

(1977) 01 MP CK 0027

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 632 of 1975

Hari Chunnilal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-01-1977

Acts Referred:

Evidence Act, 1872 — Section 32(1)

Penal Code, 1860 (IPC) — Section 300, 302, 34

Citation : (1978) ILR (MP) 873

Hon'ble Judges : N.C. Dwivedi, J;C.P. Sen, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; M.V. Tamaskar for State, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.—The appellant has been convicted u/s 302 of the Indian Penal Code and sentenced to imprisonment for life for having caused death of deceased Kanchhedilal by pouring kerosene oil and setting fire to his body.

2. The prosecution case is that on 8.11-1974 at about 10 A. M. in village Rehda when deceased Kanchhedilal had returned back to his house for his meals after grazing his cattle in the forest, Ghanshyam, son of the appellant, abused him whereupon Kanchhedilal had slapped him and Ghanshyam had gone away weeping to his house, which is just opposite to the house of the deceased. Thereafter the appellant, his wife Mst. Vipatabai and his mother Mst. Phuliyabai came there and the appellant assaulted Kanchhedilal with shoes and Phuliyabai and Vipatabai caught the deceased, the appellant poured kerosene oil on the deceased and set fire to his body. Hearing his cries, his brother Mishrilal (P.W. 1), his cousin Lakhan (P.W. 2) and his mother Dhapubai (P.W. 5) rushed there. Mishrilal and Lakhan extinguished the fire by pouring water on the deceased and it is said that some ink was applied on the burnt portion by Mishrilal on the request of the deceased. Sometime thereafter Mangalsingh (P.W. 4) father of the

deceased, and Kunjilal (P.W. 3) came there. In the presence of these witnesses, the deceased disclosed that the appellant had poured kerosene oil over his body and had set fire. The deceased was then taken in a bullock cart to police station Siwni-Malwa and he lodged First Information Report Ex. P. 15 at 6.10 P.M., the police station was at a distance of 10 miles from the place of incident. At 6. 45 P.M. the deceased was examined by Dr. Abdelibea (P.W. 11). As he found that the general condition of the patient was weak, he was very restless due to burning pain, his pulse was not perceptible, he informed the police to record his dying declaration The dying declaration Ex P. 9 was then recorded by Naib-Tahsildar S.N. Sharma (P.W. 12) at 8.30 P.M. Dr. Abdelibea certified that the patient was fully conscious while his statement was recorded. The deceased was then shifted to the District Hospital Hoshangabad on 9- 11-1974 at about 10.45 A.M. and he was admitted as indoor patient by Dr. Raha (P.W. 9). The deceased expired on 3-12-1974. Post-mortem examination was done by Dr. Vishwarup (P.W. 18) and he certified that the burns were sufficient in the ordinary course of nature to cause death. The appellant, his wife and mother were prosecuted for the offence of murder with the aid of section 34, Indian Penal Code. The accused persons abjured their guilt and contended that they have been falsely implicated. According to them, the deceased Kanchhedilal was a boy of unsound mind and be used to lodge false reports in the police station.

3. In order to prove its story, the prosecution relied on (i) evidence of eye witnesses, (ii) dying declaration made to the eye witnesses, (iii) dying declaration recorded in the F. I. R. Ex. P-15 and (iv) dying declaration recorded by the Naib-Tahsildar (Ex. P. 9), coupled with the medical evidence. The learned Additional Sessions Judge found contradictions and inconsistencies in the oral evidence of the eye witnesses and the same was rejected. However, relying on the dying declarations Ex. P-9 & P. 15 and the oral dying declaration made to Kunjilal (P.W. 3), he found the appellant responsible for pouring kerosene oil and burning the deceased. He also found that death was caused due to extensive burns though the immediate cause of death was pulmonary embolism resulting in cardiac failure which was initiated by the burn injuries. Accordingly, the Additional Sessions Judge convicted and sentenced the appellant for the offence of murder but acquitted his wife and mother as the case against them has not been found proved.

4. The findings of the Additional Sessions Judge are assailed by the appellant and submitted that no conviction can be based on the dying declarations because (i) the three dying declarations are discrepant in material particulars (ii) it has been found that the deceased was tutored before the F.I. R Ex. P. 15 was lodged and (iii) in the absence of corroboration it is not safe to convict the appellant. It is also submitted that the medical evidence does not show that the death was caused as a result of the burns. Lastly it is submitted that the deceased was insane and not much credence could be given to his dying declarations. The State on the other hand supported the conviction and sentence passed against the appellant and further submitted that the Additional Sessions Judge was in

error in rejecting the oral evidence of the eye witnesses on flimsy and untenable grounds.

5. Section 32(1) of the Evidence Act is as under:-

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in case in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

The Supreme Court in *Khushal Rao Vs. The State of Bombay*, . has held that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. A dying declaration which has been recorded by a competent Magistrate in the proper manner and in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and character. In order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination, But once the Court has come to the conclusion that the (dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. The question of corroboration can only arise when the Court has come to the conclusion that a particular dying declaration was not free from infirmities. Reiterating the principle laid down therein, the Supreme Court in *Lallubhai v. State of Gujarat* A I R 1972 S C 1766., while dealing with a case of burning has held:-

A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind, on the one hand, that the statement is by a person who has not been examined in Court on oath and, on the other hand, that the dying man is normally not likely to implicate innocent persons falsely.

The Supreme Court in another case of *Godhu and Another Vs. State of Rajasthan*, ., While dealing with a dying declaration part of which was found to be false, has held:-

It is not correct to hold that if a part of the dying declaration has not been proved to be correct, it must necessarily result in the rejection of the whole of

the dying declaration. In cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part that it is not possible to sever the, two parts, the Court would be justified in rejecting the whole of the dying declaration. There may, however be other cases where the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the Court would not normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy, the Court can act upon that part of the dying (declaration despite the fact that another part of the dying declaration has not been proved to be correct.

6. In the present case, the dying declaration Ex. P 9 was recorded by Naib Tahsildar S N. Sharma (P. W. 12). According to Sharma, he recorded the dying declaration between 8-30 to 8-40 P.M. on 8-11-1974. It was recorded in the words of the deceased and it was read over to him and then he admitted the contents, his thumb impression was taken on the statement. At that time, the deceased was fully conscious and was in a position to give a statement. His evidence has been corroborated by Dr. Abdelibea (P.W. 11) at whose instance the dying declaration was recorded. He had certified on the dying declaration Ex. P-9 that the deceased was fully conscious and was able to give his dying declaration. According to Dr. Abdelibea, the dying declaration was recorded in his presence and the deceased was fully conscious and was in a position to make a statement. Therefore, there can be no doubt that the dying declaration was recorded by the Naib Tahsildar in the words of the deceased and in the presence of the Doctor who had certified that the same was recorded while the deceased was fully conscious and was in a position to make the statement. The learned Additional Sessions Judge therefore committed no error in relying on this dying declaration. There is nothing to show that there were any other persons present at that time or that the deceased was prompted by anyone. The core of the dying declaration is that the appellant had first assaulted the deceased, then poured kerosene oil and set fire to his body and on hearing his cries, his brother Mishrilal and mother came there and Mishrilal extinguished fire by pouring water. The F.I.R. was also lodged by the deceased and it can also be and treated as a dying declaration Munnu Raja and Another Vs. The State of Madhya Pradesh, . In this report also the deceased has clearly stated that the appellant had poured kerosene oil over him and set fire to his body. There is no contradiction in material particulars with the dying declaration given before the Naib Tahsildar. Similarly (P.W. 3) stated that when he reached the spot on hearing about the incident, the deceased disclosed that the appellant had poured kerosene oil over him and set fire to him. Under the circumstances, there are no inconsistencies or discrepancies between the dying declarations. The deceased has been consistent all through that it was the appellant and appellant alone who had poured kerosene Oil and set fire to his

body. The conviction of the appellant has therefore been rightly based on these dying declarations and it is now settled law that conviction can be based on dying declaration which is found to be voluntary and truthful and no corroboration is necessary, as per Bakhshish Singh Vs. The State of Punjab, .; otherwise also, the dying declaration Ex. P-9 has been corroborated in material particulars by the F.I.R. Ex. P-15 and the oral dying declaration made to Kunjilal (P.W. 3).

