**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 07th OF JULY, 2022

CRIMINAL APPEAL NO.568 of 2011

Between:-

AJJU ALIAS AJAY, S/O SARNAM SINGH TOMAR; AGE – 21 YEARS ; R/O – JOSHI MOHALLA ITAWA ROAD BHIND DISTRICT BHIND, (MADHYA PRADESH).

…....APPELLANT

(BY SHRI VINAY KUMAR – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH AARKSHI KENDRA THANA DEHAT KOTWALI BHIND DISTRICT BHIND (MADHYA PRADESH)

…....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.717 of 2011

Between:-

RAGHVENDRA SINGH CHAUHAN

ALIAS LALA, AGE – 27 YEARS, S/O SUMAN SINGH CHAUHAN, OCCUPATION – AGRICULTURIST, R/O – RANIPURA, POLICE STATION PHOOPH, AT PRESENT R/O- SEVA NAGAR, BHIND (DISTRICT - BHIND) MADHYA PRADESH.

…....APPELLANT

(BY SHRI SUSHIL GOSWAMI – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH INCHARGE OFFICER POLICE STATION – DEHAT, BHIND (DISTRICT - BHIND) MADHYA PRADESH.

…....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.718 of 2011

Between:-

SOURABH SINGH, AGE- 21 YEARS, S/O SHRI CHANDAN SINGH, OCCUPATION- AGRICULTURIST, R/O- RANIPURA TAAL, AT PRESENT R/O- SEVA NAGAR, ITAWA ROAD, BHIND (DISTRICT- BHIND) MADHYA PRADESH.

…....APPELLANT

(BY SHRI VINAY KUMAR – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH INCHARGE OFFICER POLICE STATION – DEHAT, BHIND (DISTRICT - BHIND) MADHYA PRADESH.

……..RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

Reserved on : 22nd June, 2022
Delivered on : 07th of July, 2022

This appeal coming on for final hearing this day, ***Hon'ble Shri Justice G.S. Ahluwalia,*** *passed the following:*

JUDGMENT

1. By this common judgment, Cr.A. No.568 of 2011 filed by Ajju @ Ajay, Cr.A. No.717 of 2011 filed by Raghvendra Singh Chauhan and Cr.A. No.718 of 2011 filed by Saurabh Singh shall be decided.

2. These Criminal Appeals have been filed under Section 374 of Cr.P.C. against he Judgment and Sentence dated 01-7-2011 passed by 3rd Additional Sessions Judge, Bhind in S.T. No.263 of 2010 by which the Appellants have been convicted for the following offences :

Appellants	**Conviction under Section**	**Sentence**
All Appellants	302 of IPC	Life Imprisonment and fine of Rs. 200/- in default 7 days R.I.

3. It is not out of place to mention here that earlier the Appellant Saurabh Singh was arrested whereas Appellants Ajju @ Ajay and Raghvendra Singh Chauhan were absconding. The Appellants Ajju @

Ajay and Raghvendra Singh Chauhan were arrested at a later stage and by that time, the trial of the co-accused Saurabh Singh had reached to an advance stage. Therefore, the Trial Court by order dated 3-2-2011 directed that Ajju @ Ajay and Raghvendra Singh Chauhan shall be tried separately. However, all the Appellants have been convicted by two separate judgments passed on the same day. Since, the evidence in respect of Raghvendra Singh Chauhan and Ajju @ Ajay has been recorded separately, therefore, the evidence in the case shall be considered in the light of the judgment passed by the Supreme Court in the case of **A.T. Mydeen Vs. The Asstt. Commissioner,** decided on **29-10-2021** in **Cr.A. No. 1306 of 2021.**

4. The necessary facts for disposal of the present appeal in short are on 16-6-2009, an information was received from Distt. Hospital, Bhind that one lady namely Sadhana wife of Jagveer Singh Bhadoria has been brought in a burnt condition. Accordingly, the dying declaration of the patient was recorded. Spot map was prepared. Various articles were seized from the Spot. The deceased Sadhana Singh died on 21-6-2009 during her treatment. The police recorded the statements of the witnesses. Arrested the Appellants and after completing the investigation, filed the charge sheet for offence under Sections 302, 34 of IPC.

5. The Trial Court by order dated 11-10-2010 framed charges under Sections 302 or in the alternative 302/34 of IPC against the Appellant Saurabh Singh and by order dated 3-2-2011 framed charges under Section 302 or in the alternative 302/34 of IPC against the Appellant Ajju @ Ajay and Raghvendra Singh Chauhan.

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

7. The prosecution examined Narendra Singh Kushwah (P.W.1), Kamla (P.W.2), Rajkumari @ Shashi (P.W.3), Jagveer Singh (P.W.4), P.S. Parmar (P.W.5), Dr. J.P.S. Kushwaha (P.W.6), Kaptan Singh (P.W.7), Vishwanath Upadhyaya (P.W.8), B.L.Tyagi (P.W.9), Dr. Ajay Gupta (P.W.10), Abhilakh Singh (P.W.11), Ajay Singh (P.W.12), R.P. Sharma (P.W. 13) and Navneet Bhasin (P.W.14) to prove the guilt of the Appellant Saurabh Singh.

8. The Appellant Saurabh Singh examined Firoj Khan (D.W.1), Sobha Singh (D.W.2), Rajkumari (D.W.3), Punu Khan (D.W.4) and Ajay Tomar (D.W.5) in his defence.

9. Similarly, in order to prove the guilt of the Appellants Ajju @ Ajay and Raghvendra Singh Chauhan, prosecution examined Navneet Bhasin (P.W.1), P.S. Parmar (P.W.2), Dr. J.P.S. Kushwaha (P.W.3), Kaptan Singh (P.W.4), Vishwanath Upadhyaya (P.W.5), Jagveer Singh (P.W.6), Ajay Singh (P.W.7), A.S.Tomar (P.W.8), Dr. Ajay Gupta (P.W.9), B.L. Tyagi (P.W.10), and R.P. Sharma (P.W.13).

10. The Appellants Ajju @ Ajay and Raghvendra Singh Chauhan examined Firoj Khan (D.W.1), Sobha Singh (D.W.2), Rajkumari (D.W.3), Punu Khan (D.W.4) and Ajay Tomar (D.W.5).

11. The Trial Court by passing two different judgments on the same day, convicted and sentenced the Appellants for the offence mentioned above.

12. Challenging the judgment and sentence passed by the Court below, it is submitted by the Counsel for the Appellants that the case is based on the dying declaration of the deceased. The same is not reliable and trustworthy. The deceased had suffered 100% burn marks, therefore, She

was not in a fit state of mind. Her death was not due to burn injuries, but the cause of her death was septicemia.

13. Per contra, the Counsel for the State has supported the findings recorded by the Trial Court.

14. Heard the learned Counsel for the Parties

15. Before adverting to the facts of the case, this Court would like to consider as to whether the death of the deceased was homicidal in nature or not?

16. Dr. J.P. Kushwaha (P.W.6) [in the trial of Saurabh Singh] and (P.W.3) [in the trial of Raghvendra Singh Chauhan and Ajju @ Ajay] had medically examined the deceased at the time of her admission in the hospital and found following injuries on her body :

> Superficial to deep burn all over the body from head to toe, almost 100%, smell of kerosene oil present all over the body. Pulse feeble fast, BP 60,P/R 20 per minute. Admitted in District Hospital for treatment.
>
> The MLC is Ex. P. 9.

16.1 He was cross examined and in cross-examination, he stated that the injured with 100% burns cannot walk and cannot speak. However, he explained that if the patient has not suffered deep burns, then She can speak also. In case of deep burns, She may feel difficulty in speaking. In cross-examination by Raghvenda Singh Chauhan and Ajju @ Ajay, he further stated that at the time of her examination, She was not fully conscious, however, he was not in a position to say that this condition continued for how much period.

17. Thus, it is clear that the deceased Sadhana was admitted in the hospital with 100% superficial and deep burns.

18. Dr. Ajay Gupta (P.W.10) [in trial of Saurabh Singh] and (P.W.9) [in the trial of Raghvenda Singh Chauhan and Ajju @ Ajay] had conducted post-mortem of the dead body of Sadhana and found following injuries on her body :

> Dead body of an average built female aged about 33 years, lying on postmortem table in supine position. Bandage covering trunk, lower limbs except side sole and upper limbs except palm.
> Eyes closed. Cornea hazy, mouth open.
> Venesection wound evident over left leg lowerend medically 3 stitches evident.
> Rigormortis present all over the body and post mortem staining is difficult to appreciate because of of burn. Signing of frontal scalp hair. Eyebrow and eyelashes evident.
> Whole left thumb blue ink stained.
> 2nd to 3rd degree foul smelling old infected burn were evident over the body is as follows:
> whole body burn except scalp, palms and sole partially burn. Waist line umbilical area, injuinal area and femitalia health. Face,chest, abdomen, upper limb, and lower limb burnt. 90% of body surface area burnt.
> Burn wound is about 1 week old, infected, foul smelling involves 90% of body surface area caused by flame or fire. Burn wound is sufficient to cause death in ordinary course of nature.
> Death was due to cardio-respiratory failure as a result of burn and its complications.
> Duration of death is within 6 to 24 hours since post-mortem examination.
> Nature of death should be decided on the basis of circumstantial evidence.
> The Post-mortem report is Ex.P.13.

19. Dr. Ajay Gupta (P.W.10)/(P.W.9) was cross-examined and in cross-examination, he stated that it is incorrect to say that a lady with 90% burns cannot speak. However, he clarified that he cannot give clear

opinion in this regard. He denied that the burns sustained by the deceased can be suicidal. He explained that generally in case of suicide, kerosene oil is poured on the head. However, in reply to a question that in case if the patient pours kerosene oil on her remaining part of the body, then whether she can sustain the injuries or not, then it was stated by the witness that it is possible.

20. Thus, whether the death of the deceased was homicidal, suicidal or accidental in nature shall be decided after considering the evidence led by the prosecution.

21. Since, evidence has been led separately in the Trial Court of Saurabh Singh and the Trial of Raghvendra Singh Chauhan and Ajju @ Ajay, therefore, in the light of judgment passed in the case of **A.T. Mydeen (Supra)** the evidence in the Trial of Appellants shall be considered separately.

Appellant Saurabh Singh

22. Narendra Singh Kushwaha (P.W.1), Kamla (P.W.2) have turned hostile in toto.

23. Rajkumari (P.W.3) has also turned hostile and expressed her ignorance about the incident, but in cross-examination by the Public Prosecutor, She admitted that the deceased as well as the Appellants are her neighbour, and about 15 days back, they had some quarrel with the deceased.

24. Jagveer Singh (P.W.4), is the husband of the deceased. He has stated that he is a Conductor. He was out of station and got an information, that his wife has burnt. He was told by his wife in the hospital, that She has been burnt by Ajju, Saurabh, Lalla and Sunny. She

had further told that they entered inside the house and after catching hold of her, She was burnt after pouring kerosene oil. However, stated that role of each accused was not told. He further stated that his brother has a jeep. On a dispute over the question of jeep of his brother Rajvir, the Appellants had abused his wife and on that enmity, She was burnt. The age of his child is 14-15 years. His son Sanjay was not in the house and had gone for grazing goat. Safina Form, Ex. P.5 and Naksha Panchayatnama, Ex. P.6 contain his signatures. This witness was cross-examined.

25. In cross-examination, he specifically stated that his wife was in a position to speak and in fact she was speaking. She had informed that She was burnt by the Appellants. He further denied that false report was lodged after due deliberations. He denied that he used to quarrel with his wife. He denied that Saurabh was not present on the spot and was in the Court in connection with some other case. He denied that in order to save himself, he had cooked up a false story. His wife died in the night of 21 at about 12-1:00 A.M.

26. Thus, it is clear that Jagveer Singh (P.W.4) is a witness of oral dying declaration, and the Appellant could not point out anything substantial from the cross-examination of this witness, which may make his evidence unreliable or doubtful.

27. P.S. Parmar (P.W.5) is A.S.I., who had seized one bottle containing kerosene oil, burnt cloths of the injured, burnt match sticks and two pieces of bangles of red colour from the spot vide seizure memo Ex. P.7. The seizure was made on 16-6-2009 i.e., the date of incident. In cross-examination, he stated that by the time of seizure of articles, Merg was

not registered and he had gone to protect the scene of occurrence. [It is not out of place to mention here that since, the patient was alive on 16-6-2009, therefore, there was no question of registration of merg]. He further stated that all the articles were seized from the house of the injured. The bottle was of 750 m.l..

28. Kaptan Singh (P.W.7) is the seizure witness of articles from the spot, Ex. P.7.

29. Vishwanath Upadhyaya (P.W.8) has stated that on 1-7-2009, he had brought the merg information, regarding death of deceased from Police Station Kampoo, Distt. Gwalior to Police Station Dehat Bhind and merg enquiry no.56/09 was registered.

30. B.L. Tyagi (P.W.9) has stated that during investigation, he had recorded the statements of Narendra Singh, Rajkumari, Jagveer Singh, Sanjay, Ajay Kumar. Copy of *Jarayam* is Ex. P.11. The certified copy of the dying declaration of the deceased is Ex. P.12. In cross-examination, he stated that on 5-7-2010, he had received the case diary. Incident had taken place on 16-6-2009. He received the investigation after one year of incident. During the period of one year, only merg enquiry was conducted. Merg enquiry was done by A.S.I. Bhure Khan and A.S.I. Parmar. The delay in investigation took place for the reason that merg enquiry was pending and the case diary was also sent to High Court.

31. Abhilakh Singh (P.W.11) has stated that spot map Ex. P.2 was prepared. FIR is Ex. P.14. He had arrested the Appellant Saurabh vide arrest memo Ex. P. 15. He was cross-examined. In cross-examination, he stated that the FIR was registered on the basis of Merg enquiry. Merg enquiry report has not been filed. FIR, Ex. P.14 was registered on the

basis of intimation. He received the diary on 4-6-2010. He denied that there is no merg enquiry report in the case diary. He stated that during investigation, he did not get any application from the parents of the deceased that the husband of the deceased used to harass her. When he went to the spot, the husband of the deceased was not there. He did not find any remains of burning.[It is not out of place to mention here that this witness had got the case diary after one year of incident].

32. Ajay Singh (P.W.12) has turned hostile and has not supported the prosecution case.

33. R.P. Sharma (P.W.13) had issued safina form, Ex. P.5. Naksha Panchayatnama is Ex. P.6. Application for post-mortem is Ex. P.13. By seizure memo, Ex. P.16, Viscera, scalp hair, specimen seal etc. were seized.

34. Navneet Bhasin (P.W.14) was posted as probationer Naib-Tahsildar. He had recorded the dying declaration of the deceased. The dying declaration was written in the presence of Dr. J.P.S. Kushwaha after obtaining fitness certificate from him. The dying declaration was written in question-answer form. He stated that the patient disclosed her name as Sadhana. She narrated that her husband and son reside in the same house. She stated that boys residing in the same colony had entered inside her house and when She objected to it, then She was put on fire. On query, She disclosed the names of the assailants as Saurabh Chauhan, Raghvendra Chauhan, Sunny Chauhan and Ajju Chauhan. She also stated that Raghvendra is also known as Lalla. She also narrated that She was all alone in the house. She further stated that dispute was already going on with the Appellants and about 8 days back they had threatened her

also. The dying declaration was signed by this witness and Dr. J.P.S. Kushwaha. The dying declaration is Ex. P.12. This witness was cross-examined.

35. In cross-examination, he stated that during his posting, he had recorded 10-15 dying declarations. He had received the information about 20-30 minutes prior to recording dying declaration. He was unable to state as to whether the husband or any other family member of the patient was present at the time of recording of dying declaration or not. He further stated that her thumb was not burnt. The dying declaration, Ex. P.12 is in his handwriting. The patient was in surgical ward and not in burn ward. He also admitted that the addresses of Ajju and Saurabh are not mentioned in dying declaration. He also stated that She had stated that the boys were the resident of same colony. He denied that she was not in a position to speak and understand. He denied that dying declaration, Ex. P.12 was falsely prepared.

36. The Appellant Saurabh examined five witnesses in his defence. Firoz Khan (D.W.1) has stated that the Appellants had come to Court on the date of incident. He had also accompanied the deceased to hospital. Her condition was poor and was not speaking. He had given his statement to C.S.P. which is Ex.D.1. In cross-examination, he stated that he has his own house in Sewanagar, Distt. Bhind. He denied that on 16-6-2009, he had gone for labour purposes, but claimed that he was in his house. He admitted that he had not seen that the deceased had set herself on fire after pouring kerosene oil on her. He claimed that he had heard from the neighbours. He stated that in his police statement, Ex. D.1 he had not informed that he had gone out, but could not explain as to how

said fact was mentioned. He went to hospital at about 4 P.M. Since, the neighbors were coming, therefore, he stayed there for 3 hours. He admitted that he has visiting terms with appellant Saurabh.

37. Sobha Singh (D.W.2) is the father-in-law of the deceased. He was not present on the spot at the time of incident. He has stated that he received an information that Sadhana has got burnt, therefore, went to hospital. The deceased was not in a position to speak and was also not speaking. This witness was cross-examined. In cross-examination, he stated that he reached hospital at about 12 – 2 P.M. He stayed there for 30 minutes and, thereafter, went back to his home. He did not accompany the deceased to Gwalior. When he reached hospital, the deceased was in the ward, but was unable to disclose the number of ward. He also stated that police personnel and Doctors were there. He stated that his son and deceased Sadhana were residing in Bhind, whereas he was residing in the village. He did not try to find out as to how, Sadhana got burnt. He denied that he was not on talking terms with the deceased. He further stated that Sadhana had not spoken in his presence and he does not know as to whether She had spoken in his absence or not.

38. The dying declaration, Ex. P.12 was recorded at 4.55 P.M., and according to this witness, he reached hospital at about 12-2:00 P.M and stayed there only for 30 minutes. In view of his admission, it is clear that the appellant would not get advantage of the evidence of this witness, as he was not present in the hospital at the time of recording of dying declaration.

39. Rajkumari (D.W.3) is the sister of the deceased. She has stated that the deceased was shifted to hospital. Neither this witness talked to her

nor the deceased talked to this witness. When this witness was asked as to whether the deceased was in a position to speak or not, then She replied that She had not spoken. Thus, it is clear that her evidence is not to the effect that the deceased was either unconscious or was not in a position to speak. In cross-examination, she stated that after She shifted Sadhana to hospital, police personnel and Doctors had arrived and thereafter, She was not allowed to stay with the injured. She was sitting in the gallery. She expressed her ignorance as to whether the deceased had spoken during her treatment or not?

40. Thus, it is clear that this witness was not with the injured in the hospital and was sitting outside in the gallery. Therefore, it cannot be said that the deceased was not in a position to speak.

41. Punu Khan (D.W. 4) has stated that he has not seen the incident. He had not given the police statement, Ex. D.2 to the effect that the deceased had set herself on fire. Although this witness had spoken against the Appellant, but he was not declared hostile.

42. Ajay Tomar (D.W.5) has stated that one offence under Section 336 of IPC was registered against him on the report of Raju. Charge sheet was filed on 16-6-2009. He was granted bail on the same day vide Ex. D.4. The Appellants were also granted bail on the same day. He claimed that they came to Court at 12 P.M. and stayed there upto 4 P.M. This witness was cross-examined. In cross-examination, he denied that he had come to the Court at 11 A.M. and thereafter went back. He admitted that in order sheet, Ex. D.4, the timings of passing the order is not mentioned.

43. The important aspect of the matter is that if an accused wants to establish his plea of alibi, then he has to prove that he could not have

reached to the spot as he was present somewhere else. In the present case, this witness has claimed that the Appellants and this witness had gone to Bhind Court and the incident also took place in the city of Bhind. Thus, it was necessary to prove that at the time of incident, the Appellants were present in the Court. However, this witness could not establish the time. Thus, it is held that the appellant has failed to prove his plea of alibi.

Appellants Raghvendra Singh Chauhan and Ajju @ Ajay

44. Navneet Bhasin (P.W.1) was posted as probationer Naib-Tahsildar. He had recorded the dying declaration of the deceased. The dying declaration was written in the presence of Dr. J.P.S. Kushwaha after obtaining fitness certificate from him. The dying declaration was written in question-answer form. He stated that the patient disclosed her name as Sadhana. She narrated that her husband and son reside in the same house. She stated that boys residing in the same colony had entered inside her house and when She objected to it, then She was put on fire. On query, She disclosed the names of the assailants as Saurabh Chauhan, Raghvendra Chauhan, Sunny Chauhan and Ajju Chauhan. She also stated that Raghvendra is also known as Lalla. She also narrated that She was all alone in the house. She further stated that dispute was already going on with the Appellants and about 8 days back, they had threatened her also. The dying declaration was signed by this witness and Dr. J.P.S. Kushwaha. The dying declaration is Ex. P.12. This witness was cross-examined.

45. In cross-examination, he stated that during his posting, he had recorded 10-15 dying declarations. He had received the information about 20-30 minutes prior to recording of dying declaration. He was

unable to state as to whether the husband or any other family member of the patient was present at the time of recording of dying declaration or not. He further stated that her thumb was not burnt. The dying declaration, Ex. P.12 is in his handwriting. The patient was in surgical ward and not in burn ward. He also admitted that the addresses of Ajju and Saurabh are not mentioned in dying declaration. He also stated that She had stated that the boys were the resident of same colony. He denied that she was not in a position to speak and understand. He denied that dying declaration, Ex. P.12 was falsely prepared.

46. P. S. Parmar (P.W.2) is A.S.I., who had seized one bottle containing kerosene oil, burnt cloths of the injured, burnt match sticks and two pieces of bangles of red colour from the spot vide seizure memo Ex. P.7. The seizure was made on 16-6-2009 i.e., the date of incident. In cross-examination, he stated that by the time of seizure of articles, Merg was not registered and he had gone to protect the scene of occurrence. [It is not out of place to mention here that since, the patient was alive on 16-6-2009, therefore, there was no question of registration of merg]. He further stated that all the articles were seized from the house of the injured. The bottle was of 750 m.l..

47. Dr. J.P.S. Kushwaha (P.W.3) has stated that on 16-6-2009, he was posted in Distt. Hospital, Bhind. He had examined the patient. She had extensive burn injuries. He sent the information to the police, Ex. P.8. Sadhana was medically examined on 16-6-2009 at 4:00 P.M. She was having 100% burn injuries. Smell of kerosene oil was present. Pulse rate was very feeble. Her blood pressure was 60. She was admitted in surgical ward of the hospital. M.L.C. is Ex. P.9. In cross-examination,

he stated that when he had treated the patient, She was not fully conscious.

48. Kaptan Singh (P.W.4) is the seizure witness of articles from the spot, Ex. P.7.

49. Vishwanath Upadhyaya (P.W.5) has stated that on 1-7-2009, he had brought the merg information, regarding death of deceased from Police Station Kampoo, Distt. Gwalior to Police Station Dehat Bhind and merg enquiry no.56/09 was registered.

50. Jagveer Singh (P.W.6) has stated he is a bus Conductor. He was out of station when he got an information, that his wife has burnt. He was told by his wife in the hospital that She was burnt by Ajju, Ajay, Lalla and Sunny after entering inside the house. However, did not disclose the role of each and every accused. He further stated that his brother has a jeep. On a dispute over the question of jeep of his brother Rajvir, the Appellants had abused his wife and on that enmity, She was burnt. The age of his child is 14-15 years. His son Sanjay was not in the house and had gone for grazing goat. Safina Form, Ex. P.5 and Naksha Panchayatnama, Ex. P.6 contain his signatures. This witness was cross-examined.

51. In cross-examination, he specifically stated that his wife was in a position to speak and in fact she was speaking. She had informed that She was burnt by the Appellants. He further denied that false report was lodged after due deliberations. He denied that he used to quarrel with his wife. He denied that Ajay was not present on the spot and was in the Court in connection with some other case. He denied that in order to save himself, he had cooked up a false story. His wife died in the night of 21

at about 12-1:00 A.M. He further stated that Ajay had gone to obtain his bail. He further stated that he does not know as to whether Raghvendra was on the spot or not as this witness was not present on the spot. He further stated that the mental condition of his wife was not stable for the last few days prior to the date of incident. He denied for want of knowledge that his wife had committed suicide by pouring kerosene oil on her.

52. Thus, it is clear that Jagveer Singh (P.W.6) is a witness of oral dying declaration, and the Appellant could not point out anything substantial from the cross-examination of this witness, which may make his evidence unreliable or doubtful.

53. Ajay Singh (P.W. 7) has not supported the prosecution case.

54. A.S. Tomar (P.W.8) has stated that he had prepared spot map, Ex. P.2. The FIR, Ex. P.14 was lodged. In cross-examination, he denied that the patient had informed him that She got burnt on her own. He also denied that the deceased was mentally unstable. He denied that the matter was registered on the orders of the D.G.P. He denied that some person having enmity with the Appellants had written to the D.G.P. The merg inquiry report was prepared on 4-6-2010, and this witness received the investigation on 4-6-2010. He did not receive any information that any application/complaint was ever made by the parents of the deceased regarding harassment by her husband.

55. Dr. Ajay Gupta (P.W.9) is the autopsy surgeon who had conducted post-mortem and his evidence has already been considered in the previous paragraphs.

56. B.L. Tyagi (P.W.10) has stated that he had recorded the statements

of Narendra Singh, Smt. Rajkumari @ Shashi, Jagdish Singh, Sanjay, Ajay Kumar Bhadoria. The certified copy of dying declaration of the deceased is Ex. P.12 and copy of Jarayam register is Ex. P.11. In cross-examination, he stated that he had received the investigation on 5-7-2010. He admitted that he got investigation after 1 year of incident. Merg enquiry was conducted by A.S.I. Bhure Khan and A.S.I. Parmar. The statements of witnesses were recorded belatedly because earlier investigation was being done by A.S.I. Tomar and thereafter, the case diary was in the High Court in connection with case of Saurabh.

57. R.P. Sharma (P.W.13) had issued safina form, Ex. P.5. Naksha Panchayatnama is Ex. P.6. Application for post-mortem is Ex. P.13A. By seizure memo, Ex. P.16, Viscera, scalp hair, specimen seal etc. were seized.

58. Firoz Khan (D.W.1) has stated that the husband of the deceased used to quarrel with the deceased. The deceased had committed suicide due to quarrel with her husband. Appellants had come to Court on the date of incident. He had also accompanied the deceased to hospital. Her condition was poor and was not speaking. He had given his statement to C.S.P. which is Ex.D.1. In cross-examination, he stated that he has his own house in Sewanagar, Distt. Bhind. He denied that on 16-6-2009, he had gone for labour purposes, but claimed that he was in his house. He admitted that he had not seen that the deceased had set herself on fire after pouring kerosene oil on her. He claimed that he had heard from the neighbours. He stated that in his police statement, Ex. D.1 he had not informed that he had gone out, but could not explain as to how said fact was mentioned. He went to hospital at about 4 P.M. Since, the neighbors

were coming therefore, he stayed there for 3 hours. He admitted that he has visiting terms with appellant Saurabh.

59. Sobha Singh (D.W.2) is the father-in-law of the deceased. He was not present on the spot at the time of incident. He has stated that he received an information that Sadhana has got burnt, therefore, went to hospital. The deceased was not in a position to speak and was also not speaking. This witness was cross-examined. In cross-examination, he stated that he reached hospital at about 12 – 2 P.M. He stayed there for 30 minutes and thereafter, went back to his home. He did not accompany the deceased to Gwalior. When he reached hospital, the deceased was in the ward, but was unable to disclose the number of ward. He also stated that police personnel and Doctors were there. He stated that his son and deceased Sadhana were residing in Bhind, whereas he was residing in the village. He did not try to find out as to how, Sadhana got burnt. He denied that he was not on talking terms with the deceased. He further stated that Sadhana had not spoken in his presence and he does not know as to whether She had spoken in his absence or not.

60. Rajkumari (D.W.3) is the sister of the deceased. She has stated that the deceased was shifted to hospital. Neither this witness talked to her nor the deceased talked to this witness. When this witness was asked as to whether the deceased was in a position to speak or not, then She replied that She had not spoken. Thus, it is clear that her evidence is not to the effect that the deceased was either unconscious or was not in a position to speak. In cross-examination, she stated that after She shifted Sadhana to hospital, police personnel and Doctors had arrived and thereafter, She was not allowed to stay with the injured. She was sitting

in the gallery. She expressed her ignorance as to whether the deceased had spoken during her treatment or not?

61. Thus, it is clear that this witness was not with the injured in the hospital and was sitting outside in the gallery. Therefore, it cannot be said that the deceased was not in a position to speak.

62. Punu Khan (D.W. 4) has stated that he has not seen the incident. He had not given the police statement, Ex. D.2 to the effect that the deceased had set herself on fire. Although this witness had spoken against the Appellant, but he was not declared hostile.

63. Ajay Tomar (D.W.5) has stated that one offence under Section 336 of IPC was registered against him on the report of Raju. Charge sheet was filed on 16-6-2009. He was granted bail on the same day vide Ex. D.4. The Appellants were also granted bail on the same day. He claimed that they came to Court at 12 P.M. and stayed there upto 4 P.M. This witness was cross-examined. In cross-examination, he denied that he had come to the Court at 11 A.M. and thereafter went back. He admitted that in order sheet, Ex. D.4, the timings of passing the order is not mentioned.

Plea of Alibi

64. It is well established principle of law that plea of alibi is required to be proved by the accused by leading cogent evidence. The Supreme Court in the case of **Jitender Kumar Vs. State of Haryana** reported in **(2012) 6 SCC 204** has held as under :

> Once PW 10 and PW 11 are believed and their statements are found to be trustworthy, as rightly dealt with by the courts below, then the plea of alibi raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable

probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. (Ref. *Sk. Sattar* v. *State of Maharashtra*.)

65. The Supreme Court in the case of **Om Prakash v. State of Rajasthan,** reported in **(2012) 5 SCC 201** has held as under :

> **32.** Drawing a parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi.

66. The Supreme Court in the case of **Jumni Vs. State of Haryana** reported in **(2014) 11 SCC 355** has held as under :

> **23.** On the standard of proof, it was held in *Mohinder Singh* v. *State* that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words: (*Dudh Nath case*, SCC p. 173, para 19)
>
> "*19*. … Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

67. Therefore, the burden heavily lies upon the accused to prove his plea of alibi to exclude the direct evidence regarding his presence on the place of incident. The Appellants have not proved that at what time, they

went to the Court and at what time, they came out of the Court premises. According to Ajay Tomar (D.W.5), they reached Court premises at 12 P.M., then it was obligatory on their part to prove that till what time, they remained in the Court premises. The incident in question took place some times at 3 P.M. The Court premises and the place of incident are situated in the same city. Anybody after furnishing his bail, can always commit an offence at a place situated in the same city. Thus, it was obligatory on the part of the Appellants to prove beyond reasonable doubt that they were present in the Court premises at the time of incident. Plea of alibi means that the presence of an accused is impossible at the place of occurrence. When the Appellants were in the same city, then even a time of 15-20 minutes will be sufficient for the accused to reach to the place of incident. Accordingly, this Court is of the considered opinion, that the Appellants have failed to prove their plea of alibi.

Motive

68. The deceased had specifically stated in her dying-declaration, Ex. P.12 that her quarrel with the Appellants was already going on. 8 days prior to the date of incident, threat was also given to them. Rajkumari (P.W.3) had turned hostile. But, in the Cross-examination by the Public Prosecutor, She admitted that about 15 days prior to the date of incident, the Appellants had a quarrel with the deceased.

69. The Appellants have relied upon the FIR which was lodged against them by Rajeev in crime No.234/09 at Police Station Dehat Distt.Bhind. This FIR was lodged on 3/6/2009. The allegations were that the jeep of Rajvir Singh was damaged by the Appellants except Raghvendra. Jagveer Singh (P.W.4)/(P.W.6) has also stated that on the question of causing

damage to the jeep of Rajvir Singh, dispute was going on with the Appellants. Even from the order-sheet of the concerning Magistrate, Ex. D4, it is clear that the charge sheet was filed against the Appellants except Raghvendra, on 16-6-2009 and the Appellants except Raghvendra were required to furnish bail. Therefore, it is clear that they must be aggrieved by the registration of a crime against them. Therefore, they had a strong motive to commit murder of Sadhana. Thus, it is clear that the prosecution has also proved the motive for committing offence.

Dying Declaration

70. Navneet Bhasin (P.W.14)/(P.W.1) is the Naib-Tahsildar who had recorded the dying declaration, Ex. P.12. He is an independent person having no grudge to grind against the Appellants. He has specifically stated that the patient/deceased was in a fit state of mind and had made a dying declaration, that all the four miscreants, i.e., the 3 Appellants and Sunny who was juvenile, entered inside the house and burnt her alive after pouring kerosene oil on her.

71. The Supreme Court in the case of **Kanti Lal Vs. State of Rajasthan** reported in **(2009) 12 SCC 498** has held as under :

> **32.** It is well settled that one of the important tests of the credibility of the dying declaration is that the person, who recorded it, must be satisfied that the deceased was in a fit state of mind. For placing implicit reliance on dying declaration, the court must be satisfied that the deceased was in a fit state of mind to narrate the correct facts of occurrence. If the capacity of the maker of the statement to narrate the facts is found to be impaired, such dying declaration should be rejected, as it is highly unsafe to place reliance on it. The dying declaration should be voluntary and should not be prompted and physical as well as mental fitness of the maker is

to be proved by the prosecution.

72. The Supreme Court in the case of **Laxmi Vs. Om Prakash** reported in **(2001) 6 SCC 118** has held as under :

> 1. "Nemo moriturus praesumitur mentire — no one at the point of death is presumed to lie. A man will not meet his Maker with a lie in his mouth" — is the philosophy in law underlying admittance in evidence of dying declaration.
>
> "A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration"
>
> is the statement of law summed up by this Court in *Kundula Bala Subrahmanyam* v. *State of A.P.* (SCC p. 697, para 18). The Court added — such a statement, called the dying declaration, is relevant and admissible in evidence "provided it has been made by the deceased while in a fit mental condition". The above statement of law, by way of a preamble to this judgment, has been necessitated as this appeal, putting in issue the acquittal of the accused-respondents from a charge under Sections 302/34 IPC, seeks reversal of the impugned judgment and invites this Court to record a finding of guilty based on the singular evidence of dying declaration made by the victim. The law is well settled: dying declaration is admissible in evidence. The admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not

excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming a safe basis for conviction. In the case at hand, the dying declarations are five. However, it is not the number of dying declarations which will weigh with the court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand, if every individual dying declaration consisting in a plurality is found to be infirm, the court would not be persuaded to act thereon merely because the dying declarations are more than one and apparently consistent.

* * * * *

29. A dying declaration not being a deposition in court, neither made on oath nor in the presence of the accused and therefore not tested by cross-examination is yet admissible in evidence as an exception to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. The weak points of a dying declaration serve to put the court on its guard while testing its reliability and impose on the court an obligation to closely scrutinise all the relevant attendant circumstances (see *Tapinder Singh* v. *State of Punjab*). One of the important tests of the reliability of the dying declaration is a finding arrived at by the court as to

satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded. The statement may be brief or longish. It is not the length of the statement but the fit state of mind of the victim to narrate the facts of occurrence which has relevance. If the court finds that the capacity of the maker of the statement to narrate the facts was impaired or the court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement the court may in the absence of corroborating evidence lending assurance to the contents of the declaration refuse to act on it. In *Bhagwan Das* v. *State of Rajasthan* the learned Sessions Judge found inter alia that it was improbable if the maker of the dying declaration was able to talk so as to make a statement. This Court while upholding the finding of the learned Sessions Judge held the dying declaration by itself insufficient for sustaining a conviction on a charge of murder. In *Kake Singh* v. *State of M.P.* the dying declaration was refused to be acted upon when there was no specific statement by the doctor that the deceased after being burnt was conscious or could have made a coherent statement. In *Darshan Singh* v. *State of Punjab* this Court found that the deceased could not possibly have been in a position to make any kind of intelligible statement and therefore said that the dying declaration could not be relied on for any purpose and had to be excluded from consideration. In *Mohar Singh* v. *State of Punjab* the dying declaration was recorded by the investigating officer. This Court excluded the same from consideration for failure of the investigating officer to get the dying declaration attested by the doctor who was alleged to be present in the hospital or anyone else present.

73. The Supreme Court in the case of **Ashabai Vs. State of Maharashtra** reported in **(2013) 2 SCC 224** has held as under :

15.....It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32(1) of

the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor is it required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other.

74. The Supreme Court in the case of **Sher Singh Vs. State of Punjab** reported in **(2008) 4 SCC 265** has held as under :

16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would 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 should ensure that the statement was not as a result of tutoring or prompting or a

> product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, 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 mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the 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 without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise.

75. Thus, if the person recording the dying declaration is satisfied with regard to mental fitness of the maker of dying declaration, and the dying declaration qualifies all the standards to rule out the tutoring or unfitness of mind, then the said dying-declaration can be a sole evidence for recording conviction.

76. It is well established principle of law that if dying declaration is found to be reliable and trustworthy, then the same can be sole basis for conviction.

77. The Supreme Court in the case of **Jagbir Singh Vs. State (NCT of Delhi)** reported in **(2019) 8 SCC 779** has held as under :

> **31.** A survey of the decisions would show that the principles can be culled out as follows:
>
> **31.1.**(*i*) Conviction of a person can be made solely on the basis of a dying declaration which inspires confidence of the court;

31.2.(*ii*) If there is nothing suspicious about the declaration, no corroboration may be necessary;

31.3.(*iii*) No doubt, the court must be satisfied that there is no tutoring or prompting;

31.4.(*iv*) The court must also analyse and come to the conclusion that imagination of the deceased was not at play in making the declaration. In this regard, the court must look to the entirety of the language of the dying declaration;

31.5.(*v*) Considering material before it, both in the form of oral and documentary evidence, the court must be satisfied that the version is compatible with the reality and the truth as can be gleaned from the facts established;

31.6.(*vi*) However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.

31.7.(*vii*) In such cases, where the inconsistencies go to some matter of detail or description but are incriminatory in nature as far as the accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

31.8*.(*viii*) The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In one dying declaration, the accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two.

In the third scenario, what is the duty of the court? Should the court, without looking into anything else, conclude that in

view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon?

78. The Supreme Court in the case of **Vikas Vs. State of Maharashtra** reported in **(2008) 2 SCC 516** has held as under :

31. The principle underlying admissibility of dying declaration is reflected in the well-known legal maxim: *nemo moriturus praesumitur mentire* i.e. a man will not meet his Maker with a lie in his mouth. A dying man is face to face with his Maker without any motive for telling a lie.

32. "Truth" said Mathew Arnold, "sits upon the lips of a dying man".

33. Shakespeare, great writer of the sixteenth century, through one of his characters explained the basic philosophy thus:

"Have I not hideous death within my view,
Retaining but a quantity of life,
Which bleeds away, even as a form of wax,
Resolveth from his figure, against the fire?
What in the world should make me now deceive,
Since I must lose the use of all deceit?
Why should I then be false, since it is true
That I must die here and live hence by truth?"

(*King John*, Act V, Scene IV[*])

34. The great poet also said at another place:

"Where words are scarce, They are seldom spent in vain; They breathe the truth, That breathe their words in pain."

(*Richard II*)

35. Clause (1) of Section 32 of the Act has been enacted by the legislature advisedly as a matter of necessity as an exception to the general rule that "hearsay evidence" is "no evidence" and the evidence which cannot be tested by cross-examination of a

witness is not admissible in a court of law. But the purpose of cross-examination is to test the veracity of the statement made by a witness.

The requirement of administering oath and cross-examination of a maker of a statement can be dispensed with considering the situation in which such statement is made, namely, at a time when the person making the statement is almost dying. A man on the deathbed will not tell lies. It has been said that when a person is facing imminent death, when even a shadow of continuing in this world is practically over, every motive of falsehood is vanished. The mind is changed (*sic* charged) by most powerful ethical and moral considerations to speak truth and truth only. Great solemnity and sanctity, therefore, is attached to the words of a dying man. A person on the verge of permanent departure from his earthly world is not likely to indulge into falsehood or to concoct a case against an innocent person, because he is answerable to his Maker for his act. Moreover, if the dying declaration is excluded from admissibility of evidence, it may result in miscarriage of justice inasmuch as in a given case, the victim may be the only eyewitness of a serious crime. Exclusion of his statement will leave the court with no evidence whatsoever and a culprit may go unpunished causing miscarriage of justice.

79. The Supreme Court in the case of **Muthu Kutty Vs. State** reported in **(2005) 9 SCC 113** has held as under :

15. 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 the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot

be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben* v. *State of Gujarat*: (SCC pp. 480-81, paras 18-19)

(*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*[4] 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 deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness 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*.)

16. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. 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. 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 basis of conviction, even if there is no corroboration. (See *Gangotri Singh* v. *State of U.P.*, *Goverdhan Raoji Ghyare* v. *State of Maharashtra*, *Meesala Ramakrishan* v. *State of A.P.* and *State of Rajasthan* v. *Kishore*.)

There is no material to show that the dying declaration was result or product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility.

80. It is next contended by the Counsel for the Appellants that since, the deceased had sustained 90-100% burns, therefore, it was not possible for her to make any dying-declaration or it cannot be said that She was in a fit state of mind.

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

82. The Supreme Court in the case of **Ramesh Vs. State of Haryana**

reported in **(2017) 1 SCC 529** has held as under :

> 68. **31.** Law on the admissibility of the dying declarations is well settled. In *Jai Karan* v. *State (NCT of Delhi)*, this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard-and-fast rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement (see *Rambai* v. *State of Chhattisgarh*).
>
> 69. **32.** It is immaterial to whom the declaration is made. The declaration may be made to a Magistrate, to a police officer, a public servant or a private person. It may be made before the doctor; indeed, he would be the best person to opine about the fitness of the dying man to make the statement, and to record the statement, where he found that life was fast ebbing out of the dying man and there was no time to call the

police or the Magistrate. In such a situation the doctor would be justified, rather duty-bound, to record the dying declaration of the dying man. At the same time, it also needs to be emphasised that in the instant case, dying declaration is recorded by a competent Magistrate who was having no animus with the accused persons. As held in *Khushal Rao* v. *State of Bombay*, this kind of dying declaration would stand on a much higher footing. After all, a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the court (see *Vikas* v. *State of Maharashtra*).

70. **33.** No doubt, the victim has been brought with 100% burn injuries. Notwithstanding, the doctor found that she was in a conscious state of mind and was competent to give her statement. Thus, the Magistrate had taken due precautions and, in fact, the medical officer remained present when the dying declaration was being recorded. Therefore, this dying declaration cannot be discarded merely going by the extent of burns with which she was suffering, particularly, when the defence has not been able to elicit anything from the cross-examination of the doctor that her mental faculties had totally impaired rendering her incapable of giving a statement.

83. 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.

84. 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. Thus, merely because the patient had suffered 100% burns would not mean that he/she was reduced to ashes. Therefore, it cannot be held that merely because a person has sustained 100% burn injuries, therefore, he cannot make a Dying Declaration.

Oral Dying Declaration

85. Jagveer Singh (P.W.4)/(P.W.6) is a witness of Oral Dying Declaration. Nothing could be elicited from the cross-examination of this witness which may dislodge his evidence that an Oral-Dying Declaration was made by the deceased to this witness. Thus, it is held that the prosecution has established that the deceased had made an oral dying-declaration to her husband/Jagveer Singh (P.W.4)/(P.W.6).

Nature of offence

86. It is submitted by the Counsel for the Appellants that since, the deceased died due to septicemic shock, therefore, the act of the Appellants would be an offence under Section 304-Part I of IPC.

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

88. The contention of the Counsel for the Appellant, that due to improper treatment, the deceased had died cannot be accepted. The deceased was burnt alive. The burn injuries were sufficient in the ordinary course of nature to cause death. The intention and knowledge behind burning the deceased alive is writ large. The accused cannot take the defence of medical negligence.

89. 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.

90. 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 of 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.

91. 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."

92. 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.

93. 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.

Delayed Investigation

94. It is submitted by the Counsel for the Appellants that since, the FIR was lodged after one year of the incident and the statements of the witnesses were also recorded thereafter, therefore, the prosecution story is liable to be rejected.

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

96. It is true that the incident took place on 16-6-2009 and the FIR was lodged on 4-6-2010 i.e., after one year. However, it has also come on record, that during this period the merg enquiry remained pending and even the case diary was sent to High Court.

97. The present case is not based on evidence of any witness, but it is primarily based on the dying declaration, Ex. P.12 of the deceased which was recorded promptly, by an Executive Magistrate.

98. It appears that the police officers, deliberately kept the merg enquiry pending for no good reason. The omissions and contaminated conduct of police officer cannot be a ground to acquit the accused persons, specifically when the guilt of the accused persons is otherwise proved beyond reasonable doubt.

99. The Supreme Court in the case of **Ambika Prasad Vs. State (Delhi Admn.)** reported in **(2000) 2 SCC 646** has held as under :

> **8**.....The High Court further stated that the prosecution case cannot be allowed to suffer at the hands of the investigating officer or agencies and the investigating officer cannot be permitted to hold the prosecution to ransom by his deliberate acts. Dealing with a case of negligence on the part of the investigating officer, this Court in *Karnel Singh* v. *State of M.P.* observed that in a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling into the hands of an erring investigating officer. Similarly, in *Ram Bihari Yadav* v. *State of Bihar* this Court observed: (SCC pp. 523-24, para 13)
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> > "In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice."
>
> **9.** Further in *Paras Yadav* v. *State of Bihar* this Court held: (SCC p. 130, para 8)
>
> > "It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not."
>
> **10.** Further, it is to be borne in mind that a criminal trial is meant for doing justice to the accused, the victim and the society so that law and order is maintained. Hence, as observed by this Court in *State of U.P.* v. *Anil Singh* it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.....

Conclusion

100. Considering the Dying Declaration, Oral Dying Declaration, Motive on the part of the Appellants to commit offence, this Court is of the considered opinion, that the death of Sadhana was homicidal in nature and the prosecution has established beyond reasonable doubt that the Appellants have killed the deceased Sadhana by setting her on fire by pouring kerosene oil on her. Accordingly, their conviction under Section 302 of IPC is hereby **affirmed.**

101. So for as the question of sentence is concerned, the minimum sentence is Life Imprisonment. Therefore, the sentence awarded by the Trial Court does not call for any interference.

102. Consequently, the judgments and sentence dated 01-7-2011 passed by 3rd Additional Sessions Judge, Bhind in S.T. No. 263 of 2010 are hereby **affirmed.**

103. The Appellants are in jail. They shall undergo the remaining Jail Sentence. Let a copy of this judgment be immediately provided to the Appellants, free of cost.

104. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance.

105. The Appeals fail and are hereby **Dismissed.**

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE