
(2015) 08 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 510 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Kishori Lal and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313, 342
Evidence Act, 1872 — Section 103, 32, 32(1), 60
Penal Code, 1860 (IPC) — Section 201, 302, 304A, 304B, 307

Citation : (2015) 08 SHI CK 0036

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : M.A. Khan, Addl. Advocate General, for the Appellant; Vikrant Thakur, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J—This appeal is at the instance of the State against the judgment dated 22.6.2009, rendered by the learned Addl. Sessions Judge, (FTC), Hamirpur, H.P. in Sessions Trial No. 4 of 2009, whereby the respondent No. 1 - accused (hereinafter referred to as accused No. 1), who was charged with and tried for offences punishable under Sections 302, 498-A IPC and accused Nos. 2 to 10 who were charged with and tried for offence punishable under Section 201/34 IPC, have been acquitted.

2. The case of the prosecution, in a nut shell, is that on the intervening night of 7/8.10.2008, at about 12:20 AM, an information was received from M.O., R.H. Hamirpur in the Police Station, Sadar that one women, namely, Veena Devi wife of Kishori Lal, accused No. 1 was admitted for treatment as burn case. HC Surjit Singh alongwith other staff reached RH Hamirpur and found Veena Devi admitted as indoor patient. Request was made to M.O.R.H. Hamirpur as to whether Veena Devi was fit to make statement. The M.O. opined in the affirmative that she was fit to make statement, on the basis of which, statement under Section 154

Cr.P.C. was recorded in the presence of the Medical Officer. Smt. Veena Devi stated that on 7.10.2008 at 9:00 PM, after serving meals to her children, she was sleeping in the room and accused No. 1 Kishori Lal, her husband, was in drunken state and had come to home from his place of work Balakrupi after one month. Accused No. 1 Kishori Lal asked her to account for the money given to her. He abused her and thereafter she slept on the bed. Accused No. 1 Kishori Lal brought a big lamp containing kerosene oil and poured it on her person and ignited it with match stick. She ran outside the room engulfed in flames towards the courtyard. Her husband absconded from the spot. Her father-in-law, mother-in-law, brother-in-law and sister-in-law doused the fire. The statement of Veena Devi was attested by Dr. R.K. Agnihotri and scribed by police Head Constable. She appended her right hand thumb impression over the same. It was endorsed to SHO, PS Sadar, Hamirpur, on which the FIR under Sections 498-A and 307 IPC was recorded. Pending investigation, accused was arrested on 9.10.2008 in District Kangra. Smt. Veena Devi was medically examined at RH Hamirpur and the MO noted that there were 70% burn injuries on her person. As the injuries were serious in nature, Veena Devi was referred to Dr. R.P.G.M.C. Tanda for treatment. The I.O. visited the place of occurrence and took into possession the sample of earth from the room of the house of accused No. 1 Kishori Lal. Dupatta of pink colour of Smt. Veena Devi which was smelling of kerosene oil was also taken into possession. One half bottle 375 ml with lid and wick containing few drops of kerosene oil was also taken into possession. Clothes of Veena Devi were also taken into possession from 50 meters away from the place of occurrence. Accused No. 1 applied for bail before the learned Sessions Judge. The statement of Veena Devi was recorded by accused Nos. 2 to 10 at Dr. R.P.G.M.C., Tanda on 25.10.2008. She claimed that she herself, out of anger and heated discussion with the accused No. 1 had poured kerosene oil on her person and ignited herself. This aspect was investigated into and found that her statement was engineered one with a view to screen accused No. 1 from legal punishment. Smt. Veena Devi expired on 26.10.2008 in Dr. R.P.G.M.C., Tanda. Her post mortem was conducted by Dr. D.P. Swami. According to him, it was a case of 80% burn 5% plus minus, which led to asphyxia due to septicemia, toxecemia and infection upto liver, spleen and kidneys. Site plan was also prepared. The case property was sent to FSL. Accused No. 1 was booked under Section 302/498A IPC and accused Nos. 2 to 10 were booked for offences punishable under Section 201/34 IPC. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 23 witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the incriminating circumstances put to them. The learned trial Court acquitted the accused, as noticed hereinabove. Hence, this appeal at the instance of the State.

4. Mr. M.A. Khan, learned Addl. Advocate General for the State has vehemently argued that the prosecution has proved the case against the accused. On the

other hand, Mr. Vikrant Thakur, Advocate, for the accused has supported the judgment of the learned trial Court dated 22.6.2009.

5. We have heard learned counsel for both the sides and gone through the records of the case carefully.

6. PW-1 Prem Chand is the father of deceased Veena Devi. He testified that the marriage of his daughter was solemnized with accused No. 1 on 8.10.2008. Two sons were born out of the wed lock. Accused No. 1 Kishori Lal used to harass his daughter. He used to tear off the clothes of her daughter. The Panchayat was called. He was informed by Ami Chand, his brother that his daughter was in serious condition admitted in R.H. Hospital, Hamirpur. He alongwith his wife rushed to the hospital. He was told that his daughter has been referred to Dr. R.P.G.M.C. Tanda for treatment. He went to the Police Station, Hamirpur. He came to know that his daughter Veena Devi was burnt after pouring kerosene oil by her husband. In the bed room one burnt broom, match box and sticks were found. One lamp and wick were separately lying on the shelves of the room. There were few drops of kerosene oil in the lamp. One Dupatta of pink colour was also lying on the bed which was smelling kerosene oil. Bed sheet was also smelling of kerosene oil. The police has taken sample of soil from two places, out of which one was smelling of kerosene oil. The samples were put in parcels. He identified dupatta Ext. P-6, broom Ext. P-8, lamp lid Ext. P-9, Lamp Ext. P10, wick Ext. P-11, bed sheet Ext. P-13. His wife had told him that deceased Veena Devi had apprised her that Pradhan, Ward Panch and others had come and obtained her thumb impression on a paper on the pretext that she poured the kerosene oil on her person herself. In his cross-examination by the learned Advocate appearing on behalf of the accused, he admitted that Smt. Veena Devi had not told him that Ward Panch and others had taken her statement. It was narrated to him by his wife.

7. PW-2 Pritam Chand deposed that he heard cries from the house of Titu Ram and he went there. He found Smt. Veena Devi wife of accused No. 1 burnt. He called Taxiwalla Bidhi Chand and shifted her to RH Hamirpur. The Doctor informed the police and police came to the hospital. The police recorded her statement. He inquired from Veena Devi about the cause of burn injuries. She told him that kerosene oil had been poured on her by accused Kishori Lal. The police took into possession the burnt clothes of deceased Veena Devi which were thrown in the "nalla". He identified shirt Ext. P-15 and trouser Ext. P-16. The clothes were identified by Savitri Devi, mother-in-law of deceased Veena Devi. In his cross-examination, he admitted that he was elected as BDC Member in December, 2005. He was not on talking terms with the family of Titu Ram for the last decade. Titu Ram had restrained deceased to visit his house on 2-3 occasions. Smt. Veena Devi was admitted in the Emergency Ward. At the time of visit of the police, the doctor was present in the room. He admitted that the doctor had opined the condition of Veena Devi as serious. He also admitted that the deceased talked to none on the way from Village Brahmani to R.H. Hamirpur. He

admitted that the speech of Veena Devi was slurred. The mental condition of Smt. Veena Devi was not stable due to burn injuries till his arrival at the house of Titu Ram and upto Tanda.

8. PW-3 Titu Ram is father-in-law of deceased Veena Devi. He deposed that accused No. 1 Kishori Lal was present in his house. His daughter-in-law Veena Devi was also present with accused in the house. After taking meals, they slept in their room. At 11:00 PM in the night, he heard the cries of Smt. Veena Devi. He woke up and found her in the verandah of first floor burning. He threw water on her and the fire was extinguished. She was covered with sheets. Pritam Singh, Member of the BDC also came to the spot and Veena Devi was taken to RH Hamirpur for treatment. She was inquired but her speech was slurred. She did not tell him that accused No. 1 Kishori Lal poured kerosene oil on her and ignited fire with match stick. He was declared hostile and cross-examined by the learned P.P. He did not know that the accused Kishori Lal absconded from the spot. He also did not make any inquiry from accused Kishori Lal as to how Veena Devi suffered burn injuries. In his cross-examination by the learned Advocate appearing on behalf of accused No. 1 Kishori Lal, he deposed that Veena Devi had told him that she herself poured kerosene oil on her person and then ignited fire.

9. PW-4 Dr. R.K. Agnihotri, testified that he was on night duty in RH Hamirpur and Smt. Veena Devi, wife of Kishori Lal was admitted in the hospital as a burn case. She was brought to the hospital by her relatives. The patient disclosed the alleged history of homicidal burn by her husband at about 11:30 pm on 7.10.2008 by putting kerosene oil over her while she was sleeping. There were no clothes over her body. The condition of the patient was very serious. She was referred to Department of Surgery Dr. R.P.G.M.C. Tanda. He informed the police regarding burn case. The police reached the spot. She was admitted in Surgical Ward. On 8.10.2008, HC No. 31 had moved an application vide Ext. PW-4/B seeking his opinion regarding the feasibility of recording the statement of Veena Devi. He declared her fit to make statement. He made endorsement Ext. PW-4/B. The police official recorded the statement of Veena Devi in his presence in Surgical Ward. The statement of Veena Devi is Ext. PW-4/C. He appended his signatures on statement Ext. PW-4/C and also appended an endorsement that statement was recorded before him and she could not sign as her both hands were burnt. She appended thumb impression on statement Ext. PW-4/C. The police officer had read over and explained the contents of Ext. PW-4/C to Veena Devi. She admitted the contents to be correct and then appended her left thumb impression. Veena Devi remained admitted in the Surgical Ward. He remained present with the patient throughout as it was an emergency case and the patient was serious. He admitted in his cross-examination by the learned Advocate appearing on behalf of the accused No. 1 Kishori Lal that Veena Devi was under shock. The person with 70% burn injuries may be conscious, unconscious, semi-conscious or dead. He also admitted that if kerosene oil is poured on the person in sleeping position, there is a possibility of bed sheet and mattresses catching

fire. Smt. Veena Devi put two thumb impression marks on Ext. PW-4/C. He denied the suggestion that the statement Ext. PW-4/C was not recorded in his presence. 2-3 persons had accompanied Smt. Veena Devi but their names were not known to him. They were asked not to be present in the room where Smt. Veena Devi was admitted at the time of recording her statement. He denied the suggestion that Veena Devi was not fit to make statement as she was in serious condition.

10. PW-5 Krishani Devi deposed that on 8.10.2008 at about 7/8:00 AM, in the morning, her nephew Amin Chand informed her and her husband that their daughter Veena Devi was in serious condition admitted in R.H. Hamirpur. She alongwith her husband rushed to the hospital and at about 9:00 AM, they were told that she had been referred and shifted to Dr. R.P.G.M.C., Tanda for treatment. They reached Tanda hospital at about 11:00 AM. Her daughter Veena Devi was admitted in the hospital and was in serious condition. They returned to their village. Again they went to the Tanda hospital on 14.10.2008 and came back. They did not have much talk with her. Again on 17.10.2008, they went and stayed with her daughter in the night. She inquired from Veena Devi the cause of burn injuries. She told her that on 7.10.2008 accused Kishori Lal had returned to his house and asked from her the expenditure of the amount which he had given to her. The accused was not satisfied with the explanation furnished by her. He thereafter took a lamp from the shelf and poured kerosene oil on her and set her on fire with the match box. On 17.10.2008, she also saw impression of ink on the left thumb of Veena Devi and on inquiry she told that on 15.10.2008, Pradhan Saroj Kumari, Ward Panch Bihari Lal and one BDC Member and others had come to her and forcibly taken her statement giving clean chit to accused No. 1 Kishori Lal. The Pradhan and Members had insisted her to make a statement that she herself had poured kerosene oil on her person. The Pradhan and others had told her daughter that if she gives such like statement, accused Kishori Lal will be released and he will take care of minor children. Veena Devi died on 26.10.2008. In her cross-examination, she deposed that her daughter Veena Devi told her that on the material date, accused No. 1 had brought two sweet packets, one was distributed to the people in the temple and the other at home.

11. PW-7 Neelama Devi deposed that she was associated by the police in the investigation. The accused had given demarcation of the clothes which were thrown by him in the "nalla". The police has taken the clothes into possession vide memo Ext. PW-2/A.

12. PW-8 Dr. Ramesh Chand Chauhan, has examined Savitra Devi wife of Titu. He issued MLR Ext. PW-8/B. He noticed blister over right middle finger in middle part on palmer aspect.

13. PW-9 Ajay Sehgal proved report Ext. PW-9/A.

14. PW-10 Dr. D.P. Swami, conducted the post mortem examination on the dead

body. He noticed following ante mortem injuries:

"Ante mortem: Superficial burn all over the body except face upper 2/3 and scalp (6%), both lower of legs 9% and back of lower back 5%. So total 80? 5% superficial burn. Different areas of large pus formation, reddish area of ante mortem burn, areas of scab formation, pale and while areas of healing seen at places."

According to him, Veena Devi died of asphyxia due to septicemia, taxaemea and infection of liver, spleen and kidneys consequent to ante mortem superficial burn 80? 5%. Time elapsed between injuries and death was 2 to 4 weeks and between death and post mortem was 12 to 24 hours. He proved post mortem report Ext. PW-10/C.

15. PW-12 HHG Baldev Singh, deposed that he accompanied HC Surjeet Singh to RH Hamirpur. He had proved MLR Ext. PW-4/A which was received by him from Dr. Agnihotri, RH Hamirpur. The statement of Veena Devi was recorded by HC Surjeet Singh and MLC was taken by him to PS Hamirpur for registration of the case.

16. PW-13 HC Rajinder Kumar has taken the photographs of the spot. In his cross-examination, he deposed that in the photograph Ext. PW-13/A-4 and 5, the marked area is a place where sprinkled kerosene oil was found. The bed sheet was not found burnt on the spot.

17. PW-14 Const. Vinod Kumar has taken the photographs of dead body of Veena Devi vide Ext. PW-14/A-1 to Ext. PW-14/A-8.

18. PW-15 MHC Prakash Chand deposed that SI Guler Chand has deposited the case property with him on 8.10.2008. He made entries in the malkhana register. SI Guler Chand again on 11.10.2008 deposited with him the case property. All the parcels were sent to Director FSL, Junga for analysis on 12.10.2008 through Const. Jitender Kumar.

19. PW-16 Const. Jitender Kumar deposed that he has taken the case property to FSL, Junga.

20. PW-18 HC Surjeet Singh is the material witness since he has recorded the statement Ext. PW-4/C. According to him, on 8.10.2008, he visited Surgical Ward RH Hamirpur. Veena Devi was found as in-patient in Room No. 9, Bed No. 30. Dr. Agnihotri was attending her. He made a request Ext. PW-4/B to the doctor for her medical and sought his opinion whether she was fit to make a statement or not. The doctor opined that she was fit to make statement. In presence of Dr. Agnihotri, he enquired from Veena Devi the cause of burns. In the room, he alongwith Dr. Agnihotri were present and other persons were asked to leave the room. Smt. Veena Devi got her statement Ext. PW-4/C recorded. She told him that on 7.10.2008 at about 9:00 PM, accused Kishori Lal, her husband, poured kerosene oil on her and ignited the fire. She was unable to sign as her both hands were burnt. Statement Ext. PW-4/C was read over and explained to her by

him. She had appended her left hand impression at two places on Ext. PW-4/C. The entire statement was made by Smt. Veena Devi in presence of Dr. Agnihotri. The doctor also signed the statement as witness. He appended endorsement for the registration of the case and submitted to SHO PS Sadar through HHG Baldev Singh. In his cross-examination by the learned Advocate on behalf of accused No. 1 Kishori Lal, Veena Devi he deposed that Veena Devi had made statement in narrative form and it was not in question and answer form. She was talking normal but was in serious condition as she had suffered burn injuries. Her chin was also burnt. Her remaining face was intact.

21. PW-19 Anjani Kumar has proved reports Ext. PW-19/A, Ext. PW-19/C and Ext. PW-19/D.

22. PW-21 SI Guler Chand is the I.O. He deposed that on the intervening night of 7/8th October, 2008, at about 12:10-20 AM, a telephonic message was received from M.O. RH Hamirpur, to the effect that one lady was admitted in hospital as a burn case. He recorded the raport. He deputed HC Surjeet Singh and HC Baldev Singh to visit the hospital. The statement of Veena Devi Ext. PW-4/C was received in the Police Station for the purpose of registration of the case. He recorded formal FIR Ext. PW-21/A. Site plan was also prepared. The case property was taken into possession. In his cross-examination, he deposed that his findings in the investigation were that accused No. 2 to 10 recorded statement of Veena Devi on the request of Titu Ram, father of accused No. 1 Kishori Lal.

23. PW-22 Nasib. Singh. Patial, proved FSL report Ext. PW-19/C.

24. The case of the prosecution, precisely, is that on the intervening night of 7/8.10.2008, accused No. 1 Kishori Lal came to his house. There was exchange of hot words with his wife. The family went on to sleep. Accused Kishori Lal poured kerosene oil on deceased Veena Devi and put her on fire. She was taken to Regional Hospital, Hamirpur. The dying declaration of deceased was recorded vide Ext. PW-4/C. She was referred to Dr. R.P.G.M.C., Tanda. She died on 26.10.2008.

25. PW-1 Prem Chand is the father of the deceased Veena Devi. According to him, accused Kishori Lal used to harass his daughter. He received the information and went to R.H. Hamirpur. He was told that his daughter has been referred to Dr. R.P.G.M.C., Tanda. He visited the house of in-laws of his daughter. He noticed in the bed room one burnt broom, match box and sticks. Some of the sticks were burnt. One lamp and wick were separately lying on the shelves of the room. There were few drops of kerosene oil in the lamp. One Dupatta of pink colour was also lying on the bed which was smelling kerosene oil. His wife told him that deceased Veena Devi had apprised her that Pradhan, Ward Panch and others had come and obtained her thumb impression on a paper on the pretext that she poured the kerosene oil on her person herself.

26. PW-2 Pritam Chand was the first person to reach the spot. He took the

deceased to RH Hamirpur. The Doctor informed the police. The police reached the spot and recorded the statement of Veena Devi. He inquired from Veena Devi the cause of burn injuries. She told him that kerosene oil was poured on her by accused Kishori Lal. PW-3 Titu Ram is father-in-law of deceased Veena Devi. He deposed that at 11:00 PM in the night, he heard the cries of Smt. Veena Devi. He woke up and found her in the verandah of first floor burning. He threw water on her and the fire was extinguished. PW-4 Dr. R.K. Agnihotri, testified that Veena Devi was brought to the hospital by her relatives. The patient disclosed the alleged history of homicidal burn by her husband at about 11:30 pm on 7.10.2008 by putting kerosene oil over her while she was sleeping. He has categorically stated that on 8.10.2008, HC No. 31 had moved an application vide Ext. PW-4/B, seeking his opinion regarding the feasibility of recording the statement of Veena Devi. He declared her fit to make statement. He made endorsement Ext. PW-4/B. The police official recorded the statement of Veena Devi in his presence in the Surgical Ward. He proved statement of Veena Devi Ext. PW-4/C. He also appended his signatures on statement Ext. PW-4/C with an endorsement that statement was recorded before him. Veena Devi could not sign the same as her both hands were burnt. She appended thumb impression on statement Ext. PW-4/C. The contents of her statement Ext. PW-4/C were read over and explained to her. The police officer had read over and explained the contents of Ext. PW-4/C to Veena Devi. She admitted the contents to be correct and then appended her left thumb impression.

27. PW-18 HC Surjeet Singh is the material witness. He deposed that on 8.10.2008, he was sent to RH Hamirpur. He made request vide Ext. PW-4/B to the doctor for the medical examination of Veena Devi. He sought the opinion of doctor as to whether she was fit to make a statement or not. The doctor opined that she was fit to make statement. Dr. Agnihotri was present in the room and other persons were asked to leave the room. Smt. Veena Devi got her statement vide Ext. PW-4/C recorded. She narrated the incident the manner in which the incident had happened. She was unable to sign as her both hands were burnt. The contents of statement Ext. PW-4/C were read over and explained to her by him. She had appended her left thumb impression at two places on Ext. PW-4/C. The entire statement was made by Smt. Veena Devi in presence of Dr. Agnihotri. The doctor also signed the statement as witness. The doctor also appended endorsement regarding the fact that her both hands were burnt. PW-10 Dr. D.P. Swami, has noticed the burn injuries to the extent of 80? 5% superficial burns. According to him, Veena Devi died of asphyxia due to septicemia, taxaemea and infection of liver, spleen and kidneys.

28. The learned trial Court has discarded the dying declaration Ext. PW-4/C and relied upon Ext. PW-21/G. Mr. M.A. Khan, learned Addl. Advocate General for the State, has vehemently argued that the statement Ext. PW-4/C could not be ignored since the same was recorded by HC Surjeet Singh in the presence of PW-4 Dr. R.K. Agnihotri. On the other hand Mr. Vikrant Thakur, Advocate, for the accused has strenuously argued that Veena Devi was not in fit condition to make

statement on 8.10.2008 and he has relied upon the statement (second dying declaration) Ext. PW-21/G.

29. PW-18 HC Surjeet Singh has moved an application Ext. PW-4/B before PW-4 Dr. R.K. Agnihotri, seeking his opinion regarding the feasibility of recording statement as per Ext. PW-4/B. The statement of Veena Devi was recorded by PW-18 HC Surjeet Singh in the presence of the doctor. The contents of the statement were read over and explained to Veena Devi. Since her both hands were burnt, she put her left thumb impression on Ext. PW-4/C. Only PW-18 HC Surjeet Singh and PW-4 Dr. R.K. Agnihotri were present in the room. Her statement was voluntary and PW-4 Dr. R.K. Agnihotri has given the endorsement that she was fit to make the statement. We are surprised how dying declaration Ext. PW-4/C has been discarded by the learned trial Court and relied upon second dying declaration dated 25.10.2008 Ext. PW-21/G. Smt. Veena Devi died on 26.10.2008.

30. According to the contents of statement (first dying declaration) Ext. PW-4/C, Veena Devi deposed that on 7.10.2008 at about 9:00 PM, she was sleeping in her room with children. Her husband came and asked her to account for the money he has given to her. He started abusing her. Thereafter, she lied on the bed and in the meantime her husband came on the spot with lamp and sprinkled kerosene oil on her and put her on fire with match stick. She ran towards the courtyard. She was taken care of by her father-in-law, mother-in-law, brother-in-law and sister-in-law. She could not put her signatures since her both hands were burnt. The doctor has made the endorsement that the deceased has put her thumb impression in his presence. PW-4 Dr. R.K. Agnihotri has also made endorsement, as noticed hereinabove, that deceased was fit to give statement. Statement Ext. PW-4/C inspires confidence.

31. Now, we will advert to second dying declaration made on 25.10.2008 vide Ext. PW-21/G. In this statement, Veena Devi has deposed that her husband asked about the accounts and started abusing her. She, in a fit of anger, put herself on fire. She made this statement before all the persons in her full senses. The earlier statement given by her was given in unconscious condition. She has put her thumb impression on the same and accused Nos. 2 to 10 have also signed the same. It is apparent that deceased Veena Devi was forced to give statement Ext. PW-21/G during the bail application of accused No. 1 Kishori Lal. There is no endorsement by the doctor that she was in fit condition to make this statement on 25.10.2008. To the contrary, when the earlier dying declaration was recorded on 8.10.2008, PW-4 Dr. R.K. Agnihotri had opined that she was fit to give statement. Accused No. 2 to 10 have procured Ext. PW-21/G to screen accused No. 1 Kishori Lal. They have made deliberate attempt to destroy the evidence by procuring Ext. PW-21/G. The findings recorded by the learned trial Court that Veena Devi was not in fit condition to make statement on 8.10.2008 Ext. PW-4/C, is contrary to the evidence led by the prosecution. PW-2 Pritam Chand has categorically deposed that Veena Devi has told him that accused No.

1 Kishori Lal has put her on fire by sprinkling kerosene oil. This proves that deceased Veena Devi was in a position to talk while being taken to hospital and thereafter as well. The trial Court has given undue importance that accused No. 1 Kishori Lal and his father were not supporters of PW-2 Pritam Chand and accused No. 3 had fought election against him. It is PW-2 Pritam Chand who has taken the deceased to RH Hamirpur. PW-3, father-in-law of the deceased has also admitted in his examination-in-chief that Pritam reached the spot and he took Veena Devi for RH Hamirpur for treatment. PW-4 Dr. R.K. Agnihotri, in his cross-examination has deposed that a person with 70% burn injuries may be conscious, unconscious, semi-conscious or dead, but the fact of the matter is that he has given opinion vide Ext. PW-4/B that Veena Devi was in a fit condition to make statement. The learned trial Court has given undue importance to the statement of PW-HC Rajinder Kumar who deposed that bed sheet on the cot was not found burnt. It has come in the statement of PW-1, father of the deceased that bed sheet was smelling of kerosene oil. Pink coloured dupatta was also lying on the bed which was also smelling kerosene oil. It has come in Ext. PW-19/D, report of FSL that traces of kerosene oil were detected in the contents of parcels P/1, P/5 and P/8. Parcel P/5 is the pink coloured dupatta and P/8 is partially burnt salwar and undervest. PW-4 Dr. R.K. Agnihotri has only deposed that if kerosene oil is poured, there is every possibility of mattress catching fire. Whether the bed sheet would catch fire or not, it would depend on the amount of kerosene oil used by accused Kishori Lal. The learned trial Court has highlighted the traces of kerosene oil not found on Ext. P/2, P/3, P/4, P/6 and P/7 but ignored traces of kerosene oil on parcels P/1, P/5 and P/8.

32. PW-21 SI Guler Chand in his cross-examination has deposed that traces of kerosene oil were found on the floor at a distance of about 2 3/4 feet from the bed. According to the learned trial Court, if the kerosene oil was poured by accused No. 1 Kishori Lal on sleeping bed, how traces were found at a distance of 2 3/4 feet. The learned trial Court has given undue importance to this aspect of the matter. Since the accused Kishori Lal has brought the lamp from the shelf, the possibility of the traces of the oil being sprinkled at a distance of 2 3/4 feet cannot be ruled out. There was no need for recording the supplementary statement of Veena Devi as stated in the judgment by the learned trial Court. The learned trial Court has gravely erred in coming to the conclusion that deceased Veena Devi has put herself on fire due to heated discussion with her husband.

33. The prosecution has proved beyond reasonable doubt that it was accused No. 1 Kishori Lal who has sprinkled oil on deceased Veena Devi and set her ablaze, which resulted in her death by asphyxia due to septicemia, toxecemia and infection upto liver, spleen and kidneys. The learned trial Court has also given undue importance to the fact that accused No. 1 Kishori Lal has brought two packets of sweets out of which one was distributed in the temple and other in the house. This fact, of trivial nature, would not advance the case of the accused. Merely bringing sweets in the house would not mean that the relations between

the husband and wife were cordial, more particularly, when PW-1 Prem Chand, father of the deceased said that the accused Kishori Lal used to maltreat his daughter Veena Devi.

34. The learned trial Court has recorded specific findings that accused No. 2 to 10 had visited Dr. P.P.G.M.C., Tanda. They have forced Veena Devi to sign second declaration Ext. PW-21/G. No evidence has been led by the accused as to who was the author of dying declaration Ext. PG-21/G and whether Veena Devi was in fit condition to make statement or not, more particularly, when second declaration was made on 25.10.2008 and Veena Devi died on 26.10.2008. It is second dying declaration, which is doubtful and not the first which was made on 8.10.2008 itself. Accused No. 2 to 10 have got recorded Ext. PW-21/G from deceased Veena Devi definitely to screen accused No. 1 Kishori Lal from conviction.

35. Their lordships of the Hon^{ble} Supreme Court in the case of Suleman Rehiman Mulani and Another Vs. State of Maharashtra, AIR 1968 SC 829 : (1968) CriLJ 1013 : (1968) 2 SCR 515 , have held that in order to establish charge under Section 201 IPC, the prosecution must first prove that an offence had been committed and that the accused knowing or having reason to believe that such an offence had been committed and with the intent to screen the offender from legal punishment, had caused the evidence thereof to disappear. It has been held as follows:

"6. The conviction of the appellant No. 2 under s. 201 IPC depends on the sustainability of the conviction of appellant No. 1 under s. 304A IPC. If appellant No. 1 was rightly convicted under that provision, the conviction of appellant No. 2 under s. 201 IPC on the facts found cannot be challenged. But on the other hand, if the conviction of appellant No. 1 under s. 304A IPC cannot be sustained, then, the second appellant's conviction under s. 201 IPC will have to be set aside, because to establish the charge under s. 201, the prosecution must first prove that an offence had been committed not merely a suspicion that it might have been committed-and that the accused knowing or having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment, had caused the evidence thereof to disappear. The proof of the commission of an offence is an essential requisite for bringing home the offence under s. 201 IPC-see the decision of this Court in Palvinder Kaur v. State of Punjab (1)."

36. In the present case, accused No. 2 to 10 knew the commission of offence by accused No. 1 Kishori Lal and despite that they have obtained second dying declaration Ext. PW-21/G in order to screen the offender from legal punishment.

37. Their lordships of the Hon^{ble} Supreme Court in the case of Tapinder Singh Vs. State of Punjab and Another, AIR 1970 SC 1566 : (1970) CriLJ 1415 : (1970) 2 SCC 113 : (1970) 1 SCC(Cri) 328 : (1971) 1 SCR 599 , have held that if the dying declaration is acceptable as truthful then even in the absence of other

corroborative evidence the Court can act upon it and convict the accused. It has been held as follows:

"5. The dying declaration is a statement 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 and it becomes relevant under s. 32(1) of the Indian Evidence Act in a case in which the cause of that person's death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances. This Court in *Kushal Rao v. The State of Bombay* ("") laid down the test of reliability of a dying declaration as follows:

"On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the-opinion of the Full Bench of the Madras High Court, aforesaid, (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 the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and 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."

This view was approved by a Bench of five Judges in Harbans Singh v. State of Punjab. Examining the evidence in this case in the light of the legal position as settled by this Court we find that the dying declaration was recorded by the Magistrate within four hours of the occurrence. It is clear and concise and sounds convincing. It records:

"Today at 4.45 p.m. my Sandhu (wife's sister's husband) Tapinder Singh fired shots with his pistol at me in the, presence of Harnek Singh, Sher Singh and Gurdial Singh at the taxi stand. He suspected that I had illicit relations with his wife. Tapinder Singh injured me with these fire shots."

Considering the nature and the-number of injuries suffered by the deceased and the natural anxiety of his father and others present at the spot to focus their attention on efforts to save his life we are unable to hold that he had within the short span of time between the occurrence and the making of the dying declaration been tutored to falsely name the, appellant as his assailant in place of the real culprit and also to concoct a non-existent motive for the crime. It is unnecessary for us to refer to the earlier declarations contained in Ex. PM, Ex. DC and Ex. PH/13 because the one recorded and proved by the Magistrate seems to us to be acceptable and free from infirmity. If the dying declaration is acceptable as truthful then even in the absence of other corroborative evidence it would be open to the court to act upon the dying declaration and convict the appellant stated therein to be the offender. An accusation in a dying declaration comes from the victim himself and if it is worthy of acceptance then in view of its source the court can safely act upon it. In this case, -however, we have also the evidence of eye witnesses Gurdial Singh, (P.W. 7), Harnek Singh (P.W. 8) and Sher Singh (P.W. 9) whose testimony appears to us to be trustworthy and unshaken. No convincing reason has been urged on behalf of the appellant why these three witnesses and particularly the father of the deceased should falsely implicate the appellant substituting him for the real assailant. It is not a case in which, along with the real culprit, someone else, with whom the complainant has

some scores to settle, has been added as a co-accused. The only argument advanced on behalf of the appellant was that the deceased was shot at somewhere else and not at the place where the prosecution witnesses allege he was shot at. It was emphasised that these three witnesses were not present at the place and time where the occurrence actually took place. This submission is, in our view, wholly unfounded, and there is absolutely no material in support of it on the existing record. The probabilities are clearly against it. The fact that Hari Singh, A.S.I. (P.W. 2) went to the place of occurrence and from there he learnt from someone, 13 Sup. C1/70-10 that the injured person had been taken to Dayanand Hospital clearly negatives the appellant's suggestion. The fact that the A.S.I. did not remember the name of the person who gave this information would not detract from its truth. On the contrary it appears to us to be perfectly natural for the A.S.I. in those circumstances not to attach much importance to the person who gave him this information. And then, the short duration within which the injured person reached the hospital also shows that those who carried him to the hospital were close by at the time of the occurrence and the suggestion that Gurdial Singh (P.W. 7), Hamek Singh (P.W. 8) and Sher Singh (P.W. 9) must have been informed by someone after the occurrence does not seem to us to fit in with the rest of the picture. We are, therefore, unable to accept the appellant's suggestion that the deceased was shot at somewhere else away from the place of the occurrence as deposed by the eye witnesses."

38. Their lordships of the Hon^{ble} Supreme Court in the case of Kodali Purnachandra Rao and Another Vs. The Public Prosecutor, Andhra Pradesh, AIR 1975 SC 1925 : (1975) 2 SCC 570 : (1976) 1 SCR 602, have held that in order to bring home an offence under Section 201 Penal Code, the prosecution has to prove:

"(a) that an offence has been committed;

(b) that the accused knew or had reason to believe that the offence has been committed;

(c) that with such knowledge or belief he,

(i) caused any evidence of the commission of that offence to disappear, or,

(ii) gave any information respecting that offence which he then knew or believed to be false;

(d) that he did so with the intention of screening the offender from legal punishment; and

(e) if the charge be of an aggravated form, as in the present case, that the offence in respect of which the accused caused evidence to disappear was punishable with death or with imprisonment for life or with imprisonment extending to 10 years."

39. Similarly in the case of V.L. Tresa Vs. State of Kerala, AIR 2001 SC 953 :

(2001) CriLJ 1171 : (2001) 2 JT 515 : (2001) 2 SCALE 14 : (2001) 3 SCC 549 : (2001) 1 SCR 973 : (2001) AIRSCW 716 : (2001) 1 Supreme 654 , their lordships of the Hon"ble Supreme Court have reiterated the following principles to prove charge u/s. 201 IPC:

"12. Having regard to the language used, the following ingredients emerge:

(I) Committal of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(III) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence and

(IV) (IV) the act should have been done with the intention of screening the offender from legal punishment. The impact of Section 201 thus is the intent to screen the offender from legal punishment.

14. Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The fore-most necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), AIR 1952 SC 354 : (1953) CriLJ 154 : (1953) 4 SCR 94 . Further, in Roshan Lal and Others Vs. State of Punjab, AIR 1965 SC 1413 : (1965) CriLJ 426 : (1965) 2 SCR 316 this Court in paragraph 12 of the report observed:

"(12) Section 201 is somewhat clumsily drafted, but we think that the expression knowing or having reason to believe in the first paragraph and the expression knows or believes in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe than an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under S. 201. If it be supposed that the word believes was used in a sense different from the expression having reason to believe, it would be necessary for the purpose of inflicting punishment upon the accused to prove that he believes in addition to having reason to believe. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved."

40. It is clear from Ext. PW-4/A that in MLC, the deceased has narrated that she has been set ablaze by her husband by pouring kerosene oil, while she was sleeping. She was conscious when brought to the hospital. There was smell of kerosene oil. The police has recovered lamp containing drops of kerosene oil, match box, broom and clothes of the deceased. The report of the FSL proves that

dupatta and her clothes were smelling kerosene oil. The dying declaration recorded vide Ext. PW-4/C on 8.10.2008 is duly corroborated by PW-1 Prem Chand and PW-5 Krishani Devi, medical evidence as per MLC, statement of PW-4 Dr. R.K. Agnihotri and post mortem report Ext. PW-10/C. Veena Devi died of asphyxia due to septicemia, toxecemia and infection upto liver, spleen and kidneys.

41. Their lordships of the Hon"ble Supreme Court in the case of Mohanlal Gangaram Gehani Vs. State of Maharashtra, AIR 1982 SC 839 : (1983) 1 Crimes 83 : (1982) 1 SCALE 143 : (1982) 1 SCC 700 : (1982) 3 SCR 277 , have held that the first statement in point of time made by the injured must be preferred to any of his subsequent statements. It has been held as follows:

"17. Thus, the reason given by the High Court for distrusting the evidence of Dr. Heena is wholly unsustainable. Moreover, the statement of the injured to Dr. Heena being the first statement in point of time must be preferred to any subsequent statement that Shetty may have made. In fact, the admitted position is that Shetty did not know the appellant before the occurrence nor did he know his name which was disclosed to him by one Salim. Therefore, Salim who is now dead, being the source of information of Shetty would be of doubtful admissibility as it is not covered by s. 32 of the Evidence Act. And, once we believe the evidence of P.W. 11, as we must, then the entire bottom out of the prosecution case is knocked out."

42. In the case of Ramawati Devi Vs. State of Bihar, AIR 1983 SC 164 : (1983) CriLJ 221 : (1983) 1 Crimes 637 : (1983) 1 SCALE 1 : (1983) 1 SCC 211 , their lordships of the Hon"ble Supreme Court have held that dying declaration recorded before a police officer is admissible and can be relied for conviction. It need not be recorded before the Magistrate. It has been held as follows:

"7. In our opinion neither of these two decisions relied on by the appellant is of any assistance in the facts and circumstances of this case. These decisions do not lay down, as they cannot possibly lay down, that a dying declaration which is not made before a Magistrate, cannot be used in evidence. A statement, written or oral, made by a person who is dead 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, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that in the course of cross-examination of the witness proving the dying declaration, no questions were put as to the state of health of the deceased and no suggestion was made

that the deceased was not in a fit state of health to make any such statement. The Doctor's evidence also clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb impression had also been affixed. In the instant case, it cannot also be said that there is no corroborative evidence of the statement contained in the dying declaration. The evidence of PWs. 1, 4, 5 and 8 clearly corroborates the statement recorded in the dying declaration. We do not find any material on record on the basis of which the testimony of these witnesses can be disbelieved. It may also be noticed that none of these witnesses including the Police Officer who recorded the statement could be attributed with any kind of ill-feeling against the accused. The High Court has elaborately dwelt on this aspect and has carefully considered all the materials on record and also the arguments advanced on behalf of the appellant. We are in agreement with the view expressed by the High Court and in our opinion the High Court was right in upholding the conviction of the appellant.

8. We, accordingly, dismiss the appeal. The conviction of the appellant under Section 302 of the Indian Penal Code and the sentence imposed on her are upheld. The appellant is now on bail. The bail bond of the appellant is hereby cancelled and the appellant is directed to be taken into custody for serving out the sentence."

43. Their lordships of the Hon"ble Supreme Court in the case of State of Punjab Vs. Amarjit Singh, AIR 1988 SC 2013 : (1989) CriLJ 95 : (1988) 3 Crimes 295 : (1988) 3 JT 537 : (1988) 2 SCALE 733 , have held that dying declaration recorded by the Investigating Officer in the absence of Magistrate, in circumstances, could not be rejected. It has been held as follows:

"18. It is true as this Court has observed in Dalip Singh v. State of Punjab () that the practice of Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged and it would be better to have dying declaration recorded by Magistrate. But no hard and fast rule can be laid down in this regard. It all depends upon the facts and circumstances of each case.

19. In this case, ASI belongs to the Police Station at Bhogpur. Upon intimation by wireless message that Balwinder Kaur was admitted in Ludhiana Hospital, he straight went to that place. He met the Doctor and recorded her statement. The FIR was issued on the basis of that statement. It was then an offence under Section 307 IPC. The investigation went on accordingly at Bhogpur. The Police Station at Bhogpur is 92 kms from Ludhiana and we are told that Bhogpur is in a different district altogether. In these circumstances, we cannot find fault with the ASI for not getting the dying declaration recorded by a Magistrate."

44. Their lordships of the Hon"ble Supreme Court in the case of Mafabhai Nagarbhai Raval Vs. State of Gujarat, AIR 1992 SC 2186 : (1992) CriLJ 3710 : (1992) 4 JT 555 : (1992) 2 SCALE 170 : (1992) 4 SCC 69 : (1992) 2 UJ 637 ,

have held that unless there is something inherently defective, Court cannot substitute its opinion for that of the doctor. It has been held as follows:

"2. Learned Counsel for the appellant submitted that the deceased had serious burns on her and it would not have been possible for her to make dying declarations and that P.W. 2 the Doctor who recorded the first dying declaration has not truly recorded the same in the words of the deceased and that his evidence itself shows that the deceased would not have been in a position to make the declaration. It is also his submission that P.W. 3 the Executive Magistrate who recorded the second dying declaration did not record the same in the form of questions and answers and the statement recorded by him cannot be taken to be the true version alleged to have been given by the deceased.

3. The deceased aged about 40 years was the widow of one Savaji and was living in a wooden cabin near the maternity hospital in Harij and she was maintaining herself by doing casual work in the maternity hospital. She developed illicit intimacy with the accused. Her grown-up children were dissatisfied with her character and other members of her community were also dissatisfied. Since then she was living alone in the wooden cabin near the maternity hospital. There was some quarrel between the accused and the deceased. At about midnight on 9.7.78 the accused went to her cabin and sprinkled kerosene oil on her and set fire to her clothes and then fled. The deceased ran from her cabin inside the compound of the maternity hospital raising cries. One Patavala Motibhai came there and put a quilt on her body. The said Patavala Motibhai went and informed the Medical Officer, P.W. 2 of the Government Hospital who immediately ran to the spot and separated the burnt clothes from her body and gave first aid. He questioned as to who had set fire and the deceased replied that the accused was the culprit. P.W. 2 recorded her statement which is the first dying declaration in the case. P.W. 2 shifted her to the hospital and he himself went to the police station and gave a report. The police Jamadar also recorded her statement in the hospital which is yet another dying declaration in the case. By that time information was sent to the Taluka Magistrate with a request to record the dying declaration. P.W. 3, the Taluka Magistrate went to the spot and he also recorded the dying declaration. The deceased died in the early morning of 10.7.78. Inquest was held over the dead body and post-mortem was conducted by P.W. 2. The learned Sessions Judge, in our view, has unnecessarily doubted the veracity of P.W. 2, the Doctor. He observed that the moment the flames had been seen by the deceased on her person she must have received a severe shock and the same must have become "graver and graver" and in that state of mind it is not believable at all that the deceased could keep balance of her mind and full consciousness so as to make the statement. With this initial doubt the learned Sessions Judge proceeded to examine the evidence of the Doctor. The Doctor stated that in some cases mental shock immediately does not develop and that in the instant case the deceased developed the mental shock for the first time at 4 A.M. Thereafter it gradually increased. The learned Sessions Judge called it irresponsible statement. It is in the medical evidence that 99% of the body of the

deceased was affected by extensive burns and that the clothes of the deceased were also burnt to ashes. Therefore, the learned Judge thought that it was not at all possible to believe that the lady might have developed the shock only at 4 A.M. and he gave his firm opinion that the moment the deceased had seen the flames she must have sustained mental shock and these circumstances convinced him that right from the very beginning she must have been under a mental shock and on that ground the learned Judge disbelieved the Doctor. Likewise he has pointed out certain circumstances purely based on surmises and on his inferences. It is needless to say that the Doctor who has examined the deceased and conducted the post-mortem is the only competent witness to speak about the nature of injuries and the cause of death. Unless there is something inherently defective the court cannot substitute its opinion to that of the Doctor."

45. In the instant case, the first dying declaration was truthful and trustworthy.

46. In the case of *Om Parkash Vs. State of Punjab*, AIR 1993 SC 138 : AIR 1992 SC 138 : (1992) CriLJ 3935 : (1992) 3 Crimes 581 : (1992) 4 JT 524 : (1992) 2 SCALE 196 : (1992) 4 SCC 212 : (1992) 3 SCR 921 : (1992) 2 UJ 710 , their lordships of the Hon'ble Supreme Court have held that the dying declaration of deceased could not be rejected merely because of serious burn injuries on her person. It has been held as follows:

"7. The learned counsel appearing for the appellants submitted that it is always open to the Court to convict the accused on the basis of a dying declaration but before any such order of conviction is passed the Court must be satisfied that the dying declaration said to have been made by the victim before death is genuine and truthful. She pointed out that the so-called dying declaration which is said to have been made by Rita before ASI Amrit Lal does not appear to be a genuine and natural statement. According to her, because of the burn injuries Rita must not be in a position to make any such declaration. In this connection, she drew our attention to the post mortem examination report of Rita and the findings of Doctor who held the post mortem examination. It was urged that the Doctor had found second and first degree septic burns on the person of Rita and as such by 6.25 when she is alleged to have made the dying declaration, in normal course of the event she must not be in a position to make any such declaration. Dr. Devinderpal Singh (PW 4) has stated on oath that it was the statement of Rita which was recorded, According to him, she remained conscious till 11.00 p.m. on March 17, 1979. Dr. Harish Chander Vaid (PW 2), who examined the injuries of Rita before her statement was recorded, also has not mentioned in his report that she was unconscious. It may be mentioned that during the examination of aforesaid Dr. Harish Chander Vaid (PW 2) no question was put to him that because of the injuries on the person of Rita whether she will be in a position to make the dying declaration. It is true that there were serious burn injuries, on the person of Rita but still she survived till March 29, 1979 i.e. for about twelve days in this background we are not inclined to hold that because of the burn

injuries, Rita was not in a position to make any statement before ASI Amrit Lal."

47. In the case of Balbir Singh Vs. State, (1994) CriLJ 1079 , the Division Bench of the J & K High Court has held that even if there was 100% burns, the dying declaration recorded by I.O. in presence of doctor, was voluntary and in good state of mind. It was admissible though not recorded by a Magistrate and no corroboration was required. It has been held as follows:

"13. It was argued by the learned Counsel for the accused that as the dying declaration of the deceased was neither recorded by a Magistrate nor by a Doctor, but by the Investigation Officer himself without explaining the non availability of the Magistrate and the Doctor, therefore, such a dying declaration could not inspire confidence on which conviction could be recorded. Such an argument advanced and based upon the proposition of law as laid down in State (Delhi Administration) Vs. Laxman Kumar and Others, AIR 1986 SC 250 : (1986) CriLJ 155 : (1985) 2 Crimes 758 : (1985) 2 SCALE 701 : (1985) 4 SCC 476 : (1985) 2 SCR 898 Supp does not hold good in the circumstances of the case in question; firstly, on the ground that such a declaration was recorded by the SHO in presence of a Doctor witness soon after the occurrence had taken place, and the same was recorded instantly for the reason that the Doctor had opined to the S.H.O. that the lady (deceased) was in a critical stage and there was no hope of her survival. Secondly, the condition of the patient at that time necessitated that the Investigating Officer should have recorded her statement immediately, which he did and, although, the patient had 100% burns on her body and even was not in a position to put her thumb impressions on her statement, which were burnt, but was in a good state of mind to make such a statement without any wavering or in such a notch potch manner, which could show that she was actually in a semi conscious condition and talking incoherently, and there was a possibility that in that manner, her imagination might have played with her in giving out the name of the accused as her assailant. It is the case of the prosecution and defence as well, that both the deceased and the accused were enjoying a happy marital life and, therefore, her imagination could not play with her to blurt out the name of her husband as her assailant. The statement of the deceased, which formed the basis for initiation of criminal investigation against the accused and being her last statement before her death, has withstood all the tests of the Evidence Act, to be declared as a dying declaration, for it was made by the deceased before her death to the Investigating Officer relating the circumstances under which her death had taken place at the hands of the accused. Both the prosecution witnesses Investigating Officer Talib Hussain and Dr. Bashir Ahmed have been put to a lengthy cross examination and have succinctly proved that such a statement was made by the deceased of her own free will, when she was in a good state of mind and was not influenced or tainted by anybody, for there was no relation of her present in the hospital at the time her statement was recorded. In Khushal Rao Vs. The State of Bombay, AIR 1958 SC 22 : (1958) CriLJ 106 : (1958) 1 SCR 552 it has been held "that 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 assailant of the deceased, there was 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 any corroboration, it cannot form the basis of a conviction". In above context of the law, it becomes very material to make mention of the circumstances, under which the dying declaration of the deceased has been recorded. The said declaration was recorded by its scribe P.W. Talib Hussain, soon after he received a secret information about the occurrence, he went to the house of the accused, and found that the deceased was laying in a burnt condition and he managed her shifting to Poonch hospital on a cot and recorded her statement in presence of Dr. Bashir Ahmad and her brother-in-law P.W. Parkash Singh. P.W. Parkash Singh did not support the prosecution story in literal sense of his statement recorded Under Section 161 of the Cr.P.C., but could not deny the fact that the deceased was burnt and she came out from her house in a burning condition while saying that she caught fire, for her stove had burst. He did not support the dying declaration to have been recorded in his presence, but admitted his signatures on the dying declaration, which, according to him, were recorded by the police on a blank paper. However, his statement is negatived by Dr. Bashir Ahmad who in unambiguous terms after being put to a lengthy cross-examination by the defence has stated and corroborated the fact that the dying declaration of the deceased Rajinder Kour was recorded in his presence by P.W. Talib Hussain, when he (the Doctor) verified the fact that the deceased who could make a statement was in a critical state of health and there was every likelihood of her non survival and the same prompted the Investigating Officer to record her statement immediately in presence of the Doctor, fully being of the view that she could die at any time. Dr. Bashir Ahmad was a Medical Officer and was, in no way, connected with the accused or the deceased. He being an expert with independent thinking about the matter, was not expected to speak a lie. He did not bear any ill will or enmity towards the accused or any soft corner for the deceased and, therefore, one could not say that he could attest a blank document, so as to involve the accused falsely in the case. He had been working as a Surgeon in Poonch Hospital. He was not bearing any ill will or grouse against the accused which could impel him to make a false statement against the accused. His position as an expert derives full confidence to believe him as an independent witness, who could say as to whether the deceased Rajinder Kour was in a fit condition to make a statement or not. He has testified that the deceased was in a good state of mind to make a statement, which she made before the Investigating Officer Talib Hussain. According to him, although the deceased had received 100% burns on her body, but she even then was conscious and in a fit state of mind to make a statement. He has stated that

since the hands of the deceased were also burnt, therefore, she was not in a position to mark her thumb impressions on the statement. He narrated the whole sequence as to how her statement was reduced to writing by the Investigating Officer. According to him, she made her statement slowly and was in a great pain and also cried while her statement was being recorded. The evidence of Investigating Officer and Doctor could not be impeached in any manner by the defence to show that the said declaration of the deceased was not free from any inducement or taintedness and, as such no conviction could be recorded on such evidence by the trial Judge. As the statement of the deceased was recorded immediately after the incident, therefore, there was no possibility for the S.H.O. to wait and call for the Magistrate to record her statement in a question answer form, for there was every likelihood that she could die any time. Therefore, the way and the circumstances in which her statement has been recorded shows that such a statement of the deceased was independently sufficient to form the sole basis for the conviction of the accused even if there would have been no corroboration to it. In this regard, one gets prompted to make mention of *Khushal Rao Vs. The State of Bombay*, AIR 1958 SC 22 : (1958) CriLJ 106 : (1958) 1 SCR 552 wherein it has been authoritatively held that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. Each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made, it cannot be laid down as a general proposition that the dying declaration is a weaker kind of evidence than other piece of evidence; a dying declaration stands on a same note as other piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principle governing the weighing of evidence."

15. The deceased when removed from the place of occurrence to the hospital was surrounded by her in-laws and no relatives on her parents side were present when the dying declaration was recorded. This is an admitted case of the parties that some discord arose between the husband and wife about the solemnization of the marriage of their brother and sister respectively, as a result of which, they were sour to each other, and the same resulted into the non participation of the family members of the bridegroom, Balbir Singh in his marriage ceremony which on the eventful day took place at Gurdwara Nangali Sahib. In the circumstances when the occurrence took place at a time when the accused was present in his house, therefore, the evidence of dying declaration recorded by the Investigating Officer as far as practicable in the words of the maker of the declaration stands on a very higher footing than the dying declaration, which would have been made orally by the declarant and the same was likely to suffer from all infirmities of human memory and character. The present declaration has proved all the tests of Evidence Act, and the same has been recorded at the earliest opportunity by its scribe, who is Senior Officer in the police department in presence of the Doctor who testified to it in letter and spirit that such a statement was by the declarant which was free from any tutoring, inspiration or inducement. If such a

statement could have been beyond her control, she could have easily indicted her in-laws people in the commission of the crime, even after she came crying to them and was ablaze in fire, but they did not take any leading part in putting out the fire from her person and ensured her despatch for medical assistance, unless the Investigating Officer reached on the spot and removed her to the hospital. Their cold shoulder towards her, shows that; either they were under the control of their son (accused) badly, who never wanted that the marriage of Gurjeet Kour and Darshaan Singh to take place or they were inimical towards the deceased, which created an impediment in their mind not to take a leading part in putting out the fire from her person and ensure her despatch to the hospital. But, the deceased made a natural sequence of the circumstances, as a result of which, she was put on fire by her husband, which resulted into her death for she sustained 100% burns from such fire set on her by her husband after sprinkling kerosene oil on her body and was lit with a match stick. A person at the verge of death is not supposed to make an untrue statement unless prompted or tutored by his friends or relatives. Infect; the shadow of immediate death is the best guarantee of the truth of the statement made by dying man the cause of circumstances leading to his death, which are absolutely fresh in his mind and is un-tainted or discoloured by any other consideration except speaking of truth. It is for these reasons that the Statute (The Evidence Act) attaches a special sanctity to a dying declaration. Thus, if the statement of a dying person passes the test of graver scrutiny applied by the Courts, it becomes the most reliable piece of evidence which does not require any corroboration. Suffice it to say, that it is now well established by a long course of decisions. If, on a careful scrutiny of such a declaration, the Court is satisfied that the dying declaration is true and free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration, even if there is no corroboration. The above mentioned view has been taken in AIR 1988 SC 558 (sic). In the instant case, the dying declaration has withstood all the tests laid down under the Evidence Act, and the trial court has very clearly on proper scrutiny of the evidence of the scribe of the dying declaration and its attesting witness Dr. Bashir Ahmad clearly after satisfying its conscience found that the dying declaration made by Rajinder Kour was true, and free from any effort which prompted her to make such a statement which was coherent and consistent and, therefore, there was no legal impediment in founding the conviction of the accused on such a dying declaration, even if it would be found that there is no corroboration.

17. The said dying declaration has assumed the importance of correctness on account of the other fact as well that soon after the dying declaration was recorded at 11.15 a.m. on the eventful day, the same alongwith the report of its scribe (Investigating Officer in the case) was dispatched to the police station, Poonch, when FIR was registered at 11.40 a.m. We have never seen a case, in which such a promptness has been shown by a police officer, who has forwarded the dying declaration of a deceased moments after it was recorded, to the Police

Station, for it forming the part of FIR on which the investigating Agency swung into action and it (declaration) ultimately formed the basis for recording the conviction of the accused, after the said declaration went through all the requisite tests of evidence Act, to which the veracity of witnesses was put at the time their statements were recorded. The statements i.e. the statement of Doctor Bashir Ahmad and the scribe of the declaration Talib Hussain withstood all the cross-examination, to which they were put by the defence and after their evidence was scrutinized on the touch stone of Evidence Act, they were found to have correctly and independently proved the dying declaration, which was made before them by the deceased soon after the occurrence took place when her mind was free from any inspiration or promptness from any corner and the statement made by her was coherent and consistent in the natural sequence of the circumstances, under which such a statement was by her.

20. Even, the close relatives of the accused, brothers, bhabies and mother have been susceptible to narrate that the deceased had sustained burns on her body in their house and they sprinkled water on her body to extinguish the fire upon her body and, ultimately, covered her with a blanket which extinguished the fire. Although, they have turned hostile, but they could not resist the fact to say that the deceased sustained injuries out of burns which, according to them, had taken place due to a stove burst. No such damaged stove was either seized by the police or produced before them by the prosecution witnesses to testify that actually the fire upon the body of the deceased had taken place due to a stove lit by the deceased, either for preparing the meals, tea or was going to boil some milk for the child. No plausible story has been put forth by the defence to show as to what for the stove was lit by the lady which burst due to her mishandling and she caught fire on her body from a burning stove. The certificate of death issued by the Doctor was impeached by the appellant's counsel on the ground that no autopsy of the deceased had taken place and, therefore, the certificate issued by him that she died out of burn injuries is not certificate. The said Doctor has categorically stated that he was vividly in know of the circumstances of the case from the time the lady was admitted in the hospital till her death and found it unnecessary to cause autopsy upon her body, for the cause of death was quite apparent from her body that she died due to 100% burn injuries and no post mortem was required.

21. The post mortem examination on the dead is not absolutely necessary to prove the murder, for, even in the absence of the dead body, murder may be proved by some other cogent and credible evidence, in the case on hand, it has been admitted by the Doctor that the deceased had sustained 100% burns, which resulted into her death, because she had sustained toxemia due to burns, which led to her cardio respiratory failure. The duration of burns at the time of admission was six hours. It shows that the Doctor who is an expert in the matter, on his medical wisdom found that it was not necessary to conduct the post mortem upon the dead body of the deceased when conclusively he had found that she had received 100% burns, which resulted into her death. He was

specific in narrating the fact that it was due to such burns that she was not even able to affix her thumb impressions on the dying declaration, for her finger tips were also burnt. In all fours, the medical evidence is satisfactory and conclusive proof that the death of the deceased has taken place due to cardio respiratory failure, which led to her death.

24. In this case, if all other circumstances would not have been proved, but, even, then, the mere circumstance of the dying declaration proved by cogent and substantial evidence was in itself sufficient to show that the accused and the accused alone was the person who sprinkled kerosene oil upon the body of the deceased on 7-10-1987 and put her ablaze, as a result of which, she died in the hospital on 13-10-1987. In all circumstances of the case, as discussed above, the accused is proved to have committed the murder of the deceased, and has, therefore, rightly been convicted by the learned trial court for an offence under Section 302 RPC which offence he has forgotten to mention in recording the order of conviction against the accused."

48. In the case of Hans Raj and Others Vs. State of Rajasthan, (1995) CriLJ 1004 , the Division Bench of the Rajasthan High Court has held that the fact that deceased had 100% burn injuries of second degree and third degree, is not sufficient to presume that deceased was not physically and mentally fit to give statement. It has been held as follows:

"25. In view of the aforesaid facts and circumstances it can never be presumed that simply because the deceased had hundred percent burns injuries of second degree and third degree therefore, it must be presumed that deceased was not physically and mentally fit to give statement. Our aforesaid view is fortified from a decision of the Apex Court in Suresh Vs. State of Madhya Pradesh, AIR 1987 SC 860 : (1987) CriLJ 775 : (1987) 1 Crimes 385 : (1987) 1 JT 280 : (1987) 1 SCALE 167 : (1987) 2 SCC 32 : (1987) 1 UJ 484 . In that case, deceased had got hundred percent burns of second degree. Their Lordships believed the statement of doctor, who recorded the dying declaration of the deceased. The statement of the doctor was believed in the aforesaid case by their Lordships that the deceased after receiving hundred percent burn injuries was in a fit state of health to make a declaration. The dying declaration was believed in that case although doctor had stated that when she was recording the dying declaration, the deceased had started going into coma. In that case, the dying declaration was recorded by the doctor herself but in the instant case, the dying declaration has been recorded by the learned Judl. Magistrate PW 8 Shri Lalit Mohan, who has no interest in success or failure of the prosecution. The preponderance of the cases leads towards an irresistible conclusion that the dying declarations recorded by the learned Magistrates are ordinarily taken to be impartial and above suspicion unless some compelling reasons are brought to the notice of the Court. In the present case, nothing has been brought to our notice that the dying declaration Ex. D/3 recorded by the learned Magistrate PW 8 Shri Lalit Mohan suffers from any infirmity. Thus we are of the opinion that the learned Sessions Judge has not

committed any error in appreciating the dying declaration Ex. D/3 and recording a finding of guilt against the accused-appellants on the basis of Ex. D/3 and a contention contrary to it raised before us is untenable."

49. The Division Bench of Bombay High Court, Nagpur Bench, in the case of Ramesh Parteki Vs. The State of Maharashtra, (2001) ALLMR(Cri) 2092 : (2001) CriLJ 3780 , has relied upon the dying declaration recorded by the police constable, since the statement was recorded in the presence of the doctor who has stated that the deceased was in a fit state to make statement. It has been held as follows:

"16. In the case before hand, as to the condition of the deceased to make a statement, there is overwhelming evidence of Dr. Ezaz Ahmed. In his evidence, he has stated that Police recorded her statement in his presence and while recording the statement, her condition was fit to make the statement. He further stated that after recording the statement he gave his endorsement as to the condition of the patient on the same statement. He has also stated that he had examined the patient and found her to be fit to make a statement. The Police Head Constable Lohi who recorded the statement, has stated in his evidence that doctor was present when he recorded the statement. He has also stated that the patient was conscious when her statement was recorded. He has stoutly denied the suggestion of the defence that the patient was unconscious. Dr. Ezaz Ahmed also denied the suggestion that the deceased was in unconscious condition and she did not make any statement before him. Having regard to this clinching evidence of Dr. Ezaz Ahmed and Police Head Constable Lohi, we have no doubt that the patient was conscious and fit enough, physically and mentally, when her statement was recorded. In this background, we also take a note of the fact that both the witnesses, Police Head Constable Lohi and Dr. Ezaz Ahmed, were quite disinterested and as such there was no reason for them to falsely implicate the appellant. That is why the statement of the deceased in the dying declaration Exh. 32 is found to be truthful and inspiring confidence. Therefore, we have no hesitation in placing reliance on the dying declaration Exh. 32. As stated earlier, the circumstantial evidence as to the positive detention of kerosene residue in the burnt pieces of clothes of the deceased lends assurance to the statement of the deceased in the dying declaration Exh. 32 that it was the appellant who poured kerosene on her person and set her on fire. Therefore, the prosecution has clinchingly established that the victim Gulabwati was done to death by the appellant, by setting her on fire by pouring kerosene and as such the appellant is responsible for committing murder of the victim Gulabwati. Therefore, the trial Court has committed no error in holding the appellant guilty for having committed murder of his wife Gulabwati."

50. In the case of Rambai Vs. State of Chhattisgarh, AIR 2002 SC 3492 : (2002) CriLJ 4712 : (2002) 2 DMC 770 : (2002) 8 JT 3 : (2002) 7 SCALE 304 : (2002) 8 SCC 83 , their lordships of the Hon"ble Supreme Court have held that physical state of injuries on the declarant was not by themselves determinative of mental

fitness of the declarant to make the statement. In this case victim had suffered 85% burn injuries. The doctor himself has given declaration that deceased was in fit mental condition to make dying declaration. It has been held as follows:

"6. So far as the position of law in regard to the admissibility of the dying declaration which is not certified by the doctor, the same is now settled by a Constitution Bench judgment of this Court reported in *Laxman v. State of Maharashtra*, (JT 2002 (6) 313) wherein overruling the judgment of this Court in *Smt. Laxmi Vs. Om Prakash and Others*, AIR 2001 SC 2383 : (2001) CriLJ 3302 : (2001) 3 Crimes 140 : (2001) 2 DMC 139 : (2001) 5 JT 280 : (2001) 4 SCALE 241 : (2001) 6 SCC 118 : (2001) 3 SCR 777 : (2001) AIRSCW 2481 : (2001) 5 Supreme 26 , it is held that a dying declaration which does not contain a certificate of the doctor cannot be rejected on that sole ground so long as the person recording the dying declaration was aware of the fact as of the condition of the declarant to make such dying declaration. If the person recording such dying declaration is satisfied that the declarant is in a fit mental condition to make the dying declaration then such dying declaration will not be invalid solely on the ground that the same is not certified by the doctor as to the condition of the declarant to make the dying declaration. Be that as it may, so far as this case is concerned, that question does not arise because in the instant case PW. 19, Dr. Ashok Sharma though not a doctor who treated the deceased but being the duty doctor when summoned came and examined the deceased and noted in the dying declaration itself as to the capacity of the deceased to make a dying declaration. That apart from the narration of the questions and answers in the dying declaration it is clear that the deceased was in a fit state of mind to make the statement. But the learned counsel for the appellant contended that we should examine the contents of the dying declaration in the background of the fact that the deceased had suffered nearly 85% burns and ever since her admission to the hospital she was alternating between consciousness and unconsciousness, as also earlier attempts to record her dying declaration had failed. Therefore the learned counsel contends that it is not safe to place reliance on the dying declaration. We have carefully perused the evidence of PWs. 12 and 19 who recorded the dying declaration and PW. 19 who is the doctor who certified the condition of Vidya Bai from their evidence. We are satisfied that the deceased at the time she made the dying declaration was in a fit condition of mind to make such statement. Having found no discrepancy in the statement of the deceased we are inclined to accept the same as held by the courts below. Learned counsel then contended that from the evidence of the husband, DW. 2 himself, it is clear that the deceased must have suffered burn injuries while she was cooking lunch, therefore, it is not safe to rely upon the prosecution evidence to convict the appellant. We notice the courts below have considered this argument and taking the preponderance of evidence and also the factum that the husband of the deceased had resiled from his statement made before the investigating officer have held that it is not safe to rely upon DW. 2. In such a situation we are unable to take a contra view from the one taken by the courts

below."

51. Their lordships of the Hon^{ble} Supreme Court in the case of P.V. Radhakrishna Vs. State of Karnataka, AIR 2003 SC 2869 : (2003) CriLJ 3717 : (2003) 2 DMC 220 : (2003) 6 JT 84 : (2003) 5 SCALE 438 : (2003) 6 SCC 443 : (2003) 1 SCR 745 Supp : (2003) AIRSCW 3587 : (2003) 5 Supreme 98 , have held that dying declaration can be the sole basis for conviction. In this case, the deceased sustained 80-85% burn injuries. It was held that the absence of certification as to the state of mind of declarant, was not fatal when police official recorded statement of deceased in presence of the doctor. Their lordships have further held that the percentage of burns suffered by the deceased is not alone the determinative factor. It has been held as follows:

"15. There is no material to show that dying declaration was result of product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility.

17. The residuary question whether the percentage of burns suffered is determinative factor to affect the credibility of the dying declaration and the improbability of its recording. There is no hard and fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. As noted in Rambai's case (supra) physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement."

52. The Division Bench of the Karnataka High Court in the case of Sri Kumar alias B.A. Jayakumar Vs. State of Karnataka, (2003) CriLJ 252 : (2003) 1 DMC 606 : (2002) 4 KCCR 284 SN , has held that though condition of deceased was precarious because of 100% burns, she was mentally fit and in clear state of mind to make correct and cogent statement. In the circumstances, dying declaration so recorded was acceptable. It has been held as follows:

"3. The appellant's learned Advocate started by pointing out to us that this was a case in which Laxmi was found with her clothes blazing and by the time the fire was extinguished that she had sustained virtually 100% burns. The learned Counsel submitted that there are indications from the evidence of P.W. 10, from the evidence of the doctor, from the evidence of the sister Rathna and her mother Muniyamma that even her face had been burnt and what is emphasised is the fact with this degree and level of burns that even when Laxmi was brought to the hospital her condition was precarious. There are entries to this effect in the case papers and the learned Counsel submits that it would have been totally and completely impossible for Laxmi to have either spoken to the doctor or given any case history and that as has now been routine that since she was taken to the hospital by the Head Constable that he must have told the doctor that she

was burnt by the husband and that this is what has been taken down. Furthermore, from the fact that Laxmi did not even survive in the hospital for a few hours. What is further pointed out to us is that she was virtually hanging between life and death during that period of time and that with every hour that passed she was virtually sinking. The dying declaration is supposed to have been recorded sometime around 9 PM and the learned Counsel submits that this was hardly 3 to 4 hours before Laxmi died; that the doctors have admitted that she was given sedatives and tranquilizers and that consequently, it is totally and completely impossible for the Court to accept the prosecution version that she was in a fit condition mentally and physically to make a valid dying declaration. Our attention was drawn to the fact that even though the doctor has endorsed the dying declaration to the effect that it was recorded before him that the dying declaration does not contain the most important endorsement namely the certificate from the doctor that the patient was in a fit condition to understand questions and give rational and cogent answers. It is true that a perusal of this dying declaration does indicate to us that it does not contain the certificate from the doctor in this form. The Supreme Court has further clarified the legal position in more than one judgment laying down that in a given case if there is sufficient evidence before the Court to indicate that the dying declaration is a valid and genuine document and that it reflects the true, correct and complete statement made by the deceased that the mere omission to obtain the fitness certificate from the doctor is not a fatal infirmity. In the present case however, there are two aspects which the learned Addl. S.P.P. has very vehemently laid emphasis on. Firstly, he points out that the doctor who is P.W. 1 has in no uncertain terms stated that Head Constable Srinivas sought his permission to record the dying declaration and that he accorded the permission because Laxmi was in a fit condition to make a statement. He has been seriously grilled by the defence and he has withstood the cross-examination in the course of which he has in terms stated that he was present right through the recording of the statement and that her mental condition was perfectly stable and furthermore that she was in a fit condition to understand the questions put to her and to give the answers and that she in fact did so. We then have the evidence of Head Constable Srinivas who is the scribe of the dying declaration and he has given evidence in identical terms. He points out that he had put the questions to Laxmi, that she answered the questions without any difficulty and that the dying declaration recorded by him represents Laxmi's statement. What we need to point out in this case is that the fitness certificate which was perhaps technically lacking on the original dying declaration has been more than completely established and strangely enough, the majority of these answers have been elicited in the course of cross-examination. We have no hesitation whatsoever in holding that even though Laxmi's condition was precarious because of the 100% burns that she was still in a mentally fit and clear state of mind around 10 to 10.15 PM on that night to make a correct and cogent statement. Under these circumstances, in our considered view, Ex. P-2 which has been seriously attacked by the defence will have to be accepted.

4. It was pointed out to us that Ex. P-2 is a long statement virtually covering two full pages and that it is too much to believe that Laxmi who was very close to her end at that point of time could have been in a position to recount all this history when questions were put to her. It is true that the doctor was confronted with the position that she had been administered pain killers and sedatives but the doctor has still maintained that despite these medications that the patient was still in a fit condition. Speaking for ourselves all that we need to observe is that the doctor whose credibility we have no reason to doubt has given evidence and his evidence has withstood cross-examination and secondly that the Courts have come across numerous instances where as a result of the treatment meted out in the hospital particularly after pain killers and sedatives are administered that for some period of time the condition of the patient stabilizes even if there is a sudden collapse thereafter. It appears from the case papers that Laxmi did survive till 5AM the next morning but the number of hours or the time factor is not the parameter in so far as the Court is always guided by the evidence of the medical persons namely the doctor."

53. In the case of State of Karnataka Vs. Shariff, AIR 2003 SC 1074 : (2003) CriLJ 1254 : (2003) 1 DMC 450 : (2003) 2 JT 15 : (2003) 1 SCALE 469 : (2003) 2 SCC 473 : (2003) 1 SCR 572 : (2003) AIRSCW 600 : (2003) 2 Supreme 16 , their lordships of the Hon'ble Supreme Court have held that dying declaration recorded by the police personnel cannot be discarded on that ground alone. There is no requirement of law that dying declaration must necessarily be made to a Magistrate. Their lordships have further held that dying declaration when not recorded in question-answer form, cannot be discarded on that ground alone. The statement recorded in narrative form is more natural and gives version of incident, as it has been perceived by victim. In this case also, the doctor has recorded in the Accident Register of hospital that patient was conscious, her orientation was good and that she answered well to questions. The dying declaration cannot be discarded merely on the basis of her injury report and post mortem examination, holding that having regard to nature of injuries sustained by deceased, she could not have been in a position to make statement. It has been held as follows:

"8. The most important evidence in this case is the series of statements given by deceased Muneera Begum to different persons on several occasions. PW 2 Syed Akbar has stated that his nephew PW 3 Rasheed came to his house at about 6.00 a.m. on July 24, 1986 and informed him that his father had burnt his mother. He then immediately rushed to the house of his sister and inquired what had happened and then she said that her husband had tied her hands and legs, covered her mouth and after pouring kerosene had set her on fire. PW 6 Abdul Razak resides in the premises of the mosque in the same village. He has stated that when he was returning from the mosque at 6.00 a.m. after finishing the prayers, he saw a crowd near the house of the accused. He went there and found Muneera Begum in burnt condition and when he inquired as to how it had happened, she told that her husband had tied her hands and legs, poured

kerosene and burnt her. She could not raise any alarm as the accused covered her mouth with a cloth. PW 7 Baknu is another brother of the deceased and was working in Hosur stone quarry. According to his statement he received information about the incident at about 8 O'clock and thereafter he reached Victoria Hospital the same night. The deceased informed him that her husband had tied her hands and legs, poured kerosene and had set her on fire. No doubt PW 2 Syed Akbar and PW 7 Baknu are real brothers of the deceased, but PW 6 Abdul Razak is not related to her in any manner. He is the Imam in the mosque. There is no reason why he would give a false statement in order to implicate the accused. PWs 2 and 7 would not fabricate a story and falsely implicate the accused Shariff as he was also related to them as their brother-in-law. In our opinion the testimony of these three witnesses is quite reliable and it shows that the deceased Muneera Begum made a statement that her husband had tied her hands and legs and after pouring kerosene had set her on fire in the morning of July 24, 1986.

9. As mentioned earlier the deceased Muneera Begum was taken to Victoria Hospital, Bangalore for treatment. PW 12 Dr. K.M. Nagabhushan was posted as Assistant Surgeon in the aforesaid hospital and was working as Casualty Medical Officer on July 24, 1986. He has stated that Muneera Begum was brought to the hospital at about 9.30 a.m. with burn injuries by her brother Syed Akbar. She gave her own statement with regard to the incident and stated that she sustained burn injuries when her husband poured kerosene on her body and set her on fire in his house at about 4.00 a.m. He has further stated that on examination he found her to be conscious and was answering the questions properly and her orientation was good. After examining her he made the necessary entries in the Accident Register and the relevant extract of the same have been proved by the witness as Exh. P12 and the same reads as under:-

"Patient says that she sustained burn injuries when her husband Shariff thrown kerosene oil over her body in her house and put fire to it on 24.7.86 at 4.00 a.m. There was a quarrel between her and her husband for the last two days.

On examination patient is conscious. Pulse 86/minute.

CVS/RS NAD Answers well to the question and orientation was good.

Brought by Akbar (brother) Kerosene smell over the body of the patient."

15. In our opinion the view taken by the learned Sessions Judge that it would be unsafe to rely upon the testimony of PW 3 regarding the actual factum of incident is not correct. A boy aged 8/9 years would be near his mother and would be sleeping in the same house where she was sleeping. There was no occasion for him to go to the house of Jaina Bi and to sleep with her. If PW 3 was not present in the house and was in the house of her grand-mother in the night in question, he could not have conveyed the information about the incident to PW 1 and PW 2 nor they would have come to know about the incident forthwith. If PW 3 was present in the house he was bound to witness the incident, namely picking

up quarrel by the accused with his wife and setting her on fire. There was absolutely no reason why PW 3 would give a false statement against his own father that he had tied the hands and legs of his mother and had burnt her. We are of the opinion that the testimony of PW3 is fairly reliable on the factum of the incident and the same cannot be discarded only on account of a stray sentence in his cross-examination where he has stated that when his mother caught fire he was in his grand-mother's house. The High Court did not examine the testimony of this witness carefully and we find ourselves unable to agree with the view taken by it.

16. The other important piece of evidence against the accused is that of dying declarations and the most important one is that which was made by her to PW 12 Dr. KM Nagbhusan, Assistant Surgeon in the Victoria Hospital, Bangalore. He was the first doctor to examine her when she reached there at 9.30 a.m. The witness has clearly stated that the deceased gave her own statement with regard to the history and stated that she sustained burn injuries when her husband poured kerosene and set her on fire on the same day at 4.00 a.m. He recorded all these facts in the Accident Register and relevant extract of the same has been brought on record and has been proved by him as Ex. P. 12. There is absolutely no reason to discard the testimony of PW 12, who is a responsible government servant. The other two dying declarations were recorded by PW 11 BK Krishnappa ASI Victoria Police Station on July 24, 1986 and by PW 14 Kumar Swamy, PSI Anekal Police Station on July 26, 1986. These are fairly long dying declarations where she gave the background of the incident and also stated the fact that the accused picked up a quarrel in the morning of July 24, 1986 and thereafter after pouring kerosene set her on fire. These two dying declarations were recorded in the presence of PW 5 Dr. Rangarajan who was Assistant Surgeon in the Victoria Hospital at the relevant time. He made an endorsement that the dying declaration was recorded in his presence and thereafter he put his signature on the same. He has made a categorical statement that at the time when the statement of the deceased was being recorded on both the occasions, she was conscious and was in a fit condition to make a statement. In our opinion the aforesaid three dying declarations are wholly trustworthy and there is absolutely no reason at all to discard the same. Though PW 2 Syed Akbar and PW 6 Abdul Razak, who reached the spot in the village immediately after the occurrence, have also stated in their statements that the deceased told them that it was the accused who had set fire to her and their testimony in our opinion is trustworthy, but even if we do not take into consideration the aforesaid oral dying declaration of the deceased, the three dying declarations referred to above, are quite sufficient to fasten the liability upon the accused.

21. It is true that PW 11 and PW 14 were Police personnel and a Magistrate could have been called to the hospital to record the dying declaration of Muneera Begum, however, there is no requirement of law that a dying declaration must necessarily be made to a Magistrate. In *Bhagirath Vs. State of Haryana*, (1996) 8 AD 361 : AIR 1997 SC 234 : (1997) CriLJ 81 : (1996) 4 Crimes 139 : (1996) 9

JT 654 : (1996) 7 SCALE 882 : (1997) 1 SCC 481 : (1996) AIRSCW 4406 : (1996) 7 Supreme 682 on receiving message from the hospital that a person with gun shot injuries had been admitted a head constable rushed to the place after making entry in the police register and after obtaining certificate from the doctor about the condition of the injured took his statement for the purposes of registering the case. It was held that the statement recorded by the head constable was admissible as dying declaration. Similar view was taken in Munnu Raja and Another Vs. The State of Madhya Pradesh, AIR 1976 SC 2199 : (1976) CriLJ 1718 : (1976) 3 SCC 104 : (1976) SCC(Cri) 376 : (1976) 2 SCR 764 : (1976) 8 UJ 154 , wherein the statement made by the deceased to the investigating officer at the police station by way of First Information Report, which was recorded in writing, was held to be admissible in evidence.

24. We are a little surprised that the High Court took the view that having regard to the nature of injuries sustained by the deceased she could not have been in a position to make a statement. PW 12 Dr. KM Nagabhushan clearly recorded in the Accident Register that the patient was conscious, her orientation was good and that she answered well to the questions. He also noted that her pulse was 86/minute, CVS/RS was NAD. PW 5 Dr. Rangarajan before whom the statements of the victim were recorded by PW 11 and PW 14 on 24th and 26th July, 1986 respectively deposed that she was able to speak. He clearly stated that it is not true that the victim was not in a condition to make statement or that she was unconscious. In view of this clear statement of the Doctor that the victim was in a position to make a statement, the High Court, in our opinion erred in discarding the dying declarations merely on the basis of her injury report and post-mortem examination report. PW 4 Dr. KH Manjunath who had performed the post-mortem examination, had merely stated that he was not in a position to say if the victim was in a position to talk after sustaining the injuries and till she died. The last ground given by the High Court is regarding the language spoken by the deceased. PW 5 Dr. Rangarajan has stated in para 2 and 3 of his statement that the victim was answering in Kannada language in which language her statement was recorded by PW 11 and PW 14. We are therefore of the opinion that the view taken by the High Court is wholly perverse and also contrary to settled principles of law and therefore cannot be sustained.

25. In the result the appeal succeeds and is hereby allowed and the impugned judgment and order of the High Court is set aside and that of the learned Sessions Judge is restored. The accused-respondent shall surrender and undergo the sentence imposed by the learned Sessions Judge. The Chief Judicial Magistrate concerned shall take immediate steps to take the accused-respondent in custody. Shri Ajay Kumar Jain, learned Advocate, who appeared Amicus Curiae has rendered valuable assistance in deciding this case and we are beholden to him."

54. Their lordships of the Hon"ble Supreme Court in the case of Vidhya Devi and Another Vs. State of Haryana, AIR 2004 SC 1757 : (2004) 1 DMC 277 : (2004) 1

JT 609 : (2004) 1 SCALE 616 : (2004) 9 SCC 476 : (2004) 2 SCR 846 : (2004) AIRSCW 882 : (2004) AIRSCW 5248 : (2004) 6 Supreme 539 , have held that when statement is made to a police officer and the doctor is present in person and the deceased is in a fit state of mind to make the statement, the statement was signed by the deceased, the challenge to dying declaration was not sustainable. It has been held as follows:

"5. We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the acquittal of the other accused, except the appellants, on the ground of absence of any direct and substantial evidence against them cannot be relied upon as basis for a claim to project the case for acquittal of the appellants against whom and as to the role played by them there were ample materials as noticed, analysed and ultimately found the appellants guilty. The strained relationship between parties and also the harassment of the deceased for not bringing further dowry and not complying with the demands made on the deceased stood sufficiently substantiated on the basis of the indisputable material in the shape of complaint before the Police therefor as well as the compromise which came to be signed also by Puran Mal, Bimla (the in-laws of the deceased) Krishna, Vidhya Devi as well as by Om Prakash, Jagdamba, Raghbir Singh, Pawan Kumar, Bhupinder Kumar and attested by the Police Officer also. So far as the challenge made to the dying declaration recorded, though no doubt by the Police Officer concerned, the evidence of PW- 3, Dr. Krishan Kumar, who not only opined that the deceased was in a fit state of mind to make the statement but present when the statement was recorded and that the said statement was signed by the deceased Satyawati in token of its correctness adds credibility to the same and consequently involvement of the accused-appellants and the respective role played by them in having the deceased killed, remains firmly established by concrete and sufficient material and the findings in this regard concurrently arrived at by both the courts below are not shown to suffer from any infirmity whatsoever to call for our interference."

55. Their lordships of the Hon^{ble} Supreme Court in the case of Nallam Veera Stayanandam and Others Vs. The Public Prosecutor, High Court of A.P., AIR 2004 SC 1708 : (2004) 1 DMC 373 : (2004) 3 JT 18 : (2004) 2 SCALE 659 : (2004) 10 SCC 769 : (2004) AIRSCW 1160 : (2004) 2 Supreme 273 , have held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. The Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. It has been held as follows:

"6. It is for the above purpose, learned counsel for the appellants has strongly relied on the dying declaration Ex. P-28 which according to him, is free from all blemish and is not surrounded by any suspicious circumstances. We are of the opinion that if the contents of Ex. P-28 can be accepted as being true then all other evidence led by the prosecution would not help the prosecution to establish

a case under section 304B IPC because of the fact that even a married woman harassed by demand for dowry may meet with an accident and suffer a death which is unrelated to such harassment. Therefore, it is for the defence in this case to satisfy the court that irrespective of the prosecution case in regard to the dowry demand and harassment, the death of the deceased has not occurred because of that and the same resulted from a cause totally alien to such dowry demand or harassment. It is for this purpose the appellants strongly place reliance on the contents of Ex. P-28, therefore, we will have to now scrutinise the circumstances in which Ex. P-28 came into existence and the truthfulness of the contents of the said document. It is the prosecution case itself that on the fateful day at about 3''O clock, the deceased suffered severe burn injuries and she was brought to the Government hospital at Kothapeta. As per the evidence of PW-10 the doctor when she was admitted to the hospital, he sent an intimation to the Police as per Ex. P-21 and also made an endorsement in Ex. P-22, the accident register. In both these documents, he had noted that the deceased suffered accidental burn injuries due to stove burst. It is not the case of the prosecution that this entry was made by the doctor at the instance of any one of the appellants. At least no suggestion in this regard has been put to the doctor when he was in the witness box. As a matter of fact, there is considerable doubt whether any of the appellants was present at the time when the deceased was brought to the hospital and was first seen by the doctor PW-10. On the contrary, according to the doctor, a large number of relatives other than the appellants were present at that point of time when the deceased was brought to the hospital, therefore, it is reasonable to infer that the information recorded by the doctor in Ex. P-21 and 22 is an information given to the doctor either by the victim herself or by one of the relatives present there, who definitely were not the appellants. From the evidence of this doctor, we notice that anticipating the possible death he sent a message to the Munsif Magistrate to record a dying declaration and the said Magistrate PW-13 came to the hospital immediately and after making sure that all the relatives and others were sent out of the ward and after putting appropriate questions to know the capacity of the victim to make a statement and after obtaining necessary medical advice in this regard, he recorded the dying declarations which is in question and answer format. It is in this statement the deceased unequivocally stated that she suffered the injuries accidentally while preparing tea. There has been no suggestion whatsoever put to this witness when he was in the box to elicit anything which would indicate that this statement of the deceased was either made under influence from any source or was the statement of a person who was not in a proper mental condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate we are satisfied that there is no reason for us to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The trial court while considering this dying declaration seems to have been carried away by doubting the correctness and genuineness of this document because of other evidence led by the

prosecution thus, in our opinion, erroneously rejected this dying declaration which is clear from the following finding of the trial court in regard to Ex. P-28:

"Her statement made to the Magistrate which is at Ex. P-28 has been demonstrated to be an incorrect statement of fact and it appears that in the presence of the 3rd appellant, she made the statement that from the burning stove her sari caught fire while she was preparing tea."

We find absolutely no basis for the two reasons given by the trial court for coming to the conclusion that the deceased's statement under Ex. P-28 is an incorrect statement. The court came to the conclusion that this statement must have been made in the presence of the 3rd appellant, a fact quite contrary to the evidence of PWs. 10 and 13. On the contrary, the Munsif Magistrate specifically states that he asked everyone present and who were unconnected with the recording of the statement, to leave the room. This has not been challenged in the cross-examination. Therefore, in our opinion, this part of the foundation on which the trial court rejected Ex. P-24 is non-existent. It is also seen from the above extracted part of the judgment of the trial court that it held that it "has been demonstrated to be an incorrect statement of fact". For this also, we find no basis. If the trial court was making the second dying declaration as the basis to reject the first dying declaration as incorrect then also in our opinion, the trial court has erred because in the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs."

56. Their lordships of the Hon'ble Supreme Court in the case of Muthu Kutty and Another Vs. State by Inspector of Police, Tamil Nadu, (2005) 1 DMC 53 : (2004) 10 JT 538 : (2004) 9 SCALE 520 : (2005) 9 SCC 113, have held that the Court should be satisfied that deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or product of imagination and dying declaration can be the sole basis of conviction. It has been held as follows:

"13. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short "Evidence Act") which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which" could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is

generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are : firstly, necessity for the victim being generally the only principal eyewitness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of "Justice. These aspects have been eloquently stated by Lyre LCR in *R. v. Wood Cock*, [1789] 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolved from his figure against the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?"

(See King John, Act 5, Sect. 4)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus praesumitur mentire - a man will not meet his maker with a lie in his mouth."

14. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to

observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben Vs. State of Gujarat*, AIR 1992 SC 1817 : (1992) CriLJ 2919 : (1992) 1 Crimes 1180 : (1992) 4 JT 397 : (1992) 1 SCALE 655 : (1992) 2 SCC 474 : (1992) 2 SCR 197 :

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja and Another Vs. The State of Madhya Pradesh*, AIR 1976 SC 2199 : (1976) CriLJ 1718 : (1976) 3 SCC 104 : (1976) SCC(Cri) 376 : (1976) 2 SCR 764 : (1976) 8 UJ 154)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of Uttar Pradesh Vs. Ram Sagar Yadav and Others*, AIR 1985 SC 416 : (1986) CriLJ 836 : (1985) 1 Crimes 344 : (1985) 1 SCALE 108 : (1985) 1 SCC 552 : (1985) 2 SCR 621 and *Ramawati Devi Vs. State of Bihar*, AIR 1983 SC 164 : (1983) CriLJ 221 : (1983) 1 Crimes 637 : (1983) 1 SCALE 1 : (1983) 1 SCC 211)

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Another Vs. The Public Prosecutor*, AIR 1976 SC 1994 : (1976) CriLJ 1548 : (1976) 3 SCC 618 : (1976) SCC(Cri) 473 : (1976) SCR 542 Supp].

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg and Others Vs. State of Madhya Pradesh*, AIR 1974 SC 332 : (1974) CriLJ 361 : (1974) 4 SCC 264 : (1974) SCC(Cri) 426 : (1974) 6 UJ 68).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kake Singh Alias Surendra Singh Vs. State of Madhya Pradesh*, AIR 1982 SC 1021 : (1982) CriLJ 986 : (1981) SCC 25 Supp : (1981) SCC(Cri) 645].

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath and Others Vs. State of Uttar Pradesh*, (1981) 1 SCALE 527 : (1981) 2 SCC 654 : (1981) SCC(Cri) 581 : (1981) 3 SCR 195)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra Vs. Krishnamurti Laxmipati Naidu*, AIR 1981 SC 617 : (1981) CriLJ 9 : (1981) SCC(Cri) 364].

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On

the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Ojha and Others Vs. State of Bihar, AIR 1979 SC 1505 : (1979) CriLJ 1122 : (1979) SCC(Cri) 519 : (1979) 11 UJ 412].

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanhau Ram and Another Vs. State of Madhya Pradesh, AIR 1988 SC 912 : (1988) CriLJ 936 : (1988) 1 JT 464 : (1988) 1 SCALE 424 : (1988) 2 UJ 50].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. Vs. Madan Mohan and Others, AIR 1989 SC 1519 : (1989) CriLJ 1485 : (1989) 2 Crimes 467 : (1989) 2 JT 158 : (1989) 1 SCALE 1087 : (1989) 3 SCC 390].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani Vs. State of Maharashtra, AIR 1982 SC 839 : (1983) 1 Crimes 83 : (1982) 1 SCALE 143 : (1982) 1 SCC 700 : (1982) 3 SCR 277]."

57. The Division Bench of the Karnataka High Court in the case of State of Karnataka Vs. Smt. Akkamahadevi, (2005) CriLJ 703 : (2005) ILR (Kar) 43 : (2005) 3 KarLJ 359 : (2004) 4 KCCR 2925 , has held that sedative drugs administered to deceased take some time to have effect of sedation, therefore, it cannot be said that deceased was under sedation when her dying declaration was taken, particularly, when doctor and investigating officer stated that deceased was conscious when she made the statement. It has been held as follows:

"20. In the present case, as observed, the accused has absolutely no explanation with regard to the facts that have been proved by the prosecution. Therefore, not only the dying declaration which had been made before the Police Officer as per Ex. P. 11 is reliable but the dying declaration made by the deceased before P.W. 1, and the circumstances, which have been proved by the prosecution showing that the accused had come out of the house followed by the deceased, who was on fire and the entry (Ex. P. 9) in the medico legal register wherein it has been clearly recorded that the injured named the accused as the person who set on fire, all would complete the chain of events to show that it is only the accused, who could have set Saraswathi on fire."

58. Their lordships of the Hon''ble Supreme Court in the case of Dashrath @ Champa and Others Vs. State of Madhya Pradesh, AIR 2008 SC 316 : (2007) 12 JT 400 : (2007) 11 SCR 642 : (2007) AIRSCW 6837 , have held that when the bed-head ticket of hospital showed that when deceased was brought to hospital, he was conscious and his general condition was satisfactory. The dying declaration was to be relied upon.

59. Their lordships of the Hon"ble Supreme Court in the case of Krishan Vs. State of Haryana, (2013) 1 AD 388 : (2013) 2 RCR(Criminal) 88 : (2012) 12 SCALE 381 : (2013) 3 SCC 280 , have held that when the doctor stated that both the hands were burnt including fingers and thumbs, as per post mortem report there were superficial to deep burns all over body, except lower parts and no question was put to doctor as to whether extent of burns was such that deceased"s thumb impression could not be taken, it was held feasible to take thumb impression of the deceased. It has been held as follows:

"17. A bare reading of the above paragraphs shows that the Court opined 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. The Bench further clarified that where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. But where the dying declaration itself is attended by suspicious circumstances, has not been recorded in accordance with law and settled procedures and practices, then, it may be necessary for the court to look for corroboration of the same.

20. In this regard, reference can also be made to a recent judgment of this Court in the case of Bhajju @ Karan Singh Vs. State of M.P., (2012) CriLJ 1926 : (2012) 2 JCC 1192 : (2012) 3 SCALE 438 : (2012) 4 SCC 327 : (2012) AIRSCW 1963 : (2012) 2 Supreme 439 .

24. The learned counsel appearing for the appellant heavily relied upon the answer of the doctor in his cross-examination, where he stated that "it is correct that both hands of Rani were burnt, including fingers and thumb." The deceased is stated to have suffered 75% burns. This answer of the witness in face of his statement in examination-in-chief does not bring any advantage, inasmuch as no specific question was put to the doctor that the extent of burns was such that her thumb impression could not have been taken. No such question was put to this witness. Not even a suggestion was made to the doctor and the Investigating Officer to the effect that it was not possible to take the thumb impression of the deceased in the state of health that she was in. Dr. R.K. Wadhwa, PW14, who performed the autopsy on the dead body of Rani clearly noticed that there were superficial to deep burns all over the body except her lower parts of both thighs, both legs and feet. In other words, it is not only possible but quite feasible that her thumb impression could rightly be taken by the SDJM."

60. Their lordships of the Hon"ble Supreme Court in the case of State of Madhya Pradesh Vs. Dal Singh and Others, (2013) 6 AD 475 : AIR 2013 SC 2059 : (2013) CriLJ 2983 : (2013) 3 JCC 2010 : (2013) 8 JT 625 : (2013) 3 RCR(Criminal) 1 : (2013) 7 SCALE 513 : (2013) 14 SCC 159 , have held that law does not provide who can record a dying declaration, nor is there any prescribed

form, format, or procedure for the same. Their lordships have further held that question of thumb impression depends upon facts, as regards whether skin of thumb that was placed upon dying declaration was also burnt. It is a question of fact whether the skin of the thumb had in fact been completely burnt, and if not, whether ridges and curves had remained intact. It has been held as follows:

"27. In the dying declaration recorded by P.K. Chaturvedi (PW. 12), it is stated that the mother-in-law of Kusumbai had set her on fire by throwing kerosene oil on her, and that her father-in-law had also set her on fire. Her husband Chandrabhan, had closed the door. While she screamed in pain, her uncle Hakam Singh had brought her out by opening the door. While lodging the FIR, it was recorded by R.S. Parmar (PW. 14), that her father-in-law Dal Singh had said, "burn this bitch". Her father-in-law had then lifted the kuppi of kerosene oil, and had poured the same on her, after which he had told his wife to set her ablaze. Thereafter, her mother-in-law had lit a matchstick and set her on fire. She had started to scream because of pain. Her husband Hallu had then closed the door of the room. After hearing the hue and cry raised by her, a person from the village had informed her family who lived close by. Her father Nirpat Singh, uncle Hakam Singh and several other persons had come there, and her uncle Hakam Singh, had opened the door and had brought her out. There is thus, some discrepancy in both the dying declarations.

28. Dr. S.K. Jain (PW. 8) deposed on 7.4.2003, stating that he had been the medical officer in the district hospital Damoh on 29.11.2002. Kusumbai had been brought for medical examination from the police station in an injured state and he had examined her. According to him, she had on her person, 100% superficial burn injuries, and the smell of kerosene oil had also been present in the body of the victim. She was unconscious at the time, and her pulse and blood pressure had been difficult to detect. She was able to breathe, but with great difficulty. She had died after some time. In his cross-examination, he has deposed that at the time of examination at the initial stage, Kusumbai had been unconscious, and had been unable to speak. He has further opined that if a person suffers 100% burn injuries, then he may not be able to speak.

29. Burn injuries are normally classified into three degrees. The first is characterised by the reddening and blistering of the skin alone; the second is characterised by the charring and destruction of the full thickness of the skin; and the third is characterized by the charring of tissues beneath skin, e.g. of the fat, muscles and bone. If a burn is of a distinctive shape, a corresponding hot object may be identified as having been applied to the skin, and thus the abrasions will have distinctive patterns.

30. There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy

areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract, can follow due to the inhalation of smoke. (See: Modi's Medical Jurisprudence and Toxicology by Lexis Nexis Butterworths Chapter 20).

31. FIR (Ex. P-17) - It was recorded by Kusum Bai - deceased, on 29.11.2002 at about 2.00 p.m. According to the FIR, the said incident had occurred at 10.00 a.m. and the distance between the police station and place of occurrence is about 10 Kms. The deceased in the FIR, has named all the three accused. The deceased has mentioned that her mother-in-law had not been giving her adequate meals, and continuously harassed her for not working. On that fateful day, her mother-in-law had slapped her 2-3 times and she had started to cry loudly. Thereafter, her father-in-law had asked the other accused, if this bitch should be burnt alive? He had then brought a can of kerosene oil and poured its contents over her. Her mother-in-law lit a matchstick and had thrown its contents on her, setting her ablaze. She had then begun to scream owing to the pain. Her husband had locked the door. Her parents-in-law and husband had set her on fire with the intention of causing her death. She had burns all over her body. There is a thumb impression on the FIR which appears to be normal. It has ridges and curves.

32. Ex. P-14 is the dying declaration recorded by the Executive Magistrate, Jabeera. The original reveals that the executive Magistrate had asked the SHO to call a doctor at 2.25 p.m., but there is an endorsement stating that there was no government doctor available at Nohta. What the deceased has said, is that her mother in law had set her on fire. Her father-in-law and husband had also been party to the same. She has also stated that they had never provided her adequate food. She, in anger, had told them not to harass her everyday and to simply kill her (set me ablaze). Her mother-in-law had poured kerosene oil on her and had then set her ablaze, (humari saas ne mitti ka tal dalkar jalaya). Her father-in-law set her on fire (Sasur ne aag lagayi). Her husband bolted the door. There is thumb impression of the deceased on the FIR also. We have carefully seen the thumb impression of the deceased on the said dying declaration. The same has ridges and curves.

33. It is evident from the record that defence neither put any question in cross-examination to either the Executive Magistrate, or to the doctor who had examined the deceased in the hospital, or to Dr. S.K. Jain (PW. 8), who had conducted the autopsy on the body of the deceased with respect to whether the skin of the thumb was also burnt, or whether the same was intact. Nor was any such question put to R.S. Parmar (PW. 14), who had recorded the FIR, which can also be treated as a dying declaration.

34. The respondents in their statements under Section 313 Cr.P.C. denied their presence at home at the time of incident, taking the plea that they had been

working in their agricultural field. They had rushed to the place of occurrence only after learning about the incident. They further took the defence that Kusumbai had committed suicide by burning herself, and that it was on being tutored by her parents that she had given a dying declaration against them. The trial court however, rejected the suggestion made by Mannu Singh (PW. 5), to the effect that Kusumbai had caught fire while preparing food on the ground. Kerosene oil had been found on her body and in her burnt clothes and hair. Evidence has been led by the prosecution witnesses to the extent that she had died within a short span of 10 months of her marriage, and that she had been ill-treated by her parents-in-law as she was not being given proper food etc. She had been harassed and tortured by her in-laws, as she was not good looking, could not cook well, and had been unable to do household work properly. She was considered to have a temperamental nature, and thus had also been slapped. This evidence has not been challenged by the defence.

35. The contradictions raised by the defence in the two dying declarations, as regards who had put the kerosene oil on her, and who had lit the fire have been carefully examined and explained by the trial court. Furthermore, in such a state of mind, one cannot expect that a person in such a physical condition, would be able to give the exact version of the incident. She had been suffering from great mental and physical agony. Upon proper appreciation of the evidence on record, the trial court had found the dying declarations to be entirely believable, and worth placing reliance upon, but the High Court on a rather flimsy ground, without appreciating material facts, has taken a contrary view. In our opinion, as the defence did not put any question either to the executive magistrate, or to the I.O., or to the doctors who had examined her or conducted the postmortem, with respect to whether any part of the thumb had skin on it or not, as in both the dying declarations, ridges and curves had been clearly found to exist, we do not see any reason to dis-believe the version of events provided by the executive magistrate and the I.O., who had recorded the dying declarations. No suggestion was made to either of them in this regard, nor was any explanation furnished with respect to why these two independent persons who had recorded the dying declarations, would have deposed against the respondents accused. In the event that both of them had found the deceased to be in a fit physical and mental condition to make a statement, there exists no reason to disbelieve the same. In light of such a fact-situation, the concept of placing of a thumb impression, loses its significance altogether."

61. Their lordships in the case of Tanua Rabidas Vs. State of Assam, (2014) AIRSCW 5059 : (2014) 10 SCALE 162 , have held that smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable when evidence of doctor and nurse of Hospital fully corroborated the evidence of witnesses. It has been held as follows:

"17. Moreover on careful scrutiny, the Sessions Court was fully satisfied that the evidence of PW-6 Dr. Langkumer is true and there is no evidence to the contrary

that any effort was made by anyone to induce the deceased to make the false statement. Further absence of smell of kerosene oil in the hair of the deceased sent for chemical examination does not render the dying declaration doubtful and unbelievable as held by this Court in the case of State of Rajasthan Vs. Kishore, (1996) 2 AD 283 : AIR 1996 SC 3035 : (1996) CriLJ 2003 : (1996) 1 Crimes 156 : (1996) 2 JT 595 : (1996) 2 SCALE 462 : (1996) 8 SCC 217 : (1996) 2 SCR 1103 ."

62. Their lordships of the Hon"ble Supreme Court in the case of Prempal Vs. State of Haryana, (2014) AIRSCW 5042 : (2014) 10 SCALE 68 , have held that in case where the deceased had suffered 95% burn injuries, yet her statement before Tehsildar was clear and cogent, was relied upon. It has been held as follows:

"17. The defence version is that Anita committed suicide as she was frustrated because she could not conceive a child. The appellant-Prempal in his statement under Section 313 Cr.P.C. stated that on 24.10.2001 he had gone to Narnaund for purchase of domestic articles and returned home at 5.00 p.m. and only then he came to know that his sister-in-law Anita had set herself on fire and his father Jai Singh had taken her to Shanti Hospital for treatment and that deceased Anita used to remain depressed as she did not conceive the child and therefore she committed suicide. The appellant placed reliance upon the statement of his father Jai Singh recorded under Section 313 Cr.P.C. and also the burn injuries sustained by Jai Singh. The fact that Jai Singh sustained burn injuries, does not lead to the conclusion that it was a suicide.

18. In burn injury cases, two possible hypothesis arise in the judicial mind - was it suicide or was it homicide. In cases where the dying declaration projected by the prosecution gets credence, the alternative hypothesis of suicide has to be justifiably eliminated. In the present case, had it been a suicide, Anita who was at the point of death had no reason to falsely implicate her brother-in-law Prempal. We do not find any substance in the defence version of suicide theory.

19. A perusal of various judgments of this Court, some of which we have referred to above, shows that if a dying declaration is found to be reliable, then there is no need for corroboration by any witness and conviction can be sustained on that basis alone.

20. In the present case evidence of Tehsildar, the Doctor and other witnesses is cogent and consistent that the deceased was conscious and in a fit state of mind to give dying declaration and courts rightly based the conviction upon the same. When the trial court as well as the High Court have appreciated the entire evidence in its right perspective, we see no reason to interfere and the appeal fails. In the result, the appeal is dismissed."

63. The accused has also taken the plea of alibi. According to him, there was exchange of hot words between him and his wife. Thereafter, he left the house. He relied upon the statement of DW-1 Bakshi Ram. DW-1 Bakshi Ram testified

that in the month of October, 2008, he was employed by one Hoshiar Singh in the construction of house at Village Guliana. He knew accused Kishori Lal. He was employed as mason by Hoshiar Singh at village Guliana. On 7.10.2008, he alongwith accused Kishori Lal had come to their homes at District Hamirpur to arrange for labour. Both of them reached at Hamirpur at 4:30 PM. They had made the arrangement of labour and then they left for their houses at Kakru and Brahamani. On the same day on 7.10.2008, accused Kishori Lal came to his house at 9:00 PM in the night. He inquired from him as to why he had come in the night. He told him that he had some heated discussion with his wife. Accused Kishori Lal stayed in his house in the night and then both of them on 8.10.2008 left to the place of work alongwith labour for village Guliana. In his cross-examination, he admitted that he was very close friend of accused Kishori Lal. They stayed in the house of Hoshiar Singh for a month. He did not know the name of labourers who were arranged and hired by them. When the accused came to his house, he had already taken the dinner.

64. DW-2 Hem Ram deposed that accused was his real brother and they used to live in the same house. The room of accused was adjoining to his room on the first floor. He came back from the place of work at 8:30-8:45 PM to his village Brahamani. On the way, at about 8:30/8:45 PM, accused Kishori Lal met him half kilometer behind their village. He enquired from accused as to when he had come. He told him that he was returning to his work. In his cross-examination, he admitted that he and his wife on hearing cries of Veena Devi came out of their rooms. He has not dowsed the fire of Smt. Veena Devi but was dowsed by their younger brother Pawan Kumar.

65. The statements of DW-1 Bakshi Ram and DW-2 Hem Ram do not inspire confidence. The fact of the matter is that accused had exchanged hot words with his wife and thereafter set her ablaze. The plea of alibi taken by the accused Kishori Lal has not been proved. His conduct is also abnormal. He would not have left his house merely because there was exchange of hot words with his wife. There was no occasion for him to stay with Bakshi Ram DW-1 and that too after exchanging hot words with his wife.

66. The Division Bench of the Punjab and Haryana High Court in the case of Mohinder Singh Nand Singh Vs. State of Punjab, (1971) CriLJ 1764 , has held that whenever a defence of alibi is set up and that defence utterly breaks down, it is a strong inference that if the prisoner was not in fact where he says he was, then in all probability, he was there where the prosecution says. It has been held as follows:

"11. The appellant had successfully evaded arrest for more than two months. His service and leave records were summoned from the military authorities but it may appear to be a pity that even military personnel accused of such serious crime are screened by the authorities. The summoned records were not sent by the military authorities in spite of two or three attempts made by the Courts. The prosecution evidence had, therefore, to be closed by the Court of Session as the

case was getting old. The appellant had overstayed his leave even according to his own showing and if these records were forthcoming, the appellant may have been able to show to the satisfaction of the Court that he had joined duty without any avoidable delay. The appellant's own conduct before and after the crime may appear to be very relevant to establish his guilt. During his examination Under Section 342 of the Code of Criminal Procedure, he had stated that he had taken ten days leave from the military authorities and that this period of leave was to take effect from 29-4-1969. He had, however, left the Unit without obtaining any leave certificate and in the absence of his Commanding Officer-Even this period of leave had expired on the date of occurrence or on the date on which the appellant's brother Joginder Singh was described to have met with an accident while he was going on a motorcycle in a drunken condition.

It may be observed that according to the dying declaration, Exhibit P.H., of: the deceased, the appellant and his brother Joginder Singh were the leaders of the gang who had criminally intimidated the deceased while armed with fire-, arms and other deadly weapons four or five days before the occurrence. It cannot possibly be argued that the appellant had over-stayed the leave in anticipation of the accident in which Joginder Singh was involved on 9-5-1969. The appellant had pleaded alibi but there is nothing in the hospital records to suggest that he was attending on his brother on the night in question. In this connection, the following observations of a Special Full Bench of the Calcutta High Court in *Sarat Chandra Dhupi Vs. Emperor*, AIR 1934 Cal 719 , could be reproduced with advantage:

"Whenever a defence of alibi is set up and that defence utterly breaks down, it is a strong inference that if the prisoner was not in fact where he says he was then in all probability, he was where the prosecution say he was."

67. The accused, in the instant case, has run away from the spot and was apprehended by the police from rain shelter.

68. The Hon^{ble} Apex Court in the case of *State of Haryana Vs. Sher Singh and Others*, AIR 1981 SC 1021 : (1981) CriLJ 714 : (1981) 1 SCALE 761 : (1981) 2 SCC 300 : (1981) SCC(Cri) 421 : (1981) 3 SCR 1 , has held that where a plea of alibi is taken, burden to prove it is on the accused pleading it. It has been held as follows:

"4. When an accused pleads alibi, the burden is on him to prove it under Section 103 of the Evidence Act which provides:

"103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations: (a) A prosecutes B for theft, and wishes the court to believe that B admitted the theft to C. A must prove the admission.

B wishes the court to believe that, at the time in question, he was elsewhere. He

must prove it."

In this case defence did not adduce any evidence to prove the alibi. On the contrary the evidence of P.W. 11, Lila, is that on 21st October, 1973, all the accused were produced by Lalji, the brother of the wife of respondent, Sher Singh in village Nand Karan Majra around 8 a.m., when they were arrested. This was in presence of P.W. 11 and several others. Police had been there the witness says, from October 17 to 20, 1973. This evidence of P.W. 11 remains unrebutted. The plea of the respondents that they had been elsewhere at the time of the occurrence and returned to the place of occurrence by themselves on October 17, when they were arrested by police, is untrue."

69. The Hon"ble Apex Court in the case of State of Maharashtra Vs. Narsingrao Gangaram Pimple, AIR 1984 SC 63 : (1984) CriLJ 4 : (1983) 2 SCALE 659 : (1984) 1 SCC 446 : (1984) 1 SCR 621 : (1984) 16 UJ 199 , has held that it is well settled that plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. It has been held as follows:

"18. The High Court seems to have devoted a major part of its judgment to the various case diaries produced before the court in order to establish that the accused was not present at the police station either on the 9th or on the 13th of April 1972 when the first two demands were made. According to the High Court this gave a sufficient alibi to the respondent from which it could be safely inferred that if he was not present at the police station, there could be no occasion for him to make any demand for bribe from the complainant. Assuming that the recitals in the said case diaries are admissible (though we have serious doubts about it) yet it does not at all exclude the presence of the respondent at the Ambarnath police station on the 9th and 13th because he was not sent away to a place situated far from Bombay but was in some other police station within a radius of a few miles only. Even if he was deputed to some other place he was in possession of a jeep and he could visit the Ambarnath police station for a few minutes on any of these dates. It is well settled that a plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. Such, however, is not the case here. Therefore, the discussion of the case diaries, which engaged a substantial portion of the High Court judgment was really an exercise in futility."

70. The Hon"ble Apex Court in the case of Binay Kumar Singh and others Vs. State of Bihar, AIR 1997 SC 322 : (1997) CriLJ 362 : (1996) 10 JT 79 : (1996) 7 SCALE 910 : (1997) 1 SCC 283 : (1996) 8 SCR 225 Supp : (1997) AIRSCW 78 , has held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally, the Court would be slow to believe any counter evidence to the effect

that he was elsewhere when the occurrence happened. It has been held as follows:

"22. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi to prove it with absolute certainty. So as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey Vs. State of Uttar Pradesh*, AIR 1981 SC 911 : (1981) CriLJ 618 : (1981) 1 SCALE 285 : (1981) 2 SCC 166 : (1981) SCC(Cri) 379 : (1981) 2 SCR 771 ; *State of Maharashtra Vs. Narsingrao Gangaram Pimple*, AIR 1984 SC 63 : (1984) CriLJ 4 : (1983) 2 SCALE 659 : (1984) 1 SCC 446 : (1984) 1 SCR 621 : (1984) 16 UJ 199)."

71. PW-1 Prem Chand was told by his wife PW-5 Krishani Devi that accused No. 2 to 10 have got prepared second dying declaration from Veena Devi to save accused Kishori Lal. PW-5 Krishani Devi has categorically deposed that her daughter told her that Pradhan Saroj Kumari, Ward Panch Bihari Lal and one BDC Member and others had come to her and forcibly taken her statement giving clean chit to accused No. 1 Kishori Lal. The Pradhan and Members had insisted her to make a statement that she herself had poured kerosene oil on her person. However, the prosecution has failed to prove charge against accused No. 1 under Section 498A IPC. There is only statement of PW-1, father of the deceased that accused used to harass his daughter after consuming alcohol.

72. Accordingly, the prosecution has proved the case against the accused No. 1 beyond reasonable doubt that it was he who set Veena Devi ablaze, resulting in

her death due to asphyxia. Accused No. 2 to 10 have falsely got prepared Ext. PW-21/G (second dying declaration) from deceased Veena Devi to screen accused Kishori Lal from legal punishment.

73. In view of the observations and discussion made hereinabove, the appeal of the State is allowed. The judgment of acquittal dated 22.6.2009 of the learned trial Court is set aside. Accused No. 1 Kishori Lal is convicted under Section 302 IPC and accused Nos. 2 to 10 are convicted under Section 201/34 of IPC. However, the acquittal of accused No. 1 under Section 498-A IPC is upheld. The accused shall be heard on quantum of sentence. The State is directed to produce accused before this Court on 7.8.2015. List on 7.8.2015.