the atrocities of mother-in-law, father in-law and sisters in law. This complaint was proved on record as Ex.PW-2/A in the evidence of PW-2 – Smt. Sita Devi (mother of the deceased). In the said complaint, the deceased also stated that her sister-in-law –

Lalita got married on 24.11.1986 with her husband Raju. She also mentioned that the other sister-in-law – Neelam has been deserted by her husband and her divorce case was under consideration. She also stated that in the matrimonial home, there were six family members, which comprises of her mother-in-law – Shanti Devi, father in law – Asha Ram, her husband – Om Prakash, Neelam and Smt. Lalita (sisters – in-law) and herself.

13. During the cross-examination of Darshan Singh (PW-3), he had placed on record certain documents, which were exhibited as Ex.PW-3/B and Ex.PW-3/C. Ex.PW-3/B is an original letter dated 14.11.1986 written by the deceased Meena to her mother informing her that she was in great stress as her mother-in-law and father-in-law were harassing her and had also beaten her a day before. She had further written that if the arrangement for a sum of Rs.5,000/- cannot be made then whatever money can be sent, the same should be sent as money was required to be spent for buying some goods for the marriage of her sister-in-law. She further wrote that she was sending this letter through Raju Bhaiya. As regards Ex.PW-3/C, the same is an original letter signed by the husband of the deceased Om Prakash Soni, wherein he admitted his mistake of

leaving his wife at her parental house. He also stated that now he was taking his wife along to his house. He also promised that in future, there will be no fight between them and after forgetting the past, they will lead their lives happily. He also stated that in future, if anything happens with Meena, then he himself will be responsible. He further stated that he has written all this in full senses.

14. The aforesaid facts would clearly show that the deceased Meena was being subjected to harassment for bringing insufficient dowry and for not satisfying the monetary demands raised by her in-laws from time to time. In the complaint dated 13.4.1987, deceased Meena had levelled allegations against all the members of her in-laws family, including sisters-in-law. In the letter dated 14.11.1986 allegations were levelled by her only against her parents-in-laws and not other members of the family. In Ex.PW-3/C, which was written by her husband, just six/seven months of her marriage, as per the deposition of PW-3, entire blame was taken by the husband on himself and not any of his family members.

15. It is also evident from the material on record that the appellant Lalita got married on 24.11.1986 while the other Nanad of the deceased Meena continued to reside at her parental house due to her marital discord

with her husband. Smt. Lalita was thus not strictly speaking an integral part of the said family after getting married and it is not the case of the prosecution that Lalita also had some matrimonial problem with her husband or she used to often reside at her parental house.

16. The unfortunate incident had happened on 10.5.1987 at about 9.30 pm. The matter was not reported by the husband to the police although he first took his wife to Hindu Rao Hospital and then JPN Hospital in burnt condition, where as per the MLC Report, Ex. PW-20/B he had reached at 11.50 pm. In the MLC report the alleged cause of death disclosed was 'burnt into fire by her mother-in-law and sister-in-law after pouring kerosene oil on her in the matrimonial house'. In the MLC neither name of mother-in-law nor of the sister-in-law was specifically mentioned. So far as the reference to mother-in-law is concerned, there can arise no dispute that Smt. Shanti Devi was the mother-in-law of the deceased but so far as the sister-in-law is concerned, the deceased had two sisters-in-law and as per the case of the prosecution – Neelam had been residing at the house in question and not Lalita. The MLC further reveals that the patient was conscious and oriented but she was declared unfit for statement at 1.00 am on 11.5.1987. She was certified to be medically fit

for giving statement at 12.25 pm on 11.5.1987 and 4.05 pm on 11.5.1987 by the concerned doctor. The matter was reported to the local Police Station by PW-15 – HC Dak Lal who was on duty at the hospital vide DD No.26A at about 11.55 pm on 10.5.1987. Based on the said information, received from HC Dak Lal, the Investigating Officer had reached the hospital and had collected the MLC of Meena. The Investigating Officer found presence of Om Prakash, husband of Meena in the hospital and as per his deposition, he had recorded the statement of Om Prakash but since he himself was a suspect, so no case was registered by him based on his statement. Prosecution has not placed on record the statement of Om Prakash which was recorded by the Investigating Officer. At the time when the Investigating Officer had reached the hospital, the victim was found unfit for giving her statement. To our utmost surprise the Investigating Officer of the said case did not prefer to visit the spot and instead returned back to the Police Station at about 1.00 am and from Police Station went back to his residence at about 2.00 am. On the following day, i.e., 11.5.1987, he resumed his duty at about 9 am and then left the Police Station at 11 am for JPN Hospital where he met victim Meena at about 11.45 am. As per the deposition of Investigating Officer

