REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1279-1281 OF 2011

RAMAKANT MISHRA @ LALU ETC. **APPELLANTS**

VS.

STATE OF U.P. **RESPONDENT**

J U D G M E N T

VIKRAMAJIT SEN, J.

1 These Appeals assail the Judgment dated 13.07.2010 of the learned Single Judge, High Court of Judicature at Allahabad, Lucknow, who had affirmed the conviction of the Appellants and the sentencing under Sections 498A and 304B of the IPC pronounced by the VIIIth Additional District & Sessions Judge, Faizabad on 15.4.1999. The essay, therefore, is to reverse the concurrent findings and sentence of the Courts below.

2 The endeavour of the learned counsel for the Appellants is almost entirely predicated on an exculpatory Dying Declaration allegedly made by the deceased, who was the wife of the 1st Appellant and the sister-in-law of the 2nd Appellant and the 3rd Appellant. The deceased Vijay Lakshmi was married to the 1st Appellant, Ramakant Mishra, in 1989 and from that wedlock a son named Sonu was begotten. Sonu has been living with his maternal grandparents who have cared for all his requirements, without any efforts on the part of the Accused towards taking over his custody or making any contribution for his expenses. The prosecution has shown/proved that due to non-fulfillment of demands of dowry the deceased was harassed, tortured and treated with cruelty. The exact date of the marriage is not forthcoming, but it avowedly took place much before the expiry of seven years of the unnatural death of Vijay Lakshmi. On the morning of 21.9.1994 she has been shown by the prosecution to have been put on fire after sprinkling kerosene oil on her body. The husband/Appellant No.1 and the other Accused appear to have admitted her in a hospital and, thereafter, disappeared from the scene, not even being bothered to be present at her cremation. She succumbed to 90-95 per cent burn injuries at 11.30 p.m. that very day. Jagdamba, Appellant No.2 and brother-in-law of the deceased, has stated that when the deceased was preparing milk on the chulah, Sonu toppled the container of kerosene oil and its contents spilled on the floor; in her endeavour to pick up her son Sonu, her saree allegedly got caught

in the chulah, resulting in the saree catching fire and her receiving 90-95 per cent burns. In the Impugned Order it has been noted that the opinion of the Doctor was that death resulted from burn injuries. The Chargesheet was submitted against four Accused named in the FIR, one of whom (the father-in-law of the deceased) has died.

3 Very recently, this Court had the opportunity of interpreting Section 304B of the IPC in Criminal Appeal No.1592 of 2011, titled **Sher Singh** v. State of Haryana, [reported in (2015) 1 SCR 29] which was authored by one of us (Vikramajit Sen,J.). Succinctly stated, it had been held therein that the use of word 'shown' instead of 'proved' in Section 304B indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, 'shown' will have to be read up to mean 'proved' but only to the extent of preponderance of probability. Thereafter, the word 'deemed' used in that Section is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The 'deemed' culpability of the accused leaving no room for the accused to prove innocence was, accordingly, read down to a strong 'presumption' of his culpability. However, the accused is required to dislodge this presumption by proving his innocence beyond reasonable doubt as distinct from preponderance of possibility.

4 In harmony with the ratio of **Sher Singh,** so far as the present case is concerned, there can be no cavil that the prosecution has 'shown' that Section 304B stands attracted since the death of the wife occurred within seven years of the solemnization of the marriage; indubitably, it was an unnatural death. It has also come in evidence that immediately after her marriage a demand for a scooter was made and this demand recurred with regularity. It is in evidence that about fifteen days prior to the unnatural death of the hapless young wife, her Grandfather PW1 first did not accede to the request of the Accused to send the deceased/victim to her matrimonial house because of their harassment and cruelty towards her for not meeting their demands of dowry. Only when the Accused assured her Grandfather that she would not be ill-treated, that she was sent back to her matrimonial house. The statement of the Mother PW2 is also to the same effect. We are not persuaded, therefore, to hold that there was no live link between the dowry demand and the death or that the Accused have succeeded in proving that the demand, if any, was of a much earlier vintage, on which count no support can be rallied from the judgment in Tarsem Singh v. State of Punjab (2008) 16 SCC 155. Therefore, the requirement of Section 304B of the IPC that the dowry demand should be made soon before the death stands satisfied. Accordingly, it appears to us that the prosecution has succeeded in showing, or proving *prima facie*, that dowry demands had been made by the Accused even shortly before the death of the deceased.

5 The defence has rested very heavily nay, almost entirely, on the alleged Dying Declaration attributed to the deceased. The admissibility of a Dying Declaration as a piece of evidence in a Trial is governed by Section 32(1) of the Evidence Act, 1872. Section 32, as a whole, enunciates the exceptions to the rule of non-admissibility of hearsay evidences, eventuated out of necessity to give relevance to the statements made by a person whose attendance cannot be procured for reasons stipulated in the section. Postulating the essential ingredients to define what exactly would constitute a hearsay is an arduous task, and since we are only concerned with one of its exceptions, we should forbear entering into the entire arena. The risks while admitting a Dying Declaration and the statements falling within the domain of Section 32(1) run higher in contrast to other sundry evidences, and this entails a huge bearing on their admissibility and credibility. Such statements are neither made on oath nor the maker of the statement would be available for cross-examination nor are they made under the influence of the supremacy and the solemnity of the court-room. This is the reason why this Court has consistently underlined the necessity to examine this specie of evidence with great circumspection and care. However, once a Dying Declaration is held to be authentic, inspiring full confidence beyond the pale of doubt, voluntary, consistent and credible, barren of tutoring, significant sanctity is endowed to it; such is the sanctitude that it can even be the exclusive and the solitary basis for conviction

without seeking any corroboration. At this juncture, it is worthwhile noting that the sanctity attached to a Dying Declaration springs up from the rationale that a person genuinely under the sense of imminent death would speak only the truth. In addition to the Dying Declaration, which is only one of the species of the genus of Section 32(1), there could be other statements, written or verbal, which also would be encompassed within the sweep of this section, and at this point the Indian law drifts from the English law. This is further evident from the usage of phraseology in the section, embracing not only statements made about "cause of death" but also about "any of the circumstances of the transaction which resulted in the death", whether or not the person making the statement was under "expectation of death". These statements could be in the form of a suicide note, a letter, a sign or a signal, or a product of any reliable means of communication; their genuineness and credibility shall, of course, be reckoned by the Court entertaining the concerned matter. A Dying Declaration enjoys a higher level of credence vis-à-vis any other statement abovementioned, which is on account of the former being made in the "contemplation of death". "Contemplation of death" is the primal factor to segregate Dying Declarations from other statements. But no hard-and-fast rule can be laid down to confine the contemplation within the circumference of few hours or a few days in which death of the maker of the statement must happen so as to elevate that statement to the level of a Dying Declaration. Moreover, the state of

mind of the maker would also be material in discerning completely as to whether the maker was mentally fit to make the statement and whether the maker actually could have contemplated death.

6 Definition of this legal concept found in Black's Law Dictionary (5th Edition) justifies reproduction: Dying Declarations – Statements made by a person who is lying at the point of death, and is conscious of his approaching death, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the defendant. Shepard v. U.S., Kan., 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196. Generally, the admissibility of such declarations is limited to use in prosecutions for homicide; but is admissible on behalf of accused as well as for prosecution. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death is not excluded by the hearsay rule. Fed.Evid.R. 804(b)(2).

7 When a person makes a statement while being aware of the prospect that his death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he may have made earlier, when death was not lurking around, indicating the cause of his death. That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his door. That is why a Dying Declaration, to conform to this unique specie, should have been made when death was in the contemplation of the person making the statement/declaration.

8 In the case before us, the statement, if made by the deceased, would qualify to be treated as a Dying Declaration because she was admitted in the hospital, having sustained 90-95 per cent burn injuries, and because of this grave burn injuries, she would be expecting to shortly breathe her last.

9 The central question, however, remains as to whether the alleged Dying Declaration attracts authenticity. Since the prosecution has succeeded in showing/proving by preponderance of probability that a dowry death has occurred, the burden of proving innocence has shifted to the accused. It appears to us to be unexceptionable that whenever a person is brought to a hospital in an injured state which indicates foul-play, the hospital authorities are enjoined to treat it as a medico-legal case and inform the police. If the doctor, who has attended the

injured, is of the opinion that death is likely to ensue, it is essential for him to immediately report the case to the police; any delay in doing so will almost never be brooked. The police in turn should be alive to the need to record a declaration/statement of the injured person, by pursuing a procedure which would make the recording of it beyond the pale of doubt. This is why an investigating officer (I.O.) is expected to alert the jurisdictional Magistrate of the occurrence, who in turn should immediately examine the injured. When this procedure is adopted, conditional on the certification of a doctor that the injured is in a fit state to make a statement, a Dying Declaration assumes incontrovertible evidentiary value. We cannot conceive of a more important duty cast on the Magistrate, since the life & death of a human being is of paramount importance. We think that only if it is impossible for the Magistrate to personally perform this duty, should he depute another senior official. Non-adherence to this procedure would needlessly and avoidably cast a shadow on the recording of a Dying Declaration. The prosecution, therefore, would be expected to prove that every step was diligently complied with. The prosecution would have to produce the doctor or the medical authority to establish that on the examination of the injured/deceased, the police had been immediately informed. The I.O. who was so informed would then have to testify that he alerted the Magistrate, on whose non- availability, some responsible person was deputed for the purpose of recording the Dying

Declaration. We are not in any manner of doubt that where medical opinion is to the effect that a person is facing death as a consequence of unnatural events, the responsibility of the Magistrate to record the statement far outweighs any other responsibility. There may be instances where there was no time to follow this procedure, but that does not seem to be what has transpired in the case in hand. In cases where some other person is stated to be recipient of a Dying Declaration, doubts may reasonably arise.

10 Since the burden of proving innocence beyond reasonable doubt shifts to the Accused in the case of a dowry death, as it has in the present case, it was imperative for the defence to prove the sequence of events which lead to the recording of the alleged Dying Declaration by the Tehsildar DW1. This burden has not even been faintly addressed. It appears that at the time of seeking bail the accused had requested the Sessions Court to call for the alleged Dying Declaration. Keeping in perspective that none of the Accused was present when the deceased was receiving medical treatment in the hospital, or when the Dying Declaration was allegedly recorded, or at the time of death, or even at the time of cremation, the manner in which the Accused learnt of the existence of the Dying Declaration has not been disclosed. The statement of the I.O. also does not clarify the position; he has stated that he learnt of the existence of the Dying Declaration from the relatives of the deceased. On the application of **Sher Singh**, the burden and

necessity of proving this sequence of events stood transferred to the shoulders of the Accused since Section 304B of the IPC had been attracted. The I.O. has deposed that all the Accused, including the late father-in-law, Gorakh Nath, had absconded after the incident. In fact, in the cross-examination, the I.O. states that – "there is no reliable information about the Dying Declaration… On keeping this information that the Dying Declaration of Vijay Lakshmi was recorded by the Magistrate I did not consider any need of this thing". Neither the Doctor DW2 who had allegedly certified that the deceased was in a fit condition to make a statement nor the Tehsildar who had allegedly written down the alleged Dying Declaration has stated the manner in which the Tehsildar had been conscripted or located to perform this important recording. The Dying Declaration appears to have mysteriously popped up and referred to at the time of praying for bail. The chain or sequence of events which lead to its recording remains undisclosed. In his statement, the Tehsildar has not clarified the manner in which he happened to record the Dying Declaration and the timing of its transmission to the Court. Since the onus of proof had shifted to the Accused, this alleged sequence of events should have been proved beyond reasonable doubt by them. We may emphasise that the Tehsildar as well as the Doctor who allegedly certified that the deceased was in a fit state to make the Dying Declaration has been produced by the defence. The Doctor should have spoken of the sequence of events in which the Tehsildar

came to record the Dying Declaration. The alleged exculpating Dying Declaration is, therefore, shrouded in suspicion and we have not been persuaded to accept that it is a genuine document. The defence has failed to comply with Section 113B of the Evidence Act. The Accused being charged of the commission of a dowry death ought to have entered the witness box themselves. The Accused were present on the scene at the time of the occurrence, which turned out to be fatal, and that added to their responsibility to give a credible version of their innocence in the dowry death.

11 Paniben v. State of Gujarat (1992) 2 SCC 474, Mafabhai Nagarbhai Raval v. State of Gujarat (1992) 4 SCC 69, Vithal v. State of Maharashtra (2006) 13 SCC 54, Amarsingh Munnasingh Suryawanshi v. State of Maharashtra (2007) 15 SCC 455, Sher Singh v. State of Punjab (2008) 4 SCC 265, Samadhan Dhudaka Koli v. State of Maharashtra (2008) 16 SCC 705 and Surinder Kumar v. State of Punjab (2012) 12 SCC 120, are distinguishable on facts because in the case in hand we are not convinced of the authenticity of the Dying Declaration; in contradiction to its form, or the mental stability or lucidity of the deceased at the time when she allegedly made the statement attributed to her.

12 The Appeals are dismissed in the above terms. The interim Order is recalled.

……J.
(VIKRAMAJIT SEN)

……J.
(R.K. AGRAWAL)

New Delhi;
February 27, 2015.