
(1981) 06 P&H CK 0003
In the Punjab And Haryana At Chandigarh

Manohar Lal and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 04-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 32, 8

Penal Code, 1860 (IPC) — Section 302, 305, 306, 34

Citation : (1981) CriLJ 1373

Hon'ble Judges : M.R. Sharma, J;C.S. Tiwana, J

Bench : Division Bench

Judgement

M.R. Sharma, J.—The charge against the three appellants was that they on May 1, 1980, at about 8.30 AM at Hoshiarpur, in furtherance of their common intention which was to murder Smt, Vanita (known as Chainchal before her marriage), wife of Manohar Lai appellant, did commit her murder by intentionally causing her death thereby committed an offence punishable under Sections 302/34, I.P.C. The learned trial Judge vide his judgment and order dated 9-12-1980 convicted all the three appellants under Sections 302/34, I.P.C. and awarded them imprisonment for life each.

2. It is a case of bride burning, Chainchal alias Vanita deceased, daughter of Jagdish Ram P.W. 10, was M. A. in Instrumental Music, She could not be given away in marriage till she was 31 or 32 years old probably because her father, who was a retired Government servant, could not find a suitable match for her. She was ultimately married to Manohar Lal appellant on June 21, 1978. Manohar Lai appellant was earlier married to Usha Rani daughter of Shri Tirath Ram Sharma, P.W. 9 in the year 1973. Smt, Usha Rani was serving as a Nurse at Madho-garh in Mohindergarh district. That marriage ended up in a divorce by mutual consent. Manohar Lai appellant married another girl belonging to Pathankot but kept this fact a secret from Chainchal deceased and her father when his marriage was solemnised with her. He was employed in the State Bank of India at Mukerian but his mother Smt. Ram Rakhi appellant used to live at

Hoshiarpur. The deceased wanted to live with him at Mukerian but he declined to take her with him to that place and told her that she could either live at Hoshiarpur with his mother or she could live at Patiala with her parents. He told her that under no circumstances would he take her to Mukerian. It is also alleged that he used to flirt with one Tripta a married lady in her presence. Chainchal deceased was being maltreated by Smt. Ram Rakhi appellant on the ground that she did not bring sufficient dowry. This appellant told the deceased to cook her own meals, quarrelled with her over trifling matters, continued telling her that she should get out of her house, administered her taunts and proclaimed that she could get her son married again which would mean a dowry of about rupees one lac for him. The letters Exs. P-II to P-22 addressed by the deceased to her father Jagdish Ram, P. W. 10 contained inter alia all these allegations and show that Manohar Lai appellant and his mother Smt. Ram Rakhi appellant were in reality wolves masquerading in the form of human beings. We shall refer to these letters at a later stage.

3. Manohar Lai appellant had come on leave in connection with the purported illness of his mother from April 22 to May 17, 1980. On May 1, 1980, Chainchal deceased suffered multiple extensive superficial burn injuries almost all over her body in the house of the appellants Nos. 1 and 2 at about 8.30 A.M. Manohar Lai appellant took her in a jeep to the Civil Hospital, Hoshiarpur, where she was examined by Dr. N.K. Gulati, P.W. 1 at 11.10 A.M. The Doctor observed: ?

On Examination I found multiple extensive superficial burns all over the body except on both the soles and central portion of the back, about 2" on the sides of mid spinal line, with skin peeled off at many and different places. Burns had bright red margins with extensive blood stained serious discharge present. Stiffness of both upper and lower limbs present along with oedema of the face. Whole of the body was naked except a piece of cloth with Nala (string) inside present around the waist line.

Patient was semi-conscious and was responding to louder questions. Pulse was 124 per minute and feeble. Blood pressure was 60. Respiration was 28 per minute.

The condition of the injured was dangerous due to burn injuries which were fresh. Ex P-A is the correct carbon copy of the medico-legal report which was prepared by me along with the original.

4. Since the condition of the deceased was serious, the said Doctor sent letter Ex. P-A/2 to the Station House Officer, City Hoshiarpur, requesting him to make arrangements for recording the dying declaration of the deceased. Pursuant to this letter, A.S. I. Dalip Singh, P.W. 11 went to the Hospital. He made application Ex. P-A/3 on which Dr. Gulati, P.W. 1 made an endorsement that the deceased was fit to make a statement. A.S.I. Dalip Singh, P. W. U then recorded the statement Ex. PC of Smt, Vanita alias Chainchal deceased. This statement reads as under ;?

I belong to Patiala and was married to Manohar Lai of Krishan Nagar about one year and ten months ago, I have no issue. My mother-in-law Ram Rakhi used to quarrel daily and had been telling me that I would be turned out of the house but I refused to leave the house. I did not burn myself. My husband has married thrice. My mother-in-law suffers from cough and my husband is on leave for 10 days. This morning I had a quarrel with my husband, mother-in-law and Dinesh, who had come to our house. It was predestined, that I was towards the kitchen. My mother-in-law threw oil on me and set me on fire. My husband was not near me at that time. This happened at about 8.30 A. M. Many persons collected and I have been brought to the hospital.

The recording of the above statement concluded at 12.40 P. M.

5. The Investigating Officer also made application Ex. P.D. to the learned Judicial Magistrate 1st Class, Hoshiar-pur, praying that the dying declaration of the deceased be recorded. In response to this request, Shri Mohinder Singh P.W. 2, the then Judicial Magistrate 1st Class, Hoshiarpur, reached the Emergency Room of the Civil Hospital, Hoshiarpur, recorded the statement Ex. P. B. of Smt. Vanita alias Chainchal deceased at 12.45 P. M, This statement reads as under :?

This morning at 8 or 8.30 A. M., I was sitting in the kitchen. My husband took tea and went out to bring vegetables etc. and then came back. When I caught fire, at that time my husband had gone out somewhere?may be to have a look at the newspaper. At the time of taking tea, myself and my husband had a quarrel. At that time, Dinesh, daughter of the sister of my husband, was also with my husband. None else was there. My mother-in-law was sitting in the adjoining room and was grumbling. At that time, somebody sprinkled kerosene oil, on me. I could not see. Somebody had thrown oil from behind. Again said that oil was thrown from the front side. A scheme was there for the last many days to burn me. My mother-in-law used to say that she would not like to see my face even on my death. When I caught fire, at that time Dinesh and my mother-in-law were with me. I cannot tell who had sprinkled oil on me. My husband has married for the third time. He had turned out the previous two wives from his house. When oil was put, stone (stove ?) was burning nearby from which I caught fire. I raised loud shouts on which persons from the locality collected. Somebody brought me to the hospital in a jeep. My husband was also in the jeep, I do not want to say anything. My father is at Patiala. When he will come then I will tell him.

The recording of the above mentioned statement was completed at 1.10 P.M. and Dr. N.K. Gulati P.W. 1 also made his endorsement Ex. PB/I below the statement Ex. P.B. that the same was recorded in his presence and that during the course of the recording of the statement Smt. Vanita was fit to make it.

6. Arun Kumar P.W. 7, brother of Smt. Vanita alias Chainchal deceased, was employed in Bharat Overseas Bank at Banga, On May 1, 1980 at about 11.30 A. M. he received a telephonic message from Hoshiarpur that his sister was lying

admitted in the Civil Hospital, Hoshiarpur, with burn injuries. Pursuant to this information, he reached the Civil Hospital, Hoshiarpur, at about 2.30 P. M. Smt. Vanita alias Chainchal deceased told him that her husband Manohar Lai, her mother-in-law Smt. Ram Rakhi and Smt. Dinesh the three appellants before us had thrown oil on her and had set her on fire. Smt. Vanita alias Chainchal deceased succumbed to her injuries at about 4.10 P.M. on the same day. Dr. D.D. Sharma P.W. 3 sent the information about the death of the deceased to the police vide his letter Ex. P.E. at about 4.15 P.M. Jagdish Ram P. W. 10 father of this unfortunate girl, had also reached the hospital by about 10 P. M. after getting the news of this tragedy.

7. Dr. D. D. Sharma P. W. 3 performed the post-mortem examination on the dead body of Smt. Vanita alias Chainchal deceased on May 2, 1980, at about 9.30 A, M. and observed as under:

The length of the dead body was 5 feet 2 inches. It was moderately built and nourished. Rigor mortis was present. Post-mortem staining was present on the back dependent parts. The body was naked. Eyes were closed. The mouth was partially open. Both upper and lower limbs were flaccid and fingers were hooked giving pugilistic appearance. The whole of the body was tilted slightly to the left. Both the upper and lower limbs, front of chest and abdomen and the back were covered with some antiseptic dressings, And on removal multiple extensive superficial skin deep burns with reddish margins were present on the whole of face, neck, front of chest and abdomen and the back, front and back of lower limbs except the soles of both feet and the phalangeal area on the dorsum of both feet and distal half of both the hands on its dorsal and palmar aspect, where the skin was puckered and intact. Skin on the spinal area on the back 2i" on both sides of the mid lines was intact. The scalp hairs were partially burnt and singed. Inflammatory changes were present at the margins of the burnt areas. Skin was pealed off at different places and face was swollen.

An incised wound 3 cm x 1 cm x skin deep (wound of venesection) was present on the medial aspect of right leg in its lower one-third just above the right medial malleolus.

All the organs were healthy. Stomach was empty. Bladder was also empty.

In my opinion in this case the cause of death was shock due to multiple extensive burns. The burns were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between the burn injuries and death was about 6 hours and between the death and the post-mortem was 17 hours and 20 minutes."

8. After the completion of the investigation, the three appellants were sent up for trial. The prosecution relied upon the three dying declarations?one recorded by A.S.I. Dalip Singh P. W. 11, the second recorded by S. Mohinder Singh P.W. 2, Judicial Magistrate 1st Class, Hoshiarpur, and the third oral dying declaration made by Smt. Vanita alias Chainchal deceased before her brother Arun Kumar

P.W. 7. Jagdish Kumar P.W. 8 was examined to show that on hearing the shrieks of the deceased, he was attracted to her house when he found her lying ablaze and that Manohar Lai appellant was at that time standing closely watching the plight of the deceased. When this witness questioned him, he told him that he should mind his own business. Jagdish Ram P.W. 10, father of the deceased, produced the letters Exs. P. 11 to P. 22 written by the deceased in which she had described her tale of miseries arising from the torture meted out to her by Manohar Lai and Ram Rakhi appellants. Tirath Ram Sharma P.W. 9 was produced to show that Manohar Lai appellant had earlier been married to his daughter Usha Rani and that marriage ended up in a divorce. The learned trial Judge did not rely upon the oral dying declaration made by the deceased to her brother Arun Kumar P. W. 7. He also disbelieved Jagdish Kumar P. W. 8 but accepted the two dying declarations even though there were some minor variations between the two of them. He was of the view that she was probably under the influence of Manohar Lai appellant when she made the two dying declarations. Since there was strong motive on the part of the appellants to put an end to the life of the deceased, the learned trial Judge reconciled the two dying declarations, convicted and sentenced the appellants as indicated earlier.

9. In the appeal by the convicts, we have gone through the evidence with the help of the learned Counsel.

10. At the very outset. Sh. J.N. Kaushal. learned Senior Advocate appearing on behalf of the appellants, submitted that the letters Exs. P. 11 to P. 22 written by the deceased were not admissible in evidence. In this connection, the learned Counsel drew our attention to Section 32(1) of the Indian Evidence Act, 1872, which reads as under :?

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :?

(1) 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 cases 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.

11. The argument raised was that the contents of these letters do not relate to the transaction which resulted in the death of the deceased. In support of this contention, the learned Counsel relied upon various authorities.

12. The first case relied upon is AIR 1939 47 (Privy Council) . Therein, after referring to the aforementioned section, their Lordships observed as under:?

A variety of questions has been mooted in the Indian Courts as to the effect of this section. It has been suggested that the statement must be made after the transaction has taken place, that the person making it, must be at any rate near death, that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction; general expressions indicating fear or suspicion whether of a particular individual, or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, of as to his reason for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction. and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts, it is on the other hand narrower than "request". Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of 1981 Cri. L.J./87 X the evidence is that the cause of (the declarant's) death comes into question." It is no doubt true that their Lordships held that the words "circumstances of the transaction" are narrower than *res gestae*, yet in regard to a case of prolonged poisoning, their Lordships laid down that the circumstances might be related to dates at a considerable distance from the date of the actual fatal dose. These observations imply that while, considering the question whether the circumstances contained in the writings of the deceased have some proximate relation to the actual occurrence or not, the Court has to look to the nature of the offence. In a case of prolonged poisoning, a decision is made by the accused to put an end to the life of his victim at a much earlier date and pursuant to that decision he or she keeps on administering poison to the victim. Even if the fatal dose is administered after considerable delay, the circumstances arising after the time when the first dose was administered have to be taken to have proximate relation to the actual occurrence. The offences of bride-torture or bride-burning are in a way similar to the offences of slow poisoning. In these offences also the accused persons make up their minds to put an end to the life of the bride at one point of time and continue taking various steps in furtherance of their nefarious design. The torture administered sometimes manifests itself in various forms. To begin with, it might be mental torture and then it may assume

the form of physical torture. The physical harm done to the victim might be increased from" stage to stage to have the desired effect. The fatal assault might be made after a considerable interval of time, but if the circumstances of the torture appearing in the writings of the deceased come into existence after the initiation of the torture, the same would be held to be relevant as laid down in Section 32(1) of the Evidence Act. We are accordingly of the view that the learned defence counsel cannot validly draw any support from this authority for the proposition canvassed by him. On the other hand, the observations made by their Lordships go to show that the contents of the letters written by the deceased could be properly read into evidence.

13. The learned defence counsel then relied upon *Gokul Chandra Chatterjee Vs. The State*, wherein the letters written by a woman to the members of her family during the period of 5 to 9 months before her suicide showed that her state of mind was seriously affected by the cruel conduct of the members of the family of her husband. The prosecution wanted to rely upon these letters against the members of the family of the husband who were charged for committing the offence of abetment of suicide. Speaking for the Division Bench, Hanes C.J. after noticing *Narayana Swami's case* (1939) 40 Cri LJ 364(PC)(supra) observed :?

They cannot be said to be circumstances of the transaction which resulted in death. In other words, they are not sufficiently nor closely enough connected with the actual transaction and that being so the letters were not, in my view, admissible and were wrongly admitted by the learned Assistant Sessions Judge.

14. These observations of course endorse the point of view put forth by the learned defence counsel but it appears that the distinction drawn by us on the basis of the instance of a case of slow poisoning was not brought to the notice of the Division Bench. With utmost respect to the learned Judges, who constituted the Division Bench, we are unable to agree with the principle of law enunciated by them.

15. Even otherwise in a later judgment reported as *Protima Dutta v. The State* (1977) 81 Cal 713 : 1977 Cri LJ 96 the Calcutta High Court itself revised this opinion. In that case the appellants, the husband and the mother-in-law of the deceased girl were charged under Sections 306/34, IPC with abetment in furtherance of the common intention of both, of suicide by the deceased girl by systematic ill-treatment, cruelty and instigation to commit suicide. To prove this ill-treatment the prosecution relied upon a number of letters written by the deceased girl to her relatives and friends. The Division Bench held the admissibility of these letters by observing?

Circumstances of the transaction include evidence of cruelty by which produces a state of mind favourable to suicide. Although that would not by itself be sufficient unless there was evidence of incitement to end her life it would be relevant as evidence.

The learned Judges further observed :

In the case of Harihar Mullick v. The State (Criminal Appeal No. 5 of 1958) which was cited at the Bar, Debab-rota Mookerjee, J. commented on the aforesaid observation of the Privy Council and said that this observation taken as a whole would, in my view, imply that the time "actor is not always a criterion in determining whether the piece of evidence is properly included within "circumstances of transaction". In the illustration provided by the case of prolonged poisoning, it was clearly indicated that the evidence of circumstances might be given which from the point of view of time would be distant from the date of death. His Lordship noted that "in that case the allegation was that there was sustained cruelty extending over a period of three years interspersed with exhortation to the victim to end her life." His Lordship further observed and held that the evidence of cruelty was one continuous chain, several links of which were touched up by the exhortations to die. "Thus evidence of cruelty, ill-treatment and exhortation to end her life adduced in the case must be held admissible, together with the statement of Nilima (who committed suicide) in that regard which related to the circumstances terminating in suicide. His Lordship believed those statements, In that case an appeal against conviction on a charge u/s 305 was dismissed by the Bench.

16. Their Lordships also distinguished Gokul Chandra Chatterjee's case (1950) :51 Cri LJ 1201 (supra) decided by the earlier Division Bench

17. In Allijan Munshi Vs. State, a similar Question came up for consideration before a Division Bench. There the learned Judges held : (At P. 896 of Cri LJ)

Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. If the motive for the commission of the offence is relevant, we fail to appreciate why the making of a complaint by Rashida against the appellant charging him with serious offences may be regarded as inadmissible. The whole argument of Mr. Chari proceeded upon a fallacious assumption that Section 32 of the Evidence Act is a complete Code relating to admissibility of statements alleged to have been made by persons who cannot be examined before the Court and the admissibility of statements alleged to be made by persons who are not available to give evidence on account of circumstances set out in Section 32 is circumscribed by that section. In our view, if the fact to be proved is a statement made by a person since deceased and it is admissible under a provision other than Section 32 of the Evidence Act its admissibility cannot be denied because it does not fall within the provisions contained in Section 32. In R.D. Sethana v. Mirza Mahomed Shirazi (1907) 9 Bom LR 1047, this Court held that Section 32 of the Indian Evidence Act imposes restrictions upon the admissibility of statements made by persons who cannot be brought before the Court for giving evidence; but if a statement is admissible under any other provision of the Act, it being altogether immaterial whether the person who made the statement was alive or dead, the admissibility of that statement will not be affected because the person who allegedly to have made that statement was dead.

We are in respectful agreement with the view expressed in Protima Dutta's case 1977 Cri I J 96 (Cal) (supra) and the one expressed in Allijan Munshi Vs. State, .

18. We may now refer to the contents of some of these letters. At the trial, the learned Public Prosecutor expressly referred only to two letters, i. e. Exs. P. 12 and P. 21 but all the 12 letters were proved by Jagdish Ram P. W. 10, father of the deceased, who stated on oath that they had been written by her. Consequently, we see no reason to disregard the letters which were not pointedly brought to the notice of the learned trial Judge The letter Ex. P-21 dated 21-1-1980 addressed by the deceased to Jagdish Ram P. W. 10 reads as follows :?

Mataji reached on 19th January. She was slightly ill but now she is alright. On her arrival, I asked about her welfare but she did not. talk to me nor took anything to eat or drink. She ac- cepts anything to eat or drink only from her son. On the night of 20th January, 1980, there was so much of quarrel that I cannot write. At 12 in the night the mother and her son both asked me to leave the house and the mother claimed herself to be the owner of the house and told me that she would not keep me even for a minute. Manohar Lai Sharma was so much drunk that he was talking non-stop. He picked up a burning angithi and threw it. After abusing and beating, he called Pawan Kumar Dhir, tenant in the house, and his wife and started quarrelling in their presence, Dhir Sahib tried to counsel that we should live in peace like a family. I told them that they wanted to turn me out of the house on which Sharma Sahib said that they had already turned out two and the third will also be turned out and further that they were not fools and that after turning out two, nothing had gone wrong and that here was no dearth of girls. Since the time of the marriage, the only quarrel is about the dowry, Mataji says, "Even now she is having a matrimonial offer from persons who offered to pay one lakh of rupees and were entreating her to accept the offer. There is no dearth of girls. We thought that you had three earning brothers and the wives of two of them were in service and that your father had also retired as an officer and one of your brothers had gone to a foreign country and as such we will have lot of money little knowing that you would come empty handed. I remained under a misunderstanding that dowry would be following you. Had I known it earlier that you were not to bring any dowry, I would have turned you out from the house on the very first occasion and would not have allowed you to enter my house. It was my bad luck that I accepted relationship with a Punjabi family." Everyday these things are repeated. She does not talk to me. I feel very much upset.

19. The other letter Ex. P. 12 dated 11-3-1980 was written by the deceased to her sister. It has been translated into English by the learned trial Judge thus?

I am fed up of the daily quarrels. Not a single day has passed when there was no quarrel. Mata says that she would rent out the house to constables and would live at Pathankot whereas Manohar says that he has also made ar- rangements for himself and that I should now think over and tell the time when I am to leave

the house. Efforts are again being made to bring back the wife from Pathankot. There is only quarrel and nothing else all the day and night. They say that my relations are helpless. If at all they were to do anything, they would have settled the matter long ago. I am put to so much troubles but still it has no effect upon me or my relations. They are now after my life. Sharmaji says that it is the last warning to me. If I do not make any arrangements for myself till Sunday, the 16th of March at about 1 or 1.30, he was going to murder me saying that he would settle with law later on but first he should finish me. He quarrels so much under intoxication that it continues till 4 A. M, and Mata (mother) silently sit in her own room. The night of 9th of March was full of grave danger. I kept awake the whole night. Mrs. and Mr. Dhir were also watchful. They had called some one from Pathankot. All the three continued talking till 12/1 in the night. By chance lights also went off. There was all darkness above and down below. I felt afraid. ? Mother said to Manohar that he should once give his consent and then she should finish me off within one minute.

When Babuji came on the 26th, he told me that everything was ready and that only a letter was to be taken from Chandigarh and thereafter they all would be coming. I was asked to wait for one week more on which I told Babuji that if I could live for 1 years, I could live for one week more. Now these persons have started troubling me too much. The person who had come from Pathankot, he did not talk to me nor even wished me. He appeared to be a well built man of about 35 or 36 years. He was specially served and I was told to finish the work in the kitchen and to go upstairs thereafter. I was told not to enter the T. V. room. Mother has always been telling Dhir Sahib that day and night they were trying to find out a way to push me out of the house and that Mr. Dhir was a wiseman and should suggest some solution. Now Mrs. Dhir is to vacate the house on the Sunday evening. She has told me that she has fully understood Sharma and his mother and therefore she apprehends that in her absence these persons (husband and mother-in-law) could do any- thing to me. Mrs. Dhir has suggested to me that I should go to Patiala myself, before she vacates the house if I wanted to survive. I had 75% benefit of talking to Mr, Dhir during his stay here. After they leave the house, it will be difficult to find them out although they both have promised that wherever they would be they would help me on my call even without caring for their own lives. I have not allowed them to go for the last two months, if eating is the only purpose of life, a dog also does the same thing but even a dog is not made to starve for three days like me. I am cooking meals since long but meals have been cooked for both of them. They ask me to stop cooking telling me that it is not a hotel. I am so much fed up that I feel afraid that I may not go mad. If something can be done, then 10 persons should come on the 16th and settle the matter otherwise that would happen which Sharma and his mother would wish. After Kuku left the house, there was lot of quarrel on his visit to the house. I wonder what Babuji is thinking about even now. Even he was not fair to me and has thrown a living body on flames. Babuji was aware that he had already married twice. I have written to Babuji also. I feel very

much upset. Persuasion will have no effect upon these persons as they want to have about Rs. 60,000/- or Rs. 70,000/-. Supposing their demand is met even then he will not leave Tripta and excessive drinking. He insists that I should live in a separate house or should live at Patiala as they have firmly decided not to keep me in the house. I am cursed that even repetition of a thousand times had no effect on me. I have told them that I should be allowed to stay till the coming Sunday and thereafter I would leave the house. These "people do not want to keep me in the house but Babuji do not permit me to leave the house, whether I should go. What is my life? I am suffering since childhood, Now I am left with no courage. It will be no use coming after the 16th. I am not afraid of death. I have told them that they should not threaten me and that they can do whatever they like. On this Mr. Sharma told me that all right they would see to it. All must come on the 16th.

20. These two letters speak for them-selves and unmistakably point out the greed exhibited by Manohar Lai and Ram Rakhi appellants as well as the torture which they heaped upon the unfortunate girl. Manohar Lai appellant not only failed to discharge his marital obligations towards the deceased but also flirted with another married girl Tripta by name in the very presence of the deceased. Ram Rakhi appellant boasted that she could get another girl with substantial dowry for her son as soon as the deceased left her house.

21. Letter Ex. P-II addressed by the deceased to her father indicates that Manohar Lai appellant would not respond to the deceased even when addressed about fifty times. In letter Ex. P-13 the deceased wrote to her father that Ram Rakhi appellant told her that had there been no tenants in the house, the deceased would have been done to death on the same day. In short, all the letters are full of the instances of maltreatment meted out to her by Manohar Lai and Ram Rakhi appellants.

22. If insufficiency of dowry was the root cause of the trouble, it must have started immediately after the marriage of the deceased with Manohar Lai appellant. This appellant had forsaken earlier wives with impunity, it is precisely for this reason that Ram Rakhi appellant used to brag about that nothing would happen to them if they did away with the deceased. The allegations contained in these letters have a direct nexus with the design of Manohar Lai and Ram Rakhi appellants to administer slow and steady mental and physical torture to the deceased. It matters little if the final act of torture by burning came about on 1-5-1980. The earlier incidents, even though somewhat remote in point of time from the final act of torture are parts of the same transaction. In our considered opinion, they can be received in evidence on the basis of the rule laid down by Lord Atkin in Narayana Swami's case (1939) 40 Cri LJ 364 (PC) (supra). Once it is so held, the conclusion is inescapable that Manohar Lai and Ram Rakhi appellants had joined hands together to extort dowry from the parents of the deceased or to put an end to her life in case no dowry was offered. We accordingly endorse the view taken by the learned trial Judge on this

point that both these appellants had a very strong motive to commit this Crime.

23. The next thing to be considered is whether the deceased committed suicide or not. As noticed earlier, the occurrence took place at about 8.30 in the morning when all the inmates of the house were awake. If, in their presence, she had thought of sprinkling oil on her body and setting it ablaze, she would most probably have bolted the door of the kitchen from inside. If she had done so in an open space, then the other inmates of the house would probably have tried to extinguish the fire to save her life. In that event there would have been probably some burn injuries on the fingers of those persons. The contents of letters Exs. P-1] to P-22 show that she was crying for succour from her father and imploring him to save her from the tragedy. At no stage did she give an indication that she would take her life "herself. In both the dying declarations Exs. PC and PB she proclaimed that she did not commit suicide. When all these circumstances are cumulatively considered we come to the irresistible conclusion that it was not a case of suicide and that the oil had been poured upon her body by some outside agency for ensure in that she died of burn injuries.

24. If that be the situation, then it is for the inmates of the house to explain how the deceased met her end. Two of them, namely, Manohar Lai and Ram Rakhi appellants, had a strong motive to do away with her life. Both of them have been consistently maltreating the deceased. None of them put forth the plea that they tried to extinguish the fire. The fact that Manohar Lai appellant took the deceased to the hospital in a jeep is of no consequence because after the deceased had been subjected to extensive burn injuries some facade had to be put up to show to the world that neither he nor his mother was responsible for this heinous crime. These circumstances raise a stronger suspicion which almost borders on proof about the culpability of these two appellants.

25. We may now come to the dying declarations made by Smt. Vanita alias Chainchal deceased. In the first dying declaration Ex. PC made before A. S. I. Dalip Singh P. W. 11 the deceased stated that her mother-in-law used to quarrel with her almost daily. Her husband had married thrice. On the fateful morning she had a quarrel with the three appellants and Ram Rakhi appellant threw oil on her body and set her on fire. She has of course mentioned that her husband Manohar Lai appellant was not near her at that time but this part of her statement does not exclude the presence of Manohar Lai appellant at the time when this incident occurred. As noticed earlier, this dying declaration was attested by Dr. N.K. Gulati, P.W. 1 who also stated that the deceased was in a position to speak when she made this statement. Manohar Lai appellant in his statement u/s 313, Criminal P.C. did admit that such a statement was made by the deceased. No person belonging to the family of the father of the deceased had contacted her by that time. Consequently, it cannot be argued on behalf of the appellants that she was instigated by somebody to make such a statement. There is a common tendency on the part of the young brides to protect their husbands even if the husbands are unfair to them. Since Manohar Lai appellant

had taken the deceased to the hospital it is quite probable that during this period he gave her false hopes that she would be saved and these hopes might have for a short while made the deceased think that after she is saved her husband would probably act as a chastised man and stop giving her maltreatment. The sequence of events shows that even if Ram Rakhi appellant threw oil on the body of the deceased and set her on fire, she could not have done so without active collaboration from Manohar Lai appellant. This appellant knew that his mother had been threatening the deceased to take her life and if he was even a little interested in her welfare he would have taken her along to Mukerian. We are accordingly of the view that the guilt of Manohar Lai and Ram Rakhi appellants stands fully established on the basis of this dying declaration Ex. PC made by the deceased.

26. The second dying declaration of the deceased recorded by Mohinder Singh P. W. 2, Judicial Magistrate Is Class, Hoshiarpur, at 12.45 P. M. was a bit different from the earlier one because in that statement the deceased mentioned that Manohar Lai appellant had probably gone out when somebody sprinkled oil on her. It was also mentioned therein that she was sitting by the side of a burning stove which set her ablaze. But we cannot lose sight of the fact that by that time more than four hours had passed. During this period Manohar Lai appellant had ample time to coax her to tone down the earlier dying declaration made by her. It is in the statement of Dr N. K. Gulati. P.W. 1 that the condition of the deceased was dangerous which must have been deteriorating minute by minute. Since the father and the brother of the deceased had not arrived by that time and she was being looked after by Manohar Lai appellant, she probably thought that it was better for her to toe the line of this appellant. Besides, her condition had worsened that she probably could speak with great difficulty. The last lines of her statement Ex. PB, which read as under, are very important;?

I do not want to say anything. My father is at Patiala. When he comes, then, I will tell him.

27. The helpless girl was probably oscillating between hope and fear and waiting for the arrival of some of her relations so that she could accuse the appellants without fear of any further harm. In this situation, it is significant to mention that when Arun Kumar P. W. 7, brother of the deceased, met her in the hospital, she made a categorical statement before him that the three appellants had put her on fire. We are accordingly of the view that in the peculiar circumstances of this case it cannot be held that the deceased had in any way whittled down the effect of the first dying declaration Ex PC made by her before A. S. I Dalip Singh P. W. 11.

28. The learned trial Judge did not choose to rely upon the oral dying declaration made by the deceased before Arun Kumar P. W. 7. We, however, find that the reasons given by the learned trial Judge for disbelieving this witness on this point are not convincing. At one stage the learned trial Judge observed that this witness had probably met the deceased in the presence of some Doctors and if

the deceased had made an oral dying declaration before him, those or any of those Doctors should have been produced to corroborate his statement on this point. At one stage he observed that since this witness admitted that Manohar Lai appellant was seen bringing a white cloth, this witness had probably arrived in the hospital after the deceased had breathed her last. These observations are really irreconcilable. We might also add that if the deceased had died in the hospital, in normal course of business she could not have been encoffined before the post-mortem examination, It is in the evidence of Dr. N.K. Gulati P. W. 1 that the deceased was almost naked when she was brought to the hospital and she wore no clothes except a piece of cloth round her waist with a string in it. Even if Manohar Lai appellant had brought a white sheet, he had probably done so to cover the body of the deceased with it.

29. The other reasons for which the evidence of Arun Kumar p. W. 7 has been doubted is that according to this witness the deceased enquired about his welfare, which conduct was not natural on her part in view of the serious burn injuries received by her and this witness did not pick up a row with Manohar Lai appellant even after he had been informed by the deceased that she had been put on fire with his complicity. These two reasons do not at all appeal to us. It is a matter of common knowledge that even when a sister is seriously sick, she shows concern for the welfare of her sister. We do not feel it necessary to dwell any further on the observations made by the learned trial Judge about the credibility of all the witnesses. It suffices mention that Jagdish Kumar P. W. 8 who stated about having seen the deceased lying burning while Manohar Lai appellant was standing close by was disbelieved primarily on the ground that the signatures of this witness on Memo. Ex. PG, Ex. PG/I appeared to have been taken at a subsequent stage. However, neither this witness nor A. S. I. Dalip Singh P. W. 11 who prepared this Memo, were cross-examined by the learned defence counsel on this point. What we want to emphasise is that the evidence furnished by the letters Exs. P. 11 to P. 22 written by the deceased, the three dying declarations made by her and the circumstances and the time and place at which her body was put on fire establish beyond a shadow of doubt that Manohar Lai and Ram Rakhi appellants were responsible for this dastardly crime. The defence evidence led by Manohar Lai appellant deserves to be rejected for the reasons stated by the learned trial Judge. We, therefore, affirm the convictions and sentences imposed on these two appellants, i. e. Manohar Lai and Ram Rakhi. and dismiss the appeal qua them.

31. The case of Smt. Dinesh appellant stands on a different footing. She had come on a casual visit to the house of the other two appellants. The deceased had written the letter Ex. D-I to her mother (mother of this appellant) which does not give any indication that either this appellant or her mother were in the bad books of the deceased. Even if there had been a quarrel between her and the deceased on the fateful morning that does not show that appellant had any common intention with the other two appellants to put an end to the life of the deceased. We have, no doubt, accepted the oral dying declaration made by the

deceased before Arun Kumar P. W. 7 in which it was mentioned that all the three appellants sprinkled oil on the deceased and set her on fire but, as stated earlier, the deceased was perhaps approaching death at that time and had made a cryptic answer to the query made by her brother. This appellant is herself unmarried in spite of being 28 years old at the time when this occurrence took place. For all these reasons, we feel that as a measure of abundant caution, we should give her the benefit of doubt. Consequently, the appeal qua her is allowed and the conviction and sentence imposed on her are set aside. Dinesh appellant is on bail. Her bail bonds shall stand discharged.