

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

891

CRA-D-879-DB of 2014

Date of Decision: April 20th, 2017

Sunil and others

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. R.S. Bains, Advocate
for the appellants.

Mr. Kapil Aggarwal, Additional Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J.

This appeal has been directed against the judgment of conviction dated 09.05.2014 passed by the Additional Sessions Judge, Ambala, holding the appellants-Sunil brother-in-law (*Jeth*), Sneh Lata sister-in-law (*Jethani*) and Sudesh mother-in-law of deceased-Suman wife of Satish alias Rinku, guilty and convicting them under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for life and to pay a fine of ₹2,000/- each and in case of default of payment of fine, to undergo further imprisonment for a period of one month each.

2. Briefly the facts of the case as per the prosecution are that Police Station Shahzadpur received a telephonic information on 06.09.2012 from C.H.C. Shahzadpur regarding admission of Suman and Satish alias Rinku as burn case in the hospital. On reaching there, it transpired that they had been referred to P.G.I., Chandigarh. Head Constable Parmod Kumar reached P.G.I., Chandigarh, and obtained medical opinion of the doctor who declared Suman unfit to make statement. Rinku was declared fit and on the

basis of his statement as recorded, entry was made in the Daily Diary Report register. On 08.09.2012, the Investigating Officer obtained the medical opinion of the doctor who declared Suman fit for making a statement. Duty Magistrate, Chandigarh, was requested to record the statement of Suman under Section 164 Cr.P.C., who reached P.G.I., Chandigarh, obtained opinion of the doctor who declared her fit to make statement, recorded her statement (Exhibit P-38).

3. After collecting the medicolegal report and the statement of Smt. Suman, FIR No.106 dated 08.09.2012 under Section 307 read with Section 34 IPC was registered at Police Station Shahzadpur, District Ambala. The investigation proceeded and the Investigating Officer inspected the place of occurrence on 08.09.2012, from where parcels were taken into possession. On receipt of a wireless message on 10.09.2012 evening from Police Post P.G.I., Chandigarh, about death of Suman, the case was converted under Section 302 IPC. Proceedings under Section 174 Cr.P.C. were conducted and after the postmortem, the dead body was handed over to the family members. Accused-Sunil, brother-in-law (*jeth*), Sneh Lata, sister-in-law (*jethani*) and Sudesh, mother-in-law were arrested on 12.10.2012.

4. After the completion of the investigation and submission of the final report, case was committed to the Court of Sessions by order dated 07.12.2012 after compliance of the provisions under Section 207 Cr.P.C. Accused were charge-sheeted under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial. 18 witnesses were examined by the prosecution to prove its case. Two witnesses namely

Krishan Pal PW-8, brother of deceased-Suman and Manish PW-9, their cousin, were declared hostile and cross-examined. Apart from the dying declaration, the medical evidence, the forensic science evidence and the official witnesses were produced.

5. On closure of the prosecution evidence, all incriminating evidence/material was put to the accused as on record. Their statements under Section 313 Cr.P.C. were recorded, wherein they claimed themselves to be innocent and pleaded false implication. Defence was taken that they were having cordial relations with Suman and other family members. There has been quarrel between Suman and her husband Satish alias Rinku over the issue of taking non-vegetarian food by him. The deceased had taken a *diksha* and thus was a pure vegetarian. On the fateful day, Rinku had taken non-vegetarian food and left the utensils uncleaned. This infuriated deceased-Suman which was followed by a quarrel between them. She being a short-tempered lady, under heat of passion, lost control over herself and poured kerosene on herself from a home made lamp (*diya*). Her husband calmed her down by cleaning the utensils but prior to she changing her cloths, her son started weeping. On this, Suman went for boiling milk for her son and lit the gas stove kept in the room due to renovation of kitchen. Her cloths caught fire with gas blow. Rinku, her husband, tried to save her and in this process got burn injuries. Meanwhile the accused and the other family members reached and extinguished the fire and shifted both of them to the hospital and came to know about the truth that burn injuries were received in an accident by her. In the hospital, relatives of Suman (since deceased) tutored and poisoned her mind and she wrongly and falsely

implicated the appellants by giving a tutored statement. By the time she could disclose the truth, she died. In defence evidence, ten years' daughter of deceased-Suman namely Anushka was examined as DW-1.

6. On the basis of the evidence led by the prosecution and the defence, the learned Additional Sessions Judge, Ambala, proceeded to convict the accused and sentence them to rigorous imprisonment for life with fine of ₹2,000/- each under Section 302 read with Section 34 of the Indian Penal Code and in default of payment of fine to undergo further imprisonment for a period of one month each.

7. Learned counsel for the appellant contends that the prosecution has primarily relied upon the dying declaration of Suman dated 08.09.2012 (Exhibit P-38) as recorded by Shri Nishant, Duty-cum-Judicial Magistrate Ist Class, Chandigarh, PW-18. He submits that the dying declaration alone cannot be relied upon for holding the appellants guilty, especially when there is no corroborative evidence. His submission is that the dying declaration does not inspire confidence as it is shrouded in suspicion. An argument has been raised by the counsel for the appellants attacking the dying declaration by alleging that the allegations made in the dying declaration are vague and not specific. It is an admitted fact that there was a quarrel between deceased-Suman and her husband Rinku because of which the husband was sleeping on the bed whereas she had been sleeping on the floor. There is no likelihood of such an attempt being made by the appellants to enter the room, pour kerosene and put the deceased on fire, especially when the children were sleeping on the bed along with the husband. Further, he contends that the brother-in-law and sister-in-law have

been attributed to be having matchbox and it has been generally stated that they and mother-in-law poured kerosene and lit her on fire. No specific role has been attributed to them and it is a vague statement by the deceased. He thus contends that it is a tutored statement shrouded in suspicion and cannot thus be said to be true and voluntary. It would thus not satisfy the test of acceptability as an evidence which can be relied upon to hold any person guilty. The guidelines, as has been laid down by various precedents, especially in *Athir Versus Government of N.C.T. Of Delhi 2010 (9) SCC 1*, would not be fulfilled.

8. Further as per the statement of PW-1 Harpinder Singh, Medical Officer, C.H.C., Shahzadpur, District Amabala, where she and her husband Satish alias Rinku were firstly taken, Suman had stated that she had suffered burn injuries due to bursting of stove. In the cross-examination also, it has been so stated by the witness. Therefore, the first statement as given by deceased-Suman to the witness Dr. Harpinder Kaur would be the truthful one. Similar is the position with regard to the factum and the history as stated by Dr. Himanshu Paul PW-16, Senior Resident, Department of Plastic Surgery, P.G.I., Chandigarh, who has gone to the extent of saying that the burn injuries as recorded were caused due to stove burst at home while boiling milk for her child. He contends that it has come on record and in the cross-examination of the other prosecution witnesses as well that prior to the recording of dying declaration of deceased-Suman on 08.09.2012, no one had complained about Suman having been set on fire by the appellants despite the relatives of the deceased being immediately informed of the incident and they having reached P.G.I., Chandigarh, at

2:30 AM on 06.09.2012. As per the record, Suman was admitted in P.G.I., Chandigarh, at 2:32 AM on 06.09.2012. Had there been any foul play, immediate action would have been taken by the relatives of the deceased and the accused would not have been spared.

9. That apart, he contends that the statement of Satish alias Rinku as recorded by the Police on 06.09.2012 (Exhibit D-1), would show that there was a quarrel between the husband and wife. In the meantime the male child woke up and started crying for milk. Mother proceeded to boil the milk for the child on the gas stove and by accident her cloths caught fire which caused burn injuries to her and while saving her, her husband Satish alias Rinku also received burns. He, thus, submits that the evidence on record do not support the case of the prosecution. Further, brother of the deceased namely Krishan Pal PW-8 and Manish PW-9 have not supported the prosecution case. They would not state something which is contrary to the truth and would always see to it that the culprits who had killed their sister are appropriately punished, especially when the accused in this case are the mother-in-law, elder brother-in-law and his wife. He states that had the appellants been involved in the commission of offence, Suman would not have been immediately taken to C.H.C., Shahzadpur. He, in the light of the above, submits that the trial Court has erred in holding the appellants guilty and convicting and sentencing them for an offence which they have not committed. Learned counsel has placed reliance upon the judgment of the Supreme Court in *State of Maharashtra Versus Hemant Kawadu Chauriwal etc.* 2016 AIR (SC) 287 and *Umakant & another Versus State of Chhatisgarh* 2014 AIR (SC) 2943.

10. Counsel for the State, on the other hand, contends that the dying declaration dated 08.09.2012 is complete in all respects and fulfills the mandate and the test as has been laid down by the Hon'ble Supreme Court in various judgments. In her statement, Suman has specifically stated that she had earlier also given statement but she was not conscious at that time. The earlier statement which she had given was under the influence and on tutoring of her husband, mother-in-law and father-in-law who had asked her to give statement that she sustained injuries because of bursting of the stove. He, on this basis contends that the statements of Dr. Harpinder Kaur (PW-1) and Dr. Himanshu Paul (PW-16) and the entry made in this regard on the medicolegal report (Exhibit P-2) and the bed-head-ticket, would not be a basis for discarding the dying declaration. The dying declaration need not be a detailed one explaining each and every aspect thereof. It being brief has not to be discarded.

11. He contends that the prosecution has been able to prove that prior to 08.09.2012 i.e. on 06.09.2012 and 07.09.2012, opinion of the doctor was taken qua the fitness of Suman for recording her statement but she was declared to be unfit for the said purpose. On application moved on 08.09.2012 at 2:30 PM, fitness of the deceased to make a statement was certified by the doctor. Thereupon JMIC, Chandigarh, had come to the Court and ascertained the medical fitness of Suman from the doctor prior to recording the dying declaration. After the recording of the statement, the doctor again certified that she was medically fit throughout the proceedings conducted by him. That apart, the Magistrate himself has given a certificate with regard to the mental fitness of Suman while her statement was being

recorded. He, therefore, contends that the dying declaration was given by Suman being fully conscious and aware of the fact that such a statement was being given by her and was being recorded.

12. He submits that the truthfulness of the statement is apparent as she has given a correct account of there being a quarrel between her and her husband-Rinku about 3-4 days prior to the incident. Role of all the three appellants has clearly been mentioned i.e. mother-in-law brought the kerosene can in her hand and her brother-in-law and the sister-in-law brought matchbox with them. Thereafter it has been mentioned that they had poured kerosene oil on her and set her on fire. She has even in the end named her brother-in-law and sister-in-law. As regards the submission made by the counsel for the appellant that two of the close relatives have turned hostile i.e. Krishan Pal PW-8, brother of deceased-Suman and Manish PW-9, cousin of the deceased and stated that the deceased was tutored by one of the relatives, he submits that it is of no consequence once it is found that the statement of deceased-Suman is trustworthy, reliable, true and voluntary.

13. His contention is that the evidence which has been led by the prosecution would corroborate the statement of the deceased as the report dated 08.10.2012 (Exhibit P-50) of the Forensic Science Laboratory Haryana, Madhuban, discloses that kerosene residue was detected in gunny bag, partially burnt sleeveless kid's top, partially burnt polythene bag, partially burnt two cloth bags. Kerosene was detected in empty self-made *diya* of small glass bottle with wick pierced through its lid. Assertion has been made that it has come in the statement of PW-6 Head Constable Parmod Kumar that the small bottle which has been found from the room of

the deceased was of 200 millilitre and even if it is filled to the brim, it would not have caused burn injuries to the extent of 90-95% as has been found on the person of deceased as stated by Dr. Himanshu Paul PW-16, Senior Resident of Plastic Surgery Department, P.G.I., Chandigarh, and Dr. Satinder Pal PW-7 who had conducted the postmortem examination on the dead body. Reference has also been made to the statement given by Satish alias Rinku PW-15, husband of deceased-Suman recorded on 06.09.2012 (Exhibit D-1), where there is no mention of the fact that after the quarrel between them on the date of the incident, Suman had poured kerosene oil on her from the self-made lamp as has been stated by him before the Court while appearing as a witness. He on this basis submits that the trial Court has rightly proceeded to convict and sentence the appellants after properly considering, evaluating and testing the evidence led by the prosecution and the defence. Prayer has thus been made for dismissal of the appeal.

14. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the evidence and records of the case.

15. It is not in dispute that the unfortunate incident took place on the night of 05.09.2012 at the residence of the appellants as they were living under the same roof except that the deceased and her husband were residing on the first floor of the house.

16. The basic question in this case which requires to be determined is as to whether the dying declaration dated 08.09.2012 (Exhibit P-38) can be relied upon?

17. In case the same is found to be unreliable and not falling within the parameters which have been laid down for deciding the correctness or otherwise of a dying declaration through various judicial precedents as have been culled down by the Hon'ble Supreme Court, the appellants have a good case for acquittal.

18. In *Umakant's case (supra)*, while enumerating the philosophy behind the deviation from the general rule of evidence of non-admissibility of a hearsay evidence by making it admissible qua the dying declaration and that too without cross-examination or corroboration, its sanctity, significance, importance and the care, caution as also the broad guidelines to be kept in mind by the Court while considering and evaluating such dying declaration, the Hon'ble Supreme Court has in paras 18 to 20 observed as follows:-

“18. The philosophy of law which signifies the importance of a dying declaration is based on the maxim “nemo moriturus prasumitur mennre”, which means, “no one at the time of death is presumed to lie and he will not meet his maker with a lie in his mouth”. Though a dying declaration is not recorded in the Court in the presence of accused nor it is put to strict proof of cross-examination by the accused, still it is admitted in evidence against the general rule that hearsay evidence is not admissible in evidence. The dying declaration does not even require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of evidence is that such declaration is made by the victim when he/she is on the verge of death.

19. In spite of all the importance attached and the sanctity given to the piece of dying declaration, Courts have to be very careful

while analyzing the truthfulness, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring.

20. The legal position about the admissibility of a dying declaration is settled by this Court in several judgments. This Court in Atbir v. Government of NCT of Delhi – 2010 (9) SCC 1, taking into consideration the earlier judgments of this Court in Paniben vs. State of Gujarat – 1992 (2) SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamilnadu – 2008 (17) SCC 190 has given certain guidelines while considering a dying declaration:-

- 1. Dying declaration can be the sole basis of conviction if it inspires full confidence of the Court.*
- 2. The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- 3. Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- 4. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborative. The rule requiring corroboration is merely a rule of prudence.*
- 5. Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*
- 6. A dying declaration which suffers from infirmities, such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*
- 7. Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
- 8. Even if it is a brief statement, it is not to be discarded.*
- 9. When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
- 10. If after careful scrutiny the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration”.*

The above legal position when seen, would indicate that each case is dependent upon the factual matrix and the evidence on record. It is

on consideration thereof and applying the guidelines laid down above on proper appreciation and evaluation that the Court would come to a conclusion as to whether the dying declaration is admissible or not.

19. We now proceed to consider the dying declaration of Suman in this case which was recorded on 08.09.2012 (Exhibit P-38) which when translated, reads as under:-

“Q.What is your name?

Ans. Suman wife of Rinku resident of Shahzadpur, Ambala.

Q.How old are you?

Ans. 30-31 years.

Q.How many children do you have?

Ans. My marriage was solemnised 10-12 years ago. I have three children.

Q.Is there any type of pressure on you for making statement?

Ans. No. I am voluntarily making my statement at my own will. I had earlier also given statement, then I was not conscious. Now I am fully conscious.

Q.What had happened.

Ans. Since my marriage, my brother-in-law (jeth), sister-in-law (Jethani) and my mother-in-law had been quarrelling with me. The dispute was regarding property. They used to say that they will not give any share to us. About 3-4 days back I had a quarrel with my husband, from then my husband was sleeping on the bed and I was sleeping on the floor. My mother-in-law came with a cane of kerosene oil in her hand. Match box was with my brother-in-law (Jeth) and sister-in-law (Jethani). They poured kerosene oil upon me and lit fire. My husband was drunk, therefore he did not come to know. My husband, mother-in-law and father-in-law brought me to hospital. All along the way my mother-in-law told me that give the staement that stove had burst, whereas there is no stove in our house.

Q.Do you want to say anything else?

Ans. No. Name of my brother-in-law (Jeth) is Sunil and sister-in-law (Jethani) is Sneh Lata.

R.O.&A.C.

Sd/- Nishant D/JMIC CHD. 8.09.12.

RTI Suman”

(Note: The translation of the statement at page 233 of the paper book has been corrected as per vernacular).

20. The dying declaration was recorded by Shri Nishant, PW-18,

Duty-cum-Judicial Magistrate Ist Class, Chandigarh, who had been requested to record the statement after an application (Exhibit P-13) was moved by Head Constable Parmod Kumar PW-6 on 08.09.2012 to Senior Medical Officer, upon which he had opined that Suman was fit to make statement (Exhibit P-14). He thus reached the Court Complex, Chandigarh, and moved an application before the Duty Magistrate for recording the statement of Suman. Nishant, Judicial Magistrate Ist Class PW-18 as he then was, reached P.G.I., Chandigarh, and moved an application Exhibit P-35, where the doctor declared the patient fit to give statement. He thereafter proceeded to record the statement under Section 164 Cr.P.C. of Suman Exhibit P-38 (Dying Declaration). After recording her statement, the doctor again declared by Exhibit P-36 that patient Suman remained in fit state during her statement. PW-18 Nishant, Judicial Magistrate, also issued certificate Exhibit P-36 that she had voluntarily made statement without any coercion or pressure from any quarter and remained fit during recording of the statement. These fitness certificates along with the applications which were moved by Head Constable Parmod Kumar PW-6 have been admitted to be correct by Dr. Vishal Kumar PW-17, the doctor who gave the opinion-cum-fitness certificate. In the cross-examination, Nishant PW-18 has explained that prior to recording statement of Suman, he had given her time for re-consideration that she was not bound to give statement and after satisfaction, she had given her statement. All this duly corroborate the factum that Suman, when she gave her statement Exhibit P-38, was in a fit, stable and conscious state of mind and had voluntarily given her statement

without any coercion or pressure from any quarter.

21. Nothing has come on record which would indicate tutoring or forcing Suman to give such a statement falsely implicating the appellants. Rather, the contents of the above reproduced dying declaration would show that it is truthful, trustworthy and beyond suspicion. She was fully conscious about the fact that she had earlier also given a statement which she had given under the influence and tutoring of her mother-in-law to the effect that the burn injuries which she had suffered were because of the bursting of the stove in their house, whereas there is no such stove in the house which stands corroborated from the fact that no recovery of any kerosene stove has been effected from the house what to say of burst stove, rather a gas cylinder and a gas stove were found in the room where the incident had taken place which is stated to have been occupied by Satish alias Rinku and his family.

22. There is no evidence on record which would indicate that the children were present in the room when the incident had taken place. As per the dying declaration, Rinku, the husband of deceased-Suman, had consumed liquor and was sleeping on the bed while Suman was sleeping on the floor. There is no mention of any children being there either in the statement of the husband or any other witness. Even DW-1 Anushka, daughter of deceased-Suman and Satish alias Rinku, did not state that she and/or her brother and/or sister were sleeping in the room or were present or that the incident had taken place in her or their presence. This goes further to consolidate the position with regard to the dying declaration of Suman being correct and consequently rendering the statement of Anushka,

DW-1 irrelevant.

23. The defence, as has been taken by the accused is not worthy of credence as has been referred to above in the factual matrix of the case when seen in the context of the first statement dated 06.09.2012 (Exhibit D-1) given by Satish alias Rinku, husband of Suman, who was also admitted in P.G.I., Chandigarh, along with her. This statement was recorded on the basis of the fitness certificate obtained from the doctor by PW-6 Head Constable Parmod Kumar on application dated 06.09.2012 (Exhibit P-9), which when translated, reads as follows:-

“At about 11.00 p.m. His wife Suman asked him to clean utensils, he cleaned the utensils out of which one remained uncleaned and there was some dispute between them, upon this he was shaken by his wife by catching hold of his hairs, again there was argument between them inside the room, in the meantime, his youngest son Gagan woke up and started crying for milk. Suman started boiling the milk on the gas, he heard the lighting of fire, clothes of Suman caught the fire, he also tried to extinguish the fire and suffered injuries on his hands. Suman was badly burnt and then he with the help of his other family members brought her to CHC Shahzadpur and from there they were referred to PGI, Chandigarh”.

The above statement would show that there is no mention or reference made therein that Suman had poured kerosene oil from the self-made lamp upon herself as is the defence taken by the appellants in their statements under Section 313 Cr.P.C. However, the said statement proves the fact that the appellants were present on the site. The statement which has been given by PW-15 Satish Kumar alias Rinku (husband of the deceased) in Court does not inspire confidence firstly in the light of the fact that such theory of pouring kerosene oil by his wife on herself does not find

mention in his statement Exhibit D-1 dated 06.09.2012 reproduced above, and further the self-made lamp which is a small glass bottle, even if full, would contain 200 millilitre of kerosene oil only which even if assuming was poured by Suman upon her, would not be enough to cause burn injuries to the extent of 90-95% which were found to be on the person of Suman and that too not only superficial but deep ones as well.

24. Another aspect which cannot be lost sight of in the dying declaration is that Suman has not implicated her husband Satish alias Rinku rather has stated that he was drunk and did not come to know about the incident. Had there been a fight between her and her husband just before the incident, as is the defence of the appellants-accused and the statement of Satish, her husband, he would not have been spared and such a reaction would be quite natural. But that is not so. This shows that the statement of Satish is cooked up story by him to save his mother, elder brother and his wife. His statement thus lacks credence and cannot be given any weight in support of defence.

25. Further as per the report of the Forensic Science Laboratory, Haryana, dated 08.10.2012 (Exhibit P-50) which pertains to the seven sealed parcels which were taken from the site on 10.09.2012, the same were found with seal intact. Exhibit-1 (one unburnt gunny bag), Exhibit-2 (one partially burnt sleeveless kid's top), Exhibit-4 (a partially burnt polythene bag), Exhibit-5 (one partially burnt cloth carry bag), Exhibit-6 (one more partially burnt cloth carry bag) were detected with kerosene residue. In Exhibit-3 (an empty self made lamp '*Diya*' of a small glass bottle with wick pierced through its lid) in which kerosene was detected. This further

corroborates the statement of deceased-Suman that kerosene was the inflammable material and its presence on the site also stands proved but no kerosene stove has been found.

26. In view of the above, it cannot be said that the dying declaration of the deceased Exhibit P-38 cannot be relied upon or would not be admissible, especially when it fulfills the parameters and guidelines which have to be considered while determining the admissibility of the dying declaration as laid down by the Hon'ble Supreme Court and referred to above. This Court is fully satisfied that the dying declaration of Suman is truthful, genuine, voluntary, above suspicion, coherent and consistent which has been made by her in a fit and conscious state of mind which is corroborated and supported by the medical opinion and the certification by the Judicial Magistrate who has recorded the same. The dying declaration finds further corroboration from the documentary evidence, report of the Forensic Science Laboratory and ocular evidence of the official witnesses. There is, thus, no reason or impediment in not accepting the said dying declaration as genuine for it fully inspires the confidence of this Court and making it the basis for conviction of the appellants despite the fact that PW-8 Krishan Pal, brother of the deceased and PW-9 Manish, cousin brother of the deceased, turned hostile and changed their version.

27. The judgments on which reliance has been placed by the counsel for the appellants are distinguishable on facts as in *Umakant's case (supra)*, the Hon'ble Supreme Court found on facts that there was inordinate delay in lodging the First Information Report as the incident had taken place

on 08.02.2003 but the police was informed on 13.08.2003 for the first time about the incident despite the sister and brother-in-law being aware of the facts had given their consent letter at the time when the doctor had recorded the version of the deceased according to which she had sustained burn injuries accidentally. Apart from this aspect, there was evidence on record which established that there was tutoring of the deceased to state that she was burnt by the accused. The High Court based its conviction on the dying declaration under Section 302 IPC but had acquitted the accused under Section 304-B and 498-B IPC and Sections 3 and 4 of the Dowry Prohibition Act which was self-contradictory. All these factors weighed on the mind of the Court to come to a conclusion that the dying declaration was not trustworthy.

28. In *Hemant Kawadu Chauriwal's case (supra)*, after discussing the principles with regard to the admissibility of the dying declaration, the court had proceeded to evaluate the evidence and on the given facts and circumstances of the said case, apart from the evidence which has been brought on record, the dying declaration was not found to be reliable and trustworthy, especially when the facts were self-contradictory with reference to the factum that the deceased was asserted to be illiterate whereas reliance was placed upon the letters written by the deceased in her own handwriting by the prosecution. Further, there was material improvement made to support the prosecution case. The Court had gone to the extent of saying that the dying declaration and the letters have not been proved.

29. Present is not such a case and, therefore, no benefit can be

claimed by the appellants on the judgments which have been relied upon by their counsel.

30. An argument has been raised by the counsel for the appellants that there was no whisper from any of the relatives of the deceased that any one from her in-law's side had attempted to kill her by putting her on fire prior to the dying declaration dated 08.09.2012 although the incident was of 05.09.2012 at 11:00 PM and they had been informed immediately. This would not cut any ice as it stands established that Suman had been tutored by her mother-in-law to make a statement that she had caught fire in an accident due to bursting of the kerosene stove. Obviously this was the position known to all. Further the investigating agency had sought opinion of the doctor for recording Suman's statement on 06.09.2012 and 07.09.2012 but she was declared unfit for making statement. The position would be the same for the relatives as well. It is only on 08.09.2012 that she was declared fit for making statement when immediate steps were taken to get her statement recorded under Section 164 Cr.P.C. as detailed in the statement of Head Constable Parmod Kumar (PW-6) and duly proved and corroborated by JMJC-cum-Duty Magistrate Nishant (PW-18) and Senior Medical Officer Dr. Vishal Kumar (PW-17). There was, thus, no occasion for recording an FIR prior thereto. In any case, a Daily Diary Report entry was recorded at the Police Station, Shahzadpur, on 06.09.2012 as per the statement got recorded by Satish alias Rinku (Exhibit D-1).

31. In view of the above, we do not find any infirmity in the appreciation of the evidence by the trial Court and the conclusions drawn thereupon leading to the conviction and sentence of the appellants under

Section 302 read with Section 34 IPC. Hence this appeal stands dismissed.

(M. JEYAPPAUL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

April 20th, 2017
Puneet

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No