

Court No. - 75

Case :- CRIMINAL REVISION No. - 827 of 1995

Revisionist :- Ram Nath Yadav

Opposite Party :- Sudhir Kumar Yadav And Others

Counsel for Revisionist :- R.K. Shangloo

Counsel for Opposite Party :- Govt. Advocate, Manoj Upadhyay, Uma Dutt Shukla

Hon'ble Umesh Chandra Sharma,J.

1. None appeared from the side of the revisionists and alive accused Sudhir and Smt. Aruna, even in revised call. Hence, heard learned AGA for the State and perused the record. This criminal revision is decided on merit.

2. This revision has been preferred against the judgment and order of acquittal dated 31.03.1995 recorded by ASJ-X, Kanpur Nagar, in ST No.547 of 1989 (State vs. Sudhir Kumar Yadav and others) under Section 498A, 304B/302/34 IPC, and Section 3/4 of the Dowry Prohibition Act, Police Station Naubasta, District Kanpur Nagar

3. The grounds of revision are that the opposite parties, Sudhir Kumar Yadav, husband of the deceased Smt. Gomti @ Garima; Sunil Kumar Yadav, her jeth; Smt. Aruna Yadav, jethani and Smt. Prema Devi, mother-in-law (saas) were all responsible for maltreating the deceased. Sunil Kumar and Smt. Aruna are alleged to have caught the deceased. Prema Devi poured the kerosene on the deceased and Sudhir Kumar (husband) applied a matchstick due to

which her entire body got burnt and she died the same day in Ursala Hospital at 10:00 pm on 25.08.1989.

4. From the side of prosecution, PW-1, informant Ram Nath, brother of the deceased, PW-2, Raj Kumar, friend of the informant who had visited the victim's sasural a day before the incident and had heard her complaint about beating etc; PW-3, Dr. A. Rahman, who performed the postmortem, PW-4 HC Sant Kumar Chaturvedi; PW-5 Shyam Lal Yadav – Special Land acquisition officer, who recorded the dying declaration of the deceased on 25.08.1989 at 11:40 a.m. PW-6, Ram Lakhan Yadav, ADM, Kanpur Nagar; PW-7, Dr. S.C Mishra, who had examined her injuries before her death and PW-8, Jogendra Singh, IO have been examined.

5. The marriage was solemnized on 12.05.1989 and Smt. Gomti was done to death on 25.08.1989 within 04 months of her marriage at her sasural by pouring kerosene on her as the dowry demands of the opposite parties could not be satisfied.

6. The prosecution had also relied upon the dying declaration of the deceased, in which she had clearly stated and assigned specific role to each of the accused persons should not have been brushed aside just because the informant made a little mistake in saying something different relying upon his own memory. Even this dying declaration was enough for conviction of the opposite parties which had been ignored for no valid reasons.

7. In defence, different suggestions have been put to the witnesses as committing suicide and also as accidental burning of the deceased by a stove in the kitchen. The defence case of committing suicide was very absurd and most improbable, as it was suggested that she was involved in love affair with his own elder sister's son, Vinod, hence she committed suicide. The same is wholly false and mischievous suggestion, as Vinod was a married man having three children also. This suggestion was straightaway denied by the applicant, PW-1. Contrary to that later a suggestion was given to PW-2 Raj Kumar about her accidental burning by the stove in the kitchen.

8. There could not be any documentary evidence e.g. letter etc., by Smt. Gomti to her brother or her parents as they lived in the same city Kanpur at a distance of 8 km. The deceased was in her sasural in Mohalla Baba Nagar while her brother informant was living in Mohalla Fazalganj and only three months had passed after the marriage.

9. The medical evidence also supported the prosecution version that she was burnt by pouring the kerosene on her body, as her clothes had a clear smell of kerosene, which could not be possible if she had caught fire by a stove.

10. The trial judge has given unnecessary importance to minor contradictions and laid undue and too much importance to the defence evidence even in the presence of the victim's dying declaration.

11. There is a glaring defect in the appraisal of evidence based on misreading of evidence which is also leading to a flagrant miscarriage of justice in this case. There are compelling reasons to interfere in the order of acquittal which is against the law and the facts. Therefore, the revision be allowed, the order of acquitting the accused opposite parties be set aside and an order be passed against them to deal with in accordance with the law.

12. Initially notices were issued to the opposite parties but none appeared. It was also reported that counsel for the revisionist Sri RK Shangloo has died, hence notice was issued to the revisionist and opposite party nos.1 to 4 to engage another counsel. CMM, Kanpur Nagar vide his report dated 19.12.2022 reported that the revisionist Ram Nath Yadav had left Kanpur, though his family members were living in house no.139/07, Vijay Nagar, Masjid Wali Gali, Police Station Kakadev Kanpur Nagar and after obtaining the mobile number of his son Ankit, a copy of notice was provided to him with a direction to appear in the Hon'ble Court though none has put in an appearance on behalf of the revisionist.

