

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1387 of 1998**

Ramesh Pateria, son of Rajkumar Pateria, aged about 31 years, resident of Baijnathpara, Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For State/Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board

Per Deepak Gupta, Chief Justice

24.10.2016

1. By means of this appeal, the accused/Appellant has challenged the judgment of Learned Sessions Judge, Raipur dated 27.4.1998 passed in Sessions Trial No.277 of 1996, whereby the Appellant was convicted for having committed an offence of murder of his wife punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to imprisonment for life.
2. The undisputed facts are that the Appellant was married to Usha Pateria. As per the evidence on record, the marriage had taken place more than 7 years prior to the date of the incident 8.4.1996. It is also not disputed that Usha Pateria received serious burn injuries on 8.4.1996 at about 3:30 p.m. She was taken to the Medical College Hospital, Raipur. She was suffering from 80%–85% burns and as a result of the injuries sustained she unfortunately expired on 26.4.1996. Another undisputed fact is that the Appellant also received burn injuries during this very incident. When Usha Pateria was lying admitted in the hospital, her dying declaration (Ex.P-9) was recorded by PW-8, Ashok Tiwari, Executive Magistrate on 11.4.1996 and in this

dying declaration, she had stated that her husband poured kerosene on her and then set her on fire. First Information Report (Ex.P-11) was recorded on 11.4.1996 and after Usha Pateria died on 26.4.1996, merg intimation (Ex.P-13) was lodged. Investigation was carried out and on the basis of the investigation, the accused/Appellant was charged with the offence of murder of his wife.

3. The Trial Court convicted the accused/Appellant for having committed the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life only on the basis of the alleged dying declaration made by deceased Usha Pateria. It would be pertinent to mention that a Bench of this Court had heard this matter in detail on 11.2.2014, on which date the following order was passed:

“11.02.2014

Ms. Nirupama Bajpai, counsel for the Appellant.

Shri DK Gwalre, Government Advocate and Shri Ravindra Agrawal, Panel Lawyer for the State.

Heard on the application (IA-1) under section 391 of the CrPC for examination of Dr. DS Tiwari and Investigating Officer Shoeb Ahmed Khan in the appellate stage.

This is a criminal appeal against the order of conviction and sentence dated 27.04.1998 passed by the Sessions Judge, Raipur, in Sessions Trial No.277 of 1996 convicting Ramesh Pateria (the Appellant) under section 302 Indian Penal Code and awarding life imprisonment.

Usha Pateria (the Deceased) was the wife of the Appellant. They were married more than seven years back from the date of the incident. The Deceased received 80 – 85% burn injuries in an incident which took place on 08.04.1996. Thereafter, she died on 26.06.1996.

The statement of the Deceased was recorded by the Investigating Officer under section 161 CrPC on 08.04.1996. Thereafter, her dying declaration was recorded by the Executive Magistrate on 11.04.1996 (Ex.P-9).

The dying declaration (Ex.P-9) recorded by the Executive Magistrate has been proved in the court of law. However, the statement of the Deceased under section

161 CrPC, recorded on 08.04.1996 which is also a dying declaration was filed along with the police challan, but was not proved in the court of law.

Considering the contents of the statement of the Deceased dated 08.04.1996, it would be appropriate that this document may also be exhibited.

In view of above, the application (IA-1) is allowed. The matter is sent back to the Sessions Judge, Raipur to record the statements of the Investigating Officer concerned as well as the doctor who certified about the fitness of the Deceased in the first dying declaration. The court below after recording the evidence of the aforesaid witnesses and getting the aforesaid document exhibited, will send the matter back along with the records to this court forthwith.

Also heard on application (IA-2) for suspension of sentence and grant of bail to the Appellant.

Considering the fact that there is a statement of the Deceased under section 161 CrPC, which favours the story of the Appellant that the Deceased committed suicide and he was granted bail on 22.08.2003 but was again taken into custody pursuant to the order dated 27.09.2013 passed by this court, as no one appeared on his behalf, the application (IA-2) is allowed.

It is directed that in the event of the Appellant executing a personal bond for a sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial court, the substantive jail sentence imposed upon him shall remain suspended during pendency of this appeal and he shall be released on bail for his appearance before the concerned trial court on 12.03.2014. He shall, thereafter, continue to appear there on all such dates as are given to him by the said court, till final disposal of this appeal.”

4. After this order was passed, the Sessions Judge, Raipur recorded the evidence of Dr. Rajan Tiwari, who has certified that Usha Pateria was fit to give a statement insofar as the first dying declaration dated 8.4.1996 is concerned. Unfortunately, the Investigating Officer, who recorded the earlier dying declaration had himself expired by this time. Therefore, his statement could not be recorded, but his signatures on the said dying declaration have been proved by Shri Salik Ram Verma, Constable No.754, who had worked under him. At this stage,

we may also point out that in the earlier order dated 11.2.2014 there appears to be a small error inasmuch as it is mentioned that statement of Usha Pateria was recorded under Section 161 of the Code of Criminal Procedure (Cr.P.C.), which may be the dying declaration. On careful verification of the record, we find that in fact there is no statement of Usha Pateria recorded under Section 161 Cr.P.C., but what has been recorded is a dying declaration recorded on 8.4.1996.

5. It is indeed very unfortunate that the Public Prosecutor, who was conducting the case, did not think it fit to produce and get the earlier dying declaration dated 8.4.1996 proved before the Court. The primary role of a Public Prosecutor is to assist the Court in its search for truth. The endeavour of every Court and any officer of the Court should always be to ensure that the truth is brought out. A Public Prosecutor is duty bound to ensure that the truth is brought out even if the accused has to be acquitted. In this case, it is apparent that the Investigating Officer was not examined so that he could not be confronted with the earlier dying declaration duly recorded by him. This earlier dying declaration has now been exhibited as Ex.P-1 by the Learned Sessions Judge in the inquiry conducted by him. The dying declaration (Ex.P-1) reads as follows:

“मरणासन्न कथन

दिनांक
8.4.96

- प्र. आपका नाम पुरा पता क्या है
- उ. उषा पति रमेश कुमार पटेरिया उम्र 23 वर्ष सा. बैजनाथ पारा ठाकुर कमल सिंह का बाड़ा बड़ी मदरसा के पिछे
- प्र. कैसे जली हो
- उ. मेरा पति मुझे गाली गुफ्तार शराब के नशे में मारपीट करता था इसलिए मैं मिट्टी का तेल डाल कर आग लगा ली हूँ
- प्र. तुम्हारी शादी कब हुई थी
- उ. 7 वर्ष पूर्व
- प्र. तुम्हे कब से परेशान एवं मारपीट करता था
- उ. शादी के बाद से ही मुझे परेशान एवं मारपीट करता था

- प्र. तुम्हे क्यों मारपीट एवं परेसान करता था
 उ. अनायास ही मारपीट गाली गुफ्तार शराब पी कर करता रहता था
 प्र. तुम्हारे कितने बच्चे हैं।
 उ. एक लड़का 5 वर्ष का है।
 प्र. तुम्हे और कुछ कहना है।?
 उ. और कुछ नहीं कहना है।”

6. On the top of this dying declaration, there is a certification of Dr. Rajan Tiwari that the patient is conscious and is fit to make a statement. This dying declaration has been recorded in question and answer form and when Usha Pateria was asked how she had got burnt, she replied that her husband used to abuse her, he used to drink and when he was under the influence of alcohol he used to beat her and that is why she had poured kerosene on herself and set herself on fire. Therefore, as far as this dying declaration is concerned, the case of the deceased was that she had committed suicide because her husband used to use abusive language against her and also used to beat her when he was drunk. This dying declaration was recorded on 8.4.1996. This dying declaration by itself discloses a cognizable offence of attempt to suicide and also a cognizable offence of cruelty and harassment falling within the ambit of Section 498A IPC as well as an offence of abetment of suicide falling within the ambit of Section 306 IPC. Unfortunately, no FIR was lodged on that date.
7. One of us (the Chief Justice) has been observing since last 5 months that the practice in the State of Chhattisgarh is not to lodge the FIR at the first instance. There are various ways how the police avoids lodging of the FIR. One system being followed is to lodge mere intimation (intimation of death) and thereafter the FIR is lodged. Another system is to lodge Dehati Nalishi (unnumbered report). This is like a zero number FIR being recorded at the spot. Once the allegations are clear and a cognizable offence is made out then there

