

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No. Cr. Appeal 47/2018

Pronounced on: 23.05.2022

1. Gian Chand age 77 yrs S/O Thakur Dass;
2. Sohan Lal Age 36 yrs S/O Gian Chand both Residents of Khambi Lari Thil Udhampur (Presently lodged in Distt. Jail UdhampurAppellants
Through: Sh. S.C. Gupta Advocate.

Versus

State Through Incharge Police Station UdhampurRespondent
Through:-Sh. Sumeet Bhatia GA.

**Coram:- HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

J U D G M E N T

Per-Mohan Lal-J

1. Instant Criminal Conviction Appeal is directed by the appellants against the judgment and orders dated 19-09-2018 & 03-10-2018 rendered by the court of Ld. Pr. Sessions Judge Udhampur in file Challan No. 6 titled State V/S Gian Chand and Ors., whereby, appellants have been convicted and sentenced to rigorous imprisonment for life and fine of Rs. 5000/- each in FIR No. 67/2013 of P/S Udhampur for commission of offence u/s 302/34 RPC for commission of murder of one Vandna Sharma by burning. The trial judge has also made a reference being Cr. Ref. No.1199/PDSJU dated 09-10-2018 to this court u/s 374 of the Code of Criminal Procedure 1973 (hereinafter referred to as "Cr.P.C.") for confirmation of the sentence. Aggrieved of, and dissatisfied with the impugned judgment and order, appellants/convict have questioned it's legality, propriety and correctness on the following grounds:-

- (i) that the impugned judgment and order are against facts and law, the sole basis is the artificially created material in the form of two dying declarations from the women with 95% burns over her body and evidenced by police officials, Magistrate with doubtful presence of father and husband of the deceased both speaking differently and opposite, the manner method language script of the declarations recording the attestation certification etc. in absence of the Medical Officer is highly unnatural and improbable, the trial court failed to follow the correct legal principles in the evaluation and reached to wrong conclusion;
- (ii) that the investigation of the case has been casual, improper, unreasonably delayed, changing several officials etc., there appears

negligence in timely inspection of the site and default in recording versions of relatives of the deceased including her children, sister-in-law and other who rushed to the spot on seeing her in flames, doused the fire and transported to Hospital, the true occurrence therefore remained unrevealed, the court's omission to consider this important aspect has caused miscarriage of justice;

- (iii) that the trial court committed material illegality while declining application u/s 272 Cr.pc with respect to the statement of Sh. Aagya Ram recorded u/s 161 Cr.pc, the error seriously prejudiced the case and led to incorrect decision;

2. Sh. S.C. Gupta Ld. Counsel for appellants/convict has submitted the written arguments in addition to his oral arguments adduced at the time of hearing, and has sought the setting aside/quashment of the impugned judgment and acquittal of the appellants/convicts on the following counts:-

- (i) It is argued, that both the statements/dying declarations of victim Vandna Sharma dated 14-03-2013 & 21-03-2013 are in the handwriting of Parshotam Singh Head Constable in Urdu Language, whereas, Ghanshyam Singh (I.O) firstly claims to be the author of dying declaration/statement dated 21-03-2013, but lateron admits that the dying declarations has been written by Parshotam Singh under his dictation, whereas, Parshotam Singh has not signed this statement;
- (ii) It is argued, that in regard to the dying declaration/statement dated 14-03-2013, there are two (2) witnesses to it namely, Dhani Ram (f/o the victim) & Sat Pal (husband of the victim), whereas, Sat Pal has turned hostile and father of the victim has not fully supported the version recorded in the said statement and has only stated that after being set on fire by the accused persons the victim ran outside the room and fell unconscious;
- (iii) It is argued, that both the statements/dying declarations dated 14-03-2013 & 21-03-2013 have been recorded on the asking of police, statement dated 21-03-2013 is recorded in presence of Magistrate namely Manjeet Singh who certifies to the said extent, the victim narrated in Dogri Language which was translated by Ghanshyam Singh and recorded by Parshotam Singh in Urdu, the court version of Magistrate is in an addition and improvement upon his certificate, considering the statement of the Magistrate in forming the opinion of conviction violates the mandate of Sec. 173 (5) (b) Cr.pc and principle of fair play;
- (iv) It is argued, that as per the statements/dying declaration of victim she suffered 96 % of burns was speaking in Dogri and depicted detailed accurate account of the incident specifying definite role to each of the accused, extinguishing the flames by neighbours Aagya Ram arrangement of the transport and her shifting to Hospital Udampur and her reference for treatment of GMC Jammu are highly improbable and unrealistic, the persons mentioned in the statements such as neighbours, daughter Riya, Devrani Usha, Aagya Ram who used bag to extinguish the flames were present or reached immediately after hearing the cries of

victim have not been examined, the statements/dying declarations, therefore, are very highly improbable and unrealistic;

- (v) It is argued, that as per the prosecution version the thumb impression affixed on the statements/dying declarations, the term thumb used by PW Dhani Ram in the court should mean as one of the hand as understood and prevalent in ordinary sense which contradicts the author who recorded statement dated 14-03-2013, moreso, the application of the accused persons to admit statement of Aagya Ram recorded u/s 161 Cr.pc and objected by Public Prosecutor is wrongly rejected by the trial court, the role and stand of the prosecutor in this respect is unethical and contrary to his duties prescribed by law. To support his arguments, Ld. Counsel for appellants/convict has relied upon the decisions reported in (i) AIR 2019 SC 1852 (para 19 page 1857) (ii) AIR 2020 SC 100 (Para 8 page 104) & (iii) AIR 2021 SC 2399 (para 22 page 2408).

3. Sh. Sumeet Bhatia Ld. GA for respondent, per-contra, has supported the impugned judgment of conviction awarded by the trial court of Ld. Pr. Session Judge Udhampur. He has drawn our attention to the impugned judgment and order to suggest that the trial court has not only given a well reasoned judgment but also buttressed it with specific reasons warranting no interference. He has contended that even in cases of 100% burn injuries the courts can rely upon the dying declaration to convict the accused, prayer has been made for confirmation of the sentences awarded by the trial court.
4. We have heard Sh. S.C. Gupta Ld. Counsel for appellants and Sh. Sumeet Bhatia Ld. GA for respondent. We have also perused the record of trial court. The case of prosecution is tried to be proved by the circumstantial evidence. The appellants in the trial court have not produced any defence witness to demolish the case of prosecution. Appellants have preferred this criminal appeal from jail which has been registered as criminal appeal 47/2018 and the Ld. Pr. Sessions Judge Udhampur has also made a reference to this court for confirmation of conviction of the sentence u/s 374 Cr.pc vide his judgment/order dated 03-10-2018. The appeal as well as the reference shall be disposed off by this judgment.
5. To prove the case against the appellants/convict, the prosecution in the trial court has only relied upon the “circumstantial evidence” and has examined as many as 13 prosecution witnesses out of listed 23 in the challan, whereas, ten (10) prosecution witnesses viz; PW-3 Pushpa Devi (m/o victim), PW-4 Aagya Ram, PW-5 Puran Chand, PW-7 Sat Pal, PW-11 Rajinder HC, PW-12 SGCT Mohd Younis, PW-13 Rajiv Kumar, PW-18 Dr. Somafy, PW-21

Lakhbir Singh PSI and PW-22 Rajesh Angral PSI have remained un-examined for reasons best known to the prosecution. The prosecution examined **the circumstantial witnesses** as under:-

PW	Name	Role
1	Sat Paul (husband of victim)	Circumstantial witness and witness to dying declaration,
2	Dhani Ram (f/o victim)	Circumstantial witness to dying declaration dtd. 21-03-2013, receipt of dead body, & statement u/s 164-A Cr.pc,
6	Naresh Kumar (brother-in-law of victim)	Circumstantial witness,
8	Parshotam Singh HC No. 189/U	Witness to fard supurdnama of ring,
9	Surjit Singh HC No. 262/U	Witness to fard supurdnama of ring,
10	Mohd Yaqoob HC No. 4/U	Witness of the docket that a victim was not in a fit condition to make statement on 12-03-2013,
14	Mehboob Iqbal (EMIC Udhampur)	Witness to sealing of packets ,
15	Manjit Singh (EMIC Jammu)	Witness who certified statement/dying declaration of victim Vandna Sharma dtd.21-03-2013,
16	Dr. Deepa Hans (MO GMC Jammu)	Witness to postmortem of deceased Vandna Sharma ,
17	Dr. Gopal Sharma (PG Student in Surgery Deptt. GMC Jammu)	Witness who issued certificate on 14-03-2013 regarding the fitness of victim Mst. Vandna Sharma to record her statement,
19	Padamdev Singh S.I (I/C PP Roun Domail Udhampur)	I/O of initial investigation,
20	Ghan Shyam Singh SI (I/C PP Round Domail)	I/O of part investigation,
23	Amira Naseem Dy.SP Prob.SHO Udhampur	I/O who completed the investigation and presented the challan.

Before coming to the conclusion, whether prosecution has successfully substantiated charges against appellants/convict beyond hilt, we have found it pertinent also to give a brief resume of the evidence tendered by the prosecution witnesses before the trial court. Relevant portions of the testimonies of the prosecution witnesses can be summarized as under:-

PROSECUTION

EVIDENCE :-

PW-1 Satpaul in his examination-in-chief has stated that accused no. 1 is his father and accused no. 2 is his brother and deceased was his wife. That on 11h March 2013 he was out of his house in connection with his labour work and his father and one Agya Ram who is father in-law of his sister were present in the house. That accused Sohan Lal had also gone out in connection with his work. That at around 11.45 AM the deceased made a phone call to him and disclosed to him that she would set herself on fire and thereafter he rushed back to his home and on reaching home he found her burnt but was alive and was lying in the Virandah and on enquiry she disclosed that she had committed a mistake and requested to save her and thereafter he arranged a

vehicle of his employer and shifted her to Hospital but she died in the Hospital on 26.3.2013. At this stage, this witness was declared **hostile** at the request of PP and allowed to be cross examined by PP. **In cross-examination** by PP he has stated that police had not recorded his statement but had procured his signatures on some blank papers. That the paper signed by him was written paper on its one side. That the statement under Section 161 Cr.P.C attributed to him to the extent that Magistrate had visited Hospital on 23.3.2013 and Parshotam HC. Police official had recorded statement of his wife on 14th in Jammu Hospital is correct and it is also signed by him and Dhani Ram and the deceased had also put the impression of thumb of her foot on it. That it is not true that deceased had given any statement because she had developed blisters in her mouth and was not in a position to give any statement nor it is true that her statement was recorded in his presence and Parshotam Singh had read over that statement to him. That his signatures on the alleged statement of the deceased dated 14.3.2013 were obtained by police official Parshotam, father of complainant Dhani Ram and Naresh Kumar forcibly because deceased had not given any statement to the police. That he had not complained to any police officer that his signatures were forcibly obtained on the statement of the deceased. That the deceased could take only milk and water with a spoon during treatment in the Hospital. That Tehsildar had visited Hospital on 23.3.2013 and Parshotam, police official, had also visited Hospital on that day. That it is not true that Ghan Shyam had recorded another statement of the deceased on 21 March in his presence. That this is also not true that there was any dispute existing between him and the accused persons relating to any landed property because of which the accused had set her on fire and killed her. On being questioned whether his deceased wife was burnt to death or had committed suicide he replied that the deceased committed suicide because she had illicit relations with Naresh Kumar and she was pregnant before marriage and he had also severed matrimonial ties with her for this reason, but at the request of her parents he had again rehabilitated her but she continued to maintain illicit relation with Naresh Kumar and because of this immoral conduct she committed suicide. That the deceased was married with him some 11 years ago and out of this wedlock four children were born and both of them were living a happy married life but she continued her friendship with Naresh Kumar although he had never seen her in the company of Naresh Kumar and his parents used to disclose about this to him and his father had seen the deceased in the company of Naresh Kumar but he had never enquired about this from the deceased as she was of quarrel some nature and threatened to commit suicide. That accused were arrested on 15th. That it is incorrect to suggest that he is making a false statement in the court today to favour his father and brother. **In cross-examination** by defense counsel witness has stated that his two daughters Riya and Janvi are studying in Govt. Middle School and his son Karan is studying in Pilot Academy. That it is true that his father had given him 35 kanals of land and his father had deposited 3.00 lacs rupees in his bank account three months before the occurrence including share bonds of Rs. one and half lacs. That his T.V was not functioning on the day of occurrence and was sent for repairs. That it is true that two days before the occurrence the deceased and Naresh Kumar were found together at Roun Domail and the deceased had fled away from there. That he has given one of his daughters in adoption to friend of Naresh Kumar at the instance of the deceased. That he has six rooms whereas accused have four rooms and his compound is around 1 kanal whereas compound of accused is 2 to 3 marlas. That he is a labourer

by occupation. That his statement under Section 161 Cr.P.C attributed to him does not contain any allegation that accused had burnt her.

PW-2 Dhani Ram in his examination-in-chief by PP has stated that the deceased was his daughter who was married with Sat Paul and the relations between the deceased and her husband were cordial and out of this wedlock three children were also born including a son that one of the daughters has been given in adoption to someone. That his daughter was burnt to death on 11th/12th March 2013 by the accused persons who are her father-in-law and devar. That the death of his daughter had taken place in her matrimonial home as she was burnt by accused persons and because of the burn injuries she had died in the Hospital. That on the day of occurrence her husband was out of his home in connection with his work and only accused were present in the house and the younger daughter of the deceased namely Riya had informed him about the occurrence on telephone at around 12.30 PM whereupon he had straight way rushed to Udhampur Hospital to enquire about her condition but from there she was referred and shifted to Jammu Hospital in an ambulance and he had also traveled with the deceased in the Same ambulance. That on reaching GMC Doctors had started treatment including bandaging on burn injuries and next day she was shifted to ward for further treatment and on 3rd day she had talked with him as she had regained consciousness and on that day the police of Roun Domail had also visited the Hospital and at that time he and his son-in-law Sat Paul were present in the Hospital and in their presence police had recorded her statement. That in her statement she had stated that accused Gian Chand, her father-in-law, on the date of occurrence, started abusing her in the morning and thereafter she went out of the house with a sickle in her hand for bringing some grass and after she returned to her home with grass accused Gain Chand again started abusing her. That thereafter she started watching TV in order to avoid accused Gain Chand but accused Gain Chand entered into her room and caught hold of her hair and accused Sohan Lal followed him and was carrying kerosene oil in his hand and sprinkled kerosene oil on her body and set her on fire and fled away from there. That she came out of the room in order to douse the fire with the water which she believed to be in the drum lying outside but before that she, fell unconscious. That thereafter he knew nothing. That the statement of the deceased was also witnessed by him and his son in-law Sat Paul and deceased had also put her thumb on the statement. That the statement read over to him in the court made by the deceased on 14.3.2013 is correct and he identifies his signature on it, and is marked as EXT-P2/1. That thereafter also during her treatment in Hospital another statement was recorded by police on 18th/19th in the presence of Magistrate and the deceased reiterated her earlier statement dated 14.3.2013. That some two days before occurrence a committee to resolve property dispute between deceased and accused was held which had concluded by the day of occurrence. That the deceased was engaged in the construction of her house which was incomplete and the accused did not like the construction of this new house by her and wanted to grab this house and as such accused had started quarreling with her. **In cross-examination** by defense counsel has stated that it is incorrect to suggest that his second daughter i.e. Arti had also made an attempt to commit suicide on account of a quarrel having taken place between her and her devar. That it is also incorrect to suggest that his son Sohan Lal had also committed suicide after consuming poisonous substance in August 2002. That it is also incorrect to suggest that the deceased was pregnant before her marriage and prior to the present

occurrence also she had attempted to commit suicide once or twice, that he also does not know that accused Gain Chand had promised to give two fields to her and get her roof plastered. That he has not alleged in his earlier statement that accused had beaten her or turned her out of their home because the deceased had never made any complaint about this nor he had received any complaint from deceased that her in-laws had disinherited her nor he has any knowledge that accused Gain Chand had partitioned his property amongst his sons and had given 35 kanals to each of his sons as their share. That he did not know whether the children of the deceased were studying in Anganwari at the time of occurrence. That accused no. 1 had abused the deceased on the day of occurrence when she was watching T.V and had called her a prostitute three times and asked what she is doing and thereafter had caught her by hair but the word prostitute is not mentioned in her statement and a reference to hurling of abuses is only made therein. That the deceased was 28 years old at the time of occurrence and was a healthy woman. That it is not true that before the occurrence the accused had informed him that she was going to set herself on fire. That he had reached Udhampur Hospital between 1 to 1.30 pm when the deceased was being shifted to Jammu Hospital in an ambulance. That his statement was recorded in the court after two months during investigation. That he had not lodged any report with the police regarding the occurrence stating that she has been burnt by the accused persons. That his son in-law namely Ashok Kumar is SPO in police. That he has not stated in his statement u/s 164-A Cr.PC that deceased and accused used to quarrel before the occurrence with regard to dispute relating to landed property and alleged illicit relation of deceased with Naresh Kumar. That the deceased along with her husband was living separately from the accused persons along with their cattle with separate kitchen. That is also not true that accused Gain Chand used to demand money from the deceased and her husband nor it is true that the deceased and her husband used to demand money from the accused Gain Chand for construction and plaster of their separate house. That deceased did not disclose in her statement that Gain Chand had tried to douse her fire. That the statement of the deceased was recorded in Urdu language and he had also put his signatures on it in the same language. That when he had seen the victim in Udhampur Hospital he had seen severe burn injuries on her hands and legs and because of these injuries these had shrunk and apart from feet the entire body had received burn injuries. That the deceased was not in a condition to open her mouth properly and in the Hospital she was taking milk and rice with a spoon. That he along with his son-in-law, the husband of deceased, had cremated the deceased. That the house was built by accused Gain Chand and deceased and her husband had repaired it and apart from that the deceased and her husband had also built a new separate room. That Sat Paul is a labourer by occupation.

PW-6 Naresh Kumar in his examination-in-chief by PP has stated that the deceased was the real sister of his wife and he knows the accused also. That he has no knowledge how the occurrence took place. At this stage, this witness was declared **hostile** at the request of the PP and allowed to be cross-examined by him. **In cross-examination by PP** the witness has stated that he had seen the deceased in burnt condition in Hospital. That it is true that police had recorded his statement on 10.5.2013 but police had not read over the recorded statement to him and he had signed that document because of police pressure. That he is 9th pass and he knows that he should not have signed the statement without reading it and he had not complained to anyone about this police pressure. That it is not true that deceased had made any

alleged statement in his presence. That the father and mother of the deceased had disclosed that her in-laws had burnt her. That one of his co-brothers had disclosed that he in-laws of the deceased had burnt her on 12th of the relevant month. **In cross-examination by defence** counsel the witness has stated that he had not stated in his police statement that Pw Sat Paul had threatened him on telephone that deceased has received burn Gas injuries and he should make arrangement in Hospital and the police had attributed the alleged statement to him without his knowledge. That he had visited deceased in Hospital 3/4 times.

PW-8 Parshotam Singh HC No. 189/U in examination-in-chief by PP has stated that in March 2013, he was posted in Police Post Roun Domail. That on 12.3.2013 Mohd Yaqoob constable had informed the Police Post Incharge Roun Domail that the girl who had received burn injuries and was admitted in Govt. Hospital Udhampur for treatment has been referred to Jammu and he was directed by Incharge Police Post to reach the Medical College Jammu, and that on the directions of the Chowki Officer he had visited GMC Jammu, and had found the lady admitted in cabin no. 1 and he had written a docket at around 7 p.m and had requested the doctor for giving his opinion regarding fitness of the lady to make a statement but the doctor had declared her unfit. That thereafter on 13th he had enquired from the doctor about her fitness but the doctor had declared her unfit to make any statement. **That on 14th March he had again sought the opinion of the doctor regarding the fitness of the patient to make statement and for his permission to record her statement at around 3 PM on that day and the doctor had declared her fit on that day to make statement and he thereafter had recorded her statement in presence of the husband of the deceased and her father. The statement of the injured EXT-P21 is in his handwriting and he admits the correctness of its contents and this statement is witnessed by her husband as well as her father.** That the doctor attending upon her had expressed his inability to remain present during recording of her statement because of his other engagements, and that he had got the impression of a portion of the thumb of her foot affixed on her statement because the hands and feet of the injured had received burn injuries and were bandaged. That at the time of recording her statement she was conscious and after recording statement he had returned to the Police Post and had handed over the statement of the injured/deceased to the Incharge Police Post. That thereafter on 15 March 2013 he had visited the place of occurrence along with Incharge Police Post and Head Constable Surjit Singh and they had seen some burnt pieces of clothes and plastic bag, a kerosene oil bottle and a match box at the place of occurrence and these were seized and sealed with a ring by the Incharge Police Post and this ring was kept on the supurdnama of PW Surjit Singh. That thereafter accused were arrested by Incharge Police Post and the arrest memos were prepared which were signed by him and Head Constable Surjit Singh also and thereafter they had returned to the Police Post. **That on 21 March 2013 he alongwith I.O had visited Jammu Hospital, and at the request of I/O a Magistrate had also visited the Hospital, and Sat Paul and Dhani Ram were also present in the Hospital. That the statement of the injured was also recorded on that day in presence of the Magistrate which was attested by the Magistrate also, and that the statement of the injured under section 161 Cr.P.C is in his hand writing, but signed by the I.O and attested by the Executive Magistrate Jammu.** At the intervention and request of the PP and with the permission to the court the witness has stated that on 14 March 2013 was at around 1 PM and not 3 PM as stated by him earlier. That doctor had permitted him to record the statement of the injured and that on 14th March 2013 itself at 7.30 PM they had visited the

place of occurrence and not on 15th March 2013 as stated by him above and recoveries were made at 7.45 PM on that day. **In cross-examination by defence counsel** the witness has stated that Padamdev Singh was Incharge Police Post during the occurrence days'. That he has been in the police department for the last 20 to 25 years. That the FIR was registered only after he had recorded statement of the injured and handed it over to the Incharge Police Post. That an entry in Roznamacha report was made by the Munshi of the Police Post when he left for Jammu Hospital to record the statement of the injured on the direction of the Chowki Officer. That head constable can leave the jurisdiction of the Police Post with the permission of the Chowki Officer. That his statement under section 161 Cr. P. C was recorded but it does not bear his signature. That he does not exactly remembers the words which were said by the injured at the time of making her statement to him. That the injured in her statement had stated that accused had hurled filthy abuses on her during the occurrence. That he has not mentioned in the statement of the injured dated 14th March and 21 March 2013 that PW Agya Ram had tried to douse the fire of the injured. That on 14h March only preliminary statement of the deceased was recorded for registration of the FIR, and the statement of the injured was recorded on 21 March. That the injured had made her statement in Dogri as well as in Hindu language. That this statement dated 14th March of the injured bears the impression of left foot thumb on it and before 14th March none of the relations of the injured had lodged any report with the police for registration of FIR. That he has not recorded the statement in question answer form. That on 21 March I.O Ghan Shyam had recorded the statement of the injured in the presence of the Magistrate and the I.O had put question to the injured in Dogri language and the injured was making replies in Dogri and Hindu language, that the Executive Magistrate was a Sardar. That I.O had prepared the site plan at the scene of occurrence in his presence which is a room. That his statement was recorded on 15th March. That from the place of occurrence the burnt pieces of clothes and a kerosene bottle and a match box were seized. That he has not seen the seized material in the court today. That arrest form bears his signature. That injured in her statement has stated that her children are studying in Anganwari and he cannot certify whether her children are studying in Anganwari. That in her statement made to him the injured had stated that at the time of occurrence she was watching T. V but he does not know whether she had T. V in her house or not nor he has any knowledge whether there was any dispute going on between the injured and the accused regarding some landed property. That it is not true that deceased had not given any statement dated 14h March and 21 March.

PW-9 Surjit Singh HC in his examination-in-chief by PP has stated that he was posted in Police Post Roun Domail in March 2013 and on 14.3.2013 he had visited the scene of occurrence along with Padamdev Singh Chowki Officer. That Chowki Officer had seized the match box, a bottle, half filled with kerosene oil, half burnt clothes, and had sealed them on spot with a ring which was kept on his supurdnama which he presents in the court. That he testifies to the correctness of the contents of seizure memo and Faraad supurdnama which are marked as EXT-P9/1 and EXT-P9/2. **In cross-examination by defence counsel** has stated, that they had left for the place of occurrence on aforesaid date at 7.30pm in the evening. Place of occurrence viz; room was found with its door opened and some burnt clothes were found in the room, the place of occurrence. That some 300 ml kerosene oil was found in bottle as stated by the I.O but he did not see the kerosene lamp in the room, the site plan and seizure memo was prepared by I/O.

PW-10 Mohd. Yaqoob HC in examination- in-chief by PP has stated that in March 2013 he was posted in Police Post Roun Domail and on 12.3.2013 the Chowki Officer had informed him that some lady has set herself on fire and is admitted in Hospital and he had deputed him for recording her statement and thereafter within 5/6 minutes at around 1.30 PM he had reached the Hospital and had sought the opinion of a doctor regarding fitness of the injured to make statement through a docket which was presented before the the Medical Officer, and the Medical Officer had certified that the deceased was not fit to make any statement and thereafter the injured was referred to Jammu Hospital and he had left for the place of occurrence and found bunt clothes in the compound of the house and match box and plastic bottle containing kerosene oil in a little quantity. The inmates of the house were not present but some villagers were present there and thereafter he had locked the room after arranging the lock to guard the place of occurrence. That thereafter he had returned to police Post and had handed over the key of the room to the Moharar of the Police Station. That he admits the correctness of the contents of the docket and it is marked as EXT-P10. **In cross-examination by defence counsel** the witness has stated, that on exhibit P10 he has written HC number which means investigating Head Constable. That the room which is the place of occurrence had only one door. That Chowki Officer had deputed him to visit the Hospital and from there to the place of occurrence. That he had seen some burnt clothes and some ash at the place of occurrence and some burnt clothes in the compound and these burnt clothes were lying scattered. That in the immediate vicinity of the house of the accused there are no residential houses which are situated at some distance. That the deceased was living separately from her father in law but the room where she was living is situated in the immediate vicinity of her father in-laws' house and walls of her room and the house of her father in-law are adjoining with different doors. That he has not seen the plastic bottle in the court today. That all the proceedings conducted by him on 12th March were not recorded by him in the police diary but he had informed the Chowki Officer about these proceedings. The Chowki Officer was Padamdev Singh.

PW-14 Mehboob Iqbal (EMIC Udhampur) in examination-in-chief by PP has stated that in March 2013 he was posted as Naib Tehsildar Udhampur. That on 15.3.2013 I.O Padamdev Singh had produced three sealed packets for re-sealing and he had re-sealed those packets in his office and thereafter he had written a letter to the Director, FSL for opening these packets and for making chemical analysis and also after re-sealing handed over these packets to the I.O. That he admits the correctness of the contents of his letter **no. 776 EXMIC dated 15.3.2013** available on the challan file which is marked as EXT-P14. **In cross-examination by defence counsel** the witness has stated, that the area of Round Domail does not fall in his jurisdiction and there is no special authorization required for re-sealing these packets. That EXT-P14 has been scribed by his office clerk. That he had re-sealed the seized material produced before him by the police in sealed condition. That he affixed his seal on these packets during re-sealing and had also signed these packets.

PW-15 Manjit Singh (EMIC Jammu) in examination-in-chief by PP has stated that in March 2013 he was posted as Naib Tehsildar Executive Magistrate Satwari Jammu. Note: there is no statement of this witness to be recorded under section 161 Cr.PC and available on the file and subject to objection of Ld. Counsel the statement of the witness was recorded. PW-15 has stated that on 21 March 2013 an the direction of Tehsildar Jammu he had

visited Govt. Medical College Jammu and S.I Ghan Shyam from Police Station Udhampur had taken him to the burn ward of the Hospital where a lady Mst. Vandhana Sharma was admitted in burnt condition and was under treatment. That he had asked S.I Ghanshyam to obtain fitness certificate from the concerned doctor before recording the statement of the injured and that the said S.I. had secured a written permission from the doctor. That thereafter he had disclosed his identity to the injured in the cabin and had told her that she can make her statement without any fear and thereafter the above said lady had expressed her desire to make her statement and at the time of making statement the father and husband of the lady was also present there and the lady had identified both these persons in his presence and which had given him an assurance to believe that Vandhana Sharma was fully conscious and fit to make a statement. That thereafter S.I Ghanshyam Singh had asked her to narrate the incident and thereafter she had made a statement which was recorded by havaldar accompany the above named S.I in Urdu language and after completion of her statement the impression of the left foot thumb was affixed on this statement as her hands were burnt and were bandaged. That the statement dated 21 March 2013 available on the challan file also bears his certificate and his signatures and he identifies this statement and testifies to the correctness of the contents of the certificate endorsed by him on this statement. This statement is marked as EXT-P15. **In cross-examination** by defence counsel has stated, that while recording the statement of the deceased, EXT-P15, a carbon copy Was also prepared but the thumb impression of the deceased was taken on original statement only and the deceased had made the statement in Dogri language which is known to him also and this Dogri language was being translated into Urdu language by S.I Ghan Shyam Singh to havaldar recording the statement and he had made his endorsement on the original statement of deceased. That in his certificate endorsed on this statement if is not mentioned that this statement was read over to deceased after recording. That S.I Ghan Shyam only enquired from deceased before recording her statement as to what had happened with her and the deceased in reply had disclosed the entire occurrence. That he has no knowledge whether the deceased had made any statement prior to the statement recorded in his presence on 21 March 2013. That this statement of the deceased was recorded in his presence according to the version narrated by her. That 21 March 2013 was a public holiday and Tehsildar Jammu had deputed him to visit GMC Jammu in connection with recording of statement of the deceased by the concerned police and he had reached GMC Jammu at around 1.30 PM and visited the burn ward in the Hospital where the police officials were present. That the written order issued by Tehsildar Jammu to him was not procured by the police from him nor made part of the challan. That it is not true that he was suspended in that year in connection with some State Land Encroachment case. That the doctor was sitting in the duty room of the burn ward and the doctor was not present when the statement of the deceased was recorded. That he had not enquired about the status of the doctor. That he has not recorded the address parentage and identification of the deceased and presence of the father and husband of the deceased in his certificate. That he had not met the doctor who had declared the deceased fit for making statement. That he had not read the patient file or the medicines administered to her during treatment before recording the statement. That on 21.3.2013 he was jurisdictional Magistrate for Satwari area. That he was present in the cabin near the deceased at the time of recording her statement. That the doctor in his certificate had declared the deceased fit for making statement. That the deceased in her

statement had disclosed the names of the accused and the witnesses. That he has no knowledge whether in response to an RTI application his office had furnished information that no order no. 48 dated 21 March 2013 is available in that office whereby he was deputed to visit GMC, Jammu.

PW-16 Dr. Deepa Hans (MO, Lecturer GMC Jammu) on solemn affirmation dated 14-09-2013 has deposed as under:-

“In March 2013 I was posted in GMC Jammu. On 26.3.2013 I conducted the postmortem of Vandhana Sharma in GMC Jammu. The detail of external and internal injuries on person of the deceased is given in detail in postmortem report which bears my seal and signatures. In my opinion the death was caused due to septicemia as the result of infected flame burns involving 96% of the body surface. The burns found on the person of the deceased which led her to death could be caused by the flames produced by some inflammable liquid or material. The postmortem report is exhibited as EXT-P16. No further question. **In cross-examination by the defence counsel** the witness has stated that I have not made a mention of any inflammable material in my postmortem report. The alleged cause of death given on the first page of the postmortem report was narrated by police at the time of postmortem was conducted. The condition of the deceased was bad due to 96% burns. Septicemia is a life threatening infection which spreads fast. Septicemia progress from heart, lungs, central nervous system finally to other tissues causes meningitis. After septicemia starts progressing its initial symptoms are chill, rapid breath and rapid heart rate. Its progress depends on the body resistance of the person and treatment given. If it progresses further it leads to confusion, shock, decreased urine output and petechial haemorrhage. A person with 96% burns will have very low blood pressure at the stage when the septicemia is progressive and irreversible. In case of patient having 96% burns normally the proteins are supplied parenterally which means through intra venous by passing the stomach. A Person having 96% burns is usually given oxygen, antibiotics, IV fluids and plasma to correct the clotting problems.

Question: What is intubation?

Answer: Intubation is a vague term and unless specified the answer is not possible.

A person with congested Mucosa of Trachea can talk or in certain situation he/she cannot talk. The lungs of the deceased were swollen. A person having burn injuries on face neck, scalp can have injuries on the air passage in certain cases and even in some cases such an injury may not be there. Since the deceased was not put on ventilator so possibly there was no injury in her air way. Deceased was in burn Unit and had she been on artificial respiration she would have been in ICU. In case of 96% burns Pneumonia and Epiglottitis occur after the septicemia progresses. Such symptoms occur at the late stage of septicemia. In this case the deceased died after 14 days. it could have developed in her at late stage. In a burn case we cannot say whether the injuries are self inflicted or caused by some other person. If the membranes of the head get infected the patient can become irritable. In case of congestion in brain membranes swelling can also fallow but at late stage. No further questions.

PW-17 Dr. Gopal Sharma (PG Student in Surgery Deptt. GMC Jammu) on solemn affirmation on 14-09-2013 has deposed as under:-

“On examination-in-chief the witness has stated that on 14.3.2013, I was posted in Emergency of GMCJammu and deceased Vandhana Sharma was admitted in Hospital as a case of 95% burns. On 14.3.2013 police approached him for recording statement of patient. He examined the patient and after examination he found her fit, conscious and cooperative. She was oriented to time, place and person. She was speaking and so he issued certificate that at 1 pm of 14.3.2013 patient was fit to give her statement. The certificate on record dated 14.3.2013 bears his signature and its contents are correct, same is exhibited as Ext-P17. **In cross-examination** by defence counsel, witness says that I have not mentioned in my certificate EXT-P17 as to what convinced me to say the patient was fit to give her statement, but it stands recorded in the case history of the patient. That case history of the patient has not been recorded by me in her history sheet. I do not know about Copa-statistic. To check the conscious level of a patient we use 'glasgow coma scale'. He has not recorded anywhere the details of the questions asked from the patient and replies given by her while checking whether she is fit to give her statement. He has not signed on dying declaration after issuing the certificate.

PW-19 Padamdev Singh SI (Incharge PP Round Domail Udhampur, I/O of initial investigation), on 26-12-2014 in examination-in-chief by Ld. PP has stated that in the year 2013 he was posted as Incharge Police Post Roun Domail Udhampur, that on 12th of March. 2013 Head Constable Parshotam Singh was deputed by him for recording the statement of the victim Vandana Sharma who had reportedly received burn injuries in her marital home and was undergoing treatment in Government Medical College Jammu, and after recording the her statement the above named Head Constable on 14th March 2013 had handed over this statement to him, and on the basis of which entry in the Roznamcha was made and a copy of which was dispatched to Police Station Udhampur for registration of an FIR, and thereafter he along with Head Constable Surjit Singh and Head Constable Parshotam Singh had left for the scene of occurrence situated at Khambi Battal, and that after inspection of the scene of occurrence, he had prepared the site plan and had recovered and seized a plastic bottle containing around 350 ml Kerosene oil, a match box and some pieces of burn clothes and the seizure memo and packets of these articles were accordingly prepared on spot and marked as Mark A, B and C which were also sealed on spot with a ring which was placed on the supurdnama of Surjit Singh. That these packets were got resealed through an Executive Magistrate. The statements of PWs were also recorded and on 15th of March 2013, the accused were arrested in the case. That thereafter he stood transferred to DKR Range and was relieved on 16th of March, 2013. That the copy of the Roznamcha report no. 18 dated 14.3.2013 of Police Post Roun Domail available on the Challan file has been written under his Supervision by moharar chowki and bears the seal of Police Post Roun Domail and signature of Moharar Chowki. Note-The statement of this PW was deferred for production of Roznamcha which was produced on 31-1-2015. Further examination-in-chief dated 31-1-2015. **In further examination-in-chief by PP** has stated that on comparison with the Roznamcha Register the contents of this copy of the Roznamacha report

annexed with challan file are correct and it is marked as mark 'A'. That the site plan or in scene of occurrence prepared by him and bears his signatures and he admits the correctness of its contents. It is marked as EXT-P19. That he also admits the correctness of the contents of seizure memo EXT-P9/1 and supurdnama EXT-P9/2. **In cross-examination by defence counsel** has stated that he had read the statement of the deceased after it was received in the Police Post. That he had not enquired during his initial investigation as to whether the children of the deceased were studying in Anganwari as suggested by defence counsel. That he also does not know who had doused the fire of the deceased nor the person who had brought the deceased in an injured condition to Hospital. That on the day of occurrence he was in Srinagar in connection with official duties and he had received information about the occurrence on telephone from Police station, Udhampur. That from the initial statement of the deceased he had found that both the accused at the time of occurrence were present in the house. That according to the information conveyed by the accused Gian Chand was an Ex-serviceman and Sohan Lal was a labourer by occupation. That he had not recorded statement of the children of the deceased nor the statement of the wife of accused Sohan Lal nor Agya Ram. That initial statement of the deceased was recorded by Incharge Head Constable Parshotasm Singh. That he had not investigated whether any partition of the property had taken place between Sat Paul and his brother Sohan Lal and what was the extent of their share as well as nature of the property held by them. That during his investigation, it had not surfaced that accused Gian Chand had deposited an amount of Rs. 3.00 Lacs in the account of his son Satpal few days before the occurrence because he had carried out the initial investigation of the case for only two days. That during his investigation, it had surfaced that the deceased and her husband were living separately. That he cannot say that the area of the compound of the house of the deceased was around 1 kanal and compound of house of accused Gain Chand was only 2/3 marlas. That in his site plan, he has not shown any TV at the place of occurrence nor the bed room nor the lamp. That he had not received any complaint from the deceased during his stay in the said Police Post. That he had not made any effort to procure any phone CDR pertaining to the deceased. That on 12th of March, 2013, he had received a telephonic call from the Police Station Udhampur to the effect that a lady has received burn injuries and has been admitted in District Hospital Udhampur but no such entry exists in the case diary to that effect because FIR in the case was registered only after recording the statement of the deceased in the Hospital on 14th of March, 2013 because prior to the 14th of March 2013 it was not known under what circumstances the deceased had received burn injuries and on receipt of this information on 12th of March 2013 HC Parshotasm Singh was deputed for recording the statement of the victim in District Hospital, Udhampur and the said Head Constable had made an entry in the Roznamcha before leaving for the Hospital but its copy has not been attached with the CD file. That according to his estimate some 350 ml. Kerosene oil was found lying in the bottle. That in the site plan prepared by him, he has given the description of the rooms which are in possession of the accused and the deceased. That during his investigation, the deceased was still under treatment in the Hospital. That he had not got recorded the statement of any witness under section 164-A Cr. PC from the competent Magistrate nor he had photographed the Scene of occurrence. That before recording the statement of the injured in the Hospital it was not known that the accused had burnt her.

PW-20 Ghanshyam Singh SI (Incharge PP Roun Domail, IO of part investigation who secured written permission from doctor in GMC Jammu to record the statement of the victim) on 17.08.2015 in examination-in-chief by Ld. PP, has stated that the investigation of FIR No. 67/2013 under sections 307/34 RPC was handed over to him on 18th of March 2013 after the transfer of the first IO. Padam Dev Singh S.I who was also Incharge Police Post Roun Domail. During his investigation on 21st of March 2013 he had visited Government Medical College, Jammu and recorded the statement of the victim/injured in the Hospital in presence of an Executive Magistrate and on 24th of March, 2013 he had deputed PSI Lakhveer Singh for depositing the seized material in FSL Jammu, and on 26th of March 2016 an information was received in Police Post Roun Domail that the victim has succumbed to burn injuries, and on receipt of this information, the offence under section 302 RPC was added, and thereafter the post-mortem of dead body of the deceased Vandana Sharma was got conducted by Medical Officer in Government Medical College, Jammu and after post-mortem the dead body was handed over to her NOK. That the statements of some witnesses under section 161 Cr. PC were also recorded. **In cross-examination** has stated that the statement of PW Dhani Ram under section 161 Cr. P. C bears his Signatures but he has not scribed this statement and similarly the statement of Satpal under section 161 Cr.PC also bears his signatures but it is not scribed by him although the statement of Pw- Rajeev Kumar is in his hand writing. That he does not remember who had scribed the statements of PW Satpal and Dhani Ram nor the CD file reflects the scribe of these statements. That the investigation was handed over to him on 18th of March, 2013. That the letter through which he had requisitioned the services of a Naib Tehsildar for presence in the Hospital for recording the statement of the victim, is not annexed with the file. That he had addressed this letter to District Magistrate Udhampur who had written a letter to District Magistrate Jammu who had deputed a Naib Tehsildar to the Hospital. That he had received a telephonic call from his Office that the Naib Tehsildar has been deputed for Government Medical College Jammu and he should also proceed to Government Medical College Jammu. That on reaching the Government Medical College Jammu he had not made any report in the Roznamcha of the Police Station Bakshi Nagar. That after recording the statement of the victim on 21st of March, 2013, it was signed by her father PW-Dhani Ram and husband Satpal, and this statement was scribed by Parshotam Singh under his supervision who had accompanied him. That before recording her statement, the fitness certificate was also obtained from the doctor. That the investigation of this case remained with him only for 9/10 days because he was also transferred. That the dying declaration of the deceased is also signed by the Executive Magistrate.

PW-23 Amira Naseem (Dy.SP (Prob.)) SHO Udhampur on 30-10-2015 in his examination-in-chief by Ld. PP, has stated that in the year 2013, he was posted as SHO Probationer in Police Station Udhampur. That on 26.04.2013, he had got a letter from police station Udhampur through post office and thereafter he had conducted the part investigation of FIR No. 67/2013 and before that S.I. Rajesh Angral had conducted this investigation. That during his investigation he had got the statement of PW Dhani Ram recorded under section 164-A Cr. P C from the competent Court and thereafter had recorded the statements or PWs Pushpa Devi, Puran Chand, Naresh Kumar and Satpal

and after his investigation, he found the commission of offences under section 302/34 RPC made out against the accused persons and after completion of the investigation, he had presented the challan in the Court of Law. **In cross-examination by defence counsel** has Stated that during his investigation, he had also recorded the statement of PW-Agya Ram. That the statement of the victim was recorded twice. That the victim was living separately with her husband from her other in-laws in a room shown in the site plan. That PW-Agya Ram had doused the fire of the deceased as per his statement. That he had not sent any burnt clothes of the Agya Ram to the FSL and his predecessor might have sent these clothes to FSL.

6. We have perused the impugned judgment of the trial court and have found that there is no direct evidence to the incident. The prosecution case entirely rests upon the circumstantial evidence. With the assistance of Ld. Counsel for the parties, we have scrutinized the entire evidence on record in depth. The law with regard to conviction in cases based on circumstantial evidence has been very well crystallized in the celebrated judgment of **Hanumant, son of Govind Nargundkar V. State of Madhya Pradesh** rendered by Hon'ble Supreme Court in 1952 SCR 1091, wherein a three Judge Bench of Hon'ble Supreme Court speaking through Mehr Chand Mahajan J; observed thus:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act much have been done by the accused.”

It is thus clear that for resting a conviction in the case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and it must be such as to show that within all human probabilities, the act must have been done by the accused.

Subsequently, Hon'ble Supreme Court in the case of *Sharad Birdhichand Sarada v. State of Maharashtra (1984)4 SCC 116*, observed thus:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that Hon’ble Supreme Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by Hon’ble Supreme Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 where the observations were made. “Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

As has been held by Hon’ble Supreme Court aforesaid, in a case of circumstantial evidence, before the case can be said to be fully established against an accused, it is necessary that the circumstances from which the conclusion of guilt is to be drawn, should be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. They should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every hypothesis except the one to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused. The aforesaid view of Hon’ble Supreme Court has been consistently followed by all the courts of the Country in a catena of decisions.

7. The circumstances, which the trial court has culled out in its judgment while holding that the prosecution has proved its case beyond reasonable doubt can be conveniently grouped under the following headings:

- (i) **Dying Declarations** of deceased Vandna Sharma dated 14-03-2013 (EXT-P2/I) and dated 21-03-2013 (EXT-P15); evidence of PW-8 Parshotam Singh HC No. 189/U, PW-15 Manjeet Singh EMIC Jammu, PW-19 Padam Dev Singh SI (I/C PP Roun Domail Udhampur) & PW-20 Ghanshyam Singh SI (I/C PP Round Domail Udhampur) to the effect that deceased in her fit state of mind made dying declarations that accused persons by sprinkling kerosene oil upon her body burnt her, whereby, she died in the Hospital;
- (ii) **Medical evidence**; evidence of PW-16 Dr. Deepa Hans (MO GMC Jammu witness to postmortem report of deceased) & PW-17 Dr. Gopal Sharma (PG Student in Surgery Department GMC Jammu) witness to issuance of certificate dated 14-03-2013 regarding fitness of the victim Mst. Vandna Sharma regarding her dying declaration.
- (iii) **Motive**; evidence of PW-1 Sat Pal (husband of deceased) to the effect that his deceased wife had illicit relations with PW-6 Naresh Kumar (brother-in-law of deceased) & evidence of PW-2 Dhani Ram (f/o deceased) to the effect that there was dispute existing between the deceased and accused persons relating to landed property/house;

8. **The 1st circumstance** relied by the prosecution against the appellants/convict is, **Dying Declarations of deceased Vandna Sharma dated 14-03-2013 (EXT-P2/I) & dated 21-03-2013 (EXT-P15)** and **the 2nd circumstance of medical evidence** are intertwined, therefore, both of these circumstances are being decided jointly. Before we advert to the actual admissibility and credibility of the two dying declarations aforesaid, it would be beneficial to brace ourself to the facts of the prosecution story. The prosecution story as unfolded in the charge sheet is, “that on 12-03-2013 an information was received in police post Roun Domail Udhampur to the effect that a lady Mst. Vandna Sharma w/o Sat Pal R/O Village Battal Balian Khambi Thill has received serious burn injuries in her matrimonial home and has been admitted in District Hospital Udhampur for treatment, and the cause of injuries is to be ascertained. On this information, PW-10 Mohd Ayooob Head Constable was deputed to record her statement and vide docket EXTP-10 opinion of the attending doctor regarding fitness of injured to make statement as well as permission to record it was sought, but the medical officer attending her opined that she was not fit to make statement, whereafter, she was shifted to GMC Jammu for specialized treatment in view of her critical burn injuries condition. This information was conveyed by the said HC to police post concerned and thereafter the said HC on directions of his superior officers

rushed to the place of occurrence and found a plastic bottle containing 350 ml Kerosene oil and a matchbox lying inside the room which was locked by him to preserve the evidence, and he also saw burnt clothes lying in the compound of house which were also kept in safe condition, and on his return to police post in the evening, he handed over the keys to Incharge police post. Thereafter, vide report No. 14 Roznamcha dated 12-03-2013 PW-8 Head Constable Parshotam Singh No. 189/U was deputed to GMC Jammu for recording the statement of the above named lady to ascertain the cause of burn injuries. The said Head Constable after recording the statement of Mst. Vandna Devi w/o Sat Pal caste Brahmin R/O Battalbalian Khambi in GMC Jammu returned to police post Roun Domail and presented the said statement to Incharge police for further action, and the return entry of the said HC was made in Roznamcha dated 14-03-2013 vide report No. 18. In her statement EXTP-2/I dated 14-03-2013 Mst. Vandna Devi the alleged victim stated that on 12-03-2013 between 12 to 12.15 pm she was watching TV in her matrimonial home when her devar (brother-in-law) Sohan Singh & her father-in-law Gian Chand came into her room and started hurling filthy abuses upon her, and when she requested them not to do so, her father-in-law caught hold of her, and her devar Sohan Lal sprinkled kerosene oil upon her body and set her on fire. That on catching the fire she rushed out of her room whereupon some of her neighbourers came to the scene of occurrence and tried to extinguish the fire. Her husband was also informed by someone through a telephonic call about the alleged occurrence and he also rushed back to his home and shifted her to Udampur Hospital in a vehicle for treatment, whereas, wife of her devar (devrani) Mst. Usha who was present at the scene of occurrence remained a mute spectator and did not intervene nor made any attempt to rescue her. Her three children had gone out for attending Anganwari School and they also rushed back on hearing her cries. This statement was witnessed by her father namely Dhani Ram & her husband Sat Pal.” The said statement of deceased prima-facie disclosed the commission of cognizable offence u/s 307/34 RPC against the accused persons, therefore, a copy of aforesaid Roznamcha report mark-A was forwarded to police station Udampur through HC Mohinder Singh No. 81/U of PP Roun Domail for registration of case, whereby, **FIR No. 67/2013 u/s 307/34 RPC** was registered and investigation was carried out initially by PW-19 SI Padam Dev Singh (officer Incharge Roun Domail Udampur) and

on his transfer, the said investigation was assigned to PW-20 Ghanshyam Singh and on his transfer to PW-22 Rajesh Angral and finally to PW-23 Amira Naseem Dy.SP (Prob.). On 14-03-2013 Incharge PP Roun Domail PW-19 Padam Dev Singh with PWs 8 & 10 HC Parshotam Singh & HC Mohd Yaqoob visited place of occurrence, seized articles reflected in seizure memos EXT-P9/I from the place of occurrence, and thereafter, the above named I.O during investigation apart from recording the statements of other prosecution witnesses u/s 161 Cr.pc, on 21-03-2013 also visited GMC Jammu and sought opinion of attending doctor PW-18 Dr. Somafy regarding fitness of the victim to record her statement who was declared fit by the doctor, thereafter, the 2nd statement of the victim/deceased in presence of EMIC Jammu u/s 161 Cr.pc was recorded which was attested by the EMIC Jammu. On 26-03-2013 victim/deceased reportedly succumbed to her burn injuries whereupon the commission of offence was finally made out against accused persons which led to conversion of offence u/s 307 into offence u/s 302/34 RPC. The dead body of the deceased was handed over to her legal heirs after it's postmortem for cremation and the accused were arrested on 15-03-2013. We may hasten to add that while there is huge wealth of case law and incredible jurisprudential contribution by Hon'ble Apex Court on the subject of the admissibility and credibility of dying declaration, we are consciously referring to few decisions from para 14 of the judgment relied upon by Ld. Counsel for appellants reported in **AIR 2021 Supreme Court 2399 [Jayamma & another Vs State of Karnataka]** which are closer to the facts of the case in hand.

- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104]);
- (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 U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211]);
- (iii) The Court has to scrutinise 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 v. Public Prosecutor [(1976) 3 SCC 618]);
- (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(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 Kake Singh v. State of M.P. [1981 Supp SCC 25]);

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

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State 14 (1992) 2 SCC 474 ¶ 18.

Page | 15 of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]);

(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 Ojha v. State of Bihar [1980 Supp SCC 769]);

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152]);

(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 [(1989) 3 SCC 390]);

(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 [(1982) 1 SCC 700])”.

It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a “dying declaration” is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful and not infected by any motive or malice. The dying declaration is, therefore, admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction. As per the prosecution case, deceased Vandna Sharma has made two dying declarations dated 14-03-2013 & 21-03-2013 (EXT-P2/I & EXT-P15) respectively recorded by PW-8 Parshotam Singh HC No. 189/U & I/O PW-20 Ghanshyam Singh SI the then Incharge police post Roun Domail Udampur in Govt. Medical College Jammu. On the basis of the 1st statement recorded on 14-03-2013 FIR No. 67/2013 came to be registered against

accused persons u/s 307/34 RPC which on the death of deceased on 26-03-2013 in GMC Jammu got converted into offence u/s 302 RPC. The 1st statement of deceased dated 14-03-2013 was recorded by PW-8 Parshotam Singh HC No. 189/U after the deceased was declared fit by PW-17 Dr. Gopal Sharma of GMC Jammu vide his endorsement made on the docket EXT-P17. It is undisputed that deceased Vandna Sharma after suffering burn injuries at the hands of appellants/convict survived for 14 days from the date of occurrence of 12-03-2013 till 26-03-2013 and her death ultimately occurred as per the medical opinion due to septicemia as a result of infected flame burns involving 95% of the body surface. PW-16 Dr. Deepa Hans (MO GMC Jammu, witness to postmortem report) has categorically stated that the deceased was having 96% of burns all over the body and she died due to septicemia. PW-17 Dr. Gopal Sharma in his deposition has deposed, that on 14-03-2013 he examined the patient Vandna Sharma and found her fit, conscious and co-operative, orientated to time, place and person, she was speaking and was fit to give statement. Therefore, from the depositions of aforesaid Medical Officers the physical and mental fitness of the deceased to make the aforesaid two statements/dying declarations stands firmly established leaving no room for any doubt. **In regard to 1st dying declaration dated 14-03-2013 (EXT-P2/I)** victim/deceased Vandna Sharma has stated as under:-

“that she is a housewife and married to Sat Pal Sharma. That on 12-03-2013 at around 12 to 12.30pm she was watching TV in her house when her devar Sohan Singh & her father-in-law Gian Chand came to her room and started hurling filthy abuses. She requested them not to do so but her father-in-law caught hold of her while her devar Sohan Lal sprinkled kerosene oil upon her body and set her on fire. In order to save her life she came out of her room and on raising alarm some of her neighbours came out to rescue her and douse the fire. Thereafter, someone informed her husband on telephone about this incident. Her husband reached home hurriedly and shifted her in a vehicle to Udhampur Hospital. Her devrani namely Usha (w/o accused Sohan Lal) who was present in the house did not come to rescue her and remained as mute spectator. Her three children had gone to Anganwari Centre at that time and on hearing about this incident her children also rushed back to home. Her devar Sohan Lal & father-in-law Gian Chand have burnt her”.

In her 2nd dying declaration dated 21-03-2013 (EXT-P15) made by victim/deceased Vandna Sharma in presence of EMIC Jammu (PW-15 Manjeet Singh) and also attested by him, victim has further stated as under:-

“that on 12-03-2013 she was in her matrimonial home and her children had gone to Anganwari School. She was watching TV in her room when her father-in-law Gian Chand and devar Sohan Lal entered her room and hurled filthy abuses. She requested them not to do so, but her father-in-law Gian Chand caught hold of her and her devar Sohan Lal picked up a kerosene oil bottle from inside the room which she had kept in the room for lighting a lamp during power breakdown and sprinkled this kerosene oil upon her body and after lighting a matchstick set her on fire. She tried to rescue herself out of the room but accused followed her. One Ram Khajuria S/O Nand who was reciting Gita nearby who put an empty gunny bag (bori) upon her body in order to douse the fire. In the meantime, someone informed her husband on telephone about this incident. Her husband reached home hurriedly and shifted her in a vehicle to Udhampur Hospital from where she was shifted to Jammu Hospital and that she is under treatment in Jammu Hospital.”

The 1st dying declaration dated 14-03-2013 was recorded by PW-8 Parshotam Singh HC when the victim/declarant was declared fit by PW-17 Dr. Gopal Sharma who in his deposition has categorically put forth evidence in the trial court that on 14-03-2013 he was posted in Emergency of GMC Jammu where deceased Vandna Sharma was admitted in the Hospital as a case of 95% burns, and on the same day police approached him for recording statement of the victim, he examined the patient and found her fit, conscious and cooperative, oriented to time, place and person and she was speaking, so he issued the certificate at 1pm that patient/victim was fit to give her statement. PW-17 Dr. Gopal Sharma has proved the contents of his certificate regarding fitness of victim/declarant dated 14-03-2020 EXT-P17 as true and correct. There is no suggestion made by the defence to this witness that his opinion regarding 95% burns was wrong, nothing was also put to him in cross-examination to discredit his testimony that he has no requisite expertise in this field to assess the level of consciousness/ fitness of victim to make such statement at the relevant time. That 2nd dying declaration dated 21-03-2013 has been recorded by the then Incharge police post Roun Domail Udhampur PW-20 Ghanshyam Singh SI and attested by PW-15 Manjeet Singh (EMIC Jammu) who are both responsible Govt. Servants having no enmity with accused persons, and in their statements recorded in the trial court, they have fully supported the prosecution version that deceased made the statement in their presence in the Hospital and she/victim was physically and mentally fit to make the statement certified so by the doctor also. PW-15 Manjeet Singh (Executive Magistrate 1st Class Jammu) has deposed, that he was posted as Naib Tehsildar Executive Magistrate Satwari Jammu, and on 21 March 2013 he on the direction of Tehsildar Jammu had visited GMC Jammu, SI

Ghanshyam from police station Udhampur had taken him to burn ward of Hospital where a lady Mst. Vandna Sharma was admitted in burnt condition and was under treatment, he asked SI Ghanshyam to obtain fitness certificate from concerned doctor before recording the statement of injured, said SI secured written permission from doctor and thereafter he disclosed his identity to the injured in the cabin and told the victim that she can make her statement with any fear, thereafter, the above said lady expressed her desire to make her statement and at the time of making her statement father and husband of the said lady were also present and the said lady identified both these persons which gave him assurance to believe that Vandna Sharma was fully conscious and fit to make a statement, thereafter, SI Ghanshyam Singh asked her to narrate the incident and thereafter she made a statement which was recorded by the Havaldar accompanying above named SI in Urdu language and after completion of her statement the impression of left foot thumb was affixed on this statement as her hands were burnt and were bandaged, statement dated 21-03-2013 available on the challan file bear his certificate and signature, he identifies the statement and testifies the correctness of the contents of the certificate endorsed by him on the certificate EXT-P15. The argument of Ld. Counsel for appellants/ convict is, that there is no evidence placed on record by the prosecution to prove, that PW-15 EMIC Jammu was deputed by any superior officer to visit GMC Jammu for witnessing the statement of injured to be recorded by police, nor any previous statement of this PW u/s 161 Cr.pc is on record which defence could have confronted, and this is a serious infirmity in the prosecution case and sufficient to rule out the presence of PW-15 in GMC Jammu at the relevant time. It is apt to reiterate here, that PW-20 Ghanshyam Singh SI in his cross-examination has stated that the letter by which he requisitioned the services of PW-15 Naib Tehsildar in the Hospital for recording the statement of victim is not annexed with the file, though he had addressed the requisition to District Magistrate Udhampur, who had written a letter to District Magistrate Jammu for deputing PW-15 in the Hospital. In our considered view, if PW-20 Ghanshyam Singh has not annexed the said letter with the challan/chargesheet, his failure cannot be ground to doubt the presence of PW-15 Manjeet Singh (EMIC Jammu) in Hospital at relevant time and discard his evidence, although he has been subjected to grueling cross-examination and nothing has been elicited to doubt his presence in the

Hospital. The presence of PW-15 Manjeet Singh EMIC Jammu in Hospital at the relevant time is also confirmed by the testimonies of PW-1 Sat Pal (husband of deceased), PW-2 Dhani Ram(f/o deceased) & PW-20 Ghanshyam Singh SI. PW-8 Parshotam Singh HC & PW-20 Ghanshyam SI are police officials and have supported the prosecution version fully, their testimonies cannot be doubted or discarded simply on the ground that they are police officials in absence of any material placed on record by defence or their cross-examination found unworthy of reliance that they harbour any ill will against accused or have any previous enmity or motive to fabricate a false dying declaration against appellant/convict to falsely implicate them in the alleged crime. Hon'ble Apex Court in a case law reported in, (2007) 7 SCC 625 [Girja Prashad] while referring to the evidence of police officer held, "that it is not the law that police witnesses should not be relied upon, there is no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy, and the rule of prudence may require more careful scrutiny of their evidence". PW-2 Dhani Ram (f/o deceased) has no reason to help the police to fabricate aforesaid dying declarations against accused persons with whom he has no provisos enmity, nor there is anything elicited in his cross-examination which could provide any indication or defence that due to enmity PW-2 Dhani Ram has connived with police in fabrication of above dying declarations. The doctrine of dying declaration is enshrined in the legal maxim "**Nemo moriturus praesumitur mentire**", which means "a man will not meet his maker with a lie in his mouth". The doctrine of dying declaration is contained in Sec. 32 of Evidence Act as an exception to the General Rule contained in Sec. 60 of Evidence Act which provides that oral evidence in all cases must be direct i.e. it must be evidence of witnesses who says he saw it. The dying declaration is in fact statement of a person who cannot be called as witness and therefore, cannot be cross-examined, such statements are relevant facts in certain cases. The law is well settled that if court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it without any further corroboration. In both the aforesaid dying declarations, deceased has attributed specific role played by each appellants/convict in burning her to death by pouring kerosene oil on her body and putting her on fire. We opine that both these dying declarations are consistent and free from any suspicion,

tutoring or prompting and inspire full confidence of this court in their truthfulness and voluntariness. Ld. Counsel for appellants/convict has relied upon the judgment reported in, **AIR 2019 SUPREME COURT 1852 [Sampat Babso Kale and another V. State of Maharashtra]**, wherein, Hon'ble Supreme Court while setting aside the judgment of conviction of the High Court of Bombay dated 13-10-2010 and restoring the judgment of the trial court which acquitted the accused persons on the basis of dying declaration found not reliable, held, that non-examination of the neighbourers who were the first person to raise an alarm were not examined which led to non corroboration of the dying declaration. The facts of the case law (Supra) are distinguishable from the facts of the case in hand, wherein, none of the neighbourers raised alarm regarding the burning case of victim/deceased, therefore, ratio of the judgment (Supra) is in applicable to the facts of the case in hand. In another case law, relied by Ld. Counsel for appellants/convict reported in AIR 2021 SUPREME COURT 2399 [Jayamma and another V. State of Karnataka], order of the High Court convicting accused only on the basis of dying declaration was found by Hon'ble Supreme Court totally erroneous as the dying declaration and motive was not established as son of the deceased himself stated that his mother committed suicide. The facts of this case law (Supra) are also distinguishable from the facts of the case in hand, therefore, ratio of the judgment (Supra) is also in applicable to the case in hand. Arguments of Ld. Counsel for appellants/convict that both the dying declarations dated 14-03-2013 & 21-03-2013 have been recorded on the asking of police, neighbourers have not been recorded, and the court version of Magistrate is an addition and improvement upon his certificate and violates the principle of fair play, are farfetched, unsustainable under law, and are accordingly repelled, rejected and discarded.

9. **The 3rd circumstance** relied by the prosecution against appellants/convict is, the **motive for crime**. Motive is a thing which is primarily known to the accused himself and it may not possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. Looked at from psychological stand point motive is the particular stimulus that arouses a striving towards some definite end. Motive pervades in all human actions and behaviour but difficult to determine its true character. The inferences are invariably drawn applying the legal tests but they need not be accurate in all

given situations. The Supreme Court in **Krishna Pillai Sreekumar V. State of Kerala (AIR 1981 SC 1237)** remarked that the variations in human nature are being so vast murders are actuated by much lesser motives. The absence of motive is of no consequences when cogent and reliable evidence as to the guilt of the accused is available. However, under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. Therefore the evidence of motive is always relevant and admissible, although it is not necessary for the prosecution to offer evidence of motive, inasmuch as the motive does not form part of essential ingredients of the offence of murders. On the question of motive, Wharton says:

“An enquiry in this regard is often of great importance, particularly in case of circumstantial evidence. It assists in fixing the crime upon the proper person and, in some cases is strongly instrumental in determining the degree of the offence.”

The Supreme Court ardently projects the impressive role of motive in evaluating the circumstantial evidence to prove the offences of murder in **Mulakh Ram V. Satishkumar (AIR 1992SC 1175)** as under:

“Undoubtedly in cases of circumstantial evidence motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non- existence.”

Therefore, it cannot be said that the motive is not a link in the chain of circumstances pointing to the guilt of the accused when it is clearly and cogently established. But the Supreme Court in **Mulakh Raj's Case (Supra)** has also laid down “the absence of proof of motive does not break the link in the chain of the crime, nor militates against prosecution case.” The reason is that the motive is not an essential ingredient of an offence and proof of motive is never an indispensable for conviction.” It is unambiguously reiterated here, that in the case in hand, prosecution has relied upon the evidence of PW-1 Sat Pal & PW-2 Dhani Ram to prove the motive against appellants/convict for the commission of crime of murder of deceased Vandna Sharma. PW-1 Sat Pal is the husband of deceased Vandna Sharma, and although he has been declared hostile by the prosecution for not supporting the prosecution story, in his cross-examination although he has denied any dispute between him and accused persons relating to any landed property on account of which his wife deceased Vandna Sharma was set on

fire by the accused, however, in his cross-examination by PP he has categorically admitted that his wife Vandna Sharma had illicit relations with Naresh Kumar (PW-6) because of which deceased committed suicide. PW-2 Dhani Ram is father of deceased Vandna Sharma and has led evidence to the effect, that as the deceased was engaged in the construction of her house which was incomplete and the accused persons did not like the said construction of new house by the deceased and wanted to grab her house, as a result, accused persons were quarreling with the deceased, and on 11/12 March 2013 accused persons burnt the deceased to death in her matrimonial house. The evidence of PWs 1&2 Sat Pal & Dhani Ram signifies the motive which was locked up in the mind of appellants/convict. The theory of suicide by the deceased as projected by PW-1 Sat Pal (husband of the deceased) in view of the sufficient & credible evidence regarding the evidentiary value of dying declaration, is unbelievable, as PW-1 Sat Pal is the son of A-1 Gian Chand and real brother of A-2 Sohan Lal and in order to save them he has projected the theory of suicide by the deceased. According to us, the prosecution has brought out overwhelming circumstances in the form of evidence of PWs Sat Pal & Dhani Ram to prove motive as a connecting link in the chain of events leading to the guilt of culprits/appellants/convict.

- 10.** Ld. Counsel for appellants/convict has argued, that the application of accused persons in the case in hand to admit statement of PW-4 Aagya Ram recorded u/s 161 Cr.pc was objected by Public Prosecutor and was wrongly rejected by the trial court, and the role of Public Prosecutor in this respect is unethical and contrary to his duties prescribed by law. Reliance has been placed on, **AIR 2020 SUPREME COURT 100 [Rekha Murarka v State of West Bengal and another]**. From the perusal of the judgment impugned in paragraph 43, it has been reflected, that during the course of the prosecution leading it's evidence, defence filed an application under the provisions of Sec. 272 Cr.pc with a prayer to allow it to admit the statement of PW-4 Aagya Ram recorded u/s 161 Cr.pc on 15-05-2013 which was opposed by the prosecution on the ground that it had given up the said witness for the reasons that his statement u/s 161 did not support the prosecution case that accused had burnt the deceased and it was not a case of suicide as projected by the said PW. The trial court finding substance in the arguments of prosecution, vide it's order dated 09-11-2013 ruled that the prosecution cannot be compelled to produced any listed witness whose evidence is in conflict with

the prosecution case, whereby, liberty was given to the defence to assail the order under law. Record reveals that the said order of the trial court has remained un-assailed by the accused/defence. In a criminal justice system the Public Prosecutor occupies a position of great importance. Given that the crimes are treated as a wrong against society as a whole, the role of Public Prosecutor in the administration of justice is crucial as he is not just a representative of aggrieved person but that of the state at large. The case law (Supra) referred to us by Ld. Counsel for appellants/convict lays down an invariable law, that a private counsel engaged by a private party can question the points which remain un-addressed only through Public Prosecutor. Ratio of the judgment (Supra) is distinguishable and inapplicable to the case in hand. The arguments canvassed by Ld. Counsel for appellants/convict that the role and stand of the Public Prosecutor before the trial court is unethical and contrary to his duties prescribed by law and therefore, the prosecution case casts serious doubt about its creditworthiness, are unsustainable under law, the same are repelled, rejected and discarded.

- 11.** In a recent judgment of Hon'ble Supreme Court titled **State of U.P.—Appellant(s) Versus Veerpal & Anr.—Respondent(s)** [CRIMINAL APPEAL No. 34 of 2022 decided on 01-02-2022], Hon'ble Supreme Court upheld the conviction of accused for commission of offence u/s 302/34 IPC relying upon documentary evidence of two (2) dying declarations one recorded by police officer and another recorded by Magistrate/SDM by observing, that in the said two dying declarations one aspect remained common as was narrated by the deceased that she was assaulted by accused and burnt by pouring kerosene oil upon her. Ratio of the judgment (Supra) squarely applies to the facts of the case in hand. In the case in hand, as per prosecution version, the appellants/convicts had caught hold of victim Vandna Sharma and by pouring kerosene oil upon her, had set her ablaze whereby she received 95% of burn injuries, and her 1st dying declaration EXT-P2/I dtd. 14-03-2013 (recorded by PW-8 HC Parshotam Singh) and 2nd dying declaration dated 21-03-2013 EXT-P15 (recorded by Executive Magistrate 1st Class Jammu PW-15 Manjeet Singh) have been correctly relied upon by the trial court, as in both the dying declarations one aspect has remained common as narrated by victim Vandna Sharma (deceased) that both appellants/convict had poured kerosene upon her, whereby, she was burnt and succumbed to the injuries.

12. Apart from that, we find that, in the statements of appellants/accused recorded u/s 313 (342) Cr.pc, though all these incriminating circumstances have been put to the appellants, they have not offered any explanation except saying that it was wrong and false. In this respect, we may refer to the observation of Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda V/s State of Maharashtra (1984)4 SCC 116 (Supra):**

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: **where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court.** In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court”.

It is trite law that though the false explanation cannot be taken to complete a missing link in the chain of circumstances, it can surely be taken to fortify the conclusion of conviction recorded on the basis of the proven incriminating circumstances. We find that the non-explanation of the circumstances would fortify the finding, which is based on the chain of incriminating circumstances that leads to no other conclusion than the guilt of the appellant.

13. After churning the entire prosecution evidence once again by us being the First Court of Appeal, we are of the considered view, that the prosecution has been able to prove the charge punishable u/s 302/34 RPC against appellants beyond any reasonable doubt, and therefore, their conviction for the said charge deserve to be upheld. The net result now surfaces is, that instant appeal stands dismissed, while the conviction and sentence rendered by the trial court for commission of offence u/s 302/34 RPC against appellants/convict stands upheld and confirmed. Confirmation Cr. Ref. No.1199/PDSJU dated 09-10-2018 is answered accordingly. Registry to send the record to the concerned trial court alongwith copy of the judgment. Jail Superintendent where the appellants have been presently lodged be also informed of the outcome of the appeal.

(Mohan Lal)
Judge

(Dhiraj Singh Thakur)
Judge