
(2011) 10 UK CK 0033
In the Uttarakhand High Court
Case No : Criminal Appeal No. 11 of 2005

Km. Sudha (since deceased) and Smt. Rajini	APPELLANT
Vs	
State of Uttarakhand	RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

Citation : (2012) 1 DMC 188 : (2011) 2 NCC 889 : (2012) 2 UC 898 : (2011) 2 UD 529

Hon'ble Judges : Tarun Agarwala, Acting C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.C. Dhyani, J.—These two appeals, preferred u/s 374 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), are directed against the common judgment and order dated 17.01.2005, passed by Addl. Sessions Judge / V F.T.C., Dehradun, in S.T. No. 16 of 2001, whereby appellants Sudhir, Km. Sudha and Smt. Rajini have been convicted u/s 302 and 498-A of the Indian Penal Code, 1860 (for short I.P.C.). All of them have been sentenced to undergo imprisonment for life and directed to pay a fine of Rs. 5,000/- u/s 302 of I.P.C. and rigorous imprisonment for a period of two years and directed to pay a fine of Rs. 2,000/- u/s 498-A of I.P.C. During the pendency of this appeal, accused / appellant Km. Sudha is reported to have died, and appeal filed on her behalf stands abated.

2. Heard learned counsel for the appellants and learned Addl. Government Advocate for the State and perused the lower court record.

3. Prosecution case, in brief, is that on 20.11.2000, at 05:30 P.M., P.W.9 Raghubir Singh (father of the deceased) lodged first information report (Ext. Ka-19) with reporting outpost Rani Phokri, police station Rishikesh stating therein that her

daughter Sushila Devi got married to accused / appellant Sudhir about two year ago. After her marriage with Sudhir she started living with her husband and in-laws in village Ghamandpur, police station Rishikesh, District Dehradun. After seven months of her marriage when she came back to her parental house, Sushila Devi told her father P.W.9 Raghubir Singh that she was being subjected to cruelty by her husband, brother-in-law (jeth) and sister-in-law (nanad) for not bringing a colour television and a vikram (three-wheeler) in dowry, which according to the father of the deceased he was unable to fulfill. On this, the three used to harass Sushila Devi (deceased) for non-fulfillment of demand of dowry and commit maarpeet with her. In this background, on 19.11.2000, at about 09:00 P.M., Sudhir (husband of the deceased) set Sushila Devi on fire by pouring petrol on her. Bijendra Singh and Sudha were also present with Sudhir in this gruesome act. It is also stated that at present her daughter is in the hospital in an injured state and is being treated there. On the basis of said report, the police prepared chick report (Ext. Ka-11) and registered Crime No. 55 of 2000 against the accused / appellants Sudhir, his brother Bijendra and sister Sudha, relating to offences punishable u/s 498-A of I.P.C., and one punishable u/s 3/4 of the Dowry Prohibition Act. Later on name of Smt. Rajini (jethani) w/o Bijendra Singh was also introduced as an accused. On 19.11.2000 itself, the victim was admitted in Doon Hospital, Dehradun by her husband where she was examined by P.W.5 Dr. R.K. Singh on 20.11.2000, at 12:15 A.M. The Doctor found superficial deep burns on the whole body except both soles on the person of Sushila Devi. The Medical Officer opined that the injuries could have been sustained by dry heat. On 21.11.2000 she was referred to Govt. Medical College Hospital, Chandigarh for further treatment. On 24.11.2000, at 09:00 P.M., Sushila Devi died at Chandigarh during her treatment. A report (Ext. Ka-5) was prepared regarding her death.

4. Before the death of Sushila Devi, her dying declaration was recorded by P.W.6 Pushvinder Singh, PCS, Judicial Magistrate (Duty) Chandigarh on 24.11.2000. The dying declaration (Ext. Ka-15) is in question-answer form. Sushila Devi was asked the following questions and she replied in the manner indicated therein:

Q. When did you marry?

A. About two years ago.

Q. How many children you have?

A. I have got a baby child, aged 2 months.

Q. How many brothers and sisters are you?

A. We are two brothers and two sisters.

Q. Where is your parental house?

A. Village Baruwala, Bhaniyawala.

The above questions were asked from Sushila Devi to ascertain that she is fully

conscious and is making the statement on her own volition.

Q. How did this occurrence take place?

A. I was cooking meals at residence on 19.11.2000, at 10:30 P.M. My husband Sudhir, sister-in-law Sudha (nanad), sister-in-law Rajini (jethani) and brother-in-law Bijendra (jeth) caught hold of me. Sudhir poured petrol and lighted the match and put me on fire. At that time my second sister-in-law Santoshi (jethani) was also at home. She was not involved in setting her on fire. My second brother-in-law Sansaar (jeth) resides in our neighbourhood. He saved me. Sansaar and my husband Sudhir took me to hospital. My husband had consumed liquor at the time of incident. He used to beat me after taking liquor. All the persons used to say that my father did not give tempo in marriage.

Q. Have you got to say anything else?

A. No.

The statement was read over to the deponent, who verified this to be correct.

sd/-

Pushvinder Singh, PCS

Judicial Magistrate (Duty)

Chandigarh.

24.11.2000

After obtaining opinion of Dr. S. Sinha, I recorded the statement of Sushila, who was fully conscious. I am satisfied that she made the statement voluntarily which was read over and explained to her and she admitted the same to be correct.

sd/-

Pushvinder Singh, PCS

Judicial Magistrate (Duty)

Chandigarh.

24.11.2000

In the meantime, Investigating Officer P.W. 10 S.I. Vivekanand Tiwari took up the investigation. After death of Sushila Devi, the case was converted into one punishable u/s 304-B of I.P.C. All the accused were arrested by the police. Investigating Officer also prepared site plan of the place of incident (Ext. Ka-5), recovery memo (Ext. Ka-18) regarding taking into possession one sari, one sweater, slippers, one matchbox and one bottle (smell of petrol emanating from it), (Ext. Ka-19), inquest report (Ext. Ka-27), and letter (Ext. Ka-26) to C.M.S, Chandigarh requesting for postmortem examination. Post mortem examination on the dead body of deceased was conducted by Dr. Rakhi Aulakh of Govt.

Medical College, Chandigarh on 26.11.2000 at 10:00 A.M. The Medical Officer opined that deceased has died of shock due to burn injuries and their complications. She is also of the opinion that the burns described are ante mortem in nature and sufficient to cause death in due course of time. On completion of investigation, the subsequent Investigation Officer P.W.11 K.K. Gautam, Dy.S.P., Rishikesh submitted charge sheet (Ext. ka-32) against the four accused namely, Sudhir, Km. Sudha, Smt. Rajini and Bijendra Singh for their trial in respect of offences punishable u/s 498-A, 304B of I.P.C., and one punishable u/s 3/4 of the Dowry Prohibition Act. It is pertinent to mention here that accused Bijendra Singh died during trial and case as against him stood abated.

5. The Magistrate, on receipt of charge sheet, after giving necessary copies to the accused, as required u/s 207 of Cr.P.C., committed the case to the court of Sessions for trial. Learned Sessions Judge, Dehradun, after hearing the parties, on 28.04.2001, framed charge of offences punishable u/s 304-B and 498-A of I.P.C., and one punishable u/s 3/4 of the Dowry Prohibition Act, against accused Sudhir, Rajini and Km. Sudha. In alternative, charges were framed against these three accused for the offence punishable u/s 302 read with Section 34 of I.P.C. All the accused / appellants pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Bachan Singh (uncle of the deceased); P.W.2 Dr. Rakshi Aulakh (who conducted the postmortem examination); P.W.3 Robin Kaushik; P.W.4 H.C. Srikrishna Gupta (who prepared the chick report of the first information report); P.W.5 Dr. R.K. Singh (who examined the victim in the Doon Hospital); P.W.6 Pushvinder Singh (Magistrate who recorded the dying declaration); P.W.7 Smt. Neelam Bhandari (married Jethani of the deceased); P.W.8 Satya Pal (brother of the deceased); P.W.9 Raghubir Singh (complainant and father of the deceased); P.W.10 S.I. Vivekanand Tiwari (who started the investigation) and P.W.11 Dy.S.P. K.K. Gautam (who submitted charge sheet). The oral and documentary evidence was put to the accused / appellants u/s 313 of Cr.P.C., in reply to which they alleged the same to be false. Accused / appellant Sudhir has stated in his statement recorded u/s 313 of Cr.P.C. that he tried to save his wife and also donated his blood. In defence D.W.1 Rajesh Kumar, D.W.2 Roshan Singh, D.W.3 Sumit Kumar and D.W.4 Sanjay Sharma were produced. After hearing the parties, the trial court found all the three accused namely, Sudhir, Km. Sudha and Smt. Rajini guilty of the charge of offences punishable u/s 302 and 498-A of I.P.C. After hearing on sentence, each one of the convicts was sentenced to imprisonment for life and directed to pay fine of Rs. 5,000/- u/s 302 of I.P.C., and rigorous imprisonment for a period of two years and directed to pay fine of Rs. 2,000/- u/s 498-A of I.P.C. Aggrieved by said judgment and order dated 17.01.2005, both these appeals are preferred by the convicts.

6. Before further discussion, we think it just and proper to mention here the ante mortem injuries and the condition of the dead body of Sushila Devi found by Dr. Rakhi Aulakh, who conducted the autopsy on 26.11.2000, at 10:00 A.M., and prepared the autopsy report (Ext. Ka-1):

Whole of body covered with superficial to deep burns except the left shoulder. Fluid filled blisters present at places, greenish yellow slough seen at places. At places there is present pinkish granulation tissue, singeing of eyebrows, eyelashes and scalp hair present.

The Medical Officer recorded in the autopsy report that rigor mortis was absent. It is also recorded that postmortem staining cannot be appreciated because of burns. In the opinion of the Medical Officer the cause of death was shock due to burn injuries and their complications. The Medical Officer also opined that the burns described are ante mortem in nature and sufficient to cause death in due course of time.

7. P.W.1 Bachan Singh states that they are four brothers, namely Khushal Singh, Raghubir Singh, he himself and Jot Singh. They are residing in different houses at the same place. The eldest one Khushal Singh is hard of hearing and has a poor vision. All the brothers got the marriage of Raghubir Singh's daughter Sushila on 07.03.1999 with Sudhir, s/o Chander Singh, resident of village Ghamandpur, police station Rishikesh. Sushila's brother-in-law Bijendra (jeth), sister-in-law Sudha (nanad) and another sister-in-law Rajini (jethani) used to reside together in Sudhir's house. Bijendra has died and hence case against him stood abated.

Sushila told this witness P.W.1 Bachan Singh that within seven months of marriage, her in-laws started harassing her for dowry. They demanded television and vikram (tempo) in dowry. Sudhir was tempo driver before marriage. They used to beat Sushila and hurled abuses at her. On this, this witness and Sushila's parents went to her matrimonial home at Ghamandpur and had talks with her in-laws. They expressed their inability to fulfill the demand of dowry and submitted that they cannot provide colour television and vikram (tempo). They also requested one of the brothers of Sudhir named Sansaar Singh, who happened to be the village Pradhan to prevail over Sudhir. Sansaar, in turn, gave the assurance that he will try his best.

According to P.W.1 Bachan Singh the occurrence took place on 19.11.2000. He had been to Chandigarh on 19.11.2000. His brother Raghubir have been to Lakshman Jhula on 16.11.2000. He received a telephone call by his neighbour Surendra Singh that Sushila has been burnt by her in-laws. This witness immediately rushed to Doon Hospital on 20.11.2000. Sushila was admitted there in serious condition. When enquired from Sushila, she replied that had you given colour television and vikram to her in-laws, they would not have done so. She told that she was caught hold by Bijendra (since deceased), Rajini and Sudha (since deceased). Sudhir poured petrol on her and set her on fire. This witness took the victim Sushila to PGI Chandigarh, where on 24.11.2000, she breathed her last. The Magistrate took her statement. His brother (Raghubir) was informed about this. This witness was subjected to cross-examination on behalf of the accused / appellants. He said that Sushila was admitted in Doon Hospital on 19.11.2000. On 21.11.2000, she was taken to Chandigarh. Her statement was

not taken before the Magistrate at Dehradun. She was admitted at Chandigarh on 21.11.2000. On 23.11.2000, in the evening, the doctor had send the information relating to recording of dying declaration to police station Rishikesh. The statement of this witness was taken by the Investigating Officer after Sushila's death took place. He is also a witness of preparation of inquest report (Ext. Ka-27). This witness has denied that Sushila and Sudhir started living separately before this occurrence took place, and also the fact that on 30.02.1999, a compromise between Bijendra and Sudhir took place in his presence whereby they agreed to live separately. But this witness clarified that this arrangement was confined to the papers only (perhaps Bijendra and Rajini had sensed what was in store for them) and they used to live together. P.W.1 Bachan Singh told that he had visited Sushila's matrimonial home after one month of her marriage, but Sushila did not complain about the dowry demand then. Sudhir and Bijendra used to live together, whereas Sansaar Singh is residing separately. It is significant to note that when Sushila was set on fire, this witness met her at 12 o'clock. At that time she was conscious. She remained conscious so long as she was in Doon Hospital. This witness went to Chandigarh on 24.11.2000. Sushila's elder brother Dharam Pal, maternal uncle and maternal aunt had been to Chandigarh with Sushila on 21.11.2000. They remained in hospital. When this witness reached Chandigarh on 24th (November), he could not talk to Sushila on the advise of the doctors.

8. P.W.2 Dr. Rakhi Aulakh was posted as Demonstrator of Forensic Medicine in Govt. Medical College, Chandigarh on 26.11.2000, where the death of Sushila took place. She conducted postmortem examination on the dead body of Sushila and found superficial to deep burns on whole body. The said Medical Officer opined that Sushila died of shock due to burn injuries and their complications. In her opinion the burns described are ante mortem in nature and sufficient to cause death in due course of time. This witness has also stated that no other Medical Officer was present with her at the time she conducted the postmortem examination.

9. P.W.3 Dr. Robin Kaushik was posted as Sr. Resident, Deptt. of Surgery in Govt. Medical College Hospital, Chandigarh in November 2000, and brought Sushila's medico-legal case file in the court. Sushila was referred to Govt. Medical College Hospital, Chandigarh by Doon Hospital, where she was admitted and treated by Dr. Amrawani. He has proved the signatures of Dr. Amrawani on bed head ticket Ext. Ka-2 and Ext. Ka-3 relating to Sushila. Dr. Amrawani has left the hospital and thereafter Sushila was treated by Dr. R.K. Batra and Dr. Surjeet Singh. Dr. Surjeet Singh has also left the hospital. Sushila Devi died on 24.11.2000 at 09:00 P.M. This witness has also proved bed head ticket, death report, death summary etc. and also the certificate of Dr. Surjeet Singh (Ext. ka-9), who had endorsed that patient Sushila is fit for statement on 24.11.2000, at 01:25 P.M. This witness has also proved the certificate (Ext. ka-10) on the back of (Ext. Ka-9) that patient Sushila remained fit while recording statement between 01:25 P.M. to 02:00 P.M.

10. P.W.4 H.C. Srikrishna Gupta was posted as Head Moharrir on 20.11.2000 at police station Rani Pokhari, and has proved Chik FIR (Ext. Ka-11) and copy of extract of General Diary (Ext. Ka-12).

11. P.W.5 Dr. R.K. Singh, Medical Officer, Doon Hospital was posted as Emergency Medical Officer on 20.11.2000. He brought medico-legal register of Doon Hospital. On 19 / 20.11.2000, at 12:15 P.M., Sushila was brought by her husband and this witness found superficial to deep burns 96% which were fresh and caused by dry heat. The doctor has opined that these injuries may be caused by pouring of petrol or kerosene and setting one on fire on 19.11.2000, at 09:00 P.M. On cross-examination this witness has stated that when the patient was brought to hospital she was conscious. Bed head ticket of this patient was prepared by this Medical Officer. The patient was referred to PGI Chandigarh on 21.11.2000 at 05:30 P.M. The patient was in the state of altered consciousness. The treatment which was given by this doctor to the patient was to save her from entering seditione.

12. P.W.6 Pushvinder Singh, Judicial Magistrate, I Class, Amritsar, Punjab stated that he was posted as such on 24.11.2000 and was working as Duty Magistrate. On the application of S.I. Vivekanand Tiwari of police station Rishikesh, he contacted Dr. S. Sinha, who was on duty in hospital and obtained opinion about the fitness of the victim. Dr. Sinha told him that she is fit to give the statement. The dying declaration (Ext. Ka-15) recorded by this witness has already been discussed in the preceding paragraph. According to this witness the deponent also put her thumb impression on the statement. In his cross-examination the Judicial Magistrate has said that Dr. S. Sinha alone was with him when Sushila's statement was recorded. This witness has further stated that he satisfied himself that Sushila was fit to give the statement.

13. P.W.7 Smt. Neelam Bhandari, the married sister-in-law of Sushila deposed that Sushila told her about demand of dowry by the accused after 5-6 months of the marriage. She said that Sudhir (husband), Bijendra (jeth) and Sudha (nanad) used to harass her for non-fulfillment of demand of dowry. Sushila had disclosed about Rajini (jethani) that she cooperated in this act. The in-laws demanded colour television and tempo because Sudhir used to ply a hired tempo. On 19th November 2000, at 11:30 P.M., Sushila's brother-in-law Sansaar told her that Sushila got burnt due to bursting of the stove. Sansaar Singh asked for financial help from her which could not be fulfilled. In the cross-examination this witness has stated that when the victim was brought in the tempo then no person of vicinity came, as none was called by her. Sushila asked for water and narrated the whole story to her. This witness made it clear that Sushila told her that Rajini helped the accused in setting her on fire. She also made it clear that she did not witness burns on the person of Sudhir (it is the case of the accused that he did not set Sushila on fire, instead he tried to save her and sustained burns in the process).

14. P.W.8 Satya Pal is the brother of the deceased and has stated that when he

met his sister Sushila her whole body was burnt. She told him that Sudha, Rajini and Bijendra had sprinkled petrol on her and Sudhir set her on fire. When police went to the place of occurrence an empty bottle which was smelling of petrol was found in the room of Sudhir. Learned counsel for the accused / appellant pointed out variations in the description of articles such as sweater, slippers and sari, and argued that no such incident took place. We are inclined to brush aside this argument summarily in view of the fact that this is a case of dowry death in which minor variations here and there in the description of sweater, sari and slipper do not have any bearing on the merit of the case. It has further been explained by P.W.8 Satya Pal in his cross-examination that Sushila had told them that all the four had poured kerosene and Sudhir put her on fire.

15. P.W.9 Raghubir Singh is the father of the deceased who has alleged that Bijendra, Rajini and Sudha used to harass her for non-fulfillment of demand of dowry. Bijendra has died. He has corroborated the statement of other witnesses that Sudhir, Bijendra, Sudha and Rajini put petrol on her and set her on fire. He said that he has disclosed the names of all the four accused while lodging FIR (incidentally Rajini's name has not figured in the FIR) but this fact alone is not going to help accused Rajini in the sense that all the witnesses have stated the name of Rajini and her name also figured in the dying declaration. P.W.9 Raghubir Singh has stated that his daughter had told him that she was set on fire at 9 o'clock and she was conscious by then.

16. P.W.10 S.I. Vivekanand Tiwari is the Investigating Officer of the case and said that when Sushila was admitted to Doon Hospital she was not in a condition to give statement. He had been to Chandigarh and on his request the dying declaration of the victim was recorded by the Judicial Magistrate (Duty). This witness has proved other important documents. He was put to a lengthy cross-examination, but nothing has come out in his cross-examination which points towards the innocence of the accused.

17. P.W.11 K.K. Gautam, Dy.S.P., LIU Moradabad was posted as Circle Officer, Rishikesh on 30.11.2000, and had taken over the investigation from his predecessor Vivekanand Tiwari, and has finally submitted the charge sheet (Ext. Ka-32) against the accused persons.

18. Statements of the accused were recorded u/s 313 of Cr.P.C. and they have denied the allegations. It was brought to the notice of the court that Sudha also died during pendency of appeal. This court is considering the case of accused Sudhir and Rajini on merits. Since Bijendra and Sudha have died therefore, case against them stood abated.

19. Learned Addl. Sessions Judge has considered the evidence adduced by the prosecution in detail and has come to the conclusion that charge of offences punishable u/s 302 and 498-A of I.P.C. have been proved against Sudhir, Sudha and Rajini (Sudha died during pendency of appeal). Learned Addl. Sessions Judge did not take recourse to Section 304-B of I.P.C., and instead has come to

the conclusion that there is evidence against the accused in relation to the offence punishable u/s 302 and 498-A of I.P.C., which stood proved against them and hence, found them guilty on both the counts.

20. After hearing both the sides and perusing the evidence on record, we are in complete agreement with the finding of learned Addl. Sessions Judge that the case against the accused / appellants has been proved beyond reasonable doubt.

21. The appellants have tried to make inroads into the prosecution story by forwarding four defence witnesses, namely D.W.1 Rajesh Kumar, D.W.2 Roshan Singh, D.W.3 Sumit Kumar and D.W.4 Sanjay Sharma. D.W.1 Rajesh Kumar has stated that on 19th Novemebrr 2000, at 10:00-10:30 P.M., Sudhir came to his house and informed that his wife has burnt while preparing food. The vikram on which Sudhir took his wife to hospital belongs to this witness. According to this witness, Sudhir told others that she sustained burns while cooking food (He had no other explanation to offer!). In the cross-examination this witness has stated that he was driving the tempo and he did not see the condition of Sushila. Sushila did not speak anything to him. It appeared to this witness that she sustained burns while cooking food. He (D.W.1 Rajesh Kumar) has told this thing for the first time. The statement of this witness does not inspire confidence in view of the dying declaration which has been recorded by an independent, non partisan Judicial Magistrate at Chandigarh. The Magistrate does not even belong to Uttarakhand nor was ever posted here. He has no connections here. There is no doubt about his integrity. Possibility of his recording a wrong statement is completely ruled out. He is a responsible officer whose integrity cannot be suspected. D.W.2 Roshan Singh Chauhan is Dy. Pradhan of village Ghamandpur and has stated that Rajini and Bijendra used to live separately, but in the cross-examination he has admitted that they lived in the same compound. So the testimony of this witness does not help the accused / appellant in any way. It was tried to be projected that Bijendra and Rajini lived separately. Even if it be conceded for the sake of argument that it is so, yet the fact remains that the residential campus is the same and anybody may come from the neighbourhood to commit such crime specially when they are close family members. D.W.3 Sushil Kumar is a local resident of Ghamandpur and has stated that there were no differences between Sudhir and Sushila. He has tried to suggest that Bijendra, Sudha and Rajini lived together, and Sudhir lived separately, but has admitted in cross-examination that he was not present on the spot. D.W.4 Sanjay Sharma belongs to village Bhaniyawala who has stated that on being asked by Sushila's sister-in-law (bhabhi) as to how this incident took place, then Sushila replied that she sustained burns while cooking the meals, but in the cross-examination he has admitted that he is giving this statement for the first time. Sushila's husband took her to hospital after that. He reached the spot only when Sudhir and Sushila arrived by tempo and none other were present there except Sudhir, driver and Sushila. He had seen Sudhir while going to his residence after he alighted from the vikram (tempo). The testimony of these defence witnesses do not help the accused / appellants in any way. The testimony of these witnesses

have not been able to create suspicion in the prosecution story.

22. Emphasis was laid on behalf of the appellants that the patient / victim was sometimes conscious, and at times disoriented or semiconscious or drowsy and hence, her state of mind was not certain. True, state of mind of a burnt woman cannot be the same at all times. The fact to be underlined is that the Magistrate has taken her statement after verifying her state of mind from the Doctor and that he himself had asked certain questions in order to satisfy that she was able to answer the queries. It was also argued on behalf of the accused / appellant Sudhir that he also sustained burns in his hands. Perhaps that is on account of the fact that he poured petrol on his wife, set her on fire with a matchstick and in the process burnt his fingers. He realized the gravity of the offence, and therefore, thought it fit to take the victim to hospital. There was no other way out, except to do the same.

23. Learned Additional Government Advocate has contended that the stove was not recovered. Secondly, the Magistrate has stated that no one was present while recording dying declaration, and therefore, the dying declaration of the deceased was voluntary and not tutored one. Demand for dowry started after seven months of marriage. Learned Prosecutor also argued that it was not a case of stove-burst but brutal murder of Smt. Sushila. He argued that even if it be conceded for the sake of arguments that she died of stove-burst, he posed a question to himself as to why a mother-in-law till date has never died in this manner? Why it happens with the brides / wives only? The reply is obvious and requires no further explanation.

24. Learned counsel for the accused / appellants placed reliance on the cases of Mohan Lal and others v. State of Haryana, (2007) 3 SCC (Cri) 94; Shanti and another v. State of Haryana, (2006) 1 SCC (Cri) 557 and State of Maharashtra v. Sanjay, 2005 SCC (Cri) 231. The facts of the instant case are different from these cases referred to above, and therefore, the appellants cannot be given any benefit of these rulings.

25. It will be worthwhile to recapitulate the role assigned to the accused / appellant Smt. Rajini (jethani) and the evidence led by the prosecution in this behalf. It is true that name of Smt. Rajini is not mentioned in the FIR. Her name became prominent when P.W.6 Pushvinder Singh, PCS, Judicial Magistrate (Duty), Chandigarh recorded the dying declaration (Ext. Ka-15) of Sushila on 24.11.2000. In reply to the question posed by the Judicial Magistrate, the victim replied that when she was cooking meals at her residence on 19.11.2000, at 10:30 P.M., her husband Sudhir, sister-in-law Sudha (nanad), sister-in-law Rajini (jethani) and brother-in-law Bijendra (jeth) caught hold of her. Sudhir poured petrol, lighted the match and put her on fire. As such, the accused / appellant Smt. Rajini has been assigned the role of catching hold of the victim and thereby facilitating Sudhir to put her on fire after pouring petrol. Thus, she has actively participated in committing the murder of Sushila. It has been brought on record that the accused persons used to reside together in one house. An effort has

been made to show that Rajini along with her husband Bijendra used to reside in a different house. Be it as it may, the fact remains that all of them were residing in one compound. They were all closely related family members, and therefore, have must have easy access to each other's residence. It was not difficult for Smt. Rajini to have access to Sudhir / Sushila's house. No sooner the occurrence took place, P.W.1 Bachan Singh met Sushila in Doon Hospital. Sushila told him that she was caught hold by Bijendra (since deceased), Smt. Rajini and Sudha (since deceased). Sudhir poured petrol on her and set her on fire. P.W.1 Bachan Singh has denied the suggestion that a compromise between Bijendra and Sudhir took place, whereby they agreed to live separately. This witness has also clarified that this arrangement was confined to the papers only. In fact, they used to live together (along with their spouses). At the time of recording Sushila's dying declaration, Dr. S. Sinha alone was there with the Judicial Magistrate. Before recording dying declaration the Judicial Magistrate satisfied himself that Sushila was fit to give the statement. Smt. Sushila also disclosed to P.W.7 Smt. Neelam Bhandari (another jethani) that Rajini helped the accused in setting her (Sushila) on fire. When P.W.8 Satyapal met her sister Sushila she told him that Sudha, Rajini and Bijendra had sprinkled petrol on her and Sudhir (husband) set her on fire. The same is corroborated by the testimony of P.W.9 Raghubir Singh (father of the deceased). According to him he had disclosed the names of all the four accused, including Rajini, while lodging FIR. But, incidentally Rajini's name has not figured in the FIR. This fact alone is not going to help accused / appellant Smt. Rajini in any way because all other factors are against her. Thus, the prosecution story stands proved beyond reasonable doubt against this accused / appellant as well.

26. The dying declaration recorded in this case inspires full confidence in its truthfulness and correctness. It has intrinsic worth and its reliability can be determined from its tenor and contents. The victim had sustained more than 96% injuries. In her dying declaration she has alleged that Sudhir has poured petrol on her body and set her on fire with a matchstick. There are no contradictions in the statements of the prosecution witnesses. Minor discrepancies here and there do not matter especially in such cases where a bride has been burnt to death within seven years of marriage in unnatural circumstances. The dying declaration recorded in this case is free from doubt, reliable one and if the conviction is based on that dying declaration it will certainly serve the ends of justice. It is a case of culpable homicide amounting to murder within the four walls of the matrimonial house of the victim. There are no embellishments. The learned Magistrate has scribbled the details of what the unfortunate lady was speaking out and then prepared the statement in question and answer form. It is in the language of the victim herself. The Magistrate did not employ his own language so as to suggest that it is tutored one. The document appears to be correct and unalloyed version of the deceased. It is not a fabricated or distorted document. It passes the test of total reliability. The necessary details, minute and material are found therein. Sushila was in a fit

state to give the statement according to the doctor. The Judicial Magistrate has taken the opinion of the doctor as to her fitness. Possibility of anxiety of planting the accused is totally ruled out. Taking an overall view of perspective of the evidence, it is a case in which the veracity of prosecution witnesses and dying declaration cannot be doubted. It is free from mysteries, conjectures and surmises. The dying declaration inspires full confidence to the court in its truthfulness and correctness. Dying declaration is the last statement by its maker and great caution is exercised in considering the weight to be given to this species of evidence. Apart from this point of view the oral testimony of prosecution witnesses as well as the dying declaration recorded by an independent Judicial Magistrate it transpires that dying declaration is not the result of tutoring and is free and voluntarily one. Neither the doctor nor the Judicial Magistrate were interested in the outcome of the case. Declaration showed the clarity of mind of the maker and there is no reason to doubt the certificate issued by a qualified doctor. The declaration is found to be absolutely coherent, cogent and inspiring confidence. There is nothing to discredit or disbelieve the said dying declaration. Before recording the dying declaration learned Magistrate had obtained doctor's opinion about the condition of the patient. The Doctor had declared the victim fit for making the statement and hence, this is reliable piece of evidence. We are in complete agreement with the finding recorded by the trial court. If accused / appellant Rajini's name is not there in the FIR, this fact alone is not going to help her in as much as the prosecution witnesses have thrown light over her participation in the crime and dying declaration also has put the final seal of approval on her role in the commission of crime.

27. For the reasons as discussed above, both the appeals are liable to be dismissed. The same are hereby dismissed. Conviction and sentence recorded by the trial court against the accused / appellants Sudhir and Smt. Rajini in respect of charges of offences punishable u/s 302 and 498-A of I.P.C., are affirmed. Accused / appellant Rajini is on bail. Her bail is cancelled. Accused / appellant Sudhir is in jail. Both the accused / appellants Rajini and Sudhir shall be made to serve out the sentence awarded by the trial court against them. A copy of this judgment be sent to the Superintendent of jail where accused / appellant Sudhir is serving out the sentence. The trial court record be sent back.