

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. A.No. 493/2014**

% **Reserved on:** 22nd January, 2015
Date of Decision: 13th April, 2015

WAZIR CHANDAppellant
Through Mr. Jai Pal, Advocate.

Versus

STATE OF NCT ...Respondent
Through Ms. Aashaa Tiwari, APP along with SI Uma
Datt, P.S. Mangol Puri.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

By the impugned judgment dated 15th January, 2014, the appellant-Wazir Chand stands convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for having committed murder of his second wife Kela Devi. By order on sentence dated 10th February, 2014, the appellant has been sentenced to undergo imprisonment for life and fine of Rs.10,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 has been granted.

2. The undisputed position emerging from the testimony of the witnesses, namely, Dharamvir (PW-1), son of Kela Devi from her first husband Om Prakash, Renu (PW-2) minor daughter of the appellant and the deceased Kela Devi, Davinder Singh (PW-3), Ram Rattan (PW-4), Salochana (PW-5) and Rachna (PW-7) is that the deceased Kela Devi and

Santosh, two sisters, were married to two brothers, Om Prakash and the appellant-Wazir Chand. Some time back, Santosh who was married to appellant-Wazir Chand, left the house without informing anyone and did not return. Om Prakash expired and after his death, Kela Devi got married to Wazir Chand and started living with him. Renu (PW-2) was their minor daughter, who used to live and reside with them. The appellant-Wazir Chand and the deceased-Kela Devi were working as *safai karamchari* with the MCD. There is some dispute whether Santosh, the first wife of the appellant-Wazir Chand was still in touch with the children and was maintained by the appellant-Wazir Chand. We shall be referring to the said dispute subsequently.

3. In order to decide and adjudicate the contentions raised, we have deemed it appropriate to examine the evidence in some detail.

4. The prosecution case relies upon the purported dying declaration and testimonies of the eye witnesses. The dying declaration was made by the deceased Kela Devi in the presence of Dr. Brijesh Singh (PW-8), Chief Medical Officer, Sanjay Gandhi Memorial Hospital and SI Nisha (PW-13). It was recorded by SI Daya Kishan (PW-21) on 14th November, 2006. The said dying declaration was endorsed and recorded as FIR No.840/2006 (Exhibit PW11/B), Police Station Mangol Puri at about 8 p.m. The second primary evidence relied upon by the prosecution is the eye witness account given by Renu (PW-2), the minor daughter of the deceased-Kela Devi and the appellant-Wazir Chand. The prosecution also relies upon statement of Dharambir (PW-1), who had reached the place of occurrence immediately after Kela Devi had caught fire. The prosecution lastly relies upon circumstantial evidence in the form of motive, recovery of the plastic can, match stick as well as burn injury suffered by the appellant on his left forearm.

5. We begin with the dying declaration, which was recorded by SI Daya Kishan (PW-21). He has deposed that on 14th November, 2006, he was marked DD entry No.76B for investigation. He along with Constable Sanjeev (PW-17) went to house No.39, Harijan Basti, G-Block, Mangol Pur Kalan. They learnt that the deceased Kela Devi had been taken to Sanjay Gandhi Memorial Hospital by her family members. Thereupon, they reached the said hospital and procured the MLC of Kela Devi (Exhibit PW8/A). At about 10 P.M., Dr. Brijesh Singh (PW-8) declared that Kela Devi was fit for statement. In the presence of Dr. Brijesh Singh (PW-8) and SI Nisha (PW-13), PW-21 recorded the statement of Kela Devi in question and answers form. Thumb impression of the right foot of Kela Devi was taken on the said statement, marked Exhibit PW-8/B. The said statement was, thereafter, endorsed by PW-21 marked Exhibit PW-21/A and handed over to Constable Sanjeev for registration of the FIR. PW-21 had then arrested the appellant-Wazir Chand in the hospital. The appellant Wazir Chand had also suffered burn injuries on his left hand. Crime team was called at the spot and they took into possession one black plastic can with yellow cap, which contained some kerosene oil. Two burnt matchsticks lying at the spot were also lifted and seized. He identified the plastic can of black colour, the yellow cap and the two matchsticks in the court. Photographs of the spot were also taken by the crime team. Later on, Kela Devi was shifted to Lok Nayak Jai Prakash Hospital. She expired on 30th November, 2006. Thereupon, Section 302 in place of Section 307 IPC was invoked. The investigation was thereafter conducted by Inspector Mahesh Kumar.

6. The dying declaration marked Exhibit PW-8/B is affirmed and confirmed by Dr. Brijesh Singh (PW-8). In his court testimony, PW-8 elucidated that Kela Devi on 14th November, 2006 at about 8.45 P.M. was

brought to the hospital by Anil Dhawan, CATS with alleged history of kerosene burns. Smell of kerosene was positive. He had examined Kela Devi vide memo Exhibit PW-8/A. At 10 P.M. Kela Devi was declared fit for statement and thereafter SI Daya Kishan (PW-21) had recorded her statement Exhibit PW-8/B. Dr. Brijesh Singh (PW-8) had signed the said statement. He had signed the dying declaration as Kela Devi's fingers and thumbs of both hands were burnt. Dr. Brijesh Singh (PW-8) was cross-examined but he was categorical that the deceased Kela Devi was in a fit and sound condition to make the statement. PW-8 clarified that a person who is burnt with kerosene oil may inhale fumes. These fumes can damage the vocal cord if the injured person has a deep wound on his neck. Albeit, this depends upon person to person and the deceased Kela Devi at the time of her medical examination did not have any history of respiratory distress. PW-8 accepted that he had cut the word "un" before fit in the MLC Exhibit PW-8/A. Thus, the MLC records that the patient was fit for statement. The aforesaid deposition of PW-8 was recorded on 5th September, 2009. He was subsequently re-called for re-cross examination. In his cross-examination on 5th September, 2011, PW-8 accepted that the patient had been given antibiotics and IV fluids upon admission. The upper limbs and lower limbs above the knees of the patient were burnt. PW-8 could not state whether relatives of the patient were present or not at the time when her statement was recorded, however, other patient were present in the casualty ward.

7. SI Nisha (PW-13) in her court deposition is equally assertive and has affirmed the dying declaration. She had gone to the SGM Hospital in connection with medical examination in a rape case as she was posted at Rape Crises Cell of the sub-division Sultan Puri. In the hospital, she met SI Daya Kishan (PW-21) and SHO, Police Station, Mangol Puri, who were

present there. On their request, PW-13 had joined and was present when statement of Kela Devi was recorded. At that time, Dr. Brijesh Singh (PW-8) was also present. Due to burn injuries, Kela Devi's right foot impression was taken on her statement. PW-13 had signed the statement along with Dr. Brijesh Singh (PW-8). PW-13 testified that Kela Devi had stated that her husband Wazir Chand had poured kerosene and set her ablaze with a match stick. PW-13 was not cross-examined in spite of opportunity as is recorded by the court on 19th December, 2009. She was re-called for cross-examination, which was conducted on 5th September, 2011. She denied having any personal knowledge of the victim or personal relations with Kela Devi. There is nothing in her cross-examination to dent her testimony.

8. Kela Devi in her dying declaration has implicated and stated that the appellant, i.e. her husband Wazir Chand used to constantly quarrel with her and used to extend threats that he would kill her. He used to insist that Kela Devi should bear all expenses of the household, should earn income by illegal means or reside separately. She had married Wazir Chand about 12 years back and they had a daughter named Renu, aged 11 years. The appellant had poured kerosene on her and thereafter set her ablaze with a match stick. At that time, Renu was present there and she had seen the occurrence.

9. Kela Devi thereafter died on 30th November, 2006 at about 2.15 A.M., on account of extensive burn injuries present on her body. Her post-mortem was conducted by Dr. Vinod vide report Exhibit PW-10/A. The said report was proved by Dr. Amit Sharma, SR Forensic Medicine, Maulana Azad Medical College, who had appeared as PW-10. He had deposed that Dr. Vinod had left the hospital and his whereabouts were not known. He identified the hand writing and signatures of Dr. Vinod. As

per the post-mortem report, the deceased had suffered superficial to deep burn injuries all over the body, except on front and back of both legs. No smell of kerosene was present at that time. This is understandable as post-mortem was conducted on 30th November, 2006 at 3 P.M. as per the post-mortem report Exhibit PW-10/A. The cause of death was opined to be septicaemia consequent upon burn injuries involving 80% of the total body surface. All injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

10. No doubt the death of Kela Devi is nearly 15 days after she had made dying declaration, but the said declaration would be covered by Section 32 of the Indian Evidence Act, 1872 and can be relied upon in spite of this time gap. Kela Devi was under treatment and had received medical care and attention. In *Maniben versus State of Gujarat* (2007) 10 SCC 362, it has been observed:

“A dying declaration need not cease to be one only because death took place 25 days after the incident. All attempts would be made to save the precious life of a 25 year old young woman. The doctors must have tried their best. Dying declaration which is recorded in expectation of death need not be discarded only because death took place after a few days. What is necessary for the said purpose inter alia is that the statement had been made by a person who cannot be found or who is dead and thus incapable of giving evidence. The statements of the deceased must be of relevant facts vide *Najjam Faraghi v State of W.B.* [(1998) 2 SCC 45], *B. Shashikala v State of A.P.* (2004) 13 SCC 249]”

11. Before we deal with other contentions of the appellant, we would like to examine the depositions of Renu (PW-2) and Dharamvir (PW-1). We shall be also referring to deposition of some of the relatives, namely, Davinder Singh (PW-3), Ram Rattan (PW-4) and Salochna (PW-5).

12. Renu (PW-2) was about 12 years of age when her deposition was recorded in the court on 26th August, 2008. The Additional Sessions Judge

before recording her statement had put questions to her and has recorded that Renu (PW-2) understood the questions put to her and had rationally replied. Renu (PW-2) accepted that she was at home on 14th November, 2006 at 8 P.M. Her mother and the appellant-Wazir Chand were also present and the appellant-Wazir Chand had asked for money from Kela Devi. Kela Devi had refused. Wazir Chand had then poured kerosene oil on her mother from a can and set her on fire with a match stick. Kela Devi cried and withered with pain. PW-2 shouted. Dharambir(PW-1) thereupon reached the spot, neighbours also collected and her mother was taken to SGM Hospital. Subsequently, she expired in the Lok Nayak Jai Prakash Hospital. PW-2 identified the can, which was marked Exhibit P-1. PW-2 was not cross-examined in spite of opportunity given on 26th August, 2008.

13. Dharambir (PW-1) had testified in the court on 9th May, 2008. He identified the appellant-Wazir Chand, as the younger brother of his biological father Om Prakash, who had died. Appellant-Wazir Chand had four children from his first wife Santosh. Renu (PW-2) was his only daughter from Kela Devi. Appellant used to beat Kela Devi and take away all her money. Kela Devi used to protest as she used to financially help Dharambir and another sister. PW-1 could not remember the date, but stated that in the month of November, 2006 at about 8 A.M., he had heard his mother Kela Devi and Renu screaming. When he reached the balcony, he saw Kela Devi burning and the appellant Wazir Chand had poured kerosene oil on her. In the meanwhile, neighbours collected. PW-1 and his sister Renu threw water on Kela Devi and extinguished the fire. Thereupon, with the help of neighbours they removed Kela Devi to SGM Hospital. Appellant also reached there. PW-1 asserted that Kela Devi had informed the police that it was the appellant-Wazir Chand who had put her on fire by pouring kerosene oil on her. He affirmed that Kela Devi had

died because of burns, which the accused has caused. He identified the black-coloured can (Exhibit P-1). PW-1 was not cross-examined on 9th May, 2008 and his cross-examination was deferred as PW-1 had stated that he was not well. He was re-called for cross-examination on 26th August, 2008, but again was not cross-examined on behalf of the appellant. The order on the said date records, “Nil opportunity given”.

14. Davinder Singh (PW-3) was first examined on 7th March, 2009. He deposed about the relationship between the parties and the fact that Renu (PW-2) was the daughter of appellant-Wazir Chand and deceased Kela Devi. He affirmed that the deceased Kela Devi and the appellant-Wazir Chand used to quarrel over family expenses and Wazir Chand used to abuse his sister, i.e. Kela Devi and had threatened to kill her. On 14th November, 2006 at about 8 P.M., he was present in his house when he heard noise and proceeded to the house of Kela Devi and Wazir Chand. Kela Devi was found in a burnt condition lying on the road. Appellant-Wazir Chand, Renu (PW-2) and Dharambir (PW-1) were present. Davinder Singh (PW-3) had taken Kela Devi to the SGM Hospital. Subsequently, she was referred to Lok Nayak Jai Prakash Hospital. In his cross-examination on 7th March, 2009, PW-3 accepted as correct that appellant-Wazir Chand was present at the spot and the children of Kela Devi had told him about the occurrence. His statement was recorded by the police before Kela Devi had died. He, however, asserted that Kela Devi had not made any statement to the police officers in his presence.

15. Ram Rattan (PW-4) in his court deposition on 7th March, 2009 has deposed about the personal relationship and the factum that deceased Kela Devi and appellant-Wazir Chand used to fight. Ram Rattan (PW-4) had several times acted as a mediator. He came to know that Kela Devi was

burnt and taken to the SGM Hospital. Kela Devi had told him that she was burnt by the appellant-Wazir Chand by pouring kerosene oil on her. She was subsequently referred to the LNJP Hospital, where she died. PW-4, in his examination-in-chief did not give any reason for the quarrels between the deceased-Kela Devi and appellant-Wazir Chand. On being cross-examined by the Public Prosecutor, who had put leading questions, PW-4 explained that the quarrels used to take place as Wazir Chand used to take away salary earned by Kela Devi. In his cross-examination on 7th March, 2009, PW-4 had stated that he did not know whether Kela Devi had ever tried to commit suicide and affirmed that Kela Devi in her statement in the hospital had stated that appellant-Wazir Chand had burnt her.

16. Salochna (PW-5) is the wife of Ram Rattan (PW-4). She has deposed on similar lines regarding the relationship and the fact that on 14th November, 2006 there was a quarrel between the appellant-Wazir Chand and the deceased-Kela Devi. Renu (PW-2) had informed that her mother had been burnt. She informed the police. Crowd had gathered there. Kela Devi was taken to the SGM Hospital and after some time she died in the Irwin Hospital. In her cross-examination, Salochna (PW-5) has stated that Renu (PW-2) had told her that appellant-Wazir Chand had poured kerosene oil on her mother and that the appellant used to beat her mother if she would not give her salary. He had also threatened to kill her. In the cross-examination, she accepted that incident had not taken place in her presence and she could not state whether Wazir Chand had caused death of Kela Devi or she had committed suicide.

17. It is apparent from the above testimonies that the main public witnesses, namely, Dharambir (PW-1), Renu (PW-2), Davinder Singh (PW-3), Ram Rattan (PW-4) and Salochna (PW-5) were initially examined

on or before 7th March, 2009. The appellant-Wazir Chand did not cross-examine Dharambir (PW-1) and Renu (PW-2), the main witnesses, in spite of opportunity being granted. It is noticeable that the appellant-Wazir Chand was represented by a private counsel and had refused to avail of services of a legal aid counsel. The trial court order sheet and records reveal that an application under Section 311 Cr.P.C. was moved for recalling of PWs-2 to 8, 13, 16, 21 and 22 on the ground that they were not cross-examined properly. The reason given was that there was change in counsel and it was submitted that the earlier counsel had not cross-examined the aforesaid witnesses properly and this would affect merits of the case. It was highlighted that the case was for murder under Section 302 IPC and the rights of the appellant as an accused would be adversely affected. The Additional Sessions Judge in his order dated 21st April, 2011 noticed that except for PWs-2, 13 and 22, other witnesses had been cross-examined. However, some portions of testimonies of PWs-3, 4, 5, 6, 8, 16 and 21 were not subjected to effective cross-examination. The application was accordingly allowed, subject to certain conditions, including availability of PWs-2, 3, 4 and 5, and deposit of cost of Rs.500/- within one week in the office of Delhi Legal Services Authority, Rohini Courts, Delhi. It was further directed that the witnesses would be cross-examined on the said date and no further date would be granted. The said order was not complied and diet money and costs were not deposited. In view of the default, the case was directed to be put for final arguments on 23rd May, 2011. Thereafter, the appellant moved another application under Section 311 Cr.P.C. for recalling the witnesses for cross-examination. By order dated 6th August, 2011, the second application under Section 311 Cr.P.C. was allowed in the interest of justice noticing the fact that the witnesses had been earlier recalled but could not be subjected to cross-examination

because of failure to deposit costs, diet money, etc. The appellant was permitted to cross-examine PWs-2 to 6, 8, 13, 14, 16, 21 and 22. Thereafter, the appellant filed an application seeking bail, which was decided on 3rd January, 2012. By this order, the application was dismissed. Thereafter, on 16th January, 2012, statement was made by the counsel for the appellant that he did not wish to cross-examine Ram Rattan (PW-4), HC Vinod Kumar (PW-15), ASI Jag Roshan (PW-16) and Inspector Mahesh Kumar (PW-22).

18. It is clearly noticeable that the appellant-Wazir Chand did not seek re-examination or cross-examination of Dharambir (PW-1) and had selectively asked for cross-examination of some witnesses. Renu (PW-2) was cross-examined, thereafter, on 9th December, 2011, 29th February, 2012 and 25th April, 2012. On 9th December, 2011, Renu (PW-2) distinctly and unvirtuously reprobated by changing her version. She accepted that she was present in the house, yet ubiquitously stated that she was watching TV in another room at the time of incident. In her presence, her aunt (*mausi*) Santosh and deceased Kela Devi had quarrelled. She went on to state that Santosh was residing with them at that time and Kela Devi and the appellant Wazir Chand had not fought with each other. Her mother, i.e. Kela Devi had got burnt when she was trying to ignite the *Chulah*/stove, she then caught fire. Wazir Chand had tried to save her by pouring water on her and in this process his hands got burnt. She was cross-examined by the Additional Public Prosecutor. In her cross-examination on 29th February, 2012, she again asserted that Santosh, i.e. her mother's sister was residing with them for about a year prior to the occurrence. Her mother got burnt and she had tried to put out the fire. She was watching TV with her father and on hearing the call she had gone there. Subsequently, her father also came. She accepted that her father used to take liquor every now and

then. She accepted that her parents quarrelled when Wazir Chand use to ask for salary and her mother would refuse. Towards the end of her cross-examination, PW-2 accepted as correct that Santosh was not present at the time of the incident. She, however, claimed that Santosh had come to the hospital, when she came to know about the occurrence. In her cross-examination, on 25th April, 2012, she accepted as correct that she was residing with her elder brother and that quarrel had taken place between her parents but denied the suggestion that Wazir Chand had poured kerosene oil on her mother and put her on fire.

19. Davinder Singh (PW-3) in his cross-examination on 28th March, 2012, had also ingloriously changed his original version and had stated that his sister had informed him about her quarrels with the appellant-Wazir Chand. He claimed that he had gone to the house of a relative at the time of the occurrence and on his return came to know about the incident from Renu (PW-2). Appellant Wazir Chand was also present and Kela Devi was taken to hospital by Renu (PW-2) and police officers. While recording cross-examination, the court specifically noticed that PW-3 did not verbally answer several “exculpatory” questions and had preferred to nod his head in the negative. These were the material questions on whether Renu (PW-2) had informed him that Kela Devi was put on fire by Wazir Chand; whether Dharambir had informed him that Kela Devi had been put on fire by Wazir Chand and whether Kela Devi had told him that she had been put on fire by Wazir Chand.

20. We are inclined to discard and disbelieve the testimony of Renu (PW-2) and PW-3’s testimony recorded after recall to the extent that they tend to exonerate and give a clean chit to the appellant-Wazir Chand. It is clear to us that the true and correct version is the version by Renu (PW-2)

and Davinder Singh (PW-3) before they were recalled and subjected to cross-examination. The original version is the exact and faithful factual narration and the second variant after a long delay is a coloured and incorrect version, which has been given because of social and economic pressures. The second version, which is belated in point of time, should not be accepted and has to be discarded. In this regard, reference can be made to the decision of the Supreme Court in *Mrinal Das versus State of Tripura*, (2011) 9 SCC 479. In the said decision, the main prosecution witnesses, viz. PWs 2, 9, 10 and 12 were declared as hostile witnesses. While reiterating that corroborated part of evidence of hostile witness regarding commission of offence is admissible, the Supreme Court held: (pp. 505-506, para 67)

“67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”

21. Recently, in *Vinod Kumar versus State of Punjab*, (2015) 3 SCC 220, the Supreme Court highlighted importance of cross-examination immediately and instantaneous with examination-in-chief. Unwarranted delay and adjournments allows ample time to pressurise and gain over the witness by adopting all kinds of tactics. This is legally impermissible and jurisprudentially abominable. It is an anathema and inconceivable that the

cross-examination should be deferred for a long time. It is the duty of the Court to see that not only the interest of the accused as per law is protected, but also the societal and collective interest is safeguarded. It is the requirement of fair trial that the statutory mandate of Section 309, Cr.P.C. should be adhered to and cross-examination should not be deferred, for otherwise there is a grave possibility of miscarriage of justice.

22. Learned counsel for the appellant has drawn our attention to the statement of Rachna (PW-7), who had stated that deceased Kela Devi was her aunt/*bua*. She was cross-examined by the Public Prosecutor but denied that Kela Devi had told her that she used to be beaten up by appellant-Wazir Chand or he had threatened to throw her out of the house. She denied having tried to pacify Wazir Chand and asserted that she was not present at the time of the occurrence. Her statement, therefore, is of no relevance as she has not deposed about the actual incident. On the question whether there were disputes and differences between the appellant-Wazir Chand and Kela Devi, the statement of Rachna (PW-7), which was recorded on 14th May, 2009 is not acceptable and we would prefer to rely upon the version given by PWs-1, 2 & 3 (as originally recorded) and PWs-4 and 5. Learned counsel for the defence has also relied upon the statement of Santosh (PW-23), a neighbour (PW-23 is not the first wife of the appellant). Her statement in the court was recorded on 6th July, 2010. She had heard Renu (PW-2) raise an alarm that mummy had caught fire. She tried to exonerate appellant-Wazir Chand by stating that the appellant was watching television in the front room and Kela Devi was burning inside. She was cross-examined by the Public Prosecutor but she did not support the prosecution version. We do not accept PW-23's rendition as correct, disbelieving PWs-1, 2 and 3's version as originally stated by them.

23. We would also like to deal with the defence witnesses, who were examined on or after 3rd October, 2012, i.e. after application under Section 311 Cr.P.C. had been allowed. Breham Prakash (DW-1) is the brother of appellant-Wazir Chand. He was residing separately, but claimed that they had good relationship. He explained reasons why there were disputes and differences between the appellant-Wazir Chand and Kela Devi, the deceased. He claimed that Santosh, sister of Kela Devi used to live with Wazir Chand, even after Kela Devi had got married to him. Thereafter, Santosh left. Appellant-Wazir Chand had incurred debt on account of marriage of Salochna (PW-5) and, therefore, had requested the deceased Kela Devi to share the burden as Kela Devi was working as a safai karamchari with the Government of Delhi. Deceased Kela Devi was, however, reluctant and used to give a part of her salary to her daughter Salochna (PW-5), who did not have any means of livelihood. He claimed that Santosh was dependent upon appellant-Wazir Chand. He had gone to the house at the time of the occurrence and had seen Wazir Chand dousing the fire. Thereafter, Kela Devi was taken to the hospital in his vehicle and at that time appellant-Wazir Chand and his son were present. Appellant-Wazir Chand had also received dressing. Kela Devi was unconscious. Neither the hands nor foot of Kela Devi were burnt, but the upper body, i.e., chest was burnt. However, in the cross-examination, he accepted that he had not seen the incident of fire and also accepted that Santosh had separated from Wazir Chand and started residing apart since 1996 and he did not know the address of Santosh. He accepted as correct that he was not examined by the police officers and neither did he visit the police officers with his side of the story nor did he make any written complaint. DW-1's testimony that Santosh, first wife of the appellant and sister of the deceased Kela Devi, was alive and in touch with Wazir Chand is

unacceptable and false. Devender Singh, PW-3's statement is to the contrary. The said Santosh did not enter the witness box and DW-1 was unable to furnish her address. Similarly, the later version of Renu (PW-2) that deceased Kela Devi and her sister Santosh had quarrelled is fallible and untrue. Santosh, the first wife of appellant and the sister of deceased Kela Devi had gone missing. Appellant had got married to deceased Kela Devi 12 years prior to the occurrence.

24. Pooja (DW-2) is the daughter of Wazir Chand. She claimed that she was present at the time of occurrence. However, her presence is not deposed to by any of the other witnesses, including Renu (PW-2), Braham Prakash (DW-1), Dharambir (PW-1), Davinder Singh (PW-3), Ram Rattan (PW-4) and Salochana (PW-5). We are, therefore, not inclined to accept her version. She had claimed that there was a quarrel between her mother deceased Kela Devi and the appellant-Wazir Chand for the reason that Santosh used to come and ask for expenses. On the said date, Santosh had come for the said purpose. The deceased Kela Devi had refused to serve food to appellant-Wazir Chand for this reason. She claimed that Kela Devi had poured kerosene oil on herself and thereafter ignited a match stick. In her cross-examination, she accepted that she never used to talk to her mother, i.e., Santosh. Santosh used to reside separately, but claimed that on the date of the incident, Santosh had gone to the house of the appellant. DW-2's version as to presence of Santosh for reasons recorded earlier is disbelieved. Her presence at the spot at the time of occurrence or soon thereafter should be also disbelieved for the reason that other witnesses have not testified about her presence and he did not meet the doctors or the police officers.

25. Praveen Kumar (DW-3) is the son of Breham Prakash (DW-1). DW-3 had claimed that he had taken the deceased Kela Devi in a Maruti van along with appellant-Wazir Chand and Breham Prakash (DW-1). DW-3 had claimed that deceased Kela Devi had spoken to him with great difficulty in slow voice in the van. Kela Devi did not blame appellant-Wazir Chand. DW-3 alleged that appellant-Wazir Chand used to fight with Kela Devi and plead that they should separate. He claimed that loan was taken for the marriage of Salochana (PW-5). However, in the cross-examination, DW-3 accepted that he did not go inside the hospital and had remained outside. On the question whether deceased Kela Devi was taken to the hospital in a private van as claimed by DW-1 and DW-3, we find that the MLC of Kela Devi Exhibit PW-8/A records that she was brought to the hospital by Anil Dhawan, CATS Ambulance Alpha (2) (PW-14). The said witness has deposed that on 14th November, 2006 he was on duty with CATS ambulance Alpha (2). PW-14 reached the spot in the ambulance and had shifted the injured Kela Devi to the hospital with the help of others. In the cross-examination, PW-14 accepted that he could not recall whether Wazir Chand was present at that time or not. Similarly, he could not say with certainty whether the family of Kela Devi had accompanied them to the hospital, but the son of the deceased was certainly with them in the van. He was recalled for cross-examination, which was conducted on 5th September, 2011. PW-14 reiterated that he had taken Kela Devi to the hospital in CATS ambulance with the help of public persons as the patient was not in a position to board the vehicle on her own. She was crying and had not disclosed anything regarding the incident. He did not know whether the husband of the deceased had accompanied them to the hospital in the van. We accept the testimony and

version given by PW-14, which is supported by the MLC marked Exhibit PW-8/A.

26. On the question of injuries suffered by the appellant, we would now like to refer to his MLC marked Exhibit PW-20/A and the statement of Dr. Manoj Dhingra (PW-20). MLC of Wazir Chand was recorded on 15th January, 2006 at 7.15 A.M. He had superficial burns over upper forearm (lower 3/4th). Dr. Manoj Dhingra (PW-20) in his court deposition had identified the handwriting of Dr. Biplav Kumar, who had written the said MLC and had appended his signatures. In his cross-examination, PW-20 asserted that the burn injuries on the left forearm (lower ¾ portion) would not indicate any attempt to save a third person from burns. If Wazir Chand had made any such attempt, he would have received burn injuries on his palm. It is clear that Wazir Chand was medically examined, after he was arrested in the present case. He had not suffered any burns on his hands or palms. The burns on the left fore-arm were superficial. His MLC (Ex.PW20/A) corroborates and affirms the prosecution case.

27. The CFSL report marked Exhibit PX states that hydrocarbons were found in the exhibit marked 1, i.e. sealed black plastic can containing 1 ½ litre blue coloured liquid. Hydrocarbons were also found in the exhibits, i.e. partly burnt and burnt printed orange coloured cloth piece with designed border and the other exhibits which were worn by the deceased. The CFSL report marked Exhibit-PX again confirms and reinforces the prosecution case.

28. Constable Shiv Mohan (PW-6) has stated that he was posted in the police station as DD writer between 5 P.M. to 1 A.M. on 14th November, 2006 and at about 8.32 P.M. he received a message on wireless set regarding burning of a lady by her husband. He had recorded the

information at serial No. 76 and handed it over to Constable Avdhesh to be given to SI Daya Kishan (PW-21). ASI Ramesh Chandra (PW-8) was posted as a photographer with the Mobile Crime Team and had taken photographs marked Exhibits PW-8/A to 8/D and the negatives were marked Exhibits PW-8/E to 8/H. The photographs show the presence of kerosene can, burn marks, etc.

29. In view of the aforesaid discussion, it is clear to us that in the present case both the dying declaration as well as the original testimony of Renu (PW-2) is the true and correct version of the entire occurrence. It is not a case wherein deceased Kela Devi committed suicide or suffered accidental burns, but it is a case wherein she was deliberately burnt by pouring kerosene oil by the appellant. Kela Devi subsequently succumbed to the said injuries and died. The trial court has rightly convicted the appellant for the said offence. We affirm the said decision and the order on sentence. The appeal is accordingly dismissed. Trial court records will be sent back.

-sd-

(SANJIV KHANNA)
JUDGE

-sd-

(ASHUTOSH KUMAR)
JUDGE

APRIL 13, 2015
VKR