

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

+ **CRIMINAL APPEAL NO.802/2011**

% **Reserved on:** 17th December, 2015
Date of Decision: 6th April, 2016

WASIM HASSAN Appellant
Through Mr. M.S. Khan, Advocate.

versus

STATE Respondent
Through Ms. Aashaa Tiwari, APP with HC
Kishan Singh, MHCM, PS-New Usman Pur.

CRIMINAL APPEAL NO.571/2011

AMIR JAHAN Appellant
Through Mr. M.S. Khan, Advocate.

versus

STATE Respondent
Through Ms. Aashaa Tiwari, APP with HC
Kishan Singh, MHCM, PS-New Usman Pur.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K. GAUBA

SANJIV KHANNA, J.

This common judgment would dispose of these appeals preferred by Wasim Hassan and his mother Amir Jahan impugning judgment dated 7th April, 2011, passed by Additional Sessions Judge-V, Karkardooma Courts in the charge sheet arising out of FIR No.112/2006, police station New Usmanpur convicting them under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short) and Section 498A of the IPC.

2. By the order on sentence dated 8th April, 2011, the two appellants have been sentenced to life imprisonment, fine of Rs.5,000/- each and in default of payment of fine, to undergo simple imprisonment for one year for the offence under Section 302 read with Section 34 IPC and simple imprisonment for three years, fine of Rs.5,000/- each and in default of payment of fine, to undergo simple imprisonment of six months for the offence under Section 498A IPC. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.), it is directed, would be given.

3. Unnatural death of Rehana, wife of Wasim Hassan and daughter-in-law of Amir Jahan pursuant to burn injuries suffered in her matrimonial home on the second floor of property at L-1153, Gali No.8, Gautam Vihar, Delhi at about 10 A.M. on 2nd April, 2006, is not under challenge and is proved beyond doubt. Rehana at about 11.20 A.M. on 2nd April, 2006, was taken to the Guru Teg Bahadur Hospital (GTB Hospital) and was admitted there, vide MLC Ex.PW-15/A. Rehana died at about 11.15 P.M. on 4th April, 2006. As per the postmortem report Ex.PW-10/A, she had ante mortem burn injuries all over her body, sparing a small area in front of the abdomen. The cause of death, it was opined, was septicemic shock due to infected flame burns, ante mortem in nature, involving 95% of the body surface. The said postmortem examination was conducted by Dr. Barkha Gupta, Senior Resident, whose handwriting and signatures were identified by Dr. Arvind Kumar (PW-10).

4. The appellants do not also dispute the date of marriage of Rehana with Wasim Hassan. Shabana (PW-1), sister of Rehana has deposed that Rehana had married Wasim on 1st May, 2004. Julekha (PW-2), mother of Rehana in her testimony recorded on 25th August, 2007, has stated that her deceased

daughter Rehana had married Wasim about two years prior to her death. The said versions given by the two prosecution witnesses remained uncontroverted and, in fact, both Amir Jahan and Wasim had accepted in their statement under Section 313 Cr.P.C. that Rehana had got married to Wasim on 1st May, 2004.

5. Before we go to the evidence on record, we would notice that the trial court had framed alternative charges under Section 304 B read with Section 34 IPC and Section 302 read with Section 34 IPC, inter alia, recording that Rehana had suffered an unnatural death, otherwise than under normal circumstances within seven years of her marriage. The trial court has convicted the appellants under Section 302 read with Section 34 IPC.

6. The judgment under challenge primarily relies upon the dying declaration of Rehana marked Ex.PW-6/A, which was recorded by L.R. Meena, who on 3rd April, 2006 was posted as the Sub Divisional Magistrate, Seelampur Sub Division. This witness has testified that on 3rd April, 2006 at the request of the SHO, police station New Usmanpur, he at about 3.00-3.30 P.M. had visited the burns ward of the GTB Hospital and had recorded statement of the deceased Rehana marked Ex.PW-6/A, which was attested by him at point X. L.R. Meena (PW-6) had also recorded statement of Shabana (PW-1) and Julekha (PW-2) on the request of the SHO, police station New Usmanpur at about 12 noon on 3rd April, 2006, which were marked Ex.PW-1/A and Ex.PW-2/A, respectively. The statement Ex.PW-6/A subsequently became the fulcrum of the FIR in question, i.e. FIR No.112/2006, police station New Usmanpur. The statement made by Rehana and recorded by L.R. Meena (PW-6), marked Ex.PW-6/A in Hindi, reads as under:-

