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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. A. 750/2003**

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Judgment reserved on: 21st August, 2019

Judgment Pronounced on: 04th September, 2019

JAI SHANKAR

.....Appellant

Through: Mr. Sulaiman Mohd. Khan, Advocate
(DHCLSC)

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP for State

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been filed under Section 374 of the Code of Criminal Procedure, (hereinafter referred as 'Cr.P.C.'), against the judgment dated 26.09.2003 and order on sentence dated 27.09.2003 passed by the learned Additional Sessions Judge, Delhi in Session Case No. 105/2001 in FIR No. 442/2001 registered under Section 302 of the Indian Penal Code (hereinafter referred as 'IPC') at Police Station Nangloi, whereby the appellant was convicted and sentenced to undergo imprisonment for life and further sentenced to pay a fine of Rs.5000/- for the offence punishable under Section 302 IPC and in default of payment of fine to undergo further simple imprisonment for a period of two months.

2. Brief facts of the case, as noticed by the learned trial court, are as under: -

“1. The accused is facing a charge under Section 302 IPC. It is alleged by the prosecution that on the night intervening 2nd and 3rd June, 2001, the accused had poured kerosene oil on the person of his wife Suman and had set her on fire at their house.

The local police was informed about the incident at about 1.30 a.m. on 03.06.2001 by duty constable Om Prakash at Safdarjung Hospital. He had told the police station, Nangloi that Suman, w/o Jai Shankar, R/o Khasra No.5, Kamruddin Nagar, village Nangloi had been got admitted in a burnt condition by her husband. DD No. 30-A was recorded on this information at P.S. Nangloi and was entrusted to SI Ghanshyam. SI Ghanshyam had visited Safdarjung hospital along with const. Akhilesh and had obtained the MLC of Suman.

The injured had been declared fit for statement. SI Ghanshyam, therefore, informed the SDM as the marriage of the injured had taken place within seven years of the incident. The SDM arrived in the hospital at about 3/4 a.m. He recorded the statement of the injured and gave directions for registration of a case against her husband.

In her statement to the SDM, Suman had stated that while she was present at her house her husband had poured kerosene oil on her person and had set her on fire. She had also stated that her husband suspected her fidelity and further suspected that she had illicit relations with her nephews Raj Kumar and Manoj. On the direction of the SDM, the present case FIR No. 224/01 was registered at P.S. Nangloi U/s 307 IPC. The husband of the injured was arrested by the police.

2. Suman (deceased) had expired in the hospital on 5.6.01 at about 10 p.m. The inquest proceeding was conducted by the SDM who sent the deadbody for post-mortem. After a post-mortem had been conducted, the

deadbody was handed over to the relations of the deceased. ”

3. After completion of investigation, a charge sheet was filed and charge for the offence punishable under Section 302 of the IPC was framed against the appellant/accused, to which he pleaded not guilty and claimed trial.
4. To bring home the guilt of the appellant/accused the prosecution has examined 14 witnesses in all. Statement of the appellant/accused was recorded under Section 313 of Cr.P.C wherein he claimed innocence and stated that he has been falsely implicated in the present case. The appellant/accused lead one witness in his defence.
5. After hearing counsel for both the sides and on appreciation of entire evidence available on record, the learned Trial Court convicted the appellant for the charged offence.
6. Mr. Sulaiman Mohd. Khan, learned counsel for the appellant, opened his submissions by contending that the impugned judgment dated 26.09.2003 is based on conjectures and surmises and the same is against the facts and settled proposition of law and that the learned trial court has ignored and omitted the material evidence and has disregarded the cogent evidence in favour of the appellant.
7. Mr. Khan, further contended that the circumstances which have been relied upon by the learned Session Judge are not sufficient to draw an inference of guilt against the appellant; that PW-13 (Dr. Ranjan) did not specifically state that the victim Suman was mentally fit to make a statement as to the circumstances under which she got burn injuries;

that the statement of the deceased is not attested nor was it certified by a doctor; that the statement of the deceased recorded by the SDM has not been attested by any of the witnesses to show credibility and authenticity of the said statement; that the statement of the doctor reflects that the brain got congested due to the injuries present on the scalp portion making it impossible for the deceased to make the statement; that there exists material contradictions in the testimony of the prosecution witnesses; that PW-7 (Sunil Pahuja/brother of appellant's employer) categorically deposed that he found the wife of the appellant in a burnt condition and he received a phone call from a child who categorically deposed that his maternal aunt had burnt herself; that the appellant was not present at the time of occurrence and he came running from the factory on hearing the news of his wife receiving burn injuries and he was weeping by her side; that the appellant has been falsely implicated in this case as he failed to make the payment of Rs. 25,000/- which was demanded by the IO as bribe. To substantiate his arguments learned counsel for the appellant referred to the case of ***Deepak Baliram Bajaj vs. State of Maharashtra*** reported in ***1993 Crl. L.J. 3269***.

8. Lastly, it was urged by the learned counsel for the appellant that in view of the aforesaid facts and circumstances, the prosecution has failed to prove the case against the appellant/Jai Shankar. He therefore, submitted that the impugned judgment be set aside.
9. On the other hand, Mr. Rajat Katyal, learned APP for the State, strongly refuted the submissions made by the learned counsel for the appellant and submitted that the impugned judgment is based on

proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this Court.

10. Learned APP for State further submitted that the statements of prosecution witnesses and dying declarations of the deceased are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt. To substantiate his arguments learned APP for the State relied upon *Harjit Kaur vs. State of Punjab* reported in (1999) 6 SCC 545; *Lakhan vs. State of Madhya Pradesh* reported in (2010) 8 SCC 514; *Pawan Kumar vs. State of Himachal Pradesh* reported in (2017) 7 SCC 780; *State of Andhra Pradesh vs. P. Satyanarayana Murthy* reported in (2008) 9 SCC 674.
11. Based on these submissions counsel for the State urged that this Court may not interfere with the well-reasoned order passed by the learned Sessions Judge convicting the appellant for the alleged offence.
12. We have heard the learned counsel for the parties and have also perused the material placed on record including the record of the trial court.

DYING DECLARATIONS

13. Since the main thrust of the arguments of counsel for the appellant is that the two dying declarations recorded by Doctor Lalit Chaudhary (PW-12) and the Sub Divisional Magistrate Shri Suraj Bhan (PW-5) are not trustworthy, hence, it is necessary to examine the law relating to dying declarations for the proper adjudication of this case. It has been repeatedly held by the Apex Court that even though a dying

declaration is admissible in evidence, yet the Courts must scrutinize the dying declaration with care and caution as a person, who has made such a statement is not available for cross-examination.

14. The Apex Court in the case of ***Ramilaben Hasmukhbhai Khristi and Ors. V. State of Gujarat***, reported at ***AIR 2002 SC 2996*** has held as under:

“Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of such a dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.”

15. The Apex Court in the case of ***Shakuntala V. State of Haryana***, ***AIR 2007 SC 2709***, has taken into consideration its various decisions and culled out the principles governing dying declarations. It would be useful to reproduce relevant part of the judgment:

“9. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as

a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben V. State of Gujarat (AIR 1992 SC 1817) :

i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. V. The State of Madhya Pradesh (1976) 2 SCR 764)]

ii. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh V. Ram Sagar Yadav & Ors. AIR 1985 SC 416) and Ramavati Devi V. State of Bihar (AIR 1983 SC 1640)]

iii. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. V. The Public Prosecutor AIR 1976 SC 1994)].

iv. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg V. State of Madhya Pradesh 1974 (4) SCC 264)].

v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kaka Singh V. State of M.P.* AIR 1982 SC 1021)]

vi. A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath and Ors. V. State of U.P.* 1981 (2) SCC 654)].

vii. Merely because a dying declaration does contain the details as to the occurrence. It is not to be rejected. [See *State of Maharashtra V. Krishnamurthi Laxmipati Naidu* AIR 1981 SC 617)]

viii. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Oza and Ors. V. State of Bihar* AIR 1979 SC 1505)]

ix. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See *Nanahau Ram and Anr. V. State of Madhya Pradesh* AIR 1988 SC 912)].

x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State of U.P.V. Madan Mohan and Ors.* AIR 1989 SC 1519)]

xi. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.

{See Mohanlal Gangaram Gehani V. State of Maharashtra AIR 1982 SC 839}.”

16. In the background of the aforesaid settled legal position, let us examine as to whether the two dying declarations made by the deceased inspire confidence and whether these statements made by the deceased were uninfluenced by any tutoring, prompting, or any other extraneous reasons and more particularly whether it was made in a fit state of mind despite having suffered 99% burn injuries.
17. In the present case, two dying declarations of the deceased have been recorded i.e. the MLC which was recorded by Dr. Lalit Chaudhary of Safdarjung Hospital (*Ex.PW-12/A*) and the statement recorded by the SDM Shri Suraj Bhan vide (*Ex. PW-5/A*).
18. The relevant portion of MLC which is proved on record as *Exhibit PW-12/A* reads as follows :

<u>“TOB</u>	<u>= 9.30PM</u>	<u>TOA</u>	<u>= 12.15AM</u>
<u>DOB</u>	<u>2/6/01</u>	<u>DOA</u>	<u>3/6/01</u>

*B/B Pardeep Rana (CATS – G – 2)
Jai Shankar (Husband)*

Informant – Self

Alleged H/O sustaining thermal burn injury at Home when her husband poured kerosene oil on her and lit her clothes on fire leading to burn injury to her body. No H/O epilepsy/diabetic. LMP on 30/05/2001.”

19. The second dying declaration was recorded by Shri Suraj Bhan, SDM Patel Nagar who entered the witness box as PW-5. In this dying declaration, which is in a question-answer form, the victim had

disclosed the period of her marriage, the person who had burnt her, the place of her residence and other information. The relevant portion of this dying declaration (**Ex. PW-5/A**) has been reproduced as under:

“(4) Apko Kisne Jala Diya?”

A. Mere Pati Ne Janbhoojhkar Ke Mitti Ka Tel Dalkar Jala Diya.

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(6) Apke Pati Ne Kiyo Jala Diya?

A. Mera Pati Mere Par Shak Karta Tha. Aur Kahta Tha Ki Tera Mere Bhanjho Ke Sath Galat Samband Hai.

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(9) Apki Aag Kisne Bhujayi?

A. Mere Bhanjho Manoj Sunil Ne Aag Bhujayi.

(10) Kiske Khilaf Karwahi Chahti Ho?

A. Mai Mere Pati Jai Shankar Ke Khilaf Karwahi Chahti Hun. Kiyoki Usne Mujhe Jalakar Mara Hai.

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SD/-

SDM 6.30AM ”

20. From the perusal of both the dying declarations we found that the first dying declaration (**Ex. PW-12/A**) recorded by the doctor points out the persons who had brought the victim to the hospital. The MLC/ dying declaration (**Ex. PW-12/A**) reflects that the victim was brought by Pardeep Rana (*CATS personnel*) and the appellant i.e. Jai Shankar. At the time of medical examination of the deceased by Dr. Lalit Chaudhary (PW-12), the deceased told the doctor that ‘*she was burnt by her husband by pouring kerosene oil on her in her house*’. There is no scope of any fabrication of the said statement as no third person including any relative or any official of the investigating agency was

present at the time when the statement was recorded and there is no question of any influence. The MLC also records that the patient was conscious, oriented and had a pulse rate of 100 beats per minute. She was also found fit for making the statement. From the perusal of the second dying declaration (*Ex. PW-5/A*) recorded by PW-5 (SDM Suraj Bhan) we found that the dying declaration (*Ex. PW-5/A*) was in question-answer form and the thumb impression of the deceased at '*Point-B*' has been countersigned by PW-5 (SDM Suraj Bhan). In the second dying declaration when the deceased was specifically asked '*as to how she caught fire*', the deceased categorically stated that '*she was burnt by her husband by pouring kerosene after which the appellant ran away*'.

21. Herein it is relevant to highlight that in both the dying declarations, she has consistently stated that she was brutally burnt by her husband by pouring kerosene oil over her in the four walls of her house. There are some elaborations in the second dying declaration but the same can be ignored as the first dying declaration was recorded by the Doctor and the second was recorded by the SDM in a question-answer form. In fact, in the second Dying Declaration to the SDM, the victim has also explained that the appellant had burnt her because he suspected her of having illicit relations with her nephews (bhanja).
22. At this stage, after the examination of both the dying declarations we deem it appropriate to examine as to whether the deceased was in a fit state of mind at the time of making the dying declarations. In this context, it is necessary to refer to the testimonies of PW-5 (SDM Suraj Bhan), PW-11 (SI Ghan Shyam), PW-13 (Dr. Ranjan).

Relevant portion of the testimonies of PW-5 (SDM Suraj Bhan), PW-11 (SI Ghan Shyam) and PW-13 (Dr. Ranjan) are reproduced below.

