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

+ CRL.A. 360/2000

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Judgment dated 19th May, 2016

VED PRAKASH

..... Appellant

Through : Mr.Mohd. Saleem, Mr.Juned Alam,
Mr.Mohd. Khursheed and Mr.Tabrez,
Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State.
SI Khalid Akhtar, P.S. Prasad Nagar.

+ CRL.A. 361/2000

GIANESHWAR

..... Appellant

Through : Mr.Mohd. Saleem, Mr.Juned Alam,
Mr.Mohd. Khursheed and Mr.Tabrez,
Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State.
SI Khalid Akhtar, P.S. Prasad Nagar.

+ CRL.A. 362/2000

SAVITRI

..... Appellant

Through : Mr.Mohd. Saleem, Mr.Juned Alam,
Mr.Mohd. Khursheed and Mr.Tabrez,
Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State.

SI Khalid Akhtar, P.S. Prasad Nagar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Three appeals arise out of a common judgment and order on sentence, they have been heard together and are being disposed of by a common judgment.
2. Present three appeals have been filed by the appellants under Section 374(2) read with Section 397 of the Code of Criminal Procedure against the common judgement dated 10.5.2000 and order on sentence dated 11.5.2000 passed by learned Additional Sessions Judge, Delhi, in Session Case No.86/99 in FIR No.92/99, registered under Sections 498A/307/302/34 IPC at Police Station Prasad Nagar.
3. By the impugned judgment dated 10.5.2000 all the three appellants were held guilty for the offence punishable under Section 498A read with Sections 302/34 of the Indian Penal Code (in short '*IPC*') and vide order on sentence dated 11.5.2000 all the appellants were directed to undergo Rigorous Imprisonment for a period of two years for the offence punishable under Section 498A IPC read with Section 34 IPC. For the offence punishable under Section 302 read with Section 34 IPC, the appellants were sentenced to undergo life imprisonment and they were directed to pay fine of Rs.5,000/-, each, and in default of payment of fine, they were directed to undergo Rigorous Imprisonment for three months. It was directed that both the sentences would run concurrently and the appellants would be given benefit of Section 428 Cr.P.C.

4. The case of the prosecution, as noticed by the learned trial court, is as under:-

“The story of the prosecution begins with the receipt of DD entry No.30-A on 15th March, 1999. The D.D. entry was handed over to SI Umesh Bhardwaj who alongwith Const. Mir Singh reached at the spot i.e. 16/1691-E, D.S. Road, Bapa Nagar, Delhi has taken to R.M.L. Hospital in burnt condition. Leaving H.C. Devinder at the site, S.I. Umesh Bhardwaj and Const. Mir Singh reached in the R.M.L. Hospital and received the MLC No.25465/99, after getting the fitness from the doctor recorded the statement of the injured Neelam, who stated that, “she has been living at the above mentioned address and was married in the year 1989 with Moti Lal. During the married life, her husband Motil Lal in connivance with all his other family members used to beat her on one pretext or the other. Her in laws also used to say that she has not brought sufficient dowry. Her husband Moti Lal, mother-in-law Parvati, sister-in-law Laji Devi, brother-in-law Nathu Ram and his wife Vimla, other brother-in-law Ved Parkash and his wife Savitri and his son Bablu always used to taunt her and also used to beat her, even though when she got five years son and 8 years daughter. On that day i.e. 15th March, 1999 in the evening when she came back after meeting her mother at about 8.15, all the family members of in-laws entered in her room on third floor and told her that she will have to leave the house and she insisted that she won’t leave the house without taking her share. All of a sudden, her brother-in-law (Jeth), Nathu Ram caught her from the back side and other brother-in-law Ved Parkash caught held her hands. She was also over powered by mother-in-law Parvati, both the sisters-in-law Vimla and Laji Devi and Bablu son of Parkash. Her husband Moti Lal opened the cap of stove lying nearby and poured kerosene oil on her body and iwth the help of match stick, put her on fire. Her clothes caught fire. Moment she caught fire, she was made free and she ran towards outside towards the toilet. On raising alarm by her, neighbourers rushed to the spot and put water on her.

After that her mother Smt.Kaushayla Devi came at the spot and took her to the hospital.” On the statement of the injured, an FIR u/s 498/A/307/34 IPC was recorded, crime team was called and the spot was got photographed. The information of the incident was sent to SDM Karol Bagh. The stove and match box etc. were taken into possession. Accused Moti Lal, Bablu, Nathu and Ved Parkash were arrested.

In the statement made before the SDM, the injured did not name Moti Lal, Jethani Vimla, wife of Nathu Ram, Gianeshwar and Moti Lal, Bablu and Nathu Ram were already arrested. Vimla was not included in the list of accused. Subsequently, Neelam succumbed to the injury and on the receipt of report on 21.3.1999 vide DD No.11-A, the case was converted into Section 498-A/302/34 IPC. The report of the post mortem was received NBWs of accused Parvati and Savitri were procured and they were arrested. The exhibits were sent to CFSL Hyderabad. Accused Laji Devi was got declared proclaimed offender. After completion of the investigation, the challan was filed.”

5. The prosecution has examined 19 witnesses in support of its case. No evidence was led by the defence. Statement of the accused was recorded under Section 313 Cr.PC.
6. Learned counsel for the appellants submits that the judgment passed by the learned trial court is based on conjectures and surmises. The trial court has failed to appreciate the evidence in the right perspective. Counsel further submits that the prosecution has primarily relied upon the evidence of PW-13, mother of the deceased; PW-16, Suresh Kumar; and PW-17, Smt.Giyan Devi, who are independent public witnesses being neighbours and also relied upon two dying declarations – the first, being Ex.PW19/A, which was recorded by the Investigating Officer, PW-19, SI Umesh, on the date of the incident i.e. 15.3.1999, and the second dying declaration, being Ex.PW5/A, which was recorded by the SDM, PW-5

Sh.Lal Singh, on 16.3.1999. Counsel contends that having regard to the medical condition of the victim Neelam (hereinafter referred to as the 'deceased'), the statement/dying declaration made by her cannot be relied upon. It is further contended that at the time of recording of her statement, the deceased was not in a fit state of mind, which is evident upon reading of the MLC, which shows that when she was admitted to the hospital, she had suffered 90% burns.

7. Learned counsel for the appellants further submits that reading of the MLC would show that the deceased had been administered a drip and also injected with a pain killer, namely, Voveran, which resulted in drowsiness. It is further submitted that the dying declarations made by the deceased are neither reliable nor truthful, as the same was a result of prompting and tutoring, which is evident from the fact that close family members of the deceased were present at the time when the statements were being recorded.
8. Learned counsel for the appellants also contends that there are material discrepancies between the two dying declarations and thus cannot be relied on. It is contended that in the first dying declaration, the deceased had named every member of the husband's family i.e. father-in-law, mother-in-law, two sisters-in-law (husband's sisters), two brothers of the husband, their respective wives and one son, who is also the appellant herein. Counsel also submits that as per the first dying declaration, role has been ascribed to each and every member of the family of the husband, besides it has been clearly stated by the deceased that her husband had lit the match. Counsel next submits that in the second dying declaration made before the SDM on 16.3.1999, no descriptive details had been given as to how kerosene oil was sprinkled on the deceased and by whom and who lit the match. In the second dying declaration, the deceased had only

named mother-in-law, Parvati; brother-in-law, Prakash; sister-in-law (Jethani), Savitri; and sister-in-law (Nanad), Laji Devi, but did not name her husband, Moti Lal, whose name finds mention in the first statement. The deceased has also not named Vimla, Gianeshwar (appellant in Crl.A.361/2000) and Nathu Ram in the second dying declaration. Counsel contends that this itself would show that either the deceased was not in a fit state of mind or she had not named the abovestated four persons i.e. Moti Lal, Vimla, Gianeshwar and Nathu Ram because none of these persons were guilty. Counsel also contends that the first DD entry, being DD No.30/A, would show that it was a case of suicide as in the DD entry it was recorded that information had been received that '*a lady is trying to set herself ablaze*'.

9. Learned counsel for the appellants submits that on account of tutoring by the mother of the deceased, the deceased had made wild allegations and named each and every member of the family in the first dying declaration. Counsel further submits that even otherwise, the present appellants were not staying on the same floor where the deceased was residing. The deceased, her husband and another brother of her husband were residing on the second floor on a plot thereof constructed over a piece of land measuring 42.5 sq. yards. Relying on the site plan, it is submitted by counsel for the appellant that there were two rooms on the second floor, besides a kitchen and a toilet. The dimensions of the room i.e. 7'x 9', would belie the statement made by the deceased, as it would be virtually impossible for 10 people to be present in a small room.
10. Learned counsel for the appellant further submits that the testimonies of the independent witnesses would show that the present appellants were not present at the spot of the incident when the alleged incident took place. While relying upon the testimony of PW 16, Suresh Kumar, who is

a neighbour, counsel submits that this witness has categorically stated that *“Prakash, his wife and mother of Prakash were present on the ground floor and had nothing to do with the burning”*.

11. Relying upon the testimony of PW 17, Smt.Giyan Devi, counsel for the appellant submits that this witness has testified that when the deceased came downstairs, she was crying that she had been burnt by Nathu, Bimla, Parvati and Laji. Counsel contends that PW-17 has also not named the appellants herein.
12. It is submitted by counsel for the appellants that the mother of the deceased, PW13, in her testimony has given various instances when her daughter was tortured for bringing insufficient dowry. Counsel contends that the mother was not present at the spot when the alleged incident took place, which is evident from the fact that PW-17 had clearly stated in her statement that she had sent her son to call the mother of Neelam (PW-13), as she was living nearby. Thus, the testimony of PW-13 can be of no help to to the prosecution to bring home the guilt of the appellants for the offence under Section 302 IPC.
13. Additionally, learned counsel submits that there is no endorsement of the Doctor on the first dying declaration, Ex.PW 19/A, which was recorded by the Investigating Officer, PW-19. Counsel contends that PW-19 had verbally requested the Doctor to allow him to record the statement of the deceased and the Doctor had declared the deceased fit for making the statement. Counsel contends that as far as the SDM is concerned, reliance on the endorsement made on the MLC is misplaced for the reason that the endorsement does not bear any date or time with regard to the certificate of fitness of the deceased.
14. Learned counsel for the appellants submits that in the statement made by PW-14, Dr.R.P. Narayan, he had clearly testified that the Doctors

ordinarily give date and time when they declare the patient fit for making the statement. PW-14 had also testified that it was correct that no other certificate of fitness was given either on the MLC or any other document. PW-14 had also admitted to be correct that in the MLC there was no mention of the alleged history of burns by her in-laws by pouring kerosene oil.

15. Learned counsel for the appellants further submits that since there are material contradictions in the two dying declarations made by the deceased, neither of the dying declarations can form the basis of conviction of the appellants herein.
16. Additionally, it is contended by learned counsel for the appellants that despite the Crime Team having reached the spot of the incident chance prints were not taken and nor sent to the FSL. Counsel also contends that the alleged stove was not seized by the prosecution and, thus, could not be sent to FSL for examination. The prosecution also did not seize the clothes of the appellants as in case the appellants were present at the spot their clothes would certainly have contained smell of kerosene.
17. Ms.Tiwari, learned counsel for the State, submits that the prosecution has been able to prove its case beyond reasonable doubt. It is submitted that the testimonies of PW-13, mother of the deceased; and both the neighbours, being PW-16, Sh.Suresh Kumar, and PW-17, Giyan Devi, would make it clear that the appellants were present at the spot of the incident. Ms.Tiwari further submits that the evidence of the mother, PW-13, would clearly show that the deceased was continuously being harassed and tortured by her in-laws for bringing less dowry. Ms.Tirwari further contends that PW-13 has detailed various instances when demand of dowry was made by the in-laws of the deceased and when her daughter was beaten by her in-laws. PW-13 has also testified that she had given a

dowry of Rs.1.00 lakh at the time of marriage of her daughter. The in-laws of the deceased were demanding further Rs.50,000/-. PW-13 has also testified that she had to sell her house to enable her to bear the expenses of marriage of her daughter. PW-13 has also testified that when she reached the spot, all the family members of the in-laws of the deceased were laughing.

18. Ms.Tiwari also contends that in fact none of the family members of the deceased had accompanied the deceased to the hospital, which would show that they had all intentions to kill the deceased. Ms.Tiwari also contends that merely because the endorsement regarding 'fit for statement' does not bear the time and date that by itself cannot be a ground to reach a conclusion that the deceased was not fit to make the statement.
19. Ms.Tiwari also contends that the law is well-settled that a dying declaration can be relied upon even in the absence of the endorsement that the person is fit for making the statement, provided the person recording the statement is satisfied that the injured was in his or her proper senses and the statement was truthful and not as a result of tutoring and prompting.
20. It is next submitted by Ms. Tiwari that PW-19, SI Umesh, has testified that he has made a verbal request to the Doctor to allow him to record the statement of the deceased and the Doctor had declared the patient fit for making the statement and, thus, there is evidence on record to show that the patient was in fact fit to make a statement.
21. We have heard learned counsel for the parties, considered their rival submissions and also examined the testimonies of witnesses. The appellant, Ved Prakash, in CrI.A.No.360/2000, is the brother-in-law (Jeth) of the deceased; the appellant, Gianeshwar, in CrI.A.No.361/2000, is the

son of Ved Prakash; and the appellant, Savitri Devi, in Crl.A.No.362/2000, is the sister-in-law (*Jethani*) of the deceased, who is also the wife of Ved Prakash and mother of Gianeshwar.

22. We may also notice, at this stage, that Moti Lal, husband of the deceased, and Parvati, mother-in-law of the deceased, have died. In this case, the appellants were convicted for the offence punishable under Sections 498A/302/34 IPC.
23. In this case, there are two dying declarations, one made before the IO on 15.03.1999 and the second made before the SDM. Both the dying declarations are of utmost importance in this case and this requires careful consideration. As per the first dying declaration, the deceased stated that she was married to Moti Lal in the year 1999. Moti Lal in connivance with all other family members used to beat her on one pretext or another. The in-laws of the deceased used to complain that the deceased did not bring sufficient dowry. Her husband, Moti Lal; mother-in-law, Parvati; sister-in-law (*Nanad*), Laji Devi; brother-in-law, Nathu Ram; wife of Nathu, Vimla; other brother-in-law, Ved Prakash; Savitri, wife of Ved Prakash; and Bablu, son of Ved Prakash, always used to taunt and beat her even though she had one son and a daughter, who were five and eight years of age, respectively.
24. Further as per the first dying declaration, on 15.3.1999 she went to meet her mother. When she returned to her matrimonial home around 8.15 p.m., her husband and all his other family members gathered at the room of the deceased, which was at third floor of the house. They told the deceased that she would have to leave the house. All of a sudden her brother-in-law (*Jeth*), Nathu Ram, caught hold of her from the back side, and the other brother-in-law, Ved Prakash, caught hold of her hands. She was then over-powered by her mother-in-law, Paravti; both the sisters-in-

law, Vimla and Laji Devi; and son of Ved Prakash. The husband of the deceased then opened the cap of the stove lying nearby, poured kerosene oil over her and set her on fire.

