IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL APPEAL No. 1750 OF 2015

BETWEEN:-

NANDKISHORE S/O HEERALAL CHOUHAN, AGED ABOUT 63 YEARS, R/O 5/3 BHERUGARH MUKTI MARG, DISTRICT DEWAS (MADHYA PRADESH)

.....APPELLANT

(BY SHRI Z.A. KHAN, LEARNED SENIOR COUNSEL WITH SHRI RAMESH CHANDRA GANGARE - ADVOCATE)

AND

STATE OF M.P. THROUGH POLICE STATION – KOTWALI, DISTRICT DEWAS (MADHYA PRADESH)

....RESPONDENT

(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)

CRIMINAL APPEAL No. 1786 OF 2015

BETWEEN:-

1. **VIKAS S/O NANDKISHORE CHOUHAN, AGED ABOUT 23 YEARS, R/O: 5/3 BHERUGARH MUKTI MARG, DISTRICT DEWAS (MADHYA PRADESH)**
2. **SARITA W/O NANDKISHORE CHOUHAN, AGED ABOUT 54 YEARS, OCCUPATION: HOUSEWIFE, R/O: 5/3 BHERUGARH MUKTI MARG, DISTRICT DEWAS (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI Z.A. KHAN, LEARNED SENIOR COUNSEL WITH SHRI RAMESH CHANDRA GANGARE - ADVOCATE)

AND

STATE OF M.P. THROUGH POLICE STATION – KOTWALI, DISTRICT DEWAS (MADHYA PRADESH)

....RESPONDENT

(BY MS. VARSHA THAKUR - GOVERNMENT ADVOCATE)
(SHRI NAVNEET KISHORE VERMA – ADVOCATE FOR THE COMPLAINANT)

Reserved on : 25/04/2024
Pronounced on : 02/05/2024

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*These appeals having been heard and reserved for orders, coming on for pronouncement this day, **JUSTICE ANIL VERMA** passed the following:*

JUDGMENT

Since both these appeals have been filed against the common impugned judgment, therefore, they are being decided by this common judgment.

1. Appellants have preferred both the Criminal Appeals under Section 374 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") against the impugned judgment of conviction and order of sentence dated 27.11.2015 passed by the 3rd ASJ, Dewas (M.P.) in S.T. No.181/2013. The appellants have been convicted and sentenced as under:-

Name of the appellant	Conviction u/S	Sentence	Fine amount	Imprisonment in lieu of payment of fine.
Nandkishore	498-A IPC	3 years R.I.	Rs.5,000/-	3 months R.I.

Vikas	498-A IPC	3 years R.I.	Rs.5,000/-	3 months R.I.
	302 IPC	Life Imprisonment	Rs.10,000/-	1 year R.I.
Sarita	498-A IPC	3 years R.I.	Rs.5,000/-	3 months R.I.
	302 IPC	Life Imprisonment	Rs.10,000/-	1 year R.I.

2. The prosecution story, in brief, is that marriage of the appellant Vikas was solemnized with Swati (deceased) on 21.4.2008 in the group marriage ceremony (सम्मेलन) in presence of all the relatives of both the sides. After 2-3 months deceased was harassed by her husband, mother-in-law, father-in-law and sisters-in-law for bringing less dowry. She was mentally and physically harassed day-to-day and money was demanded from her parents. On 19.3.2013 some quarrel was taken place in the matrimonial house of the deceased. Deceased Swati informed her father Umesh. When the parents of the deceased reached at the matrimonial home of Swati, they saw her in burnt condition. Deceased Swati in her dying declaration deposed that her father-in-law, mother-in-law, sister-in-law and husband poured kerosene oil upon her and set her ablaze. During the treatment, deceased has been died. The death was reported to the police station and investigation was started.

3. Further prosecution story is that the MLC of the deceased has been done and after the death her postmortem was conducted by Dr. Prashant Rajput (PW-18) and as per the postmortem report, her death was homicidal in nature. Investigating officer has seized the treatment papers of the deceased. Investigating officer Mr. Mahendra Tarnekar (PW-17) has recovered marriage card of the deceased from the possession of her father. Merg has been registered. Investigating officer

prepared spot map. MLC of accused Vikas was also done by Dr. Sandeep Jatav and OPD slip has been recovered from his possession. All the accused persons were arrested. ASI N.S. Kanesh (PW-13) recovered a plastic can containing smell of the kerosene oil, matchstick box and burnt matchstick from the spot.

4. After completion of the investigation, charge sheet has been filed before the JMC, Dewas who has committed the case to the Court of Sessions. Later on, the case was transferred to 3rd ASJ, Dewas. The trial court on the basis of the allegations made in the charge sheet, framed the charges under Section 304-B, 498-A & 302 of IPC against the appellants and co-accused Vandana and Veena. The accused persons abjured their guilt and pleaded complete innocence. Trial court after completion of trial, scrutinized the entire evidence available on record and convicted and sentenced the appellants for the offences as mentioned hereinabove and acquitted the co-accused Vandana and Veena from all the charges. Being aggrieved by the impugned judgment, the appellants have preferred both the criminal appeals before this Court.

5. Learned counsel for the appellant Nandkishore (in CRA No.1750/2015) contended that the judgment of the trial Court is contrary to the law and facts available on record. It is neither legal, nor proper, nor correct. The trial court was wrong in believing the prosecution witnesses and discarding the defence version. There is material contradictions in the statement of the prosecution witnesses. There was no continuous demand of dowry. Trial court has ignored these aspects. Prior to the incident no FIR has been lodged against the appellants. There are so many lapses in the investigation. Hence, he prays that the

appeal be allowed and the appellant be acquitted from all the charges.

6. Learned counsel for the appellants Vikas and Sarita (in CRA No.1786/2015) contended that at the time of recording the alleged dying declaration, deceased was not in a position to speak clearly. Many of the words were not understandable and her dying declaration was recorded with the help of her father Umesh. There are material contradictions in both the dying declarations. Deceased was 95% burnt. The dying declaration filed in this matter is bad in the eyes of law. Intention was not proved. There is nothing on record that the appellants had premeditation of mind to commit murder of the deceased by burning her. The trial court has appreciated the evidence by pick and choose method, which is illegal and incorrect. The trial court has failed to appreciate defence version of the appellants and it has been ignored. Hence he prays that the impugned judgment be set aside and both the appellants be acquitted from all the charges.

7. Per contra, learned counsel for the respondent/State opposes the prayer by supporting the impugned judgment passed by the trial Court and prays for dismissal of this appeal by submitting that the impugned judgment is based upon proper appreciation of evidence and the trial Court has rightly convicted and sentenced all the appellants and same does not call for any interference. Hence, both the appeal deserve to be dismissed.

8. We have heard learned counsel for the parties at length and perused the entire record of the trial Court with due care.

9. So far as the offence under Section 498-A of IPC is concerned, admittedly appellant Vikas is the husband of the deceased Swati and

other appellants Nandkishore and Sarita are the father-in-law and mother-in-law of the deceased. Marriage of the deceased was solemnized with Vikas on 21.4.2008 about 5 years prior to the incident.

10. Umesh (PW-1) and Manju (PW-2) who happens to be father and mother of the deceased Swati, although in examination-in-chief deposed that their daughter Swati told them that after 2-3 months of the marriage accused persons taunted her for not bringing the sufficient dowry and they quarreled with her and mentally harassed her, but Umesh (PW-1) in para-8 of his cross-examination categorically admits that his financial condition is poor and at his request Nandkishore had agreed to solemnize marriage in the Sammelan and at that time no question arised regarding dowry. Manju (PW-2) also admits in para-7 that after the marriage behaviour of the accused persons with her daughter Swati was satisfactory. Both the witnesses deposed that accused Vikas has lost motorcycle of the Nandoi of the deceased, therefore, Vikas has paid Rs.40,000/-. Dilip (PW-3) also admits in his cross-examination that he does not know the cause of the incident. Amrit (PW-4) and Hemraj (PW-6) did not state anything regarding the demand of dowry by the accused persons.

11. Prior to the incident, deceased or her parents did not lodge any report against the accused persons regarding demand of dowry. There are material contradictions and omissions in the statements of Umesh (PW-1), Manju (PW-2), Dilip (PW-3) and Amrit (PW-4) in their police statements and court statements regarding the demand of dowry. Not a single witness has deposed that before him accused persons demanded any dowry from the deceased or her parents. It is also remarkable that

deceased Swati in her statement (Ex.P/5) stated that her mother-in-law demanded dowry, but she did not state anything regarding the other accused persons for demand of dowry. Therefore, on the basis of the aforesaid offence, we are of the considered opinion that regarding the demand of dowry statement of the prosecution witnesses are very vague and doubtful. Therefore, prosecution has failed to prove that after the marriage of the deceased accused persons mentally and physically harassed the deceased for demand of dowry. But the trial court has not considered all these facts in true perspective and convicted the appellants/accused persons for the offence under Section 498-A of IPC without appreciating the evidence available on record. The prosecution has failed to prove its case under Section 498-A of IPC against the accused persons. Therefore, the appellants deserve to be acquitted for the offence under Section 498-A of IPC.

12. So far as the offence under Section 302 of IPC is concerned, Dr. R.K. Sharma (PW-11), who has primarily done treatment of the deceased Swati before her death, categorically stated that during the examination he found that patient Swati was 100% burnt and Kerosene smell was found over her body, but she was conscious. Her medical examination report is Ex.P/29.

13. Dr. Prashant Rajput (PW-18) who has conducted the postmortem of the deceased, categorically stated in his statement that during the examination it is found that there was 95% superficial to deep burn all over her body except the half portion of the face, internal parts of both the thighs and both the hands and deep burn was found over the chest, abdomen and on the back. All the burns are antemortem. He opined that

cause of death of the deceased was due to the cardio-respiratory failure as a result of burn and its complications. Postmortem report is Ex.P/46. During the cross-examination, the statement of Dr. Prashant Rajput (PW-18) and portmortem report (Ex.P/46) was not seriously challenged by the accused persons. Therefore, there is no reason to disbelieve the medical opinion given by Dr. Prashant Rajput (PW-18). On the basis of the aforesaid trial Court has rightly held that death of the deceased was homicidal in nature and caused by fatal burn injuries over the vital parts of the body.

14. Admittedly there is no eyewitness in the instant case and the case of the prosecution is based upon circumstantial evidence, mainly based upon the dying declaration of the deceased, which was recorded by ASI Mr. Gulab Singh Verma (PW-10), who categorically stated in his statement that he has recorded the statement of the deceased Swati in Bombay Hospital, Indore and she deposed that her mother-in-law oftenly demands for dowry and at the time of incident quarrel was taken place with her mother-in-law on the issue that why she cooked dinner too early and she poured kerosene oil upon her and set her ablaze. Dr. Animesh Dammani (PW-8) also stated in his statement that at about 2.20 a.m. Swati told him that her mother-in-law poured kerosene oil upon her and set her ablaze by matchstick. Under the tap, by using the water, Swati extinguished the fire and her husband was present there, but he did not set her on fire. From perusal of the dying declaration (Ex.P/5), it is clear that deceased has deposed only against her mother-in-law/appellant Sarita but she did not state anything against other appellants regarding the said incident.

15. Learned counsel for the appellants contended that deceased was giving her statement in Hindi, whereas Dr. Animesh Dammani (PW-8) has recorded her statement in English and doctor has not taken her thumb impression. There was no independent witness at the time of recording the statement, therefore, the dying declaration recorded by Dr. Animesh Dammani (PW-8) is doubtful and it cannot be considered for the purpose of conviction of the appellants.

16. But the statement of Dr. Animesh Dammani (PW-8) and Gulab Singh Verma (PW-10) is well supported by the dying declaration (Ex.P/5), which was recorded in presence of the duty doctor and thumb impression of the deceased was also taken upon it. The dying declaration of the deceased is also supported by her statement under Section 161 of Cr.P.C. (Ex.P/5), which was recorded by the police officer. It is the settled position of law that the dying declaration, which inspires confidence, needs no corroboration to sustain itself. The Hon'ble Apex Court in the case of **Atbir Vs. Government of NCT of Delhi, (2010) 2009 SCC 1** has summarized the principles laid down earlier, as under:

> "(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.
> (ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
> (iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
> (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corrobated. The rule requiring corrobation is merely a rule of prudence.
> (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

> (vi) A dying declaration, which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
> (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
> (viii) Even if it is a brief statement, it is not to be discarded.
> (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
> (x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corrobation."

17. The Hon'ble Apex Court in the case of **Uka Ram Vs. State of Rajasthan AIR 2001 SC 1814** emphasised on the requirement that the Court should be satisfied about trustworthiness of the dying declaration, its voluntary nature and fitness of the mind of the deceased and it was held that:

> "6. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence."

18. On the basis of the aforesaid law laid down by the Hon'ble Apex Court and also in view of the fact that deceased was conscious at the time of recording of her dying declaration and her mental and physical condition has been duly observed by the medical experts. In the given circumstances, we are of the considered opinion that the dying declaration of the deceased is wholly reliable without any further corroboration. The conviction could be based upon the aforesaid dying

declaration but it is to be remembered that the deceased's dying declaration is found only against the appellant Sarita and not against the other co-accused persons.

19. So far as the case of the appellant Nandkishore is concerned, deceased Swati in her dying declaration did not state anything against the appellant Nandkishore. Presence of the appellant Nandkishore at the crucial time has not been established in the said house. Deceased and her parents did not state anything against the appellant Nandkishore regarding murder of the deceased. No incriminating article has been recovered from the possession of appellant Nandkishore. Therefore, prosecution has failed to prove its case against the appellant Nandkishore and he deserves for clean acquittal.

20. So far as the case of the appellant Vikas is concerned, deceased Swati did not state anything against her husband Vikas regarding the incident except indicating his presence at the time of incident. Although the appellant Vikas was present on the spot and it has been argued on behalf of the appellant Vikas that he tried to save his wife. Dr. Sandeep Jatav (PW-16) who has conducted MLC of Vikas categorically stated that during his examination, superficial burn has been found on the left arm and left side of the chest. His MLC report is Ex.P/37. From the statement of Dr. Sandeep Jatav (PW-16) and MLC report Ex.P/37, it is proved that appellant Vikas sustained burn injuries over his left arm, chest and right hand and such injuries may be caused during his efforts for saving his wife from the fire. Therefore, there is no evidence on record against the appellant Vikas that he has committed murder or involved in the murder of the deceased. The trial court has erred in not

appreciating the evidence against the appellant Vikas. Therefore, appellant Vikas deserves to be acquitted from all the charges.

21. But so far as the case of the appellant Sarita is concerned, deceased Swati in her dying declaration categorically deposed that her mother-in-law poured kerosene oil upon her and set her ablaze and at the crucial time of incident only her mother-in-law had quarreled with her on the issue of early cooking of the dinner. Other prosecution witnesses also deposed against the appellant Sarita for her direct involvement in the said incident. Therefore, on the basis of the evidence available on record, the trial court has rightly appreciated the evidence and based upon the evidence, rightly held that appellant Sarita has murdered the deceased by setting her on fire. Accordingly appellant Sarita has been rightly convicted for the offence under Section 302 of IPC.

22. For the reasons cited hereinabove, we find that the prosecution has failed to prove its case against the appellants Nandkishore and Vikas. There is no legal evidence to connect both these appellants with the aforementioned offence. Therefore, appeal filed by the appellants Nandkishore and Vikas is allowed and their conviction and sentence for the offence under Section 498-A & 302 of IPC is set aside. The appellants Nandkishore and Vikas are acquitted from the charge under Section 498-A & 302 of IPC. Appellant Nandkishore is on bail, his bail and surety bonds stand discharged. Appellant Vikas is in custody, he be released forthwith, if not required in any other case.

23. The prosecution has successfully proved its case against the appellant Sarita. Therefore, we find no force in the appeal filed by the appellant Sarita and her appeal being devoid of merit and substance is

hereby dismissed. Appellant Sarita is acquitted from the charge under Section 498-A of IPC, but the conviction of the appellant Sarita under Section 302 of IPC is upheld. Appellant Sarita is in jail, she shall remain in jail to undergo remaining part of her jail sentence.

24. Registry is directed to send a copy of this judgment immediately to the trial Court along with the record for necessary compliance.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
JUDGE

Trilok/-