

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-921-DB-2003

Date of decision:06.04.2017

Rajesh Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Narinder Singh, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

H.S. MADAAN, J.

This appeal has been filed against judgment and order dated 20.10.2000 passed by the Court of Sessions Judge, Jalandhar vide which appellant-accused was convicted for an offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of

₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Facts of the case, as per the prosecution story are that on 23.10.1998 a message Ex.PH was received from Sacred Heart Hospital, Maqsudan, District, Jalandhar at Police Post, Maqsudan that Suman wife of Rajesh Kumar, resident of Arya Nagar, Kartarpur was admitted in the said hospital due to burn injuries, which information was conveyed at Police Station, Kartarpur, District Jalandhar. On getting that information, a police party led by ASI Onkar Singh (hereinafter referred to as Investigating Officer/I.O.). went to Sacred Heart Hospital, Maqsudan, there the Investigating Officer moved a written application enquiring from the attending doctor regarding fitness of the injured to make statement, on which the doctor vide endorsement Ex.PJ/1 opined in negative. On that very day in the evening the police party again went to the said hospital and Investigating Officer moved a similar application Ex.PD at 11:00 p.m. on which Dr. Vijay Kumar vide his endorsement Ex.PD/2 declared injured Suman fit to make statement. The Investigating Officer by moving application Ex.PC requested Duty Magistrate to record statement of injured-Suman. His request was accepted and Judicial Magistrate Ist Class, Jalandhar, who was Duty Magistrate went to Sacred Heart Hospital, Maqsudan. By the time the opinion of concerned doctor regarding fitness

of injured in affirmative was sought, the time was 12.10 a.m. dated 24.10.1998 i.e. next day to the day of incident vide endorsement Ex.PD/1. The Investigating Officer had also recorded statement of Suman-injured as Ex.PV getting her thumb impression thereon. In the said statement Suman-injured, aged 22 years wife of Rajesh Kumar resident of Mohalla Arya Nagar, Kartarpur, District Jalandhar, had stated that she was married with Rajesh Kumar about six years ago; that on 22.10.1998 at about 9/10 p.m., her husband Rajesh Kumar started quarrelling with her and thereafter had slept after consuming liquor; that on 23.10.1998 at 9 a.m. in the morning, Rajesh Kumar put can of kerosene oil on her and set her ablaze; that she raised alarm loudly and her husband ran away from the spot. At the same time her mother-in-law and brother-in-law/Naresh @ Kali came there and extinguished the fire; that at 10 a.m. her mother-in-law got her admitted in the hospital for treatment. In the said statement the injured stated that her husband had set her on fire by pouring kerosene on her with intention to kill her. She stated that she was making statement in her full senses and at the time her husband Rajesh Kumar set her on fire, Sham Lal husband of her mother's sister had also come to the spot. The Investigating Officer put his endorsement Ex.PV/1 below the said statement and sent ruqa to police station, on the basis of which form FIR Ex.PV/2 was recorded by ASI Surinder Singh.

On 24.10.1998 a police party led by ASI Onkar Singh went to the spot, where the Investigating Officer carried out spot inspection. He took into possession a plastic can Ex.P1 along with match box Ex.P2 from the place of occurrence vide memo Ex.PU, attested by Piara Lal and HC

Bachittar Singh. The Investigating Officer prepared a rough site plan of the incident Ex.PX. He recorded statements of witnesses and searched for the accused but accused could not be found and on return to the police station he deposited the case property with MHC Baljinder Singh.

On 27.10.1998 a QST message was received from Police Post, Maqsudan at Police Station, Kartarpur that Suman-injured had expired in hospital, therefore, offence was converted to Section 302 IPC vide DDR No.25 dated 27.10.1998, copy of which is Ex.PY. The police party led by ASI Onkar Singh went to Sacred Heart Hospital, Maqsudan (Jalandhar) where dead body of Suman was lying in the mortuary. The Investigating Officer carried out inquest proceeding preparing report Ex.PS, which was attested by Sh. Piara Lal and Sh. Roop Lal, by that time it was late night hours, therefore, post-mortem examination could not be got conducted on the dead body on that day.

On 28.10.1998, the Investigating Officer deputed HC Rajbir Singh and PHG Baldev Singh to get post-mortem examination conducted on the dead body from Civil Hospital, Jalandhar by handing over application Ex.PR to HC Rajbir Singh. The post-mortem examination was accordingly got conducted, thereafter the dead body was handed over to family members of the deceased against receipt.

On 31.10.1998 accused had surrendered in the Court of Judicial Magistrate Ist Class, Jalandhar. The Investigating Officer moved an application and arrested him in this case. He had prepared a memo Ex.PZ in that regard.

After completion of investigation and other formalities

challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Jalandhar.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Jalandhar, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, Judicial Magistrate Ist Class, Jalandhar vide his order dated 18.01.1999 committed the case to the Court of learned Sessions Judge, Jalandhar.

When the case was received in the Court of learned Sessions Judge, Jalandhar, finding a prima facie case charge for offence under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as fourteen witnesses as detailed below:-

<i>PW-1</i>	<i>Smt. Krishna</i>
<i>PW-2</i>	<i>Naresh Kumar @ Kali</i>
<i>PW-3</i>	<i>Ranjan Khullar, JMIC</i>
<i>PW-4</i>	<i>Joga Singh</i>
<i>PW-5</i>	<i>Dalip Singh</i>
<i>PW-6</i>	<i>Dr. Alok Lalwani</i>
<i>PW-7</i>	<i>Dr. Vijay Kumar</i>
<i>PW-8</i>	<i>HC Rajbir Singh</i>

<i>PW-9</i>	<i>Dr. Baldev Singh</i>
<i>PW-10</i>	<i>Sham Lal</i>
<i>PW-11</i>	<i>HC Balwinder Singh</i>
<i>PW-12</i>	<i>HC Bachittar Singh</i>
<i>PW-13</i>	<i>Roop Lal</i>
<i>PW-14</i>	<i>Onkar Singh</i>

With that the prosecution evidence got concluded.

Statements of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him, but he denied all the allegations by stating that he is innocent and has been falsely involved in this case. The deceased had not made any statement of her own but blurted out tutored version.

During his defence evidence, accused examined Smt. Raj as DW-1, Smt. Nirmala Devi as DW-2 and Sh. Ram Anand, Naib Tehsildar as DW-3.

After hearing arguments, learned trial Court convicted and sentenced accused-Rajesh Kumar as mentioned above.

We have heard learned counsel for the appellant-convict and learned Additional Advocate General for the State besides going through the record and we find that there is no merit in the appeal.

PW-1 Krishna, mother of accused-Rajesh Kumar stated that Rajesh Kumar was married with deceased-Suman more than six years prior to the date of occurrence; that Naresh Kumar @ Kali is also her son; that she had been living in same house with sons and the deceased;

that there was no dispute of Suman-deceased with her son Rajesh Kumar and Suman was not put on fire by the accused; that accused had left the house at 7 a.m. while deceased caught fire when she was inside the kitchen and was working at the stove. As she did not support the prosecution story on material aspects, she was declared a hostile witness at the instance of learned Public Prosecutor who was allowed to put questions to her in the form of cross-examination but without any fruitful result.

PW-2 Naresh Kumar @ Kali stated that accused is his real brother whereas Suman-deceased was his wife; that about six months back Suman was in the kitchen when she received burn injuries accidentally; that he had not seen the accused putting kerosene oil on her or setting her ablaze. He was also declared a hostile witness at the instance of learned Public Prosecutor who was allowed to put questions to him in the form of cross-examination but without any fruitful result. It may be mentioned here that PW-1 Krishna being mother and PW-2 Naresh Kumar @ Kali being brother of accused-Rajesh Kumar had every reason to save him from conviction on the charge of committing of murder of his wife-Suman and their doing so does not shake the boat of prosecution.

PW-3 Ranjan Khullar, Judicial Magistrate Ist Class, Jalandhar stated that on 23.10.1998 he was on duty. On that day ASI Onkar Singh made a request for recording dying declaration of injured-Suman wife of Rajesh Kumar at 11:45 p.m. and he immediately

proceeded to Sacred Heart Hospital, Maqsudan, Jalandhar. After opening a sealed envelope and taking out of documents therefrom, police request was shown to him which he exhibited as Ex.PC. The witness stated that on reaching the hospital, ASI Onkar Singh made application Ex.PD to the Medical Officer, Sacred Heart Hospital, Maqsudan to know about the condition of the injured as to whether she was fit to make statement or not, on which Dr. Vijay Kumar declared the patient fit to make statement at 12:10 a.m.; that on 24.10.1998 vide his endorsement Ex.PD/1 on police request Ex.PD, he recorded statement of Suman wife of Rajesh Kumar in the presence of Dr. Vijay Kumar, Medical Officer of the abovesaid hospital and the same was read over to Suman, who thumb marked the same. He proved the statement recorded by him as Ex.PE and endorsement of the doctor that she remained fit during recording of her statement as Ex.PE/1. This witness stated that before recording the statement of Suman he had explained to her that she was not bound to make a statement and if she did so the same might be used as evidence against her; that she had made the statement voluntarily and it contained full and true account of the statement made by her and he made his endorsement Ex.PE/2 to that effect. The witness further added that endorsement was made on 24.10.1998 at 12:25 a.m.. He proved proceedings recorded by him Ex.PE/3 and Ex.PE/4 stating that the statement was sent to Chief Judicial Magistrate, Jalandhar in a sealed envelope, which was opened in the Court on that day.

PW-4 C. Joga Singh, a formal witness tendered into evidence his affidavit Ex.PF.

PW-5 Dalip Singh, Draughtsman, who had prepared scaled plan Ex.PG at the instance of Sham Lal in the scale of 1 inch = 2 *KARAMS*, deposed in that regard.

PW-6 Dr. Alok Lalwani, EMO, Sacred Heart Hospital, Jalandhar, who on 23.10.1998 had sent intimation Ex.PH to SHO, PP Maqsudan regarding admission of Suman in their hospital as alleged case of burns 99%, requesting for doing the needful immediately as condition of the patient was serious deposed in that record. He further stated that on police application Ex.PJ moved by ASI Onkar Singh, he had declared Suman unfit for statement, vide endorsement Ex.PJ/1.

PW-7 Dr. Vijay Kumar, Emergency Medical Officer, Sacred Heart Hospital, Jalandhar deposed that on 23.10.1998 ASI Onkar Singh submitted application Ex.PD on which he made endorsement Ex.PD/2 to the effect that Suman wife of Rajesh Kumar was fit for making statement, that endorsement was made on 23.10.1998 at 11 p.m.. He further stated that he had made endorsement Ex.PD/1 to the effect that Suman wife of Rajesh Kumar was fit for making statement on 24.10.1998 at 12.10 a.m. The witness stated that after his endorsement Ex.PD/1, Sh. Ranjan Khullar, Judicial Magistrate Ist Class, Jalandhar recorded statement of Suman wife of Rajesh Kumar in his presence vide Ex.PE and she remained fit during the time her statement was recorded and he had made his endorsement on

24.10.1998 at 12:25 a.m. He further stated that he had sent intimation Ex.PK to SHO Maqsudan to the effect that Suman had expired on 7:45 p.m. on 27.10.1998. He stated that he remained present throughout with the Magistrate and Suman-patient during the recording of her statement. This testimony also strengthens the case of prosecution that the injured had made statement on her own and not under any pressure, compulsion, coercion etc.. This statement is in consonance with the statement made by the injured to the police.

PW-8 HC Rajbir Singh, a formal witness tendered into evidence his affidavit Ex.PN.

PW-9 Dr. Baldev Singh, Medical Officer, Civil Hospital, Jalandhar deposed that on 28.10.1998 at 11:30 a.m. he conducted the post-mortem examination on the dead body of Suman wife of Rajesh Kumar, aged about 22 years, resident of Arya Nagar, Kartarpur. The dead body was brought by C. Rajbir Singh and PHG Baldev Singh, P.S. Kartarpur from Sacred Heart Hospital, Maqsudan and identified by Sh. Piara Lal and Sh. Roop Lal. As per information furnished by the police, she was alleged to have died of burn injuries. The length of the dead body was 164 c.m. and the dead body was wearing only a surgical bandage just above the right ankle. Rigor mortis was present and post-mortem staining was present on dependent parts. Singeing of scalp hair was there. There was a stitched wound 3 c.m. long present above the right ankle on the inner side. Second and third degree burn wounds were present all over the body, except left foot, right sole, part of right

hand, part of left hand and pubic area. Line of redness was present at the margins. Pus and sloughs was present over most of the area wounds. Granulation tissues was present over the wounds at many spots. Sloughs had separated out from a few spots. Pleurae, Larynx and trachea, right lung, left lung were congested. Stomach and its contents, mucous membranes was congested and contained approximately 100 ml. yellowish liquid. Small intestine was congested and contained semi digested food. Large intestines were congested and contained semi digested food and faecal matter. Peritoneum, liver, spleen were also congested and spleen was enlarged. Bladder was healthy and empty. Uterus was also healthy and empty. Other organs were also healthy.

The cause of death in his opinion in this case was due to hypoproteinaemia, marked fluid loss resulting from the injuries described which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. Probable time that elapsed between injuries and death was 4 to 5 days and between death and post mortem was within 24 hours.

The witness stated that after conducting the post mortem examination he handed over to the police stitched dead body, copy of the post mortem report Ex.PQ and police papers page 1 to 10 duly signed by him. The witness stated that the post mortem was conducted by him on police request Ex.PR which was marked to him by Medical Superintendent, Civil Hospital, Jalandhar vide his endorsement Ex.PR/1 and for uterus examination Dr. Gurinder Kaur Chawla was also deputed

and in column No. 11 of the post mortem report Dr. Gurinder Kaur Chawala after examination of the uterus had also put her signatures. He added that inquest report Ex.PS was part of the police papers sent alongwith the police request. His testimony lends corroboration to the case of prosecution.

PW-10 Sham Lal, a maternal uncle of deceased denied having gone to the house of Rajesh Kumar-accused or having seen the incident or observing Suman in burnt condition. He was declared a hostile witness at the instance of Public Prosecutor who was allowed to put questions to him in the form of cross-examination. This witness not toeing the prosecution line does not cause any major dent in the prosecution story.

PW-11 HC Balwinder Singh, happened to be a formal witness who stated that on 24.10.1998 he was posted as MHC, Police Station, Kartarpur. On that day ASI Onkar Singh deposited with him plastic Can which was smelling of kerosene oil and match box which was kept by him in the Malkhana and was entered in register No.19.

PW-12 HC Bachittar Singh, stated that he had joined the investigation of the case and while inspecting the place of occurrence ASI Onkar Singh took into possession one Can of plastic of kerosene oil alongwith match box from the kitchen of the house of Rajesh Kumar-accused vide memo Ex.PU attested by him and thumb marked by Piara Ram-PW.

PW-13 Roop Lal, a paternal uncle of deceased had identified the dead body of Suman during inquest proceeding. He is more or less a formal witness.

PW-14 ASI Onkar Singh, who had carried out investigation in this case deposed in that regard proving various documents.

During defence evidence, accused examined DW-1 Raj wife of Sham Lal son of Channa Ram, resident of Rishi Nagar Mohalla, Kartarpur, a maternal aunt of deceased stated that she lives near house of Suman-deceased and had been frequent visitor to her house; that Suman never complained against Rajesh Kumar or her in-laws; and she was leading a peaceful happy married life; that on 23.10.1998 at about 9 a.m. she came to know that Suman had caught fire from the stove, she immediately rushed to her house and found that Suman was lying on the floor of kitchen with burns on her body and mother-in-law of Suman alongwith Dewar-Naresh Kumar @ Kali took her to the hospital; that in the kitchen she asked Suman as to how she had received the burn injuries, and Suman told her that she had caught fire from stove while preparing breakfast; that the fry pan, stove were lying turtle on the floor of the kitchen; that on the same day she went to the hospital, where Suman was admitted. Suman was not able to speak; that she had been going daily to enquire about her health at hospital; that Suman always remained unconscious during the course of her regular visit at the hospital; the witness stated that she had been

enquiring from the doctor as to why Suman was not speaking to which doctor told her that a person with 90% burn injuries cannot speak.

Coming to testimony of DW-2 Nirmala Devi, Municipal Commissioner, Kartarpur, who stated that she is Municipal Commissioner of the area where Suman and Rajesh Kumar used to reside and on coming to know about the burning of Suman, she immediately went to their house and enquired about her condition to this Suman told her that while preparing breakfast she caught fire from the stove and that accused present in Court on that day was not present at the time of incident. The witness stated that she had arranged a car to send Suman-injured to hospital immediately.

DW-3 Sri Ram Anand, Naib Tehsildar, State Patwar School deposed that on 08.02.1999 he was posted as Naib Tehsildar and was having the powers of Executive Magistrate, affidavit Ex.DW3/1 shown to him was sworn in before him by Piara Lal son of Madho Ram who was identified by an advocate. He then attested the same in the capacity of Executive Magistrate, Jalandhar-II; that the advocate had read over the affidavit to him (deponent), who thumb marked the affidavit after admitting the correctness of the contents. This witness proved affidavit Ex.DW3/1 and his signatures on the affidavit Ex.DW3/2.

In cross-examination this witness stated that Piara Ram was not personally known to him and he had attested the affidavit only on the verification of Sh. Narinderpal Singh, Advocate.

The testimony of Sh. Ranjan Khullar, JMIC, Jalandhar/PW-3 is very important. He had recorded statement of injured-Suman after getting medical opinion in positive to the effect that she was fit to make statement and before recording the statement he had explained her that she was not bound to make a statement and if she did so the same might be used as evidence against her, even then she was willing to make statement. Said statement is in narrative form. For ready reference the operative part of her statement is reproduced as under:-

“Stated that the previous night, on 22.10.1998 between 9 to 10 pm, my husband Rajesh Kumar had started quarrelling with me. Earlier also he used to quarrel with me. On that night also he started consuming liquor after quarrelling and thereafter he slept and on 23.10.1998 at 9:00 a.m. after getting up, he put a canny of kerosene oil on me and set me on fire. I raised lot of RAULLA (alarm) and on hearing the alarm, my husband Rajesh Kumar slipped away and my mother-in-law and brother-in-law (husband’s brother) came there and they extinguished my fire and got me admitted in the hospital on 23.10.1998 at about 10.00. I am making the statement in full senses and understanding. My husband Rajesh Kumar has set me on fire after putting kerosene oil on my body.”

That statement contains an endorsement Ex.PE/1 by Dr. Vijay Kumar to the effect that she remained fit during making

statement.

Then there is certificate by the Duty Magistrate Ex.PE/2, which is to the effect that *“I have explained Suman w/o Rajesh Kumar that she is not bound to make a confession and that if she does so any confession she may make, may be used as evidence against her and I believe that this confession was made voluntarily. It was taken in my presence and hearing and was read over to the person making it and admitted by her to be correct and it contains full and true account of the statement made by her.”*

There is nothing on record to show that some relative(s) from paternal side of injured was/were present with her who might have tutored her to make statement against her husband. Rather it comes out that the statement so made by injured is spontaneous and without any blemish and it is not result of any tutoring rather the statement seems to have been made voluntarily without any threat or pressure. It has been made in a natural manner inspiring confidence and is bound to be accepted. One more reason in relying upon it is that it was recorded by a Judicial Magistrate in discharge of his official duties having no motive to record statement wrongly so as to involve the accused in this case falsely.

The statement is quite relevant under Section 32 of the Evidence Act since it relates to cause of death of Suman. Here it is pertinent to refer to an important authority on the subject reported as

Vikas and others vs. State of Maharashtra 2008 (1) R.C.R. (Criminal)

805(SC) . That case related to bride burning, where the accused was convicted solely on the basis of dying declaration, even though father of the deceased had turned hostile. The maxim that man will not meet his Maker with a lie in his mouth was relied. It was observed that a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and father was not a reliable witness, since at the time of investigation, his case was that the accused was responsible for causing death of his daughter, but subsequently he took totally opposite stand and supported the defence. In that very authority the law regarding admissibility of dying declaration in evidence in terms of Section 32 of the Evidence Act was summed up holding that :-

“There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

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.

Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

A dying declaration which suffers from infirmity cannot form the basis of conviction.

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

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.

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.

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

Where a dying declaration is recorded by a competent Magistrate, it would stand on a 'much higher footing'.

A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim.

1992 (3) RCR (Crl.) 552 (SC) and 1958 SCR 552

relied.”

A falsehood which DW-1/Raj tried to propagate regarding Suman having made oral deposition before her giving clean chit to the accused stood exposed when in her cross-examination she admitted that she had not stated before any Police Officer about oral dying declaration allegedly made by deceased before her; that she had not filed any application before any competent authority. If in fact Suman had caught fire from stove while preparing breakfast in kitchen then where was the occasion to change her stand and involve her husband in the case wrongly without any rhyme or reason. Suman-deceased suffering extensive burn injuries must have been aware of the fact that she was not going to survive for long, then there was no reason for her to involve her husband in this case wrongly if he had not done any wrongful act. It has to be kept in mind that she did not implicate her mother-in-law or husband's younger brother in this case. In case, she wanted to victimize her in-laws family wrongfully, she could have named a number of persons of such family and even levelled allegations of demand of dowry etc. also, which she did not do. Furthermore, if she had stated before DW-1/Raj that she had caught fire while cooking in the kitchen, then Raj on coming to know that Rajesh Kumar-accused had been booked for murder of Suman in normal circumstance would have agitated the matter with the local police and if not listened, then to the higher Police Officer in that regard submitting written representation etc., but she did not do so. Her conduct and

inaction in the matter goes to show whatever she had stated so in her examination-in-chief while appearing as DW-1 in the Court is clearly an afterthought and without any element of merit.

For similar reasons testimony of DW-2 Nirmala Devi does not inspire confidence. In the cross-examination of DW-2/Nirmala Devi, credibility of this witness also stood shaken inasmuch as she stated that she came to know about 15 days after registration of the case but she had not moved any application to any authority regarding any false implication of the accused and about the story given by her in the examination-in-chief. It is not safe to place reliance upon her deposition.

The accused procuring affidavit Ex.DW3/1 from father of deceased goes to show that he was making every attempt to tamper with the prosecution evidence so as to avoid punishment in the case. The contents of the affidavit do not get proved in a proper manner hence this affidavit does not help the accused much.

The dying declaration of Suman is sufficient to prove the case of prosecution more particularly when such declaration by Suman-deceased comes out to have been made voluntarily without any pressure, tutoring, prompting or imagination, while she was in fit state of mind. There is no suspicion attached to such declaration and it does not come out to be suffering from any infirmity or illegality. Suman-deceased had no reason to involve her husband in this case voluntarily. Her dying declaration is corroborated by the fact that a kerosene Can

alongwith match box were found from the spot and stove or fry pan which might have gone to show that Suman had caught fire accidentally, were not recovered from the spot during investigation.

The incident had taken place in the matrimonial home of deceased-Suman and accused i.e. within four walls of the house. It was for the accused-husband to explain as to under what circumstances the deceased (his wife) had caught fire and suffered burn injuries. Merely by showing ignorance and coming up with a plea that she had caught fire from stove while doing cooking thereon, which plea does not seem to be convincing, the accused cannot get a clean chit. Rather the plea comes out to be false and constitute a strong incriminating circumstances against him. Unfortunately, Sham Lal, a maternal uncle of deceased and his wife Raj seemed to have compromised the matter with the accused-party and rather than helping the Court in coming correct conclusion in the matter, they chose to extend all possible help to the accused-party in escaping punishment but they cannot be allowed to succeed in that way.

We find that the prosecution has successfully proved its charge against accused that on 23.10.1998 at about 9:00 a.m. in the area of Mohalla Arya Nagar, Kartarpur, accused-Rajesh Kumar poured kerosene oil on her wife and set her ablaze intentionally resulting in Suman severe burn injuries to which she succumbed.

The judgment of conviction and order of sentence passed by the trial Court is well reasoned one, based upon proper appraisal and

appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and sentence is upheld whereas appeal is found to be without any merit and the same is accordingly dismissed.

Rajesh Kumar/appellant-accused is stated to be on bail vide order dated 20.05.2005 granted by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Jalandhar is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

06.04.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |