

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.Rev.P.No.562/2004.**

Ram Parwar Petitioner

Through : Mr. K.B. Andley, Sr. Adv. with
Mr. M.L. Yadav and Mr. M.
Shamikh, Adv.

Versus

State of Delhi & Ors. Respondents

Through : Mr. Lovkesh Sawhney, Adv.
for the State.
Mr. B.S. Rana, Adv. for
respondents no.2-4.

% **ORDER**
13.05.2009

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J. (ORAL):

Crl.Rev.P.No.562/2004

1. Aggrieved by the judgment dated 02.11.2002 passed by the learned Additional Sessions Judge, by virtue of which, the accused persons [respondents no.2 to 4] were acquitted, the father of the deceased, has filed the present Revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure.
2. The facts necessary for the disposal of this case as noticed by the learned Additional Sessions Judge, are that one Smt. Saraswati Devi was married to one Sh. Rajesh Kumar of Village Tilangpur Kotla, Nangloi, Delhi, somewhere in the year 1992. After her marriage, Smt. Saraswati Devi started residing at her matrimonial home and out of their wedlock two children were born. Sh. Rajesh Kumar, the husband of the deceased, was serving in a factory at Kirti Nagar, New Delhi. Smt. Saraswati Devi was not happy with the attitude of her husband, Sh. Rajesh Kumar, as he was not willing to get his share apportioned out of the ancestral property of his father. The same was the bone of

contention between Smt. Saraswati Devi and her husband and also led to frequent quarrels between them. On 20.07.2000 at about 8.00 a.m., Smt. Saraswati Devi had reached home after getting milk and again asked her husband to get his share out of the ancestral property of his father. The husband, on the other hand, argued that he would not get the property partitioned and would also not claim any share out of the ancestral property. This led to a quarrel between the husband and the wife. Leaving her in the room, the husband went out of the house and sat along with his father. After sometime, Smt. Saraswati Devi was then removed to Shivam Medical Centre, Nangloi, Delhi, at around 9.00 a.m. with Eighty (80) per cent burn injuries. After providing her with First Aid, she was referred to Safdarjung Hospital. The police, having reached the Safdarjung Hospital, recorded the statement of Smt. Saraswati Devi wherein it is stated that when she insisted upon her husband to take his share from his father, then her husband, Sh. Rajesh Kumar; her sister-in-law, Shakuntla; and her father-in-law, Bharat Singh, quarreled with her and someone out of the three put her on fire. When she raised an alarm for help, then her husband, sister-in-law and father-in-law, extinguished the fire. On her report, a case for an offence punishable under Section 307 read with Section 34 of the IPC was registered. On 23.07.2000, Smt. Saraswati Devi expired in the hospital. An offence punishable under Section 304 of the IPC was added to the case.

3. The prosecution had examined Twenty (24) witnesses. No evidence was led by the defence.
4. Learned counsel for the petitioner while relying upon the statement made by the deceased before SI Suraj Bhan, PW-24, submits that as per the statement of the deceased, she had insisted upon her

husband to take his share from his father and this had led to a quarrel between them. They were then joined in by her sister-in-law, Shakuntala, and father-in-law, Bharat Singh. The deceased had then alleged that someone out of the three persons poured kerosene oil on her and put her on fire. Learned counsel submits that the trial court has committed a manifest irregularity and erred in not believing the statement/dying declaration of the deceased, Smt. Saraswati Devi, made before S.I. Suraj Bhan.

5. Learned counsel also submits that the statement of the deceased is clear and it is a cardinal principle of criminal jurisprudence that a man will not make a lie on his death bed. Counsel next submits that the Court was only to consider that the statement of the deceased was not a result of tutoring, prompting or a product of imagination.
6. It is contended by learned counsel for the petitioner that at the time when the statement was made by the deceased before SI Suraj Bhan, PW-24, there was neither anyone to torture or prompt Smt. Saraswati Devi nor it can be said that the statement was a product of her imagination.
7. Learned counsel for the petitioner has further relied upon the statement of PW-2, Dr. Arvind, Sr. C.M.D., Safdarjung Hospital, wherein it has been stated that the deceased was brought to Shivam Medical Centre, Nangloi, Delhi on 20.07.2000 with the alleged history that Sh. Bharat Singh, father-in-law; Shakuntala, sister-in-law; and the husband, Sh. Rajesh Kumar, poured kerosene oil and set the deceased on fire.
8. It is contended by learned counsel for the petitioner that the trial court has also erred in coming to the conclusion that while recording the dying declaration of the deceased, the investigating officer had

not sought an opinion from the Doctor to the effect that Smt. Saraswati Devi was in a fit state of mind to make a statement before the police. It is further contended that the I.O. had given sufficient and plausible explanation regarding this fact that the Doctor had refused to attest the thumb impression of the deceased. It is also contended that matrimonial crimes are generally committed in complete secrecy, inside the house, and the nature and amount of evidence required to establish a charge, cannot be of the same degree, as required in other matters. The absence of a certificate issued by the Doctor about the fitness of the deceased cannot be the only ground for not relying upon the dying declaration whereas in fact the dying declaration was recorded in the presence of the Doctor, who had refused to attest the thumb impression of the deceased. It is next contended that the learned Trial Court has erred in accepting the testimony of PW-3, Rambir, who had deposed that on 20.07.2000 at about 8.00 a.m., he was present at his house in Village Tilangpur Kotla, Delhi. Rajesh, s/o Sh. Srinarayan Singh, came to his house, woke him up and told him that his wife had ablazed herself. It is contended by learned counsel for the petitioner that this piece of evidence is hearsay and is not acceptable, besides Rambir is an interested witness and is the nephew of the accused. Rambir, PW-3, further stated that he accompanied Rajesh to his house and found Smt. Saraswati Devi lying in a burnt condition in her room. On his asking, Smt. Saraswati Devi replied that Rajesh had not asked his father for a share in the ancestral property. Rambir had thereafter taken Smt. Saraswati Devi to Shivam Medical Centre, Nangloi, Delhi. It is submitted that according to the Doctor of the said hospital and as mentioned in the MLC the patient was considered unfit for

statement. Thus the statement made by Smt. Saraswati Devi before Rambir cannot be relied upon.

9. *Per contra*, learned counsel for respondents no.2-4 submits that the revisional jurisdiction conferred upon by this Court is not to be lightly exercised when it is notified by a private complainant against the order of acquittal and for which the Government has a right of appeal under Section 417 of the Cr.P.C.
10. It is submitted by learned counsel for respondents no.2-4 that power of revision is to be exercised by the High Court in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. It is contended that there is no infirmity or illegality in the judgment dated 02.11.2002 and that the revision is based on flimsy grounds. In support of his submission, learned counsel for respondents no.2-4 relies upon the case of ***Johar and others Vs. Mangal Prasad and Another***, reported at 2008 II AD (S.C.) 513. It is contended that the present case, there were not one but four dying declarations, and the dying declarations first in point of time was made before PW-3, Rambir, and the same is to be accepted.
11. Learned counsel for the State submits that PW-3, Rambir, on reaching the spot of the incident had asked Smt. Saraswati Devi as to what had happened and to which she replied that she had asked Rajesh to take his share in the property and on his refusal to do so she had done this act as he was not agreeing to do what she had asked him to do. PW-3 further goes on to testify that thereafter he went to the neighbourhood so as to bring a car to take Smt. Saraswati Devi to Shivam Medical Centre, Nangloi, Delhi. Counsel further submits that the statement made before PW-3, Rambir, was the first dying

declaration wherein Smt. Saraswati Devi had stated that on account of a quarrel with her husband with regard to taking of his share in the ancestral property she had put herself on fire. PW-12, Braham Prakash, is stated to have also reached the spot to provide his car. PW-12 also inquired from Smt. Saraswati Devi and she had replied that she put herself on fire as her husband was not taking his share in the ancestral property of his father. Counsel also submits that a third dying declaration was recorded by two independent Doctors. PW-6, Bandana Karan, had recorded the dying declaration, Exhibit PW-6/DA, dated 05.08.2000, as per which, Smt. Saraswati Devi had stated before Dr. Bandana Karan, PW-6, and Dr. Dharam Pal Yadav, PW-15, that her father-in-law was not giving a share from the property and due to this she had burnt herself by pouring kerosene oil on her body and clothes. Dr. Dharam Pal Yadav, PW-15, had also identified his signatures at Exhibit PW-6/DA at point 'A'. He reiterated that Smt. Saraswati Devi had told him that she tried to commit suicide because her husband was not taking his share in the inherited property of his father.

12. Learned counsel for respondents no.2-4 submits that all the three dying declarations are reliable and trustworthy. Counsel further submits that the Doctors are completely independent witnesses and nothing has been brought on record to show that they were inimical to the petitioner's family or were biased witnesses. Counsel also submits that PW-12, Braham Parkash, was also a neighbour and an independent witness. Counsel next submits that PW-24, SI Suraj Bhan, cannot be considered as a completely independent witness on account of the fact that he was the Investigating Officer and would have an interest to see that he is able to gain the fruits of his

investigation. In support of this proposition, counsel relies upon the case of **Balram Ram Vs. State of U.P.**, reported at 1974 Supreme Court Cases (Crl.)837 wherein it was observed that a dying declaration made before the Investigating Officer cannot be doubted as for its veracity, however, it would not be prudent to solely base the conviction on a dying declaration made to an investigating officer as he would be keenly interested in the fruition of his efforts. Para 53 of the said judgment, reads as under:-

“53. The second dying declaration is alleged to have been made to the Investigating Officers are keenly interested in the fruition of their efforts and though we do not suggest that any assumption can be made against their veracity, it is not prudent to base the conviction on a dying declaration made to an Investigating Officer. Yogender Sharma says that while Tribeni Sahai was lying in a car at the scene of offence he made a statement implicating the accused. Yogendera Sharma produced a true copy of an entry in his case diary stated that even as he was still in the car, he recorded the dying declaration in the case diary which he was carrying with him. It is difficult to appreciate why, if there was time enough to reduce the dying declaration into writing. Yogender Sharma did not obtain Tribeni Sahai's signature or at least the signatures of any of the large numebr of persons who had surrounded the car. Rule 115 of the U.P. Police Regulations expressly enjoins the Investigating Officer to record a dying declaration, if at all, in the presence of two respectable witnesses and after obtaining the signature or mark of the declarant at the foot of the declaration. Besides, if the Investigating Officer was in such haste that he did not even think it proper to wait at the police station until the various columns on the first page of the F.I.R. were duly filed in it is rather difficult to believe that seized by such a pressing sense of emergency, he would take the case diary with him on the off-chance that a dying declaration may be in the offing.”

13. Learned counsel for respondents no.2-4 submits that during cross-examination, SI Suraj Bhan, had deposed that he did not record the statements of two Doctors i.e. Dr.Bandana Karan, PW-6, and Dr. Dharam Pal Yadav, PW-15, from Shivam Medical Centre. During cross-examination, SI Suraj Bhan has further deposed that he did not

make any application to the Doctors present at the Safdarjung Hospital before recording the statement of injured. However, he had asked the Doctors present at the Ward to attest the thumb impression of the injured but the Doctors had refused to attest the thumb impression or her statement. Although three Doctors were present at the spot.

14. I have heard learned counsel for the parties and gone through the record of this case. It is settled position of law that a Court exercising revisional jurisdiction cannot examine the evidence in detail and may interfere only when there is any impropriety or material irregularity in the order passed by the lower court and further that a revisional court cannot sit as a court of appeal and reappraise the evidence in detail. In the case of **Jagannath Choudhary v. Ramayan Singh** reported at **(2002) 5 SCC 659**, the Apex Court while reiterating the established principles with regard to revisional jurisdiction, held:

“9. Incidentally the object of the revisional jurisdiction as envisaged under Section 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of (sic or) apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. (See in this context the decision of this Court in Janata Dal v. H.S. Chowdhary¹.) The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the Court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of

¹ (1992) 4 SCC 305 : 1993 SCC (Cri) 36.

justice, interference cannot be had in exercise of revisional jurisdiction

(emphasis supplied)

10. While it is true and now well settled in a long catena of cases that exercise of power under Section 401 cannot but be ascribed to be discretionary — this discretion, however, as is popularly informed has to be a judicious exercise of discretion and not an arbitrary one. Judicial discretion cannot but be a discretion which stands “informed by tradition, methodised by analogy and disciplined by system” — resultantly only in the event of a glaring defect in the procedural aspect or there being a manifest error on a point of law and thus a flagrant miscarriage of justice, exercise of revisional jurisdiction under this statute ought not to be called for. It is not to be lightly exercised but only in exceptional situations where the justice delivery system requires interference for correction of a manifest illegality or prevention of a gross miscarriage of justice. In *Nosibolla*², *Logendranath Jha*³ and *Chinnaswamy Reddy*⁴ as also in *Thakur Das v. State of M.P.*⁵ this Court with utmost clarity and in no uncertain terms recorded the same. It is not an appellate forum wherein scrutiny of evidence is possible; neither the revisional jurisdiction is open for being exercised simply by reason of the factum of another view being otherwise possible. It is restrictive in its application though in the event of there being a failure of justice there can be said to be no limitation as regards the applicability of the revisional power.

15. Applying the settled position of law to the facts and circumstances of this case, it is seen that the incident herein pertains to the death of one Smt. Saraswati Devi who died soon after her marriage due to toxemia caused by more than eighty percent burns received by her. It is the case of the prosecution that Smt. Saraswati Devi was set on fire by the accused persons (respondent nos. 2-4 herein) and Smt. Saraswati Devi resultantly died as she had received more than eighty percent burns. The prosecution has based its entire case on one statement allegedly made by Smt. Saraswati Devi to SI

² AIR 1951 SC 196 : 1951 SCR 284 : 52 Cri LJ 510.

³ AIR 1951 SC 316 : 1951 SCR 676 : 52 Cri LJ 1248.

⁴ AIR 1962 SC 1788 : (1963) 1 Cri LJ 8.

⁵ (1978) 1 SCC 27 : 1978 SCC (Cri) 21.

Suraj Bhan (PW-24) and on the basis of which an FIR was registered against the accused persons (respondent nos. 2-4 herein). Learned APP has contended that the statement made by Smt. Saraswati Devi before SI Suraj Bhan is her dying declaration, and the same being reliable and trustworthy, a crystal clear case is made out against respondent nos. 2-4. On the contrary, it has been contended by respondent nos. 2-4 that no such statement was made by Smt. Saraswati Devi to SI Suraj Bhan (PW-24). Instead respondent nos. 2-4 have relied upon the statement allegedly made by Smt. Saraswati Devi to PW- 3, PW-12, PW-6 and PW-15. Learned counsel for the respondent nos.2-4 has submitted before me that there were three dying declarations in the present case. The first dying declaration was made before Sh. Rambir (PW-3), the second was before Sh. Braham Prakash (PW-12) and the third was before was Dr. Dharampal Yadav (PW-15) and Dr. Bandana Karan (PW-6). It has been contended that the three said dying declarations clearly point out that the respondents herein were not responsible for the burns received by Smt. Saraswati Devi and her consequent death

16. Learned Additional Sessions Judge of the trial Court has observed in his judgment that PW-3, Sh. Rambir had deposed that on 20.07.2000 at about 8.00 a.m., he was present at his house at village Tilangpur, Delhi. Rajesh (husband of the deceased) came to his house and informed him that his wife Saraswati had set herself ablazed and requested that he should accompany him. At the instance of Rajesh, Rambir went to his house and found Saraswati lying in her room in a burnt condition. Rambir asked Saraswati as to what had happened and to which query Smt. Saraswati replied that

since Rajesh was not agreeing to her proposal to get his share apportioned out of the property, she had done the said act in rage. Thereafter, Rambir went in the neighbourhood to bring a car to take Saraswati to Shivam Medical Centre, Nangloi. PW-3, Rambir was cross-examined at length but he withstood the same. Further to say that merely because Rambir is an interested witness and his evidence should not be taken into account, it is without any force. It is no longer *res integra* that merely because the evidence has been given by a close relative of the victim, it does not automatically imply that their version is to be discarded. Evidence of partisan and interested witnesses can be the sole basis of conviction, however, a duty is cast upon the Court to carefully scrutinize the evidence and satisfy itself that such evidence is reliable and trustworthy. It would be worthwhile to note herein that this Court in Crl.A.No.470/2003, **Harish Vs. The State**, noted the position with respect to interested witnesses. It was thus observed:

*“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalti Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan

or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported at **AIR 2003 (90) Supreme Court 3613.**

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab* (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – *Rajasthan*', (AIR 1952 SC 54 at p.59). We find,

however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.”

17. PW-12, Braham Prakash, has also corroborated the evidence of PW-3, Rambir. In his deposition PW-12 has stated that on 20.07.2000 at around 8.00 a.m., Rambir, came to his house and told him that Saraswati had set herself ablaze and that his car was required so as to take Saraswati to the hospital. PW-12 further deposed that he took his car no.DL 2CG 1932 and took Saraswati along with Rambir to Shivam Medical Centre, Nangloi. It would be relevant to note that PW-12 has also deposed that he enquired from Saraswati about the incident and who told him that since her husband (Rajesh) was not taking his share in the ancestral property, so she set herself on fire. Learned Additional Sessions Judge has further observed that although Sh. Rambir (PW-3) and Sh. Braham Prakash (PW-12) were examined as prosecution witnesses, however, they have deposed that the respondents were not responsible for the burns received by Smt. Saraswati.

18. Further, Sh. Ram Parwar (PW-11, father of the deceased) has also confirmed the fact that there was a dispute between his daughter and son-in-law, in so far as distribution of ancestral property was concerned. PW-11, has further confirmed that his daughter used to demand her share in the property from her father-in-law, namely, Sh. Bharat Singh, and her brother-in-law, namely, Sh. Rajpal and her husband, Rajesh, never took her side in this regard. Thus, even Sh. Ram Parwar, father of the deceased has admitted that the bone of contention between the deceased and the respondent persons was apportionment of ancestral property. I am in agreement with the view

given by the learned Additional Sessions Judge that the statement of Sh. Ram Parwar lends credence to the circumstances narrated by Sh. Rambir and Sh. Braham Prakash with regard to the existence of a dispute for apportionment of ancestral property. It has also been noted by the learned ASJ that Sh. Ram Parwar had reached Shivam Medical Centre where he found his daughter Saraswati Devi admitted. On seeing the condition of the victim, he requested the doctors to refer Saraswati Devi to some other hospital. Thereafter, Saraswati Devi was taken to Safdarjung Hospital. Though Ram Parwar tried to enquire the facts from Saraswati Devi, but she was not able to talk to him. Ram Parwar was declared a hostile witness by the prosecution and during the course of his cross-examination he did not support the prosecution on the count that Saraswati Devi had a talk with him in the hospital. Thus the statement of the father of the deceased also does not connect the respondents to the alleged incident.

19. Learned Additional Sessions Judge has discussed at length the statement made by Smt. Saraswati before Dr.Dharampal Yadav and Dr.Bandana Karan of Shivam Medical Centre, Nangloi, where the victim was initially taken for treatment. Dr. Yadav has deposed that on 20.07.2000, he had a brief conversation with Saraswati. She told him that she had tried to commit suicide because her husband was not taking his share in the ancestral property of his father. Learned Additional Sessions Judge has observed that Exhibit PW-6/DA was recorded by Dr. Bandana Karan in his presence and he had signed the said document. Dr.Bandana Karan has also given confirmation to the facts stated by Dr. Dharampal Yadav. It has further been noted by the learned Additional Sessions Judge that Exhibit PW-6/DA was not

assailed before him by the prosecution either by way of demolishing the deposition of the two Doctors or by adducing any evidence to the effect that this document was a fabricated document. It has been observed by the learned ASJ that it is crystal clear that the prosecution had clearly given up their case in favour of this document. I find merit in the contention of learned counsel for the respondent that the Doctors are independent witnesses and nothing has been brought on record to show that they were inimical to the petitioner's family or were biased witnesses.

20. Learned counsel for the appellant has relied upon a statement allegedly made before PW-24, SI Suraj Bhan and urged that the same be treated by this Court as a dying declaration of Smt. Saraswati Devi. PW-24 has deposed that Exhibit PW-24/B was recorded by him in the hospital and the said statement purports to be a report lodged by Smt. Saraswati Devi with the police. It has been reported in the said statement that on the day of the incident Smt. Saraswati Devi had asked her husband to take his share from his father and which proposition was not agreeable to her husband. When she questioned her husband as to why was he not taking his share from his father, he got up and went outside the room. After some time her father-in-law, Bharat Singh; her sister-in-law, Shakuntala; and her husband, Rajesh, came and quarrelled with her. Thereafter someone out of the three persons poured kerosene oil on her and set her on fire. When she raised an alarm, fire was extinguished by the aforesaid three persons. But as per Smt. Saraswati Devi, she was not aware as to who had brought her to the hospital.

21. In my considered opinion, learned Additional Sessions Judge

has, carefully and minutely analysed the alleged dying declaration, Exhibit PW-24/B. It has been correctly observed by him that Smt. Saraswati Devi was conscious enough to notice that all the three respondent persons had taken steps to put off the fire and save her, but it has not been mentioned in Exhibit PW-24/B as to who had poured Kerosene oil on Smt. Saraswati Devi and set her on fire, when at that time she was in her senses. After having been burnt, Smt. Saraswati Devi was well within her senses to have observed that the three respondent persons extinguished the fire, however, she failed to note as to who had set her on fire. Omission on her part to specify the identity of the person as to who poured kerosene oil and put her on fire makes it clear that Smt. Saraswati Devi was intentionally concealing the facts. At the same time, it has not been explained by Smt. Saraswati Devi as to why would the respondent persons first set her on fire and thereafter themselves only douse the fire and take her to the hospital. The discrepancy in the alleged statement (Exhibit PW-24/B) shows that coloured facts were presented before the police. Even otherwise also, the learned ASJ has rightly pointed out that the dying declaration nowhere satisfies the criteria of reliability and trustworthiness in terms of the law laid down by the Apex Court in the case of **Khushal Rao**, reported at AIR 1958 SC 22 and **Munnu Raja**, reported at AIR 1976 SC 2199. It has further been observed by the learned Additional Sessions Judge that before recording Exhibit PW-24/B, the investigating officer had not sought an opinion from the Doctors to the effect that Smt. Saraswati was in a fit state of mind, so much so, that SI Suraj Bhan conceded before the court that he had not obtained the opinion of the Doctor as to whether Smt. Saraswati Devi was in a fit state of mind or not. This admission on the

part of the investigating officer pushes Exhibit PW-24/B to the area of non-admissibility and non-reliability. Except the evidence of SI Suraj Bhan with respect to Exhibit PW-24/B (the alleged dying declaration), there is no other evidence on record to show that such a declaration was indeed made by the deceased. Although, it may not always be correct to opine that non-seeking of the opinion of the Doctor with regard to the state of mind of the patient, goes to discredit the entire dying declaration as sometimes exigencies warrant that the statement of the patient be recorded at the earliest, irrespective of whether the Doctor is present at the site or not. However, in the present case, no such exigencies were shown before the trial court, nor have they been argued before me. I also find no force in the contention of the counsel for the petitioner that the fact that the doctors present in the ward had refused to attest the thumb impression of the deceased, on the statement allegedly made before SI Suraj Bhan, goes to the root of the matter. Rather, I find this fact does not favour the petitioner themselves inasmuch as the doctors did not consider the deceased fit enough so as to ask her to append her thumb impression on the statement. In light of this, it would not be wrong to say that the dying declaration, Exhibit PW-24/B, fails to fulfill the criteria of reliability laid down by the Apex Court from time to time.

22. I am also fortified in my opinion by the fact that the prosecution witnesses have gone at length in supporting the case presented by the defence. PW-3, Rambir, a witness examined by the prosecution has deposed that Smt. Saraswati Devi (since deceased) had told him that she had set herself on fire because of the frustration and anger

caused by her husband not asking his father to get his share apportioned out of the ancestral property. PW-11, Braham Prakash, has also deposed that Smt. Saraswati had informed him that she had set herself on fire. PW-15, Dr. Dharampal Yadav, and PW-6, Dr. Bandana Karan, Doctors at the Shivam Medical Centre, Nangloi have also gone on record to say that patient Saraswati Devi had told them that she had tried to commit suicide because her husband was not taking his share in the ancestral property of his father. Exhibit PW-6/DA was also recorded to this effect in the presence of Dr. Bandana Karan and he had signed the said document. Learned counsel for the appellant has failed to show as to why the abovesaid three statements should not be read as the dying declaration of the deceased. Exhibit PW-24/B has been correctly denounced by the trial court that it fails to fulfill the criteria of a reliable dying declaration. The judgment passed by learned Additional Sessions Judge contains cogent reasons and there is no material irregularity or impropriety in the said judgment so as to warrant my interference. Accordingly, the revision Petition stands dismissed.

G.S. SISTANI, J.

May 13, 2009
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