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**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 594 of 2002**  
**Judgment reserved on : 10.10.2011**  
**Decided on December 30, 2011.**

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**State of Himachal Pradesh** **...Appellant.**

**Versus**

**Pawan Kumar S/o Hazara Ram, Caste Bahti R/o Village  
Nangran, P.S. And Distt. Una, Himachal Pradesh.**

**..Respondent.**

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*Coram*

**The Hon'ble Mr. Justice R.B. Misra, Judge.**  
**The Hon'ble Mr. Justice Dev Darshan Sud, Judge.**

*'Whether approved for reporting?'*

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**For the appellant: Mr. R.K. Sharma, Senior Additional  
Advocate General, with Mr. Rajinder  
Dogra, Additional Advocate General.**

**For the respondent: Mr. Sanjeev Bhushan, Advocate.**

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**Justice R.B. Misra, J.**

The present Criminal Appeal has come up for adjudication after the grant of leave to appeal under Section 378 (3) of the Code of Criminal Procedure in reference to judgment dated 4.4.2002, passed by Learned Additional Sessions Judge, Una, H.P., in Sessions Case No.45/01/99, acquitting the accused/respondent for the offences under Section 392/304-B of the Indian Penal Code, in reference to FIR No.84/98, dated 1.2.1998.

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2. The prosecution case, in brief, as per statement of victim/(deceased)/Sushma Devi, is that she was married to accused Pawan Kumar and she was being harassed and beaten for demand of dowry including Television and Scooter. Three years prior to her death on 31.1.1998, her husband asked her to bring `1,00,000/- so that he could run a shop after leaving his job on non-fulfillment of such demand, kerosene oil was poured over her by the accused and she was burnt. She was brought by her father, uncle and brother to the hospital, where her statement was recorded. While undergoing treatment she succumbed to her injuries and ultimately died on 3.4.1998. After investigation, accused was charged for the aforesaid offences.

3. In order to prove its case, the prosecution examined as many as 12 prosecution witnesses, whereas, accused through his statement under Section 313 of Cr.P.C., has denied the prosecution case, through, in his statement under Section 313 Cr.P.C. In response to the question No.38, the accused has stated that he was innocent and has falsely been implicated. When he came from Chandigarh on 31.1.1998 and reached at about 7-7.30 P.M, he asked his wife to prepare meal, at

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that time, he had gone to answer the call of nature in the nearby fields. When he came back, he observed that Arun Kumar, Pritoo and other villagers were standing in his courtyard and there was fire on the clothes of his wife. Accused tried to save his wife from the fire, in that process, he also received burn injuries. As stated by the victim and other ladies present there that while litting the Chullah she caught fire. After saving his wife from fire, accused called Ram Kumar, Up-Pradhan, who took the victim to the hospital and had sent Arun Kumar to call his in-laws. Thereafter, his father-in-law, brother and brother-in-law reached the hospital after about one or two hours after the victim admitted was in the hospital.

4. PW.6 Dr.Rajan Angra examined the victim and noticed that the victim was conscious and smell of kerosene oil was present on her body as well as on her forehead, face, front of neck, inframammary area, left side of umbilicus, right arm and hand having multiple scattered burn area, left hand, perineal area, front of both thighs and lower part of both the buttock. All the injuries are of first degree in nature caused within six hours. These injuries were said to be possible after sprinkling of kerosene oil on the body of the victim in a standing

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posture and then setting her on fire after throwing her on the floor with face upward.

On the application Ex.PW.6/B, an opinion Ex.PW.6/C was given whereby the victim was found fit to make statement. Thereafter, statement Ex.PW.6/D was recorded in the presence of Dr.Rajan Angra (PW.6) by Sub-Inspector of police and after conclusion of the statement, signature of the victim was also obtained, which was attested by Dr.Rajan Angra vide signature Ex.PW.6/E. PW.6, however, has opined that the nature of the injuries on the person of the victim, cannot be said to be sufficient in ordinary course to cause her death. In the conditions later on prevailing, the victim has developed septicemia, shock and renal failure. PW.6 has also opined that a person while in standing posture put kerosene oil in Chullah, he or she is not likely to get burn injuries scattered to different parts of his or her body. The injuries in such a case would likely to be concentrated in a particular part of body. But when victim was wearing synthetic clothes then the injuries can spread along with the clothes but that would be in a continuous or particular direction along with the spread of fire. At the time of medical examination of the victim, the only staff nurse was present

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on duty along with PW.6 and MLC Ex.PW.6/A was issued in presence of father of the victim, who told that he brought the victim to the hospital. As stated in cross-examination by PW.6 that since there was burn injuries on the right hand of the victim and finding her not capable to append her signatures on the MLC, as such, her father has appended his signatures thereupon.

5. PW.1 Sh. Arun Kumar, who on the fateful day after hearing the cries '**BACHAO BACHAO**' from the house of the accused, ran towards the house of the accused and observed that victim Sushma Devi was ablazed on fire and with the help of Pritoo Devi fire was extinguished. As stated by PW.1, the victim was crying that she was working in the kitchen and when she tried to burn the fire Chullah with kerosene oil, the kerosene oil fell on her and she caught fire. PW.1, however, did not support the prosecution case to the expectation of the prosecution. Though PW-1 has stated in cross-examination that there were burn injuries on the face, forehead, neck and other parts of the body of Sushma. The smell of kerosene oil was coming from her. PW.1 gave the information to the father of the victim at about 9-9.30 P.M. and when he reached at the spot, Sushma was lying in the courtyard. PW.1 also

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stated in cross-examination that after 15 minutes, husband of the victim also came at the spot and tried to extinguish the fire and his hands were also burnt.

6. PW.2 Sh. Tarlok Chand, father of the victim, in support of the prosecution case, has stated that he had given scooter, fridge, television, 45 grams gold ornament etc. at the time of marriage to his capacity. PW.2 has further stated that initially victim was taken by accused to Chandigarh. On the Lohri festival i.e. 12.1.1008 his son Ranjit Singh went to the in-laws' house of victim and came back alongwith his daughter on 15.1.1998. PW.2 has further stated that his daughter Sushma told her mother that her husband was demanding ₹100,000/- for starting a shop. Accordingly, mother of the victim informed PW.2. On 25.1.1998, accused came to his village and gave beatings to victim when she refused to oblige him in respect to his demand of ₹100,000/-. PW.2 Tarlok Chand, his wife Smt.Trishla Devi (PW.4), when went to in-laws' house of the victim, they were apprised of by the victim that she has been beaten by her husband with the blow of pipe used for lightening the Chullah. PW.2 Sh.Tarlok Chand has further stated that there was swelling on her left wrist joint and during such visit they were also told by

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the victim that the accused was demanding ₹1,00,000/- which was refused by her. Her hairs were also pulled by her husband. As stated by PW.2 on 31.1.1998, at about 8.30 P.M., one Arun Kumar of village Nangran came and told that victim was set on fire after sprinkling kerosene oil on her person by the accused. Immediately his elder brother, son Ranjit Singh and PW.2 rushed on a scooter to the house of the accused, however, noticed that body of the victim was though burnt but she was alive. As stated by PW.2, victim was crying that she was set on fire after sprinkling kerosene oil by her husband Pawan Kumar. PW.2 and his elder brother brought the victim to District hospital, Una followed by his son Ranjit Singh (PW.3) on scooter. Prior to that PW.2 had gone to the house of accused, at that time, parents of the accused had already gone to the wedding, whereas, the accused had already ran away from his house and only his sister Rama Devi was present in the house. PW.2 has further stated that his daughter remained under treatment for a period of about two months.

In cross-examination, PW.2 has stated that he had already given scooter, television, fridge, to his daughter in the dowry and has very fairly stated that the victim had

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never told him personally that accused had demanded money from her.

7. PW.3 Sh.Ranjit Singh, in support of the prosecution case, has stated that on 15.1.1998, when he went to the place of his sister at village Kuthar Kalan, he was told by victim that in order to establish business the accused was demanding ₹1,00,000/-. Such fact was also disclosed by the victim to his mother. On 25.1.1998, parents of PW.3 had also gone to the in-laws' house of the victim on hearing news that victim had been beaten by the accused, PW.3 also accompanied by his father (PW.2) and had also observed that the victim was lying in the courtyard about 15-20 feet away from the house of Pawan Kumar and she was crying as she could not arrange ₹1,00,000/- for that accused sprinkled kerosene oil on her and put her on fire. PW.3 has further stated that body of the victim was covered with blanket and she was taken to hospital by his father and uncle. PW.3 also accompanied them. PW.3, however, stated in cross-examination that neither the medical examination of Sushma was conducted in respect of the incident on 25.1.1998 nor the same was reported to the police or to the Pradhan of the village. PW.3 has further stated that



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when they had gone to village Nangran on scooter and reached about 10.00 P.M., about 50-60 persons were assembled at the place where his sister was lying. Accused Pawan Kumar was also present there. PW.3 has further stated that Ram Kumar and other persons had also accompanied them to the hospital.

8. PW.4 Smt. Trishla Devi, in support of the prosecution case, has corroborated the testimonies of PW.2 Tarlok Chand and PW.3 Ranjit Singh. PW.4 has, however, very categorically told to the accused that she was not in a position to arrange ₹1,00,000/- as the demand of dowry. The fact of demand of ₹1,00,000/- was also reiterated by PW.4 in her statement made in cross-examination.

9. PW.5 Dr. P.L. Nanda after examining the accused, found following injuries and given opinion as below:-

1. Right dorsal palm having worst besicles with abraised skin and two irregular small blisters due to burns.
2. Pulp of right middle and ring finger having superficial burns with no blistering.
3. Pulp of left hand of ring and middle finger having blisters.
4. Left ring finger having worst blisters.

All these injuries were simple in nature caused within 24 hours. PW.5 issued MLC Ex.PW.5/A in respect of these injuries. A normal course these burns injuries are not

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possible while setting his wife on fire. It is so because kerosene oil is not that inflammable which catches fire all of sudden. In case of petrol or spirit the things are different which are highly inflammable. If the burning lady is caught for preventing her from going outside then the persons who catches her can sustain these injuries.

PW.5 has also stated in cross-examination that injuries above mentioned, on the both hands of the accused, are possible while trying to extinguish fire to save his burning wife.

10. PW.7 Dr. Ravinder Datial, after conducting the postmortem examination of the victim, has opined that the deceased died due to septicemic shock resulting from infected burns. The burns wounds are antemortem in nature. The burn injuries were sufficient in the ordinary course of nature for the death of the victim.

11. PW.8 Head Constable Kuldeep Kumar on receiving telephonic message from Medical Officer on 31.1.1998, at about 11.10 P.M., made entry in daily diary register. PW.9 S.I. Kishore Chand, on receiving rukka Ex.PW.6/D in the Police Station, recorded formal FIR Ex. PW.9/A. PW.10 Constable Gopal Dass handed over two sealed parcels vide R.C. No.57/98 for chemical test at Forensic Science Laboratory, Junga.

12. PW.11 Sh. Ram Kumar, Up-Pradhan, Nangran

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has however not supported the prosecution case by saying that at about 8.00 P.M. when he was present in his house, accused Pawan Kumar came to his place and informed that while preparing meals, his wife (victim) had caught fire and on his request PW.11 went to his house, however, before his arrival 3-4 males and about 10 females had already gathered. Accordingly, PW.11 asked the accused to arrange a vehicle and asked Arun Kumar to go and inform the parents of the victim. Thereafter, Pawan Kumar and two other persons, whose names PW.11 did not know, removed the victim to the District hospital, Una.

PW.11 stated in cross-examination that he had never heard about any dispute between husband and wife regarding dowry, however, when PW.2 Tarlok Chand reached the hospital, he was accompanied by his son, brother and Arun Kumar.

13. PW.12, Inspector Onkar Singh, who conducted the investigation and on whose application (Ex. PW.6/B) to the Medical Officer, fitness certificate (Ex. PW.6/C) for making statement, was given by the Medical Officer. Thereafter, statement (Ex. PW.6/D) was recorded in his presence and in presence of nurse, where victim

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appended her signatures (Ex. PW.12/A) over it. The Medical Officer has also appended his signatures (Ex. PW.6/E) over it. During that night at about 12.35 A.M. on 31.1.1998, he came to the Police Station, obtained a jeep and went to the spot at village Nangran. On reaching the spot, he noticed that sister-in-law of the victim and 2-3 ladies were there. The room where incident took place was secured by locking the same. In the night, PW.12 came to the Police Station. Next day, again at about 8.00 A.M., PW.12 went there and gathered some respectable persons of the village and in their presence he inspected the room and obtained photographs. The room was smelling of kerosene oil. PW.12 has taken into possession the burnt salwar, kamiz, dupatta, bra and one undershirt of the deceased from the room. PW.12 has also taken into possession one canny of kerosene oil, one red coloured shawl smelling of kerosene oil as well as two partly burnt match sticks vide memo Ex. PW.11/A in presence of Ram Kumar and Bhagat Singh. All these articles were sent to Chemical Examiner, Junga. PW.12 has further stated that site plan (Ex. PW.12/C) was also prepared by him and has further stated that no incident took place in the kitchen, as there was no evidence to

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that effect available there.

In cross-examination PW.12 has stated that the father of the victim has stated that he had brought her to the hospital in a vehicle. Although, in view of the testimony of PW.12 made in cross-examination, victim had stated that the accused had been demanding dowry but this fact has never disclosed by her father and mother. PW.12 has also noticed Chullah inside the kitchen.

14. Statement (Ex. PW.6/D) of the victim reveals that she was married to accused and only one and a half month prior to the incident, dowry articles were given in their marriage, however, after marriage, she was being harassed and ill-treated for bringing more dowry and the fact of demand of dowry was also apprised of by the victim to her parents. In view of the statement of the victim, as reflected in Ex. PW.6/D, accused/husband has also been taunting that money, television, scooter etc. were not given to him and of and on the victim was being beaten by the accused for demand of dowry and prior to the incident, accused had also pulled hair of the victim and threatened the victim to arrange ₹1,00,000/- within 3-4 days, so that he may start his business. Victim

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stated as reflected in her statement (Ex. PW.6/D) that accused came about 7.00 A.M. on 31.1.1998 from Chandigarh and immediately after coming he enquired about the money, however, he was asked to take meal, became angry and had poured kerosene oil over her, shut her mouth and made her lie on the ground. Thereafter, accused had lit a match box and set her on fire. The victim came running outside raising hue and cry '**BACHAO BACHAO**', however, endeavour was made by accused Pawan Kumar, Smt.Pritoo Devi to save her, thereafter, she has been admitted in the hospital. As stated by the victim that within a short time of her marriage, she has been harassed and given cruel treatment for bringing more dowry.

15. On analysis of the prosecution witnesses, we find that statement of the victim made in Ex. PW.6/D is a natural statement, wherein she has divulged everything truly. Though an information to the Gram Panchayat concerned or to the police has not been given, but point of demand of dowry of ₹1,00,000/- revealed by PW.3 Ranjit Singh was corroborated by the testimony of PW.4 Smt. Trishla Devi, i.e. the mother of the victim. The victim succumbed to the burn injuries and had died on 3.4.1998

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while undergoing treatment for about two months in the hospital and within a very short span of one and a half month of marriage, she had come across this mis-happening. PW.3 Ranjit Singh, the brother of the victim, PW.4 Smt. Trishla Devi, being mother of the victim have corroborated the testimony (Ex. PW.6/D) of the injured/victim. Though there was no information to the police or to the independent persons of the locality about cruelty, maltreatment or demand of dowry and there was no medical report regarding beatings on 25.1.1998 to the victim, but we should not shut our eyes about the social norms, conservative traditions of hill area that married women generally are hesitant to divulge their grievances to the public or generally any one. Woman feel hesitant and shy of disclosing their agony, whereas, the demand of dowry, cruelty and maltreatment by accused are the cause that the victim had put her on fire. The victim had died of burn injuries and her statement (Ex. PW.6/D) made as a dying declaration, cannot totally be disbelieved, as the same has been made in natural course, more so, at the instance of accused, the victim had poured the kerosene oil over her body and set her on fire.

16. The fact of burn injuries at the instance of the accused-respondent, are corroborated by the statement of PW.5 Dr. P.L. Nanda. Analysis of the prosecution witnesses reveals that on the fateful day i.e. on 31.1.1998 accused was present on the spot and at his instance the victim had poured kerosene oil on her and set her on fire where the accused has also endeavoured to extinguish the fire to show as if he was innocent. In view of the testimony of PW-2, PW-3, PW-4, prosecution, in our considered view, is able to prove its case that the demand of dowry was made by the accused and for non fulfillment of dowry, the accused-respondent has treated the victim with cruelty and at his instance the victim has poured kerosene oil on her and set her on fire.

As such the act of accused-respondent though does not fall under the offence under Section 302 of IPC but for the death caused by burn injuries, certainly the act of offence of cruelty, harassment for demand of dowry are main cause, therefore, act of accused is covered under Section 304-B of IPC. In our considered view, accused-respondent can be held guilty of demand of dowry. Therefore, the burn injuries could be said to be caused for the demand of dowry, as such, accused is



held guilty of offence punishable under Section 498-A IPC.

17. If the dying declaration is reliable, the same could be taken as the basis of conviction in view of the decisions of Hon'ble Supreme Court in **Sharda** versus **State of Rajasthan**, (2010) 2 SCC 85 and **Narain Singh & Another** versus **State of Haryana**, (2004) 13 SCC 264. Since the dying declaration is reliable, as such, there is no need of corroboration by any other witness and conviction can be based on this alone, as has been observed in **Bijoy Das** versus **State of West Bengal**, (2008) 4 SCC 511, **Bapu** versus **State of Maharashtra**, (2006) 12 SCC 73 and **Ravi & Another** versus **State of Tamilnadu**, (2004) 10 SCC 776. We are also aware that if the dying declaration is voluntary and reliable, it does not require any other corroborative evidence and conviction can be based on such dying declaration alone in view of the decisions of Supreme Court in **Muthu Kutty & Another** versus **State By Inspector of Police, T.N.**, (2005) 9 SCC 113 and **P.V.Radhakrishna** versus **State of Karnataka**, (2003) 6 SCC 443. Even recording of dying declaration by a Magistrate is not required as in the present case the dying declaration was recorded by the Police official in presence of the medical Officer. As such,

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the dying declaration in the present case shall be treated as a reliable piece of evidence in view of the decision of Supreme Court in **Balbir Singh & Another** versus **State of Punjab**, AIR 2006 SC 3221.

18. Section 304B of IPC is defined as below:-

“Section 304B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation-For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

In order to attract the provisions of Section 304B, for one of the main ingredients of offence “soon before her death” the victim has to be subjected to cruelty and harassment in view of the decision of Supreme Court in **K.Prema S.Rao & Another** versus **Yadla Srinivasa Rao & Others**, AIR 2003 SC 11.

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19. Though the expression “Soon before her death” used in Section 304B IPC and Section 113 of the Evidence Act is available with the idea of proximity text, no definite period has been indicated and the expression “soon before her death” is not defined. The determination of the period within the term ‘soon before’ may be determined by the Courts, depending upon the facts and circumstances of each case. The expression ‘soon before’ would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In our considered view, there must be existence of a proximate and live link between the effect of cruelty or harassment and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence in view of the decision of Supreme Court in **Kaliyaperumal & Another** versus **State of Tamil Nadu**, 2003 SC 3828 and also **Yashoda & Another** versus **State of Madhya Pradesh**, (2004) 3 SCC 98.

20. In the facts and circumstances, we notice as below:-

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- (i) The death of victim was caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) The death of the victim had been occurred within seven years of marriage;
- (iii) The victim had been subjected to cruelty or harassment by her husband in connection with demand for dowry.
- (iv) Such cruelty or harassment was meted out to the woman soon before her death.

21. In these circumstances, the accused is to be held responsible for the offence under Section 304B IPC in view of the decision of Supreme Court in **Baljeet Singh & Another** versus **State of Haryana**, (2004) 3 SCC 122. In the present case, though there appears to be no corroborative evidence than the testimony of the victim as dying declaration where at the instance of accused, victim has set ablaze her on fire after pouring kerosene oil, as such, we are hesitant to hold the accused guilty under Section 302 IPC but in the totality of the facts and circumstances, we can infer safely that the accused has committed cruelty and was instrumental for cause of death by way of burn

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injuries to the victim.

22. In our considered view, learned Additional Sessions Judge, has not made proper appraisal of the prosecution evidences and as such conclusion arrived at by learned Additional Sessions Judge is erroneous. The conclusion arrived at by the learned Sessions Judge, Una on 4.4.2002 in Sessions Case No.45/01/99 cannot be said to be legally sustainable, as such, the same is set aside and the accused is held guilty of the offence punishable under section 498-A as well as under Section 304-B IPC. In view of the aforesaid analysis, the present criminal appeal, filed by the State is allowed, however, before awarding sentence to the accused-respondent, the accused-respondent has to be heard on quantum of sentence. Therefore, non-bailable warrants shall be issued against the accused-respondent to secure his presence before this Court, returnable on specified date i.e. **13.3.2012**.

**(R.B. Misra)**  
**Judge**

**December 30, 2011.**  
(Purohit/soni)

**(Dev Darshan Sud)**  
**Judge**