

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
SHRI JUSTICE SUJOY PAUL  
&  
SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**CRIMINAL APPEAL NO. 698 OF 2011.**

**BETWEEN :-**

ASHISH CHATURVEDI, S/O  
BRIJRAJ CHATURVEDI, AGED  
ABOUT 33 YEARS, R/O KRISHNA  
NAGAR, DISTRICT SATNA (M.P.)

**....APPELLANT**

*(BY MS. VANDANA TRIPATHI, ADVOCATE)*

**AND**

STATE OF MADHYA PRADESH,  
THROUGH POLICE STATION  
KOLGAWAN DISTRICT SATNA.

**....RESPONDENT**

*(BY SHRI A.S. BAGHEL, DY. GOVT. ADVOCATE)*

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Reserved on	:	03/08/2022
Delivered on	:	18/08/2022

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*This appeal coming on for hearing this day, **JUSTICE PRAKASH CHANDRA GUPTA**, passed the following :*

**J U D G M E N T**

1. Appellant/accused has filed this appeal u/s 374(2) of The Code of Criminal Procedure (hereinafter referred to as CrPC), being aggrieved by the judgment dated 26/02/2011, passed in Session Trial no. 254/2008 by the learned third Additional Sessions Judge Satna, whereby the appellant has been convicted under

Section (hereinafter referred to as u/s) 302 of the Indian Penal Code (hereinafter referred to as IPC) and sentenced to undergo life imprisonment and fine of Rs. 500/- with default stipulation of additional rigorous imprisonment of 3 months and has also been convicted for the offence u/s 498(A) of the IPC and sentenced to rigorous imprisonment for a period of 2 years and fine of Rs. 500/- with default stipulation of additional rigorous imprisonment for 3 months.

2. It is admitted fact that marriage of deceased Ashwini Chaturvedi alias Sandhya was solemnized with accused Ashish Chaturvedi approximately 10 years prior to the occurrence of incident. After marriage one daughter (Shivanshi 5 years) and one son (Krishna Kant 3 years) were born from their wedlock. It is an undisputed fact that deceased Ashwini Chaturvedi alias Sandhya has died due to burn injuries.

3. The facts necessary to be stated for disposal of instant appeal are that on 20/07/2008 at 02:20 p.m., Dr. A.K. Trivedi (PW/6) admitted deceased Ashwini Chaturvedi alias Sandhya, resident of Krishna Nagar, Satna for treatment of her being burnt and brought by her husband/accused Ashish Chaturvedi at District Hospital, Satna. He had sent information (Ex.P/12) to SHO/ Police Chowki District Hospital Satna. He also examined the victim and gave an MLC report (Ex.P/11). Looking to the serious condition of deceased Monika Chaturvedi (PW/8) (Sister-in-law of deceased) took her to Birla Hospital Satna. Dr. Rekha Maheshwari admitted her in the Birla Hospital and sent an information to P/S Kolgawan District Satna. On the basis of aforementioned intimation ASI G.S. Pandey (PW/5) wrote a roznamcha sanha no.1444. On the basis of request letter of ASI G.S. Pandey (PW/5), on 20/07/2008 Executive Magistrate/ Naib Tahsildar Raghuraj Nagar, Satna, Prabhat Mishra (PW/7) went to Birla Hospital, Satna. On the same day at 07:45 p.m. Dr. S. Singh examined the victim, Ashwini Chaturvedi and found that she was in fit condition to give statement. Prabhat Mishra (PW/7) wrote statement (Ex.P/13) of deceased Ashwini Chaturvedi during 7:45 p.m.to

08:00 p.m. In the statement (Ex/P-13) deceased stated that appellant poured kerosene on her body and set her ablaze at 01:30 p.m. on 20/07/2008.

4. On the same day ASI G.S. Pandey (PW/5) wrote statements of deceased Ashwini Chaturvedi, Monika Chaturvedi (PW/8), Father of accused Brijraj Kumar (DW/4), uncle of deceased Ramashray Tiwari (PW/2) and brother of deceased Vinod Tiwari.

5. On 20/07/2008 at 10:30 p.m. ASI G.S. Pandey (PW/5) lodged an FIR (Ex.P/7) against appellant/ accused Ashish Chaturvedi. On 21/07/2008, father of deceased Radhika Prasad (PW/1) gave a written complaint (Ex.P/1) to SHO Kolgawan District Satna. During investigation at 11:30 AM on 21/07/2008 ASI G.S. Pandey (PW/5) inspected the place of incident i.e. house of appellant/accused, at the presence of witnesses and prepared spot map (Ex.P/3). At 12:00 a.m. he seized semi-burnt saree and piece of petticoat of deceased, collected sample of kerosene from floor through cotton ball, a simple cotton ball, a matchstick, a gallon of kerosene containing approx. 2 litres of kerosene and prepared seizure memo (Ex.P/4). On the same day he arrested the appellant vide arrest memo (Ex.P/8).

6. For the better treatment on 22/07/2008 deceased was shifted to Roy Hospital Kamptee District Nagpur Maharashtra. After admission of deceased an intimation was sent to SHO Kamptee by Roy Hospital where roznamcha sanha no 4/8 was written. Head Constable (hereinafter as HC) Kamptee wrote a letter to the Medical Officer of Roy hospital about the mental status of the deceased to give statement. On 23/07/2008 at 12:30 a.m. concerning doctor after examination of deceased gave opinion that she is not fit to give statement. Thereafter on the same day Executive Magistrate/ Naib Tahsildar, Kamptee, H.K. Jhore (PW/9) consulted to the concerning doctor who examined again the deceased and he found that she is able to give the statement. H.K. Jhore (PW/9) took statement (Ex.P/14) of deceased/patient. During treatment deceased died on 05/08/2008 at

01:45 a.m.. On the same day at 02:00 a.m. an intimation (Ex.P/15) was sent to SHO Kamptee. On the basis of aforementioned intimation (Ex.P/15) and oral intimation of Radhika Prasad (PW/1), Marg intimation (Ex.P/16) was written by ASI S.R. Naranvare (PW/10) HC Madhukar Tobde after giving notice to the witnesses prepared a Lash Panchnama of deceased. Body of deceased was sent for postmortem. Dr. Subhash Gajanand Rao Titare (PW/11) carried postmortem of the body of deceased and prepared postmortem report (Ex.P/18). SHO Kamptee sent Marg intimation (Ex.P/16) alongwith statement of deceased (Ex.P/14). Lash Panchnama and other relevant document sent to the P/S Kolgawan District Satna for further proceeding. On 12/08/2008 G.S. Pandey (PW/5) wrote a Marg intimation (Ex.P/6), on the basis of Marg intimation (Ex.P/16), seized articles were sent to Forensic Science Laboratory (hereinafter referred to as FSL), Sagar for chemical examination alongwith letter (Ex.P/9) Superintendent of Police, Satna. Chemical examination report (Ex.P/10) was received. Statement of witnesses have been taken u/s 161 of CrPC. After the completion of investigation, chargesheet was filed against appellant/accused.

7. The case was committed to the court of sessions. The trial court has framed charges against the appellant. Appellant has abjured the guilt and pleaded not guilty

8. The prosecution, in order to prove its case examined father of deceased Radhika Prasad (PW/1), uncle of deceased Ramashray Tiwari (PW/2), mother of appellant Shyama Chaturvedi (PW/3), ASI A.K. Shukla (PW/4), ASI G.S. Pandey (PW/5), Dr. A.K. Trivedi (PW/6), Executive Magistrate Prabhat Mishra (PW/7), cousin-sister of appellant Monika Chaturvedi (PW/8), Executive Magistrate H.K. Jhore (PW/9), ASI P/S Kamptee S.R. Naranvare (PW/10) and Dr. Subhash Gajanan Rao Titare (PW/11).

9. After completion of prosecution evidence learned trial court examined the appellant/accused u/s 313 of CrPC, in which appellant took defence that in year

2005 some persons had beaten him on his head. Due to head-injury he lost his soundness of mind. He was treated at Satna and by neurosurgeon at Jabalpur. Due to the state of his unsoundness of mind, by the order of trial court he was sent to mental hospital Gwalior for treatment. After a long treatment he became fit and healthy. Due to unsoundness of mind he does not know that how deceased was burnt. Because of his insanity he does not know if she burnt herself or he set deceased on fire. Family members of deceased were annoyed on him due to his insanity. Therefore they have falsely implicated him in the case. In his defence appellant examined his neighbours Kamtaprasad Soni (DW/1), Jiyaram Yadav (DW/2), his father Brijraj Kumar Chaturvedi (DW/4) Dr. Pradeep Kumar Saxena (DW/3), Dr. S.B. Joshi (DW/5), Dr. Kuldeep Singh (DW/6), Dr. R.K. Sinha (DW/7) and Dr. Y.R. Yadav (DW/8).

**10.** Learned Trial court after relying on the evidence on record, convicted and sentenced the appellant as aforementioned.

**11.** Learned counsel for the appellant argued that conviction and sentence of appellant is bad, improper, incorrect and illegal. Learned trial Judge has erred in holding the appellant guilty for the offence because there is no evidence on record so as to indicate the specific type of cruelty which was alleged to have been mated upon the deceased by the appellant. She further argued that learned trial Judge has erred in placing reliance upon the testimony of the prosecution witnesses as there are many contradictions and omissions in their statements. She has also submitted that so called dying declarations on which the conviction has been founded does not inspire confidence and hence the same is not trustworthy. Many of the witnesses have not corroborated with the version of prosecution and many witnesses are interested witnesses. There is inordinate delay in lodging the FIR and no proper explanation has been offered by the prosecution. At the relevant time, the appellant was suffering from insanity but the learned trial court has erred to disbelieve the defence witnesses. The prosecution has not proved the

case beyond reasonable doubt against the appellant. The findings recorded by the trial court is absolutely erroneous. The learned counsel has placed reliance on the judgment of Hon'ble Apex Court delivered in the case of **Siddhapal Kamala Yadav V State of Maharashtra [AIR 2009 SC 97]**.

12. On the other hand learned Government Advocate for the respondent/State has argued that the impugned judgment and order is in accordance with the fact and law and need not to be interfered with. He further submitted that the dying declarations given by the deceased are properly proved by the prosecution. He also supported the impugned judgment passed by the learned trial court. Learned counsel has placed reliance on the judgments of Hon'ble Apex Court delivered in the cases of :- **State of Rajasthan V Bhup Singh [(1997) 10 SCC 675]; Biju @ Joseph V State of Kerala [CRL.A.No. 108 of 2009]**;

13. No other point is pressed by the counsel for the parties.

14. Heard learned counsel for both the parties and perused the record.

15. Entering upon the merits of this case, this court thinks it apposite to find out as to whether the death of deceased Ashwini Chaturvedi alias Sandhya was homicidal in nature or not.

16. Father of deceased, Radhika Prasad (PW/1) stated that on 20/07/2008 deceased received burn injuries. His statement is supported by uncle of deceased Ramashray Tiwari (PW/2), mother of appellant Shyama Chaturvedi (PW/3) and cousin of appellant Monika Chaturvedi (PW/8). Medical Officer of District Hospital Satna, Dr. A.K. Trivedi (PW/6) deposed that at 02:05 p.m., on 20/07/2008 he examined injured Ashwini Chaturvedi, kerosene smell was coming from her body. There was 45% of burn injuries over her body on both forearms, hands, both lower limbs, buttocks, back, chest and abdomen. Further he stated that injured was in conscious state, her pulse rate was 80 per minute and blood pressure was 118/72. He admitted the deceased in female surgical ward. In this

respect he sent intimation (Ex.P/12) to Police Chowki District Hospital Satna and gave MLC report (Ex.P/11) to the Police.

**17.** ASI P/S Kamptee District Nagpur Maharashtra, S.R. Naranvare (PW/10) stated that on 05/08/2008 after receiving death information (Ex.P/15) of the deceased from P/S Kamptee from Roy Hospital Kamptee, he wrote a roznamcha sanha no 4/2008 and lodged Marg intimation (Ex.P/16) on the same day. Medical Officer, sub District Hospital Kamptee, Dr. Shubhash Gajanand Titre (PW/11) has stated that body of deceased Ashwini has been brought before him on 05/08/2008 by Constable Durgeshwar P/S Kamptee for postmortem. As per inquest report death of deceased was homicidal in nature. She was admitted in Roy Hospital from 22/07/2008 to 05/08/2008 and died at 01:45 a.m. on 05/08/2008. During postmortem he found that bandage were tied on the burnt parts of body. Her body was cold, rigor mortis was not present. Postmortem lividity were present in back, buttock and thigh, her face was natural, eyes were closed, tongue was inside of mouth, red colour of liquid was oozing out of nose and mouth, burn injuries were present on external parts of body, her hands and feet were normal, there was 67% of burn injuries on the body. After opening of the head it was found that her entire brain was congested and pale, other internal body parts were congested. 200 ml. black coloured liquid was present in the stomach, uterus was normal, he had not preserved the viscera of the deceased. He opined that cause of death of deceased was septicaemia and cardio respiratory arrest due to 67% mixed burn. He prepared postmortem report (Ex.P/18).

**18.** The accused has not disputed the fact of death of deceased due to burn injuries, therefore statement of aforementioned witnesses are reliable. Hence, the learned trial court has rightly found proved that deceased died due to burn injuries and her death was homicidal in nature.

**19.** Next question arises that whether the appellant/ accused set deceased on fire after pouring kerosene with intention to cause death of deceased.

20. As per prosecution, deceased has given following dying declarations:-

(1) On 20/07/2008 in Birla Hospital Satna, deceased orally told her father Radhika Prasad (PW/1) and her uncle Ramashray Tiwari (PW/2) that the appellant poured kerosene on her body and set her on fire.

(2) On 20/7/2008 an Executive Magistrate/ Naib Tahsildar Raghuraj Nagar Satna, Prabhat Mishra (PW/7) wrote a dying declaration (Ex.P/13) of deceased at Birla Hospital Satna.

(3) On 23/07/2008 Executive Magistrate/ Naib Tahsildar Kamptee Nagpur, H.K. Jhore (PW/9) wrote a dying declaration (Ex.P/14) of deceased at Roy Hospital Kamptee.

21. Learned trial court has relied on oral dying declaration of deceased which has been given before Radhika Prasad (PW/1) and Ramashray Tiwari (PW/2) at Birla Hospital Satna. Learned trial court has also relied upon the statements of Prabhat Mishra (PW/7), H.K. Jhore (PW/9) and dying declarations (Ex.P/13 & P/14).

22. In the judgment of **Durgesh Singh Bhadauria vs State Of M.P.** [ILR (2022) MP 138, the Division Bench of this court has held as under:-

“19. Whenever multiple dying declarations are recorded then **Hon'ble Apex Court in Kundula Bala Subrahmanyam And Anr vs State Of Andhra Pradesh[(1993) 2 SCC 684]**, has observed as under:

*"Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross- examination, it is not credit-worthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death*



*comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same."*

23. In the judgment of **Kushal Rao V State of Bombay [AIR 1952 SC 22]** Hon'ble the Apex Court held that there is no absolute rule of law that a dying statement cannot be used as the sole ground for conviction unless it is backed up

by other proof. A real and voluntary declaration that is free from compulsion needs no corroboration.

**24.** Now the dying declaration of the deceased is required to be considered in the light of principles laid down by the Apex Court.

**25.** In this respect father of deceased, Radhika Prasad (PW/1) has stated that after hearing about the incident, he went to Birla Hospital Satna where he saw the deceased. There was burn injuries on her body. On asking upon by him the deceased told him that the appellant was asking for money to get liquor for which she denied, so he became furious and poured kerosene on the deceased and set her ablaze. There is omission of aforementioned fact in (Ex.P/1) written complaint given by this witness on the next day i.e. 21/07/2008 at P/S Kolgawan. This witness also contradicted A to A part of his statement (Ex.D/1) that “I inquired with Ashwini that how she got burnt, then she told me that she was massaging her husband’s legs at that time the abscess present on his leg was touched which caused pain to her husband, because of which he beat her and burnt her with kerosene.” Therefore, it is clear that there is material contradiction and omission present in his statement. Hence, aforementioned statement of this witness is not trustworthy and reliable.

**26.** Uncle of deceased, Ramashray Tiwari (PW/2) stated that after hearing about the incident, he went to Birla Hospital Satna and saw that entire body of deceased was burnt except face. On asking upon by him the deceased replied that her husband poured kerosene on her body and set her on fire, while in paragraph 4 of cross-examination he stated that no conversation took place between deceased and him in Birla Hospital. He contradicted A to A part of police statement (Ex.D/2) that ‘After coming to know about the incident he went to Birla Hospital Satna and saw that deceased was admitted in Birla Hospital in burnt condition. Therefore, it is clear that there is material contradiction in the

statement of this witness. Hence, aforementioned statement of this witness is also not trustworthy and reliable.

**27.** Therefore, it is clear that in respect of oral dying declaration of deceased at Birla Hospital Satna before her father Radhika Prasad (PW/1) and her uncle Ramashray Tiwari (PW/2) is not reliable and trustworthy. Hence, it appears that the trial court has erred on relying on the statement of Radhika Prasad (PW/1) and her uncle Ramashray Tiwari (PW/2), in respect of oral dying declaration of deceased.

**28.** Prabhat Mishra (PW/7) deposed that on 20/07/2008 he was posted as Executive Magistrate/ Naib Tahsildar at Tahsil Raghuraj Nagar, District- Satna. On the basis of request letter of police he went to Satna to take statement of the deceased Ashwini Chaturvedi. He received opinion of concerning doctor regarding the ability of deceased to give statement. Thereafter he took the statement of the deceased. In the statement, she told that her husband Ashish Chaturvedi put kerosene and set her on fire at around 01:30 p.m.. She also deposed that her husband is short-tempered and bothers his parents as well. Dying declaration is (Ex.P/13) carrying signature of this witness from A to A and deceased from B to B.

**29.** On perusal of dying declaration (Ex.P/13) it appears that Prabhat Mishra (PW/7) took statement of deceased on 20/07/2008 in burn unit of Birla Hospital Satna during 07:45 p.m. to 08:00 p.m.. Prabhat Mishra (PW/7) also received opinion of doctor before and after recording the dying declaration, where the doctor has given opinion that deceased is in absolutely fit condition to give statement and during the statement she was in conscious state. It also appears that Prabhat Mishra (PW/7) has written the dying declaration of deceased in question-answer form.

**30.** In paragraph 3 of cross-examination, he stated that it is not certain that deceased was in care of father, mother and brother, while being admitted in Birla

Hospital, Satna. In the same paragraph he also stated that the deceased also stated that right before the incident some quarrel took place between her and her husband/ accused. In paragraph 4 of cross-examination, he denied that he recorded statement of deceased in the words of her father. He also denied that at the time of statement deceased was not in fit condition to give statement.

**31.** Prabhat Mishra (PW/7) being an Executive Magistrate/ Naib Tahsildar is an independent witness, he recorded dying declaration of deceased in question and answer form, he also took the opinion of the doctor regarding fitness of mental state of the deceased. Therefore, the statement of Prabhat Mishra (PW/7) and dying declaration (Ex.P/13) of deceased are reliable. The statement in (Ex.P/13) the dying declaration is unmistakably clear that appellant Ashish Chaturvedi poured kerosene and set his wife/ deceased on fire.

**32.** H.K. Jhore (PW/9) deposed that on 23/07/2008 he was posted as Executive Magistrate/ Naib Tahsildar, Kamptee, District Nagpur. On the same day he took statement of deceased Ashwini Chaturvedi in Roy Hospital Kamptee. Before taking statement of deceased he got opinion of concerning doctor, for which the doctor gave opinion that she is able to give statement. The deceased stated in her dying declaration that her husband, Ashish Chaturvedi has burnt her and at that time accused's mother and sister were present there. He wrote dying declaration (Ex.P/14) in Marathi language and has given his statement by translating Marathi to Hindi language. Signature of deceased is from B to B in the dying declaration (Ex.P/14).

**33.** On perusal of dying declaration (Ex.P/14) it appears that on 23/07/2008 H.K. Jhore (PW/9) has written statement of deceased in Marathi Language and in question and answer form. He also took opinion of concerning doctor that patient/ deceased is able to give statement. Thereafter, he recorded the dying declaration. In paragraph 3 of cross-examination the witness stated that he took statement during 12:45 – 12:50 on 23/07/2008 at Roy Hospital Kamptee. Further he stated

that deceased also told in her statement that her husband was having an abscess on his leg and while massaging that abscess was pressed by her which raged him in anger. In the same paragraph he denied that the patient/ deceased was not in fit condition to give statement and he wrote the dying declaration in the pressure of police. Nothing appears contrary in the Cross examination as to disbelieve the statement of witness.

**34.** In the case of State of Rajasthan V Bhup Singh (Supra), Hon'ble the Supreme Court has observed as follows:-

*“10. Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. We bear in mind that it is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it.”*

**35.** In the case of Biju @ Joseph V State of Kerala (Supra), Hon'ble the Division Bench of Kerala High Court relying upon the judgment of Bhup Singh (Supra) has observed as follows:-

*“19. The fact that PW15 does not know to write Malyalam and the dying declaration was recorded not in the language spoken to by the deceased is not fatal.”*

**36.** Therefore, the dying declaration (Ex.P/14) can not be doubted on the basis of it being written in Marathi language. Both the dying declarations (Ex.P/13 & P/14) are written by Executive Magistrate/ Naib Tahsildar, both the Executive Magistrate have written the dying declarations after getting opinion of the

concerning doctors that whether the deceased is mentally fit to give her statement. It also appears that the deceased has given her statement voluntarily and there was no possibility to teach her. There is no circumstance giving rise to any suspicion about its truthfulness. There is no inconsistencies between the two dying declarations in material particulars. Therefore, both the dying declarations are trustworthy, hence, the learned trial court has rightly held the dying declarations to be reliable.

**37.** Mother of the appellant, Shyama Chaturvedi (PW/3) is partly hostile but she has stated that on 20/07/2008 at 01:30 p.m. she was sitting in the veranda of her house, hearing the sound of a bucket falling, went to check out and saw that her daughter-in-law/ deceased was screaming to save her. She tried to extinguish the fire because of which her hand and saree got burnt. At the time of incident appellant was present on the spot. She did not know how deceased caught fire and got burnt. After declaring hostile, she denied the suggestion of prosecution in paragraph 4 of cross-examination that at the time of incident appellant was asking money from deceased to purchase liquor, for which deceased denied to give money then the accused assaulted her, poured kerosene on her body and set her on fire.

**38.** Cousin of appellant, Monika Chaturvedi (PW/8) at the time of incident, she was applying oil on the head of her aunt, (Shyama Chaturvedi- PW3) outside of house. Deceased Ashwini and appellant were in the house, at that time she heard scream of someone to save, for which she went inside the home to check and saw body of deceased had caught fire and she was screaming to save. She was not aware who set deceased on fire.

**39.** Therefore, from the statement of Shyama Chaturvedi (PW/3) and Monika Chaturvedi (PW/8) it appears that at the time of incident the appellant was present at the spot i.e. inside the house.

40. ASI G.S. Pandey (PW/5) stated that after inquiry he lodged an FIR (Ex.P/7). As per FIR (Ex.P/7) it appears that on 20/07/2008 at 10:30 p.m. G.S. Pandey (PW/5) wrote aforementioned FIR against the appellant. Incident took place on 20/07/2008 at around 1:30 p.m. firstly deceased was admitted to District Hospital Satna, thereafter, on the same day she was taken to Birla Hospital and admitted there. In this respect, intimation has been sent by both the hospitals to the concerning police and after enquiry of information, same day FIR was lodged. In these circumstances, it appears that after receiving information from hospital ASI G.S. Pandey promptly took statement of witnesses who were present in hospital, thereafter promptly he lodged the FIR. Hence, there is no delay in lodging the FIR.

41. ASI G.S. Pandey (PW/5) stated that he prepared spot map (Ex.P/3) and marked the place of incident with red ink. Shyama Chaturvedi (PW/3) also stated that the police prepared spot map (Ex.P/3) of her house. As per (Ex.P/3) spot map it appears the spot of incident is a room of house of appellant.

42. ASI G.S. Pandey (PW/5) stated that he seized semi burnt *saree* and *petticoat* of deceased, collected sample of kerosene from floor through cotton ball, a sample of simple cotton ball, a matchstick, a gallon of kerosene containing approx. 2 litres of kerosene and prepared seizure memo (Ex.P/4).

43. ASI G.S. Pandey (PW/5) deposed that he arrested the accused and prepared arrest memo (Ex.P/8). As per arrest memo (Ex.P/8), it was prepared on 21/07/2008 at 10:00 p.m.. ASI G.S. Pandey (PW/5) further stated that the seized articles in the case were sent for chemical examination to FSL, Sagar alongwith letter (Ex.P/9). As per FSL report (Ex.P/10) it appears that Kerosene oil was present on:-

Article A- semi-burnt *saree* and *petticoat* of deceased; Article B- cotton ball; and Article E- gallon, seized from the spot. Therefore, it appears that at the time of incident accused/ appellant was present on the spot and kerosene oil was found on

the aforementioned articles. These circumstances also support the dying declarations of the deceased. Hence, it is clear that at the time of incident, the appellant/ accused had poured Kerosene on the body of deceased and thereafter set her on fire. It is also clear that during treatment deceased had died due to the burn injuries caused on her body.

44. So far as the question is concerned to cause death of deceased with intention to cause death, defence of appellant is that from the year 2005 he was suffering from the unsoundness of mind arising out of head-injury, due to his unsoundness he has no knowledge that whether he had set deceased on fire or the deceased set herself on fire.

45. In the case of Siddhapal Kamala Yadav V State of Maharashtra (Supra) the Supreme Court has observed that:-

*“The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.”*

46. After consideration of statement of defence witnesses the learned trial court has found that the appellant/ accused has not succeeded to establish his defence.

47. Father of appellant Brijraj Kumar Chaturvedi (DW/4) stated that on 06/03/2005 some persons had beaten appellant which was reported to P/S Kotwali, Satna, the certified copy of FIR is Ex.D/7, MLC is Ex.D/8 and discharge ticket is Ex.D/9. As per FIR (Ex.D/7) on the basis of intimation of appellant an FIR was lodged at P/S Satna u/s 294, 323, 506 and 327/34 of IPC on 06/08/2005 against 4 persons namely Raja Kewat, Suresh Kewat, Baiya Yadav and another. As per MLC (Ex.D/8) on 06/03/2005 4 injuries out of 2 lacerated wound on left



side of forehead and backside of scalp were found on the body of appellant/accused and all injuries were simple in nature. As per prescription (Ex.D/19) on 10/06/2008, Dr. A.K. Sinha, Victoria Hospital Jabalpur had examined the appellant and prescribed medicines as well as he advised to consult to physician, Medical College Jabalpur. Therefore, it is clear that on 06/03/2005 appellant had received simple injuries on his head

**48.** Brijraj Kumar Chaturvedi (DW/4) further stated because of head-injury, appellant could not sleep properly, used to have headaches, murmur and be irritated. His treatment was done by Dr. B.P. Gupta, Dr. Y.R. Yadav (DW/8). He stopped taking medicines as he got relief from the problem. After 3-4 months he again started to behave insanely, beat children and parents, removed his mother from his house, bother people in colony by entering and breaking articles, after this his treatment was again started by psychiatrist Dr. Pradeep Kumar Saxena (DW/3) and Dr. A.K. Sinha, but he could not get over the problem, and after 6-7 months this incident took place. Neighbours of the appellant, Kanta Prasad Soni (DW/1) and Jiyaram Yadav (DW/2) supported the statement of Brijraj Kumar Chaturvedi (DW/4). In their statement they stated that because of the injury in head, appellant was not of sane mind. In paragraph 5 & 6 of cross-examination mother of appellant, Shyama Chaturvedi (PW/3) and paragraph 3 of cross-examination cousin of appellant, Monika Chaturvedi (PW/5) also supported the aforementioned statement of Brijraj Kumar Chaturvedi (DW/4).

**49.** Dr. Y.R. Yadav (DW/8) has stated that he was posted as neurosurgeon in Medical College Jabalpur since March 1992. On 16/06/2005 he examined the appellant. He was complaining that he was having heaviness in head and lack of sleep. Dr. Y.R. Yadav (DW/8) prescribed medicines for tension reduction, headache and proper sleep to appellant. He also advised EEG (electroencephalography) of brain to get done. OPD slip is Ex.D/20. Therefore, on the

basis of this witness it does not appear that at the time of examination i.e. 16/06/2005 appellant was suffering from mental-illness.

**50.** Dr. Pradeep Kumar Saxena (DW/3) who was psychiatrist and posted as professor in Medical College, Rewa stated that on 10/01/2008 he examined the appellant. Father of appellant told him that appellant had received injury on back of his head, he sits alone, he is not able to sleep because of which he consumes several types of intoxicating tablets. He has got EEG examination done and found that his mental condition was in hyperarousal state. He prescribed the required medicines to him. Prescription slip is Ex.D/4 and EEG film and report is Ex.D/5. Therefore, it is clear that this witness has also not stated that at the time of examination on 10/01/2008 the accused was of unsound mind.

**51.** Dr. R.K. Sinha (DW/7) was posted as anaesthesiologist in Victoria Hospital Jabalpur. He stated that on 10/06/2008 he examined the appellant he was told that behaviour of patient gets abnormal, he does not get proper sleep. On examination he found that behaviour of appellant was in normal condition. He advised medicines for the same and also advised to consult with psychiatrist. In paragraph 2 of cross-examination this witness has admitted that at the time of examination the appellant was in normal condition. Therefore, it is clear that 1 month 10 days prior to the incident, on 10/06/2008 when Dr. R.K. Sinha (DW/7) examined the appellant, he was in normal mental state.

**52.** As per statement of aforementioned defence witnesses Dr. Y.R. Yadav (DW/8), Dr. Pradeep Kumar Saxena (DW/3), Dr. R.K. Sinha (DW/7), it does not appear that prior to incident the appellant/ accused was suffering from mental illness or he was insane, therefore, in this respect Brijraj Kumar Chaturvedi (DW/4), Shyama Chaturvedi (PW/3), Monika Chaturvedi (PW/8), Kanta Prasad Soni (DW/1) and Jiyaram Yadav (DW/2) being close relative and neighbours of appellant are not reliable that prior to incident mental status of the appellant was not sound. Hence, it is certain from the aforementioned witnesses', evidences that

appellant/ accused was neither at the time of occurrence of the incident nor prior to it was of insane mind.

**53.** Dr. Pradeep Kumar Saxena (DW/3) also stated that on 18/12/2008 (approx. 6 months after incident) as per direction of trial court appellant was produced before him for examination, at that time the appellant appeared to be mentally-ill. Therefore, he referred him to mental hospital Gwalior for observation and necessary check-ups. Referral letter is Ex.D/6. In paragraph 3 of cross-examination he admitted that he has examined appellant only for once further he stated that he could not say clearly that appellant is always mentally-ill. Therefore this witness says that at the time of examination on the date of 18/12/2008 appellant appeared to be mentally-ill, this witness has not clearly stated that at the time of examination, the appellant was mentally-ill.

**54.** Dr. Kuldeep Singh (DW/6) was posted as medical officer in mental hospital, Gwalior, stated that appellant was admitted from 23/12/2008 to 31/07/2009 in the mental illness ward. With due course of time he was treated by several psychiatrists. This witness has also treated the appellant on 11/02/2009, his report is Ex.D/12 in which he has declared appellant to be mentally-ill. He also prepared a report (Ex.D/17) on 31/07/2009, at that time the appellant was not having any kind of mental-illness. He further stated that on the same day i.e. 31/07/2009 he gave report Ex.D/18. As per report Ex.D/12 appellant was not able to defend himself in court of law. As per report Ex.D/17 during period 23/12/2008 to 31/07/2009, the report was given that appellant was able to defend himself in the court of Law and he is maintaining well with medicine. As per Ex.D/18 after getting in fit condition the appellant was transferred from mental hospital Gwalior to concerned jail.

**55.** Dr. S.B. Joshi (DW/5) who was posted as medical officer in mental hospital, Gwalior since 12/12/1990. He stated that he is a Psychiatrist. Medical examination report (Ex.D/10) from the period 23/12/2008 to 30/12/2008 of

appellant was produced before mental ward at central jail Gwalior in which it was found that he was having symptoms of mental-illness, used to murmur, fight, used to be irritated, used to say to have alcohol and ganja, lack of sleep, liked to stay alone, sometimes became violent and used to attack co-patients, Dr. Gautamanand, Dr. Anil Dohre, Dr. Shubhash Upadhyay have also examined the appellant and gave report (Ex.D/11, 13, 14, 15 & 16). In the report (Ex.D/11) Dr. Gautamanand has given report to require further treatment of the appellant. On considering statements of Dr. S.B. Joshi (DW/5) and Dr. Kuldeep Singh, it appears that the appellant was admitted in mental hospital Jabalpur during 23/12/2008 – 31/07/2009 i.e. approximately 5 months later from the date of incident. At that time he was diagnosed with symptoms of mental-illness and after treatment the same was cured but if the appellant had symptoms of mental-illness later the occurrence of the incident, it can not be connected to the incident. Appellant has not produced any material evidence to prove that he was insane or was unable to understand the nature of the act at the time of commission of the offence.

**56.** ASI G.S. Pandey (PW/5) in paragraph 3 of cross-examination has admitted that 2-2.5 years prior to incident, the medication of appellant for his mental illness was being carried out in Jabalpur, Rewa and Satna. Therefore, it appears that during investigation it was revealed before ASI G.S. Pandey (PW/5) that the appellant was under treatment of mental-illness for 2-2.5 years prior to incident. This witness has not stated that he produced the appellant before any doctor for his examination of mental-illness, but in this respect the appellant/accused has not sought any explanation at the time of cross-examination of this witness that why he did not produce appellant before the doctor for his examination. Though appellant has examined in his defence, Dr. Pradeep Kumar Saxena (DW/3), Dr. R.K. Sinha (DW/7) and Dr. Y.R. Yadav (DW/8) but they have not stated clearly that prior to incident the appellant was insane. In this respect Kanta Prasad (DW/1), Jiyaram Yadav (DW/2), Brijraj Kumar Chaturvedi (DW/4), Shyama

Chaturvedi (PW/3), Monika Chaturvedi (PW/8) were also not found trustworthy. Therefore, if the ASI G.S. Pandey (PW/5) has not examined the appellant from any doctor for his mental-illness, solely on this ground entire prosecution case does not vitiate. Hence, it is not established that at the time of incident the appellant/ accused was insane and was not able to understand the nature of the act, while the act was being done, which debars him from falling in the general exception of section 84 of IPC. Consequently, the learned trial court has not erred by not granting the benefit of defence of insanity u/s 84 of IPC.

57. On the above discussions it is found that death of deceased was homicidal in nature, therefore, it is also relevant to consider here section 300 of IPC, which runs as under:-

*“300 Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*

*2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-*

*3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-*

*4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

*Exception 1.-When culpable homicide is not murder.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control*

*by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

*Exception 2.-Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

*Exception 3.-Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

*Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*

*Exception 5.-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”*

**58.** On the perusal of dying declarations (Ex.P/13 & P/14) and statement of Prabhat Mishra (PW/7) and H.K. Jhore (PW/9) it is pertinent to note that the deceased had stated that her husband is short-tempered and bothers his parents as well, that her husband was having an abscess on his leg and while massaging his legs that abscess was pressed by her which raged him in anger, consequently it

led to quarrel between deceased and appellant/ accused. Looking at the incidents right before the commission of the offence, it is important to discuss the fourth exception to murder u/s 300 of IPC. fourth exception is "*Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.*" It is true that there is no evidence which shows premeditation from the side of appellant/ accused, it is also correct that pressing of abscess by the deceased had raged him in anger, but looking at the later part of the exception, it is quite apparent that appellant/ accused had taken undue advantage and acted in a cruel or unusual manner, as the appellant set deceased on fire by pouring kerosene on her is one of the most cruel ways to kill someone, mere pressing of abscess or quarrels can not lead to such furious behaviour. There is no sign that deceased even tried to defend herself while the appellant/ accused was pouring kerosene on her, after he set the deceased on fire. The instant case is not of a fight but a case where the deceased succumbed to the furious behaviour of appellant/ accused. Certainly the behaviour of appellant/ accused was the one acted in a cruel manner, hence, does not fall in the fourth exception to murder as well. There is no other exception to murder u/s 300 of IPC where the instant case falls. Therefore, it is clear that the accused has intentionally caused death of deceased which falls under the definition of murder u/s 300 of IPC.

**59.** Next question arises that whether the appellant/ accused being a husband of deceased subjected her to cruelty.

**60.** In this respect it is important to discuss the aspect of Section 498A of IPC, which has been defined as:-

*"498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with*

*imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—*

*(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

**60.** Hon’ble the Supreme Court has discussed the essential elements of section 498A in the case of *U. Suvetha v. State*, [(2009) 6 SCC 757],

*“7. Ingredients of Section 498-A of the Penal Code are:*

*(a) The woman must be married;*

*(b) She must be subjected to cruelty or harassment; and*

*(c) Such cruelty or harassment must have been shown either by*

*husband of the woman or by the relative of her husband.”*

**61.** The learned trial court in this respect considering question of determination number 3 in paragraphs 39 & 40 of the impugned judgment. On plain reading of paragraph 39 & 40 of the impugned judgment it appears that the trial court without assessing any oral or documentary evidence, simply has mentioned that ‘from the dying declaration and evidence available on record it is established that before the incident appellant used to ask money from the deceased for liquor and on being denied by the deceased for the same, he used to beat her.’ ‘It is also mentioned that it is also established from aforementioned evidences that appellant used to harass and physically assault her which had probability to affect life,



body, and health which comes u/s 498A of IPC.’ In our opinion, aforementioned approach of the learned trial court is not proper as the trial court ought to have considered all oral as well as documents available on record.

**62.** In this respect on perusal of dying declarations (Ex.P/13 & P/14) and statement of Executive Magistrate Prabhat Mishra (PW/7) and Executive Magistrate H.K. Jhore (PW/9). It does not appear that appellant has committed the cruelty as defined in the of section 498A of IPC. Apart from that mother of appellant Shyama Chaturvedi (PW/3) has not supported the prosecution case in this respect therefore, prosecution has declared her hostile and cross-examined her, then in paragraph 3 of cross-examination she denied that the appellant used to demand money from the deceased and on being denied by her, he used to physically assault her. Uncle of deceased Ramashray Tiwari (PW/2) stated in paragraph 2 of examination-in-chief that whenever deceased used to come to his house, she used to tell ladies in the house that appellant bothers her, physically assaults her and demands money to purchase liquor. This witness has not said that deceased told to him directly this witness that appellant bothers her, physically assaults her and demands money to get liquor. Therefore, this statement comes under hearsay, hence, not admissible in evidence.

**63.** Father of appellant, Radhika Prasad (PW/1) deposed that when deceased used to come parental house prior to incident, she used to tell that appellant harasses her physically and assault her for money, but this witness has not stated any specific time that when deceased had complained against appellant to him. There is also an omission of aforementioned fact in written complaint (Ex.P/1). Therefore, aforementioned statement of this witness is not reliable, hence, Offence u/s 498A of IPC is not proved beyond reasonable doubt against the appellant/ accused. Consequently, it is apparently clear that in respect of cruelty which is defined u/s 498A of IPC, the trial court has not properly assessed the evidence and has given erroneous findings.

64. On the basis of aforementioned discussions, we are of the considered view that the trial court has not properly assessed and evaluated the evidence available on record and has erred by convicting and sentencing appellant u/s 498A of IPC. But on the other hand the learned trial court has rightly assessed and evaluated the evidences and convicted and sentenced the appellant/ accused u/s 302 of IPC.

65. Resultantly, the appeal is **partly allowed**. Conviction and sentence passed u/s 498A of IPC is set aside and appellant is acquitted for the offence u/s 498A of IPC. Conviction and sentence passed by learned trial court u/s 302 of IPC against appellant/ accused is affirmed.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

*MISHRA*