* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\# **CNR No. DLHC010070202003**

\+ CRL.A. 837/2003

PRITHIVI RAJ .....Appellant

Through: Mr. L.K.Singh, Advocate.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Advocate.
Insp. Somveer Singh, P.S.Ashok Vihar.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal has been filed by the appellant against the Judgment dated 23rd October, 2003 and the Order on Sentence dated 30th October 2003, passed by the learned Additional Sessions Judge, New Delhi [**"Trial Court"**] in Sessions Case No. 70/1999, arising out of FIR No. 276/1999, under Section 302/498-A of the Indian Penal Code, 1860 [**"IPC"**], Police Station[**"PS"**] Ashok Vihar.

Factual Matrix

2. The prosecution case, in brief, is that on 11th April, 1999, at

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about 1:40 pm, an information was received from the Duty Constable, LNJPN Hospital that Pooja, wife of Prithvi Raj, was got admitted in the hospital by her father in a burnt condition. The information was recorded *vide* DD No. 8-A (Ex. PW-3/A). SI Narender Kumar (PW-21) along with Constable Shyam Sunder (PW-19) and Constable Sandeep (PW-20) rushed to the spot, that is, House No. WP-161, Wazir Pur Village. After deputing Constable Shyam Sunder at the spot, PW-21 along with Constable Sandeep went at LNJP Hospital, where, PW-21 collected the MLC of Pooja. As per MLC, Pooja suffered 100% burn injuries. The doctor declared her "fit for statement" at about 3:45 pm. Her statement Ex. PW-21/A was recorded.

3. Since the incident took place within seven years of her marriage, PW-21 passed on the information to Mr. Ajay Kumar Gupta, SDM (PW-6). SDM came at the hospital and took permission from the doctor for recording the statement of victim Pooja. At about 5:30 pm, Pooja was declared "fit for statement" by the doctor. Her statement Ex. PW-6/A was recorded by the SDM, in which, she stated that she was insisting her husband for visiting her *Bua*, but he refused; her husband then beat her, poured kerosene oil on her and set her ablaze. The SDM made his endorsement on the statement so recorded, on the basis of which, FIR No. 276/1999 (Ex. PW-17/A) was recorded under Section 307 IPC at PS Ashok Vihar.

4. During investigation, PW-21 prepared the site plan of the place of occurrence (Ex. PW-15/A), crime team was called and the photographs of the scene of crime were taken. A stove, a burnt *saree*,

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one petticoat, a burnt *chunni*, a matchbox and a burnt match stick were lifted from the spot and sealed in separate *pullandas* with the seal of MKY and were seized *vide* memos Ex. PW-20/A and Ex. PW-20/B respectively.

5. On 12th April, 1999, at about 2:45 am, an information was received at PS Ashok Vihar from LNJP Hospital vide DD No. 21-A (Ex. PW-16/A) that injured Pooja had succumbed to her injuries. Consequently, Section 307 IPC was replaced with Section 304-B/498-A/34 IPC. The SDM was informed, who conducted the inquest proceedings. Dr. Bhim Singh (PW-11) conducted the post-mortem on the body of the deceased. As per the post-mortem report Ex. PW-11/E, the death was due to shock as a result of 100% dermo-epidermal burns.

6. Appellant Prithvi Raj was arrested on 12th April, 1999. During investigation, police seized two letters written by deceased Pooja to her parents along with a list of the dowry articles *vide* seizure memo Ex. PW-1/C. Mr. Hetram, father and Smt. Burfo Devi, mother of the appellant Prithvi Raj were also arrested on 24th June, 1999.

7. Upon completion of investigation, charge sheet was filed under Section 302/498-A/34 IPC against the appellant Prithvi Raj and his parents.

<u>Proceedings before the learned Trial Court</u>:

8. The learned Trial Court *vide* judgment dated 15th September, 1999, discharged the parents of the appellant, while the appellant was charged under Section 302/498-A IPC. He pleaded not guilty and claimed trial.

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9. In order to prove its case, prosecution examined 24 witnesses, including the parents of the deceased, the SDM, the doctor and the Investigating Officer. The statement of appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 [**"Cr. PC"**]. The appellant denied all the incriminating evidence appearing on record against him. He stated that he had good relations with his wife Pooja, however, she was suffering from TB and other ailments, on account of which, she used to remain frustrated and to lose her temper very quickly. He further stated that during six years of their married life, she had threatened to commit suicide on number of occasions. With regard to the occurrence, he stated that he was present outside the house with the neighbours when he heard the alarm. He rushed to his house and saw that Pooja was already burning. He and his minor son tried to save her, and in this process, his hands, chest and face got burnt. He further stated that his wife, on reaching the hospital, had told the doctor who first attended her, that she had committed suicide and got burnt. He stated that Pooja tried to commit suicide after being tutored by her parents and relatives, she gave a false statement to the IO and the SDM. According to him, he never demanded any dowry at any point of time, that is, before, at or after the marriage till the death of his wife, either from her or her parents.

10. In his defence, the appellant examined four witnesses, namely Sh. Shyam Lal (DW-1), Sh. Naresh Kumar (DW-2), Mr. Chander Bhan (DW-3) and Sh. Satish Kumar (DW-4).

11. The learned Trial Court *vide* Judgment dated 23rd October, 2003, convicted the appellant Prithvi Raj for the offence under

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Sections 302/498-A IPC and *vide* Order on Sentence dated 30th October 2003, sentenced him to undergo Rigorous Imprisonment for Life for the offence under Section 302 IPC with fine of Rs. 5,000/-, in default of payment of which, he was directed to undergo imprisonment for three months. He was further sentenced to undergo Rigorous Imprisonment for three years for the offence under Section 498-A IPC with fine of Rs. 500/-, in default of payment of which, he was directed to undergo Rigorous Imprisonment for three months.

12. Feeling aggrieved, the appellant Prithvi Raj has preferred the present appeal.

Submissions on behalf of the Appellant

13. Mr. L.K. Singh, learned counsel for the appellant, assailed the impugned judgment, submitting that the learned Trial Court failed to appreciate the evidence in its proper perspective and convicted the appellant merely on conjectures and surmises. It was contended that the prosecution case suffered from serious infirmities and the conviction is founded upon multiple inconsistent dying declarations made by deceased Pooja, and therefore, such conviction cannot be sustained.

14. It was argued that the learned Trial Court did not properly appreciate the evidence on record. As per prosecution case itself, there are three dying declarations made by the deceased on the same day. The deceased, having sustained burn injuries, was admitted in the hospital on 11th April, 1999 at about 1:15 pm. She gave history of the injuries suffered by her to PW-13 Dr. S.K. Satrawal, who recorded the same in the MLC Ex. PW-13/A. As per history recorded by the

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doctor, "the deceased was sleeping and she does not know how she got burnt". It was argued that there is a specific endorsement in the MLC that the deceased was conscious, told her name and herself gave the history. It is argued that there is no reason to disbelieve the first given statement of the deceased. The second statement Ex. PW-21/A of the deceased was recorded after about two hours by the IO SI Narender Kumar (PW-21), while the third statement Ex. PW-6/A was recorded by the SDM (PW-6) at 5.30 pm, that is, after a gap of four hours of her having been admitted in the hospital.

15. It was argued that the learned Trial Court erred in not appreciating that the first dying declaration Ex. PW-13/A was the instant one made before the doctor (PW-13), while there was no presence of relatives near her and she gave a truthful and correct account. Therefore, there could not be any legal and valid reason to discard the first dying declaration of the deceased.

16. It was also argued that it has come in evidence that the parents and relatives of the deceased met her in the hospital, and therefore, the possibility of the parents and other relatives tutoring the deceased, cannot be ruled out and such subsequent dying declarations recorded after several hours have no evidentiary value.

17. It was argued that the dying declaration made before the doctor and before the IO and the SDM are conflicting and are not consistent with each other and therefore it was not legally correct to pick up a statement which implicated the appellant and base conviction on such dying declaration. Rather, the dying declaration made in the first point of time, ought to have been accepted.

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18. It was submitted that the evidence on record indicates that the appellant was outside his house at the relevant time, and on seeing his wife in flames, he rushed for her rescue, and in the process, he himself suffered burns on his both hands, face, scalp, forearm and upper part of the chest. These burn injuries are clearly mentioned by Dr. S.K. Satrawal (PW-13) in the MLC of the appellant Ex. PW-13/B.

19. It was argued that the learned Trial Court did not properly appreciate the testimony of Smt. Omwati (PW-7), an independent witness, who categorically stated that when she came out of her house on hearing the alarm, she found that the deceased had got burnt, and at that time, she saw the appellant rushing towards his house from outside and that the family members of the appellant took her to the hospital.

20. It was further argued that the prosecution is guilty of not examining the child witness Gaurav, then aged about five years, who was the sole eye witness of the occurrence. The presence of Gaurav at the time of occurrence is confirmed by the testimony of PW-1, who deposed that both hands of Gaurav had been burnt and that Gaurav was capable of giving reply. Similarly, another prosecution witness Phool Singh (PW-12), residing in the neighbourhood, stated that he was standing at a tea shop where the boy Gaurav came and told that his mother had set herself on fire. It is thus argued that non-examination of Gaurav would lead to an adverse inference against the prosecution. 23. It was also argued that the prosecution has failed to prove that there was any motive for the appellant to commit the alleged crime and the learned Trial Court erred in disbelieving the

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statements of the defence witnesses.

21. It is further argued that the prosecution did not produce the complete medical treatment record of Pooja between her admission in the hospital and her death. It was submitted that Pooja had suffered 100% burns, but the record produced, did not disclose the complete line of treatment, medicines administered, or the nature and dosage of pain-killers, sedatives or other medication administered to her. It was argued that the same was important because the capacity of a severely burnt patient to give a coherent and voluntary statement could not be assessed merely by relying upon a one line fitness certificate given by the doctor.

22. The learned counsel further submitted that while recording the statement Ex. PW-6/A, the SDM was having the MLC of the victim, but he did not confront Pooja with materially different history, recorded in Ex. PW-13/A. This omission, according to learned counsel, was significant because the first statement made by the victim, did not mention the presence of appellant at the time of incident.

23. It was submitted that although the third statement, that is, Ex. PW-6/A, recorded by the SDM on the same day, substantially repeated the averments contained in the second statement recorded by the IO Ex. PW-21/A, yet, the same cannot cure the fundamental inconsistency with the earlier version recorded in the MLC Ex. 13/A by PW-13.

24. The allegations relating to dowry harassment and demand for scooter were also disputed. The learned counsel drew attention to

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letters Ex. P-1 and Ex. P-2, allegedly written by Pooja to her parents, and submitted that neither letter contained any specific averment that the appellant had subjected her to harassment on account of demand for the scooter or any other dowry article. It was argued that had there been persistent dowry related harassment over the years, such allegations would find mention in the letters written by the deceased to her parents.

25. It was argued that the allegations of dowry harassment were introduced by the prosecution to furnish motive for the homicidal act. It was submitted that in the absence of reliable evidence establishing the manner in which Pooja had caught fire, the prosecution had sought to create a false narrative of matrimonial cruelty and dowry demand to lend support to its theory of homicide. It was also submitted that if the harassment was indeed the cause, it would have been natural for Pooja to refer to the same while narrating the circumstances leading to her death. Such omission substantially weakens the prosecution case.

26. It was argued that the neighbours in their testimonies, (DW-1 to DW-4) had supported the defence version that the appellant and Pooja had cordial relations and that appellant had attempted to rescue her. However, the learned Trial Court erred in not placing reliance on such testimonies.

27. It was thus argued that prosecution has failed to prove the guilt of the appellant beyond reasonable doubt, and therefore, the impugned judgment of conviction and order on sentence deserve to be set aside and appellant be acquitted of all the charges. In support of his arguments, the learned counsel placed reliance on the following

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judgments:

i. *Suresh Vs. State Rep. by Inspector of Police*, 2025 INSC 318

ii. *Uttam Vs. State of Maharashtra, (2022)8 SCC 576*

iii. *Irfan @ Naka Vs. The State of Uttar Pradesh, 2023 SCC Online SC 1060*

iv. *Abhishek Sharma Vs. State (Govt. of NCT of Delhi), (2024) 13 SCC 660*

Submissions on behalf of the State

28. *Per contra*, Mr. Aman Usman, learned APP for the State, supported the impugned judgment and submitted that the learned Trial Court duly appreciated the evidence and rightly convicted the appellant under Sections 302 and 498-A IPC. It was contended that the prosecution has established a complete, cogent and trustworthy chain of evidence, connecting the appellant with the commission of offence. It was submitted that the evidence led by the prosecution, when appreciated in its entirety and in its proper perspective, establishes the harassment suffered by the deceased in her matrimonial home as also the circumstances in which she suffered fatal burn injuries.

29. Referring to the testimonies of PW-1 Ram Rattan, father of the deceased, it was submitted that the same was of considerable significance. PW-1 deposed regarding the repeated demands raised by the appellant and harassment to which Pooja was subjected to on account of demand of dowry. He further deposed that after reaching the hospital, the deceased informed him that the appellant had poured oil upon her and thereafter set her on fire. It was submitted that the

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testimony of PW-1 stands corroborated by the testimonies of PW-2 Smt. Mohini Devi, mother of the deceased, on material aspects. The evidence of PW-4 and PW-5 also support the prosecution version regarding the harassment of deceased Pooja on account of dowry demands. The mere fact that they are related witnesses, by itself, may not render their testimonies unreliable, particularly when their evidence receive substantial corroboration from the dying declarations, medical evidence and surrounding circumstances.

30. It was submitted that the dying declaration recorded by the SDM is voluntary, coherent and inspires confidence. The same was recorded after confirming from the doctor that the victim was fit to make the statement and was recorded in question-answer form. The said declaration stand corroborated by the earlier statement recorded by the Investigating Officer as well as the oral statements made by the deceased to her parents. It was argued that there was no material on record to demonstrate that the deceased was tutored, coerced or otherwise influenced to falsely implicate the appellant.

31. It was further submitted that the medical evidence proves the physical and mental condition of the deceased at the relevant time. The doctors recorded that the deceased was conscious and capable of giving the history. Despite the extensive burn injuries suffered by her, she was found capable of communicating and thereafter shifted to burns ward for treatment. No effective suggestion was put to the doctor during the trial to establish that the deceased was under such medication or sedation as would have rendered her incapable of understanding or making a statement. The argument regarding the

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alleged sedation or incapacity is an afterthought as there was no effective challenge to the medical evidence at the appropriate stage. The appellant had sufficient opportunity to know the line of treatment and the medicines administered to the victim during her treatment, but the same was not done.

32. It was further argued that the defence theory of accidental death and suicide is wholly unsupported by any affirmative evidence. Mere suggestion during cross examination that deceased was short tampered, cannot establish that she possessed any suicidal tendency or had any reason to set herself on fire. The status of scene of crime also does not lend support to the defence theory of the deceased catching fire or committing suicide while engaged in ordinary household activities, such as, preparing *Rotis*.The FSL report confirms the kerosene oil residue in the hairs of the deceased, which fact is suggestive of murder.

33. It was also argued that there is no mechanical rule that the earlier statement must invariably prevail or that every subsequent statement must necessarily be discarded. Where a subsequent statement is consistent with the surrounding circumstances and the circumstances explained, such subsequent statement can legitimately be relied upon. In the present case, the subsequent statements of the deceased are not isolated pieces of evidence, rather, they stand corroborated by the oral testimony, medical evidence, documentary material and the state of scene of crime. In support of his submission, he places reliance on ***Jagbir Singh v State (NCT of Delhi)***, (2019) 8 SCC 779 and ***Ravi Chander and Others v State of Punjab*** (1998) 9

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34. It was further submitted that the burn injuries suffered by the appellant do not by themselves establish his innocence. The defence sought to contend that the injuries suffered by the appellant demonstrate that he had attempted to save the deceased. However, the learned Trial Court examined the testimony of PW-7 and the surrounding circumstances and rightly recorded that the injuries of the appellant did not demolish the prosecution case. The learned Trial Court found the appellant's claim of himself removing the deceased to the hospital to be inconsistent with the evidence of PW-12 Phool Singh and the MLCs which indicate that the appellant and the deceased were admitted at different times and were brought in different vehicles. The injuries of the appellant therefore cannot be examined in isolation from the complete evidentiary record.

35. Similarly, the absence of any external injury on the body of the victim in the post-mortem report does not automatically establish that she was not assaulted or was not treated in a cruel manner. The allegations of cruelty are independently supported by the testimonies of the prosecution witnesses, writings of the deceased and her statements concerning the conduct of the appellant.

36. It was further argued that the defence witnesses examined on behalf of the appellant do not create any reasonable doubt in the prosecution case. DW-1 Shyam Lal claimed to have removed the appellant to the hospital, whereas, the said version was not supported by PW-12. DW-2 Naresh Kumar claimed that the appellant and deceased were having cordial relations, which is contrary to the

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evidence regarding the matrimonial disputes and dowry related harassment. The testimonies of DW-3 and DW-4 were also examined by the learned Trial Court in the light of the contradictions, improbabilities, relationship of the witnesses with the parties and their conformity with the remaining evidence. The learned Trial Court was thus fully justified in rejecting the defence evidence to the extent it was found inconsistent with the established facts.

37. The allegations of tutoring and the contention that the prosecution witnesses were influenced merely because the parents of the deceased were present in the hospital, is without substance. The presence of family members at the hospital or at a place where the statements were recorded is entirely natural, particularly, since the deceased was critically injured. No evidence has been brought on record to demonstrate that the deceased or the prosecution witnesses instructed, influenced or coerced the victim to falsely implicate the appellant. The allegation therefore remains a bare suggestion and cannot displace otherwise reliable evidence.

38. It was further submitted that prosecution case regarding Section 498-A IPC also stands independently established. The evidence of PW-1, PW-2, PW-4 and PW-5 establish that deceased was subjected to cruelty and harassment by the appellant in connection with dowry demand, including the demand for scooter The evidence further demonstrates that efforts were made by the family members to resolve the matrimonial disputes, but the harassment continued. The learned Trial Court after appreciating the evidence in its entirety, rightly concluded that the appellant had subjected the deceased Pooja to

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cruelty and harassment within the meaning of Section 498-A IPC.

39. With regard to the non-examination of Gaurav, the minor son of the appellant and deceased, learned APP submitted that the child was barely five years old at the time of commission of offence and was not in a position to give any statement regarding horrific incident and therefore his non-examination is not fatal to the prosecution case.

40. It was further submitted that there existed no reason whatsoever for the deceased to falsely implicate the appellant. The dying declarations were made when the deceased was battling for her life and there is nothing on record to suggest anything that could have prompted a false accusation.

41. The learned APP contended that the learned Trial Court undertook a detailed and careful appreciation of the entire evidence and considered the material defences raised by the appellant, including the alleged inconsistency in the statements of the victim, allegations of tutoring, the absence of signatures of the deceased on the declaration, the question of administration of sedation or incapacity of the deceased, the injuries sustained by the appellant, his alleged conduct in taking the deceased to the hospital and the testimonies of the defence witnesses. Each of the aforesaid contentions were examined and rejected for cogent and sustainable reasons. The findings recorded by the learned Trial Court are based on the evidence available on record and do not disclose any perversity or any error of law, warranting interference by this Court.

Reasoning and Analysis

42. We have extensively heard the learned counsel for the appellant

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and the learned APP and have perused the evidence on record.

43. Undoubtedly, in the present case, the conviction of the appellant Prithvi Raj is based on the dying declarations Ex. PW-6/A and Ex. PW-21/A, made by the victim before the SDM and the IO, supported by the testimonies of the close relatives, that is, father (PW-1), mother (PW-2) uncle (PW-4) and sister (PW-5).

44. The principal challenge raised by the appellant is regarding the reliability of aforesaid dying declarations made by deceased before the different persons at different times. Since the conviction of the appellant is substantially founded upon those declarations, the Court is therefore required to scrutinize the same with due care and caution.

45. Section 32(1) of the Indian Evidence Act, 1872 makes relevant a statement made by a person as to the cause of his death or as to any of the circumstances resulting in his death. It is well settled that once a dying declaration is found to be voluntary, truthful and inspires confidence, the same can form the sole basis of conviction without requiring independent corroboration. At the same time, where multiple dying declarations are relied upon, the Court is required to examine whether they were mutually consistent on material particulars and whether they inspire confidence.

46. Before proceedings to the merits of this case, it would be appropriate to appreciate the various principles of law laid down by the Hon'ble Supreme Court in regard to cases involving multiple dying declarations. The Hon'ble Apex Court in ***Kamla v. State of Punjab, (1993) 1 SCC 1***, has held:

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> *"5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide Khushal Rao v. State of Bombay [AIR 1958 SC 22 : 1958 SCR 552: 1958 Cri LJ 106]). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."*

47. In State of ***Punjab v. Parveen Kumar, (2005) 9 SCC 769***,the Hon'ble Supreme Court further observed:

> *"10. …. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have considered such corroborative evidence to test the truthfulness of the dying declarations..."*

48. Coming back to the present case, besides the two dying declarations referred above, the victim also made a dying declaration,

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which is recorded in the alleged history in the MLC Ex. PW-13/A. The parents of the victim in their testimonies also claimed that the deceased had narrated to them as to how she suffered burn injuries and therefore the said statement of the deceased to her parents, may also operate as dying declaration. Thus, it is a case of multiple dying declarations.

49. It is not the requirement of law that multiple dying declarations must reproduce each fact in identical language or contain a verbatim account of every circumstance. The test is whether the declarations are consistent on material particulars. In ***Jagbir Singh Vs. State (NCT of Delhi), (2019) 8 SCC 779,*** the Supreme Court had an occasion to consider the law relating to the dying declaration and the problem of multiple dying declarations in detail. It was held that merely because there are multiple dying declarations, all the dying declarations are not to be rejected. It was observed that when there are multiple dying declarations, the case must be decided on the facts of each case and the Court will not be relieved of its duty to carefully examine the entirety of the material on record, as also the circumstances surrounding the making of the different dying declarations. The relevant paragraph reads as under:-

> "*Our conclusion on multiple dying declarations*
>
> *32. We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the*

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> *facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered.*"

50. Keeping the above principles in mind, we now proceed to examine whether the various dying declarations made by the deceased Pooja are consistent and inspire our confidence so as to uphold the conviction of the appellant or not.

51. The first dying declaration (DD-I), as already discussed above, finds mention in the MLC Ex. PW-13/A, prepared by PW-13 Dr. S.K. Satrawal. It reads as under:-

> *"The alleged history as given by the patient herself is that she was sleeping and does not know how she got burnt."*

52. The MLC Ex. PW-13/A was prepared at 1.15 pm on 11.04.1999. It also records that Pooja was conscious, told her name, was capable of giving history and was asking for water. Dr. S.K. Satrawal, while appearing as PW-13, reiterated as to what was recorded in the MLC Ex. PW-13/A. He confirmed that the patient

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narrated the history herself that she was sleeping while she got burn injuries and she does not know how she got burnt. He further stated that she was fit to make statement during that period. There is no cross examination that Pooja was not in a fit condition to narrate the history, so much so, there is not even a suggestion that she had not given the history herself or that she gave the same under any influence or pressure.

53. The statement made by Pooja in MLC Ex. PW-13/A is the earliest version of the incident. Such statement does not contain any allegation that the appellant had poured kerosene upon her or had set her on fire. She did not attribute any act of assault or cruelty to the appellant. She did not even speak of the presence of the appellant at the time of incident. The first statement recorded immediately after the occurrence assumes importance by itself, inasmuch as, the same is given without any tutoring or embellishment. If there was any real demand of dowry or if the appellant poured kerosene on her and set her ablaze, there is no reason why she would not have said so in the alleged history to the doctor.

54. The second declaration (DD-II) was recorded by the IO SI Narender (PW-21). He deposed that on reaching the hospital, he collected the MLC of Pooja and sought advice of the doctor, who declared her fit to make a statement. Thereafter, he made enquiry from Pooja, who made statement Ex. PW-21/A. According to him, such statement was made voluntarily. The statement so recorded by PW-21 is extracted below:-

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ब्यान अजनि. Smt Pooja W/o Parthvi Raj R/o WP-161 Wazir Pur Village Delhi age 24 year.

ब्यान किया कि मैं पता उपरोक्त पर सपरिवार रहती हूँ मेरी शादी 24 Nov 1993 को पृथ्वी राज के साथ हुई थी। मेरे पास 5 साल का लड़का गौरव है मेरा पति जो कि Electician का काम करता है अक्सर मारपीट करता था। आज वक्त करीब 12 बजे दिन अपनी बुआ अधरकली जो शाहदरा में रहती है के पास जाने के लिए कह रही थी तो मेरे पति पृथ्वीराज ने मुझे मेरी बुआ के घर जाने के लिए मना किया कि वह न स्वयं जायेगा और न ही जाने देगा। तो मैंने कहा कि जब मैं अपनी रिश्तेदारियों में जाती हूँ तो आप मुझे लेकर मेरी रिश्तेदारियों में नहीं ले जाते हो तो इस बात पर कहा सुनी होने लगी तो मेरे पति ने मेरे साथ मारपिटाई की और बाद में मेरे ऊपर मिट्टी का तेल घर में रखी कैनी से डालकर माचिस की तिल्ली जलाकर मुझमें आग लगा दी आग लगने पर मैंने बचाओ-2 कहकर चिल्लाई जो पड़ोसियों ने आकर आग बुझाई। मेरे पति ने मुझे मारने की नीयत से आग लगायी है। मेरे पति पृथ्वीराज के खिलाफ कानूनी कार्यवाही की जाय। ब्यान सुन लिया ठीक है

RPW 21 A

19/7/2002

'A'

LTI

LTI

Attested

11/4/99

55. PW-21 further deposed that the incident had taken place within seven years of marriage, and therefore, he informed the SDM and SHO about the incident. He stated that within 1 – 1 ½ hours, the SDM and SHO arrived at the hospital and he handed over the MLCs (of the deceased and the appellant) and statement recorded by him to the SDM, who perused the same. Thereafter, the SDM made enquiry at his own and recorded the statement of Pooja afresh, which is Ex. PW-6/A. He further stated that in the hospital, he came across the parents of the deceased and recorded their statements. He stated that even the appellant Prithvi Raj was found admitted in the burns ward.

56. In cross examination, PW-21 stated that when he met with the accused, he was having burn injuries on both his hands, and on enquiry, he came to know that those burn injuries were received by the appellant in the same incident.

57. The third dying declaration (DD-III) (Ex. PW-6/A) was recorded by the SDM Sh. Ajay Kumar Gupta (PW-6). The said statement is on the same line as recorded by PW-21. Ex. PW-6/A was recorded by the SDM in question-answer form and the same reads as under:-

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Statement of Smt Pooja w/o Prithvi Raj R/o WP-61, Wazirpur Village, Ashok Vihar Delhi recorded at LNJP Nayak Hospital on 11/4/99 at 5.30 pm

क्या नाम है आपका?
पूजा
पति का
पृथ्वी राज, पृथ्वी राज भारती
शादी कब हुई
नवम्बर, बानवे
कहाँ रहते हो?
वजीरपुर
कितने बच्चे हैं?
एक
कितने साल का?
पाँच
स्कूल जाता है?
नहीं
लड़के का क्या नाम है?
गौरव
पति क्या काम करते हैं?
बिजली का
आप जल कैसे गई?
मैं इनसे अपनी बुआ के पास चलने को कह रही थी। इन्होंने मना कर दी तो मैंने कहाँ तुम अपने रिश्तेदारों के चले जाते हो। तो बोले मैं नहीं जाता। फिर इन्होंने मुझे मारा। फिर मेरे ऊपर तेल छिड़क दिया।
कौन सा तेल?
मिट्टी का और माचिस से आग लगा दी।

Ex PW6
A
AS3
24.8.2000

61/

Cont Page 2

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Cont Page 2

Statement of Mrs Gogia

पर उस समय और कौन था ?

और मेरा बच्चा

कितने बजे की बात है

बारह

पहले भी कभी झगड़ा हुआ है आपस में ?

रोज ही करते हैं।

माँ बाप कहाँ रहते हैं ?

कौन से

सास - ससुर ?

वो अलग रहते हैं।

तुम्हारे माँ बाप कहाँ रहते हैं ?

क्वार्टरों में।

11/4/99

SHO (AN) to register case as per provisions of Law and investigate the matter and submit a copy of FIR to the under-signed.

11/4/99

AJAY. K. GUPTA
Sub Divisional Magistrate
Model Town, Delhi

Sub Divisional Magistrate Model T.

AJAY. K. GUPTA
Sub Divisional Magistrate
Model Town, Delhi

P.T.O.

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58. In cross examination , PW-6 (SDM Ajay Kumar Gupta) stated that he does not know the name of the doctor who had declared the patient fit for statement. He further stated that at the time of recording of statement of Pooja, there was nobody else present near her. However, he did not know as to who met her before he had gone to the hospital and could not tell if Pooja had made statement to any other person before he recorded her statement.

59. We are faced with a situation where the subsequent dying declarations are found to be contradictory with the first dying declaration. In such circumstances, the condition of the deceased at the relevant point in time and the medical evidence brought on record to indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased are of equal significance.

60. PW-1 Ram Rattan (father) and PW-2 Smt. Mohini Devi (mother) deposed that on 11th April, 1999, they received a telephone call from the uncle of the appellant, who told that Pooja was lying admitted in the hospital due to burns. They along with their relatives, including PW-4 Shyam Lal went to the hospital, where they found Pooja lying on the bed badly burnt and was writhing in pain. PW-1 deposed that appellant was also present in the hospital. He had brought his daughter to the hospital and was having burn injuries in his hands. He also saw Gaurav, son of Pooja, having burn injuries. They deposed that upon being asked, Pooja told them that on that day, she had asked the appellant Prithvi Raj to take her to Shahdara to the

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house of her *Bua*, who was ill, but he refused to do so. She told him that he takes her to his relatives, but refuses to take her to her relatives. She further told them that appellant Prithvi Raj got enraged and gave beatings to her, poured kerosene oil on her and set her on fire by lighting a match stick.

61. In cross examination, PW-1 stated that they had reached the hospital within 5-7 minutes after about 1.30 pm. They all (5/7 persons) went into the room where Pooja was lying. According to him, both the hands of Gaurav (deceased's son) had been burnt and there were heat marks on his face. However, he was capable of giving reply. He denied that they had tutored Pooja to implicate the appellant and his family members. He further stated that his daughter was not a lady of short temper.

62. Similarly, PW-2, in her cross examination, stated that they had reached the hospital at about 1.45 pm. She admitted that her daughter was badly burnt and was in great agony. She denied that she was not fully conscious. She denied that her grandson Gaurav told her that Pooja had told him that she had burnt herself and that he and the appellant had rushed and tried to save Pooja, and in the process, suffered burn injuries. She denied the suggestion that they had tutored Pooja to accuse her husband for the incident.

63. On analysis of the testimonies of PW-1, PW-2, PW-6, PW-13 and PW-21, it is evident that DD-I, given by the victim to the doctor in the MLC Ex. PW-13/A, contained the earliest version of the incident, wherein, the deceased categorically stated that she was unaware as to how she caught fire, as she was sleeping. DD No. II can

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be said to have been given after 1.30 pm before her parents and the other relatives at the hospital,DD No. III was made before the IO and DD No. IV was made after 5.30 pm before the SDM. DDs No. II, III and IV are consistent to the extent that the appellant had poured kerosene oil on Pooja and set her ablaze. However, DDs No. II, III and IV are at the same time a complete somersault from DD No. I made before the doctor. The first statement was made to the doctor before the arrival of the parents of the deceased. There is no evidence that such statement was made due to any pressure or influence from the appellant or his family members. Thus, there is no reason to disbelieve such statement made to the doctor.

64. The defence urged that the subsequent declarations ought to be discarded as they were made after the arrival of Pooja's parents and relatives. PW-4 Pyare Lal, in cross examination, stated that several relatives had met Pooja before the arrival of the SDM for recording her statement. This circumstance cannot be ignored. Even though, the mere presence of relatives in the hospital may not establish that the deceased had been tutored, it is a settled law that a dying declaration made in the presence of the relatives or made after meeting the relatives, makes the dying declaration doubtful. In ***Mohan Lal & Ors. vs. State of Haryana,*** *reported in* ***(2007) 9 SCC 151***, dealing with a case of dying declaration, the Hon'ble Apex Court in paragraph No. 11 of the judgment observed as under:-

> *"11. In the instant case, it is to be noted that the evidence of PW 3 and the doctor clearly show that before the dying declaration was recorded the relatives of the deceased including PWs 7 and 8 were present with her and were*

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> *subsequently asked to leave the room where the dying declaration was recorded. Though much was made of the dowry demand by the courts below there is only a vague reference to it in the dying declaration. The statements of PWs 7 and 8 that they had told the investigating officer about the dowry demand is not correct. They had not said so before the investigating officer. It is also significant that prior to the death, neither the deceased nor her parents had complained to the police or told anyone else about any alleged dowry demand, In the circumstances, the dying declaration itself was clearly the result of tutoring and was not a free and voluntary one. The courts below were therefore not justified in placing reliance on the same. Additionally, there was only a vague reference of dowry demand to the police which in any event has not been established and also was not told during investigation. Once the dying declaration is excluded, there is nothing to implicate the accused-appellants with the death."*

65. In ***Suresh Vs. State Rep. by Inspector of Police,2025 INSC 318***, the Supreme Court while acquitting a man sentenced to life imprisonment for his wife's murder, emphasized that when multiple dying declarations are relied upon, the Court must ascertain whether they are consistent on material particulars and inspire full confidence and where such declarations present mutually incompatible versions or create uncertainty regarding the true genesis of the occurrence, it would be unsafe to base a conviction solely thereupon. The relevant paragraph reads as under:-

> "*14. As discussed above, in cases where the dying declaration is suspicious, it is not safe to convict an accused in the absence of corroborative evidence. In a case like the present one, where the deceased has been*

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> *changing her stance and has completely turned around her statements, such a dying declaration cannot become the sole basis for the conviction in the absence of any other corroborative evidence.*

66. As per MLC Ex. PW-13/A, the deceased had suffered 100% burns. The first dying declaration was recorded before administering any medicine and admitting the deceased to the burns ward for further diagnosis and management. No medical evidence has come on record as to the line of treatment and as to what medicines were given to the victim. In ***Chacko v. State of Kerala, (2003) 1 SCC 112***,the Apex Court declined to accept a dying declaration made by a person, 70 years of age, having sustained 80% burns. Therein, the declaration was recorded 8-9 hours after burns, giving minute details as to motive and manner. It was opined that the condition of the patient described as "conscious, talking" in the wound certificate would in and of itself not testify to the condition of the patient making such declaration, nor would the oral evidence of the doctor or Investigating Officer.

67. Similarly, in ***Surinder Kumar v. State of Haryana, (2011) 10 SCC 173***, the dying declaration made by a person having 95-97% burn injuries was not accepted, given that at the time of making the declaration, the deceased was under the influence of Fortwin and Pethidine injections, because of which she could not have had normal alertness.

68. The Hon'ble Supreme Court in ***Abhishek Sharma*** (supra) held that in absence of clarification regarding the mental state in which the dying declaration was made, it cannot be safely relied upon without

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corroboration. The relevant paragraph of the judgment reads as under:-

> "*19. Despite this being the third statement given, no attempt was made to have the same made before a doctor or magistrate, which, as a rule of prudence, lends support to the prosecution. It reflects from the record that at the time when the third statement was recorded, the deceased had been administered treatment for her injuries. However, it has not come forth as to the nature of treatment and what kind of medicines were given to her. In the absence of a positive statement by the medical team responsible for her treatment, it cannot be stated, with certainty, that the medicines administered had no effect of impairing the mental fitness of the deceased. There is no medical opinion placed on record in this behalf. Therefore, with the cloud of doubt surrounding DD-III, it is but natural that the court looks to other circumstances and evidence to satisfy the requirement of the statement made as being true and voluntary. The other circumstances present shall be discussed at a later stage*."

69. In the present case, since the victim had suffered 100% burn injuries and her subsequent dying declarations were recorded after she was already shifted to burns ward for treatment, in the absence of any positive medical evidence regarding the treatment given to the deceased, it is difficult to accept the prosecution contention that the victim was in a fit mental state to give subsequent dying declarations. Hence, that being the position, it is not possible to rely upon the subsequent dying declarations for holding the appellant guilty of murder.

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70. PW-1, PW-2, PW-4 and PW-5 deposed that Pooja was being subjected to harassment on account of demand of dowry, and in particular, a scooter. However, there are contradictions in their testimonies, inasmuch as, according to PW-1, when his daughter came to their house after 20 days of the marriage as per customs, she was alright and made no complaint against anybody. She remained with them for about a month and was thereafter taken back by her husband, but after 5 or 6 months when she came back again to their house, at that time, she told that him that accused used to give her beatings as and when she demanded money for household expenses and would also say that they had given just nothing to her in the marriage. According to him, she had made repeated complaints regarding the same 6 or 7 times. He further stated that once his daughter told him that accused gave her beatings and asked her to bring scooter from them. He also deposed about two letters Ex. P-2 and P-4 sent by his daughter in her handwriting, in which, she had made complaints against the accused and his family members. He further stated that there was no particular demand from the appellant except that of a two wheeler scooter. In cross examination, he stated that his daughter had not mentioned in her letter about the demand of scooter by the accused. He further stated that the family of accused had demanded fridge, cooler and Rs. 30,000/- cash before the marriage, but he only gave a fridge at the time of marriage. He admitted that he had not made any complaint about the dowry demand, before the marriage.

71. PW-2 Smt. Mohini Devi deposed that at the time of marriage, they had presented various articles including sofa, dressing table,

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fridge, almirah, bed, seven pairs of clothes, one set of jewellery, gold ring, gold chain, wrist watch, 185 utensils and a sewing machine. She further stated that prior to marriage, accused had demanded a two wheeler scooter. She further stated that Pooja was brought by them after 15 days of the marriage and when they brought Pooja to their house, her father in law demanded a fridge. She further stated that Pooja told them that the brothers of the accused had beaten her. Her mother in law had also beaten her while her father in law used to abuse her after taking liquor. She also told them that accused and his family members were threatening to kill her and that accused had once tried to strangulate her. She further told them that she had been made to fall down from the scooter twice. In her further statement, she deposed that the father in law and mother in law of Pooja used to taunt her daughter for bringing insufficient dowry. In cross examination, she stated that before marriage, the father of the appellant Prithvi Raj demanded dowry from her husband.

72. Similarly, PW-4 Pyare Lal, uncle of the deceased and PW-5 Ms. Arti, sister of the deceased, deposed about the harassment meted out to Pooja on account of demand of dowry.

73. On an analysis of the testimonies of these related witnesses, it is found that there are contradictions, inasmuch as, PW-1 claimed that upon her first visit to their house, Pooja made no complaint. According to PW-2, at the time of such first visit, the father of accused had demanded fridge. PW-1 himself states that there was no specific demand from the accused except that of a two wheeler scooter. According to him, such demand was made after the marriage of Pooja,

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while according to PW-2, the demand of scooter was made since prior to her marriage. It is also an admitted fact that neither Pooja nor any of the family members ever made any complaint against the appellant regarding harassment on account of dowry demand.

74. Prosecution has placed reliance on the letters Ex. P-2 and P-4, sent by Pooja to her parents in the year 1995. In these letters, she made complaint to her parents that appellant had broken her dowry articles, abused her and had beaten her as and when she demanded money for expenses. However, in none of these two letters, she made any complaint against the appellant of harassment on account of any dowry demand, and in particular, a scooter. Even in the statement Ex. PW-6/A, recorded by the SDM and the statement Ex. PW-21/A, recorded by the IO, she made no allegation of dowry related harassment. The only cause attributed by her was that she was insisting the appellant to visit her *Bua*. The allegations of harassment, much less on account of dowry demand, are therefore not corroborated either by letters Ex. P-2 and P-4 or the statements Ex. PW-6/A and Ex. PW-21/A. The allegations of dowry demand and harassment are therefore vague and uncorroborated and are therefore not believable. It appears that the parents and the other family members of the deceased were of the firm belief that it is the appellant who had killed their daughter and therefore there is a possibility that they may have tutored the victim to implicate the appellant.

75. The prosecution has also failed to establish the presence of the appellant at the spot at the time of occurrence. The prosecution's own witness Smt. Omwati (PW-7), one of the neighbours, establishes that

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on hearing the alarm when she came out of her house, she found that the wife of the appellant Prithvi Raj was in flames, and at that time, she saw the accused rushing towards his house from outside and thereafter the family of the wife of accused took her to the hospital. In cross examination, she admitted that the accused along with other persons, had taken his wife to the hospital. She admitted that accused had also suffered burn injuries on his face and chest. She further admitted that accused had entered into the house after his wife had got burnt. PW-7 was neither declared hostile nor cross examined by the learned APP. It is thus proved from the testimony of PW-7 that appellant was not present at the time of occurrence and reached only thereafter.

76. The other two neighbours, that is, PW-8 Smt. Chandra Prabha and PW-12 Sh. Phool Singh also did not support the prosecution case and were declared hostile. Their cross examination by the learned APP has not been fruitful and is of no help to the prosecution in establishing the guilt of the appellant.

77. Further, the prosecution is also guilty of not producing Gaurav, five years old son of Pooja, who was present at the time of incident. In her statement Ex. PW-6/A, recorded by the SDM, Pooja herself stated that at the time of the occurrence, her son was also present. PW-1 confirms that both hands of Gaurav had been burnt. Gaurav is thus the eye witness of the occurrence, who himself suffered injuries on his person. His presence at the spot at the time of occurrence is also in consonance with the testimony of DW-2 who deposed that Gaurav told within the hearing of everybody that his mother committed

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suicide and his father had tried to save her. Gaurav was therefore the most important witness of the occurrence. However surprisingly, he was neither examined during investigation nor produced in Court despite the child being in the custody of his maternal grandfather. He would have been the best witness to throw light as to how the occurrence actually took place. PW-21 (the first IO), when questioned about the reason, stated that he did not meet the son of the deceased in the hospital and was not aware if he is an eye witness of the whole episode. PW-23 (second IO) however stated that the son of Pooja was the eye witness of the occurrence, but on interrogation, he did not find him mature enough to give rational answers. On the other hand PW-1, in cross examination, stated that Gaurav was capable of giving reply. It seems no effort was made to record the statement of Gaurav and therefore the explanation sought to be given by PW-23 regarding his non-examination is not acceptable.

78. The non-examination of Gaurav is of great significance because none of the relatives of Pooja had witnessed the actual occurrence. The parents and relatives of the deceased reached the hospital only after the occurrence. In contrast, Gaurav, being the eye witness, was present at the house at the relevant time and himself suffered burn injuries and hence withholding him, deprived the Court of the best available evidence, which may lead the Court to draw an adverse inference against the prosecution.

79. With regard to the question as to whether the appellant has been able to explain the reason how the death had occurred, as it happened in his house, the learned counsel for the appellant submitted that the

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appellant in his statement recorded under Section 313 Cr. PC has categorically stated that the deceased was suffering from TB and other ailments, on account of which, she used to remain frustrated and lose temper quickly. During the married life of six years or so, she threatened to commit suicide on number of occasions because she lacked patience. He stated that he was talking to his neighbours at a small distance from his house. At that time, Mr. Shyam Lal, Naresh, Phool Singh and Jayanti were standing. On hearing the noise, they all rushed to his house, where Pooja was already burning. He and his minor son tried to save her, and in this process, he got burnt by both hands, chest and face. He brought his wife out of the house. Jayanti and Phool Singh brought their three wheeler in which he and his parents took her to hospital. On being asked as to what had happened, Pooja narrated them that she had made attempt to commit suicide but was repenting and even apologized from him and his parents. He further stated in such statement that she never told the doctor about anything with regard to her burning. Her statement was recorded by the SDM after four hours and during these four hours, the parents of his wife and other relatives had tutored her to trap him and his parents.

80. The explanation given by the appellant finds support from the defence evidence. DW-1 Shyam Lal deposed that on 11th April, 1999 at about 11:30–12:00 noon, while he along with Phool Singh, Jayanti, Naresh Kumar and the appellant were standing at the shop of Naresh (DW-2), a child from the house of the appellant came running and said that there was a fire in the house of the appellant. All of them, including the appellant, went there and found a stove of kerosene oil

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lying there with smell of kerosene oil. The wife of the appellant was engulfed in flames. The appellant tried to extinguish fire. They also helped him in pouring water upon the wife of the appellant in order to extinguish the fire. In the process of saving his wife, appellant also sustained burn injuries on his hands, face and chest. The child also suffered minor burn injuries. He further deposed that the wife of the appellant uttered "*Mere Se Galti Ho Gayi Hai*." Then he along with other persons including the appellant, removed the injured to the hospital. He deposed that the parents of the deceased reached the hospital and asked the injured to implicate the appellant in the incident. DW-2 Naresh Kumar also corroborated the above said version.

81. DW-3 Chander Bhan deposed that on 11th April, 1999, he was standing near the house of the appellant, when his wife Pooja had set herself on fire. He stated that he was present there when she was taken to hospital. He himself also went to the hospital. According to him, Pooja was conscious and was pleading with the doctor to save her as she had committed a blunder by setting herself ablaze. He further deposed hat before the arrival of the SDM, the relatives and the parents met Pooja and told her to make statement to the SDM to implicate the appellant. DW-4 is Satish Kumar, brother in law of the appellant. He had accompanied the victim in the TSR to the hospital. He deposed that on the way, the deceased requested him to save her and that she had committed a blunder by setting herself on fire. He further deposed that the father of the victim tutored her in the hospital to blame the appellant and his family members in the incident.

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82. The defence witnesses were cross examined by the learned APP, but nothing has been pointed out in their cross examination which may be of any help to the case of prosecution. The testimonies of defence witnesses have the same evidentiary value as that of the prosecution witnesses, and cannot be discarded merely because they were produced by the appellant in his defence. PW-21 had collected the MLC of the appellant in the hospital.

83. The MLC Ex. PW-13/B of the appellant Prithvi Raj proves that even the appellant suffered 10% burn injuries in the incident. The MLC of appellant records burns on both hands, fore-arm and upper part of chest. The presence of burn injuries on the person of the appellant, is consistent with his defence that he tried to extinguish the fire, and in the process, suffered burn injuries.

84. The circumstances considered cumulatively, are sufficient to create a reasonable doubt regarding the prosecution's theory of homicidal death caused by the appellant. The burden upon the prosecution was not merely to establish that Pooja had died an unnatural death but to establish that the appellant was the perpetrator of the act causing her death. In our view, that burden has not been discharged to the standard required for holding the appellant guilty under Section 498-A/302 IPC. The various declarations made by the deceased do not present a uniform or consistent account of the occurrence and they differ materially and thus do not inspire confidence.

Conclusion

85. Consequently, we are of the view that the appeal deserves to be

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allowed and the judgment and order dated 23rd October, 2003 and 30th October, 2003 respectively, passed by the learned Trial Court cannot be sustained and deserves to be set aside.

86. The appeal is accordingly allowed. The conviction and sentence of the appellant Prithvi Raj is hereby set aside. The appellant is acquitted of all the charges against him. However, the bail bond furnished by him shall remain valid for a period of three months.

87. A copy of this judgment be sent to the learned Trial Court and the Superintendent Jail for information and necessary action.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

OCTOBER 14, 2026/*AK*

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