

Jai Devi Vs. State of Delhi

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Court : Delhi

Decided On : Mar-26-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Evidence Act - Section 32 and 32(1); ;Indian Penal Code (IPC) - Sections 34, 302, 307 and 498A; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal No. 228/1997

Appellant : Jai Devi

Respondent : State of Delhi

Advocate for Def. : Sunil Sharma, APP

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv. and; M. L. Yadav, Adv.

Disposition : Appeal dismissed

Judgement :

Ajit Bharihoke, J.

1. Shiv Kumar s/o Makhan Lal, Raj Kumar @ Kishore Kumar and Ms. Jai Devi w/o Navneet were challaned in Sessions case No. 570/93 FIR No. 120/93 Police Station Vivek Vihar. They were charged under Section 498A IPC and Section 302 IPC both read with Section 34 IPC for subjecting Ms. Archana w/o Shiv Kumar to

cruelty and committing her murder on 18th April 93 at 11:00 am at their House No. 7/308A, Jwala Nagar, Pandav Road, Biswas Nagar, Delhi. On conclusion of trial, the learned Additional Sessions Judge vide impugned judgment dated 23rd May 1997 acquitted the accused Shiv Kumar and Raj Kumar @ Kishore on both counts. Appellant Jai Devi, however, was convicted on the charge under Section 302 IPC, and acquitted for the charge under Section 498A IPC. Feeling aggrieved of her conviction and sentence for the offence under Section 302 IPC, Ms. Jai Devi has preferred this appeal.

2. Briefly stated case of the prosecution is that on 18th April, 93 at around 11.20 am, Duty Officer, P.S. Vivek Vihar, on receipt of the information from ASI Banarsi Das on wireless that a lady has got burnt at House No. 7/308, Patel Gali, Jwala Nagar, New Delhi, recorded DD No. 4A (Ex.PW15/A).

3. It is further the case of the prosecution that on 19th April 93 Shri B.P. Singh, Executive Magistrate (PW6) on the directions of the SDM Shahdara visited GTB Hospital at 12.00 in the afternoon for recording the dying declaration of the deceased. She was declared `fit for the statement? by the doctor. So PW6 Shri B.P. Singh recorded the dying declaration Ex.PW6/A wherein she stated that on 18th April 93, her mother-in-law, quarrelled with her and gave her beating. Thereafter, she poured kerosene oil on her and set her on fire. She also stated that her younger devar (brother-in-law) wanted to have physical relations with her and her husband Shiv Kumar and brother-in-law Raj Kumar as also her mother-in-law used to taunt and harass her for bringing insufficient dowry. She stated that her mother-in-law, husband and brother-in-law were responsible for her burning. PW17 ASI Bachan Singh, Investigating Officer had earlier recorded the dying declaration Ex.PW17/A wherein she had stated that she was married about 3 years back and she never had any quarrel with her husband. She further stated that while she was putting kerosene oil in the stove for heating the water, by accident, the oil fell down which resulted in sudden fire. When she raised an alarm, the neighbours came there and put off the fire by putting a blanket on her. Her said statement is Ex.PW17/A (/Ex.PW14/DA). ASI Bachan Singh appended his endorsement Ex.PW5/A on the aforesaid dying declaration Ex.PW6/A and sent it to the police station for the registration of the case.

4. ASI Bachan Singh returned back to the spot of occurrence after recording the statement of the deceased. On inspection of the spot, he found an oil stove Ex.P1, a plastic can slightly burnt having some kerosene oil Ex.P2, a half burnt matchbox and some burnt matchsticks Ex.P3, some burnt pieces of saree Ex.P4 and a half burnt blanket which he seized vide seizure memos Exhibits PW12/A to Ex.PW12/E respectively. On 19th April 93, after recording of dying declaration of the deceased by the SDM, he arrested the appellant Jai Devi as well as her co-accused persons Raj Kumar and Shiv Kumar. On 20th April 93, information of death of the deceased Archana was received through Duty Constable at the hospital which was recorded as DD No. 10A. ASI Bachan Singh, on receipt of said information went to the hospital and conveyed the information to the area SDM with the request to hold the inquest proceedings. The SDM conducted the inquest proceedings and, thereafter, the FIR was converted into a case of murder. The dead body was sent for post mortem and after the post mortem, the dead body was entrusted to the father of the deceased against the receipt Ex.PW17/C. On completion of formalities of investigation, a challan under Section 498A/302 IPC read with Section 34 IPC was submitted against the appellant as well as her two sons Shiv Kumar and Raj Kumar.

5. The appellant Jai Devi and her co-accused Shiv Kumar and Raj Kumar were charged for the offences punishable under Section 498A IPC read with Section 34 IPC and Section 302 IPC read with Section 34 IPC. All the three accused pleaded innocence and claimed to be tried.

6. In order to bring home the guilt of the appellant, prosecution has examined 17 witnesses in all. PW1 Om Prakash and PW2 Sanjay Kumar are father and brother of the deceased respectively. They have not supported the case of the prosecution in respect of any dowry demand or harassment or torture meted out to the deceased by the appellant or her other two co-accused persons.

7. PW3 Navneet is the husband of the appellant. According to him, on 18th April 93 at around 11:00 am, he was present on the terrace of his floor. On hearing the shrieks, he went upstairs and saw the deceased aflame. He covered her with a blanket to extinguish the fire and raised alarm. His neighbour Hari Om came on

hearing the alarm whom he sent to call his son from the Kerosene Depot. Shiv Kumar came along with Hari Om and took the deceased to GTB Hospital. He has deposed that at the relevant time, neither Shiv Kumar nor Raj Kumar were present at the house. PW4 Hari Om has also deposed to the similar effect.

8. PW6 Shri B.P. Singh is a material witness. He was working as Executive Magistrate at the relevant time. He has stated that on 19th April 93, on the instructions of the SDM, Shahdara conveyed through ASI Bachan Singh, he visited GTB Hospital at around 12:00 in the afternoon. The doctor declared the deceased fit for making the statement, so he recorded her dying declaration in question-answer form. He has proved the dying declaration Ex.PW6/A.

9. PW8 Dr. N.K. Aggarwal is the Autopsy Surgeon. He conducted post mortem examination on the body of the deceased. He has deposed that on examination, he found superficial to deep burns covering 100% of the body surface area with blisters with serous fluid present at places. He has proved his report as Ex.PW8/A. He opined that in the absence of any chemical analysis report of viscera, the cause of death was toxemia as a result of ante mortem superficial to deep burns covering 100% body surface area.

10. PW9 Dr. T. Gupta, CMO, GTB Hospital claims to have attended to the deceased at the Casualty of GTB Hospital. He has proved the MLC of the deceased prepared by him as Ex.PW9/A. As per the MLC, the deceased was brought to the hospital by her husband Shiv Kumar Goswami on 18th April, 93 at about 11:15 am and it is recorded in the MLC that the deceased was brought with the history of 'burn by falling kerosene from stove'. Dr. T. Gupta, in his cross-examination, admitted that the history recorded in the MLC Ex.PW9/A was given by the patient herself.

11. PW-17 ASI Bachan Singh is the Investigating Officer. He has deposed that on the receipt of DD No. 4A, he went to the spot where he found that the deceased had been taken to the GTB Hospital. Thus, he went to the GTB Hospital and collected the MLC of the deceased who was declared fit for statement and recorded her statement Ex.PW17/A, wherein the deceased had given the cause of her burns as accidental fire. He also stated that from the hospital, he came back to

the spot where he found one oil stove, half burnt oil woollen blanket, some burnt pieces of saree, a slightly burnt plastic can containing some kerosene oil and a half burnt matchbox and some burnt matchsticks which he seized vide separate memos Ex.PW12/A to Ex.PW12/E. He also deposed that he informed his senior officers and SDM about the incident. The SDM concerned visited the hospital at 5:00 pm but the patient was declared unfit for making the statement at that time. On 19th April 1993 at around 12:00 noon, patient was fit for statement so the SDM was called. In place of area SDM, Shri B.P. Singh, Executive Magistrate reached hospital at around 12.00 noon and he recorded the statement Ex.PW6/A. He appended his endorsement Ex.PW5/A on the said statement and sent it to the police station for the registration of the case. He also deposed about sequence of the investigation conducted by him.

12. Since Shiv Kumar and Raj Kumar have been acquitted on both the counts, there is no need to discuss their defence. The appellant Jai Devi when examined under Section 313 Cr.P.C. denied the prosecution evidence. She claimed that she has been falsely implicated by the police and the deceased actually died because of accident as she caught fire while working on the oil stove. No witness in defence was examined by her.

13. On appreciation of evidence, the learned trial Judge acquitted accused Shiv Kumar and Raj Kumar on both the counts. He, however, convicted the appellant Jai Devi for the offence of murder under Section 302 IPC but she was acquitted of charge under Section 498A IPC for lack of evidence.

14. Learned Counsel for the appellant has challenged the impugned judgment on several counts. His first criticism to the impugned judgment is that the learned Trial Court has erred in relying upon the dying declaration Ex.PW6/A purported to have been recorded by the Executive Magistrate Shri B.P. Singh(PW6) in the afternoon of 19th April 93 ignoring the fact that prior to the said dying declaration the deceased had also made two dying declarations, one in presence of Dr. T. Gupta (PW9) in the form of history of the cause of burns suffered by her on the MLC Ex.PW9/A and the other made in presence of the Investigating Officer in the form of her complaint statement Ex.PW17/A wherein she claimed to have sustained the

burn injuries because of accidental fire while heating water on the stove. Learned Counsel submitted that in absence of any other evidence on record, with there being two dying declarations, one implicating the appellant and other exonerating him, the learned Trial Court ought to have extended the benefit of doubt to the appellant. In support of this contention, learned Counsel for the appellant has relied upon the judgment in the matter of Chinnamma v. State of Kerala 2004(1) JCC 527.

15. The second submission of learned Counsel for the appellant is that the learned Trial Court has erred in treating the dying declaration purportedly made in the presence of Shri B.P. Singh (PW6) as proved on record. In support of this contention, he has pointed out that Ex.PW6/A is not the original statement and there is no explanation forthcoming as to where the original dying declaration has gone.

16. Learned Counsel also challenged the veracity and credibility of the dying declaration Ex.PW6/A on the ground that admittedly the deceased had sustained 100% superficial to deep burns in the morning of 18th April 93 and the statement Ex.PW6/A was purportedly recorded by the SDM on 19th April 93 in the afternoon at around 12:00. During said period, the deceased must have been given some treatment including the antibiotics and pain relieving injections. He submitted that from the MLC Ex.PW9/A, it is apparent that the deceased was advised injection Pathadine 100ml and injection Phenargan 50mg, which injections do have sedative effect and sometimes, as an after effect of such injections, the patient becomes dazed and sleepy and goes into stupor. Therefore, before acting upon the dying declaration Ex.PW6/A, it was obligatory for the learned trial Judge to have satisfied himself whether the patient was fit for making statement at the time when Shri B.P. Singh, PW6 recorded her statement. Learned Counsel drew our attention to the dying declaration Ex.PW6/A and submitted that from this dying declaration, it is not clear if the Executive Magistrate before recording the statement of the patient sought a clearance from the treating doctor that the deceased was fit for making statement. He also submitted that the dying declaration Ex.PW6/A is not even attested by the attending doctor or the attending nurse, which makes the dying declaration suspect, particularly when this purported

dying declaration Ex.PW6/A is inconsistent, rather contradictory to the earlier dying declarations made by the deceased. Thus, he has urged us to hold that the dying declaration Ex.PW6/A is not reliable and accept the appeal.

17. Learned Counsel for the State, on the other hand, has canvassed in favour of the impugned judgment. He has submitted that the purported dying declaration Ex.PW17/A of the deceased is a fabricated document, which is apparent from the evidence on record. In support of this contention, he has submitted that perusal of the testimony of PW17 ASI Bachan Singh as also the testimony of PW6 Shri B.P. Singh, Executive Magistrate makes it clear that when the Executive Magistrate reached at the hospital to record the statement of the deceased, PW17 ASI Bachan Singh was present but he did not tell the Executive Magistrate about purported dying declaration Ex.PW17/A of the patient recorded by him. This conduct of PW17 ASI Bachan Singh is highly unnatural because, under the natural course of circumstances, he being the Investigating Officer of the case, was expected to apprise the Executive Magistrate about the earlier statement made by the deceased in his presence. Secondly, he has submitted that if the dying declaration Ex.PW17/A or the history recorded on the MLC Ex.PW9/A is to be believed, then the deceased had suffered burn injuries due to accidental fire because of spilling of kerosene oil from the stove while heating water on the stove. In that eventuality, it is highly improbable, rather impossible, that the kerosene oil could have reached the hair of the deceased. Learned Counsel has pointed out that as per the testimony of PW12 Constable Prem Chand and PW17 ASI Bachan Singh, the Autopsy Surgeon handed over a wooden box sealed with the seal of CMO containing viscera of the deceased along with a parcel containing hair of the deceased, which were sent for analysis to CFSL and as per the report of CFSL Ex.PX, the sample hair of the deceased on analysis showed the presence of kerosene, which rules out any possibility of the deceased having sustained burn injuries accidentally as stated in Ex.PW17/A and the MLC. Thus, he has submitted that dying declaration Ex.PW17/A is a fabricated document and is not the true declaration of the deceased.

18. As regards the reliability of the dying declaration Ex.PW6/A, learned Counsel for the State submitted, that it was recorded by Shri B.P. Singh PW6, the then

Executive Magistrate, who is an independent witness having no reason or motive to falsely implicate the appellant. He has submitted that it is not always, that the patient suffering from 100% superficial to deep burns of the body surface area cannot speak or make a coherent declaration about the reason for the injuries sustained by them. He also submitted that perusal of the MLC Ex.PW9/A would show that in the MLC, there is an endorsement by Dr. Gyanesh Gupta declaring the patient 'fit for statement?' on 19th April 93 at 12:00 noon, which is a clear indication that on the relevant day, the patient was fit for making statement at least at 12:00 noon when, as per the version of PW6 Shri B.P. Singh, he reached the hospital. He has pointed out that even in the dying declaration Ex.PW6/A the Executive Magistrate is categorical that on the report of doctor that 'the patient is fit for statement' he recorded the statement in question-answer form. Thus, learned Counsel for the State has submitted that there is no reason to suspect the credibility of the dying declaration relied upon by the learned trial Judge. As regards the argument that the original dying declaration has not been placed on record, learned Counsel for the State submitted that it could not be placed on record as the same was not traceable. However, he pointed out that Ex.PW6/A is a carbon copy of the dying declaration, which has been prepared in the same process and it even bears the thumb impression of the deceased at point 'A?'. Therefore, it is as good as the original dying declaration, which fact also gets confirmed from the endorsement Ex.PW5/A recorded by the Investigating Officer at the back of this dying declaration before sending it to the police station for the registration of the case. Learned Counsel for the State has thus summed up his contention that the learned trial Judge has rightly convicted the appellant on the strength of the dying declarations Ex.PW6/A of the deceased, which cannot be suspected.

19. We have considered the rival contentions and perused the material on record. As per the learned Counsel for the State, there are only two dying declarations on the record namely Ex.PW17/A, purported to have been made in presence of the Investigating Officer and Ex.PW6/A, purported to have been made in presence of the Executive Magistrate Sh. B.P. Singh, whereas learned Counsel for the appellant has submitted that there is a third dying declaration also which was made in presence of PW9 Dr. T.Gupta in the form of history given by the patient at

the time of preparation of the MLC. Perusal of the MLC Ex.PW9/A reveals that as per the MLC, the patient was brought to GTB Hospital on 18th April 93 at around 11:50 am by her husband Shiv Kumar Goswami. Although the MLC records 'H/o of burns by falling kerosene from stove', there is no mention in the MLC as to who gave the above history to Dr. T.Gupta. Learned Counsel for the appellant has drawn our attention to the cross-examination of Dr. T.Gupta wherein he stated 'It is correct that the patient gave the history of burn by falling kerosene from stove'. In view of the said admission by PW9, learned Counsel for the appellant has urged us to conclude that the said history was given by the deceased herself and therefore, it falls within the definition of a dying declaration given by the deceased.

20. We are not convinced with the contention of learned Counsel for the appellant. The MLC of the deceased was prepared on 18th April 93 and Dr. T. Gupta was examined about 21/2 years later on 12th October 95. The record of the MLC does not indicate as to who gave the history at the time of admission of the deceased in GTB Hospital. It is highly improbable, rather impossible that Dr. T. Gupta, who must have attended to hundreds of patients in the casualty of GTB Hospital during the intervening period of 21/2 years, could have remembered that in the instant case who gave the history of the injuries sustained by the deceased. Thus, his aforesaid version is totally unreliable and the history detailed in Ex.PW9/A cannot be treated as dying declaration given by the deceased.

21. Now, we are left with two dying declarations of the deceased namely Ex.PW17/A made in presence of the Investigating Officer and Ex.PW6/A made in presence of the Executive Magistrate. These dying declarations are contradictory to each other. As per dying declaration Ex.PW17/A, which is prior in time, the deceased had stated that she had suffered accidental burns because of spilling of oil while heating water on the stove whereas as per the dying declaration Ex.PW6/A, the deceased had squarely blamed the appellant for setting her on fire after pouring kerosene on her. Learned Counsel for the appellant has submitted that since there are two inconsistent dying declarations and the first one i.e. Ex.PW17/A speaks of accidental burns, the Trial Court ought not to have relied upon dying declaration Ex.PW6/A and the benefit of doubt ought to have been extended to the appellant. On the other hand, learned Counsel for the State has

submitted that dying declaration Ex.PW17/A is not the correct version of the deceased and it appears to have been fabricated by the Investigating Officer in connivance with the accused person. Expanding on the argument, learned Counsel for the State contended that in this case, hair sample of the deceased were preserved and sent for analysis to CFSL and on physico' chemical examination, traces of kerosene oil were found in the hair, which could not have been possible if the deceased had accidentally suffered fire burns while heating water on the stove, as narrated in the statement Ex.PW17/A. Thus, he has urged us to reject the purported dying declaration Ex.PW17/A.

22. In order to appreciate the above contention of the parties, it is necessary to have a look at the dying declaration Ex.PW17/A. The relevant part of the dying declaration records 'aaj mein stove par chadar dhone ke liye pani garam kar rahi thi, stove par tael dal rahi thi ki tael stove se bahar gir gaya, jisse aag lag gayi thi, jab mein chillayee toh padosiyon ne aa kar mujhe kambal dal kar aag bhujayee hai, isme kisi ka koi dosh nahi hai'. If the aforesaid version in the dying declaration is to be believed, then the deceased had died accidental death due to fire burns as a result of spilling of the oil while filling the oil tank of the stove. In that eventuality, there could have been no possibility of the kerosene oil being found on the hair of the deceased whereas as per the CFSL report, the hair sample of the deceased, on analysis, gave positive test for presence of kerosene residue. Thus, the cause of the fire burns resulting in death as narrated in the purported dying declaration Ex.PW17/A is an impossibility. Further, perusal of the record reveals that the FIR in this case was recorded on the basis of the dying declaration of the deceased Ex.PW6/A, which was sent to the police station alongwith the endorsement of the Investigating Officer ASI Bachan Singh Ex.PW5/A. A perusal of Ex.PW5/A reveals that in this endorsement, the Investigating Officer, while detailing brief facts has not made any mention of the dying declaration Ex.PW17/A made in his presence by the deceased. This circumstance also leads to an inference that when Ex.PW6/A was recorded, by that time Ex.PW17/A was not in existence and there is a possibility of fabrication of aforesaid dying declaration. Further, PW6 B.P. Singh, the then Executive Magistrate, who recorded dying declaration Ex.PW6/A when asked in his cross-examination stated that he does not know whether any other statement of the deceased was recorded prior to recording of dying

declaration of Ms. Archana by him. He also admitted in the cross-examination that Investigating Officer ASI Bachan Singh remained present with him during the period in which he remained in the hospital. In latter part of the cross-examination, the witness further stated that the Investigating Officer did not tell him regarding any earlier statement given by the deceased to him. From this version of the Executive Magistrate, it is apparent that no dying declaration was made by the deceased in presence of ASI Bachan Singh. Had she made the statement Ex.PW17/A in presence of ASI Bachan Singh, under the natural course of circumstances, he definitely would have informed the Executive Magistrate that the deceased in her earlier statement had claimed that she suffered accidental fire burns. One could argue that perhaps the subsequent statement Ex.PW6/A was the result of pressure or tutoring by someone but this is not a possibility because PW1 Om Prakash, father of the deceased and PW2 Sanjay Kumar, brother of the deceased have not supported the prosecution case, which imply that they were not nursing any grudge against the appellant, as such, any possibility of the family members of the deceased having tutored her is ruled out. There is nothing on the record to suggest a possibility of anyone else having tutored or pressurised the deceased to implicate the appellant and her two sons. Thus, we are of the view that dying declaration Ex. PW17/A has been rightly rejected by the learned Trial Judge as a possible handiwork of the Investigating Officer in collusion with the accused persons.

23. The next criticism to the impugned judgment is that the trial court has erred in treating the dying declaration Ex.PW6/A as proved on record, ignoring the fact that the original dying declaration which was admittedly recorded in the hand writing of the Executive Magistrate has not been placed on record. It is true that the original dying declaration which was recorded by the Executive Magistrate has not been placed on record. Ex.PW6/A is a carbon copy of the dying declaration which obviously has been prepared contemporaneously in the same process. On perusal of Ex.PW6/A, it transpires that it bears the original thumb impression of the deceased and once this document has been thumb marked by the deceased. Thus, in our considered view, it is as good as the original document and it cannot be termed as secondary evidence. Further, on perusal of the reverse side of Ex.PW6/A, it transpires that on this there is a hand written endorsement Ex.PW5/A

of ASI Bachan Singh, which as per the version of PW17 ASI Bachan Singh was appended by him on the dying declaration Ex.PW6/A before sending it to the police station for the registration of the case under Section 498A/307/34 IPC. This circumstance clearly shows that Ex.PW6/A is the actual statement made by the deceased in the presence of Executive Magistrate which was sent to the police station for the registration of the case. Thus, we have no reason to disbelieve the explanation given by ASI Bachan Singh in his cross-examination that he had given the hand written dying declaration to the Executive Magistrate. If that document has somehow got misplaced, it cannot be taken as a circumstance to discard the dying declaration Ex.PW6/A which has been properly proved by PW6 Shri B.P. Singh, Executive Magistrate, in his testimony in the Court.

24. The next submission on behalf of the appellant is that a careful look on the dying declaration Ex.PW6/A would show that the ridges of the purported thumb impression of the deceased at point 'A' on the dying declaration Ex.PW6/A are clearly visible which is an impossibility in view of the medical evidence. Learned Counsel contended that as per MLC Ex.PW9/A and post mortem report Ex.PW8/A and also the testimony of the Autopsy Surgeon, the deceased had suffered superficial to deep burns all over her body covering 100% of the body surface area. If that is to be believed, then obviously the skin of the right thumb of the deceased must have been totally burnt and in that eventuality, it is highly improbable that the ridges of the thumb impression of the deceased could have been visible.

25. We are not convinced with the above argument. The observation of the doctor that the deceased had suffered superficial to deep burns present all over the body covering 100% of the body surface area does not mean that the entire body of the deceased was burnt due to fire. We may also note that the dying declaration Ex.PW17/A relied upon by the appellant also has thumb impression of the deceased with visible ridges. This clearly indicates that the skin on the inner side of the thumb of the deceased was not burnt or peeled off.

26. Learned Counsel for the appellant has further submitted that though there is no bar upon the Court to base conviction on the strength of dying declaration

without corroboration but the rule of prudence demands that before acting on a dying declaration, the Court must satisfy itself that the dying declaration is true and voluntary and is not the result of tutoring, prompting or imagination of the deceased. In the light of aforesaid legal proposition, learned Counsel for the appellant has submitted that the trial court has erred in relying upon the dying declaration Ex.PW6/A, ignoring the fact that the deceased had suffered 100% superficial to deep burns all over the body surface area and therefore she could not possibly have been in a position to make a clear and coherent dying declaration. He further pointed out that from the MLC Ex.PW9/A, it is apparent that the deceased was advised injection Pathedine 100 mg and injection Phenargon 50 mg as a line of treatment. Learned Senior counsel submitted that Pathedine and Phenargon are sedative and these medicines do have an impact on the mental capacity of the patient and have the potential to make them sleepy and in some cases, the patient, on intake of such injections can go into stupor. Learned Counsel further submitted that admittedly the purported statement Ex.PW6/A of the deceased was recorded by the SDM in the afternoon of 19th April 93 and by then she must have been administered sedatives, therefore, a possibility cannot be ruled out that she was not in a fit state of mind to give a coherent dying declaration to the SDM. He also added that the aforesaid doubt is further compounded by the fact that the Executive Magistrate Shri B.P. Singh admittedly did not obtain a certification from the doctor that the patient was fit for making statement before proceeding to record her statement.

27. We do not find any substance in this contention. PW6 Shri B.P. Singh, Executive Magistrate has categorically stated in his examination-in-Chief that he reached GTB hospital on 19th April 93 at around 12:00 noon and found that the concerned doctor had certified the patient to be 'fit for statement'. His aforesaid version finds corroboration from the endorsement Ex.PX of doctor Gyanesh Gupta on the MLC Ex.PW9/A wherein he has certified the patient to be 'fit for statement' and this certification is timed at 12 noon. Even in the cross- examination, in response to a specific query by learned Counsel for the accused, Shri B.P. Singh stated that 'I had simply enquired from the doctor as to whether she was in position to give a statement but I have not asked from the doctor as to whether Pathadine injection was given to Archana and if so, when?' From this reply also, it

is clear that the Executive Magistrate, before recording the dying declaration of the deceased, had consulted the doctor and after getting confirmation about her fitness to make a statement, he proceeded to record the dying declaration Ex.PW6/A which is in question-answer form.

28. On careful scrutiny of the questions put by the SDM and the answers given by the deceased in the dying declaration, one can easily make out that the deceased was in a fit state of mind to understand the nature of questions and give clear and coherent replies to the questions. Shri B.P. Singh PW6 is a public servant who had no axe to grind with the accused persons or the family of the deceased. Thus, we find no reason to suspect his testimony or to doubt the correctness of the dying declaration Ex.PW6/A recorded by him.

29. Lastly, it is argued on behalf of the appellant that the appellant along with her two co-accused persons Shiv Kumar and Raj Kumar was put to trial for the charges under Section 498A IPC read with 34 IPC and Section 302 IPC read with Section 34 IPC. The learned trial Judge, on conclusion of trial, which was based upon the dying declaration, has found the appellant guilty of charge under Section 302 IPC whereas he has acquitted her co-accused persons of the same charge. This means that the learned trial Judge has found the dying declaration of the deceased Ex.PW6/A unreliable so far as accused Shiv Kumar and Raj Kumar are concerned and found it reliable as against the appellant. Learned Counsel submitted that the aforesaid approach adopted by the learned trial Judge is against the canons of criminal jurisprudence. Thus, he has strongly urged that since the co-accused persons of the appellant have been acquitted, on the principle of parity the appellant may also be extended the same benefit.

30. The above argument of learned Senior Counsel is misconceived. Section 32 of the Indian Evidence Act deals with the cases in which statement of relevant fact by a person who is dead or cannot be found, etc. is relevant. Section 32(1) of the Act deals with dying declarations, which is reproduced thus:

32. Case in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of

giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases -

(1) When it relates to cause of death - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

31. A bare reading of aforesaid provision would show that when a person is dead only that part of his statement which relates to the cause of his death or as to any of the circumstances or transactions which resulted in his death is relevant in cases in which the cause of death of said person comes into question.

32. On perusal of the dying declaration Ex.PW6/A, it transpires that the deceased had stated about the cause and manner in which she sustained the fatal burn injuries in response to Question No. 5 put to her by the Executive Magistrate. In question No. 5, the Executive Magistrate asked the deceased 'how did you suffer the fire burns? Whether someone set you on fire or you have burnt yourself?' In response to that question, the deceased stated 'in the morning of 18.4.93, my mother-in-law Jai Devi quarrelled with me and gave me beating and she poured kerosene oil on me and set me on fire as a result of which I had suffered the burns.' She went on to say that her younger brother-in-law wanted to sexually exploit her and that her husband Shiv Kumar, her brother-in-law Raj Kumar and her mother-in-law Jai Devi used to harass and taunt her for bringing insufficient dowry. The learned trial Judge, on analysis of the statement, has taken only that part of the statement of the deceased which referred to the immediate circumstances which had led to her suffering the fatal burn injuries, as dying declaration and since the deceased had implicated only the appellant for throwing kerosene oil on her and setting her on fire, the learned Trial Judge acquitted the other two accused persons of the charge under Section 302 IPC on the premise

that the subsequent part of the statement wherein she made reference to Shiv Kumar and Raj Kumar did not fall within the definition of dying declaration. Thus, in our view, the case of the appellant vis-a-vis the other two accused persons is on entirely different footing.

33. In view of our discussion above, we are of the view that the learned trial Judge has rightly relied upon the dying declaration Ex.PW6/A to convict the appellant for the offence punishable under Section 302 IPC for committing murder of the deceased Archana.

34. The appeal is accordingly dismissed.

35. The appellant is on bail. She be taken into custody to undergo the remaining period of her sentence.

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