13. A notice was also issued to the opposite parties wherein it came out that opposite party no.2 Sunil Kumar Yadav (jeth) had died on 27.04.1996 and opposite party no.4 Smt. Prema Devi, mother-in-law had died on 10.12.2001. Though opposite party no.1, Sudhir Kumar Yadav, husband of the deceased and Smt. Aruna Yadav wife of late Sunil Kumar were found alive and living

together in house no.229 Baba Nagar, Naubasta, Kanpur Nagar which is the place of occurrence. From the side of opposite party no.1, Sudhir Kumar and opposite party no.3, Smt. Aruna Yadav, a vakalatnama of Sri Manoj Upadhyay and Sri Umadatt Shukla, learned counsel has been filed on 19.12.2022 but none appeared even in revised call for opposing this revision. Since a criminal revision has to be decided on merit and sufficient opportunity has already been provided to both the parties therefore, after hearing the argument of learned AGA, this revision is being decided on merit.

14. In brief, facts of the case are that the informant PW-1, Ram Nath Yadav, elder brother of the deceased Gomti Devi moved a written complaint Ex.Ka-1 on 25.08.1989 that his sister Gomti Devi daughter of Sri Rangi Lal Yadav had been married with Sudhir son of Hukum Singh resident of house no.229 Baba Nagar Naubasta Kanpur according to Hindu rites and rituals on 12.05.1989. The in-laws of his sister started demand of dowry and torturing her daily for it. On 24.08.1989, he visited the in-laws house of his sister with his friend Raj Kumar where she informed that the accused persons used to beat her and ask for bringing dowry otherwise they would kill her. She also insisted to come back with him but he consoled her and returned after explaining and making her understand.

15. On 25.08.1989 at 07:45 pm her mother-in-law, Sudhir and Sunil with the help of his wife set his sister

ablaze due to which her whole body has been burnt and she is struggling for life in the emergency ward of Ursala Hospital. As he received the information, he reached there where his sister Gomti informed that his sister-in-law (jethani), her husband, jeth, and mother-in-law had poured kerosene from her shoulder to her feet and Sudhir (husband) set ablaze with a matchstick. He requested to take legal action against the accused persons.

16. On the basis of the aforesaid written complaint, an FIR was lodged under Sections 498A/307 IPC and 3/4 DP Act at Crime No.679 of 1989 at about 10.30 p.m. and a chik FIR Ex.Ka-4 alongwith a carbon copy GD Ex.Ka-6 were prepared. A carbon copy of GD Ex.Ka-7 and Ex.Ka-8 was also prepared. The IO was deputed to investigate the case.

17. The matter was conveyed to the police and administration by the hospital, therefore, Shyam Lal Yadav, Executive Magistrate was deputed to record the 'dying declaration' of the victim in which she stated that at about 08 am in the morning her mother-in-law, jethani, jeth and her husband had set ablaze her. All the accused persons caught her and poured kerosene upon her. Her husband had poured kerosene upon her and her mother-in-law and sister-in-law (jethani) had put her on fire by applying a matchstick. The accused persons used to demand colour TV. When she visited her maika on the occasion of Rakshabandhan, she informed her brother and sister-in-law (bhabhi) about the demand, who had

provided Rs.10,000/-. His brother had spent Rs.80,000/- in her marriage therefore her brother had become penniless. Her husband and neighbours had brought her to the hospital.

18. During the course of treatment, the deceased died of burn injuries. Hence, an inquest report Ex.Ka-14 was prepared. The autopsy was done and a PM report Ex.Ka-3 was prepared, related papers such as Ex.Ka-11 Form-13, Ex.Ka-12, specimen seal of the dead body, Ex.Ka-13, photonash, Ex.Ka-15, letter for conducting postmortem; Ex.Ka-16, letter to RI were also prepared and a medico legal report Ex.Ka-17 was prepared and collected by the IO. During the course of the investigation site plan Ex.Ka-18 was prepared by the IO, half burnt worn apparel of the deceased and bed sheets were taken into possession and recovery memos Ex.Ka-2 and Ex.Ka-19 were prepared. After finding sufficient evidence, the IO has submitted the charge-sheet Ex.Ka-20 against all the accused persons under Sections 498A, 304B IPC and Section 3/4 of the Dowry Prohibition Act.

19. After submission of the charge-sheet the case was committed to the Court of Sessions and the charge under the aforesaid sections was framed from which the accused persons denied and sought trial.

20. The prosecution has examined following witnesses:-

1	PW-1	Ram Nath Yadav, informant and brother of the deceased
2	PW-2	Raj Kumar, friend of the informant

3	PW-3	Dr. A. Rahman, Pm doctor
4	PW-4	HC Sant Kumar Chaturvedi
5	PW-5	Shyam Lal Singh Yadav Special Land Acquisition officer who had recorded the dying declaration
6	PW-6	Ram Lakhan Gupta, ADM Kanpur Nagar who had prepared the inquest report
7	PW-7	Dr. SC Mishra who had treated the deceased after the incident
8	PW-8	Yogendra Singh, Deputy SP, CO Govind Nagar, IO

21. The accused persons denied the demand for dowry and torturing the deceased for non-fulfilment of the demand. According to the accused persons Gomti Devi had burnt from the stove. On her commotion, they saved her and admitted her to the hospital. Smt. Aruna Devi stated that Ram Nath, Raj Kumar and Nirmal Singh were the person of bad character, all these three used to tease her and use obscene language. Two months before the incident, in the evening at 6-7 o'clock they all three came and started molesting her. Knowing this the deceased had also scolded her brother and his friends and had also forbidden them not to come again. The complaint was also made by her to her father-in-law but she had not complained to her husband or her mother-in-law. Prema Devi, her mother-in-law stated that the next day was Janmastami, Garima was preparing tea. All persons were taking tea thereafter, Sudhir went to the washroom. She could not know what happened in the kitchen. When they went to the kitchen, the oil had come out of the stove and they saw that Garima was burning there. She was

standing on the floor and the stove was on the slab in the kitchen. When she cried, Sudhir and Sunil reached there and put a mattress on her. According to Sunil, he was suffering from tuberculosis and has falsely been implicated. Accused Sudhir Kumar stated that he has falsely been implicated as he admitted the deceased at Ursala Hospital and had also sent information to her family.

22. In defence, the accused persons have examined the following witnesses:-

(i) DW-1, Dr. RK Mathur, Pulmonary expert who has deposed that accused Sunil had a lung infection, his lungs was filled with pus. His health condition is not good. He has lost 40% of his weight.

(ii) DW-2, Hukum Singh Yadav, father-in-law of the deceased deposed that after marriage, the deceased used to live separately in the house. He was very affectionate towards Gomti and considered like his own daughter. Sudhir and his wife Gomti had a cordial relationship and Sudhir used to take Gomti for outings and to watch movies. There was love between Mrs. Aruna (jethani) and the deceased Gomti. Sunil also respected Gomti and did not torture her for dowry. Just before the incident, Mrs. Aruna Devi told her that in the night Gomti's brother Ram Nath, Nirmal Singh and Raj Kumar came to her house and molested her. On that day, at about 6-7 p.m, all three came to his house and molested her on which he got angry and went to Ram Nath's dispensary and scolded all

three who were present there. Neither before nor after the marriage any demand for dowry was made nor had made any complaint about not getting dowry. On the day of occurrence at about 09:00 a.m, his son Sunil had informed him that when Gomti was preparing breakfast, she got burnt by the stove. He then went to the house of Ram Nath by the scooter of Ram Pal and where he went to Ursala Hospital where she was unconscious and was not able to speak. Ram Nath and his wife had come there at 10.30 a.m. On coming out of the ward when they started abusing them, they came back.

(iii) DW-3, Sudhir Kumar Yadav, husband of the deceased had given a similar statement to that of his father, Hukum Singh Yadav and denied the demand for a golden ring, colour TV and fridge. He also denied that any complaint regarding dowry had been made to Gomti. He denied that on 24.08.1989, Ram Nath and Raj Kumar had come to his house. He further deposed that on 25.08.1989 at 7:30 a.m when he was in the bathroom, he heard the crying of Aruna Devi that Gomti was burning. He then and there came out and saw that his elder brother was trying to extinguish the fire by putting thick mattress on her. He also assisted him and extinguished the fire. Aruna Devi had also assisted in extinguishing the fire. When he reached near the kitchen, his mother, bhabhi and Gomti were moaning. By wrapping herself in the same mattress, the deceased was taken to the hospital. Gomti had worn purple-coloured nylon saree. She stated that the stove exploded and the fire engulfed her. His father had

reached the hospital at 10:00 a.m. with Harpal Singh. Dr. Ram Nath had reached the hospital with his wife at 10.30 am. None of his neighbours were with him.

