

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

% *Judgment Reserved on : October 10, 2014*
Judgment Delivered on : October 29, 2014

+ **CRL.A.937/2012**

ANAND SHARMA Appellant
Represented by: Mr.Samrat Nigam, Advocate

versus

STATE NCT OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP
Mr.Kush Sharma, Advocate for
complainant

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Shruti Sharma (hereinafter referred to as the 'Deceased') suffered burn injuries past midnight (around 2:30 in the middle of the night) on the intervening night of August 02, 2006 and August 03, 2006, or to put it differently at 02:30 hours on August 03, 2006. There could be only three alternatives for the deceased suffering burn injuries : (i) suicide; (ii) accidental fire; and (iii) being set on fire. The plea of suicide by the deceased has not been advanced either by the prosecution or by the defence. In this view of the matter, the core question which needs determination in the present appeal is : whether the deceased suffered accidental burn injuries as pleaded by the defence or whether the deceased was set on fire as pleaded by the prosecution.

2. Criminal law was set into motion when at around 02:57 hours on August 03, 2006 appellant Anand Sharma made a call to the Police Control Room informing that his wife has suffered burn injuries at their

matrimonial House No.47, Bhagwan Park, Main Road Jharoda. The aforesaid information was flashed to Police Station Timar Pur where Ct.Jitender recorded DD No.3A, Ex.PW-21/A, noting the aforesaid information.

3. PCR Van S-67 present near the house also picked up the wireless message flashed and proceeded to the house, where HC Kailash Yadav PW-16, in-charge of the PCR Van found the deceased in a burnt condition and thus removed the deceased to LNJP Hospital. On the way to the hospital, HC Kailash Yadav PW-16, made an entry at point DX in the log book register, Ex.PW-16/A of the PCR van as under:-

“S-67 Note condition. Shruti Sharma w/o Anand Sharma Age 25 address stated above who has been burnt has told that when she was sleeping a candle fell upon her due to which she was burnt...illegible....She is being removed to LNJP hospital.”
(Emphasis Supplied)

4. The deceased was admitted at LNJP Hospital at about 03:45 hours on August 03, 2006. Dr.Deepak examined the deceased and prepared her MLC Ex.PW-2/A, the relevant portion whereof reads as under:-

“Alleged case of burn by a ‘candle burner’ at home as said by Pt. herself on 3/8/06 at around 2:30 AM. History told by Pt. herself.

Note: - Smell of kerosene oil – ‘Present’

L/E – There is superficial to deep burn over the neck, chest, abdomen & B/L lower limbs and some part of the B/L forearm.

*Approx. % of burn area – 70 – 80% of burn area.” **(Emphasis Supplied)***

5. In the meantime, on receipt of DD No.3A, accompanied by HC Gulzar Singh PW-19 and Ct.Satyavrat PW-14, ASI Om Pal Singh PW-15, proceeded to the house where the deceased suffered burn injuries and

learnt that the deceased has been removed to LNJP Hospital. Leaving HC Gulzar Singh and Ct.Satyavrat at the house, ASI Om Pal Singh proceeded to the hospital.

6. On reaching the hospital, ASI Om Pal Singh collected the MLC Ex.PW-2/A of the deceased. Thereafter ASI Om Pal Singh called Yogesh Pratap PW-2, Sub-Divisional Magistrate, to the hospital to record the statement of the deceased. The SDM reached the hospital but could not record the statement of the deceased since the doctor on duty declared the deceased to be unfit for making a statement at about 06:20 hours on August 03, 2006, as endorsed on the MLC Ex.PW-2/A of the deceased, upon which Yogesh Pratap left the hospital.

7. Yogesh Pratap again visited LNJP Hospital at about 10:20 hours to record the statement of the deceased but the doctor once again declared the deceased to be unfit for making a statement as endorsed on the MLC Ex.PW-2/A.

8. In the meantime, the Crime Team reached the house and inspected the same, in particular the room on the first floor of the house where the deceased suffered burn injuries. HC Sunder Pal PW-20, took four photographs Ex.PW-20/A-1 to Ex.PW-20/A-4 of the room; negatives whereof are Ex.PW-20/A-5 to Ex.PW-20/A-8. The photographs Ex.PW-20/A1 to Ex.PW-20/A4 show that the deceased suffered burn injuries on a bed lying in a bedroom of her matrimonial house. The bed sheet spread on the bed is partially burnt.

9. At around 11:15 hours on August 03, 2006, the deceased was shifted to Apollo Hospital. Before the deceased was discharged from LNJP hospital, Ms.Neelam Verma, a nurse at LNJP hospital, handed over

the clothes worn by the deceased to ASI Om Pal Singh who seized the same vide memo Ex.PW-8/A.

10. At around 16:00 hours on August 03, 2006 Yogesh Pratap again visited Apollo Hospital to record the statement of the deceased and recorded the statement Ex.PW-2/B after obtaining an endorsement on the MLC of the deceased that she was fit for statement.

11. The statement Ex.PW-2/B of the deceased, in Hindi, loosely translated reads as under:-

“Question (SDM) What is your name? When did you get married and what is the name of your husband?”

Answer (Shruti) My name is Shruti Sharma. About three and half years ago I was married to Shri Anand Sharma s/o Om Prakash Sharma.

Question (SDM) What is the name of your father and what is his residential address?

Answer (Shruti) Shri Mahender Sharma r/o D-504, Maple Crescent, Sushant Lok-I Gurgaon Haryana.

Question Did your in-laws asked you to bring dowry after the marriage? Did they demand it?

Answer Yes, after marriage my in-laws used to demand dowry and they used to say that I should bring money or some other things from my father.

Question How was the behavior of your in-laws and husband? Did they ever give beatings to you?

Answer The behavior of my in-laws was not good towards me right from the beginning. My mother-in-law used to get me beaten from my husband.

Question How did this incident happen with you?

Answer I was sleeping. My in-laws poured kerosene oil on me and burned me.

Question Who was involved in this incident and who all is responsible?

Answer My in-laws are responsible for this. My husband Anand can do this. My mother-in-law can do this. My sister-in-law Geeta can do this. Since I was sleeping I cannot tell clearly.

Question What are your educational qualifications and do you have a child and what is your age?

Answer I have studied upto class seventh and I have a daughter and my age is about 28 years.

The above statement has been given by me truthfully and in fully conscious state and I have been read over the same and I have understood the same.”

12. ASI Om Pal Singh made an endorsement Ex.PW-15/A beneath the statement Ex.PW-2/B of the deceased and took the same to the Police Station for registration of an FIR, where HC Rakesh Kumar PW-10, registered FIR No.364/2006, Ex.PW-10/A, under Sections 307/498-A/34 IPC against appellant Anand Sharma (husband of the deceased), Om Prakash (father-in-law of the deceased), Shakuntla (mother-in-law of the deceased) and Geeta (sister-in-law of the deceased).

13. Thereafter ASI Om Pal Singh PW-15, proceeded to the house and prepared the rough site plan Ex.PW-15/B of the house where the deceased was found in a burnt condition. ASI Om Pal Singh inspected the room and saw a plastic bottle having smell of kerosene oil, some burnt pieces of cloth and match box lying in the room, which articles were seized by him vide memo Ex.PW-15/C in the presence of HC Gulzar Singh PW-19 and Ct.Satyavrat PW-14. (Be it noted here that the seizure memo Ex.PW-15/C records that the plastic bottle having smell of kerosene oil found in the room where the deceased was burnt also contained little kerosene oil).

14. On August 04, 2006 SI Samarpal PW-25, took over the investigation of the case.

15. Since the deceased has implicated her husband and in-laws as the persons who had poured kerosene oil on her in her statement Ex.PW-2/B, the police arrested Anand Sharma (husband of the deceased), Om Prakash (father-in-law of the deceased), Shakuntla (mother-in-law of the deceased) and Geeta (sister-in-law of the deceased).

16. On being interrogated by SI Samarpal PW-25, accused Anand Sharma (husband of the deceased) got recovered a bed sheet, blanket and pillow from a room on the ground floor of his house, which articles were seized by SI Samarpal vide memo Ex.PW-25/B.

17. On August 16, 2006 at about 09:35 PM the deceased succumbed in the Apollo Hospital to the burn injuries suffered by her. Dr.Kuldeep Singh PW-6, Sr. Consultant, Department of Plastic Surgery, Apollo Hospital prepared the death summary Ex.PW-6/A of the deceased, the relevant portion whereof reads as under

“SUMMARY:-

Mrs. Shruti Sharma 27 years old married lady was admitted through Emergency Triage to Surgical Intensive Care Unit on 03/08/06 at 11.15 am. with alleged history of burns at her residence at 2.30 AM.

Patient was first taken to IRWIN hospital where primary care was given and dressing of wounds was done. Patient was then brought to Apollo Hospital for further management.

Patient was dressed all over body below neck when she was received in Triage.

On Examination was:-

Sedated, but arousable

Temp :- 98.6F
HR :- 152/min
PR :- 19/min
BP :- 90/46 mm of Hg

Assessment of the patient's condition was done and fast IV fluids started. Necessary blood investigations were sent, Oxygen by mask was started @ 5lit/m, urine output kept under rigorous surveillance and after explaining extreme critical condition and imminent threat to life to parents, patient was shifted to Surgical ICU.

In Surgical ICU central line was put, plasma expanders and FFP were given along with IV fluids as needed. Dressing was done and wound swab cultures were sent. Burn wound assessment was done at 80% burn, most of which were deep. Almost whole body was burnt except left foot and front of left leg, (Rt.) sole and part of (Rt.) Shin, most of (Rt.) hand on both upper limbs, head, part of face and patches on back.

At about 10.30 PM on 03.08.2006 patient developed difficulty in breathing and hence was intubated with 7.5 size ET tube and connected to ventilator.

....

Initially patient was responding to the treatment but from about 2am she developed hypotension and fast IV fluids were given including colloids....Patient's relatives were informed about the deteriorating condition of the patient from time to time....

....However, she continued to deteriorate and fever persisted and kept increasing. Her renal parameters deteriorated on 16.08.2006. Also her FiO2 continued to gradually increase to 190%.

On 16.08.2006, she had a cardiac arrest at 9.35 PM and despite all resuscitative measures could not be revived and was declared dead.

CAUSE OF DEATH:

80% deep burns with septic shock and multiorgan failure.”
(Emphasis Supplied)

18. On August 17, 2006 the body of the deceased was sent to the Subzi Mandi Mortuary where Dr.Ashok Jaiswal PW-4, conducted the post-mortem and prepared the post-mortem report Ex.PW-4/A recording therein that the burn injuries found on the person of the deceased were ante-mortem in nature involving 70% of body surface area and death of deceased was caused due to septicaemic shock consequent to burn injuries.

