
(1979) 05 DEL CK 0008

In the Delhi High Court

Case No : Criminal Appeal No. 146 of 1976

Shantidevi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-05-1979

Acts Referred:

Citation : (1979) ILR Delhi 183

Hon'ble Judges : Prithvi Raj, J;O.N. Vohra, J

Bench : Division Bench

Advocate : C.L. Prem and P.P. Malhotra, for the Appellant;

Judgement

O.N. Vohra, J.

(1) This is an appeal by Shanti Devi (55), widow of Patti Ram, resident of House No. 2589, Bagichi Raghunath, Sadar Bazar, Delhi, who was convicted u/s 302 of the Indian Penal Code and sentenced to life imprisonment by judgment dated February 28, 1976 of the Additional Sessions Judge, Delhi, for having murdered her daughter-in-law.

(2) Briefly, the facts preceding the actual occurrence which took place on February 26, 1975 are these. Sham Wati, a young Harijan girl of Manakpura, Delhi, was married to Ved Raj on April 26, 1974. After staying with her husband for about 15 days, she went to her parental home and complained to her mother, Shanti Devi (Public Witness 12), that her husband was impotent and her in-laws had treated her with cruelty. Sham Wati remained with her parents for about seven months. During that period it was suggested to Ved Raj and his mother, the appellant, that her people would extend a helping hand in seeing that Ved Raj gets cured of his trouble. Ultimately, on the intervention of Ram Lal, who had been responsible for bringing about the marital alliance, Sham Wati was taken back by Ved Raj on January 16, 1975. About a fortnight thereafter, Chander Wati (Public Witness 16) wife of Jai Prakash (Public Witness 21), brother of Sham Wati, along with Anokhi Devi (Public Witness 30), a neighbour, visited Sham

Wati. During the talk, Sham Wati leveled the same charges against her husband and other members of his family and informed with tears in her eyes that the appellant had suggested that she could have illicit relations with Ramesh, her other son, if she liked, but she had spurned the suggestion. A few days thereafter, Chander Wati along with Parmeshwari, wife of Pyare Lal (Public Witness 22), another brother of Sham Wati, again went to the house of Sham Wati and was told that there had been no improvement in the conduct of Ved Raj and other members of the family. On being apprised of the State of affairs and on being further told by Chander Wati that the appellant had resisted their entry into her house but they had somehow forced their way to have contact with Sham Wati, Shanti Devi (Public Witness 12) implored Jai Prakash and Pyare Lal to fetch Sham Wati. Accordingly, both went to the house of their sister but the appellant and the members of her family did not allow them to meet their sister, not to talk of allowing them to take Sham Wati along with them. Some respectable of the Basti were asked to intervene and bring Sham Wati to her parental home but in vain.

(3) On February 24, 1975, Shanti Devi (Public Witness 12), along with Mohan Devi (Public Witness 14) and Batto (Public Witness 19) went to the house of Sham Wati with a view to bringing her along but they "were not allowed) to enter the house by the appellant. Accordingly, they sat down in the verandah of the house opposite to the house of the appellant. Sham Wati came out into that verandah. She was carrying visible marks of injury on the face. She reiterated farther acts of cruelty. Shanti Devi (Public Witness 12) implored the appellant to send Sham Wati to her house but the appellant remained adamant and declared that she would not hand over Sham Wati alive to her. On return to her house, Shanti Devi (Public Witness 12) took into confidence her sons, Jai Parkash and Pyare Lal, and asked them to report the matter to the police. Accordingly, both went to police station Sadar Bazar and at the instance of Pyare Lal, entry, copy of which is Ex. Public Witness 8A, was recorded in the daily diary containing the mention that the mother had been to the house of the daughter and had seen marks of injury on the face. This report was entered in the register pertaining to the non-cognisable offences and, presumably for the reason that the police would not move in the matter, Shanti Devi (Public Witness 12) asked her sons to send telegrams to the Lt. Governor and other authorities. Telegrams (copy Ex. Public Witness 12(DB), were sent, accordingly, purporting to have been made by Shanti Devi herself. In addition to the facts which were earlier mentioned in the report, it was stated that Sham Wati was in abnormal condition and her life was in extreme danger.

3A. On February 26, 1975, around 3.15 p.m. the incident of burning of Sham Wati by use of kerosene took place, Om Parkash (Public Witness 4), Sub-Officer, Sadar Bazar Fire Station, received message at 3.35 p.m. from Police Control Room in regard to fire having broken out in the house of the appellant and rushed to the spot reaching there within a couple of minutes. He saw both the doors of the room lying open and Sham Wati lying unconscious with burns all around and

perceived smell of kerosene. He carried Sham Wati on a stretcher to the Irwin Hospital. Suresh Kumar, son of the appellant, in whose presence Sham Wati was taken away to the hospital, went to Police Station Sadar Bazar and gave information at 3.50 p.m. in regard to fire having broken out in the house. He also mentioned that the incident had taken place half an hour before and that he was coming from Raj Tailor at Basti Harphool Singh when he had noticed the fire on reaching his house. Report (copy Ex. Public Witness 9/A) was recorded and Asi Hardev Singh (Public Witness 9) was deputed to the place of occurrence.

(4) Dr. C. M. Goel (Public Witness 24) attended upon Sham Wati in the Casualty on her arrival at 4 p.m. and observed burns all over the body to the extent of 90 per cent. He prepared Medico-legal Certificate (copy Ex. Public Witness 241A) and admitted the patient, who was then unconscious, in Burns Ward for detailed examination and management. Dr. R. Garg (not examined) who was working under Dr. Meenakshi Chaudhari (Public Witness 28), House Surgeon, Burns Ward, attended upon Sham Wati and found her conscious but unable to open her eyes and prepared Case Sheet (Public Witness 28/B) by mentioning the history of the patient as "having been burnt by her in-laws after throwing kerosene on her body" and described the burnt areas as :

1. Head & neck 9% 2. Front and chest 10% 12% 3. Back and Trunk 16% 4. Perineum 1 % 5. Both upper extremities 19% 6. Both lower extremities 38% 80.85%

Asi Hardev Singh, who had gone to Irwin Hospital, on being told that the patient had been removed there, collected the Medico-legal Certificate. He sought permission from the doctor to record the statement of Sham Wati but was told that she was not fit to make statement. Dr. R. Garg made endorsement (copy Ex. Public Witness 9B) to this effect on Medico- legal Certificate, copy of which is Ex. Public Witness 24A, at 5.30 p.m.

(5) Sub Inspector Chander Singh (Public Witness 32) also reached the place of occurrence at 5.30 p.m. Dhanno Devi (not examined), resident of Bagichi Raghunath made statement (Ex. Public Witness /17A) before the Sub Inspector in regard to the incident of burning. It disclosed commission of an offence punishable u/s 309 of the Indian Penal Code. Accordingly, the Sub Inspector sent rukka along with his endorsement (Ex. Public Witness 32/DA) for registration of the case. In this way case u/s 309 of the Indian Penal Code was registered against Sham Wati (copy of Fir Ex. Public Witness 1/DA). title Sub Inspector called the Crime Team. Constable Lal Chand (Public Witness 31), photographer, took photographs (Ex. Public Witness 31/A-1 to Ex. Public Witness 31/A-5). Out of these Ex. Pw 31/A-1 which was taken while standing inside the room after closing the door from inside, showed the bolt and socket intact. Sub Inspector Chander Singh took into possession human hair and burnt human skin and prepared recovery memo (Ex. Public Witness 10/A). He also look into possession plastic can containing kerosene and prepared memo Ex. Public Witness 10/B. He also took into possession match box and burnt pieces of cloth and prepared

memos Ex. Public Witness 10/C and Ex. Public Witness . 10/D. All these articles were lifted from inside the room.

(6) On February 27, 1975, Sub Inspector Chander Singh went to Ilrwin Hospital at about 2.05 p.m. and contacted Dr. Meenakshi Chaudhari who declared Sham Wati to be fit for making statement and made endorsement Ex. Public Witness 26/B on Medico-legal Certificate (Ex. Public Witness 24/A). Sham Wati, on being interrogated, made the following statement:

"I am daughter of Sohan resident of house No. 10342, Manak Pura, Delhi. I was married to Ved Raj on April 26. 1974. After marriage I went to my parental house and again went to the house of my husband and again went back to my parental house where I stayed for seven months and, thereafter, my husband brought me back a month ago. My husband had no communication with me nor would eat anything cooked by me. He would eat such food as was cooked by his sister. He would daily give me beating, and ask me to take away-the articles of dowry and go to my parents. Whenever I asked as to why be bad brought me, lie would give me beating. My mother- in law, Shanti, and my husband's brothers, Ramesh and Subhash, also joined the beating. My husband would say that he was a photographer and he liked his work and felt disturbed on account of my presence. When I went into the room on the first floor, he would ask me to go down My mother-in-law would quarrel with my brothers when. they came to see me and turn them out of the house. On Wednesday, the 25th February, 1975, my mother came to see me. She was not allowed to have full talk with me. My mother-in-law stated that she would strip off my nose with a knife or bite off with teeth and punishment prescribed for an injury with a knife was six months. Once the wives of my brothers came. My mother-in-law started speaking against me and said that if one of her sons was not potent I may be given to the other. My husband is not capable of having sexual intercourse with me. My sisters-in-law stated that they would like Shama to live with the one she had been married to and in case there was any ailment, they would see that it was cured. After they left, my mother-in-law hit me and gave me kicks. Ladies from the mohalla intervened. My mother-in-law used to quarrel with the ladies of the mohalla and used to hurl abuses on them. I do not know the names of those ladies. On Tuesday, the 25th February, 1975, I met my mother in the house opposite to our house and as I returned, my mother-in-law pushed me out of the house and uttered filthy abuses. A number of ladies collected but they were asked to go out. A day before yesterday Prabhu Dayal asked my mother-in-law as to why she was harassing me. He also gave the threat that he would inform my parents and apprise them how she was behaving with me. My mother-in-law said that I would be given food as is thrown to a dog and keep me like that. Suresh and Ramesh, my brother-in-law, told my husband that if he would not administer beating to me, they would break my bones. Thereupon my husband said that if they did so, all the neighbours would take my side. Yesterday at 9.30 a.m. Ramesh went to Telephone Exchange where he was working. My husband also went to his work. My mother-in-law, my brothers-in-law Subhash and Suresh, and my three

sisters-in-law were at the house. I used to do all the household chores but I was not allowed to cook the food. Once I was telling this fact to a lady in the neighborhood when my second sister-in-law came up and I was given beating. Yesterday at about 3.30 p.m. I was sleeping on the cot as I could not sleep properly during the night. My mother-in-law, Shanti, Subhash, Suresh and my eldest sister-in-law were at the house. My mother-in-law sprinkled kerosene on me. I got up on account of the foul smell of the kerosene. I actually got up from the charpai and jumped on the ground. My mother-in-law set fire to me with a match stick. Once all went out of the room and immediately thereafter came into the room and started extinguishing the fire, asking how I had caught fire. In the meantime a lady from the mohalla came there. Kerosene had been brought through Subhash the day before yesterday. When kerosene was brought, my mother-in-law said that she would set fire to me. Both the doors of the room were open. The door which opens in the gali generally remains closed. I do not know the names of those ladies."

Sham Wati further added :

"Prabhu Dayal asked my mother-in-law as to why she had brought me and why I was being harassed. About four days ago, my husband said to his mother that if she would not finish me, he would use the knife and kill me and go to jail. My mother-in-law said that she was not afraid of police and that she would get my brothers murdered on payment of Rs. 500.00 or Rs. 1000.00 . I am read up to the 8th class."

(7) On the view that an offence punishable u/s 307 read with Section 34 of the Indian Penal Code appeared to have been committed, the Sub Inspector forwarded the statement Ex. Public Witness 1/A which had been got thumb marked by him after it had been read over to Sham Wati for registration of a case. In that way formal F.I.R. (Copy Ex. Public Witness 1/C) came to be recorded and a case u/s 307 read with Section 34 of the Indian Penal Code was registered.

(8) On arrival at the place of occurrence. sub inspector Chander Singh prepared rough site plan Ex. Public Witness 32/A and took into possession cot. Ex. P3, vide memo Ex. Public Witness 10/C.

(9) On the same day. Assistant Sub Inspector Hardev Singh moved application (Ex. Public Witness 27/A) before Shri N. Diwakar (Public Witness 27), Sub Divisional Magistrate, for recording the statement of Sham Wati in the Irwin Hospital. Accordingly, Shri N. Diwakar went to the Hospital, took permission of Dr. Meenakshi Chaudhary for recording the statement and recorded statement Ex. Public Witness 27/B. He read out the same to Sham Wati and got it thumb marked at points B, C and D in token of correctness.

(10) Sham Wati's general condition continued to remain poor, despite best medical attention. Some time she complained of pain and more morphia was injected. On February 28, 1978, she suddenly collapsed at 5.15 p.m. Cardiac

massage was done and coramine was injected. She could not be revived and was declared dead at 5.30 p.m.

(11) Sub Inspector Chander Singh collected the Death Summary (Ex PW26/A) and prepared Inquest Report Ex. Public Witness 3/A. Reference was made for carrying out autopsy and Dr. Bishnu Kumar (Public Witness 15) conducted post mortem examination on March 1, 1975 at 3 p.m. and observed that burns were present all over the body and were approximately between 90 to 95 per cent. On internal examination, he found all the organs congested. He found no evidence of injury, that is, struggle mark present on the body and gave the opinion that death was due to toxemia and shock as a result of burns by fire (Ex. Public Witness 15A).

(12) The earlier case u/s 309 of the Indian Penal Code was got cancelled and on completion of the investigation, charge sheet u/s 307 read with Section 34 of the Indian Penal Code was filed against the appellant and her sons, Subhash and Suresh. and daughter, Raj Kumari.

(13) During the trial, the appellant denied having ever given beating to Sham Wati. She also denied the various visits by the relations of Sham Wati. In fact, she denied all the incriminating circumstances put to her and took up the stand that it was in her absence that Sham Wati had attempted to commit suicide by self immolation and that the photograph of the interior of the room had been taken by driving a nail on one side of the socket. Similar stand was taken by Subhash, Suresh and Raj Kumari.

(14) The Additional Sessions Judge relied upon the dying declaration (Ex. Public Witness 1A) recorded by Sub Inspector Chander Singh and rejecting the subsequent dying declaration recorded by the Sub Divisional Magistrate on the following day found the appellant guilty. In regard to others, he gave them the benefit of doubt and acquitted them of the charge.

(15) There is no manner of doubt that Sham Wati died on account of injuries sustained by her on February 26, 1975 and those injuries were sufficient to cause death in the ordinary course of nature.

(16) Three contentions have been advanced by Shri C. L. Prem. learned counsel for the appellant. It is submitted that the dying declaration, is unworthy of being relied upon. It is also submitted that inference should be drawn that it could be a case of self-immolation. Lastly, it is submitted that the prosecution witnesses, who have spoken about previous animosity, are interested witnesses and their accounts are discrepant and there are a number of contradictions and, therefore. they should not be believed. We would deal with these in Serialtim.

(17) The law in regard to dying declaration is well-settled. The basic authority is Khushal Rao Vs. The State of Bombay, , wherein on review of the relevant provisions of the Evidence Act and the case law, their Lordships held :

"(1) 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 ; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made ; (3) that: it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that 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 ; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say in the form of questions and answers, and . as far as practicable, in the words of the maker of 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 human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement. by circumstances beyond his control ; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it ; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. Hence, 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. If on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case. has come to the conclusion that that particular dying declaration was not free from the infirmities, referred to above or from such other infirmities as may be disclosed in evidence in that case."

(18) These observations have been relied upon in *Harbans Singh and Another Vs. State of Punjab*, , *Thurukanni Pompiah and Another Vs. State of Mysore*, , *Lallubhai Devchand Shah and Others Vs. The State of Gujarat*, besides other cases, the latest being *Bhayani Luhana Radhabai vs . State of Gujarat*, (1977) 1 SCC 762 . The emphasis has been on three considerations : truthfulness of the dying declaration in the totality of the circumstances of the case, consistency in the allegations made by the deceased in cases where there is plurality of such

declarations and promptness in the levelling of accusation.

(19) It would be observed that Om Parkash (Public Witness 4) found Sham Wati in unconscious condition and carried her to the Irwin Hospital in that state and the doctor, who attended upon her in the Casually, found her in that condition. Consciousness was, however, revived on first-aid being administered as would appear from the Medico-legal Certificate (Ex. Public Witness 24/A) prepared by Dr. C. M. Goel and the endorsement dated February 26, 1975, Ex. Public Witness /9B which was made by Dr. R. Garg at 5.30 p.m. to the effect that Sham Wati was not in a fit position to make statement. In the Case Sheet Dr. R, Qarg noted the history of the patient as "having been burnt by her in-laws after throwing kerosene on her body at 3.30 p.m.". The entry which is Ex. Public Witness 28/B has been proved to be in the hand of Dr. R. Garg by Dr. Meenakshi Chaudhari (Public Witness 28) and Khazan Sicgh (Public Witness 26), Record Clerk, Irwin Hospital, New Delhi. Khazan Singh has stated that Dr. R. Garg had left the hospital and his whereabouts were not known. This statement stands unchallenged on the record. Dr. Meenakshi Chaudhari has stated that Dr. R. Garg worked under her in the same ward and attended upon Sham Wati. She has further stated that the history of" the patient is normally asked from the patient. There is two-fold objection against this evidence. It is urged that this statement is inadmissible and in case it be held otherwise there is no warran" to hold that it was made by Shnm Wati. These contentions are devoid of force. Clauses (1) and (2) of Section 32 of the Evidence Act, 1872 say :

"(1) When the statement is made by a person as to the caused his death, or as to any of the circumstance 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. (2) When the statement was made by such person in the ordinary course of business, and in particular when it consist. of any entry or memorandum made by him in books kept. in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the recent of money goods. securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him."

(20) The history recorded by the doctor is the statement of a dead person as to the cause of death and, Therefore, clause (1) is attracted. Furthermore, this history is a statement in writing made by the doctor in the ordinary course of business and in the discharge of professional duty and inasmuch as there is undisputed evidence on the record that the doctor could not be found or his attendance could not be procured without such delay or expense as under the circumstances of the case was unreasonable, clause (2) is, Therefore, attracted and renders this entry a relevant piece of evidence. Needless to say that

"statement" within the meaning of Section 32 and other provisions of the Evidence Act, In its primary sense, means "something that is stated" and the element of communication to another person is not necessary before "some thing that is stated" can be treated as statement. Coming to the "aspect of co-relation to Sham Wati", no challenge at all was given to Dr. Meenakshi Chaudhari when she stated that the history of the patient mentioned in the Medico-legal Certificate was normally asked from the patient. In the absence of anything else, the probabilities are that Dr. R. Garg recorded this history by enquiring from Sham Wati herself, more particularly, when there is no indication at all that at that point of time there was any other person who could be questioned. Looking at the matter from a different angle, this history can be treated as a dying declaration made by Sham Wati to Dr. Meenakshi Chaudhuri herself as she is emphatic that, in this case, she asked the history from the patient. Shri C. L. Prem has pointed out that all Dr. Meenakshi Chaudhari stated is that she asked the history from the patient but has not further stated what she was told by the patient. In our view the examination of the witness in Court on the point suffers from such brevity as is irritable. It was desirable that the witness should have been further asked as to what was told by Sham Wati for making the whole thing explicit. However, when the whole sentence "the history of the patient Is normally asked from the patient and in this particular case also I asked history from the patient" is read in conjunction with the earlier statement that the alleged history and the examination of Sham Wati is in the hand writing of Dr. R. Garg and is also signed by him, there remains no doubt in the mind that what Dr. Meenakshi Chaudhari should be taken to say in regard to the history given by the patient in answer to her query is the very same that had already been recorded by Dr. R. Garg and for that reason necessity for recording the same over again was not felt. We feel reassured in this connection by a very pertinent question put to the witness and an equally pertinent answer that was given. It so happened that in her examination-in-Chief Dr. Meenakshi Chaudhari stated that Sham Wati had 80 to 85 per cent i superficial burns on the body. In cross-examination, she was asked why she did not put this fact in writing and she replied that it was because it had already been written in the Case Sheet. It is a fact that the case Sheet prepared by Dr. R. Garg mentions the extent of burns as 80 to 85 per cent.

(21) Shri C. L. Prem has referred to *Perumal Mudaliar Vs. The South Indian Railway Company, Limited*, ; *Coral Indira Gonsalves, falsely called Iswariah Vs. Joseph Prabhakar Iswariah*, and *Bava Salemamad Gulmamad vs. The State of Kutch*, Air 1953 Kutch 7, to contend that report made by a doctor can be proved by the doctor by coming into the witness box and the mere fact that the report produced in Court is shown to be in the hand writing of the doctor is not enough. The observations relied upon were made in the context that the doctors though available were not produced and where examined, they did not state the fact as they ought to have done. There was thus absence of circumstances which could attract the application of clause (2) of Section 32. In the instant case, the history

of the patient is a statement implicate made by the doctor in the discharge of his professional duties and the requirements which attract the application of clause (2) of Section 32 are undisputably there.. The contention stands repelled.

(22) We are thus of the view that the history of the patient Ex. Pw 28B is the dying declaration made by Sham Wati. The only fault that can be found with this dying declaration made to two doctors within a short span of time immediately on regaining consciousness is that it does not mention the names of the culprits- For that reason it cannot be made the basis for conviction. Nonetheless, this declaration is of immense value for evaluating the dying declaration recorded by the Sub Inspector on the following day when Sham Wati became fit to make the statement and still another declaration which was recorded by the Sub Divisional Magistrate on February 28, 1975, as it was made at the earliest opportunity and chances for tampering at the hands of interested persons stand completely eliminated.

(23) Coming to the dying declaration provided by the statement, Ex. Public Witness 1/A, the most striking feature that meets the eye is that the person who made the statement was in perfect mental condition to give expression to what was desired. It is a long narrative of series of facts and thus far from a cryptic line or two regarding which it may be possible to imagine that it was prompted by others having animus and in a position to dominate on the will of the other in, a weak and poor state of physical and mental health- The main attack on behalf of the appellant is that it is a statement made to the investigating officer in connection with a case u/s 309 of the Indian Penal Code and, Therefore, it is hit by Section 162 of Criminal Procedure Code. There is no substance in the charge in view of sub- section (2) of Section 162 Criminal Procedure Code. 1973 which says:

"Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872."

The next attack is .that if was recorded by a police officer in the absence of the doctor and, Therefore, it is not comparable to a dying declaration recorded by a Magistrate in the presence of a doctor by putting specific questions for eliciting replies. Although it cannot be gainsaid that a dying declaration, which is recorded in the manner suggested by the learned counsel, would inspire more confidence, the mere fact that the dying declaration happens to be recorded by police officer would not militate against its creditworthiness. Much would depend on the facts and circumstances of individual cases and exigencies provided by the occasion and a host of such like considerations. In the instant case, Asi Hardev Singh (Public Witness 9) who collected the Medico-legal Certificate in the evening of February 26, 1975 found that Sham Wati was not fit to make a statement. Accordingly, sub inspector Chander Singh visited Sham Wati on the following day. It was his first visit. On satisfaction that Sham Wati was fit to make a statement, he recorded the same. For all intent and purposes, the visit was in connection with interrogation in the case u/s 309 of the Indian Penal Code but the facts

stated by Sham Wati turned the table and, on account of death which supervened, her statement acquired the character of a dying declaration. So viewed this dying declaration came to be recorded in natural settings. The doctor made endorsement in regard to the fitness of Sham Wati on the Medico-legal Certificate and, Therefore, the absence to endorsement on the bottom of Ex. Public Witness 1/A is of no consequence. Sub-Inspector Chander Singh has sworn that Sham Wati made a voluntary statement, the same was read over to her and she accepted the same to be true and put her thumb impressions in token thereof. No challenge was given to this witness during cross-examination and there is, Therefore, no reason at all why he should not be believed. In this dying declaration Sham Wati clearly stated that as she was lying on the cot the appellant sprinkled kerosene on her and, thereupon, she got up and jumped on the ground. It is also mentioned that it was the appellant who set fire with a match stick and, thereafter, all went out of the room and immediately came thereafter and started extinguishing fire and asking how she had caught fire. The conclusion is, Therefore, irresistible that this dying declaration is voluntary and specific as well so far as the appellant is concerned.

(24) It is pointed out by Shri C. L. Prem that the mother, brothers and other relations of Sham Wati had ample opportunity to talk to her and instigate her to make a statement by implicating the appellant and other members of her household and, Therefore, this declaration should not be taken as spontaneous and truthful. There would have been some fores in this argument had there been no previous declaration implicating the in-laws. As the things stand this dying declaration which was made by Sham Wati at the earliest when she became fit enough to make a detailed statement is wholly consistent with the laconic though highly significant declarations made to Dr. R. Garg and Dr. Meenakshi Chaudhari within an hour or so of her arrival at the hospital. It is inconceivable that the mother and brothers of Sham Wati had the opportunity to tutor her successfully to accuse her in-laws and it is equally inconceivable that Sham Wati should so readily agree to implicate her in-laws if it were a fact that they were not responsible for causing her such burns as took the life out of her.

(25) The next dying declaration is provided by the statement recorded by Shri N. Diwakar (Public Witness 27). This statement was also recorded after seeking permission from Dr- Meenakshi Chaudhari and was read out to Sham Wati who put her thumb impressions at three points. Shri N. Diwakar has sworn that Sham Wati made the statement voluntarily and he was satisfied in that behalf. No attempt was made to falsify this witness or to bring out that it was not a true and correct record of what was stated by Sham Wati or that she was not in a fit condition to express herself. The background and facts which preceded the incident of burning given in this statement as compared to what was narrated to Sub Inspector Chander Singh leave no room for doubt in regard to the capacity of Sham Wati to say what she desired to tell. In this statement, too, it is mentioned that as she was lying on the cat the appellant threw kerosene on her. It is further mentioned that on account of kerosene her eyes became closed and

it is not known who actually set fire with the match stick. The variation vis-a-vis Public Witness 1/A is not substantial nor it can be said that it affects the veracity of the dying declaration in any manner and it would not make any difference as regards liability so far as the appellant is concerned. In Bhayani Luhana Radhabai's case (supra) the facts were that a young wife of 23 was killed on being set on fire after pouring kerosene. There were a number of dying declarations and while there was consistency in the allegation that kerosene had been poured by Radhabai, the mother-in-law, in one dying declaration specific act of setting fire by throwing lighted match stick was attributed to Girdharlal, husband, but not in the other. While maintaining the conviction of Radhabai it was observed:

"It is clear from the aforesaid discussion that the prosecution has established beyond reasonable doubt that it was the appellant who poured kerosene over the clothes of Mukta and if that be so, then even if she did not light the matchstick and set fire to the clothes and it was Girdharlal who did so, she would still be constructively liable for intentionally causing the death of Mukta, for the death of Mukta would clearly be in pursuance of the common intention of the appellant and Girdharlal to cause her death."

(26) It would be seen that in this dying declaration previous beatings are attributed to Subhash and Ramesh and the same is the case with Ex. Public Witness 1/A. There is, however, mention of Ramesh instead of Suresh along with Subhash and Raj Kumari at the time of the burning incident it appears to be a case of mistake in recording arising out of phonetic similarity between the two names "Ramesh" and "Suresh" and the fact that "Ramesh" had already been mentioned in connection with the beating. In the previous dying declaration Ex. Public Witness I/A Sham Wati had specifically mentioned that on the day of occurrence Ramesh had gone to the Telephone Exchange where he worked. For this reason as well it is inconceivable that she should mention the presence of "Ramesh" at the time of burning. It is pointed out that in Ex. Public Witness I/A, the appellant alone is mentioned at the time of the burning incident while in the other there is specific mention of Subhash, Ramesh and Raj Kumari towards the close. It is not so. The presence of Subhash, Suresh and Raj Kumari at the time of burning is implicit in the word "all" in the expression "once all came out" appearing in Ex. Public Witness I/A. It is also pointed out that express exhortation is attributed to Subhash, Ramesh and Raj Kumari, at the time of burning in Ex. Public Witness 27/B. It is not so as the reference is to the incident which happened prior to the actual burning. We are also of the view that these variations would have been significant for determining constructive liability by applying the provision contained in Section 34 of the Indian Penal Code but these are of no importance at all so far as the consideration of guilt of the appellant is concerned. The two dying declarations are singularly consistent inasmuch as the act of sprinkling kerosene is attributed to the appellant and whereas in one of the act of setting fire with match- stick is specifically attributed to the appellant and in the other inferentially only. This consistency in fact is traceable to the earliest

dying declarations made to the two doctors where there is mention of word "in-laws".

(27) Still another dying declaration is provided by the evidence of Shanti Devi (Public Witness 12), who has stated that, on being enquired. Sham Wati told her that she had been set on fire by the appellant and that Suresh and Raj Kumari had exhorted to finish her. The main criticism against this evidence is that if it were a fact that Shanti Devi (Public Witness 12) was so informed by her daughter on February 26, 1975 there is no reason why she would not rush to make a report against the appellant and her children. The argument over-looks the piquant situation in which the mother was placed on account of such extensive burns as did prove fatal. It is too much to expect of the mother to take recourse to law when life of the dear one is flickering and grim battle between life and death is raging. We see no good reason for disbelieving Shanti Devi (Public Witness 12) when she says that she was stunned on account of macabre and gruesome occurrence and that is why she did not report to the police on February 26, 1975. It may be mentioned that even if this piece of evidence in regard to dying declaration is ignored, it would not make any difference.

(28) The other contention that it could be a case of self-immolation is wholly devoid of merit and the various circumstances which have been urged in support thereof have, in fact, no substance as would be presently seen. It is pointed out that Sham Wati did not sustain any burns on hands and arms and this fact is an unerring pointer to the inference that she herself set fire to her clothes and, accordingly, did not make any effort to extinguish the same by use of her hands. Case sheet (Ex. Public Witness 28/B) would show on perusal that burnt area is divided into six heads and number 5 pertains to both upper extremities which stand for both hands and arms. The extent of burns on upper extremities are stated to be 19 per cent which shows that burning covered almost the entire area. It is also pointed out that according to Dr. Bishnu Kumar there was no evidence of any injury or struggle on the dead body which would show that Sham Wati just allowed herself to be burnt. This is not the correct inference that follows. The doctor has stated the extent of burns as 90 to 95 per cent and, Therefore, he should be taken to mean that he did not observe any injury other than burn injury and nothing else.

(29) It is next submitted that according to report Ex.PW 17/A made by Dhanno Devi shortly after the occurrence the two doors of the room where burning took place were closed from within and the door which opened in the Mohalla was pushed very hard, and in fact was broken open. Inasmuch as Dhanno Devi was not examined in defense, the report relied upon which is not substantive evidence can be considered only as a circumstance that on the basis of what was stated by Dhanno Devi a case u/s 309 of the Indian Penal Code was registered. There is, however, evidence of Puran Chand (DW 3) and Ram Samp (DW 4) to this effect. This is, however, squarely belied by evidence of unimpeachable character provided by the photograph (Ex. Public Witness 3 1/AI) taken by

Constable Lal Chand of the Crime Team under instructions of Sub Inspector Chander Singh between 5.30 and 7.30 p.m. on February 26, 1975. This photograph was taken after closing the door and fixing the rod in the socket. The socket is shown as intact. It was put to the witness that the nails of the socket of the bolt had come out and the nails were driven afresh in the socket and then the photograph was taken but he denied. Similar suggestion was given to Sub Inspector Chander Singh, too. He also replied in the negative. The very fact that Sub Inspector Chander Singh got the rod and the socket photographed is of immense significance as Dhanno Devi had represented that the door had been pushed at her instance and it had given way but the socket was intact. There appears no earthly reason why Sub Inspector Chander Singh, who, at the moment, was investigating a case u/s 309 of the Indian Penal Code should do something so atrocious as to create false evidence or circumstance as would go against the facts alleged in the first information report of that case when he had no opportunity of contacting Sham Wati or her relations and there was no question of tampering with evidence from the side of parental relations of Sham Wati.

(30) It is next submitted that according to Sub Inspector Chander Singh, the cot lying in the room was not smelling of kerosene and it appears that it was for that reason that it was not seized on February 26, 1975. It may be an omission or it may be that at that point of time the case was one u/s 309 of the Indian Penal Code. The fact remains that the non-seizure of the cot on that day or the fact that it was not smelling of kerosene is neither here nor there and not at all determinative.

(31) The last submission is that Suresh lodged report (Copy Ex. Pw 9/A) at 3.50 p.m. i.e. soon after the occurrence at police station? Sadar Bazar and this conduct is consistent with the occurrence being a case of self-immolation and inconsistent with that of being an attempt to murder or murder itself. It would be seen that the conduct of Suresh Kumar in not accompanying Sham Wati to the Irwin Hospital and going to the police station instead is by itself highly suspicious and the type of report which he made at the police station is highly intriguing. According to the defense version, Suresh Kumar saw Sham Wati ablaze and it was in his presence that she was removed by Om Parkash to the Irwin Hospital. Having known these facts, what was reported by him to the police was that fire had broken out in the house and smoke was coming there from. It is manifest that at that point of time, an attempt was made to give out that it was a case of accidental fire. That it was not a case of accidental fire is as clear as day light. Parties do not say so, nor the place, time, facts and what was observed in the room point to such an inference. No advantage can, therefore, be derived from this circumstance.

(32) This brings us to the oral evidence in the case. It is pointed out that the witnesses were examined as late as 2nd and 3rd March, 1975 and there are important discrepancies in their statements. It would be seen that the pith and

substance of the oral evidence is that Sham Wati lived with her husband for about 15 days and went to her parents' house and complained against acts of cruelty and impotency of her husband and after staying for a period of seven months she again went to her husband's house. No challenge was given to the witnesses in respect of these important matters which should be taken as having been admitted. In the circumstances it is pointless to contend that there is a delay in the recording of the statements of the witnesses. Further, oral evidence is to the effect that the appellant and other members of the family persisted in acts of cruelty and the appellant took it ill that the brothers of Sham Wati or their wives should visit Sham Wati and thwarted all efforts made by Shanti Devi (Public Witness 12) to take Sham Wati back on being informed that she was being subjected to beating. This evidence finds support from report (Ex. Public Witness 8/A) made to police on February 24, 1975 and telegrams (copy Ex. Public Witness 12/DB) sent to the Lt. Governor and other high-ups. Learned counsel has been vehement in pointing out that the grievance expressed in the report and the telegram was in regard to inadequacy of dowry while the story told in Court is about the impotency of the husband and cruelty on the part of the appellant and other members of the family. It would be seen that even in her dying declaration", Ex. Public Witness I/A, Sham Wati gave expression to the ridicule in which her husband held her dowry and, Therefore, no exception should be taken to the reference to inadequacy of dowry as the cause for the trouble. The emphasis in the report and the telegram, however, is on acts of cruelty and danger to the person of Sham Wati and, Therefore, no adverse inference can be drawn from the non-mention of the impotency, when as already mentioned above, no challenge was given during the trial and it is both natural and understandable that where there is plurality of grievances in a situation like this, one might feel advised to as chew reference to impotency in the matter of making such like reports. The conclusion is inescapable that the relations between Sham Wati and her in-laws were under heavy strain. Accordingly, criticism on the basis of discrepancies here and there is futile.

(33) There is hardly any difficulty in discerning the attitude of the appellant in the situation that existed immediately before the horrifying occurrence in this case. She could not stand the accusation that her son could be sexually incompetent and she persisted in looking at Sham Wati as a chattel acquired irrevocably through marriage and believed, howsoever unjustifiably, that the daughter-in-law must adjust herself some how or the other and should do nothing which may disturb her obsolete notions of family prestige and reputation. This is clear from the conduct exhibited towards relations who tried to intervene and asserted that Sham Wati would not go out of house alive.

(34) Certainly the evidence provides motive for the crime. Besides it shows such conduct on the part of the appellant as is consistent with the version provided by the dying declaration of Sham Wati and inconsistent with accidental burning that was earlier conceived and self immolation that was subsequently given out. This evidence lends corroboration to the dying declaration.

(35) For the foregoing reasons, we would confirm the conviction u/s 302 of the Indian Penal Code and, of course, the sentence and, accordingly dismiss the appeal.

The appellant, who is on bail, be taken into custody to enable her to undergo the sentence.