

**HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**DIVISION BENCH**

**Criminal Appeal No.1641/2000**

1. Devi Singh, son of Mitthulal Lodhi, aged 26 years.
2. Dhanpat, son of Mitthulal Lodhi, aged 31 years.
3. Narbad Bai, wife of Mitthulal, aged 55 years.

All cultivators and residents of village  
 Khamaria, Police Station Gotegaon,  
 district Narsinghpur.

Versus

The State of Madhya Pradesh

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For the Appellants:	Shri V.P. Singh, Advocate.
For the Respondent:	Shri Amit Pandey, Panel Lawyer.

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**PRESENT: HONOURABLE SHRI JUSTICE RAKESH SAKSENA**  
**HONOURABLE SHRI JUSTICE M.A. SIDDIQUI**

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Date of hearing:	22/03/2012
Date of Judgment:	30/03/2012

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

**Per: Rakesh Saxena, J.**

Appellants have filed this appeal against the judgment dated 30.5.2000, passed by Special Judge (Atrocities), Narsinghpur, in Sessions Trial No.116/1999, convicting them under Sections 302/34 and 498A of the Indian Penal Code and sentencing them to imprisonment for life with fine of Rs.3000/- and rigorous imprisonment for one year with fine of Rs.500/-, on each count respectively.

**2.** In short, the prosecution case is that Jijibai, the deceased, was married to appellant Devi Singh about 7 years before her death, which took place on

17.5.1999. Appellant Narbad Bai was her mother-in-law and Dhanpat Singh was her *Jeth*. It is alleged that appellants used to harass and subject her to cruelty for various reasons including non-fulfillment of the demand of a motorcycle in dowry. On 17.5.1999, at about 2.30 pm, when she was in her husband's house, her husband Devi Singh caught hold of her, accused Dhanpat Singh doused her with kerosene and set fire to her. Her mother-in-law Narbad Bai also assisted them. At about 6.00 pm, she was brought to Primary Health Centre, Gotegaon where Dr. Shiv Kumar Nema (PW-3) provided first aid treatment to her and sent an intimation (Ex. P/1) to Police Station, Gotegaon. While she was in Gotegaon Hospital, her dying declarations (Ex.P/4, P/18 and P/19) were recorded. Ex.P/4 was recorded by Naib Tahsildar/Executive Magistrate H.S. Dhurve (PW-11), Ex. P/18 was recorded by Dr. V.K. Garg (PW-16) and Ex.P/19 was recorded by Sub Inspector S.R. Thakur (PW-12). On the basis of dying declarations, first information report (Ex. P/13) was recorded by Sub Inspector S.R. Thakur. For further treatment, she was referred to Medical College, Jabalpur, but in the night she died. A *Murg* was recorded at Police Station, Garha, district Jabalpur. Station Officer of Garha viz. G.R. Pal (PW-6) conducted inquest proceedings and sent the dead body of deceased for postmortem examination to CMO, Medical College, Jabalpur. Dr. J.L. Sehgal (PW-14) conducted postmortem examination and found third degree flame burns on whole of her body. Vide his postmortem report, he opined that deceased died due to shock resulting from burn injuries. Investigating Officer B.L. Narbale (PW-13) prepared spot map, seized kerosene can etc. from the spot and after completion of the investigation filed charge sheet in the court. Case was then committed for trial.

**3.** Appellants and acquitted accused Mitthulal, the father-in-law, were charged under Sections 302, 302/34 and 498A of the Indian Penal Code. All

the accused abjured their guilt and pleaded false implication. According to them, deceased did not like her husband and did not want to live with him. Therefore, she committed suicide by setting fire herself. Accused Devi Singh and Dhanpat Singh were not present at the house. They were present at their field. They were called after the incident had taken place. In their defence, appellants also examined two witnesses viz. Ram Dayal (DW-1) and Munnalal (DW-2).

**4.** Prosecution, to establish charges against the accused persons, examined 16 witnesses and proved three written dying declarations i.e. Ex.P/4, Ex.P/18 and P/19.

**5.** Learned trial judge relying mainly on the evidence of dying declarations held the appellants/accused persons guilty and convicted and sentenced them as mentioned earlier. However, finding evidence insufficient against accused Mitthulal, the father-in-law, acquitted him.

**6.** Shri V.P. Singh, learned counsel for the appellants, submitted that the evidence of dying declarations were not reliable as the versions given by the deceased in dying declarations were inconsistent. Since the deceased had suffered 100% burn injuries, it was not possible for her to have made the aforesaid dying declarations. Learned trial judge misappreciated the evidence of Laltabai (PW-1), Komal Singh (PW-2), the evidence of dying declarations and wrongly convicted the appellants under Sections 498A and 302/34 of the Indian Penal Code. On the other hand, Shri Amit Pandey, learned Panel Lawyer, submitted that the evidence of dying declarations was cogent, consistent and truthful. Therefore, the finding of conviction of the appellants recorded by the trial court was justified.

**7.** It has not been disputed that deceased died due to burn injuries. From the evidence of Laltabai (PW-1), Komal Singh (PW-2) respectively the mother

and brother of deceased, Dr. Shiv Kumar Nema (PW-3), Additional Superintendent of Police D.S. Korbu (PW-16), Investigating Officer S.R. Thakur (PW-12) and Dr.J.L.Sehgal (PW-14), who conducted the postmortem of the body of deceased, it has been amply established that deceased died due to burn injuries. Dr. Shiv Kumar Nema (PW-3) stated that Jijibai, wife of Devi Singh, was brought to PHC Gotegaon in burnt condition. He admitted her and provided first aid treatment to her and sent an intimation (Ex.P/1) to police Gotegaon. On examination, he found that she had suffered 100% burn injuries on whole of her body. She was conscious. He kept her under observation and recommended for recording of her dying declaration. He referred her to Medical College, Jabalpur for further treatment. Her MLC report is Ex.P/3. He further stated that in the evening at about 6.15 pm when Executive Magistrate Mr. H.S. Dhurve came there for recording dying declaration of Jijibai, she was conscious and was fit to give her statement. He recorded that certification in dying declaration (Ex.P/4). Sub Inspector S.R. Thakur (PW-12), on receiving requisition (Ex.P/1) from hospital, went there and on the basis of statement made by Jijibai recorded first information report (Ex.P/13). When deceased died at Medical College, Jabalpur, a *Murg* intimation was sent to Police Station, Garha. Sub Inspector G.R.Pal (PW-6) conducted inquest of the dead body and recorded memorandum (Ex.P/8) and sent the body for postmortem examination. Dr.J.L.Sehgal (PW-14), on postmortem examination, found third degree flame burns on whole of the body of deceased except on her foot soles. Kerosene smell was present in her head and clothes. In his opinion, she died due to shock from burn injuries. Postmortem examination report (Ex.P/17) was written and signed by him.

**8.** From the above evidence, it has been clearly proved that deceased died due to burn injuries.

**9.** The next question before us is whether appellants caused death of deceased by setting fire to her. Admittedly there was no direct evidence of the incident. Case rested on the evidence of dying declarations made by the deceased. Prosecution, besides the evidence of oral dying declaration, produced three written dying declarations viz. Ex.P/4, P/18 and P/19.

**10.** Additional S.P., Narsinghpur, D.S. Korbu (PW-15) deposed that on 17.5.1999 when he was going to Narsinghpur from Jabalpur, on way near Khamariya village, he saw a mob of people with a woman lying on the side of the road in burnt condition. When he enquired from her as to what happened to her, she told that her husband, Jeth and mother-in-law burnt her . He got that woman shifted to Gotegaon Hospital in a Maruti Van. He called doctors and got her dying declaration recorded. Dr. Nema certified that she was conscious and was in fit condition to give her statement and Dr.Garg recorded her dying declaration (Ex.P/18) in his writing. In this dying declaration deceased stated that her husband and *Jeth* ignited her. She was hungry, but they did not give her bread for 8 days. *Jeth* caught her and husband Devi sprinkled kerosene and set fire to her. She clarified that the name of her *Jeth* was Dhanpat Singh. Deceased also stated that her mother-in-law used to harass her. Ex.P/18 was signed by Additional S.P., D.S. Korbu, Dr. S.N. Sohane and Dr. V.K.Garg. This dying declaration was recorded at 5.55 pm and was closed at 6.05 pm. D.S.Korbu (PW-15) stated that though he enquired from deceased when he found her lying surrounded by 15-20 people, but at that time he did not record her statement and took her to hospital thereafter her dying declaration (Ex.P/18) was recorded by the doctor. He had also sent information to Police Station, Gotegaon by wireless. This witness was cross-examined at length, but there appeared nothing to indicate that he was an interested or partisan witness. It was just by chance that he happened to

reach at the spot and carried deceased to hospital.

**11.** Dr. V.K. Garg (PW-16), Medical Officer of PHC, Gotegaon, rendered support to the evidence of D.S. Korbu. He stated that deceased was brought to hospital by Mr Korbu. On his asking, he recorded her dying declaration (Ex.P/18) in his handwriting. He, Mr. Korbu and Dr. S.N. Sohane put their signatures on the said document. He admitted that no requisition was given by Mr.Korbu. Since he remained present there, he did not ask for any requisition from him. He stated that deceased had put her thumb impression on the document. She was in senses and was in fit condition to give statement. In our opinion, there appears nothing to hold D.S.Korbu (PW-15) and Dr. V.K. Garg (PW-16) unreliable. It has been established by their evidence that deceased gave dying declaration (Ex.P/18) in full senses.

**12.** Naib Tahsildar/Executive Magistrate H.S. Dhurve (PW-11) deposed that on the order of Tahsildar he went to Gotegaon Hospital for recording dying declaration of Jijibai. He obtained certificate from doctor that Jijibai was in fit condition to give her statement then he recorded her dying declaration (Ex.P/4). In this dying declaration she stated that her husband caught hold of her and her *Jeth* poured kerosene and set fire to her. He started recording the said dying declaration at 6.18 pm and closed at 6.32 pm. He denied that he recorded dying declaration late in the night and made it ante-timed by writing 6.18 pm to 6.32 pm. It was not challenged by the defence counsel that Executive Magistrate did not record the dying declaration or that deceased was not in a fit condition or senses to make dying declaration. Dr.Shiv Kumar Nema (PW-3) deposed that before the Executive Magistrate started recording dying declaration, he certified that deceased was conscious and was fit to give her statement. He recorded his endorsement on dying declaration (Ex.P/4). Dr. Shiv Kumar Nema stated that when deceased was brought to hospital in burnt

condition, he sent intimation about that to police station. It is true that PW-3 stated that some family members of the deceased had come along with her, but there appeared nothing to indicate that they tutored or prompted deceased for making dying declaration against the accused persons. It is common when an injured person is carried to hospital, number of people, his well wishers and relatives accompany him, but in the absence of any indication that they influenced the mind of injured for making a false statement, it cannot be held that he made false statement.

**13.** Yet another dying declaration was proved by Sub Inspector S.R. Thakur (PW-12). S.R. Thakur, at the relevant time, was posted in Police Station, Gotegaon. When he received intimation (Ex.P/1) from the hospital about Jijibai being brought to hospital in 100% burnt condition, he issued a requisition (Ex.P/2) for her medical examination by the doctor and proceeded to record her statement (Ex.P/9) in presence of witnesses Chandrabhan Singh and Narvar Singh. Deceased disclosed to him that since after marriage her husband Devi Singh and *Jeth* Dhanpat Singh used to harass her and did not give food to her. At about 2.30 pm her *Jeth*, husband and mother-in-law beat her; *Jeth* Dhanpat Singh held her and Devi Singh poured kerosene and set fire to her. Nobody in the house saved her nor anybody from the locality came there. She did not know who brought her to hospital. Since Chandrabhan Singh (PW-8) did not support the prosecution, he was declared hostile. He stated that out of anger deceased set fire herself. He was confronted with his police statement (Ex.P/12) wherein he stated that *Jeth*, mother-in-law and husband set fire to deceased. S.R. Thakur (PW-12) stated that immediately after his receiving information from the hospital, he went to hospital and recorded the statement of deceased on a paper. After receiving information at police station, he sent a requisition to Tahsildar for recording the dying declaration of deceased. After

his return from the hospital, he recorded first information report (Ex.P/13). He, however, admitted that he did not obtain any certificate from doctor before recording the statement of deceased. According to him, her condition at that time was good and she was answering questions put to her.

**14.** Taval Singh (PW-5), a resident of village Khamariya, stated that accused Dhanpat Singh called him saying that Jijibai had ignited herself. When he went to his house, he saw Jijibai lying in the courtyard. She was crying and requesting Chandrabhan Patel to save her. At that time she did not tell as to how she caught fire, but when DSP came in a jeep and asked to her, she told that her husband and *Jeth* ignited her.

**15.** Learned counsel for the appellants argued that the aforesaid written dying declarations were inconsistent, therefore, no reliance could be placed on them.

**16.** On perusal of dying declaration (Ex.P/4) recorded by Executive Magistrate, H.S. Dhurve (PW-11), it is revealed that deceased told that accused Dhanpat ignited her and her husband Devi Singh held her whereas in dying declaration (Ex.P/18) recorded by Dr. V.K. Garg (PW-16) and the statement/dying declaration (Ex.P/19) recorded by Sub Inspector S.R. Thakur (PW-12) deceased stated that *Jeth* Dhanpat caught her and husband Devi Singh poured kerosene and set fire to her. So far as accused Narbad Bai is concerned, in Ex.P/4 and Ex.P/18 deceased only stated that she used to harass her. In Ex.P/19, no allegation was made against Narbad Bai.

**17.** In case of ***Ranjeet Singh vs. State of Punjab-(2006) 13 SCC 130*** the Apex Court found inconsistency in the roles ascribed by the deceased to her brother-in-law and sister-in-law in her two dying declarations, but found consistency in respect to the role ascribed to mother-in-law in lighting the matchstick to set the deceased ablaze, therefore, applying the rule of caution



in such a case, extended benefit of doubt to brother-in-law and sister-in-law, but convicted the mother-in-law.

**18.** On a close scrutiny of the aforesaid dying declarations, we find that Executive Magistrate, H.S. Dhurve (PW-11), Dr. V.K. Garg (PW-16) and S.R. Thakur (PW-12) recorded three dying declarations (Ex. P/4, Ex.P/18 and Ex.P/19) correctly as narrated by the deceased. On further analysis of the said dying declarations it however seems that no participation of accused Narbad Bai was disclosed in setting fire to deceased. In Ex.P/4 and Ex.P/18, merely it was mentioned by deceased that mother-in-law harassed her. In Ex.P/19 recorded by S.R. Thakur no allegation was made against Narbad Bai. Therefore, there appears no cogent evidence on record to hold that accused Narbad Bai in any manner participated in the act of setting fire to deceased.

**Learned trial judge, in our opinion, misappreciated the evidence in respect to her and committed error in holding her guilty under Section 302/34 of the Indian Penal Code.**

**19.** In dying declaration (Ex.P/4) recorded by Executive Magistrate H.S.Dhurve (PW-11) deceased stated that her husband Devi Singh caught her and *Jeth* Dhanpat Singh poured kerosene and set fire to her whereas in dying declarations Ex.P/18 recorded by Dr. V.K. Garg (PW-16) and Ex.P/19 recorded by Sub Inspector, S.R. Thakur (PW-12) she stated that husband Devi Singh poured kerosene and set fire to her and *Jeth* caught hold of her. This inconsistency in respect of the act of accused Dhanpat Singh, in our opinion, casts a doubt about his involvement in the incident. It seems possible that deceased might have roped him because of his being brother of her husband viz. Devi Singh. Since in respect of her statement deceased cannot be subjected to cross-examination, in our opinion, it would not be safe to convict appellant Dhanpat for the charge under Section 302/34 of the Indian Penal

Code on the basis of inconsistent dying declarations in respect of him. **His conviction under Section 302/34 of the Indian Penal Code, therefore, deserved to be set aside.**

**20.** So far as accused Devi Singh, the husband, is concerned two dying declarations Ex.P/18 and P/19 are consistent. Deceased categorically stated that he poured kerosene and set fire to her. From the evidence of Taval Singh (PW-5) and Additional S.P., D.S. Korbu (PW-15) it is revealed that immediately after the occurrence when deceased was lying on the side of the road, she disclosed to them that her husband set fire to her. The evidence of Ram Dayal (DW-1) and Munnalal (DW-2) that Devi Singh and Dhanpat were not present at home, does not appear reliable. Ram Dayal (DW-1) is closely related to accused persons. None of these witnesses ever disclosed to police that accused persons were not at home and deceased committed suicide by setting fire herself.

**21.** Learned counsel for the appellants argued that Laltabai (PW-1) and Komal Singh (PW-2), respectively the mother and brother of deceased, though stated that accused Devi Singh and Narbad Bai used to harass deceased but their evidence on this count was vague. No details or particulars about the harassment or cruelty were given by them. Komal Singh (PW-2) stated that accused persons demanded motorcycle in dowry, but this fact was found absent in his police statement (Ex.D/2).

**22.** No doubt the evidence of Laltabai (PW-1) and Komal Singh (PW-2) about the cruelty meted out to deceased was not specific, but deceased herself in dying declarations (Ex.P/4 and Ex.P/19) stated that accused persons harassed and quarreled with her. In Ex.P/18 and Ex.P/19 she stated that they did not provide food to her despite her working in the house. From the evidence of dying declarations it stood established that all the three accused

persons harassed the deceased and subjected her to cruelty and ultimately her husband set her ablaze. Therefore, we are of the view that the trial court committed no error in holding the appellants guilty of the charge under Section 498A IPC and convicting and sentencing them.

**23.** For the reasons stated hereinabove-

- (a) conviction and sentence of appellants under Section 498A of the Indian Penal Code is affirmed;
- (b) conviction and sentence of appellant No.2 Dhanpat Singh and No.3 Narbad Bai under Section 302/34 of the Indian Penal Code is set aside. They are acquitted of that charge; and
- (c) conviction and sentence awarded to appellant No.1 Devi Singh under Section 302/34 of the Indian Penal Code by the trial court is affirmed.

**24.** Appeal partly allowed.

**(RAKESH SAKSENA)**  
**JUDGE**

**(M.A. SIDDIQUI)**  
**JUDGE**

**HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**Criminal Appeal No.1641/2000**

Devi Singh and others

Versus

The State of Madhya Pradesh

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

**For consideration**

**(Rakesh Saxena)**  
**JUDGE**  
**\_\_\_/03/2012**

**Hon'ble Shri Justice M.A. Siddiqui**

**JUDGE**  
**\_\_\_/03/2012**

**POST FOR   /03/2012**

**(Rakesh Saxena)**  
**Judge**  
**\_\_\_/03/2012**