19. After the post-mortem, the doctor handed over the scalp hair of the deceased to SI Samarpal PW-25, who seized the same vide memo Ex.PW-25/H.

20. On August 24, 2006 Insp.Satyavir Singh PW-22, took over the investigation of the case.

21. On September 29, 2006 the afore-noted articles/exhibits seized were sent to FSL, Delhi for forensic evaluation which returned the same informing that FSL Delhi does not have facility to test hydrocarbons. Thus on October 15, 2006 the exhibits were sent to FSL, Hyderabad which returned the same informing that it had enough work at hand and thus on January 31, 2007 the exhibits were sent to FSL, Gandhinagar, Gujarat where they were tested.

22. Vide FSL report Ex.PW-22/B it was opined that hydrocarbons of kerosene were detected in the plastic bottle seized from the room where the deceased suffered burn injuries; residual hydrocarbons of kerosene were detected in the clothes worn by the deceased at the time when she suffered burns; burnt pieces of clothes seized from the room where the deceased suffered burn injuries, the blanket, the pillow and the bed sheet

recovered at the instance of appellant Anand Sharma and scalp hair of the deceased.

23. The statements of Mahender Sharma, Manju Sharma, Jayant Sharma and Sudhakar Sharma, the father, the mother, the brother and the uncle of the deceased were recorded under Section 161 Cr.P.C. in which they implicated the husband and the in-laws of the deceased for having treated her with cruelty and demanding dowry.

24. Sent for trial charges were framed against the appellant, his parents and his sister for offences punishable under Section 304B and Section 498A read with Section 34 of the Indian Penal Code.

25. At the trial, the prosecution examined 29 witnesses.

26. Manju Sharma PW-1, the mother of the deceased deposed that on January 29, 2003 the deceased got married to appellant Anand Sharma. A sum of ₹8,00,000/- was spent by them in solemnization of the marriage. A maruti car was given at the insistence of Om Prakash, the father-in-law of the deceased even though their family did not have the financial capacity to give a Maruti car. Few months after the marriage the accused persons started harassing and torturing the deceased for dowry. The accused used to beat the deceased on account of dowry. In the month of July/August appellant Anand Sharma took a sum of ₹50,000/- from her on the pretext that he would return the same but never returned the amount to her. After sometime appellant Anand Sharma demanded a sum of ₹2,00,000/- from her but she refused to give said amount whereupon the accused persons started harassing the deceased even more. On March 17, 2004 the deceased gave birth to a daughter. The accused did not take proper care of the deceased during her pregnancy. After the birth of the daughter, the accused got more annoyed with the deceased. The accused were never satisfied with the gifts given by them and their demands

increased day by day. In the month of August, 2004 the accused pressurized the deceased to bring her share from the property owned by them. When the deceased refused to oblige, the accused turned out the deceased from her matrimonial house and told her to never return. At about 01:00 AM on said day the deceased reached their house and narrated the entire incident to her. The deceased stayed with them for about five/six months and thereafter returned to her matrimonial house when appellant Anand Sharma apologized for his actions. On August 02, 2006 at about 08:00/08:30 PM she talked to the deceased over the telephone. During the conversation the deceased informed her that she was being tortured by the accused and was apprehending danger to her life. On August 03, 2006 the accused Om Prakash gave a telephonic call to them and informed them that the deceased has been admitted in RML hospital in a burnt condition. Seeing the critical condition of the deceased they shifted her to Apollo Hospital. In the evening of August 03, 2006 the SDM had recorded the statement of the deceased. The deceased was conscious at that time. After her statement was recorded by the SDM, the deceased told her that the accused had burnt her by pouring kerosene oil on her.

27. Yogesh Pratap PW-2, the Sub-Divisional Magistrate deposed that on August 03, 2006 at about 04:15 PM he recorded the statement Ex.PW-2/B of the deceased at Apollo Hospital. Before recording the statement he had obtained fitness of the deceased as per endorsement made to said effect in the MLC Ex.PW-2/A. Being relevant, we note the following portion of the cross-examination of the witness:-

“It is correct that on the statement of deceased Ex.PW-2/B, I did not obtain signatures of any Doctor or medical certification or signatures of any other official of Apollo Hospital. Vol. I alone was present when statement Ex.PW-2/B was recorded

and certification from Doctor was obtained on the MLC of LNJP Hospital. In Apollo Hospital, Shruti was found admitted in single bed room but I do not know which Ward. I do not know the number of that room also. I do not remember on which floor that room was. When I reached that room, one Nurse only was present there. No oxygen mask was put on Shruti but drip was there. On reaching Apollo Hospital, I had talked to Doctor on duty whose name I do not know, who was present outside near the room on a counter....It is incorrect to suggest that I am deposing falsely about my visit to Apollo Hospital or that oxygen mask was started as soon as Shruti was admitted in Apollo Hospital. It is incorrect to suggest that Shruti was admitted in surgical ICU and not in single bed room in the Apollo Hospital....

