

A.F.R.

Judge

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.2170/2010

Ashok Prajapati

Vs.

State of Madhya Pradesh

For the appellant : Shri S.C.Datt, Senior Advocate with
Shri Siddharth Datt, Advocate

For the State : Shri Bramhadatt Singh, Panel
Lawyer.

Present : HON'BLE MR. JUSTICE AJIT SINGH
HON'BLE MR. JUSTICE N.K.GUPTA, JJ.

JUDGMENT
(15.12.2014)

The following judgment of the Court was delivered by:

N.K.Gupta, J. The appellant has preferred the present appeal being aggrieved with the judgment dated 30.9.2010 passed by the Eighth Additional Sessions Judge, Bhopal in S.T.No.713/2009, whereby the appellant has been convicted of offence under Section 302, 498-A of IPC and sentenced to life imprisonment with fine of Rs.2,000/- and 1 year rigorous imprisonment with fine of Rs.200/-. Default sentence of 3

months and 7 days was also imposed respectively in lieu of payment of fine.

2. The prosecution's case, in short, is that, deceased Manisha Prajapati was married to the appellant on 28.6.2009. On 28.8.2009, an intimation was received at Police Station Gunga that in the house of the appellant, a gas cylinder had exploded. Head Constable Ramashray Yadav (P.W.10) therefore alongwith Constable Ramkrishna Tiwari went to the house of the appellant, situated at village Nipaniya. Head Constable Ramashray Yadav found that there was no incident of explosive of gas cylinder but, Manisha Bai had sustained burn injuries and she was taken to Hamidiya Hospital, Bhopal by an emergency ambulance No.108. Since other family members of the appellant were not present in the house at that time, Kamalrani @ Bhagwati Bai (P.W.2), wife of cousin of the appellant alongwith Ramesh (P.W.1) took the deceased Manisha to the hospital. There Manisha disclosed to these witnesses that she had sustained burn injuries due to the flames of Chulha (Earthen stove). Dr.Chourasiya recorded the MLC report, Ex.P/1 and Manisha was admitted in the hospital for treatment. On 29.8.2009, Executive Magistrate Shantaram Umhare (P.W.11) recorded the dying declaration, Ex.P/12, in which Manisha stated that the appellant had poured kerosene on

her and set fire. Simultaneously, SHO Police Station Gunga Shri Alok Shrivastava (P.W.13) had recorded a Dehati Nalshi (FIR of the spot), Ex.P/20 and registered a case. On 31.8.2009, Manisha Bai died due to the burn injuries. Dr.Geetarani (P.W.9) had performed the post-mortem on the body of the deceased Manisha Bai and found that she died due to complications of burn injuries. Dr.D.K.Sharma (P.W.1), Senior Scientist Officer of Forensic Science Mobile Unit, Bhopal had also visited the spot on 28.8.2009 and he gave a spot inspection report, Ex.P/24 alongwith spot map, Ex.P/25. After due investigation, a charge-sheet was filed before the Additional Chief Judicial Magistrate, Bairasiya, who committed the case to the Sessions Court and ultimately, it was transferred to Eighth Additional Sessions Judge, Bhopal.

3. The appellant abjured his guilt. He did not take any specific plea but, he has stated that he was falsely implicated in the matter. However, no defence evidence was adduced.

4. Eighth Additional Sessions Judge, Bhopal, after considering the prosecution's evidence, convicted and sentenced the appellant as mentioned above.

5. We have heard the learned counsel for the parties at length.

6. In the present case, there is no eye witness to the incident. When incident takes place within the premises of a closed house then, there is no possibility to get any eye witness, unless any family member volunteers. In the present case, Manisha was residing in the her marital house alongwith appellant, his parents and sister. However, according to her dying declaration, Ex.P/12, she was all alone in the house and therefore, there was no possibility of any eye witness, who would have witnessed the entire incident.

7. The entire case depends upon the dying declaration given by Manisha. There are two sets of dying declarations available on record. Firstly, the oral dying declaration of Manisha proved by witnesses Ramesh (P.W.1) and Kamalrani @ Bhagwati Bai (P.W.2) alongwith entry relating to history of incident in MLC report, Ex.P/1. Second set of the dying declarations comprises of Ex.P/12 recorded by the Executive Magistrate Shantaram Umhare (P.W.11), Dehati Nalshi, Ex.P/20 and case diary statement of Manisha recorded by SHO Shri Alok Shrivastava (P.W.13) as well as oral dying declaration witnessed by Bhagwati (P.W.6) mother and Munna @ Dhaniram (P.W.7), maternal uncle of Manisha. In the first set of dying declaration, a history is given that Manisha Bai sustained burn injuries when she was working

on Chulha to prepare a cup of tea. According to own version of Manisha, in her statement recorded by the Executive Magistrate, she was all alone in the house and Kamalrani came to her house after hearing her cries and managed to take her to the hospital by an emergency ambulance alongwith witness Ramesh.

8. Ramesh and Kamalrani are independent witnesses. Appellant's relation with Ramesh could not be established, thus there is no possibility of a false statement by Ramesh. The statement of witness Ramesh and Kamalrani are given in the natural course. Kamalrani was the person, who first met Manisha, soon after the incident and the story as told to her by Manisha was disclosed by Ramesh to the doctor, who recorded the MLC report, Ex.P/1. Though the prosecution did not examine Dr.Chourasiya to prove the MLC report, Ex.P/1 but, it is a prosecution document and if it is in favour of the accused then, it can be read in his favour without its actual proof. However, witness Ramesh had proved his signature appended on the document, Ex.P/1. Looking to the entries of document, Ex.P/1, it would be apparent that initially an information was given to the doctor that Manisha sustained burn injuries while she was working on Chulha. It is possible that in the case history, this fact was mentioned in the document,

Ex.P/1 and it might not be given by Manisha herself and such history was given by Ramesh to the doctor and therefore, by entry of that case history, it cannot be said that, that entry was a dying declaration of Manisha. However, the oral dying declaration of Manisha made before witnesses Ramesh and Kamalrani is very much available on record. Both the witnesses have stated the same thing in the Court which they had earlier stated to the police. It is also brought on record that when nobody was in the house, Kamalrani had called Maan Singh (P.W.5), Sarpanch of the village. Maan Singh also visited the hospital with Kamalrani and Ramesh but, he did not say contrary to the evidence of Ramesh and Kamalrani. In the cross-examination, Maan Singh (P.W.5) has stated that Manisha was telling that she committed suicide and the appellant was not present in the house, whereas he was sitting at a tea shop in the market. Similarly, Prakash (P.W.3) and Chandan Singh (P.W.4), residents of same locality did not support the prosecution case that the appellant killed his wife.

9. The testimony of Ramesh and Kamalrani could not be rebutted by the prosecution. They took the stand from very beginning which is visible in MLC report, Ex.P/1. There is no evidence that any family member of the appellant or the appellant was present in the house to manipulate the

dying declaration given by Manisha Bai to these witnesses. Also, the statement of Kamalrani and Ramesh is corroborated by Prakash (P.W.3), Chandan Singh (P.W.4) and Maan Singh (P.W.5). Hence, the oral dying declaration which was the declaration given by Manisha soon after the incident appears to be believable and which is not in favour of the prosecution.

10. The trial Court has based its conviction upon dying declaration, Ex.P/2 recorded by the Executive Magistrate, Shantaram Umhare (P.W.11), in which Manisha stated that the appellant poured kerosene on her and then set her on fire. Simultaneously SHO Police Station Gunga, Shri Alok Shrivastava (P.W.13) recorded Dehati Nalshi, Ex.P/20 and also recorded the document, Ex.P/23, statement of Manisha Section 161 of the Cr.P.C. Dying declaration recorded by the Executive Magistrate is same as it was recorded by Shri Alok Shrivastava, SHO Police Station Gunga in the form of FIR and case diary statement. Dying declaration recorded by Executive Magistrate has much evidentiary value in the case. It is expected that the Executive Magistrate cannot be over powered by family members of the deceased or the accused and his relatives. Hon'ble Apex Court in case of **“State of Uttar Pradesh Vs. Shishupal Singh”**, [AIR 1994 SC 129] has held that

conviction can be safely placed on dying declaration provided the said dying declaration is free from vice of infirmities and if that dying declaration commands acceptance at the hands of the Court. In the case of **“Ramawati Devi Vs. State of Bihar”**, (AIR 1983 SC 164) it is held by Hon'ble the Apex Court that there is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of their testimony in the Court. Similarly, in the case of the **“Thurukanni Pompiah & another Vs. State Of Mysore”** (AIR 1965 SC 939) Hon'ble the Apex Court has held that the Court must be satisfied that the declaration is truthful where the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

11. In this context the learned senior counsel for the appellant has placed his reliance upon the judgment of

Hon'ble the Apex Court in the case of **“Raja Ram Vs. State of Rajasthan”** [2005 SCC (Cri) 1050] that if the dying declaration passes the test of scrutiny, it can be relied on as the sole basis of conviction. Similarly, he has placed his reliance upon the judgment of Hon'ble the Apex Court in the case of **“Arvind Singh Vs. State of Bihar”** (AIR 2001 SC 2124) in which Hon'ble the Apex Court disbelieved the oral dying declaration as suggested by the mother of the deceased where according to the mother of the deceased, such declaration was given by the deceased few minutes before her death and no evidence was received about her physical fitness to give such declaration, and therefore such declaration was not believed.

12. Also in the case of **“K. Ramachandra Reddy Vs. Public Prosecutor”**, (AIR 1976 SC 1994) it is held that the Court has to scrutiny the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. Also the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Similarly, in the case of **“Rasheed Beg Vs. State of Madhya Pradesh”**, (AIR 1974 SC 332) it is held that if the dying declaration recorded under suspicious

circumstances, then it cannot be acted upon without corroborative evidence.

13. In the light of the aforesaid judgments of Hon'ble the Apex Court it is to be seen whether the dying declaration recorded by the Executive Magistrate was believable without any corroboration or not. A dying declaration recorded by the Police Officer may be doubtful to get success in the case, but not when it is recorded by an Executing Magistrate. The Executive Magistrate cannot be won over by either party and therefore if the Executive Magistrate has recorded a dying declaration carefully that he assured that the deceased was in a fit condition to give dying declaration, then it can only be brushed aside when the deceased was found tutored by someone else or was under influence of some one, before giving such a declaration otherwise such dying declaration should be believed.

14. In the present case the learned senior counsel for the appellant has invited attention of this Court to the evidence of Bhagwati (PW-6) mother of Manisha specially in para 8 to 12 in which she has admitted that Manisha remained unconscious till her death, therefore she could not give any dying declaration before the Executive Magistrate or the Police Officer or to witness Bhagwati. If the evidence of Bhagwati is considered in whole, then it would be apparent

that when she went to the hospital on the date of incident, she was not permitted to meet Manisha, because she was unconscious. On the next day morning, she again went to meet Manisha and she gave oral dying declaration to her. In this context, if the evidence of SHO Alok Shrivatava (PW-13) is considered, then it would be clear that he had sent a request letter to the Executive Magistrate to record dying declaration of Manisha on 28.8.2009, but when the Executive Magistrate Rajendra Singh Thakur reached the hospital, the duty doctor informed that she was not in a position to give any statement, because she was unconscious and thereafter again a request letter was sent to the Executive Magistrate on the second day when Manisha was conscious. The document Ex.P-12 was recorded by the Executive Magistrate Shantaram Umhare (PW-11). On that document, Dr. Sudesh Sharda gave a certificate before recording the dying declaration that Manisha was fit to give her statement and after conclusion of recording the dying declaration he further gave a certificate that she was in a fit condition even after recording of the dying declaration.

15. The learned senior counsel for the appellant has also submitted that the doctor who gave the certificate on document Ex.P-12 was not examined by the prosecution before the trial Court. However, if the duty doctor has given

the certificate and it is stated by the Executive Magistrate Shantaram Umhare before the Court that he got the certificate of the duty doctor that the deceased was fit to give her dying declaration, then non-examination of said doctor is not fatal. In this context, the judgment of Hon'ble the Apex Court in the case of “Amar Singh Yadav Vs. State of UP”, (AIR 2014 SC 2486) may be perused, in which it is observed that mere fact that the doctor who had endorsed declaration was not examined does not affect its evidentiary value. Also the learned senior counsel for the appellant has submitted that the Executive Magistrate did not take the thumb impression of Manisha on document Ex.P-12, and therefore the possibility cannot be ruled out that such statement was prepared on the basis of *Dehati-Nalishi* etc. at the office of the Executive Magistrate. Such contention may not be accepted, because soon after recording dying declaration, the SHO Alok Shrivastava recorded the *Dehati-Nalishi* Ex.P/20 at the Hamidiya Hospital, Bhopal wherein impression of right thumb of Manisha was taken. In this connection, the statement of the Executive Magistrate in para 5 may be considered that this was the first and last chance for him to record the dying declaration of anyone, and therefore he could have committed a mistake of not taking a thumb impression of Manisha on document Ex.P-12. Under these

circumstances, it cannot be said that Manisha remained unconscious till her death. The execution of dying declaration Ex.P-12 appears to be proper. The doctor has certified that Manisha was in a fit condition to give dying declaration and thereafter the Executive Magistrate Shantaram Umhare had recorded the dying declaration.

16. The learned senior counsel for the appellant has submitted that the prosecution could not prove the presence of kerosene anywhere involved in the incident. It is further submitted that even the place of occurrence was not correctly established by the prosecution. It is submitted that the various articles sent to the Forensic Science Laboratory (in short “FSL”) were not duly sealed and the contents of FSL report were not placed before the appellant while recording his statement under Section 313 of Cr.P.C. In support of his contention, he has placed his reliance upon the judgment of Hon'ble the Apex Court in the case of “**Zwinglee Ariel Vs. State of Madhya Pradesh**”, (AIR 1954 SC 15), “**Sharad Biridhichand Sarda Vs. State of Maharashtra**”, (AIR 1984 SC 1622) and “**Ajay Singh Vs. State of Maharashtra**” [JT 2007 (8) SC 638] in which it is held that if circumstances appearing against the accused of a particular nature or otherwise were not put to the appellant in his statement under Section 313 of Cr.P.C., then they

must be completely excluded from consideration, because the accused did not have any chance to explain them. In the light of the aforesaid judgments, if the present case is considered, then it would be apparent that the Additional Sessions Judge prepared the question No.47 regarding sending of various articles to the FSL but thereafter the accused was not questioned relating to the FSL report document Ex.P-19, and therefore the document Ex.P-19 i.e. the report of the FSL should be excluded from consideration as directed by the Apex Court.

17. However, the report of the FSL was not of much importance in the present case, because according to it, kerosene was found in semi burnt clothes of Manisha and also in a plastic can sent to the FSL. To prove the presence of kerosene, it is not required that chemically also it be proved that kerosene was present in such remains. If the evidence is given that there was a smell of kerosene found in such remains by the witnesses, then presence of kerosene may be accepted, and therefore if the report of FSL is excluded from the present case, then still the evidence of other witnesses can be considered and accepted and the conclusion drawn by the FSL can be obtained otherwise.

18. The submission of the learned senior counsel for the appellant appears to be correct that the prosecution

could not finally establish the actual place of incident and some manipulations have been done while investigation in collecting the various articles. According to Alok Shrivastava, who prepared the spot map Ex.P-22, he has shown that the incident took place in a kitchen whereas the semi burnt clothes of the deceased were found in the verandah outside the kitchen. He has shown that at place No.4, a can of kerosene was kept. If the document Ex.P-22 is compared with the document Ex.P-3, then it would be apparent that all the articles found in the kitchen and verandah were already recovered by the ASI VP Gaud (PW-14) vide seizure memo Ex.P-3 on 29.8.2009 at about 12:45 PM whereas SHO Alok Shrivastava had prepared the spot map Ex.P-22 on 29.8.2009 at about 3:50 PM. When all the articles were taken by ASI Gaud, then Shri Alok Shrivastava could not have found the position of such articles unless he has mentioned the position of such articles on the statement given by others. Therefore, the spot map Ex.P-22 comes in the category of statement under Section 161 of Cr.P.C. and it cannot be proved as a substantive piece of evidence. Such document should be considered for the purpose of contradiction and omission. In this connection the report Ex.P-24 and connected map Ex.P-25 prepared by Dr. D.K. Sharma (PW-15)-Senior Scientist Officer of the FSL Unit

Bhopal is also important. In his spot map Ex.P-25, he gave the description in the following manner:-

- R- Room (place of incident)
- C- Chulha
- G- Gas cylinder
- Gs- Gas Chulha
- Bcp- Semi burnt clothes
- D- Door

In this map Dr. Sharma did not find any can of kerosene on the spot. According to his report Ex.P-24, he inspected the spot on 29.8.2009 at about 12:30 PM whereas the seizure document Ex.P-7 was prepared on 28.9.2009 at about 12:45 PM, and therefore Dr. Sharma went to the spot prior to the seizure of the articles. It is a mystery why Dr. Sharma did not find any can of kerosene on the spot. He did not mention in the spot map about for presence of kerosene smell in the semi burnt clothes. However, when he prepared the report Ex.P-24 on 30.8.2009 he did mention that smell of kerosene was coming from the semi burnt clothes found in the verandah. Absence of can of kerosene in the report Ex.P-24 creates a doubt in the investigation done by the ASI VP Gaud (PW-14) that he seized a can of kerosene from the spot.

19. The contention of learned senior counsel for the appellant is also acceptable on that point that no exact spot of incident was established by the prosecution. If the incident took place in the kitchen, then on pouring of kerosene upon Manisha, some kerosene must have also

spilled on the floor, and therefore it was for the Senior Scientist Officer Dr. Sharma to advise the investigation Officer to get the sample of such kerosene from the floor by rubbing a cotton swab for sending it to the FSL, but no such suggestion was given. Kamalrani @ Bhagwati Bai (PW-2) and Ramesh (PW-1) were the persons who reached to the spot soon after the incident. They did not say that the incident took place in the kitchen. Kamalrani found Manisha in the courtyard of the house. Even no questions were asked by the Investigation Officer to Kamalrani or Ramesh that before taking Manisha to the hospital, whether her semi burnt clothes were taken away and kept in the verandah or her dress was changed. Under these circumstances, the possibility cannot be ruled out that the incident did not take place in the kitchen, but it might have taken place in the verandah or courtyard.

20. Munna @ Dhaniram (PW-7) has stated that the appellant had confessed about the incident before him, however he did not inform about this fact to the police in his case diary statement Ex.D-1, and therefore his evidence relating to extra judicial confession cannot be accepted. On the contrary, it appears that Munna @ Dhaniram was bent upon to implicate the appellant in the crime. Though the prosecution has failed to prove beyond doubt that kerosene

was used in the crime or the semi burnt clothes found in the verandah were smelling with kerosene. But there was no possibility that the deceased would have sustained burn injuries caused by any other reason like dry flame of Chulha or gas stove. There is no dispute to the fact that one gas burner/cylinder was found in the kitchen. One chulha was also found in the kitchen, but if it was used at the time of incident then, certainly some remains of fire wood and ashes must have been found by the police in that Chulha. It is not the story of Ramesh and Kamalrani that Manisha caught fire from the gas burner. If she had caught fire by the flame of gas burner or Chulha and fire must have started from lower to upper side, Manisha would not have sustained so much burn injuries on her upper portion. The entire description of burn injuries is depicted by Dr. Geeta Rani (PW-9) in the postmortem report Ex.P-9. In that document she had also shown the places of burn injuries found on the body of Manisha by sketch. Though there was a case of 25% burns only, but looking to the spots of burn on the body of Manisha, it appears that the burn injuries were caused due to some inflammable liquid otherwise by catching fire from the flame of gas burner or Chulha, such injuries could not be caused to Manisha, and therefore there is a possibility that some inflammable liquid was used in the crime. Hence the

incident is not an accidental. It could be homicidal or suicidal.

21. However, in the document Ex.P-1 the MLC report the concerned doctor did not mention that any smell of kerosene was coming from the body of Manisha. Dr. Geeta Rani, who performed the postmortem did not give any opinion as to whether smell of kerosene was found on the body or not. The opinion of Dr. Geeta Rani was not so important, because Manisha was treated for 2-3 days and specially chemicals and ointments might have been applied on her burnt portion of body, and therefore smell of kerosene could not be found after 3 days of the incident at the time of postmortem. But looking to the entire injuries, it appears that some inflammable liquid was used in committing the crime.

22. If the credibility of dying declaration Ex.P-12 is considered by assessment of circumstances in the case, then the following negative circumstances are present. Firstly that no one was present in the house from the side of the appellant when Manisha was taken to the hospital and undoubtedly she made an oral dying declaration before Ramesh and Kamalrani that she sustained burn injuries by Chulha. There was no one in the house to pressurize Manisha to give such a statement, then as to why she gave

such a statement. The possibility cannot be ruled out that Manisha attempted to commit suicide, and then to save herself, she gave a wrong information to witnesses Kamalrani or Ramesh. Hence the first oral dying declaration, which is almost admitted evidence in the eyes of law is contrary to the dying declaration given by Manisha before the Executive Magistrate. Secondly, no motive really exists for the appellant to kill Manisha. According to the dying declaration Ex.P-12 and oral dying declaration proved by Bhagwati and Munna @ Dhaniram, the appellant demanded some amount from Manisha so that he could consume liquor but such amount was not given, and therefore he set fire on her. It is also admitted that the marriage of Manisha took place with the appellant two months back. It is not proved that Manisha was earning member or the appellant was giving his earning to her, and therefore he was demanding some money from her to consume liquor. There was no possibility that the appellant would have demanded money from Manisha, who was recently married to him. If he was an employed person, he must have sufficient sum in his pocket or he would have asked for the same from his father. There was no need to the appellant to demand money from Manisha.

23. In this connection the statement given by Bhagwati is also relevant. She has stated that two days back the appellant and Manisha came to her house and on demand of the appellant she gave a sum of Rs.10,000/-. However, such statement was not given by Bhagwati to the police at the time of recording of case diary statement. But if it is accepted to be true, then if the appellant had sum of Rs.10,000/- two days back, then he had sufficient money to consume liquor for months. And there was no need for the appellant to demand any amount from Manisha to consume liquor.

24. Bhagwati and Munna @ Dhaniram did not allege that the appellant demanded any dowry at the time of marriage or thereafter. The police did not make the case under Section 304-B of IPC, and therefore the sum was not required by the appellant as dowry. If he would have demanded any amount from Manisha, then certainly the appellant would have given some time to her so that she could bring that amount from her mother. Then he could not kill Manisha immediately on non-fulfilling the demand. Under these circumstances, the motive of murder as alleged by the witnesses as oral dying declaration as well as recorded in the document Ex.P-12 and P-20 does not appear to be natural and such motive did not exist.

25. In this connection, the statements given by Bhagwati and Munna @ Dhaniram (PW-7) are important that soon before the incident the appellant contacted Munna @ Dhaniram on telephone that a quarrel took place between Manisha and the appellant and the appellant requested witness Munna @ Dhaniram to visit his house for resolving the dispute, but Munna @ Dhaniram could not go to the house of the appellant because he was sufferings from fever. If the appellant was so fair that he contacted Munna @ Dhaniram, maternal uncle of Manisha so that he would participate in the resolution of dispute between him and Manisha, then certainly looking to the conduct of the appellant, it was not possible that he would have demanded some amount from her to consume liquor or set fire upon her. Though some of the witnesses have turned hostile, but they have stated about the incident that the appellant was not present in the house.

26. If the conduct of Manisha as depicted by the entire evidence collected by the prosecution is considered, then it appears that the marriage of the appellant took place with Manisha two months prior to the incident. There was no dowry demand from the side of the appellant and quarrel took place between the appellant and Manisha and thereafter the appellant left his house. He tried to seek

intervention of maternal uncle of Manisha, but he could not succeed in doing so. Thereafter Manisha was found with burnt injuries and while she was taken to the hospital, she had no influence of the family members of the appellant. To save herself, she informed the various witnesses that she caught fire from Chulha, and therefore possibility cannot be ruled out that she tried to commit suicide. If the appellant had poured kerosene on Manisha and set her on fire, she would not have hesitated in telling this fact to witnesses Kamalrani, Ramesh and others like Sarpanch Mansingh from very beginning.

27. Thereafter it appears that the police recorded the *Dehati-Nalishi* by taking the version of Manisha and the dying declaration of Manisha was recorded by the Executive Magistrate. It is also admitted that at the time of recording of dying declaration, Bhagwati-mother and Munna @ Dhaniram-maternal uncle of Manisha were also present with her and the dying declaration was recorded before them. Therefore, the possibility of tutoring by Bhagwati and Munna @ Dhaniram cannot be ruled out. Appellant had requested Munna @ Dhaniram to come and resolve the conflict between him and Manisha, but he denied on a pretext that he was suffering from fever, but in the same evening he visited the hospital along with his sister Bhagwati. Under these

circumstances, where Manisha did not give her dying declaration telling such a fact at the first opportunity before Kamalrani and Ramesh, it appears that the dying declaration Ex.P-12 which was recorded by the Magistrate was given by her under the influence of Bhagwati and Munna @ Dhaniram. Manisha sustained burn injuries within two months of her marriage and there was no dowry demand from the side of the appellant and within two months no such cruelty could be shown so that Manisha would have committed suicide, and therefore the witnesses must have thought that the case should be converted into a crime of murder, and possibly Manisha was tutored accordingly. There was not much bounding between the appellant and Manisha because her marriage took place with the appellant two months back and on the date of incident quarrel took place between them, hence Manisha was annoyed with the appellant and in a position to state against him according to tutoring of her mother and maternal uncle. Under these circumstances, when the entire evidence is considered, then in the light of the aforesaid judgments of Hon'ble the Apex Court specially in case of K. Ramchandra Reddy (supra), it appears that the dying declaration Ex.P-12, *Dehati Nalishi* Ex.P-20, as well as the case diary statement along with the oral dying declaration as informed by Bhagwati and Munna

@ Dhaniram are not trustworthy. A doubt is also created that such statements were given by Manisha under the influence of her mother Bhagwati and maternal uncle Munna @ Dhaniram whereas the appellant had no motive to kill her, the conduct of the appellant clearly indicates that he tried to call Munna @ Dhaniram to resolve the dispute and dispute was not of demanding any amount to consume liquor, the place of incident could not be ascertained by the prosecution, no can of kerosene was found at the alleged spot by Dr. Sharma, Senior Scientist, FSL Unit Bhopal, but it was seized by the Investigation Officer and Manisha had an opportunity to give such dying declaration soon after the incident, but she gave a different dying declaration at that time. Hence possibility cannot be ruled out that Manisha herself would have attempted to commit suicide. In the light of the aforesaid judgments of Hon'ble the Apex Court, the second dying declaration which implicates the appellant is not trustworthy beyond doubt. Therefore, on the basis of that dying declaration, no conclusion can be drawn.

28. The dying declaration Ex.P-12 and similar dying declaration as recorded by Shri Alok Shrivastava and oral dying declaration to Bhagwati and Munna @ Dhaniram, cannot be believed. Under these circumstances, the chain of circumstantial evidence is broken against the appellant.

When a doubt is created that Manisha had attempted to commit suicide, because she was not happy with the appellant and within two months of her marriage, she had such a quarrel with the appellant which could not be resolved, then the appellant cannot be held guilty of offence under Section 302 of IPC. The learned Additional Sessions Judge has committed an error of law in convicting the appellant for the aforesaid offence.

29. So far as the offence under Section 498-A of IPC is concerned, the marriage of Manisha and the appellant took place two months prior to the incident. Bhagwati, Ramesh and Munna @ Dhaniram have accepted that they did not hear anything against the appellant that the appellant inflicted any cruelty with some reason and the act of cruelty committed on the day of incident was not proved beyond doubt, and therefore when there is no evidence against the appellant relating to cruelty towards Manisha within two months after the marriage, then the appellant cannot be convicted of offence under Section 498-A of IPC. The learned Additional Sessions Judge has committed an error of law in convicting the appellant for that offence.

30. On the basis of the aforesaid discussion, the present criminal appeal filed by the appellant appears to be acceptable. Consequently, it is hereby allowed. The

conviction as well as the sentence imposed by the trial Court of offence under Sections 302 and 498-A of IPC are hereby set aside. The appellant is acquitted of all the charges appended against him by giving him benefit of doubt.

31. At present the appellant is in jail, and therefore the Registry is directed to arrange for his release without any delay.

32. A copy of this judgment be sent to the trial Court along with its record for information and compliance.

(AJIT SINGH)
JUDGE
15/12/2014

(N.K.GUPTA)
JUDGE
15/12/2014