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2026:AHC-LKO:38099-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 2275 of 2019

Smt.Ram Rati and 2 others

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Nand Lal Sharma, Dilip Kumar Singh, Jyoti Rajpoot, K.k.sharma, Kaustubh Singh, Manoj Kumar Yadav, Prem Shankar, Rajendra Prasad, Rakesh Kumar
Counsel for Respondent(s)	:	Govt. Advocate,

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.
HON'BLE INDRAJEET SHUKLA, J.

Per: **Indrajeet Shukla, J.**

For the sake of convenience, instant judgment is divided into following parts:

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Introductory Facts

1. Embittered with the impugned judgment and order of conviction and sentence dated 05.08.2019 passed by the learned Additional District & Sessions Judge/Special Sessions Judge (Prevention of Corruption Act), Court No. 6, Lucknow, in Session Trial No. 440 of 2013 (State Vs. Sunil Kumar & others), arising out of Crime No. 119 of 2012, under Sections 498-A, 304-B of IPC and Section 3/4 of Dowry Prohibition Act, Police Station Mall, District Lucknow, instant appeal has been preferred before this Court.

2. Conviction and sentence awarded against the appellants under different penal provisions are tabulated as under:

Section 304-B IPC	**Ramrati** (mother in law)- Punishment for life, **Sunil Kumar** (husband) **Babulal** (father in law) -20 years rigorous imprisonment	
Section 498-A IPC	03 years rigorous imprisonment	Fine of Rs.2000/- each, in default one month's additional imprisonment
Section 4 D.P. Act	02 years rigorous imprisonment	Fine of Rs.2000/- each, in default one month's additional imprisonment
All the sentences, were directed to run concurrently		

Case of Prosecution

3. The prosecution story in nutshell as disclosed by first informant Santosh Kumar is, his daughter Sujata was married to one Sunil Kumar son of Babulal, native of village Kandhar Tala, Police Station Mall, District Lucknow as per Hindu rites and rituals about one and a half years prior to the occurrence. After the

customary farewell for the first time, his daughter went to her in-laws house. When she came to her paternal home (maika) she told her parents that her mother-in-law Ramrati, father-in-law Babulal and her husband Sunil Kumar were asking for additional dowry in the shape of motorcycle and a fan. Owing to his poor financial condition, first informant could not fulfill the said demand. Due to social pressure, first informant's daughter was again sent to her matrimonial home (sasural). A few days later, his daughter sent word to her parents with respect to harassment and demand of dowry. The first informant counselled her to stay at her in-laws home. On 13.05.2012, at approximately 10:00 AM, first informant's brother-in-law (Shivdin), called him and informed that his daughter had caught fire. Her in-laws were taking first informant's daughter to Civil Hospital, Lucknow. Upon receiving the information, the first informant rushed to the Civil Hospital. First informant's daughter was admitted to the Civil Hospital for treatment. After admission, the in-laws fled from the hospital. The first informant and his family members were involved in treatment of their daughter. Based on information received from the Medical Superintendent, Civil Hospital, the Deputy District Magistrate/SDM, Malihabad, recorded the statement of first informant's daughter (Sujata) in which, she said that on the previous day, her husband had beaten her and on the next day, her mother-in-law, father-in-law and husband poured kerosene oil upon her and set her ablaze.

4. The aforesaid information given in the shape of written complaint dated 20.05.2012 was translated into First Information Report dated 22.05.2012.

5. The injured Sujata succumbed to her injuries on 04.06.2012 at the Civil Hospital and the Inquest proceedings of the deceased were conducted on the next day i.e. on 05.06.2012. The inquest report (exhibit Ka-2) and other related documents were prepared.

The dead body of the deceased was sealed and sent for the post-mortem examination.

6. The post-mortem examination on the person of deceased was conducted on 05.06.2012 at 04.30 PM by PW-4 Dr. A.K. Srivastava at Balrampur Hospital, Lucknow, exhibited as Ka-3. As per the post mortem report, the following ante mortem injuries were noticed/found on the person of deceased Sujata:-

> *(i) Antemortem Injury-superficial to deep septic burn present on all over the body except antsolateral aspect of R side abdomen, forehead, upper part of the face, top of the head and both soles, pus, slough, debris dead skin present in wounds. On opening and section cutting of both lungs, liver, spleen and kidney multiple pus foci seen.*

7. The cause of death of the deceased as exhibited in the postmortem report has been opined as ‘septicemia as a result of ante-mortem burn injuries’.

8. The prosecution primarily relied upon the testimony of three witnesses of fact viz PW-1 Santosh Kumar (father of deceased) who is also the first informant, PW-2 Rakesh Kumar (uncle of deceased), PW-3 Sushila (mother of deceased) and also relied upon the dying declaration (exhibit Ka-12) which has been proved by PW-9 Suryanarayan Yadav (Executive Magistrate/SDM).

9. The investigation of the case was initially conducted by PW-7 Pradeep Kumar Maurya, who recorded the statements of witnesses and thereafter, the further investigation was conducted by PW-8 Rajesh Kumar Saxena, who has filed Charge-Sheet under Sections 498-A, 304-B of IPC and 3/4 of Dowry Prohibition Act against appellants-convicts vide exhibit Ka-6.

10. Learned trial Court framed charges under Sections 498-A, 304-B of IPC and 3/4 of Dowry Prohibition Act against the appellants and alternatively charge under Section 302 IPC was also framed. The accused persons pleaded ‘not guilty’ and claimed trial.

11. In order to bring home the guilt of the accused persons, the prosecution has examined following witnesses:

PW-1	Santosh Kumar (first informant and father of the deceased)
PW-2	Rakesh Kumar (uncle of the deceased)
PW-3	Sushila (mother of the deceased)
PW-4	Dr. A.K. Srivastava has conducted post-mortem of the deceased
PW-5	Rajesh Kumar Shukla (Nayab Tehsildar Mall Tehsil Malihabad- in whose presence inquest proceedings were conducted).
PW-6	Head Constable Rajdev who is the scribe of chik FIR
PW-7	Pradeep Kumar Maurya, first Investigating Officer
PW-8	Rajesh Kumar Saxena- Investigating Officer, who submitted the chargesheet.
PW-9	Suryanarayan Yadav, the then SDM Malihabad, Lucknow (Executive Magistrate, who recorded dying declaration)

12. Apart from aforesaid witnesses, prosecution produced following documentary evidences, which were exhibited and proved by leading evidence as follows:

Exhibit Ka-1	Written report
Exhibit Ka-2	Inquest report
Exhibit Ka-3	Post mortem report no.1933/2012
Exhibit Ka-4	Police form-challan-dead body
Exhibit Ka-5	Photo of dead body
Exhibit Ka-6	Letter to C.M.O.
Exhibit Ka-7	Chik no.-98
Exhibit Ka-8	G.D. report no.33
Exhibit Ka-9	Site plan of the place of occurrence
Exhibit Ka-10	Arrest memo
Exhibit Ka-11	Chargesheet
Exhibit Ka-12	Statement of deceased/dying declaration

13. After closure of prosecution evidence, the accused persons were examined under Section 313 Cr.P.C. wherein they outrightly denied all the charges and incriminating evidence against them and claimed themselves to be innocent. Dying Declaration exhibited as Ka-12, was put as incriminating material against appellants at the stage of examination under Section 313 Cr.P.C. and upon the confrontation of the same, they again discarded it stating it to be incorrect. Appellants-convicts had filed a written statement wherein they denied any demand of dowry harassment. They stated that the deceased herself set to fire. They tried to extinguish the fire during which Babulal sustained injuries on his hand. They further stated that the FIR has been lodged against them only because they could not fulfill illegal demand of first informant.

Scope of Criminal Appeal (Being First Appeal against Conviction)

14. Before we thrash out the evidence adduced before trial Court, we would like to recollect and remind ourselves of the manner in which an appeal against conviction is required to be heard by this Court, considering the scope of jurisdiction conferred by Sections 374 and 386 Cr.P.C.

15. Further, we would like to refresh our memory by going through the observations made by the Apex Court in the case of ***Ishvarbhai Fuljibhai Patni*** **v.** ***State of Gujarat*** **[1995 Supreme Court Cases (Crl) 222]**. Para-4 of the judgment reads as under:

> *…….On a plain requirement of justice, the High Court while dealing with a first appeal against conviction and sentence is expected to, howsoever briefly depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. In view of the infirmities pointed out by us, the judgment under appeal cannot be sustained."*

16. It would also be beneficial to have a glance of judgment rendered by the Hon'ble Supreme Court for understanding the scope and ambit of criminal appeal in the case of ***Lal Mandi,*** **v.** ***State of West Bengal,*** **[1995 CRI.L.J. 2659 (Supreme Court), 2659],** the Apex Court in para-5 of the report has given the caution to the High Court reminding its duty in the matter of hearing of appeal against conviction. It would be gainful to reproduce the observation made in para-5 of the report, extracted below:

> "*5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the*

Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, *which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."*

17. The law mandates and casts a duty upon the appellate court for reassessment of entire evidence, so as to arrive at an independent finding regarding the guilt or innocence of a convict, thus, the testimony of witnesses of facts is reappreciated as under:

(emphasis added)

18. **PW-1 Santosh Kumar** happens to be first informant and father of deceased appeared in the witness box and deposed as under:

"I, Santosh Kumar, aged about 40 years, occupation labourer, son of Late Fakir, resident of Kushmaura, P.S. Kakori, Lucknow, do hereby state on oath as follows: My daughter's name was Sujata, also known as Khushboo. I married her on 22.11.2010 to Sunil Kumar, son of Babulal, resident of Kandhar Tala, P.S. Mall, according to Hindu rites and customs. I gave dowry according to my financial capacity. After about four days of marriage, my daughter came to our house and told me, my wife, and my sons that her husband Sunil Kumar, father-in-law Babulal, and mother-in-law Ramrati were demanding a motorcycle and a fan as additional dowry. Thereafter, whenever she visited our house on different occasions such as Holi, Raksha Bandhan, and other family functions, she repeatedly informed us that her husband and in-laws were beating, abusing, and harassing her for not fulfilling the demand of a motorcycle and fan. On 18.04.2012, my daughter and her husband came to our house. On that night, my son-in-law again

demanded a motorcycle and a fan from me and my wife. We told him that we had not yet repaid the loan taken for the marriage and were not in a position to fulfil the demand at that time. Thereafter, he forcibly took my daughter back with him. Later, my daughter sent information that her husband and in-laws were beating and torturing her. On 05.05.2012, I went to her matrimonial home and tried to counsel her husband and in-laws. On 13.05.2012, my brother-in-law Shivdin informed me that my daughter had been burnt and taken to the Civil Hospital. I immediately went there with my family and found her admitted in the hospital. Her in-laws had fled from the hospital. When we asked her, she told us that one day earlier her husband had beaten her, and on the next day her husband Sunil Kumar, mother-in-law Ramrati, and father-in-law Babulal poured kerosene on her and set her on fire. I got a report lodged through the village Pradhan on 20.05.2012. Later, the police also came to the hospital and recorded statements. My daughter succumbed to her burn injuries on 04.06.2012 at the Civil Hospital. The inquest proceedings were conducted there, and the post-mortem was conducted on 05.06.2012 at the Medical College. I performed her last rites. No one from her in-laws' side attended. The written report shown to me was dictated by me to the Pradhan and bears my signature after being read over to me. This statement is true and correct."

19. The testimony of PW-1 was subjected to lengthy cross examination and in his cross examination he stated as under:

"I have studied up to Class VIII. I can write Hindi and have limited knowledge of English. I work as a labourer and have no other source of income. I have two sons and one daughter, Sujata alias Khushboo, who is now deceased. I married my daughter to Sunil Kumar, son of Babu Lal, resident of Village Kandhartala, Police Station Mal, Lucknow. Before the marriage, I visited the house of Sunil Kumar and Babu Lal and found their family to be of similar financial status to mine. Accordingly, the marriage was arranged. All marriage ceremonies were completed peacefully and there was no dispute at the time of marriage or farewell. After marriage, my daughter went to her matrimonial home and stayed there for four days. Thereafter, she came to my house and stayed for about fifteen days. Later, her father-in-law Babu Lal came to take her back to her matrimonial home. At the time of marriage, Sunil Kumar and Babu Lal both worked as labourers. Sunil used to work in Lucknow and sometimes lived there with my daughter. Initially, Sunil Kumar and my daughter lived normally, though occasional quarrels took place."

20. The second witness of fact adduced by prosecution is **Rakesh Kumar** examined as **PW-2** who stated in his examination in chief that:

"My name is Rakesh Kumar, son of Late Fakire, resident of Village Kusmaur, Police Station Kakori, District Lucknow. The deceased Sujata was my niece. She was married to Sunil Kumar, son of Babu Lal, resident of Kandhar Kala, Police Station Mal. For a few days after the marriage, everything was normal. Thereafter, her husband Sunil Kumar, mother-in-law, and father-in-law started harassing her for dowry. Whenever Sujata came to her parental home, she informed us that they were demanding dowry and troubling her. We used to console her and send her back. On 13.05.2012, Sujata sustained burn injuries and was admitted to the Civil Hospital. We received information through Shivdin and immediately reached the hospital. Her in-laws were present there initially but fled shortly thereafter. On 04.06.2012, Sujata died at the Civil Hospital. The inquest proceedings (Panchayatnama) were conducted in my presence, and the document bears my signature. I identify and confirm the same."

21. PW-2 was cross examined by the defence which reads as under:

"*Rakesh Kumar, son of Fakire, aged about 40 years, resident of Village Kushmaura, Police Station Kakori, District Lucknow, stated on oath as follows: The deceased Sujata was my niece. After the incident, I first saw Sujata at the Civil Hospital. My brother Santosh Kumar and my sister-in-law were already present there. Sujata was lying on a hospital bed and was conscious at that time. The information regarding the incident of burning was given to us over mobile phone by Shivdin. I spoke with Sunil Kumar during Sujata's treatment. A Magistrate also came to the hospital on the day of her admission. Sujata told me that her husband was demanding a car. No complaint had been filed by us earlier regarding this demand. I was not present at the time of lodging of the FIR. There was no dispute between Sunil Kumar and Sujata for about six months after the marriage. Thereafter, I came to know that disputes had arisen between them. Sujata had informed me over the phone that Sunil Kumar had assaulted her. It is incorrect to say that Sujata consumed kerosene or committed suicide. It is also incorrect to say that this case was falsely lodged due to any conspiracy or that I am deposing for money."*

22. Third witness of fact adduced by prosecution is mother of deceased namely **Sushila** examined as **PW-3** who stated before trial Court:

"Sushila Devi, wife of Santosh Kumar, aged about 35 years, resident of Village Kusmaura, Police Station Kakori, Lucknow, stated on oath as follows: My deceased daughter's name was Sujata. About five years ago, I married her to Sunil Kumar, son of Babulal, according to Hindu rites and customs. Dowry was given according to our financial capacity. After the marriage, Sujata went to her matrimonial home. Thereafter, when she returned to our house, she told me that her husband Sunil Kumar, mother-in-law Ramrati, and father-in-law Babulal were demanding a motorcycle and a fan as dowry. She further told me that they used to abuse, harass, and torture her for the said demand. Whenever Sujata came to her parental home, she repeated the same complaints regarding cruelty and dowry demand. About 10–15 days later, her father-in-law Babulal came to take her back. I told him about Sujata's complaints and informed him that we were not financially capable of giving a motorcycle and fan. Thereafter, after persuasion, Sujata was sent back with him. Later, in the month of Jyeshtha, at about 11:00 a.m., my brother-in-law informed me over phone that Sujata had been burnt. This incident took place about one and a half years after her marriage. My husband and I immediately proceeded there. On the way, we found that her in-laws were taking Sujata to the hospital. After getting her admitted, they fled. When I met my daughter in the hospital, she was in a serious condition."

23. The defence did not prefer to cross examine PW-3 despite opportunity was afforded, thus her statement in chief is to be read and is admissible as such.

24. In order to ascertain whether the deceased died otherwise than under normal circumstances, the consideration of testimony of **PW-4 Dr. A.K. Srivastava** who conducted the postmortem examination is expedient, who stated that after the post-mortem examination of the deceased Sujata Devi, by him, the police papers and post-mortem report were handed over to Police Constable Ramakant Pathak, Police Station Hazratganj, Lucknow. The postmortem report number of the deceased Sujata Devi is 1933/12. The deceased was approximately 20 years old. The deceased died

on 4/6/2012 at 8:30 pm at Dr. Shyama Prasad Mukherjee Hospital. This is established by Exhibit Ka-3.

External Examination-

25. The body of the deceased was of normal nature, rigor mortis was present all over the body. It was difficult to ascertain the staining after death due to burns. The deceased was identified by CP 1710 Ramakant of Hazratganj police station. The eyes of the deceased were closed and the mouth was half open in the natural opening of the body. The rest was normal. The body had burn injuries. The wounds on the body were noted.

Internal Examination

26. The scalp, skull, head, neck, and breasts were normal. Body membranes including the brain coverings, pleura, pericardium, and abdominal cavity were congested. The base of skull, spine, and meninges were not opened. The esophagus and stomach were normal. The left side of the heart was empty and the right side contained blood. The teeth, tongue, and throat were intact. The Antemortem injuries included the deceased had approximately 90% burn injuries over the body. Areas spared from burns were the right lower anterior abdomen, forehead, crown of the head, and soles of both feet. Burn wounds showed peeling skin, sloughing tissue, pus formation, and septic changes extending deep into the skin. On internal dissection, the lungs, liver, spleen, and kidneys were congested, and pus was found at several places indicating infection. The stomach contained about 90 ml fluid. The small intestine contained digested food and gas, and the large intestine contained fecal matter and gas. The urinary bladder was empty. The uterus was empty and genital organs were normal.In my opinion, the cause of death was septicemia resulting from ante-mortem burn injuries. Despite the burn injuries, the deceased could have remained capable of speech before death. If the deceased had sustained kicks, fists, or stick blows, separate external injuries may

not be visible due to the extensive 90% burn area. The post-mortem report of deceased Sujata Devi was prepared by me on 05.06.2012, jointly with Dr. Raghubir Srivastava, and bears our signatures.

27. PW-5 Rajesh Kumar Shukla, Naib Tehsildar Mal Tehsil, Malihabad, Lucknow was examined by the prosecution who proved inquest proceedings and after detailed cross examination nothing could elicit, which could doubt the veracity/genuineness of inquest proceedings. The said witness had stated before trial Court that Panchs were appointed and their opinion were taken, who stated that the deceased died due to burn injuries. Therefore, he concurred with the opinion of the inquest witnesses. For determination of real cause of death, the inquest witnesses including PW-5 were in favour of post mortem and for that purpose the body was sent. With respect to inquest proceedings, the said witness has stated that he and other witnesses signed the inquest report and they also signed police form, challan, photo of dead body, letter written to CMO. The said witness admitted his signatures on all forms/papers. Defence has not questioned either veracity of inquest proceedings or any police papers which were formally proved.

28. PW-6, Head Constable Rajdev, was examined by the prosecution. In his examination-in-chief, he stated that on 22.5.2012, he was posted as a Constable Clerk at the Police Station Mall, Lucknow. On that date, based on the complaint filed by the first informant-Santosh Kumar, the FIR registered vide Case Crime No. 119/2012 under Sections 498-A, 323, 307 of the Indian Penal Code, and sections 3/4 of the DP Act. As per his statement, he acknowledged and authenticated his signature on the FIR. He acknowledged the GD entry no.33 pertaining to the registration of FIR.

29. The defence cross examined the PW-6 but nothing material could come out impeaching the veracity of police papers.

30. On behalf of the prosecution, PW-7 Pradeep Kumar Maurya, the first Investigating Officer, was examined. The said witness after statement in his examination in chief, he stated that he has recorded the statement of the then injured Sujata (who later succumbed to her injuries), first informant and other witnesses. He also proved the preparation of site plan and other police papers. In detailed cross examination, nothing could come out which may discredit the prosecution case.

31. PW-8 Rajesh Kumar Saxena, Investigating Officer, was examined on behalf of the prosecution. He stated in his examination-in-chief that on 14.7.2012, he was posted as Circle Officer, Malihabad. On that day, he received the investigation report of FIR No. 119/2012, under sections 498A, 304B of the Indian Penal Code, and sections 3/4 of the DP Act, at Malihabad police station. He proved the filing of charge sheet and the police papers filed therein. The said witness also faced lengthy cross examination but the defence utterly failed to impeach the authenticity police papers. Even before this Court nothing could be pointed out by appellant which may discredit the authenticity of police paper filed along with charge sheet.

32. On behalf of the prosecution, PW-9 Suryanarayan Yadav, Secretary, State Backward Classes Commission, Lucknow, was examined. In his examination-in-chief, he stated that on 13/05/2012, he was working as SDM, Malihabad, Lucknow. On that day, information was received from the Civil Hospital, Lucknow, through the police station, that Mrs. Sujata, wife of Sunil Kumar, was admitted to the hospital with serious burn injuries and her statement needed to be recorded. Following this information,

he went to the Civil Hospital, Lucknow, and recorded the victim's statement. As per testimony of said witness, the statement of victim was recorded in verbatim in her own words. His testimony further states that the victim stated that she had quarrelled with her mother-in-law and father-in-law, verbally abusing her, and that when her husband returned home, he also assaulted her and attempted to drive her out of the house. She also stated that my mother-in-law, Ramrati, poured kerosene upon her and set her ablaze, and they were demanding dowry. The victim had given this statement without any pressure. Upon looking at paper number A-7/4 in the file, the witness stated, I recorded the victim's statement myself. It is in my own handwriting and bears my signature. Thus, he proved the Exhibit Ka-12 available as dying declaration.

33. The main thrust of prosecution to bring home the guilt of accused, is upon the dying declaration recorded by PW-9 Suryanarayan Yadav (Executive Magistrate/the then SDM, Malihabad). The said dying declaration has been exhibited as Exhibit Ka-12, which contains due certification by the Doctor Manoj Chaurasia, Emergency Medical Officer, Dr. S.P.M. (Civil Hospital, Lucknow).

34. The exhibit Ka-12 dying declaration of Smt. Sujata is extracted as under:

प्रदर्श क-12

Sujata 20/F W/o Sunil Kumar is Fully conscious & oriented to time place & person

Sd/-Dr. Manoj Chaurasiya
4.00 PM
13.5.12

श्रीमती सुजाता W/o सुनील कुमार निवासी ग्राम कन्धार ताला थाना माता जनपद

लखनऊ ने बहलफ बयान किया कि मेरी उम्र लगभग 20 वर्ष है। घर में सास ससुर से मेरा झगड़ा हुआ था और गाली गलौज व मार पीट किये थे। जब मेरे पति घर आये तो वे भी मारे पीटे तथा घर से निकलने लगे। मुझे मेरी सासु रामरती ने मुझे मिट्टी का तेल डालकर जलाया है ये लोग दहेज मे गाड़ी मांग रहे थे तथा आये दिन पैसे की मांग करते रहते थे। बयान मैं सत्य सत्य बिना किसी जोर दबाव के दे रहीहूँ।
बयान मेरे द्वारा लिखाया।

Sd/-Illegible

13.5.12

ह०अपठनीय

एस.डी.एम.

मलिहाबाद

Pt. was conscious & oriented during her dying declaration

Sd/-Illegible

ManojChaurasiya

13.5.12

EMO Dr. S.P.M. (Civil) Hospital, Lko.

35. In the present case, the defence adduced as many as three witnesses, namely Mrs. Rooprani as DW-1, Mr. Rajendra Kumar as DW-2 and Mrs. Kalawati as DW-3.

36. DW-1, Mrs. Rooprani, stated that shortly before the incident, Sunil had come to her shop. Thereafter, a child informed her that Sunil's wife had set herself on fire. She rushed with Sunil to his house and saw Babulal and Ramrati trying to save Sujata. Sunil covered her with a blanket, while Babulal used a quilt to extinguish the flames, during which Babulal sustained burn injuries on his hands. She further stated that when Sujata was asked as to why she had done so, Sujata replied that she had set herself on fire and that neither her husband nor her in-laws were at fault. She also stated that Sunil, Babulal, Ramrati and other villagers took Sujata to the

hospital. According to her, she had never heard of any quarrel or demand of dowry by Sunil, Ramrati or Babulal.

37. The defence examined DW-2, Rajendra Kumar, stated that Sunil was sitting at a grocery shop when a boy came and informed him that his wife had set herself on fire. Thereupon, he accompanied Sunil to the house, where they found Sujata in flames and all present persons attempted to extinguish the fire. He stated that Babulal sustained burns on his hand while saving her. Thereafter, Sujata was taken in a cart to Civil Hospital, Hazratganj, by Sunil along with his parents. He further deposed that Sujata was saying that she had set herself on fire and that none of them were at fault.

38. The defence examined the third witness, DW-3, Mrs. Kalawati, stated that Sunil and Sujata had been married about one and a half years prior to the incident. According to her, Sunil used to reside and work in Lucknow and kept Sujata with him there. She stated that she had never heard of any dowry demand or quarrel between them. She further deposed that Sujata told her that she had set herself on fire and that no one else was responsible.

39. The undisputed factual position which emerges is, the unfortunate occurrence of ablaze took place on 13.05.2012, and the injured Sujata was hospitalized and on the same day, her dying declaration was recorded by Executive Magistrate/PW-9. The injured succumbed to her injuries on 04.06.2012 in the Hospital i.e. after about 22 days. The postmortem examination was conducted on 05.06.2012, in the meantime, FIR was registered on 22.05.2012 on the written report submitted by the first informant on 20.05.2012. The Investigating Officer filed charge sheet on 25.08.2012 under Sections 498-A, 304-B of IPC and Section 3/4 of Dowry Prohibition Act. The case was committed to the Court of Session on 27.05.2013 and thereafter, the charges were framed on 31.07.2013.

Relevant Statutory Provisions and Authoritative Pronouncements

40. The dowry death is grave social menace, Hon'ble Supreme Court in introductory part of the judgment in the case of **Rajinder Singh Vs. State of Punjab, reported in AIR 2015 SC 1359,** has referred what made the parliament to amend the penal provisions to tackle the dowry death. Relevant introductory paragraphs reads as under:

> *"1. The facts of this case raises questions relating to one of the two great social evils practiced against the women of this country for centuries. In the facts presented before us, a young woman consumes pesticide having been driven to do so by repeated demands being made on her for money by the family into which she is supposed to merge her identity. Sati and dowry deaths have plagued this nation for centuries. Sati – the practice of sending a widow to her husband's funeral pyre to burn in it -was first outlawed under British Rule in 1829 and 1830 under the Governor Generalship of Lord William Bentinck in the Bengal, Madras and Bombay Presidencies. General SirCharles Napier, the Commander-in-Chief of the British Forcesin India between 1859 and 1861, is supposed to have said tothe Hindu Priests who complained to him about the prohibition of Sati that "the burning of widows is your custom but in mycountry, when a man burns a woman alive, we hang them andconfiscate all their property. Let us both, therefore, act in accordance with our national customs.*
>
> ***(emphasis supplied by us)***
>
> *2. It took free India many years before the Commission of Sati (Prevention) Act, 1987 was passed by Parliament setting down various offences relating to the commission of Sati and the trial of such offences by special courts. In this appeal, however, we are confronted with the other major problem, namely, dowry deaths. Parliament responded much earlier so far as the prohibition of dowry is concerned by enacting the Dowry Prohibition Act, 1961 under which minimum sentences were prescribed as penalty for the giving or taking of dowry. The specific menace of dowry deaths, however, was tackled by the introduction of a new provision in 1986 - Section 304B in he Penal Code together with another new provision Section 113B of the Evidence Act."*

41. Before we test the evidence led by rival parties, it would be apposite to have brief glimpse of certain provision of substantive as well as procedural law, which would necessarily lead us to reach an appropriate conclusion.

42. In order to curb and tackle the social menace of dowry death, the legislature in its collective wisdom introduced a new provision under viz ***304 B IPC and 113-B of Indian Evidence Act.*** These two provisions read as follows:

> ***"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 the 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."*
>
> ***"113-B. Presumption as to dowry death.***—*When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such 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.*
>
> *Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)."*

43. The primary ingredient to attract the offence under Section 304-B is that the death of a woman must amount to a "dowry death". "Dowry" has been defined under 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)."

44. A perusal of the aforesaid provision shows that the definition can be broken into six distinct parts.

1) Dowry must first consist of any property or valuable security- the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

3) Such property or security can be given or agreed to be given either directly or indirectly.

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

45. The ingredients of the offence under Section 304-B have been elaborately stated and restated in many judgments of Hon'ble Supreme Court. 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 order to arrive at the true construction of the definition of dowry and consequently the ingredients of the offence under Section 304-B, we first need to determine how a statute of this kind needs to be interpreted. It is obvious that Section 304B is a stringent provision, enacted to combat a social evil of alarming proportions.

47. One of the essential ingredients for constitution of an offence under Section 304-B IPC is that *soon before her death the victim must have been subjected to cruelty or harassment by her husband or any relative of her husband.* This phrase 'soon before her death' remained a matter of debate before by jurist but has been considered by the Hon'ble Supreme Court in the case of **Surinder Singh Vs. State of Haryana, reported in (2014) 4 SCC 129** had this to say:

> *"17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.*
>
> *18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207: 2000 SCC (Cri) 935] where this Court considered the term "soon before".*

The relevant observations are as under: (SCC pp. 222-23, para 15)

> *"15. … 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a Page 22 particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."*

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

48. In another judgment in the case of **Sher Singh v. State of Haryana, 2015 (1) SCALE 250,** Hon'ble Supreme Court has held as under:

> *"We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof*

> *upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt." (at page 262).*

49. We respectfully endorse what has been laid down in the aforesaid decisions. Days or months are not what is to be seen. What is required to be borne in mind is that the word "soon" does not mean "immediate" before. A fair and pragmatic construction, keeping in mind the grave social evil that has led to the enactment of Section 304-B IPC would make it clear that the expression is a relative in nature. Time lag may differ from case to case. What is necessary is that the demand for dowry should not be stale, but should be the continuing cause linked with the death of the married woman under Section 304-B IPC.

50. At this stage, it is important to notice the judgment of the Hon'ble Supreme Court in the case of **Dinesh v. State of Haryana, 2014 (5) SCALE 641** in which the law was stated thus:

> *"The expression "soon before" is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term "soon before" is synonyms with the term "immediately before". The determination of the period which can come within term "soon before" is left to be determined by courts depending upon the facts and circumstances of each case." (at page 646)*

51. Thus, position of law which emerges from a plain reading of judgments of Hon'ble Supreme Court is that the expression **"soon before"** is not synonymous with **"immediately before"**. This Court is conscious that the use of the word "soon" in Section 304-B I.P.C. ought not to be interpreted in terms of rigid periods such as days, months or years, but as necessarily should indicate that the demand of dowry should not be stale, but rather should be a continuing cause for the death. Once the presence of these concomitants is established or shown or proved by the prosecution even to their foundational effect by preponderance of possibility, the initial presumption of innocence is faded and replaced by an assumption

of guilt by the deeming provision of law, thereby shifting the burden of proof upon the accused to dislodge his guilt beyond reasonable doubt as per Section 113-B of the Indian Evidence Act.

52. The learned trial court has also convicted the appellants under Section 498-A IPC, thus, before testing the veracity of evidence led before the learned trial Court, it would be germane to examine the ingredients referable to Section 498-A IPC, which deals with cruelty. The said provision reads as under:

> *"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 purposes 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."*

53. The ingredients of an offence to be made out under Section 498-A of IPC require that there must be cruelty inflicted upon the *woman which either drives her to commit suicide or causes grave injury to herself or lead to such conduct that would cause grave injury or danger to life, limb or health (whether mental or physical).* The second part of this provision refers to harassment with a view to satisfy an unlawful demand for property or valuable security raised by the husband or his relatives.

54. The prosecution has heavily relied upon dying declaration for "bringing home the guilt of accused", thus, it is apt to extract Section 32(1) of Indian Evidence Act as under:

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

55. The 'Dying Declaration' Exhibited as Ka-12, has heavily been relied upon in the instant case, thus, this Court would like to be enlightened from certain authoritative pronouncements of the Hon'ble Supreme Court governing the field of appreciation of dying declaration as an evidence.

56. We have had privilege of combing through various authorities on the subject i.e. 'Dying Declaration' since pre independence era (time of privy council whose decision guided Indian Law pre 1950) and post independence era (after enforcement of constitution and the law declared by the Hon'ble Apex Court) such as *Queen Empress v. Abdullah (1885 ILR 7 All 385), Pakala Narayana Swami v. Emperor (1939 PC 47), Dalip Singh & Others v. State of Punjab (AIR 1953 SC 364), Kushal Rao v. State of Bombay (AIR 1958 SC 22), K. Ramachandra Reddy & Another v. State of Andhra Pradesh (AIR 1976 SC 1994), Munnu Raja & Another v. State of M.P. (1976) 3 SCC 104 (AIR 1976 SC 2199), Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622), Smt. Paniben v. State of Gujarat (1992) 2 SCC 474 (AIR 1992 SC 1817), Kamla v. State of Punjab (AIR 1993 SC 374), Paparambaka Rosamma & Others v. State of Andhra Pradesh (1999) 7 SCC 695, Laxman v. State of Maharashtra (2002) 6 SCC 710 (AIR 2002 SC 2973), Atbir v. Government of NCT of Delhi (2010) 9 SCC 1, Bhajju alias Karan Singh v. State of M.P. ((2012) 4 SCC 327), Jayamma & Another v. State of Karnataka (AIR 2021 SC 2399), Irfan v. State of Uttar Pradesh (2023 SCC OnLine SC 1060), Naeem v. State of Uttar Pradesh (2024 SCC OnLine SC*

237), Neeraj Kumar @ Neeraj Yadav Vs. Stateo f U.P. and others, 2025 SCC Online SC 2639, State of Himanchal Pradesh Vs. Chaman Lal, 2026 SCC Online SC 85.

57. Thus, we are taking it an opportunity to comprehensively sum up the law on dying declarations taking into account aforesaid authoritative pronouncement as under:

(i) 'Dying Declaration' having passed the muster of law are admissible by virtue of legal sanctity envisaged u/s 32 (1) Indian Evidence Act, such declarations being **exception to the hearsay rule** carry immense weight in criminal trials. Over the decades, the Supreme Court of India has shaped the law on dying declarations, clarifying their admissibility, the need or absence of corroboration, and the safeguards required to ensure reliability.

(ii) The root of 'Dying Declaration' lies in the latin maxim "***nemo moriturus praesumitur mentire'*** (no one at the point of death is presumed to lie). Sanctity of a dying declaration comes from the grave position of the declarant. Essentially, unless there is some concrete reason to suspect the dying declaration, the court can safely rely on it alone. The declaration must be scrutinized to ensure it was not the result of tutoring, prompting or imagination, and that the victim had a clear opportunity to identify the perpetrator and was in a fit condition to speak. If a dying declaration appears suspicious or suffers from any infirmity, the court should look for corroboration and not rely on it exclusively. For example, if evidence suggests the deceased was unconscious or physically incapable of making the statement, that declaration must be discarded.

(iii) There cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The requirement of corroboration is merely a **rule of prudence**, not a mandatory legal rule. Insisting on corroboration in every case would defeat the very purpose of the statutory exception, further, lack of detail in the dying declaration is not a reason to discard it.

(iv) If a dying declaration has been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a "substantive piece of evidence" sufficient to sustain a conviction on its own and cannot be regarded as a weak piece of evidence.

(v) The dying declaration must pass the test of it being voluntary, coherent, and made with the declarant's faculties intact. A dying declaration should be accepted if it inspires confidence after examining all the surrounding circumstances (who recorded it, when and how it was recorded, and the condition of the victim).

(vi) The omissions of detail do not invalidate a dying declaration, a statement cannot be rejected merely because it is brief or lacks particulars. In fact, brevity by itself is not a ground to doubt a statement; sometimes *"the shortness of the statement itself guarantees truth"*.

(vii) The requirement of medical fitness/certificate is pitted against eye witness testimony, the consistent law is, if an eyewitness testifies that the deceased was in a fit and conscious state to make a declaration, that can override a doctor's contrary opinion. The logic is that a person present

at the scene may better observe the victim's condition in real time than a belated medical inference.

(viii) In case of multiple dying declaration i.e. more than one dying declaration with material inconsistencies, those declarations cannot be accepted at face value without corroborative support. Specifically, if the declarations differ on essential facts or implicate different individuals, the court must examine them in light of other evidence. Further the declarations should corroborate each other; if they do not, they must at least be consistent with the overall circumstantial and medical evidence of the case. In essence, where multiple dying declarations conflict, the benefit of doubt generally goes to the accused unless one of the versions is clearly proven true by independent evidence. This principle ensures that the prosecution cannot cherry-pick one dying statement out of several contradictory ones to secure a conviction without addressing the discrepancies.

(ix) The absence of a doctor's certificate is not by itself a ground to discard a dying declaration if the circumstances otherwise indicate the victim was fit. The guiding principles emerges from Constitution Bench judgement rendered by Hon'ble Supreme Court in the case of ***Laxman (supra)*** which overruled the earlier dictum of Hon'ble Supreme Court rendered in the case of *Paparambaka Rosamma (supra).* Thus, merely not having a doctor's signature or certificate at the foot of the statement will not render it inadmissible or untrustworthy.

(x) The impact of judgment rendered by five judges bench of Hon'ble Supreme Court in the case of Laxman (supra) on Indian jurisprudence was to settle the law on recording

procedure for dying declarations. It resolved the confusion by clarifying that a doctor's certification of mental fitness is though ideal but is not a sine qua non for the acceptance of a dying declaration. What matters is that the person who recorded the statement or others present can verify the victim's consciousness and clarity.

(xi) The law does not require the declarant to be under the "shadow of death" or expect imminent death at the time of making the statement. A statement is a valid dying declaration as long as it relates to the cause of death or circumstances leading to it regardless of whether a substantial period passed between the statement and the death.

(xii) There is no rule barring police from recording of dying declaration, however, note of caution must be observed while relying such declarations but they are not outright inadmissible.

58. Heard Ms. Jyoti Rajpoot, learned counsel for the appellants and Sri Bipul Kumar Singh, learned State Law Officer representing State.

Analysis of Evidence

59. The statement of PW-1, Santosh Kumar (father of the deceased Sujata), reflects that he stated in his examination-in-chief he stated that "I got Sujata married on 22.11.2010 to Sunil Kumar, son of Babu Lal, as per Hindu customs." His testimony is consistent with the First Information Report (Exhibit KA-1). On 13.5.2012, he received a call from his brother-in-law informing him that his daughter had suffered burn injuries and that her in-laws were taking her to Civil Hospital, Lucknow. After her admission, the appellants fled the hospital, and it was PW-1 who stayed throughout her treatment. The deceased was subjected to a

post-mortem examination, which recorded that "The deceased was about 20 years of age. She died on 04.06.2012 at 8.30 p.m. in Dr. Shyama Prasad Hospital." The death occurred within two years of marriage otherwise then under normal circumstances. PW-1 Santosh Kumar made it unequivocal that his daughter had told him that her husband Sunil Kumar used to beat her and that her mother-in-law and father-in-law abused her with respect to the demand for a motorcycle and a fan.

60. The testimony of PW-1 further states that his daughter was subjected to ill-treatment at the hands of her in-laws. He then went to his daughter in-laws' house on 5.5.2012, where, he counselled his daughter Sujata's husband Sunil, and her mother-in-law and father-in-law, and advised Sujata to stay at her in-laws' house. He then returned home. On 13.5.2012, his brother-in-law Shivdin called and informed him that his daughter had caught fire and was being taken to the Civil Hospital, he stated that the deceased had stated that the three accused poured kerosene on her and set her on fire. Upon receiving this information, he arrived at the Civil Hospital with family and friends at 2:30 p.m. When he arrived at the hospital, he met the appellants at the hospital gate, after which they fled. The cross-examination further records that the deceased was lying on a stretcher at the hospital gate and that no treatment had been administered until he reached the hospital.

61. PW-2, Rakesh Kumar, stated before the trial court that "The deceased Sujata is my niece. Whenever Sujata returned home from her in-laws' house, she used to complain that the in-laws were demanding a motorcycle as dowry. They consoled Sujata and send her back, saying that everything would be fine after a few days. On 13.5.2012, all three accused together burnt Sujata." This witness is essentially a witness to the Panchnama, which has also been proved as Exhibit KA-2.

62. PW-3, Sushila, mother of the deceased Sujata, stated before the trial court that "My daughter's name is Sujata. When I met my daughter Sujata, she told me that her mother-in-law Ramrati, father-in-law Babulal, and husband Sunil were demanding a motorcycle as dowry. I counselled my daughter. My daughter also told me that her husband, father-in-law, and mother-in-law abused and harassed her with respect to the demand for a motorcycle and a fan. Whenever my daughter visited us she would tell us about the beatings and torture. Due to this very demand, my daughter's mother-in-law and father-in-law doused her with kerosene and set her on fire with the intention of killing her."
The defence did not cross-examine PW-3 Sushila, mother of the deceased Sujata on material particulars.

63. A close scrutiny of statements of all the witnesses of fact reveals that nothing material has been elicited in their cross examinationthat may impeach the credibility of the prosecution witnesses' statements. At the very least, the statements of the witnesses of fact are of corroborative value when read conjointly with the dying declaration exhibited as KA-12.

64. The post-mortem report was proved by PW-4, Dr. A.K. Srivastava, as Exhibit KA-3, who stated that "In my opinion, the cause of death was septicemia due to ante-mortem burn injuries. The extent of burn injuries in the post-mortem examination was approximately 90% burns." Despite lengthy cross-examination, his testimony cannot be impeached. He further affirmed the fitness certification appended to the dying declaration.

Contentions Raised on Behalf of Appellants

65. Learned counsel for the appellants assailed the finding of conviction returned by learned trial court raising following grounds:

66. The first and foremost submission advanced by learned counsel for appellants is that the FIR which is the foundation of prosecution case has been lodged at a belated stage as the first informant was engaged in bargaining by putting the appellant convicts to terms of paying money and since bargaining failed as such an occurrence of 13.05.2012 has been reported by means of first information report dated 22.05.2012 i.e. nearly after 9 days of delay without satisfactory explanation.

67. The contention raised by Ms. Rajpoot that the defence evidence has wrongly been discarded by learned trial court is perfunctory as on close scrutiny of all defence evidence it comes out that none of them claimed themselves to be an eye witness account and no primacy can be attached to their testimony if pitted against dying declaration.

68. Ms. Rajpoot further submitted by impeaching the testimony of PW1 - Santosh kumar contradicting it from dying declaration that when he first visited the hospital, his daughter was unconscious and she re-gained her conscious at about 5:00 PM. However, prosecution claims that dying declaration of deceased was recorded between 4:40 PM to 4:55 PM. The record does not support the timing as alleged by Ms. Rajpoot. However, PW-1 being only literate who was under trauma having seen his daughter in injured condition cannot be expected to record the timing through his watch and any such contradiction is insignificant. Thus, the argument so raised by Ms. Rajpoot does not inspire confidence impeaching the entire prosecution story.

69. The further contention raised by learned counsel for the appellants is there are multiple dying declarations thus, no credence can be attached to exhibit Ka-12 relied as dying declaration by learned trial Court. Further, the error committed by learned trial Court is relying upon dying declaration despite the deceased was brought to the hospital with 90% burn injuries. The deceased was in state of shock and severe pain arising out of burn injuries. The deceased was administered with several sedatives and painkillers which could have compromised her state of mind by impairing her cognitive capacity.

70. Learned counsel for the appellants further submitted that there was no fitness certificate which could be proved by the examining Doctor and in addition to this, the deceased was unconscious until 5:00 PM as per the testimony of father of the deceased (PW-1). Thus, the dying declaration of the deceased cannot be relied upon and is highly doubtful reason being in absence of medical certificate.

71. Counsel for the appellants-accused pointed out that on dying declaration thumb impression has been affixed which is not possible as entire body was burnt except right side abdomen, forehead upper part of the face, top of the head and both soles, thus, the alleged dying declaration is concocted.

72. The counsel for the appellant further submitted that no material object incriminating the deceased was recovered from the crime scene.

73. The submission so raised by learned counsel for the appellants that septicemia is the cause of death which could only be said to be remote cause but there is no denial that plethora of evidence is available that septicemia has direct nexus with the burn injuries suffered by deceased as such the appellants are the author

of the crime in question. It was the direct and immediate result of the death of the deceased which is not the consequence of alleged act of the accused. The deceased died after 21 days does not establish a clear plausible link between the alleged act and death being caused by the septicemia. In this respect, reliance has been placed in **Keshvalal Vs State of Madhya Pradesh,** reported in **(2002) 3 SCC 254,** it was held that where death occurs due to septicemia after days of treatment, prosecution must establish clear link.

74. The last submission raised by counsel for the appellant is with respect to quantum of sentence inter alia stating that the punishment for life awarded to mother-in-law and 20 years rigorous imprisonment to husband and father in law of the deceased by the trial Court is disproportionate and unsustainable in the eyes of law taking into the consideration that mother-in-law has already undergone more than 14 years of incarceration, while the husband and father-in-law have undergone 10 years of incarceration. Therefore, the Court must consider the mitigating factors and proportionality of the sentence awarded to the appellants.

75. No other points/grounds assailing the impugned judgment of conviction and sentence has been pressed by the counsel for the appellants.

Submissions Advanced on Behalf of the State

76. Refuting the contention of the learned counsel for the appellants, Mr. Bipul Kumar Singh, learned State Counsel submitted that the learned trial court has rightly convicted the appellants-accused in the present case after analysing evidence in detail particularly dying declaration.

77. It is submitted that PW-1 Santosh Kumar, PW-2 Rakesh Kumar and PW-3 Sushila have made clear and coherent statements that the deceased was being harassed by the appellants for dowry.

The conviction of the appellants is based on evidence and the present appeal has no merit and is liable to be dismissed.

78. Learned Counsel for the State- Respondent further contends that all statutory ingredients for " Dowry Death" are fully satisfied in this case. The deceased died within seven years of her marriage other than normal circumstances. The testimonies of PW-1 (Santosh Kumar), PW-2 (Rakesh Kumar) and PW-3 (Sushila) establishes that she was subjected to cruelty and harassment in respect to the dowry demand for motorcycle and fan "soon before her death".

79. It is further contended that the deceased specifically attributed the role of pouring kerosene oil and setting her ablaze against her mother in law/appellant-Ram Rati and she was subjected to assault and cruelty accompanying demand of dowry by her husband (Sunil Kumar) and father in law (Babulal).

80. Counsel for the State further placed reliance on the dying declaration recorded on 13.05.2012. It is submitted that the statement was recorded by Executive Magistrate, it was emphasized that deceased was certified as "fully conscious and oriented" by Doctor both before and after recording of her statement. Thus, requirement of certification by medical jurist is duly satisfied.

81. Relying upon the judgment of **Naeem vs State of UP** reported in **(2024) 3 SCR 36,** wherein the Apex Court laid down the factors to be taken into consideration while relying on dying declaration and in the present case all statutory conditions with respect to dying declaration are fully satisfied.

82. The further submission advanced by learned counsel for the State is that the death of the deceased resulting from septicemia has direct nexus with the burn injuries which was 90% and what matters is that whether the injuries were sufficient in ordinary

course of nature to cause death and if the original injury is of fatal nature it makes no difference that death is caused by the complications flowing from that injury since, casual connection is proximate as reaffirmed by the Hon'ble Supreme court in the judgment of Maniklal sahu vs state of Chhattisgarh reported in 2025 livelaw (SC) 905.

83. Having heard learned counsel for rival parties and perused the record, it comes out that the contention raised by learned counsel for the appellants that there is no explanation offered by prosecution qua delay in lodging FIR is examined in the face value of the statement of first informant, who unequivocally stated that he was involved in the treatment of his injured daughter in the Hospital, who later on succumbed to burn injuries. He has further stated that he submitted a written report on 20.05.2012 but same was not lodged by police taking sham shelter of absence of in-charge of police station and for aforesaid reasons, the police handed over the FIR to brother in law of first informant on 22.05.2012. The delay of seven days in submitting written report if examined and pitted against the mental trauma of father who was engaged in treatment of his daughter having suffered the burn injuries, the explanation of alleged delay owing to involvement in treatment appears to be plausible. The reliance placed by defence on the judgment of **Thulia Kali Vs. State of Tamil Nadu reported in (1972) 3 SCC 393** the Hon'ble Apex Court wherein it was held that unexplained delay in lodging FIR is fatal and creates suspicion and fabrication is completely misplaced as Thulia Kali's dictum has been considered by Hon'ble Supreme Court in the case of **Hariprasad @ Kishan Sahu Vs. State of Chhatisgarh reported in 2024 SCC Online SC 1764** and it has been held that delay in lodging FIR is not always fatal if cogent explanation is furnished by prosecution and the said authority is in the same line of Hon'ble Supreme Court's judgment rendered in the case of **Ravinder Kumar Vs. State of Punjab reported in (2001) 7 SCC 690.** Having

considered the judgments of Supreme Court qua delay in lodging FIR in the facts of present case, it comes out that there is sufficient explanation offered by none other than first informant stating that the delay was caused on first hand due to engagement in treatment and on the other hand the FIR was not lodged by police station assigning the reason of absence of In-charge Station House Officer, thus, the argument of defence that there is delay in registration of FIR cannot be applied in vacuum and the argument so raised is hereby rejected for aforementioned reasons.

84. The argument of Ms. Rajpoot that there were multiple dying declarations is an unfounded fact as prosecution has relied upon only one dying declaration i.e. exhibit Ka-12. Thus, there is neither multiple dying declaration nor any inconsistency from any other piece of evidence could successfully be pointed out by learned counsel for appellants at the same time, the certification appended on dying declaration by medical jurist which has been duly proved before learned trial Court by virtue of testimony of PW-4 cannot be doubted, thus, the fitness as certified by the Doctor for making dying declaration is to be believed by this Court and this Court cannot supplant its own wisdom by substituting the certificate of the Doctor in some other way.

85. Furthermore, for appreciation of dying declaration the statement of PW-9 the Executive Magistrate who recorded dying declaration is material evidence in which he has stated that the deceased was in fit condition and he examined the voice whether patient was able to put thumb impression. There is no cross examination on the point with Doctor or with Magistrate that whether deceased was at the time recording of dying declaration was in condition to put a thumb impression or not and in absence of such cross examination the defence cannot derive any benefit.

The counsel for the appellant submitted that no incriminating material pointing out deceased was set to ablaze was recovered.

86. The stress laid by appellants'counsel that nothing incriminating was recovered, this contention is if examined on its face value then even if it is assumed recovery of any incriminating material was not effect then such lapse can be attributed to Investigating Officer and defective investigation cannot be foundation for tendering any short of benefit leading acquittal to the appellants.

87. The counsel for the appellant has stressed and laid much emphasis that the victim was admitted to the hospital by in laws which rules out any possibility of culpability in the mind of accused rather their conduct is bona fide and same may be taken into account and their conduct of admission to hospital entitles them to have favour i.e. at least the benefit of doubt but such contention is tested on the overall evidence available on record which clearly suggest that if it is assumed that it was in laws they got the victim admitted for treatment even then they did not remain with the victim throughout her injured condition and there is no evidence that they have contributed towards expenses of treatment rather there is evidence in regard to their fleeing away from the hospital which belies the contention of appellant treating the accused appellants to be bona fide in their conduct. The attempt of admission of victim to hospital might be due to social pressure as the neighbours reached on the spot when victim was burning. The clear role assigned in the dying declaration waters down any attempt of admission to hospital in the backdrop when the appellants were impugned to have fled away from the hospital. Thus, the arguments so raised by appellants qua admission to hospital does not find favour of this Court.

88. The further contention raised by counsel for the appellant that the deceased died due to septicemia as a result of burn injuries thus, the cause of death could not directly be attributed to burn injuries rather the cause happened to be remote one. It is commonly noticed that death in case of burn injuries invariably is found due to septicemia thus, this contention is being examined in the light of judgment of Hon'ble Supreme Court rendered in the case of Maniklal Sahu Vs. State of Chhatisgarh reported in 2025 SCC Online SC 1960, wherein the death was due to septicemia and Hon'ble Supreme court tested ***'Theory of Causation'*** where death ensues after some delay.

89. The relevant paragraphs of aforementioned authority are extracted as under:

> *"58. Septicemia is described by the medical experts as the condition which results where the circulation becomes flooded with bacteria, either due to the failure of local defensive reactions at the site of infection or to delayed or inadequate treatment. According to the learned author, every penetrating wound except those inflicted by the surgeon is potentially infected, though a certain period elapsed before invading organisms actually establish themselves become embedded in the tissues to multiply and form toxins. [See: The Essentials of Modern Surgery by Handfield Jones and Pokitt, V Edn]*
>
> *59. In one of the recent pronouncements of this Court in Prasad Pradhan v. State of Chhattisgarh, (2023) 11 SCC 320, this Court stated in paragraphs 30 and 31 respectively as under:—*
>
> *31. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is mportant is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardiorespiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked."*
> *(Emphasis supplied)*
>
> *61. In Patel Hiralal Joitaram v. State of Gujarat, (2002) 1 SCC 22, the interval between the date of the incident when the deceased sustained burns and the date of her death was a fortnight. It was argued on behalf of the appellant therein that the death of the deceased had no direct nexus with the burn injuries as during the interregnum period some other complications cropped up as a*

result of which the victim succumbed. While negativizing such contention, this Court observed as under:—

"16. Harping on an answer given by PW 12 in cross-examination that death of the deceased had occurred due to "septic" learned Senior Counsel made out an argument that such septic condition could have developed on account of other causes. Mere possibility of other causes supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21-10-1988. The cause of death can be determined on broad probabilities. In this context we may refer to a passage from Modi's Medical Jurisprudence and Toxicology, dealing with death by burns:

"As already mentioned, death may occur within 24 to 48 hours, but usually the first week is the most fatal. In suppurative cases, death may occur after five or six weeks or even longer."

17. In Om Parkash v. State of Punjab [(1992) 4 SCC 212] the victim was set ablaze on 17-03-1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by this Court.

18. It is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicemia and died of that on 15-11-1988. Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as a sequel to the burns sustained by her. Hence we repel the contention of the learned counsel on that score."

(Emphasis supplied)

90. The argument of learned counsel for the appellants with respect to burn injuries not being direct cause of death rather remote one, is examined by taking cue/light from judgment rendered by Hon'ble Supreme Court in the case of Maniklal Sahu (supra) and is tested on the anvil of statement of doctor it comes out the medical jurist/doctor himself stated that the nexus between septicemia and the burn injuries cannot be ruled out. Furthermore the burn injuries of 90% were found to be sufficient for death in ordinary course of nature. Thus, the defence ought not to expect any leniency from this Court on the count of death being due to septicemia.

91. The deceased Sujata died at the age of about 20 years, within one and half years of her marriage, due to burn injuries at her in-laws' house, occurred "otherwise than under normal

circumstances”. Thus, her statement before the Magistrate is a significant piece of evidence in connection with her death. A perusal of Exhibit KA-12 clearly shows that before recording the statement, the then Sub-Divisional Magistrate, Malihabad, Mr. Suryanarayan Yadav, had a doctor record a fitness report with respect to the victim's condition, and only after obtaining the certification of the medical jurist, he proceeded to record the victim Sujata's statement. The said dying declaration has been proved by its author, PW-9. The incident occurred on 13.05.2012, the statement was recorded on the same day, and the victim succumbed to her injuries on 04.06.2012. As such, the statement is relevant under Section 32(1) of the Indian Evidence Act. In this statement, the deceased Sujata stated that she was 20 years old and had a quarrel with her in-laws, who abused and assaulted her. When her husband returned home, he also beat her and tried to drive her out of the house. Regarding how she caught fire, she clearly stated in Exhibit KA-12: "My mother-in-law, Ramrati, poured kerosene upon me and set me ablaze. They were demanding a vehicle as dowry and were demanding money every day.

92. In the case at hand, the prosecution proved the dying declaration recorded by an Executive Magistrate having been examined as PW-9, Suryanarayan Yadav. He stated on oath before the trial court that "On that day, I received information from Civil Hospital, Lucknow, through the police station, that Mrs. Sujata, wife of Sunil Kumar, was admitted to the hospital with serious burns and her statement needed to be recorded. Following this information, I went to Civil Hospital, Lucknow, and recorded Mrs. Sujata's statement verbatim as she had narrated it. The victim stated that she had quarrelled with her mother-in-law and father-in-law, who abused her. Later, when her husband returned home, he also beat her and they tried to drive her out of the house. She further stated that her mother-in-law, Ramrati, had poured kerosene on her

and set her ablaze, and that they were demanding a vehicle as dowry. The victim gave this statement without any pressure." Upon being shown Paper No. A-7/4 in the file, the witness confirmed that he had written the victim's statement in his own handwriting, which bore his signature. In this manner, Exhibit KA-12 was proved.

93. In nutshell we gathered since the foundational judgment of Hon'ble Supreme Court qua dying declaration to be tested on the touchstone of statutory mandate contained under Section 32 (1) of Indian Evidence Act is **Kushal Rao Vs. State of Bombay** reported in **AIR 1958 SC 22**, wherein the contention so raised that an uncorroborated dying declaration would not be safe for conviction was repelled and it was observed that there is neither rule of law nor a prudence that dying declaration must be corroborated before it can found a conviction. The only caution is required that dying declaration should have been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a substantive piece of evidence sufficient to sustain a conviction on its own. In short, a truthful and voluntary dying declaration can suffice without independent confirmation, so long as the court is convinced of its veracity. The jurisprudence qua dying declaration since time of Kushal Rao's judgment rendered in 1957 remained consistent and there is no deviation on the said legal principle.

94. We have an advantage to go through the judgment of Privy Council rendered in the case of **Pakala Narayana Swami Vs. Emperor reported in AIR 1939 PC 47** in which, the principles qua reliability of dying declaration was summerized stating therein the statement must relates to chain of evidence having a direct connection to the actual cause of death and it has further held it is not a weak piece of evidence. If the Court is satisfied that the statement is true and voluntarily it can be the sole basis for conviction without any further corroboration, there is no absolute rule that it must be recorded by a Magistrate or in a specific format

but going by the facts of case in hand the dying declaration in question exhibited as Ka-12 has been recorded by Executive Magistrate who proved its authenticity before the Court.

95. The great emphasis has been laid by defence that if there are multiple dying declarations then, it is not safe to record conviction founded on dying declarations but Hon'ble Supreme Court has held in the case of **Puran Chand Vs. State of Haryana reported in (2010) 6 SCC 566** that if there are multiple dying declarations they must be consistent, major contradiction may lead the Court to reject them. In the case in hand prosecution has not relied upon multiple dying declaration as incriminating material but it is the brain child of defence that the statement given to the parents, to the Investigating Officer and to the Executive Magistrate are termed as multiple dying declarations but so far as any contradiction is concerned, nothing could be projected as such the argument of multiple dying declaration is absolutely of no consequence.

96. The Deceased survived for almost 22 days after the incident. Her dying declaration was recorded by PW-9 Suryanarayan yadav, the then SDM, Malihabad Lucknow, after obtaining the certificate of medical fitness from the doctor concerned. This dying declaration was proved by him. This witness is absolutely an independent witness and has no grudge or enmity against appellants to get them convicted. In the wake of aforesaid judgment of Laxman (**supra**), dying declaration cannot be disbelieved, if it inspires confidence.

97. On reliability of dying declaration and acting on it, without corroboration, Hon'ble Apex Court held in **Krishan vs. State of Haryana [(2013) 3 Supreme Court Cases 280]** that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused. Where the dying declaration is true and correct, the attending circumstances show it to be reliable and it has been recorded in accordance with law, the

deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close judicial scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court comes to the conclusion that the dying declaration was the truthful version as to the circumstance of the death and the assailants of the victim, there is no question of further corroboration.

98. In **Ramilaben Hasmukhbhai Khristi vs. State of Gujarat, [(2002) 7 SCC 56]**, the Hon'ble Apex Court held that 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 the 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.

99. Thus, we find ourselves in complete agreement that dying declaration can be the sole piece of evidence if it is trustworthy for bringing home the guilt of accused and following principles can culled out for appreciation of dying declaration as an evidence. The corroboration of dying declaration often sought as a matter of prudence is not an absolute legal requirement. While examining the

dying declaration the courts must ensure that dying declaration so relied upon must pass the following tests:

(i) It must be free from tutoring, prompting or imagination;

(ii)It must have been given voluntarily, coherent and made with declarant's faculties intact

(iii) The declarant should have had a clear opportunity to observe and identify the assailants

(iv) It must have been given in fit mental state and,

(v) It ought to have been recorded properly meeting the touchstone of section 32(1) of Indian Evidence Act.

100. The rigorous judicial scrutiny of dying declaration in question, satisfactory passes the muster of all the aforementioned tests.

101. The dying declaration in the instant case is briefly but clearly worded and describes the quarrels, abuse, and assault by her in-laws. It further records that when her husband arrived, he also assaulted her, and that her mother-in-law, Ramrati, poured kerosene on her and set her ablaze. Thus, the dying declaration clearly details how the incident occurred. PW-1 Santosh Kumar, (the deceased Sujata's father), and PW-3 Sushila (the deceased Sujata's mother), also stated that Sujata had told them about the cruelty, harassment and maltreatment meted out to her in connection with demand of dowry at the hospital. Thus, the dying declaration having medical certification stands corroborated by the testimonies of witnesses of fact.

102. It is now well-settled law, since the time of foundational judgment rendered by Hon'ble Supreme Court in the case of Kushal Rao **(supra)** and ever since the judgment rendered by privy council in the case of **Pakala Narayana Swami (supra)** till today, that where a dying declaration inspires confidence, no further

corroboration is needed. In the case at hand, there is a certification by the medical jurist regarding the condition of the injured Sujata, who later succumbed to her injuries. The credibility of the Executive Magistrate, i.e., PW-9, could not be doubted by the defence. Thus, the dying declaration in this case has been sufficiently proved to bring home the guilt of the accused.

103. In the present case, the deceased died in a hospital due to burn injuries within one and a half year of her marriage. In her dying declaration, she unequivocally mentioned the cruelty and torture she had suffered in connection with a demand for dowry. The dying declaration further shows that the abuse and torture took place shortly before her death. Corroborating evidence of all these facts is available in the testimony of PW-1 and PW-3.

104. It is needless to mention that Section 113-B of the Indian Evidence Act, 1872 mandates the court to presume dowry death in cases where there is evidence of dowry demand and harassment, attracting Sections 304-B and 498-A of the Indian Penal Code. The presumption envisaged under Section 113B of Indian Evidence Act is rebuttable one but appellants utterly failed to discharge the reverse burden cast upon them by aforesaid statutory prescription as in the present case statement under Section 313 Cr.P.C. , accused Ramrati stated, "We were not in the house when Sujata set herself to fire. We came in after hearing the noise. I was outside applying mud to the wall." Accused Babulal stated, "Sujata set the fire herself. We saved her. In the process, my left hand was burned. The case arose only because her family's inability to pay the money." Accused Sunil, in his statement under Section 313 of the CrPC, said, "Ramavatar's house is near my house. On the day of the incident, there was an argument between Ramavatar's wife and Sujata, and in a fit of rage, Sujata set herself on fire. My in-laws were demanding Rs. 1.5 lakh for not filing a case. I did not pay,

hence the case was filed." In the present case, the evidence presented by the defence does not appear natural or sufficient to rebut the statutory presumption beyond reasonable doubt.

105. The legislative intent behind the enactment of Section 113-B of the Indian Evidence Act represents a profound shift in our criminal jurisprudence. Generally, this departure from the traditional maxim of the burden of proof rests upon him who affirms is deeply rooted in the doctrine of special knowledge and the compelling socio-legal necessity to pierce the veil of domestic privacy.

106. It is a grim reality that dowry deaths typically occur within the "four corners of the house," a domain characterized as a private sanctuary where the husband and his relatives exercise near-total dominion. In such a setting, the State recognizes a systemic evidentiary vacuum. In these private,hidden crimes, the victim is often dead, leaving behind no external witnesses other than the perpetrators themselves.

107. Consequently, the law justifies the imposition of a reverse burden of proof on the premise that the circumstances surrounding the death are uniquely within the exclusive knowledge of the accused. It is, therefore, both logically sound and morally imperative that the onus shifts to the occupants of the household to offer a cogent explanation.

108. Another important aspect of the defence case is that the statements of the defence witnesses do not match the statements of the accused recorded under Section 313 of the CrPC. Accused Sunil alleged that there was dispute between his neighbour Ramavatar's wife and Sujata, and stated that it was for this reason that Sujata set herself on fire. However, this fact is not mentioned in the statements of the other two accused or in the defence evidence at all. Thus, the defence's attempt to explain the circumstances of Sujata's death is entirely contradictory to the deceased's dying declaration.

109. The Hon'ble Supreme Court has also expressed its view in **Ramakant Mishra alias Lalu & Others v. State of Uttar Pradesh, (2015) 3 SCC (Crl.) 503,** that under Section 113-B of the Indian Evidence Act, in such cases, the burden of proof falls on the accused to prove their innocence.

110. The accused persons have examined three witnesses in their defence. DW-1 Smt. Roop Rani is neighbour of the appellants who in her statement has stated that at the time of incident accused-appellants were trying to extinguish the fire and accused appellant Babulal's hands got burnt while extinguishing the fire. DW-2 Rajendra Kumar is also neighbour of the appellants and has reiterated the version of DW-1. He further stated that appellants with the help of his 'Dala'(cart) have admitted the deceased at Civil Hospital, Hazaratganj, Lucknow and also stated that wife of Sunil was saying that she set herself on fire. It is not their (appellants) fault. DW-3-Smt. Kalawati is also the resident of same village. She stated that she never heard about the demand of dowry or any harassment by the deceased. She further stated that Sujata herself said that she set herself on fire and there is no fault of anyone else.

111. The defence version that appellant convict Babulal endeavoured to save the deceased by extinguishing the fire does not inspire confidence in absence of any medical examination as he had ample opportunity to get himself medically examined as appellant no.3 Babulal accompanied the deceased while reaching to Civil Hospital, thus, absence of medical examination of Babulal establishing burning of his hand in the incident goes against the defence version.

112. When the dying declaration is weighed against the tetsimonies of the three defence witnesses, it emerges that none of them witnessed the manner and mode in which the deceased

sustained the burn injuries. They are not eyewitnesses to the incident, though they have attempted to establish an alibi in favour of Sunil Kumar (the husband) by showing his presence at the grocery shop of one Sitaram. The statements of these defence witnesses are not of unimpeachable character, and when pitted against the dying declaration proved by the concerned Magistrate, their testimonies cannot be given any primacy, particularly in the backdrop of this case, where none of the defence witnesses claims to be an eyewitness. It is noteworthy that DW-2 himself stated that the deceased was in a condition to speak, which finds corroboration to the fitness certificate appended on the dying declaration by the medical jurist giving all the reason for the Court to believe upon the dying declaration and the learned trial Court has considered the dying declaration in correct perspective.

Conclusion

113. Having marshalled the evidence led by the parties before learned trial Court and having taken an overall view of the matter, including statutory prescriptions envisaged in the penal provisions and the legal requirements necessary to establish offences falling under Sections 304-B and 498-A of the I.P.C. with the aid of Section 113B of the Indian Evidence Act to be conclusively proved against the appellants, **Accordingly the conviction as recorded by learned trial Court do not call for any interference and same is maintained. Thus, is hereby affirmed.**

Proportionality of Sentence

114. The custody certificates of appellants dated 02.02.2026 having been produced before this Court reflect that appellant no.1-Ramrati has served total incarceration of 15 years 03 months and 18 days, appellant no.2 Sunil Kumar has served total incarceration of 10 years 5 months and 10 days whereas appellant no.3 Babulal has suffered incarceration of 09 years 03 months and 14 days.

115. This Court now proceeds to consider and examine the proportionality of sentence awarded to the appellants commensurate to the offence, in view of evidence led by parties and the prayer of leniency qua sentence is again examined in the light of certain authorities of Hon'ble Supreme Court which governs the field, with respect to sentence particularly life imprisonment in relation to Section 304-B IPC (major penal provision). The penal provision under Section 304-B provides, Courts could award sentence in exercise of its discretion between seven years to life imprisonment, depending upon the facts and circumstances of each case, thus, the minimum sentence provided is 'not less than 7 years' and the extreme punishment is 'life imprisonment'. The extreme penalty of life imprisonment in cases of section 304-B is not imposed as a matter of course, but only in 'rarest of rare cases'.

116. The question of sentence in penal provision such as under Section 304-B IPC came for consideration of Hon'ble Supreme Court in the case of **Hem Chand Vs State of Haryana, reported in (1994) 6 SCC 727**, wherein the Trial Court had awarded life imprisonment to the accused under Sections 304-B read with 498A I.P.C., however, the Hon'ble Supreme court reduced the sentence to 10 years and held as under:

> *"7. Now coming to the question of sentence, it can be seen that Section 304-B IPC lays down that:*
>
> *"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."*

117. This Court is faced with the question "whether the extreme punishment of imprisonment for life is warranted in the circumstances of instant case."

118. The culpability/guilt under Section 304-B IPC is primarily dependent upon presumption under Section 113-B of the Evidence

Act. Unlike section 302 IPC, the convection under Section 304-B IPC do not require direct or circumstantial evidence but almost in every case the presumption as casts by virtue of 113-B of Indian Evidence Act is the foundation, though such presumption remains rebuttable one, but again the million dollar question is ‘can a person be convicted for throughout life based on presumption cast by law and for this reason the sentence of life imprisonment as envisaged under Section 304-B IPC is for rarest of rare cases and not in every case.’ The phrase rarest of rare case used for section 302 IPC, cannot be compared to be or given same meaning when offence under Section 304-B IPC is tried with. It is profitable to have glimpse of ratio laid down in the case of **Hariom Vs. State of Haryana reported in (2014) 10 SCC 577,** wherein the Hon’ble Supreme Court examined the possibility of alteration of sentence in proportion to the gravity of crime. The relevant paragraphs of aforementioned judgment with respect to award of sentence are extracted as under:

> *“**16.** Now, the question arises as to whether we should reduce the appellant's sentence and if so, to what extent, as urged by the learned Senior Counsel for the appellant.*
>
> ***17**. This issue has been the subject-matter of debate before this Court in several cases, which arose out of Section 304-B read with Section 498-A and wherein this Court while interpreting the expression “may” occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of the offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in “rare cases” but not in every case.*
>
> ***18.** In Hem Chand v. State of Haryana [(1994) 6 SCC 727 : 1995 SCC (Cri) 36 : AIR 1995 SC 120] , the courts below had awarded life term to the accused under Section 304-B read with Section 498-A but this Court reduced it to 10 years. This was also a case where the accused was a police officer who had suffered life imprisonment. This Court held as under: (SCC p. 731, paras 7-8)*
>
> > *“7. … the appellant-accused was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As*

mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 10 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' RI."

19. *Similarly, this Court in State of Karnataka v. M.V. Manjunathegowda [(2003) 2 SCC 188 : 2003 SCC (Cri) 467] , while convicting the accused under Section 304-B awarded 10 years' imprisonment in somewhat similar facts.*

20. *Recently, in G.V. Siddaramesh v. State of Karnataka [(2010) 3 SCC 152 : (2010) 2 SCC (Cri) 19] , this Court while allowing the appeal filed by the accused only on the question of sentence altered the sentence from life term to 10 years on more or less similar facts. Hon'ble H.L. Dattu, J. (as His Lordship then was) speaking for the Bench held as under: (SCC p. 160, para 31)*

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

21. *Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would meet, if we reduce the sentence of the appellant from life imprisonment to that of 10 years. In our view, this case does not fall in the category of a "rare case" as envisaged by this Court so as to award to the appellant the life imprisonment. That apart, we also notice that while awarding life imprisonment, the courts below did not assign any reasons.*

22. *The learned counsel for the State and the complainant were not able to cite any authority in support of their submission except to oppose the prayer made by the appellant. Therefore, we are not impressed by their submission.*

23. *In the light of the foregoing discussion, the appeal succeeds and is allowed in part. The conviction of the appellant Hari Om (A-1) under Section 304-B read with Section 498-A IPC is upheld. However, the sentence (life imprisonment) awarded to the appellant*

is altered and accordingly, is reduced to 10 years' rigorous imprisonment. To this extent, the impugned judgment [Hari Om v. State of Haryana, Criminal Appeal No. 190 of 2004, decided on 14-5-2010 (P&H)] stands modified.

119. The proposition of law qua awarding life sentence under Section 304-B IPC was also examined by the Hon'ble Supreme Court in case of **State of Karnataka Vs M.V Manjunathe gowda & Anr.** reported in **(2003) 2 SCC 183**; and **G.V. Siddaramesh vs State of Karnataka**, reported in **(2010) 3 SCC 152**; wherein in both the cases the life term was reduced to 10 years.

120. The question whether the sentence of imprisonment for life can be converted into a fixed term sentence and in this regard we would like to go through the ratio of law laid down by Constitutional Bench of the Hon'ble Supreme Court, rendered in the case of **Union of India v. V. Sriharan,** reported in **(2016) 7 SCC 1** where Hon'ble Supreme Court dealt with issue as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict or the same can be reduced. The Constitutional Bench after referring to the various precedents, including S**wamy Shraddananda (2) v. State of Karnataka**, reported in **(2008) 13 SCC 767**; has answered the same in paragraph nos. 104 and 105 of the said judgment i.e. V. Sriharan (Supra), in the following words:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of

the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

121. The Hon'ble Supreme Court reiterated the said principle in the case of **Shiva Kumar v. State of Karnataka**, reported in (**2023) 9 SCC 817**; after considering both of the aforementioned judgments of V. Sriharan (Supra) and Swamy Shraddananda (Supra); wherein it has held that Constitutional Courts may, even under capital punishments is not in issue, impose a fixed term sentence of more than fourteen years in place of an ordinary life sentence, subject to the mandate of Section 433-A CrPC.

122. In the present case, this Court does not find any plausible reasons recorded by the learned Trial Court as to why the maximum punishment of life imprisonment had been awarded to the appellants. There can be no dispute that the crime committed is one of the most heinous and grave crime and does not call for any leniency. At the same time, sentencing must remain guided by judicial principles of proportionality and individual culpability.

123. Sentence awarded under Section 498-A of IPC and Section 4 of Dowry Prohibition Act having been suffered by appellants calls for no interference.

124. Thus, taking cue from Constitutional Bench judgment of Hon'ble Supreme Court rendered in the case of **V. Sriharan (Supra),** as later clarified in the case of **Shiva Kumar (Supra)**, this Court being a Constitutional Court derives authority to commute the sentence of life imprisonment to a fixed term sentence.

125. In view of ratio laid down by Hon'ble Supreme Court in the case of **M.V. Manjunathe Gowda (supra)** and **Hariom (supra)** and keeping the complicity of Ramrati into account, the sentence of imprisonment for life is commuted to the sentence she had already undergone. Similarly, the sentence awarded to other two appellants namely Sunil Kumar and Babu lal are also modified from 20 years rigorous imprisonment to the period they have already undergone.

126. The appellant no.1 shall be released forthwith if not wanted in any other case. The appellant no.2 and 3, who are on bail, need not to surrender and their bail bonds are discharged.

127. However, entire amount of fine awarded by trial Court shall be deposited by appellants within two months from today. Otherwise default sentence shall remain intact and be served by appellants-convicts.

128. **Consequently, the present appeal is allowed to the aforesaid extent only.**

129. The appellants shall comply with provisions enshrined under Section 437A Cr.P.C.

130. Record and proceedings along with copy of this judgment be sent back to the trial Court forthwith for compliance.

(Indrajeet Shukla,J.) (Rajesh Singh Chauhan,J.)

May 22, 2026
Mohit