“Meri shaadi 02.5.04 mein Wasim se hui thi, mera ek ladka 11 mahine ka hai. Mere ghar se mera pati mujhe tang karta tha or paise maangta tha. Meri mummy ne mujhe makaan leker diya tha jis per do lakh rupey diye the. Mujhe sham mein or raat mein tang kerte the, meri saas inko sikhati thi. Mere se maarpeet nahi kerte then, sirf taane dete the. Mujhe kehte the ki teri mummy mujhe khana nahi khilati hai, jo meri mummy kehti thi kit ere gahr per nahi hai jo hamse maangta hai. Mujhe kal subah mein meri saas, Wasim ne jala diya. Mujhe meri bahan or mummy yaha aspataal mein laayi. Dahej ki maang bhi kerte the or kehte the ki gaadi to di nahi. Yeh bayan main apni marji se de rahi hoon mere upper kisi ka dabab nahi hai. Main bayan den ke kabil hoon tabhi bayan de rahi hoon. Phir kaha ki mere pati ne pehle ek shaadi ker rakhi thi parantu yeh baat maine apne ghar walo ko nahi batati thi. Mujhe or kuch nahi kehna hai, bayan sun liya hai theek hai.”

7. The said statement mentions that Rehana had got married to Wasim on 2nd May, 2004 and she had a son aged 11 months. Her husband used to trouble her and would demand money from her. Her mother had bought her a house and had given Rs.2,00,000/-. She was tortured day and night and repeatedly taunted by her husband. Her mother-in-law used to instigate her husband against her. Yesterday, her husband Wasim and her mother-in-law had burnt her. Subsequently, her mother and sister had brought her to the hospital. Rehana was repeatedly told to get money and humiliated that she had not got a car. Rehana had even alleged that her husband was already married, but she had concealed this fact from her family members. In the end, she confirmed that her statement was correct.

8. The primary question to be decided in this appeal is whether this dying declaration is truthful and credible and can form the foundation and basis for convicting the appellants. Before we elucidate on the circumstantial evidence that lends credibility and support to the dying declaration, we would like to examine the testimony of L.R. Meena (PW-6), the Sub Divisional Magistrate, Seelampur Sub Division, who had recorded the said dying declaration. It is obvious that he is a third party and an independent person. He did not know the deceased or her family or the appellants or their family from before. In his cross-examination, L.R. Meena (PW-6) has testified that he had recorded statement of Julekha (PW-1) and Shabana (PW-2) and after completing the proceedings at about 12.45 P.M. on 3rd April, 2006 had left for his office. At about 3.00-3.15 P.M., on receiving information that Rehana was medically declared fit for statement, PW-6 had proceeded to the GTB Hospital. The said hospital was located at a distance of about 3-4 kilometers from his office. He had first checked the MLC, Ex.PW-15/A and examined whether Rehana was declared fit for statement. However, PW-6 could not recollect the name of the doctor who had declared that Rehana was fit and could make a statement. PW-6 took about 30-35 to ascertain whether the injured was in a fit condition to make a statement. The statement Ex.PW-6/A was recorded in the handwriting of his Head Clerk Satpal Arora. L.R. Meena (PW-6) has stated that only he, Satpal Arora and the patient i.e. Rehana were present and the relatives were sent out of the ward. He had denied the suggestion that the patient was not in a position to speak. PW-6 has accepted that he had taken right thumb impression of the deceased as the same was not burnt. One of the suggestions put to L.R. Meena (PW-6) in his cross-examination and the reply given by him reads:-

“It is wrong to suggest that I did not meet the injured on the day when I recorded the statement nor I recorded her statement.”

It is clear that L.R. Meena (PW-6) had recorded the statement of the deceased Rehana at about 3.30 P.M. on 3rd April, 2006 in the GTB Hospital. To assert and allege to the contrary would be far-fetched and fallacious.

9. Dr. Ashish (PW-17) has deposed that on 3rd April, 2006, he was on duty as a Junior Resident in the GTB Hospital, Shahdra. At about 3.15 P.M. he had declared that Rehana was fit for making statement. He had made an endorsement to this effect at point X-1 in the MLC, Ex.PW-15/A. The said endorsement was signed by Dr. Ashish (PW-17) at point X-2. Dr. Ashish (PW-17) was not cross-examined on 5th July, 2010, when his examination-in-chief was recorded. He was subsequently recalled for cross-examination, which was conducted on 27th August, 2010. In his cross-examination, Dr. Ashish (PW-17) reiterated that he had checked the vitals recorded by the nursing staff, examined the patient to ascertain whether the patient was in a condition to recognize time, place and person and only thereafter, he had declared Rehana fit for statement. PW-17 has testified that before declaring a patient fit for statement, the doctor should determine whether he or she is able to hear, see, speak and is mentally in a fit condition to comprehend questions. PW-17 denied the suggestion that he at the instance of the Investigating Officer, had declared the patient fit for statement. There is no reason to doubt the sworn statement of Dr. Ashish (PW-17).

10. At this stage, we would also take on record testimony of Dr. Parmeshwar Ram (PW-15), who had identified and proved the MLC of

Rehana Ex.PW-15/A in the handwriting of Dr. Gllayahota, ACMO, who had left the hospital. He identified the signature of Dr.Gllayahota as he had seen him writing and signing during the course of his duties. The MLC at the time of admission records that the patient was conscious but was unable to talk. She was earlier declared unfit for statement at about 4.20 P.M. and 8.50 P.M. on 2nd April, 2006 and at about 8.45 A.M. on 3rd April, 2006. Thus, the doctors had earlier on three occasions declared that Rehana was unfit for statement before she was declared fit for statement by Dr. Ashish (PW-17) at about 3.15 P.M. on 3rd April, 2006.

11. This brings us to the crucial question whether we should accept the dying declaration i.e. it is a case of murder as the two appellants had burnt Rehana. We would for the reasons recorded above accept L.R. Meena (PW-16)'s testimony that statement Ex.PW6/A was recorded by him. The primary question is not whether the statement was recorded but whether what was stated by Rehana was the true and correct version of the event and cause of death. Further, if the prosecution has failed to prove the charge of murder, whether an offence under Section 304 B read with Section 34 IPC is established. The contention of the appellants is that Rehana had committed suicide and for reasons which were personal and attributable to differences between Rehana and her mother/sister.

12. To decide this question, we would like to refer to the testimony of Mohd. Yamin (PW-3), who was residing on the first floor of the premises, L-1153, Gali No.8, Gautam Vihar, Delhi, Shabana (PW-1) and Julekha (PW-2). In addition, we would also like to refer to the statement made by Nadra (DW-1), Zakir Hassan (DW-2) and the police officers SI Pramod Kumar (PW-16), the Investigating Officer, Constable Sunil (PW-12), who had

proved the photographs Ex.PW-12/A1 to A-4 and negatives thereof Ex.PW-12/A5 to A8 and Constable Shiv Kumar (PW-8), who had visited the spot immediately after the occurrence.

13. We begin with the statement of Shabana (PW-1). She has testified that Rehana after her marriage with Wasim on 1st May, 2004, had resided happily with him for about one or one and a half months. Thereafter, her husband started harassing her and would demand money for purchasing a plot. Earlier her mother had given Rs.50, 000/- to Wasim for purchase of a fridge and motorcycle. When Rehana would protest and convey her inability to arrange for money stating that she did not have a father, her husband would point out that she could get money from her uncles (*Chacha* and *Tau*) and that her brother and uncles had fields in the village and could arrange money for them. These demands had continued for about 7-8 months but Shabana (PW-1) and her family members did not care. Her mother had a plot at Kardampuri and had asked Wasim to live there. Wasim refused the said offer stating that he could not work from the said property. Her mother had given Wasim Rs.2-2.25 lacs to enable him to purchase a plot of his choice in Usmanpur. Thereupon, Rehana was kept well for about one or two months. Subsequently, Wasim started demanding Rs.7 lacs for purchasing a big house and to setup a workshop. Suddenly, they came to know that Wasim wanted to sell the house in Usmanpur. They had tried to pacify Wasim and while expressing their inability to arrange for Rs.7 lacs, had told him that they had arranged for Rs.3 lacs. On 28th March, 2006, Shabana (PW-1) along with her mother and her uncle had gone to the house of Wasim. In their presence, Wasim had beaten Rehana. At that time, her mother-in-law was also present. They had assured them that they would

arrange the money. On 28th March, 2006, they came to know that Wasim had sold the house in Usmanpur and had moved to a rented accommodation. On 2nd April, 2006, PW-1 came to know from a neighbour that her sister had been burnt and they should go to her house. PW-1 along with her mother, uncles and aunts had proceeded to the house, where Wasim was residing, and she alongwith her mother had accompanied Rehana to the hospital in a police vehicle.

14. This testimony of Shabana (PW-1) was recorded on 25th August, 2007. Counsel for the appellants was not available and her cross-examination was accordingly deferred and taken up on 22nd October, 2007. On 22nd October, 2007, a few simple questions were asked and the cross-examination was deferred at the request of the counsel for the defence. One of the questions asked was, whether Rehana had a love affair with Kaiser Ali before her marriage with Wasim. This allegation was stoutly denied. Shabana (PW-1) was cross-examined on 22nd February, 2008 and thereafter, she was recalled for cross-examination which was conducted on 6th February, 2009. On 6th February, 2009, in her cross-examination, PW-1 testified that Rehana was in a semi conscious state and was not in a position to speak a single word when she was taken to the hospital. However, Rehana was listening and was crying. At that time, no conversation took place between PW-1 and Rehana. When Rehana was in the burns ward, they were not allowed to visit her. In fact, nobody was allowed in the ward and, therefore, PW-2 could not meet her. PW-1 has refuted and denied that there was any relationship between Kaiser Ali and Rehana or that they had forced Rehana to get married to Wasim. PW-1 had further stated that her mother had sold the plot at Kardampuri and had given cash to the appellant Wasim.

15. Julekha (PW-2) in her testimony recorded on 25th August, 2007, affirms that she had given Rs.50,000/- in cash to Wasim. Rehana for the first one or one and a half months was happy in her matrimonial home. Wasim used to ask for money from time to time and Rehana's mother-in-law, father-in-law and sister-in-law would torture her. About 15-20 days prior to Rehana's death, Wasim had asked Rehana to bring Rs.5/7 lacs. Whenever Rehana would visit PW-2's house, she would narrate such instances. On 28th March, 2006, she along with her daughter Shabana and brother-in-law Shaukeen had visited Rehana at her matrimonial house. They had seen Wasim and Amir Jahan physically abusing i.e. beating Rehana. They had intervened and Shaukeen had told them that they would arrange Rs.3 lacs. Thereupon, they came back to their house. On 1st April, 2006, Wasim had spoken to Farid, son of PW-2 on phone. PW-2 had also spoken to Wasim who had then inquired from her whether they had arranged for the money. PW-2 had told Wasim that this would take time. Wasim had then abused them on phone and stated that he would do what he wanted to do and they should arrange the money. Next day on 2nd April, 2006 at about 9.45 or 10.00 A.M, Farid (son of PW-2) had received a telephone call from Wasim and came to know about the occurrence. PW-2 along with her two sisters-in-law and elder daughter had gone to the house of Wasim. Police was present there. They took Rehana in a police vehicle to the GTB Hospital, where she was admitted. They could not meet and speak to Rehana as she was admitted to the ICU. She was not allowed to speak to Rehana. PW-2 reiterated that she had given her house to her daughter but Wasim had sold the property. PW-2 was not cross-examined on 25th August, 2007 by the counsel for the appellants. She was cross-examined on 26th May, 2009. In

her cross-examination, she reiterated her version, though minor discrepancies between her Court deposition and her statement, Ex.PW-2/A recorded by the Sub Divisional Magistrate, were pointed out. We are not referring to the said discrepancies for they are insignificant and natural. PW-2 has denied that Rehana wanted to marry Kaiser Ali. In fact, she denied the suggestion that a person named Kaiser was a relative. Her daughter would visit them after about one or one and a half months.

16. Learned counsel for the appellants had submitted and urged that Shabana (PW-1) and Julekha (PW-2) had accepted that they did not make any police complaint, though they profess that Rehana had been harassed and tortured for dowry. In the facts of the present case, this would be immaterial. Rehana had died within two years of marriage and Julekha (PW-2) had succumbed to the threats and demands of the appellants. She had paid money for purchasing the plot, which was subsequently sold by the appellant Wasim. We would be subsequently referring to the version given by the two appellants in their statement under Section 313 Cr.P.C., which makes an interesting reading.

17. Constable Shiv Kumar (PW-8) has deposed that on 3rd April, 2006 at about 6.30 P.M., they had gone to house No. L1153, Gali No.8, Gautam Vihar and at the instance of the Investigating Officer, they had seized a plank of a broken door (*palla*) vide seizure memo Ex.PW-8/A. The Investigating Officer had subsequently arrested the two appellants vide arrest memo Ex.PW-8/B and Ex.PW-8/C. As per the said arrest memos, the appellants were arrested on 3rd April, 2006 at about 9.30-9.45 P.M. Thus, the appellants were not arrested on the date of the occurrence i.e. 2nd April, 2006. The reason is obvious that the FIR was not registered till L.R. Meena

(PW-6) had recorded the dying declaration of Rehana at about 3:00 – 3:30 p.m. on 3rd April, 2006. Further, statement of Shabana (PW-1) and Julekha (PW-2) were recorded by the Sub Divisional Magistrate only on 3rd April, 2006. In his examination-in-chief, Constable Shiv Kumar (PW-8) has deposed that the door was having black coloured spots of burn marks and the paint had also got burnt in the flames. This door plank was produced in the Court and was marked Ex.PW-8/Article-1. PW-8 testified that they had met the landlord Mohd. Yasin at the spot. One of the suggestions given to PW-8 was that Wasim was arrested when he was going in the PCR i.e., along with the deceased. The suggestion was denied. PW-8 also denied the suggestion that Amir Jahan had met them in the police station and was arrested. It may be relevant to state that it was not suggested to Shabana (PW-1) and Julekha (PW-2) that Wasim had accompanied Rehana to the hospital. This is a significant fact and shows the conduct of the appellant Wasim. Records also do not show that Amir Jahan had even once visited Rehana in the GTB Hospital after she was admitted there with burn injuries.

