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

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**Judgment reserved on: 13.09.2021**

**Judgment delivered on: 30.09.2021**

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**CRL.A. 956/2018 and Crl. M.B. No. 629/2021**

SUMIT @ VICKY

..... Appellant

Through: Mr. Siddharth Yadav, Advocate.

versus

STATE

.....Respondent

Through: Mr. Ashish Dutta, APP for the State.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE JASMEET SINGH**

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

**VIPIN SANGHI, J.**

1. The present appeal by the convict/ accused No. 3 is directed against the judgment dated 19.12.2017, and order on sentence dated 23.12.2017 passed by Sh. Vivek Kumar Gulia, ASJ-03 & Special Judge (Companies Act), Dwarka District Courts, Delhi in S.C. No.130/2015, arising out of FIR No.210/2012 registered at P.S. – Chhawla under Section 302/ 304B/ 498A/ 34/ 174A IPC against four accused, namely Rohtash, Santosh, Sumit @ Vicky and Jitender @ Tinku.

2. The appellant Sumit @ Vicky, arrayed as Accused No.3 has been found guilty of commission of the offence of murder under Section 302 IPC

**CRL.A. 956/2018**

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only. The rest of the charges against the appellant could not be established. The other accused persons, namely Rohtash, Santosh and Jitender @ Tinku were acquitted of the offence for which they were charged.

3. The factual background of the case has been taken note of in the impugned judgment and there is no dispute about the same. We, therefore, consider it appropriate to reproduce the factual background as narrated in the impugned judgment itself. The same is as follows:

*“1.1 The incident came into light on registration of DD No. 5A dated 15.09.2012 of PS Chhawla, when an information was given at 12.15 am from the hospital that one Rakhi W/o Sumit @Vicky (accused) had been admitted in the hospital in burnt condition by her brother-in-law (jeth) Pradeep (PW21). Thereafter, the patient was shifted to SafdarjungHospital.*

*1.2 The FIR was registered on the complaint of Nisha (PW3), sister of the deceased, recorded by SDM (PW12) on 15.09.2012 with following facts. She alongwith her sister Rakhi were married to Pradeep and Sumit @Vicky respectively, both sons of accused Rohtash, and few days after their marriage, her mother-in-law Santosh, father-in-law Rohtash, brother-in-law Jitender @Tinku and husband of the deceased namely Sumit @ Vicky started abusing and beating both the sisters. Accused Sumit @Vicky had even damaged the articles given in the marriage and on 04.09.2012, all the accused persons beaten them and then removed them from matrimonial house and her child aged 15-16 days was also snatched from her. Thereafter, with the intervention of the police, her child was given to her. Further, both of them went to their parental house. Further, on 09.09.2012, accused Sumit @ Vicky, her husband and other relatives came to their parental house and after settling the dispute, they took both of them to their matrimonial house. However, they were again beaten on 10.09.2012 by their mother-in-law, father-in-law and brother-in-law. Further, on 14.09.2012, accused Sumit @Vicky was quarreling with and*

*beating Rakhi since 8.00 am and at about 9.00 pm, she went in their room, but accused Sumit @Vicky asked her to get out of the room. At about 10.30 pm, Sumit took Rakhi on the first floor of the house and then she also followed them and behind her, her father-in-law, mother-in-law and brother-in-law also came there. Then she saw that accused Sumit @Vicky poured kerosene oil on Rakhi and when she asked her in-laws to stop accused Sumit @Vicky, they did not do anything. Then accused Sumit @Vicky set Rakhi on fire. She shouted, but nobody helped her, After about 10 minutes, neighbours came for help and doused the fire. 15-20 minutes after that her husband Pradeep came and took Rakhi to the hospital.*

*1.3 In the hospital, statement of Rakhi was recorded by the Executive Magistrate/Tehsildar on 15.09.2012, whereby she alleged that she was tortured for demand of car and two fridges by all the accused persons and her husband Sumit @Vicky had set her ablaze in the presence of other accused persons. She succumbed the burn injuries on 21.09.2012.*

*1.4 During investigation, burnt/half burnt clothes, bottle of kerosene oil, matchbox, burnt slippers, etc., were seized from the spot. Further, medical documents of the deceased were collected and the accused persons were arrested.*

*2. After culmination of investigation, the accused persons were charge-sheeted and produced before the Court of Ld. Area MM. After complying with the provisions of Section 207 CrPC, the case was committed to the Court of Sessions u/s 209 CrPC”*

4. Charges were framed against the accused persons by the learned ASJ as follows:

- a. Under Sections 302/ 304/ 498A/ 34 IPC against the accused Rohtash, Santosh and Sumit @ Vicky on 11.02.2013; and
- b. Under Section 302/ 304B/ 498A/ 34 / 174A IPC against the

accused Jitender @ Tinku on 01.05.2013.

All the accused pleaded 'Not guilty' and claimed trial.

5. There was one eye-witness cited by the prosecution, namely Nisha (PW-3) – sister of the deceased, who deposed about the incident and about the physical and mental torture to which the deceased was subjected by the accused persons.

6. The parents of the deceased – Kitabo Devi (PW-1) & Ram Chander (PW-5), as well as the brother of the deceased – Anup @ Suresh (PW-7) were examined to show that the deceased was subjected to cruelty in connection with the dowry demands.

7. Shiv Kumar (PW-9) and Ishwar Singh (PW-22) were examined as independent witnesses to corroborate the allegations.

8. The dying declaration of the deceased was also recorded. To establish the same, Satish Kumar Rawat (PW-12) – the then Tehsildar, was examined, who recorded the dying declaration of the deceased Rakhi in the hospital.

9. Another important witness examined by the prosecution was Pradeep (PW-21) – brother of the appellant, who was also the son of the accused No.1 Rohtash and Santosh, as well as the brother of the accused No.4 Jitender @ Tinku. He was examined to establish that the deceased Rakhi was subjected to cruelty by the appellant – accused No.3 Sumit @ Vicky and that he, i.e. Pradeep (PW-21), had taken the deceased to the hospital.

