IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.432 of 2010

Judgment reserved on: October 10, 2017

Date of Decision: October 27, 2017

State of H.P. ...Appellant.

Versus

Raj Kumar ...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting? Yes.

For the Appellant : Mr. Shrawan Dogra, Advocate General, with Mr. J.K. Verma, Deputy Advocates General.

For the Respondent : Mr. Rajesh Mandhotra, Advocate.

Sanjay Karol, Acting Chief Justice

In relation to FIR No.26/09, dated 24.1.2009, registered at Police Station Jawali, District Kangra, Himachal Pradesh, for having committed an offence under Section 498-A of the Indian Penal Code, accused-respondent Raj Kumar (hereinafter referred to as the accused) was charged for having subjected his wife Usha Devi (deceased) to cruelty, as also abetted her to commit suicide, punishable under the provisions of Sections 498-A and 306 of the Indian Penal Code.

Whether reporters of the local papers may be allowed to see the judgment?

2. Trial Court acquitted the accused, discarding dying declaration (Ex.PW-2/A) made by the deceased not to be voluntary in nature, and disbelieving the testimonies of her parents, Sh. Karam Chand (PW-2) and Smt. Preeto Devi (PW-3), and brother Sh.Amandeep (PW-5) as also co-villager Sh. Vinay Verma (PW-14) being not worthy of credence. While holding the prosecution to have established its case of the deceased having visited the shop of her husband in the morning of 24.1.2009, the fateful day, but finding no evidence as to what transpired there, between the deceased and the accused, which prompted her to set herself on fire by pouring kerosene oil, Court found the prosecution not to have proven the charged offence. Trial Court found the deceased to be a person not only of hypersensitive nature but also unable to bear extreme pressures of day-to-day life. The court did not find any convincing evidence, direct or circumstantial, establishing the guilt of the accused, of having subjected his wife to cruelty or abetted her to commit suicide. Conduct of the accused in helping extinguish fire on the body of the deceased and getting her immediate medical aid by taking her to the hospital, was a circumstance, relevant in

establishing his concern for the deceased. Hence, assailing those findings the present appeal by the State.

3. A Constitution Bench of the Hon'ble Supreme Court of India in *M.G. Agarwal v. State of Maharashtra,* AIR 1963 SC 200, has held that in dealing with an appeal against the judgment of acquittal, normally the appellate Court should be slow in disturbing findings of fact recorded by the trial Court. However, there is a caveat to such principle. Such findings have to be based on proper and complete appreciation of evidence. Also jurisdiction and power of the appellate Court is to reappreciate the evidence but with caution, yet the Court is not to substitute its own opinion with that of the trial Court.

4. In *Madan Gopal Makkad v. Naval Dubey and another,* (1992) 3 SCC 204, the Apex Court held the scope of the Court in an appeal against acquittal to be "wide as in appeals from convictions" and "that an appeal from acquittal need not be treated different from an appeal from conviction".

5. Certain facts are not in dispute. Deceased and the accused were married for more than 18 years. They were residing at village Nera Kotla, Tehsil Jawali, District Kangra, Himachal Pradesh. Also, they had fully grown up

children. In the morning of 24.1.2009, in the matrimonial house, after pouring kerosene oil, deceased set herself on fire. Immediately, accused took her to Sukh Sadan Hospital, Pathankot (State of Punjab), where she was administered medical treatment and remained admitted till her last breath, which was on 31.1.2009. Deceased died as a result of burn injuries.

6. It has come on record that on 24.1.2009, at about 11.20 a.m., Dr. Avinish Kumar (PW.6) of Sukh Sadan Hospital informed officials of Police Station Jawali about admission of the deceased, having sustained burn injuries. Ex.PW-2/A is evidently clear to such effect.

7. Inspector Parkash Chand (PW-12), SHO of the concerned Police Station, who also conducted the investigation, immediately rushed to the hospital and after obtaining permission and certificate of fitness, recorded statement (Ex.PW-2/A) of the victim, which reads as under:

