

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Appeal-S No.1130-SB of 2004 (O&M)
Date of Decision: September 29, 2015.**

Rajpati and another

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. H.S. Gill, Senior Advocate with
Mr. R.K. Dhiman, Advocate
for the appellant (s).

Mr. Baljinder Singh Virk, D.A.G. Haryana.

SURINDER GUPTA, J.

FIR No.64 dated 20.02.2003 was registered at Police Station Meham, District Rohtak (Haryana) on the dying declaration of Shakuntla wife of Suresh Kumar son of Dharambir, resident of village Titrikhera (Meham), who was brought to PGIMS, Rohtak with burn injuries, recorded by Judicial Magistrate, Rohtak which reads as follows:-

“Q : You were married how many years ago?

A : I was married 11 months back.

Q : Who are the persons in your in-laws family?

A : I, my husband, father-in-law, mother-in-law, sister of mother-in-law and her husband.

Q : How this incident happened with you?

A : My mother-in-law and her sister were demanding money from me. Yesterday, at about 12.00 midday, they gave

beatings to me. My husband also joined them in beating me and went away. Thereafter, I went to take bath. When I came down after taking bath, both the sisters i.e. my mother-in-law and her sister sprinkled oil on me and put me on fire. My cries attracted the neighbours at which my mother-in-law told them that there is no use of taking me to hospital. I was brought to the hospital by the neighbours. My husband had left house and at that time both the sisters were at home. After receiving burn injuries I became unconscious.

Q : Have you to say anything else?

A : No”

Before recording the dying declaration, learned Magistrate had taken the required fitness certificate from the doctor and had also certified that Shakuntla remained conscious during her statement and was fit and conscious upto to the end of her statements.

The incident had taken place on 19.02.2003. On 22.02.2003 Shakuntla gave birth to a dead female foetus and breathed her last on 23.02.2003. The police prepared inquest report of the female foetus and got the post-mortem examination of female foetus of 24 weeks of gestation. Post-mortem examination of Shakuntla was also conducted on 24.02.2003, wherein the cause of death was recorded as due to complication of intensive burns which were to the tune of 100%.

Before the death of Shakuntla, on a note sent from the hospital on 21.02.2013 that 'patient wants to add some more facts in the statement given by her, please make an arrangement for the statement (sic to be taken)', her second dying declaration was recorded by ACJM, Rohtak, wherein she stated as follows:-

“On 20.02.2003 at about 04.00 p.m. I had ignited the stove to prepare tea. Due to bursting of stove, she caught fire. Nobody is responsible for this incident. I

have also made a statement before the Magistrate. I do not want to say anything else.”

The police investigated the case, arrested Suresh Kumar husband of deceased, Rajpati, her mother-in-law and Manpati, sister of Rajpati and presented final report under Section 173 Code of Criminal Procedure (Cr.P.C.-for short) in the Court of Sub Divisional Judicial Magistrate, Meham. The case was committed to the Court of Sessions as the offence under Sections 316, 307 and 304-B of Indian Penal Code (IPC-for short) were exclusively triable by the Court of Sessions.

Finding a prima facie case for the offence punishable under Sections 498-A, 304-B in alternate 302 and 316 read with Section 34 IPC against the accused, they were charge-sheeted accordingly to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined Dr. Mahesh Parkash as PW1, who conducted the post-mortem examination on the dead body of Shakuntla on 24.02.2003. About the burn injuries on the person of deceased Shakuntla, he has stated as follows:-

“There were various degrees of burns present all over the body. Skin was peeled off at places. Underlying surface was red. Muscle was cracked at abdomen, pelvic and iliac region and clotted blood was present with small amount of pus. Small blister present on the face and forehead. White ointment was present at the both thighs, scalp. Hair were burnt. Exception some lateral part, with signing was present (It was 100 per cent burn).”

He declared the cause of death due to 'complication of extensive

burns (100%), which were ante-mortem in nature'.

He had also conducted the post-mortem examination on the dead body of a female foetus delivered by the deceased on 22.03.2003. The post-mortem report of the female foetus Ex.PD was also prepared.

PW2 Dr. Satish Bansal had declared Shankuntla fit to make statement on the police application Ex.PE vide his endorsement Ex.PE/1. He was also present at the time of recording of dying declaration of deceased by the Judicial Magistrate, Rohtak and had given the certificate that the deceased was fit to make statement (Ex.PE/2) and that she remained conscious during statement and fit and conscious upto end of her statement (Ex.PE/3).

Sub Divisional Judicial Magistrate, Bahadurgarh Ms. Kanchan Mahi, who had recorded the first dying declaration of the deceased appeared as PW4. She has stated that before recording the statement, she had inquired about the willingness of the deceased to make statement. Before taking thumb impression of deceased on her statement Ex.PF/5, it was read over to her and she admitted the same as correct.

PW5 Constable Budh Singh was a formal witness who had taken the special reports to the senior officers and Illaqa Magistrate. PW6 Constable Raj Kumar, who got conducted the post-mortem of the deceased and female foetus delivered by her. Constable Sumit Kumar PW7 had prepared scaled site plan(Ex.PG) of the place of occurrence. PW8 Lekh Ram ASI on receipt of information about the burn injuries received by deceased on 19.02.2003 had gone to PGIMS Rohtak and collected MLR (Ex.PJ/1) of deceased. After inquiring about the fitness of the deceased to make statement, he moved application Ex.PF before the Magistrate to record

statement of the deceased. He also obtained copy of the statement recorded by the Magistrate and sent the same to police station with his endorsement Ex.PF/A for registration of the case, whereupon formal FIR (Ex.PK) was recorded.

Investigating Officer ASI Lekh Ram PW8 then visited the place of occurrence on 20.02.2003 and prepared a rough site plan (Ex.PL) on 21.02.2003.

On receipt of another VT message from PGIMS Rohtak, he went to Ward No.5 of PGIMS Rohtak. On investigation, he came to know that the patient was under pressure and gave another statement to the Magistrate. He made inquiry from Shakuntla (deceased) in this regard on which she narrated that she had already made statement before the Magistrate. He recorded her statement under Section 161 Cr.P.C. On 23.02.2003, he got conducted post-mortem of female foetus delivered by the deceased.

Shakuntla also died on 23.02.2003. He prepared the inquest report Ex.PC pertaining to the death of Shakuntla and Ex.PD/2 pertaining to the death of female foetus. The parents of deceased were called, who did not come. Post-mortem examination of Shakuntla was got conducted on 24.02.2003. On 26.02.2003, a *Panchayat* was convened by the parties and thereafter, parents of deceased got recorded their statements with him.

PW9 Sunil had stated that he got the marriage of the deceased performed with Suresh on 17.03.2003. PW Karan Singh, Rajwanti, Mahanand, Ranbir and Jaibir were given up being unnecessary as they had joined hands with the accused.

On conclusion of evidence of the prosecution, statements of

appellants and Suresh Kumar were recorded under Section 313 Cr.P.C.

Appellant Rajpati stated in her defence as follows:-

“I am innocent. There was neither any dispute with Shakuntla regarding dowry etc. nor there was any kind of harassment for or in connection with the demand of dowry. In fact, she received accidental injuries, when she was preparing meals etc. The marriage of my cousin sister (sic niece) Manisha d/o Mahender Singh was fixed for 21.02.2003 and I along with my sister Manpati and my son Suresh had to go to the house of Mahender Singh on 19.2.2003 and there we received information that Shakuntla has received accidental injuries while preparing meals etc. She was immediately brought to PGIMS, Rohtak and the parents of Shakuntla were duly informed and they reached PGIMS, Rohtak immediately. Shakuntla had clearly told to her father and mother that she has received accidental injuries while preparing meals. Shakuntla also told to the doctors the true facts. Later on, on the instigation of some inimical persons she gave the statement. She remained admitted in PGIMS, Rohtak and again made a statement regarding the true facts before the then learned ACJM, Shri R.S. Chaudhary, in which she has clearly accepted that she received accidental injuries. I am innocent. She was living with me happily. My sister is living in a separate house alongwith her own family.”

Appellant Manpati also took the similar defence and stated as follows:-

“I am innocent. There was neither any dispute with Shakuntla regarding dowry etc. nor there was any kind of harassment for or in connection with the demand of dowry. In fact, she received accidental injuries, when she

was preparing meals etc. The marriage of my cousin sister (sic niece) Manisha d/o Mahender Singh was fixed for 21.02.2003 and I along with my sister Rajpati and her son Suresh had to go to the house of Mahender Singh on 19.2.2003 and there we received information that Shakuntla has received accidental injuries while preparing meals etc. She was immediately brought to PGIMS, Rohtak and the parents of Shakuntla were duly informed and they reached PGIMS, Rohtak immediately. Shakuntla had clearly told to her father and mother that she has received accidental injuries while preparing meals. Shakuntla also told to the doctors the true facts. Later on, on the instigation of some inimical persons she gave the statement. She remained admitted in PGIMS, Rohtak and again made a statement regarding the true facts before the then learned ACJM, Shri R.S. Chaudhary, in which she has clearly accepted that she received accidental injuries. I am innocent. She was living with her happily. I am living in a separate house alongwith my family.”

In their defence, the appellants examined Karan Singh, father of deceased, as DW1, her mother Rajwanti as DW2, who have supported the defence version and have stated that deceased received the injuries while cooking food as the stove had burst. DW3 Shri Ram Singh Chaudhary, Civil Judge (Senior Division) had recorded the second dying declaration of the deceased. DW4 Mahender Singh, brother-in-law (husband's brother) of appellant Rajpati, stated that marriage of his daughter was fixed for 21.02.2003 and on 19.02.2003 his brother Sukhbir had invited the brotherhood for the lunch at his house, when the incident took place.

Shakuntla (deceased) received burn injuries while preparing tea. Om

Parkash DW5 had stated that his son Rajbir was married to Manish daughter of Mahender Singh on 21.02.2003. On 19.02.2003 he received telephonic message that daughter-in-law of Dharambir, brother of Mahender Singh had received burn injuries. The marriage of her son had taken place on 21.02.2003 and it was decided that only five persons will go at the time of marriage. Satpal DW6, a neighbour had stated that on the day of incident, he was sleeping in his house and at about 2.30/3.00 p.m., he had gone to the house of Dharambir, father-in-law of deceased on hearing cries. He found a lady on fire, took a *dari* and wrapped that lady in the *dari* to put off the fire. DW7 Dr. Paryesh Gupta had testified that the second dying declaration of the deceased was recorded in his presence and he had given the required certificate about the fitness of the deceased to make statement.

The trial Court acquitted Suresh Kumar, husband of the deceased, giving him benefit of doubt and convicted and sentenced the appellants for the offences punishable under Sections 498-A, 304-B and 316 read with Section 34 IPC but acquitted them for the offence punishable under Section 302 IPC.

This appeal has been filed by the appellants challenging their conviction and sentence awarded by the trial Court.

Shri H.S. Gill, Senior Advocate has argued that the conviction of the appellants was recorded for the offence punishable under Sections 498-A, 304-B and 316 read with Section 34 IPC despite the fact that none of the above offences is proved against the appellants for the reasons enumerated as follows:-

There is no evidence on the file that the deceased was subjected

to any cruelty by the appellant for or in connection with demand of dowry. The parents of deceased have appeared as defence witnesses and have categorically stated that their daughter was never maltreated or any demand of dowry was raised by the appellants. Not even a single witness was examined by the prosecution to prove that the appellants have been demanding dowry or harassing the deceased in connection with demand of dowry.

(ii) The only evidence on record is the dying declaration of the deceased Ex.PF/5 recorded on 20.02.2003. Even this dying declaration nowhere suggests that the deceased was harassed for or on account of demand of dowry. She has stated that the appellants gave her beatings as they were demanding money. The demand of money may be on some other account than demand of dowry.

(iii) The deceased made three dying declarations; firstly, before her parents when she was admitted in the hospital wherein she narrated to them that she caught fire due to bursting of stove while cooking meals; secondly before the Judicial Magistrate, Rohtak on 20.02.2003 (Ex.PF/5), wherein she stated that she was put on fire by the appellants and thirdly on 22.02.2003, wherein again exonerating the appellants stating that she caught fire due to bursting of stove. In these circumstances, dying declaration Ex.PF/5 loses its significance and is not sufficient to prove the offences punishable under Sections 498-A, 304-B and 316 read with Section 34 IPC against the appellants.

(iv) There is no independent corroboration to the dying declaration

Ex.PF/5 and in the absence of any independent corroboration, it is not safe to

rely on this dying declaration in the facts and circumstances of the case.

(v) This fact is also proved that there was a marriage in the family. The marriage of daughter of uncle of husband of deceased was fixed for 21.02.2003. On the day of incident, another uncle of husband of deceased had arranged for a lunch for brotherhood at his house and all the relatives were present there, as such, the entire story given in the dying declaration Ex.PF/5 that the appellants sprinkled oil on the deceased and put her on fire, stands falsified.

(vi) The offence of murder was held as not proved against the appellants and the State has not come up in appeal against non-conviction of appellants for the offence punishable under Section 302 IPC. The ingredients of offence punishable under Section 304-B IPC are not attracted to the instant case, as such, no presumption under Section 113-B Evidence Act can be drawn against the appellants.

Learned counsel for the appellants has relied on *Asha and another Vs. State of Uttarakhand 2013(4) RCR (Criminal) 1024 (SC)* and has argued that in order to bring home the charge for the offence punishable under Section 304-B IPC, the Court is required to scrutinise the evidence very cautiously and carefully in order to arrive at the conclusion as to whether all the ingredients of the offence with reference to the condition enumerated under Section 304-B IPC are satisfied and proved by the prosecution. He has also relied on *Modinsab Kasimsab Kanchagar Vs. State of Karnataka and another 2013(4) SCC 551* wherein it was observed that when the demand of money was not towards dowry but for payment of

punishable under Section 304-B and 498-A IPC were not made out. He has also relied upon *Suryakant Dadasaheb Bitale Vs. Dilip Bajrang Kale and another 2014(4) R.C.R. (Criminal) 196*, wherein the deceased had made two dying declarations. In first dying declaration, she had stated that the fire incident took place with her as her *sari* caught fire while cooking food. In second dying declaration given two days afterwards, she stated that her husband poured kerosene on her and put her on fire, after she had refused to have intercourse on the second occasion. Taking into account all the facts of the case, trial Judge acquitted the accused of offence punishable under Section 302 and 498-A IPC. He has also relied on *Gopal Vs. State of M.P. AIR 2009 Supreme Court 2111*, in support of his arguments that conviction cannot be based merely on dying declaration.

Learned counsel for the appellants has argued that the prosecution has utterly failed to prove either of the offence for which the appellants have been convicted beyond any shadow of doubt and the appellants are entitled for acquittal.

Learned State counsel has argued that it is a case which speaks volumes about the plight of a married woman who was killed within the first year of her marriage but nobody from the society including her parents had come forward to lodge the report with the police. This argument of learned counsel for the appellants has no basis that the deceased had made her first dying declaration before her parents. Investigating Officer of this case PW8 ASI Lekh Ram has categorically stated that he had called the parents of the deceased but they did not appear before him. They never reported the matter to the police prior to the death of Shakuntla or even at the time of her death

or when her post-mortem was conducted. It was only after the *Panchayat* had been held that her parents came forward with their statements. The hapless victim had spoken out her grievance and narrated the tragedy that had taken place with her in her dying declaration recorded on 20.02.2003. If the parents were already there and they have been narrated the incident by the deceased, there was no reason for the deceased to level allegations against the appellants. This shows that she had narrated the incident truly and in her full senses in dying declaration recorded on 20.02.2003. It was rather the subsequent dying declaration which was riddled with contradictions. Even in her second dying declaration, she stated that she had already made the statement regarding the incident. It is unfortunate that even the parents have sided with the appellants-accused may be due to their poverty, haplessness or some influence on them. In such circumstances, it could not be expected from anyone else to come forward to depose against the accused. The story of bursting of stove propounded by the appellants is not proved. No suggestion was given to PW8 ASI Lekh Ram, Investigating Officer that when he inspected the spot, the stove which had burst, was lying at the spot. Neither any such stove was found at the spot by the police or taken into possession. Even to Constable Sumit Kumar, who prepared the scaled site plan Ex.PG, no suggestion was given that the incident had taken place in the kitchen and a stove that had burst, was also lying there. Moreover, the bursting of the stove never leads to 100% burns. A person standing in front of the stove may get some burns due to its bursting and he/she gets enough time to run in order to save him/her. It is quite strange that nobody in the family had come forward to save the deceased. The story

propounded that there was marriage of daughter of Mahender Singh fixed for 21.02.2003 and on the day of incident, all the family members have gone for lunch at the house of Sukhbir, brother of Mahender Singh is doubtful. It is quite strange that a newly wedded wife was left alone to prepare the meal and was not taken to the family function. This speaks volume about the hollowness of the defence version and falsity of the testimony of defence witnesses. In the facts and circumstances discussed above, the trial Court has not committed any error of law or fact while convicting and sentencing the appellants.

On appraisal of evidence on record and respective submissions of learned counsel for the appellants and State counsel, it is evident that this is a case based on circumstantial evidence and the dying declaration of the deceased. The point for consideration in this appeal is as to whether the dying declaration of the deceased could be relied upon by the trial Court in the facts and circumstances of the case to record the conviction of the appellants for the offences punishable under Sections 304-B, 498-A and 316 read with Section 34 IPC.

Regarding solemnity and sanctity of the dying declaration, Hon'ble Supreme Court in **Dayal Singh Vs. State of Maharashtra (2007)12 Supreme Court Cases 452**, observed as follows:-

“14. The law regarding the dying declaration and the value which is to be attached to it has been examined in considerable detail in **State of Karnataka v. Shariff (2003) 2 SCC 473**, by a Bench of which one of us was a member and paragraph 18 of the decision is being reproduced below :-

18. The earliest case in which the law on the point of dying declaration was considered in detail by this Court is ***Khushal Rao v. State of Bombay* AIR 1958 SC 22**. The Court ruled that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. It has been further held that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.”

The dying declaration, if found true and reliable, can be acted upon without corroboration. Hon'ble Apex Court in case of ***Padmaben***

Shamalbhai Patel Vs. State of Gujarat 1991 SCC (Criminal) 275(SC), has

observed in para 8 as follows:-

“ It is well-settled by a catena of cases that a dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premises that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premises which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence--neither extra strong nor weak--and can be acted upon without corroboration if it is found to be otherwise true and reliable.”

In case of *Meesala Ramakrishan Vs. State of Andhra Pradesh*,

conviction can be founded solely on the basis of dying declaration if the same inspires confidence.

Similar were the observations in case of *Ram Bihari Yadav Vs. State of Bihar 1998 (4) SCC 517*, wherein Hon'ble Apex Court observed that dying declaration is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused. But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case.

The incident took place on 19.02.2003. The deceased was taken to PGIMS, Rohtak and as per the MLR Ex.PJ/1, she was having 100% burns all over the body. Kerosene oil smell from the body was positive. As per the MLR, the deceased was taken to the hospital by her father-in-law Balbir. In fact, Balbir is not father-in-law of the deceased. From the statement of Mahender DW4, it appears that Balbir is one of the brother of Dharambir, father of Suresh, husband of deceased and was residing in the house adjoining the house of Dharambir, where the incident took place. Said Balbir Singh has not appeared in this case either as prosecution witness or in defence. Dr. Amarjit Singh, Deputy Medical Superintendent, PGIMS Rohtak appeared as PW11 to prove the MLR of deceased as Ex.PJ/1. No suggestion was given to him that the 100% burns all over the body could be caused by bursting of stove.

Before looking into the evidence led by the prosecution, it would be relevant to look at the statements of parents of the deceased as it

prosecution case and rather supported the appellants in defence.

Karan Singh, father of the deceased, while appearing as DW1 has stated that the deceased never complained to them about any misbehaviour with her and her in-laws were keeping her properly. They immediately rushed to PGIMS, Rohtak and met their daughter, who told them that she was cooking food when the stove burst and she received burn injuries. Rajwanti, mother of the deceased appeared as DW2 and deposed on the same lines as her husband.

Mahender Singh DW4, brother of father of husband of deceased had stated that at about 2.30p.m., when he went to the house of his brother Sukhbir, who had arranged a lunch of brotherhood due to marriage of his daughter, they were told by their neighbour about the incident that the deceased had received burn injuries while preparing tea. This statement materially differs from statement of parents of deceased who had stated that their daughter disclosed at PGIMS Rohtak that stove burst when she was 'preparing meals'.

Satpal DW6 has stated that on hearing the cries of the deceased, he rushed to her house and wrapped her in a *dari* to put off the fire. He has stated that the stove had already burst.

By leading the defence evidence, the appellants have tried to make out that on the day of incident, deceased was alone in the house and was preparing meals or tea, when due to stove burst she received burn injuries. The police reached the hospital on receipt of VT message Ex.PH.

It is quite strange that neither the parents nor the in-laws of the deceased informed the police about the incident. Even the parents have

alleged that they met the deceased on the same day and deceased informed them about the incident but none of them had come up with any version before the police despite the fact that they were called by the police. They rather avoided to appear before the police and got their statements recorded when a *Panchayat* had been convened after the death of deceased. In case the statements of parents be believed that their daughter had disclosed them about the incident on the same day that she received injuries due to bursting of stove when she was preparing meals, they would have immediately informed the police. It is quite strange that even after her death, they did not contact the Investigating Officer.

In case, the deceased has told her parents that the incident had taken place due to bursting of stove when she was preparing meals, in that case, there was no pressure on her as even her parents have come to the side of accused and were not taking any action. There was no reason for her to state wrong facts in her dying declaration Ex.PF/5, wherein she has narrated the incident specifically implicating both the appellants for sprinkling oil on her and then putting her on fire. She has stated that neighbours came to the house on hearing her cries and even after the incident, appellant Rajpati told them that there was no use of taking the deceased to the hospital. She was brought to the hospital by the neighbours. This fact is proved from MLR Ex.PJ/1, wherein it has been mentioned that she was got admitted by one Balbir, who was residing in the adjoining house.

Much stress has been laid on the fact that due to the marriage of cousin of husband of deceased, a lunch had been arranged in the house of Sukhbir, uncle of husband of deceased and everybody had gone there. If a lunch had been arranged in the brotherhood due to marriage in the family, this fact remained unexplained as to what was the cause that the deceased was left at home to cook the meals. The question which arises for consideration is as to for whom she was cooking the meal when all the family members had gone for lunch at the house of Sukhbir. Another important fact which goes unexplained is as to why deceased was not taken for lunch to the house of Sukhbir which is unusual and against the customs prevailing in the society. A newly wedded in the family is always given prominence in marriage functions. If the mother-in-law, sister of mother-in-law, husband, father-in-law everybody had gone for lunch, this cannot be believed that the deceased, a newly wedded, was left to cook the meals in the house. This reflects the falsity of the defence version taken by the appellants.

In case, the deceased was not being harassed by the appellants and she had confided with her parents that she had got burn injuries due to bursting of stove, there was no reason to level false allegations against her husband, mother-in-law and sister of mother-in-law in her dying declaration Ex.PF/5.

Another important factor reflected from the dying declaration Ex.PF/5 is that she had not levelled allegations against her husband for putting her on fire. She has rather stated that after giving her beatings along

bath. In case, she had to tell a lie, she could easily implicate her husband and his other family members as well. Perusal of her statement Ex.PF/5 shows that she had given a natural narration of the incident that happened to her.

The deceased had received 100% burn injuries. A person who has received 100% burn injuries and is in acute pain, is not supposed to give every minute details of the incident that had happened with him/her. The deceased had categorically stated that the appellants gave her beatings as they had been demanding money from her. This statement of deceased is to be interpreted keeping in view the facts and circumstances that she got married and came in the family of appellants only about 11 months ago. There was no occasion or reason for the appellant to demand any money from her on any other count except for raising dowry demand. It is not a defence version that there was money dealings relating to some business or other monitory activities with the deceased in connection with which they were demanding money from her. Though she was not required to explain the demand of dowry using exact legal language, so as to reach the conclusion that she was subjected to cruelty and harassment by the appellant for or in connection with demand of dowry, the facts stated by the deceased that the appellants were demanding money from her and gave her beatings on this score goes a long way to suggest that the demand was for and on account of dowry. The trial Court has committed no error of law or fact while reaching the conclusion that the deceased who was having 100% burns was not expected to narrate all the major incidents and details in her statement. From the dying declaration Ex.PF/5, it is amply proved on record that the deceased was subjected to cruelty just before her death for and on

account of demand of dowry, thereby attracting the provisions of Section 304-B IPC and Section 113-B of Evidence Act.

Now, coming to the second dying declaration of deceased recorded on 22.03.2003. Firstly, the dying declaration recorded on 20.02.2003 is proved to be without any pressure on the deceased and there was no reason for the deceased to get another dying declaration recorded. This fact is proved that parents of deceased were not coming forward and avoiding the police investigation and they have sided with appellants. Under these circumstances, the pressure is to be presumed otherwise in favour of the appellants. The second dying declaration Ex.DA was recorded by ACJM, Rohtak. The falsity of this statement is evident from the fact that in this statement, she had given the date of incident as 20.02.2003 and had stated that at about 4.00 p.m., she had ignited the stove to prepare tea when it caught fire and got burst. The facts on file show that at about 4.15 p.m. on 20.02.2003 she was already lying admitted in the hospital. The incident had taken place in the village in Meham, which is far away from Rohtak. DW6 Satpal had narrated the time of incident at about 2.30/3.00 p.m. The difference of date of incident, time of incident in the second dying declaration shows that the deceased was under acute pressure, while making this statement. She has exonerated everyone but at the same time reiterated that earlier also she had made a statement before the Magistrate. She had not narrated even a single word that the earlier statement was not correct or was made under some wrong impression or pressure, which rather reflect that she stood by her first dying declaration. The mode and manner in which the second dying declaration was got recorded speaks volume of its falsity.

The citations referred by learned counsel for appellants have been perused by me. The same are not applicable to the facts and circumstances of this case. In case of *Asha and others (supra)*, Hon'ble Apex Court has disbelieved the version regarding maltreatment of deceased on account of demand of dowry. In the case of *Modinsab Kasimsab Kanchagar (supra)*, the demand of money was towards payment of society loan and was not for demand of dowry, as such, was held to be not attracting provisions of Section 304-B IPC. In this case, as already discussed the deceased was married only 11 months back and there was no plea that the money demanded from the deceased was on any other account. The observations in above two cases are, as such, not applicable to the facts and circumstances of the case.

In the above facts and circumstances, the trial Court has rightly relied upon the dying declaration Ex.PF/5 as credible, true and voluntary while convicting the appellant for the offence punishable under Section 498-A, 304-B and 316 read with Section 34 IPC.

Before parting it will be relevant to take note of the fact that the hapless parents of the deceased despite gruesome incident with their daughter, could not dare to rise against the family of her in-laws. This may be due to their weak economic status, poverty, illiteracy or acute pressure on them. Despite all these factors, the Investigating Officer proceeded to investigate the case and in the circumstances discussed above, his statement that he came to know that the deceased got her second dying declaration recorded before the ACJM, Rohtak under pressure is not without any basis.

This case portrays the condition of the girls in the rural society. A girl who

was put on fire and received 100% burns, unfortunately had no one including her parents to sympathise her, mourn over her death and agitate against perpetrators of crime against her. The society and social reformers require to come forward and to raise voice to change this scenario which has put the nation to lot of agony and despair.

In view of the facts and circumstances discussed above, I am of the considered opinion that the trial Court has committed no error of law or fact while recording the conviction of the appellants for the offences punishable under Section 498-A, 304-B and 316 read with Section 34 IPC. The conviction of the appellants is maintained.

The cruel act of appellants not only resulted in death of their daughter-in-law but also of a female child in her womb. The cruelty shown to the daughter-in-law who was family way calls for no leniency with regard to the quantum of sentence, as such, the sentence awarded by the trial Court is also maintained.

This appeal has no merits. Dismissed.

The bail bonds and surety bonds furnished by the appellants in pursuant to the order dated 13.09.2004 whereby their further sentence was suspended are cancelled. Both the appellants be taken into custody and sent to jail to undergo the remaining part of their sentence.

September 29, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether to be referred to reporter:

✓
Yes/No