18. Constable Sunil (PW-12) had taken the photographs Ex.W-12/A1 to A4 on 2nd April, 2006 at the spot itself. Photographs show presence of a plastic container, in which kerosene oil was kept, and the broken bathroom door. Only one plank of the bathroom door was broken. The entire door had not been taken out or removed. Burnt clothes can be also seen lying inside the bathroom. Water on the floor in the bathroom is visible.

19. This brings us to the testimony of the landlord Mohd. Yamin (PW-3). In his examination-in-chief recorded on 23rd July, 2008, he had stated as under:-

“ On 02.04.2006 at about 10.00 a.m. I was present at my house. Some person informed me that my house was on fire. With the help of other residents of the same lane I broke open the bath room door situated at second floor portion of the house and found that deceased Rehana was pouring water on her head with the help of mug from the bucket. Thereupon all the male members came downstairs and female family members and other ladies of the street, deceased was brought out of the bathroom. Police arrived at the spot and accused Wasim, present in court, called his in-laws. Thereafter, mother and sister of the deceased also reached there. Deceased was rushed to the hospital in injured condition.

No quarrel took place between either of the accused persons and the deceased at any point of time in my presence. I had shown the place of occurrence to the police. Site plan Ex.PW3/A was prepared by the police in my presence.

X X X X by accused person.

Deferred on account of non availability of Id. Defence counsel. ”

20. As per the aforesaid version, the occurrence had taken place at about 10.00 A.M. on 2nd April, 2006. Mohd. Yamin (PW-3) along with other residents had broken the bathroom door situated on the second floor portion of the house. Rehana was found pouring water on her head from the bucket with the help of the mug. PW-3 has not deposed that Wasim was present at the spot and had broken the door and had thrown water on Rehana. PW-3 had also testified that in his presence the appellants and the deceased had not quarreled at any point of time. Counsel for the defence was not available and cross-examination of PW-3 was deferred. PW-3 again appeared for

cross-examination on 22nd October, 2008, but was not cross-examined and it is recorded 'Nil. Opportunity given'.

21. Mohd. Yamin (PW-3) was re-called on an application filed by the appellants under Section 311 of the Code, and cross examined on 26th May, 2009. In his cross-examination PW-3 has made assertions to help and favour the appellants. Apparently, by then he had been influenced and won-over. For the first time, on 26th May, 2009, PW-3 claimed that Wasim was raising the alarm *bachao bachao aag lag gayi*. Wasim was shaving for he had soap on his face. Wasim was trying to open the door of the bathroom, which was locked from inside. Wasim had joined others in breaking the door and at that time they had seen Rehana was burning. Rehana was not wearing any clothes and women from the neighbourhood had wrapped her and taken her to the room. The difference between the two versions given by Mohd. Yamin (PW-3) on 26th May, 2009 and 23rd July, 2008, where he strikingly did not mention and name the appellant-Wasim with the others who had broken the door and had extended a helping hand to rescue Rehana, is conspicuous and apparent. As per PW-3's deposition on 23rd July, 2008, Rehana was pouring water on her head with the mug from the bucket, i.e., she was trying to save herself. The only act attributed to Wasim was that he had called his in-laws, who had reached the spot. The deviation and the helping hand in the second hand and belated version given by Mohd. Yamin (PW-3), projecting Wasim as a saviour is apparent from the latter portion of his cross-examination on 26th May, 2009. PW-3 has testified that a day before the incident, mother and sister of the deceased had come to the property and heated arguments had ensued between them and Rehana. He has tried to amorally negate his earlier version recorded on 23rd July, 2008 to

