

Naresh Kumar Vs. Kalawati and ors.

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Court : Delhi

Decided On : Aug-25-2011

Judge : Suresh Kait, J.

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

Appeal No. : Crl Rev. P.No.138/1996

Appellant : Naresh Kumar

Respondent : Kalawati and ors.

Advocate for Def. : Mr.Ramesh Gupta; Mr.Sunil Sethi, Advs.

Advocate for Pet/Ap. : Mr.Rajender Singvi; Mr.K.L.K. Gautam, Advs.

Judgement :

1. Vide the instant petitioner the petitioner has challenged the judgment dated 30.11.1995 passed by the learned Additional Sessions Judge whereby, both the accused persons were acquitted for the offence under Section 498A/302/34 Indian Penal Code, 1860, in case FIR No.439/1991, Police Station Hari Nagar, by giving them benefit of doubt.

2. Being aggrieved by the aforesaid judgment of the Trial Court, petitioner has filed the instant revision petition before this Court. The same was disposed-of vide

order dated 12.09.2001 without going into any of the grounds because of the fact that none appeared on behalf of the petitioner. With the help of Id. amicus curie, the instant petition was dismissed.

3. Being aggrieved by the aforesaid order of this Court, the petitioner challenged the same before the Hon'ble Supreme Court by filing a Special Leave Petition. The Supreme Court vide its order dated 25.02.2009 had set aside the order passed by this Court and remitted the matter back for a fresh disposal in accordance with law.

4. I note that in the matter, before the Trial Court, there were two accused persons, one was Jethani (sister in law) of the deceased and another was the husband of the deceased. The present revision petition has been filed by brother of the deceased, on whose complaint the FIR was registered.

5. Vide judgment dated 30.11.1995, the Trial Court, after going through the evidence and the submissions of the counsel, acquitted both the accused persons.

6. The brief facts of the case are that; On 17.09.1991 deceased Rekha Rani Jain was admitted in Safdarjung Hospital in burnt condition. She made statement in the presence of ASI Lal Singh and the said statement was attested by Dr. Anant Sinha. The occurrence was reported by Constable Sushil Kumar on 17.09.1991, who was posted as Duty Constable at Safdarjung Hospital. He gave the information to the PCR. The said information was transmitted to police station, on receipt of the information; ASI Lal Singh went to Safdarjung Hospital, where, he recorded the statement of Smt. Rekha Rani Jain. On her statement, case was registered against both the aforesaid accused persons.

7. During investigation, statements of witnesses were recorded. Smt. Rekha Rani Jain was medically examined however; she succumbed to her injuries on 18.09.1991. Shri HC Gaur, SDM was also contacted for recording the statement of Smt. Rekha Rani Jain. He reached Safdarjung Hospital at 11:15 PM on that day, by that time Smt. Rekha Rani Jain expired at 11:00 PM on that day. After the investigation and completion of the formalities, challan against the accused persons under Section 498A/302/34 IPC was filed.

8. The prosecution examined as many as 25 witnesses in support of its case. PW-14 and PW-17 were given up by the prosecution.
9. PW-20 Ct.Sushil Kumar was posted as duty constable at Safdarjung Hospital on 17.09.1991 gave the information to the PCR.
10. PW-13 SI Pishori Lal of PCR informed the SHO, police station Hari Nagar about the admission of the injured.
11. PW-12 HC Surender Pal who was posted at police station Hari Nagar, on 17.09.1991, as Wireless Operator. He received the wireless message and recorded the message in DD No.22A.
12. PW1 HC Daya Kishan, duty officer at police station Hari Nagar received wireless message at 06:05PM about the information of injured Smt.Rekha Rani Jain with 95% burn injuries. He informed SHO, police station Hari Nagar, the same was recorded in DD No.22A. The same has been proved by this witness as Ex.PW1/A.
13. On the same day, at night about 09:30PM, ASI Lal Singh sent rukka to the police station, through Constable Ravinder Kumar. On the basis of which formal FIR Ex.PW1/C was got recorded by him. He also recorded DD No.62B at about 11:45PM, regarding the death of Smt.Rekha Rani Jain.
14. PW-25 ASI Lal Singh took over the investigation on receipt of DD No.22A. He reached Safdarjung Hospital and collected the MLC of the injured Smt. Rekha Rani Jain. She was declared fit to make statement by Dr. Anant Sinha, thereafter, recorded the statement of the injured which is Ex.PW19/D. He reached at the place of occurrence along with SHO at H.No.BE-253, Hari Nagar, New Delhi.
15. Crime team and the photographer were found present; at the place of occurrence photographs and the statement of Smt. Rekha Rani Jain was sent to the police station with endorsement Ex.PW1/B.
16. Site plan Ex.PW25/A was prepared at the spot. From the place of occurrence two-three burnt match sticks, one match box containing match sticks, some broken

bangles, and two pieces of cloth smelling kerosene oil with the help of cotton at the spot, burnt paint from inside the door were taken into possession. They were sealed in separate parcels. Statement of Babu Lal and Joginder Lal were also recorded, which are exhibited as Ex.PW25/B and Ex.PW25/C.

17. The inquest proceedings were conducted by the SDM on the dead body of deceased Smt. Rekha Rani. In cross-examination, by Id. counsel for accused, Mr. R. K. Naseem, he had admitted to have collected the MLC from the burn ward and not from the casualty ward. This witness has also deposed that he did not remember whether he had obtained the certificate of fitness for making statement by the deceased on the MLC or on any other document, however, he has admitted that the certificate of fitness was given by Dr. Anant Sinha. He has also admitted that the doctor who gave certificate of fitness for statement was also present at the time recording of dying declaration. He had admitted that the endorsement Ex.PW25/DB was not by Dr. Anant Sinha, but by some other junior resident doctor. He has also admitted that the endorsement at point A on Ex.PW19/D was not by the doctor who had written the endorsement Ex.PW25/DB.

18. PW-16 is Constable Satish Kumar, who reached at the spot with photographer and took the photographs of the place of occurrence. He stated that due to some defect in the camera, those photographs could not have been developed and the negatives were washed out.

19. PW-10 W/ASI Rajender Kaur had associated with the IO of the case. She went along with the SHO to the house of accused Kalawati, wherefrom, she was arrested. On interrogation and she made disclosure statement Ex.PW10/B. They recovered canni Ex.P10 containing the kerosene oil on the instance of accused Kalawati. In the cross-examination, she has admitted that the house in which the occurrence took place was surrounded by other residential houses and other family members.

20. PW-23 Shri HC Gaur, SDM, having jurisdiction of police station Punjabi Bagh, received the information on 17.09.1991 from the SHO, police station Hari Nagar. He deposed that he reached at burn ward of Safdarjung Hospital at 11:15 PM, but the patient had already expired at about 11:00PM. He had testified that Smt.

Rekha Rani had given the statement to the doctor on duty and the doctor examined the dead body physically in ward No.22, Bed No.20 of Safdarjung Hospital. He conducted the inquest proceedings and proved the facts given by him as Ex.PW23/A. He recorded the statement of Smt. Chander Kali Jain, elder sister of the deceased, which is Ex.PW4/A. The same was endorsed by him as Ex.PW23/B, so the case was ordered to be converted to Section 302 Indian Penal Code, 1860 and direction was given to the SHO to investigate the case further.

21. In the cross-examination, he has specifically denied that the statement of the deceased was not recorded by Dr. Anant Sinha in his presence, but it was told to him that Dr. Anant Sinha had recorded the statement of the deceased, which might have told by Smt. Chander Kala Jain and Naresh Jain.

22. PW-19 is Shri Narinder Pal Singh, Record Clerk of Safdarjung Hospital New Delhi. He brought the record of MLC Ex.PW19/C, which he has identified to be in the handwriting of Dr. Anant Sinha along with the death summary Ex.PW19/B and death report Ex.PW19/C. He also testified the statement Ex.PW19/D attested by Dr. Anant Sinha.

23. In cross-examination, he has denied that all these documents were signed or attested in his presence.

24. PW-24 Inspector V.P.S. Rana, the then SHO, police station Hari Nagar took over the investigation on 18.09.1991. He interrogated accused Kalawati and he gave directions to SI Dharampal for investigation under his supervision.

25. PW-21 SI Dharam Pal, who interrogated accused Kalawati in the presence of SHO and W/ASI Rajinder Kaur. Accused Kalawati made disclosure statement, wherein she admitted that she was not happy with her Devrani Smt.Rekha Rani Jain. On 17.09.1991 when Rekha was preparing tea in the kitchen, she poured kerosene oil on her and lit fire with a matchstick and closed the door thereafter. She further disclosed that she could get recovered the 'canni from which the kerosene oil was thrown from the 'perchhatti of the house.

26. In the cross-examination, he had denied the suggestion that the 'can' containing the kerosene oil was planted upon the accused during investigation.

27. PW-9 was Dr. Arvind Thergaonkar, Safdarjung Hospital, New Delhi, who conducted the post mortem on the dead body of Smt. Rekha Rani Jain on 18.09.1991 and found the following injuries on her person:-

External Examination:-

"1. Cut down wound (surgical) was present on lower end of right leg;

2. Dermo epidermal burns, superficial to deep in nature present all over the body except front of lower abdomen and pubic region. The total percentage of burn area was about 95%. The area of blackening of skin was present on face and front of chest. The area of redness was present on front of thighs and front of both fore-arms. Hair burnt and singed on scalp eye brows, eye lashes and axillae. The pubic hairs were intact. Blisters were seen on front of thighs. The smell of kerosene was present on scalp hair and were preserved and sent for CFSL examination. No marks of violence/signs of struggle were seen on the body.

Internal Examination:-

Scalp, skull and brain, no effusion of blood was seen the scalp. Skull, vault and base show no fracture. Brain was congested. Neck and thorax trachea showed soot particles, neck structures were intact. Lungs were congested. Heart N.A.D. Abdomen and pelvis stomach was empty. Liver, spleen, kidneys all were congested. Bladder, pelvis, N.A.D. Uterus was empty."

The doctor who conducted the post mortem has opined the death was due to shock consequent upon about 95% ante-mortem burns. Time of death was about 13 hours. He proved his report as Ex.PW9/A.

28. PW-22 is Inspector Devender Singh of Crime Branch, who proved the scaled site plan Ex.PW22/A.

29. PW-7 Shri Babu Lal & PW-8 Shri Jogender Pal are the neighbours of accused Kalawati and Mahipal. The both the aforesaid witnesses have not been supported

the case of the prosecution. They were declared hostile by the Additional Public Prosecutor. Their evidences are of no use either to the prosecution or to the accused persons.

30. Now, I shall discuss the relevant witnesses. PW-3 Smt. Kamla Devi, who is the mother of the deceased Rekha Rani, has deposed that her daughter was married to accused Mahipal about 03 years ago. Whenever her daughter came to her house, she complained about her husband Mahipal having illicit relations with his Bhabi, but every time her daughter was advised that everything would be settled in due course. Further stated that the accused Mahipal, husband of the deceased used to taunt and demand for more dowry. Her daughter used to tell her that she had been given beatings several times at the instance of her Jethani. Her daughter was treated as obstacle between the relationship of Mahipal and Kalawati. Her daughter was killed by pouring kerosene oil by accused Kalawati, the Jethani of deceased.

31. In cross-examination of this witness it was revealed that deceased Rekha was the sister of PW-4 Smt. Chander Kali and had graduated from Delhi University; PW-4 was issue-less, so the deceased Rekha Rani was brought up by her. She also admitted that Rekha Rani was married of by her at Delhi, she also testified that her daughter was tensed due to the suspicion that the accused persons had illicit relations with each other. Her daughter had written letters about the relationship between the accused persons many a times, but no such letter was handed over to the police. She did not lodge any report to the police station or before any Court about the sexual relations of the accused persons.

32. PW-4 Smt.Chander Kali, who is the sister of Rekha Rani Jain (deceased), states that before marriage, Rekha Rani was living with her. This witness had deposed that deceased Rekha Rani used to complain about her Jethani accused Kalawati who used to abuse her and also complain about her husband Mahipal. Due to the behaviour of accused Kalawati, Rekha Rani was meted out bad behaviour and she was harassed. Rekha Rani was not happy with her in-laws and she used to tell her about the incidents in her in-laws house as and when she used to come to her. Further deposed that the statement of PW-4 Smt. Chander Kali

was recorded in the hospital by the SDM which is Ex.PW4/A. This witness has also stated that when she came to hospital to see her burnt daughter, she was told by gestures and by raising of her hands that she was burnt by her Jethani. Further stated that her Jethani had asked Rekha Rani to prepare tea and when she was doing that the accused Kalawati poured kerosene oil on her and lit a match stick, set her ablaze and closed the door of the kitchen. Further she deposed that she was informed about the burning of her sister by some neighbours on telephone.

33. This witness further stated that the accused Kalawati as well as accused Mahipal, husband of deceased used to make demand for dowry. It is stated that accused Mahipal had four brothers, whose names are Jai Kanwar, Maman Chand, who are elder to him. They are married and are living with their children. Mahipal has one younger brother, whose, name is Satish.

34. In cross-examination, she admitted that she visited the in-laws house of Rekha Rani only once, i.e., after 7-8 months of her marriage. Rekha Rani did not lodge any complaint about the ill-treatment received from the accused persons. She made only one complaint that accused Mahipal had illicit relationships with accused Kalawati and further made demand of dowry which made her sister mentally depressed. The statement made by her before the SDM Ex.PW4/A was not read over to her by the SDM. The statement got confronted by Id. counsel for the accused that the fact of demand for dowry has not been stated in the statement Ex.PW4/A. She further admitted in her cross- examination that this fact was not stated by her to the police that her sister Rekha Rani had told about the burning by her Jethani in which statement was recorded by the police at Safdarjung Hospital on 17.09.1991.

35. PW-6 Ram Niawas Jain was the mediator in the marriage of deceased Rekha Rani and accused Mahipal. He stated that marriage was performed with pomp and show and everything was given in the marriage. He stated that PW-5 Naresh Kumar told him that accused Mahipal was in criminal alliance with his Bhabi and it was also told to him that accused Mahipal had demanded Rs.10,000/-. He advised Naresh Kumar that by paying Rs.10,000/- Rekha could live a happy life. On 14.10.2009 he was called by Naresh Kumar at his house at Rohini where accused

Mahipal was also present there and in his presence Rs.10,000/- were paid to him by Naresh Kumar. Accused Mahipal had promised that he would now keep Rekha Rani happy. During December 1990, PW-5 Naresh Kumar again told him that Mahipal had demanded Rs.10,000/- more. During February 1991, accused Mahipal asked him to get Rs.10,000/- from Naresh Kumar to which he refused. Mahipal continued his demands and he used to harass deceased Rekha Rani.

36. In the cross-examination, he stated that he came to know about the burning of deceased on 18.09.1991. He had admitted that he was the brother-in-law of PW-5 Naresh Kumar. After coming to know about burning of deceased, on 18.09.1991, he and his wife did not visit the hospital but they went to Rohini to PW-5 Naresh Kumar. He had also asserted that PW-5 Naresh Kumar paid Rs.10,000/- in his presence to accused Mahipal at the house of PW-4 Smt. Chander Kali. When payment of Rs.10,000/- was made to accused Mahipal, PW-4 Smt. Chander Kali was also present. He had admitted that deceased Rekha Rani used to make complaints about the illicit relations of Mahipal and Kalawati. Due to this she was mentally perplexed. He had admitted that he never visited the in-laws of Rekha Rani nor had made any inquiry about the criminal alliance between accused persons. He had admitted that he did not witness this incident with his own eyes and that this information was given to him by others.

37. PW-5 is Shri Naresh Kumkar, who received the information on 17.09.1991, and along with his sister PW-4 Smt. Chander Kali reached Safdarjung Hospital. He deposed that they had spent more than their capacity in the marriage of deceased and that his sister used to make complains that her husband Mahipal was having illicit relations with the wife of his (Mahipal) elder brother and on making/raising objections; she used to get beaten up. It was also told that she was harassed for dowry and the demand of money was usually raised by accused persons. He further stated that his sister told him that she was a hurdle between both the accused persons and she had overheard talks between the accused persons that hurdle must be removed. His sister was burnt by the accused persons. On reaching the hospital, his sister told him before her death that she went to kitchen for preparing tea for the accused Kalawati and she poured kerosene oil upon her which was thrown from behind. The doors of the kitchen were closed from outside,

therefore, she got seriously burnt. She raised an alarm, but the doors were shut tight. His statement Ex.PW5/A was recorded. Even after the marriage of his sister, accused Mahipal demanded Rs.10,000/- as dowry which was paid to him in the presence of PW-6 Shri Ram Niwas Jain. Thereafter, Rs.10,000/- were again demanded, which was denied. On 14.10.1990, Rs.10,000/- were paid to accused Mahipal. He has stated that he is a partner in the business with his brother-in-law Mahabir Prasad Jain, at Delhi.

38. In the cross-examination, he has confirmed that the payment of Rs.10,000/- was made to accused Mahipal on 14.10.1990. On 17.09.1991, when, he reached the house of his sister Chander Kali, he came to know about this incident. He along with his brother-in-law Mahabir Prasad Jain went to the house where he met with the police. He and his sister PW-4 Smt. Chander Kali remained in the Safdarjung Hospital till 11:00 PM. He came to know about the relationship of accused Mahipal and accused Kalawati by his sister after 1½ month of marriage of deceased Rekha Rani Jain. He has ascertained in his cross-examination that this complaint was made to him by his sister Rekha Rani since the date of marriage and continued till her death. He did not lodge any complaint with the police about the harassment to his sister and demand of more dowry. He has also stated that his elder sister PW-4 Smt. Chander Kali Jain had no child of her own and also admitted that till the death of his sister Rekha Rani, she did not get impregnated. He had denied that his sister was examined by Vohra Nursing Home for pregnancy test or for test of some muscle piece for not being able to conceive. The suggestion has been denied by this witness that he was not present at Delhi on 17.09.1991 or 18.09.1991 and that fact of illicit relationship or demand of dowry or money is false.

39. PW-14 Inspector VPS Rana has conducted the investigation of the present case. He had deposed that on 17.09.1991 this case was registered under Section 307 IPC by PW-25 ASI Lal Singh and when the injured succumbed to her injuries at Safdarjung Hospital it was converted to Section 302 IPC. Accused Kalawati made disclosure statement Ex.PW10/B in which she stated about the occurrence and the 'canni containing kerosene oil was admitted by her and the 'canni admitted to have been kept on 'Perchatti of her house near latrine. She pointed out the

perchatti and the kanni which was recovered and taken into possession by the police vide memo Ex.PW10/C. He recorded statement of PW-5 Naresh Kumar Jain, and PW-3 Smt. Kamla Devi on 19.09.1991 and statement of PW-4 Smt. Chander Kali on 20.09.1991 and supplementary statement of PW-5 Naresh Kumar Jain on 20.09.1991.

40. This witness had admitted that he did not collect any additional evidence except the disclosure statement given by the accused. In fact he did not find any evidence. The kerosene oil kanni was lying on the perchatti and was visible while standing in front of perchatti and the same was taken out by the accused herself. There was no other article on the perchatti. As regards to the harassment and demand of dowry, he inquired about 10-12 persons from the locality, but nobody came forward to support the allegations.

41. The statements of the accused persons were recorded under Section 313 Cr.P.C. They have stated themselves to be innocent and falsely implicated by the police, but have not led any defence evidence.

42. Ld. counsel for accused argued before the Trial Court that the case of the prosecution was that Smt. Rekha Rani died of burn injuries caused by pouring kerosene oil by the accused Kalawati. Accused have taken a stand that Smt. Rekha Rani committed suicide. There is no witness to the occurrence. The case of the prosecution rests only on circumstantial evidence. It is admitted by both the sides that deceased Smt. Rekha Rani was tensed due to the illicit relations between the accused persons, but so far as the demand of dowry and more money is concerned, the same has been denied by the accused persons.

43. Further argued, the circumstances showing that deceased Smt. Rekha Rani might have committed suicide for the reason that she was tensed and depressed due to the illicit relationship between the accused persons, which has been admitted by PW-3 Smt. Kamla Devi, PW-4 Smt. Chander Kali, PW-5 Naresh Kumar Jain and PW-6 Ram Niwas Jain. It was also admitted that PW-4 Smt. Chander Kali was issueless, same was the fate with deceased Rekha Rani that she was medically examined for pregnancy test, but she could not get pregnant.

44. On this account, Id. counsel for accused has further argued that because of this fact, deceased Smt. Rekha Rani was depressed and committed suicide. She was obsessed with the idea that there was no charm for her in this world. So it can be safely said that she had committed suicide.

45. Further, Id. counsel for accused persons argued before the Trial Court that the entire case depends upon the declarations made by the deceased to the witnesses, before the Investigating Officer and before the doctor. The statement Ex.PW1/A is an information received from duty constable posted at Safdarjung Hospital, wherein, it was stated that Smt. Rekha Rani had received burnt injuries to the extent of 95% and was admitted to Safdarjung Hospital. She made statement that she was burnt by her husband. In this statement, there is no demand of dowry or harassment by her husband. This statement cannot be considered as a declaration by the deceased, so the same cannot be relied upon.

46. Id. counsel for accused persons has further pointed out that another statement as per argument of Additional Public Prosecutor is MLC Ex.PW19/A. In this MLC it is stated that the patient Smt.Rekha Rani was preparing tea and her husband's elder brother's wife came from behind, threw kerosene oil over her and closed the door of the room, the patient has been married for the last 17 months. This MLC has neither been signed nor is there any thumb impression marked by Smt. Rekha Rani, so there is a contradiction in the statement as per the MLC and as per Ex.PW1/A. In the MLC Ex.PW19/A, the husband has not been involved. In the statement Ex.PW1/A accused Kalawati has not been involved. In this MLC it was nowhere stated that patient was fit to make statement. Reliance has been placed on another statement Ex.PW19/D, this statement was recorded by ASI Lal Singh on 17.09.1991. In this statement, Smt.Rekha Rani Jain had involved her Jethani Kalawati. She has not named her husband or husband's brother. No fitness certificate was given before taking her statement; no time was mentioned at which this statement was recorded. This statement is also contrary with the earlier statements. The doctor in question has not been examined in Court; therefore, no reliance can be placed on his evidence.

47. Further, Id. counsel for accused argued before the Trial Court that before the arrival of HC Gaur, SDM, Smt. Rekha Rani was already dead. ASI Lal Singh had recorded statement of Smt. Rekha Rani in the Safdarjung Hospital which is Ex.PW19/D and is only attested by Dr. Anant Sinha with no certificate in regard to her being fit to make a statement or not. PW-5 ASI Lal Singh has admitted in his cross-examination that the endorsement at point A on Ex.PW19/D is not by the doctor who had written endorsement Ex.PW25/DB as "the patient was fit to make statement was made by Dr. R. Chandra". The endorsement is dated 17.09.1991 at 07:55 PM. Even the statement Ex.PW19/A is not going to solve the real controversy. There is no mention of a name of any person in this statement.

48. It has been further argued by the Id. counsel for the accused that when all the declarations made by the deceased whether oral or in writing are contradictory to each other, then no reliance can be placed upon them. Accordingly, accused persons must get the benefit of doubt and relied upon the case reported as 1986(1) RCR 184 at page No.192, paras 25 to 28 as under:-

"Added to these features, the time of the statement has not been indicated in the document PW17 must have known that the time aspect was very important feature in a document of this type. Ordinarily a document as valuable as a dying declaration is supposed to be foolproof and is to incorporate the particulars which it is supposed to contain. No justifying reason has been given as to why the time was not noted.

26. The summary of History sheet Ex.PW1770 indicates that a pethidine injection was given to Sudha at 10:00 PM and the doctor prescribed repetition of it every 8 hours. Judicial notice can be taken of the fact that after pethidine is given the patient would not have normal alertness. Appropriate care was not taken at the trial stage to cross-examine DW1 with reference to this aspect. We are inclined to agree with the counsel for the appellants that the certificate of DW1 that Sudha was in a fit condition to make a declaration cannot be given full credit. This Court pointed out in *Khusal Rao v. State of Bombay* AIR 19 8 SC 22 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 that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say in the form of question and answers, and as far as practicable, in the words of maker of declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and that in order to test the reliability of a dying declaration, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by the circumstances beyond his control that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

27. In Dalip Singh v. State of Punjab 1979 SC, this Court has pointed out :-

"We may also add that although a dying declaration recorded by a police officer during the course of the investigation is admissible under Section 32 of the Indian Evidence Act in view of the exception provided in sub S.2 & of S 162 of the Code of Criminal Procedure 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor. As observed by this Court in Mannu Raja v. State of Madhya Pradesh (1976) 2 SCR 764: AIR 1976 SC 2199 the practice of investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged

28. We also find that under the relevant Rules applicable to Delhi area, the investigating officer is not to scribe the dying declaration. Again, unless the dying declaration is in question and answer form it is very difficult to know that what extent the answers have been suggested by question put; what is necessary that the exact statement made by the deceased should be available to the Court. Considered from these angles the dying declaration in question is not acceptable. The High Court obviously lost sight of all these aspects when reversing the conclusion of the trial court with regard to the document and agreeing to act upon

it." Sudha was in a fit condition to make a declaration cannot be given full credit.

49. Ld. counsel for the accused further argued that in view of above cited case law, no reliance can be placed on each of the declarations which are contradictory to each other. The declarations suffered from material discrepancies. They are not consistent with each other, particularly the statement recorded by the Investigating Officer who was not competent to do so, as discussed above. So, all these declarations are disbelieved and rejected.

50. He has asserted that deceased Smt. Rekha Rani Jain has committed suicide; circumstances appearing from the prosecution case suggest so. She was issueless; she was also tense and depressed for the same reason, she suspecting illicit relations of her husband with her jethani. Her elder sister Smt. Chander Kali was also issueless. This circumstance may also be in her mind to be in the state of as oppressed, suppressed and depressed. In the situation, he had further relied upon the judgment of this Court, reported as 1995 JCC 280 at page No.293, which reads as under:-

"The victim of suicide may also be the victim of self expectations that have not been fulfilled. The sense of disappointment and frustration may have much in common with that experienced. However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. It something was to go it may be the person himself, not the perhaps excessively high standards by which the judgment has been made.... Warren Breed and his colleagues found that a sense of failure is prominent among many people who take their own lives."

51. Ld. counsel for accused persons has pointed out another circumstances in the case is that the broken pieces of bangles, partly burnt clothes and partly burnt cloth in burnt scraps from the door of the kitchen, concrete material of the floor were all sent to CFSL for chemical analysis and the report is Ex.PW24/B. Result of the analysis is that Ex.3 to Ex.8 do not show presence of kerosene oil/kerosene residue. From this angle the present case cannot be a case of burning by pouring of kerosene oil. So, it is held that that deceased committed suicide. The accused are entitled to acquittal when the accused have brought reasonable and probable

defence against the evidence of the prosecution. They are not required to prove their innocence, but they have had probable and reasonable defence. The doubts in the prosecution story about dying declarations recorded have not been removed. Dr. Anant Sinha was not examined to prove his endorsement as fit to make statement. Even with the opportunities given to the prosecution side through complainant, when the application was filed for this purpose to re-summon Dr. Anant Sinha. The complainant failed to disclose the correct address of Dr. Anant Sinha, accordingly it was held that it will serve no purpose.

52. Keeping the above discussion into view, the Trial Judge has acquitted both the accused persons giving them benefit of doubt.

53. Learned counsel for the petitioner has argued on the following points:

I) There is no finding on Section 498A IPC whereas there are sufficient evidence for the cruelty being committed against the deceased for demanding dowry.

II) The Id. counsel has drawn the attention of this Court to the fact that the trial judge has passed no order on application for furnishing address of Dr. Anant Sinha. III) There is interpolation in the date of judgment i.e. from July 30, 1995 to November 30, 1995.

IV) The trial judge has pronounced the judgment on the same date in the afternoon.

54. On the other hand, Id. counsel for the respondent submits that the prosecution could not prove its case, therefore, after the acquittal of the respondents, the State preferred not to challenge the same and no revision has been filed by the State against the judgment of the trial court. He further submits that in revision this Court has limited powers and cannot re-appreciate the facts.

55. Id. counsel for the respondent further submits that the issue of pronouncing the judgment on the same date is not a manifest error of the procedure, therefore, the petition cannot take benefit of the same.

56. On the application Ex.25/DA moved by the IO for furnishing the address of Dr. Anant Sinha who recorded the statement of the deceased. The Id. counsel for the respondent has drawn the attention of this Court to order dated 25.11.1995 passed by the trial judge which is re-produced as under:-

"25.11.1995.

Present: Addl. P.P. for State.

Both the accused on bail with counsel Shri. R.S. Naseem, Advocate.

Statement of the accused under section 313 Cr.P.C. not ready. From the complainant side application for summoning the prosecution witness Dr. Anant Sinha filed stating therein that Dr. Anant Sinha is available. Earlier on the summons sent to Dr. Anant Sinha received back with the report that Dr. Anant Sinha has left the services of the hospital and is not traceable. Now the applicant through this application has pressed that he will produce Dr. Anant Sinha. The prosecution has already closed the prosecution evidence. In the interest of justice, it is necessary that best evidence available should be examined. If at any stage the prosecution has neglected to produce the said witness Dr. Anant Sinha, then the court is not expected to follow the prosecution as it is, when the court has to be effective at its own level. So Dr. Anant Sinha is hereby ordered to be summoned. Dasti summons be given to the applicant through the prosecution. The case is now fixed for 28.11.1995. It may be clear that if the witness is not produced on the said date it shall be presumed that the applicant is trying to prolong the matter and in the absence of the witness the statement of the accused shall be recorded under section 313 Cr.P.C."

57. The Id. counsel for the respondent has drawn the attention of this Court to page 393 of the trial court record wherein the application dated 25.11.1995 was forwarded by the learned trial judge and on that date Naresh Kumar Jain, brother of the deceased, had given an undertaking in writing that if he could not produce Dr. Anant Sinha in the Court on 28.11.1995 then he would not move any application for the evidence of Dr. Anant Sinha. However, thereafter another application dated 28.11.1995 was moved and the same was not forwarded by APP

and the same was dealt with by the learned trial judge by its order dated 28.11.1995 as under:- "28.11.1995

Present: Addl. P.P. for State with Naresh Kumar, sister of the deceased.

Both the accused on bail with counsel Shri R.K. Naseem.

Summons of Dr. Anant Sinha received back un-served. Naresh Kumar again moved an application for summoning of Dr. Anant Sinha, i.e., the attesting witness of the dying declaration. There is no mention of the place of posting of Dr. Anant Sinha and the applicant is trying to prolong the matter by moving such application. Hence the application is rejected.

Statement of the accused u/s 313 Cr.P.C.

recorded. No defence. Arguments heard for about four hours. Now to come up for arguments on behalf of Addl. P.P. and order on 30.11.1995."

58. The Id. counsel for the respondent has drawn the attention of this Court towards the MLC, wherein, on the extreme right of the MLC, Dr. Anant Sinha is written but there is no signature of Dr. Anant Sinha and the prosecution could not produce any record with regard to Dr. Anant Sinha declaring the injured fit for statement, therefore, the statement recorded by the police officer, declaring the injured fit for statement is not relevant at all.

59. Further Id. counsel for the petitioner has drawn the attention of this Court to Ex.PW12/A whereby duty constable Sushil Kumar at Safdarjung Hospital informed SI Pishori Lal on telephone that Rekha Rani w/o Mahipal, age 21 years, r/o BE-253, Hari Nagar, New Delhi has been got admitted by her husband in 95% burnt condition.

60. I have also given the attention on the interpolation on the date of the judgment and observed that the trial judge has cut the month July and made it November 30, 1995. I have gone through the order sheet of the trial court and find that up to 28.11.1995, the proceeding before trial was going on and even on 30.11.1995 the learned counsel for the accused had argued the case as is evident from the order

sheet dated 30.11.1995. Therefore, aforesaid interpolation from July to November has no relevance.

61. Additionally, PW-24 Insp. V.P.S. Rana stated in his cross-examination that the message contained in DD No.22A dated 17.09.1991 was received by him through wireless. He has admitted that D.D. No.20A speaks that deceased was burnt by husband. He has denied that he collected any evidence to test DD No.22A as false or true.

62. About the harassment or demand of dowry articles PW-24 Insp. VPS Rana has admitted in the cross- examination that he enquired 10-12 persons from the locality but nobody came forward in support of allegations.

63. In addition, in hospital, if presumed, stated that she was burnt by her husband. There was no allegation of demand of dowry or harassment by her husband. PW-20 Sushil Kumar, also supported this version. On MLC Ex.PW- 19/A, no signature or thumb impression of deceased Rekha Rani obtained. In MLC, husband has not been named. In the statement Ex.PW19/A, accused Kalawati has not been involved. In statement recorded by ASI Lal Singh, the deceased has involved her „Jethani accused Kalawati. She has not named her husband. No where is it recorded in the MLC that the patient was fit to make a statement. No one has certified anywhere that the patient was fit for making statement all that the medical records show is the 95% of burnt injuries. PW-5 ASI Lal Singh has admitted in his cross- examination that the endorsement at point 'A' on Ex.PW19/D is not by doctor who had written endorsement Ex.PW25/DB.

64. I find no discrepancy in the judgment passed by the learned trial judge. Therefore, I am not inclined to interfere with the judgment passed by the trial judge. I concur with the same.

65. Accordingly, Criminal Revision Petition No.138/1996 is dismissed.

66. No order as to costs.