*....It is correct that in Ex.PW-2/A, it is nowhere reflected that patient was declared fit by a Doctor of Apollo Hospital. It is correct that the seal of Apollo Hospital is also not affixed on MLC.” **(Emphasis Supplied)***

28. Dr.Nitin PW-3, deposed that the MLC Ex.PW2/A of the deceased was prepared by Dr.Deepak. He had not examined the deceased but had merely countersigned the MLC Ex.PW-2/A.

29. Jayant Sharma PW-5, the brother of the deceased and Mahender Sharma PW-11, father of the deceased, deposed on similar lines as the mother of the deceased i.e. Manju Sharma.

30. Dr.Kuldeep Singh PW-6, deposed that he prepared the death summary Ex.PW-6/A of the deceased. Being relevant, we note the following portion of the cross-examination of the witness:-

“As per death summary, Shruti was put on Oxygen mask on 03.08.06 itself by the hospital everyday. The oxygen mask covers only mouth and nose of patient. The oxygen is given in almost all cases of extensive burns.”

31. Dr.Sudhakar Sharma PW-7, the parental uncle of the deceased, deposed that the accused persons used to harass and torture the deceased

for dowry. Additionally, he proved the Registration Certificate (RC) Ex.PW-7/A of Maruti car given by the family of the deceased to the deceased at the time of her marriage, which certificate records that a Maruti car having registration No.DL 9CE 9512 was registered in the name of the deceased.

32. Ct.Satyavrat PW-14, deposed regarding the role played by him in the investigation of the present case as noted by us in the foregoing paragraphs. Being relevant, we note the following portion of the cross-examination of the witness:-

“...I do not remember if ASI Om Pal Singh had lifted any article from the spot before leaving for the hospital....It is correct that none of the seven match sticks contained in the box is in burnt condition....It is incorrect to suggest that nothing was recovered or seized in my presence from the spot and they were planted on the accused persons.”

33. ASI Om Pal Singh PW-15, deposed regarding the role played by him in the investigation of the present case as noted by us in the foregoing paragraphs. Be it noted here that neither any question was put nor any suggestion was given to the witness in his cross-examination by the accused persons with regard to his deposition that he had seized a plastic can, matchbox and burnt pieces of clothes from the room where the deceased was burnt.

34. HC Kailash Yadav PW-16, deposed that entry at point DX in the log book register Ex.PW-16/A was made by him. On being questioned about the presence of accused Anand Sharma (husband of the deceased) at the time when she was being removed to the hospital, the witness stated that (Quote): *‘At the time, the injured was being taken to LNJP Hospital, her husband was with her.’*

35. HC Gulzar Singh PW-19, deposed regarding the role played by him in the investigation of the present case as noted by us in the foregoing paragraphs. Being relevant, we note the following portion of the cross-examination of the witness:-

“....The matchbox contained some burnt matchsticks as well as some unburnt. It is incorrect to suggest that I am deposing falsely or that the matchbox was not having burnt matchsticks....It is incorrect to suggest that I have deposed falsely or that the entire proceedings of this case have been manipulated to falsely implicate the accused persons.”
(Emphasis Supplied)

36. Be it noted here that neither any question was put nor any specific suggestion was given to the witness in his cross-examination by the accused persons with regard to his deposition that ASI Om Pal Singh PW-15, had seized a plastic can, matchbox and burnt pieces of clothes from the room where the deceased was burnt in his presence.

37. HC Samarpal PW-25, deposed regarding the role played by him in the investigation of the present case as noted by us in the foregoing paragraphs. On being questioned about the hands of accused Anand Sharma (husband of the deceased) at the time when he was arrested, the witness stated that (Quote): *‘It is correct that hands of Anand Sharma were partly burnt and we had got medical examination of Anand Sharma conducted.’*

38. Janmahmed Fakirbhai Mansuri PW-27, Scientific Officer, FSL, Gandhi Nagar, Gujarat deposed that the FSL report Ex.PW-22/B was prepared by him.

39. During the trial, accused Geeta expired, as a result whereof qua her the proceedings abated.

40. In their statements under Section 313 Cr.P.C., accused Anand Sharma (husband of the deceased), Om Prakash (father-in-law of the deceased) and Shakuntla (mother-in-law of the deceased) pleaded innocence and false implication. They denied that they used to torture and harass the deceased for dowry.

41. Being relevant, we note the following portion of the statement of accused Om Prakash (father-in-law of the deceased) under Section 313 Cr.P.C.:-

“Q.10 It is in evidence against you that at the time of incident you were present at the place of incident. What have you to say?”

A: It is correct. I was on the ground floor.”

42. Being relevant, we note the following portion of the statement of accused Anand Sharma (husband-in-law of the deceased) under Section 313 Cr.P.C.:-

“It is in evidence against you that on 3/8/06 at around 3.45 am, deceased Shruti Sharma was taken to LNJP Hospital with 80% burnt injuries, as per MLC Ex. PW2/A and was admitted with the history of candle burn, however, smell of kerosene oil was present as per medical records. What have you to say?”

A: I had taken my wife to hospital with burn injuries. I was sleeping so I do not know, how Shruti got burnt.”

43. Being relevant, we note the following portion of the statement of accused Anand Sharma (husband-in-law of the deceased) under Section 313 Cr.P.C.:-

“She was taken to hospital with burn injuries. I was sleeping downstairs at the time of incident.”

44. In defence, the accused persons examined two witnesses viz. Ishwar Singh and Mahender Kumar as DW-1 and DW-2 respectively, the

testimonies of which witnesses is not germane to the present case. As regards documentary evidence, the accused persons produced the letter Ex.DW-1/A dated April 23, 2010 issued by Forensic Science Laboratory, Delhi to accused Anand Sharma, the letter whereof reads as under:-

“1. Chemical tests, TLC & Gas Chromatography methods are being used in this laboratory for detection of Residue of Kerosene on articles/clothes.

2. The examination of Arson cases was started in this laboratory since year 2000.”

45. Holding the statement Ex.PW-2/B made by the deceased to the SDM inspires confidence; the testimonies of the relatives of the deceased establishes that the accused Anand Sharma (husband of the deceased) and Shakuntla (mother-in-law of the deceased) used to harass the deceased and subject her to cruelty for dowry; accused Anand Sharma and Shakuntla have not offered explanation as to how the deceased sustained extensive burns involving 80% of the total body surface and the conduct of accused Anand Sharma of not immediately taking the deceased to the hospital on her being burnt and of waiting for the PCR van to come to the house and the removed the deceased to the hospital is most unnatural, vide impugned judgment dated May 18, 2012 the learned Trial Judge has convicted appellant Anand Sharma and Shakuntla for having committed offences punishable under Section 498-A and 304-B IPC read with Section 34 IPC. Accused Om Prakash (father-in-law of the deceased) has been acquitted by the learned Trial Judge essentially on the ground that the deceased has not named her father-in-law in her statement Ex.PW-2/B.

46. The reasoning of the learned Trial Judge to conclude that the statement Ex.PW-2/B made by the deceased inspires confidence is as under:-

“59. On examining all the aspects relating to dying declaration EXPW-2/B, I find that the same has been sufficiently proved on record. There is no force in the arguments that dying declaration is fabricated or manipulated. The dying declaration inspires confidence and entitled to great weight and therefore is accepted for the following reasons:-

- (i) This is single dying declaration recorded by competent, independent official witness in proper manner in the form of questions and answers, few hours after the incident.*
- (ii) It is recorded after the deceased was declared fit by the doctor on duty as well as the SDM himself was satisfied about her fitness.*
- (iii) The statement is clear and concise about the facts as well as about the incident and suffers from no infirmity.*
- (iv) The dying declaration is consistent with medical and scientific evidence.*
- (v) It stands corroborated with the testimony of parents.*
- (vi) Last but not the least, and most importantly the dying declaration is found consistent with the circumstantial evidence appearing on record.”*

47. Vide order dated May 18, 2012, the learned Trial Judge has sentenced appellant Anand Sharma to undergo imprisonment for life and pay fine in sum of ₹15,000/- for the offence punishable under Section 304-B IPC; in default to undergo simple imprisonment for a period of five months. For the offence punishable under Section 304-B IPC, accused Shakuntla has been sentenced to undergo rigorous imprisonment for a period of ten years and pay fine in sum of ₹10,000/-; in default to undergo simple imprisonment for four months. For the offence

punishable under Section 498-A IPC, appellant Anand Sharma and Shakuntla have been sentenced to undergo rigorous imprisonment for a period of two years and pay fine in sum of ₹5,000/-; in default to undergo simple imprisonment for two months. Both the sentences have been directed to run concurrently.

48. Aggrieved by the conviction and the sentence, the appellant Anand Sharma and Shakuntla filed separate appeals challenging the conviction. Before the two appeals could be heard Shakuntala expired and thus proceedings qua her stood abated. We are thus left with the above captioned appeal filed by Anand Sharma.

49. The fact that the deceased suffered burns in the wee hours of August 03, 2006 is not in dispute. That the place where she suffered the burn injuries is the bedroom of her matrimonial house where she and appellant used to sleep is also not in dispute. The only question is : whether deceased suffered accidental burns when a candle fell on her or whether kerosene oil was thrown on her followed by she being set on fire. The link issue would be whether the deceased was subjected to cruelty on account of a dowry demand. It is not in dispute that the deceased died an unnatural death within seven years of her marriage.

50. Whereas the prosecution contends that the deceased was set on fire in her matrimonial house after kerosene oil was poured on her and heavily relies upon the dying declaration Ex.PW-2/B, the defence relies upon the MLC Ex.PW-2/A and the log book register Ex.PW-16/A.

51. Before analyzing the evidence, we note with pain that the learned Trial Judge who framed the charge has not bothered to correctly appraise himself of the charge sheet and the material placed along therewith by the prosecution for the reason if the statement Ex.PW-2/B, which was a part

of the charge sheet, was to be believed, it was a case of murder for the reason in the statement the deceased has said that when she was sleeping, somebody out of the accused threw kerosene oil on her and set her on fire. The FSL Report showed hydrocarbon residue in the bed sheet and the pillow cover lifted from the bed on which the deceased was sleeping. The photographs of the bed evince the bed sheet partially burnt. To some extent even the Investigating Officer is at fault because he filed the charge sheet for the offence punishable under Section 304B IPC.

52. In the absence of either accused being charged for the offence punishable under Section 302 IPC, it is our compulsion to deal with the evidence with reference to the charge being for the offence punishable under Section 304B IPC.

53. The prosecution heavily relies upon the dying declaration Ex.PW-2/B recorded by the SDM Mr.Yogesh Pratap PW-2. As noted above at about 03:45 hours on August 03, 2006 the deceased was admitted at LNJP Hospital. Her condition was very critical as she had suffered burns involving 80% of total body surface. Two times on August 03, 2006, firstly at about 06:20 hours and thereafter at about 10:20 hours she was not fit for statement when Yogesh Pratap visited LNJP Hospital. Thereafter at about 11:15 hours the deceased was shifted to Apollo Hospital.

54. The death summary Ex.PW-6/A of the deceased gives us insight into the condition of the deceased at the time when she was admitted in Apollo Hospital. The death summary Ex.PW-6/A records that the pulse rate was 19 per minute and the blood pressure was 90/46 Hgmm when she was admitted in Apollo Hospital. It shows that the condition of the

deceased was extremely critical and an oxygen mask was put on her face to facilitate absorption of oxygen in the lungs. Her condition deteriorated and by 20:30 hours she was put on a ventilator, which remained till she died after 13 days on August 16, 2006.

55. Yogesh Pratap claims that at 16:00 hours on August 03, 2006 the deceased was declared fit for making a statement and for which the prosecution relies upon an endorsement to said effect on the MLC Ex.PW-2/A.

56. We note firstly that the doctor making the endorsement on the MLC has not been examined.

57. The condition of the deceased was extremely critical when she was admitted at Apollo Hospital at about 11:35 hours on August 03, 2006. The pulse rate was 19 per minute and her blood pressure was 90/46 Hgmm. An oxygen mask was put on her mouth when she was admitted in the Surgical ICU. At about 22.30 hours her condition deteriorated and she was put on a ventilator.

58. What magic happened at around 16:00 hours on August 03, 2006 which improved the condition of the deceased and made her fit enough to make a statement? There is nothing in the death summary Ex.PW-6/A of the deceased to show that her condition improved around said time. The doctor who had purportedly declared the deceased fit to make a statement has remained a mystery inasmuch as his identity has not surfaced. The normal pulse rate and blood pressure is 72 per minute and 120/80 Hgmm respectively. It is impossible that the deceased, having pulse rate of 19 per minute (nearly one-fourth of normal pulse rate) and blood pressure

90/46 (nearly half of normal blood pressure) became fit enough to make a statement at about 16:00 hours on August 03, 2006.

59. The most tell-tale circumstance which goes to show that the deceased never got fit enough to make the statement Ex.PW-2/B is the cross-examination of Yogesh Pratap PW-2, the scribe of the statement Ex.PW-2/A.

60. Yogesh Pratap has deposed that he had recorded the statement Ex.PW-2/B of the deceased after she was declared by the doctor to be fit to make a statement in his presence. Most significantly, Yogesh Pratap has stated in his cross-examination that the deceased was admitted in a '*single bed room*' in Apollo Hospital and he had recorded her statement Ex.PW-2/B in said room. This statement is palpably false. The deceased was admitted in the Surgical ICU in Apollo Hospital (and not a single bed room) as clearly mentioned in the death summary Ex.PW-6/A of the deceased. The aforesaid blatant lie of Yogesh Pratap PW-2, the scribe of statement Ex.PW-2/A, makes it crystal clear that the statement Ex.PW-2/B was not made by the deceased and was prepared by Yogesh Pratap at the dictates of the family members of the deceased. It has come in evidence that the family members of the deceased were present in Apollo Hospital at the time when Yogesh Pratap visited Apollo Hospital on August 03, 2006.

61. The statement Ex.PW-2/B has thus to be ignored.

62. What about the two dying declarations which are exculpatory of the appellant contained in the log book register Ex.PW-16/A and MLC Ex.PW-2/A of the deceased. Both record that as told by the deceased she suffered the burn injuries when a candle fell on her.

63. Learned counsel for the appellant urged that there was no reason to disbelieve the two dying declarations.

64. It has come in evidence that the appellant was present with his wife and had accompanied her to the hospital. It looms large in the realm of reality that the deceased was threatened to speak a lie and the reality is the tell-tale circumstances : (i) The recording contained in the MLC Ex.PW-2/A that smell of kerosene oil was noticed by Dr.Deepak who authored the MLC. If Dr.Deepak truthfully wrote what was told to him by the deceased, there is no reason why he would write a false fact i.e. that smell of kerosene oil was noticed by him when he examined the deceased; (ii) The plastic can having smell of kerosene oil and a match box being recovered from the room where the deceased suffered burn injuries as deposed to by ASI Om Pal Singh PW-15, HC Gulzar Singh PW-19 and Ct.Satyavrat PW-14. The defence has not controverted the depositions of ASI Om Pal Singh PW-15 and HC Gulzar Singh PW-19, that a plastic can having smell of kerosene oil and a match box were recovered from the room where the deceased was burnt inasmuch as neither any question was put nor any suggestion was given by the defence to said witnesses in their cross-examination. In fact, it was suggested to HC Gulzar Singh PW-19, that the match box found in the room where the deceased was burnt contained only unlit matchsticks and no lit/burnt matchsticks, implying thereby that the presence of a match box in the room where the deceased was burnt was admitted by the defence. The deposition of Ct.Satyavrat PW-14, that a plastic can having smell of kerosene oil and a match box were recovered from the room where the deceased was burnt was challenged by the defence. Ct.Satyavrat was examined at length but nothing tangible could be extracted thereof which

could discredit his deposition that a plastic can having smell of kerosene oil and a match box were recovered from the room where the deceased was burnt; (iii) The absence of a candle and/or wax marks in the room where the deceased was burnt. No candle and/or wax marks were found in the room where the deceased was burnt. (Significantly, the defence has not suggested to the police officials who had inspected the room where the deceased was burnt viz. ASI Om Pal Singh PW-15, HC Gulzar Singh PW-19 and Ct.Satyavrat PW-14, that a candle and/or wax marks were present in the room where the deceased was burnt); and (iv) The deceased suffered burn injuries at around 02:30 hours i.e. past midnight when people are asleep. Nobody lights a candle when sleeping. The deceased was on the bed when she suffered the burn injuries. The photographs show that the bed sheet is partially burnt. If the deceased got up in the middle of the night and finding no electricity struck a matchstick to light a candle and accidentally got burnt, the place would be somewhere in the bedroom floor and not on the bed. The fact that kerosene oil was thrown on the deceased completely negates the theory of deceased suffering accidental burn injuries when a candle fell on her. In any case, the question of any candle causing burn injuries when it fell on her does not arise because this would mean that when the deceased was sleeping a burning candle was illuminating the bedroom; a most unnatural thing.

65. The afore-noted circumstances, when seen cumulatively, establish beyond any doubt that the deceased was burnt by throwing kerosene oil on her and then setting her on fire and negates the recording contained in the log book register Ex.PW-16/A and MLC Ex.PW-2/A of the deceased that the deceased got burnt when a candle fell upon her while she was sleeping.

66. Learned counsel for the appellant had questioned the FSL Report Ex.PW-22/B by relying upon the letter Ex.DW-1/A from the FSL Delhi as per which the laboratory had the facility to test for hydrocarbon. Counsel urged that it was an obvious case of the prosecution manipulating an opinion from an FSL Laboratory which was convenient. Counsel had argued that the dying declaration Ex.PW-2/B was contrived and urged that if the SDM could be manipulated, so could the FSL Laboratory be manipulated.

67. On the other hand, learned Public Prosecutor contended that Om Prakash, father of appellant Anand Sharma had retired from the post of Inspector in Delhi Police. The possibility that Om Prakash used his contacts/influence in FSL, Delhi and made the FSL officials return the articles/exhibits seized in order to avoid the testing of the articles is writ large. In essence, it was contended by the learned Public Prosecutor that the return of articles/exhibits seized by the FSL, Delhi was not the handiwork of father of the deceased but was that of father of appellant Anand Sharma.

68. We need not dwell on this aspect of the matter, for de-hors the FSL report Ex.PW-22/B, we have concluded that it stands established that the deceased got burnt by kerosene oil. Firstly from the fact that Dr.Deepak who gave medical treatment to the deceased recorded that he had detected smell of kerosene from the clothes of the deceased and secondly from the fact that ASI Om Pal Singh, HC Guljar Singh and Ct.Satyavrat have consistently deposed that even they detected smell of kerosene from the bed on which they saw a burnt bed sheet i.e. the bed on which the deceased was sleeping when she was burnt after kerosene oil was thrown on her.

69. It is apparent that appellant's presence with the deceased when she was removed in the PCR van and when she spoke of Dr. Deepak was the cause which led the deceased to not tell the truth. Her statements recorded in Ex.PW-16/A and the MLC Ex.PW-2/A have thus to be discarded.

70. In the decision reported as 1986 SCC (Cri.) 2 State Vs. Laxman Kumar & Ors., the Supreme Court held that a person being burnt has to be either a suicide or a homicide or accidental. Evidence other than oral dying declarations was heavily relied upon in said case to determine the truthfulness of a dying declaration made. The decision guides that the Courts should keep the adage : men may lie but circumstances don't, in mind. It is the duty of a Court at every criminal trial to find the truth. The decision reported as 2001 SCC (Cri.) 993 Laxmi Vs. Om Prakash & Ors. guides that infirmity in dying declarations should persuade the Court to discard them. So is the law declared in the decision reported as (2010) 6 SCC 566 Puran Chand Vs. State of Haryana. Intrinsic as well as extrinsic contradictions in dying declarations are extremely important and need to be captured while analyzing the evidence before believing or rejecting the dying declarations.

71. The deceased got burnt when kerosene oil was used. It is not the case of either the prosecution or defence that the deceased had poured kerosene oil on herself to commit suicide. The kerosene oil could not have accidentally fallen upon the deceased while she was sleeping in her bed room in the wee hours of August 03, 2006. The only alternative which remains is that the kerosene oil was poured on the deceased while she was sleeping and she was burnt.

72. Now, who had poured kerosene oil upon the deceased? Three persons viz. accused Anand Sharma (husband of the deceased), Om Prakash (father-in-law of the deceased) and Shakuntla (mother-in-law of the deceased) were present in the house in question at the time when she was burnt. (The said fact has been admitted by the aforesaid three persons in their statements under Section 313 Cr.P.C.) Either all of three accused persons or one/two of the (three) accused persons poured kerosene oil on the deceased and burned her to death. No evidence has emerged regarding the identity of the person (s) who had burnt the deceased to death for the death of the deceased has been burnt within the four walls of her matrimonial house.

73. To cater to a situation of this kind, in the year 1986 the Legislature enacted Section 304-B and Section 113B in the IPC and the Evidence Act respectively.