is no question of lodging a mere intimation or Dehati Nalishi at the first instance. Once the commission of a cognizable offence is made out, it is the duty of the police official to lodge the report. Zero FIR may be lodged in those rare cases where either the complaint has been lodged in the jurisdiction of a police station not having jurisdiction or when, from the facts stated no clearcut offence is made out and it cannot be said with certainty that a cognizable offence is made out.

8. We may go through the scheme of the Code of Criminal Procedure. Under Section 154 Cr.P.C., every information given to an officer-in-charge of a police station has to be recorded in writing and if such information is given in writing, it must be signed by the person giving the information and the substance of the information has to be entered into a book to be kept by such officer. Therefore, there is no discretion with the police officer. He is bound to lodge an FIR as soon as the commission of cognizable offence is made out.

9. Section 154 Cr.P.C. reads as follows:

"154. Information in cognizable cases - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer;

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have

been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

2. A copy of the information as recorded under Sub-Section (1) shall be given forthwith, free of cost, to the informant.

3. Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

- 10.** A bare reading of the aforesaid provision clearly stipulates that when an information relating to the commission of a cognizable offence is given to the Police Officer orally, he shall reduce the same in writing and when the information is given in writing, the substance thereof has to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Under sub-section (2), a copy of the information recorded under sub-section (1) shall be given forthwith free of cost to the informant. Sub-section (3) provides that if any person is aggrieved by refusal on the part of the officer to record the information, he may send the substance of such complaint in writing and by post to the Superintendent of Police concerned, who, on being satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. This virtually means that the Investigating Officer shall be an officer

other than the officer who refused to lodge the FIR.

11. Section 157 Cr.P.C. reads as follows:

"157. Procedure for investigation.-(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

- (2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

This Section clearly postulates that FIR has to be sent forthwith to the Magistrate. The Magistrate is empowered to take cognizance of such offence and investigation has to be started.

12. Section 154 Cr.P.C. has been the subject matter of discussion in a number of judgments of the Apex Court and when the Apex Court has already given directions in this regard, this Court is not required to add anything further. Reference may be made to **Lalita Kumari v.**

Government of Uttar Pradesh, (2014) 2 SCC 1, wherein the Apex

Court held as follows:

"40. In addition, Mr. Shekhar Naphade, learned senior counsel contended that insertion of Section 166A in IPC indicates that registration of FIR is not compulsory for all offences other than what is specified in the said Section. By Criminal Law (Amendment) Act 2013, Section 166A was inserted in Indian Penal Code which reads as under:-

“Section 166A—Whoever, being a public servant.—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of Section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under Section 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, Section 509

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine.”

xxx

xxx

xxx

42. Although, the argument is as persuasive as it appears, yet, we doubt whether such a presumption can be drawn in contravention to the unambiguous words employed in the said provision. Hence, insertion of Section 166A in the IPC vide Criminal Law (Amendment) Act 2013, must be read in consonance with the provision and not contrary to it. The insertion of Section 166A was in the light of recent unfortunate occurrence of offences against women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country, thought it appropriate to expressly punish the police officers for their failure to register FIRs in these cases. No other meaning than this can be assigned to for the insertion of the same.

43. With this background, let us discuss the submissions in the light of various decisions both in favour and against the referred issue.

Interpretation of Section 154:

44. It may be mentioned in this connection that the first

and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

45. At this juncture, it is apposite to refer to the following observations of this Court in *M/s Hiralal Rattanlal*¹⁴ which are as under: (SCC p. 224, para 22)

“22...In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear...”

46. The above decision was followed by this Court in *B. Premanand*¹³ and after referring the abovesaid observations in the case of *Hiralal Rattanlal*¹⁴ this Court observed as under:

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. SEBI*⁴³.”

