

Mahesh Vs. State

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Court : Delhi

Decided On : Oct-07-2013

Judge : Kailash Gambhir

Appellant : Mahesh

Respondent : State

Advocate for Pet/Ap. : Ms. Rakhi Dubey

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 654/2010 Judgment delivered on:

7. h October, 2013 MAHESH Through Appellant Ms.Rakhi Dubey, Advocate versus STATE Through Respondent Ms.Richa Kapoor, APP for the State with Insp. Prabhu Dayal, PS Maya Puri. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR %

JUDGMENT

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 374 of the Code of Criminal Procedure 1873 (hereinafter referred to as CR.P.C) the appellant seeks to challenge the judgment and order dated 4.1.2010 and 7.1.2010 passed by the Court of Ld. Additional

Sessions Judge, Dwarka Court, New Delhi, thereby convicting the appellant for committing an offence under Section 302 of India Penal Code, 1860 (hereinafter referred to as IPC) and sentenced him to undergo imprisonment for life together with fine of Rs. 10,000/- and in default thereof to undergo further imprisonment for three months.

2. Marriages are made in heaven, where two souls unite with love and devotion. But the material needs of the society like lust for money or sex etc. ravishes the very basis of this deific union. No doubt that there are many social & economic factors, governing the standard of living of various households, yet we feel that it is the righteous and moral duty of a husband that he fully discharges his matrimonial obligations for the sustenance of the family and does not aim to lead a leisurely life at the hands of his wifes family making prodigal demands or seeking financial backing. However, in todays times when a women walks shoulder to shoulder with men, harassment to newly wedded females for dowry is still spreading appendages in every nook and corner and ruining a number of marriages, pulverizing our faith in the social and cultural values. Its a curse which the society is facing. Crimes like suicide, bride burning have become common in poor and middle stratum of the society. In most of the cases, such acts are committed to satisfy ones unquenchable greed for money and other material needs. In fact, these types of social crimes meddle the entire social fabric. The present case involves one such woman, for whom marriage became shackles of debauched boon which eventually took away her life.

3. The case of the prosecution in brief is that Smt. Geeta, a young incipient lady, in her initial twenties, entered into a wedlock with the accused Mahesh sometime in the year 2004. Accused Sagarwati was her mother- in- law while accused Suraj Bhan was the elder brother-in- law. After marriage, deceased was residing with all the accused persons in House No.591, Nangal Raya, Pandani Basti, Mayapuri. It was alleged that accused Mahesh was unemployed and whenever the deceased used to persuade him to look for some work, she was given a lot of beating by him. Besides him all the other accused persons also used to harass her with dowry demands. On 14.03.2006 at about 1.30 a.m., DD No.3A was received at PS Mayapuri informing that one woman had set herself on fire. On this SI Shiv

Shankar along with Dharmender reached the matrimonial house of the deceased. There he came to know that PCR Van had already shifted Smt. Geeta (deceased) to Safdarjung Hospital, from where she was taken to RML Hospital. SI Shiv Shankar reached RML Hospital, where he found the deceased under treatment having suffered 95% to 100% superficial to deep burns. SDM, Delhi Cantt. was called who recorded the statement of the deceased on the same day at about 4:15 a.m. and subsequently, recorded the statement of Roop Chand, father of the deceased, Asha and Sunder, the sister and the sister in law of the deceased. Smt. Geeta died on 20.03.2006 on account of burn injuries. The case was registered and after due investigation challan was filed under sections 498A / 406/ 326/ 304B/ 302 IPC against the accused Mahesh. However, as against the accused Sagarwati and Suraj Bhan, chargesheet was filed under section 498A/ 406 IPC.

4. After supplying the copies of the charge sheet to the accused persons as per law, case was committed to the Court of Sessions. Arguments on point of charge were heard and charge under section 498A IPC against accused Sagarwati and Suraj Bhan, and charges under section 302 and 498A IPC against accused Mahesh were framed, to which they pleaded not guilty and claimed trial. Prosecution tendered 16 witnesses in support of their case. Prosecution evidence was concluded and the statement of the accused persons under section 313 Cr.P.C was recorded wherein they admitted the factum of marriage but controverted the other incriminating evidence. They examined one witness in their defense.

