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Smt. Chandrawati and Etc. Vs. the State

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Court : Delhi

Decided On : May-26-1995

Reported in : 1996CriLJ975

Judge : Arun B. Saharya and; M.S.A. Siddiqui, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 202 and 498A; Code of Criminal Procedure (CrPC) - Sections 366; Evidence Act - Sections 32 and 145

Appeal No. : Cri. Appeal No. 244 of 1994 with Mur. Ref. No. 3 of 1994 and Cri. A. No. 267 of 1994

Appellant : Smt. Chandrawati and Etc.

Respondent : The State

Advocate for Pet/Ap. : Thakur Ram Prakash, Adv; G.S. Sharma, Adv

Judgement :

M.S.A. Siddiqui, J.

1. The appellant Mst. Chandrawati was convicted by the learned Additional Sessions Judge; Delhi under Section 302 IPC and was sentenced to death together with a fine of Rs. 10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year. She was also convicted under Section 498-A/34 IPC and sentenced to pay a fine of Rs. 5,000/- and in default of

payment of fine to undergo rigorous imprisonment for six months. Appellants Kishan Lal and Harkesh were convicted u/S. 498-A/34 IPC and sentenced to undergo rigorous imprisonment for three years together with a fine of Rs. 5,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period of six months. Appellants have appealed against their convictions and sentences. The record is also before us for confirmation of the death sentence. The appeal and death reference a being disposed of by this common judgment.

2. Deceased Krishna, who died of burn injuries on 14-11-88 was married to the appellant Kishan Lal on 18-4-1987. The married life of the deceased Krishna and Kishan Lal, according to the prosecution, lacked connubial felicity and was marked by constant bickerings and quarrels, the cause of this discord being the dowry demands of the appellants. It is the prosecution case that the deceased was being subjected even to maltreatment. Deceased Krishna complained to her father Harichand (P.W. 9) and sister Neeru (P.W. 1) about the cruel treatment meted out to her by the appellants. The immediate provocation for the appellants stepping up their ill treatment of the deceased was their demand for a motor cycle and also half share of the sale proceeds of the house belonging to her father.

3. According to the prosecution on 13-11-1988, the deceased was beaten by her husband as a result whereof she had sustained a bleeding injury over her left arm. Thereafter, on the same day at about 8.30 to 8.45 p.m. the appellant Mst. Chandrawati and the deceased had a quarrel during the course of which the appellant Mst. Chandrawati dragged the deceased inside the bed room, threw kerosene on her and set her on fire. In the meantime at about 9.05 p.m., somebody informed the Fire Station, Shanker Road over phone about the fire at the appellants house, which brought leading Fireman Raj Kumar (P.W. 16) at the spot, and who took the deceased to the Ram Manohar Lohiya Hospital, New Delhi. The deceased was admitted in the Emergency Ward of the said hospital at about 9.40 p.m. where she was examined by Dr. S. Kumar, who found her to have Krishna, Dr. D. Gupta (P.W. 6) recorded her dying declaration (Ex. P.W. 6/A).

4. At about 9.10 p.m. a telephonic message was received at the Police Station, Patel Nager from S. I. Suraj Bhan of Police Control Room about the alleged

incident. Pursuant to this information, S. I. Inder Singh (P.W. 24) requested the S. D. M. Shri V. K. S. Chauhan (P.W. 13) to record the dying declaration of the deceased. Immediately thereafter, S. D. M. Shri Chauhan (P.W. 13) rushed to the hospital but he could not record the dying declaration as the deceased was unfit to make the statement. On 14-11-1988 at 10.30 a.m. the deceased succumbed to her burn injuries. S. D. M. Shri Chauhan (P.W. 13) prepared the inquest report (Ex. P.W. 13/A) and sent the dead body for post mortem examination.

5. On 13-11-1988, the investigating officer S. I. Inder Singh (P.W. 24) seized one half burnt GADDA and pillow, one small cane containing kerosene oil, one match box and two burnt match sticks from the bedroom vide seizure memo (Ex. P.W. 19/A).

6. Dr. L. T. Ramani (P.W. 3) performed the post mortem examination on the dead body of Smt. Krishna on 15-11-1988 at about 4.30 p.m. and observed as under :

'There are 3rd degree burns all over the body involving 100% body surface (upper part of face and forehead however shows 2nd degree burns). Scalp hair partially burnt, smell of kerosene oil is present in scalp hair. There is evidence of visitation on right side of forehead and eyelids.'

Dr. L. T. Ramani (P.W. 3) opined that the deceased's death was caused on account of shock resulting from the burn injuries vide report Ex. P.W. 3/A. After the completion of the investigation, the three appellants were sent for trial.

7. At the trial in the Court of Session, the appellants abjured their guilt and alleged that a false case has been foisted on them. They have not adduced any evidence in support of their defense.

8. In order to prove the charges against the accused, the prosecution examined as many as 24 witnesses. The learned Additional Sessions Judge on a consideration of the evidence adduced by the prosecution found that the charges under Sections 302 and 498-A/34, IPC were fully brought home to the accused Mst. Chandrawati. He also found that a charge under Section 498-A/34, IPC has been proved against the accused Kishanlal and Harkesh. That being the case, the learned Additional

Sessions Judge held that the appellant Mst. Chandrawati deserved to be awarded the highest sentence laid down u/S. 302, IPC, Consequently, he convicted and sentenced the appellant Mst. Chandrawati to be hanged. In addition to this, the appellant Mst. Chandrawati was convicted under S. 498-A/34, IPC and sentenced to pay a fine of Rs. 5,000/- or in default to suffer imprisonment for six months. The learned Additional Sessions Judge also convicted and sentenced the appellants Kishan Lal and Harkesh under Section 498-A/34, IPC to undergo rigorous imprisonment for three years together with a fine of Rs. 5,000/- each or in default of payment of fine to undergo further rigorous imprisonment for six months.

9. The case of prosecution rests mainly on three categories of evidence : (1) Evidence of Smt. Neeru (P.W. 1). Smt. Sheela (P.W. 5) and Harichand (P.W. 9); (2) the dying declaration (Ex. P.W. 6/A) made by the deceased Smt. Krishna; and (3) evidence of Dr. L. T. Ramani (P.W. 3) and the Investigation Officer, Inder Singh (P.W. 24). Evidence was also produced to show the alleged torture of Krishna for some time proceeding the occurrence over demands for a motor cycle and also half share of sale proceeds of the house belonging to her father.

10. It is beyond the pale of controversy that deceased Krishna, who died of burn injuries on 14-11-1988, was married to the appellant Kishan Lal on 18-4-1987; that the appellant Mst. Chandrawati is 1996 Cri. L.J./62 III the mother and the appellant Harkesh is the father of the appellant Kishan Lal. It is also evident from the evidence of Smt. Neeru (P.W. 1). Smt. Sheela (P.W. 5), Hari Chand (P.W. 9), Dr. D. Gupta (P.W. 6), Dr. L. T. Ramani (P.W. 3), Shri V. K. S. Chauhan (P.W. 13) and S. I. Inder Singh (P.W. 24) that on 14-11-1988 the deceased Krishna died of burn injuries. There could be three alternatives for her being burnt - (a) suicide; (b) accidental fire; and (c) being put on fire. The plea of accidental fire has not been advanced either by the prosecution or by the defense. That apart, the theory of accidental death had to be brushed aside in view of presence of kerosene on the scalp of the deceased. Deceased Krishna suffered burn injuries in a bed room of the appellant's house. Accidental fire as the reason of death has, thereforee, rightly not been pressed into service leaving the two other alternatives of suicide and the intentional killing by burning her, for consideration. As stated earlier, there is no eye-witness to testify to the act of setting fire to Krishna which is the

prosecution case. It must be remembered that since such crimes are generally committed in the privacy of residential house and in secrecy, independent and direct evidence is not easy to get. The Apex Court observed in the case of Om Prakash v. State of Punjab, : 1992 CriLJ3935 :

'..... It is the duty of the Court, in a case of death because of torture and demand of dowry, to examine the circumstances of each case and evidence adduced on behalf of the parties, for recording a finding on the question as to how the death has taken place. While judging the evidence and circumstances of the case, the Court has to be conscious of the fact that a death connected with dowry takes place inside the house, where outsiders who can be said to be independent witnesses in the traditional sense, are not expected to be present. The finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence adduced before the Court.....'

11. The prosecution has examined Smt. Neeru (P.W. 1) and Smt. Sheela (P.W. 5) to prove that at the relevant time, the appellant Mst. Chandrawati having belaboured Krishna, dragged her inside the room and immediately thereafter they heard shrieks and alarm raised by Krishna and when they looked up they noticed smoke and fire in the house while Krishna was shouting for help. Before we refer to the oral evidence of these witnesses, it is appropriate to deal with the dying declaration (Ex. P.W. 6/A) made by the deceased. The learned Additional Sessions Judge has placed strong reliance on the said dying declaration in holding the appellant Mst. Chandrawati guilty of murder. Learned counsel appearing for the appellant Mst. Chandrawati submitted that the dying declaration (Ex. P.W. 6/A) is a fabrication and must, thereforee, be discarded. He further submitted that having regard to the nature and severity of the burn injuries. Krishna could not reasonably be expected to have been in a position to make the dying declaration attributed to her.

12. It is well settled that the conviction could be based upon the dying declaration even if there is no other corroborating evidence on the record. (Tarachand Damu Sutar v. State of Maharashtra, : [1962]2SCR775 : Maniappan v. State of Madras, : 1961 CriLJ315 ; Khushal Rao v. State of Bombay, : 1958 CriLJ106). It is true that

the last word of a dying man has a sanctity to which due weight must be given and the same can't be just brushed aside. A dying declaration enjoys almost a sacrosanct status as a piece of evidence as it comes from the mouth of a person who is about to die and at that stage he is not likely to make a false statement. The Apex Court pointed out in Khushal Rao (supra) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. In Lallubhai Devchand Shah v. State of Gujarat, : 1972 CriLJ828 , dealing with a dying declaration, the Apex Court laid down (Para 9) :

'The law with regard to dying declarations is very clear. A dying declaration must be closely scrutinized as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, 'bearing in mind on the one hand, that the statement is by a person who has not been examined in Court on oath and, on the other hand, that the dying man is not likely to implicate innocent person falsely.'

13. It has been judicially evolved as to how and what test should be employed for placing reliance on a dying declaration. By and large, inter alia, the following tests can be devised in order to answer the question whether dying declaration is true :

i) Whether the declarant had sufficient opportunity to observe and identify his assailant;

ii) Whether the capacity of the declarant to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control either due to nature of the injuries or for any other cause;

iii) Whether the statement has been consistent throughout if the declarant had several opportunities of making a dying declaration apart from the official record of it;

(iv) Whether the statement had been made at the earliest opportunity and was not the result of the tutoring by interested parties;

(v) Whether the statement made by the declarant is intrinsically sound and accord with probabilities

(vi) Whether any material part of the statement is proved to be false by other reliable evidence.

14. In the instant case, the prosecution relied very strongly on the dying declaration (Ex. P.W. 6/A) recorded by Dr. D. Gupta (P.W. 6). The learned Additional Sessions Judge relying upon the testimony of Dr. D. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) came to the conclusion that notwithstanding the exclusive burns, Krishna was in a fit state of mind and able to speak at the time when she made the dying declaration (Ex. P.W. 6/A) before Dr. Gupta (P.W. 6).

15. In Suresh v. State of M.P., : 1987 CriLJ775 . The Apex Court was required to deal with a more or less similar situation. In that case, the victim had sustained 100% burns of 2nd degree and her dying declaration was recorded by Dr. Bhargava in the hospital. Dr. Bhargava had deposed that the victim was in a fit state of health. The evidence, however, disclosed that when Dr. Bhargava was recording her statement the victim had started going into coma. Yet the Apex Court accepted the dying declaration made by the victim to Dr. Bhargava. thereforee, the mere fact that Krishna suffered 100% burns and her general condition was poor is no reason to discard the evidence of Dr. D. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) when they say that she was in a fit state of mind and was able to make the dying declaration.' (See also Padmaben Shamalbhai Patel v. State of Gujarat, : [1991]1SCR88 .

16. The truthfulness of a dying declaration has to be tested with reference to the circumstances and other relevant facts of each case. It is, thereforee, necessary to examine closely the circumstances attendant upon the dying declaration (Ex. P.W. 6/A). It is true that the dying declaration (Ex. P.W. 6/A) has not been recorded in the form of question and answer. It is not necessary that dying declaration must be always recorded in the from of question and answer. It would be desirable to do so, but if that is not done, by itself it is not a circumstance which would justify rejecting the dying declaration. The law in this behalf has been clarified by the Supreme Court in the case of Ganpat Mahadeo Mane v. State of Maharashtra, :

'..... Learned counsel for the appellant submitted that since the executive Magistrate did not record the statement by way of questions and answers, the recording is defective and, thereforee, it should not be acted upon. We see no force in the submission. The form by itself is not important. The statement is clear. Because of the mere fact that the entire thing is not recorded by way of separate questions, and answers, the value of the dying declaration is not detracted.'

17. Dr. D. Gupta (P.W. 6) testified that on 13-11-1988, he was posted as Senior Resident Surgeon in the Surgical Emergency Ward of the Ram Manohar Lohia Hospital. He further testified that on that day at about 9.50 p.m. Dr. S. Kumar had referred Krishna to his ward and he had recorded her dying declaration (Ex. P.W. 6/A) in the presence of Dr. Sandeep Chopra (P.W. 7). Dr. Sandeep Chopra (P.W. 7) also swears to the same effect. At the outset, we must make it clear that the evidence of a doctor has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth. (Mayur Panabhai Shah v. State of Gujarat, : 1982 CriLJ1972). The dying declaration (Ex. P.W. 6/A) shows that the deceased Krishna had made the following statement before Dr. Gupta (P.W. 6) :

'13-11-1988 9.50 p.m.' My name is Krishna r/o 258, A Block, Ranjit Nagar, Near Satyam Cinema, Delhi. I was locked in a room by my mother-in-law Smt. Chandrawati in the evening and she put kerosene on me and burnt me. My sisters-in-law Geeta, Pushpa and Mamta were present in the house at the time of incident but were out of the room. My husband Kishan was sent to another room by my mother-in-law and he was present in the house but out of the room at time of incident. Also my husband does not do any work and drinks alcohol and beats me up regularly. Sd/-13-11-1988'

18. Dr. D. Gupta (P.W. 6) deposed that the deceased-Krishna was mentally fit and coherent when she had made her statement (Ex. P.W. 6/A) before him and she had not been given any sedative before she was transferred to his ward. Dr. Sandeep Chopra (P.W. 7) also swears to the same effect. At this juncture, learned counsel for the appellant Mst. Chandrawati has invited our attention to the evidence of leading fireman Raj Kumar (P.W. 16), and Dr. L. T. Ramani (P.W. 3)

and the M.L.C. report (Ex. P.W. 2/A and Ex. P.W. 10/A) in support of his submission that the deceased was not in a fit mental and physical condition to make a volitional statement after she had reached the hospital. Larding fireman Raj Kumar (P.W. 16) testified that on 13-11-1988 at about 9.05 p.m., a call was received at the fire station about a fire at the house of the appellants, and pursuant to this call he rushed to the spot; that on reaching there he found the deceased Krishna lying burnt in the house and that he took Krishna to R.M.L. Hospital. He further added that at that time. Krishna was unconscious and she did not make any statement before him. According to the prosecution. Raj Kumar (P.W. 16) was the first person before whom Krishna had made an oral dying declaration. Since this witness has not supported the prosecution version on the said point, he has been declared hostile by the prosecution. During cross-examination, his attention was invited to his case diary statement portion marked A to A in Ex. P.W. 16/A, but he had disowned the said statement. It is pertinent to note here that the aforesaid contradiction has not been proved by the statement of the Investigating Officer Index Singh (P.W. 24). S. I. Inder Singh (P.W. 24) has nowhere stated in his evidence a that Raj Kumar (P.W. 16) had made the statement portion marked A to A in Ex. P.W. 16/A before him during investigation.

19. Section 145 of the Evidence Act mandates that if any contradiction in the evidence of any witness, from his previous statement reduced to writing, is intended to be used in the case, the attention of the witness must be called to that particular part of his previous statement. If he admits the previous statement, it is unnecessary to prove it. If he denies the previous statement, such statement has to be proved in an appropriate manner. If this is not done, the evidence of the witness cannot be assailed in respect of those statements. (Somnath v. Union of India, : 1971 CriLJ1422 ; Tehsildar Singh v. State of U.P., : 1959 CriLJ1231). In this view of the matter, we have no hesitation in holding that the aforesaid contradiction portion marked A to A in Ex. P.W. 16/A has not been proved in accordance with law. The mere fact that Raj Kumar (P.W. 16) has been declared hostile by the prosecution and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether. (Rabindra Kumar Dey. v. State of Orissa, : 1977 CriLJ173).

20. The prosecution has produced the M.L.C. (Ex. P.W. 2/A and Ex. P.W. 10/A), which shows that Krishna was admitted in Emergency Ward of the Hospital on 13-11-1988 at about 9.40 p.m. It also contains an endorsement made by the Examining Medical Officer Dr. S. Kumar that 'Patient states that her mother-in-law threw oil on her and put fire to her by burnt match stick.' Surprisingly, the prosecution has not examined Dr. S. Kumar to prove the said dying declaration of the deceased-Krishna. However, the M.L.C. (Ex. P. 2/A and Ex. P.W. 10/A) clearly shows that at 9.40 p.m., when Krishna was admitted in the hospital, she was mentally fit to make any volitional statement. This document has lent material corroboration to the testimony of Dr. D. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) that Krishna was in a fit mental and physical condition to make a dying declaration. Dr. D. Gupta (P.W. 6), who recorded the dying declaration, was the best person to opine about the fitness of the deceased to make the statement. (See A. M. A. Rehman v. State of Gujarat, : 1976 CriLJ1382). There is absolutely no basis of doubting the integrity and veracity of Dr. D. Gupta (P.W. 6), and Dr. Sandeep Chopra (P.W. 7). Nothing has been elicited in the cross-examination of both the doctors to show that they were biased in favor of the prosecution or ill-disposed towards the appellant Mst. Chandrawati. Thus the negative testimony of Raj Kumar (P.W. 16) is not strong enough to wipe out the positive evidence of the said doctors about fitness of the deceased to make the statement.

21. Learned counsel for the appellant has also assailed the dying declaration (Ex. P.W. 6/A) on the ground that the evidence of Dr. Gupta (P.W. 6) shows that after examining the deceased he ordered resuscitation proceedings to be initiated and in the meantime he recorded the dying declaration (Ex. P.W. 6/A). Relying upon the dictionary meaning of the word resuscitation as 'revival after apparent death' contained in the 'Taber's Cyclopedic Medical Dictionary', learned counsel further submitted that an attempt was made by the attending doctors to revive krishna before recording her dying declaration (Ex. P.W. 6/A) and that would wholly improbabilise, if not render altogether, false the said dying declaration. We do not find any merit in the said submission. Dr. Gupta (P.W. 6) has nowhere stated that Krishna was clinically dead at the time of recording her dying declaration. It is undisputed that Krishna expired on 14-11-1988. The tenor of the aforesaid statement of Dr. Gupta (P.W. 6) clearly shows that he found that the life was

ebbing fast in the patient. In such a situation, he was justified indeed - he was duty bound to record the dying declaration of the deceased. Both the medical men namely, Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) were conscious about her condition and, thereforee, they would not have attached any importance to her statement if they had any doubt about her mental capacity. One important thing to notice in connection with the cross-examination of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) is that there is not even a whisper of a suggestion in their cross-examination to show that they were motivated in giving false evidence.

22. It is significant to note that the evidence of fireman Raj Kumar (P.W. 16) shows that none of the accused persons accompanied him when Krishna was being taken to the hospital. They chose to remain in the house. The M.L.C. (Ex. P. 2/A and Ex. P.W. 10/A) shows that Krishna was brought to the hospital by Raj Kumar (P.W. 16) The evidence of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) shows that none of the deceased's relatives was present in the hospital at the time of recording her dying declaration (Ex. P.W. 6/A). The evidence of Neeru (P.W. 1), Mst. Sheela (P.W. 5) and Hari Chand (P.W. 9) shows that they reached the hospital at about 12.30 a.m. the dying declaration (Ex. P.W. 6/A) was completed at 9.55 p.m. Even no police officer was present at that time. According to the Investigating Officer S. I. Inder Singh (P.W. 24), he reached the hospital at 10 a.m. In a frantic effort to undo the effect of the dying declaration (Ex. P.W. 6/A), a suggestion was put to Dr. Gupta (P.W. 6) that he had recorded the dying declaration at the instance of the police. This suggestion has been denied by Dr. Gupta (P.W. 6). There is no substance in the suggestion because Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) are independent witnesses and they have no axe to grind against the appellant Mst. Chandrawati. The deceased-Krishna was quite near to her creator at 9.50 p.m. dangerously so indeed, and we may accept that her mind was then free from failings which afflict the generality of human beings, like involving enemies in false charges. Had there being tutoring there would have been no difficulty for Krishna in implicating her husband and father-in-law also. This by itself shows that the deceased had no tendency to implicate innocent persons. The evidence of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) leaves no room for doubt that no relation of the deceased was present at the time of recording of dying declaration (Ex. P.W. 6/A) and the deceased had

made the statement without any influence or rancour. The occurrence had taken place inside the house. It cannot be said that there was mistaken identity of the assailant or that the deceased had no opportunity to see the assailant. Moreover, the defense has nowhere suggested that the deceased would have no opportunity to observe and identify the assailant.

23. The dying declaration (Ex. P.W. 6/A) finds ample corroboration from the case history (Ex. P.W. 6/A) recorded by Dr. Sandeep Chopra (P.W. 7) at 9.50 p.m. He is an attesting witness of the dying declaration (Ex. P.W. 6/A). The case history (Ex. P.W. 6/C) clearly shows that the statement had been made to Dr. Sandeep Chopra's hearing and had been recorded in his presence. The dying declaration (Ex. P.W. 6/A) and the case history (Ex. P.W. 6/C) are contemporaneous documents which go to show that the deceased had made the statement before the medical men. There is a consistency in the statements of the deceased Krishna as recorded in the M.L.C. (Ex. P.W. 2 and Ex. P.W. 10/A) the case history (Ex. P.W. 6/C) and the dying declaration (Ex. P.W. 6/A). Thus, the corroboration provided by the said documents invested the dying declaration (Ex. P.W. 6/A) with a stamp of truth, which went a long way towards inculpating the appellant Mst. Chandrawati.

24. Learned counsel further contended that the dying declaration (Ex. P.W. 6/A) is rendered doubtful in the manner in which the last two lines of the deceased's alleged statement had subsequently been added. The case history (Ex. P.W. 6/C) is almost a replica of the dying declaration (Ex. P.W. 6/A), but the last two lines containing the statement (Ex. P.W. 6/A) of the deceased to the effect that 'Also my husband does not do any work and drinks alcohol and beats me up regularly' do not find place in the case history (Ex. P.W. 6/C). Learned counsel has also invited our attention to the placement of the deceased's thumb impression at point 'B' in the dying declaration Ex. P.W. 6/A. We have ourselves examined placement of the deceased's thumb impression at point 'B' with the help of magnifying glass and find that the said last lines were added after obtaining the thumb impression on the dying declaration (Ex. P.W. 6/A). It is significant to note that the aforequoted part of the deceased's statement does not inculpate any person in the alleging incident. That apart, the said part of the dying declaration is not so indissolubly linked with

the other part of the dying declaration that it is not possible to sever the two parts. The two parts of the dying declaration are severable and the correctness of one part does not depend upon the correctness of the other part. Consequently, the subsequent addition of the last two lines in question in the dying declaration (Ex. P.W. 6/A) does not vitiate the whole to it. In the dying declaration (Ex. P.W. 6/A) before us, the statement so far as they went to implicate the appellant Mst. Chandrawati in the affair were quite categoric in character and they definitely indicated that it was the appellant Mst. Chandrawati who had set the deceased-Krishna on fire.

25. Learned counsel for the appellant Mst. Chandrawati has also invited our attention to the statement of Dr. L. T. Ramani (P.W. 3), who testified that on post-mortem examination, he found that there were third degree deep burns present all over the body of the deceased involving 100% body surface and even nails were burnt. According to Taber's Cyclopedic Medical Dictionary, third degree burns means burns in which both epidermis and dermis are destroyed with damage extending to underlying tissues. Taking his cue from the said definition, he forcefully contended that the deceased's palm and fingers including thumbs must have been burnt completely and in such a situation it is difficult to believe that impression of her thumbs was available to be taken on the dying declaration (Ex. P.W. 6/A). In our opinion, the said arguments though attractive cannot be accepted. It has come in the evidence of Dr. L. T. Ramani (P.W. 3) that upper part of the deceased's face and forehead showed 2nd degree burns and her scalp hairs were partially burnt. He has nowhere stated in his statement that nails of the deceased's thumbs were burnt. Dr. D. Gupta, (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) have unequivocally stated in their statements that the deceased had affixed her thumb impression on the dying declaration. In view of the positive evidence of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra, (P.W. 7) we are not inclined to hold that the deceased's hand thumbs had been so affected that a full impression was not available to be taken.

26. As stated earlier, the evidence of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7) clearly shows that at the relevant time, the deceased was mentally fit to make a dying declaration. Dr. L. T. Ramani (P.W. 3) testified that no internal

examination, he found that scalp bones were intact, scalp tissues, neck tissues and brain were normal. Thus the testimony of Dr. L. T. Ramani (P.W. 3) has lent material corroboration to the testimony of Dr. Gupta (P.W. 6) and Dr. Chopra (P.W. 7) regarding mental fitness of the deceased to make dying declaration. Consequently, we find that the capacity of the deceased-Krishna to remember the facts stated in her dying declaration (Ex. P.W. 6/A) had not been impaired at the time she was making the statement.

27. Lastly, learned counsel for the appellant Mst. Chandrawati, with some ingenuity has attempted to break the grain of the story as contained in the dying declaration (Ex. P.W. 6/A). According to the learned counsel there are telling circumstances which would go to show that it is a case of suicide. One of the circumstances relied upon is that if it is a case of homicide namely that the appellant Mst. Chandrawati forcibly sprinkled kerosene oil and set the deceased on fire, the deceased must have raised hue and cry and many people would have heard and that there is no evidence of any one in the locality having heard such cries and absence of any such cries would support the theory of suicide. At this juncture, the learned counsel for the State has strenuously urged that it has come in evidence of Mst. Neeru (P.W. 1) and Mst. Sheela (P.W. 5) that at the time of the alleged incident they were present at the house of the appellants; that they saw the appellant Mst. Chandrawati catching hold of Krishna and dragging her inside the room and when they went towards the back side of the appellant's house they noticed fire and smoke billowing out and heard Krishna crying 'Mausi Mujhe Bachao'.

28. At the outset, it is relevant to recall what was said by the Apex Court in State of Kerala v. M. M. Mathew, : 1978 CriLJ1690 though in a somewhat different context (at page 1573) :

'..... It is true that Courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities.....'.

Admittedly, Mst. Neeru (P.W. 1) is the real sister the deceased and Mst. Sheela (P.W. 5) is a neighbour of Mst. Neeru (P.W. 1). Consequently, the evidence of both these witnesses require a careful, independent assessment and evaluation of

their credibility. Their evidence has to be tested for its inherent consistency an the inherent probability of the story; consistency with the attending circumstances of the case.

29. Let us consider if the testimony of Mst. Neeru (P.W. 1) and Mst. Sheela (P.W. 2) pertaining to the facts mentioned above can be accepted as true and reliable. Mst. Neeru (P.W. 1) testified that on 13-11-1988 at about 6/6.30 p.m., appellant Kishan's younger brother along with another person came to the house of her father (P.W. 9) and told her that Kishan had met with an accident and her father (P.W. 9) had been called to the appellant's house. Thereupon, she along with Mst. Sheela (P.W. 5) proceeded to the appellant's house at Ranjit Nagar. When they reached Ranjit Nagar, appellant Kishan's brother and the person accompanying them left them at the bus stand Ranjit Nager and disappeared. According to Mst. Neeru (P.W. 1) somehow she managed to reach the appellant's house. On reaching the house, the appellant Mst. Chandrawati informed her that no such accident had taken place and she had summoned her father. Mst. Neeru (P.W. 1) deposed that thereafter, the appellant Mst. Chandrawati started making several complaints and levelling allegations against the deceased Krishna upon which she expressed her desire to leave and no this Krishna also expressed her desire to accompany her.

30. Mst. Neeru (P.W. 1) further added that she requested the appellant-Chandrawati to allow Krishna to accompany her but she declined her request and thereupon Krishna started weeping. At that time, Krishana's left arm was bleeding. On enquiry, Krishna told her that she was beaten up by her husband with a cricket bat. She then protested to the appellant-Kishan but he denied having beaten Krishna whereas Krishna maintained that she was being given beatings regularly for the previous four days. Thereupon, she again requested the appellant-Mst. Chandrawati to send Krishna to her father's house but she refused and threatened that only her dead body would go from the matrimonial house. She insisted to take the deceased with her and was proceeding towards the room of Krishna she was caught by hair by the appellant-Chandrawati who dragged her back and the brother of the appellant-Kishan, who had gone to call them, slapped her on face. Appellant Kishan's sister and one fat lady pushed her and Sheela (P.W. 5) out of

the house. At the same time, Satish, son-in-law of the appellant-Chandrawati started beating Krishna and dragged her inside. When she and Sheela (P.W. 5) went to the back side of the appellant's house, they heard shrieks and alarm raised by Krishna. As they looked up, they noticed fire and smoke billowing out and heard Krishna crying; 'Mausi Mujhe Bachao.' Thereupon, they raised an alarm which attracted several people and they requested them to save Krishna who had been set on fire, but none of them came to Krishna's rescue.

31. Mst. Neeru (P.W. 1) also deposed that she along with Mst. Sheela (P.W. 5) rushed to the police station in a three wheeler and reported to the police that Krishna was being burnt alive at her matrimonial home. Police then accompanied them to the appellant's house. Fire brigade had already arrived at the appellant's house and she saw Krishna being brought downstairs by the firemen. She also saw the appellant-Mst. Chandrawati weeping and at that time Mst. Chandrawati told the police that she (P.W. 1) and Mst. Sheela (P.W. 5) had set her daughter-in-law on fire. When Krishna was being taken out of the house, she and Sheela (P.W. 5) returned home. On reaching home, she informed her father about the alleged incident. According to Mst. Neeru (P.W. 1), she along with her father (P.W. 9) and Mst. Sheela (P.W. 5) reached the hospital at about 12.30 a.m. Mst. Sheela (P.W. 5) also swears to the same effect.

32. One important feature which must be duly taken note of at this stage is that the incident as narrated by Mst. Neeru (P.W. 1) and Mst. Sheela (P.W. 5) does not find place in the dying declaration (Ex. P.W. 6/A). Krishna has nowhere stated in the dying declaration (Ex. P.W. 6/A) that on the day in question her husband had assaulted her with a cricket bat as a result whereof she had sustained a bleeding injury on her left arm. Even the M.L.C. (Ex. P-2/A) and other contemporaneous medical documents (Ex. P.W. 6/C, Ex. P.W. 6/D, Ex. P.W. 6/E, Ex. P.W. 6/F) and the post-mortem report (Ex. P.W. 3/A) are conspicuous by absence of any such injury on the deceased's left arm. She has nowhere stated in her dying declaration about the presence of both the witnesses at the time of the alleged incident. It has come in the evidence of Neeru (P.W. 1) and Mst. Sheela (P.W. 5) that immediately after the alleged incident they had gone to the police station and Mst. Neeru (P.W. 1) had reported to the police that her sister was being burnt alive at her

matrimonial house and further in same police officer had accompanied them to the appellant's house. Strangely enough, no such police report has been produced in the Court to substantiate the statements made by both the witnesses. Even, none of the police personnel who accompanied these witnesses to the appellant's house has been produced in the witness box.

33. It is also significant to note here that after arrival of the police, they did not go upstairs and did not ask the police that they wanted to go upstairs to see what had happened inside the house. Although they saw that Krishna was being removed to the R.M.L. Hospital, they did not go to the hospital directly from the place of occurrence and went thereafter visiting their house and reached the hospital at about 12 midnight or 1 a.m. Such a strange conduct of these witnesses assails their version and renders it doubtful.

34. Deceased's father Hari Chand (P.W. 9) testified that at about 11 p.m. her daughter Neeru (P.W. 1), informed him about the alleged incident and immediately thereafter he along with Mst. Neeru (P.W. 1) went to the police station, Jhangirpuri, where he was informed by the police officer that the deceased had been admitted in Willingdon Hospital) (R.M.L. Hospital). They then went to R.M.L. Hospital and found the deceased in a poor condition with severe burns all over her body. Surprisingly, neither Hari Chand (P.W. 9) nor Mst. Neeru (P.W. 1) had lodged any report at the Police Station, Jhangirpuri about the alleged incident. What prevented them from lodging a report of the alleged incident at the police station is shrouded in mystery. Moreover, evidence of Mst. Neeru (P.W. 1) shows that she knew that Krishna had been removed to the R.M.L. Hospital and in such a situation there was no necessity for them to go to the P.S., Jhangirpuri to locate the deceased. The fact that Mst. Neeru (P.W. 1), Mst. Sheela (P.W. 5) and Hari Chand (P.W. 9) went to P.S., Jhangirpuri to locate the hospital where the deceased was admitted for medical treatment clearly indicates that their version about their visits to the appellant's house prior to and after the alleged incident is an afterthought or an embellishment introduced in their evidence so to add credence to the prosecution story.

35. As demonstrated earlier, both the witnesses namely Mst. Neeru (P.W. 1) and Mst. Sheela (P.W. 5) want us to believe that they were present in the appellant's house at the time when Krishna was in flames. But they made no attempt to save her. Although they deposed that they had raised an alarm and shouted for help but nobody came forward to save Krishna. It is significant to note that the prosecution did not examine any resident of that locality who could have corroborated the testimony of the said witnesses regarding the alarm alleged to have been raised by them. The normal ordinary human conduct would be that when Krishna was in flames, they would have made every endeavor to save her life and call the people to come to their rescue to save her life. The circumstances pointed out earlier clearly indicate that Krishna did not lodge any report at the police station regarding the alleged incident. Both the witnesses did not accompany the deceased when she was being removed to the hospital. At least, Mst. Neeru (P.W. 1) should have accompanied the deceased to the hospital and should have expressly or by her behavior disclosed her feelings about the well being of her real sister. The said strange conduct of both the witnesses militates against the veracity of the core of their testimony as the same is not in conformity to probability in the substantial fabric of their testimony. Consequently, we are not inclined to accept their testimony relating to their presence in the appellant's house at the time where Krishna was in flames.

36. It has to be borne in mind that the whole occurrence had taken place inside the room and it is quite possible that the cries if any raised by the deceased could not have been heard by the neighbours.

37. The next circumstance relied upon by the learned counsel is that there were no marks of violence found on the dead body and according to him some force must have been used by the appellant before setting her on fire which should have left some marks of violence. According to the medical opinion, the deceased had suffered 100% burns and if there were any marks of violence, they would have disappeared.

38. Yet another circumstance relied upon by the learned counsel in the context is that the door was bolted from inside. At the outset, we must make it clear that

none of the prosecution witnesses deposed that the door of the room in question was bolted from inside. Site plan (Ex. P.W. 15/A) prepared by the Investigating Officer Devendar Singh (P.W. 15) shows that the room in question has one door. Constable Narendra Kumar (P.W. 22) had taken the photograph (Ex. P.W. 22/2) of the door, which was in broken condition. There is not an iota of evidence on record to show as to who had broken open the door. According to the learned counsel the fact that the door was broken open, speaks for itself and it was inferable from these circumstances that the deceased had committed suicide by setting herself on fire after bolting the door from inside. He further submitted that inter alia, bolting the door from inside was a pointer towards such a possibility.

39. It is pertinent to note that nothing has been elicited in the cross-examination of Mst. Neeru (P.W. 1), Mst. Sheela (P.W. 5) and Hari Chand (P.W. 9) to show or suggest that the deceased Krishna was in the frame of mind to commit suicide. There was no question of her being broken hearted and frustrated so as to resolve to commit suicide. There was no cause or occasion to make her suddenly opt for suicide on the fateful day. Putting all these pieces together, there appears to be no possibility of the deceased having made up her mind to end her life either due to frustration or desperation or to take revenge on her husband or in-laws for ill-treating her day-in and day-out.

40. It is also pertinent to mention that the deceased sustained burn injuries inside the appellant's, house. Admittedly, the appellants including the appellant Mst. Chandrawati were inside the house at the time of the occurrence. No Explanationn whatsoever has come forth from the appellants as to how the deceased received burn injuries inside the house. They have not offered any Explanationn as to how the door of the room was broken and who did it. The appellants instead of giving any Explanationn feigned ignorance about the alleged occurrence. The normal ordinary human conduct would be that when one of their inmates was in flames, they would have made every endeavor to save her life, if it were a case of suicide, and call the people to come to their rescue to save her life. No such attempt was made nor even attempted. The evidence on record established that the deceased was burnt by pouring kerosene oil on her body. The appellants were present in the house when the incident took place but none of them attempted to save her life,

which showed their indifference and hard hearted conduct. The appellants did not inform the parents of the deceased, nor they made any report regarding the occurrence to the police. The appellants or any of their family members did not take injured Krishna to the hospital. In appreciating the dying declaration, these circumstances become highly relevant. It is a settled law that the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. These are the most telling and crucial facts apart from repulsive inhuman conduct of the appellants. Moreover, there is no evidence to show that the deceased had bolted the door of the room from inside. Fireman Raj Kumar (P.W. 16) who almost reached the scene of occurrence immediately found that the deceased was lying with burns and he took the deceased immediately to the R.M.L. Hospital. Taking an overall view of the circumstances out-lined hereinbefore, we are satisfied beyond reasonable doubt that the death of Krishna was not suicidal but homicidal. We, thereforee, have no hesitation in coming to the conclusion that the dying declaration (Ex. P.W. 6/A) is intrinsically sound and in accord with probabilities.

41. Learned counsel further submitted that the S. D. M. Shri Chauhan (P.W. 13) has specifically mentioned in his inquest report (Ex. P.W. 13/F) that 'since Krishna died without her statement recorded, a very valuable piece of evidence i.e. dying declaration could not be adduced in evidence' and this circumstance throws doubt on the dying declaration (Ex. P.W. 6/A). It has come in the evidence of Shri Chauhan (P.W. 13) that on 13-11-1988, he reached the hospital within one hour after receiving request from the investigating officer but the deceased's dying declaration could not be recorded as she was found unfit to make any dying declaration. It is pertinent to mention that there are two inquest reports on the record and both were prepared by Shri Chauhan (P.W. 13). His first inquest report (Ex. P.W. 13/A) is dated 15-11-1988 and the second inquest report (Ex. P.W. 13/F) is dated 21-2-1990. The inquest report (Ex. P.W. 13/F) was not filed before the Court along with the charge-sheet. Trial Court's order sheet dated 13-12-1989 shows that on its motion, this report (Ex. P.W. 13/F) was requisitioned by the trial Court. Subsequent order sheets recorded by the trial Court go to show that after repeated directions, an incomplete report was produced before the Court on 22-2-1990 and on that day the Court directed the S.D.M. to appear personally and pursuant to that direction this report (Ex. P.W. 13/F) was filed before the Court on

2-3-90. Shri Chauhan (P.W. 13) has not given any Explanationn whatsoever regarding the inordinate delay in preparing this report (Ex. P.W. 13/F). Since the inquest report (Ex. P.W. 13/A) prepared by S.D.M. (Ex. P.W. 13) is already on record, the report (Ex. P.W. 13/F) can't be treated as an inquest report. What actually prompted the S.D.M. to prepare this report (Ex. P.W. 13/F) is shrouded in mystery. The manner and the circumstances in which this report (Ex. P.W. 13/F) was brought into existence have completely robbed its efficacy. At any rate, this report (Ex. P.W. 13/F) is not strong enough to wipe out the positive evidence of Dr. Gupta (P.W. 6) and Dr. Sandeep Chopra (P.W. 7).

42. After giving our anxious consideration, we are satisfied that the dying declaration (Ex. P.W. 6/A) duly recorded by Dr. D. Gupta (P.W. 6) and attested by Dr. Sandeep Chopra (P.W. 7) fully implicates the appellants-Mst. Chandrawati. Having subjected the dying declaration (Ex. P.W. 6/A) to a close scrutiny, we are satisfied that it does not suffer from any infirmity. The deceased had no motive to falsely implicate the appellant and to screen the real offender who had set her on fire. On the contrary the appellant had motive for committing this ghastly offence on account of greed and avarice for dowry. The root cause for killing young bride is avarice and greed and all tender feelings which alone make the humanity noble disappear from the heart as has been observed by their Lordships of the Supreme Court Smt. Paniben v. State, : 1992 CriLJ2919 . thereforee, we see no ground to disagree with the finding recorded by the learned trial Court that the appellant Mst. Chandrawati had caused the death of the deceased-Krishna. Consequently, we find the appellant Mst. Chandrawati guilty of the offence punishable under Section 302 I.P.C. and accordingly confirm the appellant-Mst. Chandrawati's conviction thereunder.

43. Learned counsel for the appellants have also assailed their conviction under Section 498-A read with Section 34, I.P.C. Prosecution witness who deposed about the harassment of the deceased-Krishna are Mst. Neeru (P.W. 1) Mst. Sheela (P.W. 5) and Hari Chand (P.W. 9) Relying upon the testimony of the said witnesses, the learned Additional Sessions Judge has convicted the appellants under Section 498-A/34, I.P.C. Deceased's father Harichand (P.W. 9) deposed that after the deceased's marriage, he suffered a heart attack and was hospitalized

for one month and during that period, his elder son-in-law Rakesh (husband of Neeru P.W. 1) served him well in the hospital. According to him, after his discharge from the hospital, He purchased a scooter and gifted it to Rakesh. After about a month of his discharge from the hospital, Krishna was sent to his house after giving beatings. She told him that she was being harassed by her husband and parents-in-law and asked that he (P.W. 9) should give a three wheeler and half sale proceeds of his house. He then went to the appellant's house who had repeated the said demands. One important thing to notice in connection with the cross-examination of this witness is that it was not even suggested to him that the deceased was never subjected to maltreatment or harassment by the appellants and further that no such demand as alleged by him was ever made by the appellants. Thus, the said testimony of Harichand (P.W. 9) has been left unchallenged by the appellants.

44. It is also evident from the evidence of Mst. Neeru (P.W. 1) that her father (P.W. 9) had gifted a scooter to her husband as her husband had served her father well during his illness and on that account the appellant Kishanlal used to demand a scooter from Krishna. She testified that the deceased-Krishna had told him that the appellants-Mst. Chandrawati and Kishanlal had demanded half share in her father's house. She further testified that whenever Krishna used to visit her, she always used to complain about the maltreatment or harassment by the appellants. She also added that Krishna had come to her parental house and stayed about three months prior to Diwali, 1988, when she was beaten up by her in-laws. It is significant to note here that her aforesaid testimony has been left unchallenged by the appellants. In addition to this, Mst. Sheela (P.W. 5) deposed that the deceased-Krishna had complained to her about the demand of a scooter made by the accused-Kishan Lal. According to us, these statements made by Krishna regarding harassment by the appellants on account of the aforesaid demands are admissible under Clause (1) of Section 32 of the Evidence Act. The cause of Krishna's death is in question in this case. The only question that remains to be answered is as to whether it can be said that the statements are 'as to any of the circumstances of the transaction which resulted in Krishna's death.' Similar question also arose before the Apex Court in Sharad Birdhichand Sarda v. State of maharashtra, : 1984 CriLJ1738 , which was answered in affirmative.

45. In that case it was pointed out that 'the law in India does not make the admissibility of a dying declaration dependent upon the person's having a consciousness of the approach of death. Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible under Section 32, Evidence Act.' It was further observed that :

'..... The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3 months the statement may be admissible under Section 32.'

46. In Wazirchand v. State of Haryana, : 1989 CriLJ809 , the victim was one Veena. Veena and the accused Kanwar Singh were married on 16-10-1983. On the morning of 10-6-1984 Veena died of burn injuries. There was no eye-witness to say whether the fire to her clothes was accidental from the kerosene stove or whether the Veena committed suicide. The prosecution case was that the accused harassed Veena on account of demands of dowry and, thereforee, she committed suicide. There the statements of Veena which she made after her marriage and right up to the time when she died, that the she and her parents were being harassed by the accused for various dowry articles, were considered in evidence by the Apex Court. In this case. Krishna's statements go to establish harassment. They are thus admissible under Clause (1) of Section 32 of the Evidence Act. Clause (b) of the Explanationn to Section 498-A. I.P.C. shows that the harassment of the woman, where such harassment is with a view to coercing her or any

person related to her to meet any unlawful demand for property or valuable security or is on account of the failure by her or any person related to her to meet such demand would amount to cruelty for the purpose of Section 498-A. I.P.C. In the present case, as pointed out by the learned Additional Sessions Judge the evidence of Mst. Neeru (P.W. 1) and Mst. Sheela (P.W. 5), Harichand (P.W. 9) clearly proves that repeated demands were made by the appellants on Krishna for a scooter and value of her half share in her parental house. Learned Additional Sessions Judge who had advantage of watching the demeanour of these witnesses believed them on the point that the appellants subjected the deceased-Krishna to cruelty and harassment and we are not inclined to take a different view.

47. In view of the above discussion, we find that the offence under Section 498-A/34, I.P.C. against the appellants has been proved beyond and shadow of reasonable doubt.

48. This brings us to the question of sentence to be awarded to the appellant-Mst. Chandrawati. The trial Court imposed a sentence of death on the appellant. She was also sentenced to pay a fine of Rs. 10,000/- or in default to suffer imprisonment for one year. In Smt. Paniben v. State of Gujarat : 1992 CriLJ2919 (supra) it has been observed by their Lordships that 'Every time a case relating to dowry death comes up, it causes ripples in the pool of conscience of this Court. Nothing could be more barbarous, nothing could be more heinous than this sort of crime.' At the same time, it has to be borne in my mind that normal sentence for murder is now imprisonment for life and not sentence of death and the Court must give special reasons for awarding death sentence. It has been held in Lichhamdevi v. State of Rajasthan, : 1988 CriLJ1812 , that special reasons mean special facts and circumstances obtained in the case justifying the extreme penalty. In Bachan Singh v. State of Punjab, : 1980 CriLJ636 , and later in Macchi Singh v. State of Punjab, : 1983 CriLJ1457 , the Apex Court indicated certain guidelines to be applied to the facts of each case for imposing the extreme penalty of death.

49. No doubt, it is a case of bride burning. The Apex Court in State v. Lakshman Kumar, : 1986 CriLJ155 , has observed that in the case of bride burning, death sentence may not be improper. But in the present case, we do not find special

facts and circumstances to bring this case within the category of rarest of rare cases justifying imposition of the extreme penalty. In our opinion, having regard to all the facts and circumstances of the case, this is not a fit case for awarding death sentence. We, thereforee, set aside the death sentence awarded to the appellant-Mst. Chandrawati, and instead sentence her to imprisonment for life.'

50. Learned Additional Sessions Judge imposed in the instant case a fine of Rs. 10,000/- on the appellant-Mst. Chandrawati. In Palaniappa Gounder v. State of T.N., : 1977 CriLJ992 , it has been observed that the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy fine of sentence. The primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized, which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case including the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine. In the instant case, there is nothing on the record to show that the appellant-Mst. Chandrawati has made or is likely to have made any pecuniary gain by committing the alleged offence. Learned Additional Sessions Judge did not even attempt to consider whether the appellant has means to pay such a heavy fine imposed on her. In the circumstances there was no justification for imposition of sentence of fine of Rs. 10,000/- over and above the sentence of death. Hence we set aside the sentence of fine of Rs. 10,000/- imposed on the appellant-Mst. Chandrawati. If the fine has been paid it will be refunded to the appellant-Mst. Chandrawati. Except to the limited extent of modification in the sentence, appellant-Mst. Chandrawati's appeal shall stand dismissed. The reference made by the learned Additional Sessions Judge under Section 366, Cr.P.C. for confirmation of death sentences is hereby rejected.

51. The appeal of the appellants Kishan Lal and Harkesh are dismissed and their convictions and sentences under Sec. 498-A read with Section 34, I.P.C. are confirmed.

52. Before we part with the case, we would like to place on record our appreciation for the valuable assistance rendered by Shri K. B. Andley, Advocate, who has

appeared as amices Curiae in this case.

53. Order accordingly.

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