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

Reserved on: 29.09.2026
Pronounced on: 04.11.2026
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\# **CNR No. DLHC010097412004**

\+ **CRL.A. 500/2004**

SHAKILA .....Appellant

Through: Ms. Geeta Oberoi, (DHCLSC) along with Mr. Aadil Aziz and Mr. Priyanshu Jaiswal, Advocates

versus

STATE .....Respondent

Through: Mr. Aman Usman, APP for the State and Mr. Manvendra Yadav along with SI Amit Saw PS Tilak Marg

\# **CNR No. DLHC010095762004**

\+ **CRL.A. 351/2004**

HASHMAT .....Appellant

Through: Ms. Geeta Oberoi, (DHCLSC) along with Mr. Aadil Aziz and Mr. Priyanshu Jaiswal, Advocates

versus

STATE .....Respondent

Through: Mr. Aman Usman, APP for the State and Mr. Manvendra

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Yadav along with SI Amit Saw
PS Tilak Marg

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

J U D G M E N T

ARUN BHARDWAJ, J.

Introductory facts:

1. Criminal Appeal No. 500/2004, is filed by appellant Shakila assailing the judgment of conviction dated 06.04.2004 and order on sentence dated 08.04.2004 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as '*Trial Court*') arising out of FIR No. 548/2000 registered at Police Station Tilak Marg under Sections 307/498A/34 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*'), whereby she was convicted under Section 498A and Section 302 of the IPC for committing the murder of her daughter-in-law, Shahzadi (deceased). For the offence under Section 302 of the IPC, *vide* order dated 08.04.2004, she has been sentenced to undergo life imprisonment and a fine of Rs. 5000/- and in default to undergo simple imprisonment for two months. She has been directed to undergo rigorous imprisonment for two years and a fine of Rs. 5000/-, in default simple imprisonment for two months, for the offence under Section 498A of the IPC. The substantial sentences have been directed to run concurrently but sentences in default, one after the other.

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Signing Date:04.11.2026 17:55

2. Criminal Appeal 351/2004 has been filed by the appellant Hashmat, who, *vide* the same judgment of conviction and order of sentence, was convicted for the offence under Section 498A of the IPC and has been directed to undergo rigorous imprisonment for two years and a fine of Rs. 5000/-, in default simple imprisonment for two months.

3. Both appeals are being disposed of by this common judgment.

4. Before we proceed, we must note that Abdul Razzaq, the brother of Shakila, was also convicted under Section 109 read with Section 302 of the IPC. However, he died during the pendency of his appeal, therefore, the appeal *qua* him has abated, as recorded in the order dated 16.12.2025. Rukhsana, the sister-in-law of the deceased, was tried as a juvenile.

5. The details of the family members of the deceased Shahzadi and their status in the case is as under:

Sr. No.	Name and relationship	Status in the case
1.	Nathu Hassan- father of the deceased	PW4-did not support the case of the prosecution including on dowry demand by the accused persons and deposed about defence of alibi of Shakila (his real sister and mother-in-law of his daughter Shahzadi) stating that she was selling vegetables when he received information that his daughter had got burnt and he along with Shakila came to the jhuggi.
2.	Bilkish- mother of the deceased	PW6-did not support the case of the prosecution including on dowry demand by the accused persons.
3.	Gulsher- brother of	PW5-did not support the case of the prosecution including on dowry demand by the accused

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Signing Date:04.11.2026 17:55

	the deceased	persons.
4.	Hashmat-husband of the deceased	Convicted under Section 498A of the IPC and has filed Crl. A. No. 351/2004.
5.	Abdul Razzaq-brother of Shakila.	Convicted under Section 109 read with 302 of the IPC. He *died* during pendency of the appeal. Therefore, his appeal has abated.
6.	Shakila-mother-in-law of deceased	Convicted under Sections 302 and 498A of the IPC and has filed Crl. A. No. 500/2004.

6. Arguments have been addressed by Ms. Geeta Oberoi, learned counsel for the appellants. She has also filed detailed written submissions from page A-Z, comprising 26 pages. On behalf of the State, appeals are opposed by Mr. Aman Usman, learned APP who has also filed written arguments.

7. This Court has carefully perused the records and considered the arguments addressed.

Gist of Trial

8. Deceased Shahzadi was the wife of Hashmat. There are two versions of the duration of her marriage. One, as per her statement recorded by PW-14, SDM T.S. Mutti, she was married for the last six years. However, as per PW-4, Nathu Hassan, her father, she was married for 7-8 years before her death. She has two children from the said wedlock, one child was 3 to 4 months old infant boy and the other one about 2 to 3-year old girl.

9. We must herein itself highlight that Shakila, mother of Hashmat (husband of the deceased Shahzadi) is the real sister of Nathu Hassan

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Signing Date:04.11.2026 17:55

(PW-4), father of the deceased, Shahzadi. They were residents of *jhuggis* at Devi Nagar, Nangla Machi, Pragati Maidan, Ring Road, New Delhi. The site plan Ex. PW7/3 shows that these *jhuggis* are connected /adjacent to each-other, being slums, a congested area.

10. The case of prosecution is that on 02.11.2000 at about 7:30/7:45 PM, deceased was resting in her house. Appellant Shakila, her mother in law, came and poured kerosene oil on her in the presence of Rukhsana sister-in-law of the deceased. Shakila then demanded a match box from Rukhsana and set the deceased on fire.

11. ASI DD Meena (PW-7) on 02.11.2000 on receipt of information by DD No. 23A about admission of Shahzadi in JPN Hospital, had gone to that hospital accompanied with constable Raj Kumar (PW-16). The MLC (Ex. PW-1/1), which was endorsed by Dr. Pankaj Kumar Singh declaring the patient fit for statement, recorded "*alleged history of burn to all over the body by her mother-in-law, sister in law and husband as told by patient herself*". This witness recorded the statement of the deceased (Ex. PW-7/1). PW-7 has stated as under:

> *"… in her statement, Shahzadi told me that on 1/11/2000 at about 10 a.m. when she lifted tawa to keep it on the burner, surma kept on the tawa fell down and for this reason, her mother-in-law Shakila abused her, gave beating to her and then tutored her husband. She also told me that on 2/11/2000, her mother-in-law abused her throughout the day and threatened not to keep her. She also told me that her husband had also abused throughout the day and has said that he would not keep her and would kill her, as her father had not given motorcycle. She further told me on that day, at about 7.30-7.45 p.m. when she*

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

> *was lying in her house, her mother-in-law came in the house poured can of kerosene oil kept in the oil (sic) on her and her sister-in-law Rukhsana was also present there. She told me that she was set ablaze by her mother-in-law with the matchstick brought by her sister-in-law and when she cried, other persons from jhuggis extinguished the fire and she was brought to the hospital by her mother. She told me that her husband had also reached jhuggi and her mother-in-law and sister-in-law had knowingly poured kerosene and set her ablaze…"*

12. PW-7 read over the statement to the deceased Shahzadi and took her right thumb impression on the same. The statement was recorded in the presence of the doctor, who also endorsed on the statement that the same was recorded in his presence at 09:10 p.m. on 02.11.2000. Thereafter, PW-7 endorsed it and sent the Rukka through Constable Raj Kumar, PW-16 for registration of the FIR. He then went to the spot and prepared the site plan Ex.PW-7/3 and found one plastic can containing some kerosene oil, one stove, one burnt chunni smelling of kerosene, four burnt pieces of cloth and one matchbox containing about 15-20 wet matchsticks smelling of kerosene oil in the *jhuggi*, which were seized *vide* memo, Ex. PW-7/4 and sealed with the seal of RKT. He gave information to the SDM through the SHO and from the spot he again went to the hospital. SDM, Mr. TS Mutti (PW-14), Connaught Place, had reached the hospital and recorded the statement of the injured in his presence.

13. During his cross-examination, PW-7 stated that he had not told the SDM that he had also recorded the statement of the victim. He also stated that "I had recorded the statements of Bilkish, Nathu Hassan,

Signature Not Verified
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Signing Date:04.11.2026 17:55

Gulsher and may be one more person whose name I do not remember. It is correct that these persons had told me that Shahzadi was *alone in the house when she got burnt…*" When he was put questions by the Court, he stated that Shakila and her daughter whose name probably is Rukhsana were present in the house, and they had burnt the deceased. He stated that he had misunderstood the question put to him. He also stated that no one has told him in statement under section 161 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*Cr.P.C.*') that Shahzadi was alone in the house when she got burnt.

14. PW-16 Constable Raj Kumar had accompanied ASI DD Meena to the hospital. He has stated that ASI DD Meena had recorded the statement of the victim after obtaining permission from the doctor on duty. The ASI had made endorsement thereon and sent him to the Police Station for getting the case registered.

15. PW-14, Mr TS Mutti, SDM stated in his statement that:

> *"On 2/11/2000, I was posted as SDM Connaught Place New Delhi. On that day, on receipt of telephonic message from Additional SHO CP at about 10 p.m., at my residence about burning of a woman admitted in LNJP hospital in Ward No. 20, Bed No.2, I visited LNJP hospital and recorded statement of Smt. Sahibzadi (sic) W/o Hashmat R/o-Devi Nagar, Jhuggi Basti, Nangla Machi. I have seen the statement, Ex.PW14/1. It is in my handwriting and bears my signatures. I read over the statement to the deponent who found it to be correct. I thereupon, obtained her RTI and LTI on each page of the statement running into four pages. The statement was recorded between 10:45 p.m to 12:45 a.m after the deponent was declared fit to give her statement by Dr. Pankaj Kumar Singh. The statement was recorded in question-answer form. After recording the statement, I sent it to*

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Signing Date:04.11.2026 17:55

SHO, Tilak Marg, for taking appropriate action, vide my UO dated 3/11/2000, which is Exhibit PW 14/2. The deponent told me that on 1/11/2000 when she got up in the morning, she lifted tawa meant for making roti. Surma grounded by her mother-in-law which was lying on tawa fell down in darkness. Thereupon, her mother-in-law and husband got angry and the husband started abusing and beating her. He also told her that he would not keep her in the house as she had dropped surma on the ground. The deponent further told me that there was a quarrel 1-2 days ago and thereupon her husband had rebuked her. She further told me that on 1-11-2000 at about 1 p.m. her mother-in-law Shakila complained to her brother Mohd. Razzaq that she had deliberately dropped surma thereafter he (Mohd. Razzaq) came to their place and started abusing and started pelting stones and saying that she be killed. The deponent further told me that at about 6 p.m. her husband went to his vegetable shop and thereafter her mother-in-law Shakila and her sister-in-law Rukhsana were present in the house. Her mother-in-law poured kerosene oil on her and asked Rukhsana for match box. Rukhsana brought match box and gave it to her mother-in-law. Her mother-in-law set her jumper ablaze from burning match stick and after setting her ablaze both of them ran out. She raised alarm but no one heard her as TV was on. When her clothes had burnt, one boy of the locality informed her mother Bilkis that her daughter had set herself ablaze. Her mother who is residing in the same jhuggi locality came running. By that time her clothes had got burnt. Her mother brought her to hospital with the help of a Bihari and admitted her there. This statement was made by the deponent when I asked her about the cause of burn injuries. She also told me that her husband Hashmat and she had two children and was married for six years. When I asked for further details, she told me that after marriage, she was residing with her mother

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

for three years because her husband was not coming to take her and was not meeting her expenses. She further told me that her husband was asked to keep her with him and thereupon he kept her with him, but periodically she used to live with her mother as her husband was not meeting her expenses. She told me that a few days ago when she wanted to eat kheer her husband got annoyed, saying that she wanted aeroplane, but he did not have money and would kill her. She also told me that her husband was not giving food to her children and they used to go to her mother to ask for food. She further told me that her husband was not providing her medicines and that before coming to Nangla Machi for the last 2 ½ -3 months she was residing in village Bagar, PS Siroli, Distt.- Bareilly. She further told me that earlier also, there used to be small quarrel, but later on things used to settle down and that this incident had taken place only on account of surma whereupon her husband, mother-in-law, brother of mother-in-law and sister-in-law had got annoyed and her husband and mother-in-law said that they would not spare her and would kill her and that at about 6 p.m. she was burnt by her mother-in-law. When I asked her whether there was any demand for dowry, she told me that at about 3-4 months ago, she was asked to bring motorcycle, but she said that her parents were poor and could not have given motorcycle. Thereupon, her husband said that he would not keep her. She further told me that her mother-in-law was the sister of her father and her husband was the nephew of her father. On 15/11/2000, I prepared the death report Ex. PW 11/4 and also recorded the statement of Nathu Hassan and Prabhu Dayal Ex.PW11/5 and 6 respectively. I also submitted the application, Ex.PW11/2 on that day for post mortem on the dead body of the deceased."

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

16. During cross-examination, he deposed that the patient was crying/asking for water from time to time even during the course of recording her statement. He stated that it took him two hours to record her statement as she was making statement slowly.

Proceedings before the learned ASJ

17. Appellant Hashmat was arrested on 21.11.2000, whereas appellant Shakila and the sister-in-law of the deceased Rukhsana were declared Proclaimed Offenders and were arrested on 15.10.2001. The learned Trial Court framed charges under Sections 498A and 302 of the IPC against Shakila and charge under Section 498A of the IPC against Hashmat.

18. The prosecution in support of its case examined 17 witnesses, including the clerk of the LNJP hospital, father, brother and mother of deceased, doctors, SDM and IO.

19. As noted earlier, the mother, father and brother of the deceased have not supported the prosecution case and have affirmed that there was no demand for dowry.

20. Appellant Hashmat has denied all the incriminating evidence put against him under Section 313 of the Cr.P.C. He has stated that he was not present in his *jhuggi* when this incident took place. He and his mother were selling vegetables when this incident took place. He heard someone saying that daughter of Mullaji Masalewale had burnt herself. When he reached the spot, he could not see his wife due to the crowd. She was taken to hospital by someone. He went to the hospital and kept sitting outside the ward. He stated that he is innocent.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

21. Shakila in her statement under Section 313 of the Cr.P.C. also claimed innocence.

22. The appellants have examined five witnesses in their defence.

23. DW-1 is Mohd. Jaffar. He is a resident of the same slum/*jhuggis* where the victim lived. On hearing about fire incident in the *jhuggi* of Shahzadi, he had come out of his *jhuggi* and stated that he had seen that Shahzadi was alone in her *jhuggi* and was in flames. He called the mother, mother-in-law, husband and father of Shahzadi. The deceased was then taken to hospital in a three-wheeler. According to him, the victim was unconscious at that time. The stove was burning when he had gone inside the *jhuggi*.

24. During cross examination, he stated that he had switched off the stove after taking Shahzadi out of *jhuggi*. He stated that he did not go to the police station to tell the police that Shahzadi had sustained injuries by burns from stove and that the accused were innocent.

25. DW-2 is Prabhu Dayal, who has stated that the mother, mother-in-law, husband and father of the deceased were at their shops when they rushed, raising alarm that *jhuggi* of Hashmat had caught fire. He stated that he found the stove burning in the *jhuggi* up to the height of one and a half feet.

26. DW-3 Sharvan from LNJP hospital had brought the case sheet of the victim.

27. DW-4 Dr Arun Goel, Senior Plastic Surgeon stated that he was on duty in the hospital from 08:00 PM of 02.11.2000 to 09:00 AM of 03.11.2000, he proved his signatures on the case sheet.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

28. DW-5 is Dr. Pankaj Kumar Singh, who deposed that the patient was fit for recording statement, when she was brought in the hospital.

Findings of the learned ASJ:

29. The learned ASJ dealt with few anomalies pointed out by the learned defence counsel and observed that it is beyond imagination that SDM would act at the instance and dictate of a sub-inspector. It was observed that neither SI Meena nor the SDM had any ill will against the accused persons. The objection that the thumb impressions on the dying declarations were false as these could not have been taken as the victim had burn injuries over the entire body, was dealt with by observing that the burn area was 72 to 80% which means there must be several parts of the body which remained unburnt.

30. It was argued that when kerosene oil was poured over Shahzadi and her mother-in-law asked her sister-in-law Rukhsana to bring a matchstick, the deceased should have got alerted and could have easily prevented the alleged incident, in case there had been any truth in the prosecution allegation. However, the learned ASJ was of the opinion that at times, one does not take things as these appear looking to them as a fake threatening-mode or just a dramatic gesture to scare someone not really meaning to translate them into reality. The injured/deceased appears to have failed in judging the inner intent of her mother-in-law and sister-in-law and seems to have taken that act and words as only warning that she could also be burnt in case she did not obey to their dictates. Not expecting the unfortunate, the deceased appear to have

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

taken this warning a bit not seriously and had to pay for it very heavily. The learned ASJ observed that the sister-in-law Rukhsana might already be having a matchbox with her and she gave it to her mother Shakila soon after it was demanded by her after kerosene oil had been poured on the injured/deceased and injured/deceased really got no opportunity in between to run away from their evil design.

31. The argument of the defence that victim of burn injuries is given sedatives and is not in a position to give detailed statement, was repelled by learned ASJ by referring to the evidence of DW-5, Dr. Pankaj Kumar Singh, who has certified twice, first when statement was recorded by IO of the case and second time when the statement was recorded by the SDM, that the patient was fit for recording the statement.

32. The learned ASJ relied on the fact that the victim was taken to the hospital by her mother and another boy of the colony, but not by her husband, mother-in-law and sister-in-law, to come to a conclusion that they must be on their toes to stay away from getting into the hands of the police.

33. The learned ASJ relied on the fact that Shakila and Rukhsana had to be declared proclaimed offenders and could not be arrested till 15.10.2001 as an important circumstance which makes it clear as to why these accused failed to take the injured/deceased to the hospital, despite the self-admission on behalf of Shakila that she must have learnt about this incident within no time, if really she had been present at that time at the vegetable shop with her son Hashmat and was not instrumental in the cruel act.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

34. So far as resiling of the family members of the deceased is concerned, the learned ASJ recorded that there can be several reasons for the same.

35. Relying upon the two dying declarations, the learned ASJ has convicted Shakila, the mother-in-law for the offence under Sections 302 and 498A of the IPC and convicted Hashmat for the offence under Section 498A of the IPC.

Consideration and findings of this Court on the submissions made:

36. Before this court, it is argued that Shahzadi met with an accident due to *stove bursting*. This argument has been taken for the first time during final arguments in this appeal. This was not their defence during trial or in the grounds of appeal.

37. When the IO visited the spot, he had seen one plastic can containing some kerosene oil, one stove, one burnt chunni smelling of kerosene, four burnt pieces of clothes and a matchbox with 15-20 wet matchsticks smelling of kerosene oil.

38. There is no evidence that the stove was found disfigured/damaged with tank burst. If the deceased had suffered extensive burns because of her clothes catching fire accidentally, she would have run for her life, either in the open outside her *jhuggi* or rolled on the floor or wrapped something around her to extinguish the fire.

39. The record does not indicate that any such attempt was made by the deceased. The presence of extensive burns with more than 72% to 80% burn injuries all over the body ruled out the theory of accidental

Signature Not Verified
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Signing Date:04.11.2026 17:55

fire. Burn injuries on the entire body, as is evident from Ex. PW-11/4 i.e., death report, is incompatible with bursting of stove.

40. The photographs Ex. PW-12/1 to 5 show that the stove is without any damage.

41. The circumstances proved by the prosecution establish beyond the pale of doubt that the deceased had died a homicidal death and not an accidental death.

42. It is submitted on behalf of the learned counsel for the appellants that PW-7 DD Meena, IO of the case, registered FIR on the night of 02.11.2000 itself, without any complaint from the father, mother, or brother of the victim, Shahzadi.

43. This court finds no anomaly in the same, because the FIR was recorded after recording the statement of the victim by the IO after the doctor had declared the patient fit for recording her statement and the IO had also taken signatures of the doctor on the statement. In case, the registration of FIR was postponed to 03.11.2000, the appellants would have argued that there is a delay in registration of FIR to manipulate the case. According to the appellants, registration of FIR before recording of statement by the SDM was a hasty step, however, in the facts and circumstances of the case, no fault can be found with the IO in directing registration of FIR on 02.11.2000 after recording her statement, when the doctor had certified her fit for recording the statement.

44. The learned counsel for the appellant has highlighted that the IO did not tell the SDM that he had already recorded the statement of the victim and directed registration of FIR. This fact is evident from the

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

statement of PW-14 SDM Mr. TS Mutti, who has stated that after recording the statement of the victim, he sent it to the SHO Tilak Marg for taking appropriate action vide UO dated 03.11.2000, which is Ex. PW-14/2.

45. However, a reading of the statement recorded by the IO of the case and the statement recorded by the SDM shows that the victim has been consistent in both the statements, as such, the appellants have not suffered any prejudice by non-disclosure of recording of statement of the victim by IO to the SDM.

46. The appellants have taken an objection that instead of examining Dr. Manab Barota, the prosecution has examined. PW-1, a clerk in the hospital to prove the MLC.

47. In this regard, it is to be noted that nothing turns out on the MLC. What is important is the endorsement made thereon by Dr. Pankaj Kumar Singh, twice, that the patient was fit for recording statement. The prejudice, if any, suffered by the defence by non-examining the Dr. Pankaj Kumar Singh as Prosecution Witness was mitigated when the defence called the said doctor as Defence Witness, i.e., DW-5.

48. The appellants have argued that the mother, father and brother of Shahzadi did not make any complaint to the police but still they were roped in as PW-4, PW-5, and PW-6.

49. In the opinion of this court, after recording the dying declaration of the victim, no complaint was required from family members of the victim for registration of the FIR.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

50. The learned counsel for the appellants has argued that no witness has spoken about presence of two children at the place of incident. One child was 3 to 4-month-old infant boy and the other one 2 to 3 years old girl.

51. After making this argument, the learned counsel has not argued how absence of these children in the statements of PWs is helpful for proving the innocence of the appellants.

52. It is argued that witnesses from the neighbourhood were not called as a witness in this case. It is settled law that it is the discretion of the prosecution to decide which witness it wants to examine to prove its case. As per Section 231 of the Cr.P.C., the Sessions Judge is obliged "to take all such evidence as may be produced in support of the prosecution". It is clear from the said section that the Public Prosecutor is expected to produce evidence "in support of the prosecution" and not in derogation of the prosecution case. Reliance is placed on ***Banti @ Guddu v. State of Madhya Pradesh***, AIR 2004 SC 261. In ***Darya Singh and Other v. State of Punjab,*** AIR 1965 SC 328, the Supreme Court observed that in murder cases, it is primarily for the prosecutor to decide which witness he should examine in order to unfold the prosecution story. If the accused is of the opinion that the evidence of any witness would help the defence, then it is always open to the accused to examine him as a defence witness. Reliance is further placed on ***Harpal Singh v. Devinder Singh and Another***, AIR 1997 SC 2914, wherein the Supreme Court noted that the witnesses are not required to be examined in derogation of the case of the prosecution.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

53. In the present case, the parties are closely knit. The father of Shahzadi (deceased) is the real brother of Shakila. They were living in slums comprising of *jhuggis* opposite of/adjacent to each other. Considering the dying declaration of the victim, it was the prerogative of the Investigating Officer to choose its witnesses. Moreover, no prejudice is suffered by non-examination of any witness as a prosecution witness, because the defence has examined them, as defence witnesses.

54. It is also to be noted that prosecution has examined Dr. Arun Goel, Senior Plastic Surgeon of LNJP Hospital, as PW-9. He had identified the endorsements made by Dr. Pankaj Kumar Singh, declaring the patient fit for recording statement. Since the said doctor had left the hospital, the prosecution safely examined Dr. Arun Goel.

55. Even otherwise, instead of the prosecution, the defence produced the said witness, that is Dr. Pankaj Kumar Singh, and it has made the case of the prosecution only stronger and no prejudice was caused to the defence.

56. The learned counsel for the appellants has argued that out of the 17 prosecution witnesses, 10 are police officials. This may be so, however, it in no way goes against the case of the prosecution.

57. In cases where the victim dies after recording her last statement, the most important witness is the dying declaration of the victim himself/herself and the Court is duty bound to examine whether said statement is reliable or not.

58. Moreover, the investigating agency had to examine family members of the victim, but they did not support the prosecution case,

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

perhaps for the reason that they are close relatives of the accused. As mentioned earlier, appellant Shakila is the real sister of PW-4 Nathu Hassan, father of victim. The police witnesses who were examined were not unnecessary or irrelevant to the case.

59. The learned counsel for the appellants has argued that the role of PW-7, the initial IO ASI DD Meena, is suspicious because he did not inform the Court as to who made the call to the police station about the incident, which is necessary to establish the chain of events. This Court has seen the statement of PW-7 as well as PW-16 who had gone to the hospital on receipt of information received of admission of Shahzadi in burnt conditions. Whereas, in the examination in chief, they have not stated as to who gave the information to them about admission of Shahzadi in the hospital, nor prosecution has examined any such witness, but when the witnesses were in the witness box, they were not asked this question. Moreover, it is not the case of the appellants that Shahzadi had not got admitted in the LNJP Hospital at 09:00 PM on 02.11.2000 in burnt condition by her mother. Therefore, the police at the hospital would have definitely informed the concerned police station about her admission with burn history. Nothing turns out on non-examination of the witness who gave this information to the concerned police station.

60. The learned counsel for the appellants has argued that PW-7 recorded the statement of the victim in the absence of her relations who were present in the hospital. The said course adopted by the IO is rather a safer course, otherwise, the appellants would have taken the objection that the victim was tutored by her family members.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

61. The learned counsel for the appellants has argued that PW-7 could not tell the name of the doctor in whose presence statement of the victim was recorded by him on 02.11.2000. The inability to remember the name of such a doctor after lapse of time, can give no benefit to the accused because the endorsement is signed by the doctor himself, who was examined as DW-5 by the appellants themselves.

62. The learned counsel for the appellants has pointed out that the victim had told PW-7 that other persons from *jhuggis* had extinguished the fire. It is argued that the IO should have sought corroboration from them. It is to be noted that the IO had recorded the statement of the father, mother, and brother of the victim for the purposes of corroboration, but unfortunately, they did not support the case of the prosecution and turned hostile. In this situation, the test before this Court is to examine whether the statement of the deceased recorded by IO, as well as the SDM is reliable or not. Moreover, the appellants have examined the neighbours as defence witnesses and have suffered no prejudice by their non-citing as PWs.

63. It is submitted that the appellants hardly had any proper legal representation before the learned Trial Court to point out the defects in the investigation and help the Court in proper appreciation of evidence, and therefore the loopholes remain there as if they are open pot holes under the service roads for which no one bothered. In this respect, it is noted that every accused has the liberty, subject to eligibility, to engage counsel at the cost of the State. If the accused have chosen to be defended by the counsel of their choice, the Trial cannot be questioned. Moreover, no such loophole has been pointed

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

out, which may show that the accused were denied proper opportunity for defence.

64. The learned counsel for the appellants has argued that the IO had deposed that he was told by mother, father and brother of the deceased that Shahzadi was alone in the house when she got burnt. The objection is that a Court question was put to him and only then the IO stated that Shakila and her daughter Rukhsana were present in the house and they had burnt the deceased. In this regard, it is to be noted that the Court is not to be a mute spectator during the Trial and has to be attentive and take keen interest while recording of evidence. Since the IO had spoken contrary to the case of the prosecution, the learned ASJ rightly put the necessary Court questions to him.

65. Even if the Court had not asked that question, the learned prosecutor, with the leave of the Court, would have sought course correction. It is a settled law that there is also no limitation on the prosecutor to question his own witnesses, with the leave of the court, in re-examination. In ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat***, 1964 SCC OnLine SC 20, the Supreme Court held that the power under Section 154 of the Indian Evidence Act, 1872, is not confined to any particular stage of the examination of a witness. The relevant portion is produced hereinafter:

> *"8. ...Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the*

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

> *stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief."*

66. In the case of ***Vinod Kumar versus State of Punjab***, 2015 (3) SCC 220, in examination-in-chief, the witness had supported the prosecution story in entirety and in the cross-examination, he took the path of prevarication. In this context, reference was made to some passages from ***Rammi @ Rameshwar V. State of Madhya Pradesh***, (1999) 8 SCC 649, where the Supreme Court, while dealing with the purpose of re-examination, after referring to Section 138 of the Indian Evidence Act, 1872 held thus:

> *"There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination, he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when the ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness, he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his*

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

questions to ambiguities alone which arose in cross-examination.

Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions".

67. After quoting the above para, the Supreme Court held:

> *"We have reproduced the aforesaid paragraphs to highlight that when the prosecution has such a right in the process of re-examination, as a natural corollary, the testimony of a hostile witness cannot be brushed aside. On the contrary, both the prosecution and the defence can rely for their stand and stance. Emphasis on re-examination by the prosecution is not limited to any answer given in the cross-examination, but the Public Prosecutor has the freedom and right to put such questions as it deems necessary to elucidate certain answers from the witness. It is not confined to clarification of ambiguities, which have been brought down in the cross-examination.*

68. Therefore, nothing turns on the Court question put to the witness by the learned ASJ.

69. It is argued on behalf of the appellant that the victim was in severe pain when she was examined by PW-14 (SDM) and was continuously asking for water. It is argued that if such was the condition of the victim at 10:45 PM, one can well imagine the intensity of pain at 09:00 PM when PW-7 (IO) had recorded her statement. It is correct that the victim was asking for water. It is

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

additionally noted here that SDM took two hours to record the statement of the victim. Therefore, it is necessary for the Court to be satisfied that the witness was in a position to give her statement.

70. In this regard, the prosecution should be beholden to the defence for making all the efforts to summon and examine Dr. Pankaj Kumar Singh as DW-5. The witness in his cross examination stated that "*It is wrong to suggest that I have wrongly written patient fit for statement and actually was not fit for statement and I made endorsement at the behest of police inspector, and I was not present when the statement was recorded*." In this situation, the Court can satisfactorily believe the statement of the treating doctor that the victim was in a position to give her statement.

71. An effort is made by learned counsel for the appellant to question Left Thumb Impression and Right Thumb Impression of the victim on the dying declarations of the victim, considering her burn conditions. However, questions about the capacity of the victim to affix thumb impressions were never put to Dr. Pankaj Singh DW-5 when he was in the witness box.

72. Further, there is no statutory performa provided for recording the statement of a victim. Thumb impressions on the statement are taken by way of caution, but are not necessary and even oral dying declaration, if it inspires confidence, can be relied upon. Therefore, nothing turns out on burnt condition of victim *vis-a-vis* thumb impression on the dying declaration.

73. The learned counsel for the appellant has further argued that it cannot be ruled out that PW-7 and PW-14 cooked up false prosecution

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

case for the purposes of extortion. Some contradictions are shown about bandage or otherwise of the victim, but in the opinion of the Court that makes no difference and such contradictions are not so major to shake the substratum of the case of prosecution.

74. The learned counsel for the appellant has argued that DW-5 has not been effectively questioned by any of the side. If it is so, it is the appellants who are responsible for the same if they did not examine their own witness at length in spite of examining him as DW-5.

75. Some arguments have been made regarding role of Mohd. Razzaq, which is futile considering that he has already passed away during pendency of the appeal and his appeal has abated.

76. As regards to the submission that the impugned judgement does not discuss statements of DW-1 or DW-2, while deciding these appeals, this Court has carefully perused the statements of DW-1 and DW-2.

77. According to DW-1, the victim was taken to the hospital by her husband, her mother-in-law, her mother and her father. However, the same is not corroborated by the MLC, according to which, the mother of the victim, Bilkis, had got the victim admitted in the hospital.

78. It is already recorded in earlier paragraphs that Shakila and Rukhsana were declared proclaimed offenders as they had fled away from the scene of the incident, which rules out their taking the victim to the hospital for her treatment. For this reason, this Court disbelieves and discredits the testimony of DW-1.

79. Similarly, the statement of DW-2 is unbelievable because he has stated that Shakila also went to the *jhuggi*. It is a fact that Shakila

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

had fled away from the scene for several months and was declared a proclaimed offender which contradicts with the statement of the DW-2.

80. Therefore, the evidence of DW-1 and DW-2, is of no avail to the appellants.

81. The learned counsel for the appellant has argued that in 6 to 8 years of marriage, no complaints were filed for dowry harassment with the police or with the family members.

82. In the statement of PW-7, it is recorded that on 02.11.2000, Shahzadi was abused by her husband who said that he would not keep her and would kill her as her father had not given motorcycle. In the statement recorded by PW-14 SDM, Mr. TS Mutti, the victim had stated that after marriage, she resided with her mother for three years because the husband was not coming to take her and was not meeting her expenses. She stated that a few days back, she had expressed a desire to eat *kheer* which annoyed her husband who stated that she wanted aeroplane but he does not have money and would kill her. She also stated that her husband was not giving food to her children and they used to go to her mother to ask for food. She stated that her husband was not providing for her medicines. She stated that earlier also, there used to be small quarrel, but later on, things used to settle down and this incident had taken place only on account of *surma*, whereupon her husband, mother-in-law, brother of mother in law and sister-in-law had got annoyed and her husband and mother-in-law said they would not spare her and would kill her and that at about 06:00 PM she was murdered by her mother-in-law.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

83. It is only when the SDM asked the victim whether there was any demand for dowry, she told him that about 3-4 months ago, she was asked to bring motorcycle, but she said that her parents were poor and could not have given motorcycle. Thereupon, her husband said he would not keep her.

84. As noted above, the father, mother and brother of the victim have not supported allegations of dowry in their statements made in the Court. So, this Court has to examine the statements of the victim recorded by the IO and the SDM to find out whether allegations of cruelty are made out against the appellants or not.

85. From the statement of PW-14, the SDM, it appears that 3-4 months before the incident, Shahzadi was asked by her husband to bring motorcycle. From the statement of PW-14, the SDM, it also appears that after marriage, the victim resided with her mother for three years because her husband was not coming to take her and was not meeting her expenses. A few days back, the victim had expressed her desire to eat *kheer* which annoyed her husband who stated that she wanted aeroplane but he does not have money and would kill her. The victim has stated that her husband was not giving food to her children and they used to go to her mother to ask for food. She stated that her husband was not providing for her medicines. What is most important is that she has stated that "*earlier also, there used to be small quarrel, but later on, things used to settle down*".

86. This statement of the victim clears up all the allegations about demand of motorcycle in the past, not meeting the expenses of the medicines or for the care and welfare of children. She has truthfully

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

stated that earlier also, there used to be small quarrel, but later on, things used to settle down. According to the victim, this incident had taken place only on account of *surma* falling down from the *tawa*.

87. In the opinion of the Court, the SDM should not have asked the victim whether there was any demand for dowry. When such a leading and suggesting question is asked to a victim in a government hospital struggling between life and death, in acute pain, for survival, there is a possibility to embellish and support the question by answering that, yes, there was demand for motorcycle, that to a solitary instance. Had the victim made the statement without a specific question put to her by the SDM, this Court would have considered the same whether the same amounted to cruelty/demand for dowry or not. But it is not safe to rely upon such a statement, considering the manner in which it is elicited from the victim. It is reiterated that when there used to be small quarrels in the family which used to settle down after some time, it cannot be said that the wife was subjected to cruelty. The victim has been more than honest to say that this incident occurred because of *surma* falling down from the *tawa*.

88. Therefore, in the opinion of this Court, the offence of cruelty under Section 498A is not made out against either Shakila (mother-in-law) or against Hashmat (husband).

89. The appellants have argued that, if indeed the police had any evidence of any crime being committed in this incident, they would not have waited for 19 days to arrest the husband in this case. According to appellants, the police were waiting for departure of Shahzadi before they could make appellants as the scapegoats. Till

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

Shahzadi was alive, they could not have turned this unfortunate accident into dowry death as had she been alive, after her discharge, their false allegations would not have stood the test of legality. But after her death, the police empowered itself to construct a narrative of dowry death and implicate the appellants herein. According to the appellants, the motorcycle narrative is being weaved through the statements of the deceased.

90. This argument need not detain this Court for two reasons. One, the victim herself has stated that some quarrels used to take place, but used to get settled after some time. Meaning thereby, she did not persist with the allegation of demand of motorcycle. She stated that this incident occurred due to *surma*. The second reason is that this Court has accepted that the demand of motorcycle was not the cause of death but the trigger according to the victim herself was that her mother-in-law felt highly offended by the falling of the *surma* from the *tawa* by the victim which was prepared by the mother-in-law.

91. The appellants have argued that they were present in the hospital, but their presence was not highlighted to mislead the Court. The argument has no basis because the MLC records that the victim was brought by Bilkis, her mother to the hospital. The MLC nowhere records the presence of Shakila or Hashmat, the mother-in-law and husband of the victim, respectively. Moreover, as noted earlier, Shakila and her daughter Rukhsana had fled away from the place of incidence and remained proclaimed offenders for several months, which belies their tall claim that they had gone to the hospital along with the victim at the time of admission.

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

92. The reliance by the appellants on the judgement of the Supreme Court in the case of ***State of Rajasthan v. Ganwara,*** (2019) 13 SCC 687, is inapplicable to the facts of the case in hand in as much as in this case, though, there are two dying declarations of the victim, but they are consistent. Both were recorded after the treating doctor certified that the victim was fit for recording her statement. On both the statements, the endorsements are attested by the treating doctor.

93. Reliance by the appellants on the judgement of the Supreme Court in the case of ***State of Punjab v. Jagir Singh,*** (1974) 3 SCC 277, is also not applicable to the case in hand. The present case is not a fairytale, but the victim in her two statements has given the details of the incident relating to her death. Her fairness in speaking about small quarrels at home, which resolved later on, explaining that this incident is the result of *surma*, have strengthened the belief of this Court that her statements that kerosene oil was poured over her by her mother-in-law and she was set on fire by the matchbox given by her sister-in-law is reliable and truthful narration of events leading to her death.

94. The reliance of the appellants on the decision of the Supreme Court in the case of ***Kali Ram v. State of HP***, (1973) 2 SCC 808, is also of no help to them, as in this case, two views are not possible. The view propounded by the appellants that the victim suffered burn injuries by bursting of the stove has been disbelieved by this Court.

95. The abscondence of the appellant Shakila after the incident has strengthened the belief of this Court. Although, as observed by the Supreme Court in ***Sk. Yusuf v. State of West Bengal***, (2011) 11 SCC 754, and further reiterated in ***Shyamal Ghosh***

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

v. State of West Bengal, (2012) 7 SCC 646, that the absconding by itself is not consistent with the hypothesis of guilt of the accused only because it is not unknown that even innocent persons may run away for fear of being falsely involved in criminal case. However, given the facts and circumstances of the present case, the manner in which the Shakila absconded, gives rise to a hypothesis of guilt and points a definite finger towards them.

96. The appellants have argued by self-contradiction that since none of them had taken her to the hospital, it shows that the appellants were nowhere near the place of incident. In earlier paragraphs, they have argued that the mother-in-law and husband of the deceased had rushed from their shop to the house and husband had gone to the hospital. They have argued that their presence in the hospital was deliberately not highlighted by the prosecution witnesses. Now, they are arguing that since they were not in the hospital with the victim, it shows they were nowhere near the place of incident. These are contradictory arguments and neither of them is made out in the facts and circumstances of the case.

97. It is argued on behalf of appellants that the mother of the victim (Bilkis) told the police that the deceased was alone at the time of incident. However, this Court could not find any such averment in the statement of Bilkis.

98. The entire evidence of PW-6 Bilkis is as under:

> *"Deceased Shahzadi was my daughter. She was very happy in the family of her in laws. She was never subjected to any harassment or cruelty by her in laws. She never complained to me against her in laws. At this stage, Ld. Addl.P.P. wants to examine this witness as he*

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

is resiling from his earlier statement. Heard. Allowed.
Xxxx by Addl.P.P.for the State
It is wrong to suggest that accused Hashmat used to beat my daughter and used to demand a motorcycle. It is wrong to suggest that my daughter had complained to me a number of times against her husband and mother-in-law. It is wrong to suggest that accused Shakila also used to abuse her and beat my daughter in connection with demand of motorcycle. It is wrong to suggest that when we went to jhuggi of my daughter on 2/11/2000 on receipt of information regarding her having sustained burn injuries, we found accused Shakila and his daughter Rukhsana running out of jhuggi and we extinguished the fire with the help of my husband. 1 did not meet my daughter in hospital. I had no talk with her. It is wrong to suggest that 1 had met my daughter Shahzadi in JPN hospital and she had told me that on that day when she was lying in jhuggi, her mother-in-law and sister-in-law came there. Accused Shakila poured kerosene oil on her whereas accused Rukhsana, sister-in-law, set her ablaze and thereafter both of them ran out. It is wrong to suggest that we have compromised with the accused and that is why I am deposing falsely in order to save the accused from punishment.
Xxxx by S. A.Siddiqui, counsel for all the accused.
Nil.
Opportunity given.

Addl. Sessions Judge/New Delhi,"

99. It is argued on behalf of appellants that the mother of the deceased never implicated any of her in-laws responsible for this incident. It is already noted in earlier paragraphs above that Shakila is the real sister of the father of the victim, Shahzadi. As noted by the

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

learned ASJ in the impugned judgement, there can be various reasons for even a close relative, turning hostile.

100. In earlier paragraphs, this Court has concurred with the arguments of the appellants regarding cruelty under Section 498A of the IPC. The victim herself made allegations of harassment/cruelty, but was truthful enough to say that such quarrels over small issues had been occurring in the past and things were settling but this incident was triggered by falling of *surma* by the mistake of the victim which was prepared by Shakila. In human relationships, even trivial issue can lead to serious consequences. This case is an example of the same. Shakila was enraged due to carelessness of her daughter-in-law, Shahzadi to the extent that the provocation led to her killing.

101. The learned counsel for the appellants has relied on ***Kundla Bala Subrahmanyan v. State of Andhra Pradesh***, (1993) 2 SCC 684, where it is held by the Supreme Court that where there are more than one dying declarations, the Court has to scrutinise all of them to find out if they are passing the test of trustworthiness. The Court also has to see whether they are consistent with each other in material particulars before accepting and relying upon the same. The judgement relied upon by learned counsel for the appellants speak about cardinal principle, while dealing with the dying declarations.

102. The Supreme Court in the case of ***Kalawati v. State of Maharashtra*** (2009) 4 SCC 37, has held as under:

> *"14. "12. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also*

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaraton cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)

(iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(ix) Normally, 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 eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

> *(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)*
>
> *(xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .)"*

103. In ***Ramilaben Hasmukhbhai Khristi v. State of Gujarat,*** **(**2002) 7 SCC 56, the Supreme Court further elucidated the principles governing the acceptance of a dying declaration, observing as follows:

> *"28. Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration."*

104. In the earlier paragraphs of this judgement, this Court has found that a doctor in the hospital had certified on both the occasions

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

before recording the statement that the victim was fit for recording her statement. On both the occasions, the doctor has also signed the dying declaration, which lends credence to the dying declarations. The second dying declaration is recorded by the concerned SDM, who is a senior functionary of the state and there is nothing to suggest that he recorded the statement unfairly. Both the statements are consistent with each other in material particulars. Therefore, this Court has no hesitation in accepting and relying upon the same.

Conclusion:

105. Shahzadi was married to Hashmat for the last six years before the incident. She had two children, aged two years and another one a few months old. Her mother-in-law is the real sister of her father. There are some instances of cruelty/demand for motorcycle, but the victim herself stated that *earlier also, there used to be small quarrel, but later on things used to settle down and that this incident had taken place only on account of surma* whereupon her husband, mother-in-law, brother of mother-in-law and sister-in-law had got annoyed and her husband and mother-in-law said that they would not spare her and would kill her.

106. Small quarrels are general wear and tear in matrimonial life. If later on things used to settle down, it cannot be said that the offence of cruelty was committed.

107. In ***Manju Ram Kalita v. State of Assam***, (2009) 13 SCC 330, the Supreme Court held that petty quarrels cannot by themselves, be

Signature Not Verified
Signed By:ASHOK KUMAR RAY
Signing Date:04.11.2026 17:55

termed as cruelty so as to attract the provisions of Section 498A of the IPC, and made following observations:

> *"21. "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."*

108. Therefore, it cannot be considered that the offence of cruelty punishable under Section 498A of the IPC was committed by Shakila or Hashmat. Accordingly, both Shakila and Hashmat are acquitted of the offence punishable under Section 498A of the IPC.

109. So far as the offence under Section 302 of the IPC against the Shakila (mother-in-law) is concerned, twice the victim Shahzadi has accused Shakila, her mother-in-law and Rukhsana, her sister-in-law (her prosecution is not a subject matter of the present appeals as she was being tried as a juvenile). The first occasion is when the doctor found her fit for recording statement at 09:00 PM on the same day and her statement was recorded by the IO DD Meena in which she stated that she was set ablaze by her mother-in-law with the matchstick brought by her sister-in-law as they were annoyed as due to carelessness of the victim, Shahzadi, the *surma* made by Shakila,

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mother-in-law of the victim had fallen down on the ground from tawa. This statement also bears endorsement by the doctor who had declared her fit for recording statement. The second statement of the victim comes when, after being declared fit for recording her statement, her statement was recorded by PW-14 SDM Mr. TS Mutti where again, she reiterated similar allegations against Shakila, her mother-in-law and Rukhsana, her sister-in-law. The doctor who had given fitness for recording the statement of the victim has also signed the said statement. The statements inspire confidence. Nothing has been shown to the Court to doubt the truthfulness of the same.

110. Responses of different persons to provocations are different. Even a trivial provocation may trigger violent response resulting in serious consequences as has happened in this case. Mere carelessness at the end of victim, as a result of which the *surma* prepared by grounding the same by Shakila had fallen down on the ground from *tawa* which triggered violent response resulting in the death of Shahzadi.

111. The conviction of Shakila under Section 498A of the IPC is set aside. However, her conviction for the offence under Section 302 of the IPC is upheld. She is directed to surrender before the prison authorities within two weeks to undergo remaining sentence. Otherwise, steps be taken by the police to arrest her so that she undergoes remaining sentence.

112. As far as Hashmat is concerned, his conviction under Section 498A of the IPC is set aside. Bail bonds furnished by him shall stand discharged after a period of eight weeks from today.

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113. Therefore, the appeal of Hashmat is allowed and the appeal of Shakila stands partly allowed in the above terms.

114. A copy of this Judgment be communicated to the learned Trial Court and concerned Jail Superintendent for information and compliance.

ARUN BHARDWAJ, J

NAVIN CHAWLA, J

NOVEMBER 04, 2026/akr/ad

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