(iv) DW-4, Harpal Singh has deposed that on 25.08.1989 at about 9 a.m., Hukum Singh came to him and stated that Gomti had been burnt on the stove and that she had been taken to Ursala Hospital. He reached the house of Ram Nath at 09.30 a.m from his scooter and informed him about the incident thereafter, he had reached Ursala Hospital at 10 am, where all the accused persons were present and Gomti was unconscious. Dr. Ram Nath reached there with his wife at 10:00 a.m.

23. After the closure of the evidence, the arguments of both the parties were heard and the impugned judgment and order of acquittal were passed by the trial judge against which this criminal revision has been preferred by the informant.

24. It deems appropriate to reproduce the evidence of the prosecution in brief.

(i) PW-1, Ram Nath, the informant and brother of the deceased has deposed in favour of the prosecution and has proved the FIR version. This witness has proved that just after the marriage the accused persons started demanding a golden ring, colour TV and fridge from the deceased and on non-fulfilment of such demands, they used to torture the deceased. After the marriage, the deceased visited her house twice and had informed about

the demands of dowry and torture done by the accused persons. He had also visited her in-laws house twice, where the accused persons also demanded dowry from him, which he explained. Whenever the deceased used to come to his house, she used to narrate about the maltreatment by the accused persons for want of dowry. He had lastly visited her house on 24.08.1989 where Gomti stated crying that accused Sudhir had beaten her 2-3 times for bringing the aforesaid articles and had also stated that if the same were not provided, she would be killed. Thereafter, she insisted on taking her therefrom otherwise, they would kill her. He pacified her and the accused persons and came back. The next day on 25.08.1989 at about 01:00 a.m, he got information that accused persons had set ablaze Gomti @ Garima and she was admitted to Ursala Hospital. Subsequently, he informed his family members and reached there and found that Gomti was severely burnt. She narrated that Sunil, Aruna, Prema and Sudhir had set her ablaze. She also narrated that the accused Sudhir Kumar had poured kerosene on her and Aruna Devi and Prema Devi had set her ablaze by applying a matchstick. All the accused persons had caught hold of her. She also stated that when he returned, all the accused persons demanded dowry and thereafter beaten and set ablaze at about 7.45 a.m. He reported the matter to PS Naubasta at 08:30 p.m. He had reached the hospital at 02:00 p.m. and remained busy with her treatment. The witness further deposed that on his dictation Nirmal Singh had written the complaint, Ex.Ka-1. When he returned from the police station, he

found that Gomti Devi had died. Her death was reported by him to PS Naubasta. The witness has also deposed that from the clothes of the deceased, the smell of kerosene was coming out. The witness has also proved the recovery memo Ex.Ka-2; peticoat, M.Ex.1; saree M.Ex.2 and bedsheet M.Ex.3.

(ii) PW-2 Raj Kumar has deposed that M.Exs-1, 2 and 3 were produced by Ram Nath Yadav in police station about which recovery memo Ex.Ka-2 had been prepared. This witness has also deposed that whenever Gomti Devi used to come to her house, sometimes she used to meet her and also used to inform her regarding torture, non-providing meals and several kinds of maltreatment and pressure for bringing dowry by the accused persons. This witness has also deposed that on 24.08.1989 he went to the in-laws house of Gomti Devi, where she stated regarding beating by the accused persons. She had also insisted in weeping state to take her from there otherwise her in-laws would kill her. Ram Nath explained and came back. On 26.08.1989 he came to know that the in-laws of Gomti Devi had set ablaze her. Whenever he visited the in-laws house of Gomti Devi, he apprehended that accused persons would kill Gomti Devi.

(iii) PW-3, Dr. A. Rahman, who had conducted the postmortem, deposed that at 08:30 p.m, he had conducted the post-mortem of the deceased and found that she was about 20 years old there were burn injuries on the whole of her body except the head. This witness proved PM

report Ex.Ka-3 and opined that the deceased had died of burn injuries.

(iv) PW-4, Head Constable SK Chaturvedi has proved chik FIR Ex.Ka-4, GD Ex.Ka-5, Ex.Ka-6, Ex.Ka-7 and Ex.Ka-8.

(v) PW-5, Shyam Lal Singh Yadav, Land Acquisition Officer, has deposed that on 25.08.1989 after receiving the information, he reached Ursala Hospital and recorded the statement of the deceased Smt. Gomti @ Garima Devi, who stated that all the accused persons had caught hold of her and poured kerosene on her. Her husband had poured kerosene and her mother-in-law and jethani had set her ablaze by applying a matchstick. They used to demand colour TV. When she visited the house, she had asked his brother and bhabhi. They had also given Rs.10,000/-. His brother had also spent Rs.80,000/- in her marriage due to which he became poor. Her husband and neighbours have carried her to the hospital.

