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

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Judgment reserved on: 23rd February 2016

Judgment delivered on: 26th May 2016

+ CRL.A. 1504/2014

SAROJ MITTAL

..... Appellant

Through : Mr.K.K. Sud, Sr. Adv. with Mr.S.C. Sagar, Mr.Pranshu Dhingra, Mr.Honey Khanna, Mr.Ashish Dixit and Ms.Vagisha Kochar, Advs.

versus

THE STATE

..... Respondent

Through : Ms.Aashaa Tiwari, APP for the State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J

1. Present appeal has been instituted by the appellant under Section 374(2) read with Section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment dated 22.9.2014 and order on sentence dated 25.9.2014 arising out of FIR No.206/2013 registered under Section 498A/302/304B/34 of the Indian Penal Code (in short 'IPC') at Police Station Keshav Puram, whereby the appellant herein was convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo life imprisonment with fine of Rs.5,000/-.
2. As per the case of the prosecution on 17.7.2013 pursuant to the information received at Police Station Keshav Puram vide DD No.47, the

Police officials reached Maharaja Agrasen Hospital, Punjabi Bagh, and MLC No.471/13 of Deepti Mittal, wife of Sh.Amit Mittal, r/o 4321/06, Jai Mata Market, Tri Nagar, Delhi, was obtained. On enquiry it was revealed that the injured had been referred to Safdarjung Hospital. The Police officials thereafter reached Safdarjung Hospital where Deepti Mittal was admitted vide MLC No.BN2859/13. During that time, SI Mukesh came to the hospital and requested the Doctor to let him record the statement of Deepti Mittal. The Doctor declared Deepti Mittal fit for making statement. The husband of Deepti Mittal was also present in the hospital, which information was furnished to the then SHO. SDM, Saraswati Vihar, also reached the hospital and recorded the statement of Deepti Mittal. ASI Dharampal along with SI Mukesh Kumar and Constable Jagjit went to the spot of the incident, where a plastic bottle containing some kerosene oil was lying on a stool. One matchbox of make 'Ship' and some matchsticks including burnt matchsticks were lying on the floor. Burnt sari of the victim was also found on the floor. The crime team after reaching the spot took photographs of the crime scene and conducted inspection of the site. Rukka was prepared by ASI Dharampal and the case was got registered under Section 498-A/307/34 IPC. First information was sent to the Police Station through Constable Jagjit by ASI Dharampal and further investigation was transferred to SI Mukesh after registration of the FIR. During investigation SI Mukesh after inspecting the place of incident prepared a site plan and also recorded the statement of witnesses under Section 161 Cr.P.C. Further, during the course of investigation, an information was received that the injured had succumbed to her injuries, pursuant to which Section 302 of the IPC was added in the FIR. Thereafter, the appellant and husband of the deceased were arrested and their disclosure statements were recorded. In the post-mortem report the

Autopsy Surgeon gave his opinion on the cause of death as '*cause of death as a result of Ante Mortem Flame burn involving about 90% of total body surface area*'. Statements of the father and grandfather of the deceased were recorded by the SDM on 23.7.2013.

3. In support of its case, the prosecution examined as many as 25 witnesses. The appellant examined one defence witness in her support.
4. At this stage, we may notice that both, father-in-law and husband of the deceased, stand acquitted. We may also notice that the learned Trial Court has reached a conclusion that the prosecution has not been able to prove the offence under Section 498A/34 IPC read with Section 304B IPC against the present appellant as well.
5. Mr.Sud, learned senior counsel appearing on behalf of the appellant, submits that the judgment rendered by the learned Trial Court is based on conjectures and surmises, and impermissible inferences have been drawn without proper analysis of the evidence on record. Mr.Sud further submits that it is the settled principle of criminal jurisprudence that the prosecution must stand on its own legs and it cannot derive any strength from the weakness of the defence. It is further submitted by Mr.Sud that the learned Trial Court was wrong in holding the conviction on misplaced appreciation of stray circumstances against the present appellant while the husband and father-in-law of the deceased were acquitted. It is contended that the failure of the appellant to give any explanation, as envisaged in Section 106 of the Indian Evidence Act or false explanation under Section 106, are treated at par and the same comes to play only where the prosecution has been able to prove its case satisfactorily. Mr.Sud further contends that absence of explanation or falsity of the same is only an additional link and not the evidence in itself.
6. Learned counsel for the appellant further submits that the learned Trial

Court has failed to appreciate that the evidence on record was most unsatisfactory and highly incredible on each aspect and thus the admitted first two dying declarations ought to have been believed. It is contended that the first dying declaration is contained in the MLC of Maharaja Agrasain Hospital, which was recorded without any loss of time, where the deceased, Deepti Mittal, was immediately taken for treatment by her husband, Amit Mittal, history whereof was given by the patient herself and after giving necessary treatment for grievous burns she was referred to Safdarjung Hospital, where she was admitted in ICU of Burns Ward without any loss of time and where she herself gave a detailed history, which was recorded by the Doctor by way of dying declaration in the presence of three other Doctors and where she did not say that she was burnt by her mother-in-law. Mr.Sud further contends that taking note of the critical and dangerous condition with detailed notings about the pulse rate, blood pressure, rate of respiration, etc. of the deceased, her treatment was started immediately. It is further contended that there was no change to the statement made by Dr.Sachin Rajpal, PW-9, the Doctor, who examined the deceased and made the MLC. Upon examination, PW-9 has testified that *“on examination I found 90% deep thermal burns with facial and inhalational burns. My endorsement to this effect is at point B. The nature of injuries was dangerous. The general condition of the patient was critical.* Mr.Sud further contends that in his cross-examination, PW-9 has testified that *‘as per the alleged history given by the patient the case was of accidental thermal burns while cooking food when her sari caught fire and she sustained burns. The patient arrived at Safdarjung hospital at 10:30 PM’*. Mr.Sud contends that there is no challenge to the evidence of PW-9 either by the prosecution or the Court.