110. This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166.

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a 'reason to suspect the commission of an offence'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence."

- 13.** All these directions have already been ordered to be circulated by the Apex Court. These have been circulated to the police officials of the State of Chhattisgarh already and even at the cost of repetition, if needed, they shall be circulated all over again.
- 14.** Another important aspect of the matter is that if the information given by a person is not recorded by the officer-in-charge of the police station then that person in terms of Section 154(3) Cr.P.C. can approach the Superintendent of Police concerned and if the Superintendent of Police is satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by the Cr.P.C. and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. Therefore if the officer in charge does not record an FIR where the information discloses, commission of a cognizable offence some other police official must investigate the case. This is a very important provision to ensure that people feel that they shall get justice at the hands of the police and if the officer does not record FIR though the information discloses the cognizable offence then he is debarred from later investigating the matter.

- 15.** Reference may be made to Section 156 Cr.P.C. which permits a police officer to start investigation in a case relating to a cognizable offence without obtaining any orders of the Magistrate concerned. Thereafter, reference may be made to Section 157 Cr.P.C., which provides that if the information given relates to the commission of a cognizable offence for which the police officer will be empowered to investigate in terms of Section 157 Cr.P.C. then he has to “forthwith” send the report to the concerned Magistrate empowered to take cognizance of such offence. Therefore, a duty is cast on the police officer recording the information to ensure that the concerned Magistrate is immediately apprised of the lodging of the FIR in a case relating to cognizable offence. The FIR has to be sent to the Magistrate forthwith. The police cannot be permitted to circumvent the provision of Section 157 Cr.P.C. by not lodging an FIR and lodging a Dehati Nalishi or a merg intimation or G.D. entry etc. If the information discloses commission of a cognizable offence then the police is duty bound to lodge an FIR and forthwith send a copy of the FIR to the Magistrate concerned. Purpose of Section 157 Cr.P.C. is to ensure that false cases are not made out at a later stage because once an FIR is lodged and countersigned by the Magistrate then no changes can be made in the FIR. This salient provision of the Cr.P.C. cannot be circumvent by the practice which is being followed in the State of Chhattisgarh by not recording FIR straightway and first recording merg intimation, Dehati Nalishi etc.
- 16.** Another important aspect of the matter is that once the Magistrate is seized of the matter then he can direct how the investigation is to be carried out in terms of Section 159 Cr.P.C.
- 17.** As far as the present case is concerned, Usha Pateria admittedly received burn injuries on 8.4.1996. The FIR was lodged on 11.4.1996 after the second dying declaration was recorded. There is no

explanation as to why the FIR was not lodged on 8.4.1996. When Usha Pateria was admitted to the hospital, admittedly her dying declaration was recorded by the Investigating Officer. Now, the Investigating Officer is dead. But, the fact that the dying declaration was recorded is proved and as per this dying declaration also, commission of cognizable offence is made out. Therefore, there is grave doubt cast as to why no FIR was lodged after recording the first dying declaration and why the prosecution tried to withhold this dying declaration from the Court. Now, we have evidence before us of the doctor concerned that Usha Pateria was in a fit condition to make a statement at the relevant point of time. The signatures of the Investigating Officer have been proved on the dying declaration. The doctor has also certified that the patient remained conscious for the entire period of recording of the statement. This statement has also been proved. Therefore, he is a witness to the recording of the earlier dying declaration and the same stands adequately proved on record.

18. Now, we come to the second dying declaration. The need to record second dying declaration occurred when Dr. (Smt.) Amita Bose (PW-7) sent a communication to the officer-in-charge of the police station that one patient wants to make a statement. Thereafter, the second dying declaration (Ex.P-9) was recorded on 11.4.1996 and in this second dying declaration, Usha Pateria allegedly stated that she was set on fire by her husband. Therefore, there are two contradictory dying declarations on record; one in which the deceased stated that she set herself on fire because she was ill-treated by her husband and one in which she stated that she was set on fire by her husband.

