

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

(I) CRA-S-1386-SB-2002
Reserved on: 13.09.2022
Date of decision: 19.09.2022

SOMA NAND ...Appellant

Versus

STATE OF PUNJAB ...Respondent

(II) CRA-D-240-DBA-2003

STATE OF PUNJAB ...Appellant

Versus

SOMA NAND ...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Vikramjeet Singh, Advocate for
Mr. P.S. Hundal, Sr. Advocate
for the appellant in CRA-S-1386-SB-2002 and
for the respondent in CRA-D-240-DBA-2003.

Ms. Monika Jalota, Sr. DAG, Punjab
for the appellant in CRA-D-240-DBA-2003 and
for the respondent in CRA-S-1386-SB-2002.

SURESHWAR THAKUR, J.

1. The present appellant faced charges in respect of offences punishable under Sections 302, 498-A of IPC. However, through a verdict drawn on 23.08.2002, upon Trial No.51/2002 by the learned Additional Sessions Judge (Adhoc), Amritsar, the accused became convicted only in respect of a charge drawn against him for an offence punishable under Section 498-A of IPC,

but a verdict of acquittal was made upon him in respect of a charge drawn against him for an offence punishable under Section 302 of IPC.

2. Moreover, through a separate sentencing order drawn on 23.08.2002, the learned Additional Sessions Judge concerned, qua an offence punishable under Section 498-A of IPC, imposed upon the convict the substantive sentence of 3 years rigorous imprisonment, besides imposed upon him a sentence of fine of Rs.2,000/-, in default whereof he sentenced the convict to undergo 2 months rigorous imprisonment.

3. The State of Punjab by filing criminal appeal No.CRA-D-240-DBA-2003 has challenged the verdict of acquittal (supra), as made upon the accused by the learned Additional Sessions Judge concerned. Moreover, the convict on his becoming aggrieved from the verdict of conviction as made upon him in respect of a charge drawn against him under Section 498-A, has also preferred criminal appeal bearing No.CRA-S-1386-SB-2002 before this Court.

4. Since both the appeals (supra) arise from a common verdict, thus they are amenable for a common verdict being made thereons.

FACTUAL BACKGROUND

5. The genesis of the prosecution case is embodied in the FIR to which Ex.PJ is assigned. It has been recorded on the basis of a dying declaration made by the deceased Kiran to which Ex.PE/2 is assigned. Therein, she has echoed that her marriage with the accused, was solemnized in the year 1989, and, that two children were born out of their wed-lock. She echoes in Ex.PE/2 that on the asking of her husband she had proceeded to prepare tea, and, when she was preparing tea then he had caught hold of her, and, had started thrashing her. She also states therein that then she ran outside, and, then her husband caught hold of her from near the door, and, dragged her inside whereafter he set her ablaze

by pouring kerosene oil on her. Subsequently, she states that he shut her in the kitchen, and, that the younger brother of her husband through putting a blanket on her had doused the fire. Apart from both the above, no other person was stated to be present at the crime site. Lastly, she has stated therein that her husband used to give beatings to her, and, used to be demanding dowry.

COMMITTAL PROCEEDINGS

6. After completion of investigations into the crime event, the investigating officer concerned, prepared and filed a report under Section 173 of Cr.P.C., before the learned Committal Court concerned. The learned Committal Court concerned, vide commitment order made on 20.10.1997 committed the trial of the case to the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 8 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution evidence the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. In defence, the learned defence counsel examined 2 defence witnesses.

ARGUMENTS OF THE LEARNED COUNSEL FOR APPELLANT IN CRIMINAL APPEAL BEARING NO.CRA-S-1386-SB-2002

8. The learned counsel for the convict has submitted that no reliance could be made, upon the admissions of misdemeanor, if any, as made by the convict, and as become comprised in Ex.P5. He submits that no inference of conviction qua a charge drawn under Section 498-A of IPC, could become well rested upon Ex.P5, as the said exhibit relates to the period commencing from 1992 to 1993. Therefore, he submits that since subsequently the deceased

stepped into her matrimonial home, thus when she had also forgiven her husband, given his reforming himself. Thus, the mental cruelty if any arising from her husband making demands of dowry, upon her, besides also physical cruelty if any, arising from his belabouring her, are hence not proximate to the crime event. In sequel, when there is remoteness *inter-se* the belabourings besides mental cruelty if any encumbered upon the deceased through her husband making demands of dowry upon her, especially rather with the crime event, as such, the conviction recorded upon the convict with respect to an offence punishable under Section 498-A of IPC cannot be sustained.

9. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

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10. The learned State counsel has argued that the verdict of acquittal, as made upon the accused in respect of a charge drawn against him for an offence under Section 302 of IPC cannot be sustained, as it is based upon gross misappreciation of the evidence existing on record. In making the above submission, the learned State counsel argues, that the dying declaration of the deceased as comprised in Ex.PE/2, constitutes valid inculpatory material against the convict. In addition, it is also submitted by the learned State counsel, that the dying declaration (*supra*) is consistent, besides is corroborated by another inculpatory dying declaration as made by the deceased and to which Ex.PG is assigned.

SUBMISSION OF THE LEARNED COUNSEL FOR THE CONVICT

11. The learned counsel appearing for the convict submits, that the verdict of acquittal recorded upon the accused for a charge drawn against him

for an offence punishable under Section 302 of IPC, cannot be quashed, and, set aside. The reason for his making the above submission is embodied, in the factum, that the deceased had made an initial proven exculpatory dying declaration as comprised, in Ex.DD. He further submits that since in one of the inculpatory dying declarations to which Ex.PE/2, is assigned, she has narrated that at the relevant time the younger brother of her husband was also available at the crime site. Thus he was a material prosecution witness, whereas, he is neither cited as a prosecution witness nor has been examined, resultantly the above omission does stain the inculpatory dying declaration (supra) with a blemish of untruthfulness. Therefore, he argues that no reliance can be made on Ex.PE/2.

MEDICAL EVIDENCE (POST MORTEM REPORT)

12. The autopsy on the body of deceased Kiran, was conducted on 23.01.1997 by PW-1, and, by Dr. Gurpal Singh. PW-1 has proven qua his, and, Dr. Gurpal Singh, authoring Ex.PA, as relates to the autopsy as made upon the body of deceased Kiran. Moreover, he has proven that the cause of death of deceased Kiran was septicemic shock which was sufficient to cause death in the ordinary course of nature.

TWO INCULPATORY DYING DECLARATIONS AND ONE EXCULPATORY DYING DECLARATION

EXCULPATORY DYING DECLARATION EX.DD MADE ON 15.12.1996
INCULPATORY DYING DECLARATION EX.PE/2 MADE ON 14.01.1997
ANOTHER INCULPATORY DYING DECLARATION EX.PG MADE ON 21.01.1997

13. The deceased declarant has made three dying declarations. They are respectively comprised in Ex.DD, in Ex.PE/2, and, in Ex.PG. Though any declaration as made by the declarant in respect of the cause of her demise, is a solemn piece of evidence, to enable Courts of law to draw a verdict of

conviction against the accused named therein. The reason being that Section 32 of the Indian Evidence Act assigns a grave evidentiary vigor to a dying declaration, as close to her/his dying moments, the declarant would but be truthful.

14. However, in the instant case there are as stated (supra) three dying declarations. Resultantly, this Court is to determine qua which credence is to be assigned. The test for assigning of credence to any of the three competing dying declarations, is whether, at the time of the declarant making the declaration hers being declared by the treating doctor to be fit to make it, besides also the declaration as made by the declarant being free from any vices of hers being tutored, and, mentored by any of her close relatives, who may be during her treatment at the hospital visiting her there. Paramountly, also there has to be inter-se consistency amongst the competing dying declarations.

REASONS FOR ASSIGNING CREDENCE TO THE EXCULPATORY DYING DECLARATION EX.DD

15. Bearing in mind the above tests, this Court is to determine whether the first exculpatory dying declaration, as made by the declarant and to which Ex.DD is assigned, is an unblemished dying declaration, inasmuch as it being preceded by the declarant being declared by the treating doctor to be fit to make a declaration besides also it being not enveloped with any stain of the declarant rather being goaded, and, mentored to make it. The contents of the first exculpatory dying declaration of the deceased Kiran are ad-verbatim extracted hereinafter.

“Statement of Kiran w/o Som Nath Caste Mahashe r/o Indira Colony age about 25 years.

It is stated that I am resident of above said address and I do the domestic work. Yesterday on 14.12.96 at about 12.30 PM after watching the match on the T.V., I was heating the milk for my children. It was to be

heated on stove, which stove was brought newly. Prior to this I had not lit the stove. When I was to lit the above and kerosene oil which was gathered in Kauli (cup) of the above and while ablazing at once it was blast of fire, by which my hair caught fire when I tried to extinguish the fire my clothes and both arms caught fire and on this my husband Som Nath and my husband's younger brother (Dever) Ashwani Kumar put blanket and quilt on me by which fire caught on my clothes were extinguished. Then my husband and my husband's younger brother (Dever) made the arrangement of conveyance and brining the three wheeler. I was got admitted in emergency and doctor gave bandage to me. I was set on ablaze while heating the milk for my children. And there is none at fault. I do not want to proceed against anyone.

Attested: Sd/- In English, Gian Singh ASI,

P.P. Verka, dated 15.12.96

RTI of Kiran”

16. Apparently Ex.DX has been drawn on 15.12.1996. Moreover it also reveals that thereins becomes carried the declaration of the treating Doctor about her fitness to make a dying declaration. Moreover, Ex.DX carries the right thumb impression of the deceased besides it carries the signatures of the Judicial Magistrate. In proof of the validity of the declaration of fitness of the declarant to make a dying declaration, the doctor concerned, who made the declaration of fitness, did step into the witness box as DW-1. In his examination-in-chief he has proven the declaration of fitness as carried in Ex.DX. He has further in his examination-in-chief testified, that the Judicial Magistrate recorded in his presence the dying declaration of deceased Kiran. Thus, when the above made echoing in his examination-in-chief, did not become contested by the learned public prosecutor concerned, through his cross-examining DW-1. Therefore, but obviously the prosecution admits the truthfulness of the trite factum qua declaration as made by DW-1 about the fitness at the relevant time of the patient to make a dying declaration. Thus obviously it has to be concluded that the declaration of fitness of the patient to make a dying declaration has been

cogently proven. Moreover, since throughout the phase when the Magistrate recorded the dying declaration of the deceased the treating doctor was also available, resultantly during the entire relevant phase it can but be concluded that the declarant being fully fit besides hers making a free voluntary declaration about the cause of her demise. In addition, the exculpatory dying declaration carried in Ex.DD, and, which was made before the then JMIC, Amritsar also has been proven by DW-2, who at the time of his stepping into the witness box was promoted as Additional District and Sessions Judge, Ludhiana. DW-2 in his examination-in-chief has echoed that after his obtaining from the treating doctor the certification of fitness of the patient Kiran to make a dying declaration, he proceeded to record her statement. He also testifies that subsequently he read over the contents of Ex.DX to the deceased, and, whereafter she thumb marked the same in token of the correctness of its contents. Moreover, he has also testified that he has signed the exculpatory dying declaration. In his cross-examination no suggestion became meted to him by the learned public prosecutor concerned, that the thumb mark as made by the declarant, upon the exculpatory dying declaration, and, as become evidently made in the presence of DW-2 rather was without the latter ensuring qua hers comprehending the contents thereof. Therefore, even if no certificate in respect of the above fact occurs in the exculpatory dying declarations, but yet when DW-2 has in his examination-in-chief expressed that the thumb marking thereons were a result of his reading over the contents thereof to the declarant besides were made in token of correctness of all the recitals carried therein. Therefore, besides with his also proving the existence of his signatures thereons. In consequence the exculpatory dying declaration, does fulfill the test of it being a voluntarily made declaration. Furthermore it also fulfills the further test of it being made with hers being

provenly established to be in a fit mental condition to make it besides it also fulfills the relevant test that she had made her thumb mark thereons only after hers understanding all the recitals carried therein. Emphatically also when she has therein exculpated the role of her husband and also has expressed therein that he had made an attempt to douse the accidental fire which engulfed her. Thus, it was only the convict who took her to hospital. The above exculpatory dying declaration is the initial or the foremost among the other two subsequent inculpatory dying declarations. Therefore, the factum qua the immediacy of its making since the happening of the crime event does ingrain it with an aura of truth. Importantly, also when there is no evidence on record suggestive that it was a sequel of the convict tutoring and mentoring her. Resultantly, it becomes a voluntarily made declaration by the deceased.