(PW-20), when he met victim Meena, the doctor was also present there and he obtained endorsement of the doctor who certified the victim Meena to be fit to give her statement and thereafter, he recorded the statement of victim Meena. In his cross-examination, Investigating Officer deposed that he had obtained endorsement of the doctor with regard to her fitness for giving her statement at about 11.45 am. He also deposed that he has not moved any application for opinion of the doctor and nor had he obtained any signatures of the doctor on the statement of Meena. On perusal of the original MLC from the trial court, we find that the victim was declared fit for giving her statement by the doctor at 12.25 pm on 11.5.1987. The said time of 12.25 pm is clearly indicated in the MLC proved on record and we fail to comprehend as to how the Investigating Officer in his cross-examination could depose that he had obtained the endorsement of the doctor certifying the victim to be fit for statement at about 11.45 am on 11.5.1987. The Investigating Officer had also deposed that at about 1.00 pm on 11.5.1987, he had informed the Sub-Divisional Magistrate in the court although the time of receipt thereof indicated in the application moved by the Investigating Officer to the Sub-Divisional Magistrate proved on record as Ex.PW-20/E it was

11.45 am on 11.5.1987. If this Investigating Officer was present in the office of Sub-Divisional Magistrate to move the said application at 11.45 am, then how he could have obtained the endorsement of the doctor at the same time, as deposed by him in his cross-examination.

17. Before we proceed further to refer to the dying declaration recorded by the Sub-Divisional Magistrate, let us first see as to what statement was made by the victim Meena to the Investigating Officer. The translated version of the statement, as made by Meena to Investigating Officer has been reproduced in the impugned judgment and the same can be referred as under:-

"I live at the address given above with family and work as Teacher in Partap Bagh. Yesterday at about 9.30 p.m. I was sitting with my husband after taking food. My mother-in-law Shanti Devi and sister-in-law Lalita poured k. oil on me and set me on fire because these two persons were asking for Rs.10,000/-. I was saved by my husband Om Prakash and then I was first admitted in Hindu Rao Hospital and later on in J.P.N. Hospital. I have sustained burn injuries on my right hand, abdomen and knees."

18. It is on the said statement made by the victim Meena the necessary endorsement was made by the Investigating Officer and the rukka was sent for registration of the FIR at 12.35 (noon) on 11.5.1987 and FIR was registered under Section 498A/307/34 IPC.

19. The Sub-Divisional Magistrate had reached the hospital and he also recorded the statement of victim Meena proved on record as Ex.PW-8/A. This statement was recorded by the Sub-Divisional Magistrate at 4.10 pm on 11.5.1987 after the victim Meena was declared fit for giving her statement at 4.05 pm. It is a matter of record that no separate application was moved by the Investigating Officer or by the Sub-Divisional Magistrate to request the doctor to certify the medical condition of the victim and it is on MLC, the fitness of the victim was recorded, which was accordingly referred in the said dying declaration Ex.PW-8/A. The translated version of this dying declaration is also reproduced in the impugned judgment and the same is referred to herein as under:-

"I live at the above given address with my husband, parents-in-law and sister-in-law. I have worked as Teacher. I was married on 06.02.82 and I have two daughters who are aged 4 1/2 years and 1 1/2 years. In the night my husband came after drinking liquor and started abusing. A quarrel took place between us. My mother-in-law Shanti Devi and sister-in-law Lalita put kerosene oil and set on fire. These people were demanding Rs.10,000/- from me. Later on I was saved by my husband and he got me admitted in Hospital."

20. The information of the said incident was given to the parents of the deceased by Om Prakash on the morning of 11.5.1987 and thereafter,

both the parents of the deceased had reached the hospital. Surprisingly, the police did not make any efforts to record the statement of parents of the deceased. It is only on 16.5.1987 the statement of Smt. Sita Devi (mother of the deceased) and Shri Darshan Singh (father of the deceased) for the first time recorded by the Investigating Officer as well as by the Sub-Divisional Magistrate. The victim Meena had already died on 15.5.1987 at 2.15 am.

21. In the statements given by Smt. Sita Devi and Shri Darshan Singh, before the Sub-Divisional Magistrate, they were consistent in their allegations that after 6-7 months of the marriage, the in-laws of Meena started harassing Meena for bringing insufficient dowry in the marriage and at times, she was beaten and abused by them. They also stated that husband of Meena – Om Prakash was addicted to alcohol and Cannabis (ganja) and they even reported the matter to the police, where they appeared and compromised the matter, but yet again, he used to quarrel with Meena at the matrimonial home. They further stated that they made all efforts to make the mother-in-law, sister-in-law and husband – Om Prakash understand but with no result. They further deposed that on 10th May 1987, at 9.30 PM Meena was put on fire by mother-in-law – Shanti,

sister-in-law – Lalita by pouring kerosene oil at her and thereafter at hospital, Meena told them that with the intention to kill her, her mother-in-law and sister-in-law had burnt her. They further stated that as a result of the said burn injuries, Meena had finally died last night. Before the Sub-Divisional Magistrate, both the parents of the deceased, while referring to the talk which their daughter had with them, did not refer to the specific name of Lalita but only refer to Nanad (sister-in-law) alongwith the mother-in-law responsible for putting their daughter ablaze. However, in their statements made before the police, they have specifically named Lalita alongwith mother-in-law in putting their daughter on fire.

22. Before the death of Meena, the Investigating Officer of the case PW-20 had recorded her statement on 11.5.1987 at about 11.45 am. Her statement was also recorded by the Sub-Divisional Magistrate at 12.10 on 11.5.1987. As per the case of the prosecution, the three dying declarations were made by the deceased prior to her death. One was recorded in the MLC proved on record as Ex.PW-20/B; the second one recorded by PW-20 Investigating Officer; and the third one recorded by the SDM proved on record as Ex.PW-8/A. The prosecution has also proved the two oral

dying declarations made by the deceased to her parents who had met her in the hospital so as to know the cause of her burn injuries.

23. The victim had suffered 45% burn injuries as per the MLC report and 30% burn injuries as per the death summary report. The post mortem of the victim was not carried and the reason given by the prosecution was that a request was made by the mother of the deceased to the Sub-Divisional Magistrate not to carry out the post mortem of the body and the said request was readily acceded to by the learned Sub-Divisional Magistrate.

24. It is a settled legal position that the conviction of the accused can be recorded solely based on the dying declaration but the only test is that such a dying declaration must be of impeccable character and wholly reliable to straightaway inspire the confidence of the court. In a case where dying declaration is surrounded by suspicious circumstances, then the court before convicting the accused on the basis of such dying declaration would look for some corroborative evidence of unimpeachable character.

25. The principles governing the dying declaration were eloquently summed up long back by the Hon'ble Apex Court in the matter of

Paniben vs. State of Gujarat reported in ***AIR 1992 SC 1817***. The same are reproduced as under:-

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted."

26. The principle on which the dying declaration is admitted in evidence is based upon the legal maxim "*Nemo moriturus praesumitur*

mentire” i.e. a man will not meet his maker with a lie in his mouth. While keeping this old age principle in view, it cannot be forgotten that before dying declaration is relied upon by the Court, the Court should be satisfied that the dying declaration was true, voluntary, un-influenced by any extraneous consideration and same is not as a result of either tutoring, prompting or vindictive or product of imagination. In ***Laxman vs. State of Maharashtra, (2002) 6 SCC 710***, the Hon’ble Supreme Court held that:-

“A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence, it has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration, is not a statement on oath and the maker thereof be subjected to cross-examination.”

The Court also took a view that there is no requirement of law that the dying declaration must necessarily be made to a Magistrate and when such statement is recorded by the Magistrate there is no specified statutory form for such recording. The Court also held that a certification by the doctor is essentially a rule of caution and, therefore, voluntary and truthful nature of the declaration can be established otherwise. The relevant para of the said judgment is reproduced as under:-

“3. The justice 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 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 court 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 to always 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 look up to the medical opinion."

27. The issue of reliability of dying declaration also came up for consideration before the Supreme Court in ***State of Rajasthan vs. Wakteng, AIR 2007 SC 2020*** and it was held as under:-

"While great solemnity and sanctity is attached to the words of dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the Court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the Court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction."

28. In the case of multiple dying declarations, the Apex Court in ***Nallam Veera Stayanandam and Ors. v. The Public Prosecutor, High Court of A.P., AIR 2004 SC 1708*** took a view that each dying declaration

will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

29. In another case, where there were more than one dying declaration made by the deceased reported as **2007 (3) JCC 2355, Mehiboobsab Abbasabi Nadaf Vs. State of Karnataka** the view taken was that where there are more than one dying declarations made by the deceased, extra care has to be taken to see as to which dying declaration inspires confidence and the one which inspires confidence has to be accepted. If none inspires confidence, each has to be discarded.

30. In the decision reported as **2006 (2) SCLAE 482 P.Mani Vs. State of Tamilnadu**, in para 14, it was observed as under:-

"14. Indisputably conviction can be recorded on the basis of dying declaration alone but therefore the same must be wholly reliable. In a case where suspicion can be raised as regard the correctness of the dying declaration, the Court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on records suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which even conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors: physical and mental condition of the deceased is one of them."

31. In the case of *Puran Chand v. State of Haryana*, (2010) 6 SCC 566 the Apex Court took a view that mechanical approach relying upon the dying declaration just because it is there, is extremely dangerous.

Relevant para of the said judgment is reproduced as under:-

"A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. Number of times, a young girl or a wife who makes the dying declaration could be under the impression that she would lead a peaceful, congenial, happy and blissful married life only with her husband and, therefore, has tendency to implicate the inconvenient parents-in-law or other relatives. Number of times the relatives influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the Court must remain alive to all the attendant circumstances at the time when the dying declaration comes into being. When there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocuous dying declarations have to be rejected. Such trend will be extremely dangerous. However, the Courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests."

32. As can be seen from the above principles, the dying declaration made by the deceased must represent a truthful version of the incident and in a case where there are more than one dying declarations then there

should be consistency, particularly on material facts in all the dying declarations. If there are intrinsic contradictions and inconsistencies in multiple dying declarations and there are suspicious circumstances which surrounds such multiple dying declarations then it is for the prosecution to clear all such doubts with the help of other corroborative evidence otherwise it may not be safe to act upon such inconsistent and discrepant dying declarations particularly where such discrepancies are on the material aspects.

33. There is another angle which cannot be lost sight of is that in such like cases, to rope in the innocent parents-in-law and even those family members and relatives, who are in no way connected with the matrimonial affairs of the husband and wife and are staying away from their matrimonial residence, is a common trend. We are not suggesting that there can be no role of married sister-in-law (Nanad) even after her marriage to subject her brother's wife to harassment or to join hands with her brother and parents in causing harassment for dowry demands or even joining the family members in setting her on fire but in all such cases, where married sister-in-law (Nanad) or Bhabhi are living separately but have been named in the commission of any matrimonial crime, onus on

the prosecution to prove the presence of such an accused in comparison to the person, who is physically residing as part of matrimonial home is much higher. In a plethora of judgments of the Apex Court and High courts, the consistent view has been taken that to exert pressure on the husband and his family, the daughter-in-law and her parents drags even those members, who may be totally unconnected with the affairs of the family and are living independent lives with their own families.

34. In the facts of the present case, the present appellant – Lalita got married on 24.11.1986 and she was residing at Jahangir Puri at her matrimonial house. The other sister-in-law Neelam, even after her marriage was still residing in her parental house due to her marital discord with her husband and this has been so stated in the complaint dated 13/4/1987 filed by the deceased and in the evidence of PW-2, Sita Devi, mother of the deceased. The husband – Om Prakash who had died during the course of trial was a drug and alcohol addict. He had also no source of income and with a view to settle him, the monetary demands were being raised by him and his family members. As per the court depositions of PW2 and PW3, Lalita has also been blamed by Meena for not bringing sufficient dowry along with the other accused persons Om

Prakash and Smt. Shanti Devi, and this kind of harassment started three months after the marriage of the deceased with Om Prakash. Though, the said period was prior to the marriage of the accused Lalita but the possibility cannot be ruled out that she might have also joined her parents and her brother in raising demands from Meena and her family members.

35. We can further note that the said demands were primarily meant to settle down the husband of the deceased who was without any job. We also cannot gloss over the fact that the husband of the deceased was not only without a job but was alcoholic and drug addict and he used to often beat his wife especially after being drunk. The role of the present appellant Lalita, who was the sister-in-law of the deceased, even if she was involved in joining her brother and parents in raising monetary demands has to be segregated and then to examine whether the appellant could have been involved in joining her mother so as to burn the deceased by pouring kerosene oil on her.

36. It is undisputed fact that Lalita got married on 24.11.1986 and, therefore, in normal course she was expected to be with her family at her own matrimonial house. So far as the mother-in-law was concerned definitely she was residing at the same house along with her husband, son

and daughter – Neelam. After the incident the victim was brought to the hospital by her husband at 11.50 p.m. The husband never reported the matter to the police and the information was given to the local police station by PW-15 HC Dak Lal, who was on duty at the said hospital. As per the deposition of PW 20 Inspector Giri Raj he had reached the J.P.N. Hospital along with Constable Joginder and collected the MLC of Meena Exhibit PW 13/A. He found Om Parkash husband of Meena present in the hospital and as per his deposition he recorded his statement in the hospital. He also deposed that Om Parkash himself was a suspect, therefore, no case was registered on his statement. He also deposed that Meena was declared unfit for making the statement by the Doctor. He further deposed that on 11.5.1987 when he had reached J.P.N. Hospital then Meena was declared fit for statement by the Doctor by endorsement exhibit PW 20/B. He further deposed that he recorded the statement of Meena proved on record Exhibit PW 20/C and thereafter prepared rukka Exhibit PW 20/D and sent the same through HC Suresh Parsad for registration of the case. He also deposed that at 4.05 p.m. on 11.5.1987 the SDM had also recorded the dying declaration of Meena which was proved on record Exhibit PW8/A.

37. As already stated above, in the present case three separate dying declarations were made by the deceased. The first dying declaration as was recorded by the doctor in MLC Ex. PW19/A was not believed by the learned trial court as the same was not proved by the prosecution in accordance with the law. The said dying declaration also did not name the present appellant specifically and therefore, no reliance was placed on the same by the learned trial court. In so far as the second dying declaration made by the deceased which was recorded by IO- Giriraj Singh and proved on record as Ex. PW20/C is concerned, what we notice is that the said statement made by victim Meena on 11.05.1987, was in the nature of complaint based on which FIR u/s 498A/307/34 IPC was registered. As per the MLC report, Meena had suffered 45% burn injuries and as per the Death Summary report, she had suffered 30% burn injuries. What we do not understand is that why a detailed statement of Ms. Meena was not recorded by the IO, as the burn injuries suffered by her were not so serious as to incapacitate the victim from giving a detailed account of what actually happened with her and in what circumstances. One can also find that before the purported signature of Meena one more signature appears made from a shaking hand and the prosecution has not explained

as to who had put such a shaky signature at the end of the alleged statement of Meena. IO has also not recorded the certification of the doctor with regard to the fitness of Meena over the said dying declaration or on any separate sheet. IO mainly recorded that he had produced MLC of victim before the doctor on which he made the endorsement “fit for statement”. Neither name of the doctor has been mentioned in the said dying declaration nor any doctor was examined by the prosecution to prove the endorsement of the certification on the MLC. Even in the evidence of PW 20- Giriraj Singh, who was IO of the case, nowhere the name of the doctor has been disclosed who had certified the fitness of the victim to give statement. We also cannot lose sight of the fact that the said statement recorded by the Investigating Officer acquired the character of dying declaration only after the victim had died as a consequence of burn injuries suffered by her.

38. In the third dying declaration which was recorded by the SDM the position is no better. This dying declaration also nowhere records the certification of the doctor and as to who had certified the fitness of the victim, which was recorded on the MLC Ex. PW-19/A. This dying declaration also refers to a quarrel which had taken place between the

deceased and her husband after he had returned to his house in a drunkard condition. Significantly, this fact does not find mention in the dying declaration recorded by IO. The dying declaration recorded by the SDM also nowhere disclose that the victim was certified as fit for giving statement by the doctor in the presence of the SDM as the SDM only referred the endorsement made by the doctor about her fitness for statement in the MLC. No doctor who had certified the condition of the victim as fit for statement was produced by the prosecution. PW-8 Ramesh Tiwari, who was the SDM at the relevant time, in his deposition also failed to disclose the name of the doctor who certified Meena as fit for statement on 11.5.1987 at 4.05 pm.

39. It is the settled legal position that an SDM is considered to be an independent and impartial officer to truthfully and correctly record the dying declaration of the victim and therefore any dying declaration recorded by the SDM should not be easily disbelieved unless there are strong circumstances to throw doubt on his bona fides. However, in the facts of the present case, both the dying declarations recorded by the Investigating Officer and the SDM are surrounded by many suspicious circumstances and the casual and cavalier approach was adopted by both

of them and therefore, it may not be safe to accept the reliability of the said two dying declarations made by the deceased. The way the investigation was conducted by the Investigating Officer of this case deserves severe condemnation. After he had reached to J.P. Narain Hospital and took the MLC of the victim instead of proceeding at the spot, he went back to the police station and then returned back to his home. Can it be expected of any Investigating Officer to go back to his home without carrying on the investigation in an offence of such a serious nature? The Investigating Officer also did not take any steps to inform the parents of the victim, who could reach the hospital only after they were informed by the husband of the victim on the next morning. We also cannot shut our eyes from the fact that Om Prakash – husband throughout remained present with his wife. With the suffering of 30% burn injuries, the death of the victim was not expected in normal circumstances and therefore, the tutoring and prompting of the victim at the hands of her husband cannot be ruled out in the facts of the present case. We are also at loss to find that the Investigating Officer did not record the statement of the parents of the deceased till 16.5.1987, although they were available throughout to the police. It is also an undeniable fact that the appellant

got married on 24.11.1986 and therefore, she was expected to be with her own family at her matrimonial home, while other sister-in-law – Neelam, due to her marital discord was residing at her parental house.

40. Besides above, another disturbing question is the failure of the prosecution to carry out the post mortem of the deceased. We find no justification or reason for the SDM to dispense with the post mortem of the deceased by acceding to the request made by the mother of the deceased in a case of such unnatural death where the deceased had suffered 30% burn injuries. The exact cause of death could have been ascertained only after conducting the post mortem of the body and by no other method. We cannot loose sight of the fact that as per the Death Summary report, the burn injuries suffered by the deceased were 30% and with such percentage of burn injuries, the chances of survival of the victim were on the higher side.

41. Taking cumulative view of the facts and circumstances of the present case which are peculiar in themselves, we find that there are enough circumstances, which create suspicion in our mind about the truthfulness and genuineness of the alleged dying declarations made by the deceased at the time of recording of her MLC before the IO and even

before the SDM. We do not mean to suggest that in the given set of circumstances, the IO is not competent to record the dying declaration or dying declaration recorded by an independent officer like SDM should not be believed but every criminal matter has its own story to tell and no empirical rule or test can be laid down as to under what circumstances something should be believed or thrown out from the ambit of consideration. We also cannot be oblivious of the fact that the husband of the deceased was with her throughout the hospitalization and with the percentage of burn injuries not being on the higher side the victim was under hope of coming out of the impasse and in such like cases an Indian woman invariably still tries to save her husband and in the process shift the blame at others unconnected with the crime.

42. In our view, the above facts and circumstances cast a grave doubt on the veracity of the dying declarations on which implicit reliance has been placed by the learned ASJ. As such, appellant is entitled to benefit of doubt.

43. We accordingly, set aside the impugned judgment and order on sentence dated 11.12.2000 and 12.12.2000 respectively passed by the

learned ASJ and acquit her of the charge under Section 302/498A IPC.

Appeal is accordingly allowed.

44. The appellant is on bail. Her bail bonds are discharged. The case of the appellant is set at rest.

45. Copy of this judgment be sent to the Jail Superintendant and the appellant be informed accordingly.

46. The appeal stands disposed of in the aforesaid terms.

KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

MAY12, 2014

Pkb/v