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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. A. No.751/2000

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Reserved on: 30th August, 2017
Date of Decision: 30th October, 2017

PROMILA @ NEENA & ORS.

.....Appellants

Through: Mr. Anupam S. Sharma, Adv. With
Ms. Prachee Satija & Mr. Prakasrsh
Airan, Advs.

Versus

STATE

.....Respondent

Through: Ms. Radhika Kolluru, APP for the
State

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The appellant has filed the present appeal under Section 374 of the Code of Criminal Procedure 1973 (Cr.P.C.) against the impugned judgment, dated 20.11.2000, and the order of sentence, dated 24.11.2000, respectively passed by the learned Additional Sessions Judge, Delhi in case FIR No.270/1998, P.S.-Prasad Nagar, whereby the appellants have been convicted under Section 302/34 of the Indian Penal Code (IPC), 1860 and sentenced to undergo Rigorous Imprisonment for life each and fine of Rs.500/- each and in default of payment of fine, further to undergo Rigorous Imprisonment for one month.

2. We have heard learned counsel for the appellants as well as learned APP for the State and have also gone through the material on record. The

brief facts of the prosecution case are that on 06.06.1998 at 8 to 8:30 a.m. the deceased Sunita went to her parental house i.e. H. No.16-285-I, Pyare Lal Road, Bapa Nagar, Delhi where a quarrel took place between deceased Sunita and her father, mother and brother on demand of Rs.9 lakhs by the deceased from her parents which was given by her to them in last 4-5 years. Then, the deceased was dragged by her father and brother Sunil inside the house and either petrol or Kerosene oil was sprinkled on her while her sister in law Neena caught hold of her when she tried to run from the house. The deceased was set on fire by them and thereafter, she succumbed to death.

3. On 06.06.1998, PW-1 Sh. Lal Singh, SDM, Karol Bagh was informed on the telephone by the SHO Pratap Nagar that a lady had been burnt in his jurisdiction

4. The cause of the death of the deceased was due to septicimia consequent to infected burn injuries. As per post-mortem report and testimony of PW-11, Dr. Joginder Bansal had clarified in cross examination that septicimia is a natural feature in burn injuries. PW-11 Dr. Joginder Bansal who conducted the post mortem of the deceased Sunita described that the deceased Sunita was having external injuries i.e. burnt injuries present over lower front of face below the level of nose, front of chest, upper front of abdomen, upper back of chest, front of both arms, healed unhealthy granulation tissue present at the margin of burnt and unburnt areas.

5. The accused persons were convicted by the Trial Court vide judgment dated 20.11.2000 and order on sentence dated 24.11.2000. One of the co-accused Smt. Sushila mother of the deceased, subsequently on her arrest

was acquitted vide judgment dated 25.03.2010 by the court of learned Additional Session Judge, North Delhi in SC No.02/15.1.10. Thereafter, a Crl. L. P. No.452/2010 was filed against her acquittal, which was also dismissed by the Coordinate Bench of this Court vide judgment date 10.02.2011 holding that:-

“the learned Additional Sessions Judge in this case while analyzing the declaration claimed to have been made to Dr. Harish Mansukhani was mainly swayed by the contradiction in the Admit Card and the MLC. It is not necessary that all the facts mentioned in the MLC must be recorded in the Admit Card. Therefore, the reasoning given by the learned Additional Sessions Judge to reject the history given by the patient is not acceptable. But, in our view the dying declaration in the form of alleged history claimed to be given by the patient to Dr. Harish Mansukhani (PW-18) and the oral statement given to PW-5 Ms. Dheeraj daughter of Sunita, PW-6 Ram Lal Dua, husband of Sunita, cannot be preferred to the statement Ex.PW24/B recorded by SI Balwan Singh, recorded after obtaining fitness certificate from the doctor and the statement Ex.PW14/A, recorded in question and answer form by SDM Sh. Lal Singh. In this view of the matter the findings reached by the learned Additional Sessions Judge cannot be faulted.”

6. Prosecution in support of its case has examined as many as 25 witnesses.

7. The case of the prosecution, as noticed by the Trial Court, is that, on 06.06.1998, the deceased Sunita went to her parental house where all the appellants reside together and to ask her money back which she had lent to her parents over the last 4-5 years. They had a dispute and during the

dispute, the deceased was dragged inside the house and was set on fire by the aforesaid appellants and she made six dying declarations before her death which reads as under:-

- (i) First, the oral statement was made by the deceased to PW-12 ASI Ratanan, PCR Van official, that the deceased had come to the parental house to get back her money and the deceased was dragged inside, the deceased also disclosed that she was held by appellant No.1 (bhabhi) and by her mother and she was set on fire by her appellant No.2 (brother-Sunil) and appellant No.3 (father).
- (ii) Second, the statement was made to PW-10 Dr. Harish Mansukhani, that the deceased arrived at hospital at 10:00 a.m. and it was stated by the deceased to the doctor that she was burnt by her parents, appellant No.2 (brother-Sunil) and appellant No.1 (bhabhi-Neena) but does not assign any specific role to anyone.
- (iii) Third, the statement was made by the deceased to PW-2, Ram Lal Dua, her husband at the hospital between 1 pm to 2:30 pm, that she was dragged by both her parents and by her brother. She was held by her (bhabhi), appellant No.1 and mother, then (brother Sunil), appellant No.2 and (father-Om Prakash), appellant No.3 put some oil, but did not notice as to who put her on fire as she wanted to escape, then stated that brother lit the matchstick and put her on fire.
- (iv) Fourth, the deceased made an oral statement to her daughter PW-7 Dhiraj that she had left for her parental home around 08:30 a.m. to take back her money and also told her that she had been burnt

by her parents, appellant Nos. 1 and 2 but does not assign any specific role to anyone.

(v) Fifth, the deceased made a statement to PW-24 SI Balwan Singh, recorded after the endorsement of the doctor, stating that patient was fit for statement at 4:20 p.m., just prior to the arrival of PW-1 SDM Sh. Lal Singh who arrived at 06:30 p.m. It was stated by the deceased that she had given Rs.9 lakhs to her parents for the last 4-5 years and had gone to their house to collect the same, that is when appellant Nos.1, 2, 3 and her mother caught hold of her. The deceased also disclosed that she was caught hold by appellant Nos.1 and 3 along with her mother (Sushila) and appellant No.2 (brother) beaten her up and pulled her inside and poured petrol on her and set her on fire.

(vi) Sixth, the deceased made a statement to PW-1 SDM Sh. Lal Singh which was recorded on 06:30 p.m. in questions and answer form, in this it was recorded that the deceased went to her parents house in the morning and she had a fight with parents and brother, during which appellant Nos.1, 2 and 3 caught hold her and they set her on fire, but did not disclose the role of her mother.

8. Learned counsel for the appellant has submitted that the co-accused Sushila (mother) was acquitted by the learned Additional Sessions Judge vide judgment dated 25.03.2010 in a subsequent separate trial. The learned Trial Court upon scrutiny of the six dying declarations and evidence placed on record found that, the dying declarations were not reliable so as to convict the co-accused Sushila, thereafter, the co-ordinate bench of this

court upheld the judgment of acquittal of the co-accused and dismissed the Crl. L. P. No. 452/2010 vide judgement dated 10.02.2011. Hence, no reliance can be placed upon any of the dying declarations made against the co-accused.

9. Learned counsel for the appellants further submitted that the deceased had allegedly given six different dying declaration, at different stages to different persons. Hence, no reliance can be placed upon the same. Learned counsel for the appellants also submitted that the oral dying declaration given to PW-12 ASI Ratanan Singh cannot be relied upon since the prosecution neither produced the logbook/*Rojnamcha* of the PCR Van, nor there is any evidence that the said witness conveyed the information to the control room. Reliance is placed upon *Laxmi v. Om Prakash Manu/SC/0353/2001* which reads as under:-

“17..... the fact remains that PW5 Shiv Charan, ASI, had proceeded to the place of the incident on being informed of a suicide having been committed by a woman. If a story to the contrary - a positive information of an attempt to commit murder by burning and that too having been received from the mouth of the victim had come to the knowledge of PW5 Shiv Charan, ASI, then that should have been recorded in the roznamcha and also flashed to the Police Control Room. Neither the PCR van roznamcha has been produced nor such information conveyed to the Control Room and/or police station. If only a dying declaration was made by Janak Kumari to this witness then in the ordinary course of the things, message would have been transmitted promptly by ASI Shiv Charan to the Police Control Room and would have been recorded as a first information report of the incident disclosing commission of a cognizable offence by specified accused persons. The omission in the police statement of Shiv Charan is fatal to his testimony.....”

In the present case also, it is contended that the said statement neither was entered in logbook/*Rojnamcha* of the PCR Van nor disclosed to the attending doctor, also his statement was recorded under Section 161 Cr.P.C. after an inordinate delay of almost three months.

10. It is further submitted by learned counsel for the appellants that the dying declaration made to PW-10 Dr. Harish Mansukhani in the MLC Ex.PW-10/A also cannot be relied upon, as no specific role has been assigned to any of the appellants in the dying declaration which makes the dying declaration vague and unreliable. It is also submitted that the sister-in-law of PW-2 Ramlal Dua, Ms. Neelam Dua was a nurse in the same hospital, the possibility of her influence being used in order to fabricate the dying declaration in the MLC Ex. PW-10/A cannot be ruled out.

11. Learned counsel for the appellants has relied upon the judgment in the case of *Mayur Panabhai Shah v. State of Gujarat* MANU/SC/0085/1982, wherein it is held that “even where a doctor has deposed in Court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrefutable presumption that a doctor is always a witness of truth”.

12. Learned counsel for the appellants further submitted that the dying declaration made to PW-2 Ramlal Dua and PW-7 Ms. Dheeraj also cannot be relied upon since there is no evidence that the deceased, between 01:00 to 2:30 p.m. was not fit to make the statement at that point of time, in fact as per the medical record the deceased was not fit to make the statement at about 11 a.m. and thereafter, her fitness was only recorded at 04:20 p.m.

Hence, the deceased was unfit to make the statement between 11 a.m. to 04:20 p.m. either to PW-2 her husband or PW-7 daughter. Moreover, there is a contradiction in the statements of PW-2 Ramlal Dua and PW-7 Ms. Dheeraj about the disclosure of the time of the incident in the trial of co-accused Sushila (mother of the deceased), also the conduct of the witnesses PW-2 and PW-7 was even otherwise inconsistent. Learned counsel for the appellants further submitted that PW-2 and PW-7 neither informed the duty constable about the occurrence, nor the SDM nor, took any steps thereafter, had there been any such dying declaration by the deceased Sunita, the immediate action/reaction would have been to inform the Investigating Officer/SDM. Learned counsel for the appellants further submitted that PW-2 Ramlal Dua had submitted that 'on enquiry he had come to know that no 'Jhagda' had taken place at the house and he met his wife in semi conscious state', PW-2 also stated that his wife was of obstinate nature and an angry woman and further stated that in anguish she would do whatever she wanted to do. Even otherwise, it is submitted that PW-2 Ramlal Dua and PW-7 Dheeraj are interested witnesses and oral dying declarations made to them cannot be relied upon, also the dying declarations made before them, were prior to the fitness of the deceased.

13. Learned counsel for the appellants has submitted that the dying declaration given to PW-24 SI Balwan Singh also cannot be relied upon as the witness himself being the Investigating Officer is interested in its success and as such no reliance can be placed on Ex.PW-24/B. PW-24 SI Balwan Singh had recorded the statement of the deceased with the words starting from "bayan kiya ki main pata uparokt par apne pati aur bacchon ke

saath rehti hun..” and ends with the words “....ke khilaaf kaanooni karyavahi ki jaawe...” from this the inference can be drawn that such words would not have been used by the deceased-Sunita while making her statement.

