
(2007) 10 DEL CK 0279
In the Delhi High Court
Case No : Criminal Appeal No. 244 of 2004

Prem Singh Negi	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 313
Evidence Act, 1872 — Section 32, 32(1)
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2008) 1 ILR Delhi 556

Hon'ble Judges : P.K. Bhasin, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Eklavya Rai Nagpal, Mr. Gulshan Rai Nagpal and Mr. Rajiv Kumar, for the Appellant; Sunil Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This appeal challenges the judgment dated 27th February, 2004, of the learned Additional District and Sessions Judge convicting the appellant u/s 302 IPC. The appellant was charged that on 21st July, 2001 at about 10 a.m. at B1/1 18 Sewak Park, Uttam Nagar, Delhi, he committed the murder of Smt. Ruby Nayal, wife of Shri. Rakesh Nayal, by pouring kerosene oil on her and burning her resulting in her death and thereby committed an offence u/s 302 IPC. Since the appellant claimed to be not guilty, this led to the trial of the appellant leading to his conviction by the impugned judgment. The case set out by the prosecution before the Trial Court reads as follows:-

On 21.7.2001 at about 10.00 a.m. Smt. Ruby Nayal w/o Rakesh Nayal R/o B-1/118, Near Durga Mandir, Sewak Park, Uttam Nagar, Delhi-59 was admitted in burnt condition in Safdarjung Hospital who got recorded her statement to IO in the presence of Doctor. In her statement she stated that she is living at the above address with her brother in law (Jaith) Prem Singh Negi. She further stated in her statement that she was married to Rakesh Nayal about 17/18 years

ago, who is living with her mother in law and her children at R K Puram and that her husband is drug addict and therefore she is staying with Prem Singh i.e. her Jaith in relation with her own sweet will and the consent of her husband and mother in law. She has further stated that family of Prem Singh was living separately at Palam. She has further stated that her conscious pricked her for leaving her husband and children and that she wanted to go back to them to which accused Prem Singh had refused at which dispute took place between her and Prem Singh Negi. She has further stated in her statement that Prem Singh also used to incite against her husband and asked her not to meet her husband and children. She has further stated that today i.e. the day of occurrence at about 10.00 a.m. While she alongwith Prem Singh was present at the first floor of her rented house, she expressed her desire to meet her children at R.K. Puram at which Prem Singh asked her not to do so and started quarrelling with her and told her that "teri roz roz ki kil-kil se main tang aa gaya noon or aaj mai tera kissa hi khatam kar deta noon" and brought kerosene can and match box from kitchen and set her on fire. On the statement of Ruby Nayal (since deceased), a case U/s 307 IPC was got registered and was investigated by SI Tribhuwan Singh Negi. During investigation, I.O. Prepared rough site plan, got the spot photographed and collected the exhibits i.e. kerosne cane, match box and some burnt clothes from the spot. Thereafter on 23.7.01 injured Ruby Nayal died in the hospital and further investigation was taken up Insp. Sukhbir Singh. Inspector Sukhbir Singh prepared the inquest papers and got conducted the post-mortem on the body of Ruby Nayal. Exhibits collected from the spot were got deposited in the FSL, Malviya Nagar. After completion of investigation, challan U/s 302 IPC was filed against the accused in the concerned court of Ld. M.M.

The Trial court has relied upon the testimony of the 16 witnesses examined by the prosecution as under:-

(a) PW1, Head Constable Anand Singh deposed that while he was posted at Police Station Uttam Nagar on 21.7.2001, Constable Subodh brought rukka Ex.PW1/A sent by SI T.S. Negi at 3.05 p.m. and after recording FIR No. 566/2001 u/s 307 IPC he handed over rukka and a copy of FIR Ex.PW1/B to Constable Subodh to be delivered to the Investigating Officer. He recorded D.D No.12-A for registration of which Ex.PW1/C is a true copy and made endorsement Ex.PW1/D on the same rukka.

(b) PW2, photographer Ashu, deposed that he took photographs from different angles on the directions of SI Negi on 21.7.2001, the negatives of which are Ex.P1 to Ex.P5 and positives are Ex.P10; he handed the same over to IO after developing.

(c) PW3, Samuel deposed that Ruby was his sister, he identified her dead body in the mortuary of Safdarjung Hospital and made his statement as Ex.PW3/A to the IO.

(d) PW4 Mohit deposed that on 21.7.2001 while he was working as Sr. Resident

in Safdarjung Hospital in burns ICU patient Ruby Nayal was brought by Incharge IC Van P-57 ASI Balwan Singh. The patient informed that she sustained injuries when her brother-in-law, Prem Singh Negi, poured kerosene oil over her body and set her clothes on fire by lighting a match stick. On general examination patient was conscious, oriented, dehydrated with pulse rate of 100 per minute and respiratory rate of 26 per minute; no abnormality was detected clinically on examination of Cardio-vascular, respiratory or nervous system. On local examination, burns were present all over the body amounting to 100% superficial and deep burns. He prepared MLC, Ex.PW4/A and the statement of the patient Ex.PW1/A was recorded in his presence by the Investigating Officer.

(e) PW5, Rakesh Nayal deposed that he was married to Ruby in 1984. Accused P.S. Negi, son of his maternal uncle, who used to visit his house regularly, developed intimacy with his wife Ruby. He asked the accused not to visit his house and warned Ruby not to have any relationship with P.S. Negi but she did not desist. About 8/9 years ago Ruby left his house along with her belongings and went with P.S. Negi. After having been out of contact with Ruby for 2A1/2 years, he allowed her to see the children. Although accused P.S. Negi and Ruby changed many places of residences during this period, she used to tell the children about the change of residence. On 21.7.2001 he came to know that Ruby had sustained burn injuries and was admitted in Safdarjung Hospital where he went and found her unconscious, not in a position to talk and admitted in I.C.U. Next day when Ruby came to her sense and asked for water, he gave some limca to her on advice of the attending nurse, escorted her to the bed and asked her about the accident. She started weeping and told him that she was alone in her house and set herself on fire. He remained in the hospital for 3 days and Ruby expired on 23.07.2001. He identified the dead body of Ruby and got recorded his statement Ex.PW5/A by the Investigating Officer.

(f) PW6 Rajbir Singh deposed that he is the owner of House No. B-1/11-B and had let out his house to the accused P.S. Negi along with his wife Ruby about 6/7 months prior to the incident On 21.7.2001, he had gone out to visit his relation and came to know that Ruby had been burnt at about 12.00 noon. He did not know where Ruby was admitted or that police had visited his house in his absence; no article was recovered by the police in his presence.

(g) PW7 Constable Subodh deposed that on 21.7.2001 while he was posted at Police Post Matiala Police Station Uttam Nagar, he accompanied SI Negi to B-1/11-B, Sewak Park, Uttam Nagar. The owner of the house informed them the Ruby had been taken to hospital in burnt condition by PCR van. Kerosene oil smell was coming from the gallery of the first floor and burnt clothes and match sticks were lying. SI Negi left him at the spot, went to Safdarjung Hospital and after returning he gave him the rukka. SI Negi sealed burnt clothes, match box, sticks and plastic can of kerosene oil and took them in possession vide memo Ex.PW7/A and Ex. PW7/B. On 22.7.2001, he along with SI Negi arrested accused P.S. Negi from RZ-243, Raj Nagar, Part II.

(h) PW 8 Constable Mahesh deposed that he was the duty constable at Police Station Safdarjung Hospital on 21.7.2001 when he received information that Ruby Nayal admitted on 21.7.2001 had expired; he informed Police Post Matiala and got recorded DD No. 17.

(i) PW 9 SI Mahesh Kumar deposed that he visited the place of occurrence on request of the Inspector Sukhbir Singh, SHO Uttam Nagar and prepared scaled site plan Ex.PW9/A at the instance of SI Negi.

(j) PW10 Constable Rajkumar deposed that on 21.7.2001 when he was working as DD Writer at Police Post Matiala under Police Station Uttam Nagar, he got information that a woman had set herself on fire at B-2/118, Sewak Park, Near Mandi, Kakrola Mod which he recorded in Roznamcha, ExPW10/A and sent a copy of DD to SI Negi. He was informed that address is B-1/118 instead of B-2/118 which he recorded as DD No.7, ExPW10/B and gave it to Constable Kuldeep to be delivered to SI Negi. (k) PW11 SI Balwan Singh deposed that on 21.7.2001 while he was incharge of PCR Van Power 57 and got information that a woman was lying in a burnt condition at B-1/118, Sewak park, Uttam Nagar, he went along with his staff to that address and took the lady to Safdarjung Hospital.

(l) PW12 Constable Mukesh Kumar deposed that on 11.10.2001 when he took exhibits of the case from Malkhana Moharrir vide RC No.270/21 to FSL Malviya Nagar, the FSL office did not accept the exhibits as there was no facility of the examination of the exhibits and that he redeposited them to Malkhana Moharrir with seals intact.

(m) PW13 Inspector Sukhbir Singh, SHO Uttam Nagar, deposed that on 23.7.2001 the injured Ruby Nayal died at Safdarjung Hospital and Section 302 IPC was added to the investigation. He got prepared sealed site plan from the draftsman and there he recorded the statement of the landlord Rajbir Singh Ex.PW6/ A and statement of draftsman Mahesh Kumar u/s 161 Cr.P.C. He conducted inquest proceedings at Safdarjung Hospital Mortuary and prepared inquest papers as Ex.PW3/ B, recorded statement of deceased's husband Rakesh and brother Samuel regarding identity of the dead body as Ex.PW5/ A and Ex.PW3/A respectively; recorded statements of PWs Rakesh, Smt. Vidhata (bua of accused P.S. Negi), photographer Ashu, Malkhana Moharrir and Constable Mukesh who had taken the parcel to FSL Malviya Nagar for examination. He also recorded the statement of ASI Balwan Singh of PCR who had taken the injured to the hospital and also of the duty constable. After completion of the investigation he sent the accused P.S. Negi arrested by SI Tribhuvan Singh Negi for trial.

(n) PW14 Smt. Vidhata deposed that the accused P.S. Negi is son of her brother R.C. Negi and the deceased Ruby Nayal was her daughter-in-law. Ruby was married to her son Rakesh 18 years ago in court and they did not live with her. Accused P.S. Negi was on visiting terms with them and she did not have any knowledge of any illicit relationship between Ruby and P.S. Negi. Her son Rakesh had separated from Ruby at 8/9 years ago on account of her not being of good

character and had started living with her. At that time Ruby was living with one Sh. Gulam Massey in Mahipalpur and not with the accused. She had gone to see Ruby when she came to know of Ruby having been admitted in the Safdarjung Hospital from a police officer; Ruby died after 3 days. Ruby had sustained burn injuries at Uttam Nagar where she used to reside alone. She was declared as a hostile witness later on.

(o) PW15 SI T.S. Negi deposed that on 21.7.2001 he was posted at Police Post Matiala under Police Station Uttam Nagar; at about 11/11.50 am a DD writer gave him a copy of DD No. 6 ExPW10/A and he along with Constable Subodh went to the spot. He found out on enquiry that Ruby Nayal had been burnt on the first floor and was admitted in Safdarjung Hospital. There was smell of kerosene oil present on the spot, some burnt and unburnt clothes were strewn in the gallery of the first floor. A can of kerosene oil was lying under the slab and there was no eyewitness. He left Constable Subodh to safeguard the spot and went to Safdarjung Hospital where he found Ruby Nayal was admitted in the Burns Ward. He collected her MLC Ex.PW4/A and met the doctor attending her. Ruby Nayal was fit for statement and her statement Ex.PW1/A was recorded by him in presence of Dr. Mohit after which he went to the spot and after making endorsement he sent the tahrir through Constable Subodh for registration of the case. He prepared site plan Ex. PW 15/B of the place of occurrence and Constable Subodh came in between with a copy of FIR, and got photographs of the spot taken. He made enquiries from the landlord Sh. Rajbir, took in possession the burnt clothes, the match box along with burnt match sticks and a plastic can of kerosene oil and sealed them all separately. He then deposited the case property in Malkhana and went to Rajnagar in search of the accused P.S. Negi, apprehended the accused P.S. Negi from RZ-243, Raj Nagar on 22.7.2001 along with Constable Subodh and took his personal search. He interrogated the accused who made his disclosure statement and got the accused medically examined. On 29.7.2001, he accompanied SHO to Safdarjung Hospital who conducted the inquest proceedings and got conducted the post mortem of the deceased, handed over the report of post mortem to SHO. He went with the SHO to the spot on 23.7.2001 where the SHO recorded the statement of PW Rajbir. After producing P.S. Negi before the Learned. Metropolitan Magistrate on 23.7.2001 and sending him to Judicial Custody he added Section 302 IPC to the investigation when Ruby Nayal expired in the hospital, he informed the SHO and investigation was handed over to Inspector Sukhbir Singh.

(p) PW16 Dr. Chander Kant deposed that he conducted the post mortem on the body of Ruby who was 34 years of age. The body was received in private sheet with bandages on right upper limbs except on all the fingers, left upper limb, trunk, both thighs and legs. He did not find any smell of kerosene from the body during external examination of the deceased. While eyes and mouth were closed, rigor mortis was well developed in both upper and lower limbs; ante mortem burns made post mortem staining unappreciable. While there were no signs of putrefaction, there were 90% superficial and deep burn injuries covering the

whole body except scalp, head, neck, upper part below chin, right hand fingers, supra pubic region and perineum. Areas of vital reaction were revealed by peeling of the skin due to charring. There was signing of scalp hairs anteriorly, eye brows and eye lashes. During internal examination of the deceased the following findings were noted:-

- (i) The brain, liver spleen and kidneys were congested.
- (ii) Larynx was congested, fine carbon soots mixed with mucous extended upto bifurcation of trachea present.
- (iii) Stomach contained semi digested liquid contents, mucosa was healthy.
- (iv) Uterus was empty. Nothing abnormal was detected.

Time since death was one day and the cause of death was shock, toxemia as a result of 90% superficial and deep burns caused by flames. Post mortem report was Ex.PW16-A. He received 13 inquest papers.

2. The accused in his statement recorded u/s 313 Cr.P.C. had denied the allegation levelled against him and claimed that he is innocent and has been falsely implicated in this case. The accused examined himself as DW1 and also examined Smt. Sarla Devi as DW2. He has stated that on 21st July, 2001, he was present in his house at RZ 243, Rajnagar, Palam Colony, Delhi along with his parents, wife and children and on that day he had slipped in the bathroom due to his weak left eye-sight and had sustained injuries on his shoulder at about 7.30 am and he was taken to Sunil Memorial Hospital by his wife and mother where he remained admitted from 8.00 am to 5.00 pm. DW2, Smt. Sarla Devi who is the resident of RZ 246, Rajnagar, Palam Colony and the neighbour of the accused deposed that she knew the accused Prem Singh Negi for the last 15 years and he treated her like his sister. She stated that on 21st July, 2001 she went to Safdarjung Hospital after receiving a call from the PW14 mother-in-law of the deceased Ruby and remained in the hospital from 12.00 noon to 5.00 PM and during the period Ruby remained unconscious and no police official or doctor had attended her or came near her in her presence and that whole body of Ruby except face was covered with bandages.

3. The entire discussion by the trial court of the evidence is reproduced as follows:-

27. PW5 Rakesh Nayal has deposed that he has three children and Ruby was his wife who was married to him in 1984 and accused Prem Singh Negi who is son of his maternal uncle who used to visit their house usually developed intimacy with his wife Ruby and later on he came to know about their illicit relation. This witness has also deposed that he asked accused Prem Singh Negi to visit his house any more and also warned Ruby not to have any relations with accused but she did not pay any heed to his advice. This witness further deposed that he also contacted Smt. Shakuntala W/o accused Prem Singh Negi in this regard but she shows his helplessness in this matter and thereafter Ruby declared that she

would go with Prem Singh Negi 8/9 years ago. This fact is further corroborated from the perusal of the evidence of Smt. Vidhata PW14 who in her testimony has deposed before this court that since the character of Ruby was not good, her son Rakesh separated her 8/9 years ago. However, this witness did not know that Ruby had been living with accused and it was not denied by her completely. PW6 Rajbir Singh who is independent witness and is the owner of the house in which Ruby deceased and accused Prem Singh were residing. He has further corroborated this fact that accused Prem Singh Negi and Ruby were residing in his house at 1st floor i.e. the place of occurrence.

28. PW4 Dr. Mohit in his MLC Ex. PW4/A has mentioned that patient herself has given the history of sustaining burn injury when her brother in law Prem Singh poured kerosene over her body and set her clothes on fire by lighting a match stick. He has also mentioned that the patient was conscious oriented. He has further deposed that patient was fit to give statement and her statement was recorded in his presence by the IO which was also signed by him.

29. I have also carefully gone through the statement of the deceased Ex. PW1/A. In her statement injured Ruby Nayal has stated that she was living with the accused and was married 17/18 years back with Rakesh Nayal who is living with her mother in law and children are living at R.K. Puram and that her conscious pricked her for leaving her husband and children and that she wanted to go back to them to which accused had refused at which the dispute took place between the deceased and the accused and today i.e. on the day of occurrence she expressed her desire to meet her children and Prem Singh asked her not to do so and started quarrelling with her and told me that "teri roz roz ki kil-kil se main tang aa gaya hoon or aaj mai tera kissa hi khatam kar deta hoon" and brought kerosene cane and match box from kitchen and set her on fire.

30. After going through the Ex.PW1/A and the corroborated evidence it is ample clear that there was a motive behind the killing of Ruby Nayal by the accused and he had set her on fire by pouring kerosene on her. The defence put forth by the defence is not plausible hence no weightage can be given to the defence witnesses.

4. The learned counsel for the appellant, Mr. Eklavya Nagpal has submitted that the appellant was falsely implicated in the present case as deposed by him as a defence witness. The main case set up by the appellant is that the dying declaration of the deceased, Ex. PW1/A is false and is not worthy of belief as this has been recorded in total contravention of Delhi High Court Rules, Chapter XIII and in particular Rules 1, 2 and 7. The learned counsel for the appellant submitted that Rule 1 clearly prescribed that as far as the dying declaration is concerned, it should be recorded in the manner prescribed in Chapter XIII A. He further stated that Rule 2 clearly postulates that dying declaration should be recorded by a Judicial Magistrate. Rules 1, 2 and 7 of Chapter XIII A Volume III of Delhi High Court Rules provide as follows:-

1. Statements made by a person as to the cause of his death or as any of the circumstances of the transaction which resulted in his death are themselves relevant facts and admissible in evidence u/s 32(1) of the Indian Evidence Act in cases in which the cause of the person's death comes into question. A statement commonly known "dying declaration" constitutes such an important evidence in criminals that their Lordships of the Supreme Court ruled in Khushal Rao Vs. The State of Bombay, which was followed in Harbans Singh and Another Vs. State of Punjab, that it could form the sole basis of conviction. It is thus necessary that a Court trying the case should have before it a correct and faithful record of the statement made by the dead person. As far as possible the dying declaration should be recorded in the manner hereinafter prescribed, and in the event of death of person making it, should be submitted at the enquiry or trial.

2. Dying declarations to be recorded by Judicial Magistrates-(i) where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration.

(ii) On receiving such application, the Judicial Magistrate shall at once either himself proceed himself, or depute some other stipendiary Judicial Magistrate to record the dying declaration.

7. Recording of a Dying declaration by a Police Officer or Medical Officer- Where a dying declaration is recorded by a Police Officer or a Medical Officer, it shall, so far as possible, be got attested by one or more of the persons who happen to be present at the time.

It was submitted that in the present case, the incident took place at 10.00 am on 21st July, 2001 and the MLC was performed at 12.00 noon and the dying declaration was sought to be recorded at 2.35 PM. It is submitted that the death eventually occurred on 23rd July, 2001 and it is prosecution's own case that she was fit enough to make a statement, hence there was no reason why the dying declaration should not have been recorded before the Judicial Magistrate, particularly when it was the sole basis of the prosecution's case. It is submitted by the counsel for the appellant that the whole of 22nd July, 2001 was available and the legal consequence of non recording of this dying declaration before the judicial Magistrate as stipulated in the Delhi High Court Rules (which had received the imprimatur of the Hon'ble Supreme Court by its judgment in State (Delhi Administration) Vs. Laxman Kumar and Others, should apply in the present case and non-compliance of this mandatory rule without any explanation whatsoever from the prosecution, renders the dying declaration neither

admissible nor worthy of belief The Hon"ble Supreme Court in the said judgment held as follows:-

28. We also find that under the relevant Rules applicable to Delhi area, the investigating officer is not to scribe the dying declaration. Again, unless the dying declaration is in question and answer form it is very difficult to know to what extent the answers have been suggested by questions put. What is necessary is that the exact statement made by the deceased should be available to the Court. Considered from these angles, the dying declaration in question is not acceptable. The High Court obviously lost sight of all these aspects when reversing the conclusion of the trial Court with regard to the document and agreeing to act upon it.

5. It was further submitted that there was no time recorded on the dying declaration and the prosecution's explanation that the said time is to be discerned from the Rukka which was prepared immediately after the dying declaration, also does not have credibility as the Rukka reached the police station at 3.05 PM. The learned counsel for the appellant stated that therefore the absence of recording time on the dying declaration assumed significance and the time gap between the time of recording of the Rukka and its receipt at the police station clearly shows that the non-recording of time on the dying declaration is a material defect in the said dying declaration. It has also been contended that de hors the defence evidence, it is clear that the prosecution had not adduced satisfactory evidence to explain the presence of the accused on the spot. The learned counsel for the appellant pointed out that the prosecution's own witness, i.e., the landlord of the premises clearly stated that he noticed that the accused had left the place when the landlord left at 8.00 am on 21st July, 2001. He further submitted that there is no evidence from the prosecution stating as to whether the accused was thereafter seen coming back to the house or seen escaping from the house after the alleged attack by him on the deceased. It was further submitted that taking into account the crowded nature of the locality of Sewak Park, Uttam Nagar and the fact that it was 10 am in the morning, it is inconceivable that nobody heard the cries of the deceased or saw the accused escaping from the spot. He further pointed out that at least one piece of scientific evidence should have been brought on record. The guilt of the accused was not proved by the police inasmuch as no finger prints were lifted from the kerosene oil can. In this view of the case and de hors the defence evidence, the prosecution has failed to establish its case and the possibility that death was caused by suicide cannot be ruled out.

6. The learned counsel for the appellant has also relied on the evidence of the husband of the deceased stating that there was inconsistency in the two dying declarations as in her dying declaration of the deceased to her husband Rakesh, she has clearly stated that she has attempted to commit suicide.

7. The learned counsel for the appellant has further submitted that the post mortem report clearly showed the absence of kerosene. He further pointed out

that even the MLC, which was relied upon by the prosecution to corroborate the veracity of the dying declaration, did not mention that even at the time, the deceased was admitted to the hospital, there was any smell of kerosene present. It was further submitted that Dr. Mohit, Sr. Resident had clearly stated that the deceased had suffered 100% superficial and deep burns where Dr. Chander Kant, who conducted the post mortem, stated that the deceased suffered from 90% superficial and deep burn injuries. A detailed recording of dying declaration was unnecessary leading to severe doubts about its authenticity and veracity. It was submitted that the PW-16, Doctor Chandra Kant, who performed the post mortem clearly stated that the 90% burns leads to the cloudiness of mind resulting in inability to relate the sequence of events or circumstances coherently in the dying declaration. In this view of the matter, the prosecution has been unable to prove the case beyond reasonable doubt and that the trial court's judgment was thus vulnerable particularly when the trial court failed to discuss the aforesaid features and had not even referred to the defence evidence in the judgment convicting the appellant. In this view of the matter, the learned counsel for the appellant submitted that the order of the trial court deserves to be dismissed.

8. Before we take up the main issue raised by the learned counsel for the appellant, we are of the view that on one issue there cannot be any debate and that is the trial court's failure to take into account the defence evidence at all. We feel that the trial court has erred in not discussing or even referring at all the evidence adduced by the accused. The fact that this has been done in a murder case leading to a punishment for imprisonment for life shows the error to be glaring. We are of the view that this error itself would have been sufficient to set aside the judgment of the trial court.

9. We have however, considered the entire prosecution case in any event and since the dying declaration is the sheet anchor of the case set up by the prosecution we have to examine the dying declaration carefully to consider its veracity and its authenticity. It is evident that the Rules prescribed by the Delhi High Court which had received the imprimatur of the Hon'ble Supreme Court in Laxman Kumar's case (supra), where the Supreme Court had frowned upon the practice of the investigating officer in recording the dying declaration,

27. In Dalip Singh and Others Vs. State of Punjab, , this Court has pointed out:

We may also add that although a dying declaration recorded by a Police Officer during the course of the investigation is admissible u/s 32 of the Indian Evidence Act in view of the exception provided in Sub-section (2) of Section 162 of the Cr.P.C, 1973, it is better to leave such dying declarations out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor. As observed by this Court in Munnu Kaja v. State of Madhya Pradesh, the practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged...

The fact that the dying declaration was scribed by the police inspector alone clearly shows that it was not worthy of reliance particularly in the light of the law laid down by the Hon"ble Supreme Court. Further it has also been laid down by the Hon"ble Supreme Court in Laxman Kumar's case that the dying declaration should not be recorded by a police officer in order to lend it credence.

10. The fact of recording of the dying declaration by the investigating officer himself, thus clearly violated the Delhi High Court Rules and the law laid down by the Hon"ble Supreme Court in Laxman Kumar's case (supra). We cannot overlook the testimony of DW1, Smt. Sarla Devi, according to which the deceased Ruby remained unconscious from 12.00 noon to 5.00 pm on 21st July, 2001 and during that period no police official or doctor either attended her or went near her. This testimony throws considerable doubt on the authenticity of recording of the dying declaration. The non-recording of time on the dying declaration and the prosecution's explanation that the said time is to be discerned from the Rukka also affects the credibility of the dying declaration.

The absence of the kerosene or any smell of kerosene both in the post mortem report as well as in the MLC which was relied upon by the prosecution to corroborate the veracity of the dying declaration also throws doubt about its authenticity. Furthermore, the dying declaration is so detailed, that it appears to be highly unlikely to have been made by the victim who had suffered 90% burns injuries. It was also stated by PW-16, the doctor who conducted the post mortem, that 90% burns leads to the cloudiness of mind resulting in inability to relate sequence of event or circumstances-coherently. This also lends support to the plea of the appellant that the detailed nature of the narrative sequence in the dying declaration created doubts about its authenticity.

11. The above statement of PW-16 Dr. Chander Kant indicates that there is some doubt about the accuracy and the veracity of dying declaration produced by the prosecution. While we must take into account the testimony of the husband of the deceased which clearly stated that his wife had committed suicide as per her dying declaration to him, nevertheless in addition there is definite and reasonable doubt about the prosecution's case as no evidence has been brought on record to show whether the appellant/accused was seen returning to his residence or seen running out of it after the incident. We have no reason to disbelieve the evidence of the husband since, given the fact of his estranged relation with the deceased Ruby and the love and affection for her in spite of the separation, and the fact that the accused P. S. Negi was the cause of the rift, he could have had no interest in exoneration of the accused. In fact he would have been inimical to the paramour who caused the rift. The plea of the appellant is strengthened by the deposition of the landlord PW6 to the effect that when he left the house at 8:00 am the appellant was not there. Further, the case set up by the prosecution that no cries were heard by the neighbours of the deceased who had suffered severe burns cannot be believed. Thus, apart from believing the evidence led by the husband Rakesh PW5, regarding the dying declaration made to him, stating

that the deceased had committed suicide, we must also take into account the entire sequence of events and, the possibility of suicide cannot be ruled out particularly in the light of the fact that the dying declaration is supposed to have used words like "aatmgiani" which would suggest that the deceased was suffering from severe remorse and in these circumstances the possibilities of suicide could not be ruled out. We have also examined the defence evidence and have not found it worthy of sustaining the stand taken by the accused particularly on the ground that his flat denial of any stay with the deceased was clearly disproved by the evidence of witnesses namely husband of deceased Rakesh PW5 and in particular, the landlord Rajbir PW6. Furthermore, in so far as the stay at Sunil Memorial Hospital is concerned, the accused apart from producing medical and discharge slip, DW-1 and DW-2, had not led any other evidence to render the evidence worthy of implicit belief. However, this being a criminal trial, it was for the prosecution to produce evidence to prove the allegation of guilt against the appellant beyond reasonable doubt and it is in light of it we have to examine the case set up by the prosecution and the submissions of the learned counsel for the appellant. Taking into account the above factors and the failure of the trial court to even refer to the defence evidence, we are of the view that the prosecution has not been able to make out its case beyond reasonable doubt and the judgment of the trial court convicting the appellant cannot be sustained.

12. We are also distressed to note that in spite of categorical position of law requiring use of scientific data for establishing the prosecution case, we are repeatedly finding that the Delhi Police, despite having available the infrastructure for finger printing and other scientific methods, does not resort to it and relies on obsolete methods. The innocence or guilt of the accused would have been established conclusively if finger prints on the can of kerosene oil had been taken. However, use of scientific methods have not been resorted to without any explanation quite contrary to the position of law laid down by the learned Single Judge in Abdul Subhan Vs. State (NCT of Delhi), as follows:

14.13.7. Proper investigation of such accidents would go a long way in aiding the criminal justice system in convicting those who are guilty and acquitting those who are innocent. A shoddy investigation will only point in one direction and that is in the acquittal of all whether they are guilty or whether they are innocent. Because, no criminal court would (and ought not to) convict any person merely on the basis of conjectures, assumptions, probabilities. All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case which when taken objectively would lead to the inescapable conclusion that a conviction is maintainable.

There is no explanation why the scientific method was not applied in the present case by the police and after taking into account the above position of law felicitously stated by the learned Single Judge which we hereby affirm, the

prosecution case does not lead to the inescapable conclusion that a conviction is inevitable and that the prosecution had brought home the guilt of the accused beyond reasonable doubt. The appeal is consequently allowed and the impugned judgment dated 27th February, 2004 is set aside and the appellant is directed to be set free if not required in any other case.