7. Learned senior counsel further submits that in response to a Court

question PW-9, Dr.Sachin Rajpal, has specifically deposed that '*IO of this case or any other police officer never requested him to give certificate of fit for statement of the patient and whatever the patient gave in the alleged history, he has written the same*'. Mr.Sud also submits that per contra, PW-23, ASI Dharampal, in his cross-examination has deposed that '*I did not talk to the girl/injured during my stay at the hospital. Doctor Sachin Rajpal who was treating the injured met SI Mukesh who requested him to give the certificate regarding fit for statement at about 11:50 PM. Nothing was done by me and SI Mukesh from 11 PM – 11:50 PM at the hospital The SDM reached the hospital at about 12:30 AM (midnight). The statement of injured was not recorded by SDM in my presence.*' Mr.Sud contends that it is impossible to expect even on the basis of medical practice that for such a long period the patient with 95% deep burns would remain fit to make a coherently long narration and without being under any kind of sedation.

8. It is further contended by learned senior counsel appearing on behalf of the appellant that possibility of making dying declarations and affixation of thumb impressions thereupon with clear ridges and curves are highly suspicious, more so because of 95% burns as mentioned by PW-11 and the admissions made in the cross-examination that '*except some patches over the back, some portions of the lower abdomen, both hands and both the feet including thumb, all the fingers and palm were burnt*'. Mr.Sud also contends that after a gap of time, during which period treatment was constantly being given to the deceased, which includes several injections and sedatives, a long narrative statement by the deceased is wholly suspicious and unbelievable, and the same is clearly made up as far as getting thumb marks of the deceased on it is concerned. It is next contended that after the deceased was admitted to the Burns Ward of

Safdarjung Hospital, the prosecution had made an application to the CMO for recording the dying declaration of the deceased without there being any contemporaneous examination by the examining Doctor, who opined that “*patient is conscious and oriented, not under sedation and fit for statement*”. It is also contended that the identity of the said Doctor is not known and he has not been examined as a witness in the Court.

9. Learned senior counsel for the appellant further submits that the victim was being attended to by Dr.Deepak Mishra, whose name was not mentioned in the list of witnesses, and instead the name of one, Dr.Joginder Singh was mentioned by the I.O., however, during examination in Court he admitted that the name of Dr.Joginder Singh had been wrongly mentioned instead of Dr.Deepak Mishra. It is further contended that the prosecution did not summon the treating Doctor i.e. Dr.Deepak Mishra to prove the endorsement appearing on the dying declaration. Learned senior counsel also contends that the dying declaration, Exhibit PW-13/A, was sought to be proved through secondary evidence on the ground that Dr.Deepak Mishra was not available. It is contended that the said certificate, Exhibit PW-12/A, was not legally proved.
10. Learned senior counsel for the appellant has placed strong reliance on the testimony of PW-15, the grandfather of the deceased, who has categorically given a clean chit to the father-in-law, mother-in-law and husband of the deceased. Senior counsel also contends that the FSL report would show that no kerosene oil or residue or smell was found on any of the exhibits, accordingly the kerosene bottle would render the dying declaration unbelievable. It is also contended that exhibits sent to the FSL were planted with a view to create false evidence. No swab of the floor was collected and sent to the FSL to determine the spilling of kerosene oil

on the spot. It is further contended that there is no endorsement by any Doctor regarding smell of kerosene oil either on the body of the deceased or on the hair of the deceased, neither her scalp hair was sent to the FSL.

11. Mr.Sud, learned senior counsel for the appellant, further submits that lack of kerosene residue on the clothes of the deceased casts a serious doubt as to whether any kerosene oil was at all sprinkled or not. It is further submitted that neither the used matchsticks nor the unused match sticks, nor the match box show any trace of kerosene residue. Senior counsel also contends that the Trial Court has set up a new case than what was laid by the prosecution, which is impermissible. Mr.Sud further submits that the evidence of the family members i.e. PW-15 and PW-16 does not support the findings of the learned Trial Court. The unexplained inordinate delay in recording the statement of relatives of the victim, despite their alleged presence at the hospital throughout, renders the entire prosecution case doubtful. It is further contended that the learned Trial Court has erred in not appreciating the evidence before it. The Trial Court has overlooked the statements made by the star witnesses while choosing to rely solely on the testimony of the unreliable witness and has convicted the appellant even though the prosecution miserably failed to prove the guilt of the appellant beyond reasonable doubt. It is further submitted that the learned Trial Court has failed to appreciate that it is the well settled principle of law and criminal jurisprudence that in case two views are available on record, the view favouring the accused is to be taken and the benefit of doubt should always be given to the appellant, however, in the present case, the learned Trial Court has convicted and sentenced the appellant without considering that two views are available in this case and, thus, the appellant deserves benefit of doubt and in view thereof the impugned judgment and order on sentence are not sustainable. Mr.Sud also submits

that the learned Trial Court has failed to appreciate that as per the criminal jurisprudence the onus to prove the case always lies on the prosecution, however, in the present case the prosecution shifted the onus on the appellant to prove her innocence and, thus, the prosecution has failed to prove its case against the appellant.

12. Another submission made by Mr. Sud is the manner in which the testimonies of first 16 witnesses were recorded. Counsel submits that the examination-in-chief was taken on affidavits and thereafter the witnesses appeared in the Court and testified that they relied on the affidavits so filed. Thereafter, counsel for the defence was allowed to cross-examine the witnesses. He submits that this method has resulted in gross injustice and serious prejudice has been caused to the rights of the appellant.
13. Ms.Tiwari, learned counsel for the State, submits that the prosecution has been able to prove its case beyond any shadow of doubt. Simply because the appellant and the co-accused persons have been acquitted under Section 498A and 304B of IPC and the prosecution was not able to prove its case against the appellant under Sections 498A and 304B does not mean that no case is made out against the appellant herein under Section 302 IPC. Ms.Tiwari further submits that the third dying declaration, which was recorded by the SDM based on the endorsement made by the Doctor that the patient was fit for statement, is reliable and trustworthy, which is evident from the fact that the deceased did not name all the family members and in case the dying declaration was not truthful or was as a result of coaching the entire family would have been named. Ms.Tiwari also contends that since there was a gap of approximately eight months no residue/smell of kerosene oil was detected from the exhibits that by itself cannot be a ground to acquit the appellant. Ms.Tiwari also submits that the Trial Court has rightly reached a conclusion that since the

appellant was present in the house, and therefore under Section 106 of the Evidence Act, it was for her to explain as to how the deceased suffered burns.

