

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:13th December,2019

+ CRL. A. 243/2016

FIROZA ...Appellant

Through: Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Dhruv Chawdhry, Ms. Shikha Garg & Mr. Jay K. Bhardwaj, Advocate.

versus

STATE ...Respondent

Through: Mr. Ashish Dutta, APP for State, SI Ashish Sharma PS Welcome.

+ CRL. A. 250/2016

SEEMA ...Appellant

Through: Mr. Ashu Kumar Sharma, Advocate.

versus

STATE ...Respondent

Through: Mr. Ashish Dutta, APP for State, SI Ashish Sharma PS Welcome.

+ CRL. A. 263/2016

SHAMSUDDIN ...Appellant

Through: Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Dhruv Chawdhry, Ms. Shikha Garg & Mr. Jay K. Bhardwaj, Advocate.

versus

STATE ...Respondent

Through: Mr. Ashish Dutta, APP for State,
SI Ashish Sharma PS Welcome.

+ CRL. A. 264/2016

SAMEER ...Appellant

Through: Mr. Harsh Prabhakar, Mr.
Anirudh Tanwar, Mr. Dhruv
Chawdhry, Ms. Shikha Garg &
Mr. Jay K. Bhardwaj, Advocate.

versus

STATE ...Respondent

Through: Mr. Ashish Dutta, APP for State,
SI Ashish Sharma PS Welcome.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant appeals are directed against Judgment dated 16.09.2015 and Order on Sentence dated 26.09.2015 passed by learned Additional Session Judge, North East, Karkardooma Courts, Delhi in Session Case No. 123/10, titled *State v. Sameer & Ors.* which is arising out of FIR No. 246/2008 under Section 498A/304B/302/34 IPC, at PS Welcome, Delhi whereby appellants have been convicted under Sections 498A/34 IPC and were sentenced to undergo rigorous imprisonment each for three years. They are further sentenced imprisonment for life each for the offence under Section 304B read

with Section 302 IPC. They are further sentenced to fine of Rs. 10,000/- each, in default to further undergo simple imprisonment for period of six months. Punishments shall run concurrently.

2. The brief facts stated are that a message was received through telephone Number 9210372237, that one lady had been set on fire by her in-laws at House No. B-377, Gali No. 19, Janta Colony, Welcome, Delhi. The same was received at PS Welcome on 25.06.2008 at 9:30 PM and it was reduced down in writing vide DD No. 15A. SI Jagbir Singh alongwith Ct. Chaman Singh reached to the spot for further action and on verifying the address, it was revealed that the actual address of incident is D-463, Janta Colony, Welcome, Delhi. Consequently, they reached there and found injured was already taken to GTB Hospital. SI Jagbir Singh kept Ct. Chaman Singh at the spot and reached to GTB Hospital where the injured was admitted vide MLC No. A-2669/08.

3. SI Jagbir Singh collected the MLC Ex.PW19/1 of injured Amreen who was under observation in emergency ward No. 149. The doctor on duty declared her 'unfit for statement'. No eye-witness was found present at the hospital, SI Jagbir on enquiry came to know that the injured has received burn injuries and she was married about 8 months ago to one Sameer. Accordingly, he informed the concerned SDM. The SDM visited hospital on the next morning i.e. 26.06.2008, when the doctor on duty declared injured 'fit for statement' at about 10:20 AM. Subsequently, SDM recorded statement of the injured vide Ex.PW11/A. The SDM after recording the statement of injured, directed the police to take action as per law. The subject FIR was

registered under Section 498A read with Section 307 IPC. SI Jagbir Singh reached the spot i.e. D-463, Janta Colony; called the crime team; inspected the spot and took photographs of the spot, where incident had taken place and accordingly the site plan was prepared. Burnt cloth pieces, plastic can, burnt match sticks were found and were put in a parcel and were sealed with seal of JSN and then deposited in the *Malkhana* of PS Welcome. Thereafter, Accused Sameer, Husband of the deceased, was arrested on 27.06.2008 at about 6 PM from Gate No. 7, GTB Hospital, vide Arrest Memo Ex.PW2/A and his personal search was conducted vide Personal Search Memo Ex.PW2/B. Later, the injured Amreen succumbed to her injuries on 28.06.2008, and information of the same was given to SI Jagbir vide DD No. 3A Ex.PW1/C. SDM was also present at the spot who prepared inquest proceedings and on his direction, postmortem of the deceased was got conducted. Thereafter, body of the deceased was handed over to the family vide Handing Over Memo Ex.PW8/D. On the same day i.e. 28.06.2008 Accused Firoza, Mother-in-Law of the deceased, was arrested at about 1 PM from the house where the incident took place i.e. D-463, Janta Colony, vide Arrest Memo Ex.PW2/C. Thereafter, both arrested accused persons Sameer and Firoza were produced before the concerned Court and were sent to JC. SI Jagbir Singh recorded statements of the witnesses and deposited the seized articles in *Malkhana* PS Welcome.

4. On 12.08.2008, Seema came to PS Welcome and she was arrested vide Arrest Memo Ex.PW18/2, but later she was released on bail. On the same day, exhibits were sent to the FSL, Rohini.

5. On 22.08.2008, Section 302 IPC was added to the subject FIR and further investigation was handed over to Insp. Pradeep Kumar. On 03.09.2008, on the direction of Insp. Pradeep Kumar, SI Jagbir Singh alongwith SI Mukesh Kumar Jain, draftsman prepared scaled site plan. On 05.09.2008 Mother of deceased PW4 Praveen Begum produced *Nikahanama* Ex.PW4/A. SI Jagbir thereafter, obtained NBW against accused Shamsuddin who was absconding (later he was got arrested on 31.01.2011 from Karkardooma Court No. 49 vide Arrest Memo Ex.PW16/1).

6. Statement of the witnesses were recorded and chargesheet was filed on 11.09.2008. Charges were framed under Section 498A, 304B, 302 and 34 IPC against all accused persons on 13.01.2009 and all accused persons pleaded not guilty.

7. The prosecution in order to prove its case, examined 20 witnesses i.e, HC Ashok Kumar (PW1), Parvez (PW2), Ahsan (PW3), Parveen Begum (PW4), SI E.S. Yadav (PW5), Ved Prakash (PW6), Tarun Kumar (PW7), Ct. Chaman Singh (PW8), Savitri (PW9), Insp. Mukesh Kumar Jain (PW10), Yogesh Pal Singh (PW11), HC Sohan Lal (PW12), Dr. Abhishek Goyal (PW13), ASI Om Kar Dutt (PW14), Insp. R.K. Jha (PW15), Ct. Dinesh (PW16), Insp. Ajay Kumar (PW17), SI Jagbir Singh (PW18), Dr. Parmeshwar Ram (PW19) and Dr. Sumit Tellewar (PW20). Thereafter, prosecution evidence was closed.

The Statement under Section 313 Cr.P.C. of accused/appellant Firoza, Sameer, Seema and Shamsuddin were recorded. The accused persons preferred to examine four Defence Witnesses i.e., Mobina

(DW1), Javed (DW2), Fateh Mohammad (DW3), Suraiya (DW4) and closed the defence evidence.

8. After concluding arguments, Trial Court vide its Judgment dated 16.09.2015 and Order on sentence dated 26.09.2015 convicted all the appellants under Sections 498A/304B/302/34 IPC. Hence, the present appeals.

9. Ld. Counsel on behalf of Firoza, Shamsuddin and Sameer has submitted that the dying declaration Ex.PW11/A recorded by Executive Magistrate Mr. Yogesh Pal Singh is shrouded with suspicion as he is not the Judicial Magistrate as per the Chapter-13A of the Delhi High Court Rules. Moreover, said dying declaration alleged to be recorded does not show the mental fitness of the deceased Amreen as she was under trauma having been administered medication.

10. Ld. Counsel further pointed out that the name "Irfan" is mentioned as the husband at five places in the dying declaration. Irfan is not the husband, but father of the deceased Amreen. Husband of deceased Amreen is Sameer.

11. Ld. Counsel further submitted that the circumstances under which the alleged dying declaration was stated to be recorded, mentioning Irfan as the husband on 5 occasions cannot to be presumed to be a clerical error. It certainly and definitely indicates the mental condition of the deceased at the relevant point of time, that she was not in a fit state of mind to depose as alleged in the dying declaration.

12. The Ld. Counsel further submitted that the deceased Amreen was admitted to GTB Hospital on 25.06.2008 at about 10:20 PM and

her statement could not be recorded as the doctor had declared her "unfit for statement" and her fitness condition would have further deteriorated. The patient Amreen was further administered with 'Fortwin' (a drug) and would have been under its intoxication. The circumstances that she was therefore in a state of delusion could not be completely ruled out. He relied upon Judgment in *Sampat Babso Kale & Anr. v. State of Maharashtra* (2019) SCC Online SC 498, in this behalf.

13. The Ld. Counsel further submitted that no doctor was personally present with the patient to assess her mental condition at the relevant point of time from 10:20 AM to 11:05 AM on 26.06.2008, and under those circumstances, it is highly probable that her mental condition was fluctuating as she referred name of her late father as Husband and it would not be safe to presume that the patient Amreen was consistently stable at the time when her dying declaration was being recorded by PW11 SDM Yogesh Pal Singh.

14. The Ld. Counsel further submitted that Dr. Kishore, Junior Resident, who allegedly declared the injured fit for statement on the MLC was not examined by the prosecution as not available, and as such, defence has suffered serious prejudice as they were deprived of the valuable opportunity to cross examine the said doctor. The Ld. Counsel placed his reliance on this Court judgments in *State v. Kumari Mubin Fatima & Ors.* 197 (2013) DLT 608 (DB) and *Angoori Devi & Anr. v. State* 230 (2016) DLT 251 (DB).

15. The Ld. Counsel further submitted that statement of the deceased further suffers from the words used in Dying Declaration

such as "mehtav", "turant", "samaksh", "pati" and "baap" which could not be expected to be the words of Amreen, a Muslim tender aged girl of 18 years, who had studied upto 2nd or 3rd class and her education was confined to Arabic.

16. The Ld. Counsel further submitted that PW2 Parvez, PW3, Ahsan and PW4 Parveen begum were present with the injured Amreen on 25.06.2008 itself in the GTB Hospital. Thus, possibility of their tutoring the injured, cannot be ruled out. The Ld. Counsel further submitted that Statement of PW2 and PW3 under Section 161 Cr.P.C. were not recorded on 25.06.2008. However, statements of PW2 and PW3 were recorded belatedly on 28.06.2008 and statement of PW4 was recorded on 05.09.2008 by improving their statements and nothing else.

17. Ld. Counsel on behalf of the Appellant Seema has submitted that deceased Amreen received 89% burns injuries, and was administered with the medication 'Fortwin' and was consequently not in a fit state of mind to make a statement i.e. dying declaration. Counsel relied on judgment in *Surender Kumar v. State of Haryana* (2011) 10 SCC 173. Ld. Counsel further submitted that impugned Judgment and Order on Sentence deserve to be set aside.

18. Per contra, Ld. APP for the State has submitted that the prosecution has examined 20 witnesses and the statement of PW2, PW3 and PW4 is corroborative with the dying declaration Ex.PW11/A; and Court below has rightly convicted all the accused persons. Ld. APP submitted that sentence awarded needs no alteration and the present appeals of the Appellants be dismissed.

19. Instant are Appeals based on Circumstantial Evidence, Record indicates that the deceased got married with accused Sameer on 05.11.2007 as per *Nikahanama* Ex.PW4/B and she was living at her matrimonial house i.e. D-463, Janta Colony, Welcome, Delhi alongwith Accused persons Sameer, Firoza and Shamsuddin, while her Sister-in-Law (*Nanad*), Accused Seema, lived nearby in neighbourhood. On 25.06.2008 she received burn injuries on her person and subsequently succumbed to her injuries on 28.06.2008.

Ocular Evidence

20. Brother of deceased, PW2 Parvez, specifically stated in his statement that his younger sister Amreen got married to accused Sameer and was living at the matrimonial house alongwith her Mother-in-Law, Father-in-Law and one Brother-in-Law Saleem (*Devar*) and Accused Seema, her Sister-in-Law (*Nanad*), lived nearby in the same neighbourhood. He further deposed that on 25.06.2008 at about 8:30 PM he came to know that her sister Amreen has been set on fire by the accused persons and he reached to his sister's matrimonial house alongwith his brothers and mother. On reaching, they found Amreen in burnt condition. None of her in laws were present in the house at that time and all of them had absconded. They took Amreen to GTB Hospital. He further stated that Amreen was harassed by her in laws family members in her matrimonial home after marriage for demand of dowry. On next day i.e. 26.06.2008, SDM recorded the statement of the deceased Ex.PW11/A and later she succumbed to her injuries on 28.06.2008. Statement of PW2 is corroborated with the statement of

PW3 Ahsan and PW4 Parveen Begum as they have deposed on the similar lines.