10. Dr. Vikram, DDU Hospital (PW2), proved MLC of the deceased Ex.

PW2/A. Dr. Vinayak Sidharth, Safdarjung Hospital ( PW24), proved MLC of accused Sumit @Vicky Ex. PW24/A, and death summary of deceased Rakhi Ex. PW24/B. Dr. Abhishek Yadav, Safdarjung Hospital (PW25), proved postmortem report of the deceased Ex. PW25/A, prepared by Dr.Shrawan Kumar and Dr. Lohith Kumar.

11. Apart from the aforesaid witnesses, formal witnesses were also examined by the prosecution.

12. Statements of the accused persons were recorded under Section 313 Cr.P.C. They denied the allegations made against them. Accused Rohtash claimed that upon hearing noise from the roof, he went there and found Rakhi sitting in burnt condition, and hands & face of the accused Sumit @ Vicky were also burnt. He also stated that at the time of the incident Accused Jitender @ Tinku was not in the house. He stated that Nisha (PW-3) – the eyewitness, was standing at quite a distance from the deceased Rakhi and that his wife Santosh – accused No.2 and son Pradeep (PW-21) took the deceased Rakhi to the hospital along with his two nephews, namely Rahul and Shammi – neither of whom were examined either by the prosecution, or by the defence. The accused Sumit @ Vicky, i.e. the appellant denied ever having maltreated his deceased wife Rakhi, and claimed that the deceased Rakhi was in the habit of creating quarrels and she used to go to her parental home without any cause or reasons. He stated that Rakhi had set herself on fire and when he tried to extinguish the fire, he also received burn injuries and, though Nisha (PW-2) – the eyewitness was present on the roof, but she did not make any effort to douse the fire. He further stated that Rakhi – the deceased, was not happy in his company and



wanted to reside with the person with whom she had an affair prior to her marriage.

13. Accused Jitender @ Tinku stated that at the time of the incident, he was not at his house and he had gone to attend the birthday of his friend Hariom.

14. The accused persons led defence evidence by producing the following four witnesses:

A. Rajo @ Raj (DW-1) deposed that after hearing the screams of "bachao-bachao", she went to the house of accused Rohtash and knocked the door and on opening the door by accused Santosh, she was informed about the fire at upstairs in the house. Then they all went upstairs and found that Rakhi was sitting in burnt condition, whereas, accused Sumit @Vicky was standing in burnt condition.

B. Hariom (DW-2), deposed that accused Jitender @Tinku is his friend and on 14.09.2012, he was celebrating his birthday at his home and invited accused Jitender @ Tinku for celebration and, from 8.00 pm till 11.15 pm, accused Jitender @ Tinku remained at his house.

C. Subhash Chander (DW-3), stated that at the time of incident, he was roaming on the terrace of his house; when he heard the sound of quarrel, he went to house of accused Rohtash and then he alongwith accused persons – Rohtash and Santosh, went upstairs and found that Rakhi was sitting in burnt condition, accused Sumit @Vicky was standing there in burnt condition, and Nisha was standing at a distance of 10-12 steps from them.

D. Krishan Kumar (DW-4), deposed on the lines of DW-1

15. Learned counsel for the appellant has, firstly, drawn our attention to the statement of PW-1 – Shrimati Kitabo Devi, the mother of the deceased. PW-1 Kitabo Devi had deposed in favour of the prosecution on aspects of dowry demand and the harassment of the deceased by the accused for dowry. During her examination-in-chief, she had stated that the accused persons had made a demand of motorcycle and gold chain on the occasion of Chuchak. However, during her cross examination she accepted the suggestion given to her by stating:

*“It is correct that when I along with my family member went to the matrimonial home of my daughter for the purpose of giving Chuchak, during that visit, the accused person behaved well with us and they did not make any dowry demand. Again said, the accused persons had demanded motorcycle at that time.*

*It is correct that marriage of my daughter was performed at Sanatan Dharma Mandir, Dharam Shabha, J-II, Wazirpur, J J Colony, Delhi and Rs. 2500/- were paid.”*

16. He also draws our attention to the statement of the eye witness PW-3 Nisha, who was the sister of the deceased, and the appellant and her husband (PW21) were brothers. They – i.e. the deceased and PW3 were married to two brothers on the same day. She too stated that she and her sister were regularly harassed for dowry and were given beatings. In relation to the incident, she, inter alia, stated:

*“On 9<sup>th</sup> of the month, which I do not remember of year 2012, accused Sumit, my husband Pradeep and the aunt (Bua) of accused Submit came to our house and they took us to our matrimonial house. On the same day, accused persons again*

*quarrelled with us and gave beatings to us. On 10<sup>th</sup> of that month, accused Sumit and accused Tinku gave beatings to my husband also. On the next day, accused Santosh put a lock on the kitchen and she did not allow us to have anything. After two/three days from that day, accused Sumit again quarreled with my sister Rakhi and beat her. I went to the room of my sister Rakhi and at that time she was weeping. I enquired from her as to what had happened but accused Sumit turn me out from the room. After sometime, I saw that accused Sumit was taking forcibly Rakhi to the roof of the house. I also went to the roof of the house. I saw that accused Tinku was pouring kerosene oil on my sister Rakhi. I objected that said act but in the meantime accused Sumit lit a matchstick and set my sister Rakhi on fire. I cried and my parents-in law, namely, Rohtash and Santosh caught hold of me who had come behind me. My sister Rakhi was also crying. All the accused persons left us there. None came forward to rescue us. I brought down my sister to the ground floor. I saw two/three neighbours outside my house and I requested them to shift my sister to hospital but they refused. After some time, my husband came. After seeing my sister in that condition, my husband put a bed sheet on her and took her to the hospital.”*

17. Learned counsel submits that PW-3 is not a reliable witness inasmuch, as, she not only roped in the appellant but also Jitender @ Tinku by alleging that he poured kerosene on the deceased. However, the prosecution could not establish the presence of Jitender @ Tinku at the site of occurrence. Learned counsel submits that PW-3 was not consistent, and did not stand by her statement recorded under Section 161 Cr.P.C. She turned hostile and was cross examined by the learned APP. He has also drawn our attention to the cross examination of PW-3 on behalf of the State by the learned APP wherein, she stated:

*“I did not tell in my statement Ex.PW-3/A that accused Vicky had poured the kerosene oil on my sister and he was pouring*



*the same by a lamp (confronted with portion A to A of Ex.PW-3/A where it is so recorded) Vol. I had told the police that accused Tinku had poured the kerosene oil.*

*I did not tell police that I asked my parent-in-law and accused Tinku to stop accused Vicky but none of them stopped him (confronted with portion B to B).*

*It is wrong to suggest that accused Vicky had poured the kerosene oil on my sister or that I had asked accused Rohtash, Santosh and Tinku @ Jitender to stop accused Vicky but they did not stop him. It is wrong to suggest that I am deposing falsely on the confronted portion of my statement at the instance of the accused persons as I have been won over by them. ”*

18. Learned counsel submits that PW-3, during her cross examination on 20.07.2013 on behalf of the accused, inter alia, stated:

*“It is correct that the plastic can, one plastic bottle containing kerosene oil, burnt match stick, burnt clothes were recovered at my instance by the police. Burnt clothes consist of a maxi/nighty only. No other burnt clothe except the maxi/ nighty was recovered by the police at my instance.”*

19. However, in her statement recorded under Section 161, she alleged that oil was being poured on the deceased Rakhi from a lamp – “Diya”. He further submits that PW-3 also sought to make improvements during her cross examination. In this regard, he has drawn our attention to the following:

*“ I used to love my sister very much. I could not make any attempt to save my sister as I was caught hold by my in laws. I had told this fact to Executive Magistrate that I could not save my sister as I had been caught hold by my in laws (confronted with Ex.PW3/A wherein it is not so recorded.”*

20. Similarly, during her further cross examination, she stated:

*“ I had told the Executive Magistrate that my parents had given sufficient articles of istridhan to me and my sister in marriage (confronted with statement Ex.PW3/A wherein it is not so recorded). I told to the Executive Magistrate in my statement regarding demand of dowry from me and my sister Rakhi (confronted with statement Ex.PW3/A wherein it is not so recorded). It is wrong to suggest that I did not mention this fact of demanding of dowry since no such demand was made and I am deposing falsely today in this regard to secure the conviction of the accused. I had told the Executive Magistrate while giving my statement to him that after 4-5 months of marriage, accused Sumit and his family members had beaten Rakhi miserably and accused Sumit had cut the vain of Rakhi (confronted with statement Ex.PW3/ A wherein it is not so recorded). I had also told in my statement to the Executive Magistrate that my husband made a call on 100 number and police came and all the accused persons were taken to PS (confronted with statement Ex. PW3/ A wherein it is not so recorded). I told in my statement to the Executive Magistrate that accused persons gave beatings to my sister Rakhi, I was having my child with me and when I tried to intervene the matter also gave beating to me and my brother in law Tinku gave a leg blow in my stomach and my sister Rakhi made a call on 100 number (confronted with statement Ex. PW3/ A wherein it is not so recorded). I had also told in my statement to the Executive Magistrate that on 9th of the month (which I do not remember) when we were taken back to the matrimonial home from the parental home by the accused persons, they again quarrelled with us and gave beatings to us (confronted with statement Ex. PW3/ A wherein it is not so recorded). I had told in my statement to the Executive Magistrate that on 10th of the said months accused Sumit and Tinku gave beatings to my husband (Pardeep) (confronted with statement Ex. PW3/ A wherein it is not so recorded). I had told in my statement to the Executive Magistrate that after 2-3 days from that day accused Sumit again quarrelled with my sister Rakhi and gave beatings*

*to her (confronted with statement of Ex. PW3/ A wherein it is not so recorded). I had told in my statement to the Executive Magistrate that my parents in law namely Rohitash and Santosh caught hold me who had come behind me (confronted with statement Ex. PW3/ A wherein it is no so recorded.)”*

21. Next, counsel for the appellant has referred to the statement of PW-22 Ishwar Singh, who is the neighbour of the accused. PW-22 had, inter alia, stated that on the day following the incident, he went to Safdarjung Hospital in the burnt ward where the deceased was admitted. He met the deceased there who told him that she had burnt herself, as accused Vicky did not stop drinking, and she was fed up with his habit. He argues that PW-22 was not challenged in relation to his aforesaid testimony by the prosecution.

22. Learned counsel for the appellant has also drawn our attention to the MLC of the deceased Ex.PW2/A, where the history given to the doctor was “*burnt by stove as told by B/B*”. It is argued that the history given contemporaneously was not of the deceased being burnt by anyone.

23. Learned counsel has also referred to the testimony of PW-12 Shri Satish Kumar Rawat, Tehsildaar, Palam. PW-12 had recorded the dying declaration of the deceased Rakhi. Learned counsel points out that in his statement, PW-12, inter alia, stated:

*“Thereafter I inquired from Rakhi whether she is giving the statement voluntarily without any pressure from any corner. And she has stated that she is giving the statement voluntarily. Thereafter, I started recording the statement of deceased Rakhi and on my dictation, statement was written by the IO and in her statement, she stated that she is residing in her matrimonial home along with her husband and in-laws for the last 10 months and she is housewife and further stated that on 14/9/12*

*at about 10/10.15 pm, her husband Sumit @ Vicky, father-in-law Rohitash, mother-in-law Santosh and brother-in-law Jintender @ Tinku were present in the house and her husband sumit had forcibly taken her to the room and her husband poured kerosene oil on her and by lighting the match-stick, put her on fire in the presence of her in-laws and her elder sister Nisha also present and raised the alarm bacho-bachao (save-save) and none of her in-laws came forward to help her and in-laws went downstairs."*

24. Thus, according to PW-12, the dying declaration was recorded by the I.O. on the dictation of PW-12.

25. However, PW-34 SI Prakash Chand, during his testimony, inter alia, stated:

*"I came to know that the injured was fit for statement so I went to Safdarjang hospital where ASI Paras was already present along with Tehsildar, Najafgarh. Tehsildar, Najafgarh handed over to me the statement of Rakhi which he had already recorded before I reached there."*

26. Thus, the I.O. contradicted PW-12 by stating that the dying declaration was already recorded, when he reached the hospital.

27. Learned counsel further submits that PW-12 stated that the deceased Rakhi, in her statement/ dying declaration had stated that her husband Sumit @ Vicky had forcibly "taken her to the room". However, the case of the prosecution is that the appellant had taken the deceased to the roof, and not the room. Learned counsel submits that the aforesaid contradiction raises a serious doubt about the correctness of the statement/ dying declaration attributed to the deceased Rakhi. Counsel for the appellant has also drawn our attention to the statement of ASI Paras Kumar, PW-30, wherein he, inter

alia, stated that after he had obtained the opinion of the doctor with regard to fitness of the deceased Rakhi to record her statement that *“After 10-15 minutes the concerned Tehsildar reached at the hospital. Thereafter, Tehsildar took the statement of Rakhi. As the patient was speaking very slowly and in very feeble voice, Tehsildar gave me instructions to write the statement. On instructions of Tehsildar I wrote the statement of the deceased as dictated by Tehsildar, the same is in my handwriting and same is already Ex. PW-12/C. In the meanwhile, SI Prakash Chand also reached at the hospital. The statement recorded by me was handed over to Tehsildar by me. Tehsildar after going through the statement and appending his signatures gave the same to the IO.”*

28. Learned counsel submits that the contradiction in the statement of PW-12, Shri Satish Kumar Rawat, Tehsildar, Dwarka, PW-30 ASI Paras Kumar and PW-34 SI Prakash Chand raises a serious doubt about the correctness of the statement attributed to the deceased/ her dying declaration.

29. Mr. Ashish Dutta, the learned APP has supported the impugned judgment and order on sentence. He has, firstly, drawn our attention to the statement of PW-3, on the basis of which, the FIR was registered in the case. He submits that the incident narrated by PW-3, as recorded in the rukka is consistent with the testimony of PW-3. She had narrated that on 14.09.2012 Rakhi – the deceased, and her husband Vicky were quarrelling since 08:00 A.M. in the morning. The appellant Vicky had beaten Rakhi. At 02:00 P.M., once again, a quarrel broke out between them, whereafter Vicky left the home. At about 09:00 P.M. the appellant Vicky came back home.



Rakhi served dinner to everyone at home and at that time PW-3 Nisha, the deceased Rakhi, her mother in law Santosh, her father in law Rohtash, the appellant Vicky and the younger brother in law Jitender @ Tinku were present. The deceased Rakhi and the appellant Vicky were in their room. PW-3 stated that she could hear them fighting. At about 10:30 P.M., while they were fighting, they both went to the first floor. The appellant Vicky was ahead and the deceased Rakhi was forcibly taken by him to the terrace. PW-3 put on her slippers and followed and went to the terrace. She was followed by her mother in law – Santosh, and father in law – Rohtash, and Jitender @ Tinku. She saw that the appellant Vicky was pouring oil on the deceased Rakhi. He was pouring the oil through a lamp. PW-3 pleaded to her mother in law, father in law and brother in law Jitender @ Tinku to stop the appellant Vicky, but none of them did so. They just stood there and the appellant Vicky, in front of PW-3 lit a matchstick and burnt Rakhi, the deceased. PW-3 raised alarm for help. The deceased Rakhi was also screaming and shouting but her father in law, mother in law, Jitender @ Tinku and Vicky, the appellant simply went away to the ground floor room. About 10 minutes later, the neighbours came into the house and they used a sheet to put off the fire on Rakhi. After about 15-20 minutes, the husband of PW-3 (Pardeep PW-21), and his friend came home and they took the deceased Rakhi in burnt condition to the hospital.

30. Mr. Dutta submits that this statement of PW-3 was consistent with her testimony recorded before the Court. He submits that mere embellishments and exaggerations found in the statement of PW-3 do not shake the core of her testimony qua the role played by the appellant Sumit @ Vicky. He

submits that being the sister of the deceased, she may have sought to rope in Jitender @ Tinku by stating that he was pouring kerosene oil on her sister Rakhi – the deceased, and also her parents in law by claiming that they caught hold of her (PW-3) from behind, as if, to prevent PW-3 from saving her sister Rakhi. Mr. Dutta submits that these exaggerations do not take away from the core of the testimony of PW-3, who was an eye witness, to the incident. In this regard, Mr. Dutta has drawn our attention to the answer given by the appellant Sumit @ Vicky in response to question No. 14 at the time of the recording of his statement under Section 313 Cr.P.C. The question put to him and the answer given by him read as follows:

*“ Q14.It is in evidence against you that PW3 Nisha testified that she cried but your co-accused Rohtash and Santosh, who came behind her, caught hold of her and all the accused persons left Rakhi burning at the spot and none came to her rescue. What do you have to say?*

*Ans. It is incorrect. At that time, Nisha did not make any effort to extinguish the fire and was at a distance from the spot near the bathroom.”*

The aforesaid establishes the presence of the eye witness PW-3 at the place of occurrence when the incident took place.

31. With regard to the submission of learned counsel for the appellant raising doubts on the correctness of the statement made by the deceased Rakhi/ in her dying declaration, Mr. Dutta has, firstly, drawn our attention to Ex. PW30/A, which is the application addressed to the CMO Safdarjung Hospital by PW30 ASI Paras Kumar to enquire whether the burnt – injured Rakhi is fit for making even statement, or not. Mr. Dutta submits that at 09:10 P.M. the doctor declared the patient Rakhi fit for giving her statement.

He also endorsed that the patient was conscious and not under the influence of sedatives. Mr. Dutta has then read to us the statement of Rakhi/ her dying declaration wherein she, inter alia, stated that yesterday i.e. 14.09.2012, in the night, at about 10/ 10:30 P.M. her husband Sumit @ Vicky, her father in law Rohtash, her mother in law Santosh and her younger brother in law Jitender @ Tinku were all at home and that her husband Sumit @ Vicky caught hold of her hand and took her to the terrace. Her husband poured kerosene oil on her and lit her with a matchstick in the presence of all others. Her elder sister was also on the terrace at the same time, and she was calling out for help and screaming upon seeing her condition. However, no one came to help her and all of them went down. Then her elder brother in law Pardeep came and, with his and with the help of the neighbours, her elder brother in law (jaith) i.e. PW-21 brought her to the hospital. She further stated that the accused was harassing her for dowry. She also stated that her husband Vicky, her mother in law, her father in law and the younger brother in law were responsible for her condition.

32. Mr. Dutta has also referred to the statement of PW-7 Alok @ Suresh, who was the brother of the deceased. He had stated that both his sisters i.e. the deceased and PW-3 Nisha were being harassed for want of dowry. The accused used to demand washing machine and refrigerator, and after the birth of a child to PW3 Nisha, on the occasion of Chuchak, they demanded a bike.

33. Mr. Dutta has next drawn our attention to the statement of PW-21 Pardeep, the brother of the appellant Sumit @ Vicky. PW-21 had, inter alia, deposed that his brother Sumit was an alcoholic and used to take up quarrels

with his wife. Sometimes, he used to beat her. On the date of the incident, he i.e. PW-21 was not present in the house. When he reached home, some neighbours had gathered there and he came to know that a fight had taken place between his brother and his brother's wife Rakhi. He immediately found that Rakhi was burnt and his brother was heavily drunk. He slapped his brother Sumit and asked as to what he has done to his wife. Since, his brother was heavily drunk, he did not respond. He stated that he along with his mother Santosh took his bhabhi Rakhi to DDU hospital from where she was transferred to Safdarjung Hospital Rakhi was got admitted at Safdarjung Hospital for the next 7/8 days. On the aspect of dowry demands by his parents, PW-21 did not stand by his statement recorded earlier and marked P-21/A and, therefore, he was cross examined by the prosecution. He also deposed that it was correct that with the help of his neighbour Ishwar Singh, PW-22, the deceased Rakhi was taken to the hospital. During his cross examination by the counsel for the accused, PW-21 stated that on the date of the incident, he was residing at his grandmother's house which is adjoining the house of his parents. Both the houses are separated by a common wall and have different entry doors. He also stated that the main dispute between his deceased bhabhi and his brother Sumit was in respect of the drinking habit of his brother Sumit, and there was no other dispute between them.

34. Mr. Dutta has also referred to the statement of PW-30 ASI Paras Kumar who obtained the opinion from the doctor with regard to the fitness of the injured Rakhi to record her statement, and who took down the statement of the injured as dictated by the tehsildaar.

35. Mr. Dutta submits that the defence witness produced by the defence

were wholly irrelevant. DW-1 Shrimati Rajo @ Raj who lives in the neighbourhood stated that she did not know how Rakhi, the deceased received burnt injuries. She again said that Rakhi would have set herself on fire. Mr. Dutta submits that this was her mere *ipsi dixit*, since she was not an eye witness and arrived at the spot after the incident. During her cross examination, she reached the spot after the deceased had already received the burn injuries and she did not witness the incident. Similarly, the testimony of DW-2 Hariom is not relevant for the purpose of the present appeal inasmuch, as, he merely stated that his friend Jitender @ Tinku had gone to his house at 08:00 P.M. on 14.09.2012 and left the house at 11/11:15 P.M. The testimony of DW-3 Subhash Chander is of no avail, since he was not an eye witness and arrived after the incident. DW-4 Krishan Kumar, another neighbour was not an eye witness to the incident, since he arrived at the spot after the incident. He, however, claimed that PW-3 Nisha was standing and crying “*Rakhi what have you done to yourself and you should not have let it happen to you*”

36. Mr. Dutta further submits that the appellant Sumit @ Vicky completely denied that any quarrel took between himself and his deceased wife Rakhi, in response to Question No. 24 during the recording of his statement under Section 313 Cr.P.C. This statement is completely belied upon perusal of the testimony of PW-3. Mr. Dutta has also referred to the above conduct of the appellant. In this regard, he has drawn our attention to Ex. PW18/A, the daily diary of 26.04.2012 recording the quarrel, as well as Ex. PW 18/B, which is another DD Entry recording the quarrel (jhagda) between the parties. Ex. PW 20/B is DD No. 7B dated 26.04.2012



registered at PS Chhawla, New Delhi on the complaint of PW-22 reporting about the accused trying to cut the vein of the deceased and beating her up. He has also referred to the statement of PW-1 Kitabo Devi, the mother of the deceased who deposed about the harassment and beatings given to the deceased by the appellant Sumit @ Vicky, from time to time. Mr. Dutta has drawn our attention to the FSL Report Ex. PW 23/A to submit that kerosene was found in the plastic can, in a plastic bottle and some semi burnt and partial burnt clothes, one semi burnt and melted slipper. That apart, some unburnt matchsticks were also found at the place of occurrence from where the aforesaid exhibits were lifted.

37. Mr. Dutta submits that the dying declaration of the deceased is clear and there is no reason not to accept the same. He submits that the dying declaration is credible. The conviction of the accused can be founded upon the same itself, and it does not even require corroboration. However, in the present case, the dying declaration of the deceased is corroborated by PW-3 Nisha, eye witness. Mr. Dutta has also sought to place reliance on the following decisions:

- (a) ***Laxman v. State of Maharashtra***, 2002 (6) SCC 710;
- (b) ***Kundula Bala Subrahmanyam & Ors. v. State of Andhra Pradesh***, MANU/SC/0508/1993;
- (c) ***Varikuppal Srinivas v. State of A.P.***, MANU/SC/0099/2009;
- (d) ***Sham Shankar Kankaria v. State of Maharashtra***, MANU/SC/8463/2006;

- (e) *Khushal Rao v. State of Bombay*, AIR 1958 SC 22;
- (f) *Ravi Chander v. State of Punjab*, 1998 (9) SCC 303; and
- (g) *Paniben v. State of Gujarat*, 1992 (2) SCC 474.

38. We have considered the submissions of learned counsels. So far as the submission of learned counsel for the appellant with regard to the testimony of PW-1 – Shrimati Kitabo Devi is concerned, in our view, the said submission is irrelevant for the reason that, even though the appellant was charged under Section 302/ 304/ 498A/ 341 IPC, his conviction by the Trial Court is only under Section 302 IPC. The testimony of PW-1, referred to by learned counsel for the appellant relates to the aspect of dowry demand and harassment of the deceased by the accused for dowry. We may observe that even in relation to the aspect of dowry demands and harassment for dowry, there was substantial evidence led by the prosecution before the Trial Court. However, the Trial Court has acquitted the accused, including the appellant in relation to the offence under Section 398A and 304B of the IPC. The State has not preferred any appeal to assail acquittal of the accused under the said provisions. Therefore, we are not inclined to go into the said issue.

39. We may only state that insofar, as, PW-1 – Shrimati Kitabo Devi is concerned, she was not present at the place of occurrence of the incident which led to the death of her daughter Rakhi by burning from kerosene oil and her testimony in relation to the said incident, in any event, is not material.

40. The submission of Mr. Yadav that PW-3 was not a reliable and credible witness also has no force. It stands conclusively established that she was present in the house where the occurrence took place, as well as at the place where the occurrence took place as this has been stated by not only PW-3, other witnesses – including defence witnesses, but even by the accused, including the appellant Sumit @ Vicky at the time of recoding of his statement under Section 313 Cr.P.C. Thus, it is evident that she was an eyewitness to the occurrence. The reason why the appellant has raised a doubt with regard to the testimony of PW-3 is because she has deposed that, not only the appellant, but also Jitender @ Tinku had poured kerosene on the deceased, whereas the prosecution could not establish the presence of Jitender @ Tinku at the site of occurrence, at the time of occurrence. Moreover, it is argued that PW-3 was not consistent inasmuch, as, she disowned part of her statement recorded under Section 161 Cr.P.C, during her cross examination on behalf of the State by the APP, as well as on behalf of the accused. Learned counsel has also sought to highlight that during the recording of her statement under Section 161 Cr.P.C., PW-3 had alleged that oil was poured on the deceased from a lamp – “*diya*”. However, in her testimony before the Court, she did not state that oil was poured from a lamp – “*diya*”.

41. We have carefully gone through the entire testimony of PW-3. Insofar as the core of her testimony is concerned, there is no inconsistency inasmuch, as, she has consistently stated – both while recording her statement under Section 161 Cr.P.C., as well as while recording her testimony before the Court that the appellant Sumit @ Vicky had dragged

the deceased to the terrace by holding her hand after a quarrel between the two of them on the night of 15.09.2012, whereafter the appellant first poured kerosene oil on the deceased and, thereafter, lighted the match and put her on fire. The inconsistency in her statement with regard to the involvement of the accused Jitender @ Tinku does not impinge on her statement qua the appellant. It is well known that there is tendency in such like cases to rope in not only the concerned accused but other family members out of vengeance, and that explains the role attributed by PW-3 to Jitender @ Tinku, as well as to the accused Rohtash and Santosh. The deceased Rakhi was the younger sister of PW-3 and the two sisters were married to two brothers. Pertinently, PW-3 also deposed with regard to dowry demands and harassment for dowry by the accused persons, not only qua the deceased Rakhi, but also in relation to herself. Thus, we are not inclined to discard the testimony of PW-3 who, admittedly, was an eyewitness, particularly when her testimony qua the appellant is consistent and clear. Moreover, her testimony is corroborated by the Dying Declaration of the deceased Rakhi Ex. PW-12/C, which we shall deal with a little later.

42. Reliance placed on the testimony of PW-22 Ishwar Singh, wherein he stated that he met the deceased in the hospital on the day following the incident, and that the deceased told him that she had burnt herself, as accused Sumit @ Vicky did not stop drinking, and she was fed up with his habit, is also misplaced. PW-22 had turned hostile when he claimed that he visited the hospital on the day following the incident; met the deceased Rakhi and; that Rakhi had told him that she had burnt herself, as accused did not stop drinking and she was fed up with his habit. He was cross examined

by the learned APP, since he sought to make improvement from his earlier statement. During his cross examination by the learned APP he stated that he had narrated the incident to the police officials and had informed the Police about the “entire facts which I have disclosed today in the Court”. Admittedly, he did not come forward to have his statement recorded contemporaneously after the incident under Section 161 Cr.P.C. This witness is a neighbour of the accused. The possibility of his deposing falsely, to save the accused, is very high. Moreover, the version that he narrated with regard to the incident – that the deceased was “*shouting that either he will survive or she would*” and that “*she was also complaining about the drinking habit of the accused Sumit @ Vicky*”, has not been narrated either by PW-3 – the eye witness, or even stated by the accused Sumit @ Vicky, the appellant herein. In answer to question number 13 put to him under Section 313 Cr.P.C, the appellant Sumit @ Vicky stated “*It is incorrect. I was on the roof of the house and in the meantime, I noticed that Rakhi had burnt herself with a matchstick. I did not notice when she poured kerosene on her. At that time Jitender was not at home. As soon as I noticed that Rakhi had lit herself, I ran towards her and I tried to extinguish the fire with my hands and in the process, I also got burn injuries. When my father came upstairs, the fire was almost extinguished and my father put his lungi on Rakhi.*”

43. Even DW-3 – Subhash Chander, who is a neighbour of Rohtash and residing at a distance of about 3 to 4 houses has not corroborated the version of PW-22 – Ishwar Singh. Subhash Chander claimed that on the day of the incident, he was roaming on his terrace and he heard the sound of quarrel.



He rushed to the house of the accused Rohtash and at that time, Rohtash and Santosh were downstairs. He, along with Rohtash and Santosh rushed upstairs and found Rakhi was sitting in burnt condition, whereas Sumit @ Vicky, the appellant was also standing in burnt condition and Nisha was also standing at a distance of 10-12 steps from them. Even though, he claimed that he was on the terrace when he heard the quarrel between the appellant and the deceased Rakhi, he did not claim that Rakhi was shouting that *“either he will survive or she would”* or that *“she was also complaining about the drinking habit of the accused Sumit @ Vicky”*. Pertinently, even DW-4 –Krishan Kumar, who is residing opposite to the house of Rohtash did not claim to have heard the statements attributed to Rakhi, the deceased by PW-22. PW-22 having turned hostile and his testimony having gone uncorroborated, we are not inclined to accept the same. PW-22 was clearly not a credible and reliable witness.

44. Reliance placed by Mr. Yadav on the MLC of the deceased Ex. PW 2/A, wherein the history given to the doctor was recorded as *“burnt by stove as told by B/B”*, is also of no avail. It is nobody’s case – neither the case of the prosecution, nor the defence of the accused, that the deceased had got burnt by a stove. No stove – burnt, or otherwise, was recovered from the spot. The history recorded by the doctor was not on the basis of any statement made by the deceased – since she was not even in a condition to make any such statement at that stage. The incident history recorded in the MLC was as given to the Doctor by those who took the deceased to the hospital. Thus, reliance placed on Ex. PW2/A is of no avail to the appellant.

45. Learned counsel for the appellant has sought to create a doubt with

regard to the recording of the dying declaration Ex. PW-12/C of the deceased Rakhi. In this regard, he has drawn our attention to the testimony of PW-12 Satish Kumar Rawat, Tehsildaar, Palam, wherein he, inter alia, stated that he started recording statement of deceased Rakhi and *“on my dictation, statement was written by the I.O. and.....”*. The submission of learned counsel for the appellant is that, though PW-12 claimed that he had dictated the statement to the I.O., PW-34, I.O., SI Prakash Chand, stated that when he came to know that the injured was fit for statement, he went to Safdarjung Hospital, and he was handed over the statement of Rakhi which had already been recorded when he reached there. Thus, it is argued that contrary to the claim made by PW-12 that he dictated the statement of the deceased to the I.O, the I.O. stated that he was handed over the statement of Rakhi, which had already been recorded before he reached the hospital.

46. In our view, there is no merit in this submission of learned counsel for the appellant. This is for the reason that the scribe of the dying declaration PW 30, ASI Paras Kumar had stated that he obtained the opinion of the doctor with regard to the fitness of the deceased Rakhi to record her statement and after 10-15 minutes, the concerned Tehsildaar reached the hospital. Thereafter, the Tehsildaar dictated the statement of Rakhi, as the patient was speaking very slowly and in a feeble voice, *“Tehsildar gave me instructions to write the statement. On instructions of Tehsildar I wrote the statement of the deceased as dictated by Tehsildar, the same is in my handwriting and same is already Ex. PW-12/C. In the meanwhile, SI Prakash Chand also reached at the hospital. The statement recorded by me was handed over to Tehsildar by me. Tehsildar after going through the*

*statement and appending his signatures gave the same to the IO.”*

47. Thus, the statement PW-30 ASI Paras Kumar is consistent with the statement of I.O. PW-34, SI Prakash Chand.

48. Pertinently, in the cross examination of the I.O. , SI Prakash Chand, PW-34, it was not even suggested to him that the dying declaration Ex. 12/C was not the genuine statement of the deceased. At the same time, a suggestion was given to PW-12 Shri Santosh Kumar Rawat, Tehsildaar, that the statement of the victim was written by the I.O. because he – (PW-12), did not visit the hospital to record the statement of the deceased, and that the I.O. was an interested person and the I.O. recorded the statement on his own. This suggestion was denied by PW-12. As noticed above, no such suggestion was given to the I.O. to say that he was an interested person or that he himself read the statement attributed to the victim. Pertinently, during the cross examination of PW-30 – ASI Paras Kumar – the scribe of the statement of the deceased Rakhi, it was not even suggested to him, that he had not scribed the statement of Rakhi on the dictation of the Tehsildaar PW-12, or that the statement was not correctly recorded. Thus, the endeavour of the appellant to raise a doubt on the authenticity and correctness of the statement of the deceased Ex. PW-12/C, has no merit.

49. Mr. Yadav has also argued that PW-12, the Tehsildaar had stated in his testimony that the deceased stated to him that her husband Sumit @ Vicky *“had forcibly taken her to the **room** and her husband poured kerosene oil on her and by lighting a matchstick, put her on fire in the presence of her laws and her elder sister – Nisha was also present, and raised the alarm bachao*

*bachao.....”* (emphasis supplied)

50. Mr. Yadav has emphasized that PW-12 claimed that the deceased informed him that she had been forcibly taken to the “room”, and not the “roof”, as per the case of the prosecution. Once again, we find that there is no merit in this submission. The appellant is merely seeking to resort to hair splitting and exploit a mere typographical error in the recoding of the testimony of PW-12. It is nobody’s case that the deceased was taken to the room by the appellant Sumit @ Vicky, and that kerosene was poured on her, and she was put on fire in the room. The scaled site plan Ex. PW-29/A, which shows the place where the burnt clothes were lying; burnt matchstick was lying; burnt clothes and *chapel* were lying; matchbox was lying; burnt underwear was lying; burnt vest was lying, and; the place where plastic can and plastic bottle of kerosene oil were lying, is of the terrace floor, and there are no rooms on the terrace. There is a staircase which is going down, and there is no staircase going up. Even the testimonies of several prosecution, as well as defence witnesses taken note of hereinabove show that the deceased was burnt and found in that condition on the terrace, and not inside any room.

51. We may refer to the answer given by the appellant accused – Sumit @ Vicky to question No. 13 while recording his statement under Section 313 Cr.P.C. The question No. 13 and the answer given by the appellant read as follows:-

*“Q13. It is in evidence against you that PW3 deposed that she saw that you were taking Rakhi forcibly to the roof of the house and she also went to the roof where she found that accused*

*Jitender was pouring kerosene oil on Rakhi and despite the objection of PW3, you lit a matchstick and set Rakhi on fire. What do you have to say?*

*Ans. It is incorrect. I was on the roof of the house and in the meantime, I noticed that Rakhi had burnt herself with a matchstick. I did not notice when she poured kerosene on her. At that time Jitender was not at home. As soon as I noticed that Rakhi had lit herself, I ran towards her and I tried to extinguish the fire with my hands and in the process, I also got burn injuries. When my father came upstairs, the fire was almost extinguished and my father put his lungi on Rakhi.*

*(emphasis supplied)*

52. Even the appellant did not ever claim that the deceased burnt herself inside a “room”. Thus, we find no reason to raise any doubt about the testimony of PW-12, or the statement/ dying declaration attributed to the deceased Ex. PW-12/C. In **Ravi Chander and Others** (supra), the Supreme Court, inter alia, observed:

*“.....The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration.....”*

53. The Supreme Court in **Khushal Rao v. State of Bombay**, (supra) has held that the dying declaration of a person, by itself, may be sufficient to find the accused guilty and if the statement is reliable and credible, it does not even need corroboration. The Supreme Court in this case observed as follows:

*“11. The legislature in its wisdom has enacted in Section 32(1) of the Evidence Act that “When the statement is made by a*



person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question", such a statement written or verbal made by a person who is dead (omitting the unnecessary words) is itself a relevant fact. This provision has been made by the legislature, advisedly, as a matter of sheer necessity by way of an exception to the general rule that hearsay is no evidence and that evidence which has not been tested by cross-examination, is not admissible. The purpose of cross-examination is to test the veracity of the statements made by a witness. In the view of the legislature, that test is supplied by the solemn occasion when it was made, namely, at a time when the person making the statement was in danger of losing his life. At such a serious and solemn moment, that person is not expected to tell lies; and secondly, the test of cross-examination would not be available. In such a case, the necessity of oath also has been dispensed with for the same reasons. Thus, a statement made by a dying person as to the cause of death, has been accorded by the legislature, a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that the person making the statement was not in expectation of death, not that that circumstance would affect the admissibility of the statement, but only its weight. It may also be shown by evidence that a dying declaration is not reliable because it was not made at the earliest opportunity, and, thus, there was a reasonable ground to believe its having been put into the mouth of the dying man, when his power of resistance against telling a falsehood, was ebbing away; or because the statement has not been properly recorded, for example, the statement had been recorded as a result of prompting by some interested parties or was in answer to leading questions put by the recording officer, or, by the person purporting to reproduce that statement. These may be some of the circumstances which can be said to detract from the value of a dying declaration. But in our opinion, there is no absolute rule of law, or even a rule of prudence which has ripened into a rule of law, that a dying declaration unless

*corroborated by other independent evidence, is not fit to be acted upon, and made the basis of a conviction. No decision of this Court, apart from the decision already noticed, has been pointed out to us as an authority for the proposition that a dying declaration, in order to be acted upon by a court, must be corroborated by independent evidence.”*

54. In the present case, the dying declaration of the deceased Rakhi Ex. PW-12/C is very clear. She stated that yesterday i.e. 14.09.2012, in the night at about 10/10:30 P.M., her husband Sumit @ Vicky, her father in law – Rohtash, her mother in law – Santosh and brother in law – Jitender @ Tinku were all at home and her husband Sumit caught held of her hand and took her to the terrace and her husband poured kerosene oil on her and lit the matchstick in the presence of the other persons/ accused and put her on fire. Her elder sister was also on the terrace at that time, and she was shouting “bachao bachao”. However, nobody came to help her and they all went down. That is when her elder brother in law – Pradeep came to the terrace and with his help and the help of the neighbours, her brother in law Pradeep took her to the hospital. She stated that the accused used to demand dowry and harassed her for the same. They had demanded a car and two fridges in dowry and after her marriage she was being harassed for dowry. She stated that her husband – Sumit, mother in law – Santosh, father in law – Rohtash, and brother in law – Jitender @ Tinku were responsible for her condition.

55. It is pertinent to note that in her statement Ex. PW-12/C, she did not claim that the accused Jitender @ Tinku had an active role to play in the commission of the crime. However, she claimed that all the other accused were demanding dowry and harassing her on that account. The statement of the deceased Ex. PW-12/C on the aspect of the manner and cause of her

death inspires the confidence of its voluntariness, truthfulness and correctness, and is also sufficiently corroborated by the testimony of PW-3 and the other evidence brought on record, namely, the medical evidence which shows that the deceased suffered burns by kerosene and all other exhibits were found to contain kerosene. The relevant extract from the FSL report Ex. PW-23/A reads as follows:

<b><i>“No. of Parcels Exhibits</i></b>	<b><i>No. of Seals &amp; Seal impression</i></b>	<b><i>Description of Parcels/ Exhibits</i></b>
<i>Parcel -1</i>	<i>One seal of “P.C.”</i>	<i>One sealed plastic bag (katta) marked as ‘A-1’ FIR No. 210/12, dated 15.09.12 U/ S 498A/304B/34 IPC. It was found to contain exhibits ‘1’ ‘2’ ‘3’ ‘3a’ &amp; 3b’’</i>
<i>Exhibit – ‘1’</i>		<i>Light greenish blue coloured liquid volume approx 2.5 L, kept in a plastic cane</i>
<i>Exhibit – ‘2’</i>		<i>Light greenish blue coloured liquid volume approx 100 ml kept in a plastic bottle</i>
<i>Exhibit – ‘3a’</i>		<i>Some semi-burnt &amp; partially burnt cloths, one semi-burnt &amp; melted slipper kept in a bag</i>

<i>Exhibit – ‘3b’</i>		<i>Some unburnt matchsticks kept in a matchstick</i>
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9. *Purpose of reference:- For Chemical Examination & Report.*

10. *Dates of Examination: 15.10.2012 to 31.10.2012*

# 11. *RESULTS OF EXAMINATION REPORT*

*On GC examination (i) Exhibits ‘1’ & ‘2’ were found to contain kerosene*

*(ii) Exhibits ‘3a’ & ‘3b’ were found to contain residue of ‘kerosene’*

56. In the light of the above, we are of the considered view that the Trial Court has correctly arrived at the finding of the appellant’s guilt in the commission of the offence under Section 300 IPC and he has been correctly convicted under Section 302 IPC. We, accordingly, dismiss the present appeal.

**VIPIN SANGHI, J.**

**JASMEET SINGH, J.**

**SEPTEMBER 30, 2021**

*N.Khanna*

**CRL.A. 956/2018**

Signature Not Verified

Digitally Signed  
By: BHUPINDER SINGH  
ROHELLA  
Signing Date: 30/09/2021  
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