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

Reserved on: 30.09.2026
Pronounced on: 30.10.2026
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\# **CNR No. DLHC010513372005**

\+ **CRL.A. 709/2005**

SHARMISHTHA .....Appellant

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

versus

THE STATE OF NCT OF DELHI .....Respondent

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

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

J U D G M E N T

ARUN BHARDWAJ, J

1. The present appeal assails the judgment of conviction dated 21.05.2005 and order of sentence dated 23.05.2005 passed by the learned Additional Sessions Judge, Karkardooma, Delhi (hereinafter referred to as '*Trial Court*') in Sessions Case no. 163/2002 arising out of FIR No. 527/98 P.S Kalyan Puri, registered under Sections 498A/307/354//201/34 of Indian Penal Code (hereinafter referred to as '*IPC*').

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2. *Vide* the impugned judgment, the learned Trial Court has convicted the appellant for offences under Sections 302/34 and 498A/34 of the IPC and, by the impugned order of sentence, sentenced her to life imprisonment along with a fine of Rs. 3,000 under Section 302/34 of the IPC and Rigorous Imprisonment for two years and a fine of Rs 2000/-, in default simple imprisonment for two months, under Section 498A/34 of the IPC.

Introductory Facts:

3. The deceased- Dayawati was admitted in LNJP Hospital by her husband Tilak Raj (ASI in Delhi Police) on 21.10.1998 with burn injuries. She was declared unfit for recording her statement by the treating doctor.

4. However, on the next day, i.e. 22.10.1998, she was declared fit for recording her statement. As such, her statement was recorded by the SDM, which reads as under:

5. SDM arrived at the hospital at 12.20 PM and recorded in his handwriting her statement in Hindi, in question-answer form as under:-

"Statement – LNJP Hospital, Delhi

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

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4. ऐसी हालत क्यों हुई: ये मुझे तंग करते थे।मेरा घर वाला तंग करता था।दो बार 50-50 हजार रुपये लाई हूँ। मारूती कार लाने के लिए मेरा घर वाला कहता था। मिट्टी का तेल छिड़क छिड़क कर मुझे जला दिया– गैलरी में।मेरा घरवाला, ससुर, सास, 2 ननद, देवर, सभी थे। घरवाला तिलकराज, ससुर प्रेमसिंह, अनोखीदेवी, 2 ननद– एक सुरेश, एक सर्मिष्ठा, देवर हंसराज।देवर हंसराज ने 2-3 बार मेरी इज़्ज़त पर हमला भी किया।रात को 09 - 9.30 बजे सभी ने पकड़कर, ननद ने बत्ती लगाई।पति ने कहा की भैयादूज को घर जा और मारूती कार लेकर आ। तीसरी ननद राजकुमारी मेरठ से आ आकर सिखाकर जाती थी– कल यहाँ नहीं आई थी। मेरा पति मुझे मारता था, मुझ से बोलता नहीं था। मुझे धमकी देता था।"

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

"<u>Statement</u> *<u>LNJPN Delhi</u>*

1. *What is your name?* *Dayawait*

2. *What is your husband's name?* *Tilak Raj*

3. *Where do you live?* *D-15/I Kondli, Delhi*

4. *Why such a condition?* *These people harass me. My husband used to harass me. I have brought Rs.50,000/- twice. My husband used to ask me to bring a Maruti Car. I was set ablaze after pouring Kerosene*

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oil on me in the gallery. My husband, father-in-law mother-in-law, two sisters-in-law and brother-in-law (Devar) were all present. Their names are Tilak Raj (my husband) Prem Singh (Father-in-law), Anokhi Devi (Mother-in-law) Sudesh and Sharmishtha (two sisters-in-law) and Hans Raj (brother-in-law). The brother-in-law, Hans Raj had even tried to outrage my modesty two-three times. In the night at about 9/9-30, all of them caught hold of me and my sister-in-law set me ablaze. My husband had asked me to go to my house on the eve of Bhaiya –Duj and bring a Maruti Car. My third sister-in-law Raj Kumari used to come from Meerut and use to do back-biting. She had not come here yesterday. My husband used to give beatings to me. He was not on talking terms with me and he used to advance threats to me."

7. On the directions of the SDM, FIR No.527/98 was registered at Police Station Kalyan Puri, Delhi under Sections 498A/307/201/354/34 of the IPC.

8. On 23.10.1998, Dayawati succumbed to the burn injuries suffered by her.

9. On completion of investigation, chargesheet was filed against Tilak Raj (her husband), Prem Singh (her father-in-law) and Anokhi Devi (her mother-in-law) for the offence under Sections 498 A/201/304A/302/34 of the IPC. Raj Kumari (Sister-in-law of the

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deceased) was prosecuted for the offence under Section 498 A/34 of the IPC.

10. Tilak Raj, Prem Singh and Anokhi Devi were convicted by the learned ASJ vide judgment dated 11.07.2002 for the offence under Sections 498A/201/302/34 of the IPC. Raj Kumari was convicted for the offence under Section 498A/34 of the IPC.

11. Tilak Raj, Prem Singh and Anokhi Devi challenged their conviction vide Crl.A.No.600/2002 and Rajkumari challenged her conviction vide Crl.A.No.599/2002.

12. Prem Singh expired during pendency of the appeal and as per order dated 05.05.2014, the appeal, *qua* him, has abated.

13. Appeals filed by other three convicts against their convictions have been disposed of by this Court *vide* separate judgment passed today.

14. In Criminal Appeal No.600/2002, Tilak Raj has been convicted under Sections 302/201/498A/34 of the IPC. Anokhi Devi has been convicted under Sections 302/201/34 of the I.P.C. She has been acquitted under Section 498A of the IPC. However, she has been let of by modifying the sentence to the period undergone (five years, seven months and a day) keeping in view her age of 77 years. Criminal Appeal 599/2002 filed by Raj Kumari has been allowed acquitting her for the offence under Section 498A of the IPC.

15. Shamishtha, who is the appellant in this case, is the second sister-in-law of the deceased Dayawati.

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16. She was declared a proclaimed offender *vide* orders dated 20.04.2001 and therefore she could not be tried along with other accused.

17. Shamishtha was apprehended on 11.09.2002 and a supplementary challan was filed against her.

18. The prosecution examined twenty witnesses in its support including the IO, the SDM, the brother of the deceased, and the medical officers. No witness was examined in defense by the appellant. The learned ASJ has summarized the PWs examined in this case as under:

> (i). Prosecution has got examined twenty witnesses in this supplementary challan case. ASI Sobran Singh – PW1 is the Investigating Officer in this case. Ravi Dadich – PW3 has proved the dying declaration Ex. PW3/A of the deceased recorded by him.
>
> (ii) Ashok Kumar – PW4 is the brother of the deceased Dayawati. Babu Lal – PW5 and Puran Lal – PW8 are the independent public witnesses.
>
> (iii) Dr. K.S. Sachdeva – PW2 proved MLC Ex. PW2/A. Dr. Prabhat Srivastava – PW7 has proved MLC Ex. PW7/A prepared by Dr. Vishal Raina. Sh. Hem Raj – PW20, record clerk of Maulana Azad Medical College, has proved the MLC Ex. PW15/A prepared by Dr. Bhim Singh.
>
> (iv) SI S.N. Rajora – PW6 has proved the proceedings U/s 82 Cr.P.C against the accused. ASI Ram Bhool Singh – PW9 has arrested the accused in this case. Const. Umer Mohammad – PW10 was posted as duty constable in JPN hospital on that day. SI Ram Kewal – PW11 has proved DD No.32-A as Ex. PW10/A regarding death of the deceased. ASI Daya Ram –

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PW12 has proved formal FIR Ex. PW17/A. HC Jagdish Singh – PW13, L/ct. Reena Choudhary – PW14, const. Komesh – PW15, HC Vipin Kumar – PW16, W/HC Poonam – PW17, HC Rishial – PW19 are the formal official witnesses. SI Rajinder Pal – PW18 has arrested the accused vide memo Ex. PW14/B.

19. Dr. Vishal Raina, who endorsed on the MLC of the deceased being fit for statement, and Dr. Bhim Singh, who conducted the post-mortem, were examined in the *main case* as PW-20 and PW-15 respectively. However, neither of them was examined in the trial of the present case.

20. In her statement under Section 313 of the CrPC, the appellant denied the prosecution case. She stated that she is innocent and no demand was ever made either by her or any of her family members. She further stated that she was married earlier to the deceased and was residing with her in-laws happily and separately from the house of her brother and deceased. She stated that she has no concern with the family affairs of deceased and her husband's family. She claimed that on the day of incident, she was not even present at the alleged spot and was very much present in her in-law's house and till the date of her arrest, she was very much available there. She has stated that her relations with the deceased were very cordial.

21. As noted herein above, the appellant has been convicted vide the impugned judgment dated 21.05.2005 passed by the learned ASJ in S.C. No. 163/02 under Section 302/34 and 498A/34 of the IPC and has been sentenced as recorded by us herein above.

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22. The said judgment and order are the subject matter of present appeal.

23. To complete the narration, it is recorded here that even today, there are two proclaimed offenders in this case. They are Hans Raj (brother-in-law of the deceased) and Sudesh (third Sister-in-law of the deceased).

24. For the sake of clarity, the details of the family members of the deceased Dayawati and the status of their cases is as under:

Sr. No.	Name	Relationship	The offence convicted for	Details of appeal
1.	Tilak Raj, ASI in Delhi Police	Husband	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002. (being decided *vide* separate order)
2.	Prem Singh	Father-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002. (Since deceased, and the appeal qua him has abated *vide* order dated

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				05.05.2014)
3.	Anokhi Devi	Mother-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 600/2002(being decided *vide* separate order)
4.	Raj Kumari	Sister-in-law	498A/34 of th IPC	Crl.A. No. 599/2002 (being decided *vide* separate order)
5.	Sharmishtha	Sister-in-law	302/34, 201/34 and 498A/34 of the IPC	Crl. A. No. 709/205
6.	Sudesh	Sister-in-law	Proclaimed Offender	Not Applicable
7.	Hans Raj	Brother-in-law	Proclaimed Offender	Not applicable

Proceedings before this Court

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25. When this appeal came up for final arguments before this Court, the learned counsel for the appellant submitted that the submissions made by him in CRL.A. 599/2002 and CRL.A. 600/2002 be considered for this appeal as well. This Court, therefore, proceeded to hear the submissions of learned APP for the State, while recording as under in its order dated 22.09.2026:

> *"Though the appellant in the present appeal had faced separate trial and had been convicted vide a separate judgment by the learned trial court, given the above submissions of the learned counsel for the appellant we shall now hear the learned APP for the State on this appeal."*

Findings of the learned Trial Court

26. The learned Trial Court noted that the dying declaration was recorded by the SDM PW-3 after the victim was declared fit for recording her statement by Dr. Vishal Raina on the MLC of the deceased. The dying declaration bears the thumb impression of Dayawati, signatures and the endorsement made by the SDM.

27. The defense of the accused was that as per the evidence of Dr. Bhim Singh (*PW-15 in the main case*) the hands of the victim were degloved that is the skin on the hands of the deceased was peeled off and she was not in a position to thumbmark the dying declaration.

28. This defense was taken despite the fact that Dr. Bhim Singh was *not even examined as a witness in this case by the prosecution*. The learned defense counsel relied on and referred to the evidence of Dr.

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Bhim Singh, who was examined as PW 15 in the case of other co-accused in a separate trial. This is impermissible.

29. However, this defense was dealt with by the learned Trial Court observing that the evidence of Dr Bhim Singh is of no avail to the defence because Dr Bhim Singh came to the picture at a later stage of conducting post-mortem on the dead body of the deceased on 23.10.98. The relevant stage for seeing the condition of the deceased was on 22.10.98 at 12:15 p.m. and not on 23.10.98.

30. It was observed by the learned Trial Court that Dr Vishal Raina was the best witness who could have deposed about the condition of the hands of the deceased because he had given fitness certificate. It was observed by the learned Trial Court that Dr Vishal Raina was not examined on this aspect and it was not suggested to him that the condition of the thumbs of the deceased was such at the time of giving of fitness certificate that she was not in a position to put her thumb impression on dying declaration.

31. The learned Trial Court noted that a bare perusal of the dying declaration shows that the thumb impression of the deceased on it is not very clear, meaning thereby, it is quite possible her having put her thumb impression on the dying declaration in the manner as reflected at point B in Exhibit PW 3/A.

32. The stand of the accused that the dying declaration is fabricated and the entire family of the accused has been falsely implicated was dealt with by the learned Trial Court by observing that the dying declaration clearly mentions that third sister-in-law (*nanad)*, *R*aj Kumari was not present at the time of this incident.

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33. It was observed that neither it was suggested to the doctor who had given the certificate of fitness for recording the statement nor to the SDM that the deceased was not in a position to speak or make the dying declaration. It was observed that although Dayawati had sustained 100% burns, but it does not mean that in such a situation, she would not have been able to speak. It was observed that after administration of injections, namely Fortwin and Phenargen, the pain of the deceased would have considerably reduced.

34. The learned Trial Court was of the opinion that the deceased was in a position to speak and give the dying declaration at that time, as stated by the prosecution.

35. The plea of alibi taken by this accused, relying on the statement of Ashok Kumar (PW-4), one of the brothers of the deceased, that the appellant was present at her in-laws house at the time of incident, was dealt with by the learned Trial Court by recording that the same witness has also stated that he was told by the deceased that on account of non-fulfilment of demand of Maruti car, the present accused along with other co-accused had set the deceased on fire. The dying declaration of the deceased was given more weightage than the evidence of Ashok Kumar (PW-4) observing that when a person is on the verge of death, then such a person would ordinarily not lie.

36. It was observed that no reason has come on record to show why the deceased would falsely implicate her sister-in-law *(nanad)* (present accused).

37. The defence has also relied on the statement of IO of the case, who has stated that present accused was residing with her in-laws at

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the time of this incident. The learned Trial Court was of the view that this stray admission in the cross-examination of the IO is apparently with a view to help the accused. The IO had not gone to the matrimonial house of the present accused immediately after this incident. Therefore, the IO cannot vouch safe about the presence of this accused at her matrimonial house at the time of incident.

38. The learned Trial Court observed that the dying declaration inspires utmost confidence and is not a tutored statement and found no hesitation in relying upon the same.

39. Insofar as motive is concerned, the learned Trial Court relied on the dying declaration in which the deceased had stated that "they" used to harass her. The learned Trial Court held that the reference to "they" refers to present accused as well as all other accused who were named in the dying declaration.

40. The learned Trial Court was of the view that the deceased was being harassed for not bringing a Maruti car and was cornered in the gallery in her matrimonial house and kerosene oil was thrown upon her by the present accused while co-accused had caught hold of her hand and her husband had put her on fire.

41. Reliance was placed on evidence of PW-4, who is the brother of the deceased, who has stated in his evidence that upon regaining consciousness in the hospital, his sister Dayawati had told him that on account of non-fulfillment of demand of Maruti car, the appellant had poured kerosene oil over her and she was put on fire by her husband. The learned Trial Court formed the opinion that the motive for the murder of Dayawati was on account of non-fulfillment of demand of

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dowry for which the appellant along with co-accused had burnt the deceased.

42. The learned Trial Court observed that nothing has been brought out in the cross-examination of Dr. Bhim Singh and Dr. Vishal Raina in the main case to establish that the death was due to suicide. The learned Trial Court came to the conclusion that the death was homicidal and not suicide as alleged by the defence.

43. The learned Trial Court had laid emphasis on the fact that the appellant was absconding from the very beginning. Therefore, the plea of alibi was refused observing that an inference of guilt can be drawn by abscondence of the appellant after the incident which unerringly points finger of guilt against the appellant and lends credence and assurance to the dying declaration.

Submissions made on behalf of the learned counsel for the appellant

44. As noted in the earlier paragraphs of this judgment, the learned counsel for the appellant did not address any argument in this appeal and relied upon the arguments addressed by him in the appeals of co-accused that is, Tilak Raj, Anokhi Devi and Raj Kumari. These are being summarized by us as under:

i. It is not clear who found the patient fit to make a statement.

ii. SDM Ravi Dadich (PW-4) has stated that he was informed by ASI Sobran Singh at about 11:00 AM on 22.10.1998 that the victim is fit to make statement but

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Dr. Vishal Raina (PW-20) had declared the victim fit for recording her statement at 12:15 PM. The defense has questioned how ASI Sobran Singh informed SDM Ravi Dadich almost one hour and fifteen minutes before the victim being declared fit to make statement to come and record the statement of the victim.

iii. Great emphasis has been laid on the evidence of PW-15 Dr. Bhim Singh to submit that the victim with 100% burn suffers from de-gloving and skin is separated from the body. In such a situation, the victim cannot affix thumb impression. The said doctor has also stated that after development of shock, patient cannot give exact statement regarding the happening to her/him. Such a patient cannot make speech or a statement. However, in this case, the victim not only gave names of all the members of her in-law's family but also narrated how her brother-in-law on two-three occasions tried to outrage her modesty. The learned counsel for the defence has emphasized on the fact that PW-15 Dr. Bhim Singh was not a defence witness but a prosecution witness. He was neither questioned by the prosecutor nor by the Court on these points.

iv. It cannot be ruled out that ASI Sobran Singh PW-18 manipulated the statement of the victim because if the SDM had reached the hospital at 12:05/12:10 PM, he would have recorded the statement of the victim in the

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presence of Dr. Vishal Raina and would have obtained the endorsement of the doctor on the dying declaration but it was not done. The argument of the learned counsel for the defense is that the Court ought to have given more weightage to the evidence of Dr. Bhim Singh (PW-15) than the evidence of SDM Ravi Dadich (PW-4).

v. The deceased has committed suicide as she was not conceiving. Reliance is placed on treatment record of the deceased.

vi. Delay in registration of FIR.

vii. Three prosecution witnesses including real brother of the deceased, namely, Ashok Kumar (PW-3) have turned hostile which doubts the veracity of the prosecution's story.

Submissions on behalf of the Learned APP

45. Mr. Aman Usman, the learned APP submitted that the testimony of PW-4, brother of the deceased, cannot be discarded as he had turned hostile for a possible reason that he had lost several members of his family within a period of six months of the incident and may have been under significant emotional turmoil.

46. On the role of the appellant, the learned APP, while referring to the testimony of PW-4 brother, submits that the deceased had named the appellant among others responsible for the incident and

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even the dying declaration attributed a role to the appellant as recorded by the SDM.

47. He further submits that the dying declaration cannot be discarded merely because the deceased had 100% burn injuries. He contends that percentage of burns, by itself does not establish that the deceased was incapable of making a coherent statement, particularly when the same is supported by medical endorsement of fitness.

48. The learned APP further submitted that the appellant's prolonged abscondence is an additional circumstance to be considered and shows her conduct to avoid proceedings against her.

Analysis/Reasoning

49. At the outset, we deem it necessary to mention that the Hon'ble Supreme Court in the case of ***A.T. Mydeen and another v. The Assistant Commissioner, Customs Department***, 2021 INSC 697, while dealing with the question whether the evidence recorded in a separate trial of co-accused can be read and considered by the appellate Court in a criminal appeal arising out of another separate trial conducted against another accused even though for the commission of the same offence, has reiterated as under:

> (i) Each case is to be decided on the evidence led in it and this is, irrespective of any view of the same act that might have been taken on different evidence led in another case. (***Karan Singh v. State of Madhya Pradesh*** *AIR 1965 SC 1037*)

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(ii) When the trial of other accused person was separate, his confession statement is not admissible in evidence and the same cannot be taken as evidence against co-accused, who has been tried separately. (***Raja @ Ayyappan v State of Tamil Nadu*** (2020) 5 SCC 118).

(iii) It is the duty of the appellate court to keep each appeal absolutely separate and to deal with it on its own merits, confining himself to the evidence given in that case, and that alone. (***Doat Ali and Ors. v. Mahammad Sayadali and Anr***. AIR 1928 Cal 230)

(iv) Even if same witnesses have deposed in two trials, it would not mean that the evidence was identical and similar because in the oral testimony, not only the examination in chief, but cross examination is also equally important and relevant. In the cross examination of the witnesses, there could have been an element of some benefit accruing to the accused which could have been conducted maybe by the same counsel or a different counsel. The role of each accused cannot be said to be the same.

(v) The same witnesses could have deposed differently in different trials against different accused depending upon the complicity or/and culpability of such accused.

(vi) All these aspects have to be examined and scrutinized by the Appellate Court while dealing with both the appeals separately and the evidence recorded in the respective trials, giving rise to the appeals.

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(vii) There cannot be any presumption that when a witness deposes in two trials, everything will be identical word to word. The culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross examination, unless the case falls under exceptions of law.

(viii) The evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence.

50. Therefore, the present appeal is being decided considering the evidence recorded exclusively in the present case and without relying upon the evidence in the case of the other co-accused who were tried separately in the connected appeals.

51. The principal question requiring determination is whether the dying declaration, EX PW 3/A, can be relied upon to establish appellant's participation in the incident and, consequently, whether her conviction under Sections 302 and 498A of the IPC is sustainable.

52. From the evidence of PW-4, Ashok Kumar, brother of the deceased, it is clear that Dayawati was married to Tilak Raj as per Hindu rights and customs on 09.05.1997. As per PW-2 Dr. K.S. Sachdeva, on 21.10.1998, Dayawati was brought to JPN hospital in a CATS ambulance by her husband Tilak Raj with deep burns all over

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her body with 100 percent burns. MLC Ext.PW2/A was prepared by him according to which patient was unfit for statement. PW-10 Constable Umer Mohammad gave information to P.S. Kalayanpuri, on which, DD Entry No.22A, Ext. PW7/A, was recorded by the duty officer Head Constable Jagdish Singh.PW-1 ASI Sobran Singh was entrusted DD No.22/A for investigation. He along with Constable Surat Singh went to JPN Hospital in burn ward. He informed the SDM of this incident who directed him to inform when the injured is fit for statement.

53. On 22.10.1998, Constable Surat Singh informed PW1 ASI Sobran Singh that the patient is fit for making statement. The SDM was informed of the same, who came to the hospital for recording the statement of Dayawati. As per PW-7 Dr. Prabhat Srivastava, on 22.10.1998 at about 12.15 Noon, Dr. Vishal Raina had declared the patient fit for statement and certified the same on MLC, Ext.PW7/A.

54. PW-3 Ravi Dagich, SDM received the information from PS Kalayanpuri at around 11:00 AM that Dayawati was fit to make statement. He went to the hospital and, at 12:15 PM, obtained opinion of the Doctor on her MLC that she was fit to make her statement. He recorded the statement of Dayawati in his own hand writing, Ext.Pw3/A, and also took her thumb impression on the said statement. The SDM directed the SHO Kalayanpuri for necessary action and to register a case against all the accused under relevant sections of IPC. Dayawati succumbed to her injuries on 23.10.1998.

55. PW-4 Ashok Kumar, the brother of the deceased, has deposed that deceased Dayawati was not happy in her matrimonial home. He

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stated that she used to tell this fact to his wife that her in- laws used to harass her but she never told that Sharmishta harassed her or taunted her. In his cross examination, he further states that after 15 days of marriage, Tilak Raj had demanded cash of Rs. 50,000 on two occasions, which was given by the father of the deceased. After some time, Tilak Raj pressurized the family of the deceased for a Maruti car. In that context, a panchayat was held, but Tilak Raj was adamant on his demand. On 21.10.1998, which was the day of "Bhaiyya Duj", Dayawati was told that she will be sent to her parental home only if she brought a Maruti car, otherwise she would be killed.

56. On that day, at 7:30 PM, PW4 Ashok Kumar had spoken to Tilak Raj and his father on telephone and he was told that if their demand is not fulfilled, they will not spare Dayawati. PW-4 had asked Tilak Raj and his father that they would come to their house and talk about it. While they were discussing the matter as to what should be done, he received a phone call that Dayawati has been admitted in JPN Hospital after being set her on fire. He has stated that he along with his father and brother had gone to JPN Hospital where Dayawati was found in unconscious condition with burn injuries. He further stated that she regained consciousness on the next day and told him that on account of non-fulfillment of demand of Maruti car, her husband, mother-in-law, father-in-law, sisters-in-law and brother-in-law (Devar) had burnt her by pouring kerosene oil and it was done due to it.

57. When confronted with Ex. PW 4/C where the fact of pouring kerosene by Sharmishta is mentioned, he stated that Dayawati had

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taken the name of accused Sharmistha in the hospital as one of the accused who were responsible for this incident. However, in his cross-examination PW-4 denied Sharmishta's presence on the spot and said that she was already at her matrimonial house in Misal Garhi beyond Ghaziabad at the time of the incident.

58. From a reading of the above it can be said that PW-4 Ashok Kumar, the brother of the deceased has deposed regarding the demand of dowry and Maruti car made by husband of the deceased and his father, as also threats extended in connection with the non- fulfillment of such demands, however he has not made any allegation that the present appellant Sharmishta had also made demand for dowry. He also goes on to state that although the deceased used to tell his wife that her in-laws harassed her, she had never specifically mentioned appellant doing the same.

59. As regards to the statement of the deceased, insofar as subjecting her to cruelty is concerned, the same has been reproduced hereinabove.

60. The deceased has deposed in her last statement that "*Yeh mujhe tang karte the*" This is only a matter of conjectures and surmises that she is referring to all her in-laws, in particular the appellant herein, in this statement. However, when she says ... "मेरा घर वाला तंग करता था। दो बार 50-50 हजार रुपये लाई हूँ। ...मारूती कार लाने के लिए मेरा घर वाला कहता था। ...पति ने कहा की भैया दूज को घर जा और मारूती कार लेकर आ", it leaves no doubt that her husband Tilak Raj subjected her

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to cruelty and harassed her with a view to coercing her to meet unlawful demand for car.

61. There is no allegation of demand of dowry against Sister-in-law Sharmishtha except the line "*Yeh mujhe tang kartey the*" wherein she refers to all her in-laws. It is ambiguous whether she was referring to her sister- in-law when she says "ये मुझे तंग करते थे।"

62. Neither the testimony of PW-4, nor the relevant portion of the dying declaration sufficiently clarifies the nature of cruelty, if any attributable specifically to the appellant. Keeping in view the above, the appellant Sharmishta is given the benefit of doubt and acquitted of the charge under Section 498A of the IPC. Her conviction under Section 498A of the IPC is therefore set aside.

63. The next circumstance that arises for consideration is whether the dying declaration (Ex PW 3/A) as recorded above, establishes the participation of the appellant in the commission of offence under Section 302/34 of the IPC, particularly in view of her plea that she was not present at the place of occurrence.

64. The appellant, in her statement under Section 313 of the Cr.P.C., has stated that she was married earlier to deceased and was residing with her in-laws happily separately from the house of the deceased and her husband. She had no concern with the family affairs of deceased and her husband's family. She has stated that on the day of incident, she was not even present at the alleged spot and was very much present in her in-law's house at Misal Garhi, Ghaziabad and till the date of her arrest she was very much available there.

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65. In this regard, it is to be noted that PW-4 Ashok Kumar, the brother of the deceased has stated that on 22.10.1998 when Dayawati regained consciousness, she had told him that on account of non-fulfillment of demand of Maruti car, her husband, mother-in-law, father-in-law, sisters-in-law and brother-in-law (devar) had burnt her by pouring kerosene oil. The deceased in her statement has referred to "sisters-in-law" which will include appellant Sharmishta because the deceased had three sisters-in-law. She has stated that one of the sister-in-law Raj Kumari had not come to their house on the date of incident. That leaves two other two sisters-in-law namely Sharmistha and Sudesh. Therefore, the use of expression "sisters-in-law" by Dayawati referred to Sharmistha as well. PW4 Ashok Kumar has also stated that Dayawati had taken the name of accused Sharmistha in the hospital as one of the accused who were responsible for this incident.

66. Present appellant was declared a proclaimed offender and could not be arrested for more than three years of the incident. She avoided her arrest for all these years and her abscondence being a conduct under Section 8 of the Evidence Act, 1872 has to be taken into consideration along with other evidence to prove her guilt. Present appellant would have known too well about this prosecution as four of her family members were facing the trial, but still continued to be a proclaimed offender. No witness has been examined by the appellant to prove her alibi. There is no explanation for her avoiding the investigating agency for more than three years. There is, thus, no doubt that the appellant had not been able to proof her plea of alibi.

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67. Since the learned counsel for the appellant made no arguments in this appeal and relied upon arguments made in appeal of co-accused, those arguments are discussed now.

68. The first contention of the appellant is that who found the patient fit to make a statement.

69. The evidence has shown that first of all Constable Surat Singh had informed ASI Sobran Singh that patient was fit for making statement. Secondly, the Dr. Vishal Raina has certified that the patient was fit for recording the statement. Finally, when the SDM Ravi Dadich (PW-3) recorded the statement, it also showed that the patient was fit for recording her statement. The patient had given the particulars of her family and the details of the incident. SDM is an important functionary of the State and there is no evidence to suggest that he recorded the statement of the deceased falsely. There also is no evidence of any enmity between ASI Sobran Singh and the brother of the present appellant, ASI Tilak Raj (husband of the deceased), for being the cause of manipulation in the statement of the deceased. Therefore, it is sufficient to prove that the patient was fit for giving her statement when the SDM Ravi Dadich (PW-3) came to the hospital for recording her statement.

70. The second argument is that the SDM was informed at 11:00 AM that victim is fit for recording her statement, but Dr. Vishal Raina had declared the victim fit for recording her statement at 12:15 PM.

71. In this regard, it is to be noted that it is on record that SDM Ravi Dadich had directed the IO on 21.10.1998 to inform him when the patient was fit for recording of statement. On 22.10.1998, the IO

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was informed by Constable Surat Singh that the deceased is fit for recording her statement, which message was conveyed to the SDM. This gap of one hour fifteen minutes is, therefore, explained. Some difference in the timing of such intimation is understandable as the evidence of these witnesses was recorded after more than two years of the incident.

72. It is well settled that with the passage of time, the statements made on the basis of human memory can have some discrepancies. The Supreme Court in the case of ***State of Punjab v. Wassan Singh*** AIR 1981 SC 697 has held that:

> "Where the witnesses are examined at the trial, 17 months after the incident such discrepancies in regard to collateral and subsidiary facts or maters of details occur even in the statements of truthful witnesses, particularly when they are examined to depose to events which happened long before their examination. Such discrepancies are hardly a ground to reject the evidence of the witnesses when there is general agreement and consistency in regard to the substratum of the prosecution case."

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

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

75. The next argument of the appellant is that PW-15 Dr. Bhim Singh, who was examined in the trial of other co-accused, has stated that a patient with 100% burns suffers from de-gloving and her thumb impression cannot be taken.

76. This evidence has been dealt by this Court while deciding the appeal of other co-accused, but this Court refrains itself from dealing with this question in this case because this witness was not examined in this case and the present case is to be decided on the basis of evidence recorded in this case only.

77. The fourth argument is that since the endorsement of Dr. Vishal Raina is not obtained on the dying declaration, it shows the SDM had not reached the hospital at 12:05/12:10 PM otherwise he would have taken the endorsement of the doctor on the dying declaration.

78. In this regard, it is noted that it is not mandatory that the dying declaration should have endorsement of the doctor also. Certification by a doctor is essentially a rule of caution and therefore, voluntary and truthful nature of the declaration can also be established otherwise.

79. In the present case, certification by the doctor of the deceased being fit to make a statement is there; merely, not taking the signatures of the doctor on the dying declaration does not make the dying declaration manipulated statement.

80. The fifth argument of the appellant that Dayawati committed suicide as she was not able to conceive, is also not acceptable as there

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is no evidence that the accused was not in a position to give birth to a child. Whereas, in case of the other co-accused, evidence of a doctor was recorded as a defence witness, but even that evidence was not accepted because the final report was withheld. In this case, leave aside placing on record final report opining that the deceased was not able to conceive, no defence evidence was led. Therefore, the argument of the appellant that Dayawati had committed suicide for her inability to conceive is rejected.

81. The sixth argument is that there is a delay in registration of the FIR.

82. In this case, the patient was unfit for recording her statement on 21.10.1998, the date of incident. Her statement was recorded by the SDM on 22.10.1998 with an endorsement "Forwarded to SHO, Kalyanpuri for necessary action and to register a case against all the accused under relevant sections of IPC", which resulted in registration of FIR. Therefore, there is no delay in registration of FIR.

83. The last argument of the appellant is that had there been some truth in the case of prosecution, three prosecution witnesses, including her real brother of the deceased, would not have turned hostile.

84. In the opinion of this Court, there can be many reasons for a witness turning hostile. Mere fact that the brother of the deceased turned hostile is no proof of innocence of the appellant. Moreover, when questioned by learned APP for the state, the witness has partially supported the case of prosecution.

85. This Court therefore finds no to set aside the impugned judgment for the offence under section 302 of the IPC.

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***Conclusion**:*

86. The appeal is partly allowed. The conviction of appellant under Section 498A/34 of the IPC is set aside. Her conviction under Section 302/34 of the IPC is upheld. The bail bonds are cancelled, and the appellant is directed to surrender before the Jail Superintendent within three working days from today. Otherwise, State will take steps to arrest her for serving remaining sentence awarded to her.

87. A copy of this Judgment be sent to the Jail Superintendent and the learned Trial Court for necessary information and compliance.

ARUN BHARDWAJ, J

NAVIN CHAWLA, J

OCTOBER 30, 2026*/akr*

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