19. There is a third oral dying declaration allegedly made by the deceased to her family members, i.e., mother Kamla Pandey (PW-4), brother Ramesh Kumar Pandey (PW-5) and sister-in-law (Jethani of the deceased) Kumari Pandey (PW-6). All these three witnesses state

that the deceased told them that she had been set on fire by her husband. However, when cross-examined, all the three witnesses have stated that the deceased made the statement to them 3-4 days after the occurrence. There is no explanation why the deceased kept silent about the alleged role of her husband till 11.4.1996. If indeed the deceased had been set on fire by her husband, as is the case of the prosecution, what prevented her from saying so when her first statement was recorded on 8.4.1996. There is no allegation much-less proof of the fact that the husband had got the statement of the wife recorded. In fact, the husband himself was admitted in the hospital with burn injuries. Though there is no direct evidence that he sustained the burn injuries while trying to save his wife, the prosecution has miserably failed to show how the husband sustained the burn injuries. The prosecution led no evidence with regard to alleged ill-treatment of the wife. The mother (PW-4) though she states that her daughter told her that she (daughter) had been set on fire by the accused has made no allegation against the husband. In cross-examination, she states that her daughter and son-in-law used to fight very after. She has also admitted that her daughter used to say that some day she may set herself on fire. There is not even a whisper that the accused was ill-treating his wife or was harassing her or treating her with cruelty within the meaning of Section 498A IPC. The brother (PW-5) and sister-in-law (PW-6) have not said any word with regard to cruelty or harassment.

- 20.** As far as this present case is concerned, the accused, in our opinion, has to be acquitted in view of the two totally contradictory dying declarations which do not support each other. Not only that, there is no corroboration to the second dying declaration. In the second dying declaration, the statement of the wife is that since her husband had some bad habits, she had committed suicide. What were these bad

habits? This question has not been answered by the prosecution. As pointed out above, none of the three witnesses, i.e., PW-4, PW-5 and PW-6, who are the family members of the deceased, have made any statement about the alleged bad habits of the accused.

21. No doubt, the deceased committed suicide. She was a married lady having a 5-year old son. It is indeed unfortunate that this lady committed suicide. It is obvious that she must have committed suicide because she was unhappy. However, what were the reasons for her to commit suicide had to be proved by the prosecution and this Court cannot convict the accused/Appellant on the basis of surmises and conjectures. The prosecution unfortunately has not proved its case. In fact, the prosecution has not been fair and has withheld the first dying declaration from the Court.
22. On behalf of the State, it is urged that even if the first dying declaration is relied upon, the husband has to be convicted under Section 306 or Section 498A IPC. A dying declaration, in terms of Section 32 of the Evidence Act, is relevant only if it relates to the cause of death. The dying declaration would be relevant if it relates to an offence relating to death be it under Section 302, 304, 304 Part B or Section 306 IPC, but a dying declaration cannot be used for convicting an accused under Section 498A IPC. That cruelty has to be proved by leading evidence other than the dying declaration. As far as Section 306 IPC is concerned, the dying declaration must show that there is abetment to the commission of the offence. Abetment has been defined in Section 107 IPC as follows:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.— Instigates any person to do that thing; or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes

place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

23. Therefore, in a case like the present, the prosecution has to prove that the husband had instigated his wife Usha Pateria to commit suicide. Strained relations by themselves cannot be said to be a ground for abetment of suicide. As pointed out above, the family members have not said a word in this regard.
24. Therefore, we are of the considered opinion that the Trial Court wholly misdirected itself in not relying upon or not taking into consideration the first dying declaration dated 8.4.1996 and has gravely erred in convicting and sentencing the accused/Appellant.
25. The appeal is accordingly allowed. The impugned judgment of conviction and sentence is set aside. The accused/Appellant is acquitted. The bail bonds of the Appellant shall remain operative for a further period of six months from today in terms of Section 437A Cr.P.C. This Court places its appreciation on record for the valuable assistance rendered by Ms. Nirupama Bajpai, Advocate appearing as a Counsel engaged by the High Court Legal Services Committee for the Appellant.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE