

(2019) 02 DEL CK 0332

In the Delhi High Court

Case No : Criminal Appeal No. 385 Of 2016

Anzar Ali Alias Saddam

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304B, 498A
Dowry Prohibition Act, 1961 — Section 2, 4
Code of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106, 113B, 114

Citation : (2019) 02 DEL CK 0332

Hon'ble Judges : Siddharth Mridul, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : M.M. Kashyap, Radhika Kolluru

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

1. The present appeal is directed against the judgment dated 07.12.2015 and order on sentence dated 18.12.2015 passed by the learned District & Sessions Judge, North-East, District Karkardooma Courts, Delhi, in Sessions case No. 78/2012 in FIR No. 156/2012 under Sections 302/498-A/304-B of the Indian Penal Code (hereinafter referred to as 'IPC') registered at Police Station Seelampur, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for life and further sentenced him to pay a fine of Rs.45,000/- for the offence punishable under Section 302 of Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for a period of three months.

The appellant was further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- for the offence punishable under Section 498-A IPC and in default of payment of fine to further undergo simple imprisonment for a period of three months.

2. Brief facts of the case are as under:-

(i) That the appellant and the deceased (Ms. Shaina Praveen) got married on 13.12.2009 and thereafter both of them were residing on the First Floor of H.No. E-16 B-38, K Block, Seelampur, Delhi. The appellant and the deceased were having a normal/peaceful marital life for about 4 to 5 months, but thereafter the appellant and his father Azad Ali started raising frequent demands of dowry. Consequent to which, the deceased was exposed to physical and mental assault from her husband and in-laws because the family of the deceased were not able to fulfill the said demands. It was discovered that the appellant was having an affair with a girl named Asma, contrary to which the parents of Ms. Shaina Praveen initiated every way in harmonizing their daughter's relationship with her husband and her in-laws, but the relation remained stinging

(ii) That the deceased had stayed at her parent's house for about 1 to 1½ months and was accordingly taken back to her matrimonial house before 30.04.2012 (after 4/5 months) on the surety and declaration that she will not be subjected to harassment and cruelty from her husband and in-laws.

(iii) On 30.04.2012 at about 5 pm, the appellant assaulted Ms. Shaina Praveen and asked her to bring a sum of Rs. 5000/- from her parents. Being refused to bring the desired amount, appellant got annoyed and picked a bottle of kerosene oil, poured it over his wife and set her on fire.

(iv) On the following circumstances DD. No. 35A was registered at Police Station Seelampur and the injured was accordingly admitted in GTB Hospital with 45% burn injuries. The statement of the victim was recorded in the hospital, by SDM Sh. Radha Charam and based on her statement FIR No. 156/2012 was registered under Section 307/498A IPC and Section 4 of the Dowry Prohibition Act, 1961. Further, DD No. 23A was registered on 10.05.2012 with regard to the death of Ms. Shaina Praveen and the post-mortem report was concluded with the fact that the death is caused due to septicemic shock as a result of infection ante mortem flame burns involving about 45% of the total body surface area.

(v) On the completion of the investigation, charge sheet was filed for the offences punishable under Section 302/304B/498A IPC and Charges were framed under Sections 302/304-B/498A of the Indian Penal Code.

3. To bring home the guilt of the accused the prosecution examined 18 witnesses in all. Statement of the accused was recorded under Section 313 of Code of Criminal Procedure wherein he claimed innocence and stated that he has been falsely implicated in the present case and examined 3 witnesses in his defense.

4. Mr. M.M. Kashyap learned counsel for the appellant, opened his submissions by contending that the impugned judgment dated 07.12.2015 is based on conjectures and surmises and the same is against the facts and the settled proposition of law; that the learned Trial Court has ignored and omitted the material evidences and has disregarded the cogent evidences in favour of the

appellant; that the learned Trial Court has failed to appreciate the basic matter in dispute, that how come the appellant has been categorized as the actual perpetrator of the crime as there was no existing disagreement between the deceased and the appellant; that the defence witnesses i.e. DW-2 Khalid has specifically stated that the deceased had caught the fire from the flames of the stove and the husband of the deceased had himself poured water over her; that DW-3 Chhote has further stated that there was no present dispute in the family and they were living happily in peace, therefore it is sustained that the appellant was not having any dispute with the deceased and there was no inveterate motive for the appellant to commit the alleged offence.

5. Learned counsel for the appellant laboured hard to contend that the learned trial court erred in convicting the appellant on the basis of the testimony recorded by the SDM, Ex. PW-1/A dated 30.04.2012. He further submitted that at the time of recording of the statement of the deceased, no medical fitness certificate has been obtained by SDM from the concerned Doctor; hence the deposition recorded by the SDM is of no relevance. Learned counsel for the appellant further submitted that there are various contradictions and variations in her two statements i.e. statement dated 30.04.2012 recorded by the SDM (Ex. PW-1/A) and statement dated 03.05.2012 recorded by SI Mukesh Kumar (Ex.PW13-F) hence her statements are unreliable.

6. Learned counsel for the appellant further contended that the learned Trial Court has erred in relying on the testimonies of PW-2 and PW-6 because they are closely related to the deceased and are categorized as interested witnesses, hence their evidence cannot be exclusively relied on as trustworthy and reliable because there is a very strong possibility of the prosecution witnesses being tutored and influenced; that the medical evidence as well as the postmortem report does not establish the fact that the burn injuries were self-inflicted or were homicidal in nature; that the prosecution has to establish an unbroken chain of circumstances, which leads to only one conclusion, which is the guilt, and culpability of the accused person and the prosecution has miserably failed to prove the same; that since the prosecution has failed to prove its case, the impugned judgment is liable to be set aside.

7. Ms. Radhika Kolluru, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and submitted that the impugned judgment is based on proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.

8. Learned counsel for the State further contended that the evidence produced on record as well as the circumstances proved by the prosecution, formed a complete chain pointing unequivocally towards the guilt of the accused. Based on these submissions counsel for the State urged that this Court may not interfere

with the well-reasoned order passed by the learned Sessions Judge convicting the appellant for the alleged offence.

9. We have heard learned counsel for the parties and have also perused the material placed on record including the record of the Trial Court.

10. At the outset we deem it appropriate to examine the testimonies of material witnesses of the prosecution, more particularly the testimonies of PW2-Mohd. Yasin (father of deceased) and PW6-Mehrunisha (mother of deceased), who have categorically leveled allegations of cruelty and harassment, being committed upon their daughter Ms. Saina Praveen (deceased) by the appellant and his family members.

11. Mohd. Yasin, father of deceased stepped into the witness box as PW-2 and deposed that:

".... My daughter Saina Parveen was got married by me on 13.12.2009 to Saddam @ Anzar Ali and accused today present in court in this case is that person Anzar Ali. I had provided dowry to my daughter Saina in that marriage according to my capacity. The matrimonial life of Saina with accused Anzar went along normal for 4 to 5 months. Thereafter from the year 2010 accused and his father started demanding victim Saina to bring Rs. 5000/- or Rs. 10,000/- from her parents so that accused could begin some business. I tried to make them understand that I was not in a position to satisfy their demand and at that time accused Anzar Ali, his father Azad Ali, his uncle Wakeel and Smt. Kherunisha, mother of Anzar and Shehnaz, sister of Anzar were present.

Accused Anzar Ali then contacted a second marriage about two months after that talks of May, 2010 and that fact I came to know later on.

Somewhere in 2011 my daughter Saina suffered a serious head injury which had been caused in her matrimonial home and she had to be taken to GTB hospital and my wife went to GTB hospital to see and attend Saina. Saina used to be harassed and she used to call me and considering that consistent acts of cruelty and harassment being committed to Saina. I stopped even responding to calls of my daughter. All the in laws of Saina i.e., Azad Ali, Anzar Ali, Wakeel, Shehnaz and Kherunisha used to beat and harass my daughter after putting up a demand for money as Anzar Ali used to ask my daughter that he wanted to set up some machine and that demand for money was not being satisfied.

...After I got my daughter married to accused, father of accused contracted a second marriage with a lady Smt. Kherunisha. Thereafter problems increased as accused persons started putting up demands for money like Rs. 50,000/- so as to settle accused in business. I repeatedly used to take my daughter Saina to her matrimonial home so as to settle her there but every time Saina used to give me phone call that she was being given beatings.

Finally, before the death of Saina about four to five months before accused, his father and their other family members had taken Saina to her matrimonial home

from my house and on that occasion a writing was recorded, photocopy of this is mark X.

About 15-20 days or to say a month before death of Saina I visited my daughter in her matrimonial home and Saina told me that she was being harassed and committed cruelties by accused persons as they were demanding money as a dowry.

On 30.04.2012, at around 6.00 or 6.30 pm I received a phone call on my mobile phone and that call was made by Bahadur Ali and he told me that Saddam and his all other family members had set Saina on fire and he further informed me that Saina whether would survive or not. He further asked me to reach Shastri Park and I reached there but I could not find Saina there. Bahadur Ali then further told me to reach Mohan Nursing home and as I reached there, I did not find daughter there or any of the accused. He further told me to reach GTB Hospital and I reached there. There I found my daughter Saina admitted in hospital and I saw her in burn injuries condition. When I asked Saina as to how it had happened, she replied to me that accused persons had been asking for money Rs. 5000/- repeatedly from her and she declined to bring that money and that demand was being put by her husband and then by all other family members, all accused persons then set her on fire after putting kerosene oil on her. My statement was recorded by the I.O. On 11.05.2012, I identified dead body of my daughter in GTB hospital vide identification statement Ex.PW1/C.

12. Smt. Mehrunisha mother of the deceased was examined as PW-6 and deposed that:

"...For about 20-25 days my daughter Saina was kept well in her matrimonial home but thereafter accused Anzar ali husband, father in law Azad, mother in law Kherunisha and Shehnaz sister of Anzar Ali started harassing my daughter Saina Praveen for dowry. Saina Praveen conveyed and narrated that harassment to her to me. To resolve that issue of harassment to my daughter by accused, myself and my husband started visiting the matrimonial home of my daughter and we visited on a number of occasions. Father of accused Anzar Ali used to demand money so as to begin some business. Accused Anzar Ali used to demand vehicle a motorbike. Accused persons used to physically assault Saina Praveen when that demands were not being fulfilled. My husband had tried to fulfill demands of accused persons and he paid in occasions Rs.5000/- and on another occasion Rs. 10,000/- and on another occasion he paid Rs. 20,000/-. ...Accused persons still continued to ask for more dowry. On 28.04.2012 Saina Praveen was given a physical beating by accused in her matrimonial home and that fact was conveyed to us by a person Bahadur by phone call given on the mobile phone of my husband. Myself and my husband then reached the matrimonial home of my daughter that is house of accused Anzar Ali. Accused Anzar Ali, his father Azad Ali and his mother in law Kherunisha and his sister Shehnaz were present in the house. Saina was also there. We asked accused persons as to why they gave beating to our daughter Saina. Azad Ali replied that they wanted money.

On 30.04.2012 again a phone call was received from Bahadur on the mobile phone of my husband and information conveyed was that our daughter Saina has been set on fire. My husband immediately reached GTB hospital and there Saina was found admitted. I gave a call on the mobile of my husband and he told me that Saina was there in GTB hospital and he asked me to reach there and I also reached GTB hospital. I met my daughter Saina and Saina told me that her in laws had put her on fire after pouring kerosene oil on account of demand of dowry. Saina further told me that when she tried to rescue her accused persons closed the gate."

13. From the perusal of the testimonies, we find that PW-2, Mohd. Yasin (father of deceased) has deposed that after 4-5 months of the marriage the accused and his family members started raising dowry demands for setting up a business for the appellant. He further deposed that he had tried to build the relationship of understanding with them and had tried to explain his inability to fulfill their frequent dowry demands. He further deposed that 'Somewhere in 2011 my daughter Saina suffered a serious head injury which had been caused in her matrimonial home and she had to be taken to GTB hospital and my wife went to GTB hospital to see and attend Saina. Saina used to be harassed and she used to call me and considering that consistent acts of cruelty and harassment being committed to Saina. I stopped even responding to calls of my daughter. All the in laws of Saina i.e., Azad Ali, Anzar Ali, Wakeel, Shehnaz and Kherunisha used to beat and harass my daughter after putting up a demand for money as Anzar Ali used to ask my daughter that he wanted to set up some machine and that demand for money was not being satisfied'. He further deposed that after repeated persuasion, the deceased was taken back by her in-laws, after executing the declaration affidavit vide Ex. PX but despite the declaration when he had again visited the matrimonial house of Saina he came to know that 'she was being harassed and committed cruelties by accused persons as they were demanding money as dowry'. With regard to the incident dated 30.04.2012, PW-2, Mohd. Yasin (father of deceased) deposed that after reaching GTB hospital he met his daughter Saina and on being asked about the incident '..... she replied to me that accused persons had been asking for money Rs. 5000/- repeatedly from her and she declined to bring that money and that demand was being put by her husband and then by all other family members, all accused persons then set her on fire after putting kerosene oil on her.....'. PW-6, Mehrunisha (mother of the deceased) has deposed that 'accused Anzar ali husband, father in law Azad, mother in law Kherunisha and Shehnaz sister of Anzar Ali started harassing my daughter Saina Praveen for dowry' . She further deposed that Accused persons used to physically assault Saina Praveen when that demands were not being fulfilled. My husband had tried to fulfill demands of accused persons and he paid in occasions Rs.5000/- and on another occasion Rs. 10,000/- and on another occasion he paid Rs. 20,000/-. With regard to the incident dated 30.04.2012, PW-6, Mehrunisha (mother of the deceased) deposed that after reaching GTB hospital she met his daughter Saina and on being asked

about the incident 'Saina told me that her in laws had put her on fire after pouring kerosene oil on account of demand of dowry'.

14. A close scrutiny of the testimonies of PW-2, Mohd. Yasin (father of deceased) and PW-6, Mehrunisha (mother of the deceased) it is abundantly clear that the deceased was subject to cruelty on account of demand of dowry.

15. Further, as far as the stand taken by learned counsel for the appellant that PW-2 and PW-6 are interested witnesses and closely related to each other, a survey of the judicial pronouncements of the Hon'ble Apex Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinized and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Ref: Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju@Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Ganga bhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52).

16. In the present case nothing has been brought on record to prove that the evidence of PW-2 & PW-6 cannot be believed and relied upon or they have falsely implicated the appellant due to some personal vengeance or have been implicated in the present case at the instance of the prosecution. Therefore, aforesaid testimonies cannot be rejected on the mere ground of their relationship because the relationship by itself is not a sufficient ground to discard the evidence of the witnesses and specify it as inappropriate for credence and hence the argument of the counsel for the appellant with regard to interested witness and contradictions in the statements of prosecution witnesses hold no ground.

17. Further the Court, after going through the entire evidence must form an opinion about the credibility of the witnesses and otherwise also, in all criminal cases, normal discrepancies are bound to occur in the depositions of the witnesses due to normal errors of observation, namely, error of memory due to lapse of time or due to mental disposition such as shock and horror at the time of the incident. In case of Mritunjoy Biswas Vs. Pranab @ Kutu Biswas and Anr., reported at (2013) 12 SCC 796, the Apex Court held as under:

"28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the

test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defense can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See *Leela Ram vs. State of Haryana* and another, *Rammi alias Rameshwar v. State of M.P. and Shyamal Ghosh v. State of West Bengal*).

Dying declaration

18. Since the main thrust of the arguments of counsel for the appellant is that the statement recorded by the SDM is not trustworthy, we deem it appropriate to discuss the law with regard to the dying declaration. The Apex Court in the case of *Ramilaben Hasmukhbhai Khristi And Ors. V. State of Gujarat*, reported at AIR 2002 SC 2996 has held as under:

"Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of such a dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration."

19. The Apex Court in the case of *Shakuntala V. State of Haryana* reported at AIR 2007 SC 2709, has taken into consideration its various decisions and culled out the principles governing dying declarations. It would be useful to reproduce para 9 of the judgment:

"9. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid

down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben V. State of Gujarat: (AIR 1992 SC 1817) :

- i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. V. The State of Madhya Pradesh: (1976) 2 SCR 764)]
- ii. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh V. Ram Sagar Yadav & Ors.: AIR 1985 SC 416) and Ramavati Devi V. State of Bihar (AIR 1983 SC 1640)]
- iii. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. V. The Public Prosecutor: AIR 1976 SC 1994)].
- iv. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg V. State of Madhya Pradesh: 1974 (4) SCC 264)].
- v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See Kaka Singh V. State of M.P.: AIR 1982 SC 1021)]
- vi. A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. V. State of U.P.: 1981 (2) SCC 654)].
- vii. Merely because a dying declaration does contain the details as to the occurrence. It is not to be rejected. [See State of Maharashtra V. Krishnamurthi Laxmipati Naidu: AIR 1981 SC 617)]
- viii. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors. V. State of Bihar: AIR 1979 SC 1505)]
- ix. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. V. State of Madhya Pradesh: AIR 1988 SC 912)].
- x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. {See State of U.P.V. Madan Mohan and Ors.: AIR 1989 SC 1519)}
- xi. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying

declaration could be held to be trustworthy and reliable, it has to be accepted. {See Mohanlal Gangaram Gehani V. State of Maharashtra: AIR 1982 SC 839}}.

20. Learned counsel for the appellant laboured hard to contend that the learned trial court erred in convicting the appellant on the basis of the testimony recorded by the SDM, Ex. PW-1/A dated 30.04.2012. He further submitted that at the time of recording of the statement of the deceased, no medical fitness certificate has been obtained by SDM from the concerned Doctor; hence the deposition recorded by the SDM is of no relevance. Learned counsel for the appellant further submitted that there are various contradictions and variations in her two statements i.e. statement dated 30.04.2012 recorded by the SDM (Ex. PW-1/A) and statement dated 03.05.2012 recorded by SI Mukesh Kumar (Ex.PW13-F) hence her statements are unreliable.

21. In the present case, two statements of the deceased have been recorded i.e. statement dated 30.04.2012 recorded by the SDM (Ex. PW-1/A) and statement dated 03.05.2012 recorded by SI Mukesh Kumar (Ex.PW13-F). In the statement recorded by the SDM, Ex. PW-1/A dated 30.04.2012 the deceased deposed as under:-

".....Mere saath mar peat karte the. Mere pati mere saath mar peat karta the, Aasma naam ke ladki ke chakar mei. Shaam 5 baje cable ka taar cheel rahi thi. Mere pass paisi nahi the. Mujhse mere pati ne kaha, paanch hazaar rupey apne baap se lekar aao. Meine mana kar diya. Phir marne pitne lage kaha Paise lekar aa nahi tuo teri kahani katam kar dunga. Mere pati ne miti-ka-tel mere upar dala. Kamre mei tel ek shishi mei rakha tha. Vahi se lekar mere upar dala. Machis se mere pati ne aag laga di. Mei niche bhagi, to mohalle walon ne pani dal diya. Padosi he mujhe hospital lekar aaye. Unhone he mere maa-baap ko phone kiya. Vah bhi aspatal aa gaye."

The deceased vide her statement dated 03.05.2012, Ex.PW-13/F, deposed as under:

".....Dinank 30.04.2012 ko sayn ke samay.....anzar ali ne mujhse kahan ke apne ghar se paany hazaar rupey lekar aa. Meine mana kar diya, jo saddam kehne laga aaj teri kahani katam kar deta hun. Jo uss wakt mei rasoi ke darvage mei bathi thi. To sadam ne plastic ke bottel me rakha miti-ka-tel mere upar dal diya, jisse mere sare kapdo mei aag lag gaye. Jo phir usne neche se pani lakar, Pairo ke upar dal diya. Jo jab mohale/pados ke log ekatha hone par vah mujhe aspatal lekar aaye.Mere pati saddam ne paise na lane par maire upar miti ka tel dalkar aag lagai hai."

22. From the perusal of the above statements, we find that in both the statements, she has stated that she was subject to dowry demands and beatings by her husband. She further held her husband responsible, for pouring kerosene oil on her and setting her on blaze. There are some contradictions in the both the statements but these contradictions and variations in statements are ignorable as the deceased would not have been in a normal state of mind after the gruesome

incident and slight variation in statements are bound to occur, due to normal errors of observation, namely, error of memory due to lapse of time or due to mental disposition such as shock and horror at the time of the incident.

23. As far as contention of learned counsel for the appellant with regard to fitness of the deceased at the time of recording of statement is concerned, we deem it appropriate to rummage through the law in this regard.

24. In the case of *Paparambaka Rosamma v. State of A.P.*, reported at (1999) 7 SCC 695, the Apex Court has taken a view that since the certificate of the Doctor was not to the effect, that the patient was in a fit statement of mind to make the statement, the dying declaration cannot be accepted by the Court, to form the sole basis for conviction. Another three Judge Bench in the case of *Koli Chunilal Savji v. State of Gujarat*, reported at (1999) 9 SCC 562, has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased could not be ignored merely because the Doctor had not made the endorsement that the deceased was in a fit statement of mind to make the statement. Since the decisions in the aforesaid two matters were somewhat contrary, the matter was referred to the Constitution Bench. In the case of *Laxman v. State of Maharashtra*, reported at (2002) 6 Supreme Court Cases 710. Paras 3 and 5 read as under:

"3. The juristic 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 affect their truth. The situation in which a man is on the 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 courts 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 always to be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting 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. Normally, therefore, 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 eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of

communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjeet Kaur v. State of Punjab* case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in *Paparambika Rosamma and Ors. v. State of A.P.* (at SCC P. 701, para 8) to the effect that

"...in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this court in *Paparambika Rosamma and Ors. v. State of A.P.* must be held to be not correctly decided and we affirm the law laid down by this court in *Koli Chunilal Savji and Anr. v. State of Gujarat* case."

25. The aforesaid decision rendered by the Apex court in the case of *Laxman v.*

State of Maharashtra, reported at (2002) 6 Supreme Court Cases 710 was reiterated by the Apex Court in the case of State of Madhya Pradesh v. Dal Singh, (2013) 14 SCC 159 observing as under:-

"15. In *Laxman v. State of Maharashtra*, AIR 2002 SC 2973, this Court held, that a dying declaration can either be oral or in writing, and that any adequate method of communication, whether the use of words, signs or otherwise will suffice, provided that the indication is positive and definite. There is no requirement of law stating that a dying declaration must necessarily be made before a Magistrate, and when such statement is recorded by a Magistrate, there is no specified statutory form for such recording.

Consequently, the evidentiary value or weight that has to be attached to such a statement, necessarily depends on the facts and circumstances of each individual case. What is essentially required, is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind, and where the same is proved by the testimony of the Magistrate, to the extent that the declarant was in fact fit to make the statements, then even without examination by the doctor, the said declaration can be relied and acted upon, provided that the court ultimately holds the same to be voluntary and definite. Certification by a doctor is essentially a rule of caution, and therefore, the voluntary and truthful nature of the declaration can also be established otherwise.

16. In *KoliChunilalSavji v. State of Gujarat*, AIR 1999 SC 3695, this Court held, that the ultimate test is whether a dying declaration can be held to be truthfully and voluntarily given, and if before recording such dying declaration, the officer concerned has ensured that the declarant was in fact, in a fit condition to make the statement in question, then if both these aforementioned conditions are satisfactorily met, the declaration should be relied upon. (See also: *Babu Ram &Ors. v. State of Punjab*, AIR 1998 SC 2808).

17. In *Laxmi v. Om Prakash & Ors.*, AIR 2001 SC 2383, this court held, that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired, or if the court entertains grave doubts regarding whether the deceased was in a fit physical and mental state to make such a statement, then the court may, in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act upon it.

18. In *Govindappa & Ors. v. State of Karnataka*, (2010) 6 SCC 533, it was argued that the Executive Magistrate, while recording the dying declaration did not get any certificate from the medical officer regarding the condition of the deceased. This Court then held, that such a circumstance itself is not sufficient to discard the dying declaration. Certification by a doctor regarding the fit state of mind of the deceased, for the purpose of giving a dying declaration, is essentially a rule of caution and therefore, the voluntary and truthful nature of such a declaration, may also be established otherwise. Such a dying declaration must be recorded on the basis that normally, a person on the verge of death would not

implicate somebody falsely.

Thus, a dying declaration must be given due weight in evidence.

19. In *State of Punjab v. GianKaur&Anr.*, AIR 1998 SC 2809, an issue arose regarding the acceptability in evidence, of the thumb impression of Rita, the deceased, that appeared on the dying declaration, as the trial court had found that there were clear ridges and curves, and the doctor was unable to explain how such ridges and curves could in fact be present, when the skin of the thumb had been completely burnt.

The court gave the situation the benefit of doubt.

20. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case.

21. Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity"

26. In the present case, it has come on record that PW-14, Dr. Anupam Priyadarshee was present when PW-1, Sh. Radha Charan (the then SDM) has recorded the statement of the deceased (Ex. PW-1/A). PW-1, Sh. Radha Charan (the then SDM) has testified that 'Victim injured Saina was in a condition to speak and give her statement. Doctor who had been treating victim was also present. I started recording statement of Saina at 11.40 pm'. PW-14, Dr. Anupam Priyadarshee in his testimony has admitted that at the time of examination, the deceased was in a fit state of mind, he deposed that 'the patient was conscious and oriented'. There is no reason to disbelieve the testimony of PW-1, Sh. Radha Charan (the then SDM) that the deceased was in a fit state of mind while recording her statement. Accordingly, in view of the law settled by the Apex Court as well as on the basis of the facts of the present case, the argument of learned counsel for the appellant with regard to fitness of the deceased at the time of recording of statement holds no ground.

Ingredients of Cruelty

27. So far as the contention regarding cruelty is concerned, it is essential to extract the said section 498A of the Indian Penal Code and lay emphasis on it: -

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty. -- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for

a term which may extend to three years and shall also be liable to fine.

Explanation. --For the purpose of this section, 'cruelty' means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

28. On a plain reading of Section 498A it transpires that if a married woman is subjected to cruelty by the husband or his relative, the offender is liable to be punished with the sentence indicated in the Section. But cruelty can be of different types and therefore what kind of cruelty would constitute offence has been defined under the above explanation. As per first definition contained in Clause (a) it means a willful conduct of such a nature which is likely to drive the victim woman to commit suicide or to cause grave injuries to health and life, limb or health (mental or physical). The other definition of cruelty is in Clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

29. Returning to the facts and circumstances of the present case, it is eventually established by the testimonies of PW-2, Mohd. Yasin (father of deceased) and PW-6, Mehrunisha (mother of the deceased) that the deceased was subjected to cruelty and assault. It has also come over the record that 4/5 months prior to the incident, father of the appellant had visited the parental house of the deceased Saina Praveen along with other persons and had apologized for their misconduct/mistakes/cruelties inflicted on her. PW-2, Mohd. Yasin (father of deceased) and PW-6, Mehrunisha (mother of the deceased) had also taken a declaration in writing from the appellant Anzar Ali EX. PX that their daughter will not be harassed in her matrimonial house, which has not been disputed by the appellant. It was thereafter only the deceased who had thought of giving another chance to the appellant and his family members, but despite the declaration, the alleged incident occurred, which has caused a traumatic and disturbing experience for the family of the deceased. Thus, it becomes abundantly clear that the alleged incident is not happening for the first time and the appellant and her in-laws were in the frequent and repetitive practice of illtreating and torturing the deceased.

Medical & Scientific Evidence

30. Dr. Anupam Priyadarshee (PW-14) Junior Resident, GTB Hospital, has examined the victim on 30.04.2015 and has proved the report as Ex.PW14/A and has opined that on the local examination burns on chin, abdomen, chest

bilateral, upper limbs and perineum and bilateral thigh were present on the victim. The relevant portion from her statement recorded on 22.08.2013 is reproduced below-

"On 30.04.2012, I was working as Jr. Resident, GTB Hospital, Delhi. At about 9pm, one injured Sayena Parveen brought before me by Ajad Ali, father-in-law of injured with the alleged history of thermal burnt at Seelampur at about 6.30 pm on 30.04.2012. The alleged history was given to me by the patient herself and Azad Ali. The patient was conscious and oriented. Chest bilateral air entry positive. CVS S1S2 was positive. On per abdominal examination, it was found soft. B/P was 98/66 and pulse was 90 per minute. Respiratory rate of patient was 16 per minute.

On local examination, burns on chin, abdomen, chest bilateral, upper limbs and perineum and bilateral thigh. After giving primary treatment, I had referred the patient to Sr. Resident Burnt and Plastic. I had examined Sayena Parveen vide her MLC No. C1935/12 and at the time of her medical examination, she was fit for statement. My detailed report is Ex.PW14/A and bears my signatures at point A."

31. Dr. Arun Kumar (PW-3) Junior Demonstrator, UCMS & GTB Hospital, has conducted the post-mortem of Ms. Saina Parveen on 11.05.2012 and has proved the post-mortem report as Ex.PW3/A. The relevant portion from the testimony of PW-3 recorded on 09.01.2013 is reproduced below: -

"On 11.05.2012 I was working as Junior Demonstrator in Department of Forensic Medicines, at UCMS & GTB hospital. On the request of SDM Radha Charan, I had conducted the post mortem on the dead body of Mrs. Saina Parveen wife of Anzar Ali aged about 21 years old female vide Post Mortem Report No. 715/12 dated 11.05.2012.

General Observation: Dead body of an adult female, average built wrapped in white bag wearing no clothes. Surgical dressing was present over chest, abdomen, bilateral upper limbs and bilateral thighs. Eyes and mouth were closed, rigor mortis was present in well developing stage upper limbs. Post mortem staining was present on the back and fixed. No external signs of decomposition seen. Old healed scar measuring 18 cm present horizontally on lower abdomen 3 cm above pubic symphysis. Details external injuries:

1. Ante mortem flame burns superficial to deep in nature involving a patch of skin in midline of upper chest, over the breast, lateral aspect of chest on both sides, abdomen except a patch of skin around umbilicus, upper back sparing a patch in midline, front and back of right lower arm, front and back of right forearm, dorsum of right hand, front and back of left lower arm and forearm, dorsum of left hand and, bilateral thigh front and back. The burnt area was covered with greenish yellow foul smelling pus and slough material and unhealthy granulation tissue. Singeing of scalp hair and body hair was present. Total burnt area is about forty five percent (45%) of total body surface area.

Internal examination:

- a) Head and neck: scalp and skull NAD, brain 1206 grams congested, neck NAD.
- b) Chest: rib cage NAD, lungs (right 462 grams and left 455 grams) both the lungs are adherent to the chest wall posteriorly and at the diaphragm. Pleura is thickened and yellowish at the site of adhesion. Both the lungs are congested and edematous. Heart 262 grams NAD, coronaries NAD.
1. Abdomen and others: Signs of surgical repairs was present in the muscles of anterior abdominal wall and rectus sheath. Stomach contains about 50 ml of yellowish fluid walls congested. Intestine contains fecal matter and gases of decomposition walls NAD. Liver 1930 grams congested greenish discoloration due to decomposition was present on inferior surface. Spleen 327 grams congested enlarged capsule thickened. Kidneys (right 185 grams left 176 grams) NAD, bladder empty wall NAD. Uterus empty walls NAD. External genitals NAD. Pelvis and vertebrae NAD.

Sealed envelope containing scalp hair recovered from 'body of deceased Saina Parveen wife of Anzar Ali, 21 years old female with PM report No. 715/12 dated 11.05.2012 PS Seelampur along with sample seal for chemical analysis of inflammable substances.

Death in this case caused due to septicemic shock as a result of infected ante mortem flame burns involving about forty-five percent (45%) of total body surface area. The post mortem report is Ex.PW3/A bearing my signatures at point A"

32. PW-13 SI Mukesh Kumar, has specified that on the inspection of the aforesaid location, he had seized a plastic bottle of half litre, which was having a small quantity of kerosene oil in it. Relevant portion from the testimony of PW-13 is reproduced below: -

"Accused Anzar Ali today present in Court in this case was present in GTB Hospital and he was present nearby victim and he was accordingly identified by victim Saina Praveen as her husband. He was apprehended.

Father of the victim girl namely Yaseen was also met me in GTB Hospital. I taking accused Anzar Ali along with me reached the residential house of accused E-16B/38, Jhuggi Seelampur. Accused pointed out the spot where incident had occurred and that was on the first floor. Crime team had also arrived that spot and crime took inspection of that spot and recorded photographs of that spot. Meanwhile, Ct. Ashok brought copy of the FIR along with the original Rukka and handed over those documents to me. Copy of the FIR is Ex.PW12/A. I prepared the Site Plan which is Ex.PW13/B.

There was kitchen kind of room on the first floor and I found a half litre capacity plastic bottle lying in that kitchen and that bottle contained a small quantity of kerosene oil. That bottle was with its tap closed on its mouth and took that bottle

into cloth Pulanda and seal MK was affixed. Some clothes pieces which appeared to be pieces of blouse and two further partly burnt pieces appearing of dupatta. Dupatta partly burnt piece was red colour. Pink colour dupatta piece did not appear to be a burnt piece but it was giving kerosene smell. One brazier black colour was also lying which did no bear any burn mark but it was giving kerosene oil smell. One matchbox containing matchsticks was also lying there in the kitchen. All these articles that is clothes pieces, brazier and match box were taken in one parcel by taking them into a plastic polythene bag and then taking it into a cloth parcel and seal MK was affixed. These articles were described by serial No. 2 to 6 in the seizure memo, which is Ex. PW13/C. I interrogated accused and he confessed his guilt. His arrest was effected through memo Ex.PW13/D with personal search memo Ex.PW13/E. Accused was taken to the PS lock-up."

33. Certain other article including one sealed cloth parcel, partially one burnt green colored embroidery cloth, one partially burnt maroon colored cloth, one pink color cloth, one black color braisery and one open matchbox with some unburned matchsticks were also seized and were sealed with an impression of "MK". The aforesaid articles were forwarded to the forensic science laboratory for its scientific examination and the FSL report No. 2012/C-3397 was concluded with the following datum: -

"On GC examination (i) Exhibit '1' was found to contain 'kerosene'

(ii) Exhibit '2' was found to contain Residue of Kerosene"

34. Perusal of the aforesaid testimonies and MLC of the deceased (Ex.PW14/A) along with post-mortem report as (Ex.PW3/A) we find that burns on chin, abdomen, chest bilateral, upper limbs and perineum and bilateral thigh were present on the victim. The Postmortem report has specified that the death is caused due to septicemic shock as a result of infected ante mortem flame burns involving about 45% of the total body surface area. Perusal of the testimony of PW-13 SI Mukesh Kumar shows that 'There was kitchen kind of room on the first floor and I found a half litre capacity plastic bottle lying in that kitchen and that bottle contained a small quantity of kerosene oil'. The clothes of the deceased seized from the place of incident also show presence of kerosene oil and burns marks. The aforesaid testimonies confirm that the death was caused due to septicemic shock as a result of infected ante mortem flame burns.

35. It is strange, but the appellant has taken a ground that 'the occurrence shows pouring Kerosene Oil by deceased by her own to commit suicide' on the contrary the appellant has also taken a ground that 'the burns injury were caused by stove by deceased while pumping the stove'. Both the arguments are converse to each other. On the one hand the appellant submitted that it was a suicidal death and on the other hand the appellant claimed it as an accidental death.

36. From the perusal of the testimonies of PW-2, Mohd. Yasin (father of

deceased) and PW-6, Mehrunisha (mother of the deceased) and the statement of the deceased recorded by PW-1, Sh. Radha Charan (the then SDM) (Ex. PW-1/A) it stood established that the deceased was subject to cruelty on account of demand of dowry. MLC of the deceased (Ex.PW14/A) along with post-mortem report as (Ex.PW3/A) confirms that the death was caused due to septicemia shock as a result of infected ante mortem flame burns. In a suicidal case, the victim would have burns marks on the head, face as well as hands and the burn injuries would be more than 45% but in the present case the deceased has burn marks present on her chest, abdomen, upper back, lower back, forearm and thigh with 45% burn injuries which suggests that it was not a suicidal attempt. It also does not appear to be a case of accidental burn injuries as PW-13, SI Mukesh Kumar confirms the presence of half litre bottle which contained a small amount of kerosene. Moreover, from the perusal of photographs of the site Ex.PW-7/1 to Ex. PW-7/9 shows that the stove was in a good condition and does not suggest any instance of bursting of stove. Further the utensils which are seen in the photographs Ex.PW-7/1 to Ex. PW-7/9 were also in a good condition without any residue of fire, even the wall where the stove was kept was in a good condition and does not suggest of any burst. Hence it can be safely derived from the aforesaid discussion that the death of the victim was due to burns injuries which are neither suicidal in nature nor accidental.

Burden of Proof

37. Applying the law to the facts and circumstances of the present case, we find that in this case the offence has taken place inside the privacy of the house and there are major injuries, which are caused due to septicemic shock as a result of infected ante mortem flame burns, involving about 45% of the total body surface area. Therefore, this is yet another case, where the offence has been committed with cruelty within the close four walls of the house and the medical/scientific evidence corroborating with the testimonies of the prosecution witnesses shifts the burden of prove on to the accused to prove the facts and circumstances, which are within his special knowledge and conscience.

38. Initially the burden to establish the case would undoubtedly be rest upon the prosecution, but in our view, the initial burden has been discharged by the prosecution on the basis of the evidence on record, which establishes the fact that the deceased was burnt alive by her husband, for not meeting their frequent dowry demands. Accordingly, by the virtue of Section 106 of the Indian Evidence Act, the appellant ought to have been explained the incriminating circumstances pointing against him.

39. It is also a settled legal position that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond any shadow of reasonable doubt. It is only, when such a burden is discharged from the onus of the prosecution and eventually shifts on to the accused to prove any fact within his special knowledge, to establish that he/she is not guilty of the aforesaid alleged offence. We may refer to the following Para,

from the judgment of the Apex court in *Sucha Singh v. State of Punjab*, reported in AIR 2001 SC 1436 as under:

"We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to Offer any explanation which might drive the court to draw different inference."

40. Placing reliance on the judgment of the Apex Court in the case of *Prithpal Singh vs. State of Punjab & Ors.* reported in (2012) 1 SCC 10, the Apex Court in the following Para has held as under:

"... if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused."

41. We deem it appropriate to rely upon *Trimukh Maroti Kirkan vs State of Maharashtra* reported at (2006) 10 SCC 681. The facts of this case are somewhat similar to the facts of the case at hand. Both these cases relate to the death of a woman in the dwelling house of her husband. In the case of *Trimukh Maroti Kirkan* (*Supra*) the deceased Ms. Revata died in her matrimonial home; allegations were that her in-laws and husband used to ill-treat her and used to harass her and demanded Rs. 25,000/-; police were informed that she was bitten by a snake and had died. The post mortem report, however, revealed that she died due to asphyxia as a result of compression of neck. The Supreme Court has held that when an offence takes place inside the privacy of the house and the assailants have ample opportunity to plan and commit the offence, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused. Relevant paragraphs of the judgment read as under:

"12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted

upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket.

The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

15. In *Ram Gulam Chaudhary & Ors. v. State of Bihar* (2001) 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found.

The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

16. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The

principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 (para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 (para 40); *State of Maharashtra v. Suresh* (2000) 1 SCC 471 (para 27); *Ganesh Lal v. State of Rajasthan* (2002) 1 SCC 731 (para 15) and *Gulab Chand v. State of M.P.* (1995) 3 SCC 574 (para 4)].

17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died

due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."

42. Keeping in view the law laid down above, it stands settled that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

Dowry Death

43. The learned trial court framed charges under Sections 302/304B/498A of the IPC and the appellant was held guilty for the offences punishable under Sections 302 and 498A of the IPC. The learned trial court failed to deal with the charges framed under Section 304 B of the IPC.

44. Before delving into merits of the case, we deem it appropriate to discuss the relevant provisions which are involved in the present case. Section 304B of IPC, which reads as under:

"304-B Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation - For the purpose of this sub-section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

45. In the case of *Rajinder Singh v. State of Punjab* reported in (2015) 6 SCC 477, the Supreme Court has observed as under:

"7. The primary ingredient to attract the offence under Section 304B is that the death of a woman must be a "dowry death" "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"2. Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not

include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I.- [***]

Explanation II.-The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."

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 solemnized.

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".

9. The ingredients of the offence under Section 304B have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry."

46. In *Amar Singh v. State of Rajasthan*: (2010) 9 SCC 64, Hon'ble Supreme Court has observed:

"29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

47. In Raman Kumar Vs. State of Punjab: (2009) 16 SCC 35, Hon'ble Supreme Court has observed:

"13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. xxxxxxxxxx

15. xxxxxxxxxx As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised

only if the accused is being tried for the offence under Section 304B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives

(3) Such cruelty or harassment was for, or in connection with any demand of dowry.

(4) Such cruelty or harassment was soon before her death

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

48. The law as it exists is that to bring home the guilt of an accused under Section 304B of IPC, the prosecution is obliged to prove that:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

- (b) such death must have occurred within seven years of her marriage;
- (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (d) such cruelty or harassment must be in connection with the demand for dowry.

49. Two of the ingredients of Section 304B of the Indian Penal Code are answered in the affirmative as it is not in dispute that, firstly, the death of the deceased was within seven years of marriage, as the marriage between the appellant and the deceased took place on 13.12.2009 and the deceased died on 10.05.2012, secondly, death of the deceased was caused by burns and bodily injuries.

50. A legal fiction has been created to the effect that in the event if it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

51. In the present case, as discussed above, it has been proved that the deceased was subjected to cruelty on the ground of dowry demands made by the appellant and the family members. The statement of the deceased recorded by the SDM as well the testimonies of PW-2 (father of deceased) and PW-6 (mother of the deceased) establishes torture on non-fulfillment of dowry demands.

52. Accordingly, the appellant is also held guilty of the offence punishable under Section 304-B. Since he has already been convicted for the higher offence punishable under Section 302 of the IPC, no separate sentence is required to be awarded against the appellant for the offence punishable under Section 304-B of the IPC.

Conclusion

53. Having perused the evidence, we are of the considered opinion that Ms. Shaina Praveen died due to pouring of Kerosene oil and setting her body on fire and this act could be done only by the appellant and by no one else as only he was present at the relevant time. In other words, it was a case of homicidal death and not a case of suicidal or accidental death as proved by the following circumstances

? Firstly, it is not in dispute that the incident in question occurred in the house when both the deceased and the appellant were present. In these circumstances, it was the appellant who could give some plausible explanation as to how and in what manner the incident in question occurred. As mentioned above, the explanation given by the appellant that the death was a suicidal death or an accidental death, in our opinion, cannot be believed.

? Secondly, the relations between the appellant and deceased were not cordial. The appellant always used to demand money from the deceased which she was

not in a position to give to the appellant.

? Thirdly, had this been a case of accident as suggested by the defence then burn injuries sustained by the deceased would have been more on the lower part of her body rather on the upper part of the body because according to defence, the deceased had accidentally caught fire from the flames of the stove. The post-mortem report, however, showed that the burn injuries were more on her upper part

? Fourthly, the statement of the victim recorded by the SDM (Ex.PW-1/A) and also the testimonies of PW-2 and PW-6 read with the medical and scientific evidence, establishes that it was case of murder on the ground of demand of dowry by the appellant.

54. From the above discussion, it is proved on record that the deceased was treated with cruelty and was harassed by her husband and her in-laws, on the account of her inability to meet their subsequent dowry demands. The result of the discussion hereinabove comes that the prosecution has successfully established the ingredients of cruelty, assault, harassment and the prosecution has been able to prove that the accused had clear intention and motive to kill his wife/Saina Praveen and he has intentionally poured the kerosene oil over her and has burnt her alive.

55. In the background of such a scenario, we are of the view that the prosecution has succeeded in establishing its case against the appellant. Thus, we find no infirmity with the view taken by the learned trial court. The conviction rendered by the trial court is upheld. The appeal is dismissed.

56. Trial Court Record be sent back along with a copy of this order.

57. A copy of this order be also sent to Superintendent of Jail, Tihar Jail Delhi.