Dying Declaration:-

21. The dying declaration, becomes relevant under Section 32(1) of Indian Evidence Act as the same is based on the principal of '*nemo moriturus proesumitur mentiri*' which is an exception to the general rule of inadmissibility of hearsay evidence.

22. The dying declaration, is the last statement made by a person at a stage when he/she has serious apprehension of his/her death and expects no chance of his/her survival. In such a situation, it is expected that a person will speak the truth and only the truth.

Following guidelines with regard to admissibility of dying declaration is laid down by apex court in para 22 of *Atbir v. Govt. (NCT of Delhi)* (2010) 9 SCC 1:-

- i. *Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.*
- ii. *The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- iii. *Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- iv. *It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.*
- v. *Where the dying declaration is suspicious it should not be acted upon without corroborative evidence.*

- vi. *A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction*
- vii. *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
- viii. *Even if it is a brief statement, it is not to be discarded.*
- ix. *When the eyewitness affirms that the deceased was not in fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
- x. *If after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.*

23. Dying Declaration Ex.PW11/A recorded by PW11 Yogesh Pal Singh, SDM concerned, is reproduced hereunder:-

Alleged burn case of Smt. Amreen W/o Sh. Irfan, R/o H. No. B-377, Gali No. 19, Janta Colony, Welcome, Delhi. Age 18 y. Female.

DDNo.-15. Dt-25.06.2008. Time-9:30PM. PS-Welcome.

I.O. SI Jagbir Singh.

MLC No. A-2609/08. Dt. 25.06.2008. Time 10:20 PM GTBH

Fit for statement at 10:20 AM. Dt 26.06.2008

Statement

Herself, Amreen W/o Irfan R/o House No. B-377, Gali No. 19, Janta Colony, Welcome, Delhi. The following statement had been made before Executive Magistrate (Shahadara) consciously, without any pressure or coercion. She was made understood the importance of her testimony.

Q.1 *When were you married and to whom.*

A. *Her marriage was solemnized about 8 months ago and her Nikah was performed with Irfan.*

Q.2 Was the demand for dowry made at time of your marriage.

A. At the time of marriage, no specific demand of dowry was made. However, soon after the marriage a pressure was created by her father-in-law, Mother-in-law, Sister-in-law (Nanad) and her husband to fetch dowry. Her Mother-in-law started taunting her that her parents has not provided sufficient dowry. All of them demanded Rs. 2.5 Lakhs, fridge, washing machine, cooler, T.V. etc.

Q.3 Who all are there in your matrimonial house.

A. In her matrimonial house her husband, mother-in-law, father-in-law and married Sister-in-Law (Nanad) who resides nearby whose daily needs are fulfilled from Amreen's matrimonial house. Amreen cooks for everybody. The name of my mother-in-law is Firoza, father-in-law is Shamsuddin, Sister-in-law (Nanad) is Seema and her husband is Irfan.

Q.4 Have you ever told to your family earlier that your in-laws demand dowry?

A. She has not narrated much as her mother generally remains sick and her father has already expired.

Q.5 How your in-laws treat you.

A. Nobody at her in-laws house take her side; they keep demanding to fetch more dowry. Her mother-in-law and sister-in-law always taunt her and her husband beats her. Her father-in-law threatens her of dire consequences if she does not bring more dowry.

Q.6 Narrate the incident taken place in details.

A. She at about 8:30 p.m. was weeping on the ground floor in front of kitchen. Her mother-in-law and husband had quarrel with her and were harassing her. At that point of time her sister-in-law fetched kerosene oil while her mother-in-law and her husband caught hold of her, she

cried for help, but her father-in-law present at the spot caught hold of her and her husband set her on fire. When she was put on fire, she cried for help and came out. The neighbors and tenants poured water on her person and put off the fire. After some time her mother and brother came to the spot who reside next to the street and they brought her to GTB hospital.

Q.7 Do you apprehend someone's involvement in the incident.

A. Her husband Irfan, father-in-law Shamsuddin, mother-in-law Firoza and sister-in-law Seema set her on fire with intention to kill her for want of dowry. All the aforesaid persons are responsible for setting her ablaze. Legal action to be taken against all four persons.

Statement is read over to her, same is correct.

Recorded by me and LTI before me. The victim remained fit during the statement till end by 11:05 AM.

***"LTI of Amreen"
BedNo.1, Burn Ward
GTB Hospital, Delhi.***

Sd/-

(Yogesh Pal Singh, Executive Magistrate)

24. PW11 Yogesh Pal Singh, SDM, Author of the dying declaration deposed, on receiving information from PS Welcome where he was posted as Executive Magistrate, visited the GTB Hospital on 26.06.2008 in pursuance of the Telephonic conversation. He saw injured Amreen admitted in GTB Hospital who had sustained burn injuries. She was conscious and was talking. He enquired the facts from her. Prior thereto he had consulted the doctor on duty regarding her fitness to make statement Ex.PW11/A. Thereafter, he recorded statement of injured Amreen Ex.PW11/A. The injured Amreen has put her Left Thumb Impression on each page of statement Ex.PW11/A.

Thereafter, he forwarded the said statement to SHO, PS Welcome for taking necessary action.

25. The statement of PW11 Yogesh Pal Singh inspires confidence and correctness in recording the statement Ex.PW11/A, without any influence from outside on following grounds:-

- a. The manner of incident taken place on 25.06.2008 is described in Ex.PW11/A which is not in the personal knowledge of PW11, as the statement so recorded by him is in the official capacity as SDM. Question and Answer No. 6 in Ex.PW11/A is relevant, and the same is reproduced hereunder:-

Q6. Narrate the incident taken place in details.

A. She at about 8:30 p.m. was weeping on the ground floor in front of kitchen. Her mother-in-law and husband had quarrel with her and were harassing her. At that point of time her sister-in-law fetched kerosene oil while her mother-in-law and her husband caught hold of her, she cried for help, but her father-in-law present at the spot caught hold of her and her husband set her on fire. When she was put on fire, she cried for help and came out. The neighbors and tenants poured water on her person and put off the fire. After some time her mother and brother came to the spot who reside next to the street and they brought her to GTB hospital.

- b. The statement Ex.PW11/A wherein it is recorded that the deceased was put on fire after pouring the Kerosene Oil is corroborated with the FSL Report wherein the Kerosene Oil is detected on the hair/scalp of deceased Amreen.
- c. The dying declaration Ex.PW11/A is corroborated with the MLC Ex.PW19/1 in which the deceased was admitted

to GTB Hospital on 25.06.2008 with history of "being put on fire by in Laws".

- d. The Post Mortem Report Ex.PW20/1 further corroborates the deceased having sustained 85% burn injuries on 25.06.2008 and consequential cause of death opined as "Toxic shock as a result of antemortem flame burns".
- e. The dying declaration indicating left thumb impression of the deceased put on statement Ex.PW11/A is corroborated with Post Mortem Report Ex.PW20/1 in its general observation column mentioning "The stain present on left thumb."
- f. The statement of PW11 Yogesh Pal Singh pertaining to recording of dying declaration of the deceased Ex.PW11/A is corroborated with the statement of PW15 Insp. R.K. Jha, PW2 Parvez, PW3 Ahsan and PW4 Parveen Begum.

26. Contention of the Ld. Counsel of the appellants that the deceased was administered with 'Fortwin' (a drug) which resulted into intoxication and she was not in a fit state of mind to depose, loses its significance.

The MLC shows that the deceased was admitted to the GTB Hospital on 25.06.2008 and was administered 'Fortwin' at 10:20 PM. Whereas, dying declaration was recorded by PW11, Yogesh Pal Singh, Executive Magistrate/SDM of the area on the next day i.e. 26.06.2008 at about 10:20 AM after a gap of 12 hours, and after

obtaining patient fit for statement opinion from Doctor on Duty. Doctor observed that the patient stayed fit while her statement was being taken down till 11:05 AM vide MLC Ex.PW19/1.

27. Contention of Ld. Counsel of the Appellant that dying declaration Ex.PW11/A suffers from its voluntariness in presence of mentioning name of her husband as 'Irfan' 5 times and the same cannot be treated as mere clerical error, too loses its significance.

It is apparent from Dying Declaration Ex.PW11/A that her father died long back and her mother remains unwell and because of this reason she did not disclose the ill-treatment, harassment and demand of dowry to her mother. The MLC Ex.PW19/1 indicates that deceased was admitted to GTB Hospital on 25.06.2008 by her Late brother Ajmal who gave information of Amreen as daughter of Irfan and resident of House No. B-377, Gali No. 19, Janta Colony, Welcome, Delhi which belongs to her father. The Performa of MLC where patient has to disclose name of Guardian i.e. 'Son/Daughter/Wife of' remains unmarked since Amreen was admitted by her brother, he thought proper to offer his credentials i.e. name of their father in place of Sameer, Husband of deceased. It is because of this reason, the name of 'Irfan' is appearing in place of 'Sameer'. Sameer alongwith co-accused persons ran away from the spot soon after putting the deceased on fire, therefore, in their absence name of Sameer could not have been used. Moreover, accused persons did not cross examine PW11 Yogesh Pal Singh, SDM to the effect that appearance of name of Irfan five times in the 'Dying Declaration' is not a clerical error.

28. So far, the contention of Ld. Counsel of Appellants in relation to the use of words such as "mehtav", "turant", "samaksh", "pati" and "baap", by the deceased in her Dying Declaration is concerned, same loses its significance in presence of deceased's own narration of the incident in detail (as stated in answer to Question 6 in Ex.PW11/A).

29. The contention of Ld. Counsel of Appellants that the prosecution failed to examine doctor on duty i.e. Dr. Kishore loses its significance in presence of the statement of PW19 Dr. Parmeshwar Ram who was cross examined. As such, doctor on duty acted in his official capacity, same is relevant under Section 114(e) Indian Evidence Act.

30. Contention of Ld. Counsel of Appellants that as per the Chapter-13A of the Delhi High Court Rules, dying declaration has to be recorded by a Judicial Magistrate, loses its significance as the statement of Amreen was recorded by PW11 Yogesh Pal Singh, Executive Magistrate/Sub-Divisional Magistrate, on receiving the burn injuries under section 307 IPC and Amreen died subsequently due to the burn injuries on 28.06.2008 and the said statement of Amreen subsequently became dying declaration, which is trustworthy and inspires confidence. This circumstance goes against all the accused persons. Reliance is placed on Judgment of Apex Court in ***Laxman v. State of Maharashtra*** AIR 2002 SC 2973. Relevant extract of para 4 is reproduced as under for necessary emphasis:-

"...In the latter decision of this court in Koli Chunilal Savji & Another vs. State of Gujarat 1999(9) SCC 562 it was held that the ultimate test is whether the dying declaration can be held to be a truthful one

and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The court relied upon the earlier decision. In Ravi Chander vs. State of Punjab 1998 (9) SCC 303 wherein it had been observed that for not examining by the doctor the dying declaration recorded by the executive magistrate and the dying declaration orally made need not be doubted. The magistrate being a disinterested witness and is a responsible officer and there being no circumstances or material to suspect that the magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the magistrate does not arise."

Medical Evidence

Post Mortem Report

31. The prosecution has examined PW20 Dr. Sumit Tellewar who is author of the Post Mortem Report and conducted Post Mortem on dead body of deceased Amreen on 28.06.2008 at 12:30 PM. Body of the deceased was identified by her brothers Ahsan and Ajmal. Following injuries were found:-

"Ante mortem injuries

Superficial to deep burns present over the body except on both the feet and in the regions below the knee joint. Thus, sparing 15% of the total body surface area. The margins of the burns were erythematous, singying in scalp hair was present. Yellow colour slough was present at places over the burnt areas. The burnt area involve 85% of the total body surface area.

Internal Examination

Scalp, Skull, Neck-NAD (No abnormality detected)

Brain-congested

Lungs-odematous and congested.

Heart- NAD (No abnormality detected)

Stomach- About 50 cc fluid present, walls-NAD.

Liver, Spleen, Kidneys-congested.

Uterus-NAD

Urinary Bladder-Empty.

Opinion

In my opinion, the cause of death was toxemic shock as a result of ante mortem flame burns involving 85% of the total body surface area.

The time since death was about 06 hours.

After completion of post mortem, scalp hair and clothes were duly sealed with seal of SR and with sample seal, those were handed over to the IO for analysis of inflammable substances. I prepared detailed post mortem report regarding above said post mortem and the same is Ex. PW20/1 (running into four sheets) bearing my signatures at point A.”

32. As per Post Mortem Report, deceased Amreen died on 28.06.2008 and Post Mortem of her body was conducted on the same day at 12:30 PM. Time since death is 6 hours which indicates that the deceased died due to burn injuries received on her person on date of the incident i.e. 25.06.2008. Same goes against all accused persons.

FSL Report

33. PW18 SI Jagbir Singh deposed that on receiving DD No. 15A on 25.06.2008 he reached to the spot i.e. House No. D-463, Gali No. 19, Janta Colony, Welcome, Delhi alongwith Ct. Chaman Singh. Thereafter, he went to GTB Hospital where injured was admitted. He at GTB Hospital received sealed *pulandas* containing hair and burnt clothes of Amreen alongwith seal of hospital. Same were deposited in *Malkhana*.

Thereafter, he reached to the crime spot and called crime team and he found burnt and half burnt matchsticks, one match box and made a *pulanda* and sealed the same with seal of JSN. He also found one plastic can of green colour with smell of kerosene oil and made a *pulanda* and sealed the same with seal of JSN. He further found two burnt pants at the spot and made a *pulanda* and sealed the same with seal of JSN. He seized all the aforesaid three *pulandas* vide seizure Memo Ex.PW8/A. He on 26.06.2008 deposited aforesaid three *pulandas* with *Malkhana*. He further on 08.07.2008 after post mortem, received two sealed *pulandas* containing hairs and clothes of deceased, same were seized vide Seizure Memo Ex.PW8/B and were deposited with *Malkhana*. On 12.08.2008, exhibits of the case were sent to FSL Rohini through PW6 Ct. Ved Prakash.

PW14 Omkar Dutt, MHC(M) has specifically stated that he received aforesaid sealed *pulandas*. On 26.06.2008, three *pulandas*, one having seal of GTB and other two having seal of JSN were deposited vide entry No. 2259 in Register No. 19, same is Ex.PW14/A. On 08.07.2008 two sealed *pulandas* with seal of SR were deposited vide entry no. 2273 in Register no. 19, same is Ex.PW14/B. He further deposed that on 12.08.2008 Ct. Ved Prakash got the said *pulandas* deposited into FSL Rohini vide RC No. 93/21/08 same is Ex.PW14/C. Received copy of RC and acknowledgement from FSL Rohini is Ex.PW14/D.

PW6 Ct. Ved Prakash deposed, on 12.08.2008 he collected sealed *pulandas* of the case from *Malkhana* in intact condition and

deposited the same in FSL Rohini vide RC No. 93/21 and while it remained in his custody, same were not tampered with.

34. The relevant extract of FSL Report is reproduced as under :-

DESCRIPTION OF ARTICLE CONTAINED IN THE PARCEL(S)/ EXHIBIT(S)

Parcel- '1': One envelop sealed with the seal of "SR". It was found to contain exhibits '1'.

Exhibit- '1': Some scalp hair, wrapped in a white paper.

Parcel- '2': One envelop sealed with the seal of "SR". It was found to contain exhibits '1'.

Exhibit- '2': One Cream coloured Baniyan, having some dirty stains.

Parcel- '3': One cloth parcel sealed with the seal of "JSN", it was found to contain exhibits- '3A', 3B' & 3C.

Exhibit- '3A': One grey coloured half burnt Pant.

Exhibit- '3B': One Cream coloured half burnt pant.

Exhibit- '3C': white coloured Cap.

Parcel- '4': One cloth parcel sealed with the seal of "JSN". It was found to contain exhibits- '4'.

Exhibit- '4': One green coloured empty cane.

Parcel- '5': One cloth parcel sealed with seal of "JSN". It was found to contain exhibits- '5'.

Exhibit- '5': Some burnt & unburnt match sticks, kept in a match box make 'SHIP KARBORISED'.

Parcel- '6': One cloth parcel sealed with the seal of "MLC GTB HOSPITAL DELHI-95". It was found to contain exhibits- '6'.

Exhibit- '6' : One Yellow-Red coloured half burnt cloth.

RESULTS OF EXAMINATION

On chemical, TLC & GC examination, exhibits '1', '2', '3A', '3B', '4', '5' & '6' were found to contain residue of kerosene.

35. The scalp/hair of deceased, bunt and unburnt matchsticks with matchbox and green coloured empty can which were seized from the crime spot were found to contain residue of Kerosene Oil. Burnt clothes which were seized from GTB Hospital were also found to contain residue of Kerosene Oil, which supports the prosecution version that on 25.06.2008 deceased was put on fire by pouring kerosene oil as shown in site plan Ex.PW10/A and goes against the accused persons.

Absconding from place of incident

36. The deceased last resided with her husband Sameer, father in law Shamsuddin and mother in law Firoza at matrimonial house i.e. D-463, Gali No. 19, Janta Colony, Welcome. Seema, Sister in law of the deceased was residing in next street. As per the MLC Ex.PW19/1, deceased was admitted in the hospital by her brother Ajmal with help of PW2 Parvez and PW3 Ahsan who reaches to the spot soon after the incident. The accused persons have not admitted the deceased into the hospital which indicates that they have absconded themselves from place of the incident and later they have been arrested by the police. Depositions of DW1 Smt. Mobina and DW2 Javed too supports the fact of deceased being in flame at the matrimonial house i.e. D-463, Gali No. 19, Janta Colony, Welcome, Delhi on date of the incident at 8:30 PM.

False Plea

37. It is apparent on the record that deceased Amreen got married with accused Sameer vide *Nikahanama* Ex.PW4/A it is further

apparent on record that name of father of the deceased is 'Irfan' who died long time back before date of the incident. It is admitted fact that deceased died on 28.06.2008 at GTB Hospital, Delhi.

During trial accused persons has taken a false painful plea that Amreen had an illicit relation with Irfan, the said suggestion put to PW4 is reproduced as under:-

"It is wrong to suggest that my deceased daughter Amrin was in love with a boy namely Irfan and she used to treat him as her husband."

Irfan being biological father of deceased Amreen and putting false allegation of illicit relationship with Irfan is painful to deceased Amreen who cannot testify her chastity anymore in this world.

38. The statement of PW2, PW3 and PW4 and Dying Declaration Ex.PW11/A indicates that the deceased was taunted, harassed and was put on fire soon before her death by the accused persons as shown in the site plan Ex.PW10/A for demand of dowry of Rs. 2.5 Lakhs, fridge, washing machine, cooler, T.V. etc.

39. Reliance placed by Ld. Counsel for defence on *Sampat Babso* (supra), *Kumari Mubin* (supra), *Angoori Devi* (supra) and *Surender Kumar* (supra) are misplaced.

Conclusion

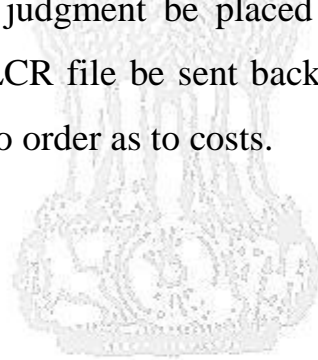
40. As discussed above; We after going through the relevant records, ocular evidence discussed above, Dying Declaration Ex.PW11/A, FSL Report, Post Mortem Report, conduct of the accused persons soon after the incident and chain of the circumstances which

are independent to each other and connects the accused persons only to the commission of the offence; are of the considered view that the same leaves no manner of doubt that the offence was committed by accused persons only.

Reliance is placed on Apex Court Judgments in *Jagbir Singh v. State (NCT of Delhi)* (2019) 8 SCC 779 and *State of Maharashtra v. Rajendra & Ors.* (2014) 12 SCC 496.

As such, Court below has rightly convicted the accused persons under Sections 498A/304B/302/34 IPC. We find no merit to interfere with impugned Judgment dated 16.09.2015 and Order on Sentence dated 26.09.2015, as such appeals are dismissed.

41. One copy of this judgment be placed in CRL. A. 250/2016, 263/2016 & 264/2016. LCR file be sent back forthwith along with a copy of this judgment. No order as to costs.



I.S.MEHTA, J.

**SIDDHARTH
MRIDUL, J.**

13 DECEMBER, 2019