HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

DIVISION BENCH

G.S. AHLUWALIA
&
RAJEEV KUMAR SHRIVASTAVA J.J.

Cr.A. No. 148 of 2011

Rajaram and Others

Vs.

State of M.P.

Cr.A. No. 245 of 2011

Santi Bai

Vs.

State of M.P.

Cr.A. No. 185 of 2016

Susheela Bai @ Halki

Vs.

State of M.P.

Shri A.K. Jain Counsel for the Appellants in Cr.A. No. 148/2011 and 245 of 2011
Shri Prateep Visoriya, Counsel for Appellant in Cr.A. No. 185/2016
Shri Naval Kishore Gupta Counsel for the State

Date of Hearing : 04-04-2022
Date of Judgment : 18th-04-2022
Approved for Reporting :

Judgment

18th - April -2022

Per G.S. Ahluwalia J.

1. By this Common Judgment, Cr.A. No.s 148 of 2011, 245 of 2011 and Cr.A. No. 185/2016 shall be decided.

2. It is not out of place to mention here that initially the Appellant Susheela Bai @ Halki, who has filed Cr.A. No. 185/2016, was also being tried along with other Appellants. However, She did not appear before the Trial Court on 4-5-2010 and accordingly, her bail bonds were cancelled, and ultimately by order dated 11-8-2010, She was declared absconding and perpetual warrant of arrest was issued. The prosecution had already examined 13 prosecution witnesses in the presence of the Appellant Susheela Bai @ Halki, and only Dr. P.N. Dhakad and S.K. Chaturvedi were examined in her absence. The Appellant Susheela Bai @ Halki surrendered herself before the Trial Court on 1-9-2015 but the Public Prosecutor made a statement that he doesnot wish to examine Dr. P.N. Dhakad and S.K. Chaturvedi against the Appellant Susheela Bai @ Halki, therefore, in the light of judgment passed by Supreme Court in the case of **A.T. Mydeen Vs. The Asstt. Commissioner** by **order dated 29-10-2021** passed in **Cr.A. No. 1306/2021**, the evidence of Dr. P.N. Dhakad and S.K. Chaturvedi cannot be read against or in favor of Appellant Susheela

Bai @ Halki. Since, all other witnesses were examined in the presence of the Appellant Susheela Bai @ Halki, therefore, their evidence would be read in respect of Appellant Susheela Bai @ Halki also.

3. Criminal Appeals No. 148/2011 and 245/2011 have been filed under Section 374 of Cr.P.C. against the Judgment and Sentence dated 7-2-2011 passed by 1st Additional Sessions Judge, Ashoknagar, in S.T. No.227/2009 by which the Appellants have been convicted for the following offences :

Names of Appellants	Conviction	Suspension
Santi Bai	Under Section 302 of IPC	Life Imprisonment and fine of Rs. 15,000/- in default R.I. for 2 years
Rajaram Ramdayal Ram Singh @ Halke Kamla Bai Santi Bai	Under Section 498A of IPC	2 years R.I. and fine of Rs. 3,000/- in default 3 months R.I.

Sentences awarded to Appellant Santi bai shall run concurrently.

4. Criminal Appeal No. 185/2016 has been filed under Section 374 of Cr.P.C. against the Judgment and Sentence dated 11-2-2016 passed by 1st Assistant Sessions Judge, Ashoknagar, in S.T. No. 227/2009 by which the Appellant Susheela Bai @ Halki has been convicted for the following offence :

Name of Appellant	Conviction	Suspension
Susheela Bai @ Halki	Under Section 498A of IPC	2 years R.I. and fine of Rs. 3,000/- in default 3 months R.I.

5. According to the Prosecution case, on 23-4-2007 at 10:00 A.M, an information was sent from hospital that, a lady has been brought to the hospital by her husband, in a burnt condition. Accordingly, at the request of the Police Station Ashok Nagar Distt. Ashoknagar, the MLC of the Injured Pushpa/deceased was done. Her dying declaration was recorded. On 23-4-2007, burnt cloths with smell of Kerosene Oil, one *Chimani,* One broken Mangalsutra with smell of Kerosene Oil, One match box with name Anand containing 3-4 match sticks were seized. Spot map was prepared. Statements of witnesses were recorded. Injured died on 10-5-2007 in District Hospital Guna. Post-mortem was got done. Seized articles were sent for F.S.L. Police after completing the investigation, filed the charge sheet against the Appellants for offence under Sections 302,307,304B,498A/34 of IPC and under Section 3 /4 of Dowry Prohibition Act.

6. The Trial Court by order dated 30-9-2009, framed charges under Sections 498A,302 or in the alternative 304B of IPC against the Appellant Santi Bai, whereas framed charges under Section 498A,304B of IPC against remaining Appellants, namely Rajaram, Ramdayal, Ram Singh, Kamla Bai and Susheela Bai @ Halki.

7. The Appellants abjured their guilt and pleaded not guilty.

8. At the cost of repetition, it is clarified that the Appellant Susheela Bai @ Halki had initially appeared before the Trial Court, but thereafter absented herself on 4-5-2010. No application for

exemption from personal appearance was filed and accordingly, her bail bonds were forfeited and ultimately by order dated 11-8-2010, She was declared absconding and perpetual warrant of arrest was issued.

9. The prosecution examined Dashrath Raikwar (P.W.1), Phool Chandra (P.W.2), Mayabai (P.W.3), Ramcharan (P.W.4), Dr. R.B. Bhati (P.W.5), Janved Singh (P.W.6), Yasha Rai (P.W.7), Hemant Goswami (P.W.8), Ramesh Singh Raghuvanshi (P.W.9), Dr. B.K. Shakya (P.W.10), Chandramohan Khaddar (P.W.11), Sarvesh Kumar (P.W.12), Satendra Singh Tomar (P.W.13), Dr. P.N. Dhakad (P.W.14) and S.K. Chaturvedi (P.W.15).

10. It is made clear that Dr. P.N. Dhakad (P.W.14) and S.K. Chaturvedi (P.W.15) were examined in absence of Appellant Susheela Bai @ Halki. Susheela Bai @ Halki surrendered before the Trial Court on 1-9-2015 and it was expressed by the Public Prosecutor that he doesnot want to examine Dr. P.N. Dhakad and S.K. Chaturvedi against the Appellant Susheela Bai @ Halki.

11. The Appellants did not examine any witness in their defence.

12. The Trial Court by the impugned Judgments, convicted and sentenced the Appellants for the above mentioned offences.

13. Challenging the judgment and sentence passed by the Court below, it is submitted by the Counsel for the Appellants where a statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death,

then the said statement would be admissible, therefore, the allegations made by the injured/deceased against the Appellants Ramdayal, Rajaram, Ram Singh @ Halke Singh, Kamlabai and Susheela Bai @ Halki, in her dying declaration would not be admissible as those allegations are not of the circumstances of the transaction which resulted in her death.

14. The Counsel for the Appellant Santi bai, also submitted that the dying declaration of the deceased Pushpa is not reliable.

15. The Counsel for the State has supported the findings recorded by the Trial Court.

16. Heard the Learned Counsel for the parties.

17. Before adverting to the facts of the case, this Court would like to find out as to whether the death of the deceased Pushpa bai was homicidal in nature or not?

18. Dr. B.K.Shakya (P.W.10) had medically examined the injured Smt. Pushpa bai and found the following injuries :

> Pushpabai wife of Rajaram Kevat, age 25 years, Caste Kevat resident of Barkheda Jageer, P.S. Ashoknagar, Identification mark black mole over lateral aspect of right knee
> Brought by H.C. Arvind Sigh Sengar No. 39 P.S. Ashoknagar
> **Details of Examination**
> H/o Burns
> Extensive burns superficial to deep all over the body
> Burn is approximately 80 to 90%
> Singing of hair all over middle and frontal aspect of scalp
> Face with whole chest is charred (blackish)
> Eyebrow, tip of nose, and lips burnt teeth visible
> cloths burnt (Saree burnt in front and blouse adhered to body.

> Kerosene smelling all over cloths and hair of scalp
> Opinion Extensive burns present over the body is (Illegible) and dangerous to life
> Her General condition was poor, pulse was feeble, B.P. Was 90/60, pulse rate 22/m, **She was conscious and responding to verbal commands.**
> Patient was admitted in hospital for observation
> The M.L.C. is Ex. P. 16.

19. This witness was cross-examined. In cross-examination, he stated that he had started medical examination of the injured Pushpa at 10:40 A.M. He denied that She was not in a position to speak as her lips were burnt. He denied that the injured was not in a fit state of mind. He denied that She had not given any dying declaration.

20. Dr. R.B. Bhati (P.W.5) had conducted the post-mortem of the dead body of deceased Pushpa bai and found following injuries on her body :

> Examined naked body of the above mentioned female, covered by white bed sheet. Rigormortis appearing over upper half of the body. Eye closed. Mouth Closed. I to III degree burn present all over body except anterior surface of both leg, lower abdomen below umbilicus, both gluteal region. Infection with Suppuration with inflammation present. Scalp hair of forehead and both parietal region, eyebrow and eye lash singed. Intravenous cannula over both lower legs and follies catheter present.
> The cause of death was septicemic shock and due to burn injuries and its complications.
>
> The post-mortem was done on 10-5-2009 and is Ex. P.9.

21. This witness was cross-examined and in cross-examination, he stated that he cannot say as to whether the deceased could have survived by a better treatment or not?

22. Thus, it is clear that the death of the deceased was due to burn

injuries sustained by her. Now the only question for consideration is that whether her death was homicidal, accidental or suicidal?

23. Dashrath Raikwar (P.W.1) brother of the deceased, Phool Chandra (P.W.2), father of the deceased, Mayabai (P.W.3) Sister of the deceased, Ramcharan (P.W.4) brother-in-law of deceased, Hemant Goswami (P.W.8) seizure witness of seizure of articles from the spot, have turned hostile and they have not supported the prosecution case.

24. The case hinges around the Dying Declaration of the deceased.

25. Yasha Rai (P.W.7), Naib-Tahsildar had recorded the dying declaration, Ex. P.11 which reads as under :

नाम – पुष्पा
उम्र – 22–23 वर्ष
जाति – रैकवार
पति का नाम मट्टू
निवासी – बरखेडा
व्यवसाय – बगीचा का काम
दिनांक – 23.4.2009
समय – 10,35 am
प्र1 क्या नाम है
उ, पुष्पा
प्र, 2 पति का नाम क्या है
उ, मट्टू
प्र, 3 क्या हो गया है तुम्हे
उ, जल गई हूं
प्र, कैसे जल गई
उ, मै सुबह आंगन मे बैठी थी. लडाई हो रही थी, मेरी दोनो जेठानी लड रही थी बडी अद्दी थी मिट्टी का तेल उसमे से मेरे उपर डाल दिया था मेरी जेठानी किरण और शांति ने तेल डाल दिया और माचिस से आग लगा दी मेरी बडी सास वही खडी होकर देख रही थी। हमारी सास घर पर नही थी। पति घर के बाहर था।
प्र. किसने बचाया तुम्हे
उ. एक डुकरा ने बचाया मै जानती कौन था डुकरा
प्र. अस्पताल कौन ले आया
उ. नही पता
प्र. कुछ कहना है

उ. दो जेठ है वैसे तीन जेठ है दो सास है तीन जेठानी है तीसरी जिठानी का नाम सुशीला है वो उस समय धर पर नही थी वो लडतीा थी मारती थी मेरा छोटा बच्चा 6–7 महीने का है समब मारते थे सास भी मारती थी तीनो जेठ लडते थे मुझे लगडी कहते थे मुझसे दहेज मांगते थे।
The dying declaration is Ex. P.11.

26. Dr. B.K.Shakya (P.W.10) had given fitness certificate. He has stated that the injured Pushpa bai was in a fit state of mind and his certificate is at D to D on dying declaration, Ex. P.11. She was in fit state of mind even after the dying declaration was recorded and his report is at F to F on dying declaration, Ex. P.11. This witness was cross-examined on the issue of fitness of mind and he stated that the Naib-Tahsildar had taken about 30 minutes to record dying declaration. He denied that he has given the false report under the pressure of the police.

27. Thus, it is clear that the injured Pushpa bai was in a fit state of mind at the time of recording of dying declaration.

28. Yasha Rai (P.W.7) is the Naib-Tahsildar who had recorded the dying declaration. He has stated that the patient was in a fit state of mind and was conscious. He had obtained fitness certificate from the Doctor. The dying declaration is in his handwriting. He had not added or subtracted anything and had written whatever was disclosed by the injured in her dying declaration. This witness was cross-examined. In cross-examination, he stated that the thumb impression of the injured was taken after the dying declaration was recorded. The recording of dying declaration had started at 10:35 and was completed by 10:50. He had received a requisition from Police

Station Ashoknagar, but he has not brought the same. He denied that the patient was not conscious at the time of recording of dying declaration. He denied that he had recorded false dying declaration. He denied that She had not affixed her thumb impression. He on his own clarified that her thumb was fit for affixing thumb impression.

29. Thus, it is clear that the injured Pushpa bai was in a fit state of mind at the time of giving of dying declaration. She was conscious. Even as per MLC, she was found conscious and responding to verbal commands.

30. It is submitted by the Counsel for the Appellants, that as per Yasha Rai (P.W.7), the dying declaration was recorded upto 10:50, wheres MLC of the injured Pushpa was conducted at 10:40, therefore, it is clear that either MLC is false or dying declaration is false.

31. Considered the submissions made by the Counsel for the Appellants.

32. There is some discrepancy in the timings of MLC and recording of dying declaration, however, this Court cannot lose sight of the fact that the timings were mentioned in the respective documents by Dr. B.K. Shakya (P.W.10) and Yasha Rai (P.W.7) on the basis of timings which were being shown by their individual watches. It is not the case of the prosecution or the defence, that both the witnesses had mentioned the time on MLC and dying declaration after watching it from the same watch. The individual watches of persons, may show some different time. Even otherwise, the

difference in timings is of few minutes, which is natural due to different timings shown in the watches of the individuals. Thus, it is held that there is no discrepancy in the timings and the patient was in fit state of mind, conscious and was responding to verbal directions.

33. It is further submitted that since, the injured had suffered 80-90% burns, therefore, She cannot be in a fit state of mind to give dying declaration.

34. Considered the submissions made by the Counsel for the Appellants.

35. The Supreme Court in the case of **Purshottam Chopra v. State (NCT of Delhi),** reported in **(2020) 11 SCC 489** has held as under :

> **18.** The principles relating to admission and acceptability of the statement made by a victim representing the cause of death, usually referred to as a dying declaration, are well settled and a few doubts as regards pre-requisites for acceptability of a dying declaration were also put at rest by the Constitution Bench of this Court in *Laxman* v. *State of Maharashtra*.
>
> **18.1.** In the said case of *Laxman*, conviction of the appellant was based on dying declaration of the deceased which was recorded by the Judicial Magistrate. The Session Judge and the High Court found such dying declaration to be truthful, voluntary and trustworthy; and recorded conviction on that basis. In appeal to this Court, it was urged with reference to the decision in *Paparambaka Rosamma* v. *State of A.P.* that the dying declaration could not have been accepted by the Court to form the sole basis of conviction since certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement. On the other hand, it was contended on behalf of the State, with reference to the decision in *Koli Chunilal Savji* v. *State of Gujarat*, that the material on record indicated that the deceased was fully conscious and was capable of making a statement; and his dying declaration cannot be ignored merely because the

doctor had not made the endorsement about his fit state of mind to make the statement. In view of these somewhat discordant notes, the matter came to be referred to the larger Bench.

18.2. The Constitution Bench in *Laxman* summed up the principles applicable as regards the acceptability of dying declaration in the following: (*Laxman case*, SCC pp. 713-14, para 3)

"*3*. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for

recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

18.3. The Constitution Bench affirmed the view in *Koli Chunilal Savji* while holding that *Paparambaka Rosamma*, was not correctly decided. The Court said: (*Laxman case*, SCC p. 715, para 5)

"*5*. … It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat*."

19. In *Dal Singh case*, this Court has pointed out that the law does not provide as to who could record dying declaration nor is there a prescribed format or procedure for the same. All that is required is the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. This Court also pointed out that as to whether in a given burn case, the skin of thumb had been completely burnt or if some part of it will remain intact, would also be a question of fact. This Court said: (SCC p. 167, paras 20-22)

"*20*. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or

procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case.

21. Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.

22. So far as the question of thumb impression is concerned, the same depends upon facts, as regards whether the skin of the thumb that was placed upon the dying declaration was also burnt. Even in case of such burns in the body, the skin of a small part of the body i.e. of the thumb, may remain intact. Therefore, it is a question of fact regarding whether the skin of the thumb had in fact been completely burnt, and if not, whether the ridges and curves had remained intact."

19.1. In *Bhagwan*, this Court accepted the dying declaration made by a person having suffered 92% burn injury and whose continued consciousness was certified by the doctor. This Court referred to the decision in *Vijay Pal* v. *State (NCT of Delhi)*, where the statement made by the victim having suffered 100% burn injury was also accepted. This Court said: (*Bhagwan case*, SCC pp. 106-107, paras 24-25)

"**(B)** ***Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration?***

24. This question is also no longer res integra. In *Vijay Pal* v. *State (NCT of Delhi)*, we notice the following discussion: (SCC p. 759, paras 23-24)

'*23*. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval* v. *State of Gujarat* wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In *State of M.P.* v. *Dal Singh*, a two-Judge Bench placed

reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.'

25. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable."

20. In *Gian Kaur*, the dying declaration was disbelieved on the ground that though as per medical evidence the deceased had 100% burn injuries but the thumb mark appearing on the dying declaration had clear ridges and curves. The benefit of doubt extended by the High Court was found to be not unreasonable and hence, this Court declined to interfere while observing as under: (*Gian Kaur case*, SCC p. 943, para 5)

"*5*. The High Court disbelieved the dying declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration had clear ridges and curves. The High Court found the evidence of Dr Ajay Sahni-PW 1 not reliable as he failed to satisfactorily explain how such a thumb mark could appear on the dying declaration when Rita had 100% burns over her body. The High Court relied upon the deposition of Doctor Aneja, who had performed the post-mortem and who has categorically stated that there were 100% burns over her body and both the thumbs of Rita were burnt. In view of such inconsistent evidence, the High Court was right in giving benefit of doubt to the respondents. It cannot be said in this case that the High Court has taken an unreasonable view."

20.1. In *Gopalsingh*, the Court found that the dying declaration did not contain complete names and addresses of the persons charged with the offence and it was found that conviction could not be based on such dying declaration alone without corroboration. Essentially, for the infirmity carried by such dying declaration, this Court found lesser justification for the High Court's interference with the order of acquittal while observing as under: (SCC p. 272, para 8)

"*8*. But even if we assume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole basis of a dying declaration if it is such

that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required."

20.2. In *Dalip Singh*, the alleged dying declaration turned out to be doubtful for it contained such facts which could not have been in the knowledge of the deceased and hence, this Court found it unsafe to rely on the same while observing as under: (SCC p. 335, para 9)

"*9*. … The dying declaration seems to be otherwise truthful but for the fact that it could not be within the knowledge or vision of Teja Singh that Jetha Singh was murdered by the appellants. His saying so in the dying declaration makes his statement a bit doubtful. It is, therefore, safe to leave out of consideration this dying declaration."

20.3. In *Thurukanni Pompiah*, this Court held that while a truthful and reliable dying declaration may form the sole basis of conviction, even without corroboration but the Court must be satisfied about its truthfulness and reliability; and if the Court finds that the declaration is not wholly reliable and a material portion of the deceased's version of the occurrence is untrue, the Court may, in the circumstances of a given case, may consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. This Court observed, inter alia, as under: (AIR p. 941, para 9)

"*9*. Under clause (1) of Section 32 of the Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the

Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration."

20.4. In *Uka Ram*, this Court again emphasised on the requirement that the Court should be satisfied about trustworthiness of the dying declaration, its voluntary nature and fitness of the mind of the deceased and it was held that: (SCC p. 257, para 6)

"*6*. … Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as a rule requiring corroboration is not a rule of law but only a rule of prudence."

20.4.1. In the said case of *Uka Ram*, however, the Court found that the deceased was a mental patient and there existed a doubt about mental condition of the deceased at the time of making the dying declaration. In the given circumstances, this Court found that to be a fit case to extend the benefit of doubt to the accused.

21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate

be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

* * * *

25.2. Another emphasis laid on behalf of the appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in *Vijay Pal case* and reiterated in *Bhagwan case*, the extent of burn injuries — going beyond 92% and even to 100% — would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded.

25.3. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.

> **25.4.** The suggestions have also been made that the victim was in 100% burnt condition and therefore, the alleged statements Exts. PW-8/A and PW-16/B are manipulated and manufactured. We find nothing of substance in such suggestions for there had not been shown any reason for which PW 8 Dr Sushma and PW 16 SI Rajesh Kumar would manufacture any such document. Interestingly, certain suggestions were made to PW 19 Inspector Om Prakash in his cross-examination about his previous exchange of hot words or altercation with the accused persons. However, there was no such suggestion to PW 16 or to PW 8. For the same reason, the doubts sought to be suggested about availability of thumb impression of the victim on the statement Ext. PW-16/B deserve to be rejected. In *Dal Singh*, this Court has pointed out that in the case of burns, the skin of a small part of the body like thumb may remain intact; and it is essentially a question of fact as to whether skin of thumb had also been burnt completely. In this regard, it is also noticeable that even when the victim was carrying 100% deep burns, as per the post-mortem report, peeling off of skin was noticed on dorsum of hands and therefore, taking of thumb impression on Ext. PW-16/B is not ruled out. The concurrent findings of the trial court and the High Court in accepting the thumb impression on Ext. PW-16/B do not appear calling for any interference. It gets, perforce, reiterated that there appears no reason for PW 16 to go to the extent of manufacturing the document with a false thumb impression.
>
> **21.8.** If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

36. As per Modi's Medical Jurisprudence, 1st degree burn mark is also known as epidermal burn. First Degree burns consists of eythema or simple redness of the skin caused by the momentary application of flame or hot solids, or liquids much below boiling point. It can also be produced by mild irritants. The erythema marked with superficial inflammation usually disappear in few hours, but may last for several days, when the upper layer of the skin peels off but leaves no scars.

They disappear after death due to the gravitation of blood to the dependent parts. Second degree burns comprise acute inflammation and blisters produced by prolonged application of a flame, liquids at boiling point or solids much above the boiling point of water. The third and fourth degree burns are also known as Dermo-Epidermal burns. The third degree burn refers to the destruction of the cuticle and part of the true skin which appears horny and dark, owing to it having been charred and shrivelled. Exposure of nerve endings gives rise to much pain. Whereas in Fourth degree burn, the whole skin is destroyed. The fifth and sixth degree burns are also known as Deep burns. Fifth degree burn includes penetration of the deep fascia and implications of the muscles, and results in great scarring and deformity whereas sixth degree burn involves charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. Thus, it is clear that it is not the extent of superficial burn which effects the state of mind of the patient, but it is the degree of burn which effects the state of mind of the patient.

37. According to the Post-mortem, the deceased had suffered Ist to IIIrd degree burns. Third degree burn means destruction of the cuticle and part of the true skin. But the entire body did not have 3rd degree burns. Thus, this Court is of the considered opinion, that the injured/deceased Pushpa Bai was in a fit state of mind to give dying declaration.

38. It is next contended by the Counsel for the Appellants that S.K. Chaturvedi (P.W. 15) had also recorded the police statement of the injured Pushpa, Ex. P.26 and in that statement, She had specifically stated that her kid had spread water on the ground, and on that issue the Appellant Santi bai and Kiran bai had set her on fire after sprinkling Kerosene oil on her. Thus, it is clear that the injured Pushpa was not burnt on account of demand of dowry. It is further submitted that her allegations that the other appellants used to harass and beat her on account of demand of dowry cannot be read as the same were not the cause of her death or any of the circumstance of the transaction which resulted in her death.

39. Before considering the submissions made by the Counsel for the Appellants, this Court would like to consider as to whether the police statement of the injured Pushpa, Ex. P.26 is reliable or not?

40. As already pointed out, S.K. Chaturvedi (P.W. 15), who had recorded Police Statement of injured Pushpa, was not examined after the re-arrest of Appellant Susheela Bai @ Halki, and as evidence of S.K. Chaturvedi (P.W.15) was recorded in absence of Susheela Bai @ Halki, therefore, his evidence cannot be read either in favor or against the Appellant Susheela Bai @ Halki. Thus, there is only one dying declaration, Ex. P.11 against the Appellant Susheela Bai @ Halki.

41. S.K. Chaturvedi (P.W.15) has stated that he had recorded the statements of the witnesses including that of injured/deceased Pushpa. If the police statement of injured/deceased Pushpa is

considered then at the end of the statement, it is mentioned that her condition is very bad. Therefore, it is not clear as to whether the injured/deceased Pushpa was in a fit state of mind or not. Even otherwise, this witness has not clarified that on what date he had recorded the statement of injured/deceased Pushpa. It is true that while recording the police statement under Section 161 of Cr.P.C., this witness was not required to obtain the fitness certificate from the Doctor, but in view of the last line of her statement, that " her condition is very bad", this Court is of the considered opinion, that it would not be safe to rely on the Police Statement of the injured/deceased Pushpa, Ex. P.26.

42. Accordingly, the Police Statement of the injured/deceased Pushpa Bai, Ex. P.26 is hereby disbelieved.

43. S.K. Chaturvedi (P.W. 15) had also prepared spot map, Ex. P.18 and had seized burnt pieces of cloths which were having smell of Kerosene, one empty box of *Chimani* which was having smell of Kerosene, one match box and broken Mangalsutra which too was having smell of Kerosene vide seizure memo Ex. P.12 The seized articles were sent to F.S.L. Sagar and FSL report is Ex. P. 25.

44. From the F.S.L. report, Sagar, Ex. P.25, it is clear that Kerosene was found in seized articles.

45. Thus, the evidence of seizure of above mentioned articles as well as the F.S.L. report, Ex. P.25 is proved against the Appellants except the Appellant Susheela Bai @ Halki. Further, no question was

put to Susheela Bai @ Halki in her statement under Section 313 of Cr.P.C. regarding F.S.L. report, Ex. P.25.

46. Thus, the only circumstance which is available against all the Appellants is the Dying Declaration, Ex. P.11. This Court has already come to a conclusion that the said Dying Declaration, Ex. P.11 is trustworthy and reliable, whereas against the Appellants Rajaram, Ramdayal @ Veer Singh, Ram Singh @ Halke, Kamla bai and Santi Bai, there are additional evidence of seizure of burnt cloths of the deceased, her broken Mangalsutra. As per FSL report, Kerosene was found in Mangalsutra, which is indicative of fact that Kerosene was poured on her, which corroborates the Dying Declaration, Ex. P.11.

47. It is submitted by the Counsel for the Appellants that where the case is based on sole circumstance of dying declaration then the recording of conviction is not safe.

48. Considered the submissions made by the Counsel for the Appellant.

49. The Supreme Court in the case of **Madan Vs. State of Maharashtra** reported in **(2019) 13 SCC 464** has held as under :

> **11.** We are aware of the fact that the physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence. In order to ameliorate such concerns, this Court has cautioned in umpteen number of cases to have a cautious approach when

considering a conviction solely based on dying declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [see: *Ram Bihari Yadav* v. *State of Bihar* and *Suresh Chandra Jana* v. *State of W.B.*].

12. Moreover, this Court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and genuineness, it should not be acted upon without corroborative evidence [see also: *Atbir* v. *Govt. (NCT of Delhi)*, *Paniben* v. *State of Gujarat* and *Panneerselvam* v. *State of T.N.*].

50. The Supreme Court in the case of **Mukesh Vs. State (NCT of Delhi)** reported in **(2017) 6 SCC 1** has held as under :

174. A dying declaration is an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction. If a dying declaration is found to be voluntary and made in a fit mental condition, it can be relied upon even without any corroboration. However, the court, while admitting a dying declaration, must be vigilant towards the need for "*compos mentis certificate*" from a doctor as well as the absence of any kind of tutoring.

175. In *Laxman* v. *State of Maharashtra*, the law relating to dying declaration was succinctly put in the following words: (SCC pp. 713-14, para 3)

"*3*. … A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and

when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

176. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court in *Atbir* v. *Govt. (NCT of Delhi)*, taking into consideration the earlier judgment of this Court in *Paniben* v. *State of Gujarat* and another judgment of this Court in *Panneerselvam* v. *State of T.N.*, has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration: (*Atbir case*, SCC pp. 8-9, para 22)

"*22*. (*i*) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(*ii*) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(*iii*) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(*iv*) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(*v*) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(*vi*) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(*vii*) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(*viii*) Even if it is a brief statement, it is not to be discarded.

(*ix*) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration,

medical opinion cannot prevail.

(*x*) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

177. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances.

51. The Supreme Court in the case of **Bhagwan Tukaram Dange v. State of Maharashtra,** reported in **(2014) 4 SCC 270** has held as under :

8. Dying declaration is undoubtedly admissible under Section 32 of the Evidence Act, but due care has to be given by the persons who record the statement. Dying declaration is an exception to the hearsay rule when it is made by the declarant at the time when it is believed that the declarant's death was near or certain. Dying declaration is based on the maxim *nemo moriturus praesumitur mentire* i.e. a man will not meet his Maker with a lie in his mouth. Dying declaration is a statement made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted. Hearsay evidence is not accepted by the law of evidence because the person giving the evidence is not narrating his own experience or story, but rather he is presenting whatever he could gather from the statement of another person. That other person may not be available for cross-examination and, therefore, hearsay evidence is not accepted. Dying declaration is an exception to hearsay because, in many cases, it may be the sole evidence and hence it becomes necessary to accept the same to meet the ends of justice.

9. The court has to carefully scrutinise the evidence while evaluating a dying declaration since it is not a statement made on oath and is not tested on the touchstone of cross-examination. In *Harbans Singh* v. *State of Punjab* this Court held that it is neither a rule of law nor of prudence that dying

> declaration requires to be corroborated by other evidence before a conviction can be based thereon. Reference may also be made to the decision of this Court in *State of U.P.* v. *Ram Sagar Yadav*. This Court in *State of U.P.* v. *Suresh* held that minor incoherence in the statement with regard to the facts and circumstances would not be sufficient ground for not relying upon the statement, which was otherwise found to be genuine. Hence, as a rule of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon.

52. The Supreme Court in the case of **Sampat Babso Kale v. State of Maharashtra,** reported in **(2019) 4 SCC 739** has held as under :

> **15.** No doubt, a dying declaration is an extremely important piece of evidence and where the Court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the Court can convict the accused only on the basis of a dying declaration. We need not refer to the entire law but it would be apposite to refer to the judgment of this Court in *Sham Shankar Kankaria* v. *State of Maharashtra* held as follows: (SCC p. 172, para 11)
>
> > "*11*. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

53. The Supreme Court in case of **Jayamma v. State of**

Karnataka, reported in **(2021) 6 SCC 213** has held as under :

> **14.** Before we advert to the actual admissibility and credibility of the dying declaration (Ext. P-5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.
>
> **14.1.** In *P.V. Radhakrishna* v. *State of Karnataka*, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard-and-fast rule of universal application in this regard and much would depend upon the nature of the burns, part of the body affected, impact of burns on the faculties to think and other relevant factor.
>
> **14.2.** In *Chacko* v. *State of Kerala*, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "*patient conscious, talking*" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.
>
> **14.3.** In *Sham Shankar Kankaria* v. *State of Maharashtra*, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying

upon the decision in *Paniben* v. *State of Gujarat* wherein this Court (at SCC pp. 480-81, para 18) summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria* reiterated: (*Sham Shankar Kankaria*, SCC pp. 172-73, para 11)

> "*11*. … (*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.*);
>
> (*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* and *Ramawati Devi* v. *State of Bihar.*);
>
> (*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.*);
>
> (*iv*) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg* v. *State of M.P.*);
>
> (*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.*);
>
> (*vi*) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath* v. *State of U.P.*);
>
> (*vii*) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra* v. *Krishnamurti Laxmipati Naidu*.);
>
> (*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.*);
>
> (*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.*);
>
> (*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*.);

(*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*.)"

15. 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.

16. We may also take note of the decision of this Court in *Surinder Kumar*. In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95-97% burn injuries. Thereafter, it was noted that "*at the time of recording the statement of the deceased ... no endorsement of the doctor was made about her position to make such statement*", and only after the recording of the statement did the doctor state that the patient was conscious while answering the questions, and was "*fit to give statement*". This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying

> declaration cannot be acted upon without corroboration, the Court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

54. The Supreme Court in the case of **Munnawar v. State of U.P.,** reported in **(2010) 5 SCC 451** has held as under:

> **13.** In *Balak Ram case* this Court dealt with two dying declarations, one recorded by the investigating officer in the case diary which was held to be unreliable and the other by the Executive Magistrate which was held to be reliable notwithstanding the fact that the injured, when taken to the hospital, was in a very critical condition. This Court observed that though there may be some suspicion with regard to the statement recorded by the police officer, the same could not be said of the second dying declaration.
>
> **14.** It was observed thus: (*Balak Ram case*, SCC p. 235, para 54)
>
> > "*54*. … The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil Services have no platform to controvert allegations, howsoever grave and unfounded. It is, therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."
>
> The aforequoted paragraph fully supports the view that (save for very good reasons) a dying declaration recorded by a Magistrate duly endorsed by a doctor should not be discarded.

55. Thus, it is clear that if the dying declaration inspires confidence, then it can be the sole basis for conviction.

56. From the plain reading of Dying Declaration, Ex. P.11, the evidence of Dr. B. K Shakya (P.W. 10) and Naib-Tahsildar Yasha Rai (P.W.7), as well as her MLC, Ex. P.16, in which it was mentioned that

the injured Pushpa bai is conscious, responding to verbal commands, this Court is of the considered opinion, that the Dying Declaration, Ex. P.11 is a voluntary statement made by the injured/deceased Pushpa in a fit state of mind and thus, it is reliable and trustworthy. Further, the recovery of semi burnt cloths with smell of Kerosene oil, broken piece of Mangalsutra with smell of Kerosene oil from the spot, clearly indicates that Kerosene Oil was poured on her. Therefore, the other circumstances also corroborates the Dying Declaration, Ex. P.11.

Whether the act of the Appellant Santi Bai would come under the purview of Section 304 of IPC or 302 of IPC

57. It is submitted by the Counsel for the Appellants that the incident took place on 23-4-2009 whereas the deceased died on 10-5-2009, and the cause of death was septicemic shock due to extensive burns and its complications, therefore, it is clear that the deceased has died due to ineffective treatment given to her, therefore, the act of Santi Bai would be punishable under Section 304 Part I of IPC and not under Section 302 of IPC.

58. Considered the submissions made by the Counsel for the Appellants.

59. The Supreme Court in the case of **State of Rajasthan Vs. Arjun Singh** reported in **(2011) 9 SCC 115** has held as under :

> **31.** Finally, the learned Senior Counsel for the accused pointed out that inasmuch as Himmat Raj Singh died after 35 days due to septicaemia, the courts below are not

justified in convicting the accused persons for an offence under Section 302 IPC for his death. Considering the medical evidence that Himmat Raj Singh sustained 7 gunshot injuries which were sufficient to cause death in the ordinary course, we are satisfied that the death of Himmat Raj Singh undoubtedly falls within the ambit of Section 302 IPC.

60. The Supreme Court in the case of **Munnawar (Supra)** has held as under :

21. Mr Sushil Kumar has also pointed out that the Sessions Judge had, in his judgment, acquitted the appellant-accused for the offence punishable under Section 302 IPC but had convicted them under Section 307 IPC and that in any case this was the proper order to be made in the peculiar facts of the case. It has been submitted that the injuries had been suffered by Fateh Mohammad on 20-5-2000 but he had died on 25-5-2000 and that as per the statement of PW Dr. N.K. Gupta, who had conducted the post-mortem of the dead body, the death was due to septicaemia on account of the infection caused by the injuries and that had Fateh Mohammad been given proper treatment, he may have survived. It has been pleaded that from the evidence 458of PW Dr. Anil Kapoor, who had initially treated the injured at Jaswant Rai Speciality Hospital, it was apparent that the infection had set in on account of the lack of proper treatment and that in the light of this medical opinion the appellants were entitled to claim the benefit of doubt and plead that, if at all, a case under Section 307 IPC was spelt out.

22. We are of the opinion, however, that the trial court has ignored some basic issues.

23. We have gone through the statement of Dr. Anil Kapoor who had noticed the following injuries on the person of Fateh Mohammad at the time of his admission to hospital:

1. Lacerated wound, size of wound 2.9 × 1.0 cm fresh bleeding present. Depth not probed, with inverted margins present at right side of chest 8.0 cm from right nipple at 2.00 o'clock position. Tattooing present in an area of 17.0 × 4.5 cm area.

2. Tattooing without any wound present over right side of the neck obliquely vertical in an area of 9.0 cm × 3.0 cm upper end starting at the level of mastoid process, 4.0 cm posterior to mastoid process.

3. Lacerated wound with inverted margins present over

> left side of face 5.0 × 2.0 cm × depth not probed. 2.0 cm below left eye. Tattooing present around the wound in an area of 6.0 × 5.0 cm. Fresh bleeding present.
>
> *4*. Lacerated wound with inverted margins present over back of left hand 13.0 cm below left oleranon process size 3.0 cm × 1.0 cm × depth not probed, fresh bleeding present. Tattooing present in an area of 4.0 × 3.0 cm around wound.
>
> *5*. Lacerated wound with everted margins present over antero-lateral size of left forearm size 1.0 × 1.0 cm × depth not probed, fresh bleeding present.
>
> *6*. Lacerated wound with everted margins 4 × 2 cm × depth not probed, present over right scapular region 7.0 cm from post axillary line, fresh bleeding present.
>
> *7*. Lacerated wound with everted margins 1.0 × 1.0 cm × depth not probed, present over left scapular region 6.0 from mid line, fresh bleeding present.
>
> **24.** We see from the injuries that they had been caused from a very close range as tattooing was present. Dr. Anil Kapoor also pointed that Injuries 1, 3, 6 and 7 were grievous and were fatal to life and all the injuries were sufficient to cause death as they were on sensitive parts of the body and that the injured was under severe shock, and had been given three units of blood at the time of his admission to the hospital. In the light of this evidence, we are unable to comprehend as to how the trial court could have concluded that it was the negligence on the part of Dr. Anil Kapoor which had led to septicaemia and finally to the death of the patient.

61. The Supreme Court in the case of **Antram v. State of Maharashtra,** reported in **(2007) 13 SCC 356** has held as under :

> **13.** Coming to the question as to applicability of Section 302 IPC, great emphasis was laid on the evidence of Dr. S.K. Shinde (PW 7). It was contended that the death was due to medical negligence and therefore the accused could not have been convicted under Section 302 IPC. It was submitted that had the patient been given proper care, there was a possibility of removing thick mucus and food particles from trachea and bronchi by using certain instruments and with proper medicines, she could have survived. The High Court noted that the throwing out of the vomit by the deceased was not a natural course but it was a result of two injuries i.e. Injuries 3 and 4. The High Court

found that the presence of mucus and food particles in the trachea and bronchi cannot be totally delinked from the injuries inflicted by the accused. It was the stand of the accused that the death was due to septicaemia and, therefore, it is not referable to cause of death in the ordinary course of nature due to ante-mortem injuries.

14. In *State of Haryana* v. *Pala* it was noted as follows: (SCC pp. 52-53, para 3)

> "… In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration."

15. In *Sudershan Kumar* v. *State of Delhi* it was noted as follows: (AIR p. 2328)

> "The fact that the deceased lingered for about 12 days would not show that the death was not the direct result of the act of the accused in throwing acid on her. So also the fact that the deceased developed symptoms of malaena and respiratory failure and they also contributed to her death could not in any way affect the conclusion that the injuries caused by the acid burns were the direct cause of her death."

16. As noted above it was emphasised by learned counsel for the appellant that with proper medical care the deceased could have survived and therefore Section 302 IPC has no application. The plea clearly overlooks Explanation 2 to Section 299 IPC, which reads as follows:

> "*Explanation 2*.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

62. The Supreme Court in the case of **Jagtar Singh v. State of Punjab,** reported in **(1999) 2 SCC 174** has held as under :

> **7.** Having given our anxious consideration to the first contention of Mr Gujral, we do not find any substance in it. It is true that Naib Singh died 16 days after the incident due to septicaemia, but Dr M.P. Singh (PW 1), who held the post-mortem examination, categorically stated that the septicaemia was due to the head injury sustained by Naib Singh and that the injury was sufficient in the ordinary

course of nature to cause death. From the impugned judgment, we find that the above contention was raised on behalf of the appellants and in rejecting the same, the High Court observed:

> "It is well settled that culpable homicide is not murder when the case is brought within the five exceptions to Section 300 Penal Code, 1860. But even though none of the said five exceptions is pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses, firstly to fourthly, of Section 300 Penal Code, 1860, to sustain the charge of murder. Injury 1 was the fatal injury. When this injury is judged objectively from the nature of it and other evidence including the medical opinion of Dr M.P. Singh (PW 1), we are of the considered view that the injury was intended to be caused with the intention of causing such a bodily injury by Harbans Singh, the appellant on the person of Naib Singh which was sufficient in the ordinary course of nature to cause death…."

On a perusal of the evidence of PW 1 in the light of Explanation 2 to Section 299 IPC, we are in complete agreement with the above-quoted observations of the High Court.

63. The Supreme Court in the case of **Khokan Vs. State of Chhatisgarh** reported in **(2021) 3 SCC 365** has held as under :

> **13.....** There is no absolute proposition of law laid down by this Court in the said decision that in all cases where the deceased died due to septicaemia, the case would fall under Section 304 Part I IPC. In the present case, though the deceased died due to septicaemia, however, it is required to be noted that he died while taking treatment in the hospital and that too he died within three days from the date of occurrence of the incident. Therefore, on facts, the said decision shall not be applicable.
>
> **14.** However, at the same time, it is also required to be noted that the deceased was admitted to the hospital after 24 hours and thereafter he died within three days due to septicaemia. If he was given the treatment immediately, the result might have been different. In any case, as observed hereinabove, there was no premeditation on the part of the accused; the accused did not carry any weapon; quarrel started all of a sudden and that the accused pushed the

> deceased and stood on the abdomen and therefore, as observed hereinabove, the case would fall under Exception 4 to Section 300 IPC and neither Clause 3 of Section 300 nor Clause 4 of Section 300 shall be attracted. Therefore, as observed hereinabove, at the most, the accused can be said to have committed the offence under Section 304 Part I IPC.

64. Thus, where the injuries caused to the deceased are sufficient in ordinary course of nature to cause death, then the defence of medical negligence would not be available to the accused. In the present case, the deceased was burnt alive after pouring Kerosene Oil on her. She was immediately hospitalized and her treatment started. Merely because She survived for next 17 days, would not mean that the act of the Appellant Santi Bai would not fall under Section 302 of IPC.

Whether the remaining Appellants namely Susheela Bai @ Halki, Rajaram, Ramdayal @ Veer Singh, Ram Singh @ Halke and Kamla bai have committed an offence under Section 498-A of IPC or not?

65. It is submitted by the Counsel for the Appellants that since, the allegations made by the injured Pushpa bai in her Dying Declaration, Ex. P.11 regarding harassment and demand of dowry are not the circumstances of transaction which caused death, therefore, that part of Dying Declaration, Ex. P.11 is not admissible.

66. Heard the Learned Counsel for the Appellants.

67. Section 32 of Evidence Act, reads as under :

> **32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—**

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) **When it relates to cause of death.**—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) **Or is made in course of business.**—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) **Or against interest of maker.**—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) **Or gives opinion as to public right or custom, or matters of general interest.**—When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) **Or relates to existence of relationship.**—When the statement relates to the existence of any relationship [1][by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute

was raised.

(6) **Or is made in will or deed relating to family affairs.**—When the statement relates to the existence of any relationship [3][by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) **Or in document relating to transaction mentioned in Section 13, clause (*a*).**—When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, clause (*a*).

(8) **Or is made by several persons and expresses feelings relevant to matter in question.**—When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

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

69. If the Dying Declaration, Ex. P.11 is considered then it is clear that She has specifically stated about the ill-treatment and cruelty by other Appellants. It is not the case of the injured/deceased in her Dying Declaration, Ex. P.11, that She was burnt alive by the Appellant Santi Bai and Co-accused Kiran Bai (Absconding) on account of any other reason. Thus, the Second Part of the Dying

Declaration, Ex. P.11 in which She had levelled allegations of cruelty, ill-treatment and demand of dowry is admissible being one of the circumstance of the transaction which resulted in her death.

70. No other argument is advanced by the Counsel for the parties.

71. Accordingly, the conviction of the Appellant Santi Bai in Cr.A. No. 245/2011 for offence under Section 302 and 498-A of IPC is **upheld.** Similarly, the conviction of remaining Appellants namely, Susheela Bai @ Halki, Rajaram, Ramdayal @ Veer Singh, Ram Singh @ Halke and Kamla Bai for offence under Section 498-A of IPC is also **upheld.**

72. Since, the minimum sentence for offence under Section 302 of IPC is Life Imprisonment, therefore, the sentence of Life Imprisonment awarded by the Trial Court to Appellant Santi Bai for offence under Section 302 of IPC doesnot call for any interference. Similarly, the sentence of Rigorous Imprisonment of 2 years and fine of Rs. 3,000/- awarded to the Appellants for offence under Section 498-A of IPC is also affirmed as it doesnot call for any interference.

73. Ex-Consequenti, the Judgment and Sentence dated 7-2-2011 passed by 1st Additional Sessions Judge, Ashoknagar, in S.T. No.227/2009 (Cr.A. No. 148/2011 and 245/2011) as well as Judgment and Sentence dated 11-2-2016 passed by 1st Additional Sessions Judge, Ashoknagar, in S.T. No. 227/2009 (Cr.A. No. 185/2016) are hereby **Affirmed.**

74. The Appellants **Susheela Bai @ Halki, Rajaram, Ramdayal**

@ Veer Singh, Ram Singh @ Halke and **Kamla Bai** are on bail. Their Bail bonds are cancelled. They are directed to immediately surrender before the Trial Court by 30th of April 2022 for undergoing the remaining Jail Sentence. The Appellant **Santi Bai** is in jail. She shall undergo the remaining jail Sentence.

75. The office is directed to immediately supply a copy of this judgment to the Appellants, free of Cost.

76. The record of the Trial Court be sent back for necessary information and compliance.

77. The Cr.A. No. 148/2011 (Rajaram, Ram Dayal @ Veer Singh, Ram Singh @ Halke, Kamla Bai), Cr.A. No. 245/2011 (Santi Bai) and Cr.A. No. 185/2016 (Susheela Bai @ Halki) fail and are hereby **Dismissed.**

(G.S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge