

*Before S. S. Saron, S. P. Bangarh, JJ.*

**DAPINDER SINGH AND ANOTHER—Petitioners**

*versus*

**STATE OF PUNJAB—Respondent**

**CRA No. D- 297 -DB of 2006**

12th February, 2013

*A. Indian Penal Code 1860 - Ss 302/498-A and Section 34 IPC - Punjab and Haryana High Court Rules and Orders, Vol.3 - Chap 13-A - Evidence Act 1872 - S. 32 - Code of Criminal Procedure 1973 - S. 162(2) - Dying declaration -as High Court Rules dying declaration to be recorded by Judicial Magistrate - In this case recorded by Police Inspector - No attempt made by him to get dying declaration recorded from any Executive or Judicial Magistrate - such dying declaration to be left out of consideration - Practice of Investigating Officer recording dying declaration ought not to be encouraged since he is interested in the success of the investigation - Dying declaration repelled and conviction of Co-Appellant under Section 302 IPC set aside.*

*Held*, that according to Chapter 13-A Volume 3 of the Punjab and Haryana High Court Rules and Orders:-

*"Where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration. On receiving such application, the Judicial Magistrate shall at once either himself proceed, or depute some other stipendiary Judicial Magistrate to record the dying declaration."*

(Para 36)

*Further held*, that Hon'ble Supreme Court of India in **Dalip Singh and others v. State of Punjab (1979) 4 Supreme Court Cases 332**, held that although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of Indian Evidence Act in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfied the Court as to why it was not recorded by a Magistrate or by a doctor. The practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. It is not that such dying declarations are always untrustworthy, but better and more reliable methods of recording dying declarations of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon, if there was no time or facility available to the prosecution for adopting any better method.

(Para 37)

***B. Evidence Act 1872 - S. 113-B - Dowry death - Presumption as to - Death in first year of marriage - Woman subjected to cruelty or harassment in connection with any demand for dowry soon before her death- the Court shall presume the commission of a "dowry death"***

*Held*, that as per section 113-B of the Indian Evidence Act, 1872, there is presumption as to dowry death. It has been enshrined, therein, that when a question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

(Para 50)

*Further held*, that the appellants, in this case, have been failed to rebut the presumption of "dowry death" of deceased. That being so, they were rightly held guilty of causing "dowry death" of deceased, by the learned trial Court. There is, thus, no illegality or impropriety in the findings of the learned trial court to this extent and the impugned judgment and order of sentence holding the appellants guilty for commission of offence unishable under Section 304-B IPC must be upheld and affirmed.

(Para 51)

S.S.Gandhi, Sr. Advocate with Mr. Bharat Bhushan Bhatia, Mr. Arun Gosain and Akshay Bhatia, Advocates, *for the appellants*.

H.S.Sangha, Advocate.

P.P.S. Thethi, Additional Advocate General, Punjab for respondent.

**S.P. BANGARI, J.**

(1) The appellants have assailed the judgment of conviction and order of sentence dated 01.04.2006, passed by the learned Sessions Judge, Bathinda in Sessions Case No. 7 of 21.03.2002, emanating from FIR No.501 dated 24.10.2001, under Sections 302/498-A read with Section 34 of the Indian Penal Code (IPC for Short) of Police Station Kotwali.

Bathinda, whereby, appellant no.1 was convicted for commission of offence punishable under Section 304 B IPC and sentenced to undergo rigorous imprisonment for a period of seven years, while appellant no.2 was convicted for commission of offences punishable under Sections 302 IPC and 304B IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/- and in default, thereof, to further undergo rigorous imprisonment for a period of six months for commission of offence punishable under Section 302 IPC. No separate sentence under Section 304-B IPC was imposed upon appellant No.2.

(2) Case of the prosecution is that on 23.10.2001, Amarjit Singh, ASI, of Police Post Civil Lines, Bathinda received a slip from Medical Officer of Civil Hospital, Bathinda about the admission of Maninder Kaur wife of appellant no.1 in the hospital due to burn injuries. Thereupon, Amarjit Singh, ASI along with other police officials went there, where he learnt that injured has already been referred to New Dayanand Medical College and Hospital, Ludhiana. On the same day, Baldev Singh, Inspector of Police Haibowal, Ludhiana received a telephonic message from the residence of Senior Superintendent of Police regarding admission of Maninder Kaur in New Dayanand Medical College and Hospital, Ludhiana. Thereupon, Baldev Singh, Inspector went there and moved application Ex.PE to the Medical Officer to seek his opinion regarding fitness of Maninder Kaur to make statement.

(3) Dr.Amarjit Singh, vide his endorsement Ex.PE/1 declared Maninder Kaur fit to make statement. Thereupon, Baldev Singh, Inspector recorded dying declaration / statement Ex.PG of Maninder Kaur wife of appellant no.1 in the presence of Dr.Anita, wherein, she stated that she was married to appellant no.1 on 29.07.2001 at Jalandhar according to Sikh rites. Her parents had spent sufficient amount on her marriage. Albeit, appellants, who are her husband and mother-in-law respectively were not satisfied with the dowry brought by her. They used to taunt her for bringing dowry of inferior quality. They also used to taunt her that the function of marriage was not good and the refrigerator given in the marriage was of small size. Her husband (appellant no.1) used to harass her sensually and he used to beat her as also used to say that he married her for sensual purpose only. Appellant no.1 used to compel her to bring money from her parents for expansion of his business of watches.

(4) In her statement / dying declaration Ex.PG, Maninder Kaur further stated that in the first week of that month, she had gone to her natal house and narrated the whole occurrence to her mother and brothers. They dissuaded her husband (appellant no.1) and, thereafter, sent her with him. Even though, appellant no.1 did not mend her ways and he continued harassment and maltreatment of Maninder Kaur. She narrated all this to her mother on phone. Her mother, brother Harpreet Singh and maternal uncle Ranjit Singh came to see her at Bathinda on 16.10.2001 and asked her husband and mother-in-law as to why, they had been harassing their daughter. Thereupon, they replied that in case, they wanted to see their daughter happy, they should send money for expansion of their business. She further stated that on 22.10.2001, both appellants threatened her that since her brother and mother had not sent the money, therefore, they would teach them a lesson. They gave merciless beating to her.

(5) Maninder Kaur further stated in her dying declaration / statement Ex.PG that on 23.10.2001 at about 10:00 / 11:00 a.m, her mother-in-law (appellant no.2) told her to prepare tea. She went inside the kitchen to prepare tea, at that time, she was not aware of the fact that the gas pipe was lying detached from the cylinder. When she was trying to set right the gas pipe, her mother-in-law ignited a match stick and threw it into the kitchen and thereafter, she bolted the door of the kitchen from outside. As a result, thereof, which, she caught fire. She raised a hue and cry. Appellant no.2 also started raising alarm after opening the door of the kitchen and, thereafter, she (Maninder Kaur) became unconscious. She further stated that both the appellants on account of non fulfilment of their demand of dowry, set her on fire with an intention to kill her. The doctor underneath the statement Ex.PG of Maninder Kaur made an endorsement Ex.PG/1 to the effect that she remained fit during the course of recording of her statement. This statement Ex.PG was recorded in the daily diary register by Baldev Singh, Inspector. Ex.PG/3 is the report recorded in the daily diary register on the basis of statement Ex.PG, that was sent to Police Station Kotwali, Bathinda through Harinder Pal Singh and on the basis, thereof, formal FIR Ex.PG/4 was recorded under Sections 498-A and 307 IPC.

(6) Investigation was entrusted to Amarjit Singh, ASI. He visited the place of occurrence and prepared rough site plan Ex.PP with correct marginal notes at the instance of Manjit Singh. He also seized one gas

cylinder Ex.P9, regulator Ex.P11 alongwith plastic pipe Ex. P10, gas stove Ex.P9/1, pair of half burnt chapals Ex.P12 and Ex.P13 and one match box Ex.P14 from the kitchen vide memo Ex.PQ, that was attested by Swaran Singh and Darshan Singh. He also visited New Dayanand Medical College and Hospital, Ludhiana on 25.10.2001 and recorded the statements of Harbans Kaur and Harpreet Singh under Section 161 of the Code of Criminal Procedure ('Cr.P.C' for short).

(7) On 26.10.2001, both the appellants were arrested after disclosing to them the grounds of arrest vide memos Ex.PR and Ex.PR/1 respectively, which were signed by them and attested by Mahinder Singh Sohal and Balbir Kaur, Lady Constable. Nothing was recovered from their personal search and memos Ex.PS and Ex.PS/1 respectively in this regard were prepared, which were signed by them and attested by Mahinder Pal, Angrej Singh, Constable and Balbir Kaur, Lady Constable. On 28.10.2001, investigating officer visited the house of Balwinder Kaur (appellant no.2) and recovered dowry articles vide recovery memo Ex.PH that was attested by Jarnail Singh and Harpreet Singh. Rough site plan Ex.PP of the place of recovery of the dowry articles was also prepared by Inverstigating Officer.

(8) On 29.10.2001, Investigating Officer received a telephonic message regarding the death of Maninder Kaur. Thereupon, he made entry in the daily diary register and added offence under Section 304-B IPC. He visited New Dayanand Medical College and Hospital, Ludhiana on 30.10.2001 and prepared inquest report Ex.PL on the corpse of Maninder Kaur, on its identification by Harpreet Singh and Ranjit Singh, whose statements under Section 175 Cr.P.C were also recorded. Later, he sent the corpse of Maninder Kaur to the mortuary of Civil Hospital, Ludhiana for getting conducting autopsy, thereon, along with request application Ex.PK for conducting autopsy. After the autopsy, corpse of Maninder Kaur, copy of autopsy report and police papers were entrusted to Investigating Officer, who, in return, handed over corpse of Maninder Kaur to her legal representatives. On return to Police Station, Investigating Officer deposited case property with MHC.

(9) Further investigation of this case was conducted by Rajender Kumar, Superintendent of Police, who added offence under Section 302 IPC on 04.01.2001 after making entry no.28 in this regard in the daily diary register. After obtaining production warrants, he re-arrested both the appellants for commission of offence punishable under Section 302 IPC after disclosing them the grounds of arrest vide memos Ex.PN and Ex.PN/1 respectively. He also seized photographs along with their negatives of marriage of Maninder Kaur and bills of gold ornaments vide recovery memo Ex.PI, that was attested by Harpreet Singh. He also recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure.

(10) After completion of investigation, Station House Officer of Police Station Kotwali, Bathinda instituted police report under Section 173 Cr.P.C before the learned Illaqa Magistrate, to the effect that it appeared that the appellants have committed offences punishable under Sections 498-A/302/304-B IPC read with Section 34 IPC.

(11) On presentation of police report, copies of documents, as required under Section 207 Cr.P.C, were supplied to the appellants by the learned Illaqa Magistrate, who later committed this case to the Court of Session, where, charge under Sections 302 IPC and 304-B IPC was framed against Balwinder Kaur (appellant no.2) while charge under section 302 IPC read with Section 34 IPC IPC and 304-B IPC was framed against Dapinder Pal Singh (appellant no.1), whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(12) At the trial, the prosecution examined Karam Singh, HC as PW1, Dr. Niranjan Lal Garg as PW2, Dr.Aman Jit Singh as PW3, Baldev Singh, Inspector as PW4, Harpreet Singh, brother of the deceased, as PW5, Harbans Kaur, mother of the deceased as PW6, Dr.Manmohan Singh as PW7, Dr.Anita Jain as PW8, Rajinder Kumar, SI as PW9 and Amarjit Singh, ASI as PW10 and closed the prosecution evidence.

(13) After the closure of the prosecution evidence, appellants were examined under Section 313 Cr.P.C, wherein, they denied the allegations of prosecution, pleaded innocence and false implications in the case.

(14) Dapinder Pal Singh (appellant no.1) gave his own version that he and his co appellant have been falsely implicated in this case. They neither

maltreated nor demanded any dowry from Maninder Kaur deceased. On the day of occurrence, he was present at his shop. Gas was leaking when Maninder Kaur deceased went inside the kitchen. When she ignited the burner of the gas stove with the help of the lighter, she accidentally caught fire, on raising alarm by his mother (appellant no.2), neighbours came there and extinguished the fire and he was called from his shop. He further stated that he along with his mother (appellant no.2) removed Maninder Kaur to Civil Hospital, Bathinda, from there to New Dayanand Medical College and Hospital, Ludhiana. He rang up his in-laws at Jalandhar.

(15) He further stated that Maninder Kaur did not make any dying declaration voluntarily and the dying declaration has been fabricated by Baldev Singh, Inspector, as also by radio artist Ghuggi, who belongs to the family of the deceased, prevailed upon the police and higher officers to fabricate the dying declaration. He further stated that Maninder Kaur was not ready to give any statement against him or his mother and that is why, police did not get her dying declaration recorded from any Magistrate. He also submitted that dowry articles were entrusted to the complainant party even before the death of Maninder Kaur. He also stated that his mother (appellant no.2) is an old and infirm lady and she used to treat Maninder Kaur as her own daughter and that she was leading happy married life. He also stated that he incurred all the expenses for the treatment of his deceased wife, who died due to negligence of the doctors, as they did not provide her proper treatment.

(16) Balwinder Kaur (appellant no.2) also stated that she and her coappellant have been falsely implicated in this case. She adopted the plea taken by her co-appellant Dapinder Singh.

(17) Appellants were called upon to enter in defence and they examined Manjit Singh Walia as DW1, who deposed that he was the landlord of the house, wherein, the appellants along with Maninder Kaur used to reside. He further deposed that the appellants along with Maninder Kaur resided in his house as tenants for two and a half months on the ground floor and he along with his family members was residing on the first floor of the room. He deposed that he never noticed any dispute between the appellants and the deceased and that the latter was leading a normal life in the family. The appellants later closed the defence evidence.



(18) After hearing both the sides, learned trial Court vide impugned judgment and order of sentence, convicted and sentenced the appellants, as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court, have come up in this appeal with prayer for acceptance, thereof, and for acquittal of the charge framed against them.

(19) Learned senior counsel for the appellants and learned Additional Advocate General for the respondent have been heard and record of the learned trial Court perused with their assistance.

(20) First of all, it is to be seen as to what the prosecution witnesses deposed against the appellants:-

PW1 Karam Singh, HC tendered in evidence his affidavit Ex.PA.

(21) PW2 Dr. Niranjana Lal Garg, deposed that Maninder Kaur was admitted in Civil Hospital, Bathinda at 23.10.2001 at 12:30 a.m due to burn injuries. He further deposed that she was examined by the specialists and was referred to DMC/CMC hospital, Jalandhar, on the same day at 01:05 p.m, on the request of the patient. He further deposed that intimation Ex.PB regarding admission of this patient was sent to the police and on police application Ex.PC, he made his endorsement Ex.PC/1 that the patient has been referred to DMC, Ludhiana. He also deposed that Maninder Kaur was semi conscious and her condition was serious.

(22) PW3 Dr. Amarjit Singh deposed that Maninder Kaur was admitted in New Dayanand Medical College and Hospital, Ludhiana on 23.10.2001 in the department of Plastic Surgery vide admission no.16703 CR No.23843 with alleged history of sustaining flame burns and he sent intimation to the police regarding her admission vide memo Ex.PD and he declared Maninder Kaur fit to make statement vide memo Ex.PE/1 on police application Ex.PE. He also deposed that Maninder Kaur had 85% burns and he also proved copy of her bed head ticket Ex.PF.

(23) PW4 Baldev Singh, Inspector deposed that on 23.10.2001, on receipt of telephonic message from the residence of Senior Superintendent of Police regarding admission of Maninder Kaur in New Dayanand Medical College and Hospital, Ludhiana, he went there and after obtaining opinion

regarding fitness of Maninder Kaur to make statement, recorded her statement Ex.PG and after recording her statement, he also obtained a certificate of the doctor to the effect that Maninder Kaur remained fit during the course of recording of her statement. He also deposed that later he recorded that statement in the daily diary report and sent the same to police station Kotwali, Bathinda through Harinder Pal Singh, Constable for registration of the case.

(24) PW5 Harpreet Singh, who is the brother of Maninder Kaur deceased deposed that the marriage of the latter was solemnized with appellant no.1 on 29.07.2001, according to sikh rites and that dowry articles were given at the time of her marriage. He also deposed that Maninder Kaur was residing at Bathinda with the appellants. He also deposed that appellants, who are husband and mother-in-law respectively of the deceased were not satisfied with the dowry articles and started raising demand of more dowry, as also, they used to taunt his sister that dowry articles were substandard; refrigerator given in the dowry was of lesser capacity and that the marriage function was not properly organized. He further deposed that Dapinder Pal Singh (appellant no.1) gave beatings to the deceased for bringing money for expansion of his business and that was disclosed to him by his sister when she came to his house after third day of the marriage. He also deposed that on their persuasion, Maninder Kaur went to her matrimonial house along with her husband Dapinder Pal Singh (appellant no.1). He also deposed that Maninder Kaur also told them telephonically that she was being subjected to cruelty and she came to their house in the first week of October 2001. He also deposed that in the evening of 16.10.2001, he along with his mother and maternal uncle Ranjit Singh went to the house of appellants and in their presence, Maninder Kaur was slapped and the appellants raised a demand of Rs. 60,000/-.

(25) PW5 Harpreet Singh further deposed that appellants told them that only after receipt of '60,000/-, Maninder Kaur would be rehabilitated in her matrimonial house, but they showed their inability to pay such a huge amount and promised to pay the same. He also deposed that on 23.10.2001, they received a telephonic message that Maninder Kaur deceased while preparing tea caught fire and has been removed to New Dayanand Medical

College and Hospital, Ludhiana and, thereupon, he along with his mother and other relatives reached there. He further deposed that Maninder Kaur disclosed that Balwinder Kaur (appellant no.2) asked her to prepare tea and when she went inside, she felt smell of gas as the pipe of the gas was not fixed properly and was detached and that Balwinder Kaur had thrown burning match stick in the kitchen and she caught fire. She further disclosed that door of kitchen was shut by Balwinder Kaur (appellant no.2). He further deposed that after the death of Maninder Kaur, he joined the police party, who got recovered dowry articles, which were seized by the police. He also deposed that he produced bills, photographs along with negatives of the marriage of the deceased before Amarjit Singh, ASI, who seized those vide recovery memo Ex.P1.

(26) PW6 Harbans Kaur, mother of the deceased also deposed likewise and corroborated the testimony of PW5.

(27) PW7 Dr. Manmohan Singh, Medical Officer conducted autopsy on the corpse of Maninder Kaur on 30.10.2001 in Civil Hospital, Ludhiana on the basis of order Ex.PK/2 of senior medical officer on police request Ex.PJ/2. He deposed that it was a corpse of a female, moderately built and nourished, wearing hospital dressing, eyes and mouth were closed. Rigor mortis was present. Post mortem staining could not be ascertained due to extensive burns, syringes of scalp hair was present. There were superficial to deep burns all over the body septic and partially healed except dorsum of left forearm lower 1/3 part of right forearm and right hand and front of left leg and knee. Lateral aspect of right thigh, knee and right leg. On exploration of chest, both lungs on cut section showed pussy froth. Heart on cut section showed fat embolism. Exploration of skull-petichial, haemorrhage in brain matter was present. He opined that cause of death in this case was due to shock and septicemia due to extensive burns which was sufficient to cause death in ordinary course of nature. Burns were ante mortem in nature. He handed over corpse of Maninder Kaur along with copy of attested report and police papers numbering 1 to 56 to the police. This witness proved the copy of relevant autopsy report Ex.PJ and also proved pictorial diagram showing the seat of the injury Ex.PJ/1.

(28) PW8 Dr. Anita Jain deposed that on 23.10.2001, she was posted as Senior Medical Officer in New Dayanand Medical College and Hospital, Ludhiana and on that day, Baldev Singh, SI of Police Station Haibowal recorded statement of Maninder Kaur in her presence. She also deposed that Maninder Kaur was fit to make statement and she gave her opinion Ex.PG/1 on the statement of Maninder Kaur Ex.PG to this effect. She also deposed that as per their record, Maninder Kaur died at 08:15 p.m on 31.10.2001.

(29) PW9 Rajinder Kumar, SI and PW10 Amarjit Singh, ASI conducted investigation of this case and they deposed on the lines of investigation, which has been reproduced in the earlier parts of this judgment.

(30) Learned senior counsel for the appellants contended that the dying declaration of the deceased was recorded by the police, which on the contrary, was required to be got recorded from the Magistrate. He also contended that at certain places of record, it has been mentioned that relatives of the deceased were not present and at some places, it has been mentioned that they were present. So, he contended that possibly the deceased was tutored by her relatives to suffer dying declaration Ex.PG before the police officials. He also referred to Vol. III Chapter 13-A of the High Court's Rules and Orders pertaining to dying declaration, whercin, it has been enshrined that dying declaration be possibly got recorded from Judicial Magistrate. So, he contended that this dying declaration was wrongly relied upon by the learned trial Court for holding the appellants guilty for commission of offences punishable under Sections 302, 304-B and 498-A IPC. He also contended that it has been mentioned in inquest report Ex.PL that employees of the Punjab State Electricity Board extinguished the fire by putting clothes and got the deceased admitted in the hospital. But no employee has been examined. He also contended that at the time of admission of deceased, it was not stated by her that as to how she was burnt. So, he contended that the impugned judgment and order of sentence are liable to be set aside and the appellants are entitled to be acquitted in this case.

(31) On the other hand, learned Additional Advocate General for the respondent contended that the impugned judgment and order of sentence do not suffer from any illegality or infirmity and, therefore, these are liable to be upheld and affirmed. He also contended that dying declaration, which has been recorded by the police official, could not be repelled, as doctor remained present through out the recording of the statement of the deceased, who had 85% burn injuries. So, he contended that it was an unnatural death of the deceased and the onus was on the appellants to explain as to how deceased turned into corpse, as no one else than them intruded into the house and caused burn injuries to the deceased, who later succumbed, thereto.

(32) We have given our thoughtful consideration to the contentions raised on behalf of the learned senior counsel for the appellants and the learned Additional Advocate General for the respondent.

(33) So far as the charge under Section 302 IPC against the appellant no.2 is concerned that cannot be said to have been proved on record. It is in the dying declaration that appellant no.2 ignited a match stick and threw it in the kitchen and the leaked gas from the gas cylinder caught fire and, therein, deceased was burnt and appellant no.2 bolted the door from outside.

(34) Learned senior counsel for the appellants rightly contended that dying declaration is transgressive of Chapter 13-A Volume 3 of the Punjab and Haryana High Court Rules and Orders. According to the requirement of those rules, dying declaration should be got recorded from a Judicial Magistrate. In the case in hand, PW10 deposed that he made no attempts to get recorded dying declaration of the deceased from any Executive or Judicial Magistrate. This conduct of PW10 is reprehensible and cannot be swallowed. Ignorance of law is not an excuse. He was required to act according to Chapter 13-A Volume 3 of the Punjab and Haryana High Court Rules and Orders at the time of recording dying declaration Ex.PG Since the compliance of the aforementioned provisions has not been made in this case, that itself makes the dying declaration Ex.PG doubtful.

(35) This Court in **State of Punjab v. Sita Devi and another (1)**, held that we fail to understand why no attempt was made to get the statement of the deceased Krishna Devi recorded in terms of the aforesaid rule, when considerable time was available between the burning incident and the date of death. It was also held that it is not understandable as to why the services of an Executive Magistrate were taken for recording the dying declaration. So, this Court in the judgment (supra) upheld the judgment of acquittal and dismissed the said appeal.

(36) The facts of this judgment are akin to the facts of the case in hand. According to Chapter 13-A Volume 3 of the Punjab and Haryana High Court Rules and Orders:-

*“Where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration. On receiving such application, the Judicial Magistrate shall at once either himself proceed, or depute some other stipendiary Judicial Magistrate to record the dying declaration.”*

This has not been done in this case. As already held, the Investigating Officer did not make any effort to get recorded dying declaration of the deceased from any Executive or Judicial Magistrate. According to the judgment of this Court (supra), the dying declaration, which has been recorded by the police official, requires to be repelled.

(37) Hon'ble Supreme Court of India in **Dalip Singh and others versus State of Punjab (2)**, held that although a dying declaration recorded

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(1) 1997 CrL. L. J 2210

(2) (1979) 4 SCC 332

by a police officer during the course of investigation is admissible under Section 32 of Indian Evidence Act in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfied the Court as to why it was not recorded by a Magistrate or by a doctor. The practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. It is not that such dying declarations are always untrustworthy, but better and more reliable methods of recording dying declarations of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon, if there was no time or facility available to the prosecution for adopting any better method.

(38) Hon'ble Supreme Court of India in **Munnu Raja and another v. The State of Madhya Pradesh (3)**, held that dying declaration recorded by Investigating Officer in the hospital is suspect since he is interested in the success of the investigation. It was held that High Court ought not to have placed any reliance upon third dying declaration, Ex.P2, which is said to have been made by the deceased in the hospital. The Investigating Officer who recorded that statement had undoubtedly taken the precaution of keeping a doctor present and it appears that some of the friends and relations of the deceased were also present at the time, when the statement was recorded. But, if the investigating officer thought that Bahadur Singh was in a precarious condition, he ought to have requisitioned the services of a magistrate for recording the dying declaration. It was further held that investigating Officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged. Therefore, the dying declaration Ex.P2, recorded in the hospital was excluded from consideration.

(39) In view of the law laid down in the aforementioned judgments, the dying declaration Ex.PG, ought to be and is, hereby, repelled and fact remains that appellant no.2 did not set deceased on fire and therefore, she cannot be held guilty for commission of murder of Maninder Kaur deceased.

(40) Learned trial Court, thus, overlooked the view taken in the judgment (supra) and wrongly interpreted the view taken in the judgment (supra). Evidence of PW5 and PW6 to the effect that the deceased told them that appellant no.2 ignited a match stick and threw it in the kitchen as a result, thereof, fire occurred and therein, deceased got burnt, loses significance, as these witnesses were not present at the time of alleged occurrence. Therefore, when the dying declaration is repelled, the evidence of these witnesses also cannot be believed for holding appellant no.2 guilty of murder of deceased.

(41) If it has come in the record that employees of Punjab State Electricity Board came and extinguished the fire, none of the employees of Board, who allegedly extinguished the fire, has been examined. Even, at the time of her admission, deceased did not state as to how she was burnt. So, in these circumstances, it is arduous to hold appellant no.2 guilty of commission of murder of deceased and, therefore, her conviction under Section 302 IPC has to be set aside. Her appeal to this extent has to be allowed and impugned judgment of conviction to this extent is also liable to be set aside.

(42) Learned senior counsel for the appellants then contended that charge under Section 304-B IPC against both the appellants was also groundless and they were wrongly convicted and sentenced, thereunder. This contention is devoid of merit and is repelled.

(43) There is no gain saying about the deceased being the wife of appellant no.1 and daughter-in-law of appellant no.2. There is no gain saying about the marriage between the deceased and appellant no.1 as on 29.07.2001. Deceased succumbed to burn injuries on 31.10.2001. In this manner, she died an unnatural death within a period of seven years after her marriage with appellant no.1.

(44) Now the question arises as to whether soon before her death deceased was subjected to cruelty or harassment by her husband (appellant no.1) and her mother-in-law (appellant no.2) in connection with any demand for dowry. If it is so, then the unnatural death of the deceased shall be called as "dowry death" and appellants being her husband and mother-in-law respectively shall be deemed to have caused her death. For this, evidence



of PW5 and PW6 is relevant, who in candid words deposed that though dowry articles were given at the time of marriage and deceased started residing with the appellants after marriage at Bathinda, yet, latter were not satisfied with the quantum of dowry. They were demanding more dowry articles, as also, they were stating that the dowry articles were substandard and their quantity was also less or not according to their expectations.

(45) Deceased also told PW5 and PW6 that the appellants taunted her that refrigerator given at the time of dowry was of lesser capacity, as also, the marriage function was not properly organized. Even, it has come in the evidence of PW5 and PW6 that appellant no.1 used to beat deceased to force her to bring money to carry on business and Maninder Kaur deceased on third day of marriage came to her natal house and at that time, she disclosed PW5 and PW6 that she was being taunted by appellants for bringing less dowry and they were demanding more articles. Even, thereafter, PW5 and PW6 received a telephonic message from Maninder Kaur that she was being subjected to cruelty and was being beaten in connection with the demand of dowry articles. This message was received by PW5, who later disclosed this message to his mother PW6.

(46) Evidence of PW5, which has been fully corroborated by PW6 has been reproduced in the earlier parts of this judgment. Both these witnesses were subjected to searching cross examination by the learned counsel for the appellants before the learned trial Court, but the long cross examination failed to elicit anything worth the name, which could possibly cause any dent in their testimony. Evidence of DW1 Manjit Singh Walia is inconsequential to the appellants, as this witness simply deposed that he did not notice any dispute between the deceased and the appellants and that the former was living a normal life. Even this witness was living at a different floor. So, he is quite a stranger, so far as, demand of dowry by appellants from deceased was concerned. Learned trial Court rightly repelled his testimony.

(47) Unnatural death of Maninder Kaur deceased had taken place in the house of appellants. There were 85% burns on her body. This itself indicates that she did not catch fire accidentally. If it would have been so, then he would have tried to extinguish it by herself. In that event, she would

have rushed out of the kitchen for extinguishing the fire and she would have definitely got the help of the people around in extinguishing the fire. The percentage of burns would not have been 85% in case of accidental fire.

(48) It is not the case of the appellants that the deceased was suffering from some mental disorder and, therefore, had suicidal tendency. When that is so, the accusing finger must go towards the appellants, who were not satisfied with the dowry brought by the deceased from her parents at the time of her marriage with appellant no. 1. They compelled her to bring more dowry. Appellant taunted her for bringing inadequate and substandard dowry. They also taunted her that the marriage function was not properly organized. It has also come in evidence that the appellant no. 1 used to beat her. It has also come in evidence of PW5 and PW6 that the behaviour of the appellant no. 1 was cruel towards the deceased. Appellant no. 2 did not dissuade appellant no. 1 from this.

(49) So, it follows that immediately before the incident, deceased was subjected to cruelty and harassment by her husband (appellant no. 1) and mother-in-law (appellant no. 2) in connection with demand for dowry. In these circumstances, the unnatural death of Maninder Kaur deceased, which has been caused by 85% burns, must be called "dowry death" and the appellants shall be deemed to have caused her death. Even if the deceased had herself put her on fire, she was fed up with the maltreatment given to her by the appellants. The unnatural death of Maninder Kaur deceased occurred within seven years of her marriage and it is proved that soon before her death, she was subjected to cruelty and harassment by the appellants. It was for the latter to explain as to how the deceased died an unnatural death.

(50) As per section 113-B of the Indian Evidence Act, 1872, there is presumption as to dowry death. It has been enshrined, therein, that when a question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

(51) The appellants, in this case, have been failed to rebut the presumption of “dowry death” of deceased. That being so, they were rightly held guilty of causing “dowry death” of deceased, by the learned trial Court. There is, thus, no illegality or impropriety in the findings of the learned trial court to this extent and the impugned judgment and order of sentence holding the appellants guilty for commission of offence punishable under Section 304-B IPC must be upheld and affirmed.

(52) Resultantly, the appeal is partly allowed; appellant no.2 is acquitted of the charge framed against her under Section 302 IPC and impugned judgment and order to this extent are set aside. However, the order of conviction qua appellants nos. 1 and 2 is maintained for commission of offence punishable under Section 304-B IPC. So far as, the appellant no.1 is concerned, he has been sentenced to undergo rigorous imprisonment for a period of seven years under Section 304-B IPC. This is the minimum sentence prescribed under this Section and, therefore, no case is made out to interfere in the impugned order of sentence imposed upon the appellant no.1 for commission of offence punishable under Section 304-B IPC.

(53) So far as appellant no.2 is concerned, since she was sentenced to life imprisonment under Section 302 IPC, that has been set aside, no separate sentence under Section 304-B IPC was imposed upon her. Now the sentence has to be imposed upon her for commission of offence under Section 304-B IPC.

(54) Appellant no.2 is not a previous convict. She is an old lady, therefore, imposition of minimum sentence prescribed under Section 304-B IPC shall meet the ends of justice. Accordingly, the appellant no.2 is sentenced to undergo rigorous imprisonment for a period of seven years for commission of offence punishable under Section 304-B IPC. Both the appellants be taken in custody for undergoing remaining portions of their sentences.