the effect that he had seen Rehana pouring water on herself. In the end, PW-3 even accepted the suggestion given on behalf of the appellants that Rehana had burnt herself. Noticeably, Mohd. Yamin's wife Nadra has appeared as a defence witness, DW-1. She professed that Rehana in her free time would speak to her (Nadra) and had divulged liking for Kaisar whom she continued to love. In fact, at all times Rehana would speak about Kaisar and 10-12 days before the occurrence, Rehana had given DW-1 two letters written by the said Kaisar to her to be kept in safe custody. Rehana had revealed to DW-1 that her mother and sister had forcibly and against her wishes got her married to Wasim for she wanted to marry Kaisar, whom she had not forgotten. On 1st April, 2006 at about 1 P.M. when Rehana was alone in her house, her mother and sister had come and the three had quarrelled. Rehana had thereafter told DW-1 that her mother and sister had forcibly taken with them Rs.2,75,000/- kept in a polythene bag. The said amount had been kept aside by Wasim for purchasing a house. In her cross-examination, DW-1 accepted that she had never met Kaisar and the accused, i.e., the appellants, were their tenants for whom she had developed liking and affection. DW-1 was not a summoned witness and had appeared and deposed at the request of the appellant Wasim, who used to address her as *khala* (maternal aunt). She denied the suggestion that Kaisar was a fictitious person, she had concocted the story that Rehana used to like Kaisar and the letters were fabricated. Zakir Hassan, father of Wasim and husband of Amir Jahan has deposed as DW-2. He also claims that on 1st April, 1996 (sic. 2006) when Rehana was alone at home her mother and sister had come and forcibly taken away Rs.2,75,000/-, which had been kept aside for purchasing a house. Further, cousin sister of Rehana, who was residing nearby, had told them that Rehana

was in love with Kaisar, but her mother and sister had forcibly got her married to Wasim against her wishes. The mother and sister of Rehana had falsely implicated the appellants in this case. DW-2 went on to ascribe and attribute threats and extortion by Julekha, for he had asserted that in August, 2007, mother of Rehana, i.e., Julekha (PW-2), had called them to their house and told them that on payment of Rs.3 lacs they would state the true facts, otherwise they would implicate them. Noticeably, Julekha (PW-2) was not confronted and cross-examined on extortion, demand of Rs 3 lakhs, or that she and her daughter had forcibly snatched and taken away Rs 2,75,000/-. DW-2 had accepted that the deceased Rehana had not made any allegations against him or other relatives. Further, neither he nor his family members had ever seen Kaisar and the witness could not deny or admit whether there was any person named Kaisar or if he was only a fictitious person. DW-2 accepted that Wasim was married to Rehana and had not divorced her. Marukh Ahmad (PW-4), a neighbour, had turned hostile after accepting that he was a resident of the same house. He refused to divulge about the occurrence.

22. The two appellants in their statements under Section 313 Cr.P.C. have stated that Rehana used to like Kaisar Ali and wanted to marry him. Both of them had even claimed that Rehana had got pregnant and had aborted a child in 1996 and consequently developed medical problems. On 1st April, 2006, Julekha (PW-2), and Shabana (PW-1), sister of the deceased, had come to their house and taken away the polybag with Rs.2,75,000/-. This amount had been kept aside by Wasim for purchasing a house. This incident was seen by the wife of the landlord and since then Rehana was very sad, and on the next day, i.e., 2nd April, 2006 she committed suicide by bolting the door

of the bathroom and setting herself on fire. Wasim had tried his best to save her. At the time of the incident, Wasim was in his room and had thereafter come towards the bathroom and had tried to break the door. He had raised an alarm. With the help of neighbours, he had broken the door and Rehana was taken out from the bathroom. He had called an ambulance for taking Rehana to the hospital and had also informed his in-laws and the police. Rehana was admitted with 100% burns and was unconscious and had remained in this condition till she died. SDM, Seelampur, Shabana (PW-1) in connivance with IO Pramod Kumar and Dr. Barkha Gupta and Julekha (PW-2) had fabricated the dying declaration.

23. The assertion that Julekha (PW-2) and Shabana (PW-1) had taken away Rs.2,75,000/- from the hands of Rehana on 1st April, 2006 is clearly a concocted and invented story having no basis whatsoever. It is a false and fabricated assertion, which must be rejected. Noticeably, Nadra (DW-1) does not say that she had seen Julekha (PW-2) or her daughter taking away this amount. Mohd. Yamin (PW-3) did not assert or allege that DW-1, his wife had told or informed him about any such occurrence. Similarly, introduction and reference to Kaisar, a person whose parentage and residence remains obscure and incomprehensible, is a concoction and a ghost. This rendition and insinuation is a pretence and Rehana's love affair an illusion and a myth. These falsities and aspertions only reflect and give added credence to the allegations against the appellants. They unwittingly in a small manner add to the factors against the appellants.

24. The fact that the neighbours had broken the bathroom door that was locked from inside is somewhat perplexing and of concern for it could reflect that the deceased Rehana had set herself on fire in the bathroom. In case the

appellants had set Rehana on fire in the bathroom, they could not have bolted the door of the bathroom from inside. The dying declaration, Ex PW-6/A is silent and does not spell out how Rehana had entered the bathroom. Rehana was however unequivocal and explicit that her husband and mother-in-law, i.e., the two appellants, had burnt her. She did not implicate her father-in-law or other family members. The photographs, marked Exhibit PW-12/A1 to A4, are revealing. Burnt clothes can be seen lying on the bathroom floor. A bucket can be seen. Water on the bathroom floor can also be seen. A washing machine lying outside the bathroom on the terrace is visible. Mohd. Yamin (PW-3) in his examination-in-chief on 23rd July, 2008 has stated that Rehana was pouring water on her head with the help of a mug from the bucket. This is the true and correct version. Presence of clothes on the floor shows that Rehana was not wearing clothes at that time, a fact stated by Mohd. Yamin (PW-3) in his cross-examination on 26th May, 2009. In case Rehana had to commit suicide, she would not have removed her clothes before setting herself ablaze. We had called for and examined these burnt clothes before reserving the judgment. Rehana had suffered 95% burns. Indications are that Rehana was burnt and had bolted the door of the bathroom, and had removed her clothes to save herself. She had poured water on herself. Bolting the door of the bathroom from inside was to extricate and protect herself from the perpetrators. It is, in this context, the conduct of Wasim becomes relevant. It is proven and accepted that Wasim and Amir Jahan were present in the house. Mohd. Yamin (PW-3) in his examination on 23rd July 2008 had stated that he and other residents of the same lane had broken the door. PW-3 was Wasim's landlord and knew Wasim but did not name and state that Wasim was amongst the persons who

had broken the door. It is evident and obvious from Mohd. Yamin (PW-3)'s deposition on 23rd July 2008 that Wasim had not cried out or shouted for help. He had not taken immediate and first steps to save Rehana. The conduct, demeanour and behaviour of the appellants and other surrounding facts lend support to and affirm Rehana's assertion in the dying declaration that she was set on fire by her husband Wasim and mother-in-law Amir Jahan. The only act attributed to Wasim in the deposition of Mohd. Yamin (PW-3) on this date was the call he made to his in-laws. Mohd. Yamin (PW-3) was initially not cross-examined. PW-3's version did change after about eight months on 26th May, 2009 when he was cross-examined on being recalled on an application under Section 311 of the Code. On this occasion, contrary to the earlier version he had stated that Wasim had also participated in breaking the door. We have for reasons explained, rejected this second version that tries to absolve the appellants.

25. The aforesaid facts have to be read along with the dying declaration and should not be read in isolation. What we have is the weighty and authoritative dying declaration, Ex. PW 6/A, recorded by L.R.Meena, the SDM (PW-6). The aforesaid discussion makes reference to oral testimony of the police officers and the first version of Mohd. Yamin (PW-3), and documentary evidence in the form of photographs, which affirmatively corroborate the dying declaration. Noticeably, the FSL report marked Exhibit PW-16/H records that hydrocarbon residues resembling as that of the petroleum hydrocarbons were to be found in the plastic container, clothes found at the spot and on the sealed paper envelop containing the scalp hair. However, no hydrocarbon residues could be seen on the match stick, which could be also found at the spot.

26. Courts before accepting and relying on a dying declaration should rule out possibility of tutoring or false implication at the behest of third parties or a statement implicating and naming a person due to anger or ill will. In this case, we do not see any reason or cause as to why the deceased Rehana would have falsely or wrongly indicted the two appellants as the perpetrators who had burnt her, and that too at the behest of Shabana (PW-1) or Julekha (PW-2). Rehana had got married and was living with Wasim. Amir Jahan was the mother-in-law of Rehana. Perceptively, there was no reason and cause for Shabana (PW-1) or Julekha (PW-2) to falsely implicate and ensure that Rehana names her husband or mother-in-law for the occurrence. Rehana did not name her father-in-law or other relatives in the dying declaration. Rehana's version was recorded by L. R. Meena (PW-6), the SDM. There was no cause or reason for him to come under anyone's influence or tutoring. His objectivity cannot be doubted.

27. SI Pramod Kumar, the Investigating Officer (PW-16) did not arrest or detain Wasim or Amir Jahan, immediately after the occurrence on 2nd April, 2006. He has testified that on reaching the place of occurrence, he had seen Rehana in a burnt state, door of the bathroom had been broken and mother of deceased Julekha (PW-2) was present. Rehana was sent to the GTB Hospital in a CATS ambulance. He had seen one plastic container having some kerosene and a match box with matchsticks, which had come out. One match stick was burnt. He had also seen burnt clothes, broken pieces of bangles lying in the bathroom, which was seized vide seizure memo Exhibit PW-6/A. Broken pieces of bangles would indicate the struggle. We have seen the seized burnt clothes, which would indicate that the deceased had taken off the clothes, which were burning. Mohd. Yamin (PW-3) has stated

that the deceased was not wearing any clothes when he had seen her in the bathroom. Amir Jahan and Wasim were arrested the next day, on 3rd April, 2006, at about 9.30-9.40 P.M. vide arrest memo Exhibits PW-8/B and 8/C. SI Pramod Kumar (PW-16) in his cross-examination had accepted that during the course of investigation he had learnt that Mohd. Yamin (PW-3), the landlord and the owner of the house, had informed the police on No. 100 about the occurrence but he had not recorded Mohd. Yamin's statement to the said effect. PW-16's assertion that he does not know whether the burnt clothes found at the spot belonged to the deceased or the appellant, reflects a natural reply when a person cannot recollect facts. This can happen for a number of reasons. PW-16 has deposed that certain other clothes and dresses were hanging in the bathroom, which were not burnt, and were not seized. PW-16 was categorical that the appellants had not accompanied Rehana when she was taken to the hospital.

28. Referring to the statement of L.R. Meena (PW-6), our attention was drawn to the fact that the said witness had changed his version about the presence of the relatives of Rehana when he had recorded her dying declaration. In his cross-examination, PW-6 had stated that relatives were present and were sent out of the ward. He has not stated that the relatives of Rehana were present when the dying declaration was recorded. The dying declaration, Exhibit PW-6/A, is a short one and it specifically records that this statement was written by Satpal Arora on the dictation of PW-6. Right hand thumb impression of Rehana was taken on the dying declaration. It is mentioned that the statement was recorded on 3rd April, 2006 in the GTB Hospital at 3.35 P.M. It is not the law that the dying declaration should be recorded in question answer form. Once we hold that the dying declaration

is credible, reliable and trustworthy, then it can form the basis for conviction of the two appellants.

29. In view of the aforesaid discussion, the evidence led by the prosecution proves and establishes as under:

- (i) Rehana, wife of Wasim and daughter-in-law of Amir Jahan had suffered extensive burn injuries in her matrimonial home at about 10-10.30 P.M. on 2nd April, 2006.
- (ii) She was taken out of the bathroom after breaking the bathroom door and at that time she was pouring water on herself. She was trying to save herself.
- (iii) The two appellants-Wasim and Amir Jahan were present, but had not participated along with the neighbours and Mohd Yamin (PW-3) in breaking the door to save Rehana.
- (iv) Rehana when in the bathroom was not wearing clothes, but burnt clothes were found in the bathroom and as per the FSL report Exhibit PW-16/H, residues of hydrocarbon resembling petroleum hydrocarbon were found on the said clothes.
- (v) Kerosene oil container and match sticks were also found at the spot.
- (vi) Rehana in her dying declaration Exhibit PW-6/A recorded by L.R. Meena, SDM (PW-6) on 3rd April, 2006 had stated that she had been burnt by her husband Wasim and her mother-in-law Amir Jahan. She did not name others, including her father-in-law.

- (vii) The dying declaration was recorded after Rehana was declared fit for statement by Dr. Ashish (PW-17).
- (viii) Presence of Wasim and Amir Jahan at the place of occurrence i.e. the matrimonial home of the deceased, is undisputed and accepted.
- (ix) It is only after the dying declaration Exhibit PW-6/A was recorded, that the two appellants Wasim and Amir Jahan were arrested on 3rd April, 2006 at about 9.30-9.40 P.M.
- (x) Statement of Shabana (PW-1) and Julekha (PW-2) show and establish that Rehana was harassed and tortured for dowry. Julekha (PW-2) had given money to enable Wasim to purchase a house. She had also given money to Wasim on other occasions.
- (xi) The versions given by appellants-Wasim and Amir Jahan that Rehana was in love with Kaisar Ali and that she had quarrelled with her mother and sister, who had taken away Rs.2,75,000/- from Rehana on 1st April, 2006, is a sham and a concocted story.

30. In view of the aforesaid findings, we do not find any merit in the present appeal. The conviction of the appellants Wasim Hassan and Amir Jahan is affirmed under Section 302 read with Section 34 IPC and Section 489A read with Section 34 IPC. We also do not see any reason to interfere with the order on sentence. The appeals are dismissed. Appellant Wasim Hassan was granted interim bail for a period of three weeks vide order dated 7th December, 2015. He

should have surrendered. If he has not surrendered, steps will be taken by the police and the trial court to ensure his arrest to undergo remaining sentence. Amir Jahan was released on suspension of sentence vide order dated 25th August, 2011. She will surrender within a period of four weeks from today to undergo the remaining sentence. In case, she does not surrender, steps will be taken by the police and the trial court to detain her in accordance with law. A copy of this judgment will be sent to the Trial Court.



(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

APRIL 6th, 2016
NA/ssn