25. In the second dying declaration made by the deceased before the SDM, the entire background of the deceased visiting her mother's house, her returning home, being asked to leave the house and the manner in which each person had played a role in setting her ablaze, is absent. We also find it most surprising that in the second dying declaration three persons, one of which being the most important person, being her own husband has not been named. The deceased has also not named Vimla, Gianeshwar (appellant in CrI.A.361/2000) and Nathu Ram. It may also be noticed that in the second dying declaration, which was in the question-answer form, there is no mention of any beating. The deceased has simply testified that her mother-in-law Parvati Devi, brother-in-law (*Jeth*) Ved Prakash, sister-in-law (*Jethani*) Savitri and sister-in-law (Laji Devi) had sprinkled kerosene oil and set her on fire. On being asked by the SDM, who was responsible for setting her on fire, she answered her mother-in-law Parvati, brother-in-law (*Jeth*) Ved Prakash, sister-in-law (*Jethani*) Savitri and sister-in-law (Laji Devi).
26. Having regard to the fact that absence of name of Gianeshwar and Moti Lal, husband of the deceased in the second dying declaration before the SDM while as per the first dying declaration, it was the husband and mother-in-law, who had lit the match, in our view, casts a serious doubt on the dying declarations of the deceased.
27. The Supreme Court while dealing with law with regard to the dying declaration in the case of ***Ramilaben Hasmukhbhai Khristi And Anr. V. State of Gujarat, Suleman Yakubbbhai Khristi Parmar Vs. State of***

Gujarat and Dahyabhai Ashabhai Khristi Parmar & Ors. Vs. State of Gujarat, reported at (2002) 7 SCC 56, has held as under:

“Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of such a dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.”

28. The Supreme Court in the case of ***Shakuntala v. State of Haryana***, AIR 2007 SC 2709, has taken into consideration its various decisions and culled out the principles governing dying declarations. It would be useful to reproduce para 9 of the judgment:

“9. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an

*absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in **Smt. Paniben V. State of Gujarat** (AIR 1992 SC 1817):*

- i. *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See **Munnu Raja & Anr. V. The State of Madhya Pradesh** (1976) 2 SCR 764)]*
- ii. *If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See **State of Uttar Pradesh V. Ram Sagar Yadav & Ors.** (AIR 1985 SC 416) and **Ramavati Devi V. State of Bihar** (AIR 1983 SC 1640)]*
- iii. *The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See **K. Ramachandra Reddy and Anr. V. The Public Prosecutor** (AIR 1976 SC 1994)].*
- iv. *Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See **Rasheed Beg V. State of Madhya Pradesh** (1974 (4) SCC 264)].*
- v. *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See **Kaka Singh V. State of M.P.** (AIR 1982 SC 1021)]*

- vi. *A dying declaration which suffers from infirmity cannot form the basis of conviction. [See **Ram Manorath and Ors. V. State of U.P.** (1981 (2) SCC 654)].*
- vii. *Merely because a dying declaration does contain the details as to the occurrence. It is not to be rejected. [See **State of Maharashtra V. Krishnamurthi Laxmipati Naidu** (AIR 1981 SC 617)]*
- viii. *Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See **Surajdeo Oza and Ors. V. State of Bihar** (AIR 1979 SC 1505)]*
- ix. *Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See **Nanahau Ram and Anr. V. State of Madhya Pradesh** (AIR 1988 SC 912)].*
- x. *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. {See **State of U.P. V. Madan Mohan and Ors.** (AIR 1989 SC 1519)}*
- xi. *Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. {See **Mohanlal Gangaram Gehani V. State of Maharashtra** (AIR 1982 SC 839)}."*

29. The case in hand is to be decided on the touchstone of the law laid down by the Supreme Court of India with regard to dying declarations.
30. In the case of ***Amar Singh v. State of Rajasthan***, reported at 2010 (3) Apex Court Judgments 258 (S.C.), the Apex Court has held that it is not unusual in the matters of dowry death that there is a general tendency to rope in all the relations of the in-laws of the deceased wife. The relevant portion of the judgment reads as under:

“23. PW2 (father of the deceased) has not stated in his evidence before the Court that Jagdish and Gordhani, in any way, subjected the deceased to any harassment or cruelty. PW4 (mother of the deceased), however, has stated that the deceased used to complain about the demand of a Scooter by Girdhari and harassment by her mother-in-law Gordhani, but PW-4 has not stated what was the exact act of Gordhani by which the deceased felt harassed. The evidence of PW-5 (brother of the deceased) is that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and they were demanding a Scooter or Rs.25,000/- for a shop and that when the deceased came home one month prior to her death, she complained that her mother-in-law and all other in-laws used to torture her and taunt her that she did not bring anything, but PW5 has not described the exact conduct of the mother-in-law and other in-laws on account of which the deceased felt tortured and taunted. On the other hand, the evidence of PW4 is clear that Amar Singh used to taunt her that she has come from a hungry house. Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the deceased but there was no such evidence in the case of Jagdish and Gordhani. A prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have

not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh's family.