(vi) PW-6, Ramlakhan Gupta ADM Kanpur Nagar, deposed that he had conducted the inquest of the deceased on 26.08.1989 at 10 am. This witness has proved challanlash Ex.Ka-11, specimen seal Ex.Ka-12, photolash Ex.Ka-13, inquest report Ex.Ka-14 and letters Ex.Ka-15 and Ex.ka-16. The witness also deposed that he had sent the dead body for a postmortem. According to this witness and panch witnesses, the deceased had died of burn injuries.

(vii) PW-7, Dr. S.C. Mishra, emergency doctor of Ursala Hospital has deposed that Sudhir Yadav had brought his wife Garima to Ursala Hospital on 25.08.1989 at 09:00 a.m. He had taken the thumb mark of Sudhir Yadav on the concerned register. There was a 100% burn injury to Garima Yadav. Kerosene smell was coming out of her body. The hairs on the head had been scorched. He had informed the police and the Magistrate. He had examined her. The witness has proved the medical report, Ex.Ka-7. The witness has also proved the thumb impression of Garima as Ex.Ka-17A and the thumb impression of Sudhir Yadav as Ex.Ka-17. According to this witness, the burn injuries would have occurred to Garima on 25.08.1989 between 06-08 a.m. The witness further deposed that the Magistrate had recorded the dying declaration of the deceased before her death and he had given her the certificate Ex.Ka-9 regarding her mental fitness. The injured person was conscious and was also speaking.

(viii) PW-8, Yogendra Singh Deputy, SP CO Govind Nagar IO of the case has deposed that after getting the information of death, the case was converted into Section 302 IPC. On 26.08.1989 at 12:10 a.m. The earlier investigation was conducted by SI RS Lavania. He had recorded the statements of the witnesses, inspected the place of occurrence and prepared the site plan Ex.Ka-18, prepared fard Ex.Ka-19 and after concluding the investigation he had submitted the charge-sheet Ex.Ka-20.

25. The learned trial court has narrated the story and repeated the statements of the witnesses on ten pages and thereafter, the trial court has given his finding from pages-11 to 17 and concluded that no offence of dowry could be proved by the prosecution. The learned trial court has not given any finding that if the accused persons had not set ablaze the deceased for dowry, how and why the deceased had died. He has not given any finding that it was an accident or a case of suicide.

26. From the perusal of the judgment, it is very clear that, first of all the learned Additional Sessions Judge formed an opinion to acquit the accused, fabricated the structure of an acquittal, misread the evidence on record in his own way and acquitted the accused persons. According to this Court, when it was an unnatural death of a young newly married lady within four months of her marriage and there was a charge of demand of dowry and torture for not bringing the dowry and the prosecution had adduced unrebutted and unimpeachable evidence in support of the prosecution and the initial burden of proving the case had been discharged, why was the liability to discharge the burden of proof under Section 113B of the Indian Evidence Act not sought from the accused persons.

27. In this case a prompt FIR has been lodged by the informant levelling the charge of demand of dowry, torture and setting ablaze the deceased by the accused persons by pouring kerosene on her. The PM doctor has

also found that there was a smell of kerosene in the whole body of the deceased. Had the stove been burst, the deceased would have suffered only fire injury and not the kerosene would have spilled on her body. It is not denied that Rs.20,000/- and one motorcycle were not provided prior to the tilak ceremony of the deceased by her brother to the accused persons. According to the prosecution, just after the marriage, the accused persons started demanding dowry in the form of a colour TV, fridge and golden ring, which could not be provided by the informant thereafter, she was burnt to death.

28. From the evidence of PW-1 and PW-2, it has been proved that PW-1 informant Ram Nath and PW-2 Raj Kumar visited the house of the accused persons in the evening of 24.08.1989 where the deceased had again narrated the demand for dowry by the accused persons and also regarding torture by them for non-fulfilment of the said demand.

29. An allegation has been levelled against the informant PW-1 Ram Nath, PW-2 Raj Kumar and Nirmal Singh that whenever they visited the house of the deceased, they used to tease and molest Smt. Aruna Devi, wife of Sunil Kumar (Bhabhi). It is surprising that whether a brother who is visiting the house of in-laws of his newly wedded sister would dare to molest her elder sister-in-law while the relations would have been established a few days ago. It is also noteworthy that Smt. Aruna Devi had a child and was the wife of the elder brother of his brother-in-law

(bahnoi). It is also material that if it was so, why no question had been asked and no suggestion has been given regarding it to the informant PW-1. and PW-2. On account of such omission on the part of the defence, it can be safely concluded that no such teasing, molesting or immoral offence had been committed by the informant or his friends with Aruna Devi and this fact has been hypothesised to diminish the veracity of PW-1 and PW-2 and only to get the undue sympathy of the court. It is also noteworthy that a relative or a friend generally does not enter in the inner part of the house. They remain in the drawing room. It is also the case of defence that, after marriage the deceased and her husband used to live separately in the house. In such a situation, how the above mentioned three persons would get an opportunity to tease and molest Smt. Aruna.

30. Another defence has been taken by the accused persons that the deceased used to love Vinod. The whereabouts of any Vinod have not been given by them. According to prosecution evidence, Vinod was the son of the elder sister of the deceased. It has been mentioned in the revision that Vinod was already a married person having three children. However, no cogent, credible and sufficient evidence could be produced and the same could not be proved by the accused persons. This allegation has been outrightly dismissed by the PW-1. It is also noteworthy that neither accused Sunil Kumar, Sudhir Kumar nor Prema Devi have stated in this regard in their statements under Section 313 CrPC. The defence

witnesses, especially DW-2 Hukum Singh Yadav, father-in-law of the deceased and DW-3, husband Sudhir Kumar Yadav, have also not deposed that there was a love affair between the deceased and any Vinod. If such a love affair had been between both of them, these witnesses would have deposed in their evidence. Therefore, it is proved that such false, fabricated and immoral allegations were levelled by the accused persons only to lower and diminish the dignity of the deceased, the departed soul which is mere a lame excuse. It is also noteworthy that no charge has been levelled against the deceased in her life time for not performing marital duties towards her husband or the rest of the family members. It is also noteworthy that it has not been the case of the defence that since the marriage of the deceased could not be solemnized with the alleged Vinod, therefore, she committed suicide by pouring kerosene on herself. The defence case is that when the deceased was preparing breakfast, the stove exploded and the deceased was caught on fire, though no damaged stove, cooked breakfast or any raw material in this regard were found and noted at the place of occurrence. Thus, the whole defence taken by the accused persons appears to be imaginary and concocted for the purposes of the case.

31. In this case, a prompt FIR has been lodged with relevant materials against the accused persons. The motive regarding the demand for dowry and torture for not bringing the demanded dowry has been put forward and proved by the prosecution witnesses. It has also been

proved by the evidence of PW-1 and PW-2 that prior to the incident the deceased had been tortured for not bringing the dowry. She wanted to come with her brother, but he did not take her back and the next day she died of an unnatural death. The learned trial court has misinterpreted the fact that there is variation between the dying declaration and the contents of the FIR. According to this Court, such variations are of little importance and meaningless in the eyes of law. It is quite possible that the sequence of the incident narrated by the deceased in her dying declaration and the same narrated by the informant in FIR could have been slightly different. In so many cases, the Apex court has held that it is immaterial if the witness could not answer as to which accused has played which role during the course of commission of crime. The FIR is not an encyclopedia, it is not a substantive piece of evidence. It is only to contradict or corroborate the evidence of the maker. Therefore, the dying declaration would prevail upon the first information report and over all the evidence available on the record.

32. The informant PW-1 has deposed that when he reached in the hospital after 01:00 p.m, the deceased was able to speak and she was screaming and accusing the accused persons for the offence. The doctor who had given the certificate regarding her consciousness had also found the deceased conscious before and after the recording of her dying declaration. PW-5, Shyamlal Yadav had also found the deceased conscious while recording her dying declaration. Thus, on the basis of oral and

formal evidence it is concluded that the deceased had given her dying declaration consciously.

33. The learned trial court has concluded that no independent witness had been examined. In this case Ram Nath, brother of the deceased and his friend, Raj Kumar have been examined. According to this court, no independent witness would be available when the offence has been committed by the in-laws inside the house. It was not an incident on the street or public place. The learned trial court has also concluded that why the deceased was not taken to her house in the previous evening, is also an absurd finding. Generally, family members fail to assess that some such untoward incident may happen to their daughter/sister in the near future.

34. The learned trial court has also heavily hammered that the deceased was admitted by her husband. According to this Court, mere admission in hospital does not exonerate the accused from the guilt. Some times the patients are admitted only to establish themselves to be bonafide.

35. The learned trial court has concluded that if the deceased could have been burnt to death, her head would have also been poured with kerosene. According to this Court, it is also an absurd ground. A person may be poured by kerosene from his or her head only when he would not be able to resist otherwise kerosene may be thrown on his or her person. No one can imagine what

would be done by the accused and how the offence would be caused by him.

36. The learned trial court has also concluded that the informant was promptly informed about the incident which establishes that the accused persons had acted in bonafide manner. According to this Court, PW-1 has proved that he was informed at about 01:00 p.m. The incident had occurred in the morning, therefore, it cannot be said that a prompt information was given by the accused to the informant.

37. It is also noteworthy that according to the accused person, the stove burst and the deceased was caught fire. If it was true, why the stove, raw or cooked or semi-cooked foods items were not found by the IO. DWs say that the stove was thrown in the river after six months. According to this Court, generally a stove are made of metal and if they are damaged, they are sold to scrapper or the stove seller. If the incident occurred due to burst of the stove, it was an important defence evidence which would have been produced in the court during the course of defence evidence and the same would have been exhibited. Doing not so establishes that no such stove burst and the incident had not occurred in the manner as alleged by the defence.

38. It is a matter of surprise that a senior Additional Sessions Judge has not discussed the ingredients of Section 304B IPC and Section 113B of the Indian Evidence Act, 1872. When the initial burden of proof had

already been discharged by the prosecution, a prompt FIR had been lodged, an unnatural death of the deceased had occurred within the walls of the accused persons' house, why the burden to prove the innocence was not shifted on the shoulders of the defence. Though four witnesses have been examined from the defence side, but none of the witnesses has deposed that the deceased had committed suicide as she had love affair with the alleged Vinod while such plea had already been taken. When it has not been proved that it was an accident and the aforesaid plea had already been taken by the accused persons, it was their duty to prove the same to the hilt.

39. It is also a matter of surprise that if all the accused persons had tried to extinguish the fire, why none of them got injured by the fire and why their clothes were not damaged, it establishes that no attempt was made by the accused persons to save the deceased. This vital aspect of the incident goes against the accused persons.

40. Though the accused Sunil, elder brother of Sudhir has died on 27.04.1996 after about seven years of the incident but it has not been established that he had died due to illness. A plea has been taken by him that he was ill and was under the treatment of DW-1, Dr. R.K. Mathur but he was not a bed ridden patient. Prema Devi had stated in her statement under Section 313 CrPC that Sunil and Sudhir put mattress on the deceased in order to save her which establishes that Sunil was not so ill and he was

not unable to assist rest of the accused persons in setting ablaze the deceased.

41. It is wrong to say that the deceased was living separately from the rest of the family members as from the evidence of the defence itself, it has been proved that there was one common kitchen and if the defence version is accepted that soon before the death, the deceased was preparing breakfast for whole family and before that she had already served tea to all the family members, it can be said that there was no separation among the family members and they were living in separate rooms as per their convenience.

42. Since it is a case of dowry death within four months of the marriage, it would be proper to quote Section 304B IPC and Section 113B of the Evidence Act. These are 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 her 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.

Explanation. For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(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.

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. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).”

43. There are the following ingredients of the offence under Section 304B IPC:

- (i) The death of the woman should have been caused by burns, bodily injury or otherwise than the natural death;
- (ii) such death should have occurred within a period of seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or her relatives;
- (iv) such cruelty or harassment should be for, or in connection with dowry demand; and
- (v) she should have been subjected to cruelty or harassment immediately before her death.

44. In **Pawan Kumar Vs. State of Haryana, (1998) CrLJ 1144 SC**, there was a demand of scooter and fridge after the marriage which were not made by the parents of the bride, lead to her harassment and ill treatment by husband and his relatives. It was held that such demand constitutes a “dowry demand” which is punishable under Section 2 of the Dowry Prohibition Act, 1961 and Section 304B IPC.

45. In **State of Punjab Vs. Iqbal Singh and others, AIR 1991 SC 1532**, the Apex Court held that since the dowry deaths are generally committed in the privacy of residential homes, it is not easy to get direct evidence in such cases.

46. In **Sher Singh Vs. State of Haryana, 2015 (1) Scale 250**, the Apex Court observed “*we would prefer to interpret the word 'soon' which finds place in Section 304B, not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, instead it should be a continuing cause for the death under Section 304B IPC or the suicide under Section 306 IPC. Once the presence of these concomitant are proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by guilt of the accused, thereby transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt beyond reasonable doubt*”.

47. In **Bheem Singh Vs. State of Uttarakhand, 2015 CrLJ 1428 (SC)** the accused appellant was married to deceased Prema Devi on May 4, 1997 who died an unnatural death in her matrimonial home on November 26, 1997, within five months after her marriage. The village pradhan made complaint to SDM on telephone. The Magistrate alongwith the SI reached the place of incident and prepared inquest report stating death due to 90% burn injury on the body of the deceased. PM report

also confirmed death due to burn injuries. The brother of the deceased lodged FIR next day alleging harassment and torture of his deceased sister by her husband and in-laws for dowry demand. He asserted that deceased herself had complained that her husband and in-laws were taunting and torturing her for dowry demand but parents pacified her assuring that they will speak to her husband and in-laws and settle the issue.

48. The accused in his defence pleaded that he himself had taken the initiative of informing the village pradhan about his wife having burnt herself, which caused her death. But the circumstantial evidence established the guilt of the accused and there was no missing link in prosecution story. Therefore, the accused (appellant) was denied the benefit of doubt and convicted for the offence under Section 304B IPC.

49. Since there is also a dying declaration, therefore, Section 32(1) of the Indian Evidence Act being relevant is quoted as under:-

“32(1). When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Illustrations :-

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished.

The question is whether she was ravished by B; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

50. It would be expedient to note down the actual dying declaration Ex.Ka-10 of the deceased:-

“श्रीमती गरिमा यादव W/O सुधीर यादव, उम्र 21 वर्ष, पता 221 बाबा नगर नौबस्ता, कानपुर नगर ने बयान दिया आज लगभग 8 बजे सुबह मुझे दहेज के पीछे सास, जेठानी, जेठ व पति ने जला दिया। सास नाम नहीं मालूम, जेठानी का नाम अरुणा, जेठ का नाम सुशील तथा पति का नाम सुधीर है। सबने पकड़कर मिट्टी का तेल डाल दिया। मिट्टी का तेल मेरे पति ने डाला तथा सास तथा जेठानी ने माचिस आग लगायी। मायका फजलगंज है। रंगीन टी०वी० माँगते थे। शादी हुए तीन माह हुए थे। रक्षाबंधन पर जब मैं घर गयी थी भाभी भैया से कहा था। 10,000/- दिया। मेरे भैया उक्त शादी में 80,000/- रुपए खर्च किये थे। भैया कंगाल हो गये। अस्पताल मुझे मेरे पति एवं मुहल्ले वालों ने लाया है। मैं हाईस्कूल तक पढ़ी हूँ।

बयान मैंने स्वयं अभिलिखित किया।”

51. In this case when informant, PW-1 reached hospital at about 01:00 p.m, the dying declaration had already been recorded between 11:40 to 11:55 a.m. by PW-5, Shyam Lal Singh Yadav. Two certificates were given by the doctor; (i) that “Garima Yadav is conscious”; (ii) “examined Garima Yadav, remained conscious till 11:55 a.m.

52. From the above, it is very much clear that the alleged dying declaration was recorded in accordance with law and in full consciousness of the victim who died later on, hence her statement is admissible under Section 32(1) of the Evidence Act.

53. In **PV Radhakrishnan Vs. State of Karnataka, AIR 2003 SC 2859**, the Apex Court held that a dying declaration can be used as a sole basis of conviction. A person on death bed is in a position so solemn and serene that it is equal to the obligation under oath. For this reason the requirement of oath and cross-examination are dispensed with. The victim (declarant) being the only eye-witness, the exclusion of his declaration may defeat the ends of justice. The court has to be on its guard and see for itself that the declaration is voluntary and seems to reflect the truth. In the case in hand when the dying declaration was recorded, the informant or his family members were not there which shows that it was voluntary and it was reflecting the clear picture of the incident.

54. In **Kalawati Vs. State of Maharashtra, AIR 2009 SC 1932**, the Apex Court held that a dying declaration, once found to be true and voluntary, can be made basis of conviction without further corroboration.

55. The above judicial pronouncements are in support of the prosecution version. It was an unnatural death of the bride within four months of the marriage for not bringing the demanded dowry, she was subjected to physical and mental cruelty soon before her death, the explanation given by the accused persons cannot be accepted by a prudent mind. After discharging the burden of proof by the prosecution, the accused persons could not discharge their burden under Section 113B of the Evidence Act,

hence the revision deserves to be allowed. From the reading of judgment it comes out that the judgment and order of acquittal was passed by the learned trial court on account of some unknown reasons which must be quashed for the ends of justice.

ORDER

56. This revision is **allowed** and the impugned judgment and order of acquittal dated 31.03.1995 is hereby quashed.

57. The Session Trial No.547 of 1989 (State Vs. Sudhir Kumar Yadav and others) is revived. Since accused Sunil Kumar Yadav and Smt. Prema Devi have died and accused Sudhir Kumar Yadav and Smt. Aruna Devi are alive, therefore, they would be heard again.

58. This session trial is remanded back for afresh decision by the present learned ASJ-X, Kanpur Nagar. He would be at liberty to record some other evidence or to take some other documentary evidence as permissible under the law. He would summon both the surviving accused persons and after affording opportunity of hearing to both the parties, the judgment would be pronounced within three months after receiving the copy of this judgment alongwith the original records of the case.

Order Date :- 18.10.2023

Shahroz

(Umesh Chandra Sharma, J.)