14. We have heard learned counsel for the parties, considered their rival submissions, examined the Trial Court record and the testimonies including the testimonies of all the witnesses.
15. Before the rival submissions can be discussed in detail, we deem it appropriate to analyse the testimonies of some of the material witnesses. In addition to the formal witnesses, PW-15, Sh. Ram Niwas is the grand-father of the deceased. He testified that the deceased was his grand-daughter and her family name was Mudita. She was married to Amit on 23.01.2013. Post-marriage, she was residing with her husband and her in-laws. He had got the marriage performed, whereas only *kanyadan* was done by her parents as the deceased and her brother remained with him from childhood. He testified that his grand-daughter did not make any complaint after the marriage except some petty domestic issues. The grand-daughter had informed him that her family was in financial crisis and they require Rs.20 lacs, but he did not give any money to her grand-daughter or her in-laws. Again, one lac was demanded which was given to his grand-daughter in the presence of her in-laws. Rs.50,000/- was again given. In the month of July, his grand-daughter had telephoned him that she wanted to come for 5-7 days. The next day, he was informed that Deepti had been burnt and her in-laws were taking her to the hospital. He had met his grand-daughter at the hospital while crying she had told him that she was cooking food and caught fire. Her mother-in-law, appellant, was with her throughout when she had told him this. However, when the doctors took her inside on stretcher, she continued to cry of the pain and he asked her as to what had happened, to which she had stated that her

mother-in-law had put oil on her and burnt her.

16. During cross-examination, this witness testified that Rs.1.5 lacs given by him to his grand-daughter was returned by the mother-in-law after some time. During cross-examination, this witness again stated that when he was talking to his grand-daughter about the incident, she told him that she was cooking food when her clothes caught fire accidentally and when she made a hue and cry, her mother-in-law came from upstairs and she tried to put off the fire with her neighbours. The witness stated as correct that Mudita never named Saroj in the hospital to him. He also testified during cross-examination that his grand-daughter had praise for her in-laws and husband, she never made any complaint to him with regard to any harassment or demand of dowry. He again stated as correct that Mudita had not told him in the hospital that she had been burnt by her mother-in-law Saroj. He had volunteered to state that it was told to him by Vicky.
17. PW-16, Sh. Manoj Garg is the father of the deceased who testified that marriage was performed by his father and whatever ultimately is given on the marriage was gifted to her on their own. He had been residing permanently at Jaipur while the deceased used to reside with his parents in Delhi who performed her marriage. This witness further testified that in the month of May, he had received a call from his daughter and she requested him for Rs.8-10 lakhs as her husband had been suffering losses in the business and he required money. He informed her that since he was doing a job, he would be unable to arrange for the said amount. On 17th July, 2013, he received a call from his father around 8-9 pm and was informed that his daughter had been burnt. On the next day, he reached Safdarjang Hospital, New Delhi where he identified the dead body of his daughter. On leading question being put to this witness by the APP, he deposed that it was correct that he told the IO in his statement Ex.PW

16/PX1 that after he came to Delhi, he tried to find out about the cause of death of his daughter and he was informed by his father that his daughter had been burnt by her husband Amit, mother-in-law Saroj and father-in-law Shiv Kumar as their demand for dowry could not be fulfilled. During cross-examination this witness deposed that his daughter had never told him personally about any demand for dowry and that she was being harassed for the same. During cross-examination, it was revealed that the father of the deceased had no personal knowledge about any demand of dowry and after his second marriage, his children were residing with their grand parents. He also stated that it was correct that his present wife and he never visited in-laws of his daughter even on rituals and other occasions.

18. PW-17, Himanshu Garg is the brother of the deceased. This witness did not support the case of the prosecution. This witness was confronted with his statement Ex.PW 17/PX1 which was given to the police on various issues. He denied the suggestion that he was won over by the accused persons.
19. PW-9, Dr.Sachin Rajpal, Sr.Resident (Burns and Plastic Surgery), Safdarjang Hospita, Delhi has testified as under:-

“On 17.7.2013, I was working as Sr.Resident at Safdarjung Hospital. On that day I examined the patient Deepti Mittal w/o Sh.Amit Mittal, aged about 20 years, Female vide MLC Ex.PW9/A bearing my signatures at point A. She was admitted in burns ICU of the hospital. On examination I found 90% deep thermal burns with facial and inhalational burn. My endorsement to this effect is at point B. The nature of injury was dangerous. The general condition of the patient was critical and patient was conscious and oriented.

XXXXXX by Sh.Pradeep Rana, Ld.counsel for both the accused persons.

As per the alleged history given by the patient the case was of accidental thermal burns while cooking food when her sari caught fire and she sustained. The patient arrived at Safdarjung hospital at 10.30 pm.

On Court Question- the patient was brought by her mother-in-law Saroj but I do not recollect whether the history was given in the presence of mother in law or not. In case of female attendant we normally permit the attendant to remain inside with the patient during the treatment. IO of this case or any other police officials never requested me to give the certificate of fit for statement of the patient. During the time I gave the treatment to patient she was talking comfortably. Whatever the patient gave in the alleged history I written the same.”

20. PW-10, Dr.Anil Jindal, Casualty Incharge, Maharaja Aggarwal Hospital, Punjabi Bagh, Delhi has testified as under:-

“I have been authorised by the MS of the Hospital to depose in this case on behalf of Dr.Manraj who was working as CMO and has left the services of the hospital and his whereabouts are not known. I can identify the signatures and hand writing of Dr.Manraj as I have seen him while writing and signing during the course of my official duty.

As per record on 17.07.2013 Dr.Manraj examined the patient Deepthi Mittal W/o Amit Mittal aged about 20 years, female with alleged history of burn whole body around 8.30 pm at home, vide MLC Ex.PW 10/A bearing signatures of Dr.Manraj at point A and B. The patient was conscious and oriented On local examination the patient was found to be burnt upto 60% and more. Whole body was found burned. The patient was referred to higher center for further management.”

21. PW-11, Dr.Shabarish Dharampal, GDMO-2, EDMC, New Delhi has testified as under:-

“On 19.07.2013 I was working as Sr.Resident, Department of Forensic Medicine and Toxicology at Safdarjung Hospital and

VMMC. On that day Dr.Neha Suri was also working as Junior Resident (Forensic Medicines) with me. We both conducted the post-mortem on the body of deceased Deepti Mittal w/o Amit Mittal aged about 20 years, female vide post-mortem report Ex.PW 11/A bearing my signatures at point A and signatures of Dr.Neha Suri at point B. Cause of death in this case was due to shock as a result of ante mortem flame burns involving about 95% of total body surface area. The inquest document prepared by the IO, the copy of FIR, death summary, death report were produced before me and we have made out initials. The documents are Ex.PW 11/B-1 to Ex.PW11/B-10 bearing my initials at point A.

XXXXXXX by Sh.Pradeep Rana, Advocate for all the accused persons.

The entire body of the patient was burnt except some patches over the back and some portion of the lower abdomen. The both the hands and both the feet including thumb, all the fingers and palm were burnt.”

22. Statement of PW-13, Sh.Mani Bhushan Malhotra, SDM, Saraswati Vihar, Delhi reads as under:-

“On 17.07.2013 I was working as SDM, Saraswati Vihar. On that day I received information from the IO at about 10.00 pm regarding the incident happened at H.No.4321/6, Jai Mata Market, Tri Nagar, Delhi. I directed the Investigating Officer to inform me as and when the patient/victim is fit to give her statement. On the intervening night of 17/18.07.2013 at about 12.00 midnight I received the information from the IO that the patient Deepti Mittal has been declared fit for statement by the doctor. At about 12.30 am I went to Safdarjung Hospital and recorded the statement of Smt.Deepti Mittal w/o Sh.Amit Mittal vide Ex.PW 13/A bearing my signatures at point A and B. I directed the investigating officer to take necessary action and my endorsement in this regard is at point C and bearing thumb impression of victim at point D.

On 18.07.2013, at about 4.50 pm, the victim has expired. On 19.07.2013, the post-mortem on the body of deceased was got conducted vide post-mortem report already Ex.PW 11/A. The request of IO in this regard is already Ex.PW 11/B-1 bearing my signatures at point B, the brief facts Ex.PW11/B-2, DD No.22, PP

Shanti Nagar Ex.PW 11/B-3, Dd No.47 Ex.PW 11/B-4 also bears my signatures and stamp at point B. The statements of relatives of the deceased namely Manoj Garg and Himanshu Garg were also recorded regarding identification of body vide already already Ex.PW11/B-5 and Ex.PW11/B-6 which bears my signatures and stamp at point B. The death report was also prepared vide already Ex.PW 11.B-7 bearing my signatures and stamp at point B. In recorded statement of grand father of deceased namely Ram Niwas and father Sh.Manoj Garg which are now Ex.PW13/B and Ex.PW 13/C respectively both bearing my signatures and stamp at point A.

XXXXX by Sh.Pradeep Rana, Ld.Counsel for both the accused persons.

The IO informed me initially at 10.00 PM that the patient was not fit for statement that is why I asked him to inform me as and when she is fit for statement. I started recording statement of patient at about 12.35 approximately and I took around ten minutes in recording her statement so approximately her statement was completed by 12.45 AM and I put my signatures on the same time and handed over the same to the SHO at about 1.00 AM who was present in the hospital at that time. I did not ask anybody to get the proceedings of recording of the statement of patient photographed or videographed. Perhaps the thumb impression of left hand of victim was taken on her statement. I do not remember if the thumb of her left hand was burnt or that she was not in a position to put her left hand thumb impression on any paper. I was alone in the burn ward with the patient when statement of patient was recorded by me. No police officials, no family member, any employee or public person was present when I recorded the statement of the patient. I left the hospital at about 1.10 or 1.15 AM approximately. By that time the police officials were present in the hospital. I did not ask any doctor or any of the staff member to become a witness to the statement of the victim. Some of the family members and relatives of the patient were present in the hospital when I reached there but I cannot tell their relations. Vol. They were all from the side of the girl. I do not know if the husband or mother in law of the victim were present in the hospital. It is wrong to suggest that husband and mother in law of patient were present in the hospital but I am deliberately denying regarding their presence as per the asking of the IO/SHO. It is wrong to suggest that I did not record the statement of patient or that I put my signatures on the paper

prepared and submitted by the IO. It is wrong to suggest that patient did not make any statement to me. It is wrong to suggest that the said papers reflects the time of recording of statement as 1.30 AM or that I am deposing falsely regarding the time of recording of the statement as I did not visit the hospital and did not record any such statement. It is wrong to suggest that I put my signatures on Ex.PW 13/A in collusion with the IO and family members of the deceased. It is wrong to suggest that I did not get the recording of the statement videographed as no such statement was recorded by me. It is wrong to suggest that I am deposing falsely.”

23. It would also be useful to notice the testimony of ASI Rajbir, PW-3 which reads as under:-

“I tender my examination in chief by way of affidavit which is Ex.PW3/A bearing my signatures at points A and B. I rely upon Crime Team Report which is Ex.PW3/A bearing my signatures at point A.

XXXXX by Sh. Pradeep Rana, Advocate for both the accused.

I received the information about this case at about 1.50 a.m. on 17.7.13 and I reached to the spot at about 2.10 a.m. I alongwith the other crime team officials remain there upto 2.40 a.m. During our stay from 2.10 a.m. to 2.40 a.m. the proceedings were conducted by the Crime Team. When I reached to the house No.4321/6, Jai Mata Market, Tri Nagar, the house was found opened and lots of police officials including SI Mukesh were found present there inside the house. Lots of public persons of the neighbouring area were present inside the house alongwith the police officials. The photographs were taken of the ground floor only and he had not taken the photographs of the other floors of the house. The said house was of the area of about 30/40 Sq.Yds. When the crime team left the said house, the local police including SI Mukesh remained at the spot. The articles were asked to be seized by the crime team and same were seized in our presence. Against said nothing was seized in our presence. No bottle, match box or any other cloth or articles were seized by the local police or by the crime team in our presence during the aforesaid period. The crime report was prepared during our stay at the spot and the same

was handed over to the IO at the same time and thereafter crime team left the spot.

I hereby adopt my earlier examination dated 21.03.2014 by way of affidavit which is already Ex.PW3/I bearing my signatures at points A and B. I rely upon Crime Team Report which is already Ex.PW3/A bearing my signatures at point A.

XXXXX by Sh. Pradeep Rana, Advocate for all the accused persons.

I received the information about this case at about 1.50 a.m. on 17.7.13 and I reached to the spot at about 2.10 a.m. I alongwith the other crime team officials remain there upto 2.40 a.m. During our stay from 2.10 a.m. to 2.40 a.m. the proceedings were conducted lby the Crime Team. When I reached to the house NO.4321/6, Jai Mata Market, Tri Nagar, the house was found opened and lots of police officials including SI Mukesh were found present there inside the house. Lots of public persons of the neighbouring area were present inside the house alongwith the police officials. The photographs were taken of the ground fflow only and he had not taken the photographs of the other floor of the house. The said house was of the area of about 30/40 Sq.Yds. When the crime team left lthe said house, the local police including SI Mukesh remained at the spot. The articles were asked to be seized by the crime team and same were seized in our presence. Again said nothing was seized in our presence. No bottle, match box or any other cloth or articles were seized by thelocal police or by the crime team inour presence during the aforesaid period. Between 2-2:45 AM all the articles including the bottle of kerosene was seized land seizure memo accordingly prepared in our presence. The crime report was prepared during our stay at the spot and the same was handed over to the IO at the same time and thereafter crime team left the spot.”

24. We may notice that in this case on the statement made by Deepti Mittal, a case was registered under Section 498-A/307/34 IPC. Upon the death of Deepti Mittal, Section 302 of the IPC was added. A charge sheet was filed against Saroj and Amit Mittal, being mother-in-law and husband of the deceased Deepti Mittal, respectively, on 10.10.2013 under Section 498-

A/304B/302/34 IPC. On 12.12.2003, charge under Section 498A/34 of IPC and under Section 304B/34 IPC and in the alternative under Section 302/34 IPC was framed against Saroj Mittal and Amit Mittal. A supplementary charge sheet was filed against Shiv Kumar Mittal, father-in-law of the deceased, under Sections 498A/302/304B/34/120B IPC.

25. By a detailed judgment the Trial Court has acquitted the husband, father-in-law and mother-in-law, i.e. all the three accused persons for the offences under Section 498A/34 IPC and 304B/34 against all the accused.
26. For the offence punishable under Section 302 IPC, the Trial Court has acquitted the husband and father-in-law but held the mother-in-law guilty for the said offence.
27. The present appeal has been filed by the mother-in-law. The deceased, Deepti Mittal, used to reside along with her husband and in-laws. Marriage of Deepti was performed by her grand-father, PW-15.
28. In his testimony, the father of the deceased, PW-10, Manoj Garg, has testified that his daughter was not residing with him and after his second marriage his children from his first marriage were residing with their grand-father.
29. The brother of the deceased, PW-16, has also not supported the case of the prosecution and, thus, the Trial Court has rightly acquitted the accused of the offences punishable under Section 498A and 304B read with Section 34 IPC. The Trial Court has held the appellant guilty based on circumstantial evidence and also that since the mother-in-law, Saroj Mittal, appellant herein, was present in the house at that time along with the deceased, Deepti Mittal, so she would have to explain as to in what circumstances Deepti Mittal sustained burn injuries and since she was not able to explain, a conclusion was drawn that Deepti Mittal was burnt by her mother-in-law by pouring kerosene oil over her.

30. We may notice that the deceased was immediately rushed to Maharaja Agrasen Hospital on 17.7.2013 at 9.00 p.m. As per the MLC, Exhibit, PW-10/A, it was noted that *“first alleged H/O burnt whole body around 8.30 p.m. at home”*. The patient was conscious and oriented. As per the prosecution, the patient was referred to Safdarjung Hospital. At 10.30 p.m. the MLC, Exhibit PW-9, prepared at Safdarjung Hospital shows that *“accidental thermal burn while cooking food when her sari caught fire and she sustained burns. Initially taken to some hospital and then referred here”*.

31. The arguments of learned counsel for the appellant can be summarised as under:-

1. The father-in-law, husband and even the appellant (mother-in-law) stand acquitted for the offence u/s 498/34 read with section 304B IPC. Thus no motive is established.
2. The prosecution must stand on its own legs and reliance on section 106 of the Evidence Act while the prosecution has not been able to prove its case beyond reasonable doubt is erroneous.
3. The Trial Court erred in not relying on the first two dying declarations.
4. The third dying declaration recorded by the SDM is unreliable and is a result of tutoring and prompting. The dying declaration is also unreliable in view of 95% burns and thumb impression could not have been affixed.

32. The arguments of learned APP for the State can be summarised as under:-

1. The prosecution has established its case beyond any shadow of

doubt.

2. The deceased died within the matrimonial home and since mother-in-law was present, section 106 of the Evidence Act would be applicable and in view of absence of any explanation from the appellant, the trial rightly convicted the appellant.
 3. The dying declaration recorded by the SDM is reliable and not as a result of tutoring.
33. 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 Yakubhai Khrishti 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.”*
34. 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)}.

35. Learned Senior Counsel for the appellant has contended that there are three dying declarations. Ex.PW 9/A is the MLC of the deceased dated 17.7.2013 when she arrived at the Safdarjung Hospital at 10.30 pm. The doctor noted “accidental thermal burn while cooking food when her saree caught fire and she sustained burns.” The details in the MLC were provided by the patient (deceased) herself. Prior to being shifted to Sadarjung Hospital, the deceased was taken to Maharaja Agrasen Hospital, Punjabi Bagh, New Delhi. The said MLC is of the same date at 9 pm Ex.PW 10/A. The doctor has noted “burned whole body around 8.30 pm at home. It is contended by Mr.Sud that the deceased did not make any allegation of having been burnt by the mother-in-law in the statement made to the doctor at Safdarjung Hospital and prior thereto before the Doctors at Maharaja Agrasen Hospital. It is also the case of the appellant that the dying declaration made before the SDM is as a result of tutoring and prompting by the family members.
36. It may be noted that PW-15, Ram Niwas, grand-father of the deceased, with whom the deceased was living prior to her marriage has testified that when he met his grand-daughter at Safdarjung Hospital, while she was crying she told him that she was cooking food and had caught fire. PW-15 has further testified that when the Doctors were taking Deepti on a stretcher she was crying in pain. He asked Deepti as to what had happened to which she replied that she had been burnt. This witness has further testified that when he told Deepti that there is nothing to fear and asked her to speak clearly then she told him that her mother-in-law, Saroj, burnt her by pouring kerosene oil.
37. During cross-examination, PW-15 has admitted it to be correct that

Mudita had not told him in the hospital that she had been burnt by her mother-in-law, Saroj. PW-15 volunteered to state that it was told to him by Vicky.