7. It is true that the learned Additional Sessions Judge has held that the deceased was tutored while he was being carried from the village to the police station by his parents who were with him in the bullock cart because in the F.I.R. he has also implicated the wife and mother of the appellant. But this inference does not seem to be correct because in the dying declaration Ex. P-9 recorded by Naib Tahasildhar, he also mentioned that the appellant's wife first instigated the appellant to pour kerosene oil and burn him. Besides, if we consider the oral evidence of Mishrilal, who is an eye witness, it is evident that these two women were also present and helped the appellant in setting fire to the deceased. However, since these 2 women have been acquitted and there being no appeal, It is not necessary to dilate on this question. The discrepancies and variances pointed out by the appellant between Exs. P-9 and P-15 are with regard to the time of the incident, the case of the incident, about, persons involved, about deceased being first assaulted, about the exact place where the incident took place, as to how fire was put on the person of the deceased, as to who came to help first and what reliefs were given. These are all minor contradictions and even if there are discrepancies and variances they cannot, in any way, affect the consistent story in all the dying declarations that it was the appellant who had poured kerosene oil and set fire to the deceased. It is common knowledge that the villagers have no sense of time and there is bound to be variances about the exact time of the incident. It is apparent from F.I.R. Ex. P-9 that the deceased was inside his house but he was dragged out and assaulted in the Usari and then fire was set on him in the Angan. The seizure memo Ex. P-3 leaves no doubt that fire was set on in the Angan. Exhibit P 9 is very brief and only mentions about the person who had poured kerosene and set fire to his body. The Supreme Court in Jayaraj Vs. State of Tamil Nadu, . has held that when the deponent was in severe bodily pain, his natural impulse would be to tell the Magistrate without wasting his breath on the details as to who had caused his death. It was, therefore, natural for the deceased not to give details at that stage. In the F.I.R. the deceased has mentioned that there was fire in the Ghude and by applying one Khadi the appellant had set fire to him. Non-mentioning of this fact in Ex. P 9 is of no consequence. Moreover, it has come in evidence that when the deceased lodged F.I. R. Ex. P-15 he was in a position to walk down from bullock cart and may be he was in a better condition to narrate all the details which were elicited by the police. Mentioning of full details in the F.I.R. Ex. P-15 does not in any way contradict the dying declaration given to the Naib Tahsildar in Ex. P-9. Whether the 2 women had aided and abetted the appellant in commission of the crime is a matter which can be separated from the main act by which the

appellant had poured kerosene and set fire to the deceased. So even accepting the finding that the 2 women did not participate in the crime, still the part ascribed to them can be separated from the main part played by the appellant and on this count the dying declaration can be accepted so far as the appellant is concerned as has been held in *Godhu v. State of Rajasthan* (supra). The conviction and sentence of the appellant has, therefore, to be affirmed.

8. The deceased was burnt on 8-11-1974 and he died in the District Hospital, Hoshangabad, on 3-12-1974. Dr. Abdelibe (P.W.11) had examined the deceased on 8-11-1974 at 6.45 P.M. and according to him he found the following injuries:--

The deceased was having second and third degree burn injuries on the mandibular region, on the anterior side of the chest, anterior abdominal wall, anterior and posterior aspect of upper extremities on the back whole of the left side and partially of the right side, and the anterior and posterior aspect of both the thigh. Skin had peeled off in most of the places. Black sootiness of the skin at various places and some blisters were present and some vesicles were present.

He found the total burn body was about 75%. The deceased was then admitted in District Hospital by Dr. Raha (P.W.9), who found 45% of the body of the deceased had burn injuries. The post-mortem examination was done by Dr. Vishwaroop (P.W.18) who found as under:--

General Conditions:--Emaciated, rigor mortis present, hair black, height about 5'6" and prepuce present.

External Examinations--Following external injuries were found on the said dead body:--

(1) Healed wounds on anterior part of the neck, right half of the chest, abdomen, left buttock, waist, right arm, right forearm and hand, left forearm, left arm and hand, right thigh upper 2/3rd anteriorly, and left thigh lower 2/3rd anteriorly.

(2) Bedsore lumbo sacral region of the back 5" x 3" x bone deep.

(3) Bedsore right iliac crest 2" in diameter X1".

(4) Bedsore right iliac crest 1 1/2 x 1" X1".

(5) Septic wound left back scapular region 5" x 3" x 1/4". (6) Septic wound right back scapular region 1 1/2" x 1" x 1/4".

(7) Septic wound left thigh upper third slough coming out 6"x4"x1/4".

(8) Septic wound left side of chest and axilla 3"x4"x 1/4"

(9) Healing wound right elbow 1" x 1" x 1/2".

All the aforesaid injuries were antemortem.

Internal Examination:--Both lungs: Pale.

Pericardium contain 100 ml. of fluid.

Heart: Clot present in the right side, left side containing blood.

Large Vessels: Containing a big embolus (thrombus) at bifurcation of pulmonary artery, blocking the left branch.

(2) Thrombus in left femoral vein and inferior vena cava. Rest of the organs were healthy.

Detailed description of injury of deceased:--As a result of extensive burns, the deceased became debilitated and was immobile for a long time. Due to this, there was deep vein thrombosis, in the left leg and femoral vein, which propagated upwards, causing pulmonary embolism.

(2) In my opinion the cause of death is due to pulmonary embolism, resulting in cardiac failure. The aforesaid extensive burns were sufficient in the ordinary course of nature of cause death".

9. There is no contradiction as such between the statement of Dr. Abdelibe (P.W.11) and Dr. Raha (P.W.9). Dr. Raha found 45% of the body of the deceased had burn injuries, while Dr. Abdelibe found total burn body was about 75%. Dr. Raha had given his rough estimate that about 45% of the body was burnt while Dr. Abdelibe calculated the total burn body according to rule of nines. There is therefore no difference. Similarly, Dr. Abdelibe found one injury in the lower jaw but this injury has not been noticed by Dr. Vishwarup. This may be because this burn injury may have been very slight and by the time the post mortem was done, i.e. after 3 weeks, the injury might have healed up. It is also true that Dr. Vishwarup has stated that immediate cause of death was pulmonary embolism resulting in cardiac failure and he also admitted that thrombosis in veins was caused due to immobility for a long time and was the remote or indirect cause of the burns, though process was initiated due to burn injuries. He also stated that injuries Nos. 5 to 8 must have become septic due to lack of resistance and secondly due to wound infection which is a general problem and universal menace. It is now settled law that if the supervening causes are attributable to the injuries caused, then the person inflicting injuries is as much liable for causing death even though the death was not the direct result of the injuries. A Division Bench of the Nagpur High Court in AIR 1949 19 (Nagpur) . has held:--

Where the accused intended to cause and caused an abdominal stab wound by knife on the deceased which was sufficient in the ordinary course of nature to cause death or to cause such bodily injury as the accused knew to be likely to cause death, the offence is murder even though the death was ultimately due to the supervention of gangrene and paralysis of the intestines which were due to the abdominal wound.

This has been followed by a Division Bench of this Court in Manjar Allabux Vs. State, ., [that a deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis, it is clearly a

case of murder. Here, Dr. Vishwarup also certified that the burn injuries were sufficient in the ordinary course of nature to cause death. But somehow the deceased could survive but ultimately he died to pulmonary embolism which resulted due to the extensive burns. Dr. Abdelibea found second and third degree burns on the body of the deceased. In the second degree burns there is acute inflammation and formation of blisters, whereas in the third degree burns there is destruction of cuticle and part of the true skin. According to Modi in his Medical Jurisprudence and Toxicology 19th Edition., the death may occur due to shock and severe pain within 48 hours but in suppurative cases the death may occur within 5 or 6 weeks or even longer resulting in various complications, such as pluera are congested or inflamed lungs are congested and they may be shrunken and rarely aenemic. Lyons on Medical Jurisprudence of India, 10th Edn. at page 385 has observed that burns involving a great extent of surface are specially dangerous to life. A burn involving 2/3rd or even 1/2 of the entire skin may be regarded as certain to destroy life and the same practically may be said of a burn (if severe) involving one third of the body. Burns of limited intensity involving a wide extent of surface is more dangerous. Burns on trunks are more dangerous than on the extremities. Here, the burns were on the vital parts of the body and it being third degree burns, part of the skins were destroyed which was more dangerous. Taylor on Principles and Practice of Medical Jurisprudence, 12th Edn. at page 330 has stated that pain is responsible for a degree of initial shock immediately following the injury, but this merges rapidly into the stage of hypotension and circulatory collapse associated with loss of luid, of protein and haemo-concentration. If the patient survives, the danger persists due to occurrence of sepsis in the burned areas but virus infection resist treatment and prove fatal. The Supreme Court in State of Madhya Pradesh Vs. Ram Prasad, . has held:--

Held since no special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person it is obvious that the accused must have known that he was running the risk of causing the death of the victim or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must betaken to fall within 4thly of section 300, Penal Code, in other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death.

Therefore, it has to be held that the deceased died due to the bum injuries caused by the appellant and he has been rightly convicted for the offence of murder.

10. Apart from the dying declarations, there is also the oral testimony of Mishrilal (P.W. 1); younger brother of the deceased aged 13 years, who is an eye witness to the incident, be being a member of the family his presence in the house at the time of the incident cannot be doubted. According to Mishrilal, he was sitting in

Angan and his brother deceased Kanchhedilal had returned for taking his lunch, at that time Ghanshyam, son of the appellant, abused the deceased, he therefore slapped Ghanshyam who went away to his house weeping. Immediately thereafter the appellant, his wife Vipatabai and mother Phuliyabai came there, the deceased was dragged out in the Angan and was beaten with shoes by the appellant, then Vipatabai and Phuliyabai caught hold of the deceased, the appellant took out kerosene oil bottle from the Khuti in the Usari and poured kerosene oil on the deceased and then he set fire with the Kadi which was lighted by Vipatabai from the Ghude burning in the Angan. Though he is a small boy aged about 13 years, he was not shaken in the Cross-examination, except some minor contradictions. His testimony finds full corroboration from the dying declarations Exs. P. 9 & P. 15 that he was the first person to come to the help of the deceased and he had poured water. The Additional Sessions Judge committed an error in rejecting his testimony, firstly by assuming that according to the dying declarations, the incident took place inside the house and secondly Mishrilal has been contradicted in material particulars by Lakhan (P.W. 2) and Dhapubai (P.W. 5). The F.I.R. (Ex. P. 15) clearly mentions that the deceased was first assaulted in Usari and the empty bottle and burnt clothes were found in the Angan, clearly showing that the fire was set on the deceased in the Angan. The Additional Sessions Judge even after finding that Lakhan and Dhapubai having admitted that they have not actually seen the main incident, used their testimonies for contradicting the eye witness Mishrilal. The evidence of Mishrilal has been rejected on wrong premises and due to certain minor contradictions. The supreme Court in *Ravinder Singh Vs. State of Haryana*, . has held that where, however, the prima facie appreciation of the recorded evidence is opposed to even a reasonable appraisal of the same bearing in mind the relevant point or points sought to be established by the evidence, there will be no option to the High Court in the interest of justice but to step in and interfere. "The evidence of Mishrilal has been rejected because (i) Mishrilal deposed that the deceased came to the house for taking meals after tying the cattle in the forest while Lakhan and Dhapubai deposed that Kanchhedilal came with cattle, (ii) Mishrilal stated that it being Friday, the school was from 7 A.M. to 9 A.M., while Kunjilal (P.W. 3) deposed that on Fridays schools are between 7 A.M. to 12 O'clock and further Dhapubai deposed that on the date of the incident Mishrilal did not go to school. In fact, the statement of Dhapubai corroborates the presence of Mishrilal in the house, (iii) Mishrilal in the cross-examination stated that the deceased did not slap Ghanshyam although he was abused but earlier in his examination-in-chief, he clearly stated that deceased had slapped Ghanshyam for abusing. It seems he was confused during cross-examination. (iv) Mishrilal deposed that the alleged incident took place in the Angan, whereas Lakhan and Dhapubai deposed that the incident took place in the Usari. In front of Usari is the Angan and it will not make much difference whether the incident took place in the Usari or in the Angan. The empty bottle and burnt clothes were found in the Angan. (v) Similarly, in the cross-examination Mishrilal stated that there was no fire in the Ghude but earlier in the examination he did say that

there was fire in the Ghude. (vi) Mishrilal has deposed that at the time of incident the deceased was wearing one shirt, baniyan, underwear and Paijama, whereas Lakhan has deposed that Kanchhedilal was not wearing any Paijama. This is hardly of any consequence. The burnt Shirt and Baniyan were seized from the spot vide seizure memo Ex. P. 3 and the underwear was seized when he was examined by Dr. Abdelibea, who found it smelling of kerosene. The presence of Mishrilal on the spot is corroborated by dying declarations, statements of Lakhan (P.W. 2) and Dhapubai (P.W. 5). His statement is also corroborated from the oral dying declaration made by the deceased to Kunjilal (P.W. 3) and Mangalsingh (P.W. 4) and other witnesses. Therefore, the oral testimony of Mishrilal is not only truthful but it has been duly corroborated by oral evidence and circumstantial evidence. The conviction can be based on the oral testimony of Mishrilal also.

11. Besides, there is evidence of Lakhan (P.W. 2) and Dhapubai (P.W. 5), cousin and mother respectively of the deceased. It may be mentioned here that the appellant is also a cousin of the deceased. Being relations, these witnesses would not have falsely implicate another relation of theirs on a murder charge and screen the real offender. Lakhan is living by the side of the house of the deceased and Dhapubai, who was inside the house, rushed to her son on hearing his cries, as is evident from the dying declaration Ex. P. 9. They are, therefore, most natural witnesses and their evidence could not have been brushed aside. Lakhan (P.W. 2) stated that when he returned at 12 noon for his meals, he saw the appellant beating the deceased with shoes in the Usari of the deceased. Lakhan then went inside his house for his meals and immediately heard cries of the deceased, he came out and saw the deceased burning Lakhan and Mishrilal then poured water on the deceased, who then disclosed that the appellant after pouring kerosene had set fire to him. If he wanted to lie, he could have very well stated that he had seen the whole incident Similarly, Dhapubai (P.W. 5) who was in the inside Angan of her house, heard cries of her son, she rushed out and she saw her son burning. Though in her examination-in-chief, she claimed to have seen the main incident, she frankly admitted in her cross-examination that she was inside her house when the appellant had set fire to her son. Being a mother and being present in the house at the time of the incident, she could know as to how her son was burnt by the appellant and so she narrated the whole thing as if she was an eye witness. Lakhan has been disbelieved because in his case diary statement he did not state about beating of the deceased with shoes by the appellant, but he stated about quarrel and also because he deposed that he went to call Mangalsingh (P.W. 4), father of the deceased, whereas Mangalsingh stated that on learning about the incident he himself reached there. Dhapubai has been disbelieved because she in her cross-examination admitted that she did not witness the actual incident of setting fire to her son and because she deposed that she had removed the burnt clothes of the deceased, whereas Mishrilal asserted that he had removed the clothes. Their evidence should not have been rejected in toto for such discrepancies. At least they should have been relied

upon to corroborate the presence of the appellant in the Usari and beating of the deceased just before when the deceased was found burning. They therefore corroborate Mishrilal to this extent in any case.

12. Though the appellant had taken the plea that the deceased Kanchhedilal was a boy of unsound mind and he used to lodge false reports but this fact has not at all been substantiated. There is no evidence on record to show that the deceased behaved in an abnormal manner on the date of the incident or immediately prior to it. It is not the appellant's case that the deceased due to his mental imbalance had set fire to himself. This is also negated from the conduct of the appellant. If it was a case of suicide, the appellant being a relation and living next door, would have rushed to save him but he did not come out of his house nor he protested when the deceased declared that the appellant had burnt him. No questions have been put to Mishrilal (P.W. 1), Lakhan (P.W. 2), Mangalsingh (P.W. 4) and Dhapubai (P. W, 5) to elicit that Kanchhedilal was of unsound mind. However, Kunjilal (P.W. 3) has stated in his cross examination that from the childhood Kanchhedilal's brain was somewhat affected. Badri (P.W. 7) is a hostile witness and he also similarly stated. Surprisingly enough even no questions have been put to Hukum Singh, Head Constable (P.W. 17) who recorded F.I. R., Dr. Abdelibea (P.W. 11), Dr. Raha (P.W. 9) and Naib Tahsildar Sharma (P.W. 12) to show that the deceased was not in a fit mental condition and was suffering from insanity when his statements were recorded. The appellant has filed the certified copy of deposition of the deceased, Ex. D. 4, and the judgment in Criminal Case No. 98 /73, Ex. D. 5, concerning an incident in which the deceased was the complainant. From the perusal of these documents, it does not appear that the deceased was insane, otherwise such a remark would have been made while recording his statement by the Magistrate. That case could not be said to be a false case because the complainant's evidence was not accepted as the independent witness had turned hostile. The plea of insanity taken is an afterthought and has been rightly rejected.

13. The appeal, therefore, fails and it is dismissed.