

Jaideep Narang vs.state

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Court : Delhi

Decided On : Sep-19-2017

Appellant : Jaideep Narang

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: August 31, 2017 Judgment Delivered on: September 19, 2017 CRL.A. 441/2001 JAIDEEP NARANG Appellant Through: Mr.Ajay Burman, Sr.Advocate with Ms.Sadhvi Gaur, Ms.Tanya Harnal & Mr.Harsit Khurana, Advocates versus STATE Respondent Through: Mr.Kewal Singh Ahuja, APP for the State with SI Sazesh Khan PS Subzi Mandi CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI JUDGMENT1 Case FIR No.185/1991 was registered at PS Subzi Mandi on the basis of statement made by Smt.Kiran Narang (deceased). Initially the FIR was registered under Section 498-A/306 IPC, however after the death of Smt.Kiran Narang, the FIR was converted into Section 498-A/304-B/34 IPC. The chargesheet was filed against four accused persons namely O.P.Narang (father-in-law), Rita Narang (mother-in-law), Jaideep Narang (husband) and Vineet Narang @ Babbu (brother-in-law/devar). CRL.A. No.441/2001 Page 1 of 21 2. Vide impugned judgment dated 23rd May, 2001 while the three accused persons namely O.P.Narang (father-in-law), Rita Narang (mother-in-law) and Vineet Narang (brother-in-law/devar) have been acquitted of the charges, the appellant Jaideep Narang - husband of the deceased has been convicted for committing the

offence punishable under Section 498-A/306 IPC for treating his wife with cruelty and also for abetting commission of suicide. Vide order on sentence dated 28th May, 2001, the appellant has been sentenced as under:-

"Offence Sentence U/S498 IPC U/S306IPC RI for 1 year and fine of `2,000/-. In default SI for 6 months. RI for 2 years and fine of `5,000/-. In default SI for 1 year. Both the sentences were ordered to run concurrently.

3. In brief the prosecution case is that on 19th September, 1991 on receipt of DD No.7A SI Suresh Kumar along with Constable Ram Chander reached the place of occurrence i.e. 1735, Sohan Ganj, Subzi Mandi, Delhi-1100007 and came to know that Kiran Narang who suffered burns had been removed to Hindu Rao Hospital.

4. While leaving Cont.Ram Chander to guard the spot he left for Hindu Rao Hospital along with the Executive Magistrate from where he came to know that Kiran Narang as well her husband Jaideep Narang have been referred to Loknayak Jai Parkash Narain Hospital. He reached Loknayak Jai Parkash Narain Hospital and collected the CRL.A. No.441/2001 Page 2 of 21 MLC of Kiran Narang and Jaideep Narang. Kiran Narang succumbed to the burn injuries same night at about 10.40 pm.

5. The first dying declaration has been recorded by PW-20 Dr.Anuj K.Bhatnagar at the time of her medical examination on 19.09.1991 at 11.55 am after observing that the patient was conscious, well oriented in time, place and person. As per the alleged history given by Kiran Narang, she was doused with kerosene by her husband and set on fire by him.

6. The second dying declaration was made before PW-15 Sh.B.P.Singh, Executive Magistrate which is to the following effect: APNE AAP JALI HUN TEL SE (I have burnt myself by pouring kerosene oil) She further stated that her Pati, Devar, Sasur and Saas all had given beating to her in the morning on that day i.e. on 19.09.1991. Her Devar Babbu, O.P.Narang (father-in-law), Jaideep (husband) etc. used to given beating to her daily as a result of which she used to feel harassed. On 19.09.1991 being fed up with them, she poured kerosene on herself and set herself on fire. She poured the oil on herself outside the room and all of them were

present at home but none came to save her and she had done that being fed up with these persons. They also used to taunt her for her dowry articles. She has no complaint against any other person except her father-in-law, mother-in-law, devar and husband as these persons used to give beating to her. She informed her brother and mother about this maar peet but they used to counsel her saying that she had to live there only. She got married about three years before. CRL.A. No.441/2001 Page 3 of 21 7. After the registration of case under Section 498A/306 IPC, SI Suresh Kumar reached the spot and got the same photographed and also seized the articles lying there. He again visited the hospital and found Jaideep Narang, husband of the deceased present in the hospital and arrested him. As Smt.Kiran Narang expired on the same date during night time at 10.40 pm, SDM, Patel Nagar was informed about her death and FIR was converted from Section 306 IPC to Section 304B IPC. Inquest proceedings were conducted after arrival of brother and mother of the deceased from Agra. After completion of investigation charge-sheet was filed.

8. All the accused persons were charged for the offences punishable under Sections 498A/304B/34 IPC to which they pleaded not guilty.

9. Prosecution examined 22 witnesses to bring home guilt of all the accused persons. After examination of all the accused persons under Section 313 Cr.P.C. wherein they pleaded innocence and claimed that she suffered burn injuries while lighting the stove, stated that the husband in fact had suffered burn injuries while trying to save her.

10. Mr.Ajay Burman, learned Senior Counsel for the appellant has filed the written submissions and made oral submissions as well. The arguments advanced by learned Senior Counsel for the appellant can be summarized as under:-

"(i) There are two dying declarations which are inconsistent, hence not reliable. CRL.A. No.441/2001 Page 4 of 21 (ii) The deceased having suffered 95% burns at the time of admission was not in a fit state of mind to make a dying declaration. (iii) There is a long gap between the first dying declaration made before the doctor recorded on the MLC Ex.PW20/A and the second dying declaration made before the Executive Magistrate Ex.PW15/A. (iv) The Executive Magistrate has not

recorded the time of recording the dying declaration. No opinion was taken by him just before recording the dying declaration nor satisfied himself by putting questions to her as to whether she was in a fit state of mind. (v) The dying declaration is in the handwriting of Investigating Officer and not of the Executive Magistrate. (vi) The dying declaration is unreliable as the deceased did not make any such statement on her way to the hospital. (vii) If the two dying declarations have not been believed to convict the other three accused persons i.e. father-in-law, mother-in-law and devar, the same could not have been considered reliable for convicting the husband that too when the first dying declaration wherein she named the husband to be the person who doused her with kerosene and set her on fire, has been rejected.

11. Mr.Kewal Singh Ahuja, learned APP for the State has made the following submissions:-

"(i) The appellant was present at the time of incident. (ii) The dying declaration can be the sole basis of conviction. (iii) The Doctor had no motive to falsely implicate the husband and he recorded the dying declaration truthfully. CRL.A. No.441/2001 Page 5 of 21 (iv) The law is well settled that an order of conviction can be passed solely on the basis of a dying declaration given to the doctor, who was fully competent and thus no corroboration is required. The law with regard to conviction on the basis of a dying declaration is well settled. It is equally well settled that any order of conviction can be based solely on the basis of a dying declaration and no corroboration is required provided the Court is satisfied that the dying declaration is truthful, independent and the person was in a fit state of mind and that the statement was not made on account of any tutoring or prompting.

12. I have considered the rival contentions and carefully gone through the LCR as well the testimony of the prosecution witnesses.

13. The learned ASJ on appreciating the testimony of the prosecution witnesses especially the mother, brother and bhabhi (PW-4 to PW-6) of the deceased and the two dying declarations (i) recorded on the MLC Ex.PW-20/A and (ii) Another made before the SDM, Patel Nagar Ex.PW-15/A, learned Trial Court has acquitted the three accused persons i.e. mother-in-law, father-in-law and brother-in-law of

the deceased for committing the offences punishable under Section 498A/304B IPC. The appellant Jaideep Narang - husband of the deceased has been convicted for committing the offence punishable under Section 498-A/306 IPC and sentenced in the manner stated above.

14. The reasons recorded for the acquittal of the three co-accused are as under: (i) (page 7, para 11 of the judgment) The first dying declaration recorded by Dr.Anuj Kumar (PW-20) on the MLC Ex.PW-20/A on CRL.A. No.441/2001 Page 6 of 21 19th September, 1991 when deceased Kiran Narang was brought to JPN Hospital in injured condition at 11:55 AM was as under: At the time of examination, the patient was conscious well oriented in time, place and person; according to history given by her, she was allegedly doused with kerosene by her husband and set on fire by him. (ii) As per the above dying declaration, the culpability of the husband Jaideep Narang falls within the ambit of the Section 302 IPC and cannot be used for attracting Section 304B IPC. (iii) The second dying declaration Ex.PW-15/A was made before the SDM PW-15 Sh.B.P.Singh, wherein she stated as under: Apne Aap Jali Hun Tel Se (I burnt myself by pouring kerosene oil); then in the next sentence she starts narrating the incidents by stating that on 19-9-91 in the morning all the accused persons jointly gave beatings to her, they used to beat her daily and she was very much in trouble. As a result of which she decided to set herself on fire. She also states therein that the accused persons used to taunt her in connection with the dowry brought by her in marriage. In both the dying declarations there is not even a whisper in (iv) respect of any dowry demand being made by any of the accused persons soon before her death or even prior thereto at any point of time after her marriage till the date of occurrence.

15. Both the dying declarations were rejected by the learned Trial Court to hold that on the basis of these two dying declarations Ex.PW-15/A (made before the SDM) & Ex.PW-20/A (as recorded by the doctor in the MLC), the accused persons cannot be convicted for committing the offence punishable under Section 304B IPC. CRL.A. No.441/2001 Page 7 of 21 16. The testimony of mother, brother and bhabhi of the deceased, PW-4 to PW-6, have been rejected by the learned Trial Court for the following reasons: (i) Kiran Narang expired on 19th September, 1991 at 10:40 PM and PW-4 mother and PW-5 brother reached the hospital in the

morning of 20th September, 1991 and after receiving the dead body of the deceased Kiran Narang for cremation, went back to Agra without making any complaint either to the police or to the Executive Magistrate. (ii) Statements have been made by PW-4 to PW-6 much thereafter on 9th October, 1991 without giving any explanation for this delay which reveals deliberation on their part to give coloured statement and no plausible explanation has been give for not making any statement before the Executive Magistrate when they came to Delhi on 20th September, 1991. (iii) During their deposition before the Court, the version of PW-4 to PW-6 about the dowry demand was an improvement as no such statement before the Executive Magistrate. (iv) PW-4 to PW-6 have not come out with any version that the deceased Kiran Narang was subjected to cruelty or harassment in connection with the dowry which was agreed to be given on or before or after the marriage. Therefore, their testimony does not fulfill the second ingredient of Section 304B IPC.

17. Thereafter the culpability of the accused persons for committing offence punishable under Section 498A/34 IPC has been discussed by the learned ASJ in the impugned judgment as under: CRL.A. No.441/2001 Page 8 of 21 So far as the harassment of Smt.Kiran Narang with a view to coercing or any person related to her to meet any unlawful demand for any property or valuable property or on account of failure to meet such demand as contemplated by clause (b) of explanation appended to Section 498A is concerned, that does not stand proved as observed and discussed by me while deciding the culpability of the accused persons for the offence u/s 304B of the IPC. Certainly, when Section 304B has collapsed, the explanation b of Section 498A shall also collapse simultaneously. Therefore, we need not examine and discuss the culpability of the accused persons for the harassment of Kiran as per explanation b of Section 498A of the IPC. Now, we shall determine the cruelty of harassment in the light of explanation (a) of Section 498A of the IPC. Reverting to the second dying declaration Ex.PW15/A I can see that Smt.Kiran Narang committed suicide. If the prosecution succeeds in proving cruelty having been committed by the accused persons on Smt.Kiran Narang, as per explanation a of Section 498A of the IPC, in that event the culpability and involvement of the accused persons for the offence u/s 306 shall have to be considered and determined.

18. Learned ASJ again dealt with the two dying declarations and the law relating to the admissibility of the dying declaration despite the fact that the two dying declarations had already been rejected while acquitting all the accused persons for the offence punishable under Section 304B/34 IPC. The reasons given for again reverting to the dying declarations and placing some reliance thereon to convict the husband/appellant have been given as under: (i) Extreme step of committing suicide is taken by a person under stress of extreme circumstances. CRL.A. No.441/2001 Page 9 of 21 (ii) While accepting or rejecting a dying declaration it must be kept in mind as to in what circumstances a particular dying declaration was made by the maker of it. (iii) At the time of making first dying declaration, in the opinion of the learned ASJ, the deceased made her statement under heat of moment and actuated by utter rage towards her husband Jaideep Narang. (iv) The time gap between her receiving 95% burn injuries and her first dying declaration is not much as she was immediately removed to the hospital and it was but natural to express her anger that she was doused by kerosene by her husband and set on fire by him. (v) For this psychological behavior and conduct, the truth cannot be sacrificed if it can be ascertained from the very facts and circumstances of the case. (vi) As regards second dying declaration Ex.PW-15/A recorded by SI Suresh Kumar in the presence of PW-15 Executive Magistrate, though the Executive Magistrate PW-15 did not record his satisfaction about the fitness of the maker to make the statement, he stated so in his deposition before the Court and the omissions are not fatal and on account of certain omissions truth cannot be sacrificed. (vii) While making the second dying declaration Ex.PW-15/A before the Executive Magistrate on seeking that the enraged feelings of the deceased Kiran Narang having subsided with the passage of time, the relevant discussion is as under: As regards the commission of somer sault by Smt.Kiran Narang the second dying in making (deceased) CRL.A. No.441/2001 Page 10 of 21 declaration Ex.PW-15/A, it was the result of enraged feelings having subsided with the passage of time, then good sense prevailing and then narrating the truth, although not absolutely since still making exaggerations therein. Now the first dying declaration has to be taken in and to be read along with the second dying declaration because this process will help in driving out the truth. From the first dying declaration it is ascertainable that as a matter of fact, Smt.Kiran Narang was

aggrieved from the act and conduct of her husband Jai Deep Narang; it is he whom she wanted to punish. Therefore, while the second statement she mentioned husband she simultaneously, out of vengeance and vindictiveness, roped in her mother-in-law, father-in-law and dewar also. I am of the considered view that the husband Sh.Jai Deep Narang, who gave her beatings on the day of occurrence, drove her to take this extreme step of committing suicide. PW4 Smt.Santosh, the mother of deceased Kiran also stated in examination in chief that Smt.Kiran used to disclose to PW4 that Sh.Jai Deep Narang her husband was entangled with other girls and one such woman was Manju, who even projected herself as of that status quo Jai Deep Narang which status Kiran Narang enjoys with her husband. This allegation has not been denied by the accused persons. Although this allegation has not been leveled by Smt.Kiran in her dying declaration yet I am of the view that it is difficult for a dying person to narrate the incident in detail. However, this allegation is sufficient to believe that throughout it was husband of deceased who caused miseries for being suffered by Smt.Kiran deceased. There might have been minor quarrels between the deceased and her in-laws which are natural in matrimonial life but these minor mishaps to what contemplated the presumption contained in Section 113A of the Indian Evidence Act which enables a Court to presume that a commission of suicide by a woman has taken amounting cannot be CRL.A. No.441/2001 Page 11 of 21 that the women has committed suicide within a been abetted by her husband or by her relatives if two conditions are satisfied: a) period of seven years from her marriage; and b) to cruelty. that the husband or his relatives has subjected her 19. Thereafter learned Additional Sessions Judge discussed the provisions of Section 113-A of the Indian Evidence Act and observed that the husband had subjected his wife Kiran Narang to cruelty by beating her on that day and also he was involved with a girl named Manju. The conduct of the husband, his involvement with another girl and his giving beating to his wife on the same day on which the incident had taken place led her to commit suicide. The act of beating is sufficient to constitute cruelty.

20. The husband has been convicted for committing offence punishable under Section 498A/306 IPC for the following reasons: As regards abetment, it has been observed by the Honble Supreme Court of India in a case reported as AIR 1991

SC1929that:-

"the women Abetment is an intentional aiding of suicide by the husband or his relatives. When the question arises as to whether the accused has abetted in committing suicide, the Court will consider cumulating effect of all the circumstances including the conduct of the accused, relation between the parties, time, place or manner in which the incident took placeetc. etc. In the mirror of this judgment I have seen the conduct of the husband accused, his involvement with girl named Manju as abovesaid, the husband-accused having given CRL.A. No.441/2001 Page 12 of 21 abeting to Smt.Kiran Narang, his wife on the same day on which the incident took place and the first dying declaration of Smt.Kiran Narang revealing utter rage of Smt.Kiran Narang towards her husband accused Jai Deep Narang, all reflects upon the conduct of accused Jai Deep Narang which ultimately led to the commission of the suicide by Smt.Kiran Narang. The Act of beating is sufficient act to constitute cruelty. As per the judgment reported as Crl.L.J.

1837 (Calcutta), the act of abetting was held as constituting cruelty by observing that:-

"Where the accused was alleges to have assaulted his wife with his hands and stick the evidences of eye witnesses regarding assault & torture was found trustworthy and corroborated by medical evidence and it was held that accused was held guilty of subjecting wife to cruelty in the event of the failure by the accused to explain the injury suffered by the wife in her marital home. As regards Post Mortem it was conducted by PW-3 Dr.P.L.Dixit who proved the Post Mortem Report, Ex. PW3/A, he also prove on record the viscera report Ex.PW3/8. He opines cause of death due to shock consequent upon anti-mortem 95% burns of body surface which were recent in duration and caused by fire. The testimony of all the material witnesses relevant for disposal of the case stands discussed. I would like to record at this juncture that the Judgment cited by Id. defence counsel reported as 1999 FLC544High Court of Karnataka wherein it was held in answer to the supplementary argument advanced by the Id.State Public Prosecutor to the effect that even if main charge u/s 304 B of the IPC were to fail, the accused still

be convicted for the offence u/s 498A of the IPC as the Court must draw the inference that it was only such harassment and cruelty of an abnormal high order that forced her to end her life. Their Lordship held that there CRL.A. No.441/2001 Page 13 of 21 is practical difficulty there in the way of the prosecution in so far as once the evidence fails to inspire confidence on the main charge it would be in violation of the rules relating to appreciating of evidence, if the Court were to accept the same evidence and held that subsidiary charge is established; the rule of consistency is one of the cardinal principal of criminal jurisprudence and something which the Court cannot lose sight of-cannot be availed of since in the instant case all the accused are going to be acquitted for the offence under Section 304-B of the IPC because the prosecution has failed to prove harassment or cruelty as contemplated by explanation (b) Section 498-A of the IPC. The case now is being considered for the offence under Section 306 of the IPC read with explanation (a) of Section 498-A of the IPC. At this juncture one more question arises whether the accused can be held guilty and convicted for an offence of which there is no charge having been framed against the accused persons. The answer is that even if there is no charge for an offence but from the facts and circumstances of the case and the evidence brought on record the smaller offence in comparison to the offence for which the accused have been charged and were facing trial surfaces that can be considered at the time of writing of judgment. So is the situation here. The offence under Section 306 of the IPC read with explanation (a) of Section 498-A IPC certainly is smaller in comparison to the Section 304-B of the IPC. The sentence prescribed for the offence under Section 304-B of IPC is imprisonment of not less than seven years but which may extend to imprisonment for life whereas the punishment prescribed for the offence u/s 306 of the IPC is imprisonment of either description for a term which may extend to 10 years and shall also be liable for fine. For offence u/s 304-B of the IPC there is minimum sentence prescribed which is not less than 7 years but for the offence u/s 306 the maximum sentence prescribed is imprisonment which may extend to 10 years. The Id. counsel for the accused CRL.A. No.441/2001 Page 14 of 21 persons has argued that it is a fit case where benefit of doubt can be given to the accused persons. I have considered this argument of the Id. counsel for the accused persons in the light of above observations and discussions and I find that although,

doubts came to be created in the prosecution case particularly on account of the aforesaid two dying declaration made by deceased Smt.Kiran Narang yet I am of the considered opinion that those doubts do not seem to have gone to the extent of creating a phenomenon as that of prosecution case not being free from the shadow of reasonable doubt in respect of accused Jai Deep Narang for the offence u/s 498-A and 306 of the IPC; however, Id. defence counsel is justified in claiming this benefit in favour of remaining accused persons in respect of offences u/s 498A read with explanation(a) and u/s 306 of the IPC. In the light of the above observations and discussions I can safely conclude that the prosecution has succeeded in proving its case for the offence u/s 498A read with explanation (a) appended thereto and for the offence u/s 306 of the IPC against accused Jai Deep Narang beyond the shadow of reasonable doubt. However, prosecution has failed to prove its case against all the accused persons for the offence u/s 304-B of the IPC and 498A read with explanation (b) appended thereto. Consequently, all the accused persons are acquitted of the charge for the offences u/s 498A read with explanation (b) appended thereto and 304-B of the IPC. However, only accused Jai Deep Narang is held guilty for the offence u/s 498A read with explanation (a) appended thereto and he is also held guilty for the offence u/s 306 of the IPC and he is convicted accordingly for these offences. 21. In a recent report K.V.Prakash babu vs. State of Karnataka AIR 2016 SC5430 the question that emerged for consideration CRL.A. No.441/2001 Page 15 of 21 before the Supreme Court was whether involvement of husband in an extra-marital affair invites his conviction under Section 306 IPC for abetment to commit suicide by the wife, which was answered as under:-

"15. Slightly recently in Ghusabhai Raisangbhai Chorasiya v. State of Gujarat, the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below:-

"immoral, as has been said True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that

cruelty, as envisaged under the first limb of Section 498A Indian Penal Code would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra- marital relationship, even if proved, would be illegal and in *Pinakin Mahipatray Rawal* (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted. CRL.A. No.441/2001 Page 16 of 21 16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to ones endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498- A Indian Penal Code. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 Indian Penal Code.

17. We are absolutely conscious about the presumption engrafted under Section 113-A of the Evidence Act. The said provision enables the Court to draw presumption in a particular fact situation when necessary ingredients in order to attract the provision are established. In this regard, we may reproduce a passage from *Pinakin Mahipatray Rawal* (supra):-

"Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill- treated or forcing to commit suicide by the husband or his relatives, demanding dowry.

Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498-A Indian Penal Code, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the CRL.A. No.441/2001 Page 17 of 21 husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A Indian Penal Code is on the prosecution. We have reproduced the aforesaid passage only to highlight that the Court can take aid of the principles of the statutory presumption.

18. In the instant case, as the evidence would limpidly show, the wife developed a sense of suspicion that her husband was going to the house of Ashwathamma in Village Chelur where he got involved with Deepa, the daughter of Ashwathamma. It has come on record through various witnesses that the people talked in the locality with regard to the involvement of the appellant with Deepa. It needs to be noted that Deepa, being not able to digest the humiliation, committed suicide. The mother and the brother of Deepa paved the same path. In such a situation, it is extremely difficult to hold that the prosecution has established the charge under Section 498A and the fact that the said cruelty induced the wife to commit suicide. It is manifest that the wife was guided by the rumour that aggravated her suspicion which has no boundary. The seed of suspicion planted in mind brought the eventual tragedy. But such an event will not constitute the offence or establish the guilt of the accused-appellant under Section 306 of the Indian Penal Code.

19. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the Indian Penal Code but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify. 22. On careful perusal of the LCR (re-constructed) and the impugned judgment, it is evident that the learned Trial Court had rejected both the dying declarations while passing the impugned CRL.A. No.441/2001 Page 18 of 21 judgment and acquitting the appellant i.e. the husband and the three co-accused persons i.e. father-in-law, mother-in-law and brother-in-law for the offence

punishable under Section 304-B/34 IPC. The learned Trial Court has also returned a finding that it was not a case of dowry death. The testimony of PW-4 to PW-6 i.e. the mother, brother and bhabhi of the deceased before the Court were also disbelieved while returning a finding that it was not a case of dowry death. The accused husband Jaideep Narang was also not found culpable for the offence punishable under Section 302 IPC for the reason that though in the first dying declaration the deceased blamed him for dousing her with kerosene and setting her on fire, in the second dying declaration she stated that Apne Aap Jali Hoon Tel Se as she was fed-up with the beatings given by her father-in-law, mother-in-law, husband and brother-in-law.

23. The State has not preferred any appeal challenging the acquittal of father-in-law, mother-in-law and brother-in-law of the offence punishable under Section 498-A/304-B/34 IPC.

24. The learned ASJ has convicted the appellant for the offence punishable under Section 498A IPC for treating the deceased with cruelty within the meaning of Explanation (a) on two grounds: (i) On the date of occurrence he had given beating to her. (ii) He was involved with another girl namely Manju.

25. The above two findings by learned ASJ have to be termed as perverse being based on no material to arrive at above conclusion. Once the learned ASJ proceeded to reject the two dying declarations and disbelieved the testimony of PW-4 to PW-6, he was left with no CRL.A. No.441/2001 Page 19 of 21 evidence to hold the husband guilty for the offence punishable under Section 498-A [Explanation (a)]./306 IPC by invoking presumption under Section 113A Evidence Act.

26. Here it is relevant to mention that in none of the dying declarations the deceased stated about the involvement of her husband with another lady. Neither in the FIR nor in the statements made by PW-4 to PW-6 before the Executive Magistrate, there was any mention of involvement of the appellant Jaideep Narang any with another lady or a lady named Manju. Statement of PW-4 (mother of the deceased) that Jaideep Narang was involved with another lady Manju and her statement was disbelieved observing that these facts were not mentioned before

the Executive Magistrate or during investigation. Learned ASJ could not have picked up one line from the second dying declaration about the beating being given and one line from the deposition of PW-4, the mother of the deceased, which was held to be an improvement to return a finding that only the husband had subjected her to cruelty by giving beating to her on that day and for his involvement with another lady.

27. In view of the law as laid down by the Apex Court in K.V.Prakash Babu vs. State of Karnataka AIR 2016 SC5430 and the two dying declarations being rejected by the learned Trial Court for acquitting all the four accused persons including the husband (appellant herein) for committing the offence punishable under Section 304-B IPC and three accused persons i.e. father-in-law, mother-in-law and devar for committing the offence punishable under Section 498-A IPC, the second dying declaration by Kiran Narang that CRL.A. No.441/2001 Page 20 of 21 she was given beatings on that day by all the accused persons jointly, could not have been relied upon by the learned ASJ to convict the appellant/husband for committing the offence punishable under Section 498-A/306 IPC.

28. The appeal is allowed. The conviction and sentence awarded to the appellant are set aside.

29. The appellant is acquitted of all the charges.

30. LCR (reconstructed) be sent back alongwith copy of this order.

31. A copy of this order be also sent to the concerned Jail Superintendent for information. PRATIBHA RANI (JUDGE) SEPTEMBER19 2017 hkaur/st CRL.A. No.441/2001 Page 21 of 21

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