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

% *Judgment reserved on: 28th April, 2016*
Judgment delivered on: 29th April, 2016

+ **CRL.A. 130/2016**

STATE (GOVT OF NCT OF DELHI) Appellant

Through : Ms. Aashaa Tiwari, APP for State.
Mr. Rajiv Mohan, Advocate for the
complainant in Crl. A. No. 328/2015.
Versus

SURESH SINGH CHAUHAN & ORS. Respondents

Through: Mr. Arvind Singh and Mr. Jitendra Mishra,
Advocates.

+ **CRL.A. 131/2016**

STATE (GOVT OF NCT OF DELHI) Appellant

Through: Ms. Aashaa Tiwari, APP for State.
Mr. Rajiv Mohan, Advocate for the
complainant in Crl. A. No. 328/2015.
Versus

HARI SINGH CHAUHAN Respondent

Through: Mr. Arvind Singh and Mr. Jitendra Mishra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Both these appeals arising out of a common judgment and order dated 07.11.2014 were taken up and heard together and shall stand disposed of by this common judgment. Criminal Appeal No. 130/2016 has been filed by the State against the impugned judgment by which the mother-in-law and husband of the deceased have been acquitted of the

charges under Sections 302/34 of the Indian Penal Code and Criminal Appeal No. 131/2016 has been filed by the State against the impugned judgment by which the father-in-law of the deceased has been acquitted of the charges under Section 498A of the Indian Penal Code.

2. Mother of the deceased had also preferred a Criminal Appeal No. 328/2015 which was disposed of by this Court on 03.02.2016 with the liberty to urge all grounds in the present State Appeals.
3. The present appeals have been filed by the State under Section 378 (3) of the Code of Criminal Procedure against the judgment dated 07.11.2014 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 49/2011 by which the respondents have been acquitted of all the charges against them.
4. The brief facts of the case are as under:

“1...At about 12:45 am (night) in the intervening night of 29th/30th August, 2011, an information was received at Police Station Sangam Vihar vide DD no. 66-A to the effect that “Bhawna w/o Suresh Singh aged 25 years, r/o D-485/5, Sangam Vihar is admitted by Hari Singh (father-in-law) in 30 % burnt condition at safdarjung hospital”. ASI Rajender Singh alongwith Ct. Virpal reached at Safdarjung hospital and collected MLC no. 79884 of injured Bhawna having alleged history of “thermal burn when her clothes caught fire while cooking on kerosene stove”. Nature of injury was opined by the attending doctor as “dangerous caused by fire”. IO/ASI Rajender Singh intimated Kuldeep Singh (PW-1) SDM, Kalkaji regarding admission of Bhawna in a burnt condition at Safdarjung hospital, who reached at the hospital on 30th August, 2011 and recorded her statement, wherein she stated that she got married with Suresh on 06th May, 2006 at Faridabad. After six months of her marriage, she came to know that her husband was

addicted to liquor and her husband had never gone for work and used to quarrel with her after drinking liquor. He was of suspicious nature and always doubted her character. He also used to suspect her relations with his brother-in-law (jija). She stated that there used to be quarrel between them on petty issues but was never subjected to cruelty relating to dowry. Due to his drinking habits, unemployment and suspicious nature of her husband, she requested him to allow her to do some stitching or beauty parlour course, as she did study upto 8th class and was a housewife but he did not allow her to learn anything and to go outside the house. She stated that on previous night, at 08:00/09:00pm, her husband was heavily drunk and “his mother used to harass her on the ground that her husband (Suresh) used to sit idle and never used to work”. On hearing this, her husband became annoyed with her and uttered that “kya main tere baap ki khata hoon”. Her mother-in-law came downstairs from first floor and her husband strangulated her neck and gave kick blow on her stomach, due to which she fell down. Her mother-in-law came with a bottle of kerosene oil and poured kerosene oil from backside. Bhawna further alleged that her husband threw a burning match stick on her and went outside from the house . Subsequently, when her kurti and salwar received fire through chunni, then her mother-in-law poured water to extinguish fire and it was told to her that she received burn injuries while making food on stove. Thereafter, her in-laws took her to a private dispensary, which was found closed and then she was shifted to Safdarjung hospital. She further stated that whenever there was a quarrel, her father-in-law used to increase volume of television so that neighbours would not know that they were abusing her”.

5. To bring home the guilt against the accused persons, the prosecution examined 21 witnesses in all. Statements of the accused persons were

recorded under Section 313 of the Code of Criminal Procedure wherein they denied all the incriminating facts and claimed to be tried. The accused Suresh Singh took a plea that the complaint was lodged by his father-in-law in anger after the unfortunate incident occurred with his daughter. It was further stated that at the time of incident, he was not present in his house. The accused Shanti Devi and Hari Singh stated that they were present at the first floor whereas Bhawna (deceased) was alone on the ground floor and she was cooking food using a kerosene oil stove, where she used to reside with their son Suresh Singh. It was further stated that they heard the alarm 'bachao' and rushed to the ground floor and saw her burning. They extinguished the fire and changed her burnt clothes and took her to the hospital. They further stated that Suresh Singh was not at home and the in-laws of Suresh had deposed falsely against them and they had never demanded any dowry or money from them. Statement of one more witness i.e. Hayat Singh was recorded as CW1 who proved the death summary of the deceased.

6. Ms. Aashaa Tiwari, learned counsel appearing on behalf of the State vehemently argued that the impugned judgment is contrary to the settled position of law and thus not sustainable. The trial court disregarded and failed to take into account the relevant material on record and has based its findings on mere conjectures and surmises. Further, the trial court gravely erred in disbelieving the dying declaration duly recorded by the Sub Divisional Magistrate without any cogent and justifiable reasons and the judgment suffers from serious infirmities and deserves to be set aside.

7. The counsel for the State urged that the deceased suffered an unnatural death within seven years of her marriage and thus attracts Section 113B of the Indian Evidence Act. The counsel further clarified that if an offence is committed inside a house, the burden would be on the inmates to give a cogent explanation as to how the crime was committed and that onus would shift on the accused persons.
8. Counsel for the State further urged that the trial court gave undue advantage to the fact that the deceased was not in a fit state of mind at the time of making the dying declaration. Further, the court erred in disbelieving the testimony of PW14 ASI Rajender Singh who fairly conducted investigation of the case in the best possible way.
9. The counsel for the State further contended that the evidence of the PW1 Sh. Kuldeep Singh (Sub Divisional Magistrate who recorded the dying declaration), PW3 Sh. Hari Singh Jakhad (father of the deceased), PW12 Smt. Malti Devi (mother of the deceased) and PW14 ASI Rajender Singh (Initial Investigating Officer) is concise, cogent and satisfactory for holding the respondents guilty of the charged offences.
10. The counsel for the State argued that the trial court has overlooked the FSL report which clearly pointed towards the incriminating materials used in the commission of this untoward incident.
11. On the basis of aforesaid submissions, it has been strongly urged by the counsel for the State that the impugned judgment be set aside as it has caused a grave miscarriage of justice.
12. Mr. Rajiv Mohan, learned counsel appearing on behalf of the complainant Smt. Malti Devi (mother of the deceased) adopted the

arguments raised by the counsel for the State and further contends that the trial court has failed to appreciate the forensic evidence adduced by the prosecution on record which categorically suggests the presence of kerosene oil on the clothes of the deceased as well as bottle seized from the spot.

13. Learned counsel further contends that the trial court has not considered the testimonies of PW14 ASI Rajender Singh (initial investigating officer) and PW17 SI Tika Ram (investigating officer) in right perspective wherein both the witnesses establish the presence of kerosene oil on the spot.
14. Learned counsel further contended that the trial court has failed to take into consideration the testimony of PW17 who categorically stated that the stove from which the deceased caught fire appeared to be not used for a long time.
15. Per contra, Mr. Arvind Singh learned counsel appearing on behalf of all the respondents has canvassed the correctness of the view taken by the trial court below in the judgment impugned before us. The counsel submitted that the approach of the trial court led by the prosecution cannot be found faulty.
16. The counsel for the respondents relied on the MLC Ex.18/A and the testimony of Dr. Shishir Kumar PW19 wherein he deposed that the alleged history was given by Bhawna herself and no police official had met him on that day or thereafter.
17. The counsel for the respondents contended that when the dying declaration was recorded by the SDM on 30.08.2011, there was no certification of the doctor that she was in a fit state of mind to give the

dying declaration even though she had received 30% burns and that it is highly improbable that the deceased was unfit to give any statement at around 2.30 AM and was declared fit at about 10.00 in the morning; hence it has no probative value.

18. The learned counsel thus argues that the conduct of the accused persons immediately after the occurrence gives credence to the version given by them under Section 313 of the Code of Criminal Procedure. Learned counsel further contended that interference by this Court in the impugned judgment is not warranted as the findings of acquittal recorded by learned trial court are neither perverse nor against the evidence.
19. We have heard learned counsel for the parties and also examined the judgment in detail rendered by the trial court.
20. In order to appreciate the rival contentions of the learned Counsel for the parties, we have independently scrutinized the evidence led by the prosecution and examined the judgment of the trial court. At the outset, it would be relevant to mention para 25 and 27 of the impugned judgment wherein it was held as under:

“25. Now as per prosecution version, in her statement to the SDM, Bhawna (deceased) stated that her mother-in-laws and husband had told her to make a statement that her cloths caught fire while she was cooking food on the stove. Smt. Malti Devi (PW-12) categorically deposed that she had met her daughter Bhawna before SDM had recorded her statement. In her examination in chief, PW-12 deposed that she had gone inside the ICU Ward at about 09:30am and she had inquired from her daughter as to what had happened and in the cross examination, she deposed that SDM had come later on who might have

come after one hour of talk with her daughter. Similarly, Hari Singh Jakhad (PW-3) father of deceased deposed that he had gone inside the ICU to see his daughter. This testimony of parents of deceased shows that they had met the deceased before SDM had recorded her statement and therefore had the opportunity to tutor and prompt the deceased and this fact also makes it further doubtful that the alleged dying declaration was true and voluntarily.

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27. To sum up, prosecution has failed to establish beyond doubt that Bhawna (deceased) was in a fit state of mind at the time when her statement was recorded by the SDM. Furthermore, in view of the apparent discrepancies in the two statements of Bhawna (deceased), it would be unsafe to convict the accused persons. Thus, it cannot be concluded that Bhawna (deceased) was set on fire on the intervening night of 29th August, 2011 by the accused persons or was subjected to cruelty or harassment by accused persons in connection with demand of dowry at any point of time beyond reasonable doubt...”

21. At the outset, before dealing with the submissions made by the counsel for the parties, it would be relevant to discuss the material testimonies on which the case of prosecution is based upon.
22. PW3 Hari Singh Jakhad (father of the deceased) in his testimony deposed as under:

“In the morning at about 10.00 am SDM came there. He recorded statement of Bhawna. SDM told me that Bhawna appeared to be in a state of fear and we were asked to make her understand. SDM did not record my statement on that day.”

PW3 in his cross-examination stated as under:

“I was allowed to enter in the hospital only after arrival of SDM. My wife also went inside the hospital after the arrival of SDM. SDM had not recorded my statement or of my wife statement. We all met him at around 10.00am and he informed us that Bhawna was hopeless.”

23. PW12 Smt. Malti Devi (mother of the deceased) in her testimony deposed as under:

“On 30.08.2011, at 05.00 am, we reached at Safdarjung Hospital and met with our daughter Bhawna. My daughter was not in a condition to speak and she was in a unconscious state. At about 09.30 am, I again went inside the ICU Ward, then I saw tear in the eyes of my daughter. Although, I was allowed to remain in the ICU only for sometime. On asking from my daughter as to what had happened, my daughter told me that her mother-in-law had poured kerosene oil from a bottle and her husband Suresh threw a burning matchstick on her body and after setting her ablaze, he went out of the room.”

PW12 Smt. Malti Devi in her cross-examination stated as under:

“Bhawna had not told me that Suresh Singh had pressed her neck and because of hitting on stomach, she fell at some distance. Bhawna had not told me that her mother in law had brought the kerosene oil from outside. Bhawna had not told me that her mother in law had sprinkled kerosene oil from the back side. It is wrong to suggest that I have stated that kerosene oil was sprinkled from front side as Bhawna was found burnt from the front side.”

However in later part of the cross examination, she stated as follows:

“Bhawana had told me that kerosene oil was sprinkled from her front side.”

24. PW12 further in her evidence stated as under:

“I cannot recollect the exact time when SDM had reached in the hospital. SDM had come later on. He might have come after one hour of my talk with my daughter. I had no talk with SDM. Voln. SDM had met my daughter and I only heard in saying that my daughter was hopeless. I cannot tell for how much time, SDM stayed in the hospital. My husband was also present in the hospital. I cannot say if my husband had a conversation with SDM.”

25. Another witness adduced by the prosecution is the testimony of PW21 Sh. Hari Chand (neighbor of the deceased) who deposed as under:

“CQ: Whether you or any of the neighbour did not feel it necessary to take the injured to the hospital or to help her in your TSR?”

Ans. No. Hari Singh or his wife had not requested myself or any other person to help them, therefore, we had not taken injured to the hospital or offered help.

PW21 in his cross examination deposed as under:

“TSRs are available at Ratia Marg which is about half km from our house. A clinic is also situated on the Ratia Marg. I had heard that Bhawna had expired after about four five days in the hospital but I had not visited the hospital or the house of Hari Singh. I am not on visiting terms with the family of Hari Singh except exchange of greetings.”

Medical Evidence:

26. PW19 Dr. Shishir Kumar prepared the MLC Ex.PW18/A and deposed as under:

“On that day I medically examined at 10 pm Bhawna W/o Suresh Singh, brought by her father in law namely Hari

Singh with the alleged history of thermal burn when her cloth caught fire while cooking over kerosene stove.”

27. It is important to notice that PW19 in his cross-examination stated as under:

“The alleged history of burn was given by Bhawna herself. No police man met me on that day or thereafter.”

28. After reading the testimonies of the above witnesses, we find several lacunas that makes the case of the prosecution not trustworthy as PW21 stated that he was not on visiting terms with the family of Hari Singh except exchange of greetings and the accused persons did not requested him to help them. Furthermore, it is in evidence that the deceased was brought to the hospital by the father-in-law which is suggestive of this fact that PW21 had made every best possible effort to save the life of the deceased. In the above backdrop, we conclude that the testimony of PW21 is not sufficient to convict the accused persons for the offences they have been charged with. So far as the medical evidence is concerned, the doctor who prepared MLC Ex.18/A in his testimony categorically deposed that deceased herself told him that her clothes caught fire while cooking over kerosene stove. The MLC of the deceased also suggests two things *firstly* it was her father-in-law Hari Singh who brought the deceased to the hospital and *secondly* the time on the MLC shows that the deceased was admitted to the hospital at 10.00 pm however, the alleged incident is of about 9.00 pm. Had it been the case, if the intention of the accused persons was to kill her then they would not admit her to the hospital.

29. As far as the argument raised by the learned counsel for the complainant is concerned, it is relevant to take into consideration the testimonies of PW14 ASI Rajender Singh and PW17 SI Tika Ram, as well as FSL report Ex.PW16/A which are necessary to decide the present State appeals.

30. PW14 ASI Rajender Singh (initial investigating officer) in his testimony deposed as under:

“SI Tika Ram reached at the spot. IO/SI Tika Ram had inspected the spot at my instance. The burnt clothes of Bhawana (deceased) from which the smell of kersosene was coming and one stove was sealed in separated three pullandas with the seal of TR.

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At this MHC (M) produced one parcel No. 1 sealed with the seal of FSL.”

31. PW14 in his cross-examination stated as under:

“Soon thereafter, SDM had recorded statement of Bhawna (sic). SDM had handed over to me the statement of Bhawna at 11.00 AM. I was standing 5 feet inside the ward. I was present inside the ward when SDM was recording the statement of Bhawna.

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I had not seen burnt chunni, portion of the cigarette or match stick at the place of occurrence.”

32. PW17 SI Tika Ram in his testimony deposed as under:

"The stove was appeared to be in a condition as if, it was not being used since long time. I sealed all the said articles in separate cloth pulinda with the seal of TR and seized the same vide memo Ex. PW14/D bearing my signature at point B."

33. PW17 in his cross examination stated

“It could not be ascertain as to from what distance behind Bhawna, the kerosene oil was poured on her by her mother in law. Burnt match stick was not recovered from the spot by me.

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I did not seized the clothes of Bhawna, which was wearing when taken to the Safdarjung Hospital and was replaced by the Hospital clothings.”

34. FSL report Ex. PW16/A reads as under:

“DESCRIPTION OF ARTICLES CONTAINED IN THE PARCEL (S) /EXHIBIT(S)

Parcel-‘1’ : One sealed cloth parcel sealed with the seals of “TR”. It was found to contain exhibits ‘1A’ & ‘1B’.

Exhibit-‘1’ : One orange coloured salwar damp and semi-burnt with few dirty stains on it and One green coloured cloth piece with range, golden & yellow embroidery designs charred & burnt with dirty deposits on it stated to be “Kerosene oil and water soaked deceased cloths.

Parcel-‘2’ : One sealed cloth parcel sealed with the seal of “TR”. It was found to contain exhibit ‘2’.

Exhibit-‘2’ : One medium size white plastic bottle having dirty deposits sticking inside it stated to be “half ltr. Plastic bottle.

Parcel-‘3’ : One sealed cloth parcel sealed with the seals of “TR”. It was found to contain exhibits ‘3’.

Exhibit-‘3’ : One metallic stove with burner and oil tank having few dirty deposits stated to be “kerosene operated stove made iron”.

RESULTS OF EXAMINATION

On GC examination, exhibits ‘1, 2 & 3 were found to contain residue of kerosene.”

35. To analyse the argument of learned counsel for the complainant, we again have to go through the dying declaration made by the deceased. The deceased in her dying declaration recorded by the SDM stated that *her mother-in-law had brought kerosene oil from outside and sprinkled the same on her chunni from behind and her husband ignited a cigarette and threw burning match stick on her, went out of the house as a result of which she caught fire.* The deceased in her dying declaration categorically stated that *her mother-in-law had brought kerosene oil from outside and sprinkled the same on her chunni from behind.* PW 12 Malti Devi (mother of the deceased) also stated the same fact that her daughter her that *kerosene oil was sprinkled from her back side and Suresh was sitting on a sofa, who lighted a cigarette with a match stick.* Both the deceased and her mother stated that the kerosene oil was sprinkled from the backside. In this context it is necessary to peruse the postmortem report of the deceased Bhawna Ex.PW 9/A wherein PW 9, Dr. Chetan Kumar has opined that *Infected epidermal-dermal deep burn injuries present over the lower half of face, neck, front of chest and abdomen, in patches over both upper limbs, upper part of front of thighs, spared right hand and both pains.* Bare reading of the post mortem would suggest that the burns suffered by the deceased were on the front portion of her body. Presence of burn injuries on the front portion creates a doubt in the statements of the deceased as well as the mother of the deceased that the kerosene oil was sprinkled from her backside. PW14 ASI Rajender Singh (initial investigating officer) in his examination in chief deposed that *the burnt clothes of Bhawana (deceased) from*

which the smell of kerosene was coming and one stove was sealed in separated three pullandas with the seal of TR. But in his cross examination he admitted that I had not seen burnt chunni, portion of the cigarette or match stick at the place of occurrence. PW17 SI Tika Ram in his examination in chief deposed that the stove was appeared to be in a condition as if, it was not being used since long time. But in his cross examination he admitted that burnt match stick was not recovered from the spot and also that he did not seized the clothes of Bhawna, which the deceased was wearing at the time when she was taken to the hospital. From the above statements of the Investigating officers they have admitted to the fact that there was no burnt chunni and match stick was found at the spot. It is further established that no efforts were made by them to ascertain the fact that the burnt injury suffered by the deceased was due to kerosene. Keeping in view the above contradictions in the testimonies of the aforestated witnesses it would be highly unsafe to convict the respondents solely on their testimonies and we are of the view that the dying declaration of the deceased must be looked into.

36. Learned trial court while passing the impugned judgment has observed that the present case rests mainly on the dying declaration made by the deceased Bhawna. The dying declaration was recorded before PW1 (the then Sub Divisional Magistrate who recorded the statement) wherein she alleged that her husband strangled her neck and gave kick blow on her stomach, due to which she fell down. It was further stated by the deceased that the accused Shanti Devi came downstairs from first floor with a bottle of kerosene oil and poured kerosene oil

on her and accused Suresh Singh threw an ignited matchstick upon her and went outside from the house, thereafter when her kurti and salwar caught fire through chunni, then her mother-in-law poured water to douse the fire and then her father-in-law and mother-in-law took her to a private dispensary which was found closed and then she was taken to Safdarjung hospital. The deceased also stated that the accused person forced her to say that she received injuries while making food on stove.

37. The law relating to dying declaration is well settled. At this juncture, it is relevant to take note of Section 32 of the Evidence Act, which deals with the cases in which the statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 of the Evidence Act. The eighth clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: *firstly*, necessity for the victim being generally the only

principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and *secondly*, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice.

38. This is a case where the only evidence against the accused persons is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.
39. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of

deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. The Hon'ble Supreme Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in ***Smt. Paniben v. State of Gujarat*** reported in ***1992 Cri LJ 2919***:

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

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

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. 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 basis of conviction, even if there is no corroboration.

40. The courts have always favoured a dying declaration recorded by a Magistrate, preferably in question and answer form after obtaining fitness certificate from the doctor. These safeguards are insisted because of an inherent flaw of admitting hearsay evidence without the maker being subjected to cross-examination to test his veracity. By virtue of Section 32 of the Evidence Act, a statement made by any person is admissible when it relates to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in case in which the cause of that person's death comes into question. A dying declaration is admitted in evidence as a rule of necessity. It is believed that a dying man does not lie while leaving this world but then all safeguards have to be complied with to ensure that the dying declaration is voluntary, truthful and has been made without tutoring and in a fit state of mind.
41. It has been laid down in a catena of judgments that the cardinal principle of criminal jurisprudence is that the prosecution is supposed to prove its case on beyond reasonable doubt by leading reliable, cogent and convincing evidence. Similarly, it is established principle that prosecution is supposed to stand on its own legs and cannot derive benefits whatsoever from the weakness, if any, in the defence of accused.
42. It is an established fact that the parents of the deceased met her before her statement was recorded by the Sub Divisional Magistrate and this fact creates a doubt that the alleged dying declaration made by the deceased is free from any form of tutoring. Applying the aforesaid principles of law to the facts of the present case, we are of the

considered view that the guilt of the accused persons has not been proved beyond reasonable doubt and we find the whole case of the prosecution very shaky and doubtful because of various infirmities and defects.

43. While deciding the present case the court must further take into account the presumption of innocence of the accused persons and the acquittal by the trial court adds to the presumption of his innocence. In ***Ramanand Yadav v. Prabhunath Jha*** reported in **2004 Cri LP 640**, this Court observed:

"There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not."

44. In ***State of Goa v. Sanjay Thakran and Another*** reported in (2007) 3 SCC 755. Relevant para has been reproduced as under:-

*“14. By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in **Tota Singh and Anr. v. State of Punjab (1987) 2 SCC 529**, as under:*

6....The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.

*15. Further, this Court has observed in **Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225**:*

7....This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an

acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions....

45. In ***State of Maharashtra through CBI Vs. Ahmad Shah Khan @ Salim Durani and Anr.*** reported in **2013 (3) SCALE 272**, the Apex Court held that :

“47. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the

presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

46. In the light of the entire above discussion, we conclude that the learned trial court has given valid and substantial reasons for disbelieving the prosecution version of the case. We agree with the observations made by the learned trial court and are unable to be persuaded by the observations made by the learned counsel for the State to take a different view than the one taken by the learned trial court.
47. We are of the view that the learned trial court has given detailed reasons for disbelieving the prosecution case and we are not inclined to take a different view. We find no infirmity in the judgment of the learned trial court. The acquittal recorded by the trial court is based on reasons. Consequently, the appeals are dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

April 29, 2016 / gr//