



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

I **CRA-D-305-DBA-2004 (O&M)**
Date of Decision:- 26.05.2025

State of Punjab ... Appellant

Versus

Mukesh Kumar and others ... Respondents

II **CRA-S-12-SB-2004 (O&M)**

Mukesh Kumar ... Appellant

Versus

State of Punjab ... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Siddharth Attri, AAG, Punjab
for the appellant in CRA-D-305-DBA-2004 &
for respondent/State in CRA-S-12-SB-2004.

Mr. M.S.Sidhu, Advocate,
for the respondents in CRA-D-305-DBA-2004 &
for the appellant in CRA-S-12-SB-2004.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose off the above mentioned two appeals as both are directed against the same very judgment i.e. judgment dated 05.08.2003 passed by learned Additional Sessions Judge (Adhoc) Patiala. While, appellant-Mukesh (in CRA-S-12-SB-2004) assails his



conviction for offence under Section 304-B IPC, the State of Punjab (in CRA-D-305-DBA-2004) assails acquittal of respondents/accused Mukesh Kumar in respect of offence under Section 302 IPC; acquittal of Nirmala Devi for offence under Section 302/304-B IPC and acquittal of Sawita Rani for offence under Sections 302/304-B and 498-A IPC.

2. The matter arises out of FIR No. 68, dated 25.9.2002, Police Station Ghanaur, District Patiala under Section 302/34 IPC (Ex.PW-9/B), lodged at the instance of Bachan Singh. The translated gist of statement (Ex.PW-8/A) of Bachan Singh leading to FIR reads as under:

“I am resident of Rajpura Town and am employed as a Constable in Police department. On 25.09.2002 while I was on duty in the morning, I received a telephonic message to the effect that the in-laws of my daughter had a quarrel with my daughter Manpreet Kaur whose marriage had been solemnized with Mukesh Kumar about 1 ½-2 years back. Upon receiving the said message, I and my wife went to village Sandarshi to inquire about the welfare of our daughter, where we found that my daughter Manpreet Kaur was lying on a cot with burn injuries. When I and my wife made inquiries from her, she disclosed that on yesterday i.e. on 24.9.2002 at about 8 pm. her mother-in-law Nirmala Devi, her husband Mukesh Kumar and her sister-in-law (*Nanand*) Sarita had quarreled with her. She disclosed that her sister-in-law (*Nanand*) had come to attend a marriage in the neighborhood. She further disclosed that during night her husband had given her electric shocks and had forced her to write filthy and wrong allegations. She further disclosed that today in the morning when she was lying on cot, then all three of them kept on



talking with each other, but she could not figure out as to what they were talking about and thereafter her husband asked her to bring an amount of Rs.30,000- from her parents so as to purchase a motorcycle. They had earlier also been harassing my daughter. I had earlier also given money to them. My daughter disclosed that while she was lying on the cot, her mother-in-law caught hold of her from her legs and her sister-in-law gagged her mouth and caught hold of her arms and her husband Mukesh Kumar poured kerosene oil on her and set her on fire and went away while saying that he has to mark his attendance. She further disclosed that thereafter her sister-in-law and mother-in-law also left while shutting the door with a hasp and that thereafter she did not know what had happened and she became unconscious. Due to critical condition of my daughter, the villagers put her in an ambulance and shifted her to Rajindra Hospital where she is under treatment. My wife is accompanying her. I was proceeding to lodge information when you met me at Lalru Bus State. Action be taken.

Sd/-
Bachan Singh
25.09.2002.”

3. The aforesaid statement (Ex.PW-8/A) was recorded by ASI Balwant Singh when complainant had met him at Bus Stand, Lalru. A *ruqa* was sent to the police station for registration of a case. The ASI along with accompanying officials proceeded to the place of occurrence where a rough site plan was prepared. Some pieces of burnt clothes were taken into possession. A partly burnt double bed and a plastic can containing kerosene oil was also taken into possession from the spot.



4. ASI Balwant Singh made a written request to Chief Judicial Magistrate, Patiala for recording statement of Manpreet Kaur and pursuant thereto Sh. Mewa Singh, Judicial Magistrate 1st Class, Patiala visited Rajindra Hospital, Patiala and moved an application (PW-6/A) to the Medical Officer, Rajindera Hospital, Patiala seeking information as regards fitness of Manpreet Kaur to make a statement. Dr. Jaideep Singh furnished opinion (PW-6/B) on 25.09.2002 at 5.35 pm to the effect that Manpreet Kaur was fit to make a statement. Pursuant to the aforesaid fitness having been certified by doctor, the Magistrate proceeded to record statement of Manpreet Kaur. A translated gist of her statement (Ex.6/C) reads as under:

“Yesterday at 8 pm a dispute had arisen between me and my husband Mukesh Kumar. My husband Mukesh had earlier been given money by me. Yesterday night he threatened to kill me by way of giving electric shocks. I told him that I could not get more money for him because I have two other unmarried sisters whose marriages have to be solemnized. He started hurling abuses and asked me to get another amount of Rs.30,000/- because he wanted to purchase a motorcycle. I replied that I could not get the said amount upon which he brought an electric wire and said that he will give electric shock to me. His mother also came there and she also said that I should be given electric shocks. Thereafter, I wrote whatever they wanted me to write.

Today, at about 9/9.15 am my mother-in-law Nirmala caught hold of my legs, my sister-in-law Sarita gagged my mouth and my husband sprinkled kerosene oil on me and set me on fire and thereafter they all went out. My husband immediately went away on



his bicycle saying that he has to mark his attendance so that nobody comes to know about the incident.

RTI
(Manpreet Kaur)
25.09.2002 (5.45pm)”

5. Manpreet Kaur however, could not survive and expired at 11 pm on 25.9.2002 itself at Rajindra Hospital, Patiala. Inquest proceedings were conducted by ASI Balwant Singh. Accused Mukesh Kumar, Nirmala Devi and Sawita Rani were produced by Surinder Kumar and Kamaljit Kaur before Inspector Gurinder Singh SHO (PW-10) on 09.10.2002 and were arrested. Upon conclusion of investigation challan was presented against the accused in the Court of learned Sub Divisional Judicial Magistrate, Rajpura on 04.12.2002 who committed the case to the Court of Sessions vide order dated 18.12.2002. Learned Additional Sessions Judge, Patiala framed charges against the accused for offence under Section 302 IPC with an alternate charge of Section 304-B on 21.1.2003 to which all the three accused pleaded not guilty and claimed trial.

6. The prosecution in order to substantiate its case examined as many as 10 PWs. The gist of their testimonies is referred to herein under:-

PW-1 HC Gurmail Singh tendered his affidavit Ex.PA in evidence wherein he deposed that on 25.09.2002 he was posted as MHC at Police Station Ghanaur and was Incharge Malkhana and on the said day ASI Balwant Singh had deposited the case property with him which he had duly entered in register No.19. He stated that on



08.10.2002 the case property was handed over to Constable Jarnail Singh for depositing the same in the office of FSL, Chandigarh, but on account of certain objections the same could not be deposited and was brought back and deposited in *malkhana* and thereafter it was on the next day on 09.10.2002 that the case property was deposited in FSL Chandigarh. He further deposed that as long as the case property remained in his possession, the same was not tampered with.

PW-2 Dr. Ram Lubhaya stated that on 26.09.2002 he had conducted post mortem examination on the dead body of Manpreet Kaur and that the entire body had been burnt except for scalp and a part of abdomen and the cause of death was shock due to burns which was antemortem in nature and was sufficient to cause death in the ordinary course of nature.

PW-3 Constable Jarnail Singh tendered his affidavit Ex.PC in evidence wherein he deposed that he had remained associated with the investigation of the case.

PW-4 Dr. Jaideep Singh Chahal stated that on 25.09.2002 the police made a request to ascertain about the fitness of Manpreet Kaur vide request letter Ex.PD and that he had opined that patient Manpreet Kaur was fit to make statement and proved his opinion Ex.PD/1.

PW-5 Paramjit Singh Gurm, Draftsman, proved the scaled site plan of the place of occurrence prepared by him as Ex.PE.



PW-6 Mewa Singh, Judicial Magistrate 1st Class, Patiala stated that on 25.09.2002 ASI Balwant Singh made a request to him for recording statement of Manpreet Kaur, pursuant to which he proceeded to Rajindra Hospital, Patiala and sought opinion of the doctor concerned by way of moving an application Ex.PW-6/A upon which the doctor made his endorsement Ex.PW-6/B and that after seeking opinion of the doctor he recorded statement (Ex.PW-6/C) of Manpreet Kaur. He further stated that he appended his certificate with the statement Ex.PW-6/D.

PW-7 Parkash Kaur, mother of the deceased narrated in detail with regard to the occurrence in hand, while stating that on the day of occurrence, she had been caught hold of from her legs by her mother-in-law and from her arms by her sister-in-law while her husband poured kerosene oil and set her on fire.

PW-8 Bachan Singh who is the complainant in the present case stated broadly in tune with the allegations got recorded by him in the FIR.

PW-9 ASI Balwant Singh who had recorded the statement of the complainant on 25.09.2002 leading to lodging of FIR stated about the investigation conducted in the case. He stated that he conducted inquest proceedings on 26.9.2002.

PW-10 Inspector Gurinder Singh who had partly investigated the case after the same was handed over to him on 29.7.2002 stated about the proceedings of the case conducted by him. He stated about the arrest



of all the three accused on 09.10.2002. He stated about recording statements of the witnesses in terms of Section 161 Cr.P.C. and that upon completion of investigation challan had been filed by him.

7. Upon conclusion of prosecution evidence, the entire incriminating evidence was put to the accused in terms of Section 313 Cr.P.C. to enable them to explain the same, but the accused denied the entire prosecution case in toto and pleaded false implication. Accused-Mukesh Kumar further raised a plea that Manpreet Kaur had developed illicit relations with their neighbour Raju and when they objected to the same, Manpreet Kaur felt offended and poured kerosene oil upon her and set herself on fire. The accused however, did not chose to lead any evidence in their defence.
8. The trial Court upon marshaling the evidence on record returned its findings to the effect that while charges under Section 302 IPC were not established, but offence under Section 304-B IPC was found to be established qua accused-Mukesh. Nirmala Devi while being acquitted of charges under Section 302 and also of the alternate charge under Section 304-B IPC, was however held guilty for having committed offence under Section 498-A IPC. Sawita Rani was acquitted of all the charges framed against her. Aggrieved by his conviction, Mukesh Kumar has assailed the same by way of filing an appeal (CRA-S-12-SB-2004). The State of Punjab, aggrieved by



acquittal of the accused for various offences has preferred an appeal (CRA-D-305-DBA-2004) against the same very judgment.

9. Learned counsel representing accused-Mukesh submitted that he has falsely been implicated in the present case and his conviction for offence under Section 304-B IPC is unsustainable inasmuch as there is no convincing evidence to establish any demand of dowry by him and that it is only the bald statements of the parents of the deceased upon which the prosecution relies without there being any corroborative evidence for the same. Learned counsel further submitted that although learned trial Court has placed much reliance upon the alleged dying declaration, but the same is not trustworthy inasmuch as there is nothing to show that the victim remained fit enough throughout during the course of recording of her alleged statement. It has been submitted that PW-4 Dr. Jaideep Singh had opined about fitness of the deceased only before her statement was recorded and not as regards her fitness during the period when her statement was being recorded and that under these circumstances the alleged dying declaration becomes suspect and consequently, the accused is entitled to be acquitted for want of trustworthy evidence.
10. Learned State counsel while opposing the appeal filed by accused-Mukesh and also while pressing upon the State appeal against acquittal of the accused submitted that it is a case supported not just by statement of the complainant and his wife i.e. the parents of the



deceased, but it is a case where the deceased shortly before her death had made a statement before a Judicial Magistrate indicting all the accused. Learned State counsel submitted that once the doctor had certified about the fitness of Manpreet Kaur and even the learned Magistrate who recorded her statement had made an endorsement regarding fitness of the deceased during the course of recording of her statement, there was no room to cast any doubt regarding the authenticity of such like dying declaration. It has further been submitted that there is no absolute law that in the absence of presence of a doctor during the entire course of recording of statement of deceased, the same cannot be accepted to be a valid statement. Learned State counsel submitted that since the deceased in her dying declaration has very categorically levelled allegations against all the three accused and has also specifically defined the role played by her mother-in-law Nirmala Devi and sister-in-law Sawita Rani being instrumental in causing her death, their acquittal for offence under Section 302 IPC was not warranted and as such the findings of their acquittal deserve to be set aside and they ought to be held guilty for having murdered Manpreet Kaur.

11. This Court has considered rival submissions and has also perused the record of the case.
12. Since, it is the specific case of the prosecution that Manpreet Kaur had been set on fire which led to her death, it is apposite to first of all



refer to medical evidence led by the prosecution as regards the cause of death of Manpreet Kaur. PW-2 Dr. Ram Lubhaya who had conducted post mortem examination on the dead body of Manpreet Kaur proved the post mortem report Ex.PB. The relevant extract from his statement is reproduced herein under:

“..... Whole body was burnt except scalp and part of abdomen. Nostrils, buccal cavity and tranches was inflamed. Mouth and nostrils were showing blackish carbon particles. Body was showing dermoepidermal burns all over the body. All the organs of body were congested.

Cause of death in our opinion was shock due to burns which were antemortem in nature and were sufficient to cause death in ordinary course of nature, and were sufficient to cause death.....”

13. The witness was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of cross-examination so as to doubt his opinion or his credibility in any manner. The witness however, stated that they did not find any evidence of electric shock on the dead body. The post mortem report and the statement of doctor leaves no manner of doubt that it is a case where the deceased had lost her life on account of the burn injuries sustained by her.
14. The next question before this Court is as to whether it is a case of homicidal death caused by the husband (Mukesh Kumar), mother-in-law (Nirmala Devi), sister-in-law (Sawita Rani) against whom the



charges were framed for offence under Section 302 IPC with an alternate charge for offence under Section 304-B IPC. While there is no eye witness to the occurrence inasmuch as the incident was not witnessed by anyone but the prosecution banks mainly upon dying declaration (Ex.PW-6/C) made by the deceased before the Magistrate i.e. PW-6 Mewa Singh, Judicial Magistrate 1st Class, Patiala. As per the case of prosecution, when Manpreet Kaur had been taken to the hospital in injured condition, PW-9 ASI Balwant Singh moved an application Ex.PD to the Medical Officer, Rajindra Hospital, Patiala seeking his opinion as regards fitness of Manpreet Kaur to make statement upon which the doctor available i.e. Dr. Jaideep Singh (PW-4) opined vide his endorsement Ex.PD/1 that Manpreet Kaur was fit to make her statement. The said opinion of the doctor was recorded at 4.40 pm on 25.09.2002 and pursuant thereto PW-9 Balwant Singh recorded statement (Ex.PW-9/F) of Manpreet Kaur, the translated gist of which reads as under:

“I was married with Mukesh Kumar about 1 ½ years back. After my marriage, my mother-in-law Nirmala Devi and my sister-in-law Sawita Rani and my husband Mukesh Kumar taunted me and demanded money from my parents. I had brought some amount from my parents and given the same to them, but despite the same their ill-treatment towards me continued. My husband Mukesh Kumar demanded an amount of Rs.30,000/- from me to be brought from my parents for the purpose of buying a motorcycle, but I refused telling him that the financial position of my parents is not sound. Yesterday i.e. on 24.9.2002 at about 8 pm my mother-in-law, my sister-in-law



and husband quarreled with me and gave me electric shock. My sister-in-law had come yesterday to attend a marriage in our neighbourhood. They forced me to make some filthy writings which I wrote being scared. Today in the morning at about 9.15 am when I was lying on my cot, my mother-in-law, sister-in-law and my husband were talking amongst themselves. While I was lying on the cot my mother-in-law caught hold of my legs and my sister-in-law caught hold of me from my arms and gagged my mouth and my husband poured kerosene oil on me and set me on fire and then ran away by saying that he has to mark his attendance. Thereafter my mother-in-law and sister-in-law also closed the door and ran away. I became unconscious thereafter.”

15. PW-9 ASI Balwant Singh thereafter made a written request to Chief Judicial Magistrate, Patiala for the purpose of recording statement of injured Manpreet Kaur. It is the case of prosecution that Mr. Mewa Singh, Judicial Magistrate 1st Class, reached Rajindra Hospital, Patiala pursuant to the aforesaid request and moved an application Ex.PW-6/A to the medical officer, Rajindra Hospital, Patiala seeking his opinion as regards the fitness of Manpreet Kaur upon which the doctor as per endorsement Ex.PW-6/B opined that Manpreet Kaur was fit to make statement. The said endorsement was made at 5.30 pm on 25.9.2002. It was thereafter that PW-6 Mr. Mewa Singh, Judicial Magistrate 1st Class, Patiala proceeded to record the statement (Ex.PW-6/C) of Manpreet Kaur which has already been reproduced in the earlier part of the judgment.
16. The aforesaid two statements of Manpreet Kaur i.e. the one recorded by ASI Balwant Singh and the other by the Magistrate (Ex.PW-6/C)



are absolutely consistent to the effect that husband of the deceased i.e. Mukesh Kumar had been demanding an amount of Rs.30,000/- from the deceased for the purpose of buying a motorcycle. Both the said statements are also consistent qua the role of other two co-accused inasmuch as in both the said statements it has been specifically recorded that while Nirmala Devi (mother-in-law) caught hold of the deceased from her legs, Sawita Rani (sister-in-law) caught hold of the deceased from her arms, her husband Mukesh Kumar poured kerosene oil and set her on fire. Although apart from the aforesaid dying declarations particularly the dying declaration recorded by the Magistrate, the prosecution also banks upon the statements of the parents of the deceased, both of whom claimed that shortly before her death, the deceased had also narrated the occurrence in the same manner, but even in case the statements of her parents are not taken into account, still the dying declaration recorded by the Magistrate and that too after seeking opinion of the doctor about fitness of the deceased cannot be discarded or brushed aside.

17. The law regarding admissibility, reliability and value of a 'dying declaration is well settled to the effect that once such statement is found to have been made voluntarily and is not an attempt by the deceased to falsely implicate a person, then such dying declaration can safely be relied upon and it can form the basis of conviction. However, 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 must be in a fit state of mind to make the declaration and must identify the assailants. In Khushal Rao v. State of Bombay AIR 1958 SC 22, Hon'ble Supreme Court after examining the relevant provisions of the Evidence Act and various judicial pronouncements inter-alia held that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated.

18. Reiterating the ratio of Khushal Rao's case(supra), a Five Judges Bench of the Hon'ble Apex Court in a case reported as (2002) 6 SCC 710 Laxman vs. State of Maharashtra, while stating the broad principles regarding acceptability of dying declaration held as follows:

"The jursitic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may effect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or



prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant."

19. The Hon'ble Apex Court in a case reported as (2008) 17 SCC 190 Panneerselvam v. State of Tamil Nadu, while referring to various judgements on the issue of dying declaration, enumerated the principles governing dying declaration as under :-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- (iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
- (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.
- (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.
- (ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks 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.



- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.
- (xi) Where there is 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 declarations could be held to be trustworthy and reliable, it has to be accepted

20. In a recent judgement, AIR 2024 (Supreme Court) 2682 Rajendra vs. State of Maharashtra, Hon'ble Supreme Court, in a case based solely on dying declaration held as under:

“25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.”

21. While examining the dying declaration (Ex.PW-6/C) in the light of ratio of the above referred judgments we find that in the instant case we have a statement of the deceased which was initially recorded by a police official, but subsequently a Magistrate was also called at the spot who after ascertaining about the fitness of deceased Manpreet Kaur also recorded a statement wherein also the deceased narrated the occurrence identically. While, it is correct that the doctor who had declared Manpreet Kaur fit for making statement i.e. PW-4 Dr. Jaideep Singh Chahal has not stated anything to the effect that he remained present throughout the period when her statement was being



recorded by the Magistrate, but a perusal of the dying declaration recorded by the Magistrate shows that there is a specific endorsement (Ex.PW-6/D) recorded by the learned Magistrate to the effect that the patient was fit for making statement and that he had faithfully and correctly recorded the statement.

22. Hon'ble Apex Court in Laxman's case (supra) affirmed the earlier view of a three Judges bench in the case of Koli Chunilal Savji & Another v. State of Gujarat, 1999(9) SCC 562, wherein it had been held that if the material on record indicates that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. It was further held therein that certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.
23. In the present case, the dying declaration (Ex.PW-6/C) has been recorded by a Magistrate after seeking opinion of the doctor regarding fitness of Manpreet Kaur and the Magistrate after recording the statement has also made an endorsement to the effect that the patient was fit for making statement and that he had correctly recorded her statement. There is nothing on record to show that the deceased had been tutored in any manner or that when her statement was being



recorded there were members of her family present around her or near her. The statement has been recorded by a Judicial Officer after ascertaining about her fitness from doctor and the Magistrate himself also certified that Manpreet Kaur was fit. Under these circumstances, we do not find any ground to disbelieve or discard any part of the statement made by the deceased.

24. Said statement clearly defines the role played by all the three accused in causing death of Manpreet Kaur. Both Sawita Rani and Nirmala Devi had played an active role to facilitate co-accused Mukesh Kumar to set her on fire inasmuch as it was on account of both Nirmala Devi and Sawita Rani having held the deceased from her legs and arms that Mukesh Kumar effectively poured kerosene oil on the deceased and set her on fire. Consequently, both Nirmala Devi and Sawita Rani are equally liable for having killed the deceased. Learned trial Court even fell in error in holding accused-Mukesh Kumar guilty for offence under Section 304-B IPC instead of offence under Section 302 IPC when there was a direct evidence of Mukesh Kumar having killed the deceased by setting her on fire. Resultantly, all the three accused are held guilty of having murdered the deceased by setting her on fire and had thus rendered themselves liable for having committed offence punishable under Section 302 IPC.
25. The dying declaration is further very specific to the effect that Mukesh Kumar had earlier been demanding money from the deceased



and even on 24.9.2002 he had demanded an amount of Rs.30,000/- to be brought from by the deceased from her parents for the purpose of buying a motorcycle. Consequently, accused Mukesh Kumar has rendered himself liable for having committed offence punishable under Section 498-A IPC as well which otherwise is an ingredient of Section 304-B IPC in respect of which there was an alternate charge.

26. While examining the allegations pertaining to harassment of the deceased by Nirmala Devi and Sawita Rani we find that in the dying declaration the deceased did not level any specific allegation qua demand of dowry or harassment against Nirmala Devi and Sawita Rani and as such the findings of the trial Court holding Nirmala Devi guilty for offence punishable under Section 498-A IPC cannot sustain and deserve to be set aside. Consequently, while all the three accused are held guilty of having committed offence punishable under Section 302 IPC, it is only Mukesh Kumar who is additionally convicted for offence under Section 498-A IPC as well. The conviction of appellant-Mukesh Kumar for offence punishable under Section 304-B IPC as recorded by trial Court, consequently stands modified to conviction for offence punishable under Section 302 IPC. The conviction of Nirmala Devi for offence punishable under Section 498-A IPC is set aside.
27. As regards the quantum of sentence to be imposed upon all three accused, having regard to the facts and circumstances of the case



particularly bearing in mind that it is a case where the occurrence had taken place about 23 years back, we do not find it to be a case warranting punishment greater than the minimum punishment prescribed i.e. rigorous imprisonment for life for offence punishable under Section 302 IPC. Consequently, the accused are not required to be heard specifically over the quantum of sentence to be imposed. In this context observations of Hon'ble Apex Court as recorded in Ram Deo Chauhan @ Raj Nath Vs. State of Assam Review Petition (Crl.) No.1105 of 2000 decided on 10.05.2001 are being extracted herein under:

“33. It must be remembered that two alternative sentences alone are permitted for imposition as for the offence under Section 302 Indian Penal Code - imprisonment for life or death. Thus no court is permitted to award a sentence less than imprisonment for life as for the offence of murder. The normal punishment for the offence is life imprisonment and death penalty is now permitted to be awarded only "in the rarest of the rare cases when the lesser alternative is unquestionably foreclosed." [vide Bachan Singh v. State of Punjab, 1980(2) SCC 684]. The requirement contained in Section 235(2) of the Code (the obligation of the Judge to hear the accused on the question of sentence) is intended to achieve a purpose. The said legislative provision is meant for affording benefit to the convicted person in the matter of sentence: But when the Sessions Judge does not propose to award death penalty to a person convicted of the offence under Section 302 Indian Penal Code what is the benefit to be secured by hearing the accused on the question of sentence. However much it is argued the Sessions Judge cannot award a sentence less than imprisonment for life for the said offence. If a Sessions Judge who



convicts the accused under Section 302 Indian Penal Code (with or without the aid of other sections) does not propose to award death penalty, we feel that the Court need not waste time on hearing the accused on the question of sentence. We therefore choose to use this occasion for reiterating the legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence.

- (1) When the conviction is under Section 302 Indian Penal Code (with or without the aid of Section 34 or 149 of 120B of Indian Penal Code) if the Sessions Judge does not proposes to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. Section 235(2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence.
- (2) In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.
- (3) The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.
- (4) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge propose to impose death penalty) the proviso to Section 309(2) is not a bar for affording such time.
- (5) For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict on the sentence is pronounced. Further detention will depend upon the process of law.”

28. All the three accused namely Mukesh Kumar, Nirmala Devi and Sawita Rani are thus sentenced to undergo rigorous imprisonment for life and to pay fine amounting to Rs.1000/- each for having



committed offence punishable under Section 302 IPC and in default of payment of fine to further undergo rigorous imprisonment for one month. Given the fact that Mukesh Kumar already remained in custody for a period of more than 4 years and we propose to impose a lesser sentence, adjourning the matter for hearing him on quantum of sentence for offence punishable under Section 498-A IPC also would not serve any useful purpose. Mukesh Kumar is sentenced to undergo rigorous imprisonment for one year and to pay a fine amounting to Rs.1000/- for having committed offence punishable under Section 498-A IPC and in default of payment of fine to further undergo rigorous imprisonment for one month. Both the sentences of imprisonment shall however, run concurrently.

29. As a sequel to the discussion made above, the appeal filed on behalf of appellant-Mukesh Kumar (CRA-S-12-SB-2004) is dismissed whereas the appeal filed on behalf of State of Punjab (CRA-D-305-DBA-2004) stands accepted as indicated above. The sentences as imposed above are separately defined herein under:

Names	Offence	Imprisonment	Fine	In default of payment of fine
Mukesh Kumar	302 IPC	Rigorous imprisonment for life	Rs.1000/-	One month
Nirmala Devi	302 IPC	Rigorous imprisonment for life	Rs.1000/-	One month
Sawita Rani	302 IPC	Rigorous imprisonment for life	Rs.1000/-	One month



Name	Offence	Imprisonment	Fine	In default of payment of fine
Mukesh Kumar	498-A IPC	Rigorous imprisonment for one year	Rs.1000/-	One month

30. Accused be arrested to undergo sentence.
31. A copy of this judgment be sent to quarters concerned for necessary compliance.
32. A photocopy of this order be placed on the connected case.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

26.05.2025

Mohan

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No