

State of Rajasthan Vs. Smt. Lichma Devi

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Court : Rajasthan

Decided On : Nov-21-1985

Reported in : 1986(1)WLN106

Judge : Guman Mal Lodha and; Gopal Kishan Sharma, JJ.

Appeal No. : D.B. Criminal Appeal No. 330 of 1978

Appellant : State of Rajasthan

Respondent : Smt. Lichma Devi

Disposition : Appeal allowed

Judgement :

Guman Mal Lodha, J.

1. We are required to consider this appeal filed by the State of Rajasthan, against the acquittal of Smt. Lichmadevi, mother-in-law of deceased Pushpa, in what is alleged to be a most heinous, barbaric, cruel and gruesome murder by pouring kerosene oil and lighting fire on her; and locking her in the kitchen from outside by Smt. Lichmadevi, her mother-in-law, after ill-treatment on account of non-fulfillment of her expectations of dowry.

2. The trial court has come, to the conclusion that undoubtedly Pushpa died on account of burns sustained by her which were caused by homicidal act of putting

kerosene oil on the body and lighting fire, which constitutes an offence under Section 302, IPC. However, while fixing liability for responsibility of this offence, the trial court was of the opinion that basing conviction on the dying declarations, would not be safe, and further that the evidence of the neighbours cannot be said to be wholly reliable.

3. Before we proceed to analyse the relevant evidence and consider the validity of the reasons given by the trial court for acquittal, it would be proper to mention in a nut-shell, the facts of the case as per the allegations of the prosecution.

4. Pushpa was daughter of Sitaram PW 9. She was married to Jagdish Prasad son of Smt. Lichmadevi. The relations in between Smt. Lichmadevi and Pushpa had become strained on account of alleged dowry-affair. Pushpa used to be harassed by her mother-in-law before she left her husband house and went to her father's house where she was staying with her father Sitaram. Only 4-5 days before this unfortunate incident When she is alleged to have been burnt to death, she came from her father's house to her father-in-law's house. On 29th Jan., 1977, at about 4-5 p.m. Pushpa was cleaning utensils on the roof of the house. Accused-Lichmadevi then lifted one 'Bagouha' (pan) and stuck it on the head of Pushpa (deceased). The accused is also alleged to have said that she was feeling like burning her alive after pouring kerosene oil on her.

5. In quick succession of the above event, in the night at about 8 O'clock, on that very terrace where there was a kitchen of tin-shed, the neighbours found flames of fire coming out therefrom, who also heard a cry, 'bachao' 'bachao' Bhanwarlal PW 3, who was working at his house nearby, then shouted and attracted the neighbours, who rushed and reached the house of Lichmadevi, and then climbed the terrace.

6. The crucial allegation is that the neighbours observed that the doors of the kitchen were closed, and there was a chain which locked and closed the doors from outside. Deendayal PW, 4 Lalit Kishore PW 5, Sushil Kumar PW 6 and Ors. who were neighbours, tried to open the door of the kitchen. Sushilkumar opened the chain from outside and he found that under the tin-shed, one woman was lying naked in severe condition of burning. She was then taken out, and it was found

that she was none-else put Pushpa, wife of Jagdishprasad, who was suspected to be dead by that time. Therefore, the neighbours wanted to take her to hospital. The crudest act, as per the prosecution, did not stop at burning alive but at refusal of the accused and her other family members to take Pushpa to hospital.

7. Lalitkishore PW 5 took Pushpa to the SMS Hospital, and got her admitted to Emergency-Ward, wherefrom Pushpa was taken to Female-Ward 3AB. There, it is alleged that she gave her dying-declaration at about 5.30 a.m. next day, before PW 14 Sopsingh which was recorded as Ex.P 52. She stated therein that her mother-in-law had lit fire on her after pouring kerosene oil on her and burnt her. This dying-declaration was given to her father PW 9 Sitaram, PW 2 Rameshchandra and Lallulal PW 13. Lalitkishore, after getting her admitted to hospital came to the accused and her family members and asked them to make arrangements for blood as per doctor's advice. But, all the members of the accused-family refused to do anything in this regard. The accused asked Jagdish not to give blood to Pushpa. Pushpa breathed her last at about 10 a.m, in the morning in the Female-Ward.

8. PW 14 Sopsingh, ASI, who recorded the dying-declaration Ex.P 2, treated it as FIR and investigation commenced.

9. Dr. M.R. Goyal conducted the post-mortem examination on the dead body of Pushpa.

10. Dr. Goyal's examination revealed the following injuries on the person of the deceased :-

1st, 2nd & 3rd degree superficial burns with line of redness and blackening of skin, signing of the fairs, peeling of the superficial skin involving scalp, face, both upper extremitities, neck, chest front, and back of chest, abdomen, back both lower extevities.

11. According to Dr. Goyal, all the burns were ante-mortem in nature The doctor opined that the cause of death was severe burns, which were sufficient in the ordinary course of nature to cause death.

12. The accused denied the charge and she was tried. She did not produce any defence-witness. Before this Court, it is not in debate or dispute that Pushpa (deceased) died on account of burn-injuries caused to her on account of burning. The finding of the trial court is that the facts and circumstances of the case further prove that it was not a case of suicide, but homicide. This finding has not also been challenged by the counsel for the accused.

13. Mr. Tibrewal, the learned counsel for the accused, submitted that so far as the mother-in-law, accused Lichmadevi is concerned, she is not responsible for this offence and according to him, there is no proof to prove her guilt or involvement in the alleged crime.

14. The learned Public Prosecutor has challenged the finding of the trial court so far as the acquittal of accused Lichmadevi is concerned and argued that the case against the accused is fully proved beyond all reasonable doubt, and that, since it is an offence against weaker sex of burning alive, it falls within the category of rarest of rare cases warranting death sentence.

15. Mr. Tibrewal to the contrary submitted that firstly the trial court was justified in disbelieving the dying-declaration because no dying-declaration was recorded by the Magistrate and the expected precautions for ensuring true dying-declaration, were not taken at all in this case.

16. Mr. Tibrewal further submitted that in any case, it is obvious from the entire evidence that burning was not act of Lichmadevi alone, if at all it is proved, because, Lichmadevi's sons and husband were all available there, and, therefore, according to him, it would not be left to a lady alone to burn her daughter-in-law. Suggestion was that it is doubtful whether Lichmadevi, at all, was involved in this offence, and in any case, it was certain that some more persons, who were about 9 in number, have been let off by the investigating Agency from the very beginning.

17. We have carefully considered the rival contentions of both the learned counsel for the parties.

18. PW 2 Rameshchandra has stated that Pushpa had told him that her mother-in-law was harassing her and was not even giving food on the ground on dowry.
19. PW 4 Deendayal has clearly stated that before the incident, about 2-4 days before, he had found the mother-in-law and the brother-in-laws of the girl, Pushpa quarrelling with her (Pushpa) and they were harassing Pushpa on account of dowry.
20. PW 5 Lalitkishore is another witness, who has clearly stated that he observed that in-laws of Pushpa used to harass and quarrel with her. He had also seen Jagdishprasad, husband of Pushpa and Savitri, husband's sister giving beating to Pushpa. Out of all these incidents, the most important thing which the witnesses observed was that at the time of beating her, mother-in-law used to say that she had not brought any dowry from her father's house.
21. On a detailed thorough assessment of the evidence of these witnesses, we find that they are trustworthy and nothing has been pointed out from their cross-examination from which, we can infer that the alleged demand of dowry or harassment for dowry, or strained relations in between the mother-in-law and other in laws of Pushpa with Pushpa, is not proved. We find that it is well proved that Pushpa used to be harassed and beaten by her in-laws including the present accused Lichmadevi, as they were not satisfied with her for not bringing dowry from her father's house.
22. Now, the next question that comes for consideration is to whether the dying-declaration alleged to have been made by the deceased Pushpa, was in fact, made truly and voluntarily without any tutoring influence. In the present case, the dying-declaration recorded by the ASI was not during investigation, but, as a matter of fact, it was the FIR, which was revelation of facts by the deceased to the ASI, which was recorded as 'Parcha' 'Bayan' and investigation started. We, therefore, are not prepared to accept the argument of the defence that the police investigating the case, cooked up a false dying-declaration for providing evidence to the prosecution case, which was under investigation at the time. Since, there was nothing in the investigation and no FIR was registered at that time, question of disbelieving the dying-declaration only on this ground, does not arise.

23. We now come to the dying-declaration which was made before Dr. S.K. Goyal PW 16. Dr. Goyal was present at the hospital when the neighbours brought, Pushpa to hospital. According to Dr. Goyal, when she was brought he examined her and treated her. In the night, he was again called, and he examined her finding that she was semi-conscious, According to Dr. Goyal the conditions or circumstances under which Pushpa was admitted to hospital, were very strange and curious, because, there was no relative accompanying her, and the neighbours were present at the hospital, who also left leaving her alone. When he asked the patient as to how she had been burnt then the lady told him that her mother-in-law had burnt her. Much emphasis was laid by the learned counsel for the accused, and the trial court has also accepted this objection as valid that since the bed-head ticket had no such entry of dying-declaration, it should not be believed. When this witness was asked as to why he had not stated so to the police, then, he replied that the SHO or any other officer did not make any query from him in this regard. According to this doctor, he was a medical jurist, and therefore, he did not take any steps. The trial court has disbelieved this witness firstly, on the ground that there is no mention in the bed-head ticket of the dying-declaration, by him, secondly, he did not say anything to the police as to how Pushpa had received the burn-injuries; and thirdly, for the reason that there was no police officer present at the time of recording of the dying-declaration. But, we are unable to accept this ground. We do not find any serious infirmity for which the dying-declaration should be rejected. There is no doubt that Dr. Goyal had no interest in the complainant i.e., the father and the other members of the family of the deceased, as he performed his duty independently, and was not in any way, related to the deceased or her family members. However, the fact that the deceased was taken to hospital by the neighbours only and none of the family members accompanied the victim to hospital, is proved by the evidence of this witness also who was doctor and was present at the hospital at the time when Pushpa was taken to hospital by the neighbours. The fact that the recording of dying-declaration is not mentioned in the bed-head ticket, in our opinion, is not of much significance Bed-head ticket is not a crime register or police Roznamcha, or record of any officer who is required to either register the case; investigate the case, or even in any other manner connected with the case. Bed-head ticket is meant for mentioning

general condition of a patient from time to time in respect of his/her ailment, progress, check-up, blood-pressure and functioning of the various important mechanism of the human body like heart-beat, pulse beat etc. etc. So, we do not find any substance in the submission of Mr. Tibre-wal, and we are of the opinion that the trial court was not justified in rejecting the dying-declaration, before the doctor, on the ground that no written complaint was kept in the hospital or was it mentioned to the police. In our opinion, bed-head ticket need not contain any entry regarding the name of the accused or details of the offence committed. The principal thing required to be mentioned in the bed-head ticket is the general condition of the patient from time to time, and medical treatment given to a patient; response observed, and treatment suggested from time to time.

24. The trial court as well as Mr. Tibrewal have laid emphasis on the ground that the statement of the doctor before the police, did not find any mention of this allegation.

25. A bed-head ticket cannot be regarded and treated as analogous or synonymous to an FIR for a crime. Dr. Goyal was only a medical jurist present at the hospital. He was concerned with looking after the patient who was admitted to hospital at its Emergency-Ward. In his police statement, this witness as would be obvious from the entire evidence, was question about the medical aspect of the case. No question was ever put to him by any Police Officer to explain and to give the story of incident. The doctor was only required to give his statement about the condition of the patient (Pushpa) from time to time, to the police. Normally a medical witness is examined for for proving medical aspect of a case. If under that impression, the police did not inquire from the witness about the name of deceased of burning Pushpa or whether she had told anything to him about the author of the burning, it was not necessary for the doctor at his own initiative to have mentioned that she had stated to him by whom she had been burnt. In view of the above, we are of the opinion that Dr. Goyal's statement about the dying declaration of the deceased, cannot be said to be tainted or untrustworthy or false, nor does it suffer from any inexactitude.

26. We have repeatedly inquired from Mr. Tibrewal as to whether any suggestion was made to Dr. Goyal or any other witness or in the statement of the accused showing that Dr. Goyal was in any way interested in the deceased party, or in any manner he was inimical to the accused-party.

27. When question was put to him, he replied that Pushpa died on account of various burn-injuries on her person, which which were sufficient to cause death.

28. When the accused was asked that, Dr. Goyal had stated that in the hospital, Pushpa had told him that her mother-in-law had caused her death after sprinkling kerosene oil and lighting fire. All that the accused replied was that Dr. Goyal was giving a false story. When she was asked as to why the witnesses were stating against her then, she stated that they were inimical, but no enmity was specifically stated much less proved; nor any enmity in particular was alleged or proved. She ultimately told that Madanmohan had opened the door and Kailash brought water, but, when she reached the terrace she never saw that the deceased was burnt.

29. Mr. Tibrewal invited our attention to the rules which are found in in the Police Manual, wherein precautions to be taken for recording a dying-declaration, are contained. Rule 6.22 of the said manual reads as under:

6.22. Dying Declaration--(1) A dying declaration shall, whenever possible, be recorded by a Magistrate;

(2) The person making the declaration shall, if possible, be examined by a Medical Officer with a view to ascertaining that he is sufficient in possession of his reason to make a lucid statement;

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted Police Officer is not present, be recorded in the presence of two or more reliable witness unconnected with the police department and with the parties concerned in the case;

(4) If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more Police Officers;

(5) A dying declaration made to a Police Officer should, under Section 162, Code of Criminal Procedure, be signed by the person making it.

30. We may, at the very outset, mention that firstly, these are sort of precautions which can be taken as far as possible which depend upon the facts and circumstances of each case. As is clear, from the opening part of Clause (22) Rule-6, it states that whenever it is possible a dying declaration must be recorded by a Magistrate, and when it can be possible the person making dying-declaration, should be examined by a Medical Officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement. It then states that when a Magistrate is not available, the declaration shall be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case. If no such witness is obtained then, it should be recorded in the presence of two or more Police Officers.

31. We find that in the present case, Dr. Goyal himself was the doctor who was treating the patient, and therefore, there was no question of getting the patient examined medically by some other to find out whether she give her statement or not. Moreover, the statement before Dr. Goyal was not actually recorded as such, but it was only a statement which the deceased could give orally to the doctor. In our opinion, the requirement of recording a dying-declaration as such, cannot be insisted upon when a doctor inquires from a patient, or even otherwise if a patient discloses certain facts to a doctor who is treating him her in the course of medical treatment.

32. We are of the opinion that these requirements are not applicable at all to this case, so far as Dr. Goyal is concerned.

33. In our opinion, the reasons given by the trial court for disbelieving Dr. Goyal, mainly emphasize on not mentioning of the dying-declaration in the bed head ticket, and its absence in the police statement. As we have mentioned above, for a doctor, in this case it was not necessary to have mentioned it, in the bed-head ticket, nor any importance can be given to it, because, the police examined only for the medical aspect of the case, i.e. the injuries sustained by the patient etc.

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34. We find that Dr. Goyal is an independent Witness wholly unconnected and unrelated to any of the parties, who was a Government officer on duty at the hospital at the time when Pushpa was admitted to the hospital, and obviously, there has not been any suggestion of any motive either of enmity against the accused or bias in favour of the complainant party on account of which, he would falsely involve the mother-in-law of the deceased by getting dying-declaration from the deceased. We are satisfied that the statement of the doctor is a natural and probable one which inspires confidence and there is no cross-examination to suggest that his statement was tainted or gives any hint of bias against the accused. This dying declaration which, of course, is oral is also corroborated by the written dying-declaration recorded by the S.H.O. on the basis of which investigation started.

35. The trial court has disbelieved this dying declaration again on the ground that the Police Officer did not take the precautions of getting it recorded by a Magistrate, secondly, without a medical certificate to the effect that she was under a fit state of health physically and mentally to give her statement. The same stock argument was advanced by Mr. Tibrewal that the police in this case have not adopted the precautions to be taken for recording a dying declaration as enumerated in the rules. We have examined the dying-declaration, Ex. P.2 and also the statement of PW. 14, Sopsingh, ASI.

36. Sopsingh ASI has clearly stated that he had to stay at the hospital though outside in the night, because, the deceased was not conscious earlier. According to him, at about 10 O'clock he observed her and again 2.30 O'clock he checked her and remained the whole night outside the hospital. At about 5 a.m. in the morning, when he reached the hospital, he found Ramesh-chandra and Lallulal who were there, trying to awake the deceased. When they called, 'Pushpa' 'Pushpa' Pushpa starting getting back consciousness, and became conscious, they asked her as to who had burnt her. At this she replied that her mother-in-law after pouring kerosene oil and then lighting fire on her. He then obtained signatures of Rameshchandra and Lallulal on this document, which was also

signed by him. He then handed over the document to the SHO of the police station by treating it as FIR.

37. In cross-examination, this witness Sopsingh PW 14 was told that as Investigating Officer, he was conscious of the fact that first of all, it must be satisfied that the deceased at the time of giving her dying-declaration was in a fit state of health mentally and physically, so as to whether he had ensured that or not. His reply was in positive, he stated that he was knowing this and he had ensured it because when Rameshchandra and Lallulal called her she started speaking. The fact that this witness had tried to find out many times whether or not the deceased was conscious at that time to give her statement, and that, he remained outside the hospital throughout the night, only shows that this witness had sincerely honestly genuinely tried to ascertain whether Pushpa could give her statement under consciousness.

38. Much capital was sought to be made by the learned counsel on medical ground that there was no doctor, and no certificate was obtained, and also that a nurse who is alleged to have been present there, her signature was also not obtained on the dying declaration. Sopsingh ASI, PW 14, in this regard has stated that a nurse was present but her signature could not be obtained because, she refused to put her signature on the document. In our opinion, there is nothing because, mostly persons are shy of becoming a witness as they are often required in court to give evidence. It all depends on psychological make-up of a person, and no rule can be laid down in this regard. However, this is significant to note that according to this witness, when Ex. P. 2 was recorded, the accused by that time, also had come to hospital and was present there.

39. Much capital was sought to be made by the learned counsel for the accused on the ground that the witness at the last portion of his statement, has stated that he was not sure as to whether Pushpa was conscious or semiconscious. We are of the opinion that there is ample evidence in the form of PW 2 Rameshchandra and PW 5 Lalitkishore who have testified that Pushpa was conscious at the time when her statement was recorded.

40. PW 2 Rameshchandra has also stated that when he inquired from Pushpa as to how she had been burnt, then she replied that her mother-in-law had burnt her by pouring kerosene oil & then lighting fire. He also corroborates that he ASI also had asked from Pushpa and she had stated that it was her mother-in-law, who had burnt her. He is also signatory in document Ex.P2. She was confronted with her previous statement Ex DI wherein she has stated that her mother-in-law had poured kesosene oil and then lighted the fire. She has stated that her version was that her mother-in-law poured kerosene oil on her and then lighted fire on her. We are of the opinion that in the above version, there is no material contradiction, because, the true fact that fire was lit by the mother-in-law on Pushpa at the kitchen on the terrace, is not in dispute, and Pushpa was burnt by that fire. It is only a method of narration or way of description, and there is no difference between the two statements.

41. We find that the statement of Rameshchandra PW 2 is a straight forward statement and it inspires confidence and We find it truthful. Nothing has been found in his cross-examination, on account of which, he can be dis-believed.

42. PW 9 Sitaram is the father of the deceased Pushpa. He is a Class IV servant in the Rajasthan State Government Service. On learning about the burning of Pushpa. by fire, he went to hospital. In his examination-in-chief he, has stated that after one, year of the marriage of Pushpa the accused started having strained, relations with her on account of dowry demand, and she used to say that the dowry given was scanty and was not sufficient. According to his statement, on the unfortunate day, when he rushed to hospital he saw, what his daughter was lying burnt. He called, 'Pushpa' 'Pushpa' 'Pushpa' Then, once she responded. He then asked Pushpa to come in consciousness and also that he was her father. Ramesh and Lallu Prasad were with him. He then asked Pushpa as to what was the real fact and as to whether she had been burnt herself or by some body else. At this, Pushpa told him that first she should; be given water. He then tried to take water from a nearby patient. There the question upon, they requested him not to give her water & that the doctor had advised so. He then assured Pushpa that water was being brought for her & asked her she replied that mother-in-law & 'Nanad' (sister-in-law) had put kerosene oil on her and burnt her. Mr. Tibrewal then pointed out

that Pushpa implicated Nanad (sister-in-law) and the mother-in-law both, and therefore, the part of the mother-in-law becomes doubtful. We are of the opinion that on the basic fact that mother-in-law has involved in burning Pushpa alive by pouring kerosene oil on her and lighting: fire, there is no dispute and it has been corroborated and confirmed by the other evidence also.

43. Mr. Tibrewal then submitted that Sitaram PW 9 has also stated that he sent a report, but that report is not available on the record. The witness has stated that the police has recorded something on which, he put his signature, and that he was not aware as to whether the same matter was taken in the 'Roznamcha'. According to his statement, such a report was made after the death of Pushpa on the same date around 11-11.30 a.m. In our opinion, nothing turns upon it, because, the ASI has stated that in the morning at about 5-5.30 O'clock, when he recorded the statement of the deceased in the form of dying declaration, then, he went to police station and gave the report to the SHO, who treated it as FIR. Once an FIR was recorded in the form of last statement of the deceased and investigation started on that basis, it was immaterial whether any report in writing or oral was lodged or not.

44. The dying declaration is further corroborated by the statement of PW 13 Lallulal. According to him, when he went to the SMS Hospital, under Emergency-Ward, Pushpa was in the female ward. He went there. The police came there. The ASI asked Pushpa as to how it all had happened. At this, Pushpa replied that her mother-in-law, after sprinkling kerosene oil on her had burnt her.

45. In his cross-examination, Lallulal PW 13 stuck to the same version. He is also signatory in Ex. P. 2 Nothing incriminating or improbable features showing his incredibility have been shown from his cross-examination. It would, thus be seen that the statement of Sopsingh ASI PW 14, is corroborated by not less than three witnesses.

46. We are of the opinion that these two sets of dying declarations, one by the doctor and the other before the Police Officer, the ASI, Sopsingh, in presence of three witnesses provide clinching evidence of trust worthiness and correctness of the version regarding fire-incident given by the deceased before her death. We are

also of the view that in the facts and circumstances pointed out above, when Dr. Goyal examined Pushpa medically and when the ASI inquired from her, she was conscious and she was alleging and able to give her statement, in full consciousness of the facts and thus, it was her mother-in-law (of Pushpa), who had burnt her.

47. True it is that a Magistrate could not be called for the purpose of recording of dying-declaration, as mostly, Pushpa was either under unconsciousness or semiconsciousness and she got consciousness only for a while, and therefore, it was not possible to keep a Magistrate ready in the night. The incident happened at about 8 p.m. in the night, and the dying declarations were recorded in the early morning at 5 a.m. and it appears that thereafter, she could not get consciousness back again. That being so, it could not have been possible to have kept a Magistrate ready.

48. In our opinion, the two dying-declarations when taken together, have got a chain of truth, and there is no reason to doubt their veracity or truthfulness. We are, therefore, unable to accept the reasons given by the trial court for rejecting these two dying-declarations, as already discussed above.

49. Apart from the two dying declarations, the facts mentioned in the dying declaration that it was the accused who had poured kerosene oil on the victim and burnt her, are also corroborated by other circumstances evidence on record. It has come in evidence of the witnesses and also of those neighbours that when they rushed to the house of the accused, they called the accused and also the other members of the family to come up and save Pushpa but they did not move even an inch. They stayed there. Therefore, it were the other witnesses or neighbours who went up with water and tried to take Pushpa out from the closed doors after opening chain from outside.

50. Lalitkishore Pareek PW 5 has come into evidence and so also, the other witnesses, namely, Deendayal PW 4 and Sushilkumar PW 6.

51. It is most shocking that while the daughter-in-law was in {flames and the cries and shrieks attracted the neighbours, the accused-as well as the other relatives in

the family remained at the ground-floor unmoved. Even when the neighbours came, then also they did not move to rescue her. This conduct of the accused corroborates the prosecution evidence that on account of dowry demand which could not be satisfied by the deceased's father who was a Class-IV servant in the Rajasthan Government Service, the accused was so much enraged, that even after her daughter-in-law was in flames, the accused or her other family members had no emotional urge to run and rescue her.

52. PW 7 Manbhardevi has stated that she saw on the roof of the house of the accused that Pushpa was cleaning utensils. She saw that the accused threw a 'Bagoni' (pan) at the head of Pushpa. Pushpa could not resist, and when the witness tried to intervene and advised the accused not to beat her daughter-in-law the accused paid no heed. This witness then saw that when Lichhma Devi went inside the tin-kitchen, she stated that she was feeling like burning Pushpa alive after pouring kerosene oil on her. In the night, this witness saw the flames and also heard the cries of the deceased. The neighbours then came there and rushed upstairs. She also rushed there and there she saw that near the kitchen of tin, the body of Pushpa was lying, and there was smell of kerosene oil, and a match box was also lying there. She thereafter went to hospital also. She also stated that she was giving statement on 'Gangajali' and not an untrue statement. She also stated that the accused, Smt. Lichhma Devi was of bad character, and that many persons of questionable character used to come with her to her house.

53. We also find that in the evidence it has come to that when the doctor advised that blood must be given to Pushpa and the neighbours came to request the accused for this purpose, the accused and the other family member refused to make any arrangement for blood, and they remained unmoved. They said there was no question of giving any blood to the victim (deceased) and accused prohibited Jagdish from giving blood.

54. It is true that the statement of the accused should not be read against her in a case, but it is noteworthy that on being asked, the accused even stated that Pushpa had not been burnt. However, the statement of the accused certainly shows that instead of giving valid explanation. She has even denied that Pushpa

was seen burnt. We are, therefore, convinced that the present one is a typical case where the greed of dowry and because the deceased who was the daughter of a Class IV employee could not satisfy the lust of the dowry-vultures, instead of leaving the matter there and trying to earn themselves, the mother-in-law 'burnt alive her daughter-in-law.

55. Mr. Tibrewal submitted that it has come in the evidence that when the witnesses reached there, the accused said that Madanmohan had burnt her, and that the circumstances show that it was Madanmohan who had burnt Pushpa and not the accused. Mr. Tibrewal further pointed out that some of the witnesses has stated that when he went on the roof, Madanmohan came from behind the kitchen.

56. We are of the opinion that the fact that Madanmohan came from behind the kitchen, may show that in addition to the mother-in-law, who had burnt Pushpa alive, there were other persons who had helped her committing the ghastly crime. The present one is a case where the mother-in-law . accused may have been helped, abetted or instigated either by her sons or daughters, but, that would not give a licence to the mother-in-law to commit the crime and have acquittal only on this ground that the other guilty persons have not been challaned on account of paucity of evidence or want of evidence. So far as the accused is concerned, there is a consistent chain of evidence pointing out her guilty, including the dying declarations: If the case would have rested solely on the dying-declarations before police probably we would not have thought of recording conviction simpliciter on that basis, but, we find that the dying declaration of the deceased before Dr. Goyal and other three independent witnesses corroborated by the other evidence, proves the participation of the accused in the crime and proves her guilt beyond all manner of reasonable doubt.

57. We are now to consider as to what sentence should be awarded in this case. During the course of arguments, we made it clear to both the parties that we would hear this case on merits and also on the point of sentence. Both the learned counsel for the parties have addressed us on the question of sentence also, at length. Whereas the learned Public Prosecutor citing the judgment of Supreme Court in Bachan Singh v. State of Punjab : 1980 CriLJ636 and Machhisingh's case

1983 SC 957 has made a strong plea that cases of bride burning or dowry deaths, for the sake of eliminating these Social crimes fall in the category of rarest of rare cases, where death sentence should be awarded to the accused. Mr. Tibrewal, the learned counsel for the accused pointed out that there are important factors in favour of the accused in this case for awarding lesser penalty of life imprisonment. He laid much stress on the fact that in this case, the accused being a lady, and this appeal being against her acquittal this case needs some leniency, and as such according to him, lesser penalty should be imposed on the accused. We have given a very serious and thoughtful consideration to this aspect of the case.

58. We are here dealing with a case where, as per the above findings, which we think, are unchallengable and based on cogent, clinching and reliable evidence. We have come to the conclusion that a poor Class-IV employee's daughter was burnt to death simply because, she could not satisfy the lust of dowry of the mother-in-law and the other in laws. The question for consideration before us is as to whether the accused in this case deserves the extreme penalty of death sentence or a lesser sentence.

59. It is true that life imprisonment is a rule and death sentence is an exception. We are conscious that death sentence should be imposed only when the sentence of life imprisonment appears to be inadequate having regard to the facts and circumstances of the case.

60. According to the dictum of law laid down in Bachan Singh's case (supra), we are required to prepare a full balance sheet of mitigating and also aggravating circumstances in this case, for the purpose of awarding the extreme penalty of death to the accused.

61. In Bachan Singh v. The State of Punjab (supra). It was observed by the Supreme Court as under:

The Supreme Court should not venture to formulate rigid standards in an area in which the legislature so warily treads. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down;

From a reading of Sections 354(3) and 235 and other related provisions of the Code of 1973, it is clear that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not, these two aspects are so inter wovened that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is way, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore, all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. It cannot be over-emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354. Judges should never be blood' thirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India in the instant case, show that in the past Courts have inflicted the extreme penalty with extreme infrequency a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is therefore, imperative to voice the concern that courts aided by the broad illustrative guidelines indicated will discharge onerous Function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

62. We are, therefore, required to consider as to whether is there something more for which the sentence of life imprisonment would be inadequate, and which warrants imposition of maximum penalty of death.

63. We have given very serious consideration to this aspect of the case, because, the question is to opt one between death sentence which is extreme penalty of death and a lesser punishment as the accused is a woman who has committed the crime, in this case.

64. We feel all the considerations which we can have for a female and something which a woman accused normally deserves are missing here. In the present case, the mother-in-law by her barbaric inhuman and unprecedented cruelty has burnt alive non else but a bride, a young woman who was her daughter-in-law and who expected love and affection, and also protection, who also expected the best in a mother-in-law for a daughter-in-law. It is a pity that the mother-in-law instead of providing protection to her daughter-in-law, in a most cruel, ghastly and barbaric manner, has burnt her alive, which betrays even an age when there was no civilization. In our considered view, such a mother-in-law deserves nothing but extreme penalty of death. While adjudicating this case that extreme penalty should be given to the accused, we are conscious of the fact that the factors which Mr. Tibrewal has pointed out namely, that she is a lady, that the case has been pending for quite some time, and that the appeal is against the judgment of acquittal, should be weighed against the proposal to grant extreme penalty.

65. We are conscious of all these facts, and we have drawn a balance-sheet of the two sides. On one side, there is humanity crying for protection of law, and the women of the country crying and appealing the courts of justice to protect them from the dowry-vultures, to save them from the lust of dowry, from the harassment, from the humiliation, which these dowry-vultures used to inflict on the brides which result in bride-burning cases in this country. This story of Pushpa who was a daughter of a Class-IV employee who was placed lowest in the ladder in the service, and who fell prey to the hands of the accused, is a heart-breaking, nerve-cracking, hair-raising and society-shocking incident, which would be shameful for any society in any country, in an age of social justice when we talk of social

justice, equality before law and equal protection of law. In our opinion, an accused in such a ghastly, gruesome, barbaric and inhuman crime, should be punished with no leniency. We therefore, feel that if a balance sheet is to be drawn the considerations of pendency of the litigation for quite some time or the appeal being against acquittal, and the accused being a woman, carry no weight at all. Contrary to it, the demand of the society is social justice,. and requirement of protecting our weaker sex from such barbaric and inhuman dowry deaths, weigh much high.

66. Dowry hungry vultures, having failed in getting their anti-social lust and greed for their heavy expectations of dowry satisfied, started teasing, taunting insulting and creating un-tolerable torture to Smt. Pushpa, a young innocent bride. The dowry demand having not been satisfied has resulted in severe mental agony, torture, insults, teasing and not only beating but also burning Smt. Pushpa alive by pouring kerosene oil and Closing the doors from outside and becoming deaf, dumb and blind to the cries and shrieks of the young helpless innocent girl.

67. Such is the tragic, pathetic, hair-raising, heart-breaking, nerve-cracking, conscious shocking and society rocking plight and story of a poor young undefended, helpless, and innocent Smt. Pushpa in teen-age of her murder by her mother-in-law, and her dowry starving family members. It is serious social crime of heinous nature as not one Pushpa but several Pushpas are being burnt alive and becoming victims of dowry deaths every day. This is crime against society, against womanhood, poverty, and against all guarantees enshrined in the Constitution. It is daylight rape on the social justice concepts so conspicuously exhibited in the preamble and the Directive Principles. It is a 'slur' on society and stigma on our present generation. Such heinous and serious crime so also social evil taking away precious lives of young married brides deserves maximum extreme punishment, in terms of Machhi Singh's decision's standard as it is a caste iron case of 'bride burning' for 'dowry lust' by dowry hungry vultures.

68. In Machhi Singh's case AIR 1938 SC 957 Hon'ble Thakkar, J. while speaking of the catalogue of such crimes in which death penalty should be given, mentioned in para-32 as under:

I. Manner of Commission of murder:

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community, for instance--(i) when the house of the victim is set aflame with the end in view to roast him alive in the house; (ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death; (iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner;

II. Motive for commission of murder : III. Anti-social or socially abhorrent nature of the crime:

(a)... (b) In case of bride burning and what are known

as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(IV) Magnitude of crime:

(V) Personality of victim of murder : (a) ...

(b) a helpless woman or a person rendered helpless by old age or infirmity; (c) When the victim is a person vis-a-vis whom the murderer is in a position of domination or trust; (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

69. In our opinion, in the instant case, not only Pushpa was harassed for not bringing dowry, but she was given beating when she returned from her father's house, and when the neighbours tried to intervene, the accused said that she was feeling like pouring kerosene oil on Pushpa and burning her alive. In that night, the accused made it a fact by putting kerosene oil on Pushpa and burning her alive closing the doors of the kitchen and then bolting from outside, so that, the helpless bride might not even come out roasted in fire. When the neighbours came and asked the accused and the others in her family to go up and rescue Pushpa, she (accused) even did not move an inch. The accused prohibited Jagdish from giving blood. Even stones would have melted at such stage, but the accused mother-in-

law acted in worst manner than even a stone. We are, therefore, of the opinion that she deserves no sympathy in law, or from a court which is to impart social justice. If the cases of dowry-deaths and bride-burning which are ever-increasing for lust of dowry, are to be put an end, then, the courts have no option but to perform their solemn duty of hanging such dowry-vultures. We are of the opinion that in such rarest of rare cases, and propose as in the present case, which is a rarest of rarest cases extreme penalty of death should be imposed on the accused, and we have no hesitation in imposing the same for doing real justice.

70. We feel that when the society is ever increasingly exhibiting abhorrence to dowry deaths of young brides and even then bride burning cases are suddenly increasing & there is proof of bride burning cases challenging the judicial consciousness & authority of the judiciary as well as the State to provide protection to the innocent young brides from the actual barbaric gruesome crimes of in-laws, who as dowry hungry vultures are taking out the flesh and blood of young brides, the punishment when such crimes are proved should be both exemplary and deterrent. One, such exemplary punishment if given demonstratively in public, can provide protection to thousands of young brides from being burnt alive by creating fear and terror in the minds of such dowry hungry vultures who are doing torture of young brides for the satisfaction of the dowry lust. It would prevent attempt of creating miserable condition either of suicide or homicide, as every one would know that he would not be allowed to go unpunished and one can do it at his or her own peril.

71. If the law of the land makes no prohibition we would direct that that the punishment to be demonstrative and deterrent, be given before the public eyes, at a public place, e.g. Ramlila or Stadium open to the observations of all.

72. These directions, however, are subject to the rules and the security problems of the authorities who may take a decision to the contrary after bringing such revisions and their difficulties if any to the notice of the court. Subject to the above, we direct that in order to make the punishment more effective deterrent and exemplary there should be public hanging of the accused Smt. Lichma in the stadium grounds of Jaipur or Ramliala grounds of Jaipur, after due notice to the

people by 'media'.

73. We are constrained to give this direction because of the increasing menace of dowry deaths, flood of cruelty to young helpless innocent brides who expect this protection for their natural inherent fundamental right of living as a human being under the Constitution of India which provides not only protection of social justice and equality to all but contains a special mandate for the duty towards the weaker sex.

74. Pushpa belongs to the weaker sex as well as weaker segment of the society being a young girl of a poor family of class IV employee who is lowest in the ladder and she deserves maximum and the highest protection from the law courts, as it is only by law that a weak can combat the atrocities of the stronger, as Manu said even in the age where there used to be classes. Manu said.

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75. We are now in an age where there is emphasis in the Constitution on the class less society equality, social justice and protection to weaker sex and weaker segments.

76. We, therefore, direct public hanging, as above.

77. Consequently, the appeal of the State is accepted, Accused-respondent Smt. Lichhmadevi is found guilty of offence of committing murder under Section 302 IPC, of none else, but her own daughter-in-law Smt. Pushpa (deceased). Having held Smt. Lichhmadevi guilty of offence under Section 302, IPC, we impose upon her the extreme penalty of death.

78. We, therefore, direct that Smt. Lichhmadevi accused-respondent in this case, be hanged by neck till death. She is not available in the Court. A non-bailable warrant of arrest would be issued immediately to arrest her.

79. In case, Smt. Lichhmadevi surrenders herself, or is arrested she be given a copy of this judgment, free of cost, according to rules. Her bail-bonds are hereby cancelled.

80. The learned Public Prosecutor prays that in view of imposition of death sentence against Lichhmadevi, the accused-respondent, wife of Lallulal, by caste, Sharma, resident of House No. 2286, Salo-ki-Gali, Purani Basti, Jaipur the warrant of arrest against her, be given dasti to him.

81. It is therefore ordered that the warrant of arrest against the accused-respondent, Smt. Lichhmadevi, be given 'dasti' to the learned Public Prosecutor for compliance forthwith.

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