

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

Reserved on : 10th November, 2016

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Date of Decision: 22nd November, 2016

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CRL.A. 689/2000

AMI LAL & ORS

..... Appellant

**Through: Mr. K.B. Andley, Sr. Adv.
with Mr. M. Shamikh, Adv.**

versus

STATE OF DELHI

..... Respondent

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

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

GITA MITTAL, J

1. The appellants before us assail the judgment dated 31st October, 2000 whereby Ami Lal, his wife Smt. Feroz @ Shanti and their daughter Anju were held guilty for commission of offences punishable under Section 498A and Section 302 read with Section 34 IPC in Sessions Case No. 49/94 which arose out of FIR No. 441/91 registered under Section 498A/302 read with Section 34 IPC by the Police Station Kashmiri Gate. The appellants also assail the consequential order of sentence dated 2nd November, 2000 whereby the trial court sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- each, in

default to further undergo rigorous imprisonment of six months for the commission of the offence under Section 302 read with Section 34 IPC.

So far as the commission of the offence under Section 498A read with Section 34 IPC is concerned, the trial court has sentenced the appellants to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- each, in default of payment of fine to further undergo rigorous imprisonment of four months each. The appellants were held entitled to the benefit of Section 428 of the CrPC and the sentences of imprisonment were directed to run concurrently.

2. It appears that during the pendency of the appeal, Feroz @ Shanti Devi, appellant no.2 died on 10th March, 2003 and the appeal qua her abated.

3. The present appeal is, therefore, pressed on behalf of Ami Lal-appellant no.1 and his daughter Anju-appellant no.3, i.e. the father-in-law and sister-in-law of the deceased.

4. The appellants are represented by Mr. K.B. Andley, learned senior counsel and Mr. M. Shamikh, advocate before us while Ms. Aashaa Tiwari, learned APP appears for the State, all of whom have carefully taken us through the available record.

5. In an incident on 13th November, 1991, Meenu, daughter of Nawab Singh (PW-1) and Smt. Rani (PW-2) suffered burn injuries in her matrimonial home. This unfortunate incident resulted in her demise on 3rd December, 1991 after almost three weeks of hospitalisation and the incarceration of her father-in-law Ami Lal,

mother-in-law - Feroz@Shanti Devi and sister-in-law Anju of the deceased and has led to the present case.

Established Facts

6. Deceased Meenu was married on 1st November, 1990 to Shri Manohar Lal, son of Ami Lal (appellant no.1) and Smt. Feroz @ Shanti Devi (appellant no.2). After their marriage, this couple was residing in a room on the first floor of House No. 759, Chabi Ganj, Kashmiri Gate, Delhi.

7. It is also in evidence that the couple was living separately from the in-laws of the deceased and maintaining a separate kitchen. The in-laws were living separately from the couple on a different floor of the same premises and were maintaining their own kitchen.

8. The site plan Exh.PW4/A proved by the prosecution on record shows that the first floor of the said property consisted of two rooms, kitchen, bathroom, toilet and open terrace. One of the two rooms was occupied by the deceased and her family while the second room was in possession of one Om Prakash who is not identified on record nor examined by the prosecution, though his occupancy is mentioned on Exh. PW4/A.

9. So far as the incident is concerned, police intervention in the matter commenced upon telephonic information being received by SI Shambu Dayal (PW-25) from the duty officer at the Sunder Lal Jain Hospital to the effect that at about 5 p.m., one Meenu who was resident of 759, Chabi Ganj, Kashmiri Gate, had been admitted in

the Sunder Lal Jain Hospital, Ashok Vihar in burnt condition and that some officers should be sent to the hospital. This information was logged as DD No. 15A at 8.50 p.m.

10. We may note at this stage that Meenu had been rushed to the Sunder Lal Jain Hospital by her relatives and her MLC No. 1164 (Exh.PW22/A) was recorded by the doctor.

11. On receipt of this information, SI Shambhu Dayal (PW-25) proceeded to the premises at 759, Chabi Ganj, Kashmiri Gate where he found nobody. It is in his testimony that in the room of the deceased, they found one iron stove (Exh.P3), one *parat* (pan used for making dough out of flour) having wet *atta* (dough); one *tava* (griddle) on the stove having an uncooked *chapatti* (bread) on it and the *chakla* (rolling board) with *atta loi* (dough) for making a *chapatti*. They also found two match boxes, one empty and another having some match sticks (Exh.P1) lying on the bed room on the first floor of the house, some bangle pieces (Exh.P2) lying on the floor. Outside the room, these police officials found some burnt clothes lying which included a *salwar* (Exh.P4) alongwith ladies undergarments and an under shirt having embroidery. SI Shambhu Dayal (PW-25) seized these articles, converted them into a sealed parcel which was sealed with the seal of JL and took it into possession vide seizure memo Exh.PW9/A which was duly signed by him as well as Ct. Ravinder Kumar (PW-9) who was accompanying him.

12. On the requisition of the investigating officer, Ct. Sunil Kumar (PW-18) had also gone to the spot in the intervening night

of 13/14th November, 1991. He had taken photographs of the spot from different angles and had developed positive photographs (Exh.PW18/C, 18/D and 18/E). The original negatives were also produced on record.

13. Leaving Ct. Ravinder Kumar (PW-9) at the spot, SI Shambhu Dayal (PW-25) proceeded to the Sunder Lal Jain Hospital where Meenu was found admitted.

14. SI Shambhu Dayal (PW-25) also informed the SDM, Shri Dharmender Sharma (PW-16) about his being required at the hospital to record the statement of the deceased. He has stated that Sh. Dharmender Sharma (PW-16) recorded Meenu's statement in his presence.

15. As per Sh. Dharmender Sharma (PW-16), upon reaching the Hospital on 13th November, 1991, he confirmed that the patient was fit for statement from the doctor who was on duty and thereafter at about 10:15 p.m. recorded her statement in his own handwriting in vernacular (Exh. PW16/B). The statement shows that it is not a narrative but PW16 put questions to the deceased and noted the question as well as the answer given by the deceased.

16. It appears that Meenu thereafter had a change of mind. At about 10.50 am on the next day i.e. the 14th of November, 1991, Shri Nawab Singh (father of the deceased Meenu) telephonically informed the police control room from room no. 107 in the Sunder Lal Jain Hospital, that the girl who got burnt at Chabi Ganj had given a statement under pressure and that she wanted to give another statement. Shri Nawab Singh had requested that an officer

be deputed for this purpose. This information was sent by the duty officer from the Sunder Lal Jain Hospital to the police control room which was recorded by L/HC Renu as DD No. 112A, proved on record as Exh.PW25/B.

17. This information was further conveyed to the police station, Kashmiri Gate and logged by the duty officer HC Kali Charan (PW-21) at the police station as DD No. 17B (Exh.PW21/A).

18. Copy of DD No. 17B was furnished to SI Shambhu Dayal who thereupon again proceeded to the hospital.

SDM Sh. Dharmender Sharma (PW-16) was also again informed to record the statement of Meenu again.

19. Accordingly, Shri Dharmender Sharma (PW-16) reached the hospital and after confirming from the doctor on duty that patient was fit for statement, PW-16 recorded Meenu's second statement in his own handwriting. This statement (Exh.PW16/C) was also in a question and answer format. On this statement, PW 16 made an endorsement that the statement was recorded from 2 pm to 2.30 pm on 14th November, 1991 after certification by the doctor on duty that she was fit to make a statement Exh.PW16/D.

We find that an endorsement to this effect has been obtained (Exh.PW14/B) from Dr. Subhash Aggarwal (PW-14) at the end of the statement.

20. The statement was handed over to SI Shambhu Dayal (PW-25). As per the prosecution, the statement (Exh.PW16/C) disclosed commission of offences under Section 498A/307/34 IPC. After receipt of the statement, on the direction from the SDM, SI

Shambhu Dayal endorsed the *tehrir* at mark A which was sent to the police station through HC Jagbir Singh and gave the rukka to HC Jagbir Singh (PW-7) for getting the case registered. HC Jagbir Singh brought the rukka to the police station and got a case registered as FIR No. 441/91 under Section 498A/307/34 of the IPC at the Police Station Kashmiri Gate. The registration of the case was logged at 3.40 p.m. on 14th November, 1991 as DD No. 8A (Exh.PW12/A) at the police station. The original rukka and copy of the FIR was delivered to SI Shambhu Dayal at the spot.

21. It appears that after registration of the case, Ami Lal (appellant no.1) was arrested on 14th November, 1991 from his house and his personal search was conducted vide memo Exh.PW6/A.

22. Inspector Jagbir Singh (PW-3) was posted as an SI at Police Station Kashmiri Gate on 15th November, 1991 when the investigation of the case was handed over to him. He had sent the seized articles in the sealed pullandas to the Central Forensic Science Laboratory, Lodi Road, New Delhi through Ct. Satpal who also searched for accused persons Anju and Feroz @ Shanti Devi but they could not be arrested, as they were not traceable.

23. Ct. Ravinder Kumar (PW-9) proved on record the photographs taken of the crime scene as Exh.PW18/C, 18/D and 18/E. The site plan Exh.PW4/A was proved on record by HC Balbir Singh (PW-4) who had prepared the same on requisitioning of the Investigating Officer.

24. It is in the testimony of SI Shambhu Dayal (PW-25) that he had also conducted investigation from the parents of Meenu, Shri Nawab Singh (PW1) and Smt. Rani (PW2) at the police station and that their statements Exh.PW16/E and Exh.PW16/B were recorded by Sh. Dharmender Sharma (PW-16) in his presence.

