

had recorded the Medico Legal Report (MLC), and SI Praveen Kumar, PW-18 are relevant. We may notice that the trial court has disregarded the dying declaration recorded by PW-18, SI Praveen Kumar, and Exhibit PW-18/A. This aspect has been examined in the paragraphs below.

5. PW-2 has stated that Sansarwati, his sister used to complain that the appellant gave her beatings and did not pay for household expenses. His sister's brother-in-law, Sunil and his wife Sunita used to reside in the same locality, i.e., after two-three houses and they used to give beatings to her occasionally. On 29th September, 2004 at about 2.30 p.m., PW-2 was taking lunch at his residence when he was informed by one lady, who was a relative and resided in the same neighbourhood, that his sister was burnt. He rushed to the house of his sister and found her on the ground floor of the house in a burnt condition. Another person Prem Sagar (sic. Prem Kumar) PW-5 had made a telephone call to the police and PCR officials arrived at the spot/residence. Sansarwati was put in the gypsy, and thereafter in the ambulance at G.T. Karnal Road bye pass, and was taken to JPN Hospital. The deceased was conscious, when PW-2 had reached the residence and remained conscious till she was taken and admitted in JPN Hospital. Sansarwati told him that her husband had poured kerosene oil on her and set her on fire with a match stick. The police officials had also recorded her statement in JPN Hospital. On being cross-examined by the Additional Public Prosecutor, he corrected himself and stated that the date of occurrence was 27th September, 2004 and not 29th September, 2004, which was stated by him by mistake. When cross-examined by the counsel for the appellant, PW-2 had stated that his bhabhi had come and informed him that his sister was

burnt. He reached the residence of his sister within two-three minutes and it must be between 2.30 to 3 PM. G.T. Karnal Road was at a distance of five kilometres. His statement was recorded on 28th September, 2004 before the death of his sister. His sister expired on 1st October, 2004 at 5.30AM. He had met his sister on 30th September, 2004 and at that time his sister was unconscious. His sister had given her statement to the police and then told him about the incident. Statement was given to the police on the spot in the presence of the other persons, but his sister had not put any thumb or foot impression on the statement. His sister was married before him and when she was married PW-2 was residing in Bullandshair.

6. Learned counsel for the appellant has submitted that the statement of PW-2 should be discarded as he is an interested witness who harboured animosity and ill will towards the appellant. We do not find any merit in the said contention. PW-2 is the brother of the deceased. He was residing very near to the house/residence of the deceased. PW-2, when cross-examined had stated that his house was 2-3 houses away from the residence of his sister, i.e., deceased. His presence at the spot immediately after the occurrence is also proved from the testimonies of the PCR police officers PW6 SI Pradeep Rana and PW20 Head Constable Omender Kumar. He was with Sansarwati when she was admitted in the hospital. PW-13, Dr. Ritu Saxena, CMO, Casualty, LNJP Hospital had admitted and recorded the MLC. The MLC Exhibit PW-13/A records that Soudan Singh, brother of the deceased Sansarwati, had brought her to the hospital in a CATS ambulance. The MLC further records that the patient was conscious and her pulse was 80 per minute, though she had burns all over the body to the extent of 98%. The MLC Ex. PW13/A also records that

the patient had given alleged history of burns due to pouring of kerosene oil by her husband at her house, in Shahbad Dairy at 2.50PM. It was recorded that this was stated by the patient herself, i.e., Sansarwati, the deceased. Thus, the dying declaration of the deceased, clearly stating and implicating the appellant as the person who had put kerosene oil on her and thereafter igniting the fire, was made by the deceased to PW-2 as well as the PW-13. The MLC was recorded at 3.50PM on 27th September, 2004.

7. It is difficult to conceive and believe that the deceased would have falsely implicated or made a wrong declaration/statement to PW-2 or PW-13. There was no reason and cause for the deceased to falsely and wrongly state that the appellant was guilty and responsible for the burns and that he had poured kerosene oil on her and set her on fire, a grave and serious charge against her husband, who was married to her for thirteen years. There was no reason for PW-13 to wrongly record the said statement immediately on the admission of the deceased in the hospital in the MLC Exhibit PW-13/A. It is also clear from the MLC that the deceased despite severe burns the deceased was conscious and oriented. As noted before, her pulse was 80 per minute. She died nearly four days after the incident, on 1st October, 2004.

8. There is evidence and material to suggest and show that the relationship between the appellant and the brothers of the deceased were not cordial but this does not mean that PW2 would have falsely implicated the appellant and would have wrongly attributed her injuries/death to the appellant. The statement made by the deceased to the PW2, as already recorded and noted above, was again reiterated to PW13, a doctor. It was also recorded in the MLC.

9. PW-13, Dr. Ritu Saxena in her cross-examination had stated that when she examined the patient, i.e., the deceased, she was conscious. PW-10, Constable Raj Kumar had stated that he had visited the hospital on 27th September, 2004. The deceased was admitted there and till he left, she was speaking.

10. PW-2 was extensively cross-examined by the accused on 11th April, 2005 but he withstood the said cross-examination and remained steadfast on his statement implicating the appellant. He had also stated that he had not seen the appellant accused at the spot as he was busy looking after the deceased sister. He was recalled and subjected to further cross-examination nearly four years later, on 26th May, 2009. In the cross-examination, on the said date, he wanted to substantially change his statement and had stated that his deceased sister was crying “jala diya jala diya” but had not named any person, who had burnt her. He stated that the deceased had not made any statement to the police in his presence. However, when re-examined by the Additional Public Prosecutor, he accepted that the statement made on 11th April, 2005 was his correct statement and the deceased sister had told him that her husband had poured kerosene oil on her and set her on fire. He reiterated that the police officers also reached the hospital and had recorded the statement of his sister. Further, due to lapse of time, he had forgotten to mention the facts on the said date as the same were already recorded in his statement dated 11th April, 2005. His statement dated 11th April, 2005 was correct.

11. PW-18, SI Praveen Kumar, who was also the Investigating Officer, had recorded the statement of the deceased Sansarwati, which is Exhibit PW-18/A. The same forms a part of the rukka resulting in registration of the FIR. Initially, Section 307 IPC was invoked, which

was converted on the death of Sansarwati into Section 302 IPC. Learned trial court has not placed reliance on the dying declaration recorded by PW-18 on the ground that the dying declaration was not recorded by a doctor or a Magistrate. The MLC, Exhibit PW-13/A has an endorsement made by Dr. Ajay Sagar, dated 27th September, 2004 at 6.10 p.m., which reads “patient is fit for the statement”. The said endorsement was proved by the prosecution through PW-17, Dr. Arun Goel. He had stated that Dr. Ajay Sagar had left the hospital and his present whereabouts were not known. He identified the handwriting and signatures of Dr. Ajay Sagar and had stated that the endorsement at point B on Exhibit PW-13/A was in his handwriting and duly signed by him. PW-17 was, however, not present in the ward at 6.10 p.m. In his cross-examination, he had stated that the patient had not cried or resisted when she had received 98% burn injuries. It would have been certainly better and wiser if PW-18 had ensured that the dying declaration was recorded by a doctor or Magistrate. This would have assured greater credibility and taken care of any question or contention. However, in the present case, the deceased had made dying declaration to PW-2 and then to PW13, which are identical and similar to the dying declaration Exhibit PW-18/A made to PW-18. In these circumstances, it will not be correct to completely disregard and not rely on the said dying declaration PW-18/A. The dying declaration corroborates and affirms the dying declarations made to PW-2 and PW-13. It is an additional factor and ground to hold that the two dying declarations should be accepted as true and trustworthy. The dying declarations are identical and implicate the appellant as the person, who had poured kerosene oil and then ignited the fire burning Sansarwati, the deceased, his wife. This aspect has been elucidated from paragraph 17 onwards.

12. The dying declarations in the present case are also corroborated by another fact, i.e., recovery of the bottle from the spot. The said bottle is clearly visible in the photographs, which were taken by PW-7, Manish, resident of B-688, Shahabad Dairy, Delhi, who was carrying on business in the name of Sonu Photo Studio. He had taken photographs at 8 p.m. The bottle of kerosene oil was seized from the first floor. It was a plastic bottle, which still had some oil in it. Burnt cloth and match stick was also seized vide memo Exhibit PW-14/A. This is proved from the testimony of PW-14, ASI, Shiv Narain and PW-18, SI Praveen Kumar. The presence of kerosene in the bottle is established by PW-15, Ms. Veena Amba Pd., Junior Scientific Officer, CFSL Laboratory, Hyderabad. The plastic bottle, as per the CFSL report, (Exhibit PW-15/A) had blue coloured liquid which was kerosene. However, kerosene could not be detected in the match box or the burnt clothes.

13. Learned counsel for the appellant submitted that, as per Exhibit PW-19/C, the first report recorded by Police Control Room was that “a wife had caught fire because of gas cylinder”. The said information was possibly given by PW-5, Prem Kumar. PW-5 had stated that he saw smoke from the house in question between 2-3 p.m. Public persons were saying that the house of the appellant had caught fire. He came to his house and informed the PCR from his mobile. He had seen the smoke at a distance of about twenty meters. It is interesting to note that PW-2, PW-14 and PW-18 were not cross-examined or questioned on the aspect that the deceased had caught fire “because of gas cylinder” or “while cooking”. It is not the case that the gas cylinder had burst or exploded. Had it been so, the entire house would have been engulfed in fire and there would have been massive damage. In

case it was accidental burn while cooking on a gas flame, then the presence of kerosene bottle at the spot is contra indicated. PW-2 was not cross-examined and it was not put to him that the deceased had caught fire while cooking on a gas stove. We may note here that the appellant and PW-2 were working in a gas agency and were responsible for supplying gas to customers. Naturally and normally, it can be expected that they would be using gas cylinder at home, which is a convenient method of cooking, rather than using kerosene oil stove for the purpose of cooking. PW-14 and PW-18 were not cross-examined and it was not put to them that any kerosene gas stove was available or found in the house. No question was put to them regarding whether the kitchen was damaged or was there anything which indicated that the deceased had got burnt accidentally while cooking in the kitchen.

14. Referring to the statement of PW-5, it was submitted that five children of the accused appellant were present in the house but they were not questioned. PW-5 in his cross-examination had stated that children of the accused later came down from the house and were questioned by the firemen. Police did not interrogate the children of the accused appellant. There is no evidence or material to show that firemen had come to the house. PW-2 in his cross-examination had stated that the accused and his sister had five children. The eldest daughter was physically challenged and aged about fourteen years. The second eldest was a boy aged about eight years. The three children used to go to school and two children used to remain in the house. Obviously the said two children were small. The eldest daughter Pavitra had appeared as DW-1 and in her statement, recorded on 29th May, 2006, she had stated that her mother was perhaps pouring

kerosene in the stove or trying to ignite the stove when she caught fire and started crying. She was sitting in her room and her mother completely got burnt when the police came to their house. Her father Murari Lal was not in the house and telephone call was made by one Lalti Devi informing the police. In the cross-examination, DW-1 had stated that she does not know how to read and write and was an illiterate. She denied the suggestion that her father had poured kerosene oil on her mother and set her on fire and killed her. DW-1 is the daughter of the deceased and the appellant. PW-2 had stated that the children were residing with the grandmother in the village. Her belated statement appearing as defence witness on 29th May, 2006 has to be carefully scrutinized before it is accepted. She was about 13/14 years old at the time of her statement. We have already commented upon the existence and the use of kerosene stove in the house for cooking, by the deceased. Surprisingly, PW-2 was never cross-examined on the said lines and on the basis of statement made by DW-1. Having lost their mother, DW-1's desire and wish to help and protect their father, the appellant herein, is understandable. Presence of DW-1 is not recorded or noticed by PW-14 or PW-18. Both of them were not cross-examined and questioned as to why and for what reason statements of DW-1 or other children, of the appellant and the deceased, were not recorded. DW-1, Pavitra had stated that she was illiterate and did not know how to read and write because she had not been to any school. This statement was made to justify her presence at home. However, she had signed her statement in Hindi and also written the date. She had also given a wrong time of occurrence. She had stated that the occurrence had taken place at 12 noon/1 P.M. whereas the occurrence had actually taken place around 2.30 to 2.45 P.M. PW-2 had clearly stated that the three elder children use to go to school.

DW-1's presence at the spot, therefore, is not established. Her statement is not trustworthy and credible. It may be also interesting to note that the appellant in his statement under Section 313 Cr.P.C. recorded on 8th December, 2005 had stated that he was not present at the spot and his daughter had told him that this was a mishap or may be a suicide. The daughter, DW-1 did not state or claim that it was a case of suicide.

15. Relying upon the statements of DW-2 Lalti Devi, DW-3, Mohd. Yakub, DW-4, Hari Prasad and DW-5, Girish Kumar it was submitted that the appellant was not responsible for the said occurrence and had not thrown kerosene oil or ignited the fire. In fact, he was not present in the house at the time of the occurrence. PW-2 had also not seen the appellant. It is correct that PW-2 had not seen the appellant but the appellant's presence is indicated and mentioned in the dying declarations of the deceased Sansarwati. DW-2 is a neighbour. She had stated that first at about 2 to 2.30 p.m. she had heard cries "aag lag gayi aag lag gayi" coming from the house of Murari Lal and Sansarwati had received burnt injuries. All five children were crying. Somebody called the police. After some time, accused Murari Lal along with his brother Hari Prasad came there. In the cross-examination, she admitted that she had not told the said story or her version to any authority, either police or the court. She was aware that the appellant had been apprehended on the same day on the charge of murdering his wife and she had come to know about the same on the very day. She was not able to give any reason as to why she did not tell to any person and authority, prior to her making the statement in the court that the appellant was not at home and had not been named by the deceased.

16. DW-3, Mohd, Yakub is a beldar, who claimed that he was working with the appellant for the same gas agency. He had stated that (DW-2) Lalti Devi had called him on his mobile and informed the appellant about the said incident, when the appellant was sitting at a tea shop across the road. When cross-examined, DW-3 stated that he had informed the police about his version when police had come to the spot after three days but he could not tell the name or rank of the policeman. Thereafter, he never told the story to any court or police or wrote to any senior officer. More importantly, DW-3 could not explain how (DW-2) Lalti Devi could imagine or know that the appellant and he were together at the date and time of the occurrence.

17. DW-4, Hari Prasad is the brother of the deceased Sansarwati. He had stated that at 2/2-30 P.M. a phone call was received by DW-4 from a lady that there was a fire in the house of the appellant and his wife had received burn injuries. After hearing the message, Murari Lal and he went to the house. He had stated that relationship between the appellant and his wife was cordial and his sister had never complained about her husband or his behaviour. He had spoken to his sister. She never complained against the appellant. His father had come to Delhi after the occurrence to meet the deceased. Statement of DW-4 has to be examined with caution and care before being disregarded as he is the brother of the deceased and has supported the appellant. In his cross-examination, he admitted that he came to know about the arrest of the appellant in the murder case of his sister, after about 2 to 3 days of the incident, but he did not tell the story to the police or any other authority even after the appellant-accused was arrested. He volunteered that he did not know that this could be done. He did not forbid his father or PW-2, Soudan Singh from deposing against the

appellant. The statement of DW-4 was recorded on 2nd June, 2006. As noticed above, PW-2, Soudan Singh, the brother of the deceased was called for re-examination and was re-examined on 26th May, 2009. In the cross-examination he tried to resile from his earlier statement recorded on 11th April, 2005 but when he was re-examined by the Public Prosecutor, he accepted that his earlier statement recorded on 11th April, 2005 was correct. We do not think the statement made by DW-4 is credible and truthful. DW4 has not stated what he and Murari Lal did after coming to the spot of occurrence, on the said day. Murari Lal could not be seen at the spot by PW2 Soudan Singh. Presence of DW4 at the spot was not put and confronted to PW2. PW5 did not also see Murari Lal at the spot when they reached, after the deceased was injured and burnt. This apart there is contradiction between the statements made by (DW3) Mohd. Yakub and (DW4) Hari Prasad. DW3 had stated that appellant was with him whereas DW4 had stated that he along with the appellant went to the house of the deceased i.e. the house of Murari Lal. Why and how Murari Lal came to him is not indicated or explained. He had suddenly sprung up and decided to support the appellant, probably keeping in mind the interest of the children. It is not possible to accept that in spite of knowing full facts, he had kept quiet and did not protest to or against PW-2. DW-4's statement that he came to know about the arrest of the appellant 2/3 days after the incident is not believable and cannot be accepted. Father of PW2 and DW-4, Kanshi Ram had appeared as PW-3. In his statement, he had stated that his daughter deceased used to tell him that the accused used to favour his brother and sister-in-law and was not providing proper food or properly maintaining her. His daughter used to tell her grievances. He used to advise her daughter to reside peacefully as it was a family matter. He had met his daughter on the

date of occurrence at 10 A.M. and she had also come to see him off as he had left for his village. He accepted that the appellant had purchased a plot in the name of his daughter and had rented a shop to a doctor. His daughter was unhappy on account of some dispute, which had arisen 4-5 months prior to the incident between his two sons and son-in-law, i.e., appellant, who had worked together. He was not, however, aware about the cause of the dispute. His sons were not having ill feeling towards the accused but they were not on visiting terms. It was suggested to him that the deceased had committed suicide. The suggestion was denied.

18. DW-5, Girish Kumar had stated that he was residing in the neighbourhood and on 27th September, 2004, at 2.30 P.M. he heard noise of “bachao bachao” and went to the house of the sister of Soudan Singh, who was shouting and was standing in a gali in a burnt condition. Soudan Singh had put a blanket on her and she was completely burnt. Pavitra met them and told them that her mother had got burnt while preparing tea on the stove and one neighbour had called 100 number. He claimed that he had travelled with Soudan Singh and was with the deceased when she was admitted in the emergency in JPN Hospital, and was treated by a lady doctor. Deceased had not made any statement to the lady doctor. On being cross-examined, he denied that he had not accompanied the deceased to the hospital in the PCR van as well as in the CAT ambulance. However, his presence is not recorded and not mentioned by either PW-14 or PW-17. His presence was not put to PW-2, Soudan Singh, when he was cross-examined. PW-6, SI Pradeep Rana, Jr. Ambulance Officer, CAT Ambulance Service had stated that there was one attendant. He was not cross-examined that DW-5 was also present.

DW-5 in his cross-examination, however, stated that the deceased was in a position to speak after the incident till the time she reached the hospital and the appellant had not accompanied the deceased to the hospital. What is surprising and relevant is why did DW-5 keep quiet for such a long time?

19. We do not think the decision of the Supreme Court in *Ishwar Singh v. State of U.P.*, AIR 1976 SC 2423 is applicable. In the said case, the police had failed to examine witnesses essential for unfolding of the narrative on which the prosecution case was based. Some of the eye witnesses to the occurrence named in the FIR, who were important witnesses were not examined and kept back. This, it was indicated, was a special significance given the discrepancy between the FIR and the version of the occurrence given by the prosecution in the Court. It was observed that the Court should take into account the said circumstances in considering the probabilities of the case. It was observed and held that witness was not reliable and, therefore, her statement should be discarded as not worthy of credence and acceptance.

20. PW-20, Head Constable Omender Kumar, in his statement had stated that he was posted as Head Constable in PCR, North-West Zone and had received a call that one lady had received burn injuries in Shahabad Dairy. He reached the house and noticed that one lady with burn injuries was lying at the gate of the house and Soudan Singh was present there. She was oriented and speaking. She was taken in the PCR van and then in the CAT van, which was parked at G.T. Karnal bye pass. The lady had given her name as Sansarwati, wife of Murari Lal. In the examination-in-chief, he had stated that the injured lady did not tell anything else to him or his staff. However, when cross-

examined by the Public Prosecutor, PW-20 had stated that she had named her husband Murari Lal as the person, who had poured kerosene upon her and set her on fire. This fact was recorded in the Exhibit PW-19/C, the PCR form, a form in which communication made is recorded. Her husband was not there. He had forgotten the said facts in his examination-in-chief.

21. PW-20 had, therefore, initially denied whether the deceased had said anything to him or his staff, but later on when confronted with Ex. PW19/C PCR form, he had stated that the deceased named Murari Lal as the person who had poured kerosene oil on her and set her on fire. The said averment was recorded in Ex. PW19/C. The person who had recorded the said statement in such form was not produced and, therefore, we are disregarding the PW-17/C. For the same reason we also disregard statement of the PW-20 to this extent. Statement of PW-20 has been relied upon to the limited extent and purpose i.e. that when he had transported the deceased in the PCR van, Soudan Singh was with them and the deceased was oriented and speaking. He had denied that (DW5) Girish Kumar had accompanied them in the PCR van.

22. In *Paras Yadav vs. State of Bihar* (1999) 2 SCC 126, it was held that a statement of the deceased recorded by the police officer in routine manner as a complainant, and not as a dying declaration can be treated as a dying declaration after the death of the injured and relied upon if there was evidence that the maker was conscious and was in fit state of health to make the statement. It was further held that lapse on the part of the investigating officer in not bringing the Magistrate to record the statement should not be taken in favour of the accused.

23. Effect of failure to get the dying declaration recorded by the Magistrate was examined in *Balbir Singh vs. State of Punjab* (2006) 12 SCC 283, and it was held that there was no requirement in law that the dying declaration must be necessarily made to a Magistrate or it should be in a question-answer form (also see *State of Karnataka vs. Shariff*, (2003) 2 SCC 473 and *Ram Bihari Yadav v. State of Bihar* (1998) 4 SCC 517). In *Munna Raja vs. State of M.P.* (1976) 3 SCC 104, the Supreme Court had cautioned that as investigating officers were naturally interested in the success of investigation, the practice of investigation officer himself recording a dying declaration ought not to have been encouraged. Referring to these decisions in *Atbir v. Govt. of NCT of Delhi* (2010) 9 SCC 1, it has been held as under:-

“It is clear that merely because the dying declaration was not recorded by the Magistrate, by itself cannot be a ground to reject the whole prosecution case. It also clarified that where the declaration is wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. This Court further held that the statement of the injured, in the event of her death may also be treated as FIR.”

24. In this decision, after analyzing several judgments, it was observed:-

“22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the 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 imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) 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.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

25. A statement by a dying person as to cause of death has a special sanctity which should on first principles be respected if it is credible and trustworthy. There should not be any evidence to the effect that the statement was a result of tutoring, prompting or a product of imagination. Further the deceased should be in fit state of mind to make the statement. This caution and care has to be taken as the deceased is not subjected to cross-examination. The court must be fully satisfied that the dying declaration impress a truth on it, after examining the circumstances in which the dying person had made the ex-parte statement. If on such examination, the court is satisfied that the declaration was the true version of the occurrence, conviction could be solely based on it. (See *Khushal Rao v. State of Bombay*, 1958 SCR 552).

26. Merely because dying does not contain details as to the occurrence, it should not be rejected. A brief statement is not to be disregarded but may in a given case guarantee its truth (See *State of*

Maharashtra v. Krishnamurti Laxmipati Naidu, AIR 1981 SC 1505 and *Surajdeo Ojha v. State of Bihar*, AIR 1979 SC 1505).

27. Learned counsel for the appellant has relied on *T.K. Reddy v. State of Andhra Pradesh*, AIR 2002 SC 2988. In the said case, the evidence on record belied the presence of the appellant at the spot. In *Surinder Kumar v. State of Haryana*, 2011 (12) Scale 172, the dying declaration was rejected because it did not inspire confidence. There were infirmities and contradictions as to the occurrence. In *Paparambaka Rosamma and Others v. State of A.P.*, (1999) 7 SCC 695 it has been observed that where conviction is solely based on the dying declaration, the Court has to consider carefully the dying declaration and the evidence of the witnesses supporting it. Care should be taken to ensure whether it is established that the dying declaration was genuine, true and free from doubts and was recorded when the injured was in a fit state of mind. In *State of U.P. v. Raj Bahadur*, 1993 Cr.L.J. 86 it has been held that conviction can be based on the dying declaration if it is found to be untutored and worthy of belief. In the said case, there were fundamental hurdles in accepting veracity of the dying declaration. The deceased was never left alone and several persons, who were instrumental in launching the prosecution were present and there was ample opportunity to tutor and brain wash the deceased. However, it is not correct that dying declaration are weak type of evidence. Dying declarations when true and voluntary can form basis for conviction. In *Jagdish Lal Malhotra v. the State*, 25 (1984) DLT 405 (DB), dying declaration was found to be in variance with other evidence and, therefore, was not accepted. *L/NK. Meharaj Singh v. State of Uttar Pradesh*, 1994 (2) Scale 632 is not relevant as we do not think that there is delay in the registration of

FIR. The FIR was registered at 8.45 P.M. on 27th September, 2004 after Rukka was prepared and dispatched after recording statement of Sansarwati at 7.15 P.M. vide Exhibit PW-18/A.

28. In the facts of the present case, we are satisfied that the dying declarations are true and correct. The three dying declarations were verbatim and materially identical. There is no contradiction. Dying declarations were made to three different persons who were there at the particular point of time with the deceased and were in a position to speak and talk her. Possibility of tutoring or getting influenced was not there. The first two declarations were immediately after the occurrence. The second declaration was made to the PW-13, a doctor, a third party who clearly has no interest in implicating any wrong person. No one virtually had access to the deceased, once she was taken in the PCR van and then the ambulance to the hospital. Her condition and that she was in a fit state to make the statements is established from the MLC, statement of PW13, PW20 etc.

29. In light of the above observations, our appraisal and our analysis, we uphold and confirm the judgment of the trial court and the order of sentence. Conviction and sentence are maintained. Appeal is dismissed.

(SANJIV KHANNA)
JUDGE

(S.P. GARG)
JUDGE

AUGUST 31st, 2012
VKR/kkb