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2026:AHC:130273-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1401 of 2020

Suhail

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Babu Lal Ram, Jitendra Kumar, Pradeep Kumar, Praveen Kumar, Sanjay Vikram Singh, Santosh Kumar Yadav
Counsel for Respondent(s)	:	G.A., Javed Alam, Krishna Dev Mishra

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Along with :

1. Criminal Appeal No. 1007 of 2020 :
Tufail

Versus

State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

These criminal appeals have been filed by accused-appellants, Suhail and Tufail, against the judgment and order of conviction dated 14.01.2020 passed by learned Additional Sessions Judge/F.T.C.-II, Fatehpur in Session Trial No.119 of

2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act, Police Station Sultanpur Ghosh, District Fatehpur.

2. Brief facts of the case, according to written report, Exhibit Ka-1, which was lodged by Anarunnisha (PW-1), are *inter alia* that "on 16.11.2017 at about 9:00 PM, the in-laws of my daughter, namely her husband Suhail, Imran, Afsar, Tufail, Jeena, Arbeena, and Rabiya, poured kerosene oil on the body of Sanno while she was sleeping and set her on fire. As a result, Sanno sustained severe burn injuries and her skin was badly damaged. She is currently fighting for her life, and there is little hope of her survival. Due to her not having children and the demand for a four-wheeler not being fulfilled, all of them together want to kill Sanno."

3. On the basis of the written report, Exhibit Ka-1, which was filed by informant Anarunnisha (PW-1), a case was registered at Case Crime No. 235 of 2017, under Sections 498A, 307 IPC and Section 3/4 Dowry Prohibition Act at Police Station Sultanpur Ghosh, District Fatehpur against the named accused persons, Suhail, Imran, Afsar, Tufail, Jeena, Arbeena and Rabiya by Head Moharrir Kanhaiya Singh (PW-6).

4. After registration of the F.I.R., Inspector Radheyshyam Dwivedi (PW-8) took the investigation of the case. He inspected the place of occurrence and also recorded the statement of informant Anarunnisha (PW-1). The Investigating Officer prepared the site plan of the place of occurrence on the pointing out of the informant, Anarunnisha (PW-1). He also collected and made a recovery memo of burned clothes and ashes of the hut as Exhibit Ka-6. The victim Sanno was firstly taken to the District Hospital, Fatehpur. Prosecution witness, Dr. Santraj Singh, Naib Tehsildar

(PW-11) on 17.11.2017 on the direction of S.D.M., Sadar, Fatehpur visited District Hospital, Fatehpur and recorded the dying declaration of the victim Sanno. Thereafter victim Sanno was referred to Hallett Hospital, Kanpur for her treatment. At Hallett Hospital, Kanpur, the victim Sanno died on 30.11.2017 at 11:00 PM. After the death of deceased Sanno at Hallett Hospital Kanpur, Section 304B IPC was added and investigation of the case was handed over to Circle Officer, Surendra Kar. After suspension of Surendra Kar, the investigation was handed over to Circle Officer, Shripal Yadav (PW-7). Prosecution witness Arsala Naas, Naib Tehsildar, Sadar, Kanpur (PW-10) conducted the *panchayatnama* proceeding of the dead body of the deceased Sanno and prepared the *panchayatnama*, Exhibit Ka-8.

5. Investigating Officer Shripal Yadav (PW-7) recorded the statement of prosecution witnesses as well as of other formal witnesses under Section 161 Cr.P.C. and after completing all the formalities of the investigation, he submitted charge-sheet only against the accused-appellants, Suhail and Tufail, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act. The Investigating Officer also found the allegations against the other accused persons named in the written report, namely, Imran, Afsar, Jeena, Arbeena and Rabiya to be false, hence they all were exonerated.

6. Prosecution witness Dr. Sarvajeet Singh (PW-9) conducted the postmortem examination of the dead body of the deceased Sanno and prepared the postmortem report, Exhibit Ka-7. According to Dr. Sarvajeet Singh (PW-9), following ante mortem injuries were found on the body of the deceased Sanno :

> *"Superficial to deep thermal burn injuries all over the body except skull, face and both soles. Pus present all*

over the burn area. Pubic hairs burnt and singed. About 95% thermal burn injury seen."

7. According to Dr. Sarvajeet Singh (PW-9), about 95% body of the deceased Sanno was burnt. The deceased died by septicemia due to ante mortem burn injuries.

8. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

9. The charge was framed against the accused-appellants, Suhail and Tufail, under Sections 498A, 304B IPC and Section 3/4 Dowry Prohibition Act. Apart from these charges, learned trial Court also framed alternative charge against the accused-appellants, Suhail and Tufail, under Section 302 read with Section 34 IPC. The accused-appellants denied from the charge and claimed trial.

10. To substantiate the charge against the accused-appellants, prosecution adduced Anarunnisha (PW-1), Babu @ Bablu (PW-2), Suman @ Suggan (PW-3), Pannabano (PW-4), Mohd. Husain (PW-5), Kanhaiya Singh (PW-6), Shripal Yadav (PW-7), Radhey Shyam Dwivedi (PW-8), Dr. Sarvajeet Singh (PW-9), Arsala Naas (PW-10), Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12). Apart from the above ocular evidence, prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-13.

11. In trial Court, the evidence of prosecution witnesses was recorded. After recording the evidence of prosecution witnesses, learned trial Court examined the accused-appellants under Section 313 Cr.P.C. The accused-appellants denied all the allegations and have stated that all allegations are false. The prosecution has given false evidence against them. The accused-

appellants have also stated that the deceased Sanno was cooking food on the date of incident at 09:00 PM. Under hut, a lamp of kerosene oil was lit above the clay stove (*chulha*) at some distance. Due to pressure from some insects, the lamp of kerosene oil fell on the ground and by falling the same, spark spread and fire caught in the hut as well as in the clothes of deceased, Sanno. The accused-appellant, Suhail, has also stated that he tried to extinguish the fire. In this attempt, he also got burnt. He has not demanded any four wheeler vehicle from his wife or from his father-in-law and mother-in-law. He also stated that he has never taunted his wife for not having child. Both the accused-appellants have stated that they are innocent. They have also stated that the deceased has received burn injuries of 95% and she was not in a condition to speak. The victim has not given any statement to Naib Tehsildar and he in collusion with the informant has written false statement. In this way, the accused-appellants denied from all the charges and allegations. They have also stated that they will adduce defence evidence in their support. In their defence, accused-appellants have adduced Kallu as DW-1.

12. After recording the evidence of both sides, the trial Court heard the arguments of the prosecution and defence and found the accused-appellant, Suhail, guilty under Section 302, 498A IPC and accused-appellant, Tufail, was also found guilty under Section 498A IPC. However, the accused-appellant, Suhail, was acquitted under Section 304B IPC and Section 3/4 Dowry Prohibition Act. The accused-appellant, Tufail, was also acquitted under Section 302, 304B IPC and Section 3/4 Dowry Prohibition Act. The trial Court convicted and sentenced the accused-appellant, Suhail, for life imprisonment under Section 302 IPC and a fine of Rs. 10,000/- and in default of payment of fine, he was directed to

undergo six months' additional imprisonment. The accused-appellant, Suhail, was further sentenced under Section 498A IPC to undergo three years' imprisonment and a fine of Rs. 3000/- and in default of payment of fine, he was directed to undergo three months' additional imprisonment. The accused-appellant, Tufail, was convicted and sentenced under Section 498A IPC for two years' imprisonment and a fine of Rs. 2000/- and in default of payment of fine, he was directed to undergo two months' additional imprisonment. All the sentences were directed to run concurrently.

13. Aggrieved by the above judgment and order of conviction and sentence dated 14.01.2020, accused-appellants preferred these criminal appeals.

14. We have heard the arguments of learned counsel for the appellants and learned A.G.A. for the respondent-State. We have also gone through the evidence available on record and the judgment and order of the learned trial Court dated 14.01.2020.

15. Learned counsel for the accused-appellants has argued that at the time of passing of the impugned judgment and order, learned trial Court has not applied its judicial mind. The appellant, Suhail, is husband of the deceased, Sanno, and he has been falsely implicated in the present case without any evidence. The appellant, Tufail, is father-in-law of the deceased Sanno. He was also falsely implicated by the prosecution. Learned trial Court has illegally convicted the accused-appellants without considering real facts and circumstances of the case. It is also submitted by learned counsel for the accused-appellants that the deceased Sanno was cooking food at the time of the incident in her hut. A lamp of kerosene oil was lit above the clay stove (*chulha*) which fell down on the ground. Due to this, spark spread from the clay stove and caught fire in the hut. The fire was also caught the

clothes of the deceased Sanno, who was cooking food at that time. Suhail, who is husband of the deceased Sanno, tried to save her life. In this attempt, he also got burnt and sustained injury. Prosecution witnesses of the facts turned hostile. They have not supported the prosecution story. Due to this, learned trial Court, although acquitted the accused-appellants under Section 304B IPC and Section 3/4 Dowry Prohibition Act, but convicted and sentenced the accused-appellant, Suhail, husband of the deceased Sanno, against the settled principles of law under Section 302 IPC. There is no evidence on the record from which it could be conclusively proved that accused-appellant, Suhail, has committed murder of his wife, deceased Sanno, by pouring kerosene oil upon her and setting her on fire. However, learned trial Court without any evidence available on record or from any prosecution witnesses wrongly held accused-appellant, Suhail, guilty under Section 302 IPC for murder of the deceased Sanno and convicted and sentenced him. The finding and reasoning of the learned trial Court are against the settled principles of law and without any evidence on the record. The accused-appellant, Tufail, who is father-in-law of the deceased is totally innocent and was living separately from his son, Suhail, in a separate hut and earning his livelihood by doing labour work, but the trial Court has wrongly convicted and sentenced Tufail for Section 498A IPC. It is also submitted on behalf of the accused-appellants that so called dying declaration of deceased Sanno is falsely recorded by the prosecution witness Dr. Santraj Singh (PW-11) in collusion with the informant Anarunnisha (PW-1). There are many defects and drawbacks in the dying declaration, Exhibit Ka-13, of the deceased Sanno, which was recorded by Dr. Santraj Singh (PW-11). The trial Court has not considered legal perspective in the light of the settled principles of law in this regard by the Supreme Court and in total disregard of the settled principles of law and

against the evidence, held the accused-appellants guilty for commission of the alleged offence. On the above point of arguments, it is submitted by learned counsel for the accused-appellants that the accused-appellants are innocent and deserve to be acquitted by the Trial Court. Hence the judgment and order dated 14.01.2020 of the Trial Court is not sustainable in the eyes of law and is liable to be set aside and the criminal appeals filed by the accused-appellants deserve to be allowed.

16. Per contra, learned A.G.A. for the respondent-State has submitted that although witnesses of the facts have turned hostile but on the basis of dying declaration, Exhibit Ka-13, and evidence of the prosecution witnesses, Dr. Santraj Singh (PW-11), who recorded the dying declaration of the deceased Sanno, and Dr. Atul Kumar Srivastava (PW-12), who has testified and given certificate that the deceased at that time was in conscious condition and she was able to give her statement. On the basis of the above evidence, trial Court has held the accused-appellants guilty for commission of the crime and sentenced them accordingly. There is no misappreciation and misreading of the evidence by the trial Court. The trial Court has appreciated all the evidence in proper perspective and according to the settled principles of law. There is no perversity or illegality in the judgment and order of trial Court. The finding and reasoning given by trial Court are based on cogent evidence, such as, dying declaration and evidence of prosecution witnesses, Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12). The evidence of the above prosecution witnesses and dying declaration, Exhibit Ka-13, were found fully reliable and creditworthy by the trial Court. Due to this reason, the trial Court delivered the above judgment and order of conviction and sentence. In this way, learned A.G.A. for the respondent-State

has submitted that criminal appeals filed by the accused-appellants have no merit and are liable to be rejected and the judgment and order of conviction and sentence passed by the trial Court dated 14.01.2020 is liable to be affirmed.

17. In the light of above arguments and from perusal of the written report, Exhibit Ka-1, it is revealed that informant Anarunnisha (PW-1) filed written report, Exhibit Ka-1, alleging that "on 16.11.2017 at about 09:00 PM, the in-laws of my daughter, namely, Suhail (husband), Imran, Afsar, Tufail, Jeena, Arbeena, and Rabiya, poured kerosene oil on the body of Sanno while she was sleeping and set her on fire. As a result, Sanno sustained severe burn injuries and her skin was badly damaged. She is currently fighting for her life, and there is little hope of her survival." In the written report, Exhibit Ka-1, the informant, Anarunnisha (PW-1), stated that the cause of the incident was that her daughter was unable to give birth to child. In other words, childlessness and the demand for a four-wheeler vehicle were cited as the reasons and motive for the incident. Thus, it is apparent that aforesaid two causes or motives for the incident are stated in the written report, Exhibit Ka-1.

18. When informant Anarunnisha (PW-1) was examined in the trial Court, she, in her examination-in-chief, fully supported the prosecution story. She stated in her examination-in-chief that "I am illiterate. The incident is about one year old. I had married my daughter with Suhail, who is resident of the same village. Marriage was solemnized in the year 2014 about four years ago. In November last year, at about 9:00 PM, when my daughter was sleeping, her husband and in-laws, namely, Suhail, Imran, Afsar, Tufail, Jeena, Arbeena and Rabiya, set her on fire. After catching fire, my daughter rushed out of the house to save herself. Upon hearing the hue and cry in the village, I also reached at the spot.

My daughter was badly burnt. In-laws of my daughter were demanding a four-wheeler vehicle in dowry. My husband and my elder brother-in-law had taken my daughter to the Government Hospital. From there, she was taken to Sadar Hospital, Fatehpur. Since the condition of my daughter was very serious, doctor referred her to Hallet Hospital, Kanpur. I had also went at Hallet Hospital. My daughter had died later at Hallet Hospital. The statement of my daughter was recorded by magistrate during her treatment at District Hospital, Fatehpur. After setting her on fire, in-laws of my daughter fled away from the house. Due to not fulfilling the demand of a four-wheeler vehicle in dowry, my daughter was burnt by her in-laws." However, in her cross-examination, she resiled from her statement in examination-in-chief and has not supported the prosecution story. In spite of becoming hostile in her cross-examination, written report, Exhibit Ka-1, has found fully corroborated by her statement given in the examination-in-chief. Thus, we find that the written report, Exhibit Ka-1, found corroboration by the evidence of informant (PW-1) as given in her examination-in-chief.

19. Other prosecution witnesses of the facts, Babu @ Bablu (PW-2), Suman @ Suggan (PW-3), Pannabano (PW-4) and Mohd. Hussain (PW-5) have not supported the prosecution story and all turned hostile.

20. Now only dying declaration of the deceased Sanno, Exhibit Ka-13, become relevant in this case. From the perusal of the dying declaration, Exhibit Ka-13, it is revealed that on 17.11.2017 at 12:20 AM, her statement was recorded at District Hospital, Fatehpur. Before recording her dying declaration, Medical Officer, District Hospital, Fatehpur has given a certificate at the first page of the dying declaration, Exhibit Ka-13, that "patient is conscious and able to speak at 12:15 AM on 17.11.2017." After recording

the dying declaration of the victim Sanno on the backside below the ending of dying declaration in middle of the page again a certificate is endorsed by the same Medical Officer, District Hospital, Fatehpur dated 17.11.2017 that "patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM." On backside of the dying declaration, Exhibit Ka-13, thumb impression of the right hand of the victim Sanno was endorsed. Signature of Naib Tehsildar are also endorsed with date "17.11.2017".

21. From the perusal of the dying declaration, Exhibit Ka-13, of the deceased Sanno, it is revealed that incident happened on 16.11.2017 at 08:00 PM and dying declaration of the deceased Sanno was recorded on the same night on 17.11.2017 at 12:20 AM. Thus, there is no delay in recording the dying declaration of the deceased Sanno. In her dying declaration, Exhibit Ka-13, Sanno stated that "she is aged about 22 years and wife of Mohd. Suhail." She also stated that "on 16.11.2017 at about 08:00 PM, her husband suddenly started beating and abusing her and he poured kerosene oil on her body and set her on fire." She has also stated that "I made hue and cry and began to rush here and there. I rushed outside and fell on the road. Then my uncle-in-law, Afsar, reached me and extinguish the fire caught on my body and I become unconscious." According to the dying declaration, she also stated that "my matrimonial home and paternal home are in the same village. I was married before three years of the incident with Mohd. Suhail, who is son of my maternal uncle." According to her statement in dying declaration, she has also stated that "after three years of marriage, I could not conceive and was unable to give birth to the child. Due to this reason, my in-laws were aggrieved and taunting me for not giving birth to the

children." Apart from the above statement, deceased Sanno has also stated in her dying declaration that "her husband had illicit relation with his sister-in-law, Rabiya. This relationship is known to me for the last two years. I had seen them on bed in a compromising situation. Due to this reason, they began to harass me and often committed cruelty." In this way, in her dying declaration, Exhibit Ka-13, deceased Sanno has stated above two causes and reasons, due to which her husband, Suhail, poured kerosene oil on her body and set her on fire.

22. Learned counsel for the accused-appellants has made arguments that prosecution witnesses, including informant Anarunnisha (PW-1), has not made any allegation against the appellants. There is no evidence of any independent witness that the appellant Suhail used to torture his wife Sanno for being issue-less. Hence, in the absence of any evidence to this effect, prosecution story appears to be concocted and is liable to be rejected. It is also submitted that in the present case, in absence of any other evidence, the appellant was convicted by the trial Court only on the basis of dying declaration of the deceased without corroborating the contents of the dying declaration of the deceased. The dying declaration of the deceased is not free from tutoring and prompting since PW-1 was present at the time of recording the dying declaration. It is further submitted that from perusal of the post mortem report of the deceased, it is clear that at the time of making dying declaration, the deceased was burnt upto 95%. The deceased suffered ante mortem superficial to deep burnt injuries all over the body except skull, face and both soles. Brain and its internal matter were congested, lungs were congested, spleen and lever were also congested and both kidneys were also congested. Under such circumstances, it is highly improbable that the deceased has to make her statement

which makes the dying declaration doubtful and the conviction based on it, is unsustainable. He also submitted that PW-1, who is mother of the deceased, has also admitted in her cross-examination that when the dying declaration of the victim Sanno was recorded, she was not fit to make any statement and her condition was very serious. Hence, the dying declaration appears to be doubtful and unreliable.

23. In the light of the above submissions of learned counsel for the accused-appellants, we have perused the evidence of Dr. Santraj Singh, Naib Tehsildar, Sadar, Fatehpur (PW-11), who has recorded dying declaration of the deceased Sanno on 17.11.2017 and evidence of Dr. Atul Kumar Srivastava (PW-12), who has given certificate of fitness and mental condition of the victim Sanno before and after recording of her dying declaration.

24. From the perusal of the evidence of Dr. Santraj Singh, Naib Tehsildar (PW-11), it is revealed that, on the direction of the S.D.M., Fatehpur, he reached the District Hospital, Fatehpur for recording the dying declaration of the victim, Sanno. According to this witness, on 17.11.2017, he went to the emergency ward of Sadar Hospital, Fatehpur, where the doctor, under whose supervision the deceased, Sanno, was undergoing treatment, was present. He requested Dr. Atul Kumar Srivastava (PW-12) for giving certificate about fitness and mental condition of the victim Sanno. Thereafter, Dr. Atul Kumar Srivastava (PW-12) has given certificate that "patient is conscious and able to speak at 12:15 AM on 17.11.2017." Apart from this, Dr. Santraj Singh (PW-11) also himself questioned the victim Sanno to know her condition and according to this witness, Sanno has given correct answer and he found that she is fully competent to give her statement. Thereafter, this witness has recorded the dying declaration of the victim/deceased Sanno with regard to whole incident. According

to this witness, at the time of recording of the dying declaration, no patient except Sanno was present in the ward. According to this witness, after completion of the recording of the dying declaration of the victim Sanno, again Dr. Atul Kumar Srivastava (PW-12) has given certificate about fitness and mental condition of the victim Sanno that "patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM." The victim/deceased Sanno heard the contents of her dying declaration, Exhibit Ka-13, and she verified the same to be true. During the course of cross-examination by defence, this witness has denied all suggestions put to him. There is no question of this nature in the cross-examination of this witness by which we could doubt the veracity and trustworthiness of this witness.

25. In the same way, from the perusal of the evidence of Dr. Atul Kumar Srivastava (PW-12), it is revealed that before recording of dying declaration by Dr. Santraj Singh (PW-11), this witness Dr. Atul Kumar Srivastava (PW-12) has given fitness certificate about the mental condition and competency of the deceased Sanno. Even after recording of the dying declaration of deceased Sanno, this witness has also given certificate at the end of the dying declaration, Exhibit Ka-13, on the backside of the paper that "patient is conscious and able to speak and well oriented and mentally sound during her statement. Patient is mentally sound now at 12:52 AM." Both above prosecution witness Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12) verified this fact and testified after perusing the dying declaration, Exhibit Ka-13, in their handwriting. During cross-examination by defence, Dr. Atul Kumar Srivastava (PW-12) has stated in his cross-examination that there was no one present in the ward at the time of recording of dying declaration of

deceased Sanno. Only he (PW-12) and Dr. Santraj Singh (PW-11) were present. Meaning thereby, no member of the deceased Sanno's paternal family members were present at the time of recording her dying declaration. Thus, from this fact, it is amply clear that there was no possibility or chance for tutoring and prompting to deceased Sanno about the statement. The dying declaration of deceased Sanno was found to be free from tutoring, prompting and false concoction.

26. We have perused the judgment of the Apex Court (Five-Judge Bench) in the case of **Laxman v. State of Maharashtra, (2002) 6 SCC 710**. The facts of the above case law and those of the present case, to some extent, are similar inasmuch as, in the said case, only a certificate was given by the doctor stating that the patient was conscious, and in the present case as well, Dr. Atul Kumar Srivastava has given a certificate that the patient was conscious and able to speak. On this point, the Supreme Court held that there was certificate of the doctor indicating that patient was conscious. The accused-appellants contended that, since the doctor's certification did not state that the patient was in a fit state of mind to make the statement, the dying declaration could not form the sole basis of conviction. The Supreme Court in the light of above arguments held that;

> *"The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must*

further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and it is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration."

27. The Supreme Court overruled the case law of **Paparambaka Rosamma v. State of Andhra Pradesh, (1999) 7 SCC 695** as not a good law and affirmed the law laid down by the Supreme Court in the case of **Koli Chunilal Savji and another V. State of Gujarat,**

(1999) 9 SCC 562. The three Judges Bench of the Supreme Court in the case of **Koli Chunilal Savji (supra)** held in para 7 that;

> *"In Ravi Chander v. State of Punjab, (1998) 9 SCC 303, this Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that the Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise."*

28. The Supreme Court in the case of **Krishna Kumar @ Pamma v. State of Haryana, (1998) 8 SCC 586** has held in para 10 that;

> *"On perusal of the impugned judgment, we find that both the learned courts below went into the question as to whether the deceased met with homicidal death as alleged by the prosecution or a suicidal death as contended by the appellant and on detailed discussion of the evidence found the story made out by the appellant wholly unacceptable. The most important circumstance which persuades us to disbelieve the version of the appellant is the fact that immediately after the incident, he ran away from the spot. If his version was true, it was expected of him to take the deceased immediately to the hospital for the purpose of treatment. Indeed, he did not even get himself examined for his own burns. While on this point it will be pertinent to mention that Dr (Mrs) Sinha opined that the injuries found on the appellant were possible while putting somebody on fire by pouring kerosene as in such a situation, flames emerge abruptly. We do not however for a moment suggest that his such conduct by itself points to his guilt but it certainly belies his version of the incident. It is, of course, true that the sister of the deceased has supported the appellant but we cannot lose sight of the fact that she was*

a witness for the prosecution and was summoned to testify on its behalf. She was however not examined by the prosecution as she was found to have been won over; and then she examined herself as a defence witness. She admitted in her cross-examination that for the purposes of testifying on behalf of the defence, she was not summoned by the Court but was brought by Raj Kumar, the brother of the appellant. Then again we find that she admitted in her deposition that she had been attracted to the spot on hearing the cries of the deceased. Obviously, the cries were raised by the deceased after she was put on fire and, therefore, she could not have been in a position to say how she had been set on fire."

29. Thus, in light of the legal principles laid down by the Supreme Court in the cases of **Laxman (supra)**, **Koli Chunilal Savji (supra)** and **Krishna Kumar @ Pamma (supra)**, it is clear that the requirement of a doctor's endorsement regarding the mental fitness of the deceased to make his/her declaration is not a rule of law or a mandatory provision, but merely a rule of prudence; the ultimate test is whether the dying declaration is truthful, voluntary, and free from any tutoring, prompting, or other suspicious circumstances.

30. From the appreciation and perusal of the evidence of Dr. Santraj Singh (PW-11) and Dr. Atul Kumar Srivastava (PW-12), we find that the dying declaration, Exhibit Ka-13, of deceased Sanno is free from any tutoring and prompting. It is found to be truthful and voluntary, which inspire confidence as being trustworthy and creditworthy and is wholly reliable.

31. Thus, in the light of the above legal principles as laid down by the Supreme Court in the cases of **Laxman (supra), Koli Chunilal Savji (supra)** and **Krishna Kumar @ Pamma (supra)** and in the light of the evidence of Dr. Santraj Singh (PW-11) and also Dr. Atul Kumar Srivastava (PW-12), we find no force in any

arguments of learned counsel for the accused-appellants in this respect.

32. We have also perused the case law as referred and relied on by learned counsel for the accused-appellants, such as, **Khushal Rao v. State of Bombay, 1957 LawSuit (SC) 93; Rasheed Beg v. State of M.P., 1973 LawSuit (SC) 355; K. Ramachandra Reddy v. Public Prosecutor, 1976 LawSuit (SC) 214; Darshan Singh v. State of Punjab, 1983 LawSuit (SC) 104; Paniben v. State of Gujarat, 1992 LawSuit (SC) 228; Jugal v. State of U.P., 2023 LawSuit (All) 1227; Phulel Singh v. State of Haryana, 2023 LawSuit (SC) 951**; and **Sunil Kumar, Bal Krishna and another v. State, 2024 LawSuit (All) 2327**, and find that the facts and circumstances of the aforesaid cases as relied upon and referred to by the accused-appellants are different from the facts and circumstances of the present case at hand. Apart from the above, we also find that in the light of the legal principles as laid down by the Supreme Court in the case of **Laxman (supra), Koli Chunilal Savji (supra)** and **Krishna Kumar @ Pamma (supra)**, the accused-appellants are not found entitled for any benefit on the ground of case laws as referred above by them.

33. From the perusal of the evidence, documentary and oral, it is revealed that after happening of the incident, accused-appellants Suhail fled away from the place of occurrence. The house of parents of the deceased Sanno was in the same village. On hearing the hue and cry of the people, they reached at the spot and got admitted her daughter Sanno at Sadar Hospital, Fatehpur. Although all witnesses of facts, such as, mother and other prosecution witnesses turned hostile and have not supported the prosecution story but it is clear that the accused-appellant, Suhail, after the incident disappeared from the place of occurrence. If the accused-appellant Suhail was innocent, he

would have been duty-bound to take his burnt wife Sanno to the hospital for treatment and also to inform the police by giving information at the concerned police station having jurisdiction about the incident. It is the defence of the accused-appellants that a kerosene oil lamp was lit above the clay stove where the deceased Sanno was cooking food and it accidentally fell on the ground, and due to the spark, fire caught the clothes of the deceased. In these circumstances, why did the accused-appellant Suhail, who is the husband of the deceased Sanno, flee from the place of the incident and not cared to admit her to the hospital for treatment? Why accused-appellant, Suhail, husband of the deceased Sanno, has not given information of so-called accidental occurrence at the police station? Thus, from the conduct of the accused-appellant, Suhail, it is amply clear that it is not an accidental death but a homicidal death. Thus, the defence of the accused-appellant, Suhail, is belied by his own conduct. Meaning thereby, incident dated 16.11.2017 is not an accidental incident but it is a homicidal one because after pouring kerosene oil upon his wife Sanno, accused-appellant, Suhail, fled away from the place of occurrence. He even not cared to take the victim to the hospital for her treatment and also he had not given any information at the concerned police station having jurisdiction in this respect. Thus, the conduct of the accused-appellant, Suhail, also corroborates the prosecution case of homicidal death and the statement of the deceased Sanno in her dying declaration, Exhibit Ka-13.

34. As far as the argument of learned counsel for the accused-appellants in respect of lodging the first information report after four day delay is concerned, we also find no force in this argument because the incident happened on 16.11.2017. The victim Sanno was admitted by her parents to District Hospital,

Fatehpur on the same night on 16.11.2017 and her dying declaration was recorded on the same night at 12:20 on 17.11.2017. Since the condition of the victim was serious, she was referred to Hallett Hospital, Kanpur for her treatment where she died on 30.11.2017. It is revealed from the record of the case that after the incident, the accused-appellant, Suhail, whose wife deceased Sanno was burnt seriously has fled away from the place of occurrence with his family members. The paternal family members of the deceased Sanno were busy in her treatment to save her life. For this reason, the written report, Exhibit Ka-1, could be lodged by Anarunnisha (PW-1) only on 20.11.2017. Since the parents, brother, and sister of the deceased Sanno were busy in her treatment and in efforts to save her life, therefore, there was a delay of four days in lodging the written report, Exhibit Ka-1, at the concerned police station. Thus, we find that there is no delay in lodging the written report, Exhibit Ka-1, at the concerned police station, therefore, we find no force in the argument of learned counsel for the accused-appellants in this respect.

35. As far as arguments of learned counsel for the accused-appellants that no witnesses of fact has supported the prosecution story and in this light, the prosecution story become suspicious is concerned, we are of the opinion that all witnesses of facts have been won over by the defence. Due to this reason, witnesses of facts have not supported the prosecution story. However, only on that ground, accused-appellant, Suhail, is not found entitled to gain any benefit because in the dying declaration, Exhibit Ka-13, it was found fully trustworthy and free from tutoring and prompting. The deceased herself narrated the incident in a very simple words. Learned trial Court based its finding and reasoning on the dying declaration, Exhibit Ka-13, and

found the accused-appellant, Suhail, guilty for the commission of the murder of his wife, deceased Sanno, by pouring kerosene oil on her body and set her on fire. Thus, even after all prosecution witnesses of facts turned hostile, there is ample evidence, which is based on dying declaration, Exhibit Ka-13, of deceased Sanno against the accused-appellant, Suhail. Thus, we also do not find any force in the arguments of learned counsel for the accused-appellants in this respect.

36. As far as the arguments of learned counsel for the accused-appellants which are based on the postmortem report, Exhibit Ka-7, and the testimony of Dr. Sarvajeet Singh (PW-9), who prepared Exhibit Ka-7, are concerned, it is clear from the postmortem report, Exhibit Ka-7, and the statement of Dr. Sarvajeet Singh (PW-9) that the features of the dead body regarding the external and internal organs, as recorded in the postmortem report, were noted after the death of the deceased Sanno. Meaning thereby, on 17.11.2017 at 12:20 AM, she was fully conscious and able to give her statement. This shows that on 17.11.2017, there was no failure of internal and external organs of the deceased Sanno, when her dying declaration was being recorded by Dr. Santraj Singh, Naib Tehsildar (PW-11) in presence of Dr. Atul Kumar Srivastava (PW-12). In view of the above, we find no force in the argument of learned counsel for the accused-appellants in this respect also.

37. Thus, from the above discussions and perusal of the dying declaration, Exhibit Ka-13, of the deceased, which is corroborated by Dr. Santraj Singh, Naib Tehsildar (PW-11) and Dr. Atul Kumar Srivastava (PW-12), it is clearly revealed that when Sanno was sleeping, accused-appellant, Suhail, with intention to kill her, poured kerosene oil upon her and set her on fire and thereby killed his wife only for the reasons that she was not conceiving

and giving birth to child and she had seen her husband, Suhail, with her sister-in-law (Jethani), Rabiya, in a compromising situation.

38. We have also gone through the finding and reasoning given by learned trial Court and found that the finding and reasoning given by learned trial Court in respect of the role and direct involvement of accused-appellant, Suhail, are based on cogent and reliable evidence as stated by deceased Sanno in her dying declaration, Exhibit Ka-13. However, we find that after registering the case under Sections 498A, 307 IPC and Section 3/4 Dowry Prohibition Act, the then Investigating Officer Inspector Radheshyam Dwivedi investigated the case and at that time, the victim Sanno was alive. The then Investigating Officer Inspector Radheshyam Dwivedi (PW-8) stated in his cross-examination that "I have shown both houses of accused persons in the site plan in which one house is of accused Tufail and second house is of Suhail and were shown by me in the site plan."

39. From the perusal of the site plan, Exhibit Ka-5, we find that the house of Tufail is shown on the right side, in the eastern direction of the road, and the house/hut of accused Suhail, where the incident took place, is shown at the corner in the western - southern direction of the site plan, in the jungle and bushes. The accused-appellant, Suhail, was living with his wife, the deceased Sanno, separately from his father, accused Tufail, and other family members, in a separate hut. This fact indicates that all other family members of the accused-appellant, Suhail, were living with accused-appellant, Tufail, in a separate house. Thus, this fact also found corroboration from the dying declaration of the deceased that accused-appellant, Tufail, has no role in torturing or committing cruelty to deceased Sanno. It was the act

of only Suhail, who tortured, harassed and killed his wife Sanno by pouring kerosene oil and setting her on fire.

40. In view of the above fact and situation, we find that implication and involvement of the accused-appellant, Tufail, was found to be doubtful. Due to this reason, the finding and reasoning in this respect of learned trial Court by which accused Tufail was held guilty under Section 498A IPC and his conviction for two years' imprisonment with a fine of Rs. 2000/- is not found sustainable in the eyes of law. Thus, we find that conviction and sentence of accused Tufail under Section 498A IPC is not sustainable and is liable to be set aside, but the judgment and order of conviction of the accused Suhail is found to be based on cogent finding and reasoning. Hence, we are only inclined to sustain the conviction and sentence of accused Suhail under Sections 302, 498A IPC.

41. In view of the above, Criminal Appeal No. 1007 of 2020 is **allowed**. We set aside the impugned judgment and order dated 14.01.2020 of conviction and sentence passed against the accused-appellant, **Tufail**, by learned Trial Court in Session Trial No.119 of 2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Section 498A IPC, Police Station Sultanpur Ghosh, District Fatehpur. The appellant, Tufail, is acquitted of the charge under Section 498A IPC. He is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged.

42. Criminal Appeal No. 1401 of 2020 filed by accused Suhail is **dismissed**. The impugned judgment dated 14.01.2020 passed by learned Additional Sessions Judge/F.T.C.-II, Fatehpur in Session Trial No.119 of 2018 (State Vs. Suhail and another) arising out of Case Crime No. 235 of 2017, under Sections 498A, 302 IPC, Police Station Sultanpur Ghosh, District Fatehpur is affirmed. The

appellant, Suhail, is in jail. He shall remain in jail to serve out the sentence awarded to him by the learned Trial Court.

43. Let a copy of this judgment be transmitted to the learned trial Court along with the trial Court records forthwith for necessary compliance.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 01, 2026
SHUBHAM

Digitally signed by :-
SHUBHAM KUMAR AGRAHARI
High Court of Judicature at Allahabad