25. On 3rd December, 1991, injured Meenu died at the hospital and investigation of the case was handed over to Inspector Chandra Mohan, SHO of the Police Station.

26. After completion of the investigation, the challan was filed on 1st February, 1992 under Section 173 of the CrPC. The metropolitan Magistrate committed the proceedings to the sessions court. The appellants pleaded not guilty. The prosecution examined 25 witnesses. Statement of the appellant was recorded under Section 313 of the CrPC. The appellants did not lead evidence in their defence. The trial court considered the evidence and passed the impugned judgment dated 31st October, 2000 and the order of sentence dated 2nd November, 2000.

27. We have heard Mr. K.B. Andley, learned senior counsel and Mr. M. Shamikh, learned counsels for the appellants as well as Ms. Aashaa Tiwari, learned APP for the State and scrutinised the record with them. We find the prosecution has rested its case primarily on the two dying declarations recorded by the SDM (PW16). In fact, the learned trial judge has passed the impugned judgment on a consideration of these two statements. We consider the evidence on record hereafter.

First statement (Exh.PW16/B) recorded by the SDM, (which was in fact her second dying declaration)

28. Shri Dharmender Sharma (SDM) (PW-16) has submitted that at the hospital, at 10.10 p.m. on 13th November, 1991, Meenu was declared fit for statement by the doctor who was on duty and that he has recorded her statement (Exh.PW6/A). This statement was recorded in the vernacular language in question and answer form. In answer to question no.2 as to how she had got burnt, the following answer has been recorded by the SDM in vernacular and reads as under :

“Today, at about 4.30 p.m. in the day while I was lighting the stove for cooking food and to heat water for my mother-in-law to take bath, some wood were downstairs while some were upstairs. I was wearing a nylon suit with a cotton chunni. I got up to get the wood when my suit suddenly caught fire. I screamed whereupon my mother-in-law, father-in-law, husband’s paternal aunt (husband’s chachi) and others together poured water on me. While trying to save me, my husband’s hands also got burnt.”

(Emphasis supplied)

29. From the above, it would appear that the deceased was cooking food when she decided to light a wood fire to heat water for her mother-in-law’s bathing. She was getting up from her cooking to get the wood for this purpose when her synthetic clothes caught fire.

30. So far as the statement that she was cooking at the time when her clothes caught fire is concerned, the same is amply

supported by the testimony of the investigating officer SI Shambhu Dayal (PW-25) who has unequivocally stated that when he reached the spot he had found an uncooked *chapatti* on the *tava* (griddle) on the stove; *atta* (dough) on the *chakla* obviously to be used for rolling out the next *chapatti* as well as uncooked dough in the *parat*, which obviously had to be used for making the chappatis for her family. The narration of the unfolding of events in Exh.PW16/B is thus not only natural but stands corroborated by the position which subsisted on the spot. It certainly establishes that the deceased was actually cooking when her clothes caught fire.

31. We find that, in answer to the third question by the SDM (PW16) as to who else were present in the house at that time, the deceased Meenu has listed her father-in-law, mother-in-law, both sisters-in-law, husband, husband's younger brother and others (*not legible*) and others as being on the ground floor at that time.

32. When questioned at serial no. 4 as to whether her in-laws used to trouble her, Meenu answered that there were no major fights other than the normal differences as in any other household. She refers to a minor squabble over articles received at the *Diwali* festival but clarifies that there was no major issue.

33. We find that Meenu has categorically stated in answer to question no. 4 that she was happy in her marriage.

Finally as answer to question no.5, Shri Dharmender Sharma (SDM) (PW-16) has read out the statement to Meenu and asked her if she wanted to say anything else. Meenu in response had confirmed that the statement was correct.

34. SI Shambhu Dayal (PW-25) has stated that Sh. Dharmender Sharma handed over the detailed statement to him and since this statement dated 13th November, 1991 made by the deceased, did not make out any offence, the investigation was kept pending. Consequently, he took Ct. Ravinder from the spot and returned to the police station.

35. So far as Meenu's statement that she was rising from her cooking to get wood so as to heat water for her mother-in-law to bathe and her nylon suit catching fire in the process, is also a plausible course of events and quite believable.

Second statement allegedly recorded by the SDM, which was her third dying declaration

36. So far as the contents of the second statement (Exh.PW16/C) recorded on 14th November, 1991 are concerned, it is at material variance with the previous statement Exh.PW16/B. This time, in answer to the question no. 2 as to how she had suffered the injury, the deceased gave the following narration (*translated herein*) :

*“Yesterday morning (13th November, 1991) I wanted to visit my mother. My mother-in-law Shanti and my sister-in-law (nanad) Anju told me not to leave the house. They always did like this. They **abused me ever since**. I was also bent upon going(“zid”) and I complained to my husband Manohar and thereafter I took my daughter and left my maternal home in a rickshaw. **I told my mother about fights in the last days**. My mother told that she would accompany me and would talk to my mother-in-law. At 1.30 p.m., **my mother and I returned to my maternal home. Both sisters-in-law***

(nanads) were there. They were not prepared to speak to either my mother nor to me. My mother returned home. I went back to my room and lay down. At 3.30 p.m. my father-in-law came and at 4 p.m. my mother-in-law and then quarrelling ("kalesh") started. My mother-in-law abused me that everybody at my maternal home are loafers ("awara"). You are more towards them ("tu zyada hi unki ho rahi hai, saali ko iss baar achchi tarah theek karte hain") and this time, you should be properly set right. Father-in-law said that today my whole family should be called and we will decide today and gave abuse. She does not work. I kept quiet. I came out in anger and went up to my room. My mother-in-law and father-in-law followed me upstairs and said that they would neither leave me nor would they leave me in such a state that I could not get married again. In the meantime my sister-in-law Anju also came upstairs. My mother-in-law grabbed my plait. I pushed her. At that, my mother-in-law and Anju held me. My mother-in-law grabbed my plait. Anju lifted a plastic can containing kerosene oil and poured it over me. My father-in-law grabbed my feet and then my sister-in-law Anju threw a burnt match stick on me. I screamed. These three persons ran outside. I also came out. In the meantime, my husband also returned. My mother-in-law started exclaiming "arre Meenu what you have done, never mind even if we have to spend a lakh of rupees, we will save you". You should not have done like this. First the fire was extinguished by my "chachi saas" (paternal aunt) and other people, I cannot properly remember. My husband and mother-in-law put me in an auto rickshaw. I told them to take me to the St. Stephens Hospital. My mother-in-law said that a police case would be made there, that I should be taken to the place

*where she was working. They took me to Tri Nagar where the doctor refused to admit me. Thereafter they have brought me here. **My mother-in-law had told me to remember that my daughter was with her and if I gave a statement against them to the police, they would chop her into pieces. I was really scared.** I told mummy not to worry and that my daughter should be kept properly. I would not say anything.”*

(Emphasis supplied)

37. As question no. 3, the SDM (PW-16) asked the deceased for an explanation as to why she had not given such statement the previous night. The deceased Meenu had replied that her mother-in-law was very clever who had clearly stated that she would kill her daughter of which she was capable.

38. PW-16 has further queried Meenu as question no.4 as to why she wanted to change her statement. In response, Meenu had stated that she was now sure that she would not survive and that she was confident that after this statement, the SDM and others would save her daughter. She added that her husband really loved her (deceased) and that he would handle everything; that only her sister-in-law and mother-in-law should be kept away from her daughter.

39. As question no.5, PW-16 asked Meenu as to how she was living in her in-laws house. In response, Meenu confirmed that though her husband was very nice however, her mother-in-law and sister-in-law used to harass her a lot; that Anju was after her for everything - dowry and gifts on festivals; gifts from her parents etc

that they used to trouble her on everything. The deceased went to the extent of stating that Anju used to often beat her as well.

40. Shri Dharmender Sharma (PW-16) put a further question no.6 to Meenu to relate a specific instance of the beating, Meenu answered that when she was seven months pregnant, Anju and the mother-in-law had substantially beaten her; kicked her in the stomach resulting in injury to her head and that she had visited Dr. Ramesh on this occasion. She, however, told the SDM that she had not informed Dr. Ramesh about this incident.

Dying declaration on the MLC(which was her first dying declaration)

41. We also find that apart from these two statements attributed as having been made to the SDM, there is a prior statement by her. The first statement made by the deceased disclosing the circumstances in which she suffered the burns, is to be found on the MLC No. 1164 Exh.PW22/A.

42. As per this MLC, Meenu had reached the Sunder Lal Jain Hospital at 7.38 p.m. Upon her arrival, the doctor has noted the history as “*alleged H/O burn while pt was working in kitchen. She was cooking food*”. The doctor has observed in the MLC that upon arrival, the “*pt is conscious and well oriented with time, place and persons. Her parameters were also within limit.*” The doctor observed that *she had suffered about 9% burns on her face; about 9% burns on each of her upper limbs; chest and abdomen* (Exh.PW22/A).

Thus, in the first statement in time, made by the deceased has categorically informed the doctor that she suffered burns when she was working in the kitchen and was cooking food.

Truthfulness and reliability of the dying declarations

43. It is to be noted that the father of the deceased has confirmed that they received information on the night at 9 p.m. itself that Meenu stood admitted in the Sunder Lal Jain Hospital. It would be the normal reaction of the parents to visit their daughter and to support her during her critical sickness.

44. We also find it is Nawab Singh, father of the deceased who has telephoned the police control room that she wants to give another statement (Exh.PW17/B). This fact clearly shows that the deceased was in the company of her relatives shortly after she suffered the injuries. In any case her father was with her at the time that she had a change of mind as is manifested by his above call to the police.

45. SI Shambhu Dayal (PW-25) has categorically confirmed that Meenu's parents were found present there when he visited the hospital on both days. This lends credence to the suggestion of the appellants that the deceased was influenced by her relatives to change the statement, resulting in Exh.PW16/C being recorded.

46. We also find several contradictions in this third statement (Exh.PW16/C). It makes completely general allegations. In this statement Meenu attributes antipathy against two sisters in law

without naming them at one place. She makes strong allegations against one sister-in-law namely Anju and goes on to attribute her burning to her father-in-law, mother-in-law and sister-in-law Anju.

47. The deceased was young and healthy and would have resisted any attempt to take away her life. We have the ocular evidence of the investigating officer SI Shambhu Dayal (PW-25) as well as Ct. Ravinder Kumar (PW-9) which would show that they did not find any kerosene in the room where the incident occurred and wherefrom the exhibits were lifted. There were also no signs of struggle or violence or of burning, if two persons held the deceased and the third poured kerosene over her. The sequence of events disclosed in Exh.PW16/C is difficult to believe. It is alleged that her mother-in-law held her by the plait while her father-in-law held her legs while Anju picked up a plastic can of kerosene and poured on her and then threw a lit match stick in a small room full of furniture. That all this happened without any of the accused suffering any burns and without evidence of kerosene being found spilt on the floor is impossible to believe.

48. Despite the categorical statement as contained in the third statement Exh.PW16/C to the effect that kerosene was poured from a plastic can, though the police reached shortly after the deceased was removed to the hospital, no plastic can of any kind was also found at the spot.

49. Meenu's second statement to the SDM is completely falsified by her MLC, the post mortem report as well as Meenu's Death Summary recorded by the doctor. These three documents

have noted the extent of her burns as well as the part of the body which was burnt. These records note that her face, upper limbs, chest and abdomen only had suffered 9% burns each. There is no evidence that any other part of her body was burnt. The hair on her head was intact. Meenu's back as well as the lower part of her body was completely untouched. Clearly, this would not have been the position if somebody had poured kerosene over her.

If the events had unfolded in the manner alleged in Exh.PW 16/C, the deceased would have burns over all her body and the deceased would not have burnt from her front alone.

50. We also find that there is nothing on record which would suggest that there was deterioration in the condition of the deceased between the night of the 13th November, 1991 (when she made the first statement Exh.PW16/B to the SDM) and the morning of 14th November, 1991 when her father conveyed her desire to make another statement. So the explanation given by the deceased in answer to the question no. 3 regarding the alleged threat and to question no. 4 that she was now sure that she would not survive is also not supported by record and completely unreliable.

51. In any case, the evidence shows that the parents of the deceased had reached by 9 o'clock and reached the hospital shortly thereafter. It was also the stand of the deceased that her husband Manohar Lal loved her deeply and that he had taken her to the hospital. The MLC notes that Manohar Lal had got the deceased admitted to the hospital. He was present in the hospital.

Any fear because of the alleged threat by the mother-in-law as well as any apprehension in the mind of the deceased would have stood assuaged by the presence of her near and dear ones which included a husband who loved her deeply as well as her parents. We, therefore, do not find it safe to believe the statement made by the deceased that she gave the statement Exh.PW16/B to the SDM on account of fear because of a threat which has been attributed to the mother-in-law in Exh.PW16/C.

52. Multiple dying declarations have been considered by the Supreme Court in **(2004) 13 SCC 314 State of Maharashtra v. Sanjay** wherein it was observed thus:

*“It is **not the plurality of the dying declarations** that adds weight to the prosecution case, but their **qualitative worth is what matters**. It has been repeatedly pointed out that the dying declaration should be of such nature as to **inspire full confidence** of the Court in its **truthfulness and correctness** (vide the observations of five-Judge Bench in *Laxman Vs. State of Maharashtra*). Inasmuch as the correctness of dying declaration cannot be tested by cross-examination of its maker, ‘great caution must be exercised in considering the weight to be given to this species of evidence’ (SCC p. 713, para 3). **When there is more than one dying declaration genuinely recorded, they must be tested on the touchstone of consistency and probabilities. They must also be tested in the light of other evidence on record.** Adopting such approach, we are unable to place implicit reliance on the dying declarations, especially when the High Court felt it unsafe to act on them.”*

(Emphasis supplied)

53. In this regard, we may usefully refer to the judicial pronouncement of the Supreme Court reported at **1993 (1) SCC 1 Kamla v. State of Punjab** wherein the court noted the principles of dying declarations, where there are more than one dying declaration, which reads thus :

*“5. It is well-settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide **Khushal Rao v. State of Bombay**). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”*

54. So far as the factual matrix is concerned, the same is noted in para 6 of **Kamla** which are reproduced as under :

“6. Learned Counsel further submitted that there are four dying declarations in the case, three of them were recorded by the doctors and one of them by the Sub-Inspector and that in spite of an intimation being given at the earliest time, the police did not make any attempt to get a dying declaration recorded by a judicial officer. Therefore that factor also has to be taken into consideration in examining the inconsistent versions given in these dying declarations.”

55. The court in para 8 of ***Kamla*** further noted that the four dying declarations which were made, could not be reconciled with each other. It was consequently held as follows :

*“8. If we examine all these **dying declarations** one by one we notice **glaring inconsistencies** as to who exactly poured kerosene oil and set fire or whether she caught fire accidentally. Suicide however is ruled out. In Ext. PB-2 recorded by PW2 the deceased stated that her mother-in-law sprinkled kerosene from behind and burnt her. In the next statement Ext. DA recorded by Dr. Jaison Chopra, CW 1, she is alleged to have stated that her clothes got burnt catching fire from the stove, thereby indicating that it was an accident. In the third statement Ext. PJ recorded by CW 2 she was rather vague as to who exactly poured kerosene oil and set fire on her and she only stated that it could be possible that her mother-in-law and father-in-law might have set the fire after pouring kerosene oil. On 30-9-1979 Ext. PD was recorded in the presence of three doctors, PW 7, PW 3 and CW 1 wherein she stated that she turned to the store and she heard her mother-in-law and father-in-law talking behind her and suddenly they poured kerosene oil and they set her on fire...*

...Under these circumstances, the irresistible conclusion is that the dying declarations are inconsistent and in such a situation we just cannot pick out one statement namely Ex. PB/2 and base the conviction of the appellant on the sole basis of such a dying declaration. The courts have cautioned that in view of the fact that the maker of the statement cannot be cross-examined, the dying declaration should be carefully scrutinised. In the instant case the deceased was wavering for the reasons best known to her. The inconsistency between Ex. PB/2 and Ex. PD is enough to manifest the same. That being so, we do not think that either Dr. Jaison Chopra, CW 1 or S.I. Vidya Sagar, CW 2 who claimed to have recorded Ex. DA and Ex. PJ should be blamed, Having given our earnest consideration, we feel that under these circumstances it is highly unsafe to convict the appellant on the sole basis of the dying declaration Ex. PB/2 recorded by PW 2..."

(Emphasis Supplied)

56. The second statement (Exh.PW16/C) recorded by Shri Dharmender Sharma (PW16) as having been made by Meenu upon her change of mind, therefore is really her third statement given by her. In the given facts, it is certainly not above doubt and suspicion and cannot be relied upon to support the conviction of the accused.

57. We also find that the deceased has made identical statements to both the doctor who first examined her and noted the same on the MLC Exh.PW22/A as well as to the SDM (PW-16) later in the night of 13th November, 1991 by way of the first statement (Exh.PW16/B) recorded by him. Both these persons were independent persons, one a doctor who was treating her and the second, an independent civil servant.

58. It is well settled that a dying declaration must be voluntary and should not be tutored. The first dying declaration on the MLC (recorded by the doctor) and the second dying declaration (Exh.PW16/B) (recorded by the SDM) are similar in content and are also supported by evidence of the position on the spot, whereas the third dying declaration (Exh.PW16/C) (the second statement recorded by the SDM) is completely contradictory to and is not supported by the position on the spot. The first two dying declarations do not implicate the appellants and, in fact, make out an episode of the clothes of the deceased having caught fire accidentally. The statements completely exonerate the appellants and Late Smt. Feroz @ Shanti Devi.

59. Thus, the dying declaration which is first in the point of time must be preferred.

Signatures/Thumb imprints not obtained by the SDM on statement Exh.PW16/B, PW16/C – effect thereof

60. It is important to note that the second and third dying declarations (Exh.PW16/B & 16/C) do not contain any mark and identification to connect the same with the deceased. Neither of these statements has been signed by the deceased. They also do not contain her thumb impressions.

There is no explanation at all for this.

61. In this regard, we may refer to the rule position on the manner in which dying declarations should be recorded. Our attention has been drawn to Chapter 13A of the ***Delhi High Court***

Rules, Practice and Procedure which were inserted vide Correction Slip No. 12-Rules/XII F-8, dated 26th May, 1966 . Rules 3, 4 and 5 have a bearing on the present case and read as follows :

“3. Fitness of the declarant to make the statement should be got examined - Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If, however, the circumstances do not permit waiting or the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendances.

4. The statement of the declarant should be in the form of a simple narrative - The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative. This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting questions to the dying man, the Judicial Magistrate should record the question also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible the statement should be recorded in the language of the declarant or the Court language.

5. Signatures or thumb impression of the declarant to be *obtained* to token of the correctness of the statement - At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb impression in token of its correctness unless it is not possible to do so. The dying declaration shall be placed in a sealed cover and transmitted to the Judicial Magistrate having jurisdiction to deal with the case to which it relates.”

62. In the case in hand, the statement has not been taken down in the form of a simple narrative. On the contrary, PW16 has put leading questions to the deceased and recorded the same in question and answer form. In fact leading questions stand put to the deceased. It is not the case of the prosecution that the deceased was so ailing or unable that she had to be guided in the making of a statement.

63. More importantly, we are concerned with the non-compliance of the requirement of Rule 5 above which requires that the signatures or the thumb impression of the declarant should be mandatorily obtained in token of the correctness of the statement. The only exception thereto is, if, it is not possible to do so, say for instance, in a case where the hands and feet of the victim are burnt. It was not so in the present case. The witnesses have failed to explain as to why the signatures or the thumb impression of the deceased Meenu were not obtained in the present case. This in our view was a major lapse on the part of the prosecution and casts doubt on the reliability of the two statements.

64. This omission would cast doubt on both the dying declarations leaving behind the statement made by the deceased to the doctor upon her admission in the hospital as recorded on her MLC Exh.PW22/A as the only reliable statement giving the circumstances in which her clothes caught fire.

Ocular evidence not supporting the case of the prosecution

65. A careful scrutiny of the record would show that, other than statements attributed to the deceased, the prosecution has failed to lead any independent evidence to corroborate the statements attributed to the deceased alleging commission of the offence. The evidence is to the contrary.

66. In (2005) 9 SCC 113 **Muthu Kutty v. State**, it was observed as follows by the Supreme Court :

*“15. 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 **Panjben v. State of Gujarat** : (SCC pp. 480-81, paras 18-19)*

*(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See **Munnu Raja v. State of M.P.**)*

*(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 U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar.**)*

*(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 v. Public Prosecutor.**)*

*(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See **Rasheed Beg. v. State of M.P.**)*

*(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See **Kake Singh v. State of M.P.**)*

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath and Ors v. State of U.P.)

(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. Krishnamurti Laxmipati Naidu.)

(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.)

(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 eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanahau Ram v. State of M.P.)

(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. Medan Mohan.)

(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.)

(Emphasis by Us)

67. The principles with regard to admissibility of a dying declaration are best stated by the Supreme Court in **(1999) 8 SCC 161 Jai Karan v State of Delhi**, relevant portion whereof is reproduced thus:

“10. 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 premiss that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premiss 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.”

68. The prosecution has examined only the father of the deceased namely Shri Nawab Singh (PW-1) and mother Smt. Rani (PW-2). These witnesses have not supported the case of the prosecution either for commission of the offence under Section 498A or Section 302 of IPC.

69. On the contrary in the witness box, Meenu's parents are categorical that Meenu had never complained that she was being harassed by her mother-in-law Smt. Feroz, sister-in-law Anju and/or her father-in-law Ami Lal.

70. Meenu's mother Smt. Rani (PW-2) denied making the statement (Exh.PW2/A) to the police which was attributed to her. PW-2 does not support the third dying declaration Exh.PW16/C at all wherein the deceased is alleged to have stated that she had told her mother about harassment at the instance of her in-laws and that her mother had accompanied her to the matrimonial home on 13th November, 1991 when she was treated rudely by her sisters-in-law. PW-2 also does not make any statement with regard to any kind of demand or harassment for dowry.

71. Similarly, Nawab Singh (PW-1), father of the deceased also does not make a single allegation against the appellants or any other family member in the in-laws of his daughter. In the witness box, he even denies that his daughter ever told him that she wanted to make a third statement to the SDM or that he informed the police about this request! The witness denied having made the

statement (Exh.PW16/B) which was attributed as having been made by him to the police.

72. We may note that on the request of the prosecution, the parents were both declared hostile and cross examined by the learned prosecutor but the same was of no avail so far as its case was concerned.

73. In these circumstances, there is no oral or ocular testimony to support the allegations made in Exh.PW16/C. As discussed above, the evidence led by the prosecution, in fact, goes contrary to the allegations contained therein.

No prior complaint at all

74. There is thus no evidence to support the charges under Section 498A or 302 of the IPC against any of the appellants. The first dying declaration (Exh.PW16/B), recorded by the SDM refers to the ordinary differences, which are normal in the wear and tear of life and records the statement of the deceased that she was happy in her matrimonial house. It does not make any specific allegation of dowry demand or harassment.

75. Meenu's family was living as a nuclear household having a separate kitchen, independent of the in-laws, though in the same premises. The in-laws were even living on a separate floor.

76. It has been pointed out by Mr. M. Shamikh, learned counsel for the appellants that there is not even a whisper of a complaint by the deceased or any relative on her behalf with regard to ill

treatment at the hands of the husband or in-laws to any person or authority. On the contrary, in both statements (Exh.PW16/B and PW16/C), the deceased has referred to the deep affection that her husband had for her.

77. Certainly, this circumstance also mitigates against the culpability of the appellants for commission of the offence.

Valuable evidence concealed – material witnesses not even examined, let alone produced

78. Though the deceased was living separately with her husband in a single room on the first floor of the premises no. 759, Chabi Ganj, it is in the statement given by the deceased Exh.PW16/B that several other relatives were present in the premises at the time of the incident.

79. In her third statement (Exh.PW16/C) as well in answer to the third question, Meenu has disclosed the presence of the accused persons in the house as well as another sister-in-law, husband, husband's brother-in-law. None of them have been examined by the prosecution.

80. The site plan Exh.PW25/C shows that Sh. Om Prakash was an occupant of the room immediately adjacent to the room of the appellant on the first floor of the premises. He would be a vital witness so far as the incident on the same floor is concerned.

81. In his cross examination, SI Shambhu Dayal (PW-25) has disclosed that he had met neighbours of the appellant and learnt from them that the appellants had gone to the Sunder Lal Jain

Hospital when he reached the house. It is also in his testimony that about 7-8 families were residing in that lane and that the house of one family is visible from the house of another family. The investigating officer, when cross-examined, declared that he made no inquiries from any of the neighbours about the said incident as he had to rush to the hospital.

82. The prosecution was bound to have made inquiries and recorded the testimony of independent public witnesses in order to place the true unfolding of events before the court. This has not been done. This is an unfortunate case where even the statement of the husband Manohar Lal, in whom the deceased had full confidence as per both her statements, was not even examined by the investigating officer and has been kept out of the witness box. Valuable material evidence which would have shed light on the unfolding of events on that fateful evening and enabled determination of the truth has not been produced in the witness box.

Conclusion

83. We find that the trial court has completely failed to consider these aspects of the case. The dying declaration which is found on the MLC is not even adverted to let alone considered in the impugned judgment of the trial court. Erroneously, complete reliance has been placed on Exh.PW16/C which we have found

completely unreliable without considering the same in the context of ocular evidence with regard to the position on site.

84. In view of the above, we are of the view that the prosecution has miserably failed to establish the case with which the appellants and deceased Feroz @ Shanti Devi were charged. The conviction of the appellants is not sustainable in view of the evidence established on record and has to be set aside.

85. Before parting with the case we record our deep appreciation for the valuable assistance rendered by Mr. M. Shamikh, learned counsel for the appellants and Ms. Aashaa Tiwari, learned APP for the State in the present matter.

Impact of the incarceration

86. The case relates to an incident dated 13th November, 1991. The accused Ami Lal was arrested on 14th November, 1991, while his wife Feroz@Shanti and daughter Anju were arrested on 14th April, 1992.

87. The record contains an application dated 30th November, 2000 (Crl.M.C.No.3065/2000) noting that in the last week of November, 2000, Feroz @ Shanti had suffered a severe paralytic stroke necessitating her removal to the G.B. Pant Hospital by the jail authorities and her suspension of sentence was sought. On this application, the sentence of the appellant was suspended for one month by the order dated 4th January, 2001 which was extended by the order dated 7th February, 2001.

88. As per the nominal roll of appellant no.1, received from Central Jail No.3, Tihar, New Delhi, as on 24th January, 2001, he was of 60 years age.

89. Anju who is appellant no.3 was the married sister of Manohar Lal (i.e. a *nanad* of the deceased). Crl.M.C.No. 462/2001 was filed in this appeal by her contending that her son Master Ankit, then aged about 1 ½ years, was suffering from pulmonary tuberculosis and crying hoarse for his mother (Anju). On this application, the sentence imposed upon her was suspended by an order dated 14th March, 2001 for a period of four weeks.

90. Crl.M.C.No. 2908/2000 stood filed alongwith the appeal for suspension of the sentence imposed on the appellants. It was only by an order dated 3rd May, 2001 the sentence imposed on the appellants was suspended.

91. These few facts set out the grave suffering that the appellants and their family members have faced because of their prolonged incarceration. The trauma and suffering of over 25 years which commenced on 13th November, 1991 has not ended in as much as this appeal has remained pending and the uncertainty of the outcome must be haunting these appellants and their family members would have left indelible scars and is irreparable.

Result

92. The judgment dated 31st October, 2000 passed in Sessions Case No.49/94 arising out of FIR No. 441/91 registered under Section 498A/302 read with Section 34 IPC by the Police Station

Kashmiri Gate and the consequential order of sentence dated 2nd November, 2000 are hereby set aside and quashed.

93. In terms of section 437A of the Code of Criminal Procedure, the bail bonds and surety bonds executed by the appellants and on their behalf shall remain in force for a period of six months from today.

Copy of this order be supplied to the police and be also sent to the Superintendent, Tihar Jail, Delhi for compliance. Copy of this judgment be also sent to the trial court alongwith the trial court record.

GITA MITTAL, J

ANU MALHOTRA, J

NOVEMBER 22, 2016/kr

