

(2015) 03 RAJ CK 0217
In the Rajasthan High Court
Case No : Criminal Appeal No. 196 of 2012

Sunil Kumar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Dowry Prohibition Act, 1961 — Section 3, 4, 6

Penal Code, 1860 (IPC) — Section 120-B, 302, 304-B, 316, 376

Citation : (2015) 03 RAJ CK 0217

Hon'ble Judges : R.S. Chauhan, J; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Advocate : Arvind Kumar Gupta and Chandrakala, Counsel, for the Appellant;
Aladeen Khan, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.—The appellants, by way of instant appeal filed under Section 374 of the Code of Criminal Procedure, 1973, have challenged the impugned judgment of conviction and order of sentence, dated 23.02.2012, rendered by the Court of Additional Sessions Judge (Fast Track), No. 2, Sikar, Headquarter Srimadhapur, whereby the appellants were held guilty of offences punishable under Sections 498-A, 304-B and 316 of Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. In the instant case, on 14.12.2004, Sunil Kumar, (appellant No. 1) was married with Smt. Usha Devi daughter of Ramesh Kumar at Chidarwa City. They were blessed with a child, who was aged about one-&-half years. On the date of the incident, Smt. Usha Devi, being pregnant was also carrying a quick unborn child aged about eight-months. On 26.06.2007 at around 10:00 A.M. in the house of her husband at Khandela, Smt. Usha Devi suffered burn injuries due to pouring of kerosene oil. On 02.09.2007, she died at S.M.S. Hospital, Jaipur.

3. During investigation, beside her husband, Sunil Kumar, father-in-law,

Ramgopal, mother-in-law, Smt. Vidhya Devi, brothers of her husband, namely Anil and Lakhan and sister of her husband, namely Mamta Devi, were also named as accused.

4. However, the Investigating Agency submitted charge-sheet against the present appellants, namely Sunil Kumar, the husband, Ramgopal, the father-in-law and Smt. Vidhya Devi, the mother-in-law. They were tried by the Court of Additional Sessions Judge (Fast Track), No. 2, Sikar, Headquarter Srimadhopur.

5. By its impugned judgment dated 23.02.2012, the trial Court, held all the appellants guilty for offences punishable under Sections 498-A, 304-B and 316 of Indian Penal Code, and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

6. Having convicted the appellants for the above said offences, by a separate order of even date, the trial Court sentenced them as under :-

"For offence under Section 304-B I.P.C. the appellants were sentenced to undergo life imprisonment.

For offence under Section 498-A I.P.C. the appellants were sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1,000/- each. In default of payment of fine to further undergo six months" simple imprisonment.

For offence under Section 316 I.P.C. the appellants were sentenced to undergo seven years imprisonment and to pay a fine of Rs.1,000/- each. In default of payment of fine to further undergo six months" simple imprisonment.

For offence under Section 3 of the Dowry Prohibition Act, 1961, the appellants were sentenced to undergo five year imprisonment and to pay a fine of Rs.15,000/- each. In default of payment of fine to further undergo six months" simple imprisonment.

For offence under Section 4 of the Dowry Prohibition Act, 1961, the appellants were sentenced to undergo six month imprisonment and to pay a fine of Rs.10,000/- each. In default of payment of fine to further undergo one months" simple imprisonment."

7. Though there was an allegation that after two months of the marriage, her father-in-law, Ramgopal, had committed rape with the deceased, Smt. Usha Devi, but the trial Court has not accepted this allegation, and has recorded acquittal of Ramgopal, father-in-law, for commission of offence punishable under Section 376 I.P.C.

8. The trial Court has also acquitted all accused for offence punishable under Section 6 of the Dowry Prohibition Act, 1961 and under Section 120-B of the Indian Penal Code.

9. Aggrieved against their conviction and sentence, Sunil Kumar, husband, Ramgopal, father-in-law and Smt. Vidhya, mother-in-law, have preferred the

present appeal.

10. In between the day of incident and death, besides oral dying declaration, three dying declarations of the deceased, Smt. Usha Devi were recorded.

11. The defence has projected that the deceased on the day of incident, made oral dying declaration to Manoj Kumar (DW-3) and Dinesh (DW-4) absolving the accused of the offence. Furthermore, reliance has been placed upon the first recorded dying declaration, (Exhibit-D/5) by A.S.I. Ranjeet Singh (DW-1), which is attested by Dr. Pradeep Sharma (DW-2). In this dying declaration, the deceased has stated that it was a case of accidental fire.

12. The second dying declaration, (Exhibit-P/14) was recorded on 20.07.2007 by Dheeraj Verma (PW-11), Station House Officer, Police Station Khandela in which the husband and his family members have been named as accused.

13. On the basis of the above said dying declaration, (Exhibit-P/14), a formal First Information Report (Exhibit-P/16), bearing No. 141/2007 was registered at Police Station, Khandela, District Sikar.

14. A day later i.e. on 21.07.2007 at about 04:10 P.M., another dying declaration, (Exhibit-P/19) was recorded by Issar Khokhar (PW-17), who was then posted as Judicial Magistrate, No. 7, Jaipur City.

15. Besides the above said dying declarations, Sunil (PW-1), the brother, Ramesh (PW-7), the father and Seeta Devi (PW-18), the mother of the deceased, had appeared in the witness-box to say that the deceased on account of dowry demand was harassed, maltreated and was burnt by the accused. They have also deposed that the deceased had also made oral dying declaration, implicating the appellants and other relatives of husband as accused.

16. We have been called upon to examine the testimony of witnesses by whom three dying declarations were recorded.

17. It is canvassed before us, by Shri A.K. Gupta, counsel for the appellants, that we should place reliance upon the dying declaration recorded for the first time, which was withheld from the Court and has been proved by defence on the ground that, the first dying declaration contains spontaneous version. Hence, the same should be acted upon.

18. It has been equally urged before us by the learned counsel that the second and the third dying declarations should be ignored. For, the relatives of the deceased were already in the hospital. Thus, the dying declarations have been recorded after the deceased was tutored to say against her husband and in-laws, even though husband had suffered burn injuries while saving his wife.

19. To appreciate as to which dying declaration is an authentic, genuine and reliable piece of evidence, we shall reproduce here true translation of all three dying declarations.

20. The first dying declaration, (Exhibit-D/5), when translated into English reads as under :-

"Statement of Usha Goduka w/o Sunil Goduka, by caste Mahajan, aged about thirty-years, resident of Ward No. 16, Khandela, at present under treatment at Community Health Centre, Khandela.

Stated that today i.e. on 26.06.2007 at about 10:00 A.M. I was cooking meals on the Gas. My child had passed stool. I proceeded to take care of him. Then suddenly my sari caught fire due to which I was burnt. My husband came forward to douse fire and he also suffered burn injuries on his hands. Nobody had put me on fire. Due to sudden fire, I had received burn injuries.

L.T.I. Usha signature Sd/ A.S.I. Ranjeet Singh Police Station, Khandela Dated 26.06.2007 Time : 11:30 A.M.

Place : Community Health Centre, Khandela" Sd/ Medical Jurist,
Community Health Centre, Khandela, (Sikar)."

21. On 20.07.2007 in the afternoon at about 12:20 P.M. Dheeraj Verma (PW-11), who was then posted as Station House Officer, Police Station, Khandela recorded statement of deceased, Smt. Usha Devi, (Exhibit-P/14).

22. The said statement (Exhibit-P/14), when translated into English reads as under :-

"Parchabayan of Smt. Usha wife of Sunil Kumar, daughter of Ramesh, by caste Mahajan, aged about twenty-four years, resident of Ward No. 16, Ballupura Mohalla, Khandela, at present admitted for treatment in I.C.U (Burn) Ward, S.M.S. Hospital, Jaipur, dated 20.07.2007, time 12:20 P.M.

"Stated that on 14.12.2004 I was married with Sunil at my paternal house, Chidawa. For some days, I stayed with my parents- -in-law at Khandela. For a few days, I stayed at Reengus. After two months of marriage, my father-in-law had committed rape with me at Khandela. My husband had threatened to kill me and to commit suicide. For this reason, I had not disclosed this incident to anybody. I am staying separately from my parents-in-law from last six/seven months. Only once rape was committed upon me. Thereafter, on number of occasions, he misbehaved with me and made attempts to commit rape. My father-in-law had given a teeth bite on my left shoulder. Due to fear, I could not disclose this fact to anybody. When I remained at in-laws house, my husband, parents-in-law, brothers-in-law (jaith and devar) and sister-in-law (nanad), all used to harass me. They used to ask me to bring money from my parents. In case, I used to bring money, they used to keep me well. After few days, they again used to maltreat. My husband often used to beat me. Before two days of occurrence, my mother-in-law had come. I had a quarrel with my mother-in-law and husband. On 26.06.2007 at about 10:00 A.M. I was present in the house along with my husband and nobody else was present in the house. My husband

caught hold of me, poured kerosene oil on me and had put me on fire. Nobody saved me. I ran towards outside, but my husband caught hold of me. I was having pregnancy of eight months. Due to burns, miscarriage had taken place in the female ward. I am having one-and-half year old child. Earlier, I had given statement to the Police, but that was given under duress. Now I do not fear anybody. For three days, my in-laws treated me and thereafter leaving me alone they have gone away. Now my parents are getting me treated. My in-laws used to make calls to my brother and threatened him that they will harm my child. I want justice. The name of my husband is Sunil Goduka, name of my father-in-law is Ramgopal Goduka, Anil Goduka and Lakhan Goduka are my Devar and Mamta Devi is my "nanad."

23. On the next day i.e. 21.07.2007 at about 04:10 P.M. Issar Khokhar (PW-17), who was then posted as Judicial Magistrate, No. 7, at Jaipur had recorded dying declaration of the deceased (Exhibit-P/19).

24. The said dying declaration, when translated into English reads as under :-

"Question : On which day, this incident occurred and at what time?

Answer : On 26.06.2007 in the morning at 10:30 A.M.

Question : What is place of occurrence ?

Answer : At my in-laws house.

Question : Why are you in this condition?

Answer : A week before i.e. on 26.06.2007, I came at my parental house. My husband had demanded money from my parents. I had not brought the money, then my husband, Sunil Goduka pouring kerosene oil, had put me on fire. I was carrying eight months pregnancy and the miscarriage has taken place in the hospital.

Question : Who were present at the time of incident ?

Answer : At the time my husband put me on fire, I made attempt to run away. My husband caught hold of me and at that time except my husband, nobody was present there.

Question : At the time of incident, who did what and said what?

Answer :- At the time of incident, my husband told me that you were sent to bring money from your parental house, but you have not brought. Therefore, he poured kerosene oil on me and put me on fire.

Question : Who came at the place of incident thereafter?

Answer : My husband himself brought me to the hospital at Khandela?.

Question : What else you have to say about this ?

Answer : On 14.12.2004 I was married with Sunil Goduka. Thereafter, my in-laws taunted for bringing less dowry. My father-in-law, Ramgopal had committed rape with me on numerous occasions. My mother-in-law, Vidhya used to beat me. Before two days of occurrence, i.e., on 26.06.2007, she had given beating to me and had threatened that they will kill my son, aged about one-&-half years. Anil also used to threaten me and say that you have to do the entire work. I was not keeping good health. He used to pressurize me. Lakhan also used to threaten me that send your son to us, otherwise we will murder your son.

Signature Sd/ Issrar Khokhar A.C.J. (J.D.) No. 7, Jaipur at 04:40 P.M."

25. We have noted all the three dying declarations herein above.

26. So far as the fitness of the deceased is concerned, there is no doubt that she was fit to make statements. As she died one-and-half months after her last dying declaration was recorded. There is also no dispute that the deceased had died due to sufferance of burn injuries.

27. Since we have to determine whether the deceased caught accidental fire or was put to fire, it will be necessary for us to take brief note of the medical evidence.

28. Dr. Hariram Dangi (PW-8) stated that on 26.06.2007 he was posted as Medical Officer at Community Health Centre, Khandela. On that day at about 11:30 A.M., he had medico-legally examined Usha Goduka.

29. As per Medico-Legal Report, (Exhibit-P/11), the Doctor had noted the following injuries on the person of Usha Godika :-

"Superficial to deep burn whole left and right lower limbs, whole anterior abdominal wall and chest wall. Whole neck and face. Upper left limb extending from middle arm to middle of forearm. Upper half of posterior chest wall. The burn is about 70%."

30. This witness on the said date and time had also examined, the appellant, Sunil Kumar. As per Medico-Legal Report, (Exhibit-P/12), the Doctor had noted the following injuries on the person of appellant, Sunil Kumar :-

"Superficial to deep burn right upper limb left upper limb, face and neck.

Burns about 27%"

31. The prosecution has neither proved nor brought on record bed-head ticket of the deceased. Furthermore, as per the Post-Mortem Report (Exhibit-P/18), she died on 02.09.2007. Post-Mortem on the dead body of Usha was conducted on 03.09.2007 at 04:00 P.M. The Post-Mortem Report, (Exhibit-P/18) has been proved on record by Dr. Rajesh Kumar Verma (PW-15), who was Member of the Medical Board. As per the Doctor, the deceased had suffered second to third degree of burns. As per opinion of the Doctor, the cause of death was Septicemia shock, due to secondary infection.

32. Dr. N.L. Disaniya (PW-20) stated that he had examined a quick unborn child, who had died in the abdomen before the birth, due to burn injuries received by the mother.

33. We have noted the medical evidence, now we shall revert to the statements made by relatives of deceased Usha Devi.

34. Sunil (PW-1), the brother of deceased, deposed in the Court that Usha was his younger sister. On 14.12.2004 she was married with appellant, Sunil Kumar. His parents had given dowry beyond their capacity. This witness stated that for giving less dowry, her mother-in-law Vidhya, father-in-law Ramgopal, husband Sunil Kumar, brothers-in-law (jeth and devar), namely Lakhan and Anil, and sister-in-law, (nanad), Mamta, used to give beating to Usha. They were demanding Rs.2,00,000/-. This witness further stated that her father-in-law on various occasions made attempts to commit rape. It is further stated that the accused, having hatched conspiracy, have put his sister on fire after pouring kerosene oil. This witness stated that Usha had informed him that on 24.06.2007 that her mother-in-law came to Khandela and had given beating to her, and had asked her to bring money from the parents. According to this witness, the deceased had further informed that on 25.06.2007 her father-in-law, brothers-in-law (jeth and devar), husband, Sunil Kumar, mother-in-law gave beating to her and were demanding Rs.2,00,000/-. Subsequently, on 26.07.2007 all the members of the family of in-laws having conspired had gone out of house after prompting Sunil Kumar to finish Usha.

35. Ramesh Kumar (PW-7), the father of deceased, has also corroborated the version of Sunil Kumar (PW-1). He stated that the accused used to maltreat and harass the deceased. They subjected her to cruelty. This witness further stated that on 25.06.2007, he had received a telephonic call from his daughter wherein she disclosed that accused had demanded Rs.2,00,000/- as dowry.

36. Seeta Devi (PW-18), the mother of deceased, has also supported Sunil (PW-1), her son and Ramesh Kumar (PW-7), her husband regarding, conduct of the accused to harass and maltreat the deceased, Usha for want of dowry.

37. However, neighbours, who were staying in the same vicinity at Khandela, in which deceased along with her husband was staying, have not supported the prosecution case and have been declared hostile. These witnesses have stated that on hearing noise, they had gone to the house of deceased. They found that the appellant, Sunil was saving his wife, and he also received burn injuries in the occurrence.

38. Ramesh (PW-4) stated that near the house of Sunil, he was having a School. He knew Usha. He had seen Usha in burnt condition in the hospital, and had not seen anybody else at the house. This witness was declared hostile and was cross-examined by the prosecution.

39. Yogendra Kumar (PW-5) stated that after hearing shrieks given by Usha, he

had gone to their house. At that time, Sunil also ran towards his house for saving his wife. At that time, Usha was burnt. Sunil while saving her, also suffered injuries. This witness further stated that there was no dispute between Sunil and Usha.

40. Suresh Kumar Sharma (PW-6), another neighbour stated that on hearing shrieks, he ran towards the house of accused. At that time, Sunil was dousing the fire.

41. Thus having noted the case of the prosecution in a nut-shell, we need not notice the statement of the others witnesses, who have participated in the investigation.

42. The prosecution had examined as many as twenty-witnesses, and proved twenty-six documents i.e. Exhibit-P/1 to Exhibit-P/26 respectively.

43. Thereafter, prosecution closed its evidence.

44. The statement of the accused, Sunil Kumar, the husband of deceased, was recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances put to him and stated that on the day of occurrence, he had to visit "Dhani" because on that day, being Tuesday, Bazaar was closed. The accused further stated that his wife told him to leave the house after taking meals. The accused requested his wife to cook the meal early and came out of the house. He tied up a jute bag on the motorcycle. Meanwhile, his two friends came and he talked along with them and five/seven minutes later, he heard shrieks from inside the house. The accused climbed stairs of house and saw that his wife was on fire; he made an attempt to douse the fire with his hand; he also suffered burns injuries on hands. He further stated that his two friends, namely Yogesh and Sumit brought his wife to the hospital. They also brought him to the hospital.

45. The accused, Ramgopal, father-in-law of deceased, in his statement recorded under Section 313 Cr.P.C. stated that he is innocent and he has been falsely implicated in the case.

46. To the similar effect is the statement of Vidhya Devi, the mother-in-law of the deceased.

47. In defence, the accused examined as many as nine witnesses.

48. Ranjeet Singh (DW-1) stated that on 26.06.2007 he was posted as A.S.I. at Police Station, Khandela. He received a telephonic information from the Community Health Centre, Khandela stating that due to burn injuries one woman has been admitted in the hospital. He went to record the statement of Usha wife of Sunil. She made statement (Exhibit-D/5) without any duress or coercion. She gave statement without fear. She was admitted in the hospital by the residents of Mohalla. The accused, Sunil was also admitted in the male ward. Usha was lying admitted in the female ward. At the time of the statement, Usha was speaking

coherently and she was fit to make the statement. The Government Doctor also declared Usha fit to make a statement. This witness stated that at the time of recording of the statement of deceased (Exhibit-D/5), doctor and the residents of Mahalla were also present in the hospital. The dying declaration has been signed by Dr. Bangra. The witness has also obtained thumb impression of Usha on the dying declaration. The witness further stated that spot, can of kerosene oil was found and from clothes of deceased Usha smell of kerosene was not coming. This witness was cross-examined by the Additional Public Prosecutor.

49. In cross-examination, this witness stated that the left hand of Usha was burnt below the elbow, and when he went to the hospital, Usha was conscious.

50. Pradeep Sharma (DW-2) stated that on the day of occurrence, he was posted at Community Health Centre, Khandela. On that day, Usha was admitted in the hospital at around 11:00 A.M. Information was relayed to the Police Station, Khandela. He had commenced treatment to be given to Usha. Due to heavy burns received, she was referred to the S.M.S. Hospital, Jaipur. Meanwhile, the Police had come to the Community Health Centre, Khandela. They asked him regarding the condition of the patient to make statement. Thereafter, this witness stated that the statement of patient was recorded in his presence. He had attested the statement. Since her hands were burnt, her thumb impression was taken. He further stated that she was not pressurized by anybody. She was not having any fear or pressure on her face.

51. Manoj Kumar (DW-3) stated that he knew Sunil. His house is at a distance of 100 feet. On 26.07.2007 at around 10:00 A.M., he was making preparation to undertake a tour. His car was parked in front of the house of accused. He heard noise of from the house of accused Sunil. He went inside and saw that Sunil was dousing fire on his wife. Usha told him that her husband has also caught fire. He be saved. Both, husband and wife were saying to douse each other's fire. This witness further stated that he brought, both the husband and the wife to Khandela, Government Hospital in his car. While he was present in the house of Sunil, brother of deceased, Suresh @ Munna and Yogesh and two other persons and neighbours came to the spot. The parents of Sunil are residing at Reengus. Sunil and Usha were residing at Khandela. This witness further stated that for last one year, he had not seen Ramgopal, Vidhya and their other sons at Khandela.

52. Dinesh (PW-4) stated that on 26.07.2007 at about 10:00/11:00 AM. he heard news from his neighbour that Usha caught fire and she was taken to the hospital. He had also come to the hospital. This witness further stated that he came to the hospital and saw that Usha had received burn injuries and she was crying that Sunil be saved. In the other room, Sunil was admitted in burnt condition. He suffered injuries due to fire on his both hands. This witness further stated that Usha was having obstinate by nature and on trivial issues, she used to fight with Sunil. On enquiry, deceased had disclosed that Sunil used to come late in the house. This witness stated that she threatened Sunil to go out of the

house or she will die. This witness stated that the parents of Sunil were residing at Reengus from last ten/twelve years.

53. Sumit (DW-5) stated that he knew Sunil, being neighbour. His house was at a distance of five/ten houses from the house of accused. On 26.06.2007 while wife of Sunil was making the meal, her sari caught fire. On hearing hue and cry raised, he reached at the house of Sunil. He saw that Sunil was dousing fire. Both the hands of Sunil were burnt. Manoj and Yogesh had already reached at the spot. People were saying that while Usha was making meals, she was also taking care of her child, and in that process her sari had caught fire. This witness stated that he had not talked to Usha. He further stated that Manoj had taken them to the hospital. He went to the hospital later. In his presence, Usha made a statement to the Police that she was working on the gas and while taking care of her child, suddenly the border of her sari caught fire. This witness further stated that at the time of incident, Sunil was outside his house, and he entered into the house, after hearing shrieks of Usha.

54. To the similar effect is the statement of Pawan Kumar (DW-6).

55. Anil Kumar (DW-7) stated that he knew Ramgopal. In June, 2007, he was living on rent in the house of Ramgopal. Ramgopal is father of three sons. Anil and Lakhan were living at Reengus with him, whereas Sunil and his wife were staying at Khandela. This witness further stated that in June, 2007, Lakhan and Ramgopal told him that they have to leave for Jaipur urgently as they had learnt that Sunil's wife had caught fire. This witness further stated that Sunil rarely used to visit Reengus. Sunil used to come to the house with his wife and children. He had never seen the accused maltreat the deceased.

56. Ramlakhan (DW-8) stated that for the last twenty-years, Ramgopal is a Cardiac Patient having diabetes. This witness stated that Ramgopal used to treat deceased Usha as his own daughter. This witness further proved the entry note of the Government Hospital, Exhibit-D/5 to Exhibit-D/18 to say that the family duly attended Usha for her medical treatment. This witness stated that Usha informed him regarding the incident and had reiterated as to what was stated by Usha in the dying declaration (Exhibit-D/5) recorded by A.S.I. Ranjeet Singh (DW-1).

57. The accused Sunil also appeared as DW-9 and reiterated as to what was stated by his wife in statement (Exhibit-D/5) and what was recorded in his statement under Section 313 Cr.P.C.

58. We have taken note of the prosecution evidence and the evidence led by the defence.

59. On the basis of the evidence of the neighbourers and the dying declaration (Exhibit-D/5), it is canvassed before us by the learned counsel that it is a case of accidental fire. Whereas the learned Public Prosecutor appearing for the State relying upon the testimonies of the relatives of the deceased, second and third

dying declarations recorded by the Investigating Officer and Issar Khokhar (PW-17), Judicial Magistrate, No. 7, Jaipur City, Jaipur, contended that the husband had poured kerosene oil on the deceased Smt. Usha Devi, and, thus, the appellant Sunil Kumar, being husband has caused murder of his wife. He has been rightly convicted by the trial court for offence punishable under Section 304-B I.P.C. to life imprisonment.

60. Thus, we have to determine whether the deceased was subjected to cruelty on account of the demand of dowry or not? And whether she has suffered burn injuries due to accidental fire, or she has been burnt by her husband, Sunil Kumar?.

61. To fortify his submissions, Mr. Arvind Kumar Gupta, the learned counsel appearing for the accused-appellants, has relied upon Khushal Rao Vs. The State of Bombay, AIR 1958 SC 22 : (1958) CriLJ 106 : (1958) 1 SCR 552 , to submit that it is necessary for the prosecution to lead evidence to corroborate dying declaration.

62. A further reliance has been placed upon Kishan Singh Munsha Singh Vs. The State, AIR 1963 P&H 170 : (1963) CriLJ 469 : (1962) 2 ILR (P&H) 855 , to contend that the Court should take into consideration the capacity and opportunity of person making dying declaration. Therefore, the Court must insist upon corroboration to the dying declaration by looking into other evidence led by the prosecution.