38. The deceased had made a statement before the SDM, which was recorded in Hindi, however, as per the translated version of the statement made by the deceased before the SDM, she has deposed as under:

“I, Deepti Mittal, depose on 17.7.13-18.7.13 that I got married to Amit Mittal on 23.1.2013. Since after marriage, my husband, Amit Mittal, and mother-in-law, Saroj, used to torture me. They used to tell me to bring Rs.20.00 lakhs in dowry. They also used to tell me that since the day I have come to their house, everything is getting worse. Today (17.7.2013), I went to the Temple in the morning and upon my return a quarrel took place with my husband. That time Amit had also beaten me. Today (17.7.13), in the evening, when I was cooking food, my mother-in-law, Saroj, poured kerosene oil on me and set me ablaze. At that time nobody was at home. Then my mother-in-law, Saroj, called upon my husband, Amit, by telephone. Thereafter my husband took me to the hospital.”

39. The Court is, thus, faced with (i) the statement made before the Doctor while preparing the MLC at Maharaja Agrasen Hospital; (ii) statement made to Doctor at Safdarjung Hospital; (iii) the testimony of PW-15, grand-father of the deceased, where three versions emerge; and (iv) the dying declaration recorded by the SDM.
40. While in the statement made to the Doctor at Safdarjung Hospital at the time of preparing MLC, there is no allegation against the mother-in-law of the deceased and the deceased claimed that she had caught fire while cooking food, but before the SDM the deceased stated that while she was cooking food, her mother-in-law sprinkled oil on her and set her ablaze.
41. In the case of ***Mohantal Gangaram Gehani*** (supra) it was held that 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.

42. 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.
43. In the light of contradictory statements made to the Doctor at Maharaja Agrasen Hospital where no explanation has been provided as to how Deepti sustained burn injuries, to the statements made at Safdarjung Hospital where it was stated that her saree caught fire while she was cooking and then is the statement to the SDM where it has been stated that while cooking food her mother-in-law sprinkled oil and set her ablaze, the statements as discussed hereinabove thus, make the dying declaration recorded by the SDM to be suspicious and would thus, require corroborative evidence.
44. We may notice that not only the husband and father-in-law of the deceased have been acquitted even the mother-in-law (appellant in the present case) has been acquitted under Sections 304B and 498A.
45. We have discussed the evidence of PW-15, grand-father of the deceased; PW-16, Manoj Garg, father of the deceased; and Himanshu Garg, brother of the deceased. The demand of dowry of Rs.20.00 lakhs is not supported by any of the three witnesses although PW-15, Ram Niwas, has stated that his grand-daughter had informed him that her family was in a financial crisis and they required Rs.20.00 lakhs but he did not give any money to either his grand-daughter or her in-laws. He then deposed that Rs.1.00 lakh was demanded and given.
46. It may be noticed that the learned Trial Court has noticed that during cross-examination, PW-15 has deposed that he had given a credit of Rs.1.50 lakhs twice due to financial crisis of the in-laws of Deepti and the

said amount was returned by the mother-in-law of the deceased (appellant herein) after sometime.

47. As far as the dying declaration relating to demand of dowry is concerned, in our view, it does not stand established and it is for this reason that the Trial Court not only acquitted the husband, father-in-law but even mother-in-law under Section 498-A.
48. The dying declaration, as recorded before the SDM, talks about a quarrel, which took place on the same day i.e. 17.7.2013 between the deceased and her husband, and as per the dying declaration after the deceased returned from the *Mandir* her husband had beaten her. The dying declaration does not suggest that there was any demand of dowry either by the husband or by the mother-in-law on the date of the incident.
49. The dying declaration does not give any reason as to what prompted the mother-in-law, Saroj, to pour kerosene oil on her daughter-in-law in the evening while she was cooking food, whereas the deceased gave the background of a fight between her and her husband on her return from the *Mandir*. The dying declaration also makes it clear that her husband was not in the house when the incident took place.
50. Since different versions have arisen, we find it highly unsafe to base the conviction of the appellant solely on the dying declaration as the same does not inspire any confidence, especially when we find no corroboration as per the testimonies of the father, grand-father and brother of the deceased with regard to demand of dowry and also on account of shifting stand of the deceased and her grand-father.
51. The Trial Court has convicted the appellant herein (mother-in-law) only on the ground that the appellant has failed to explain how the deceased had caught fire despite the fact that she was present in the house.
52. It may be noticed that the Trial Court was not convinced with the view

that the deceased was cooking food in the kitchen as none of the Police officials either the IO or the Crime Team incharge deposed before the Court that during investigation they found 'any food in the cooking process' in the kitchen. The Trial Court has also observed that presuming Deepti had caught fire while cooking on gas stove then she could have sustained injuries on her upper part of the body in excess in comparison to the lower part of the body because according to the photographs, the gas stove was placed on a shelf of the height of the waist of a person. The Trial Court also observed that in case Deepti was cooking food while standing in the kitchen her soles could not be burnt. The Trial Court then reaches a conclusion that according to the post-mortem report, Deepti had upto 90 % burn injuries all over her body including her palms, soles and genitalia were involved, which would show that she was lying on the bed in a particular posture when she was burnt by her mother-in-law. In our view, the learned Trial Court has exceeded its jurisdiction and the observations are based on conjectures.

