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2026:DHC:9626-DB

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

Reserved on: 30.09.2026
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\# **CNR No. DLHC010061662002**
CRL.A. 599/2002

RAJ KUMARI .....Appellant

Through: Mr. D. B. Goswami, Mr. S. Gaurav Sasan, Mr. S. Saurabh Sasan and Mr. Arunansh B. Goswami, Advocates

versus

STATE N.C.T. OF DELHI .....Respondent

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Advocate.

\# **CNR No. DLHC010061692002**
CRL.A. 600/2002

TILAK RAJ & ORS. .....Appellants

Through: Mr. D. B. Goswami, Mr. S. Gaurav Sasan, Mr. S. Saurabh Sasan and Mr. Arunansh B. Goswami, Advocates.

versus

STATE N.C.T. OF DELHI .....Respondent

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Advocate.

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CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

ARUN BHARDWAJ, J

1. Present appeals assail the judgment of conviction dated 11.07.2002 and the order on sentence dated 12.07.2002 passed by the learned Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi (hereinafter referred to as the '*Trial Court*'), in Sessions Case No. 171/1999, arising out of FIR No. 527/1998 registered at Police Station Kalyan Puri, Delhi for offences punishable under Sections 498A/307/354/201/302 read with Section 34 of the Indian Penal Code (hereinafter referred to as '*IPC*').

2. *Vide* the impugned judgment, the learned Trial Court convicted appellant Tilak Raj, ASI in Delhi Police (husband of the deceased Dayawati), Prem Singh (father-in-law of the deceased) and Anokhi Devi (mother-in-law of the deceased) for the offences under Sections 302/34, 201/34 and 498A/34 of the IPC. Appellant Raj Kumari was convicted for the offence punishable under Section 498A/34 of the IPC.

3. For the offence under Section 302/34 of the IPC, Tilak Raj (appellant no.1), Prem Singh (appellant no.2) and Anokhi Devi (appellant no.3) were sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- each, failing which they were directed to undergo Simple Imprisonment (SI) for one year. They were further

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sentenced to undergo Rigorous Imprisonment(RI) for two years each for offences under Sections 201/498A of the IPC read with Section 34 of the IPC and to pay a fine of Rs.1,000/- each for both the offences, failing which they were to undergo RI for one month.

4. Appellant Raj Kumari has been sentenced to undergo RI for two years and to pay a fine of Rs.1,000/-, failing which she was directed to undergo SI for one month.

5. Aggrieved by the same, Tilak Raj (appellant no.1), Prem Singh (appellant no.2) and Anokhi Devi (appellant no.3) have challenged their conviction *vide* Crl.A. 600/2002 and Raj Kumari has challenged her conviction *vide* Crl.A. 599/2002.

6. Prem Singh, appellant no.2, died during pendency of the appeal and as per order dated 05.05.2014, the appeal *qua* him has abated.

7. The accused persons, their relationship with the deceased, the offences for which they were convicted, and the status of their respective appeals are set out below:

Sr. No.	Name	Relationship	The offence convicted for	Details of appeal
1.	Tilak Raj, ASI in Delhi Police	Husband	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002.
2.	Prem Singh	Father-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002. (Since deceased, and the appeal qua

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				him has abated vide order dated 05.05.2014)
3.	Anokhi Devi	Mother-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002.
4.	Raj Kumari	Sister-in-law	498A/34 of the IPC	Crl.A. No. 599/2002
5.	Sharmishtha	Sister-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 709/2005 (being decided vide separate order)
6.	Sudesh	Sister-in-law	Proclaimed Offender	Not applicable
7.	Hans Raj	Brother-in-law	Proclaimed Offender	Not applicable

Case of the Prosecution:

8. Case of the prosecution is that the deceased Dayawati had got married to appellant no. 1 Tilak Raj s/o Prem Singh on 09.05.1997 as per Hindu rites and ceremonies and at the relevant time, appellant no.1 was working as ASI with Delhi Police.

9. The prosecution alleged that Dayawati was subjected to harassment and cruelty in her matrimonial home in connection with demands for money and a Maruti car.

10. On receipt of DD No. 22-A, at 09.35 PM by PW-7 that Dayawati was admitted in the LNJP Hospital due to burns on

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21.10.1998, ASI Sobran Singh (PW-18) along with constable Surat Singh (PW 8) went to that hospital.

11. The deceased had suffered 100% burn injuries. When she was brought to the hospital at about 09:00 PM, she was declared unfit to make her statement.

12. ASI Sobran Singh (PW-18) went to House No. D15/1, Budh Vihar, Kondli, the residence of the family of the accused and found that the floor of the house was cleaned but smell of kerosene was coming from the premises. On 22.10.98, at 12:15 PM, Dr. Vishal Raina (PW-20) declared that the patient was fit to make the statement. SDM Ravi Dadhich (PW-4) was informed that the patient is fit for recording her statement. SDM arrived at the hospital at 12.20 PM and recorded her statement in Hindi, in question-answer form as under:-

Statement – LNJP Hospital, Delhi

1. नाम क्या है :दयावती
2. पति का नाम :तिलकराज
3. रहती कहाँ है : D-15/1, कोंडली, दिल्ली

4. ऐसी हालत क्यों हुई: ये मुझे तंग करते थे। मेरा घर वाला तंग करता था। दोबार 50-50 हजार रुपये लाई हूँ। मारूती कार लाने के लिए मेरा घरवाला कहता था। मिट्टी का तेल छिड़क छिड़क कर मुझे जला दिया– गैलरी में। मेरा घरवाला, ससुर, सास, 2 ननद, देवर, सभी थे। घर वाला तिलकराज, ससुर प्रेम सिंह, अनोखी देवी, 2 ननद– एक सुरेश, एक सर्मिष्ठा, देवर हंसराज। देवर हंसराज ने 2-3 बार मेरी इज़्ज़त पर हमला भी

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किया। रात को 09- 9.30 बजे सभी ने पकड़ कर, ननद ने बत्ती लगाई। पति ने कहा की भैया-दूज को घर जा और मारूती कार लेकर आ। तीसरी ननद राजकुमारी मेरठ से आ आकर सिखा कर जाती थी– कल यहाँ नहीं आई थी। मेरा पति मुझे मारता था, मुझसे बोलता नहीं था। मुझे धमकी देता था।

13. English translation of this statement, as available on record, is as under:

"Statement *LNJPN Delhi*

1. *What is your name?* *Dayawait*
2. *What is your husband's name?* *Tilak Raj*
3. *Where do you live?* *D-15/I Kondli, Delhi*
4. *Why such a condition? These people harass me. My husband used to harass me. I have brought Rs.50,000/- twice. My husband used to ask me to bring a Maruti Car. I was set ablaze after pouring Kerosene oil on me in the gallery. My husband, father-in-law mother-in-law, two sisters-in-law and brother-in-law (Devar) were all present. Their names are Tilak Raj (my husband) Prem Singh (Father-in-law), Anokhi Devi (Mother-in-law) Sudesh and Sharmishtha (two sisters-in-law) and Hans Raj (brother-in-law). The brother-in-law, Hans Raj had even tried to outrage my modesty two-three times. In the night at about 9/9-30, all of them caught hold of me and my sister-in-law set me ablaze. My husband had asked me to go to my house on the eve of Bhaiya –Duj*

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and bring a Maruti Car. My third sister-in-law Raj Kumari used to come from Meerut and use to do back-biting. She had not come here yesterday. My husband used to give beatings to me. He was not on talking terms with me and he used to advance threats to me."

14. On the basis of her statement, FIR No. 527/98 (Ex-PW-17/A) under Sections 498A/307/201/354/34 of the IPC was recorded at PS Kalyan Puri at 01.45 PM.As Dayawati succumbed to her injuries on 23.10.1998, the case was converted to Section 304-B of the IPC.

15. Unfortunately, the father, mother and one of the brothers of the deceased, who were star prosecution witnesses met with an accident and died before their statements could be recorded in this case.

Proceedings before the learned Trial Court

16. All the aforesaid four accused were charged for the offence under Section 304B read with Section 34 of the IPC and in alternative the offence under Section 302/34 of the IPC. The charge was also framed against all the accused under Section 498A/34 of the IPC and Section 201/34 of the IPC.

17. The prosecution, in order to bring home the guilt of the accused persons, examined 21 witnesses, including Ashok Kumar, brother of the deceased (PW-3), Ravi Dadhich, the then Sub-Divisional Magistrate, who recorded the dying declaration of the deceased (PW-4), and the police officials and medical witnesses associated with the investigation and treatment of the deceased.

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18. The appellants in their defence examined three defence witnesses being DW-1, DW-2 and DW-3.

19. In their statements recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*CrPC*'), the accused persons pleaded not guilty and denied the allegations levelled against them and claimed trial.

Findings of the learned Trial Court:

20. The learned Trial Court relied upon the evidence of the Dr. Vishal Raina, PW-20 who had declared the patient fit for recording her statement *vide* endorsement Ex.PW-20/A.

21. The learned Trial Court further relied upon the evidence of PW-4 Ravi Dadich, SDM, Preet Vihar, Delhi, who had recorded the statement of the victim in his own handwriting, Ex. PW-4/A, and treated the same as relevant fact as the said statement was made by the victim as to the cause of her death including circumstances of the transaction which resulted in her death, as in the case in hand, the question involved was the cause of victim's death.

22. The learned Trial Court also relied on the evidence of Dr. Rajiv Ahuja, HOD, Plastic Surgery, LNJP Hospital, Delhi who was examined as a Court Witness and had stated that a patient can become fit to give statement even if he receives 100% burns because the initial disorientation is a result of shock state which can be corrected by resuscitative measures. He clarified that in no case of burns of this nature, the brain is ever burnt because the injury is limited to the skin and other organs are affected by hypovolemia and later by infection.

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23. The learned Trial Court relied on the evidence that the place of incident was cleaned up to corroborate the dying declaration, and convicted the husband, mother and father-in-law of the deceased for the offence under Sections 302/201/498A/34 of the IPC and convicted the sister-in-law Raj Kumari for the offence under Sections 498A/34 of the IPC.

Submissions on behalf of the learned counsel for the Appellants

24. Mr. D. B. Goswami, learned counsel for the appellants assailed the impugned order by reading the evidence on record in detail, to submit that the statement of the deceased recorded by the SDM is unreliable.

25. It is argued that the conviction of the appellants in this case is based solely on dying declaration recorded by SDM, Ravi Dadich (PW-4). He submitted that the way dying declaration is alleged to be recorded by PW-4, the same is not free from doubts.

26. It is argued that PW-4 Ravi Dadich was the SDM and an independent witness, therefore, doubt cannot be raised on his intention, but he is also a human being and is therefore not infallible. It is argued that PW-4 put so much reliance on IO of the case, ASI Sobran Singh and it is not clear who found the patient Dayawati to be fit to make the statement.

27. Referring to evidence of Dr. Vishal Raina (PW-20), the argument is that the doctors never inform the police on their own that the patient is fit to make the statement. It is argued that Dr. Vishal

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Raina has affirmed the endorsement made on the MLC but did not disclose which police personnel produced the MLC before him.

28. It is argued that PW-18 ASI Sobran Singh stated in his examination-in-chief that on 22.10.1998 he was informed by Ct. Surat Singh PW-8 that the patient is fit to make statement and this fact was conveyed to the SDM who came to the hospital for recording the statement of the victim, but PW-8 Surat Singh has not stated that he informed ASI Sobran Singh about the patient being fit for recording her statement.

29. It is submitted that according to the evidence of the SDM Ravi Dadich, he had received information from ASI Sobran Singh at about 11:00 AM on 22.10.1998 that the victim is fit to make statement, whereas as per the endorsement on the MLC, Doctor Vishal Raina (PW-20) had declared the victim fit for making statement at 12:15 PM, which raises a question that the said ASI could not have informed the SDM almost one hour and fifteen minutes before the victim becoming fit to make the statement to come to the hospital for recording the statement of the victim.

30. On the basis of these deficiencies in the statements of PW-4 SDM Ravi Dadich, PW-8 Ct. Surat Singh, PW-18 ASI Sobran Singh and PW-20 Dr. Vishal Raina, it is argued that the alleged dying declaration of the victim is nothing but a statement manipulated by IO ASI Sobran Singh.

31. It is emphatically argued that the Dr. Bhim Singh (PW-15), who had conducted the post-mortem of the victim, has said that in case of 100% burns, the victim suffers from degloving, which means due to

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burn, skin is separated from the body and it is not possible for anyone to take thumb impression of such a patient, but the dying declaration of the victim is containing the right hand thumb impression of the deceased Dayawati, which is not possible.

32. Reliance is placed on the statement of the Dr. Bhim Singh (PW-15) to submit that after development of shock, the patient cannot give exact statement regarding what is happening on him/her and it is not possible for the patient to make a speech or a statement.

33. It is submitted that according to Dr. Bhim Singh (PW-15), in view of the report given by himEx.PW-15/A, under the heading of neck, it is not possible for the patient to make a speech or a statement.

34. It is argued that, contrary to the opinion given by Dr. Bhim Singh, in this case, the victim has given not only the names of all the members of her in-law's family, but she has also narrated how her brother-in-law on two to three occasions had tried to outrage her modesty. The learned counsel for the appellants submits that PW-15 is a prosecution witness and not a defence witness and his testimony is totally against the case setup by the prosecution.

35. He further submits that the evidence of the SDM Ravi Dadich and Dr. Bhim Singh is the evidence of independent witnesses, the victim was not a relative of the SDM but the possibility cannot be ruled out that ASI Sobran Singh manipulated the statement of the victim and by the time SDM reached the hospital, the victim was not in a position to make her statement, because Dr. Vishal Raina, PW-20 has stated that the statement of the victim was not recorded by the SDM in his presence and had the SDM Ravi Dadich reached the

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hospital at 12:05/12:10 PM, he would have recorded the statement of the victim in the presence of Dr. Vishal Raina and would have taken the endorsement of Dr. Vishal Raina on the statement of the victim but it is not done.

36. The appellants have sought to give the reason for suicide by the deceased (which is their defence) by stating that the deceased was frustrated as she was not conceiving a child and the doctors had reported that she cannot conceive a child, and consequently she was mentally upset and, in this frustration, she took this drastic step.

37. It is the submission of the appellants that the FIR was not recorded by the IO on 21.10.1998 itself, though from the hospital he had gone to the place of incident and made inquiries from the neighbours. According to him, this is a suspicious material which shows that the investigation was not fair but is manipulated to falsely implicate innocent persons.

38. A plea of *alibi*, stating that Prem Singh and Anokhi Devi were not present at the place of incident on 21.10.1998 as they had gone to Bulandshahr to celebrate '*bhaiya-duj*', has also been taken and reliance is placed on the testimony of Karan Singh (DW-2), who is the brother of Anokhi Devi, to submit that Prem Singh and Anokhi Devi were not at home at the time of incident.

39. It is submitted that had the police found their complicity in the commission of crime, they would have been arrested on 22.10.1998 when accused Tilak Raj was arrested, but these two accused were arrested on 26.10.1998.

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40. In support of innocence of Raj Kumari, it is argued that she was married at the time of marriage of Tilak Raj and had three children and was residing at her matrimonial home at Ghaziabad. It is argued that even if the alleged demand of main accused, that is, Tilak Raj, had been fulfilled by his in-laws, she would have gained nothing and therefore, there is no motive on the part of Raj Kumari to harass her sister-in-law for the sake of dowry.

41. It is further submitted that the fact the deceased has not even spared the married sister of her husband, shows that the case is falsely made by the police at the instance of someone.

42. Lastly, the learned counsel for the appellants has argued that had there been any truth in the prosecution's case, the prosecution witnesses Ashok Kumar (PW-3) brother of the deceased, Puran Lal (PW-5), Pradhan of Gam Nagar Colony, Faridabad, and Bablu Lal (PW-12), from the in-laws side of the accused Tilak Raj, would have supported the prosecution's story, but during the trial, they turned hostile and did not support the case of the prosecution, which casts doubt on the veracity of the prosecution's story.

Submissions by the learned APP on behalf of the State:

43. Mr. Aman Usman, learned APP for the State, submitted that the appellants are doubting the visit of the SDM to the hospital and have suggested that the Investigating Officer himself recorded the statement of the deceased and subsequently supplied the same to the SDM, who merely reproduced it in his handwriting and procured a fabricated thumb impression. He submits that the SDM had entered the witness box as PW-4 and has deposed about his visit to the hospital and

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recording of the statement of the victim. The presence of the SDM and the fact of recording of the statement by him are supported by PW-3, PW-8 and PW-13, the Investigating Officer.

44. It is further submitted that the appellants are trying to substitute a theory of fabrication for the consistent testimony of an independent public officer and the corroborative evidence of other prosecution's witnesses and that there is no material to show any reason for the SDM to falsely implicate the appellants.

45. It is argued on behalf of the State that PW-20 Dr. Vishal Raina had declared the victim to be medically fit to make the statement at about 12:15 PM and the statement was recorded by the SDM at about 12:20 PM, which shows that the SDM acted upon the medical assessment of the patient's fitness for recording the statement of the victim.

46. Insofar as arguments of the appellant that a patient with 100% burns cannot give a coherent statement, reliance is placed on evidence of CW-2 Dr. Rajiv Ahuja, HOD of Plastic Surgery, who has clarified that even a patient who has suffered from 100% burns can, after medical resuscitation, regain consciousness and can be capable of making a coherent statement and 100% burns do not necessarily render a person incapable of speaking. Reliance is placed on ***State of M.P. Vs. Dal Singh & Ors.,*** (2013) 14 SCC 159, to submit that mere percentage of burns cannot lead to an automatic conclusion that the deceased was incapable of making a dying declaration.

47. Regarding degloving of the skin due to severe burns and thereby inability to procure thumb impression, it is argued that the

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SDM has deposed that thumb of the deceased was intact and thumb impression was accordingly taken. Reliance is again placed on ***M.P. Vs. Dal Singh*** (supra), to submit that whether the thumb itself had been burnt was a question of fact and possibility of an intact thumb cannot be ruled out merely because the deceased had suffered extensive burns.

48. For the posting of Dr. Vishal Raina, PW-20, it is submitted that the fitness endorsement given by the doctor has not been challenged in cross examination in a manner sufficient to establish that the doctor could not have examined the deceased or could not have certified her fitness.

49. The learned APP for the State has sought to rely on the evidence of PW-3, submitting that he has deposed about the facts which were personally known to him in relation to the matrimonial circumstances of the deceased. The reason for PW-3 not supporting the case of the prosecution is that after the death of the deceased, his mother, father and brother also died in quick succession in an accident and that may be the reason for PW-3's unwillingness or lack of emotional capability to support the prosecution version during trial. It is submitted that prosecution had recorded the statements of several family members of the deceased but before they could enter into the witness box, they died in an accident.

50. The learned APP has also submitted that the scene of occurrence had been cleaned, notwithstanding the persistence of the smell of kerosene. It is submitted that if, as the defence suggests, the deceased had voluntarily committed suicide, the subsequent cleaning

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of the scene assumes considerable significance and requires an explanation. The circumstance becomes even more relevant considering the deceased's specific account that kerosene had been sprinkled upon her before she was set on fire. It is submitted that the conduct of cleaning the scene is inconsistent with an innocent explanation and provides circumstantial support to the prosecution's version.

51. He has further submitted that the husband Tilak Raj gave a false history of commission of suicide by the deceased to the doctor in the alleged history.

Analysis/Reasoning

52. This Court has gone through the records of the case and examined the arguments addressed by the learned counsel for the appellant as also the learned APP.

53. The deceased Dayawati was admitted to hospital on 21.10.1998 with burn injuries (100%) and subsequently died on 23.10.1998. Her statement was recorded by the SDM on 22.10.1998 at about 12:20 PM, (PW 4/A) after the doctor (PW-20 Vishal Raina) had endorsed that she was fit to make a statement. The SDM Ravi Dadhich recorded her statement in question-answer format. The same has been reproduced above.

54. The case of the prosecution primarily rests on the following parameters;

(i) the reliability of the dying declaration recorded by the SDM(PW-4);

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(ii) the medical evidence concerning deceased's condition; and

(iii) the ability of Dayawati to make a statement and affix her thumb impression on the said dying declaration.

55. The learned counsel for the appellant had laid much emphasis on the Death Summary (Ex PW 19/A) as recorded by Dr. Rekha T (PW-21) which recorded alleged history of getting burnt (suicidal attempt) by the patient after her brother and her husband had a quarrel. It further recorded that the patient poured kerosene over herself and set herself on fire at 08:00pm on 21.10.1998. PW-21 in her statement, stated that the above history is written by the examining doctor and she had prepared the death summary on the basis of history sheet.

56. In view of the reference to an alleged suicide in the death summary, the Court examined CW-2, Dr. Rajiv Ahuja to clarify the circumstances in which the history had been recorded by Dr.Rekha T. CW-2, Dr. Rajiv Ahuja, stated that the time of preparation of the death summary, the history of the incident was taken from the existing case record, which had been recorded by his colleague or the treating doctor. He further stated that the history provided to the treating doctor in the department had been given by the husband of the deceased and was recorded in Ex. CX-1. He further stated that the MLC also recorded the history as provided by the husband of the deceased. In his cross examination, CW-2 stated that, a patient who had suffered 100 percent burns, it was not possible to predict precisely when the patient would be fit to make a statement, he explained that the initial disorientation could result from the state of shock and could be

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corrected by resuscitative measures. He further stated that in burns of this nature, the brain itself is not burnt and the injury is primarily to the skin, while other organs could be affected due to hypovolaemia and by infection.

57. In view of the above, the history of the burn injury suffered by the deceased as recorded in the Death Summary, cannot come to the aid of the appellants, the same being based on the say-so of the appellant Tilak Raj alone.

58. The submission of the appellants that the deceased had 100% burns and, due to trauma, could not have given a detailed statement, and that due to resultant degloving, the deceased could not have affixed her right hand impression on the dying declaration (Ex PW 4/A) recorded by the SDM Ravi Dadich, is squarely met by the evidence of Dr. Rajiv Ahuja (CW-2) who stated during his cross-examination, that it cannot be said when the patient will become fit to give statement if he/she has received 100% burns, because the initial disorientation is a result of shock state which can be corrected by resuscitative measures. CW-2 further clarified that in no case of burns of this nature is the brain ever burnt because the injury is limited to the skin and other organs are affected because of hypovolemia and later by infection.

59. Testimony of CW-2 therefore provides an explanation for the deceased having been declared unfit to make a statement on 21.10.1998 and fit to make a statement on 22.10.1998.It shows that though the patient was suffering with 100% burns and would have been disorientated as a result of shock state on 21.10.1998, but was

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corrected by resuscitative measures following the treatment given to her.

60. In so far as the degloving of the skin of the patient and therefore, the inability to affix thumb impression is concerned, the learned counsel for the State has relied on ***State of M.P. v. Dal Singh and Others***, (*supra*). The question involved in the said case was whether 100% burnt person can make a dying declaration or can put a thumb impression. The decision underscores that the percentage of the burn injuries by itself is not determinative of the declarant's ability to make a statement, the issue must therefore be assessed with reference to the medical evidence and the facts of the particular case. While deciding the said case, the earlier decision in the case of ***Mafabhai Nagarbhai Raval v. State of Gujarat***, (1992) 4 SCC 69 was referred to, where a person had suffered 99% burn injuries and it was held that the doctor who had conducted the post-mortem was a competent person and unless there existed some inherent and apparent defect, the Court could not have substituted its opinion for that of the doctor's. Therefore, the dying declaration was found to be worthy of reliance as the same had been made truthfully and voluntarily and there was no evidence that the victim had given a tutored version. Consequently, the argument of the defence that the condition of the deceased was so serious that she could not have made such a statement, was not accepted and the dying declaration was relied upon.

61. Reliance is also placed in this judgment on the case of ***Laxman v. State of Maharashtra***, (2002) 6 SCC 710 where it was held that the dying declaration can be oral or in writing and communicated by any

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adequate method and use of words, signs or otherwise will be sufficient provided the indication is positive and definite. There is no specified statutory form for recording of the dying declaration and therefore, evidentiary value or weight that has to be attached to a dying declaration depends on the facts and circumstances of each individual case. It is the satisfaction of the person who records a dying declaration that the deceased was in a fit state of mind and where the same is proved by the testimony of the Magistrate, in such a case, even without examining the doctor, the said declaration can be relied and acted upon, provided it inspires the confidence of the Court that the same is voluntary and definite. Certification by a doctor is essentially a rule of caution and therefore, voluntary and truthful nature of the declaration can also be established *otherwise*.

62. To the same effect is the judgment of the Supreme Court in the case of ***Govindappa v. State of Karnataka***, (2010) 6 SCC 533 where the Executing Magistrate while recording the dying declaration did not get any certificate from the medical officer regarding the condition of the deceased and it was held that such a circumstance itself is not sufficient to discard the dying declaration. Certification by a doctor regarding the fit state of mind of the deceased, for the purpose of giving a dying declaration, is essentially a rule of caution and, therefore, the voluntary and truthful nature of such a declaration, may also be established *otherwise*. The dying declarations are recorded on the basis that normally a person on the verge of death would not implicate somebody falsely and therefore, must be given due-weight in defence.

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63. In ***State of Punjab v. Gian Kaur***, (1998) SCC (Cri) 942, the issue before the Court was regarding the acceptability in evidence of the thumb impression of the deceased that appeared on the dying declaration as the Trial Court had found that there were clear ridges and curves and the doctor was unable to explain how such ridges and curves could be present when the skin of the thumb had been completely burnt.

64. Applying the above principles to the facts of the present case, neither a doctor's certificate nor a thumb impression is a legal requirement for a valid dying declaration, but rather a rule of caution. In the present case, the dying declaration PW 4/A was recorded by the SDM duly supported by a medical endorsement, thereby satisfying the rule of caution.

65. In these peculiar circumstances, to satisfy the conscience of this Court, the physical records of the case were called rather than merely relying upon the softcopy of the Trial Court record. A perusal of the Trial Court record showed that the thumb impression on the dying declaration did not disclose any discernible curves or ridges which, therefore, appropriately matches with the medical condition of the victim, that is, 100% burns and degloving of both hands.

66. An SDM recording a dying declaration cannot be expected to have the medical knowledge of a skin or burn specialist. There is no material on record to show that the SDM was made aware that due to degloving, the thumb impression of the victim will not be meaningful. It appears that the thumb impression of the deceased was obtained as a cautionary measure and without realizing the degloving of the skin.

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The physical record of the Trial Court makes it clear that, although the thumb impression of the deceased was taken but it resulted in no discernable curves or ridges and is almost blank, which shows that whatever impression could be gathered of the thumb impression, was taken on the endorsement and the impression is almost blank, which in turn explains and establishes that the thumb impression of the victim was taken but due to degloving, it turned out to be blank in the absence of clear curves or ridges.

67. The learned ASJ in its impugned judgment had also recorded that although the thumb impression of the deceased has light impression, yet there lies no bar in affixing her RTI, in whatever condition it may be.

68. There is objection of the learned counsel for the appellants regarding manner and time of intimation to the Investigating Officer that the patient is fit for recording her statement/the time of intimation to the SDM that the patient is fit for recording her statement/time of examination by the doctor to declare the patient fit for statement.

69. PW-8 Ct. Surat Singh has stated that ASI Sobran Singh was in the hospital at about 11.30 a.m. on 22.10.98, when the doctor had declared the patient fit for making her statement. This witness, as well as ASI Sobran Singh both were present in the hospital when the SDM was called in the hospital/when the SDM recorded the statement of the victim. PW-8Ct. Surat Singh has stated that ASI Sobran Singh had instructed him that he should be informed immediately as and when the patient appeared to be fit to make a statement and so declared by the doctor. It explains intimation of appearance of fit condition of the

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victim for recording her statement by PW-8 Ct. Surat Singh to ASI Sobran Singh. Further, ASI Sobran Singh has deposed that on receiving information from PW-8 Ct. Surat Singh that the patient is fit for making statement, he informed the SDM. That explains the intimation to the SDM that the patient was fit for recording her statement.

70. Some difference in the timings of such intimation by PW-8 Ct. Surat Singh to ASI Sobran Singh is understandable as the evidence of these witnesses was recorded after more than two years of the incident which explains such discrepancies in the timings.

71. The learned Trial Court has also dealt with this issue in the impugned judgment as under:

> *"The contradictions pointed out by the Id. defence counsel are not very insignificant and do not rock the boat to a dangerous extent. Such like contradictions happen even in the testimony of the true witnesses. It must be borne in mind that the incident took place on 21.10.98. The statement of the SDM was recorded on 2.5.2000, statement of constable Surat Singh, PW 8, was recorded on 17.7.2000 and 30.8.2000, statement of ASI Sobran Singh was recorded on 21.9.2000, 14.3.01 and 12.4.01 and statement of Dr. Vishal Raina was recorded on 14.3.01. It is well settled that with the passage of time the human memory vicissitudes. The apex Court in an authority reported as State of Punjab Vs. Wassan Singh AIR 1981 SO 697 held,*
>
> *"Where the witnesses are examined at thetrial, 17 months after the incident suchdiscrepanciesin regard to collateral andsubsidiary facts or maters of details occureven in the statements of truthful witnesses,particularly when they are examined*

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> *to deposeto events which happened long before theirexamination. Such discrepancies are hardly aground to reject the evidence of thewitnesses when there is general agreement andconsistency in regard to the substratum ofthe prosecution case."*

72. Courts have to be conscious of the fact that the human mind neither possesses a video camera nor a tape recorder, button whereof can be pressed, to re-run a picture or re-run the voice recording. In fact, such kind of memory lapses, far from discrediting a witness, lend credence to his words for the reason perfect truths are seldom to be found, but perfect lies are often to be found. In this regard reliance is placed on ***Suresh @ Suresh Singh v. State (NCT) Delhi***, 2010:DHC:1455-DB.

73. Therefore, there is nothing doubtful in the manner and time of giving information to the IO by PW-8 and to the SDM by the IO about fitness of the deceased to record her statement.

74. The truthfulness of the dying declaration is also evident from the fact that the deceased did not nail one and all in the family of her husband and truthfully stated that Raj Kumari was not present on the date of incident. Had the statement been a tutored one, then no one in the family would have been spared.

75. The motive for murder can also be said to be made clear by the dying declaration of the deceased in which she has stated that her husband was asking for a Maruti Car and she had brought from her parents Rs.50,000/- on two occasions. The husband was demanding

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the car on "*bhaiya-duj*" and in the evening of "*bhaiya-duj*" as the demand was not fulfilled, the wife was set on fire.

76. As regards to the submission of the appellants that the deceased had committed suicide as she was not able to give birth to a child, the learned Trial Court has recorded in the impugned order as under:

> *"The accused have examined two DWs. Dr.RakeshSingh, SMC, LBS Hospital, appeared as DW 1. He deposedthat he was posted in Balak Ram hospital from 11.7.98 to10.10.98 as SMC. He explained that OPD treatment card Ex.PX/1-5 belongs to Dayawati. He stated that test tubalblock was conducted but not by him. He explained that hehad referred the case to Sr.Gynaecologist because thiscase was regarding the production of the child. In hiscross-examination he could not say about the final resultof this case. He explained that he had treatedtuberculosis treatment."*

77. The learned Trial Court has returned the following findings in this regard:

> *"The story set up by the accused does not just stackup. There is no clinching evidence that the accused wasnot in a position to give birth to a child. The finalreport was withheld. Even if it is assumed that she dieddue to abovesaid depression, why did she name the accused."*

78. This Court agrees with the findings returned by the learned ASJ in this regard.

79. Regarding the plea of *alibi* taken by the appellant no.3 (Anokhi Devi) and appellant no.4 (Prem Singh), the brother of Anokhi Devi DW-2 Karan Singh has stated that Prem Singh and Anokhi Devi were at his place in Bulandshahr on the occasion of "*bhaiya-duj*". On the

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other hand, during the recording of evidence of ASI Sobran Singh (PW-18) on 21.09.2000, it has come during his cross-examination that he had gone to the spot at the midnight at about 12:30 AM or 01 o'clock (the start of 22.10.1998) and on the spot, he had met with the parents of the accused and two three other persons. He denied the suggestion that parents of Tilak Raj were not present or they had been called from Bulandshahr from where they had come on the next day. He stated that he had made enquiries from the parents of Tilak Raj regarding the incident but they denied knowledge. During his further cross-examination on 12.04.2001, the IO again denied the suggestion that the parents of Tilak Raj were not present on the day of incident at their house as they had gone to celebrate the festival of "*bhaiya-duj*" at Bulandshahr in Uttar Pradesh and they had returned back on the next day morning after they received the information regarding this incident.

80. Moreover, DW-2 Karan Singh, being the real brother of Anokhi Devi, has every reason to give false statement to save her on the defence of *alibi.* Had Prem Singh and Anokhi Devi been at Bulandshahr on the day of incident, they would have been in a position to have evidence of their presence / travel to Bulandshahr on the said date from independent sources also. In view of the statement of the deceased and the evidence of IO, their plea of *alibi* is unbelievable and unacceptable.

81. The submission of the appellants is that ASI Sobran Singh manipulated the dying declaration, but there is no reason given as to

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why a colleague of Tilak Raj in Delhi Police will go out of the way to harm him. Both were ASI in Delhi Police at that time.

82. As far as the conviction under Section 201 of the IPC is concerned, it is to be noted that Tilak Raj himself is ASI in Delhi Police and therefore, would have this much training that the site of crime is required to preserved but when the IO visited the house, the same was found to be cleaned but there was smell of kerosene. It clearly shows committing of offence under Section 201 of the IPC, that is, destruction of evidence of the offence by the accused.

83. Therefore, there is nothing to doubt the prosecution's story and conviction of Tilak Raj and Anokhi Devi is therefore, confirmed for the offence under Section 302/34 of IPC.

84. To consider whether offence of Section 498A of IPC is made out, we may first reproduce Section 498A of IPC as under: -

> *"**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 purposes 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*

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or is on account of failure by her or any person related to her to meet such demand."

85. The ingredients for an offence to be made out under Section 498-A of IPC require that there has to be cruelty inflicted against the victim which is either likely to drive her to commit suicide or cause grave injury to herself or lead to such conduct that would cause grave injury or danger to life, limb or health. The second part of this Section refers to harassment with a view to satisfy an unlawful demand for any property or valuable security raised by the husband or his relatives.

86. PW-3, Ashok Kumar, the brother of the deceased has stated that the deceased had told his mother as well as his wife-Om Wati that the husband of the deceased Tilak Raj, and her other in-laws Anokhi (mother-in-law of the deceased), Prem Singh (father-in-law of deceased) and her *nanad* Raj Kumari and other two *nanads* started harassing and torturing the deceased regarding dowry demands. He stated that the deceased, however, never told him the above facts directly. He has stated that on the second Bhaiya-Duj of his sister on 21.10.98, his sister Dayawati had given a phone call to his wife and his brother Naresh Kumar to tell that she was being harassed by her in-laws. He has also stated that his deceased sister Dayawati did not tell anything to him or in his presence how she got burnt.

87. The learned APP for the State submitted that the above statement is admissible as the same is due to personal knowledge gained by PW-3 being a family member of the deceased. However,

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this Court does not agree with his submissions and treats the deposition as hearsay. Whereas the mother, father and another brother of the deceased namely Naresh Kumar died in a road accident and therefore, the prosecution was deprived of their evidence but the wife of PW-3 namely Omwati should have been examined, who according to PW-3, was told about the harassment being suffered by the deceased Dayawati at the hands of her husband and in-laws for demand of dowry.

88. That leaves us only with the statement of the deceased, insofar as subjecting her to cruelty is concerned.

89. The deceased has deposed in her last statement that *"Yeh mujhe tang karte the"*.This is only a matter of conjectures and surmises whether she is referring to all her in-laws in this statement.

90. However, when she says "…मेरा घर वाला तंग करता था। दो बार 50-50 हजार रुपये लाई हूँ। ...मारूती कार लाने के लिए मेरा घर वाला कहता था। ...पति ने कहा की भैया दूज को घर जा और मारूती कार लेकर आ", it leaves no doubt that her husband Tilak Raj subjected her to cruelty and harassed her with a view to coercing her to meet unlawful demand for car. The offence of cruelty under section 498Aof the IPC is therefore made out against him.

91. However, there is no specific allegation of demand of dowry against mother-in-law Anokhi Devi. It is ambiguous whether she was referring to her mother- in-law when she says *"Yeh mujhe tang karte the"*. Therefore, Anokhi Devi is given the benefit of doubt and acquitted of the charge under Section 498A of the IPC.

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92. The only allegation against sister-in-law Raj Kumari is that "तीसरी ननद राजकुमारी मेरठ से आ आकर सिखा कर जाती थी–कल यहाँ नहीं आई थी।". The expression *"sikha kar jaati thi"* is that she must be conveying something inimical against the deceased Dayawati or she was abetting them for some offence. Though in the circumstances, one can guess that she was referring to instigating the other accused to harass the deceased with the aim of pressing her for dowry, but conviction cannot be upheld on the basis of guess work. Therefore, Raj Kumari is also acquitted of the offence of cruelty.

93. The conviction of Tilak Raj is therefore upheld for the offence under Sections 302/201/498A/34 of the IPC. The conviction of Anokhi Devi is upheld for the offence under Sections 302/201/34 of the IPC. She is acquitted of the offence under Section 498A of the IPC. As per nominal roll, she has undergone sentence for five years seven months and one day. She is 77 years of age. Her sentence is therefore modified to period undergone i.e., five years, seven months and a day. The conviction of Raj Kumari is set aside for the offence under Sections 498A/34 of the IPC.

94. The convict Tilak Raj shall surrender before the Jail Superintendent within three working days from today as his bail bond is cancelled. Otherwise, State will take appropriate steps to arrest him so that he serves the remaining sentence awarded to him.

95. Before closing, it must be observed that this Court has felt that it is difficult to accept that the daughter and son of an ASI of Delhi Police, namely, Sudesh and Hans Raj could not be apprehended and

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are proclaimed offenders since the year 1998. This Court is of the opinion that strict action is required to arrest both the proclaimed offenders to do complete justice to the victim. For this purpose, Commissioner of Police is requested to initiate all possible steps to arrest the proclaimed offenders for putting them to trial. Let monthly progress report in this regard, till their arrest be filed before the learned Trial Court, who will give such further directions in the matter as may be required, in accordance with law.

96. Let a copy of this judgment be communicated to the Jail Superintendent as also the learned Trial Court for information and compliance in respect of Sudesh and Hans Raj who are the proclaimed offenders and thereafter, the file be consigned to the record room.

ARUN BHARDWAJ, J

NAVIN CHAWLA, J

OCTOBER 30, 2026/akr