63. It is contended by the learned counsel that since the story of rape projected in the dying declarations (Exhibit-P/14 and Exhibit-P/19), respectively, has not been believed by the trial Court, the Court must be on guard to apply a rule of caution and where the Court is not in a position to sift unreliable portion of the dying declaration, the aforesaid dying declaration should be rejected.

64. In support of the contentions raised before us, counsel appearing for the accused-appellants, has relied upon the following judgments: (i) Godhu and Another Vs. State of Rajasthan, AIR 1974 SC 2188 : (1974) CriLJ 1500 : (1975) 3 SCC 241 : (1974) SCC(Cri) 859 : (1975) 1 SCR 906 (i) K. Ramachandra Reddy and Another Vs. The Public Prosecutor, AIR 1976 SC 1994 : (1976) CriLJ 1548 : (1976) 3 SCC 618 : (1976) SCC(Cri) 473 : (1976) SCR 542 Supp , (iii) Mohanlal Gangaram Gehani Vs. State of Maharashtra, AIR 1982 SC 839 : (1983) 1 Crimes 83 : (1982) 1 SCALE 143 : (1982) 1 SCC 700 : (1982) 3 SCR 277 , (iv) Smt. Kamla Vs. State of Punjab, AIR 1993 SC 374 : AIR 1992 SC 374 : (1993) CriLJ 68 : (1992) 3 Crimes 1088 : (1993) 1 DMC 4 : (1992) 6 JT 707 : (1992) 3 SCALE 205 : (1993) 1 SCC 1 , (v) State of U.P. Vs. Raj Bahadur and Others, (1993) CriLJ 86 (vi) Kishan Lal Vs. State of Rajasthan, AIR 1999 SC 3062 : (1999) CriLJ 4070 : (1999) 2 DMC 439 : (1999) 6 JT 41 : (1999) 5 SCALE 31 : (2000) 1 SCC 310 : (1999) 1 SCR 517 Supp : (1999) 2 UJ 1284 : (1999) AIRSCW 2998 : (1999) 7 Supreme 386 , (v i) Sagir Khan Vs. State of Rajasthan, (1999) CriLJ 1705 : (1999) 1 WLC 638 , (viii) Dada Machindra Chaudhar and

another Vs. The State of Maharashtra, (1999) 5 BomCR 601 : (1999) CriLJ 4009 : (1999) 3 MhLj 325 and (ix) Dandu Lakshmi Reddy Vs. State of A.P., AIR 1999 SC 3255 : (1999) CriLJ 4287 : (1999) 2 DMC 371 : (1999) 6 JT 166 : (1999) 5 SCALE 118 : (1999) 7 SCC 69 : (1999) 1 SCR 535 Supp : (1999) AIRSCW 3235 : (1999) 7 Supreme 354 . Furthermore, reliance has been placed upon Gaffar Badshaha Pathan Vs. State of Maharashtra, (2004) 10 SCC 589 to urge that where first dying declaration has been recorded by the Head Constable and in the same, it is stated that the deceased had died by catching accidental fire. It is a duty of the prosecution to prove that the dying declaration recorded by Head Constable was a false document.

65. We need not devote our time to judgments cited by counsel for the appellants, regarding dying declaration, as the legal position is well settled in the case of Smt. Paniben Vs. State of Gujarat, AIR 1992 SC 1817 : (1992) CriLJ 2919 : (1992) 1 Crimes 1180 : (1992) 4 JT 397 : (1992) 1 SCALE 655 : (1992) 2 SCC 474 : (1992) 2 SCR 197 , wherein for appreciating dying declaration, the law has been summed up as under:-

"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 on its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. 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:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. Munnu Raja and Another Vs. The State of Madhya Pradesh, AIR 1976 SC 2199 : (1976) CriLJ 1718 : (1976) 3 SCC 104 : (1976) SCC(Cri) 376 : (1976) 2 SCR 764 : (1976) 8 UJ 154 .

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, AIR 1985 SC 416 : (1986) CriLJ 836 : (1985) 1 Crimes 344 : (1985) 1 SCALE 108 : (1985) 1 SCC 552 : (1985) 2 SCR 621 , Ramawati Devi Vs. State of Bihar, AIR 1983 SC 164 : (1983) CriLJ 221 : (1983) 1 Crimes 637 : (1983) 1 SCALE 1 : (1983) 1 SCC 211 .

(iii) This Court has to scrutinise the dying declaration carefully and must ensure

that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. *K. Ramachandra Reddy and Another Vs. The Public Prosecutor*, AIR 1976 SC 1994 : (1976) CriLJ 1548 : (1976) 3 SCC 618 : (1976) SCC(Cri) 473 : (1976) SCR 542 Supp .

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. *Rasheed Beg and Others Vs. State of Madhya Pradesh*, AIR 1974 SC 332 : (1974) CriLJ 361 : (1974) 4 SCC 264 : (1974) SCC(Cri) 426 : (1974) 6 UJ 68 .

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, AIR 1980 SC 1983 : (1980) 4 SCC 531 : (1981) SCC(Cri) 25 : (1981) 1 SCR 640 .

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. *Ram Manorath and Others Vs. State of Uttar Pradesh*, (1981) 1 SCALE 527 : (1981) 2 SCC 654 : (1981) SCC(Cri) 581 : (1981) 3 SCR 195 .

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. *Narinder Singh Suri Vs. Union of India (UOI) and Others*, AIR 1980 SC 945 : (1980) CriLJ 683 : (1980) 2 SCC 357 : (1980) SCC(Cri) 455 : (1980) 12 UJ 505 .

(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. (*Surajdeo Oza v. State of Bihar*, 1980 Supp SCC 769).

(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 has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (*Nanahau Ram v. State of M.P.*, 1988 Supp SCC 152).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. *State of U.P. Vs. Madan Mohan and Others*, AIR 1989 SC 1519 : (1989) CriLJ 1485 : (1989) 2 Crimes 467 : (1989) 2 JT 158 : (1989) 1 SCALE 1087 : (1989) 3 SCC 390 ."

66. Thus, it is apparent that uncorroborated dying declaration can be made basis of conviction, if same inspire confidence.

67. The law is also well settled that the dying declaration, which is accompanied by suspicious circumstances, can be discarded by the Court. For, it is not safe to act upon the dying declaration, which is surrounded by suspicious circumstances.

68. We shall now examine the dying declaration (Exhibit-D/5) recorded by A.S.I. Ranjeet Singh (DW-1) in the presence of Dr. Pradeep Sharma (DW-2),

69. Richpal Singh (PW-9), in his deposition before the Court has stated that on 26.06.2007, he being posted as Constable, on receipt of telephonic information that one women is lying admitted in burnt condition in the Government Hospital, Khandela, along with In-charge Ranjeet Singh, A.S.I. and driver Mahendra Kumar had gone to inspect the spot. This witness stated that at the place of occurrence, one half filled can of kerosene oil, and burnt clothes were lying. This witness further stated that the A.S.I. Ranjeet Singh has not taken into possession the burnt clothes, and the can of kerosene oil. A.S.I. Ranjeet Singh had also not photographed the spot. Lastly, this witness stated that the plastic can of kerosene oil contained about five liters of kerosene oil. Ranjeet Singh (DW-1) is not a truthfull witness. He stated in Court that at spot no can of kerosene oil was found.

70. To the similar effect is the statement made by Mahendra (PW-14), who being driver of Police vehicle had accompanied Ranjeet Singh A.S.I. (DW-1) and Richpal Singh (PW-9) to the spot. At the spot, he found one half filled plastic can of kerosene oil and the burnt hairs. The burnt hairs and skin were not taken into possession. This witness also belie testimony of A.S.I. Ranjeet Singh (DW-1).

71. In cross-examination by defence counsel, Mahendra (PW-14) stated that the kitchen was on the first floor and near the door of kitchen, kerosene can was found and the kerosene oil was spilled near the door of the kitchen. He further stated that he is not aware that the can of kerosene oil was brought to the Police Station or not.

72. Referring to two dying declarations, one recorded by A.S.I. another by the Magistrate, we are of the view that preference ought to be given to the dying declaration recorded by the Magistrate as A.S.I. Ranjeet Singh (DW-1) has suppressed material pieces of evidence from the Court.

73. Our opinion to place implicit reliance upon Dying Declaration recorded by Magistrate is further fortified by observations made by five-judge Bench of the Hon"ble Apex Court in the case of Laxman Vs. State of Maharashtra, AIR 2002 SC 2973 : (2002) CriLJ 4095 : (2002) 4 Crimes 42 : (2002) 6 JT 313 : (2002) 6 SCALE 135 : (2002) 5 SCALE 418 : (2002) 6 SCC 710 : (2002) 1 SCR 697 Supp : (2002) 2 UJ 1363 : (2002) AIRSCW 3479 : (2002) 5 Supreme 557 , wherein it was held as under :-

"4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the court which persuaded the bench to make the reference to the Constitution Bench. In Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, AIR 1999 SC 3455 : (1999) CriLJ 4321 : (1999) 3 Crimes 150 : (1999) 6 JT 585 : (1999) 5 SCALE 451 : (1999) 7 SCC 695 : (1999) 2 SCR 328 Supp : (1999) 2 UJ 1440 : (1999) AIRSCW 3440 : (1999) 7 Supreme 640 the dying declaration in question had been recorded by a judicial magistrate and the magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit

disposing state of mind to make a declaration. Doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the court also had found serious lacunae and ultimately did not accept the dying declaration recorded by the magistrate. In the latter decision of this court in *Koli Chunilal Savji and Another Vs. State of Gujarat*, AIR 1999 SC 3695 : (1999) CriLJ 4582 : (1999) 4 Crimes 280 : (1999) 7 JT 568 : (1999) 6 SCALE 267 : (1999) 9 SCC 562 : (1999) 3 SCR 284 Supp : (2000) 1 UJ 437 : (1999) AIRSCW 3727 : (1999) 8 Supreme 717 it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The court relied upon the earlier decision. In *Ravi Chander and Others Vs. State of Punjab*, (1998) 8 JT 211 : (1998) 9 SCC 303 wherein it had been observed that for not examining by the doctor the dying declaration recorded by the executive magistrate and the dying declaration orally made need not be doubted. The magistrate being a disinterested witness and is a responsible officer and there being no circumstances or material to suspect that the magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the magistrate does not arise.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjit Kaur Vs. State of Punjab*, AIR 1999 SC 2571 : (1999) CriLJ 4055 : (1998) 3 Crimes 57 : (1999) 2 DMC 169 : (1999) 5 JT 317 : (1999) 4 SCALE 447 : (1999) 4 SCALE 417 : (1999) 6 SCC 545 : (1999) AIRSCW 2751 : (1999) 6 Supreme 390 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 *Paparambaka Rosamma and Others Vs. State of Andhra Pradesh*, AIR 1999 SC 3455 : (1999) CriLJ 4321 : (1999) 3 Crimes 150 : (1999) 6 JT 585 : (1999) 5 SCALE 451 : (1999) 7 SCC 695 : (1999) 2 SCR 328 Supp : (1999) 2 UJ 1440 : (1999) AIRSCW 3440 : (1999) 7 Supreme 640 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 where-after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, AIR 1999 SC 3455 : (1999) CriLJ 4321 : (1999) 3 Crimes 150 : (1999) 6 JT 585 : (1999) 5 SCALE 451 : (1999) 7 SCC 695 : (1999) 2 SCR 328 Supp : (1999) 2 UJ 1440 : (1999) AIRSCW 3440 : (1999) 7 Supreme 640 must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji and Another Vs. State of Gujarat, AIR 1999 SC 3695 : (1999) CriLJ 4582 : (1999) 4 Crimes 280 : (1999) 7 JT 568 : (1999) 6 SCALE 267 : (1999) 9 SCC 562 : (1999) 3 SCR 284 Supp : (2000) 1 UJ 437 : (1999) AIRSCW 3727 : (1999) 8 Supreme 717 case."

74. The Magistrate is a most independent person, he will not record false dying declaration. The dying declaration by the Magistrate has been recorded almost after one month of the occurrence. In the dying declaration, the deceased has stated, in categorical terms, that her husband had poured kerosene oil and put her on fire.

75. Therefore, we are of the view that it is not safe to rely upon the dying declaration (Exhibit-D/5), as the Magistrate after obtaining opinion of the doctor regarding fitness of the deceased, had recorded the dying declaration (Exhibit-P/19). Therefore, we shall rely upon the dying declaration, which is recorded by the Magistrate and is duly corroborated by the statements made by the relatives of the deceased, to hold that it is the accused, Sunil appellant, who had put his wife on fire.

76. Therefore, we find no merit in the appeal preferred by appellant No. 1, Sunil Kumar, and the same being devoid of merit is, hereby, dismissed.

77. So far as the appellant Nos. 2 and 3, namely Ramgopal and Vidhya are concerned, it has come in the prosecution evidence and in the dying declaration (Exhibit-P/14) that from last six/seven months, parents-in-law were residing separately at Village Reengus, whereas the deceased along with her husband was residing at Village Khandela. Dying declaration (Exhibit-P/19) also state that on date of incident, husband alone was present. Though, the dying declaration stated that before today, the mother-in-law of deceased had visited her son, this fact has not been corroborated by any independent witness.

78. To us, the parents who have a separate residence, have nothing to gain from the alleged demand of dowry.

79. It is a case where husband had poured kerosene oil and put deceased on fire. No role has been played by the other appellants, namely Ramgopal and Vidhya Devi so far as occurrence is concerned. They have been separately residing with other two sons, who are also married. To us, they have nothing to gain from the

alleged demand of dowry.

80. As a matter of abundant caution, we shall extend the benefit of doubt to the appellants, namely, Ramgopal and Vidhya Devi by recording their acquittal, qua offences under Sections 304-B, 498-A and 316 of Indian Penal Code.

81. Since the accused, Sunil Kumar, had poured kerosene oil on his wife and set her on fire, it is a clear case of murder. But since no charge for offence under Section 302 I.P.C. has been formulated, we are of the view that the case of the appellant No. 1, Sunil Kumar, shall also fall within the ingredient of Sections 304-B I.P.C., as Smt. Usha Devi died within seven years of marriage an unnatural death in her matrimonial home.

82. It has also come in the evidence of the brother of the deceased, Sunil (PW-1), Ramesh (PW-7), father and Seeta Devi (PW-18), mother that the deceased was subjected to cruelty on account of demand of dowry.

83. Therefore, the case of appellant No. 1, Sunil Kumar, substantively, fall under the provisions of Section 304-B I.P.C. and taking his conduct into consideration, we find no ground for reduction of the sentence.

84. As a result of aforesaid discussions, we accept the present appeal, qua appellants Nos. 2 and 3, namely Ramgopal and Vidhya Devi and they are acquitted of the charges and dismiss the appeal, qua appellant No. 1, Sunil Kumar, upholding his conviction and sentence on various counts recorded by the trial Court.