14. Learned counsel for the appellants also stated that the prosecution has failed to prove the fitness endorsement of the deceased Sunita at 04:20 p.m., the vital of the patient had not been mentioned along with the endorsement and due to non examination of the medical doctor, prejudice is caused to the appellants. Learned counsel for the appellants relied upon judgment titled as *Sher Singh v. State* MANU/DE/0136/1995.

15. Learned counsel for the appellants further submitted that in such a situation it was essential for the statement to have been attested by the doctor and nurse present in the hospital, which was not done. It was admitted by PW-24 SI Balwan Singh that, the statement was recorded by him in the presence of the doctor and nurse in the ward, however, he did not ask them to sign the statement. Further, besides the words mentioned in the dying declaration as stated above, are not the words of a person who is dying, the said statement is a graphic version which is again not possible by a person who has sustained extensive burn injuries.

Learned counsel for the appellant also submitted that the Apex Court in the case of **Mohar Singh & Ors V. State of Punjab** MANU/SC/0181/1981 excluded the dying declaration from consideration for failure of the Investigating Officer to get the same attested by the doctor who was alleged to be present in the hospital or anyone else present. The relevant extract is reproduced hereunder:

“5. We have, however, been taken through Ext. P-19, the statement of the deceased kartar Singh and we find that he has given a very detailed and graphic narration of the entire history of the case, starting from the motive, the enmity and minutest features of the assault excluding the individual acts committed by the appellants. He has also mentioned that the appellants assaulted him with Kassi. The ocular evidence however is that the deceased was attacked not by Kassi but by spade. In view of the detailed and extremely coherent nature of the dying declaration, we find it impossible to believe that the deceased even if conscious would have made such a detailed statement. We are, therefore, inclined to think that this statement smacks of concoction of fabrication in order to make the present case foolproof. At any rate, we find it wholly unsafe to rely on the dying declaration, particularly, when P.W. 12 did not take the necessary precaution of getting the dying declaration attested by the wife who was stated to be present there or the doctor who was alleged to be present in the hospital. Thus, the dying declaration has to be excluded from consideration.”

16. Learned Counsel for the appellants also submitted the prosecution has not been able to rule out the possibility of tutoring, by the husband and other relatives of the deceased prior to the recording of the statement. It was admitted by PW-24 SI Balwan Singh that, whenever he visited the hospital he never found the deceased alone and her family members were always seen to be attending her, as such the possibility that the deceased gave a tutored and coloured statement to the IO and the SDM, cannot be ruled out.

17. Learned counsel for the appellant submitted that in ***Uka Ram v. State of Rajasthan*** MANU/SC/0242/2001, the Apex Court held as under:

“It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to

note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or a product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement.”

18. Learned counsel for the appellants also contended that the statement given to PW-24 SI Balwan Singh as Ex. PW-24/B is totally contradictory to her statement allegedly given to PW-1 SDM Lal Singh as Ex. PW-1/A and to the statement made to other witnesses, which makes all statement unreliable. Learned counsel for the appellant has also asserted that the dying declaration made before PW-1 SDM Lal Singh by the deceased cannot be relied upon, it is submitted that the deceased was declared fit at about 04:20 p.m. and her statement was recorded by PW-1 at around 06:30 p.m. In this regard, there is nothing on the record to show that the deceased was fit to make the statement at that time of the recording of the statement and the possibility of the deceased being unfit, cannot be ruled out. Even otherwise, the doctor who gave the fitness certificate to the deceased has not been examined in the present case. PW-1, SDM admitted himself that he was not satisfied whether the deceased was fit to make the statement and it is a settled law that in absence of any fitness by the doctor the statement becomes unreliable. Learned counsel for the appellant submitted that it has been held in **Ram Singh v. State** MANU/DE/0658/1996 as under:-

“12. Another very strong reason for rejecting the third dying declaration is the doubt about the fitness of the patient for making the statement. It will not be correct to base fitness of the patient on the M.L.C. because it records the fitness at 11.35 a.m. It cannot be said that till 5.00 p.m. when the alleged dying declaration was recorded the deceased Hemlata continued to be fit. This has to be seen in the background of the Death Certificate, Ex.PW-15/A, which records that the patient’s condition continued to deteriorate. If the fitness is taken on the basis of alleged oral statement of a doctor that will be highly doubtful in the absence of even the name of the doctor having been mentioned or any doctor having been examined in the court to that effect. The fact that even a nurse or other independent person was not involved further destroys the credibility of the statement of the Magistrate about the fitness of patient to make a dying declaration. One cannot lose sight of the fact that the hospital must be full of doctors and nurses. It is surprising that the Executive Magistrate could not find even one to help him out. For these reasons along we are satisfied that the conviction of the appellant cannot be based on the so called third dying declaration.”

19. On the other hand, learned APP for the State has submitted that all the six dying declarations given by the deceased are voluntary, reliable and truthful which consistently implicate, all the three appellants herein.

20. In view of the arguments addressed by the learned counsel for the appellants and learned APP, let us see the operating part of the judgment in the case of the co-accused Sushila (mother) who had been declared proclaimed offender and was subsequently tried on arrest 10 years after conviction was acquitted in CrI. L. P. 452/2010 vide judgement dated 10.02.2011. The Trial Court in the aforesaid case was of the view that the six dying declaration made by the deceased were not consistent and did not inspire confidence. The Coordinate Bench of this Court while deciding the

case of the mother in CrI. L. P. No. 452/2010 vide judgment dated 10.02.2011 held as under:-

“12. The first dying declaration (according to the prosecution) was made to PW-26 ASI Ratan Singh who had reached the spot on receipt of a telephonic call that a woman was burnt in front of House bearing No. 60/285, I-Block, Gali No.1 Piare Lal Road, Delhi. He deposed that on reaching the spot he lifted her (the lady) with the help of members of the public and took her to LNJP hospital in the van. She told him that her family members had set her on fire on account of some money dispute.

13. The second declaration is claimed to have been made by Sunita to PW-18 Dr. Harish Mansukhani at the time of her admission in the hospital who also prepared MLC Ex.PW10/A. At this time Sunita allegedly disclosed to the doctor that she was burnt by her parents, brother Sunil and Bhabhi Neena.

14. The third statement according to the prosecution was made to PW-5 Ms.Dheeraj, daughter of Sunita. She stated that on reaching the hospital at about 4.30 PM, she talked to her mother, and she (her mother) informed her that she had been burnt by her parents i.e her father, mother, brother and bhabhi.

15. The fourth statement made by Sunita is to PW-6 Ram Lal Dua her husband. According to this witness, he inquired from her (Sunita) as to how this had happened upon which Sunita informed him that she had demanded money from her parents. She was beaten up and dragged inside the house. Her father, mother, brother and bhabhi poured petrol or oil on her and set her afire. She then ran out in burnt condition. Some neighbors poured water on her. PW-6 Ram Lal, further deposed that his wife had told him that her mother and bhabhi had caught hold of her and her father poured petrol or oil on her and brother lit the fire with a match stick.

16. The fifth statement (as per the prosecution version) made by Sunita is to PW-27 SI Balwan Singh, Investigating Officer of

the case which was recorded by him under Section 161 Cr.P.C. The substance of the relevant portion of the statement as recorded by this witness is that she had gone to her parents house to ask for return of Rs. 9 lacks which had been advanced to them by her. There was a quarrel between her parents and brother Sunil on the issue. Sunil dragged her inside the house, his Bhabhi Neena and father held her. Sunil poured petrol on her and lit the fire. She ran outside the house to save herself. This statement according to PW-27 SI Balwant Singh was recorded by him after obtaining fitness certificate from PW-17 Dr. Chander Shekhar at 4.20 PM.

17. The last such statement is recorded by PW-14 Sh. Lal Singh, SDM. This statement is recorded in question and answer form. Here Sunita is claimed to have given the cause of the quarrel and implicated her father, brother Sunil and Bhabhi Neena. She did not attribute any act to the respondent here.

21. Turning to the facts of this case, the learned Additional Sessions Judge has given his own reasons for rejecting all the dying declarations. It has to be kept in mind that oral dying declaration is a weaker type of evidence because the court does not even know as to what was exactly stated by the deceased. That is the reason a dying declaration recorded in question and answer form is considered to be more reliable as the court can see the questions put so as to analyse if any answer was suggested or not.

22. The first dying declaration purported to have been made to PW-26 ASI Ratan Singh, in fact does not incriminate the respondent. According to this witness Sunita had stated that she was set on fire by the members of the family. About the second declaration in the form of alleged history recorded in the MLC Ex.PW10/A by Dr. Harish Mansukhani (PW-18) at the time to admission of Sunita in the hospital it has been mentioned that the informant had been admitted with the history of being burnt by her parents, brother (Sunil) and Bhabhi (Neena). We are not

inclined to agree with the reasoning given by the learned Additional Sessions Judge that in the treatment card Ex.PW18/A it had not been recorded by the doctor that the patient was conscious or unconscious. Once it was recorded on the MLC that the patient was conscious and oriented and the doctor had entered the witness box to depose that the patient was fit to make the statement, it is difficult to doubt the fitness of the patient merely on the ground that the fitness certificate had not been given on MLC.

25. In Laxman vs. State of Maharashtra, (2002) 6 SCC 710, it was held by the Constitution Bench of the Supreme Court that mere absence of doctor's certification as to fitness of the declarant's state of mind would not ipso facto render a dying declaration unacceptable. In Laxman it was held that normally the Court in order to satisfy whether the deceased was in a fit mental condition to make a dying declaration looks up to the medical opinion but where the eye witness state that the deceased was not in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, dying declaration is not acceptable. It was observed that what is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Thus, 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 it (the declaration) can be acted upon provided the Court ultimately holds the same to be voluntarily and truthful. A certification by the doctor is essentially a rule of caution and, therefore, the voluntarily and truthful nature of the declaration can be established otherwise."

21. Hence, the Co-ordinate Bench of this Court has clearly laid down in aforesaid Crl. L. P. 452/2010 that dying declarations given by deceased to PW-18 Dr. Harish Mansukhani as well as the oral statement given to PW-5

Ms. Dheeraj, daughter of deceased Sunita and to PW-6 Ram Lal Dua, husband of deceased, in the case of Sushila v. State before the learned Trial Court, cannot be preferred to the statement Ex. PW-24/B which was recorded by PW-24 SI Balwan Singh after obtaining fitness certificate from the doctor and the statement of Ex. PW-14/A i.e. Ex. PW-1/A in this case recorded in question and answer form by PW-1 SDM Sh. Lal Singh.

22. It is clear in view of the specific findings of the Co-ordinate Bench of this court, that the Trial Court in that case, did not chose to disregard all the six dying declarations made by the deceased, but preferred and relied on the dying declaration recorded by PW-1 SDM Sh. Lal Singh in question and answer form exhibited as PW-14/A i.e. Ex. PW-1/A in this case as well as dying declaration Ex.24/B recorded by PW-24 SI Balwan Singh.

23. Since, the dying declaration made to PW-1 SDM Sh. Lal Singh did not assign any role to the mother of the deceased, the mother was given the benefit of her acquittal by the Co-ordinate Bench of this Court.

24. In view of the submissions made, let us firstly examine in this regard, the judgment of the learned Trial Court in SC No.42/1998 vide judgment dated 20.11.2000. The relevant portion of the judgment of the learned Trial Court reads as under:-

“.....The counsel for the accused has further submitted that the dying declaration Ex. PW-1/A and Ex. PW-24/B are liable to be rejected as the doctor did not certify her fit to make statement when her statement was recorded by the SDM PW-1 Shri Lall Singh. I have gone through the MLC which is Ex. PW10/A and as per the MLC the patient was found unfit for statement at 11 a.m. on 6.6.98 by Dr. Nirupam Lakha and again the patient was found fit for statement by Dr. Chander Sharma

at 4.20 p.m. on 6.6.98. I have gone through statement of PW-1 SDM Sh. Lal Singh. He has stated that he started recording statement at 6.30 p.m. and ended at 6.45 p.m. of the patient Smt. Sunita . So as per the MLC Ex. PW10/A the patient was fit to make statement at 4.20 p.m. onwards and when the S.D.M. recorded the statement of patient Sunita at 6.30 p.m. the patient was found fit to make statement. I have also gone through statement Ex. PW24/B. As per PW-24 SI Balwan Singh he recorded statement Ex. PW24/B in the evening of 6.6.98 after the doctor declared her fit to make statement vide his endorsement at point B in the MLC. So it has become very clear from the statement of this witness that when he recorded the statement of Smt. Sunita, she was declared fit to make statement by the doctor. So the contention of the Ld. Counsel for the accused on this point without any merit and the same is therefore rejected. The learned counsel for the accused has further stated that the dying declaration contained in the MLC Ex. PW10/A has not been signed by the injured Sunita so the same is liable to be rejected. I have gone through the MLC Ex. PW10/A. The doctor has written in the MLC as under:-

Informant and self alleged history of being burnt by her parents, brother Sunil and Bhabhi Neena. This information has been written by the doctor on the MLC.

I have gone through PW-10 Dr. Harish Mansukhani who recorded this endorsement on the MLC and he has categorically stated that on 6.6.98 at about 10 a.m. one patient Sunita w/o Ram Lal was brought by PCR. He had examined the patient. The patient gave the history of allegedly being burnt by her father, brother and bhabhi Neena. The doctor is the most independent witness and he recorded this information after he examined the patient Sunita as to how she was burnt. Whatever

information deceased Sunita gave him was recorded by him in the MLC. The signatures of the patients are never obtained on the MLC and in the MLC the information which has been given by Smt. Sunita is categorical and as per the said information she was burnt by her parents and by her brother and bhabhi. The doctor does not have any enmity with the accused persons and there is nothing on record to suggest that the doctor was enemical to the accused persons while recording the said information on the MLC. The contention of the Ld. Counsel for the accused that the endorsement of the doctor on the MLC does not contain the signatures of Sunita is without any merit and the same is therefore rejected. The Counsel for the accused has further submitted that as per the allegations in the dying declaration some petrol or kerosene oil was sprinkled on Smt. Sunita and then she was set on fire by the accused persons but as per CFSL report Ex. PW24/G the exhibits sent to the CFSL for chemical examination gave negative test for petrol hydrocarbon fractions and therefore the dying declaration made by the deceased stands falsified and the same should be rejected. I have gone through the report EX. PW24/G which is the CFSL report. The exhibits gave negative test for the petrol hydrocarbon fractions. I have also gone through the dying declaration EX. PW1/A and 24/B and as per dying declaration Smt. Sunita has stated that her parents and brother Sunil sprinkled petrol or kerosene oil on her. So as per the dying declaration Smt. Sunita was not very sure whether petrol was sprinkled on her by the accused persons or kerosene oil was sprinkled on her by the accused persons. What she could guess was that either it was petrol or kerosene oil. It is quite possible that the accused person might have sprinkled any other inflammable material on her. Moreover, the CFSL report is not conclusive and is not a substantive piece of evidence. It is only

a corroborative piece of evidence. There is no denying the fact that Smt. Sunita has been burnt as has been stated by the doctor PW-10 Dr. Harish Mansukhani who examined her when she was admitted at the hospital and he has categorically stated that Smt. Sunita has approximately 50% burns on front, both arms and face. So sufficient evidence has come on the record that the accused persons were responsible for causing burns on the person Smt. Sunita. The material which was used in causing burns may be petrol or may be kerosene oil or may be some other inflammable material. Simply because CFSL report gives negative tests for petrol or kerosene oil does not mean that the deceased Smt. Sunita was not burnt by the accused persons. The contention of Ld. Counsel for the accused persons, on this point is therefore rejected. The Counsel for the accused has further submitted that the dying declaration has to be corroborated by independent evidence and only then it should be believed by the court. He has further submitted that in the present case the dying declaration has not been supported by independent witnesses so the same should be rejected. I do not agree with the Ld. Counsel for the accused on this point. The dying declaration was first of all recorded by the doctor on duty PW-10 Dr. Harish Manshukhani. He is an independent witness and there is nothing on record to suggest that the doctor has any enmity with the accused persons. There is also nothing on record to suggest that this doctor has wrongly recorded the dying declaration of Smt. Sunita. Dying declaration was thereafter recorded by PW-1 Sh. Lal Singh, SDM, who is also an independent witness as he was working as SDM of the area at the relevant time. He recorded the dying declaration in his own hand in the hospital. There is nothing on record to suggest that the SDM is interested in the prosecution of the accused persons of that he was enemical with the accused persons when

he recorded dying declaration of the deceased. Nothing has also come on record to show that he is interested in the prosecution and conviction of the accused. Dying declaration was also recorded by PW-24 SI Balwan Singh who is IO of this case. The said dying declaration is Ex.PW24/B. I have gone through the statement of Ex.PW24 SI Balwan Singh. He has stated that when he again visited the hospital he recorded the statement of Smt. Sunita immediately after she was declared fit for statement by the doctor and thereafter the SDM came at the hospital and recorded the statement of Smt. Sunita. There is nothing on record to suggest that SI Balwan Singh fabricated this document Ex.PW24/B in order to falsely implicate the accused persons. He has recorded the statement of Smt. Sunita injured during the investigation of the case and this statement of Smt. Sunita corroborates with the dying declaration recorded by the doctor as well as the SDM. So the argument of the Ld. Counsel for the accused that the dying declaration has not been recorded by an independent witness is without any force and the same is therefore rejected. The counsel for the accused has further submitted that the statement of PW-12 ASI Rattan Singh u/s 161, Cr. P.C. was recorded by the police after three months and the same cannot be believed and should be rejected outright. I do not agree with the contention of the Ld. Counsel for the accused although the IO PW-24 SI Balwan Singh did not record the statement of PW-12 ASI Rattan Singh in time but it does not mean that the statement of PW-12 ASI Rattan Singh should be rejected outright because as per record PW-12 ASI Rattan Singh was on PCR duty on 6.6.98 and he took the injured in his PCR van to JPN hospital for medical treatment. So it is on record that the injured was removed in a PCR van to JPN hospital by this witness. His statement therefore cannot be rejected simply because the IO failed to record his statement

well in time. I have gone through the statement of PW-12 ASI Rattan Singh who has categorically stated that on 6.6.98 he took the injured in his PCR van to JPN hospital. The contention of the Ld. Counsel for the accused on this point is without any merit and the same is therefore rejected. The Counsel for the accused has further submitted that the deceased has died on account of septicemia. Septicimia can be caused due to infection. The deceased remained in the hospital for 18 days and after 18 days she died due to septicimia. The accused cannot be held responsible for the death of the deceased Smt. Sunita as she did not die due to burn injuries directly but she died due to septicimia. The accused are therefore liable to be acquitted. I do not agree with the Ld. Counsel for the accused on this point. I have gone through the statement of PW-11 Dr. Joginder Bansal who conducted post mortem on the dead body of Smt. Sunita. He has given his opinion that death in this case is due to septicimia consequent to infected burn injuries. All the burn injuries were ante-mortem, around 18 days in duration and caused due to burn due to fire. In the cross examination this witness has stated that septicimia is a natural feature in such like burn injuries. It could not have been on account of any lapse in medical attention. However, unhygienic conditions could contribute to septicimia, otherwise present in the body. In some cases septicimial could result from unhygienic condition in the hospital. From the statement of PW-11 Dr. Joginder Bansal it has become clear that septicimia is on account of infected burn injuries. He has further stated that septicimia is a natural feature in such like burn injuries. So from the statement of this witness it can be inferred that in case of burn injuries septicemia naturally occurs afterwards and septicimia is only because of the burn injuries received on account of fire on the body of the deceased Smt. Sunita. So

ultimately it is the burn injuries which were responsible for causing septicimia also and which caused the death of Smt. Sunita. So, it cannot be said that septicimia was caused by some other material or some other cause. Septicimia is the direct result of the burn injuries and can be caused naturally after the patient gets burn injuries on his person. So the contention of the Ld. Counsel for the accused that the accused are not responsible for the death of Smt. Sunita is without any merit and the same is rejected.”

25. It has to be noted that, the judgment in the matter of Sushila in CrI. L. P. 452/2010 was delivered by the Coordinate Bench of this Court on the leave petition of the State. The parameters to consider the fact, a re-appreciation of evidence while hearing the leave petition against the judgment of acquittal and in comparison to that of conviction are different. It is a matter of law that the High Court possesses wide powers and can re-appreciate the evidence while hearing an appeal against an order of acquittal; at the same time the Court has to be satisfied that the conclusions reached by the Trial Court are unreasonable and that relevant and convincing material were unjustifiably not taken into consideration. The High Court, while hearing a leave petition/appeal, would be slow to interfere in the order of acquittal if the view taken by the Trial Court is reasonable and probable. Even where two views are possible and one is taken by the Trial Court, the High Court has no power to replace the view of the Trial Court with its own view. In the light of the judgment in the matter of Sushila (Supra) delivered by the co-ordinate Bench of this Court, whatever was discussed or appreciated, was in the context in the matter of the co-accused Sushila only. The co-ordinate bench of this Court dismissed

the leave petition and upheld the acquittal of the co-accused Sushila on the basis of appreciating and distinguishing dying declarations i.e. Ex. PW-24/B recorded by PW-24, SI Balwan Singh and Ex. PW-14/A which is Ex. PW-1/A in this case, recorded in question and answer form by PW-1 SDM Sh. Lal Singh which were preferred than the other dying declarations. The Coordinate Bench of this Court while discussing both the dying declarations PW-24/B and PW-14/A i.e. Ex. PW-1/A in this case, could not find any fault in the findings reached by the Trial Court in the matter of Sushila (supra). Even otherwise, when we go through the statements made/dying declarations, the role of the appellants, in this case, has been consistent, however, the deceased mentioned the presence of the co-accused Sushila (mother) in three dying declarations and in the other two dying declarations, the deceased mentioned 'parents' and in the sixth dying declaration made before PW-1 SDM, the deceased did not disclose the role of her mother and therefore, co-accused Sushila was duly given the benefit of doubt. However, the three appellants have been consistently mentioned in all the six dying declarations, over the course of the day of the incident from the time she was picked up by the PCR van officials, to the time she gave her statement to PW-1 SDM at 06:30 p.m.

26. The PCR official, doctor, Investigating Officer and SDM are neutral, independent witnesses who could not have any interest to conspire or to falsely implicate the appellants herein. Learned APP submitted that, three dying declarations have been reduced to writing contemporaneously, with the making of such declaration there is no suggestion whatsoever that they were antedated or antetimed. Learned APP also submits that though out of

the six, three dying declarations were made prior to the endorsement of medical fitness to give statement, hence, the fact that they are consistent with the ones given after the deceased was declared fit, shows that they are true and can be relied upon. It is evident that the sixth dying declaration given to the PW-1 SDM at 06:30 pm. was in question and answer form, which is more reliable than the other dying declarations made before the PCR Official, doctor and daughter, which also contain particular specific role of the appellants. In the dying declaration made by the deceased before the Investigating Officer PW-24 SI Balwan Singh i.e. fifth dying declaration, the deceased has also specifically stated the role of the appellants. Even otherwise, if we discard all the other dying declarations, other than the sixth dying declaration made before PW-1 SDM, the dying declaration made by the deceased before PW-1 SDM is in question and answer form after ascertaining the medical fitness of the deceased, also without the presence of her husband or any relative, specifically stated the role of each of the appellants is voluntary, truthful and is also reliable. The same facts and this dying declaration has been relied upon by the Co-ordinate Bench of this Court for the acquittal of one of the co-accused, Sunita. The deceased had in this dying declaration has also clearly assigned specific role to each one of the appellants and the same can be relied upon to establish role of the appellants.

27. The dying declarations Ex. PW1/A and Ex. PW24/B, hence, are fully reliable, voluntary, and truthful. There is nothing to suggest that the deceased was not in a fit medical condition to make the statements as made in dying declarations Ex. PW-1/A and Ex. PW-24/B.

28. Now reverting back to the another contention of learned counsel for the appellants that this was a case of self immolation and false implication by the deceased herself. Learned counsel for the appellants relied upon the DD entry 12/A where the information recorded is that “ek ladki ne aag laga li hai”. Learned counsel for the appellants submitted that this information recorded in DD entry 12/A clearly proves that it is a case of suicide by self immolation and not of her getting burnt by someone else. Learned counsel for the appellants submitted that the case of the prosecution is that the deceased was dragged inside the house and thereafter put on fire, however, no evidence either of burning or of kerosene oil/petrol was found inside the room of the house. The CFSL report indicated that the clothes of deceased gave negative test for the presence of petroleum hydrocarbon fractions, so, the alleged version of deceased being burnt by pouring kerosene oil/petrol is not corroborated either by medical or forensic evidence. Learned counsel for the appellants also submitted that in the cross examination of PW-2 Ramlal Dua, he disclosed that the deceased was in the bulb making business and red phosphorous is used in the process of bulb making which is an inflammable chemical and the same material was used by the deceased for self immolation. Per contra, the testimony of PW-24, the Investigating Officer has deposed that an almirah making factory was part of the residential premises of the appellants and was in front of the house and that the burnt pieces of clothes were found on both sides of the gate of the factory. There some match sticks were found near the moulding machine of the factory. Therefore, it is clear that a steel almirah making unit operated by the accused was on the spot itself and that many inorganic chemicals

which are highly inflammable are used to make steel almirahs and even in powder coating of wooden almirahs. As such, the appellants also had access to non petrol hydrocarbon based inflammable substances. The incident took place on 06.06.1998, when the deceased had gone to her parents house and the FSL report is more than a year later i.e. 29.06.1999, kerosene and petrol evaporates very quickly even within a few days there can be no trace of the same. The deceased herself was not clear as to what fuel was used by the appellants to burn her. In her dying declaration to her husband PW-2 Ramlal Dua, she stated that either father or brother poured some petrol/kerosene, she could not see who lit the match stick as she was trying to save herself. Even in the sixth dying declaration i.e. statement of the deceased before PW-1 SDM, she said “petrol ya mitti ka tel”, as she herself was not clear as to what fuel was used. Hence, mere absence of petrol hydrocarbons on the burnt clothes of the deceased, as per FSL report, does not in any manner indicate that the appellants did not burn the deceased. We do not find any force in submission made by the learned counsel for the appellants in this regard.

29. Learned counsel for the appellants has also submitted that as per PW-2 Ramlal Dua, his elder daughter Chanchal had made a telephonic call to his brother Ram Chand, thereafter his mother and nephew Deepak came to his house informing him about the incident. All the above named person, were not made witnesses, except for PW-2 in the present case. However, we do not find any flaw or infirmity in the judgment of the Trial Court on this contention since it does not affect the case adversely.

30. Learned counsel for the appellants also submitted that the husband of the deceased was not financially well off and that the deceased used to keep asking her parents for financial help as it is evident from the cross examination of the husband of the deceased as well as in view of the statement of the appellant under Section 313 Cr.P.C. The family of the deceased even disowned her on account of this. The deceased on the day of the incident had arrived at her parents house demanding money since her parents had sold some property a few weeks earlier and she was claiming a share, they also led the evidence of DW-1 who was the purchaser of the terrace rights of the property to prove the said property sale. It is also stated that on instigation of the husband of the deceased, the deceased used to keep making demands for property, she also threatened to commit suicide if her demands were not met and such she made good her threats on the day of the incident.

31. Learned counsel for the appellants also submitted that at the time of the incident, appellant No.2 was not in the house as stated by him in his statement under Section 313 Cr.P.C. Also, father of the deceased appellant No.3, in his statement under Section 313 Cr.P.C. submitted that he was taking bath at the time of the incident and when he came out he saw his daughter in burnt condition outside his house, according to the statement of appellant No.1 Bhabi Neena under Section 313 Cr.P.C. submitted that she was upstairs drying clothes, and that her father in law was having bath and her husband was not in the house and she heard a cry and came downstairs, her mother in law put water on the deceased and she put a bed sheet on her. To take note of the fact, if the deceased wanted to commit self immolation,

why would she do so in the absence of her family member to whom she wanted to teach a lesson? We fully agree with the contention of learned APP for the State that even if, the objective of the deceased was false implication, the deceased would have ensured that the act of self immolation to take place, while all the appellants were present at the house. We agree with the contention of the learned APP that the theory of self immolation sits inappropriately with the defence taken by the appellants in their statements made under Section 313 Cr.P.C. Also it is to be kept in mind that the conduct of the appellants is quite relevant as they showed an indifferent attitude towards the deceased.

32. PW-12 ASI Rattnan, PCR official stated that appellant Nos. 2 and 3 i.e. Sunil and Om Prakash were present but they refused to accompany him in the PCR vehicle saying “it was the duty of the police”. It was specifically denied by him that these persons helped in putting the deceased in the van. PW-2 deposed that on knowing that the deceased had been burnt, he tried speaking to his in laws on the phone to inquire about her, they told him to contact the police. The deceased informed him that on being set alight, she ran out and “someone” put water on her and she was taken to hospital by the PCR officials. Had the deceased actually self immolated rather than being set alight by the appellants, the efforts of the appellants would have been to douse the fire to get her instant medical attention or to accompany her to the hospital which they admittedly did not care to do. They did not even care to make efforts to inform the husband of the deceased about the incident. Hence, it is not a case of self immolation or suicide.

33. Learned counsel for the appellants has also submitted that DW-2 Mohinder Singh deposed that he had seen the deceased and her husband going towards the house of the accused at about 9:15 a.m. It was also suggested to the husband during his cross examination that he was at the spot and that he had put some inflammable chemical on his wife to put her on fire. However, the testimony of PCR official made it clear that the husband was not at the spot. He is a neutral witness with no interest in protecting the husband neither has the same been suggested. The testimony of PW-7 daughter of the deceased also made it clear that husband was not at the spot and got to know of the burning of the deceased only from her uncle who in turn was told by her elder sister Chanchal who was called by a neighbour regarding the incident. She denied that her father had accompanied her mother to the spot on the date of the incident.

34. Learned counsel for the appellant also submitted that the MLC was prepared at the instance of Neelam Dua, nurse and *Devrani* of the deceased. However, there is nothing on record that Neelam Dua was present at the time of the admission of the deceased or was in the ward. PW-10 Dr. Harish Mansukhani on a specific question in his cross examination denied that the MLC was prepared by him at the instance of any Neelam Dua. However, even in any case, the dying declarations made by the deceased before PW-12 PCR Van official was even prior to the arrival at the hospital, which almost contains the same position.

35. In our view, even if it is assumed, for the sake of argument that Neelam Dua, *devrani* of the deceased could have tried to manipulate hospital records (in a situation where the patient was not in a fit condition to

voluntarily give a statement), then certainly she would do so at the instance of the husband, however, at the time of admission of the deceased, the husband was still trying to ascertain in which hospital she was admitted. Considering that the brother received the phone call only at 10 a.m., it is more likely that by the time the husband arrived at the police station it was 11 a.m. since on receipt of phone call, the nephew and mother first went to fetch him, then he went to his brother's house, spoke to his in laws and only then set out for the police station. MLC reveals that patient was admitted at 11 a.m., since the husband himself reached the police station and got to know the whereabouts of his wife only at that time, thus there would have been scarce opportunity for him to contact Neelam Dua and conspire with her to manipulate the MLC so quickly. It is also relevant that the FIR was registered on statement of PW-24 SI Balwan Singh, Investigating Officer pursuant to the DD entry, PCR vehicle taking the deceased to hospital and the preparation of MLC, had the husband been present at the time of admission, the FIR would have been registered on his statement.

36. Learned counsel for the appellant further submitted that the father of the deceased had made a complaint prior to the incident against the deceased wherein he had also mentioned that the deceased was threatening to commit suicide, this complaint is marked X in the deposition of DW-3. Learned APP submitted that this document was never proved as per law. Even otherwise, this complaint does not absolve the accused. It also does not affect the case of the prosecution adversely in view of the evidence on the record and the discussions herein above.

37. Learned counsel for the appellant contended that the deceased did not die due to burn injuries but she died due to septicimia. The death report of the deceased makes it clear that, though the deceased was diagnosed to be suffering from diabetes mellitus and she was bearing treatment for her blood sugar levels, the medical record of the patient during her stay in hospital, including nurses charts etc. are available on the trial court record, indicated that apart from antibiotic's, dressing and other treatment for the burn injuries, the deceased was constantly monitored right from the start of her treatment and was given insulin, as well as blood transfusions as and when required. Therefore, it is clear that she was given appropriate treatment bearing in mind her diabetic condition and thus, it can be held that septicaemia was a direct consequence of the burn injuries. The post-mortem report of the deceased is clear wherein it is stated that "death in this case is due to septicaemia consequent to infected burn injuries. All the burn injuries were ante-mortem around 18 days in duration and caused due to burns due to fire." In the cross examination, the doctor, who exhibited the post mortem report, specifically states that "septicaemia is a natural feature in such burn injuries. It could not have been on account of any lapse in medical attentions. However unhygienic conditions could contribute to septicaemia otherwise present in the body." As such, there is nothing on record in the medical history of the patient or in the suggestions put to the doctor to indicate that the septicaemia was caused by or even exacerbated by the diabetic condition of the deceased Sunita.

38. There is no reason to disbelieve the dying declarations specifically Ex.PW-1/A and PW-24/B made by the deceased. There is ample evidence

against the appellants that they were responsible to burn the deceased Sunita who later succumbed to death. Trial Court has found the entity of the appellants, the manner of the commission of the offence, documents prepared, post-mortem report etc. proved beyond any shadow of doubt. All the prosecution witnesses and material placed on record, supported the prosecution's case. The testimonies of the witnesses are consistent and therefore, do not suffer from any flaw or infirmity.

39. In view of the above discussions and the distinct facts of the present appeal, we do not find the judgments relied upon by the appellants to be of any help to the case of the appellants {*Mayur Panabhai Shah v. State of Gujarat* MANU/SC/0085/1982; *Sher Singh v. State* MANU/DE/0136/1995; *Mohar Singh & Ors V. State of Punjab* MANU/SC/0181/1981; *Uka Ram v. State of Rajasthan* MANU/SC/0242/2001; *Ram Singh v. State* MANU/DE/0658/1996}.

40. In the light of the above discussions, we hold that the prosecution has established its case beyond any shadow of doubt against the appellants and we are in agreement with the conclusion arrived at by the learned Trial Court, consequently, the appeal is held to be devoid of any merit and is accordingly dismissed.

41. The appellant Om Prakash had died during the pendency of trial of this case, whereas the appellants Promila@Neena and Sunil Kumar are on bail, they are directed to serve the sentence as imposed by the learned Trial Court and surrender before the Central Jail, Tihar, New Delhi within three weeks from today. They shall be taken into custody to serve out the sentence.

42. Copy of this judgment be sent to the Jail Superintendant Central, Tihar Jail, Delhi for updating the jail record.
43. Trial Court Record be sent back along with a copy of this judgement.

(CHANDER SHEKHAR)
JUDGE

(G. S. SISTANI)
JUDGE

30th October, 2017/b

भारतमेव जयते