23. PW-5 (SDM Suraj Bhan) in his examination-in-chief has deposed as under:-

“On 03.06.2001 I was working as SDM, Patel Nagar. On that day SDM, Nangloi was on leave and I was informed by SHO, PS Nangloi that a woman in an injured condition had been admitted in Safdarjung Hospital. I reached the hospital and recorded her statement. After she had been declared fit for statement by the doctor attending upon her. The statement of Smt. Suman was recorded in question answers form and is Ex.PW-5/A.”

In his cross examination PW-5 (SDM Suraj Bhan), has deposed that:

“At the time I reached the hospital the doctor had declared the injured fit for statement. I had seen the application filed by the police before the doctor asking him to declare whether the patient was fit for statement. I do not remember the time at which the doctor had declared the patient fit for statement. I was called to the hospital at about 6/30 am on 03.06.2001. I was informed telephonically. I cannot confirm whether the doctor had declared the patient fit for statement once or twice or more times.”

PW-11 (SI Ghan Shyam) in his examination has deposed as:

“On 03.06.2001 I had made applications Ex.PW-11/G to the doctor at Safdarjung Hospital. The patient was declared fit for statement at 4.10 AM. She was again declared fit for statement at 6.30 AM when the SDM had arrived vide endorsement Ex.PW-11/H-1 and H-2 which were recorded by the doctor in my presence. Later on the investigation was taken over by Inspector H.K. Singh.”

PW-13(Dr. Ranjan) in his examination has deposed that:

“On 03.06.2001 I was working as a Junior Resident in Safdarjung Hospital. I was on duty in the burn ward. An application was made before me seeking opinion as to whether Smt. Suman w/o Jai Shankar, the patient admitted in the burn ward was fit for statement. I had given opinion at 6.30 AM on 03.06.2001 that the patient was fit for statement and was conscious. My endorsement Ex.PW-11/H2. It bears my signatures at point A and is in my hand. The patient was declared fit for statement earlier on the same day at 4.10 AM by doctor Lalit Chaudhary, Senior Resident vide his endorsement PW-11/H1. I have been working with Dr. Chaudhary and I am conversant with his handwriting and signatures. I identify his handwriting and signatures at point B on Ex.PW-11/H1.”

24. From the perusal of the aforesaid testimonies, it emerges that as per the testimony of PW-13 (Dr. Ranjan) an application was moved by the Investigating officer which is ***Exhibit PW-11/G*** to record the statement of the injured and he had opined that *“the patient was fit for statement and was conscious. My endorsement Ex.PW-11/H2. It bears my signatures at point A and is in my hand. The patient was declared fit for statement earlier on the same day at 4.10 AM by doctor Lalit Chaudhary, Senior Resident vide his endorsement PW-11/H1.”* Further PW-13 (Dr. Ranjan) during his cross-examination has deposed that *“After the patient is admitted with burn injuries, he is given fluids for a period of 24 hours which makes the patient more conscious and oriented”*.
25. Further, PW-12 (Dr. Lalit Chaudhary) during his cross-examination *‘when asked about the fitness of a person to depose after suffering*

from 99 % burn injuries’, replied that “It depends from patient to patient as to how the patient remains fit for statement or loses consciousness. The case sheet of the patient might be in the hospital. It is incorrect that the patient was not conscious and oriented at the time of her examination.”

26. The Supreme Court in the case of ***Jose vs. State of Kerala*** reported in ***AIR 2013 SC 2284*** has held that there is no straight jacket rule to suggest that a person receiving considerable percentage of burn injury cannot make a statement in a fit state of mind. Relevant portion of which reads as under:-

“The medical report produced by the Jubilee Mission Hospital also reflects that she was conscious and oriented. She was given a pain killer injection. That apart, there cannot be any thumb rule that a person sustaining a particular percentage of burn injuries would not be in a position to give any declaration.”

27. Reference can also be made to the dicta of the Apex Court in ***Latoor Singh vs. State of NCT of Delhi*** reported in ***2015 SCC Online Del 8103*** wherein it has been held that:

*“20. In burn cases, usually it is argued that the victim was possibly not capable of making the dying declaration because of burns or due to sedation given by the doctors, which is, in a way, the preliminary or first treatment to relieve and soothe the pain and anxiety. However, expert medical opinion does allay such suggestions, for they reject that the impact of burn wounds or drugs used to treat burns, affect the higher functions of brain. They accept the proposition that *compos mentis* is neither*

affected by burns nor by treatment (refer Gupta BD, Jani CB. Status of compos mentis in relation to dying declaration in burn patients. Journal of Indian Academy of Forensic Medicine (JIAFM) 2004; 25(4) : 133 to 136). Thus such arguments should not be accepted, without reference to the factual matrix and the deposition of the witness recalling and asserting that he had recorded the dying declaration.

21. In cases of 100 per cent burn injuries, a person can make a dying declaration or put a thumb impression. There are several decisions where the Supreme Court has relied on such dying declarations (See Mafabhai Nagarbhai Rawal vs. State of Gujarat, AIR 1992 SC 2186; Rambhai vs. State of Chhattisgarh, (2002) 8 SCC 83; Laxman vs. State of Maharashtra, AIR 2002 SC 2973; Koli Chunilal Savji vs. State of Gujarat, AIR 1999 SC 3695; Smt. Laxmi vs. Om Prakash and Ors., AIR 2001 SC 2383; Govindappa and Ors. vs. State of Karnataka, (2010) 6 SCC 533 and The State of Punjab vs. Gian Kaur and Anr., AIR 1998 SC 2809). ”

28. In view of the above judicial pronouncements and from the perusal of the aforesaid testimonies, it is evident that even though the deceased had suffered 99% burn injuries, her statement was recorded only after ensuring that she was in a fit state of mind and thus the argument of the counsel for the appellant fails.

CONTRADICTIONS IN THE TESTIMONIES OF THE PROSECUTION WITNESSES

29. The counsel for the appellant further argued that no reliance can be placed on the dying declaration as there are material discrepancies in the testimonies of the PW-5 (SDM Suraj Bhan) and PW-11

(SI Ghan Shyam). Pointing out the discrepancies, learned counsel for the appellant contended that:-

- that PW-5 (SDM Suraj Bhan) in his testimony has stated that 'no doctor was present at the time of the recording of the statement of the deceased' whereas PW-11 (SI Ghan Shyam) has deposed that 'at the time of recording of statement of deceased, Dr. Rajiv was present'.
- that PW-5 (SDM Suraj Bhan) in his statement has deposed that 'the statement was scribed by PW-11 (SI Ghan Shyam) on his dictation' whereas the PW-11 (SI Ghan Shyam) has stated that 'PW-5 (SDM Suraj Bhan) recorded the statement in his own handwriting'.
- that the time of the arrival of the SDM is also doubtful as PW-5 (SDM Suraj Bhan) in his examination in chief deposed that 'he came to the hospital at around 6-6:30 am and recorded the statement of the deceased at 6:30 am' which is contrary to the testimony of PW-11 (SI Ghan Shyam) who stated that 'PW-5 (SDM Suraj Bhan) came to the hospital at around 3-4 am.'

30. In this context, it is relevant to analyse the testimonies of PW-5 (SDM Suraj Bhan) and PW-11(SI Ghan Shyam). PW-5 (SDM Suraj Bhan) has deposed that:

"On 03.06.2002, I was working as SDM, Patel Nagar. On that day SDM, Nangloi was on leave and I was

informed by SHO, PS Nangloi that a woman in an injured condition had been admitted in Safdarjung Hospital. I reached the hospital and recorded her statement after she had been declared fit for statement by the doctor attending upon her.

xxxxx xxxx xxxx xxxx

Cross examination by Mr.R.C. Mittal.

xxxxx xxxx xxxx xxxx

I do not remember the time at which the doctor had declared the patient fit for statement. I was called to the hospital at about 6/6.30 am on 03.06.2001. I was informed telephonically. I cannot confirm whether the doctor had declared the patient fit for statement once or twice or more times. The doctor was not present at the time I had recorded the statement of the injured. The nursing staff was present along with the Investigating Officer at the time I recorded the statement of the injured. The statement was scribed by the Investigating Officer on my dictation and is not in my hand. I might have asked 9/10 questions from the injured. In my presence the statement of the injured was recorded only once and Ex.PW5/A.

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It had taken me 10/15 minutes in recording the statement of the injured. The injured was not under the influence of medicines when I recorded her statement. It is incorrect that the injured was not able to speak. I might have started the recording of the statement at about 6.15 a.m. and had concluded at about 6.30 a.m. It is wrong that I had not read over the statement to the injured and had obtained her thumb impression. The brief facts were prepared by me after inquiry. It is correct that the injured was completely burnt when I recorded her statement. She had burns all over the body.”

31. PW-11 (SI Ghan Shyam) has deposed that:

“On the night intervening 2nd and 3rd June, 2001 I was posted in P.S. Nangloi. DD No.30-A was received by me. I along with const. Akhilesh went to Safdarjung Hospital. Copy of DD No. 30-A is Ex.PW11/A. I obtained the MLC of Suman, who had been admitted in the hospital with burn injuries. She was declared fit for statement by the doctor. I informed the SDM as the marriage of the injured had taken place within seven years. The concerned SDM i.e. SDM, Punjabi Bagh was on leave. I then contacted SDM Patel Nagar who came to the hospital at about 3/4 a.m. He recorded the statement of the injured Suman. The SDM had given a direction for registration of a case. I had put up this order before the SHO, P.S. Nangloi who had made an endorsement Ex.PW11/B on the said order of the SDM and had got this case registered.

xxxxx xxxx xxxx xxxx
On 03.06.2001 I had made applications Ex.PW11/G to the doctor at Safdarjung Hospital. The patient was declared fit for statement at 4.10 a.m. She was again declared fit for statement at 6.30 a.m. when the SDM had arrived vide endorsements Ex.PW11/H1 and H2 which were recorded by the doctor in my presence. Later on the investigation was taken over by Inspector H.K. Singh.
Cross examination by Mr.R.K. Mittal.

I had reached the hospital at about 3 a.m. I had gone by a two wheeler scooter. I might have met the doctor on duty at about 3.15 a.m. I now do not remember the name of the doctor. I had seen Suman admitted in the hospital

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In my presence no medicine was administered to her. I had not made any inquiry from Suman before the arrival of the SDM. In my presence no doctor had made inquiries from her. I had not made any report to the police station after obtaining the MLC in the hospital. SDM had arrived in the Burn Ward of the hospital. At the time of recording of the statement of Suman by the SDM,

I was present along with the doctor. One Dr. Rajiv was present. The SDM had recorded statement of Suman in his own hand. In my presence SDM had recorded the statement of Suman only once. I had not signed on the said statement. I do not remember whether the doctor had signed the same or not. The SDM remained in the hospital for about 30 minutes.”

32. From the perusal of the record, it has emerged that the counsel for the appellant failed to raise any objection before the trial court as to the scribe of the second dying declaration, which has come to surface due to contrary versions in the testimony of PW-5 (SDM Suraj Bhan) and PW-11(SI Ghan Shyam). The controversy could have been put to rest by examining the handwriting by a handwriting expert. Be that as it may, nothing has been brought on record to disbelieve the two dying declarations in as much as minor contradictions in the testimony of PW-5 (SDM Suraj Bhan) and PW-11(SI Ghan Shyam) in relation to who has scribed the second dying declaration does not affect the case of the prosecution.
33. As far as the contention of the learned counsel for the appellant in connection to time of arrival of PW-5 (SDM Suraj Bhan) is concerned, we find that PW-5 (SDM Suraj Bhan) deposed that ‘I might have started the recording of the statement at about 6.15 a.m. and had concluded at about 6.30 a.m.’ which stood corroborated with the testimony of PW-11 (SI Suraj Bhan), who during his cross-examination has deposed that ‘She was again declared fit for statement at 6.30 a.m. when the SDM had arrived vide endorsements Ex.PW11/H1 and H2 which were recorded by the doctor in my presence.’ Thus, the argument so raised fails to help the appellant.

34. The question whether Dr. Rajiv was present at the time when the second dying declaration was being recorded, does not affect the case of the prosecution as the second dying declaration was recorded by the SDM who is a responsible officer. The irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions and as such this argument raised by the learned counsel for the appellant does not call for any close scrutiny by this Court. Reference in this regard can be made to ***Bhajan Singh and Ors. vs. State of Haryana*** reported in ***AIR 2011 SC 2552*** wherein is has been held:-

“30. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. [Vide: Vijay @ Chinee v.

State of M.P., (2010) 8 SCC 191; and Brahm Swaroop (Supra)].”

PLEA OF ALIBI

35. When a plea of alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.
36. Enumerating the essence of a plea of alibi, it was observed in ***Dudh Nath Pandey v. State of U.P.*** reported in ***AIR 1981 SC 911*** that:

"The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed."

37. This was more elaborately explained in ***Binay Kumar Singh v. State of Bihar*** reported in ***AIR 1997 SC 322*** in the following words:

"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 Section 11 of the Evidence Act is then partially reproduced in the decision, but it is fully reproduced below: "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. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant."

23. This Court then went on to say, "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."

(emphasis supplied)

38. But once the prosecution succeeds in discharging the burden of proof, 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.
39. But if the evidence adduced by the accused is of such a quality and of such a standard then the court may entertain some reasonable doubt regarding his presence at the scene of crime, then the accused would, no doubt, be entitled to the benefit of reasonable doubt. It follows, therefore, that strict proof is required for establishing the plea of alibi and this view has been reiterated in ***Jayantibhai Bhenkarbhai v. State of Gujarat*** reported in ***AIR 2002 SC 3569***.
40. On the standard of proof, ***Dudh Nath Pandey (supra)*** goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words: "Defence witnesses are entitled to equal treatment with those of the prosecution and, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses." Keeping in view the facts of the case and applying the principles laid

down by the Apex Court, the statement of the defence witness is to be analysed on the same pedestal as any other prosecution witness.

41. Applying the aforesaid test, it is relevant to examine the defence witness produced by the appellant. The appellant got examined Manoj Kumar as DW-1 in his defence who deposed that:

“At about 9.15 pm the wife of Jai Shankar came to the factory with his food. Thereafter we all had our dinner. Jai Shankar had sent Sunil to his house to fetch water. Sunil came running and told us that the house of Jai Shankar was on fire. I along with Jai Shankar and Sunil ran to the spot. The door of the house was bolted from inside. We peeped inside the window. There was a fire inside. We had heard cries coming from inside. We all broke open the door. We found wife of Jai Shankar completely burnt lying near the door. We brought gunny bags and put out the fire. I along with Sunil and Jai Shankar had put out the fire. The son of Jai Shankar had also received burn injuries. He had burn injuries on his ear, face and nose. Jai Shankar had received burn injuries on his foot in the said fire. I had gone to fetch a TSR. In the meanwhile our employer Sumit Ahuja had come there in a Maruti Car. The wife of Jai Shankar was taken to a Nursing Home (M/s Sonia Nursing Home). I along with Jai Shankar and Sunil had also accompanied him in the car. The wife of Jai Shankar was not in a position to speak. She was crying with pain. From Sonia Nursing Home, to wife of Jai Shankar was taken to Safdarjung Hospital in a CATS Ambulance. I along with Jai Shankar and Sunil had accompanied in the CATS Van whereas Sumit Ahuja had followed in his car. Jai Shankar had got his wife admitted in the hospital in my presence as well as to presence of Sumit. Jai Shankar had told the doctor that he was working in the factory when the incident had taken place. The wife of Jai Shankar had not told anything to the doctor as she was not in a position to speak due to burns. Police had come

to the hospital after 2/3 hours. In my presence wife of Jai Shankar had not told anything to the police. Police had demanded money from Jai Shankar who had shown his inability to do so. Thereafter the police took away Jai Shankar with them. We remained in the hospital upto 7/8 am on the following day. The wife of Jai Shankar had died on 5th June. The parents of the deceased had arrived in the hospital after her death. My maternal uncle and aunt had been attending upon the deceased in the hospital. In my presence police had not come to the house of the accused nor had conducted any proceeding there. The children of Jai Shankar remained with my Mausi.

Cross examination of DW-1

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I did not tell him to file a complaint. I am not a summoned witness. We had broke open the door and the bolt had come out. We had not shown the said bolt to any police officials or anybody else. Vol. No police officer had visited the spot. We had shown the bolt to our employer. He also did not file any complaint against the false implication of the accused. It is incorrect that I have given a false story in the Court today in order to save the accused. I have come to delhi today only by Sharam Shakti express. It had arrived at 6.45am at new Delhi Railway Station. The ticket was taken away by the T.C. It is incorrect that I had not come to Delhi today and in fact have been residing in Delhi throughout. It is incorrect that I have deposed falsely that the deceased was not in a position to speak. It is incorrect that the deceased had told the doctor attending upon her that the accused had set her on fire. It is incorrect that I have given a completely false version in the Court today.

(emphasis supplied)

42. From the perusal of the aforesaid testimony it is evident that the facts enumerated by DW-1(Manoj Kumar) do not find support from testimonies of any other prosecution witness. The fact that the appellant was at the factory at the time of the incident came up for the first time in his statement recorded under Section 313 of the Cr.P.C, which only finds support from the testimony of DW-1 (Manoj Kumar) and was not corroborated by any other independent witness. Moreover, the stand taken by the appellant in his statement recorded under Section 313 Cr.P.C does not describe the whole incident as stated under oath by DW-1 in his testimony. Further, there are many missing links in the testimony of DW-1 which have not been brought on record by the counsel for the appellant. DW-1 in his testimony deposed that he along with the appellant rushed to the house of the appellant/Jai Shankar after being informed by Sunil, however to corroborate the aforesaid version the defence failed to produce Sunil in the witness box. Further, nothing has been brought on record by the defence to prove that the alleged dying declarations were recorded under the influence of tutoring, prompting or imagination of the deceased; as such the argument raised by the learned counsel for the appellant raising plea of alibi holds no ground.

FALSE IMPLICATION

43. The next plea taken by the counsel for the appellant is that the Investigating Officer demanded ₹ 25,000/- from the appellant/Jai Shankar and on the failure to pay this amount, the appellant has been falsely implicated in the present case. In this regard, the counsel refers

to the statement of the appellant under section 313 of the Cr.P.C as well as the testimony of DW-1 wherein the said fact has been mentioned.

44. However, the record reflects that at the time of recording of the first dying declaration, the IO was not even present at the spot. Moreover, no complaint or action has been initiated by the appellant against the Investigating officer which shows that this particular contention is nothing but a bald allegation in order to deviate this court from finding the truth.

CONCLUSION

45. There is not an iota of doubt that the conviction can be based solely on the basis of dying declaration, if the same inspires confidence and is credit worthy. Applying the principles relating to dying declaration, as discussed above, to the present case, the first dying declaration which has been recorded by PW-12 (Dr. Lalit Chaudhary) in the form of MLC has been proved on record to be free from any interference from the relatives of the deceased or the investigating agency as only the CATS personnel and the appellant was present at the time of recording of the first dying declaration. In this statement, the deceased has very clearly mentioned the assailant, who is no other than her husband/appellant. Further, the second dying declaration recorded by the SDM has also been proved on record and the same stands corroborated by the first dying declaration. Even, the appellant's plea of alibi does not find support from evidence on record, and the same appears to be an afterthought. The fact that

Sunil, who allegedly informed appellant about the said incident, as well as appellant's minor son who allegedly got injured in the alleged incident were not produced before the Court raise a doubt on the defence raised by the appellant. The appellant has also failed to produce his medical certificate showing that he had received burn injuries while extinguishing the fire and helping his wife while she was burning. The medical certificate of the son has also not been produced showing that his son received burn injuries on his face and other parts of the body, when he was inside the room along with his mother, and therefore, an adverse inference is to be drawn against the appellant.

46. It is pertinent to refer to the recent findings of the Hon'ble Supreme Court in ***Bhagwan vs. State of Maharashtra (Criminal Appeal No. 385 of 2010)*** decided on **08.07.2019**, wherein the apex court while dealing with similar set of facts held as under:-

“The deceased in a natural response to the injuries would be frantic and her reaction would bring her into close contacts with others in a small room including the Appellant and their children. No doubt the trial Court has reasoned that the Appellant might have tried subsequently for extinguishing the fire. The Appellant stands squarely implicated by the dying declaration. The unambiguous words came from the mouth of his deceased wife who cannot be expected to lie as she would be conscious, that she would have to meet her maker with a lie in her mouth. We see no merit in the appeal. The appeal will stand dismissed. As the Appellant has been released on bail Under Orders of this Court, we direct that the bail bond of the Appellant be cancelled and Appellant shall be taken into custody to serve out the remaining sentence.”

47. Therefore we find no infirmity in the impugned judgment dated 26.09.2003 and order on sentence dated 27.09.2003 passed by the learned Additional Sessions Judge and the same is upheld. The appeal stands dismissed.
48. Copy of the judgment be sent to the trial court and Jail superintendent, Tihar Jail.
49. Bail bond of the appellant is cancelled and the sureties stand discharged. TCR be sent back.
50. The appellant shall surrender before the Jail superintendent, Tihar Jail, forthwith.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

SEPTEMBER 04, 2019

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