

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

**CRA-D-647-DB-2010
Date of decision :- 9.3.2017**

Vinod Kumar @ Pamma and others

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr. K.D.S. Hooda, Advocate with
Ms.Pooja Bishnoi, Advocate
for the appellants.

Mr. Praveen Bhadu, Assistant A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 15.5.2010 passed by the Court of learned Additional Sessions Judge, Karnal vide which he had convicted accused Vinod Kumar @ Pamma, Parmod Kumar alias Sonu, Chandro and Sudesh for the offence under Section 302 IPC and order dated 24.5.2010 vide which they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for two months each.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

In nutshell, the prosecution story as it unfolded during the trial is that on 10.5.2009 on receipt of V.T. message Ex.P35 from Police Station Civil Lines, Karnal, a police party headed by ASI Om Parkash (hereinafter referred to as Investigating Officer/IO) from Police Station Gharaunda reached at Police Station Civil Lines, Karnal. From there, after collecting medical ruqa, the police party left for Bala Ji Burn Centre, Karnal, where injured Asha in burnt condition stood admitted. The Investigating Officer moved an application Ex.P36 at the said hospital seeking opinion of the attending doctor to record statement of injured Asha, on which the doctor declared her fit to make statement.

Thereafter, the Investigating Officer approached the Duty Magistrate, Karnal by moving application Ex.P37 for recording statement of injured Asha. On receipt of that application, Ms.Aarti Singh, Duty Magistrate, Karnal went to Bala Ji Hospital. After getting opinion of the attending doctor in affirmative regarding fitness of the injured to make statement, Ms Aarti Singh, Duty Magistrate, Karnal recorded statement of injured Asha Ex.P20. *Inter alia* in the said statement Asha stated that she is having two daughters and on 10.5.2009 in the morning her brother-in-law (devar) - Sonu, husband – Vinod, mother-in-law - Chandro and sister-in-law (jethani) gave beatings to her and set her ablaze by sprinkling kerosene upon her; that the neighbours gathered there; that then her in-laws brought her to the hospital; that she had been saved by the neighbours; and that she was maltreated by her in-laws due to bringing insufficient dowry as well as for giving birth to two daughters. That statement was thumb marked by injured Asha and signed by Ms.Aarti Singh, Judicial Magistrate Ist Class (Duty

Magistrate), Karnal. Dr.Rakesh Jindal put a certificate Ex.P50 below such statement to the effect that patient Asha remained fit throughout the time of statement. Learned Magistrate had appended her certificate Ex.P21 on that statement dilating that the said statement was recorded by her in her own handwriting and it contains true account of facts deposed by Asha and nothing had been added or subtracted therefrom; that statement had been made voluntarily without any pressure or coercion from any corner.

On an application having been filed by the Investigating Officer, learned Magistrate supplied copy of the statement to him. ASI Om Parkash (Investigating officer) appended his endorsement Ex.P39 below such statement and sent it to Police Station Gharaunda through HC Arvind Kumar, on the basis of which formal FIR Ex.P2 was recorded by ASI Balwinder Singh. Thereafter, the Investigating officer with his team went to the spot and called a photographer there, who took snaps of the place of incident. Thereafter, the Director, Forensic Science Laboratory along with his team reached there and carried out spot inspection. The Investigating Officer also did so and prepared rough site-plan of the place of incident as Ex.P40. Thereafter, he lifted an empty can of kerosene oil (MO1), one burnt match stick (MO2), one *KALASH* (MO3) and pieces of burnt clothes (MO4) on which the skin of the deceased was found to be sticking. Those were converted into parcels and sealed with the seal of Investigating Officer having initials 'OP'. Those parcels were taken into possession vide recovery memo Ex.P24 attested by witnesses. Seal after use was handed over to HC Arvind Kumar. The Investigating Officer recorded statements of

witnesses. From the spot, he went to Bala Ji Hospital and recorded statement of Karambir son of Chander Bhan, father of injured – Asha, Krishna wife of Karambir, Pala son of Chander Bhan, Virender son of Chander Bhan and Hemant son of Karambir. On return to Police Station Gharaunda, he deposited the case property with MHC. On 11.5.2009, the Investigating Officer got a scaled site-plan Ex.P1 of the place of occurrence prepared from HC Veer Shakti Singh. On 21.5.2009, a V.T. message Ex.P41 was received regarding death of Asha, therefore, Section 304-B IPC was added in the FIR. Thereafter, Investigating Officer along with HC Arvind Kumar reached at Bala Ji Hospital, where dead body of Asha was lying. The Investigating Officer carried out inquest proceedings with regard to unnatural death of Asha preparing a report Ex.P42 in that regard. He got post-mortem examination conducted on the dead body on 22.5.2009. After post-mortem examination, dead body of Asha was handed over to her parents vide receipt Ex.P43. On 23.5.2009, accused Vinod @ Pamma and Parmod @ Sonu were arrested in this case and on 30.5.2009, accused Chandro was arrested. On 3.7.2009 Karambir produced invitation card of marriage of Asha which was taken into possession vide memo Ex.P44, such invitation card being Ex.P45. The Investigating officer recorded statements of witnesses.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Karnal.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Karnal, he supplied copies of documents relied

upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 304-B IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate, Karnal vide his order dated 25.7.2009 committed the case to the Court of learned Sessions Judge, Karnal, from where it was entrusted to the Court of learned Additional Sessions Judge, Karnal.

Learned Additional Sessions Judge, Karnal finding that charge for offence under Section 302/34 IPC and, in the alternative, for offence under Section 304-B/34 IPC and for the offence under Section 498-A/34 IPC was disclosed against the accused, charge-sheeted all the accused for the said offences, to which, they 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 twenty witnesses as per details below:

PW1 EHC Veer Shakti Singh, Draughtsman, Police Lines, Karnal stated that he had visited the spot on 11.5.2009 and prepared scaled site-plan of place of incident as Ex.P1 on pointing out of ASI Om Parkash.

PW2 ASI Balwinder Singh stated that on 10.5.2009, while he was posted as such in Police Station Gharaunda, on receipt of ruqa from ASI Om Parkash through HC Arvind Kumar, he had recorded formal FIR Ex.P2 under his signatures and he had also made endorsement Ex.P3 on the ruqa. He also sent special reports of this case to the Illaqa Magistrate and higher officers through Constable Lakhi Ram.

PW3 Constable Sunil Dutt stated that he was posted as

Gunman of Manoj Kumar son of Hari Kishan, resident of Gharaunda under orders of higher authorities from 23.4.2009 as Manoj Kumar was contesting the Parliamentary Election as a candidate of Vanchit Jamat Party; that he used to remain with Manoj Kumar all the time at his house as well as outside his house as his bodyguard; that on 10.5.2009, he along with Dharambir Panchal and Manoj Kumar was sitting in the room of Manoj Kumar in the upper storey of his house and they were talking with each other; that at about 10:00 A.M., he heard noise of some altercation going at ground floor of house of Manoj Kumar; that Dharambir who was sitting along with them, asked Manoj Kumar that he should go downstairs and see as to what type of altercation was going on there; that thereafter, Manoj Kumar came down to the ground floor; that they also tried to see the altercation through ventilator of the room. At that time, Sudesh Kumari - accused wife of Manoj Kumar asked them as to why they were peeping through the ventilator since it was a private dispute of husband and wife and asked them to sit inside the room. The witness further stated that thereafter, he along with Dharambir sat inside the room and ten minutes thereafter, Asha - deceased along with her two daughters came in her room on the first floor; that after some time, both the daughters of Asha came out of the room and Asha also came out of the said room and her clothes were burning and she was running downstairs to the ground floor; that thereafter, fire of the deceased was extinguished by other family members; that Sudesh wife of Manoj Kumar was in her room on the first floor at that time; that after some time they came down on the ground floor and on enquiry came to know that in fact the daughters of the

deceased were given bath by their grandmother and thereafter they were made to sit in the sun. At this deceased asked her daughters as to why they were sitting in the sun to which they replied that their grandmother had asked them to sit there because of winter, hearing that, deceased Asha told her mother-in-law as to why “*DADI RANDI KAYON NAHI DHOOP ME BAITHI*”. On this, the altercation took place between the deceased and her mother-in-law. Vinod - accused also gave a slap to the deceased. Sonu - accused also stopped the deceased from opening the gas cylinder and he had also given a slap blow to the deceased when she was trying to open the gas cylinder and he also pushed her outside the kitchen. Thereafter, Asha deceased tried to set herself on fire by opening the gas cylinder lying in the kitchen. Then the deceased came on the first floor and set herself on fire by sprinkling kerosene oil lying in the room on account of the incident which had taken place on the ground floor; that he himself had seen the deceased when she set herself on fire in a room; that the incident was also seen by Dharambir; that father-in-law, mother-in-law and other family members of the deceased tried to extinguish the fire by putting water on the deceased. Thereafter, deceased was taken to Bala Ji Hospital at Karnal.

PW4 HC Arvind Kumar, a formal witness tendered in evidence his affidavit Ex.P4 submitting that the same may be read as a part of his statement.

PW5 Ashok Kumar, Photographer from Ashoka Photo Studio, Maharana Partap Chowk, Meerut Road, Karnal deposed that on 21/22.5.2009 at about 9/10:00 p.m., he had gone to Bala Ji Hospital and taken photographs Ex.P5 to Ex.P7 of the deceased Asha Rani with the

help of a digital camera. He stated that after developing the photographs, he handed over the same to the Investigating Officer.

PW6 Inspector Baljinder Singh deposed that on 28.6.2009 while he was posted as such at Police Station Gharaunda, on that day on completion of investigation of this case, he had prepared report under Section 173 Cr.P.C.

PW7 Constable Surender Singh from Police Station Gharaunda stated that on 19.5.2009 also, he was posted as such. He tendered in evidence his affidavit Ex.P8 submitting that the same may be read as a part of his statement.

PW8 HC Jai Narain deposed that on 10.5.2009, he was posted at Police Station Gharaunda. He tendered in evidence his affidavit Ex.P9 submitting that the same may be read as a part of his statement.

PW9 Karambir son of Chander Bhan, father of deceased -Asha deposed that Asha was his eldest daughter; that her marriage with Vinod accused was performed on 22.11.2002 at Gharaunda; that after marriage, his daughter gave birth to two children, from the loins of her husband, i.e. Tannu aged 6 years and Lucky aged about two years. The witness stated that in-laws of his daughter kept her properly and they never harassed her on account of demand of dowry etc.; that his daughter was living happily in her in-laws house separately along with her husband and two daughters; that in-laws of his daughter never taunted her on account of giving birth to daughters only; that on 9.5.2009, he received a telephonic message from his daughter Asha Rani and she told him that she and her husband were living separately and he

had a talk with his son-in-law as well and he was also happy when he talked to him about the welfare of the family. The witness stated that on 10.5.2009 at about 10:30 A.M., when he was present in the vegetable market at his shop, then he received a telephonic message from his son-in-law that his daughter Asha had set herself on fire because of mental depression. The witness stated that his daughter Asha was suffering from this problem for the last 2-3 years; that thereafter her daughter was brought by her in-laws to Karnal for her treatment in Bala Ji Hospital and he along with his other family members reached there; that at that time Asha was in a perfect condition to speak and explain everything and on inquiry by him, she told him that she had set herself on fire because of depression. The witness deposed that the accused present in the Court were not at all responsible for setting his daughter on fire; that after some time a large number of his relations gathered there in the hospital and everyone of them was of the view that in case her daughter survived, then she would be involved in a criminal case for attempting to commit suicide; that thereafter their relations gathered in the room of his daughter Asha and they started tutoring her that she should put the entire blame of the incident upon her in-laws, otherwise she would be involved in a criminal case; that she (deceased) was tutored strongly to depose against her in-laws and that his daughter Asha had made statement before the Magistrate as well on the same day as tutored by him and his relations and it was not her own statement and whatever she stated before the Magistrate was her tutored version in order to save herself. The witness further stated that in fact it was a mischief on the part of some of his relations who succeeded in prevailing upon his

daughter to make such statement. Even at the time of recording of her statement all of them were present on her bed side and were pressing her to depose as suggested by all of them. The witness stated that accused are not responsible for the death of his daughter Asha Rani and that father-in-law of his daughter also suffered burn injuries on his arms while extinguishing the fire and also to save Asha Rani. The learned Public Prosecutor came up with a request that the witness was suppressing the truth, as such he should be declared hostile and permission be granted to him to cross-examine the witness and his such request was allowed.

PW10 Ms.Krishna also deposed on similar lines of Karambir (PW9) and she was also declared a hostile witness. The Public Prosecutor availed of permission to cross-examine the witness.

To similar effect has been testimony of PW11 Virender Kumar, uncle of the deceased, who instead of supporting the prosecution story, went out of the way to depose in favour of accused. He was also declared a hostile witness as per the request of Public Prosecutor, who was allowed to put questions to him in the form of cross-examination.

PW12 Pala Ram did not toe the line of prosecution version and was declared a hostile witness.

PW13 Ms.Aarti Singh, Judicial Magistrate Ist Class, Karnal stated that on 10.5.2009, police had moved an application Ex.P14 for recording statement of Asha, wife of Vinod Kumar admitted in Bala Ji Hospital, Karnal; that she had received the application at 1:40 p.m. and then proceeded to the hospital for recording the statement; that she made her endorsement Ex.P15 on the application itself, thereafter, she reached

the hospital at 1:45 p.m. She proved her endorsement Ex.P16 stating that police had also presented an application to the Medical Officer, Bala Ji Hospital seeking opinion of the attending doctor regarding fitness of the injured to make statement, such application being Ex.P17; that the concerned doctor declared the injured fit to make statement vide endorsement Ex.P18 and she also made her endorsement Ex.P19 on the application. Thereafter, she recorded statement of injured - Asha as Ex.P20 which was signed by her and thumb marked by injured Asha. The witness stated that she had also given her certificate Ex.P21 regarding recording of statement of injured - Asha in her own handwriting; that the statement made by injured - Asha contained true account of facts deposed by her and nothing had been added or subtracted therefrom; that statement has been made voluntarily without any pressure or coercion from any corner; that thereafter, the Investigating Officer moved an application Ex.P22 for issuance of copy of the statement and she made her endorsement Ex.P23 and carbon copy of the same was given to the Investigating Officer Om Parkash.

PW14 Dharambir deposed on the same lines as that of PW3 Sunit Dutt.

PW15 ASI Lehna Singh stated that on 9.6.2009 while he was posted at Police Station Gharaunda, he had arrested accused Sudesh and produced her in the Court.

PW16 Constable Lakhi Ram deposed that on 10.5.2009 while he was posted at Police Station Gharaunda, ASI Balwinder Singh handed over to him the special report of this case for delivering the same to the Illaqa Magistrate and higher police officers; that he delivered the

special report to the Illaqa Magistrate, SP and additional SP without any delay.

PW17 Mohan Handa, Photographer, resident of Gharaunda, running a photographer shop in the name and style of Handa Photo Studio stated that on 10.5.2009, he had gone to the house of Hari Krishan in Aggarsain Colony, Gharaunda and took photographs of the site. He proved the photographs as Ex.P25 to Ex.P29 and negatives thereof as Ex.P30 to Ex.P34.

PW18 ASI Om Parkash, who had carried out the investigation in this case deposed in that regard proving various documents.

PW19 Dr.Rakesh Jindal C/o Bala Ji Plastic Surgery and Burns Centre, Mall Road, Karnal deposed that patient Asha wife of Vinod Kumar, 25 years female, resident of Gharaunda, Karnal was admitted in his hospital on 10.5.2009 at 11:00 A.M. with diagnosis of thermal burns 100% . Patient was brought by Vinod Kumar (husband) and Karambir (father). Patient had history of burns by kerosene oil on 10.5.2009 at 10:30 A.M.; that fire was extinguished by clothes and blankets; that there was no history of unconsciousness, convulsion, vomiting and ENT bleed. On examination, pulse rate was 120 per minute, respiration rate was 36 per minute and temperature was 98 degree F; that there was deep burns all over the body; a diagnosis of thermal burns 100% was made; that patient was treated on conservative basis on intra venous fluids, antibiotic, pain killers, hydrocortisone etc.; that patient was monitored regularly; that he sent ruqa Ex.P48 to SHO, Police Station Civil Lines, Karnal, regarding admission of injured Asha

which bears his signatures. The witness further deposed that on the same day, on police request Ex.P17, he gave his opinion Ex.P18 that patient is fit to give statement, which bears his signatures at 1:30 p.m.; that on 10.5.2009, after recording statement Ex.P20 of injured - Asha by Judicial Magistrate, he gave his opinion Ex.P50 that Asha remained fit throughout the time of statement, which bears his signatures; that on attendants request, patient was referred to PGI, Chandigarh on 11.5.2009 at 4:10 p.m.; that patient was again brought to his hospital on 11.5.2009 at 11:30 p.m. and was readmitted; that patient was again treated on conservative basis; that despite all efforts, patient could not be saved and declared dead on 21.5.2009 at 7:45 p.m. This witness further deposed that he handed over written intimation Ex.P49 later on to the police regarding death of Asha on 21.5.2009, which bears his signatures.

PW20 Dr.Anoop Garg, Medical Officer, Trauma Centre, Karnal deposed that on 22.5.2009, he along with Dr.Vishal Mahajan conducted the post-mortem examination on the dead body of Asha wife of Vinod Kumar, 24 years female as per police papers, resident of Aggarsain Colony, Gharaunda. The dead body was identified by Karambir son of Chander Bhan and Virender son of Chander Bhan, residents of Gali No.2, Moti Nagar, Karnal. He found the following:

"Length of the body was 5 feet 6 inches, mark of ligature on neck was nil. It was a dead body of a female aged approximately 20 years female moderately built and nourished. No cloth on the body. Rigor mortis were present. Both eyes and mouth closed. Superficial to deep burn present all over the body except on a part of back and lower

1/3 on the both legs. Fine pus was present on various parts of the body and abdomen, thigh, chin to feet. Walls, ribs, cartilages, pleura, larynx and trachea were healthy, whereas both the lungs were congested. Pericardium heart and large vessels were healthy. Wall of abdomen, peritoneum, mouth, pharynx and esophagus were healthy. Stomach contained semi digested food. Small intestine contained chyme and gases, large intestine contained faecal matter and gases. Liver, spleen and kidney were congested and health. Bladder was empty. Organ of genitalia were healthy.”

The cause of death as per their opinion was due to septicemia and due to extensive burn, which was enough to cause death in normal course of life. All burn injuries were ante-mortem in nature.

Following articles were handed over to the police:

1. A well stitched dead body after post-mortem examination with all belongings.
2. Copy of PMR.
3. Police papers No.1 to 20 duly signed.

As per their opinion, the probable time that elapsed between injuries and death was variable and between death and post-mortem was within 24 hours. The witness had brought the original PMR, which was duly signed by him, Dr.Vishal Mahajan, Om Parkash ASI, Karamvir and Virender Kumar, the correct carbon copy of which was Ex.P51. The witness further deposed that on police request, carbon copy of which is Ex.P52, for conducting the post-mortem examination on the dead body of Asha, he along with Dr.Vishal being on duty in Trauma Centre,

Karnal had conducted the post-mortem. The inquest report being Ex.P42 was signed by them.

The Public Prosecutor closed the evidence of prosecution after tendering report regarding visit of FSL team to the place of occurrence Ex.P46 and report from FSL Ex.P47.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Further, accused Vinod Kumar @ Pamma took up a plea that he and his co-accused had never set the deceased on fire as stated by her in her dying declaration. The true facts of the case are that his wife was suffering from depression and she was a short tempered lady. She used to pick up quarrel on small issues. On the day of occurrence, she picked up a quarrel with him with respect to the children. First of all, she tried to burn herself by opening the LPG Gas cylinder lying in the kitchen. Soon thereafter, she went upstairs in her residential room with kerosene oil and within no time, she set herself on fire. She thereafter rushed down stairs in the courtyard of the house, where they tried to extinguish the fire by putting water etc. In that process, his father also received 40% of burns on his hands and arms. This occurrence was witnessed by Gunman of his brother, namely, Sunil Dutt and Dharambir son of Shanker, who were present in the room in front of the residential room of the deceased, where she had set herself on fire. Soon after the occurrence, they took the deceased to Karnal for her immediate

treatment. He also informed his in-laws regarding the incident. They also joined him when he came to Karnal along with his wife. All of them then took her to the hospital of Dr.Jindal, where she was given treatment. After some time, his in-laws and their relations picked up a quarrel with him and his family members on the pretext that they were negligent in stopping the deceased from taking such a drastic step. On this issue, hot words were exchanged between him and his in-laws family because he told them that he and his family members were not at all at fault. Thereafter, his in-laws and their relations taking undue advantage of the incident entered the room of his wife and asked them to leave her with them only. Thereafter, they tutored the deceased telling her that she should involve him and his parents etc. They also told her that in case she did not change her version, she would be arrested by the police for her wrongful act in case she survived. His wife being under the influence of her parents, subsequently falsely involved them by way of giving a tutored version before the Magistrate. All of them in the present case are innocent. All his brothers are living separately because his father had partitioned the house long back. They are all having their separate ration cards and separate business etc.

Accused Parmod Kumar @ Sonu took the plea that he being a student had no connection with the matrimonial life of his brother Vinod Kumar and his wife. He has been residing separately along with his father. He also helped his father in running a small shop. All his brothers are living separately and all the allegations levelled against him are false and frivolous one.

Accused Chandro took the plea that all the allegations

levelled against her are false and frivolous. The deceased was a hot headed lady. She was residing separately from her and her family members in a separate portion of the house, which was mutually partitioned by them. On the day of occurrence, the deceased had picked up a quarrel with her husband with respect to her children and out of rage, she tried to set herself on fire by burning the LPG Gas cylinder in the kitchen. Later on, she changed her mind and immediately went upstairs in her residential room and there she set herself on fire by putting kerosene oil upon her. Her son Vinod had informed the parents of the deceased immediately after the incident and all of them joined them at Karnal for taking the deceased to Bala Ji Hospital for best possible treatment. Her parents and other relatives had accompanied them to the hospital. After some time, they picked up a quarrel with her son Vinod Kumar and on account of this reason, they got annoyed with them. Thereafter, they conspired together and tutored the deceased to change her statement before the Magistrate. They also told the deceased that in case she survived because of the burn injuries, she would be involved in a criminal case because she had herself set on fire. Moreover, the deceased was suffering from some depression as well. Later on, the parents of the deceased in league with the local police managed to record the tutored version of the deceased before the Magistrate and involved them falsely in the present case. That the moment her husband came to know about the incident, he had tried to extinguish the fire when the deceased came running from her room on the first floor of the house in the courtyard of the house. In that process, her husband had also suffered 40% burns on his hands and other parts of

the body and this fact was completely ignored by the police.

Accused Sudesh took up the plea that she is living separately along with her children in a separate portion of the house. Her kitchen is also separate. She has no connection whatsoever with the family of the deceased. In fact, the deceased had set herself on fire out of rage. Her father-in-law had extinguished the fire and in that process, he had also suffered about 40% burns. The matter was reported to the parents of deceased. They reached in the hospital, where the deceased was admitted. In fact, subsequently, the parents of the deceased tutored her to change her stand before the Magistrate because they apprehended that in case the deceased survived the injuries, she would be involved in a criminal case. The parents of the deceased purposely and willfully tutored Asha deceased to involve all of them in this case. She was having her separate ration card. She has been residing with her family members for the last 15 years separately from her in-laws.

During their defence, accused examined Ramandeep Singh, Clerk, Office of District Registrar, Firms and Societies, Karnal as DW1, who had brought the summoned record stating that as per record of his office, a partnership firm under the name and style of M/s Tripati Balaji Construction was registered in their office vide registration No.ROF/382 of 2007-08; that at the time of registration of the firm, partnership deed was also supplied by the partners of the firm and as per their record Manoj son of Hari Kishan and Sudesh wife of Manoj, both residents of House No.179, Ward No.6, Aggarsain Colony, Gharaunda were the partners. He proved photostat copy of Form-C as Ex.D3. He also proved copy of Form-A as Ex.D4 and copy of the partnership deed as Ex.D5.

DW2 Dr.Manjeet Singh Dahiya, Medical Officer, PHC Kutail, District Karnal deposed that on 10.5.2009, he was posted as Medical Officer, CHC, Gharaunda and on that day, he medico-legally examined Hari Kishan son of Chandan Ram, aged 65 years, retired Government Employee, resident of Aggarsain Colony, Ward No.6, Gharaunda and he found the following injury on his person:

1. The entire dorsum of the right hand was burnt. The adjacent 2 inches approximately of the right forearm. Both the anterior and posterior surfaces were also involved. There was degloving of the skin and blister formation on the dorsum surface of the right hand involving the fingers also. Blisters were also seen on the thenar and hypothenar eminences of the right hand. The entire hand was swollen. Singeing of the hairs on the right forearm adjacent to the burnt area was present Percentage of burn was less than 9%.

This witness further deposed that the patient was referred to G.H., Karnal for further management and determination of the degree of the burns and Surgeon's opinion. The duration of the injury was stated to be within 12 hours and the nature of the injury could only be commented upon after the Surgeon's opinion.

This witness further deposed that he has seen Hari Kishan injured present in the Court and he was the same person, who was medico legally examined by him on 10.5.2009. He proved the MLR Ex.D6. He further deposed that possibility of the burn injuries on the right hand of the injured while saving the burning person cannot be ruled out.

After hearing arguments, learned trial Court convicted and

sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record and we find that there is no merit in the appeal.

The most important piece of evidence in this case is dying declaration of Asha, which she got recorded with Ms.Aarti Singh, Judicial Magistrate Ist Class, Karnal on 10.5.2009. In that dying declaration, she has clearly stated that accused gave beatings to her and set her on fire by sprinkling kerosene oil upon her; that she was maltreated by her in-laws due to insufficient dowry as well as for giving birth to two daughters. She had further stated that the neighbours had gathered there who had saved her and then her in-laws had brought her to hospital. Thus, no doubt is left in the mind regarding all the four accused being responsible for the murder of Asha. The statement was made by Asha while she was mentally alert and was in a fit condition to make statement. This is obvious from the certificate appended by Dr.Rakesh Jindal below the statement, such certificate being Ex.P50. PW19 Dr.Rakesh Jindal, who had examined injured - Asha first of all, since she was taken to his hospital i.e. Bala Ji Plastic Surgery and Burns Centre, Mall Road, Karnal, deposed that on police request Ex.P17, he had opined that patient was fit to give statement vide Ex.P18. He had further stated that on 10.5.2009 after recording statement Ex.P20 by Judicial Magistrate Ist Class, he had opined that Asha remained fit throughout the time of her statement, such opinion being Ex.P50. Then

there is testimony of PW13 – Ms.Aarti Singh, Judicial Magistrate Ist Class, Karnal who had recorded such statement of Asha. She stated that she had recorded her (Asha) statement, after getting the opinion (Ex.P18) regarding fitness of injured which was given in affirmative, such statement being Ex.P20 thumb marked by Asha. She categorically stated that the statement made by Asha contained true account of facts deposed by her and nothing had been added or subtracted therefrom; that statement has been made voluntarily without any pressure or coercion from any corner. That statement seals the fate of all the accused. PW13 – Ms. Aarti Singh, Judicial Magistrate Ist Class, Karnal had no reason to depose falsely against the accused and in favour of prosecution. This statement is quite relevant under Section 32 of the Evidence Act since it relates to cause of death of Asha. 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 relates 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 her 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 :-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) 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.
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.
- (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the

dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

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

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

(xii) 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.”

We find that this authority had almost the same facts as to the facts of the present case.

In this case a clear attempt was made to nullify the dying declaration made by Asha and in that regard, accused party, which is shown to have political links and influence at high level obviously tried to divert the direction of the investigation and procured help of prosecution agency also so as to get a favourable verdict in the trial. Such type of tactics deserve to be condemned because if allowed to succeed, that results in diverting the ends of justice and the Courts have to be very vigilant in that regard. Coming to the testimony of PW3 Constable Sunil Dutt, that totally favours the defence and is a clear attempt to cause a major dent in the prosecution version. How and under what

circumstances, he was examined as a prosecution witness is something which needs to be inquired into by the quarter concerned. Similarly, PW9 – Karambir, father of the deceased, PW10 – Krishna, mother of the deceased, PW11 – Virender Kumar, uncle of the deceased and PW12 – Pala Ram, another uncle of the deceased let the prosecution down very badly resiling from the statements made by them before the police during investigation of the case. As a matter of fact, they denied having made such statements to the police. Such close relatives of deceased having opted to help the accused, instead of going by the statements earlier made by them to the police, is a matter of anguish showing falling moral values. These relatives were obviously won over by the accused and their every attempt was to help the accused in getting a clean chit. In the statements to the police, they had levelled allegation of deceased being harassed and maltreated by members of her in-laws family and that Asha was set on fire by the accused since they were unhappy due to Asha having brought insufficient dowry and giving birth to two daughters. But such attempt by these close relatives of the deceased cannot be allowed to succeed and their depositions so far as those are meant to help the accused are to be ignored. They were duly confronted with their statements recorded during the investigation of the case. They could not offer any satisfactory explanation for resiling from the same. It seems that they have compromised the matter with the other party, most likely for consideration and for that reason have resiled from the statements originally made by them against the accused. Their statements cannot cause a dent in the prosecution story and dying declaration of Asha is sufficient to bring all the accused to book. Such

dying declaration comes out to have been made by Asha voluntarily, without any pressure, while she was in fit state of mind. It does not come out to be result of tutoring, prompting or imagination. There is no suspicion attached to such declaration and it does not come out to be suffering from any infirmity. Necessary details of the incident, names of the culprits and role played by them in the incident are clearly mentioned therein. Asha had no motive to involve the accused in this case falsely. Therefore, due solemnity and sanctity is to be attached to her words. Since the dying declaration has been recorded by a competent Magistrate, it has to be given due weightage. Statements of PW9 – Karambir, father of the deceased, PW10 – Krishna, mother of the deceased, PW11 – Virender Kumar, uncle of the deceased and PW12 – Pala Ram, another uncle of the deceased, in which they obviously tried to help the accused during the trial, are not creditworthy and cannot be given much weightage while deciding the present case. The medical evidence duly corroborated the prosecution version in terms of the dying declaration. The charge against all the accused is proved conclusively and affirmatively.

As already observed, investigation of this case has not been carried out in a proper, scientific and efficient manner, rather it leaves much to be desired. The investigation seems to have been carried out to help the accused rather than bringing the culprits responsible for death of Asha to book. Similarly, during the trial, the Public Prosecutor did not perform the duty properly and instead of trying to bring the incriminating evidence against the accused, the evidence favourable to them was brought on record.

The judgment of conviction and 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 dismissed accordingly.

9.3.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No