> "States that I am resident of the abovestated address and is an Anganwari worker. My marriage took place in the year 1990. I have two sons and a daughter. Since after the marriage, my husband used to beat me and ask me to bring money from my parental house. My husband was having illicit relations with some lady. Last night dated 23.1.2009 my husband was not at home. I doubted that he was with that lady during night. Today dated 24.1.2009, in the morning at 6, to know about whereabouts of my husband, I went to the shop, where servant Kishore and Lala were present. I asked them

about whereabouts of my husband, on which they said that he had left for home at 11 in the night, on which I stated that he had not reached home, and I sat in the shop waiting for my husband. At about 7½ O'clock, he came to the shop. I asked my husband where he had gone, on which he said that who was she to ask. On this, he started beating her in the bazaar. My husband then made me sit on the scooter of Vinay Verma. I deboarded the scooter near the shop of Shoko uncle (Tau) and then went to my house on foot. Due to the maltreatment by my husband, after going into the kitchen of the house, I poured kerosene oil from a can on my body. On this, both my sons went out to call their father. In the meantime, I set myself on fire with the help of a matchstick and came to the verandah. By then, my husband and both my sons reached home. My both sons ran towards the kitchen and brought a bucket of water and poured the same on me, because of which the fire was extinguished. Due to fire my entire body has burnt. Thereafter, I fell down the verandah and thereafter my husband and my elder son took me in car of Kamal to Pathankot Hospital. This incident I have done due to maltreatment of my husband."

8. At this juncture, it be observed that prosecution has tried to establish its case of cruelty and abetment to suicide, on the basis of (a) dying declaration (Ex.PW-2/A), (b) previous complaint of the deceased, dated 11.11.2008 (Ex.PW-8/B), (c) ocular version of father Karam Chand (PW-2), mother Preeto Devi (PW-3), independent witness Narinder Kumar (PW-4), witness to the dying declaration, Dr. Avinish Kumar (PW-6), and Vinay Verma (PW-14), witness to what transpired immediately prior to the

deceased taking the unfortunate and drastic step of setting herself on fire.

9. In the instant case, deceased was just 34 years of age. In the morning of 24.1.2009, she set herself on fire. She was admitted in the hospital at about 11.20 a.m. Dying declaration (Ex.PW-2/A) was recorded in the hospital on 24.1.2009.

10. Inspector Prakash Chand (PW-12), on receiving information, reached the hospital and moved an application dated 24.1.2009 (Ex.PW-12/A) for recording statement of the deceased. From his unrebutted testimony, it is evidently clear that at about 5 p.m., victim was certified fit to give her statement and pursuant thereto it was so recorded and her thumb impression appended thereupon. Investigating Officer is categorical that statement was recorded in the presence of two independent witnesses, as also parents of the deceased.

11. What stands stated in the dying declaration, we have already referred to supra.

12. It is true that in his testimony, Dr. Avinash Kumar (PW-6) does not refer to the dying declaration. But crucially he does state, which version, we do not find to be incorrect or false, that "*The patient was admitted by her*

husband and she was giving a alleged history of suicidal burns by pouring kerosene oil on her body after she had an argument with her husband". Thus, one fact is clear that on the fateful day, argument had taken place between the deceased and her husband.

13. At this point in time, we may also take note of the testimony of Vinay Verma (PW-14), who uncontrovertedly states that in the morning of 24.1.2009, when he came to his shop, he saw the accused standing outside and the deceased lying on the road. Accused was asking the deceased to go home. Further on the asking of the accused, he lifted the deceased and took her to his shop, where she sat for few minutes, but left for her house. Lateron at about 9.30 a.m., he saw flames of fire coming from the house of the accused. Both he and the accused ran to the spot, where he saw son of the accused running out of the house. Thereafter, both of them went inside the house and after few minutes accused took the deceased, who was suffering from burn injuries, to the hospital. From his statement also it is evidently clear that all was not well between the accused and the deceased. Significantly it is not a case of murder and there is no complicity of any one of the children of the accused in the crime.

14. We may also take note of the fact that on 11.11.2008, which is just two months prior to the incident, deceased had lodged a complaint (Ex.PW-8/B) with the Women Police Cell, Dharamshala, District Kangra, but was subsequently not pressed. On 5.12.2008, she had sent a written application (Ex.PW-8/C) that she was not interested to carry on with the proceedings.

15. Now, all this reveals that notwithstanding the fact that parties were married for more than 18 years and that deceased was working as an Anganwari Worker, all was not well between the parties.

16. Here, we may also observe that from the testimony of Karam Chand (PW-2) and Preeto Devi (PW-3), parents of the deceased, it is quite evident, in fact stands established, that a sum of ₹5,00,000/- stood paid to the accused. Though suggestion of denial has been put to these witnesses, but one fact, which remains uncontroverted, as has come in the testimony of Karam Chand, is that in the morning of the unfortunate incident, accused had given beatings to the deceased outside his shop. Significantly, shops of Vinay Verma and that of accused are nearby, so also the house of the accused. Vinay Kumar does not state that relationship between the

accused and the deceased were cordial. He also does not state that nothing happened between the accused and the deceased. In fact, from his unrebutted testimony, it is clear that in front of the shop, deceased was lying on the road and that accused had asked him to take her away.

17. It is in this backdrop, we are of the considered view that contents of the dying declaration cannot be ignored.

18. Let us first examine the law on the issue.

19. It is a settled principle of law that dying declaration is just a piece of evidence and is to be treated like any other evidence.

20. Dying declaration can be made any time, in the presence of anyone. It need not to be a Doctor, a Government Officer or an Executive Magistrate. So long as the victim is aware and fully conscious of what is being done and said, any statement made by her can be treated as a piece of evidence, it being a different matter, as to whether it requires corroboration or not. [*Munnu Raja and another v. The State of Madhya Pradesh,* (1976) 3 SCC 104; *Ramawati Devi v. State of Bihar,* (1983) 1 SCC 211, *Sohan Lal alias Sohan Singh and others vs. State of Punjab,* (2003) 11 SCC 534, *State of Karnataka vs. Shariff,* (2003) 2 SCC

473, *Dayal Singh vs. State of Maharashtra,* (2007) 12 SCC 452 and *Kanti Lal vs. State of Rajasthan,* (2009) 12 SCC 498 and *Gulam Hussain and another vs. State of Delhi,* (2000) 7 SCC 254].

21. In *Jaishree Anant Khandekar vs. State of Maharashtra,* (2009) 11 SCC 647, a comparative study of laws of various countries on the point of dying declaration was done by the Apex Court. It was held that:

> "17. The law relating to dying declaration is an exception to the hearsay rule. The rationale behind admissibility of a dying declaration was best expressed, not in any judgment, but in one of the soliloquies in Shakespeare's King John, when fatally wounded Melun wails:
>
> 'Have I met hideous
> death within my view,
> Retaining but a quantity of life,
> Which bleeds away
> even as a form of wax,
> Resolveth from his figure
> 'gainst the fire?
> What in the world should
> make me now deceive,
> Since I must lose the use of all
> deceit?
> Why should I then be false
> since it is true
> That I must die here
> and live hence by truth?'
> (See King John, Act V, Scene IV.)
>
> 18. Both Taylor and Wigmore in their treatise on Evidence took refuge to the magic of Shakespeare to illustrate the principles behind admissibility of dying declaration by quoting the above passage.

19. Among the judicial fraternity this has been best expressed, possibly by Lord Chief Justice Baron Eyre (See. R. Vs. Woodcock, (1789) 1 Lea.502, and which I quote (ER p.353): -

> "...That such declarations are 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 mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation, equal to that which is imposed by a positive oath in a court of justice."

20. The test of admissibility of dying declaration is stricter in English Law than in Indian Law. Sir James Fitzjames Stephen in 1876 brought out a 'Digest of the Law of Evidence' and its introduction is of considerable interest even today. The author wrote that English Code of Evidence is modelled on the Indian Evidence Act of 1872. In the words of the author:

> "In the autumn of 1872 Lord Coleridge (then Attorney General) employed me to draw a similar code for England. I did so in the course of the winter, and we settled it in frequent consultations. It was ready to be introduced early in the Session of 1873. Lord Coleridge made various attempts to bring it forward, but he could not succeed till the very last day of the Session. He said a few words on the subject on the 5th August, 1873, just before Parliament was prorogued. The Bill was thus never made public, though I believe it was ordered to be printed.

It was drawn on the model of the Indian Evidence Act and contained a complete system of law upon the subject of evidence."

21. In that book, Article 26 sums up the English law relating to dying declaration as under:-

"Article 26. Dying Declaration as to Cause of Death . - A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is deemed to be relevant only in trials for the murder or manslaughter of the declarant; and only *when the declarant is shown, to the satisfaction of the judge, to have been in actual danger of death, and to have given up all hope of recovery at the time when his declaration was made.*

Such a declaration is not irrelevant merely because it was intended to be made as a deposition before a magistrate, but is irregular."

(emphasis supplied)

22. In Section 32(1) of the Indian Evidence Act the underlined portion is not there. Instead Section 32 (1) is worded differently and which is set out:

"32. Cases in which statement of relevant fact *by person who is dead or cannot be found, etc., is relevant - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:-*

> *(1) When it relates to cause of death - When the statement is made by a person as to the cause of his death, or to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.*
>
> *Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be he nature of the proceeding in which the cause of his death comes into question." (emphasis supplied)*

23. The Privy Council in the case of Nembhard Vs. The Queen, 1982 (1) The All England Law Reports 183 (Privy Council), while hearing an appeal from the Court of Appeal of Jamaica, made a comparison of the English Law and Indian Law by referring to the underlined portions of Section 32(1) of the Indian Evidence Act at page 187 of the report. Sir Owen Woodhouse, speaking for the Privy Council, pointed out the different statutory dispensation in Indian Law prescribing a test of admissibility of dying declaration which is distinct from a common law test in English Law.

24. Apart from an implicit faith in the intrinsic truthfulness of human character at the dying moments of one's life, admissibility of dying declaration is also based on the doctrine of necessity. In many cases victim is the only eye witness to a crime on him/her and in such situations exclusion of the dying declaration, on hearsay principle, would tend to defeat the ends of justice. American Law on dying declaration also proceeds on the twin postulates of certainty of death leading to an intrinsic faith in truthfulness of human character and the necessity principle.

25. On certainty of death, the same strict test of English Law has been applied in American Jurisprudence. The test has been variously expressed as ‘no hope of recovery', ‘a settled expectation of death'. The core concept is that the expectation of death

must be absolute and not susceptible to doubts and there should be no chance of operation of worldly motives. (See Wigmore on Evidence page 233-234).

26. This Court in Kishan Lal Vs. State of Rajasthan, AIR 1999 SC 3062, held that under English Law the credence and the relevance of the dying declaration is admissible only when the person making such statement is in hopeless condition and expecting imminent death. Justice Willes coined it as a "settled hopeless expectation of death" (R Vs. Peel, (1860) 2 F. & F. 21, which was approved by the Court of Criminal Appeal in R Vs. Perry, (1909) 2 KB 697). Under our Law, the declaration is relevant even if it is made by a person, who may or may not be under expectation of death, at the time of declaration. (See para 18,page 3066). However, the declaration must relate to any of the circumstances of the transaction which resulted in his death."

22. The apex Court in *Tapinder Singh vs. State of Punjab & another,* AIR 1970 S.C. 1566 has held that if the dying declaration is acceptable as truthful then even in the absence of other corroborative evidence, the Court can act upon it and convict the accused.

23. In *Khushal Rao vs. State of Bombay,* AIR 1958 SC 22, the Apex Court has further held that:-

"Sometimes, attempts have been made to equate a dying declaration with the evidence of an accomplice or the evidence furnished by a confession as against the maker, if it is retracted, and as against others, even though not retracted. But in our opinion, it is not right in principle to do so. Though under S. 133 of the Evidence Act, it is not illegal to convict a person on the uncorroborated testimony of an accomplice, illustration (b) to S. 114 of the Act, lays down as a rule of produce based on experience, that an

accomplice is unworthy of credit unless his evidence is corroborated in material particulars and this has now been accepted as a rule of law. The same cannot be said of a dying declaration because a dying declaration may not, unlike a confession, or the testimony of an approver, come from a tainted source. If a dying declaration has *been made by a person whose antecedents are as doubtful as in the other cases that may be a ground for looking upon it with suspicion, but generally speaking, the maker of a dying declaration cannot be tarnished with the same brush as the maker of a confession or an approver*."

"*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; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made*; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence that other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as for as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the lying man for observation, for example, whether there was sufficient light if the crime was committed at night; *whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and*

> *that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties*."
>
> "In order to pass the test of reliability, a dying declaration has to be *subjected to a very close scrutiny*, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. *If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then without corroboration it cannot form the basis of a conviction*. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that particular dying declaration was not free from the infirmities."
>
> (Emphasis supplied)

24. The aforesaid decision came up for consideration before the Constitution Bench of the Apex Court in *Harbans Singh and another vs. The State of Punjab,* AIR 1962 SC 439 and after taking into account its earlier decision in *Ram Nath vs. State of Madhya Pradesh,* AIR 1953 SC 420**,** affirmed the aforesaid view.

25. In *Paniben (Smt.) vs. State of Gujarat,* (1992) 2 SCC 474, the Court has further reiterated and laid down the following principles:-

"A dying declaration is entitled to great weight. 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."

> "However, since the accused has no power of cross-examination, which is essential for eliciting the truth, 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, 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 assailants. 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 has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail".

> "Merely because a dying declaration does not contain the details as to occurrence, it is not to be rejected. Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. But a dying declaration which suffers from infirmity cannot form the basis of conviction. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon."

> "(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Mannu Raja v. State of U.P. (1976) 2 SCR 764) (AIR 1976 SC 2199).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).

(iii) This 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 opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of Madhya Pradesh, (1974) 4 SCC 264 : (AIR 1974 SC 332).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., AIR 1982 SC 1021).

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P., 1981 SCC (Crl) 581).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).

(viii) Equally, merely because it is a brief statement it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza 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 eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State, 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. (State of U.P. v. Madan Mohan, AIR 1989 SC 1519).
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> 19. In the light of the above principles, we will consider the three dying declarations in the instant case and we will ascertain the truth with reference to all dying declarations made by the deceased Bai Kanta. This Court in Mohan Lal v. State of Maharashtra, AIR 1982 SC 839 held:
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> "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 declarations could be held to be trust-worthy and reliable, they have to be accepted."

26. In *Jayabalan vs. Union Territory of Pondicherry,* (2010) 1 SCC 199, the Apex Court was dealing with the case of an accused who after pouring kerosene oil had set his wife on fire. The husband was held guilty of having committed an offence punishable under Section 302, IPC. The accused assailed the findings of conviction on the ground that prosecution had examined only interested witnesses and also dying declaration was tutored, promoted and product of the imagination of deceased. In the proven

facts of that case repelling the contention, it was held as under:-

> "We are of the considered view that in case where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."
>
> (Emphasis supplied)

27. In *Krishan vs. State of Haryana,* (2013) 3 SCC 280, even where the witnesses had turned hostile, solely on the basis of dying declaration, the Court convicted the accused.

28. There can be more than one dying declarations and if there is no inconsistency between them, all can be used against the accused for proving the guilt. [*State of Karnataka vs. Shariff,* (2003) 2 SCC 473 and (1982) 1 SCC 700, *Mohanlal Gangaram Gehani vs. State of Maharashtra,* (1982) 1 SCC 700].

29. This view further stands reiterated *in Jaishree Anant Khandekar vs. State of Maharashtra*, (2009) 11 SCC 647, where the Apex Court was dealing with five dying

declarations, which were found not to be in variance with each other.

30. Further in *Puran Chand vs. State of Haryana*, (2010) 6 SCC 566, Apex Court has again summarized its view in the following terms:-

> "The Courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in replying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. When there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocuous dying declarations have to be rejected. Such a trend will be extremely dangerous. However, the courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests. The court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. The courts must bear in mind that each criminal trial is an individual aspect. If after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it a basis of conviction, even if there is no corroboration.
>
> (Emphasis supplied)"

31. However, where there is variation in the dying declaration (two in question), the Apex Court has held any conviction to be bad in law. [*Dandu Lakshmi Reddy vs. State of A.P.* (1999) 7 SCC 69 and *Sanjay vs. State of Maharashtra*, (2007) 9 SCC 148].

32. Further, where the prosecution version differs from the statement of deceased, dying declaration cannot be used for convicting the accused [*Paniben (supra)* and *State of Rajasthan v. Shravan Ram and another,* (2013) 12 SCC 255].

33. The aforesaid view has been reiterated in Jai *Karan vs. State of Delhi (MCT)*, (1999) 8 SCC 161, *Sham Shankar Kankaria vs. State of Maharashtra*, (2006) 13 SCC 165 and *Mohammed Asif vs. State of Uttaranchal,* (2009) 11 SCC 497.

34. The Constitutional Bench of the Apex Court in *Laxman vs. State of Maharashtra,* (2002) 6 SCC 710, while considering the conflict in *Paparambaka Rosamma vs. State of A.P.* (1999) 7 SCC 695 and *Koli Chunilal Savji vs. State of Gujarat,* (1999) 9 SCC 562, came to the conclusion that law laid down in the latter was the correct law and simply because the Doctor has not recorded/made endorsement that the deceased was in a fit state of mind to make the

statement in question, other material on record to indicate that the deceased was fully conscious and capable of making statement cannot be ignored. This view has been reiterated in *Ravi and another vs. State of T.N.* (2004) 10 SCC 776; and *Kamalavva and another vs. State of Karnataka,* (2009) 13 SCC 614.

35. In *Shaik Nagoor vs. State of Andhra Pradesh represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad,* (2008) 15 SCC 471, the Apex Court held that where the Judicial Magistrate and the Police officer had given detailed description and the witnesses were not cross-examined on the point of fitness of the deceased, plea taken by the accused that the deceased was not fit to make the statement in the given circumstances was untenable.

36. In *Sukanti Moharana vs. State of Orissa,* (2009) 9 SCC 163, the Court was dealing with a case where the dying declaration was challenged on the ground that it did not contain thumb impression or signatures of the deceased. The challenge was repelled on the ground that medical evidence proved that the deceased was having 90% burn injuries on the thumb and therefore was in no position to sign the dying declaration. The Apex Court

further reiterated its decision in Nallapati Sivaiah vs. SDO, (2007) 15 SCC 465, in the following terms:-

> "18. ...This Court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion."

37. The apex Court in *Lakhan vs. State of Madhya Pradesh,* (2010) 8 SCC 514 had an occasion to deal with two contradictory dying declarations made by the deceased. Finding the first one to have been recorded in presence of the close relatives of the accused, even though by an Executive Magistrate, the Court by ignoring the same, relied jupon the second dying declaration recorded by the police officer in holding the accused guilty of the crime charged for.

38. Dying declaration need not be in the form of question and answer. Principles required to be adopted for recording the statement of deceased stand reiterated in *Ram Bihari Yadav Vs. State of Bihar and others,* (1998) 4 SCC 517, *State of Karnataka vs. Shariff* (2003) 2 SCC 473 and *K.Ramachandra Reddy and another vs. The Public prosecutor,* (1976) 3 SCC 618.

39. The apex Court in *Dandu Lakshmi Reddy vs. State of A.P.,* (1999) 7 SCC 69 has held that when the sphere of scrutiny of the dying declaration is a restricted area, the Court cannot afford to sideline such a material divergence relating to this very occasion of the crime.

40. In *Mohan Lal and others vs. State of Haryana* (2007) 9 SCC 151, the Court disbelieved the statement made by the wife of the accused on the ground that not only it was vague but also there was no contemporaneous documentary or other material to prove dowry demands prior to the incident.

41. In *Maiben D/o Danabhai Tulshibai Maheria vs. State of Gujarat,* (2007) 10 SCC 362, the Court was dealing with a case where death took place 25 days subsequent to the recording of the statement of the deceased, yet the same was taken to be a dying declaration.

42. In *Ramakant Mishra @ Lalu & others vs. State of Uttar Pradesh,* (2015) 8 SCC 299 the Court cautioned the prosecution to establish that every step for recording the dying declaration must be diligently complied with including alerting the Jurisdictional Magistrate of the occurrence of the incident.

43. The question, which arises for consideration, is as to whether the dying declaration is believable or not.

44. No doubt, the doctor has not deposed anything with regard to fitness of the witness, but then from the testimony of Inspector Parkash Chand, it is clear that despite burn injuries, deceased was able to speak and her statement recorded by the police.

45. It be only observed that after reaching the hospital, Inspector Parkash Chand, moved an application for recording statement of the deceased. At 4 p.m., the victim was found not fit, but lateron at 5 p.m., she was declared fit and accordingly statement (Ex.PW-2/A) recorded and the deceased put her thumb impression. Now, on this issue, defence taken by the accused, as is apparent from the cross-examination part of the testimonies, is twofold – (a) that application (Ex.PW-12/A) was prepared in "connivance" with the doctor, (b) it was written when both the father and the mother of the deceased were present.

46. Parents Karam Chand and Preeto Devi are also categorical in their deposition of the deceased having made statement (Ex.PW-2/A) to the police in their presence. They are signatories to the document. Also, one finds even Narinder Kumar (PW-4), so associated by the police during

investigation, to have corroborated such version. He clarifies that it was police and not the mother of the deceased, who was putting the questions. In his unrebutted testimony he states that "*Usha had said that accused was beating her on account of dowry. She had also told that accused had been demanding money. Usha had also told that accused was having illicit relations with some other lady. Usha had not stated anything about her suspicion*".

47. Thus, in our considered view, prosecution has been able to establish the factum of the deceased having made statement (Ex.PW-2/A).

48. At this juncture, we may also take note of certain contradictions pointed out by the learned counsel for the accused, which, according to him render the factum of dying declaration to be doubtful. Karam Chand states that the deceased was in pains and not in a position to say anyting and that at the time of recording of statement (Ex.PW-2/A) he was outside the room. No doubt, the document records his presence, but then this fact alone, in our considered view, is not sufficient enough to either impeach credit of the witnesses or render the dying declaration to be false. One cannot forget that this witness is a rustic villager and his statement came to be recorded in

Court after a period of seven months. The contradiction, minor in nature, in our considered view, needs to be ignored. Also, Preeto Devi has explained that her husband was suffering from heart problem. Significantly it is not the suggested case that the parents exercised undue influence or pressurized the deceased to make the statement.

49. Learned counsel for the accused also invites our attention to the previous complaint (Ex.PW-8/B), only to highlight that previously allegations were made not against the husband but the in-laws. Even this would not make any difference, for one thing is clear that in the morning of the unfortunate incident, accused had fought and given beatings to the deceased, for why else would the accused allow his wife to lie on the road and ask his neighbour to pick and drop her home.

50. Next, it is contended that prosecution concealed and suppressed relevant information. They ought to have associated sons of the accused, who would have thrown light on what really transpired in the morning. Well prosecution witnesses have already established such fact. Equally, it was open for the accused to have adduced evidence in support of his defence.

51. Significantly, all these witnesses have withstood the test of cross-examination, establishing authenticity and genuineness of the dying declaration.

52. Still further, Mr. Rajesh Mandhotra, learned counsel for the accused, submits that dying declaration is nothing but a waste paper and requires corroboration. Well, we are unable to persuade ourselves to accept such a contention. Dying declaration stands corroborated by the witnesses, so also its contents and as we notice, allegations of the accused having illicit relationship with another lady, which apparently was the reason for the fight stands duly corroborated from the unrebutted testimony of Preeto Devi who states that *"it is correct that my daughter was suspicious that accused was having relations with some other lady. Self-stated that on two occasions my daughter had brought back accused from the company of that lady".*

53. Thus, in our considered view, trial Court erred in concluding that the dying declaration was not voluntary in nature and that testimonies of relatives and the co-villagers were uninspiring in confidence. Trial Court ventured into the realm of conjecturing, by holding the deceased to be of "hypersensitive nature unable to bear extreme pressures of day-to-day life". The Court below got swayed with the

conduct of the accused, who undoubtedly took steps for extinguishing the fire and taking the deceased to the hospital, but then these facts relate to post incident, for it has come on record that soon before the deceased set herself on fire, accused had subjected her to cruelty, prompting her to take away her life.

54. "Cruelty" for the purpose of the crime in question would mean, willful conduct of the accused, which is of such a nature as is likely to drive the deceased to commit suicide or harassment with a view to coerce her to meet any unlawful demand of property or valuable security. Also, harassment on account of failure to meet such demand would also amount to cruelty. Also, for proving the charge of abetment to suicide, it has to be proved that the accused treated the deceased with cruelty and drove her to commit suicide.

55. In *Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618,* the Apex Court has also held that "Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under section 498-A and may also, if a course of conduct, amounting to

cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned."

56. In *State of West Bengal Vs. Orilal Jaiswal (1994) 1 SCC 73*, the Apex Court has held as under:

> "In a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of S. 498A, I.P.C and S. 113A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

> The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law."
>
> (Emphasis supplied)

57. The Apex Court further cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused

charged of abetting the offence of suicide should be found guilty.

58. In *Arun Vyas & anr. Vs. Anita Vyas (1999) 4 SCC 690*, the Apex Court has held that the essence of offence in Section 498-A is cruelty. It is a continuing offence and on each occasion on which the wife is subjected to cruelty, she would have a new starting point of limitation.

59. In Kundula *Bala Subrahmanyam and Anr. Vs. State of Andhra Pradesh (1993) 2 SCC 684*, the Apex Court has held as under:-

> "The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacune in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women."

60. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of

sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not. [*Mohd. Hoshan A.P. & Anrs. Vs. State of A.P. (2002) 7 SCC 414*].

61. In State *of A.P. Vs. M. Madhusudhan Rao (2008) 15 SCC 582*, the Apex Court has held as under:

> "It is plain that as per clause (b) of the Explanation, which, according to learned counsel for the State, is attracted in the instant case, every harassment does not amount to "cruelty" within the meaning of Section 498-A I.P.C. The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In other words, for the purpose of Section 498-A I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable under Section 498-A I.P.C."

62. In *Balram Prasad Agrawal Vs. State of Bihar & Ors. (1997) 9 SCC 338*, the Apex Court has held cruelty to mean torture to be so unbearable in the common course of human conduct that a young lady having commitments to life could take a drastic steps to end her life leaving behind her infant children in the lurch and at the mercy of the accused husband who was found to be in contemplation of remarrying.

63. In *Arvind Singh Vs. State of Bihar (2001) 6 SCC 407*, the Apex Court has held as under:-

> "The word 'cruelty' in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent in Section 498-A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. The same would be within the meaning of the section. Torture is a question of fact. There must be a proper effort to prove it."

64. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The accused must by his acts or omission or by a continued course of conduct create such circumstances that the deceased is left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. [*Ramesh Kumar vs. State of Chhatisgarh, (2001) 9 SCC 618*]

65. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case. [*Gananath Pattnaik vs. State of Orissa, (2002) 2 SCC 619*]

66. The Apex Court in *Naresh Kumar v. State of Haryana and others,* (2015) 1 SCC 797, has observed that “as regards the claim for parity of the case of the Appellant with his mother and brother who have been acquitted, the High Court has rightly found his case to be distinguishable from the case of his mother and brother. The husband is not only primarily responsible for safety of his wife, he is expected to be conversant with her state of mind more than any other relative. If the wife commits suicide by setting herself on fire, proceeded by dissatisfaction of the husband and his family from the dowry, the interference of harassment against the husband may be patent. Responsibility of the husband towards his wife is qualitatively different and higher as against his other relatives”.

67. *With* regard to dowry death, the Apex Court in *Baljinder Kaur v. State of Punjab*, (2015) 2 SCC 629, held that:

> "21. In our view, there is force in the submission of the learned counsel for the appellant. In cases related to dowry death, the circumstances showing the cruelty or harassment are not restricted to a particular instance, but normally refer to a course of conduct. Such conduct of cruelty or dowry harassment must be "soon before death". There should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her."

68. The Apex Court in *Rajinder Singh v. State of Punjab,* (2015) 6 SCC 477, in the following words, explained the meaning of "dowry", as under:

> "8. A perusal of this Section shows that this definition can be broken into six distinct parts:
>
> (1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.
>
> (2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.
>
> (3) Such property or security can be given or agreed to be given either directly or indirectly.
>
> (4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach

> of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.
>
> (5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.
>
> (6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".”

69. In the very same decision, after examining the intent of the Legislators for enacting the special enactment, by applying the principle of “force and life”, the Court held that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Also, that the word “soon” would not mean immediate and each case had to be judged on the given facts. There has to be proximity and link between the impact of dowry demand and the consequential death and there cannot be any straitjacket

formula for determining such factor. "Soon before" was held not to be synonymous with "immediately before".

70. The guilt or innocence of the accused has to be deduced from the material on record. And, what is required to be kept in mind by the court, while appreciating the evidence, stands reiterated by the Apex Court in *Bhim Singh and another v. State of Uttarakhand,* (2015) 4 SCC 281, as under:

> "22. In the present case, the guilt or innocence of the accused has to be adduced from the circumstantial evidence. The law regarding circumstantial evidence is more or less well settled. This Court in a plethora of judgments has held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. *Gurpreet Singh v. State of Haryana*, (2002) 8 SCC 18 is one of such cases. On the question of any reasonable hypothesis, this Court has held that if some of the circumstances in the chain can be explained by any other reasonable hypothesis, then the accused is entitled to benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The Court considers ordinary human probabilities."

71. From the material placed on record, it stands established by the prosecution witnesses that the accused is guilty of having committed the offence charged for. There is sufficient, convincing, cogent and reliable evidence on record to this effect. The circumstances stand

conclusively proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused stands proved beyond reasonable doubt to the hilt. The chain of events stand conclusively established and lead only to one conclusion, i.e. guilt of the accused. It cannot be said that accused is innocent or not guilty or that he has been falsely implicated or that his defence is probable or that the evidence led by the prosecution is inconsistent, unreliable, untrustworthy and unbelievable. It cannot be said that the version narrated by the witnesses in Court is in a parrot-like manner and hence is to be disbelieved.

72. Hence, in our considered view, prosecution has been able to establish the guilt of the accused, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence.

73. Thus, the findings returned by the trial Court cannot be said to be based on correct and complete appreciation of material on record, which are reversed. The appeal is allowed and we hold the accused guilty and convict him for having committed offences, punishable under the provisions Sections 498-A & 306 of the Indian Penal Code, for causing cruelty to the deceased and thereby abetted her co commit suicide.

74. Bail bonds furnished by the accused-convict stand cancelled. For the purpose of hearing him on the quantum of sentence, the appeal be listed on 13.11.2017. He be produced in the Court on the said date. Copy of the judgment be supplied to the accused, free of cost.

Appeal stands disposed of, so also pending application(s), if any.

(Sanjay Karol),
Acting Chief Justice.

October 27, 2017(sd)

(Ajay Mohan Goel),
Judge.