74. Section 304-B IPC reads as under:-

“304B. Dowry Death –

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

75. Section 113B of the Evidence Act reads as under:-

“113B. Presumption as to dowry death –

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

76. Section 304-B IPC read with Section 113B Evidence Act embodies a legal fiction whereby the husband or concerned relative of the husband is deemed to have caused dowry death in a case where the (four) conditions prescribed in Section 304-B IPC are fulfilled. When the (four) conditions prescribed in Section 304-B IPC are fulfilled, the onus shifts on the husband or the concerned relative, as the case may be, to rebut the presumption enshrined in the Section by cogent evidence to show that he has not caused dowry death.

77. The four conditions laid down under Section 304B IPC on fulfillment of which presumption of dowry death would be raised against the husband or concerned relative of the deceased are as follows:-

- (i) The death of woman is caused by any burns or injury or occurs otherwise than under normal circumstances;
- (ii) The death of woman must have occurred within seven years of her marriage;
- (iii) The woman was subjected to cruelty or harassed by the husband or concerned relative of husband soon before her death;
- (iv) The woman was subjected to harassment or cruelty for or in connection with any demand for dowry.

78. Reverting to the facts of the instant case, we have already held in the foregoing paragraphs that the death of the deceased was not caused

under normal circumstances. The death of the deceased had taken place within seven years of marriage inasmuch as it is not in dispute that the marriage of deceased and accused Anand Sharma was solemnized on January 29, 2003 and the deceased had died on August 16, 2006. The ocular evidence of the family members of the deceased who stepped into the witness box establishes that the deceased was being harassed by her husband Anand Sharma (and other in-laws) in connection with demand for dowry soon before her death. (The ocular evidence of the family members of the deceased on the aspect of harassment faced by the deceased at hands her husband Anand Sharma (and other in-laws) in connection with demand for dowry soon before her death has not been seriously controverted by the defence). Thus, all four conditions laid down under Section 304B IPC for raising the presumption that husband of the deceased Anand Sharma had caused dowry death of deceased stand fulfilled in the present case. As a result, the onus now shifts upon accused Anand Sharma (husband of the deceased) to rebut the presumption that he had caused the dowry death of the deceased.

79. The explanation given by accused Anand Sharma (husband of the deceased) in his statement under Section 313 Cr.P.C. was that he does not know as to how the deceased got burnt as he was sleeping at the time when the deceased got burnt. The aforesaid explanation furnished by accused Anand Sharma is most flimsy and unsatisfactory. As per accused Anand Sharma himself, he i.e. accused Anand Sharma was sleeping by the side of the deceased on the bed where the deceased was burnt. the deceased sustained extensive burn injuries to the extent of 80% of total body surface area but accused Anand Sharma who was sleeping next to

the deceased did not come to know as to how the deceased got burning. It is not as if the deceased got burnt in thin air.

80. We have already noted herein above that the dying declarations contained in the log book register Ex.PW-16/A and MLC Ex.PW-2/A of the deceased was most probably made by the deceased at the instance of her husband accused Anand Sharma. The photographs Ex.PW-20/A1 to Ex.PW-20/A4 show that the deceased was burnt on a bed lying in a bedroom of her house inasmuch as the bed sheet spread on the bed in question is burnt. In view of the fact that the deceased was burnt on a bed lying in a bedroom of her house it became compulsion for accused Anand Sharma to make the deceased speak that she got burnt when a candle fell upon her “while she was sleeping” instead of saying that she got burnt while lighting the candle for had the deceased burnt while lighting the candle she would have gotten up from the bed and bed sheet spread on the bed where the deceased was sleeping would not have burned in said case. In these circumstances, it has to be held that accused Anand Sharma (husband of the deceased) failed to rebut the presumption arising against him that he had caused dowry death of the deceased.

81. Further, we note that the conduct of accused Anand Sharma was most suspicious at the time when the deceased got burnt. To repeat, the deceased has sustained extensive and deep burn injuries to the extent of 80% of total body surface area. The condition of the deceased was extremely critical. In such a situation, the first instinct of a husband would be to immediately take his (burnt) wife to the hospital. However, in the instant case, accused Anand Sharma (husband of the deceased) did not take the deceased to the hospital but instead waited for a PCR van to take the deceased to the hospital, despite the fact that he i.e. accused

Anand Sharma owned a car. The relatives of the deceased who have stepped into the witness box viz. Manju Sharma PW-1, mother of the deceased, Mahender Sharma PW-11, father of the deceased, Jayant Sharma PW-5, brother of the deceased and Sudhakar Sharma PW-7, parental uncle of the deceased have deposed that a Maruti car was gifted to the deceased at the time of solemnization of her marriage with accused Anand Sharma, which deposition has not been seriously controverted by the defence.

82. The net result of the above discussion is that accused Anand Sharma (husband of the deceased) is guilty of causing dowry death of the deceased and thus committed an offence punishable under Section 304B IPC. (We are not dealing with other in-laws of deceased viz. her father-in-law Om Prakash, mother-in-law Shakuntla and sister-in-law Geeta for the reason Geeta and Shakuntla died during the pendency of trial and appeal respectively. Om Prakash, father-in-law of the deceased, has been acquitted by the learned Trial Judge, which acquittal has not been challenged by the State).

83. The conviction of the appellant as also the sentence to undergo imprisonment for life is upheld.

84. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 29, 2014
mamta