

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ Crl. Appeal No. 1243/2013

% Reserved on : 11th August, 2015
Date of Decision: 23rd November, 2015

RAJESH Appellant
Through Mr.Sumeet Verma and
Mr. Amit Kala and Mr. Gopalji, Advocates.

versus

STATE (NCT OF DELHI) Respondent
Through Ms.Aashaa Tiwari, APP for
State with SI Uma Dutt, PS-Mangolpuri.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K. GAUBA

SANJIV KHANNA, J.

Appellant Rajesh assails conviction for having committed the murder of his wife Sheela during the night intervening 12th and 13th March, 2008, in the rented accommodation consisting of a room located at A-714, Mangol Puri, Delhi. The impugned judgment dated 20th July, 2013, arises from charge-sheet filed in FIR No.137/2008 under Section 302 of the Indian Penal Code, 1860 (IPC, for short), registered at the police station Mangol Puri. By order on sentence dated 1st August, 2013, the appellant has been sentenced to imprisonment for life, fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment of six months. Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), it is observed, would apply.

2. Undisputed relevant facts may be first noticed and taken on record. The appellant accepts incontrovertible prosecution evidence on record that he had taken a room on rent in the aforesaid house from the landlady Geeta (PW1) and there he, his deceased wife Sheela and minor daughter would reside. As noticed below, the appellant, however, professes that he was not in Delhi having gone to his native village a day prior to the date of occurrence.

3. MLC of Sheela marked Ex.PW22/A records that she was brought to Sanjay Gandhi Memorial Hospital, Mangol Puri at about 12.35 a.m. on 13th March, 2008 with an endorsement recording alleged history of burns from a bursted stove as stated by the patient. We would refer to the MLC of Sheela marked Ex.PW22/A subsequently in detail, but would at this stage record that the deceased Sheela was examined by Dr. Munish Kumar (PW23) who had made the above endorsement. On 13th March, 2008 itself, Sheela was referred to LNJP Hospital, where she was examined by Dr. Yuvnish Bhardwaj (PW24) at 2:45 a.m. and declared fit for statement vide endorsement made on MLC marked ExPW2/A.

4. Sukhbir Singh (PW11), then the Executive Magistrate, Sub Division-Saraswati Vihar, on 13th March, 2008 at about 1 a.m., received a telephone call from Police Station Mangol Puri that a lady with burn injuries i.e. the deceased Sheela was admitted to Sanjay Gandhi Memorial Hospital. On the way to Sanjay Gandhi Memorial Hospital, PW11 learnt that the patient had been referred to LNJP Hospital. He reached the LNJP Hospital at about 2.15 a.m. and recorded statement of Sheela marked Ex.PW11/A at 2:45 a.m. after

obtaining the fitness certificate from Dr. Yuvnish Bhardwaj (PW24). This statement, marked ExPW11/A, records that the deceased Sheela was heating vegetables on a stove when all of a sudden the stove got disbalanced and Sheela's clothes caught fire. At that time, her daughter and husband were present, and no one was responsible for the said incident and she had been never harassed for dowry. On 14th March, 2008, Sukhbir Singh (PW11) received another call from Police Station Mangol Puri that Sheela wanted to make another statement, which was recorded by the witness and is marked ExPW11/B. Sheela on this occasion professed that her earlier statement (Ex.PW11/A) was given under pressure of her husband and Sheela now avowed that while she was cooking on the stove, her husband had poured kerosene oil on her and set her alight. Thereupon, her husband ran away. Sheela had then raised an alarm and their landlady came and tried to extinguish the fire and neighbours had brought her to Sanjay Gandhi Memorial Hospital, Mangol Puri. Sukhbir Singh (PW11) testified having made inquiries from neighbours to ascertain facts and thereafter directed registration of the FIR in question. We shall refer to the two statements of Sheela marked Ex.PW11/A and Ex.PW11/B, subsequently when we examine the allegations against the appellant on merits.

5. At this stage, we record that Sheela on 15th March, 2008 was shifted to PGIMS, Rohtak, where on 21st March, 2008, she delivered a dead female foetus. Post mortem of the dead female foetus was conducted by Dr. Vinod Kumar Kangra (PW21), vide report marked ExPW21/A. The report ExPW21/A mentions the age of the female foetus, born dead, was about five months (intra uterine) and had not

reached the level of viability. Sheela herself expired on 25th March, 2008 at about 5.30 a.m. at the PGIMS, Rohtak. Her post mortem marked Ex.PW6/PX was conducted by Dr. Sudhir Kumar (PW19) along with Dr. Sanjeev Kumar. The report records that 70 to 75% superficial to deep tissue burns, were present over lower part of the face, anterior aspect of the neck, chest (anterior), anterior aspect of abdomen, bilateral upper limbs, bilateral thighs and lateral aspect of back. The unburnt portions were the forehead, nose, some part of bilateral cheeks, central part of back, bilateral legs, gluteal region, feet and posterior aspect of the bilateral thighs. The burns were ante-mortem and sufficient to cause death in normal course of nature. In his cross-examination, Dr. Sudhir Kumar (PW19) clarified that the lower part of the body was more affected as compared to the upper part of the body and he did not observe any other external injury apart from the burn injuries and pus formation consequent upon the burn injuries.

6. The core question, which arises for consideration in the present case, is whether the trial court is justified in convicting the appellant Rajesh for the murder of his wife Sheela, notwithstanding the first dying declaration ExPW11/A and endorsement on the MLC ExPW22/A. We record that the trial court for convicting the appellant while relying on the dying declaration marked Ex.PW11/B does make copious reference to the ocular testimony of the landlady, namely Geeta (PW1), her son, Suresh (PW2) and neighbours Surender (PW5) and Jyoti (PW9), in addition to projecting the motive as established from the testimonies of Jai Bhagwan (PW3), Roshni Devi (PW7) and Satbir (PW10). Some of the latter witnesses have also deposed about

the oral dying declaration made by Sheela, which we will be referring to subsequently.

7. We begin with by reproducing the dying declaration of Sheela marked Ex.PW11/A, English translation of which reads as follows:-

“I stay in the above address with my husband and daughter. At around 11.45 PM on 12th March, I was heating vegetables on the stove, when suddenly the stove got titled and the fire flared. My clothes caught fire. No one is responsible for the occurrence. No one has ever troubled me for dowry. The statement has been read to me, I have heard it and it is correct.”

8. The aforesaid dying declaration was recorded in LNJP Hospital by Sukhbir Singh (PW11) at about 2.45 a.m. on 13th March, 2008. PW11 has stated that it took about two hours to record the statement after the doctors had declared Sheela fit for statement and apart from him, one police officer was present at that time. The endorsement on the MLC marked ExPW22/A is to the same effect.

9. The second dying declaration marked Ex.PW11/B was recorded on 14th March, 2008. The documents marked Ex.PW11/C and Ex.PW11/D mention that Sukbir Singh (PW11) had visited the hospital on 14th March, 2008 at the request of Sheela, which was communicated to him by SI Vishesh Kumar. Sukhbir Singh (PW11) had learnt from SI Vishesh Kumar that Sheela wanted to change her earlier statement, statedly given by her under pressure of her in-laws. He had accordingly recorded statement of Sheela at 1.40 p.m. marked Ex.PW11/B, which reads:-

“I, Sheela, affirm that I want to change my statement given at 2.50 a.m. on 13th March at LNJP Hospital as I had given that statement under the pressure of my in-laws. In my fresh statement, I want to say that when the stove was lighted in the house, my husband had poured kerosene oil on me and alighted me. After putting me on fire, my husband ran away from the house. I shouted and the landlady came from downstairs and tried to extinguish the fire. The neighbours only took me to Sanjay Gandhi Hospital. My husband is responsible for setting me ablaze and strict action should be taken against him. I am giving this statement in my senses and without any pressure. The statement has been read to me, I have heard it and it is correct.”

10. The first dying declaration marked Ex.PW11/A and the Ex.PW 22/A completely exonerates and absolve the appellant, whereas the second dying declaration marked Ex.PW11/B, if accepted as true and correct, would implicate the appellant and serrate him as the perpetrator, who committed the said crime by pouring kerosene oil and setting Sheela ablaze. There are several reasons why we feel that the charge against the appellant stands proved and established beyond doubt for the earlier dying declaration marked Ex.PW11/A was for several reasons not the correct and truthful version. In the following paragraphs we would elucidate and explicate our reasons.

11. Jai Bhagwan (PW3), brother of the deceased affirms their visit to the LNJP Hospital on 14th March, 2008 with his mother Roshni Devi (PW7) and uncle Satbir (PW10), and that they had spoken to Sheela, who had informed them that the appellant Rajesh had set her on fire after pouring kerosene oil. She had not disclosed this fact to others, being a mother of a small child aged about two and a half

years. Worried and concerned about the matrimonial family, she had earlier made a wrong statement to the Sub Divisional Magistrate. Roshni Devi (PW7) has similarly deposed, and even maintained that the appellant had threatened Sheela that he would kill her daughter. Testimony of Satbir (PW10) on the said aspect is in seriatim. We would like to substantially rely on their version, why initially Sheela did not give the painful but factually inaccurate statement and had given credulous and precipitous account of what had actually happened. We would do so, primarily rely and pontificate on the statements of Geeta (PW1), Suresh (PW2), Surender (PW5) and Jyoti (PW9), which are quintessentially revealing and nail the appellant.

12. Geeta (PW1), the landlady, whose presence at the spot or near the spot of occurrence cannot be questioned. She identified the appellant Rajesh stating that he had taken a room on rent in her house about two months prior to the occurrence. The appellant was residing there with his wife and a minor daughter. In the intervening night, at about 12 midnight, PW1 woke up as Sheela was shouting and crying “save me, save me” (Bachao Bachao). Sheela was in flames and was seen by PW1 coming down from her room. Her son Suresh (PW2) had also reached and they had inquired and asked Sheela as to how she had caught fire, upon which, Sheela had stated that she received injury from the stove, except this she had not stated anything and had kept quiet. Geeta (PW1) had not seen the appellant at that time and neither did he accompany Sheela. Someone had informed the police and Sheela was taken to hospital. However, when cross-examined by the Additional Public Prosecutor, PW-1, accepted as correct that the appellant Rajesh had followed Sheela on the staircase and then ran

away from the spot in her presence. Appellant made no attempt to try and extinguish the flames. No doubt, Geeta (PW1) in the cross-examination by the counsel for the appellant has accepted that the witness was not aware as to how Sheela had caught fire, but this would necessarily imply or mean that PW1 was not an eye-witness as she had not seen the actual occurrence. PW1 after initial hesitation has in categorical terms narrated and accepted that Sheela had implicated the appellant Rajesh as the person who had set her on fire.

13. Suresh (PW2), son of Geeta (PW1) has deposed on almost identical lines. He has, also, accepted that on one or two occasions he had heard Rajesh and Sheela quarrelling and fighting with each other. On the said night, he had heard Sheela cry and thereafter both of them i.e. PW1 and PW2 saw Sheela coming down from the steps in flames and they had extinguished the fire. Suresh (PW2) at first, like his mother, had claimed that Sheela had told them that she had caught fire from the stove, but then hesitated and stated that she did not tell him anything. PW2 has accepted that appellant Rajesh was arrested in his presence by the Investigating Officer on 28th March, 2008 vide arrest memo Ex.PW2/A signed by PW2 at point A. In his cross-examination by Additional Public Prosecutor, PW2 affirmed and accepted that he had told the police that Rajesh had followed Sheela and in spite of their request to stop, Rajesh ran away. He had also accepted that Sheela told him that her husband had set her on fire. He had called their neighbour Surender (PW5), who had then along with the police taken injured Sheela to the hospital. In his cross-examination on behalf of the appellant, PW2 accepted as correct that Sheela had not caught fire in his presence and was not aware whether Sheela had

suffered burn injuries on account of bursting of a stove. He professed that he did not remember whether the appellant at that time was present or not. As noticed earlier, in the cross-examination by Additional Public Prosecutor, PW2 had clearly accepted that Rajesh had followed Sheela on the stairs and in spite of their request to stop and inspite of seeing Sheela in flames, had fled from the spot.

14. Surender (PW5) in his deposition has stated that at about 12 midnight on 13th March, 2008, he was present near his shop and had heard shouts (Bachao-Bachao), upon which he had proceeded towards the street and had seen Sheela, who was burning, present on the road. Landlady and her son were trying to extinguish the fire. In the meanwhile, appellant Rajesh came from the house and in spite of their attempt to stop, he ran away. Sheela was taken to Sanjay Gandhi Memorial Hospital, Mangol Puri in the PCR van, with Surender (PW5) accompanying them. Sheela at that time was conscious and had stated that she was burnt by her husband and once she was well, she would take revenge. PW5 claimed that Sheela did not want to tell these facts to police as she thought that she would survive. PW5 had remained with Sheela in the hospital for about 3 days. In his cross-examination, PW5 accepted that he did not know how Sheela got burnt. This deposition of Surender (PW5) is the prosaic and true version which reflects the prediction of Sheela, a mother of a small child who knew that the perpetrator was not an enemy but her husband. Sheela knew that if she names and states the truth, her husband and father of her small child would be arrested. Putatively, Sheela believed that she would survive and thereafter deal with the appellant and take care of her child. This protuberance and mindset is

the true explanation which elucidates the initial statements of Sheela as recorded in the MLC Ex.PW22/A and Ex.PW11/A. The said exculpatory statements are irreconcilable and in disagreement with the accurate evidence of Geeta (PW1), Suresh (PW2) and Surender (PW5). Statement of Jyoti (PW9) is in affirmation.

15. Jyoti (PW9) another neighbour, has testified that she was outside her house when at about 12 midnight in the intervening night between 12th and 13th March, 2008, she had heard shrieks of a lady, who came running down from the first floor. The lady was burning and Geeta (PW1) and her son, Suresh (PW2) were trying to extinguish the fire. At that time, the lady was explicit that she was set on fire by her husband. Jyoti (PW9) had made a call to the police on number 100 from the mobile phone of her husband. She professed in her cross-examination that she had not seen the appellant earlier and came to know about Rajesh from the police.

16. Testimonies of the aforesaid four witnesses affirmatively evince that at about 12 midnight the deceased Sheela ran down from her room and came on to the street crying “Bachao-Bachao”. She was ablaze. Appellant Rajesh had followed her and in spite of efforts to stop him, he fled from the spot. Rajesh made no attempt to save, extinguish the fire, or to show concern and comfort Sheela. The appellant’s behaviour manifests and demonstrates his involvement. His dysfunction and impenitent behaviour soon after the occurrence is confirming and sealing, when we reflect and elucidate on the credibility and truthfulness of the dying declarations blaming the appellant. At that time or in the PCR van, Sheela as per Jyoti (PW9)

and Surrender (PW5) had implicated her husband as the person who had set her on fire. This errant has been accepted by Geeta (PW1) and Suresh (PW2), though reluctantly after and on being cross-examined by the Additional Public Prosecutor. Predictably, PW1 and PW2 under oath to speak the truth, found it difficult and have substantially accepted true facts.

17. Our attention was drawn to Police Control Room forms (PCR forms for short) especially Ex.PW14/A. The PCR form Ex.PW14/A records information communicated by Mahan (PW-4) to the effect that a house had got fired. Mahan (PW-4) has deposed that on 13.3.08 after taking dinner, while he was roaming, he had seen fire on the first floor of the H.No. 714 Mangol Puri. The police communication to the control room in PCR form Ex.PW14/A mentions that Sheela w/o Rajesh had accidentally suffered burns when the stove on which she was cooking had tilted. Another police communication in the said form mentions that husband of Sheela was missing. The first information by Mahan (PW-4) in Ex.PW14/A was recorded at 7/9 minutes past midnight. PCR form Ex.PW14/B records that a man (husband) has burnt his wife. Ex.PW14/C recorded still earlier at 5/6 minutes passed midnight records that a lady has put herself on fire. Interestingly Ex.PW14/D recorded at 13/14 minutes passed midnight states that a lady was badly burnt. We have referred the four PCR forms to show and establish that even at that stage somewhat conflicting communications were sent by the informants to the PCR. These are reflective of the fact that different versions were communicated. Possibly, the information was communicated at the first instance, without ascertaining true facts. Ex.PW14/A is in

seriatim with the initial version/ dying declaration of Sheela but a subsequent noting does record that Sheela's husband Rajesh had fled. Ex.PW14/B on the other hand in assertive terms implicates and states that a wife had been burnt and set ablaze by her husband.

18. At this stage, it would be relevant to refer and rely upon the evidence and material found at the spot as deposed to by the police officers. Constable Dalbir Singh (PW29) of Mobile Crime Team, North-West District on the directions of the Investigating Officer and SI Baljeet Singh had taken photographs marked Ex.PW29/A-1 to A-8, negatives of which were proved as Ex.PW29/B-1 to B-8. The photographs would show presence of a gas stove and a small gas cylinder. The gas stove and cylinder were kept at a height on a concrete platform. A kerosene stove can be seen lying on the floor. Two bottles, possibly of liquor can be also seen. The kerosene stove does not have any burn marks and there was no indication or evidence that it had caught fire. Small cap used for closing kerosene tank on the stove can be seen lying. The cap, it is obvious, had been removed from the stove. The cap has been separately photographed. The cap also does not have any burn mark. The floor itself was wet but there were no burn stains or marks which could indicate or remotely suggest that the kerosene stove had caught fire, accidentally or due to negligence. The photographs would negate and reflect that it is not a case where a stove was the cause of fire resulting in the burn injuries on Sheela. The said photographs were taken on 13.3.2008 at about 2 A.M., i.e. before the dying declaration Ex.PW11/B was recorded at about 2:50 A.M. and the FIR in question was registered.

19. SI Vishesh Kumar (PW30) had visited the room in question immediately after the occurrence. He had collected the MLC (Ex.PW22/A) and had collected the dying declaration marked Ex.PW11/A from the Sub Divisional Magistrate. At the place of occurrence, he had lifted one stove, one lady's suit in burnt condition, one match-box, some burnt matchsticks and a towel in burnt condition. The said articles were seized and taken into possession vide seizure memo Ex.PW30/C. Subsequently, he received the second dying declaration marked Ex.PW11/B. This dying declaration was recorded after he came to know that the deceased wanted to change her statement. Statement of Inspector Pawan Singh Rana (PW32) is similar.

20. FSL report marked Ex.PW31/A records that the blue colour stove marked as "Goldy" was examined and found to be containing approximately 300 ml. blue colour liquid, which on analysis was found to be kerosene oil. Residues of the petroleum hydrocarbons of kerosene were detected on the pink colour burnt and half burnt top, other clothes, match box and on the half burnt match sticks. Presence of the kerosene oil on the match box and half burnt match sticks shows that the person who had used the match box was also possibly responsible for pouring or using kerosene oil. Presence of kerosene oil in the stove again contradicts and negates the possibility of a stove burst.

21. We would at the cost of repetition, recapitulate and further re-affirm some of our conclusions and findings endorsed earlier. The conduct of the appellant in running away from the spot, though Geeta

(PW1), Suresh (PW2) and Surender (PW5) had asked him to stop as recorded above is relevant and is of importance. It is an indication that the appellant felt apprehensive and scared, though the police had not come to the spot, neither any information at that time had been communicated to the police. The anxiety of the appellant to run away, rather than to save and nurse his wife who had suffered the burn injuries reflect and are telling and compelling. Alibi of the appellant that he was not present at the spot having gone to his native village a day prior, is an afterthought and belied by the witnesses Geeta (PW1), Suresh (PW2), Surrender (PW5) and Jyoti (PW9). The said assertion of the appellant is false and concocted. The appellant was certainly present in the room. The aforesaid facts reflect that the deceased Sheela had initially hesitated in informing and telling an outsider like Sukhbir Singh (PW11), SDM that her husband was responsible for the burns caused. Assumptively, she felt that she would recover and take care and bring up her child. She was also expecting another child. However, when the realisation of seriousness of the burn injuries and that she and her foetus might not survive dawned on her, Sheela gathered courage to speak the truth. Palliative presence of her family members may have given her strength to narrate the actual happening, though this meant that her husband would be arrested and even jailed. Presence of her relatives in the present case cannot be treated as a negative fact, justifying rejection of the dying declaration Ex.PW11/B. Presence of the family members ensured that the truth was spoken, and did not bury and die unrecorded with the deceased. Sheela being weak and fearful of “would be” adverse consequences had not in the beginning implicated her husband.

22. The aforesaid inference drawn by us is predicated on the facts of the present case. We are aware and conscious that there are judicial decisions and cases again based on factual matrix, where the dying declaration has been disbelieved for tutoring, instigating or prompting by relatives or third persons. The person making the dying declaration should be in a fit mental condition, the version and statement made should be voluntary and free of concoction and falsehood. Courts have to be cautious and must revert to and examine such possibilities, for these decisions reflect that tutoring and false assertions are sometimes made at the behest and at the instance of others for vested and personal reasons. The accused suffer a disadvantage for they cannot cross-examine the assertions made in the dying declaration. It is the onerous task and duty of the courts in criminal trials to decipher and reach the truth ensuring that no innocent is punished and the guilty do not escape. It would be appropriate and a fortiori to reproduce the following two texts from Sarkar on Evidence 16th Edition at pages 764 and 765:

“Though these declarations, when deliberately made under a solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, it should always be recollected that the accused has not the power of cross-examination, - a power quite as essential to the eliciting of the truth as the obligation of an oath can be; - and that where a witness has not a deep sense of accountability to his maker, feeling of anger or revenge, or, in the case of mutual conflict, in natural desire of screening his own misconduct, may affect the accuracy of his statements and give a false colouring to the whole transaction. Moreover, the particulars of the violence to which the deceased has spoken are likely to have occurred under

circumstances of confusion and surprise, calculated to prevent their being accurately observed, and leading both mistakes as to the identity of persons, and the omission of facts essentially important to the completeness and truth of the narrative” [Tay s 722]. It is absolutely necessary for the protection of society that dying declaration should be received, for otherwise a premium would be held out for the comission of crime and it must sometimes occur that the only testimony, often the only direct testimony against an accused, is to be found in the dying declaration. But at the same time, we must receive this evidence with a certain degree of caution..... The effects of the wound itself may dim his memory, or weaken or confuse his intellectual powers. The very suddenness of the attack may have rendered him mistaken in his identification of the assailant; the darkness, the disguise, may tend to the same result; although where the mental powers are not affected by the wound or its consequences, it may be very true that the circumstances of the attack, however, sudden, have made an indelible impression on the suffered; and a just providence has, perhaps, determined that this should be so, as one of the most mysterious instruments for the discovery of the crime The weight to be attached must vary with the circumstances of each particular case. The deceased may have stated his inferences from facts, concerning which he may have drawn a wrong conclusion, or he may have omitted important particulars, from not having his attention called to him..... It cannot also be concealed that animosity and resentment are not likely to be felt in such a situation. The passion of anger, once excited, may not have been entirely extinguished, even when all hope of life is lost [Nort pp 176-177]”

While it may not be possible to ascribe to subsequent observations in Sarkar on Evidence, these texts, which have to be adopted and modified for the legal requirements of section 32 of the Indian Evidence Act are somewhat different, and human behavioral

responses have to be judged in the Indian context and background, do bring out the questions which arise for consideration. Dying declaration have been recognized and accepted as admissible and if found reliable of great value. Dying declaration can form basis for conviction. (See observations of the Supreme Court in *Paniben v/s State of Gujrat*, AIR 1992 SC 1817). It is for this reason we quoted the two dying declarations and then referred to compelling and emphatic facts, material and ocular statements for us to come to a firm and inerrant decision that the second dying declaration marked Ex.PW-11/B, should be accepted.

23. The factum that the deceased and the appellant did not enjoy a happy and joyous married life has been spoken to by Suresh (PW2), who has referred to one or two instances. Jai Bhagwan (PW3) is more categorical. He has deposed that the behaviour of the appellant towards his sister Sheela was not good and on several occasions he had made demand for a motorcycle. She was harassed and the appellant in anger had once set his room on fire. The appellant had even kicked Sheela on her stomach. PW3 professed that the appellant would consume liquor and was not working. In 2007, Sheela had taken up employment in a dispensary in Delhi and was the earning member of the family. The couple had shifted to the present residence and started residing in the room after the deceased Sheela had secured employment.

24. Roshni Devi (PW7), mother of the deceased has similarly testified that the appellant Rajesh would demand a motorcycle. He would consume liquor and would even beat Sheela for bringing

insufficient dowry. After Sheela got a job in the Delhi Government dispensary, the married couple had started living on rent at Mangol Puri. Sushila (PW8), cousin of the deceased was also working as an auxiliary nurse and midwife in the same dispensary at Mangol Puri, where the deceased would work. She affirms that she being a cousin of the deceased had good relations. They were of the same age. The appellant Rajesh was not working. Rajesh was earlier warned in the presence of the elders to stop drinking, but this has not made any difference. PW7 professed that Rajesh had threatened that he would kill their minor daughter, if he was implicated and, therefore, Sheela initially had not stated true facts.

25. Satbir (PW10) has similarly deposed that the appellant was addicted to liquor and Sheela, his niece, would be harassed on account of dowry. At the time of marriage, the appellant used to work in a private factory in Haryana. Sheela got a job in Delhi and thereafter the couple had shifted to Delhi. Rajesh had demanded a motorcycle. Rajesh had also threatened that if true facts are disclosed, he would kill their minor daughter and, therefore, Sheela had not revealed and narrated the true facts before the SDM.

26. We are conscious and accept that certain assertions made by Jai Bhagwan (PW-3), Roshni Devi (PW-7), Sushila (PW-8) and Satbir (PW-10) are incorrect exaggerations. We are also inclined to disbelieve that Sheela was threatened that her minor child aged about two and a half years would be killed, if she had named and blamed Rajesh as the perpetrator, though it is possible that the appellant, Rajesh might have in anger shouted that he could harm her also, when

in rage and fury, Rajesh had poured kerosene oil and set Sheela ablaze. The reason is that appellant, Rajesh after committing the said act, hardly had any time and chance to interact or converse with Sheela, for Sheela after catching fire had cried and had run down stairs. Appellant, Rajesh had followed her, ran away and escaped.

27. In view of the aforesaid circumstances, we have no hesitation in affirming the finding of the trial court that appellant, Rajesh is guilty under Section 302 IPC for pouring kerosene oil, causing burn injuries on the deceased, Sheela. We also do not see any reason to interfere or modify the order on sentence. The appeal being devoid of merit is dismissed.

-sd-

(SANJIV KHANNA)
JUDGE

-sd-

(R.K. GAUBA)
JUDGE

NOVEMBER 23, 2015
NA