53. The findings of the Trial Court cannot be accepted as even in the dying declaration before the SDM a statement was made by the deceased that when she was cooking food, her mother-in-law had sprinkled kerosene oil on her. When the victim Deepti herself had stated that she was cooking food and if part of the dying declaration is to be accepted that her mother-in-law had poured kerosene oil on her, we see no reason that Deepti would not have said so that when she was lying down her mother-in-law poured kerosene oil on her. Even as per the cross-examination of PW-11, Dr.Shabarsih Dharampal, the entire body of Deepti was burnt except some patches over the back and some portion of the lower abdomen.
54. We are also unable to accept the reasoning given by the Trial Court that the appellant was present in the house and, thus, she must explain as to

how Deepti sustained burn injuries. It is the settled principle of criminal jurisprudence that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Only after the initial burden is discharged by the prosecution, the onus shifts on the accused to rebut the presumption.

55. In this case, the prosecution has failed to prove that the mother-in-law was present on the ground floor of the house at the time of the incident.
56. It may be noticed that in the statement made by the appellant under Section 313, the appellant has stated that she was present at the first floor of the house at the time of the incident and after hearing hue and cry of her daughter-in-law, she came down stairs and saw that her daughter-in-law was in flames. Few neighbours were present there, who were trying to extinguish the fire.
57. We may notice that out of 25 witnesses examined by the prosecution *14 witnesses* were Police witnesses, being PW-1 to PW-8, PW-14, PW-19, PW-21 and PW-23 to PW-25; *four witnesses*, being PW-9 to PW-11 and PW-22, were Doctors; *two witnesses*, being PW-12 and PW-18, were the Medical Record Technicians of Safdarjung Hospital; *one witness*, being PW-13, is the SDM, Saraswati Vihar; *three witnesses* are the close family members of the deceased, being PW-15 (grand-father of the deceased), PW-16 (father of the deceased) and (PW-17 brother of the deceased); and one witness, being PW-20, is the SSO (Chemistry) from FSL Rohini. We find that not a single public witness has been associated in this case.
58. The evidence of PW-3, ASI Raj Bir, would show that photographs were taken only of the ground floor and not of the other floors of the house. This witness has testified that the area of the house was about 30/40 sq. yards. PW-3 has also testified that lots of public person from the neighbouring area were present inside the house along with the Police

officials.

59. PW-6, Inspr. Manohar Lal, who had prepared the site plan, during cross-examination has stated that he remained only on the ground floor, he did not go upstairs to any floor and he had prepared the site plan only of the ground floor.
60. As per the testimony of PW-7, Ct. Subhash, when he reached the spot at about 2.10 a.m., Ct. Mukesh, SI Mukesh, ASI Dharam Pal and other local Police officials were already present there. Public persons of the street were also present inside the said house.
61. PW-9, Dr. Sachin Rajpal, Senior Resident (Burns and Plastic Surgery), Safdarjung Hospital, has testified that nature of injury of Deepti was dangerous. Her condition was critical though the patient was conscious and oriented. This Doctor has also stated during cross-examination that as per the alleged history given by the patient, the case was of the accidental thermal burns while cooking food when her sari caught fire and she sustained burns.
62. As per Dr. Shabarish Dharampal, PW-11, who conducted the post-mortem, the patient had anti-mortem flame burns involving about 95% of total body surface area. During cross-examination, PW-11 has stated that the entire body of the patient was burnt except some patches over back, some portion of the lower abdomen, both hands and both feet including thumb and all the fingers and palms were burnt.
63. It may be seen that out of 25 witnesses examined by the prosecution not a single public witness or neighbour has been examined by the prosecution, although as is evident from the testimonies of PW-3 and PW-7 public persons of the street were present inside the house.
64. DW-1, Naveen, is the neighbour. DW-1 has testified that the family of Shiv Kumar Mittal (husband of appellant herein) is known to him being

his neighbours. DW-1 has further testified that his house is in front of the house of Shiv Kumar Mittal. DW-1 has also testified that the family of Shiv Kumar Mittal comprises of his wife, his son and his daughter-in-law (since deceased). According to this witness, on 17.7.2013 at about 8.30 p.m., he was taking a stroll in front of his house after having dinner. He heard the cries from inside the house of Shiv Kumar Mittal. The main door of the house of Shiv Kumar Mittal was lying open. He along with some other neighbours, who were present in the street, went inside the house of Shiv Kumar Mittal and saw that the wife of Amit Mittal was running towards bedroom from the kitchen while crying and she was in flames. DW-1 has further testified that in the meanwhile the wife of Shiv Kumar Mittal (appellant herein), who was on the first floor of the said house, came down after hearing the cries and then they all put off the flames by putting some clothes upon the wife of Amit Mittal and the appellant herein made a telephone call to her husband, Shiv Kumar Mittal, and her son Amit Mittal, informed them about the incident of fire and told them to reach home. Within ten minutes, Shiv Kumar Mittal and Amit Mittal reached home. At that time, Deepti, wife of Amit Mittal, was conscious and they asked her as to how she caught fire, upon which she stated that her clothes (*Saree*) caught fire while she was cooking food in the kitchen. Thereafter Shiv Kumar Mittal, Saroj Mittal and Ankit Mittal took Deepti to the hospital.

65. During cross-examination, DW-1 was asked as to how he remembered the date of 17.7.2013. DW-1 denied the suggestion that on 17.7.2013, in the evening, he was not present at his house was he taking a stroll, nor had he heard the cries inside the house of Shiv Kumar Mittal, nor had he seen Deepti running towards the bedroom from the kitchen. DW-1 was also questioned about the fact that since he was present near the spot so he did

not go inside the house and Deepti since deceased had not stated anything in his presence. During cross-examination, DW-1 has admitted as correct that he did not receive any injury nor his clothes had caught fire while saving Deepti as he simply put a *chadder* on her with the help of other persons. DW-1 has also stated that he did not know about the quarrels between the accused persons and Deepti. DW-1 volunteered to say that he did not see any quarrel. DW-1 also volunteered to state that he had stated all the facts to the Police at the spot, but he did not know whether those facts were recorded by the Police or not. DW-1 denied that he was not at the spot. He also denied that he has deposed falsely.

66. It is settled law that equal weightage must be given to defence witnesses. In the case of ***State of Haryana v. Ram Singh***, (2002) 2 SCC 426, it was held as under:

“20. Incidentally be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by defence witness has been effected rather casually by the High Court....”

67. Similar view has been expressed by the Apex Court in a recent judgment in the case of ***Jumni and Others v. State of Haryana***, 2014(3) Scale 588, whereby it was held that the plea of *alibi* should be held at an equal footing to the evidence provided by the prosecution. In para 27 of the judgment, it was held as under:

*“27. On the standard of proof, it was held in Mohinder Singh v. State, 1950 SCR 821 that the standard of proof required in regard to a plea of *alibi* must be the same as the standard applied to the*

prosecution evidence and in both cases it should be a reasonable standard. Dudh Nath Pandey goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words:

“Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.”

68. Now the question arises whether the testimony of DW-1 is reliable and trustworthy or not?
69. DW-1, Naveen, who is a neighbour, has testified that his house is in front of the house of Shiv Kumar Mittal, however, there has been no cross-examination on this aspect. DW-1 has also testified that upon hearing hue and cry of Deepti, he along with others reached inside the house of the appellant and had seen the wife of Shiv Kumar Mittal i.e. appellant herein, who was on the first floor of the said house, coming down after hearing the cries of Deepti. There is no cross-examination of the witness on this point as well. Thus, for the Trial Court to reach a conclusion that that the mother-in-law was present in the house and, thus, she must explain how Deepti caught fire is not acceptable as the prosecution has failed to establish that the appellant was present on the ground floor of the house.
70. As per PW-3, ASI, Rajveer, when he reached the spot of the incident lot of public persons of the neighbouring area were present inside the house along with Police officials. Presence of public witnesses inside the house is also established by the testimony of PW-7, Ct. Subhash, who has testified that the public persons of the street were present inside the house when he reached there.
71. DW-1 has also stated what was stated by Deepti before the Doctor at

Safdarjung Hospital that she caught fire while cooking food and after she caught fire from the kitchen she ran to the room, which also finds corroborated from the fact that *gadda* in the room had also caught fire.

72. We find the testimony of DW-1 to be truthful and reliable. To the contrary, we find that the prosecution has given no explanation as to why not a single public person or neighbour was not arrayed as a witness especially when according to the draftsman the house was 30 to 40 square yards, which would show that the area was thickly populated and thickly congested area. It is most believable that when Deepti had caught fire and when she was crying, the neighbours including DW-1 would have rushed to the house especially when he claims that he was taking a stroll outside the house of Deepti and the main door was lying open.
73. In the case of ***Md.Faizan Ahmad @ Kalu v. State of Bihar***, reported at (2013) DLT (CRL.) 914 (SC), the Supreme Court of India has observed as under:

“10. We have no manner of doubt that the offence is grave; the children were abducted and kept in a tunnel for over five months and anonymous calls were made for ransom. Accused whose involvement in such crimes is proved must be dealt with with a firm hand, but the seriousness or gravity of the crime must not influence the Court to punish a person against whom there is no credible evidence. The Trial Court, therefore, erred in convicting the appellant.

11. Criminal Courts recognize only legally admissible evidence and not farfetched conjectures and surmises. The High Court’s observation that there was a preconceived plan to abduct the children would not be applicable to the appellant because there is nothing on record to establish that the appellant met the co-accused and planned a strategy to abduct the children and demand ransom. His case stands on a different footing from that of other accused. The case of the

other accused will have to be dealt with on its own merit. The High Court was carried away by the heinous nature of the crime and, in that, it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a Criminal Court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing great violence to the basic tenets of criminal jurisprudence. We hope and trust that this is just an aberration.”

74. In the case of **Mangu Singh v. Dharmender and Another**, reported at (2015) 13 SCALE 800 it was held as under:

“11. The Trial Court laid undue stress on the non-explanation of fact of death of the victims by the accused respondent. It is established that the Trial Court based the conviction upon the testimony of PW4, yet it took a 'U' turn to shift the burden on the accused respondent under Section 106 of the Indian Evidence Act, 1872, to prove the incident. The High Court, in our considered view, rightly reversed the finding on this point of law. Section 106 does not absolve the prosecution's burden under Section 101 to prove its case of guilt of the accused beyond reasonable doubt.....”

75. The Court cannot lose track of the fact that at the first opportunity available Deepti did not inform the Doctor that her mother-in-law had poured kerosene oil over her and set her on fire. She did not even say so to the Doctor at Safdarjung Hospital. The possibility of the deceased falsely implicating the mother-in-law is in the realm of probability.
76. In the case of **P. Mani v. State of Tamil Nadu**, reported at (2006) 1 JCC 447, it was held that while considering dying declarations Courts have to be careful in weighing the fact whether the deceased had been nurturing any grudge amongst the persons accused by the maker of the dying declaration.
77. In this case, we cannot lose track of the fact that the mother-in-law had

immediately called her husband and son and all three of them had first removed Deepti to Agrasen Hospital and thereafter to Sadarjung Hospital.

78. Having regard to the fact that the dying declaration recorded by the SDM cannot be relied upon on account of the fact that when the victim was first taken to Maharaja Agrasen Hospital, she did not implicate any family member nor did she give the history as to how she suffered the burn injury, also taking into consideration that when she was taken to Safdarjung Hospital, she made a statement that she had suffered burns while cooking and then having regard to the dying declaration recorded by the SDM where a diametrically opposite statement was made, we find it highly unsafe to convict the appellant based on the dying declaration. We are unable to accept the view of the Trial Court and the reasoning that since the mother-in-law, the appellant herein, who was residing in the same house was unable to give a satisfactory explanation as to how Deepti suffered burn injuries, she is liable to be convicted even as the prosecution, at the first instance, has failed to prove that appellant was present at the ground floor of the house at the time when Deepti suffered burn injuries. It is only after the prosecution had proved the presence of the appellant on the ground floor, would the onus on the appellant to render an explanation as to how Deepti suffered burn injuries would arise. We also find that the Trial Court has reached the conclusion that Deepti was lying on the bed when her mother-in-law sprinkled kerosene oil and set her ablaze. This reasoning of the Trial Court is not borne out even by the statement of the deceased herself who stated that she was cooking when her mother-in-law had sprinkled oil on her.
79. For the reasons stated herein above, the appeal is allowed.
80. The impugned judgment of the Trial Court and the order on sentence are set aside.

81. The appellant shall be released forthwith, if not required in any other case.
Trial court record be sent back.
82. Appeal stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 26th, 2016

msr