5. The Additional Sessions Judge, Dwarka, New Delhi by judgment dated 04.01.2010 acquitted the accused Suraj Bhan and Sagarwati however convicted accused Mahesh for the offence under Section 302 IPC. Hence the present appeal.

6. On behalf of the appellant, arguments were advanced by Ms. Rakhi Dubey, Advocate while on behalf of the respondent, submissions were made by Ms. Richa Kapoor, learned Additional Public Prosecutor for the State, Advocate.

7. Ms. Rakhi Dubey, Advocate broadly made the following submissions: that the conviction of the appellant is based solely on the dying declaration of the

deceased but the same does not inspire any confidence because of many suspicious circumstances surrounding the same and the deceased being fully tutored by her sister PW-1, who remained present throughout in the hospital at the time of recording of the dying declaration. Counsel further argued that with a view to save the deceased, after she had burnt herself, the appellant himself suffered 30-35% burnt injuries and due to that he was admitted in Lok Nayak hospital thus, he was not present or available with the deceased and this gave sufficient opportunity to the sister of the deceased to tutor her to give a statement against the appellant in her dying declaration so as to falsely implicate the appellant. Counsel also argued that the said dying declaration also became doubtful as the prosecution had failed to examine the doctor who had declared that the deceased was fit for statement. Counsel also argued that with the deceased having suffered 90-95% burnt injuries could not have been in a fit state of mind to give her statement to the SDM at about 4.15 a.m. on the intervening night of 14th /15th March, 2006 and it can be well perceived that after her admission in the hospital, the doctors attending upon her must have administered tranquilizers to bear the pain and to make her sleepy and in such circumstances to say that the deceased was in a fit state of mind to give her dying declaration is extremely doubtful.

8. Another argument advanced by counsel for the appellant was that prosecution failed to prove any motive on the part of the appellant to murder his wife. Even in her complaint lodged by the deceased to the police in the year 2005, no such allegations of dowry were raised and in fact in her complaint she clearly stated that the appellant wanted to live with her whereas the deceased did not want to live with him.

9. Counsel further argued that in DD No.3A, which is a first information received by the police, the information given was that a lady had burnt herself, which clearly shows that even as per this report the appellant had no role in the burning of his wife. Even in the MLC report there is no mention of burning of the victim by her husband by pouring kerosene oil on her. Counsel also argued that another significant circumstance which clearly demolishes the case of the prosecution is that in the postmortem report Dr. Prem Kumar, who had conducted the postmortem, clearly stated that smell of kerosene oil was absent. Likewise, in the

CFSL report it was opined that kerosene oil or its residues could not be detected in the blanket, burnt cloth material and bunch of hair, marked as Exhibit PW-14/ E. Counsel also submitted that even IO / PW-14 and crime team in charge PW-10 also nowhere stated detection of kerosene oil on the floor of the room where the alleged incident had taken place. Counsel further argued that the appellant himself had sustained 30-35% injuries as stated by Dr. Sanjay Kumar/ PW-6 in his deposition, which he received while saving the deceased and had he been involved in burning his wife, then certainly he would have avoided to receive any burn injuries himself and would not have made any endeavor to save her at the cost of his own life. As per the counsel for the appellant, another circumstance which goes in favour of the appellant was that he did not run away after he was discharged from the hospital. Counsel further contended that the testimonies of PW-1 and PW-2 clearly reveal that the deceased was not comfortable in staying with the appellant, as the appellant had failed to even provide her with basic amenities in the matrimonial home. Counsel further argued that the deceased had a suicidal tendency and on the date of the incident, either she had committed suicide or accidentally she caught fire while the appellant was sleeping. Counsel also argued that the deceased was not happy with the appellant because of the inadequate facilities at the house and due to this reason the deceased had lived together with her husband only for 6 to 7 months out of 21 months of her marriage. Counsel also argued that the prosecution has failed to examine Dr. Gole, who had allegedly given the fitness certificate declaring the deceased fit for statement and similarly prosecution failed to examine the PCR officials who took the deceased and the appellant to the hospital and also Surender Singh (brother -in-law of the deceased), who was the first to reach the spot along with PW-1. Contention raised by the counsel for the appellant was that all these witnesses were material witnesses and the failure of the prosecution to examine them lurches enough doubt on the case of the prosecution. Counsel also argued that the learned Trial Court has failed to consider the defense of the appellant as in his statement recorded under Section 313 Cr.P.C, he clearly stated that he was sleeping at the time of the incident and did not know how she got burnt and also that he tried to save her and in the process his hands and chest were burnt.

10. Based on the above submissions counsel for the appellant pleaded for the acquittal of the appellant. In support of her submissions, counsel for the appellant placed reliance on the following judgments:a) Parbati V. State , 2009 (4) JCC3166b) Jitender Kumar V. State , 2009 (1) JCC491c) State V. Kumari Mubin , 197 (2013) DLT608(DB) d) State V. Raj Bahadur, 1993 Cri LJ8611. Repudiating the submissions made by counsel for the appellant, Ms. Richa Kapoor, learned Additional Public Prosecutor for the State completely supported the reasoning given by the learned Trial Court in convicting and sentencing the appellant for committing an offence under Section 302 IPC. Advancing her submissions, learned counsel submitted that there is no scope to disbelieve the dying declaration of the deceased, which was recorded by the learned SDM and at that time nobody was present, who could influence the deceased nor even the sister of the deceased. Counsel further submitted that in her statement the deceased categorically stated that the appellant had poured kerosene oil on her and then set her on fire. She also stated that none of her in-laws came forward to save her and she was brought to the hospital by her sister and brother-in-law. She also stated that her-in-laws used to make dowry demands and for that very purpose she was made to suffer severe harassment. Counsel also submitted that the said statement was recorded by the SDM in question and answer form after the deceased was declared fit by Dr. Gole of the RML hospital. Counsel also argued that there can be no reason to disbelieve the testimony of the said SDM who entered the witness box as PW-4, even in the absence of examination of doctor by the prosecution. Counsel also argued that the police had seized one stove, mattress (rajai), some pieces of burnt cotton clothes and one cane containing residual of kerosene oil vide seizure memo proved on record as Exhibit PW13A. Counsel also argued that postmortem of the deceased was conducted on 21. 03. 2006 and thereafter, the exhibits were sent for scientific analysis to the FSL and with this gap, the smell of kerosene oil could have evaporated from the seized exhibits. Counsel also referred to the previous complaint lodged by the deceased on 25.5.2005, which is a clear evidence of the deceased being subjected to harassment by her husband and inlaws.

12. Based on the above submissions, learned APP submitted that the Trial Court findings are cogent, correct and well reasoned warranting no interference by this

Court in the present appeal. In support of her arguments counsel for the State placed reliance on the following a) Laxman V. State of Maharashtra , AIR 2002 SC2973b) Puran Chand V. State of Haryana, 2010 (6) SCC566c) Hansraj & Anr. V. State (citation) 13. We have heard Ms. Rakhi Dubey , learned Counsel for the Appellant, and Ms. Richa Kapoor learned APP for the respondent- State. We have given our thoughtful consideration to the arguments advanced by both the counsels and have also perused the trial Court record.

14. The present case is primarily based upon the dying declaration of the deceased, which is a vital piece of evidence in the facts of the present case. Section 32 of the Code of Criminal Procedure is an exception to the rule of hearsay evidence and has been made acceptable in evidence based on the universal principle that the statement of a person, who is dying should be accorded due sanctity and solemnity because a person on the edge of death is not expected to tell a lie or to concoct a case so as to implicate an innocent person. This principle is based on the maxim *nemo moriturus proesumitur mentiri* which means a dying person would not normally tell a lie.

15. It is also settled legal position that once the Court is satisfied that the dying declaration is true, voluntarily and the person making such a declaration was in a fit state of mind and was making the statement without any inference, rancor or without any tutoring, prompting then such a dying declaration can be sufficient to form the conviction even without looking for any other corroboration.

16. Mathew Arnold, a renowned British poet once said:

truth sits on the lips of a dying man.

When a man is at a verge of his death, one rarely finds any motive to tell fiction. Why would a person specially a dying married woman, in her last stage would want to create misfortune for her husband, if she was so happily married.

17. The Honble Apex Court in the case of Muthu Kutty & Anr. V. State by Inspector of Police, Tamil Nadu, reported in (2005) 9 SCC113 dealing with the aspect of dying declaration and its substantive importance, held as under:

13. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations 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 mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in R. v. Wood Cock (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain: "Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire?. What is the world should make me now deceive, Since I must lose the use of all deceit?. Why should I then be false since it is true That I must die here and live hence by truth?." (See King John, Act 5, Sect.4)

18. The principles governing dying declaration were eloquently summed up by the decision of the Supreme Court long back in the case of Paniben vs State of Gujarat, AIR 1992 SC1817 The same are reproduced as follows:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (ix) (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (xi) 19. Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the medical opinion cannot prevail. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

In the background of the aforesaid legal principles we have to examine the facts of the present case to analyze whether the dying declaration made by the deceased before the Judicial Magistrate was voluntarily, truthful, totally uninfluenced by any tutoring, prompting or for any extraneous or imaginary reasons and the same fully inspire the confidence of the Court even if the same is taken as a solitary evidence uncorroborated by any other evidence. Before we deal with this aspect in detail, let

us examine as to what was said by the deceased in her dying declaration.

20. After disclosing her name and address, the deceased had disclosed that her marriage took place two years back and the marriage was solemnized according to Hindu rites and ceremonies with the consent of both the families. She further stated that no demand for dowry was raised from the side of the family of her husband, although all possible dowry articles were given in her marriage. Explaining the said incident, she stated that at about 1.00 a.m. in the night, her husband Mahesh after putting kerosene oil on her person, lit her on fire. She had raised a lot of hue and cry but none of the members present in the house came forward to help her rescue. No person from the neighborhood also extended any help. In reply to the question as to who brought her to the hospital, she replied that her sister Asha, wife of Surender Singh R/o WZ-553-A/1, Nangal Rai, Delhi, who resides just four streets behind, brought her first to Safdarjang Hospital and thereafter, to R.M.L. Hospital where her treatment was in progress. In response to the question as to whether she was subjected to any kind of harassment or if any quarrel had taken place prior to the said incident, the deceased replied that her husband Mahesh, her father-in-law and her brother-in-law and other members of her husband's family have been raising constant demand for dowry like TV, Cooking Gas and cash amount and due to non fulfillment of these demands, she was always subjected to harassment and was even given beatings at their hands. She further stated that about 3-4 months back, she had made complaint in the Police Station Mayapuri. In reply to another question as to whether she would prefer to stay with her husband Mahesh or with the parents if she gets recovered from the burn injuries, the deceased replied that she would not like to stay with her husband but with her parents as otherwise, they will kill her.

21. The said dying declaration was recorded by the Sub Divisional Magistrate who entered the witness box as PW-4 and the same was in a question and answer form. The deceased Geeta was admitted in the RML Hospital on 14th March 2006 at 3:

20. a.m. and the said dying declaration was recorded by the Sub Divisional Magistrate between 4:15 to 4.45 a.m. The victim was declared fit to give her

statement by Dr. S.N. Gole of the said hospital, an endorsement can be seen on the perusal of the said dying declaration marked as Ex PW4 A.

22. Except deceased Geeta herself, none else was present at the time of recording of her dying declaration by Sub Divisional Magistrate, not even the sister of the deceased, who had accompanied her to the hospital. The said dying declaration was proved on record as Ex.PW-4/A in the testimony of Mr. S.M. Bharadwaj, SDM who entered the witness box as PW-4. In his deposition, he categorically stated that after reaching the hospital, he contacted the doctor and asked him whether the patient was fit for making statement or not and in response thereto, doctor had informed him that the patient was fit for making statement. He further deposed that the doctor who had declared the patient fit for statement, had also put his signature at point C. The said testimony of PW-4 remained unrebutted as he was not cross-examined to dispute the presence of the doctor or doubt his endorsement on the dying declaration declaring the patient fit for statement. The defense also could not throw any doubt to impinge the credibility of the said witness who was otherwise an independent witness being the Sub Divisional Magistrate.

23. This responsibility of recording the statement of the victim has been entrusted to the Judicial Magistrate under section 164 Cr. PC, considering the fact that nobody could easily suspect the impartiality and integrity of such a government officer in recording the dying declaration of a victim in a fair and impartial manner. To challenge the credibility of the Judicial Magistrate, the defense has to make out a very strong case otherwise the impartiality and independence of the Magistrate cannot be easily questioned. Learned Trial Court has placed reliance on the judgment of the Apex Court in Harjit Kaur V. State of Punjab , 1999 (3) RCR (Cri) 700 wherein the Apex Court took a view that Sub Divisional Magistrate being an independent witness holding high position had no reason to do anything which was not proper and genuineness of dying declaration recorded by him could not be easily doubted and conviction recorded on that basis could not be faulted with. Although as per the settled legal position, the dying declaration if is true and reliable, free from any kind of suspicion and is recorded after fully ascertaining the fitness of the victim, no corroboration to draw support from some other evidence is

necessary. The germane portion of the judgment is extracted below:

5. It was submitted by the learned counsel for the appellants that about hundred persons had approached the District Magistrate for getting the Dying Declaration of Parminder Kaur recorded and that some of the relative of the deceased had even accompanied the S.D.M. (P.W.-7) while he was going to the hospital for recording her Dying Declaration. He also submitted that the evidence of this witness discloses that three to four persons were present in the room where Parminder Kaur was kept. According to the learned counsel these two circumstances clearly indicate that P.W. 7 had recorded the Dying Declaration under pressure and in presence of those persons who were interested in Parminder Kaur. We do not find any substance in this contention because this witness has categorically stated in his Examination-in-Chief that when he was recording her statement, nobody was present in the room and even the Nurse attending on her was asked to get out of that room. What he has stated in cross examination is that when he had reached that place, three or four persons were seen sitting in the room. Therefore, it is not correct to say that the Dying Declaration was recorded in presence of some relatives of the deceased. The other circumstances that there was an agitation by the relatives of Parminder Kaur for recording her statement cannot lead to an inference that P.W.-7, who was an I.A.S. Officer and holding high position of Sub-Divisional Magistrate had recorded it under pressure and as desired by the relatives of the deceased. There was no reason for him to do so. As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because that endorsement was made not on the Dying Declaration itself but on the application, that would not render the Dying Declaration suspicious in any manner. The said endorsement made by the Doctor was produced by him and it has become evidence in the case.

6. It was further submitted by the learned counsel that the statement of Parminder Kaur was not recorded by the witness in question and answers form. The evidence of the witness is that she narrated the incident and therefore the Dying Declaration is not in the question-answer form. It was then contended by the learned counsel

that the Dying Declaration bears her thumb mark but according to the medical evidence, the skin over the two thumbs was burnt and, therefore, the S.D.M. could not have obtained her thumb impression on it. Whatever impression could be taken was taken by the S.D.M. The medical evidence in this case does not disclose that she could not have put her thumb mark on the Dying Declaration. We fail to appreciate how this circumstance can create any doubt regarding the evidence of this witness or genuineness of the Dying Declaration. P.W. 7 was an independent witness and was holding a high position and had no reason to do anything which was not proper or correct. Except a bare suggestion made to him that the Dying Declaration was manufactured by him after her death, we do not find anything in his cross-examination as would create any doubt regarding truthfulness of what this witness has deposed. We fully agree with the finding recorded by the courts below that the Dying Declaration was voluntarily made by Parminder Kaur and that it was correctly recorded by P.W.-7.

24. The other contention raised by the counsel for the appellant challenging the dying declaration was that the sister of the deceased remained present throughout the recording of the dying declaration and her presence creates enough suspicion on the credibility and genuineness of the last statement of the deceased, merits outright rejection as it is an indisputable fact that the sister of the deceased was not present in the room where the SDM had recorded the dying declaration of the deceased. Therefore, the presence of the sister in the hospital after she had accompanied the deceased can be of no consequence.

25. Counsel for the appellant also laid much stress on the argument that the prosecution failed to produce Dr. Gole who had declared the deceased fit for the statement and his non production is enough to create qualm on the medical condition of the deceased and also on the legitimacy of the said dying declaration. To deal with this argument of counsel for the appellant, we find support from the decision of the Constitution Bench in the case of Laxman vs. State of Maharashtra, (2002) 6 SCC710 wherein the Apex Court has held as under:

3. The justice 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 death bed 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 court 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 to always be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting 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 look 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, 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 in 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 is 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.

26. Another contention raised by counsel for the appellant was that the deceased having suffered 90-95% burn injuries, she could not have been in a fit state of mind to give statement before the SDM at about 4.45 AM in the intervening night of 14/15th March 2006. This contention of counsel for the appellant has been suitably answered by PW-3, Dr. Prem Kumar who in his deposition had clarified that the person suffering from 95% burn injuries can make a statement if the medical condition of such patient is stagnant and fit as per the doctor treating him. This contention was also raised by the appellant before the learned Trial Court. To deal with this contention, learned Trial Court placed reliance upon the judgment of the Apex Court in Satish Ambanna Bansode vs. State of MP, (2009) 2 RCR (Cri) 294 wherein also the patient with 95% of burns was held to be in a position to give last statement despite such an extensive burn injuries.

27. In the light of the aforesaid legal position, we do not find that the counsel for the appellant has succeeded in creating enough suspicion to doubt the credibility and truthfulness of the dying declaration made by the deceased before a Judicial Magistrate who recorded her statement after she was declared fit by the attending doctor and also when nobody was present in the room nor even the sister of the deceased. The said dying declaration of the deceased giving a truthful version of the circumstances that led the deceased to suffer burn injuries has rightly been believed by the learned Trial Court.

28. Dealing with the other contentions raised by counsel for the appellant and one of them being that the prosecution failed to prove any motive on the part of the appellant to murder his wife it will be suffice to state that the motive is well reflected in the dying declaration of the deceased wherein she categorically stated that her husband, mother-in-law and brother-in-law used to raise dowry demands and she used to be physically beaten and harassed by them. She has also

referred to the complaint lodged by her about three four months back prior to the recording of her said statement. Roop Chand (PW-2) father of the deceased Geeta in his deposition had also referred to such harassment being caused by the husband, his mother and brother. He has also referred in his deposition to complaint made on 25th May 2005 against Mahesh and has pointed out in the said complaint that Mahesh has extended an assurance that he will not harass his daughter - Geeta any further. We thus find no force in the argument of counsel for the appellant.

29. Another argument taken by counsel for the appellant that in the DD No.3A, which was received by the police, the information given was that a lady had burnt herself and even in the MLC report, there is no mention of burn of the victim by pouring kerosene oil on her. This contention is also found to be devoid of any merit. It is not necessary that in the very first information given to the police, that the informant may give the exact information. The non recording of any reason in the MLC report of deceased is also of no consequence in the light of the dying declaration of the deceased.

30. Another contention raised by counsel for the appellant was that in the post mortem report it was clearly stated by Dr. Prem Kumar that smell of kerosene oil was absent and likewise in the CFSL report it was opined that kerosene oil or its residue could not be found on Ex.3, Ex.4 and Ex.5 (Blanket, burnt clothes material and bunch of hairs) marked in Ex. PW14 E. Counsel for the appellant took a stand that even the Investigating Officer (PW-14) and Crime Team Incharge (PW-10) also nowhere recorded the detection of kerosene oil on the floor of the room, where the alleged incident had taken place. To deal with these contentions raised by counsel for the appellant, it would be pertinent to point out here that at the matrimonial home of the victim, there was no gas Chula and cooking in the house used to take place with the help of stove run on kerosene oil. Therefore, the presence of kerosene oil at the house is an undisputed fact. After the incident, the police had seized the stove, kerosene oil cane, and a mattress of red colour, which was giving smell of kerosene oil, burnt cotton and burnt clothes. In the Report of the Crime Team proved on record as Ex.PW-10/A, the modus operandi of the deceased receiving burn injuries was disclosed on account of kerosene oil.

Undeniably, as per the CFSL report, kerosene oil or its residue could not be detected on the Ex.3, i.e., burnt blanket/Razai (quilt), burnt cloth material (Ex.4) and a bunch of hairs (Ex.5), and likewise PW-3 in his statement deposed that smell of kerosene oil was absent. This argument has been well answered by the Apex Court in the case of *Puran Chand vs. State of Haryana* reported in 2010 (6) SCC566 wherein, dealing with similar kind of argument of no traces of kerosene being found, in the FSL report, the Apex Court in the following paras held as under:

14. Lastly, a point was raised by the learned defence counsel that on the half burnt clothes of Santosh, there were no traces of kerosene and, therefore, the whole story of burning her by pouring kerosene on her body has to be disbelieved. It is to be seen that the seizure of these clothes was proved by Mam Chand (PW-8). He spoke about the seizure of an empty can, smelling of kerosene oil, a match box with 4 or 5 burn match sticks, a quilted bed (probably meaning 'mattress'), smelling of kerosene from it which was semi burnt and some sample of soil. According to him, they were packed in the parcels separately and sealed. On this backdrop, when the recovery memo is seen, it mentions one empty tin box, match box, two burnt match sticks, earth which was put in plastic Dibbi, clothing of the deceased Santosh of light blue colour, bed sheet (Bichhona) with marks of fresh burns. The in-Chief to the cloth parcel (Exhibit

4) with some partially burnt pieces of clothes. The FSL report suggests that kerosene residues were detected in Exhibit 5, which was a plastic bag containing a partially burnt coloured check cotton gadda, It clearly suggests that no kerosene residues could be detected on Exhibits 1, 2, 3, 4 or 6. From this, the learned Counsel urged that particularly, the parcel Nos. 1, 3 and 4 were bound to carry kerosene residues if the prosecution story was truthful. However, it is to be seen that the mattress did have kerosene residues. While this incident has taken place on 15.12.1997, parcels seems to have been sent only on 29.12.1997 i.e. after about 14 days of the incident, which reached the FSL Laboratory on 31.12.1997. The FSL report bears a date 5.6.1998. There is thus the possibility of the articles losing the kerosene residues due to the long interval of time, yet it has to be noted that the mattress which undoubtedly a thick material, did have the kerosene

residues. Ordinarily, there was no reason for the mattress having the kerosene residues unless kerosene was poured on the same. It is again to be noted that even the plastic container, containing kerosene, was also found not having any kerosene traces. Therefore, this circumstance will not help the accused as some kerosene traces have been found on the mattress where Santosh was sleeping. Even if we ignore this circumstance, the fact of the matter is that the dying declaration has been found by us to be voluntarily truthful and unblemished. That would clinch the issue against the accused.

15. The appreciation by the Trial Court and the Appellate Court on the overall circumstances and their finding of conviction is correct. The appeal has no merits and it deserves to be dismissed. It is accordingly dismissed.

31. In the facts of the present case also, the deceased had received the burn injuries on 14th March 2006 at about 2. a.m and her post mortem report was conducted on 21.03.2006 and the examination of the seized exhibits was conducted after a gap of 2 months period, i.e., between 18.05.2006 to 31.05.2006. Keeping in view the said gap, there could not have been any possibility of the smell of kerosene oil subsisting on the mattress and burnt pieces of the clothes of the deceased for such a long period. Therefore, this argument of counsel for the appellant will not sustain in the present factual background.

32. Learned counsel for the appellant laid much stress on her argument that the appellant had also received 30-35% burn injuries when he tried to save the deceased and this circumstance itself is sufficient to prove the innocence of the appellant. Counsel for the appellant also submitted that the appellant in his statement under Section 313 Cr.P.C. clearly stated that he was sleeping at the time of the incident and he did not know as to how the deceased got burnt. He also stated that he tried to save her and in the process his hands and chest were burnt due to which he had to remain in the hospital for about one week. Counsel also took a stand that the photograph of the spot clearly showed that the food was cooked and the leftover food could be seen in the photographs but contrary to this photograph, the learned Trial Court considered the cooked food as uncooked food.

33. Undeniably, the husband had received burn injuries. After the said incident, the appellant was also admitted in Lok Nayak Hospital and as per his MLC proved on record as Ex. PW-6/A he had received the following superficial to deep burn injuries:1. Patchy injuries over the face and the right upper limb.

2.

3. Left upper limb and 4.

34. Left half of the chest and abdomen. Patchy injury of the left lower limb. PW-6, Dr. Sanjay Kumar had proved the said MLC in his evidence and in his cross-examination, he opined the said burn injuries to the extent of 30-35%. We also find from the MLC of the appellant that he himself had attributed the said injuries because of Kerosene oil around 1.30 am on 14.03.2006. In his statement recorded under Section 313 Cr.P.C. the appellant in answer to question No.25 (Q) enquiring from him Do you want to say anything else, he gave the following reply:

We were residing happily. There was no dispute between us. We never demanded any dowry nor subjected her to any cruelty. I was sleeping at the time of incident and I do not know how did she get burnt. I tried to save her and in the process my hands and chest were also burnt due to which I had to remain in the hospital for about one week.

35. As would be seen from the above, at the time of appellants admission in the Lok Nayak Hospital, he himself had given the reason of his getting burnt due to Kerosene oil. Vide his statement, under Section 313 Cr.P.C. he simply pleaded lack of knowledge as to how his wife got burnt as he was sleeping at that time. Admittedly, the appellant was living in a small accommodation where even the amenity of separate latrine was also not there as per the unrebutted deposition of PW-2. Under what circumstances, the deceased got burnt either could be known to the appellant or his deceased wife. The deceased wife in a dying declaration has categorically fastened the blame on her husband and as already discussed above, there is no reason to disbelieve her last words recorded by the learned Judicial Magistrate in the dying declaration, and therefore, her dying declaration itself puts a question mark on the vacillating stand of the appellant. The learned

Trial Court is right in observing that had the accused Mahesh really wanted to save her, he could have very well prevented her from igniting fire. The learned Trial Court also correctly observed that even after the fire was lit, Geeta would not have received 90-100% burn injuries if accused Mahesh actually and immediately had tried to extinguish the fire and in such a case percentage of burn would have been much less. The credibility of the stand taken by the appellant gets completely shaken because of the fact that the deceased Geeta was left alone outside her house crying and writhing in pain without any clothes on her body and it is only when her sister Aasha PW-1 rushed to the spot; she had covered the body of her sister and then took her to the hospital. Had the appellant made any effort to save her then certainly he would not have left his wife in such a precarious condition outside her house without even any clothes on her body.

36. We, therefore, are not persuaded to accept the argument of the counsel for the appellant that merely because the appellant had received 30-35% burn injuries, he should be given the benefit of doubt. We also do not find any merit in the contention raised by the counsel for the appellant that the learned Trial Court has wrongly observed that the cooked food as shown in the photographs as uncooked food in fact the learned trial Court has correctly stated that the photographs of the spot show even unconsumed cooked food lying in the room to draw any inference that both had not slept until then. The aforesaid contentions raised by the counsel for the appellant therefore merits outright rejection.

37. The Honble Supreme Court in the case of Satya Narayan Tiwari @ jolly and Anr. Vs. State of U.P. (2011)2SCC(Cri)393 while dealing with such horrendous and inhumane acts held as under:

9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialization of our society, and lust for money which induces people to

commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand.

38. Therefore, taking the overall view of the facts and circumstances of the present case, we believe that such ghastly crimes should be dealt with a heavy hand. Respect forms the basis of our society and respect of a woman should be given prime importance and any such devastating acts that belittles the fundamental values should not be over looked and snubbed. In light of the above, we are of the view that in the reasoning given by the learned trial Court, there lies no perversity or illegality and the impugned judgment suffers no error. There is no merit in the present appeal and hence, the same is accordingly dismissed. KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

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