

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.215 OF 2011

JUDGMENT: (Per Hon'ble Sri A. Shankar Narayana)

The present Criminal Appeal is directed against the judgment, dated 21st day of July, 2009, passed by the Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad, whereby Sessions Case No.297 of 2008 ended in conviction for the charge under Section 302 of the Indian Penal Code, 1860 (for short "IPC") against the appellant, who was sentenced to undergo imprisonment for life. No sentence of fine was imposed.

2. The prosecution story, in brief, is as under:

i) The deceased - Smt. Jaya Sree was married to the appellant about 1½ years prior to the date of incident. They lived together only for a brief period of ten days for the reason that the appellant used to suspect her character and threaten her. However, no grievance was expressed against her in-laws and, on the other hand, the deceased in her statement stated that they were of good behaviour and treated her as their daughter. She joined her parents' house and even applied for grant of decree of divorce by filing original petition before the Mahila Court, Nampally, Hyderabad. She was working in Housing

Development Finance Corporation (HDFC) Bank. Even, an eye-witness examined as PW.1 - G. Rajani is employed in the same bank.

ii) PW.1 is also a resident of the same locality, in which the deceased was residing with her parents. As usual on 19.11.2007 at about 8.15 p.m., on completion of their duty, when they got down RTC bus at Sreedevi Nursing Home Bus Stop, and while they were proceeding on foot to reach their home and reached Sreedevi Nursing Home, the appellant went from behind caught her tuft, pulled her hair backwards and poured acid on her head and face carrying it in the mug threatening that none would marry her in future and he intended to kill her. She received burns on her head, face and other parts of her person.

iii) She was immediately shifted to Sreedevi Nursing Home, and from there she was shifted to Gandhi Hospital, Secunderabad, where she was admitted for treatment. Her statement was recorded by PW.12, then working as Head Constable of Chilkalguda Police Station, and on the basis of said statement a case in Crime No.806 of 2007 under Section 307 IPC was initially registered against the appellant and investigated into by the Sub-Inspector of Police, Chilkalguda Police Station, Secunderabad (PW.13).

iv) During the course of investigation, PW.13 - Sub-Inspector of Police visited Gandhi Hospital, Secunderabad, examined the complainant - deceased and recorded her statement. He has also examined and recorded the statements of PWs.1 to 5 and one Sri L.

Ramu (LW.6), eye-witness. Later, he visited the scene of offence and in the presence of PW.6 and one Sri Y. Suryanarayana, drafted scene of offence observation - cum - seizure *panchanama*, and seized one black colour burnt hand bag containing small silver colour Tiffin box and burnt orange colour Chunni.

v) On a request made by the Duty Doctor, PW.7 - VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad recorded the statement of the complainant, Ex.P-4. The Investigating Officer apprehended the appellant at his residence, and in the presence of one Sri L. Narsing Rao and Sri R. Sangeeth, recorded the confessional statement of the appellant. In consequence thereof, PW.13, seized one white and green colour mug which was used in the commission of offence. At about 3.00 p.m. on 20.11.2007, the appellant was arrested and sent for judicial remand.

vi) The complainant, while undergoing treatment succumbed to burns on 14.12.2007. The Duty Medical Officer has sent death intimation letter to the Investigating Officer. Basing on the same, alteration memo was made by altering the Section from 307 IPC to 302 IPC.

vii) On completion of investigation, charge sheet was laid, opining that the appellant seems to be a sadist and brutally murdered his innocent wife by pouring acid on her face.

3. Record reveals that the learned X Additional Chief Metropolitan Magistrate, Secunderabad, assigned P.R.C. No.33 of 2008 on his file, and complied with the provisions of Section 207 of the Code of Criminal Procedure, 1973 (for brevity 'Code'), and committed the P.R.C. to the Metropolitan Session Division. The learned Metropolitan Session Judge, having assigned Sessions Case No.297 of 2008, made over the case to the Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad (for short 'Sessions Judge').

4. The learned Sessions Judge having heard the prosecution and the learned defence counsel, framed the charge under Section 302 IPC, and when explained the allegations and charge to the appellant, he pleaded not guilty.

5. In order to bring the guilt of the accused to his home, the prosecution examined as many as fifteen (15) witnesses and exhibited Exs.P-1 to P12, besides marking Material Objects 1 to 4.

i) Amongst the witnesses examined by the prosecution, PW.1 is an eye-witness, who was actually accompanying the deceased at the time and place of occurrence.

ii) PWs.2 and 3 are parents of the deceased, intended to speak about performing the marriage of the deceased with the appellant and their living together for ten days, convening elders mediation, and the

deceased thereafter, staying at their house, working in HDFC Bank and rushing to the place of occurrence on hearing cries of the deceased just immediately after taking place of the occurrence.

iii) PWs.4 and 5 cited as eye-witnesses are examined to prove that they too rushed to the place of occurrence just immediately after hearing the cries of the deceased and enquiring with the deceased as to the cause of sustaining burns on her face, hands and other parts of her person.

iv) PW.6 is one of the Panchayatdars for scene of occurrence observation and seizure mahazar through whom Ex.P1 - panchanama and Ex.P2- rough sketch of scene of occurrence were marked.

v) PW.7 is VII Additional Chief Metropolitan Magistrate, Nampally. He recorded the dying declaration of the deceased on 19.11.2007 on receipt of Ex.P3 - requisition to record dying declaration made by PW.12 and Ex.P4 - statement of the deceased recorded by him which turned out to be the dying declaration later.

vi) PW.8 is one of the panchayatdars for confessional and recovery statement said to have made by the appellant and seizure of mug which was used to carry acid alleged to have poured on the deceased by the appellant and in consequence of confessional statement made by the appellant, the mug was seized and marked as MO.4 and confessional-cum-seizure mahazar was marked as Ex.P5.

vii) PW.9 is the Medical Officer, who treated PW.1 and issued wound certificate - Ex.P6, noting down that the burns on right wrist, left arm and wrist found on PW.1, were looking like acid burns.

viii) PW.10 was the Deputy Tahsildar, Urban Land Ceiling, who held the inquest on the body of the deceased in the presence of Smt. Pasupuleti Ratna Kumari examined as PW.11 and Sri M. Vijaya Kumar, through whom (PW.11) Ex.P7 - inquest report was exhibited.

ix) PW.12 is the first Investigating Officer, who was working as Head Constable, Chilkalguda Police Station, who went to the Gandhi Hospital on receipt of requisition as to medico-legal case sent by PW.9 and visited the hospital and recorded the statement of the deceased at 11.45 p.m. on the same night (19.11.2007) marked as Ex.P8 in the presence of duty doctor which constitutes first dying declaration.

x) PW.13 is the second investigating officer working as Sub-Inspector of Police, who on receipt of the statement recorded by PW.12, registered the case in Crime No.806 of 2007 under Section 307 IPC and issued First Information Report and transmitted it to the Court.

xi) PW.14 is the Medical Officer working as Assistant Professor, Forensic Department, Gandhi Medical College, who held autopsy on the dead body of the deceased on 14.12.2007 between 1.00 p.m. and 1.30 p.m.

xii) PW.15 is the Inspector of police, who, on completion of investigation, laid charge sheet on 01.07.2008.

6. The learned Sessions Judge, upon completion of prosecution side, proceeded with the examination of the appellant under Section 313 (1) (b) of the Code on 16.03.2009. While expressing that he would enter upon defence, stated that he had never harassed his wife and the deceased herself laid a false case against him, and he is the only son to his father and he has got a married sister and he was not addicted to any vices and he has not committed any offence. However, he did not examine any witnesses on his behalf.

7. The learned Sessions Judge formulated the following three points for consideration:

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- 1) Whether the prosecution established that the accused poured acid on his wife Smt.Jaya Sree with an intention to kill her and if so she died with those burnt injuries?
- 2) Whether the prosecution proved the guilt of the accused for the charge under Section 302 IPC beyond all reasonable doubt?
- 3) To what result? ”

8. Having referred to the evidence let in by the prosecution, more particularly, the dying declarations and the evidence of Medical officer opining that the evidence of PW.1 corroborates the statements made by the deceased, held that the prosecution proved the guilt of the accused beyond all reasonable doubt, and thereby recorded conviction

under Section 235 (2) of the Code for the charge under Section 302 IPC and inflicted sentence of 'imprisonment for life'.

9. Questioning the sentence imposed, the accused preferred the present Criminal Appeal under Section 374 (2) of the Code.

10. It is clear from the record, the appellant - accused was granted bail by this Court in CrI.A.M.P. No.2140 of 2016 on 21.12.2016.

11. Heard Ms.Naseeb Afshan, learned counsel for the appellant - accused, and the learned Public Prosecutor for the State of Telangana.

12. The learned counsel for the appellant would submit that the evidence on record, both, oral and documentary, would make it clear that the attack on the deceased was from behind and, therefore, there was no chance for witnessing the assailant, and consequently, it cannot be said that the appellant was the person, who alleged to have poured acid on the deceased. In order to support the said stand, she would submit that the acid alleged to have brought in the mug was sulfuric acid as per the prosecution story, and it is highly inconceivable that sulfuric acid can be carried in a plastic mug as it is more corrosive acid, and that itself would expose the falsity in the case of the prosecution including seizure of the mug at the instance of the appellant in consequence of the confessional statement alleged to have made by him. In the same context, the learned counsel would

submit that as could be seen from the judgment under challenge that a divorce petition was filed by the appellant and the deceased requesting to grant decree of divorce on mutual consent and, therefore, it cannot be said that the appellant would pour acid on the deceased uttering that the deceased would not remarry. By taking a cue from the petition filed for divorce on mutual consent, the learned counsel would submit that when viewed in the presence of circumstance that the death of deceased did not take place immediately after the alleged incident and she had survived for about 24 days would completely rule out the intention to murder the deceased.

i) She would further submit that PW.1's evidence is not consistent and she cannot be construed as a truthful witness as she did not support the prosecution case and, in fact, she was treated as hostile witness and cross-examined by the learned Public Prosecutor, but nothing was brought out in her cross-examination in the direction of proving that the person, who alleged to have poured acid on the deceased, part of which had also sprinkled on some parts of her person causing burns, was the appellant.

ii) Touching the dying declarations, one recorded by the Head-constable soon after the deceased was admitted in Gandhi Hospital, and the latter recorded by the learned VII Additional Chief Metropolitan Magistrate, the learned counsel would submit that they are not consistent. It is according to the learned counsel that the dying declaration - Ex.P8 recorded by the Head Constable, PW.12 cannot be

accepted and acted upon as it does not bear the certification by the duty Medical Officer certifying that the deceased was conscious and able to make a statement. In the absence of such certification by the duty Medical Officer, the said dying declaration cannot be viewed as having been made by the deceased, more particularly, when the assertion of PW.2, the father of the deceased, to the effect that the deceased lost consciousness soon after the incident and regained consciousness at 10.00 a.m. on the next day of the incident is viewed. On the same lines, she urges to discard the dying declaration, Ex.P4 recorded by the learned Magistrate, PW.7. Thus, the learned defence counsel is emphatic that both the dying declarations are to be excluded from record for the aforesaid non-compliance of the mandatory requirements and the evidence of PW.2 belying that the deceased was conscious to make statements, and when both the dying declarations are excluded and the evidence of PW.1 is disbelieved, nothing remains on record to base the conviction. She, therefore, would submit that the learned Sessions Judge, somehow, overlooked these vital aspects and deviated in appreciation of the evidence on record in accordance with evidentiary rule and the findings recorded by the Sessions Judge are, therefore, not well-reasoned and lacks appreciation in the correct perspective.

iii) She would still further submit that PW.3 cannot be construed as a direct witness and even PW.4, who alleged to have arrived at the scene of occurrence on hearing the cries of the deceased

from their houses situated in that locality. According to her, none of them did have a chance to witness the occurrence, as even according to the prosecution case, they rushed to the scene of occurrence only on hearing the cries of the deceased. Even their evidence would not disclose that they did witness the incident, in the sense, when the assailant poured acid on the deceased.

iv) For all these reasons, the learned counsel would contend that the prosecution failed to prove the guilt of the accused for the charge alleged against him beyond all reasonable doubt.

These have been the principal submissions made by the learned counsel for the appellant.

13. The learned counsel for the appellant placed reliance in **Bhajrang Gupta v. State of Andhra Pradesh**¹ rendered by the Hon'ble Division Bench of this Court for the proposition that dying declarations recorded in accordance with procedure prescribed and if supported by any circumstantial evidence, they can certainly be taken into account and may constitute the basis for conviction. Referring to the said ruling, she insists that in the dying declaration made to the Head Constable, the deceased did not state that the appellant uttering that she should not remarry poured the acid. In the aforesaid ruling, the learned Division Bench found that the deceased, who made dying declarations, marked as Exs.P2 and P4, did not state that she had

¹. Crl.A. No.1657 of 2009, dated 07.03.2014

raised cries i.e., uttering 'Bhajrang Bhajrang', whereas PW.1, grandfather of the deceased therein asserted that the deceased cried "Bhajrang Bhajrang" and that accounted for inconsistency, and thereby opining that the evidence let in by the prosecution was with full of contradictions, omissions and improbabilities held that it was unsafe to convict the accused and has set aside the conviction recorded and sentence inflicted by the Sessions Judge.

14. Per contra, the learned Public Prosecutor for the State of Telangana, would submit that PW.1 partly turned hostile and assertions she made supporting the prosecution case cannot be excluded and even admissions she made when she was cross-examined by the learned Public Prosecutor having sought permission treated her as hostile witness cannot also be brushed aside viewing that the witness is untruthful.

i) The learned Public Prosecutor would submit that the evidence of PWs.2 to 4 cannot be excluded for the reason they arrived at the scene, just immediately on hearing the cries and the deceased did inform them that she sustained burns when the appellant poured acid and, therefore, when their evidence is found trustworthy and corroborates the evidence of PW.1 and dying declarations, there can be no reason to disbelieve their testimony.

ii) Concerning the dying declarations, one recorded by the Head-constable and the other by the learned Magistrate, the learned

Public Prosecutor would submit that both the statements are consistent and there is nothing to view them with suspicion.

iii) Touching absence of certification of the duty doctor in the dying declaration, Ex.P8, he would submit that mere absence of the certification by the duty doctor as to whether the patient was conscious and fit, it cannot be said that the statement had been brought into existence, more particularly, when Ex.P8 contains the endorsement made by the Head Constable (PW.12) as to the presence of the duty doctor and Ex.P4 not only would contain the certification by the learned Magistrate having satisfied with the answers given by the deceased when she was preliminarily examined to assess whether she was able to comprehend the questions put to her and conscious and fit in answering them, but also, would contain the certification by the doctor at the bottom of the statement and, therefore, it cannot be said that both the dying declarations are to be excluded merely because at the beginning of recording the dying declarations there was no certification by the doctor that the maker was conscious and in a fit condition to make a statement.

15. The aforesaid submissions on behalf of the defence and the prosecution, in our view, the following points arise for determination.

- i) Whether the prosecution could prove that the appellant was the person who poured acid on the deceased causing burns and consequent death of the deceased?
- ii) Whether the recoveries effected are proved;

- iii) Whether the conviction recorded and the sentence imposed can be sustained?
- iv) Whether the prosecution could prove the charge under Section 302 IPC beyond all reasonable doubt?

POINT Nos. (i) to (iii)

16. Keeping in view the aforesaid arguments, initially, we would incline to proceed with the submissions of the learned counsel for the appellant on the issue whether the testimony of PW.1 deserves acceptance or not. In the same context, the evidence of PWs.2 to 4 requires evaluation in assessing whether their evidence is relevant and if so, to what extent, in the sense, whether their testimony would constitute corroborative piece of evidence.

i) PW.1's evidence would show that on 19.11.2007 at 7.00 p.m., they i.e., herself and the deceased, left HDFC Bank, Lakdi-ka-pool by 8.15 p.m. and got down at Sreedevi Nursing Home Bus Stop near their residence from 86 Route Number Bus; when both of them were proceeding to reach their residence on foot, suddenly, one person came from behind, caught the hair of the deceased and poured acid on the head of the deceased; the deceased received acid burns on her face, chest, hands and legs; then they raised alarm. Her evidence also shows that since she was beside the deceased, the acid had also fallen on her left shoulder, on her wrist and she received severe wounds. PWs.2 and 3, parents of the deceased, came first and public gathered and the deceased was shifted to Sreedevi Hospital and from there, she

was shifted to Gandhi Hospital. She took out-patient treatment from Gandhi Hospital for the injuries received by her. Then she asserts that the deceased - Jaya Sree told her that the person poured acid on her was her husband Shiva Prasad. She also asserts that prior to the incident, the deceased - Jaya Sree used to tell her that she was staying in her parents' house as her husband was not good and she filed divorce petition.

a) At this stage, the learned Additional Public Prosecutor sought permission to treat her as hostile as she contradicted her version contained in the statement recorded under Section 161 of the Code. Having obtained permission, the Additional Public Prosecutor when confronted to her that portion in her statement recorded under Section 161 of the Code, to the effect that she stated before the police that the person who poured acid on the deceased uttered that she should not marry anybody in future, and that Shiva Prasad poured acid on her with an intention to kill the deceased, she admits having stated so in her statement to the police. To yet another question, she answered that she did not see the person, who poured acid on the deceased.

b) Now, whether she was really present at the time and place of occurrence is the question which initially requires an answer. The evidence of PWs.2 and 3 would prove the presence of PW.1 at the place and time of occurrence. Even PW.4, who is a stranger, but not inter-related, also would assert as to her presence. This apart, the very

fact that she sustained burns is proved through the medical evidence since PW.9, who examined and treated her, as an out-patient, would assert that on the request from Chilkalguda Police Station, she examined PW.1 on 20.11.2007 and found injuries like acid burns on right wrist, left arm and wrist, and she issued Ex.P6 opining that the injuries received were simple in nature. No doubt, the Medical Officer was cross-examined by the learned defence counsel and elicited that Ex.P6 was issued on 25.03.2008, and she did admit that she did not mention the age of the injuries in Ex.P6, but, certainly, that cannot be a ground to discredit the testimony of PW.9 as to her treating PW.1 and presence of burns on the person of PW.1. Therefore, the presence of PW.1 at the time and place of occurrence cannot be doubted.

c) Now, the question is, whether she did see the appellant when pouring the acid on the deceased. Exs.P4 and P8 even corroborate the presence of PW.1 at the place and time of occurrence. The submission of the learned counsel for the appellant that there would not have been any occasion for the deceased and PW.1 to witness the assailant when he held tuft of the deceased and poured acid from behind would not merit acceptance in the presence of clear and cogent ocular testimony of PW.1 corroborated through the testimony of PWs.2 to 4, and further corroborated by Exs.P4 and P8.

ii) Turning to how far the evidence of PWs.2 to 4 would assist the prosecution in proving that the appellant was the assailant, who

poured acid on the deceased, PW.2 asserts in his chief examination that on 19.11.2007 at about 8.00 p.m., while he was at his house situate near Ramalayam, Namalagundu, on hearing the commotion, he came out and found that his daughter was coming raising cries calling “dadi dadi” and he poured two buckets of water on her person, and when she was taken to the hospital, she told him that when herself and her friend PW.1 were coming home by getting down the bus and reached Sreedevi Nursing Home, the appellant came and poured acid on her body by pulling her hair. At a later stage of his chief examination, he states that the deceased told him at Gandhi Hospital that the appellant poured acid by uttering that she would not be useful to anybody in future and with an intention to kill her.

iii) PW.3, mother of the deceased, in her chief-examination, would assert that when her daughter was coming home along with PW.1, the appellant came from behind and caught the hair of her daughter, poured acid on her head, and on hearing cries of their daughter, they reached the place of occurrence and took her to Sreedevi Nursing Home and, thereafter, shifted her to Gandhi Hospital.

a) The learned counsel for the appellant would contend that the answer given by PW.2 to the effect that the deceased became unconscious after pouring water, and regained consciousness on the next day at 10.00 a.m., would give rise to an inference that there was no occasion for the deceased to tell the name of the accused as the

person who poured acid and, therefore, to disbelieve the testimony of both PWs.2 and 3. It is no doubt true, PW.2 did answer that the deceased became unconscious after pouring the water, but that answer would not gain precedence over the evidence of PWs.7 and 12, who recorded the statements of the deceased just immediately after receiving the requisitions from PW.9. It appears unwittingly such an answer was made by PW.2 in his cross-examination.

iv) Turning to the evidence of PW.5, he, of course, states in his chief examination itself that he heard cries of girls in a lane in front of his house, that those girls with acid injuries were going to the house of PW.3 by weeping; that his house and the house of parents of deceased are intervened by five houses and he learnt through their Basti people that the husband of the deceased poured acid. Thus, his evidence shows that he heard the cries, but did not rush to the place of occurrence.

v) PW.4 is Sri K. Satyanarayana, resident of the same locality. He asserts that on 19.11.2007, after he reached home from his duty at 7.30 p.m., and when he was at his house, he heard cries of the ladies in the lane, and so he came outside and noticed two girls, one girl's face, hands and other parts of her person were with burns due to acid and another girl also was found with acid injuries on her hand and the girl, who received severe burns, told him that her husband came and poured acid on her body and escaped, and she further disclosed her husband's name as Shiva Prasad. He denied the suggestion that he

did not go to the place of incident and only came to know the incident after two days. According to his evidence, his house is situated at a distance of 150 metres from the place of occurrence, and it is straight lane. He has also denied the suggestion that he did not state before the police that on his enquiry the deceased told him that her husband poured acid. But, the said suggestion does not account for any material contradiction, much less a contradiction, nor would account for any omission amounting to material contradiction to hold that the testimony of this witness is unreliable. On the other hand, that part of his testimony in relation to the deceased telling him that her husband came and poured acid on her body and escaped and disclosing her husband's name as Shiva Prasad when he enquired, would account for relevancy of fact forming part of same transaction, which is admissible under Section 6 of the Indian Evidence Act, 1871 (for brevity 'Act 1871') dealing with doctrine of *Res gestae*. Section 6 of the Act, 1871 would become relevant in the present context. It reads thus:

“6. Relevancy of facts forming part of same transaction

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

Illustration (a) is also apt to quote. It reads thus:

“(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so

shortly or after it as to form part of the transaction, is a relevant fact.”

Thus, the doctrine of *res gestae* stands as an exception to hear-say evidence.

vi) The test of the admissibility of evidence as part of the *res gestae*, is—

(a) whether the act, declaration, or exclamation, is so intimately interwoven or connected, or with the principal fact or event, which it characterizes, as to be regarded as a part of the transaction itself, and;

(b) also whether it clearly negatives any premeditation or purpose to manufacture testimony.

Incidents that are thus immediately and unconsciously associated with an act, whether such incidents are doings or declarations, become in this way evidence of the character of the act.

vii) Touching conditions for admissibility of *res gestae*, where the transaction consists of different acts, in order that the chain of such acts may constitute same transaction, they must be connected together by- (a) proximity of time, (b) proximity or unity of place, (c) continuity of action, and (d) community purpose or design.

viii) In the present context, we also opine that it would be appropriate to refer to the ruling in **Babulal Choukhan v. Western India Theatres Limited**². The Hon’ble Division Bench of Calcutta High Court explained the meaning of the word “*res gestae*” occurring

². AIR 1957 Calcutta 709

in Section 6 of the Evidence Act (1 of 1872), stating that the essence of the doctrine of *res gestae* in evidence is that the facts which though are not in issue are so connected with the fact in issue as to form part of the same transaction and thereby become relevant like fact in issue.

In **Mahendrapal and another v. The State**³, touching Illustration (a) of Section 6 of the Act, 1872, the Hon'ble Division Bench of Allahabad High Court while noting the evidence of persons who came up immediately after the incident and were informed by the eye-witnesses as to who the two accused had been, held to be relevant fact having been so connected with the fact in issue in view of Section 6, Illustration (a) of the Act, 1872, as to have necessitated the giving of evidence on that relevant fact itself as required by Section 5 of the Act, 1872 thus:

“7. The ahata was occupied by a number of persons, apart from the deceased and the eyewitnesses, and it is in evidence that they were sleeping there. It is further in evidence that those persons came up immediately after and it is alleged that they were informed by the eye-witnesses as to who the two culprits had been, namely, the two appellants. Amongst those persons were Onkar Nath Tewari, an Assistant Public Prosecutor, Rajendra Singh Amin, Bhagwat Singh and certain others. These persons were not produced as witnesses in the case. They were, however, examined by the investigating Officer on 2-7-1953, as stated by him. Their non-production has been explained upon the hypothesis that they did not actually see the culprits.

Assuming that they did not, their evidence was material, not with a view to prove the actual fact of murder, which was 'in issue', but to prove the 'relevant fact' namely, that just after the

³. AIR 1955 Allahabad 328

event the eye-witnesses disclosed the names of the culprits to those who came, this relevant fact having been so connected with the fact in issue in view of Section 6, illustration (a), Evidence Act, as to have necessitated the giving of evidence on that relevant fact itself as required by Section 5 of that Act. Section 5, Evidence Act, says that evidence may be given of the existence or non-existence of every fact in issue and of such other facts as are declared in the Act itself to be relevant.

Section 6, Evidence Act, says that facts, which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant whether they occur at the same time and place or at different times and places. Illustration (a) of that section makes it clear that where A is accused of the murder of B by beating him, whatever was said or done by A to B, or by the bystanders, at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

Vikram Singh P. W. 3 stated that after the accused ran away he told Onkar Nath Tewari and the other persons who came there that the two appellants were the culprits and had been seen by him committing the crime. If that was so, and if those persons had been examined by the police at the time of the investigation on 2-7-1953, their evidence to prove that relevant fact assumed considerable importance. On this part of the case the learned Sessions Judge observed as follows:

"It has been vehemently urged by the learned counsel for the accused that there were several other persons sleeping at a short distance from the cot of Thakur Fateh Singh and as they were independent witnesses, they should have been produced by the prosecution to corroborate the statement of the eye-witnesses. The evidence shows that those witnesses consisting of Sri Tiwari, A. P. P., Sri Pandey and Sri Bhagat Singh and an Amin came to the spot only after the accused had made good their escape. Even if these four witnesses had been aroused by the report of the gun-shot, the most that these four witnesses could have seen was the backs of the accused who were running

away and it could not have been possible for these witnesses to see the faces of the assailants or to recognise or identify them. These witnesses, therefore, were more or less unnecessary witnesses and hence their non-production does not affect the prosecution case at all.

It has been urged that these witnesses should have been produced in order to corroborate the statement of the prosecution witnesses that they had told these witnesses the names of the assailants immediately after the incident. It would no doubt have given the prosecution more support if these witnesses had been produced and if they had stated that the three eye-witnesses told them immediately after the incident that the assailants were the two accused, but if these witnesses had been produced, the defence would have come forward with the objection that Sri Tiwari is an Assistant Public Prosecutor and hence he should not be believed, that Rajendra Singh Amin who was sleeping about 63 feet away should not be believed because the Collector had taken a keen interest in the case and had gone immediately to the spot in the night of the occurrence and hence he was bound to support the prosecution, while Pandey and Bhagat Singh are residents of the Ahata and were bound to be friendly with Thakur Fateh Singh."

We cannot fully subscribe to this line of reasoning adopted by the learned Sessions Judge who drew largely upon his imagination and took a narrow view of the provisions of Sections 5 and 6, Evidence Act, under which the evidence of those witnesses could have been relevant, and who failed to take note of Section 114, Illustration (g), Evidence Act, namely, that evidence which could be produced and is not produced would, if produced, " be unfavourable to the person who withholds it."

In **Raban Lalu Shaikh v. Emperor**⁴, where the fact-situation shows that in a trial for murder of mother of a child whose cries attracted by passersby, the witnesses can speak not only of nature of child's cries,

⁴. AIR 1938 Sind 97

but even as to what child said so far as it explains their conduct, held thus:

“We should perhaps for the guidance of the Judge refer to the question of the admissibility of the statements made by the child Bashi. It is argued that the Judge should not have admitted upon the record evidence of Allahdino and Fazul as to what this child said, and the learned Advocate-General was prepared to agree with the learned advocate for the accused to this extent, that evidence only as to the fact that the child cried and that the cries attracted the attention of Allahdino and Fazul, was admissible upon the record and not evidence of what she said. We are not certain however that the Advocate-General was not too cautious. It is true of course that the evidence of the child is not admissible as evidence of the truth of what she said but as explaining the conduct of other witnesses; it appears to us that even what she said is admissible in evidence. As the child is not called as a witness, her evidence in a way is hearsay evidence, but she is deemed by reason of her tender years to be an incompetent witness; she does not understand the meaning of the truth. To this extent she is regarded by the law as an irrational creature, but if, for instance, instead of being concerned with the cries of a child we were concerned with the barking of a dog, clearly witnesses would be entitled to speak to the barking of the dog to explain their conduct. They could say the dog barked so long and so loudly that they were attracted to the place; it continued barking and would not be quietened by their voices, so they went aside a hut to investigate and found the dog’s master murdered. So in this case it appears to us the witnesses can speak to the nature of the child’s cries and even as to what the child said so far as it explains their conduct. While, for instance, Fazul as a neighbour was attracted by the child’s cries, clearly if the child had not said to him that her father had killed her mother but that both her mother and father had gone out and left her, Fazul might not have gone into the hut and found the mother dead and

the father with a bloodstained axe. He might merely have questioned the child or taken the child into his own hut: therefore as explaining why Fazul did go inside the hut and investigate what the child said, as explaining his conduct, as giving to it the value of probability, what the child said, for this purpose and not for the purpose of proving its truth, would be in our opinion, admissible in evidence. “

ix) Applying the above ratio, when the evidence of PW.4 is examined intrinsically, his assertion in his chief-examination that he enquired the deceased and she told him that her husband came and poured acid and escaped, and she further disclosed that her husband's name as Shiva Prasad, would account for a relevant fact though not he is a direct witness to the occurrence, and to that extent, his evidence becomes admissible under Section 6 of the Act, 1872. Therefore, the evidence of PW.4 and the evidence of PW.1 would corroborate the dying declarations which would be taken up a little later.

18. Turning to whether recoveries effected are proved, the evidence of PW.8 and PW.13 would become relevant. PW.8 is a panchayatdar for confession-cum-seizure report, under which, mug was recovered at the instance of the appellant at his house and the same was marked as MO.4. He asserts that he went to Chilkalguda Police Station when called on 20.11.2007 along with one R. Sangeeth, and when they all went to the house of the appellant, he was present thereat, and having made confession, he went inside the house and produced the mug (MO.4) in regard to which, Ex.P-5 was recorded. He was, no doubt, cross-examined by the learned defence counsel, but

except making a bald suggestion that the appellant did not confess the offence, and MO.4 was not seized from the house of appellant in his presence, nothing-else is occurring to discredit his testimony as regards recovery of MO.4; whereas, the evidence of PW.13 on that aspect of the case, stands unshaken. Therefore, the recovery of mug from the house of the appellant at his instance is proved by the prosecution.

19. Adverting to the submission of the learned counsel for the appellant that since sulfuric acid is a more corrosive liquid and it is difficult to believe that one can carry sulfuric acid in a plastic mug, nothing is placed on record to show that sulfuric acid used by the appellant through the mug was so concentrated that it would eat away the plastic mug disabling the appellant to carry it in the said mug. Though, the witnesses assert using the word 'acid', but, it is clear from the F.S.L. report - Ex.P-12 definitely indicating that sulfuric acid, a corrosive chemical, was found in a partially burnt black coloured cotton hand bag (MO.1) containing a steel Tiffin box (MO.2), orange coloured partially burnt synthetic chunni (MO.3) and the mug (MO.4) sent for analysis.

20. Now, adverting to the submissions made by the learned counsel for the appellant, raising suspicion on genuineness of the dying declarations on the grounds firstly, they are inconsistent; second, the assertion of PW.2 that the deceased regained consciousness only on 20.11.2007 at 10.00 a.m. and third, the absence

of certification of the Duty Medical Officer when the dying declarations were recorded, initially, we intend to examine Ex.P4 and P8 and the evidence of PW.4 and PW.7.

i) It is now well settled that a dying declaration constitutes an important piece of evidence, and if found veracious and voluntary could be the sole basis for conviction. While observing that the Court when admitting a dying declaration, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring, in **Mukesh and Others v. State for NCT of Delhi and Others**⁵, the Hon'ble Supreme Court referring to its earlier ruling in **Laxman v. State of Maharashtra**⁶, extracted the law relating to dying declaration in paragraph No.173 thus:

“173. A dying declaration is an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction. If a dying declaration is found to be voluntary and made in fit mental condition, it can be relied upon even without any corroboration. However, the court, while admitting a dying declaration, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. In **Laxman v. State of Maharashtra** (2002) 6 SCC 710, the law relating to dying declaration was succinctly put in the following words:

3. ... A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is

⁵. AIR 2017 SC 2161

⁶. (2002) 6 SCC 710

recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.” ”

As regards admissibility of a dying declaration, the Hon’ble Supreme Court held in paragraph Nos.174, 175, 176, 177, 178 and 179 thus:

“174. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court, in *Atbir v. Government of NCT of Delhi* (2010) 9 SCC 1, taking into consideration the earlier judgment of this Court in *Paniben v. State of Gujarat* (1992) 2 SCC 474 and another judgment of this Court in *Panneerselvam v. State of Tamil Nadu* (2008) 17 SCC 190, has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration:

22. (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

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

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

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

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

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

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

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

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

175. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances. In *Shudhakar v. State of Madhya Pradesh* (2012) 7 SCC 569, this Court, after referring to the landmark decisions in *Laxman* (supra) and *Chirra Shivraj v. State of Andhra Pradesh* (2010) 14 SCC 444, has dealt with the issues arising out of multiple dying

declarations and has gone to the extent of declining the first dying declaration and accepting the subsequent dying declarations. The Court found that the first dying declaration was not voluntary and not made by free will of the deceased; and the second and third dying declarations were voluntary and duly corroborated by other prosecution witnesses and medical evidence. In the said case, the accused was married to the deceased whom he set ablaze by pouring kerosene in the matrimonial house itself. The smoke arising from the house attracted the neighbours who rushed the victim to the hospital where she recorded three statements before dying. In her first statement given to the Naib Tehsildar, she did not implicate her husband, but in the second and third statements, which were also recorded on the same day, she clearly stated that the accused poured kerosene on her and set her on fire. The accused was convicted Under Section 302 Indian Penal Code. In this regard, the Court made the following observations:

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.

176. Recently, a two-Judge Bench of this Court in *Sandeep and Anr. v. State of Haryana* (2015) 11 SCC 154 :

(2015) 2 SCR 1999 SC was faced with a similar situation where the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After referring to the two dying declarations, this Court examined whether there was any inconsistency between the two dying declarations. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between the two dying declarations and non-mention of certain features in the dying declaration recorded by the Judicial Magistrate does not make both the dying declarations incompatible.

177. In this regard, it will be useful to reproduce a passage from *Babulal and Ors. v. State of M.P.* (2003) 12 SCC 490 wherein the value of dying declaration in evidence has been stated:

7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (*nemo moriturus praesumitur mentire*). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the 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 mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. ...

178. Dealing with oral dying declaration, a two-Judge Bench in *Prakash and Anr. v. State of Madhya Pradesh* (1992) 4 SCC 225 has ruled thus:

11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with. ...

179. In *Vijay Pal v. State (Government of NCT of Delhi)* (2015) 4 SCC 749, after referring to the Constitution Bench decision in *Laxman* (supra) and the two-Judge Bench decisions in *Babulal* (supra) and *Prakash* (supra), the Court held:

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the Appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned Counsel for the Appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval v. State of Gujarat* (1992) 4 SCC 69 wherein it

has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In *State of M.P. v. Dal Singh* (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.” ”

As regards duty of the Court in appreciation of evidence and cautioning the Courts not to attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecution witnesses are immaterial and of no consequence, and minor variations in the testimonies of the witnesses are often, the hallmark of truth of the testimony, and trivial discrepancies ought not to obliterate an otherwise acceptable evidence, and due to efflux of time, there are bound to be minor contradictions/discrepancies in the statements of the prosecution witnesses, but such minor discrepancies and inconsistencies are only natural since when truth is sought to be projected through human, there are bound to be certain inherent contradictions, the Hon'ble Apex Court held in paragraph No.383 thus:

“383. Courts should not attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecutrix are immaterial and of no consequence. Minor variations in the testimony of the witnesses are often the hallmark of truth of the testimony. Trivial

discrepancies ought not to obliterate an otherwise acceptable evidence. Due to efflux of time, there are bound to be minor contradictions/discrepancies in the statement of the prosecutrix but such minor discrepancies and inconsistencies are only natural since when truth is sought to be projected through human, there are bound to be certain inherent contradictions. But as held in *Om Prakash v. State of U.P.* (2006) 9 SCC 787, the Court should examine the broader probabilities of a case.”

In the very same context, the observations of the Hon’ble Apex Court contained in paragraph Nos.388, 389, 390, 391, 392, 393, 396, 397, 398 and 403 are apt to refer to reading thus:

“388. Dying declaration is a substantial piece of evidence provided it is not tainted with malice and is not made in an unfit mental state. Each case of dying declaration has to be considered in its own facts and circumstances in which it is made. However, there are some well-known tests to ascertain as to whether the statement was made in reference to cause of death of its maker and whether the same could be relied upon or not. The Court also has to satisfy as to whether the deceased was in a fit mental state to make the statement. The Court must scrutinize the dying declaration carefully and ensure that the declaration is not the result of tutoring, prompting or imagination. Once the Court is satisfied that the declaration is true and voluntary, 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. That the deceased had the opportunity to observe and identify the assailants and was in a fit state to make the declaration. [K. Ramachandra Reddy and Anr. v. Public Prosecutor (1976) 3 SCC 618]

389. The principles governing dying declarations have been exhaustively laid down in several judicial pronouncements. In *Paniben (Smt.) v. State of Gujarat* (1992) 2 SCC 474, this Court referred to a number of judgments laying down the principles governing dying declaration. In this regard, I find it apposite to quote the following from *Paniben (supra)* as under:

18. 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, 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 assailants. 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Munnu Raja v. State of M.P.* (1976) 3 SCC 104)
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P. v. Ram Sagar Yadav* (1985) 1 SCC 522; *Ramawati Devi v. State of Bihar* (1983) 1 SCC 211).
- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make

the declaration. (K. Ramachandra Reddy v. Public Prosecutor (1976) 3 SCC 618).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. (1974) 4 SCC 264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. (1981) Supp. SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. (1981) 2 SCC 654)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu (1980) Supp. SCC 455)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar (1980) Supp. SCC 769)

(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 eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. (1988) Supp. SCC 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan (1989) 3 SCC 390)

The above well-settled tests relating to dying declarations and the principles have been elaborately considered in a number of judgments. [Vide Khushal Rao v. State of Bombay, AIR 1958 SC 22; State of Uttar Pradesh v. Ram Sagar Yadav (1985) 1 SCC 552; State of Orissa v. Bansidhar Singh (1996) 2 SCC 194; Panneerselvam v. State of Tamil Nadu (2008) 17 SCC 190;

Atbir v. Govt. of NCT of Delhi (2010) 9 SCC 1 and Umakant and Anr. v. State of Chhattisgarh (2014) 7 SCC 405].

390. Multiple Dying Declarations: In cases where there are more than one dying declarations, the Court should consider whether they are consistent with each other. If there are inconsistencies, the nature of the inconsistencies must be examined as to whether they are material or not. In cases where there are more than one dying declaration, it is the duty of the Court to consider each one of them and satisfy itself as to the voluntariness and reliability of the declarations. Mere fact of recording multiple dying declarations does not take away the importance of each individual declaration. Court has to examine the contents of dying declaration in the light of various surrounding facts and circumstances. This Court in a number of cases, where there were multiple dying declarations, consistent in material particulars not being contradictory to each other, has affirmed the conviction. [Vide Vithal v. State of Maharashtra (2006) 13 SCC 54].

391. In Amol Singh v. State of Madhya Pradesh (2008) 5 SCC 468, while discarding the two inconsistent dying declarations, laid down the principles for consideration of multiple dying declarations as under:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P.(1993) 2 SCC 684) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the

inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

392. In *Ganpat Mahadeo Mane v. State of Maharashtra* (1993) Supp. (2) SCC 242, there were three dying declarations. One recorded by the doctor; the second recorded by the police constable and also attested by the doctor and the third dying declaration recorded by the Executive Magistrate which was endorsed by the doctor. Considering the third dying declaration, this Court held that all the three dying declarations were consistent and corroborated by medical evidence and other circumstantial evidence and that they did not suffer from any infirmity.

393. In *Lakhan v. State of M.P.* (2010) 8 SCC 514, this Court considered a similar situation where in the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between two dying declarations and non-mention of certain features in the dying declarations recorded by the Judicial Magistrate does not make both the dying declarations inconsistent.

396. As per the settled law governing dying declarations, even if there are minor discrepancies in the dying declarations, in the facts and circumstances of the case, the Court can disregard the same as insignificant. A three-Judge Bench of this Court in *Abrar v. State of Uttar Pradesh* (2011) 2 SCC 750, held that it is practical that minor discrepancies in recording dying declarations may occur due to pain and suffering of the victim, in case the declaration is recorded at multiple intervals and thus, such discrepancies need not be given much emphasis.

12. It is true that there are some discrepancies in the dying declarations with regard to the presence or otherwise of a light or a torch. To our mind, however, these are so insignificant that they call for no discussion. It is also clear from the evidence that the injured had been in great pain and if there were minor discrepancies inter se the three dying declarations, they were to be accepted as something normal. The trial court was thus clearly wrong in rendering a judgment of acquittal solely on this specious ground. We, particularly, notice that the dying declaration had been recorded by the Tahsildar after the doctor had certified the victim as fit to make a statement. The doctor also appeared in the witness box to support the statement of the Tahsildar. We are, therefore, of the opinion, that no fault whatsoever could be found in the dying declarations.

397. When a dying declaration is recorded voluntarily, pursuant to a fitness report of a certified doctor, nothing much remains to be questioned unless, it is proved that the dying declaration was tainted with animosity and a result of tutoring. Especially, when there are multiple dying declarations minor variations does not affect the evidentiary value of other dying declarations whether recorded prior or subsequent thereto. In *Ashabai and Anr. v. State of Maharashtra* (2013) 2 SCC 224, it was held as under:

15.As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

398. Considering the present case on the anvil of the above principles, I find that though there was time gap between the declarations, all the three dying declarations are consistent with each other and there are no material contradictions. All the three dying declarations depict truthful version of the incident, particularly the detailed narration of the incident concerning the rape committed on the victim, insertion of iron rod and the injuries caused to her vagina and rectum, unnatural sex committed on the victim and throwing the victim and P.W. 1 out of the moving bus. All the three dying declarations being voluntary, consistent and trustworthy, satisfy the test of reliability.

403. Corroboration of Dying declaration by Medical Evidence: The dying declaration is amply corroborated by medical evidence depicting injuries to vagina and internal injuries to rectum and recto-vaginal septum as noted by P.W. 49 Dr. Rashmi Ahuja and P.W. 50 Dr. Raj Kumar Chejara. On the night of 16.12.2012, the prosecutrix was medically examined by P.W. 49 who recorded her injuries and statement in the MLC (Ex. P.W. 49/B). On local examination, a sharp cut over right labia and a 6 cm long tag of vagina was found hanging outside the introitus. Vaginal examination showed bleeding and about 7 to 8 cm long posterior vaginal wall tear. A rectal tear of about 4 to 5 cm was also noticed communicating with the vaginal tear. Apart from the said injuries to the private parts of the prosecutrix, guarding and rigidity was also found in her abdomen and several bruises and marks on face were noticed. Bruises and abrasions around both the eyes and nostrils were also found. Lips were found edematous and left side of the mouth was injured by a small laceration. Bite marks over cheeks and breast, below areola, were also present. Bruises over the left breast and bite mark in interior left quadrant were prominent.”

On the anvil of aforesaid principles, the case of the prosecution and the version of the deceased as depicted in her dying declarations require evaluation.

ii) Ex.P-8 is the statement of the deceased recorded by the Head Constable (PW.12). He was deputed by the Sub-Inspector of Police (PW.13) on receipt of requisition from PW.9 to visit Gandhi Hospital and to record statement of the deceased. Ex.P-8 shows that PW.12 recorded the statement of the deceased at 23.45 hours on the night of 19.11.2007, on which night at about 8.15 p.m., the incident occurred. The statement would show that the deceased stated that she was married to the appellant about 1½ years prior to the incident. Her husband used to suspect her and she led marital life only for ten days. They were issueless. Her parents-in-law were well behaved. On account of harassment by her husband, she filed a petition for divorce on the file of the Family Court at Nampally. On 19.11.2007 at about 8.15 p.m., having completed her duty, along with her friend (PW.1), who was working in HDFC Bank, resident of her locality i.e., Medibavi, Seethaphalmandi, both having traveled in RTC bus, got down at the Bus-stage near Sreedevi Nursing Home, and on foot, when they were proceeding, her husband came from behind holding a mug with acid, held her plait and holding her hair, forcibly dragged her and poured acid on her head and face uttering that none would marry her in her life and deliberately poured acid intending to kill her and she received burns on the head and face and on other parts of her

person. Immediately, she was referred to Gandhi Hospital and pleaded to take action against her husband as he intended to kill her by pouring acid. This had been the statement made by the deceased to the first Investigating Officer constituting first dying declaration. The Head-constable - PW.12 also mentioned in the same statement by endorsing that the statement was recorded as per the version made by the deceased and admitting that it was written as a true statement affixed her thumb impression. He sent the statement to the Station House Officer (PW.13) who received it at 00:30 hours on 20.11.2007 and registered a case in Crime No.806 of 2007 under Section 307 IPC. PW.12 in his evidence asserts that he recorded Ex.P-8 in the presence of duty doctor and he returned to police station and handed it over to PW.13. When he was pursued in his cross-examination, he would answer to a question that when he went to the Burns Ward, Nurse and Doctor were present with the patient. Relations of the patient were outside. He enquired the doctor orally about the condition of the injured and the doctor told him that she could give statement, on which he recorded the statement of the deceased as in Ex.P8. He denied the suggestion that the injured was unconscious and that he did not record the statement of the injured and he was deposing falsehood.

iii) The said statement made by the deceased would point out two important aspects. The first is, presence of PW.1 at the time and place of occurrence. Second, the appellant coming from behind holding her plait and dragging her hair and pouring acid on her head

and face. Thus, the identity of the appellant is emphatically spoken to by the deceased in her statement under Ex.P-8. PW.12's evidence would make it clear that in the presence of the doctor, the said statement was recorded by him. No doubt, no endorsement was made by the doctor as to his presence in Ex.P-8, but the fact, that nothing is confronted to PW.12 in that regard by the learned defence counsel is sufficient to view that his evidence is trustworthy. In such an event, the presence of the duty doctor while PW.12 was recording Ex.P-8, cannot be doubted. Further more, the deceased was in a condition to make a statement indicating that she was conscious and fit to make a statement.

iv) Now, it is to be seen whether the dying declaration under Ex.P.4 recorded by the learned Magistrate is consistent with Ex.P-8 or contradicts Ex.P8 as regards basic version of the deceased. Ex.P-4 shows that the learned Magistrate examined as PW.7 received Ex.P-3, requisition at 10.35 p.m. In fact, the endorsement he made prior to putting the questions to the deceased in ascertaining whether she was conscious and in a fit state of mind to give the statement would show that the doctor, who was present at the deceased, whom he identified through the duty doctor, certified as to the condition of the patient, endorsing that the patient was conscious, coherent and in a fit state to give statement. A perusal of the certification made by the duty Medical Officer occurring in the original dying declaration recorded by the learned Magistrate prior to commencement of recording the

statement of the deceased. Later, he put the preliminary questions to the deceased to know about her cognitive condition. Having satisfied with the answers given by her, he arrived at the satisfaction that she was conscious to give statement and then proceeded with recording the statement as to the cause of burns sustained by her.

v) When he put a question as to how she sustained burns, she made the statement mentioning that she studied B.Com., she was married about 1½ years back and did not beget any issues. She was working in HDFC Bank at Lakdi-ka-pool. That day, she went to the office. She did not like the character of her husband. Therefore, she decided to file divorce petition in Court. That day while herself and her friend, Rajani, got down bus at Sreedevi Nursing Home Bus-stop at about 8.15 p.m., her husband - Siva Prasad came from behind, held her hair and poured acid brought in a jug on her head and it spread over her entire body, and her husband poured acid on her person with an intention to kill her. The learned Magistrate then obtained right thumb impression of the deceased and made an endorsement stating that he recorded the statement of the deponent in verbatim, read over and explained to her which she admitted as true and correct, and then he obtained her right thumb impression again, and the duty Medical Officer, who was present, certified that the patient was conscious, coherent and fit state of mind throughout while recording the statement.

vi) One of the contentions raised by the learned counsel for the appellant is that the doctor, who certified in Ex.P-4 as to the mental state of the deceased was not examined and, thus, it is fatal to the prosecution case and, therefore, to disbelieve both the dying declarations. Certainly, it is difficult to agree with the said submission for the reason, the evidence of learned Magistrate (PW.7) cannot be brushed aside, more particularly, when nothing is shown or brought out in his cross-examination that he has ‘animus’ to record a wrong dying declaration implicating the appellant. In the present context, it is apt to refer to the ruling in **Ramesh and others v. State of Haryana**⁷. The Hon’ble Supreme Court on the admissibility of the dying declarations, referring to the rulings in **Jai Karan v. State of N.C.T., Delhi** [(1999) 8 SCC 161 : AIR 1999 SC 3512] , **Rambai v. State of Chhatisgarh** [(2002) 8 SCC 83: AIR 2002 SC 3492], **Kushal Rao v. State of Bombay** [1958 SCR 552: AIR 1958 SC 22] and **Vikas and others v. State of Maharashtra** [(2008) 2 SCC 516: AIR 2008 SC (Supp) 1356], expressed in paragraph Nos.27 and 28 thus:

“27. Law on the admissibility of the dying declarations is well settled. In **Jai Karan v. State of N.C.T., Delhi** [(1999) 8 SCC 161], this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the

⁷. 2017 CrL.L.J. 352

person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no Rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard and fast Rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement (See *Rambai v. State of Chhatisgarh* [(2002) 8 SCC 83]).

28. It is immaterial to whom the declaration is made. The declaration may be made to a Magistrate, to a Police Officer, a public servant or a private person. It may be made before the doctor; indeed, he would be the best person to opine about the fitness of the dying man to make the statement, and to record the statement, where he found that life was fast ebbing out of the dying man and there was no time to call the Police or the Magistrate. In such a situation the Doctor would be justified, rather duty bound, to record the dying declaration of the dying man. At the same time, it also needs to be emphasised that in the instant case, dying declaration is recorded by a competent Magistrate who was having no animus with the accused persons.

As held in *Kushal Rao v. State of Bombay* [1958 SCR 552], this kind of dying declaration would stand on a much higher footing. After all, a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the Court (See *Vikas and Ors. v. State of Maharashtra* [(2008) 2 SCC 516]).”

vii) On an intrinsic analysis of Ex.P4, applying the principles laid down by the Hon’ble Supreme Court referred to hereinabove, since Ex.P4 bears certification by the doctor as to the fit state of mind and conscious enough and coherent in making a statement, certainly, the said statement cannot be viewed with suspicion, more particularly, as to the mental condition of the maker. The very fact that the answers given by the deceased to the preliminary questions put and recorded by PW.7 would clearly indicate without any contra indication that the deceased was in a fit state of mind to make a statement as certified by PW.7. Mere non-examination of the duty doctor, who has certified as to the fit condition of the deceased to make a statement in Ex.P-4 would not cut at the root of the prosecution case to erase Ex.P-4. Therefore, the genuineness of dying declarations under Exs.P-4 and P-8 cannot be doubted.

viii) Turning to whether they are consistent or otherwise, the basic version in both the dying declarations are so consistent to inspire confidence of the Court rather than raising any suspicion at all. Even in the cross-examination of PW.7 and PW.12, nothing has been

brought out to discredit their testimony so as to discard Exs.P-4 and P-8.

ix) Adverting to yet another submission of the learned counsel that the deceased cannot be expected to be in a position to make a statement or dying declaration as more corrosive chemical (sulfuric acid) burnt her head, face and other parts of her person, but it is to be observed that the chemical caused burns externally and it is not a case where the acid was consumed. Even otherwise, the dying declarations recorded by PW.7 and PW.12, referred to in the above, certainly, outweigh and gain precedence over the answer given by PW.2 that the deceased regained consciousness on the next day. As already stated, it appears that PW.2 has given a stray answer in his cross-examination without comprehending the consequence of giving such an answer. Therefore, that submission made by the learned counsel for the appellant also is without any merit.

x) Therefore, we are of the view, that the submissions made by the learned counsel for the appellant to view Exs.P-4 and P-8 with suspicion for the reasons discussed by us herein before, do not merit acceptance. Hence, we find that the finding recorded by the learned Sessions Judge in accepting and acting upon the dying declarations cannot be withheld, more particularly, when Ex.P4 and P8 were made voluntarily as nothing is brought out in the cross-examination of the prosecution witnesses that the statements under Ex.P8 and P4 were made by extraneous circumstances or was the result of tutoring.

Therefore, even without the aid of evidence of PWs.1 to 4, the dying declarations under Exs.P4 and P8, in our considered view, constitute the basis for convicting the appellant - accused. However, for the aforesaid reasons, the evidence of PWs.1 to 4, more particularly, the evidence of PWs.1 and 4 since cogent, clear and beyond reproach coupled with the dying declarations under Exs.P4 and P8 positively proves that the appellant - accused was the assailant, who carried sulfuric acid in a mug and poured on the deceased with an intention not only to see that she would not get remarried, but also with an intention to kill her.

21. Turning to the reasoning adopted by the learned Sessions Judge, we hold that the learned Sessions Judge has analyzed the evidence in correct perspective and in the face of the conclusions recorded on the dying declarations and the evidence of PWs.1 to 4 relating to the imputations levelled against the appellant, we are of the opinion that no interference is warranted with the impugned judgment of the conviction and sentence recorded against the appellant - accused.

22. We have independently dealt with the evidence on record, by way of reappraisal and in view of the reasoning we have adopted as in the above, we hold that the present appeal is devoid of merit.

23. Hence, the present Criminal Appeal fails and the same is dismissed confirming the judgment, dated 21st day of July, 2009,

passed by the Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad, in Sessions Case No.297 of 2008.

24. Since the appellant - accused is on bail as he was accorded bail by this Court, by the order, dated 21.12.2016, in CrI.A.M.P. No.2140 of 2016, his bail bonds shall stand cancelled, and he is directed to surrender before the Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad within two (2) weeks from today and undergo the sentence awarded to him, failing which, the learned Special Judge for trial of offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad, shall take appropriate steps to put the appellant - accused in jail to undergo the sentence awarded to him.

As a sequel to the dismissal of the appeal, the miscellaneous applications, if any, pending in this appeal shall stand dismissed.

SANJAY KUMAR , J

A. SHANKAR NARAYANA, J

October 13, 2017.

Mgr