

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

CRA-D-268-DB of 2013(O&M)

Date of decision :- 22.08.2017

Rinku @ Kana and others

....Appellants

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE S.S. SARON,
ACTING CHIEF JUSTICE.**

HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Vijay Saini, Advocate for
Mr.Rakesh Nehra, Advocate
for appellant No.1.

Mr.Vinod Ghai, Senior Advocate with
Mr.Simrandeep Singh Sandhu, Advocate
for appellants No.2 and 3.

Mr.Surender Singh Pannu, D.A.G., Haryana

Mr.Vinod Kumar, Advocate
for the complainant.

H.S. MADAAN, J.

Accused Rinku @ Kana, Kalu and Lovely, all the three brothers were tried by the Court of learned Additional Sessions Judge, Rohtak for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code ('IPC' - for short). They were convicted and sentenced to undergo rigorous imprisonment for life, besides, pay a fine of Rs.10,000/- each and in default thereof, undergo further rigorous imprisonment for a period of one year each.

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

Briefly stated, the prosecution case as it emanated during the trial is that on 9.9.2007, a telephone message was received at Police Station City, Rohtak from Police Post PGIMS, Rohtak that Sonu son of Parkash Chand, resident of Salara Mohalla, Rohtak was admitted in the said medical institute with burn injuries. An Investigating Officer was asked to be sent. On receipt of said message, SI Om Parkash (hereinafter referred to as the Investigating Officer/IO) along with other police officials reached Police Post PGIMS, Rohtak. A copy of the MLR Ex.PB of Sonu and written intimation Ex.PC were collected from there. Then the police party went to Ward No.4, where Sonu was admitted. The Investigating Officer obtained opinion from the attending doctor regarding fitness of injured - Sonu to make a statement. After getting an opinion in the affirmative, he recorded the statement Ex.PK of injured – Sonu.

Sonu, aged 24 years inter alia stated that he had been running a shop for sale of utensils in Salara Mohalla, Rohtak. About 15-20 days earlier i.e. earlier from 9.9.2017, Rinku son of Veer Bhan of Punjabi community, resident of Salara Mohalla had borrowed a sum of Rs.800/- from him. On the fateful day (9.9.2007) at about 2:00 p.m. when Sonu demanded the said amount from Rinku, he got infuriated and held out threats to kill the complainant, if he demanded the money again from him.

On that very day at about 6:30 p.m., when Sonu was coming from Jhulawala Chowk, then Rinku, Kalu and Lovely sons of Veer Bhan intercepted him on the road. Kalu and Lovely caught hold of Sonu from his hands while Rinku sprinkled petrol on him from a bottle and set him ablaze. Thereafter all the three culprits ran away towards Jhulawala Chowk. According to the complainant - Sonu, he raised an alarm and on hearing that Jaggu, Cycle Mechanic and Monu brother of the complainant came there and they extinguished the fire. Thereafter, they took him to Medical College, Rohtak, where he was admitted and medically treated. In the concluding lines of his statement, the injured – complainant stated that the accused had done the said act with an intention to kill him.

The statement was signed by complainant and his signatures were attested by SI Om Parkash, who appended his endorsement Ex.PK/3 below the statement and sent a 'ruqa' to the police station at about 9:40 p.m. through Constable Sharwan Kumar. On the basis of which formal FIR Ex.PK/1 for the offences under Sections 307/506/34 IPC was registered at police station by SI Raj Singh. SI Raj Singh made his endorsement Ex.PK/2 on the original 'ruqa' and sent it back to SI Om Parkash at PGIMS, Rohtak. He sent special reports of this case to the learned 'Illaqa' Magistrate and other senior police officers through Constable Mahabir Singh.

The Investigating Officer thereafter along with other police officials proceeded to the place where the incident had occurred. However, no person from complainant side was found there. In the meanwhile, Constable Sharwan Kumar reached that place along with

copy of FIR and 'ruqa' carrying the endorsement of SI Raj Singh. Thereafter, the police party returned to the police station.

On the next day i.e. 10.9.2007, the police party headed by SI Om Parkash again went to the place of occurrence. PWs Jaggu Mistri, Monu and Prakash Chand and several other persons from the locality were met by the police party. The Investigating Officer carried out the spot inspection as demarcated and indicated by the witnesses. He lifted an empty bottle Ex.PM. It was emitting smell of petrol. A half burnt T-shirt Ex.PN from the place of occurrence was also taken in possession by the police. The recovered articles were converted into separate parcels and sealed with the seal bearing impression 'OP'. The said parcels were taken into possession vide recovery memo Ex.PF, which was attested by the witnesses Monu and Prakash Chand. Seal after use was handed over to PW Monu. The Investigating Officer prepared rough site plan of the place of incident as Ex.PO. He recorded statements of witnesses and inquired regarding the matter from the people present at the spot. On the same day, on receipt of secret information, the police arrested accused Rinku alias Kana. On return to the police station, the Investigating Officer deposited the case property with MHC and put accused Rinku @ Kana in lock-up.

A telephone call from Police Station City, Rohtak was received at Police Post Sabji Mandi, Rohtak on 14.9.2007 that Sonu admitted in PGIMS, Rohtak had expired. Sub-Inspector Ajmer Singh, posted at Police Post Sabji Mandi, Rohtak along with Constable Iswhar Singh reached PGIMS, Rohtak and collected written intimation Ex.PP regarding death of Sonu. Thereafter, he went to Ward No.4 of that

medical institute, where the dead body of Sonu was lying. Inquest proceedings under Section 174 Cr.P.C. with regard to death of Sonu were conducted and report Ex.PE/2 was prepared. The statements of Sanjay and Gulshan during inquest proceedings were recorded. An application Ex.PE/1 was written and handed over to Constable Ishwar Singh directing him to get the post-mortem examination conducted on the dead body of Sonu. Thereafter, SI Ajmer Singh left that place and while he was present at Police Station City, Rohtak, Constable Ishwar Singh reached there and handed over copy of post-mortem report Ex.PE of Sonu along with other papers to him. As such offence under Section 302 IPC was added in the FIR. Special reports were sent to Illaqa Magistrate and higher police officers through Constable Mahabir Singh. During the course of investigation, the Investigating Officer got prepared scaled site-plan, recorded statements of witnesses and took into possession various documents. After completion of investigation and other formalities, 'challan' against accused Rinku @ Kana alone was prepared and filed in the Court of learned Chief Judicial Magistrate, Rohtak.

On presentation of 'challan' in the Court of Chief Judicial Magistrate, Rohtak, copies of documents relied upon in the 'challan' were supplied to the accused Rinku @ Kana as provided for under Section 207 Cr.P.C. The learned Chief Judicial Magistrate finding that offence under Section 302 IPC was exclusively triable by the Court of Sessions, he vide his order dated 2.4.2008 committed the case to the Court of learned Sessions Judge, Rohtak. The case was received in the Court of learned Sessions Judge, Rohtak by way of commitment and it

was entrusted to the Court of learned Additional Sessions Judge, Rohtak.

The learned Additional Sessions Judge, Rohtak, to whom the case was assigned on finding that prima-facie charges for the offences under Sections 302 and 506 IPC were made out against accused Rinku @ Kana, charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial.

During the course of trial, an application under Section 319 Cr.P.C. was filed for summoning of Kalu and Lovely as additional accused to face trial along with their brother - co-accused Rinku @ Kana. However, that application was dismissed by the learned trial Court vide order dated 1.6.2009. The prosecution filed a Criminal Revision petition against the said order in this Court, which was accepted vide order dated 13.9.2010 and accused Kalu and Lovely were ordered to be summoned. Their presence was accordingly procured by the learned trial Court and then charge for the offences under Sections 302 read with Section 34 was framed against all the three accused namely Rinku @ Kana, Kalu and Lovely vide order dated 13.1.2011, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as thirteen witnesses as per details below:

PW1 Gulshan Kumar stated that on 14.9.2007, he had gone to PGIMS, Rohtak and had identified the dead body of Sonu during inquest proceedings.

PW2 Sumit Kumar, Draughtsman, S.P. Office, Rohtak, had

visited the place of occurrence on 18.10.2007 and had prepared scaled site-plan Ex.PA thereof on the demarcation given by Jag Mohan son of Saiditta Mal. He deposed in that regard.

PW3 Dr.S.P. Chugh stated that on 9.9.2007, he was posted as Causality Medical Officer, PGIMS, Rohtak. On that day at 7:15 p.m., he medico-legally examined Sonu son of Parkash Chand, resident of Salara Mohalla, Rohtak. It was a case of alleged history of homicidal burns by sprinkling of petrol on the body of Sonu by some persons and thereafter setting him on fire. On examination, there were superficial to deep burns over face, part of chest, abdomen and back and both upper limbs. He advised for seeking Surgeon's opinion. The patient was kept under observations. There were approximately 45% burns. He proved carbon copy of original MLR as Ex.PB and 'ruqa' Ex.PC sent by him to the In charge, Police Post PGIMS, Rohtak regarding admission of the injured.

PW4 Dr.Vikas, Medical Officer, CHC Kiloï deposed that on 14.9.2007 while he was posted as Medical Officer, Forensic Medicine Department, PGIMS, Rohtak, the Investigating Officer had submitted an application for conducting the post-mortem examination on the dead body of Sonu son of Parkash Chander, aged 24 years, resident of Salara Mohalla, Rohtak and he accordingly did so. He submitted his affidavit in that regard as Ex.PD, carbon copy of original post-mortem report as Ex.PE. He stated that the police put up total 11 pages before him along with application Ex.PE/1 and inquest report Ex.PE/2 and all the eleven papers were initialled by him. In his affidavit Ex.PD, the witness has contended as follows:

1. That during his posting as M.O. In F.M. Deptt. PGIMS, Rohtak, he conducted post-mortem examination on the dead body of Sonu son of Parkash Chander, Caste Punjabi, resident of Salara Mohalla, Rohtak, Sex Male, aged 24 years, with PMR No.1415/07 DATED 14.9.2007. The dead body was brought by Head Constable Ishwar Kumar, No.1706, P.P. Sabji Mandi, Rohtak and was identified by Gulshan Kumar son of Sh.Shanti Lal and Sanjay son of Gulram. The time of death of dead body was 08:50 a.m. on 14.9.2007 according to PGIMS papers. PME was conducted at 3:00 p.m. on 14.9.2007.
2. It was the dead body of well built well nourished male of length 170 cm wearing green underwear, mouth and both eyes were closed. Rigor mortis was present.
3. Burn Injuries : There were present superficial to deep burns present over whole back upto buttocks, chest upto nipples, 20 x 15 cm area below right nipple over abdomen, 25 x 5 cm below left nipple, whole face, both arms. Both legs and genitalia were spared. Singing of scalp, genital here were present. Pus formation was present at places. Red line of demarcation was present. Soot particles were present in trachea. Burns were approximately 45 to 30%.

4. Plourse, larynx, trachea, both lungs were congested. Paricardium and large vessels were healthy. Right side of heart contained dark liquid blood and left side was empty.
5. Peritoneum, pharynx, oesophagus were congested. Stomach contained semi digested food and juices. Small intestine contained digested food and juices. Large intestine flatus. Bladder was empty. Liver, spleen and kidneys were congested. Organs of generation were healthy.
6. The cause of death of deceased was injuries due to burn and its complications which were ante-mortem in nature and were sufficient to cause death in ordinary course of nature.
7. Following things were handed over to police:
 - (a) Well stitched male dead body after PME with its belongings.
 - (b) Copy of PMR No.1415/07 dated 14.9.2007.
 - (c) Police papers 1 to 11 in number signed by him.
8. Time between death and PME was within 12 hours.

PW5 Monu, brother of Sonu deceased gave an eye-witness account of the incident deposing in consonance with the prosecution story. For ready reference, relevant part of his statement is reproduced as under:

“Stated that my brother Sonu, since deceased, was running a shop of utensils in Salara Mohalla, Rohtak. Rinku,

accused had taken a sum of Rs.800/- from my brother Sonu 15-20 days prior to this occurrence. On 9.9.2007 at about 2:00 P.M. my brother Sonu demanded his money from Rinku accused whereupon Rinku threatened to kill him if he demanded the money again. On the same day at about 6:00/6:30 P.M., I was standing near the shop of Jaggu Mechanic. My brother Sonu was standing in front of the shop of Loki son of Dharampal Parjapat, where some persons were playing cards. My brother came from the Juhla Chowk and then Rinku, Kalu and Lovely sons of Virbhan came there. Kalu and Lovely caught hold of hands of my brother Sonu and Rinku sprinkled petrol upon my brother Sonu with the intention to kill him and then lit the fire. I extinguished the fire and then all the accused persons ran away from the spot. We took my brother to PGIMS, Rohtak. On 10.9.2007, the police came at the spot and lifted pieces of half burnt T-shirt, one plastic bottle from Locky's burnt shop. They were converted into separate parcels and the parcels were sealed with seal 'OP' and were taken into possession vide recovery memo Ex.PF, which was signed by me and my father Parkash Chand. The seal was handed over to me after its use. All the three accused are present in the Court today.”

PW6 MMASI Ram Kumar and PW7 EASI Sukhdarshan, formal witnesses tendered in evidence their affidavits Ex.PH and Ex.PJ, respectively.

PW8 Inspector Pawan Kumar stated that on 24.10.2007, on completion of investigation of this case, he had prepared the report under Section 173 Cr.P.C.

PW9 SI Raj Singh stated that on 9.9.2007 while he was posted at Police Station City, Rohtak, he received ruqa Ex.PK sent by SI Om Parkash through Constable Sarwan Kumar and had recorded formal FIR Ex.PK/1 and that he had made his endorsement Ex.PK/2 on the ruqa.

PW10 SI (Retd.) Om Parkash, who had carried out the investigation of this case initially deposed in that regard proving various documents.

PW11 Constable Mahabir Singh stated that on 9.9.2007, he was posted at Police Station City, Rohtak and on that day SI Raj Singh had handed over to him three envelopes containing special reports for delivering the same to the 'Illaqa' Magistrate, SP and DSP and he accordingly did so without loss of time.

PW12 SI Ajmer Singh, who had carried out the investigation after receiving information regarding death of Sonu deposed regarding what had been done by him in this case.

PW13 Dr.Amit Kumar, General Surgery (Senior Resident), Unit-II, PGIMS, Rohtak deposed that he had worked with Dr.Joginder Kadian, M.S. (General Surgery) while he was posted in PGIMS, Rohtak, who had since expired. He had seen opinion Ex.PL/1 and the writing 'fit for statement' pertains to Dr.Joginder Kadian. He further deposed that Ex.P13/A was in the hands of Dr.Joginder and it bears his signatures at point 'A'. He identified his signatures and writing.

Learned Public Prosecutor tendered in evidence FSL report Ex.PG and closed the evidence of prosecution.

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 were innocent and had been falsely 'challaned' by the police in this case and this was a concocted story. They further contended that they have no concern with the crime in question.

In their defence, the appellants examined three DWs as under:

DW1 Jag Mohan alias Jaggu, aged about 63 years, resident of Salara Mohalla, Rohtak deposed that on 9.9.2007 at about 6:00/6:15 p.m., he came to know that petrol had been sprinkled on Sonu son of Parkash and he was set on fire. However, he did not know as to who had set him on fire. The witness further deposed that he could not tell the names of the persons, who had witnessed the occurrence and that police had not recorded his statement.

DW2 Krishan Singh son of Ram Lubhaya, aged 68 years, resident of Salara Mohalla, Rohtak whose statement was recorded on 6.1.2012 stated that about 4 years earlier while they were playing cards in their locality, accused Rinku and Sonu deceased had an altercation; that Rinku brought petrol in a nip, sprinkled it upon Sonu and set him on fire; that accused Kalu and Lovely were not present at the spot at the time of occurrence. The witness stated that he had shifted Sonu to PGIMS, Rohtak and prior to that he had gone to Police Post, who had directed him to take Sonu to PGIMS, Rohtak and his statement was

recorded by the police.

DW3 Ravinder Kumar, Clerk, SP Office, Rohtak stated that he is working as such and dealing with the applications under 'Right to Information Act'. One Surinder alias Kalu son of Vir Bhan, resident of House No.562/12, Salara Mohalla, Rohtak on 11.6.2008, moved an application for obtaining final report under Section 173 Cr.P.C. in case FIR No.493 dated 9.9.2007 of Police Station City, Rohtak and copies thereof Ex.D1 and Ex.D2 were supplied to him in due course.

With that the defence evidence got concluded.

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, learned Deputy Advocate General for the State of Haryana and learned counsel for the complainant, besides, have gone through the records of the case with their assistance.

Learned counsel for the appellants contended that there are several circumstances which would cast a reasonable doubt in the mind of the Court about the truthfulness of the prosecution story. Firstly, statement of Sonu was recorded by a police officer, who had an interest in success of the case. Sufficient time was there to get the statement of Sonu injured recorded by a Judicial Magistrate which would have lent much more credence and credibility to the prosecution version but it was not so done. This puts a big question mark over credibility of the prosecution story. It is further contended that as per own case of the prosecution, the dispute was between deceased Sonu and Rinku @ Kana

only, while Kalu and Lovely had nothing to do with the same, therefore, it is unlikely that Kalu and Lovely would have participated in the incident. Learned counsel further contended that the story put forward by the prosecution that Kalu and Lovely had caught hold of the hands of Sonu, while Rinku @ Kana had sprinkled petrol on him from a bottle and then set him ablaze appears to be highly improbable since if that was so, there would have been a grave risk to the lives of the persons who had caught hold of the arms of Sonu also getting burnt in the process and no sane person would have taken such a risk.

Learned Senior counsel for appellants No.2 and 3 has further contended that during investigation Kalu and Lovely were found to be innocent and as such were not sent up for trial and it was only during trial that the prosecution filed an application under Section 319 Cr.P.C. for summoning them as additional accused. The said application was dismissed by the learned trial Court; however, a revision petition having been filed by the prosecution in this Court, it was allowed. Both the said accused were ordered to be summoned so as to face trial along with their brother and co-accused Rinku @ Kana.

Learned counsel for the appellants in support of their case have relied upon **Laxman Versus State of Maharashtra, 2002 Cr.L. Law Journal 4095** (Supreme Court).

In response, learned State counsel submitted that the statement on the basis of which FIR in the case has been registered was made by Sonu within three hours of the incident that had occurred. He was mentally alert and in a fit condition at that time to make that statement. SI Om Parkash had obtained medical opinion regarding the

fitness of injured to make the statement before proceeding to record the same. The statement was made voluntarily without any pressure or coercion. As such, it should be accepted and relied upon. Furthermore, PW5 - Monu, brother of the deceased who had seen the incident gave the ocular version and supported such account given in the statement on material aspects, therefore, the prosecution successfully proved its charge against the accused that accused Rinku @ Kana, Kalu and Lovely sharing a common intention had committed murder of Sonu by causing burn injuries to him. Learned State counsel has thus defended the impugned judgment passed by the learned trial Court stating that there is no illegality or infirmity therewith and it should be affirmed since there is no reason to set it aside.

The vital piece of evidence in this case is the statement of Sonu which was recorded by SI Om Parkash (Investigating Officer) on 9.9.2007. Sonu had expired on 14.9.2007. Since the statement was made by Sonu regarding the incident in which he had suffered burn injuries, to which he had succumbed subsequently, the said statement is relevant in terms of Section 32 (1) of the Evidence Act and is to be taken as his dying declaration.

Sonu in his statement stated that on that very day at about 6:30 p.m., while he was coming from Jhulawala Chowk, he was intercepted by Rinku @ Kana, Kalu and Lovely on the road and Kalu and Lovely had caught hold of his hands and Rinku @ Kana sprinkled petrol on him from a bottle and set his clothes on fire.

The incident as per prosecution case had taken place on 9.9.2007 at about 6:30 p.m., whereas the statement of Sonu was

recorded at PGIMS, Rohtak by SI Om Parkash and after putting his endorsement below that statement, ruqa was sent at about 9:40 p.m. Therefore, indeed as contended by learned State Counsel the statement of Sonu was recorded within three hours of the incident that had occurred. However, Sonu died on 14.09.2007 i.e. five days after the incident. In the intervening period, the prosecution did not make any efforts to get statement of Sonu recorded by a Judicial Magistrate. Besides, the effect of the statement which is made five days earlier to the death of a person, then such statement it could be said was made when the person was not under immediate fear of death. Therefore, it could not be given as much weightage as in a case where there is eminent threat of death and as such it would get somewhat diluted.

In *Laxman v. State of Maharashtra* (supra), Hon'ble the Supreme Court held as follows:-

- (1) *Dying declaration is accepted on the theory that person death bed will speak the truth – But great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth.*
- (2) *Since the accused has no power of cross-examination, the Court should insist that the dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness.*
- (3) *Court should also see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination.*
- (4) *Court further (is to) satisfy that the deceased was in a fit state of mind and had the opportunity to observe*

and identify the assailant.

- (5) Statement of eye-witnesses that deceased was fit and conscious to make the declaration will prevail over medical opinion.*
- (6) A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will sufficient provided the indication is positive and definite.*
- (7) When dying declaration is recorded on oath (neither) is (it) necessary nor is the presence of a Magistrate is (sic.) absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available.*
- (8) 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.*
- (9) What evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.*
- (10) 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.*

We find that as far as involvement of accused Rinku @ Kana in the incident is concerned, the same stands proved on the record. It is established on the file that Sonu had suffered burn injuries on his person to which he later succumbed. From dying declaration of Sonu and oral account of incident given by his brother PW5 – Monu, it is

brought out that it is a homicidal case and not one of an accidental death or a suicide. It being so, the person responsible for death of Sonu comes out to be Rinku @ Kana as he had a motive to commit the murder as he nursed a grudge against Sonu, who had demanded back the money lent by him to Rinku @ Kana. Rinku @ Kana is specifically named in the statement of Sonu which he had made to SI Om Parkash on the day of incident within about three hours thereof. There was no occasion for Sonu to substitute his assailant with some innocent person.

The rationale behind accepting dying declaration is that a person on his death bed would not lie but then it has to be kept in mind that there is a tendency amongst people of this region to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature. Besides, the weightage given to a dying declaration to the circumstances leading to the death of a person must have some proximate relation with the actual occurrence and such proximity is to be considered in the facts and circumstances of the case. In the present case, the death of Sonu had occurred five days after the incident and, therefore, it cannot be taken to be in close proximity to the incident that occurred. The statement of Sonu having been made five days earlier to his death, it could be said that he was not under immediate fear of death and as such could not be given as much weightage as in a case where there is eminent fear of death and it would indeed be somewhat diluted in the facts and circumstances of the present case. This is more so for the reason that Sonu in his statement had inculpated Kalu and Lovely also but during the course of investigation, their involvement in the incident was not found.

PW10 SI Om Parkash, who recorded the statement of Sonu had carried out initial investigation in this case. In his cross examination recorded in the Court on 29.3.2011, he stated that the shop of Jaggu Mistri is situated exactly opposite to the place of occurrence. He admitted as correct that all the people, who had gathered at the spot and Jaggu Mistri had informed him that accused Kalu son of Veer Bhan and Lovely son of Veer Bhan were not present at the spot and they had no role to play in the burning of Sonu. This witness further stated that he had mentioned in his 'zimni' (case diary) regarding the statements made by the people present at the spot for which they had spoken about innocence of Kalu and Lovely.

Thus, Kalu and Lovely having been found innocent by the investigating agency and not sent up to face trial causes a major dent to the prosecution case and puts a big question over their involvement in the incident.

A reference may also be made to statement of PW12 SI Ajmer Singh, who had carried out investigation in this case at a later stage. In his cross-examination, he accepted as correct that Kalu and Lovely were found to be innocent in the investigation conducted by the DSP.

In defence evidence, the accused examined Jag Mohan @ Jaggu as DW1. He stated that on 9.9.2007 at about 6:00/6:15 p.m., he had come to know that petrol was sprinkled upon Sonu son of Prakash, who had been set on fire but he did not know as to who had done so and could not tell the names of the persons who had witnessed the occurrence. DW2 Krishan Singh deposed that he had seen the incident

in which Rinku had brought petrol in a nip and sprinkled it on Sonu setting him on fire and that Kalu and Lovely were not present at the spot at the time of occurrence. He stated that he had shifted Sonu to PGIMS, Rohtak and prior to that he had gone to the police post but he was directed to take Sonu to PGIMS, Rohtak.

Therefore, in the above noticed facts and circumstances, it is difficult to uphold conviction and sentence of accused Kalu and Lovely.

Adverting to participation of Rinku in the incident, it needs to be reiterated that the same stands proved conclusively and affirmatively. As discussed above, he had a motive to commit the murder of Sonu on account of monetary transaction between them. Secondly, Sonu in his statement made to the police, which is to be taken as a dying declaration. The dying declaration though is not being relied upon for maintaining the conviction and sentence of Kalu and Lovely, however, in the case of Sonu, there is other evidence, besides, other material circumstances which go to show his involvement. The dying declaration is not solely being relied upon to maintain the conviction and sentence of Sonu. In case a dying declaration is found to be suspicious, the Court independent of the dying declaration is to see other facts and circumstances so as to corroborate the dying declaration. The same, in the present case, are very much there. Besides, the dying declaration insofar as Sonu is concerned, is not solely being relied upon to maintain his conviction and sentence. From the statement of Monu (PW5), the participation of Sonu in the crime stands established. The very fact that he had sprinkled petrol upon Sonu and thereafter set him on fire resulting

in causing approximately 45% burns to him goes to show his intention to commit his murder. Sonu had succumbed to such burn injuries on 14.9.2007 i.e. within five days of the incident. The medical evidence also corroborates the prosecution case as regards burn injuries having been found on the person of Sonu and he having succumbed to those injuries. The investigation in this case has been conducted in a fair and impartial manner inasmuch as though as per dying declaration of Sonu and statement of his brother Monu (PW5), the involvement of all three accused namely Rinku @ Kana, Kalu and Lovely was there in the incident but only Rinku @ Kana had been sent up to face trial. An empty plastic bottle had been recovered and one partially burnt piece of T-shirt had been recovered by the Investigating Officer from the spot which had been sent to FSL, Madhuban, Karnal (Haryana). As per report Ex.PG received from there, residues of petrol were detected in the bottle whereas it was not so as regards the T-shirt. Nevertheless the T-shirt was found to be in a burnt condition which fact supports the prosecution case.

Therefore, we conclude that the impugned judgment of conviction and sentence as regards accused Rinku @ Kana does not suffer from any illegality or infirmity and is based upon proper appraisal and appreciation of evidence and correct interpretation of law. Therefore, conviction and sentence of appellant Rinku @ Kana is upheld. Whereas regarding his co-accused/appellants Kalu and Lovely, we find that prosecution has failed to prove its charge against these accused beyond a shadow of reasonable doubt and a reasonable doubt arises in the mind about their participation in the incident. The judgment

recorded by the trial Court convicting and sentencing them cannot pass judicial scrutiny and is liable to be set aside.

Resultantly, the appeal is partly allowed. The judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Rohtak are set aside to the extent Kalu and Lovely (appellants No.2 and 3) have been convicted and sentenced and they are acquitted of the offences for which they were charged. The appeal, however, in respect of Rinku @ Kana (appellant No.1) is dismissed. The appellants No.2 and 3 be released from custody forthwith, if not wanted in any other case.

(S.S. SARON)
ACTING CHIEF JUSTICE

(H.S.MADAAN)
JUDGE

22 .08.2017
Brij/amit

Whether speaking/reasoned : Yes
Whether Reportable : Yes