

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

(1) CRA-D-1350-DB of 2015 (O&M)

Jaswinder Kaur

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(2)

CRA-D-1363-DB of 2015

Mohinder Kaur

.... APPELLANT

Versus

State of Punjab and another

..... RESPONDENTS

Reserved on : 05.04.2019

Date of decision : 11.04.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.S. Marahar, Advocate,
for the appellant in CRA-D-1350-DB of 2015.

Mr. H.S. Randhawa, Advocate,
for the appellant in CRA-D-1363-DB of 2015.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both the appeals, i.e. CRA-D-1350-DB of 2015 and CRA-D-1363-DB of 2015, therefore, these are taken up together and being disposed of by a common

judgment.

2. CRA-D-1350-DB of 2015 is instituted against judgment and order dated 13.07.2015, rendered by learned Additional Sessions Judge, Sangrur, in SC No. 103 of 2014 dated 25.08.2014. Appellant Jaswinder Kaur was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code (for short, 'IPC'). She was convicted and sentenced thereunder to undergo imprisonment for life and to pay a fine of ₹ 50,000/-, in default of payment of which to undergo further rigorous imprisonment for one year. It was further ordered that out of the fine amount, if paid, ₹ 45,000/- will be paid to the mother of the deceased as compensation under Section 357 of the Code of Criminal Procedure subject to provisions of Section 357 (2) of the Code of Criminal Procedure.

3. CRA-D-1363-DB of 2015 has been filed by Mohinder Kaur, mother of the deceased, seeking enhancement of compensation awarded to her.

4. The case of the prosecution, in a nutshell, is that on 16.03.2014, a telephone call was received by the police from Rajiv Singla Hospital, Sunam, regarding admission of Mandeep Kaur wife of Hardeep Singh. Inspector Rajesh Snehi along with ASI Hardev Singh, Constables Sukhdeep Singh and Baljit Singh reached at Rajiv Singla Hospital, Sunam. He moved an application before Smt. Balwinder Kaur, Duty Magistrate, Sunam, for recording the statement of injured Mandeep Kaur at Rajiv Singla Hospital, Sunam. Smt. Balwinder Kaur, Judicial Magistrate Ist Class, Sunam, who was the Duty Magistrate, reached at Rajiv Singla Hospital, Sunam. The doctor declared injured Mandeep Kaur fit to make statement. Thereafter, the

learned Judicial Magistrate Ist Class, Sunam, recorded the statement of Mandeep Kaur under Section 164 Cr.P.C. Thereafter, the Investigating Officer also recorded the statement of Mandeep Kaur in the presence of her mother Mohinder Kaur and her cousin Gurdeep Singh son of Dhanna Singh resident of Kishangarh. According to the statement of Mandeep Kaur, her marriage was solemnised about 1 ¼ years ago with Hardeep Singh. She was kneading the flour near the outer hearth in her in-laws house. Her husband and brother-in-law were not present in the house. Her mother-in-law was offering prayers. She was patient of low blood pressure. She got giddiness while kneading flour. She became unconscious and fell on the ground. She did not know how she caught fire. She did not have any grudge against any one. However, on 20.03.2014, Sukhdev Singh son of Jagat Singh, resident of Kishangarh, who is maternal uncle of injured Mandeep Kaur, came to Police Station Dharamgarh. He made a request for again recording the statement of Mandeep Kaur. On this, Inspector Gurbachan Singh along with Lady Constable Rajwinder Kaur and gunmen, in a government vehicle, went to the court of Smt. Balwinder Kaur Dhaliwal, Judicial Magistrate Ist Class, Sunam. He moved an application for again recording the statement of the injured. She orally told that since the statement of Mandeep Kaur under Section 164 Cr.P.C., had already been recorded, as such, statement could not be recorded again. The Investigating Officer went back to Rajiv Singla Hospital, Sunam. After getting opinion of the doctor in writing regarding fitness of Mandeep Kaur, he recorded her statement. She stated that her parental village was Kishangarh, Police Station Bareta. Her marriage was solemnised about 1 ¼ years ago with Hardeep Singh. Her mother-in-law

used to chide her. On 16.03.2014 at about 6.15 PM, she was doing the household work. Her husband Hardeep Singh and her brother-in-law Sukhdeep Singh had gone to play in the play ground of their village. Her mother-in-law Jaswinder Kaur was watching T.V. She was kneading flour. After kneading the flour, when she went to throw the remaining water, she felt that some cold substance, which was smelling like kerosene, was thrown on her back side on her clothes. She started removing her clothes. In the meantime, her body and clothes caught fire. She turned back and saw that her mother-in-law was standing behind her holding a burning candle in her hand. She abruptly put off candle and turned back. While screaming, she came in the street through the gate. People doused off the fire. Her husband Hardeep Singh came on the spot. She was taken to Rajiv Singla Hospital, Sunam. Her mother-in-law had tried to kill her by sprinkling kerosene and by putting her on fire with the burning candle. She had no grudge against her husband and brother-in-law. Earlier, on 16.03.2014, she had made the statement before the learned Judicial Magistrate at the instance of her husband Hardeep Singh. Statement made by her on 20.03.2014 was correct. Statement was recorded by Lady Constable Rajwinder Kaur. FIR was registered.

5. On 24.03.2014, on receipt of copy of an order passed by the court of learned Chief Judicial Magistrate, Sangrur, Smt. Balwinder Kaur Dhaliwal, learned Judicial Magistrate Ist Class, Sunam, went to Rajiv Singla Hospital, Sunam, for re-recording the statement of Mandeep Kaur. She recorded the statement of Mandeep Kaur after taking certificate from the concerned doctor that she was fit to make statement. She stated that she was

25 years old. She had some altercation with her mother-in-law at about 6.30 PM. She and her mother-in-law were in the house. Her husband and younger brother-in-law had gone to play. Her mother-in-law was forcing her to sell the land of her share in her parental family. She refused to do so. She started kneading the flour by placing utensil on the *otta*. Some cold substance like water fell on her. It was kerosene. She started removing her clothes. Thereafter, her mother-in-law set her on fire with the help of candle. She started screaming and came in the street. The accused was arrested on 05.04.2014. Her statement was recorded under Section 27 of the Indian Evidence Act on 06.04.2014. Empty can and candle were got recovered by her. Mandeep Kaur died on 11.04.2014 in CMC, Hospital, Ludhiana. The body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

6. The prosecution has examined as many as ten witnesses. The accused was also examined under Section 313 Cr.P.C. She denied the case of the prosecution. She took the plea of alibi and examined four witnesses in support of her defence.

7. The appellant was convicted and sentenced, as noticed above.

8. Hence, CRA-D-1350-DB of 2015 has been filed by the appellant against her conviction and sentence. Mohinder Kaur – mother of deceased Mandeep Kaur, has filed CRA-D-1363-DB of 2015 seeking enhancement of compensation.

9. Learned counsel appearing on behalf of appellant Jaswinder Kaur has vehemently argued that the prosecution has failed to prove its

case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below. Learned counsel appearing on behalf of appellant Mohinder Kaur has argued that the compensation awarded to her is inadequate.

10. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

11. PW.5 Dr. Arvind Kumar testified that he conducted the post-mortem examination of the body of Mandeep Kaur. He proved post-mortem report Ex.PW.5/C. The cause of death in this case was due to multiple organ failure due to septicemia consequent to the complications of infection of the burn wounds.

12. PW.6 Dr. Kavita, Medical Officer, Department of Plastic Surgery, CMC, Ludhiana, deposed that on 27.03.2014, Mandeep Kaur was admitted in CMC Ludhiana for treatment of 70% burn injuries. She died on 11.04.2014. She attended Mandeep Kaur.

