



2026:AHC:132590-DB

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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4273 of 2022

Mahnaz and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Achchhey Lal Tiwari, Vinay Kumar
Tripathi
Counsel for Respondent(s) : G.A.

With

CRIMINAL APPEAL No. - 10 of 2022

Rashid

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Achchhey Lal Tiwari, Chandra
Kumar, Devendra Singh, Vinay
Kumar Tripathi
Counsel for Respondent(s) : G.A., Ghan Shyam Yadav

With

CRIMINAL APPEAL No. - 637 of 2022

Shabnam

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Achchhey Lal Tiwari, Chandra
Kumar, Devendra Singh, Vinay
Kumar Tripathi
Counsel for Respondent(s) : G.A.

With

CRIMINAL APPEAL No. - 5089 of 2022

Khalid

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Achchhey Lal Tiwari, Vinay Kumar
Tripathi
Counsel for Respondent(s) : G.A.

Court No. - 49

**HON'BLE AJAY BHANOT, J.
HON'BLE DIVESH CHANDRA SAMANT, J.**

[PER: HON'BLE AJAY BHANOT, J.]

1. The instant appeals arise out of a common judgment dated 06.09.2021 rendered by the learned Sessions Court in Sessions Trial No.- 419 of 2019, State vs. Khalid and Ors.

2. The learned trial court by the impugned judgment has found the appellants guilty of the offences under Section 302/149 I.P.C. and has imposed a punishment of life imprisonment and fine of Rs. 10,000/-, and in default of payment of fine additional 3 months simple imprisonment has been imposed. The period spent in jail by the accused during the trial shall be merged against the sentence.

3. All four appeals are being heard and decided together. The following appellants in the respective appeals are before this Court:

(a). Mahnaz and Jayara @ Shayara Bano are appellants in Criminal Appeal No.- 4273 of 2022.

(b). Rashid is the appellant in Criminal Appeal No.- 10 of 2022.

(c). Khalid is the appellant in Criminal Appeal No.- 5089 of 2022.

(d). Shabnam is the appellant in Criminal Appeal No.- 637 of 2022.

F.I.R- Prosecution Case

4. Briefly put the prosecution case set out in the F.I.R. is that about four years ago the first informant's daughter had got married to Khalid as per Muslim rites. Sometime after the marriage, her husband and in-laws started demanding Rs. 1 lakh and a motor cycle. Since the first informant could not make good the dowry demands due to financial incapacity her daughter was constantly harassed by her in-laws. She continued to endure the torture. Zubia's husband and in-laws threatened to murder her in case the dowry demands were not fulfilled. Her husband would then solemnize another marriage.

5. On 19.02.2017 when she was assaulted by her in-laws she confessed the inability of her family to satisfy their demands. In the morning her brother-in-law Rashid flung her to the ground and her husband's sisters Mahnaz and Shehnaz bound down her hands. Her husband poured the kerosene oil on her and set her on fire.

6. The FIR further states that the accused persons locked the door from outside and left the victim to burn. After sometime, in the certain belief that the deceased would have died and in order to create an alibi for themselves they rushed her to the hospital and informed the first informant. The first informant on reaching the district hospital dialed the emergency police number. Police authorities reached the site in response to the call. The statement of the victim was taken down by the City Magistrate in the presence of the police personnel. After the recording of the statement the victim was referred to Bareilly. However due to paucity of funds proper medical aid could not be given to her and the condition of the victim deteriorated. The victim in that condition was again threatened by her husband that in case any action was taken, her whole family would be burnt to death. The first informant was informed by the victim about the aforesaid threat in presence of the police personnel.

7. Pursuant to the FIR police investigations were set on foot. A charge sheet was filed against the accused persons under Sections 498A and 304B I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, 1961 on 23.07.2017. Cognizance of the offences was taken by the learned trial court on 22.10.2019.

Charge:

8. Charges were framed against the accused persons on 18.11.2019 which read as under:

“आरोप

मैं राम बाबू शर्मा, सत्र न्यायाधीश, शाहजहाँपुर, आप-खालिद, राशिद, महनाज, शबनम तथा जायरा उर्फ सायरा बानो के विरुद्ध निम्नलिखित आरोप विरचित करती हूँ:-

प्रथम- यह कि वादी श्रीमती शमा परवीन की पुत्री जुबिया की शादी खालिद के साथ चार वर्ष पूर्व होने के बाद से लेकर दिनांक 07-03-2017 को जुबिया की मृत्यु होने तक विभिन्न देनाकों व समय पर

आप सभी ने अपने निवास स्थान मो० अलीजई, थाना सदर बाजार, जिला शाहजहाँपुर में जुबिया से दहेज की माँग की एवं उक्त माँग पूरी न होने पर आप सभी के द्वारा उसके साथ मारपीट कर उसे शारीरिक व मानसिक रूप से परेशान किया गया। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि भा०दं०सं० की धारा 498-ए के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

द्वितीय- यह कि उपरोक्त दिनांक, समय व स्थान पर आप सभी के द्वारा अपने सामान्य आशय के अग्रसर में जुबिया से दहेज की माँग करने व उस माँग के पूरी न होने पर उसे शारीरिक व मानसिक रूप से प्रताड़ित करके विवाह के चार वर्ष के अन्दर दिनांक 07-03-2017 को मिट्टी का तेल डालकर आग लगाकर किसी समय अपने निवास उपरोक्त पर जुबिया की हत्या कारित कर दी गयी। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि भा०दं०सं० की धारा 304-बी के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

विकल्प में

यह कि उपरोक्त दिनांक 07-03-2017 को समय अदम तहरीर स्थान अपने निवास उपरोक्त पर आप लोगों द्वारा सामान्य आशय के अग्रसर में वादी की पुत्री जुबिया की दहेज की मांग के कारण अथवा अन्यथा साशय हत्या कारित कर दी गयी। इस प्रकार आप लोगों द्वारा ऐसा अपराध किया गया, जो कि भा०दं०सं० की धारा 302 सपठित धारा 34 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

तृतीय- यह कि वादी श्री श्रीमती शमा परवीन की पुत्री जुबिया की शादी खालिद के साथ चार वर्ष पूर्व होने के बाद से लेकर दिनांक 07-03-2017 को जुबिया की मृत्यु होने तक विभिन्न दिनांकों व समय पर आप सभी ने अपने निवास स्थान मो० अलीजई, थाना सदर बाजार, जिला शाहजहाँपुर में जुबिया से दहेज में एक लाख रूपये व मोटर साइकिल की माँग की। इस प्रकार आप लोगों द्वारा ऐसा अपराध कारित किया गया, जो कि धारा 3/4 दहेज प्रतिषेध अधिनियम के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा मैं आप लोगों को निर्देश देता हूँ कि न्यायालय द्वारा किया जायेगा। उक्त आरोपों में आपका परीक्षण इसी न्यायालय द्वारा किया जाएगा। ”

9. The following accused persons were charged by the learned trial court on 18.11.2019:

(a) Mahnaz, sister-in-law and Jayara @ Shayara Bano, mother-in-law of the deceased who are the appellants in Criminal Appeal No.- 4273 of 2022.

(b) Shabnam, sister-in-law of the deceased who is the appellant in Criminal Appeal No.- 637 of 2022.

(c) Khalid, husband of the deceased who is the appellant in Criminal Appeal No.- 5089 of 2022.

(d) Rashid, brother-in-law of the deceased who is the appellant in Criminal Appeal No.- 10 of 2022.

10. The accused persons pleaded not guilty to the charges and the case went to trial.

Tabular form of evidences

11. Tabular charts depicting evidences adduced by prosecution during the trial are as under:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

Sr. No.	Witness No.	Witness Name	Nature of Witness
1.	PW-1	Shama Parveen	First Informant (Hostile)
2.	PW-2	Manzoor	Father of deceased (Hostile)
3.	PW-3	Shaanu	Sister of deceased (Hostile)
4.	PW-4	Yameen	Brother in law of deceased
5.	PW-5	Israr@Nanhe	Maternal Uncle of the deceased (Hostile)
6.	PW-6	Sanjay Kumar	Naib Tehsildar who recorded the dying declaration of the deceased.
7.	PW-7	Dr. Anurag Parashar	Doctor who evaluated the victim for her fitness to give dying declaration
8.	PW-8	Latesh Verma	Ist Investigating Officer
9.	PW-9	Avanishchar Chand Srivastav	IInd Investigating Officer- STF
10.	PW-10	Jabar Singh	Head Constable who narrated the Chik FIR
11.	PW-11	Dr Devendra Singh	Doctor who conducted the postmortem
12.	PW-12	Sumit Shukla	Circle Officer who arrested the accused Shabnam and Mahnaz

Documentary evidences:

Sr. No.	Documents	Proved by	Date	Exhibit No.
1.	Written Report	PW-1	20.02.2017	Exh Ka-1
2.	Panchayatnama of deceased	PW-2	07.03.2017	Exh Ka-2
3.	Dying Declaration	PW-6	19.02.2017	Exh Ka-3
4.	Site Plan made by PW-8	PW-8	02.03.2017	Exh Ka-4

5.	Site Plan made by PW-9	PW-9	11.04.2017	Exh Ka-5
6.	Carbon Copy of GD No. 21	PW-10	20.02.2017	Exh Ka-6
7.	Chik FIR	PW-10	20.02.2017	Exh Ka-7
8.	postmortem Report	PW-11	07.03.2017	Exh Ka-8
9.	Chargesheet	PW-12	23.07.2017	Exh Ka-9

FIR:

12. The FIR was got registered on 20.02.2017 at 13.10 hours as Case Crime No. 1060 of 2017 at P.S. Sadar Bazar District Shahjahanpur under Section 498-A, 307 I.P.C. and Section 3/4 D.P. Act. The tehrir tendered by the first informant before the police was proved by her and marked as Exh. Ka 1. On the basis of the tehrir which was received at the police station on 20.02.2017 at 13:10 hours Head constable Jabar Singh /P.W. 10 had dictated the chik to Constable 1484 Manish Kumar who reduced the same to writing. PW-10 proved the F.I.R which was marked as Exh. Ka 7. P.W. 10 also stated that he had made G.D. entry no.21 consequent to the lodgement of the FIR in his hand writing. P.W. 10 identified his handwriting and signatures on the carbon copy of G.D. entry no.21 in the trial court record and proved the same. Carbon Copy of the G.D. entry no.21 was marked as Exh. Ka 6.

Hospitalization of the victim at District Hospital, Shahjahanpur:

13. After the incident, the victim was rushed to the district hospital Shahjahanpur by her husband. This fact is recorded in the FIR and also stated in the deposition of P.W. 6 Sanjay Kumar, Naib Tehsildar. P.W. 1-Shama Parveen, P.W. 2-Manjoor, and P.W. 3-Shaanu testified that the deceased's

husband and in-laws had rushed her to District Hospital, Shahjahanpur after she sustained burn injuries.

14. However, it is noteworthy, that no records pertaining to the hospitalization and treatment of the victim including her bed head ticket, medical sheet drawn up by the attending doctor have been produced by the prosecution. Absence of the bed head ticket was also admitted by P.W. 7/Dr. Anurag Parashar under cross-examination. The statement of the doctor who had attended to the victim and provided her medical aid and had drawn up the medical case sheet was also never recorded. The said doctor was not produced as the prosecution witness during the trial.

Hospitalization at the Civil Hospital Lucknow:

15. Later on the victim was shifted to the Civil Hospital, Lucknow where she died at 6:45 am on 07.03.2017. The documents or evidence referring the deceased to Civil Hospital, Hazratganj, Lucknow are not part of prosecution evidence. Medical case sheet or treatment details and statements of doctors treating the deceased at Civil Hospital, Lucknow have also not been adduced as evidence by the prosecution. The doctors who attended the victim at Civil Hospital Lucknow also did not enter the witness box as prosecution witnesses.

Inquest Report:

16. Information regarding death of the deceased was sent by ward boy, Jaggu working at Civil Hospital, Lucknow at 7:30 am on 07.03.2017 to the police station. Recitals in the inquest report disclose that ward boy-Jaggu had also informed the police authorities that the victim was under treatment for burn injuries at the Civil Hospital, Hazratganj, Lucknow. The inquest

proceedings commenced on 07.03.2017 at 13:05 hours and concluded at 13:45 hours. The inquest was conducted by V.P. Verma, Additional City Magistrate-V, Lucknow at Civil Hospital, Hazratganj, Lucknow. The inquest report was proved by Manjoor father of the deceased and a witness to inquest report. The inquest report was then marked as Exh. Ka 2.

17. Witnesses to inquest report include P.W. 2-Manjoor, the father of the deceased, P.W. 3-Shaanu, brother of the deceased, P.W. 4-Yameen, brother-in-law of the deceased and P.W. 5-Israr @ Nanhe, maternal uncle of the deceased.

18. P.W. 5 in his deposition before the trial court has baldly stated that he had signed some documents at the time of inquest proceedings. The opinion of the Panchas in the inquest report have not been proved by the prosecution.

Site Plan

19. S.I. Latesh Verma/ I.O./P.W.8 has stated that he has drawn up the site plan which was then proved by him and marked as Exh. Ka-4

20. P.W.8 does not disclose at whose pointing out the site plan was drawn up. The second site plan was drawn up by S.I. Abhinash Chandra Srivastava/P.W.9. also proved the site plan which was marked as Exh. Ka-5. P.W. 9 also did not state the name of the person at whose pointing out the site plan was drawn up. Both documents do not add value to the prosecution case and no reliance can be placed on them.

Postmortem Report:

21. The inquest report records that documentations like letter to C.M.O, Challan Nash, Photo Nash, Sample Seal, death memo were finalized and the body was stitched wrapped, sealed and

made over to Constable 2521 C.P. Ram Kishore Singh Chandel and M.H.G No. 1811 Suman Lata and H.G. No. 1174 Nirupam Mishra. The latter police personnel took the body to the hospital for postmortem.

22. The postmortem proceedings commenced on 07.03.2017 at 03:45 PM and concluded on 07.03.2017 at 04:10 PM. The postmortem was conducted by Dr. Devendra Singh and Dr. G.P. Gupta. The postmortem report and its contents were proved by Dr. Devendra Singh/P.W.11. The postmortem report was then marked as Ex. Ka-8. The relevant extracts of the postmortem report depicting the antemortem injuries, cause of death and time of death are extracted hereinunder:-

“Ante mortem Injuries:

Superficial to deep septic burn on all over the body except top of the head, whole of the back. Both buttock and back of both lower limb, both feet and sole. Pus slough, debris present in the wound

On opening and section cutting of both lungs, liver, spleen and both kidney multiple pus foci seen.

Cause of Death: Septicimia due Ante mortem burn injury as noted

Time of death : 6:45 am on 07.03.2017”

First Dying Declaration:

23. The first statement of the victim (later treated as the dying declaration) was recorded on 19.02.2017 at 12:20 PM by the P.W. 6/Sanjay Kumar who was posted as Naib Tehsildar, Sadar, District Shahjahanpur at the relevant time. P.W. 6 stated that he was nominated to record the statement of the deceased. P.W. 6 then testified that he recorded the victim’s statement made before him at District Hospital, Shahjahanpur on 19.02.2017. P.W. 6 proved the dying declaration and its contents. The document was marked as Exh. Ka 3.

24. Dr. Anurag Parashar who had endorsed his medical opinion on the dying declaration regarding the fitness of the victim/later deceased to give a statement deposed as P.W.-7. P.W.-7 testified that the victim had burn injuries when she was brought to the District Hospital. After he had conducted a full mental and medical examination of the victim, he found her to be in a fit condition to give her statement. She was fully conscious when her statement was recorded. P.W. 6 identified the medical certificates given by him in the records of the trial court.

25. P.W. 7 has identified his signatures on the two certificates of fitness recorded by him in the dying declaration. The aforesaid two certificates at the beginning and at the conclusion of the dying declaration were proved by PW 7 which was marked as Exh. Ka 3.

Second Dying Declaration:

26. P.W. 8-S.I. Latesh Verma/I.O. had deposed that he had recorded that statement of the victim (later deceased) on 04.03.2017. The said statement of the victim (later deceased) was in fact the second dying declaration but was never produced before the trial court by the prosecution.

Oral Testimonies:-

27. The prosecution witnesses namely Shama Parveen mother of the deceased/informant/PW-1, Manjoor father of the deceased/PW-2, Shaanu brother of the deceased/PW-3 have repudiated the prosecution case in their testimonies before the trial court. The aforesaid witnesses were declared hostile at the instance of the prosecution. PW-4, Yameen, who is brother in

law of the deceased refuted the prosecution case in his testimony while under cross-examination.

Submissions from the Bar:

Arguments on behalf of appellants:

28. Shri I.K. Chaturvedi, learned Senior Counsel and Amicus Curiae assisted by Shri Ali Jamal Khan, learned counsel for the appellants and Amicus Curiae made the following submissions:

I. All material prosecution witnesses have repudiated the prosecution case. The witnesses of fact have thus not supported the prosecution case during the trial.

II. The dying declaration is unreliable.

III. The prosecution deliberately suppressed the second dying declaration made by the deceased before the Investigating Officer. An adverse inference is liable to be drawn against the prosecution for suppressing the material evidence since it would have been adverse to the prosecution.

IV. The prosecution has failed to prove its case beyond reasonable doubt.

V. The prosecution does not disclose commission of any offence under the alternative charge under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act.

Arguments on behalf of State:

29. Shri Rishi Chaddha, learned AGA have vehemently opposed the submissions of learned Senior Counsel and has made following submissions:

- I. The dying declaration is reliable and can be the sole basis of the convicting the appellants.
- II. The second dying declaration was not produced since the first one was of impeccable credibility.
- III. The dying declaration is relevant and was duly proved by the prosecution.
- IV. The prosecution has proved its case beyond reasonable doubt.
- V. Even if the appellants are found to be innocent of the charges under Section 302 IPC, they can still be convicted under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act. The evidence in the record is sufficient to bring home the charges under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act.

Appraisal of Evidence:

30. All material witnesses of fact have repudiated the prosecution case against the appellants. Hence the said witnesses do not lend any support to the prosecution case. The only piece of incriminating evidence is the dying declaration of the deceased recorded on 19.02.2017 at 12:20 P.M. by PW-6/Sanjay Kumar/Nayab Tehsildar. The prosecution case turns entirely on the credibility of the dying declaration.

Dying Declaration:

31. The contents of the dying declaration are as under:

“मृत्यु पूर्व बयान

श्रीमती जूबिया डब्लू ओ खालिद, उम्र 22 वर्ष, निवासी -अलीजई, पीएस - सदर बाजार, जिला शाहजहांपुर।

प्रश्न- कैसे जली?

उत्तर- मेरे ससुराल वाले जिनमें मेरा पति खालिद, उनके भाई राशिद, मेरी सास, सायरा, मेरी ननद शबनम व मयनाज ने मिलकर मिट्टी के तेल डालकर आग लगा दी।

प्रश्न- कौन बचाया?

उत्तर- किसी ने नहीं बचाया।

प्रश्न- अस्पताल में कौन भर्ती कराया?

उत्तर- मुझे पता नहीं।

प्रश्न- तुम्हें यह लोग क्यों जलाये? व परेशान करते थे?

उत्तर- क्यों जलाया यह पता नहीं। लेकिन यह लोग परेशान करते थे।

प्रश्न- इस घटना का कौन जिम्मेदार है?

उत्तर- इस घटना का मेरे पति खालिद, उनका भाई राशिद, मेरी सास सायरा, मेरी ननद शबनम व दूसरी ननद मयनाज ने मिलकर जलाया। इसीलिए यह लोग जिम्मेदार है।

बयान बिना जोर दबाव के स्वीकार किया।”

32. The dying declaration is predicated by an endorsement made by Dr. Anurag Parashar/PW-7 that the deceased Jubia aged about 22 years was in a fit condition to give her statements. In her dying declaration the deceased stated that her in-laws including her husband Khalid, her brother-in-law Rashid, her mother-in-law Saayra, her sister-in-laws Shabnam and Mahnaz had poured kerosene oil on her and set her on fire. No one attempted to save her. She did not remember who brought her to the hospital. She did not know why she was set on fire, however she later added that the accused persons used to harass her. According to the victim's dying declaration all accused persons had set her on fire and they were responsible for the act. She did not give the statement under threat or coercion.

33. Dying declarations have been accorded acceptability by statute and judicial pronouncements alike. The consistent

jurisprudential rationale for accepting dying declarations is that a declaration is made at the point of imminent death and the expectation of impending death inspires a person to speak only the truth. The solemnity of the occasion on death bed provides the assurance of veracity of the statement thus precludes possibilities of falsity.

34. A Constitution Bench of the Supreme Court in **Laxman vs. State of Maharashtra**¹ while reiterating the aforesaid time honoured principles for accepting dying declarations also emphasized the cautions to be exercised by Courts while appraising a dying declaration for its veracity and set forth the following proposition of law:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail,

1 2002 6 SCC 710

nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

35. More recently, **Laxman (supra)** was cited with approval by the Supreme Court in **Irfan @ Naka vs. State of Uttar Pradesh²** .

36. The broad acceptance of dying declarations are thus caveated by strong cautions that are to be observed while determining the truth of such statements. Expectation of imminent death and extinguishment of hopes to survive induced by the grievous nature of injuries or parlous medical condition of the person are the prerequisites of bringing the statement of such person within the fold of a dying declaration.

2 2023 SCC OnLine SC 1060

Imaginary fears of death which do not have any medical basis cannot be invoked to qualify a statement as a dying declaration.

37. There are some inherent limitations of dying declarations. The facts that the author of the dying declaration is never subjected to cross-examination is an aspect which cannot be neglected while appraising such a statement.

38. The proposition that solemnity of the near death experience is most conducive to telling the truth is a judicial principle which is tempered by judicial experience. The serenity of human mind facing fast approaching end of human life is not an iron clad guarantor of truth. While anticipating death moments of serenity can also be times of turmoil. Petty emotions of vindictiveness, imaginary fears, faults of subjectivity may make insistent demands on vulnerable minds and lead to falsehoods. A searching scrutiny of evidences in the records has to be made before finding on the reliability of the dying declaration is made.

39. The question now arises as to whether the aforesaid dying declaration in the facts and circumstances of this case can be the sole basis for convicting the accused persons.

40. Determination of credibility of the dying declaration has to be predicated by an examination of the medical condition of the deceased. More specifically it has to be established whether the deceased was in expectation of imminent death when she gave her statement. The prosecution has not produced any evidences documentary regarding hospitalization of the deceased including the bedhead ticket after she was rushed to the hospital on sustaining burn injuries. Medical case sheet of the deceased

depicting the line of treatment has not been tendered in prosecution evidence. The doctors who had administered the medical aid too were not produced as witnesses. It is noteworthy that even the postmortem report does not depict the percentage of burn injuries. In such a situation the actual medical condition of the deceased remains vague.

41. From the available evidence, no accurate finding can be recorded regarding the medical condition of the victim prior to her death. In absence of evidence pertaining to the gravity of the victim's medical condition this Court is unable to find whether the injuries were fatal enough to foreclose possibilities of survival and grave enough to induce the expectation of imminent death. The conditions precedent for treating statement of the deceased as a dying declaration have not been established by the prosecution.

42. Moreover, in the dying declaration the deceased implicated her husband and all members of his family by making broad and sweeping allegations. The failure to provide relevant details and assign particular roles to accused persons dents the credibility of the dying declaration. It appears that the intent of the dying declaration is more to wreak vengeance on the husband and his family than to state the truth. The generalized description of the incident given in the dying declaration makes it unsafe for the Court to rely on the same to convict the appellants.

43. The victim's denial in the dying declaration about knowledge of the person who brought her to the hospital lacks credibility. The incident occurred in the morning of 19.02.2017. The victim's family including her mother spoke to the victim

before lodgement of the FIR and recording of the dying declaration. The FIR clearly discloses that the victim was brought to the hospital by her husband and his family members. The victim's version as given to her mother is depicted in the FIR. The victim's mother/PW-1 and other members of her family including PW-2, PW-3 have consistently testified before the trial court that the victim's husband and his family has brought her to the hospital. P.W. 7-Dr. Anurag Parashar had testified that the victim (later deceased) was fully conscious and alert while giving the statement. In these circumstances it cannot be believed that the victim was unaware that her husband brought her to the hospital.

44. The victim in the dying declaration initially states that she was not aware of the motive of accused persons to commit the offence. The statement was later qualified to same the failing prosecution case, when the victim added that she was harassed by all the accused. The motive ascribed in the dying declaration is weak, vague and an afterthought. The said motive depicted in the dying declaration is not sufficiently strong to commit a heinous crime and is not worthy of any credence.

45. Prosecution case set out in the F.I.R. itself contradicts the dying declaration inasmuch as the two accused persons namely mother in law Shayara and sister in law Shabnam who are not named in the F.I.R. were introduced by the deceased in her dying declaration. The contradiction gains importance in view of the fact that the first informant had spoken to the deceased prior to lodgement of FIR. The mother in law has been assigned the role of pouring kerosene in the dying declaration. The first informant could not have missed the fact of such importance

while lodging the F.I.R. The mother-in-law was evidently nominated as an afterthought.

46. The presence of P.W. 7 at the time of recording of the dying declaration is inconsistent with the testimony of P.W. 6. P.W. 6 under cross-examination testified that he had asked all the people to leave the room at the time he was recording the dying declaration. Hence presence of P.W. 7 at the time of recording of the dying declaration and his testimony that the victim was awake and conscious at the time of her statement become doubtful.

47. Another fault line in the prosecution case is that the second dying declaration of the deceased was recorded on 04.03.2017 by the Investigating Officer/P.W.8. The prosecution has however chose to suppress the aforesaid dying declaration and has not produced the same as evidence before the trial court. No cogent reason has been given by the prosecution regarding the failure to produce the said statement. The aforesaid dying declaration was a material piece of evidence and prosecution cannot escape the consequences of suppressing the same.

48. In the wake of the preceding discussions, the pre-conditions for drawing an adverse inference against the prosecution as contemplated under Section 114(g) of the Indian Evidence Act are fully satisfied. This Court hence draws an adverse inference against the prosecution by holding that in the event such dying declaration would have been adverse to the case of the prosecution.

49. Furthermore, the contents of the dying declaration that the harassment by the in laws are clearly contradicted by the

testimonies of P.W.1, P.W.2, P.W.3 and P.W.5 i.e. all material prosecution witnesses of fact. The critical and incriminating aspects of the dying declaration are completely negated by the testimonies of P.W.1, P.W.2, P.W.3 and P.W.5 as regards the harassment of the deceased by her in laws.

50. It is equally noteworthy that the P.W.1, P.W.2, P.W.3 and P.W.5 have also testified that the deceased was a person of extreme temperamental behavior and was prone to suicidal tendencies. The veracity of the dying declaration is also required to be seen in the context of the testimonies of the aforesaid material witnesses of fact. Apart from the burns or injuries from forceful assault or resistance no other ante-mortem injuries are depicted in the postmortem report. A composite reading of the aforesaid evidences negatives the prosecution case which hinges only the dying declaration.

51. The testimonies of PW 1, PW 2, PW 3 and PW 5 do not rule out the possibility of the deceased committing suicide or the death being caused in an accident resulting from aggravated behaviour of the deceased.

52. The first informant/PW-1 in the FIR has admitted that the deceased's condition deteriorated due to lack of sources and inability to access quality medical care. The possibility of the death due to septicemia from ante-mortem burns being caused by medical negligence or inadequate medical care cannot be ruled out. In fact the percentage of burn injuries is not recorded in the postmortem report.

53. In the wake of the preceding discussion it cannot be ruled out that the victim had nominated all the accused persons out of vindictiveness arising from matrimonial differences. The dying declaration has been repeatedly impeached by inherent contradictions, vague generalizations, testimonies of material prosecution witnesses. The other attending facts and circumstances of the case which are exculpatory in nature further impair the credit of the dying declaration discussed in the preceding part of the narrative. In such circumstances the dying declaration lacks reliability and is completely disbelieved. The dying declaration is the sole pivot of the prosecution case. After the dying declaration is discarded, the prosecution case has no legs to stand on.

54. Last but not the least the conduct of the appellants is of utmost importance in the facts of this case. It is admitted in the F.I.R. as well as the testimonies of all prosecution witness that the deceased was rushed to the hospital by her husband-Khalid and his family members for urgent medical treatment. The husband of the deceased also informed the in-laws about the incident with promptitude. Conduct of the husband of the deceased-Khalid as well his family members appears to be bonafide.

55. In the wake of the preceding discussion this court finds that the dying declaration of the deceased is unreliable. Further, in light of other attending facts and evidences which are exculpatory in nature the dying declaration is liable to be discarded.

Judgement of trial court

56. The learned trial court erred in law by relying on the said dying declaration (which has been found to be unreliable) to enter a verdict of conviction under Section 302/149 IPC against the appellants.

57. The judgment rendered by the learned trial court is perverse and contrary to the evidences in the record. The impugned order dated 06.09.2021 in Sessions Trial No. 419 of 2019 (State Vs. Khalid and others) is liable to be set aside and is set aside.

Alternative Charges:

58. Allegations of dowry demand and harassment due to failure to make good the demand could not be established by the prosecution. All prosecution witnesses refuted the case of dowry demands set out in the F.I.R. Furthermore, the deceased in her dying declaration too did not assert that any dowry demand was made upon her and that she was tortured for the same.

59. Demands of dowry and harassment of deceased for dowry by accused at a time immediately preceding her death have not been proved by the prosecution. There is complete absence of prosecution evidence to establish the said foundational facts to draw the presumption of a dowry death under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act. The evidence in the record does not support the prosecution case under Section 304B IPC and the charge under Section 304-B, 498-A IPC read with Section 3/4 of Dowry Prohibition Act is liable to fail.

Conclusions:

60. This Court finds that the prosecution has failed to prove the charges under Sections 302/34 and 304 IPC beyond reasonable doubt. The accused/appellants are acquitted of the charges which were laid against them before the trial court and which are the subject matter of this appeal.

61. The accused persons namely Mahnaz and Jayara @ Shayara Bano, Rashid, Khalid and Shabnam are honourably acquitted.

62. Bail bonds and sureties of the appellants are discharged.

63. All the Criminal Appeals are **allowed**.

64. A copy of this judgment translated in Hindi to be served upon the appellants by the Secretary, District Legal Services Authority.

(Divesh Chandra Samant,J.) (Ajay Bhanot,J.)

July 3, 2026

Ashish/Dhananjai/Vandit