24. *In Kans Raj v. State of Punjab and Others*, 2000 (2) Apex Court Journal 221 (S.C.) : 2000 (5) SCC 207, this Court cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, this Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

25. We, therefore, do not find any substance in the contention of Dr.Singhvi that the High Court should have sustained the conviction of Jagdish and Gordhani and we accordingly dismiss this appeal.”

31. In the case of ***Shudhakar v. State of Madhya Pradesh***, reported at (2012) 7 SCC 569, it was held as under:

“21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the Court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by

the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters. In the case of Lakhan (supra), this Court provided clarity, not only to the law of dying declaration, but also to the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is charged. The facts of that case were quite similar, if not identical to the facts of the present case. In that case also, the deceased was burnt by pouring kerosene oil and was brought to the hospital by the accused therein and his family members. The deceased had made two different dying declarations, which were mutually at variance. The Court held as under:

9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as “the Evidence Act”) as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of

prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal Rao v. State of Bombay, Rasheed Beg v. State of M.P., K. Ramachandra Reddy v. Public Prosecutor, State of Maharashtra v. Krishnamurti Laxmipati Naidu, Uka Ram v. State of Rajasthan, Babulal v. State of M.P., Muthu Kutty v. State of Rajasthan v. Wakteng and Sharda v. State of Rajasthan.)

32. Further in the case of **Rasheed Beg** (supra), it was held that where a dying declaration is suspicious, it should not be acted upon without corroborative evidence.
33. Applying the law to the facts of the present case, we find the submission of counsel for the appellants that in the absence of endorsement fit for statement or in the absence of any time or date on the endorsement the dying declaration cannot be relied upon is without any force. However the underlying principle to be kept in mind is that the dying declaration

can be relied upon even without any corroboration provided the same is truthful, reliable and not as a result of prompting or tutoring.

34. In this case, the testimony of the mother PW-13 would show that at the time when the first dying declaration of the deceased was being recorded, she was present at the spot. PW-13 has testified that “ *It is correct my daughter was crying with pain when Police came there. When the Police asked my daughter about the occurrence she was alright. The Police asked about the occurrence and thereafter they sat outside the room. Again said near the door along with the bed of my daughter and reduced the statement in writing for 15 minutes. I was not asked anything but I was remained present when the statement of my daughter was recorded. The questions were asked from my daughter about the occurrence for 15 minutes and they reduced the 15 minutes into writing. My both sons were also present at the time of recording of the statement of my daughter. It is correct that the statement was recorded by the Police at my instance. It is correct that all the 15 minutes when my daughter was asked questions, she was feeling pain and she was asking for water frequently as saying that she was having burning pain.....*”.
35. Reading of the testimony of PW-13 would show that at the time when the first dying declaration was made by the deceased and when questions were being put by the IO to the deceased, not only PW-13 but her both sons were present. A further examination of the testimony of PW-13 would show that at the time when the deceased was making the first dying declaration, the IO was not writing her version but he reduced her version into writing after fifteen minutes while sitting outside near the bed of the patient.
36. Having regard to the testimony of PW-13, it creates a suspicion in our mind as to whether the statement made by the deceased was truthful and

reliable or whether it was as a result of tutoring and prompting by her close family members, who were sitting by her side. There is also another factor, which raises suspicion in our mind is that in the second dying declaration made by the deceased there is absence of particulars in the manner the deceased was set ablaze.

37. As noticed hereinabove, in the first dying declaration there is a vivid description, the manner in which one of her brothers-in-law had caught hold of her, the fact she was overpowered by her mother-in-law, sister-in-law and her husband's nephew and the manner in which her husband had set her on fire, the all of which is conspicuously absent in the second dying declaration, which raises a doubt in our mind regarding the truthfulness of the dying declarations. Further, in the second dying declaration three persons have not been mentioned by the deceased, one of whom is none else but her own husband, against whom in the first dying declaration it has been stated that he had set her on fire.
38. It is neither a rule of prudence or law that a dying declaration cannot be acted upon without corroboration, however the Court must be satisfied that the declaration is truthful and voluntary. In case the dying declaration is suspicious it should not be acted upon without corroboration.
39. In the present case, it would be necessary to examine the testimonies of two independent witnesses being neighbours PW-16 and PW17 for corroboration.
40. PW16 has testified as under:

“PW16, Sh. Suresh Kr., S/o. Kishan Lal, aged about 45 years, sanitary (plumber), R/o. 16/1690, Bapa Nagar, Arya Samaj Rd., Karol Bagh, New Delhi-5. On S.A.

I do not remember the date, about 6/7 months ago at about 8.00 P.M. I heard the noise ‘Bachao Bachao’

raised by Neelam from her house. I went there immediately and had seen Neelam in flames. I used to see the quarrel between Neelam and Nathu.

xxx by counsel for accused (all) except Moti

It is correct that Prakash, his wife and mother of Prakash were present on the ground floor and had nothing to do with the burning of Smt. Neelam. It is also correct aht Giyaneshwar was not present at the time of occurrence. I had stated to the police what I have stated in the court today. When I reached the spot one tenant in the same house was coming down after extinguishing the fire. It is incorrect that I had never seen any occurrence of quarrel between Smt. Neelam and Nathu.”

41. Testimony of PW-17 reads as under:

“PW-17 Smt. Giyan Devi. W/o. Late Sh. Net Ram, aged about 52 years, housewife. R/o House No.16/1690, Arya Samaj Rd., Karol Bagh. On S.A.

I had seen that Neelam was being tortured and harassed by Nathu and Bimla and other family members used to quarrel with Neelam. Seven months ago I had seen Neelam crying ‘Bachao Bachao’ that the family members of her in laws had set her in fire and she was in the flames. My brother in law (Devar) named Suresh and my son Subhash went up stairs to save her. Many people had gathered after hearing the cries of Neelam. I had sent my son to call the mother of Neelam as she was living nearby. When she came downstairs she was crying that I have been burnt by Nathu, Bimla, Parwati and Laji.

xx by counsel for accused (all) except Moti.

I had made the statement to the police on 15.3.1999. I had stated to the police that Neelam after she came down had said that Nathu, Bimla, Parwati and Laji had burnt her confronted with her statement Ex.PW17/DA where it not so recorded. I had also stated to the police that

Neelam stated that her family members had burnt her. Confronted with her statement Ex. PW17/DA where it not so recorded. It is incorrect that on 17.4.1996 at 2.00 P.M. Subhash gave blows on abdomen of Giyneshwar as a result of which he sustain injuries and was treated in Ram Manohar Lohiya Hospital from 17.4.1996 to 22.4.1996. I do not know if Giyaneshwar lodged a report against my son on 17.4.1996. It is incorrect that I had deposed falsely because of strained relations with Nathu and Giyneshwar.”

42. Upon reading of testimony of PW-16, it would show that during the cross-examination he has clearly stated that Ved Prakash, appellant in Crl.A.No.360/2000; his wife Savitri Devi, appellant in Crl.A.No.362/2000; and mother of Prakash, were present on the ground floor and had nothing to do with the incident of burning Smt.Neelam. PW-16 has also stated in the cross-examination that Gianeshwar, appellant Crl.A.No.361/2000, who is the son of Ved Prakash, was also not present at the time of occurrence.
43. PW-17, Giyan Devi, has primarily named Nathu and Bimla and a general statement was made that the family members of the husband of the deceased used to quarrel with the deceased. This witness further goes on to state that when the deceased came down stairs, she was crying that she had been burnt by Nathu, Bimla, Parvati and Laji. It may be noted that the appellants herein were not named by the deceased. None of the appellants have been named by this witness as well. Thus, the dying declaration does not find any corroboration from the testimonies made by PW-16 and PW-17.
44. After a perusal of the evidence on record, the testimonies of the material witnesses discussed above in the preceding paragraphs, we have found that firstly, there is no reliable piece of evidence brought on record to suggest that the deceased was subjected to cruelty at the instance of the

present appellants. PW-16 deposed only to the effect that he had witnessed quarrels between Smt. Neelam and Nathu, whereas he is silent about the role of the appellants herein. Even PW-17 in her deposition made a general statement to the effect that she had witnessed the deceased being tortured and harassed only by Nathu and Bimla and other family members also used to quarrel with the deceased. She did not specify the role of the appellants herein. Furthermore, the fact that no complaint of any kind was ever made against the husband or his family members for cruelty or harassment to the deceased during 10 years of subsistence of their marriage, raises serious doubt regarding the alleged role of the present appellants in commission of the offence under Section 498A of the Indian Penal Code.

45. Further, it is noteworthy that most of the allegations of cruelty and harassment were made against the co-accused Moti Lal (husband of the deceased) and co-accused Parvati (mother in law of the deceased), who have already passed away during the course of the trial.
46. We also cannot rule out the possibility of the growing tendency of roping in as many relations of the deceased's husband as possible. However, other relations of the husband cannot be held guilty unless some overt act is attributed to them and proved at the trial as discussed in detail by the Hon'ble Supreme Court in the case of **Kans Raj (supra)**,
47. This court reiterated the same observation made by the Apex Court in a case titled as **Savitri Devi vs. Ramesh Chand and Ors.** reported in (2003) **DLT 824**. It was observed as under:

“23. These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counter productive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative-including minors and even school

going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad and married, unmarried sisters, 'sister-in-laws, unmarried brothers, married uncles and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband. Once a complaint is lodged under Sections 498A/406 IPC whether there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.”

48. We feel that this is yet another case where the victim has made an attempt to rope in all the family members of the in-laws of the deceased. Furthermore, the dying declaration of the deceased shows that her family members lived at the second floor of the house where the incident took place. As per the site plan, the deceased was living at the third floor of the house consisting of one room measuring 7 ft x 9 ft. It is hard to believe that all the ten members of the family would fit in one room, which also had at least one chair, a sofa and other articles.
49. In light of the aforesaid dictum as well as on the basis of the peculiar facts of the present case, we are of the considered view that the prosecution has failed to prove its case against the appellant under section 498A of the Indian Penal Code beyond reasonable doubt.
50. In our view, the evidence placed on record including the dying declarations does not point the finger of guilt towards the appellants

herein. We find it to be highly unsafe to convict the three appellants for the offence punishable under Section 302/34 of the Indian Penal Code.

51. The Court must ensure that there is no miscarriage of justice and if the facts and circumstances of a case so demand then benefit of doubt must be given to the accused person provided a reasonable doubt is not imaginary, trivial, or merely a probable doubt, but a doubt based upon reasoning and common sense.
52. In the case of **Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan**, reported at (2013) 5 SCC 722, the Apex Court has held as under:

“17. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant

Govind Nargundkar and Anr. v. State of M.P.: AIR 1952 SC 343; Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra: AIR 1973 SC 2622; Sharad Birdhichand Sarda v. State of Maharashtra: AIR 1984 SC 1622; Subhash Chand v. State of Rajasthan: (2002) 1 SCC 702; Ashish Batham v. State of M.P. : AIR 2002 SC 3206; Narendra Singh and Anr. v. State of M.P. : AIR 2004 SC 3249; State through CBI v. Mahender Singh Dahiya: AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P. : AIR 2012 SC 1979) It is a case of circumstantial evidence and it is well-settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a Complete chain without giving room to any other hypothesis and should be consistent with his guilt and inconsistent with his innocence.”

53. For the reasons stated above, the appeals are allowed. The impugned judgment of conviction and the order on sentence passed by the trial court are set aside as the charges under Section 498A and 302/34 of the Indian Penal Code have not been proved.
54. We have been informed that the appellants are already on bail. Their bail bonds stand cancelled.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 19, 2016

msr