FIRST INCULPATORY DYING DECLARATION EX.PE/2

17. Be that as it may, subsequent thereto the deceased also made an inculpatory dying declaration to which Ex.PE/2 is assigned. Ex.PE/2 became drawn on 14.1.1997 and its contents become extracted hereinafter.

“Statement of Smt. Kiran w/o Soma Nand, Guru Nanak Dev Hospital, Plastic Surgery Ward No.10, room No.10, bed No.13 Amritsar.

It is stated that I was married with Soma Nand in 1959 and I have two children. I along with my husband resides in Indira Colony. My husband's younger brother (Dever) Ashwani Kumar also used to live with us. About a month 1 ½ month ago my husband said to me to prepare tea and when I went to prepare tea, he asked me to do immediately and then he caught hold me and tried to kill me. I ran towards outside and he caught hold me near the door and dragged me inside, poured kerosene oil on her and set her on ablaze and shut me in the kitchen. My husband's younger brother (Dever) put blanket on me and put off the fire. At that time no other member was present. My husband used to give me beating prior to this. He compelled me to bring money.

*Sd/- In English, Ravinder Kumar,
Judicial Magistrate Ist Class,
Amritsar. 3.40 P.M.”*

18. Prior to the drawings of the inculpatory dying declaration (Ex.PE/2), the treating doctor declared the patient to be fit to make it. The apposite fitness certificate is carried in Ex.PE/1. The contents of Ex.PE/1 are extracted hereinafter.

“This is to certify that Ms. Kiran admitted as a case of extreme burns in Plastic Surgery Ward No.10 of G.N.D. Hospital Amritsar on 13.1.1997 (Bed No.13) is in a fit condition to give statement. It is further certified that she is unable to write or give thumb impressions as both hands are burnt and dressings applied.

Sd/- In English, (Vivek Puri),

14.1.1997 (3.30 P.M.)

Prof. & Head of Plastic Surgery

W. No.10

GND Hospital Amritsar.”

19. Though Ex.PE/2 became preceded by the treating doctor declaring the patient to be fit to make a statement besides is also proven by the Judicial Magistrate concerned, before whom it was made. Moreover, the Judicial Magistrate concerned, in his deposition has not only proven trite factum of the voluntariness of the deceased to make a declaration before him, but has also testified, that the contents thereof were read over, and, explained to the patient, whereafter she admitting them to be correct, she thumb impressed thereon, as both hands of the patient were burnt. However, during the course of his being subjected to cross-examination, he has admitted the suggestion, of the learned defence counsel, that he omitted to record in his proceedings, that he had satisfied himself about the deceased making a voluntary declaration before him. Moreover, he has also admitted a suggestion made to him, that he has also not given any note in the proceedings that the patient remained fit, and, conscious during the time she made her statement. In addition, he has also admitted a suggestion as made to him, that he had not recorded any observation

about the contents of the dying declaration being read over, and, explained to deceased one, Kiran, and, whereafter, after hers admitting its contents to be correct, she impressed her thumb marks thereon.

20. Even though the above made admissions, do not completely reduce the vigor of the testification as made by PW-2, in his examination-in-chief, wherein, he speaks about the deceased-declarant making her thumb impressions on her dying declaration only after his ensuring that all the recitals therein becoming understood by her. Nonetheless what does erode the evidentiary efficacy of Ex.PE/2 vis-a-vis Ex.DD, is that, during the phase of drawing of Ex.DD in the latter the treating doctor remained throughout with the Magistrate who recorded the dying declaration. Thus making it construable to become voluntarily authored by her, whereas, the doctor concerned, being not throughout the phase of the recording of Ex.PE/2 by the Judicial Magistrate, rather available with him in the ward concerned. Reiteratedly hence the inculpatory dying declaration vis-a-vis the exculpatory dying declaration, does *prima-facie* loose its evidentiary worth. Moreover, since the above time gap between the initial (supra) exculpatory dying declaration, and, the subsequent inculpatory dying declaration of the deceased, is about one month. Consequently, it is but obvious that her parents and other relatives were frequently accessing her in the hospital. Thus when the investigating officer testifies in his examination-in-chief, that even after an exculpatory dying declaration being made by the deceased, he had rather chosen to close proceedings in respect of the demise of Kiran, but yet the father of deceased, showing complete dissatisfaction about the cause of demise of his daughter. As such, on his insistence, he had made an application to the Judicial Magistrate concerned, for the recording of the dying declaration of one Kiran. Bearing in

mind the above, it is but obvious that the parents of the deceased are but be concluded to be making regular attendances in the hospital, upon their ailing daughter, only obviously for theirs giving tutorings, and, mentorings to her, so that the initially made exculpatory dying declaration, is overcome through hers subsequently, making a contrived inculpatory dying declaration against the accused. Therefore, Ex.PE/2 is not a voluntarily made dying declaration.

21. If so irrespective of the deposition of PW-2, the inculpatory dying declaration to which Ex.PE/2 is assigned, cannot become the befitting anchor, for erecting any firm conclusion about the guilt of the accused, in respect of a charge drawn against him for an offence under Section 302 of IPC.

SECOND INCULPATORY DYING DECLARATION EX.PG

22. The further reason for sustaining the above inference, is comprised in yet the prosecution, subsequent thereto ensuring the making an inculpatory dying declaration on 21.01.1997, by the deceased, thus, with a gap of only a week occurring since hers making the above inculpatory dying declaration. The above inculpatory dying declaration is carried in Ex.PG. Though prior to the making of Ex.PG the treating doctor declared her fit to make a statement, besides also though the contents of Ex.PG are proven by ASI Gian Singh. However, a reading of the hereinafter extracted contents of Ex.PG, do reveal, that the declarant has thereins made vast improvements, and, additions to what she has earlier stated in Ex.PE/2.

“Statement of Smt. Kiran w/o Soma Nand, r/o Indira Colony, Majitha Road, Amritsar age about 27 years.

It is stated that I am resident of above said address and my parents used to live at Dashmesh Nagar, Jaura Phatak, Amritsar and my parents solemnized my marriage on 16.4.89 with Soma Nand s/o Hans Raj, r/o Indira Colony, Majitha Road, Amritsar and my parents gave dowry excess of their status. Two children born from my

abdomen. Elder son is about 6 years and younger daughter is 2 years. After the marriage, my husband insists me to bring more dowry because whichever he earns he used to take drink and purchase some lotteries. Whenever he insists me to bring money from my parents and I brought money 2-3 times from my parents and make ends of my house. On 14.12.96 before leaving for his duty said to me to bring money from my parents and in failure not to come back home. I do not went to my parents to bring money because prior to this I have brought many times money from my parents. In the night at 10 PM, he said to me, whether I brought money, on this I said that I had not gone. On this my husband got angered and poured can of kerosene oil on me and put out match box from his pocket and set me on fire. I raised alarm 'Mar ditta' 'Mar ditta' and on hearing alarm my neighbourers come there who extinguish the fire and after making arrangements of conveyance got admitted me in emergency of Guru Nanak Dev Hospital. Which statement I have on 15.12.96 was due to fear of my husband because he had threatened me to kill. On the same day Judge Sahib also recorded my statement. On 14.1.97, I again made my statement before Judge Sahib. My husband Soma Nand s/o Hans Raj, r/o Indira Colony tried to kill me after pouring kerosene oil on me and set me on fire. Action be taken."

23. In Ex.PE/2 proven by the Judicial Magistrate concerned, she has made a reference only to her husband taking to prior to the relevant occurrence, hence belabour her besides she has made a recital therein, that he also used to compel her to bring money, but much more beyond what has been scribed in Ex.PE/2, rather the apposite additions to Ex.PE/2 as occur in Ex.PG, do appear to be at the instance(s) and instigations of her father one Bakshi Ram. The reason for drawing the above conclusion, arises from the factum that all the additions to Ex.PE/2, as occur in Ex.PG, are also narrated by one Bakshi Ram in his examination-in-chief. Resultantly, Ex.PG is stained with the blemish of tutorings, thus obviously it is not a voluntarily made dying declaration by the deceased. If so, the same has to be discarded. Nonetheless, the most noticeable

difference *inter-se* Ex.PE/2, and, Ex.PG, is that, in Ex.PE/2 she names her brother-in-law to be present at the crime site to douse the fire engulfing her hence though his putting a blanket on her, whereas, in Ex.PG she excludes his name. In detraction thereof she in Ex.PG states that she raised an alarm 'Mar-ditta' 'Mar-ditta', and on the above alarm being heard by neighbours, the latter coming from their house, and, extinguishing the fire. The effect of the above noticeable difference *inter-se* Ex.PE/2, with Ex.PG, is that, qua the making(s) of both Ex.PE/2, and, of Ex.PG, rather being involuntary. Moreover, also the effect of the above *inter-se* glaring contradictions, or *inter-se* improvements is that, she has belied not only the contents of Ex.PE/2 but has also belied the contents of Ex.PG, irrespective of the fact that the valid drawings of both the dying declarations, has been testified by the officers where before whom each became recorded. Conspicuously also when reliance by the prosecution is made only on Ex.PE/2 thus it appears that the prosecution does admit the falsity of the making of Ex.PG but with a concomitant effect that the earlier thereto inculpatory dying declaration comprised in Ex.PE/2 also becoming involuntarily tainted doing declaration.

24. Paramountly, the exclusion in Ex.PG of the name of the younger brother of the deceased, who was available then at the crime site, especially given his being named in the initially recorded exculpatory dying declaration as carried in Ex.PE/2, rather is for disabling the younger brother of the accused to step into the witness box, and, but obviously for smothering upon his stepping into the witness box the emergence of truth from him qua the crime event. Thus, the above manner of suppression of material evidence, by the prosecution through its relying upon Ex.PG as drawn subsequent to the drawings of Ex.PE/2, does obviously adversely impact the prosecution case. Thus also Ex.PG is to be

concluded to be besmirched with the taint of it being a result of mentorings, and, tutorings being meted to her by her father. Moreover, if reliance is placed upon Ex.PE/2 by the prosecution thus, also it become incumbent to ensure the citing of the younger brother of the convict as a prosecution witness besides it become incumbent upon it to also ensure his stepping into the witness box so that the complete truth of the entire event becomes unfolded. Needless to say the above has been not done, resultantly the suppression of the evidence of the younger brother of the convict casts an adverse effect upon the prosecution case as is made dependent upon Ex.PE/2.

25. As above stated a dying declaration is a sacrosanct piece of evidence for proving the relevant charge against the inculpatated person. However, the rule of consistency amongst the various dying declarations, is the golden rule, for assigning or for not assigning creditworthiness, to multiple dying declarations, which are made at different stages by the declarant.

CONCLUSION FOR ACCEPTING THE EXCULPATORY DYING DECLARATION EX.DD

26. In view of the lack of (supra) *inter-se* consistency *inter-se* the two inculpatory dying declarations as made by the deceased, thus no evidentiary sanctity is acquired by both the inculpatory dying declarations. Contrarily, the initially made exculpatory dying declaration as becomes relied upon by the convict and to which Ex.DD, is assigned, when does accomplish the relevant test(s) inasmuch as, it being made after a proven declaration of her fitness to make it, becoming recorded by the treating doctor. Moreover, when the further factum of its being authored by the deceased, has also been proven by the Judicial Magistrate concerned, who stepped into the witness box as DW-2.

Therefore, when at that stage it appears that she was not under the tutorings of

her parents nor was under the tutorings of her husband, who took her to hospital, especially who when inside the relevant ward the convict was not present, rather throughout the phase of the recordings of the dying declaration by the Magistrate also the treating doctor was present there. Thus, credence is to be assigned to the exculpatory dying declaration, where she states that she was taken to the hospital for the treatment of her burn injuries by her husband. Moreover, though in the inculpatory dying declaration she speaks about the neighbours shifting her to hospital for treatment of her burn injuries, but no credence can be assigned thereto, as the MLR depicting the above fact has not been placed on record. Therefore, also on the above score the narration carried in Ex.PG becomes belied. In consequence, it can be validly inferred, that the husband of the deceased took her to hospital for the treatment of her burn injuries, as such, his above conduct is consistent with his innocence.

27. Since at the time of the making of the exculpatory dying declaration on 15.12.1996 by the deceased, there is no evidence that she was tutored, and, mentored by her husband, therefore, also credence is to be assigned to the exculpatory dying declaration. Fortified strength to the above inferences, is garnered from the factum, that neither the doctor, who stepped into the witness box as DW-1 nor the Judicial Magistrate wherebefore whom, the deceased made an exculpatory dying declaration, rather becoming meted any suggestions by the learned public prosecutor concerned, that the husband of the deceased was then attending upon his deceased wife. In consequence in the absence of the above cross-examinations being made upon DW-1, and, upon DW-2, it is to be but concluded, qua both truthfully stating in their respective examinations-in-chief that the patient was not only fit to make the exculpatory dying declaration, but also both truthfully stating that the same was voluntarily made, besides also both

truthfully stating that the thumb markings by the deceased, on Ex.DD rather occurred only after hers being made to understand all the contents therein.

**DISCUSSION ON VALIDITY OF VERDICT OF CONVICTION QUA AN
OFFENCE PUNISHABLE UNDER SECTION 498-A OF IPC**

28. Though the learned trial Judge concerned, had relied upon certain letters to which Ex.P-1, Ex.P-2, and, Ex.P-3 are assigned. Even though, the signatures as carried thereon of the accused, are denied in the proceedings drawn under Section 313 of Cr.P.C., but when the above denial has not been proven. Resultantly, when he does not prove the relevant denial, thus he is to be construed to be admitting his signatures as occur on Ex.P-5, wherein, there occurs an echoing about his committing certain misdemeanors upon his deceased wife. Moreover, the above letters appertain to the years 1992-1993. However, the relevant occurrence occurred on 14.12.1996. Since in the very same year she had joined her matrimonial home. Thus, she is to be concluded to condone the previous lapses, if any, of her husband. Also it can be concluded that the accused had then reformed himself. In consequence, the much prior thereto belabourings as meted to the deceased by the convict, are but not proximate to the relevant occurrence, besides also any mental cruelty caused to the deceased by the accused, as, comprised in his rearing demands of dowry upon her also become inconsequential, theirs' too being inproximate from the crime occurrence. The further reason being that the demands of dowry are narrated in the discarded inculpatory dying declaration, rather on score of mentorings, and, tutorings being meted to the deceased by her father one, Bakshi Ram. Resultantly, the above are hereinabove inferred to blemish Ex.PG. Resultantly, the testification of one Bakshi Ram in support of a charge drawn under Section 498-A of IPC also becomes a blemished, and, an untruthful

testification. Thus, the verdict of conviction, as recorded upon the convict in respect of a charge drawn against him for an offence punishable under Section 498-A of IPC, is liable to become interfered with.

29. Though the learned State counsel argues that in proof of the dying declaration, the statement of minor son Suraj Parkash @ Monu is relevant, as he was a eye-witness to the occurrence. However, the above submission is completely rudderless as in none of the dying declarations, she has named him to be available at the crime site, rather has named the younger brother of the convict to be available at the crime site, who has however remained unexamined, resulting in an adverse inference being drawn against the prosecution.

SUMMARIZATION OF PRINCIPLES

- I. In case of multiple dying declarations, inculpatory or exculpatory, the Courts of law are to be cautious in excluding one or in assigning probative vigor to the other(s). They are to be guided by the golden rule of there being inter-se consistencies *inter-se* the inculpatory dying declaration(s).
- II. If there are wide *inter-se* inconsistencies, *inter-se* the inculpatory dying declarations, thus the inculpatory dying declarations become unworthy of evidentiary vigor being assigned thereto.
- III. The exculpatory dying declaration, can then become assigned evidentiary vigor but only subject to it being proven qua it being voluntarily recorded, also it being proven that it was preceded by a declaration of fitness by the treating doctor, besides it being also proven that it became recorded before/by a gazetted officer.
- IV. The principle to determine whether there are *inter-se* inconsistencies *inter-se* inculpatory dying declarations, is that, it

being ensured by Courts to marshal from the relevant evidence whether such *inter-se* inconsistencies are a result of tutorings, and, mentorings being made to the declarant by his/her relatives.

FINAL ORDER

30. In view of the above, criminal appeal bearing No.CRA-D-240-DBA-2003 as preferred by the State challenging the verdict of acquittal as made upon the accused in respect of a charge drawn for an offence punishable under Section 302 of IPC, is dismissed.

31. However, criminal appeal bearing No.CRA-S-1386-SB-2002, as directed against the verdict of conviction made upon the convict, in respect of a charge drawn for an offence punishable under Section 498-A of IPC is allowed. Moreover, the consequent therewith imposed sentence(s) (*supra*), are also quashed, and, set aside. The personal, and, surety bonds of the convict are directed to be forthwith cancelled, and, discharged. The convict if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to him, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

(SURESHWAR THAKUR)
JUDGE

19.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No