13. PW.1 Mohinder Kaur deposed that her daughter Mandeep Kaur was married with Hardeep Singh. On 16th March, she received a phone call. According to the information received on phone, Mandeep Kaur had burnt slightly. They reached at the hospital of Dr. Rajiv Singla at about 11.00 PM at Sunam. She was accompanied by Gurdeep Singh son of her brother-in-law. They were not allowed to talk to Mandeep Kaur. On 19th March at about 7.00/8.00 AM, Darbara Singh and Kulwant of her village came to her house in order to enquire about the health of Mandeep Kaur. She told them that she had not talked to Mandeep Kaur and she was told that Mandeep Kaur had suffered slight burn injuries. They offered her to accompany them

in order to enquire about the health of Mandeep Kaur. When they reached the hospital, they were accompanied by her brother Sukhdev Singh. Jaswinder Kaur and Hardeep Singh were present in the hospital. When they went inside the room of Mandeep Kaur, on seeing them, Jaswinder Kaur and Hardeep Singh went away. Mandeep Kaur on seeing them started crying. Her brother enquired from her why she was crying. She told them that she had been put on fire by her mother-in-law as she was insisting that she should sell her share of land. She told that she was kneading the flour. She went to throw surplus water. She felt that some cold substance was thrown on her back. It was kerosene. She turned back and saw that her mother-in-law was standing there with a burning candle in her hand. After putting her on fire, her mother-in-law went away. She came to street screaming. In cross-examination, she categorically deposed that Mandeep Kaur was not suffering from hypertension. She was not aware of the details of the incident of 16.03.2014. She did not know the contents of the statement of Mandeep Kaur recorded by the police on 16.03.2014.

14. PW.2 Kulwant Singh deposed that on 20.03.2014, he came to know that Mandeep Kaur was admitted in hospital with burn injuries. He along with Ex-Sarpanch Dalbara Singh, Mohinder Kaur and Gurdeep Singh reached Rajiv Hospital at Sunam. They reached there at 8.30 AM. Mandeep Kaur told them that on 16.03.2014 at about 6.15 PM, she was busy in her chores. Her husband and brother-in-law had gone out of the house. She and Jaswinder Kaur were present in the house. When she went to throw water after kneading the flour, some oil like substance was thrown on her from back side. It was smelling like kerosene. She tried to remove her clothes.

Her clothes caught fire. When she looked back, she saw that Jaswinder Kaur was standing there with a burning candle. She ran inside after blowing off the candle.

15. PW.3 Dalbara Singh also corroborated the statements of PW.1 Mohinder Kaur and PW.2 Kulwant Singh. He deposed that on 20.03.2014, he came to know that Mandeep Kaur was admitted in hospital with burn injuries. He along with Ex-Sarpanch Kulwant Singh, Mohinder Kaur and Gurdeep Singh reached Sunam at Rajiv hospital. They reached there at 8.30 AM. Mandeep Kaur told them the manner in which she was put on fire by the accused.

16. PW.4 Dharminder Singh prepared scaled site plan Ex.PW.4/A.

17. PW.7 Smt. Balwinder Kaur Dhaliwal deposed that on 16.03.2014, she was posted as Judicial Magistrate Ist Class at Sunam. She was Duty Magistrate on that day. Police moved an application Ex.PW.7/A. She reached at Rajiv Singla Hospital, Sunam, for recording statement of injured Mandeep Kaur. She was admitted there. At 10.20 PM, the doctor declared the patient fit to make statement vide certificate Ex.PW.7/B. She passed order Ex.PW.7/C. Thereafter, she recorded the statement of Mandeep Kaur vide Ex.PW.7/D. As per her observation, the statement was not trustworthy, as the patient stated that she fell down forward as she was suffering from high blood pressure but her face and neck were absolutely fine. On 24.03.2014, she received an order from the Chief Judicial Magistrate, Sangrur, for re-recording the statement of Mandeep Kaur as soon as possible. She again reached at Rajiv Singla Hospital, Sunam. She got certificate from Dr. Rajiv Singla whether the patient was fit to make

statement. The doctor declared Mandeep Kaur fit to make statement vide endorsement Ex.PW.7/H. She recorded her statement Ex.PW.7/J. Mandeep Kaur deposed that she had earlier also made a statement. However, that statement was made under the influence of her husband. In her second statement, she stated that her mother-in-law had put her on fire. The doctor had declared her fit throughout and fully conscious at the time of recording the statement vide Ex.PW.7/K.

18. PW.8 Dr. Rajiv Singla deposed that Mandeep Kaur was brought to his hospital on 16.03.2014 at 7.45 PM with 70% to 80% burn injuries. Her clothes were charred all together. Her body was smelling of kerosene. Her hands, feet and front scalp were spared. Parts of her chest and face were also spared. She remained in the hospital till 27.03.2014. She was referred to CMC Ludhiana by him. Police had moved application Ex.PW.8/B on 16.03.2014 for recording statement of Mandeep Kaur. He declared her fit to make statement. Her statement was recorded on 16.03.2014 by Smt. B.K. Dhaliwal, learned Judicial Magistrate Ist Class, Sunam in his presence. She remained conscious throughout. On 20.03.2014, the police had moved an application Ex.PW.8/C before him for ascertaining the fitness of the patient to make statement. He declared her fit to make statement vide endorsement Ex.PW.8/C1. Thereafter, police again moved an application Ex.PW.7/G on 24.03.2014 to ascertain the fitness of patient to make statement. Thereafter, statement of the patient was recorded by Smt. B.K. Dhaliwal, learned Judicial Magistrate Ist Class, Sunam. He made endorsement Ex.PW.7/K under the statement that Mandeep Kaur remained fit throughout and fully conscious while recording the statement by Smt.

B.K. Dhaliwal.

19. PW.9 Inspector Rajesh Snehi deposed that he received a telephone call from Rajiv Singla Hospital, Sunam, on 16.03.2014. Thereafter, he along with other police officials went to Rajiv Singla Hospital, Sunam. He found that Mandeep Kaur had more than 70% burns. He went to Smt. B.K. Dhaliwal, Duty Magistrate and moved application Ex.PW.7/A for recording the statement of Mandeep Kaur. She reached at Rajiv Singla Hospital, Sunam. She recorded the statement of Mandeep Kaur. Sukhdev Singh son of Jagat Singh came to him on 20.03.2014. According to him, statement on 16.03.2014 was given by Mandeep Kaur under duress. He moved an application before the learned Judicial Magistrate Ist Class, Sunam, for re-recording statement of Mandeep Kaur. However, same was declined by the learned Magistrate on 20.03.2014. He went to Rajiv Singla Hospital, Sunam and moved application Ex.PW.8/C for re-recording statement of Mandeep Kaur. The concerned doctor gave certificate Ex.PW.8/C1 declaring her fit to make statement. Statement of Mandeep Kaur was recorded vide Ex.PW.9/D. The statement was endorsed by Lady Constable Rajwinder Kaur. On 24.03.2014, on receipt of order Ex.PW.9/E, passed by the court of learned Chief Judicial Magistrate, Sangrur, ASI Sampuran Singh was directed to submit an application before learned Judicial Magistrate Ist Class, Sunam, to re-record the statement of Mandeep Kaur. He moved application Ex.PW.7/G before Judicial Magistrate Ist Class, Sunam. Thereafter, learned Judicial Magistrate Ist Class, Sunam, after taking fitness certificate from the concerned doctor, recorded the statement of Mandeep Kaur. Accused Jaswinder Kaur was

arrested on 05.04.2014. She made a disclosure statement that on 16.03.2014, she had poured kerosene on the back side of her daughter-in-law Mandeep Kaur. She lit the fire with candle. The statement is Ex.PW.9/H. He also obtained record from Rajiv Singla Hospital, Sunam. Dowry articles were also recovered.

20. What emerges from discussion of the evidence, discussed herein-above, is that marriage of Mandeep Kaur was solemnised with Hardeep Singh. The marriage was solemnised about 1 ¼ years back. There used to be quarrel between her and her mother-in-law. On 16.03.2014, her husband and brother-in-law were not present in the house. She and her mother-in-law were present in the house. She was kneading the flour. When she went outside to throw surplus water after kneading the flour, kerosene was thrown on her back. She tried to remove her clothes. In the meantime, her mother-in-law put her on fire. The incident happened on 16.03.2014. She died in CMC, Ludhiana on 11.04.2014.

21. PW.6 Dr. Kavita, Medical Officer, Department of Plastic Surgery, CMC, Ludhiana, testified that on 27.03.2014, Mandeep Kaur was admitted in CMC Ludhiana for treatment of 70% burn injuries. The cause of death, as per the post-mortem report Ex.PW.5/C, was due to multiple organ failure due to septicemia consequent to the complications of infection of the burn wounds. Statement of Mandeep Kaur was recorded on 16.03.2014 by PW.7 Smt. Balwinder Kaur Dhaliwal, Judicial Magistrate Ist Class, Sunam, before the police. In this statement, she had absolved her mother-in-law. However, she again made a request to the Investigating Officer of the case to get her statement re-recorded. The Investigating Officer, PW.9 Inspector

Rajesh Snehi, requested the Judicial Magistrate Ist Class, Sunam, on 20.03.2014, to re-record the statement of Mandeep Kaur. She refused to do so. He went to the hospital. Mandeep Kaur was declared fit to make statement. The Investigating Officer recorded her statement. She categorically narrated the manner in which she was put on fire by her mother-in-law. Thereafter, on the orders passed by learned Chief Judicial Magistrate, Sangrur, statement of Mandeep Kaur was re-recorded by learned Judicial Magistrate Ist Class, Sunam, on 24.03.2014. Mandeep Kaur stated that she was kneading the flour on 16.03.2014. When she went to throw the surplus water, some liquid was thrown on her back. It was smelling kerosene. She tried to remove her clothes. In the meantime, she was put on fire by her mother-in-law with a burning candle. She was taken to hospital.

22. It has come in the statement of PW.1 Mohinder Kaur also that they went to the hospital on 20.03.2014. On seeing them, Mandeep Kaur started crying. Brother of PW.1 Mohinder Kaur enquired Mandeep Kaur why she was crying. She told the sequence in which she was burnt. Statement of PW.1 Mohinder Kaur is corroborated by PW.2 Kulwant Singh and PW.3 Dalbara Singh, who had reached hospital, along with PW.1 Mohinder Kaur. They deposed that Mandeep Kaur had told them how she was put on fire by her mother-in-law. Mandeep Kaur categorically stated in her second statement that earlier her husband put pressure upon her not to disclose the manner in which she was put on fire by her mother-in-law. PW.7 Smt. Balwinder Kaur Dhaliwal has also deposed that as per her observation statement of Mandeep Kaur recorded on 16.03.2014 was not trust-worthy, as she stated that she fell down forward as she was suffering

from high blood pressure. However, there was no burn mark on her face.

23. Though the appellant has taken the plea of alibi, but she has not proved the same. The plea of alibi is a double edged weapon. In case the accused fails to prove the plea of alibi, her presence at the spot cannot be ruled out.

24. Statement of DW.3 Harkimat Singh is to the effect that he had gone to Talwandi Sabo on 16.03.2014. He came back in his vehicle to his home at about 7.00/7.15 PM. When he came back, he saw gathering in front of the house of the accused. He was asked by the crowd to stop the vehicle. Baljit Kaur came to him and asked him to take the vehicle to Kanakwal to fetch accused Jaswinder Kaur. Village Kanakwal was about 5/6 kms. away from village Ganduan. It took about 10/15 minutes to reach there. On reaching there, he got busy in parking his vehicle. Baljit Kaur went to call Jaswinder Kaur. Thereafter, Jaswinder Kaur accompanied Baljit Kaur into the vehicle. Then they went to the hospital. In his cross-examination, he categorically admitted that he had not made any statement to the police regarding the facts which he had stated in his examination in chief. He had not made any complaint to the police officials to initiate inquiry in the present case regarding innocence of Jaswinder Kaur. He was not eye witness to the occurrence.

25. DW.4 Baljit Kaur deposed that on 16.03.2014 at 6.00 to 7.00 PM, her husband came to take vehicle. He was in hurry. He hurriedly started the vehicle. She inquired where he was going. He told her that he was to take the wife of Hardeep Singh to Sunam. When they reached at their house, many people had gathered. She enquired from the persons present there that

what had happened. She was told that Jaswinder Kaur who was at Kanakwal should be called. In the meanwhile, Harkimat Singh reached there with his vehicle. She asked him that they had to bring Jaswinder Kaur from Kanakwal in his vehicle. They went to Kanakwal. They took Jaswinder Kaur with them and went to Sunam. In her cross-examination, she deposed that Jaswinder Kaur was niece of her mother-in-law. She had not made any statement to the police regarding the facts which were stated in her examination in chief. She had not made any complaint to the police officials to initiate inquiry regarding innocence of Jaswinder Kaur.

26. The aforesaid statements of DW.3 Harkimat Singh and DW.4 Baljit Kaur do not prove that the appellant was not present on 16.03.2014 at the place of occurrence.

27. Learned counsel for the appellants has vehemently argued that the deceased was suffering from giddiness. However, PW.1 Mohinder Kaur specifically stated in her cross-examination that her daughter Mandeep Kaur was not suffering from hypertension. No evidence has been led by the appellant to prove that the deceased was suffering from any ailment. It has come in the statement of Mohinder Kaur recorded on 24.03.2014 that some quarrel had also taken place and thereafter, she started kneading the flour, and she was put on fire by the appellant. She had suffered 70% to 80% burns. The statement recorded by PW.7 Smt. Balwinder Kaur Dhaliwal, learned Judicial Magistrate Ist Class, Sunam, is voluntary in nature. The patient was certified to be medically fit to make the statement. The endorsement was made by PW.8 Dr. Rajiv Singla. The statement of Mandeep Kaur was also recorded by the Investigating Officer, PW.9

Inspector Rajesh Snehi, on 20.03.2014, after getting certificate from the doctor that she was fit to make statement. There is no occasion for the deceased to falsely implicate her mother-in-law. It has come on record that the appellant chided her daughter-in-law Mandeep Kaur for not bearing child and to sell her share of the land.

28. Their Lordships of the Hon'ble Supreme Court in **Nallam Veera Stayanandam and ors. Vs. Public Prosecutor, High Court of A.P.,** (2004) 10 SCC 769, have held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. The Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. Their Lordships have held as under :-

“6. It is for the above purpose, learned counsel for the appellants has strongly relied on the dying declaration Ex. P-28 which according to him, is free from all blemish and is not surrounded by any suspicious circumstances. We are of the opinion that if the contents of Ex. P-28 can be accepted as being true then all other evidence led by the prosecution would not help the prosecution to establish a case under section 304B IPC because of the fact that even a married woman harassed by demand for dowry may meet with an accident and suffer a death which is unrelated to such harassment. Therefore, it is for the defence in this case to satisfy the court that irrespective of the prosecution case in regard to the dowry demand and harassment, the death of the

deceased has not occurred because of that and the same resulted from a cause totally alien to such dowry demand or harassment. It is for this purpose the appellants strongly place reliance on the contents of Ex. P-28, therefore, we will have to now scrutinise the circumstances in which Ex. P-28 came into existence and the truthfulness of the contents of the said document. It is the prosecution case itself that on the fateful day at about 3'O clock, the deceased suffered severe burn injuries and she was brought to the Government hospital at Kothapeta. As per the evidence of PW-10 the doctor when she was admitted to the hospital, he sent an intimation to the Police as per Ex. P-21 and also made an endorsement in Ex. P-22, the accident register. In both these documents, he had noted that the deceased suffered accidental burn injuries due to stove burst. It is not the case of the prosecution that this entry was made by the doctor at the instance of any one of the appellants. At least no suggestion in this regard has been put to the doctor when he was in the witness box. As a matter of fact, there is considerable doubt whether any of the appellants was present at the time when the deceased was brought to the hospital and was first seen by the doctor PW-10. On the contrary, according to the doctor, a large number of relatives other than the appellants were present at that point of time when the deceased was brought to the hospital, therefore, it is reasonable to infer that the information recorded by the doctor in Ex. P-21 and 22 is an

information given to the doctor either by the victim herself or by one of the relatives present there, who definitely were not the appellants. From the evidence of this doctor, we notice that anticipating the possible death he sent a message to the Munsif Magistrate to record a dying declaration and the said Magistrate PW-13 came to the hospital immediately and after making sure that all the relatives and others were sent out of the ward and after putting appropriate questions to know the capacity of the victim to make a statement and after obtaining necessary medical advice in this regard, he recorded the dying declarations which is in question and answer format. It is in this statement the deceased unequivocally stated that she suffered the injuries accidentally while preparing tea. There has been no suggestion whatsoever put to this witness when he was in the box to elicit anything which would indicate that this statement of the deceased was either made under influence from any source or was the statement of a person who was not in a proper mental condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate we are satisfied that there is no reason for us to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The trial court while considering this dying declaration seems to have been carried away by doubting the correctness and genuineness of this document

because of other evidence led by the prosecution thus, in our opinion, erroneously rejected this dying declaration which is clear from the following finding of the trial court in regard to Ex. P-28 :

"Her statement made to the Magistrate which is at Ex.P-28 has been demonstrated to be an incorrect statement of fact and it appears that in the presence of the 3rd appellant, she made the statement that from the burning stove her sari caught fire while she was preparing tea."

We find absolutely no basis for the two reasons given by the trial court for coming to the conclusion that the deceased's statement under Ex. P-28 is an incorrect statement. The court came to the conclusion that this statement must have been made in the presence of the 3rd appellant, a fact quite contrary to the evidence of PWs.10 and 13. On the contrary, the Munsif Magistrate specifically states that he asked everyone present and who were unconnected with the recording of the statement, to leave the room This has not been challenged in the cross-examination. Therefore, in our opinion, this part of the foundation on which the trial court rejected Ex. P-24 is non-existent. It is also seen from the above extracted part of the judgment of the trial court that it held that it "has been demonstrated to be an incorrect statement of fact". For this also, we find no basis. If the trial court was making the second dying declaration as the basis to reject the first dying declaration as incorrect

then also in our opinion, the trial court has erred because in the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.”

29. Their Lordships of the Hon'ble Supreme Court in **Ashabi and another Vs. State of Maharashtra**, (2013) 2 SCC 224 have held that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected solely because of certain variations in another declaration. It has been held as under :-

“15. About the evidentiary value of dying declaration of the deceased, it is relevant to refer Section 32 (1) of the Indian Evidence Act, 1872, which reads as under:-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. - (1) Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves

relevant facts in the following cases:-

(1) when it relates to cause of death. -

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2)

(8) ”

It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32 (1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding

the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.”

30. In order to prove plea of alibi, their Lordships of Hon'ble the Supreme Court in **Binay Kumar Singh vs State of Bihar** (1997) 1 SCC 283,

have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the

*prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* (1981) 2 SCC 166; *State of Maharashtra v. Narsingrao Gangaram Pimple* AIR 1984 SC 63)."*

31. In view of the above discussion, the prosecution has proved its case against appellant Jaswinder Kaur beyond reasonable doubt. Thus, there is no occasion for us to interfere with the well reasoned judgment and order of the trial court. Accordingly, CRA-D-1350-DB of 2015 is dismissed.

32. So far as the prayer made by Mohinder Kaur, mother of deceased Mandeep Kaur, for enhancement of compensation, is concerned,

no ground has been made out for enhancement of compensation, in view of the peculiar facts and circumstances of the case. Accordingly, CRA-D-1363-DB of 2015 is also dismissed.

(**RAJIV SHARMA**)
JUDGE

April 11, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes