

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

2026:PHHC:037017-DB



(204)

**CRA-D-324-DB-2015 (O&M)
Decided on: 18.02.2026**

Inder Singh & another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MS.JUSTICE LISA GILL
HON'BLE MR.JUSTICE RAMESH CHANDER DIMRI**

Present:- Mr. Ashwani Talwar, Sr. Advocate with
Mr. Nikhil Sehrawat, Advocate
Ms.Vaishnavi Sikka Advocate
Mr. Deepak Goyat, Advocate
Mr. Sidheshwar Hans, Advocate, for appellants.

Mr. Dhruv Dayal, Addl. A.G., Haryana.

Ramesh Chander Dimri J. :

1. Through present appeal, appellants/accused (for brevity, ‘appellants’), challenge judgment of conviction dated 17.01.2015 and order of sentence dated 21.01.2015 passed in Sessions Case No.37 of 3.9.2010 titled as “*State Vs. Inder Singh & another*”, arising out of FIR No.379 dated 05.05.2010 under Sections 302, 307 and 34 of Indian Penal Code, 1860 (for short IPC), registered at Police Station Sadar Hisar, through which, appellants were convicted under Section 302 read with Section 34 IPC and were sentenced to undergo imprisonment for life each with a direction to pay a fine of Rs.5000/-

each. In default of payment of fine, they were sentenced to undergo simple imprisonment for a period of three months.

2. Prosecution case, as unfolded by police proceedings Ex.PF/1, is that on 05.05.2010, Ms.Shakuntala and Baby Anu, wife and daughter respectively of appellant Inder Singh, were admitted to General Hospital, Hisar with burn injuries. On intimation, police officials i.e. ASI Radhey Shyam PW6, collected Ruqa and MLRs. They obtained opinion of concerned Doctor about their fitness to make statement, who intimated that they have been referred to PGIMS, Rohtak but it came to light that they both are admitted to Soni Burn Hospital, Hisar. Police officials reached there and PW6, ASI Radhey Shyam obtained opinion of concerned Doctor about fitness of Shakuntala to make statement. She was declared fit for said purpose, Ex.PJ. In turn, police presented an application before Shri Tayyab Hussain, the then JMIC, Hisar for recording statement of Shakuntala. In turn, said Magistrate, PW3 reached Soni Burn Hospital, Hisar and recorded her statement, Ex.PF. In said statement, she inter-alia stated that she is 28 years old and has two daughters. On the night of 05.05.2010, she was sleeping with her daughter. Her mother-in-law was also sleeping at that time. All in her family were present in house at that time. Her husband and brother-in-law (Dewar) were present but her sister-in-law (Jethani) was not present. Someone poured kerosene on her. She knows nothing as to who poured kerosene on her. Her husband and mother-in-law brought her

to hospital. She was sleeping at that time. No one has put pressure on her. She has nothing more to say. After recording said statement, PW3 Magistrate attested it. PW1 Doctor of said hospital also certified that she remained fit in the process of recording her statement. PW3, Magistrate then appended his certificate at bottom of said statement that said Shakuntala remained in good/fit state of mind in the process of recording her statement and it is a true version of her statement. Nothing has been added to or subtracted therefrom. This statement was recorded on 05.05.2010 at 5.00 a.m. PW6, ASI Radhey Shyam, endorsed the same and sent it to Police Station Sadar Hisar for registration of a case. He then reached spot. On the basis of said statement, above-mentioned FIR was registered under Sections 307/34 IPC. PW11 SI Dharambir reached spot and took over investigation. He photographed it and got it demarcated. Its rough site-plan was prepared. Various articles were collected from the spot and taken into possession. Statements of witnesses were recorded.

3. On that very day, Anu aged about 8-9 months died at Soni Burn Hospital, Hisar. Inquest proceedings were conducted and autopsy on the dead body was done at General Hospital, Hisar. Her postmortem report Ex.PH was collected. Special report in the case was sent and Section 302 IPC was added. Statement of PW4, Dharambir, was recorded under Section 175 Cr.P.C. on 5-5-2010, on the basis of which appellants were arrested on 06.05.2010. Disclosure statements were suffered by appellants in police custody.

In consequence to such statements, they led police party to place of occurrence and got it demarcated. They were produced before Court on 07.05.2010 and were sent to judicial custody. On 06.05.2010, Shakuntala also succumbed to her burn injuries. Inquest proceedings under Section 174 Cr.P.C., in respect of her dead body were conducted and post-mortem examination on the same was also conducted from said hospital. Copy of her post-mortem report Ex.PH was collected.

4. On completion of investigation against appellants, final report dated 09.06.2010 under Section 173 Cr.P.C. was prepared and presented before concerned Area Magistrate, who after complying with provisions of Section 207 Cr.P.C., committed the case to Court of Sessions. Learned Sessions Court, after hearing prosecution and appellants on issue of framing of charges, vide order dated 03.09.2010, charge-sheeted appellants under Section 302 read with Section 34 IPC. They pleaded not guilty to charges and claimed trial.

5. In support of its case, prosecution examined 12 witnesses in trial. It also proved documents mentioned in impugned judgment.

6. In his statement under Section 313 Cr.P.C., appellant Inder Singh inter-alia stated that he is innocent and has been falsely implicated in the case. Shakuntala always remained in tension because of birth of two female children through surgery. Doctor advised her not to conceive again in hope of a male child as it will

cause danger to her life. Said appellant had deputed his mother to take care of Shakuntala and her babies in ailment. On the date of occurrence in question, he came late in evening as he was posted as Driver of a dumper which used to bring stones from Rajasthan and unload the same on a crusher at Khanak. Shakuntala told him at that time that she was putting kerosene in a stove arm-can. It spilled on her clothes. Anu got up in the meanwhile. Shakuntala took her in lap and started stove because of which fire broke-out. Said appellant immediately intimated father of Shakuntala. He met them in Hisar. He instigated Shakuntala so that he could get much more money from them. He tortured Shakuntala but she did not say anything against them. Appellant Amit, in his such statement, inter-alia stated that he is innocent and has been falsely implicated in the case. He was not present at home on that day. Police has falsely implicated him on false statement of complainant who wanted to extract money from him after death of Shakuntala.

7. In their defence, appellants examined 2 witnesses.

8. On completion of evidence of parties, Court of Shri Raj Kumar Yadav, then Learned Addl. Sessions Judge, Hisar, heard them on merits of the case. After such hearing, vide impugned judgment dated 17.01.2015 and order of sentence dated 21.01.2015, it convicted both appellants in above stated terms. Aggrieved of said conviction and sentence, appellants are in appeal before us.

9. We have heard Learned Senior Counsel for appellants as well as Learned Addl.A.G., Haryana, on merits of appeal. With their assistance, we have perused the record.

10. Learned Senior Counsel for appellants has argued that Shakuntala was under tension because of medical advice that if she conceives in future, it may endanger her life. Due to said tension, when she was in the process of putting kerosene in stove having Anu in her lap, she ignited stove because of which kerosene caught fire resulting in their burning. Immediately after occurrence, appellant Inder Singh took both of them to hospital with his mother and also intimated PW-4 Dharambir. Therefore subsequent conduct of appellants was of a prudent person. Prosecution itself alleges that appellant Inder Singh was living in the house in question with his two brothers. In her statement Ex.PF, Shakuntala states that she does not know as to who lit fire. PW3 Shri Tayyab Hussain deposes that Shakuntala was not in fit state of mind. Since second brother of appellant Inder Singh was not arrayed as an accused and was also not tried, it cannot be said that it was appellant Amit who put Shakuntala and Anu on fire. In view thereof, prosecution has falsely implicated appellants in the case in question. For said false implication, appellants deserve to be acquitted of charges framed against them in the case in question.

11. Per Contra, learned Addl.Advocate General, while referring to Trial Court record, has argued that statement Ex.PF of

Shakuntala was a dying declaration. It was on the basis of said dying declaration that FIR in question was registered. Contents of said dying declaration inspire confidence. When Shakuntala and Anu were put to fire, no one except appellants and their family members were present in the house as occurrence took place on intervening night of 04.05.2010 and 05.05.2010. May be that in dying declaration Ex.PF, Shakuntala stated that she does not know as to who lit fire but fact remains that appellants and their family members were the only ones present in the house and they are under a mandate to explain the occurrence in question. Said fact was in special knowledge of appellants but they have concealed it from Court, for which an adverse inference has to be drawn against them. Plea of false implication raised by appellants is not substantiated by evidence on record. Stand of Shakuntala being in tension for above mentioned reason, has not been proved on record and prosecution has proved offences in question against both appellants to hilt. Appellant Amit was living in same house. Second brother of appellant Inder Singh may not have been arrayed as an accused but this by itself cannot be of any benefit to appellants entitling them to acquittal. He has accordingly prayed for dismissal of appeal.

12. To prove its case, prosecution has led following evidence:-

12.1 PW1 Dr.Rajat Soni from Soni Burn Hospital, Hisar has inter alia deposed that on 05.05.2010 at about 3.30 a.m., Shakuntala

and Anu were admitted to his hospital with 100% and 90% burns respectively. He sent a ruqqa Ex.PA about their admission. Anu expired on that very date at 12.30 p.m. He accordingly sent a ruqqa Ex.PWA/1 to Police Station Civil Lines, Hisar. Bed head ticket of Anu is Ex.PA/2. Shakuntala died on 06.05.2010 in said hospital at 08.10 p.m. and he sent a ruqqa Ex.PA/3 on that very date to police. Original bed head ticket of Shakuntala is Ex.PA/4.

12.2 PW2 Subhash Chand is a draftsman. As per his deposition, on 27.05.2010, on asking of PW11 SI Dharambir, he visited place of occurrence and on pointing of said PW, prepared scaled plan Ex.PB with correct marginal notes.

12.3 PW3 Shri Tayyab Hussain, posted as JMIC, Hisar at that time, has inter alia deposed that on 05.05.2010, on an application moved by police, he recorded statement of Shakuntala under Section 164 Cr.P.C. who accepted same as correct and put her thumb impression thereon. He then gave certificate Ex.PG below said statement. It contains his signature.

12.4 PW4 Dharambir is father of Shakuntala. He inter-alia deposes that his daughter was married to appellant Inder Singh on 20.05.2003. He spent sufficient money on her marriage. After marriage, appellant Inder Singh, his brother Kuldeep and Amit as well as his mother Badamo started harassing his daughter for more dowry. They demanded motorcycle and money. She told said facts to said witness. From said wedlock, two daughters named Kannu

aged 5 years and Anu aged 3 years were born. At their birth he had given sufficient dowry and articles. Despite that, said persons were not happy. One year prior to occurrence, appellant Amit was married to one Kavita. Her parents gave sufficient dowry because of which said persons started harassing Shakuntala for motorcycle and cash. He paid Rs.20,000/- twice to Badamo (mother-in-law of deceased Shakuntala) and also gave a buffalo worth Rs.2,00,000/-. He assured said persons of rest of demanded dowry but they cautioned him that they will kill his daughter if motorcycle and money is not given. He took time one month from them. His son Rajbir left Shakuntala at her matrimonial home. On 04.05.2010, at about 1.00 a.m., he received a telephonic message from appellant Inder Singh etc. that they have burnt Shakuntala and Anu. If he can save them, he should come to General Hospital, Hisar. He, his son Ramesh and brother Rakesh then reached said hospital. Shakuntala and Anu stood admitted there. They were referred to PGIMS, Rohtak but he got them admitted to Soni Burn Hospital, Hisar. Anu died in said hospital. Magistrate recorded statement of Shakuntala. She died in said hospital at 8.00 p.m. Shakuntala disclosed to him that Badomo and Kavita caught her. Amit and Inder poured kerosene on her and Kuldeep set her afire but she did not disclose said facts to Magistrate as Inder Singh etc. had threatened her that if she does so, they will burn her other daughter also. Autopsy on dead body of Shakuntala and Anu was conducted in General Hospital, Hisar. Said

witness had disclosed all facts to police but it did not take action as per his statement. He does not know as to what police recorded in his statement. Police only challaned appellant Inder and Amit but not remaining ones.

12.5 PW5 Dr.Amit Kumar has inter-alia deposed that on 05.05.2010 at 4.45 p.m., he was posted in General Hospital, Hisar and conducted autopsy on dead body of Anu which was identified by PW4 Dharambir and another. He detected injuries mentioned in his affidavit Ex.PW5/A on her person. Her cause of death was burn and its complications which were ante mortem in nature and were sufficient to cause death in ordinary course of life. Her post-mortem report is Ex.PH.

12.6 PW6, ASI Radhey Sham, is first Investigating Officer and subsequently, remained associated in investigation. He inter-alia deposed that on 05.05.2010, he received a telephonic message from General Hospital, Hisar about admission of Shakuntala and Anu. He then with others reached said hospital and collected their ruqa as well as MLRs. He moved an application before concerned Medical Officer about fitness of Shakuntala and Anu to make statement who opined that they both had been referred to PGIMS, Rohtak. He then came to know that injured stood admitted to Soni Burn Hospital, Hisar. He accordingly reached there. On opinion of concerned Doctor about fitness of Shakuntala to make statement, he went to residence of Shri Tayyab Hussain, then learned JMIC, Hisar and

moved an application for recording her statement. Said Magistrate then accompanied him to Soni hospital and recorded the statement of Shakuntala. He appended his endorsement on this statement and sent it for registration of a case. He intimated SHO of said Police Station about facts of the case and then reached the spot. PW11, SI Dharambir and others also reached there. He then handed-over investigation to PW11. In his presence, PW11, SI Dharambir took in police possession a carpet having burnt pieces, one plastic tin half-filled with kerosene, few clothes in burnt condition and converted them to separate parcels. Same were taken into police possession. Said witness attested recovery memo in that regard. Thereafter, they received an intimation that Anu has expired. They accordingly reached Soni Burn Hospital, Hisar and conducted inquest proceedings. Her body was handed-over to him for autopsy. He got the same conducted from General Hospital, Hisar. After autopsy, relevant documents were handed-over to him which he handed-over to SI Dharambir.

12.7 PW7, Ramesh Kumar, inter-alia deposed that Shakuntala was his niece, married to appellant Inder. Dowry articles were given in her marriage. Two daughters were born therefrom. Her in-laws used to taunt and harass her for bringing less dowry. They demanded motorcycle and cash money. Shakuntala told said facts to them after returning from her matrimonial home. At the time of birth of children of Shakuntala, his cousin PW4 Dharambir had given

sufficient articles to appellant's family. However, they were not happy with the same. One year prior to occurrence in question, marriage of Kuldeep, brother of appellant Inder, was performed. His in-laws gave good dowry. For said reason, appellant Inder etc. started harassing Shakuntala. PW4 Dharambir accordingly paid Rs.20,000/- to them and also gave a buffalo. Despite that they were not happy and demanded motorcycle as well as cash in dowry. On intervening night of 05.05.2010, he received a telephonic message from PW4 Dharambir that Shakuntala has been burnt by appellants and their family members and if they can save her, they can reach hospital. On such intimation, he, PW4 Dharambir, Rajbir and Balwan reached General Hospital, Hisar and found Shakuntala and Anu lying on a stretcher in hospital in a burnt condition. No member from her in-law's family was present there. PW4 Dharambir, got them admitted to General Hospital, Hisar and then to Soni Burn Hospital, Hisar. Statement of Shakuntala was recorded in Soni Burn Hospital, Hisar. She disclosed to them that her sister-in-law Kavita and mother-in-law Badomo caught hold of her whereas appellant Inder and Amit put kerosene on her and her brother-in-law Kuldeep set her on fire. She could not give said statement before Magistrate as appellant Inder had threatened that if she discloses these facts to Magistrate, her elder daughter Kannu would be killed. Said facts were disclosed by them to police but same were not recorded in police proceedings.

12.8 PW8, DSP Ramphal (Retd.), on 09.06.2010, was posted as Inspector/SHO of Police Station Sadar Hisar. He prepared final report containing his signature under Section 173 Cr.P.C. He has deposed in this regard.

12.9 PW9, Dr. Vishal Goyal, a Medical Officer posted in General Hospital, Hisar has inter-alia deposed that on 07.05.2010, he conducted autopsy on dead body of Shakuntala and prepared the post-mortem report Ex.PL. Cause of death of Shakuntala was burns and its complications.

12.10 PW10, Dinesh Kumar Prajapat, has inter-alia deposed that on 05.05.2010, he medically examined Shakuntla wife of Inder Singh resident of Dahima and found as under :

I) Patient was conscious, cooperative and pulse oriented and BP was not recorded.

II) Superficial to deep burn all over body except right side of chest. Peeling of his skin at all over body with exposed raw under neath area. Nature of injury were kept under observation. Kind of weapon was burn or fire caused within six hours. Patient was brought by Dharambir father of injured Shakuntla.

12.10.1. He has also deposed that Ex.PM is correct carbon copy of MLR of Shakuntala which bears his signature and is true according to original. On the same day at about 2.00 a.m. Anu was examined by

him. It was a case of alleged history of burns at village Dahima at about 12.30 a.m. Injured was conscious. Pulse and BP were not recordable. Patient was brought by Dharambir and he found following injuries on her:-

“ Superficial to deep burns involving whole except part of face and part of left arm. Skin was peeling all over body raw under neath reddish area. Nature of injuries was kept under observation and caused by fire within duration of 6 hours.

12.10.2. He has also deposed that Ex.PN is correct carbon copy of MLR of Anu which bears his signature and is true according to original. On that very date, police moved an application before him about fitness of Shakuntala and Anu to give statement and he gave his opinion Ex.PI that they had been referred to PGIMS, Rohtak for further management.

12.11 PW11, SI Dharambir, inter-alia deposed that on 05.05.2010 while posted as SHO of Police Station, Hisar, he received a statement Ex.PF sent by PW6 ASI Radhey Shyam. On its basis, he registered FIR and sent special reports thereof to higher officers. He then, with other police officials, reached Village Dahima. PW6 ASI Radhey Shyam met him there and handed-over investigation to him. Said witness prepared rough site-plan Ex.PN and lifted above-mentioned articles from place of occurrence with one pair of shoes. Same were converted to parcels and were taken into police

possession through a separate recovery memo attested by ASI Radhey Shyam and another. He then received an intimation that Anu has expired. He accordingly reached Soni Burn Hospital, Hisar and prepared her inquest report. In respect of subsequent investigation done by him in the case in question, he has reiterated the stand deposed by PW6 ASI Radhey Shyam. He also deposed that on 06.05.2010, he arrested appellants who on interrogation made their respective disclosure statements leading to demarcation of place of occurrence by them separately. He has proved case property recovered from spot as Ex.MO/1 to Ex.MO/3.

12.12 PW12, ASI Suresh Kumar, has deposed about arrest of appellants on 06.05.2010 in the manner deposed by PW11 SI Dharambir and also about appellants making their respective disclosure statements leading to demarcation of place of occurrence through separate memos.

13.1 In their defence, appellants have examined Satbir Singh, Ex-Sarpanch of Village Dahima DW1. In his deposition, he inter-alia states that his house is situated near the house of appellant Inder. On 05.05.2010 at about 1/1.30 a.m., he heard screams on which he went to house of appellant Inder. DW2 Ram Chander, Member Panchayat whose house is also situated near house of appellant Inder also reached spot. Shakuntala and Anu had caught fire and some tea was lying in utensils (patila). He and DW2 Ram Chander made enquiry from Shakuntala who stated that when she was

preparing tea, some kerosene spilled on her clothes and clothes of Anu. Fire broke out when she ignited the matchstick. She was putting kerosene in stove and Anu was in her lap. In that process, her clothes also caught fire. Shakuntala was sleeping on a cot and her mother-in-law was also sleeping on a different cot near cot of Shakuntala and Anu. Daughter Kannu of Shakuntala was sleeping with her mother-in-law. said witness etc. took both to Civil Hospital, Hisar. PW4, Dharambir, also came there with several persons. They assaulted Inder Singh and his family members and prevented them from attending them in hospital. PW4, took both of them to Soni Burn Hospital, Hisar. Anu succumbed to her injuries during night time on that very date whereas Shakuntala died on next day. They then returned to their village. Some women of his village intimated him that both female babies of Shakuntala were born through surgery because of which Doctor had opined that if she conceives again, her life will be endangered. Because of that reason, Shakuntala used to remain in tension and was mentally depressed. After last rites, they had gone to village of PW4 Dharambir and had convened Panchayat to make an enquiry about material facts but he did not agree with compromise and rather demanded Rs.5 lakhs. Appellants belong to down-trodden community and could not arrange said heavy amount for compromise. Appellant Amit was not present in his house on that day.

13.2 DW2 Ram Chander, in his examination-in-chief, has almost reiterated the stand taken by DW1 Satbir Singh in his examination-in-chief. Narration of his deposition will rather be a repetition.

14. Having summarized evidence on record, we may now come to its appreciation. As per prosecution case, Shakuntala was legally wedded wife of appellant Inder Singh whereas Anu was his daughter and appellant Amit is his real brother. Deposition of PW4, Dharambir, is categorical that Shakuntala was married to appellant Inder Singh on 20.05.2005 and two daughters were born to her out of said marriage. His deposition also establishes that on the date of incident in question, both were living in matrimonial home of Shakuntala. Appellants do not dispute that on the date of occurrence in question, appellant Inder Singh, Amit, mother of appellant Inder Singh and his brother Kuldeep, were living in the house in which Shakuntala and her daughters Anu as well as Kannu were living. If cross-examination conducted on PW4, Dharambir, is perused minutely, it shows that appellants have not disputed said facts. To that very effect is deposition of PW7, Ramesh Kumar, brother of PW4 Dharambir. In cross-examination of said two witnesses, there is nothing material to doubt them in respect thereof. Their evidence and absence of challenge to it on above-mentioned aspects, prove said facts on record.

15. However, dispute between prosecution and appellants is in respect of manner of occurrence taking place in intervening night of 05.05.2010 and 06.05.2010. Prosecution alleges that in intervening night of said dates, appellants poured kerosene on them and then set them on fire when they were sleeping in courtyard. As against its such stand, appellants say that Shakuntala had given birth to two daughters through surgeries and concerned Doctor had advised her not to conceive in future and if she conceives, it may endanger her life because of which she used to remain in tension. They then allege that on said intervening night, when Shakuntala was in the process of putting kerosene in stove while having Anu in her lap, kerosene spilled to her clothes because of which when she lit the fire, both caught fire and received burn injuries. It is in evidence that on said intervening night, there was no one else in matrimonial house of Shakuntala except Inder Singh, Amit, their mother and brother Kuldeep. Appellants also do not dispute said evidence. However, above-mentioned stand about catching of fire in the manner alleged is not borne out from evidence on record. PW6, ASI Radhey Shyam and PW11, SI Dharambir, specifically depose that when they reached the spot they collected one carpet, a plastic can of kerosene, one salwar, one chunni, some burnt clothes of children and one pair of slippers therefrom and took same into police possession. If site-plans Ex.PN & Ex.PB are perused, same show that said articles were recovered from courtyard of house belonging to Inder

Singh and Amit. No stove or traces thereof were found at that spot by said two prosecution witnesses. Nothing is said to have been recovered by them from kitchen of said house. Furthermore, at 1.00 a.m. of said intervening night, Shakuntala cannot be expected to be preparing tea either for herself or for anyone else. In the absence of traces of stove and tea preparing utensils etc. recovered from spot, we find that said stand taken by appellants is not supported much less proved by evidence on record. Furthermore, defence has not produced any evidence to establish that Shakuntala was under any kind of tension because of the reason set forth by them. No medical record of Shakuntala has been brought on record. No Doctor who advised her in the alleged manner was examined. True it is, that appellants have examined DW1 Satbir Singh and DW2 Ram Chander in support of their said plea. However, said witnesses did not participate in investigation. There is no representation or application moved by appellants prior to date of examination of said witnesses that police intentionally did not join them in investigation and did not examine them as witnesses. They have been brought forth in the case in question only on the date of their respective examinations. In view of said facts, their depositions cannot be accepted to hold that occurrence in question took place in the manner set forth by appellants and that Shakuntala, on the date of occurrence in question, was in tension because of reason alleged. It appears that they have been procured by appellants to set up a plausible version to

controvert prosecution case. Their depositions are also liable to be discarded as utensils used for preparing tea were not found at spot. May be that they also say that Shakuntala told them that she had caught fire while igniting stove. However, except their self serving statement, there is nothing no-corroboration thereof available on record.

16. PW1, Rajat Soni, has proved that on said intervening night, Shakuntala and Anu were admitted to Soni Burn Hospital with 100% burns and 90% burns respectively. His deposition also establishes that he sent ruqa Ex.PA about them and Anu died in his hospital on that very date at about 12.30 p.m. in respect of which he sent a ruqa Ex.PA/1. He has also proved bed-head ticket of Anu as Ex.PA/2. His evidence establishes death of Shakuntala in his hospital on 06.05.2010 at 08.10 p.m. and factum of his handing over ruqa in respect thereof to police. He has also proved bed-head ticket of Shakuntala on record. Documents proved by him show that Shakuntala and Anu had a history of burn injuries by pouring kerosene.

17. Deposition of PW5, Dr.Amit Kumar, establishes that on 05.05.2010 at about 4.45 p.m. he conducted autopsy on dead body of Anu and prepared her post-mortem report whereas deposition of PW9, Dr.Vishal Goyal, establishes that when he was posted as Medical Officer in General Hospital, Hisar on 06.05.2010, he conducted post-mortem examination on dead body of Shakuntala

whereafter he prepared her post-mortem report Ex.PL. They both have given cause of death of Shakuntala and Anu as burn injuries and their complications. Post-mortem reports proved by them establish the cause of death as has been deposed by them. Above described deposition of PW10, Dinesh Kumar Prajapat, establishes that on intervening night of above mentioned dates, Shakuntala and Anu were brought to General Hospital Hisar with a history of burn injuries at village Dahima.

18. There is nothing in depositions of said medical witnesses to doubt them about above-mentioned facts. It therefore stands established that on intervening night of 05.05.2010 and 06.05.2010, Shakuntala and Anu were taken to General Hospital, Hisar with 100% and 90% burn injuries respectively where they were medico-legally examined and then were got admitted to Soni Burn Hospital, Hisar where they died on above-mentioned dates because of burn injuries and their complications.

19. Coming to the issue as to how Shakuntala and Anu received burn injuries, we have already observed that version put-forth by appellants in that regard is not borne out from evidence on record. However, prosecution has examined PW6, ASI Radhey Shyam to prove that on the said intervening night when Shakuntala was opined as fit for recording her statement, he went to house of PW3, Shri Tayyab Hussain, then learned JMIC, Hisar, with a request to record statement of Shakuntala under Section 164 IPC. He also

deposes that upon such application, PW3, Shri Tayyab Hussain came to Soni Burn Hospital, Hisar and recorded her statement Ex.PF, whereafter PW3, Shri Tayyab Hussain gave certificate Ex.PG signed by him. PW3 Shri Tayyab Hussain has corroborated said ASI in that regard. Their deposition also establishes that during the period statement of Shakuntala was recorded, she remained fit to make statement. May be that in last sentence of deposition of PW3 Shri Tayyab Hussain, it has been mentioned that she was not in fit state of mind. Wholesome perusal of record, however, makes it amply clear that said sentence is in all probability incorrectly worded as at place of “not” it should have been “in”. Otherwise also, contents of certificate given by PW3, Shri Tayyab Hussain are contrary to said sentence. His overall deposition shows that in the process of recording statement of Shakuntala, she remained fit for giving statement. Argument of learned counsel for appellants, in that regard, therefore, has no substance. Deposition of said two prosecution witnesses establishes that during said intervening night, PW3, Shri Tayyab Hussain recorded statement Ex.PF of Shakuntala. There is nothing in their depositions to doubt them about the process adopted by them while recording statement Ex.PF of Shakuntala.

20. Here it deserves mention that PW4, Dharambir and PW7, Ramesh Kumar have alleged that after her marriage with appellant Inder Singh, Shakuntala was harassed for dowry articles and also for motorcycle as well as cash. May be that there is nothing in that regard

in statement Ex.PF of Shakuntala. At the same time, considering her serious condition at the time of recording such statement, she could not be supposed to disclose said fact/s in it especially when it was in question answer form. PW4, Dharambir had stated to police in his statement Ex.DA that appellants and their family members had put them on fire in the said intervening night.

21. We have already observed that PW6, ASI Radhey Shyam has categorically deposed that one carpet, a plastic tin of kerosene, some burnt pieces of carpet and few clothes in burnt condition, were lifted from spot and were converted to parcel/s which were taken into police possession through recovery memo Ex.PK attested by PW6, ASI Radhey Shyam. PW11, Dharambir has corroborated him in that regard and has also deposed that one pair of slippers was also recovered from the spot. There is nothing in their respective cross-examinations to doubt them about said recovery from spot. Maybe that they have not deposed about a recovery of a multicoloured sheet over which some burnt clothes were pasted. At the same time, recovery memo Ex.P-3, with the recovery of above-mentioned articles, also shows recovery of said sheet from spot. PW11 SI Dharambir is categorical that defence setup by appellants was not found to be in existence during his investigation. As observed earlier, articles of tea preparation and stove etc. were not recovered from spot. In absence of recovery of tea preparation articles and stove etc. and recovery of above-mentioned articles by PW11, SI

Dharambir, we find that prosecution has connected articles recovered in case in question with commission of crime in question by appellants.

22. Deposition of PW3, Tayyab Hussain establishes that during process of recording of statement Ex.PF, on 05.05.2010 at 04:50 AM, Shakuntala was in a fit state of mind. Deposition of PW1 Dr.Rajat Soni from Soni Burn Hospital, Hisar establishes that she died in his hospital on 06.05.2010 because of her 100% burn injuries. In statement Ex.PF, she has given facts constituting circumstances under which she received such injuries. Said burn injuries turned out to be cause of her death. Once it is so, said statement has to be taken as a dying declaration under Section 32(1) of Indian Evidence Act, 1872 (for brevity, '1872 Act') in the present case. Said section is reproduced as under:-

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

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

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

23. Thus, statement Ex.PF qualifies definition of a dying declaration contained in said section. In respect of a dying declaration, in its decision in **Muthu Kutty and another Vs. State by Inspector of Police, Tamil Nadu, 2005 (9) SCC 113**, Hon'ble the Supreme Court observed as under:

"14. This is a case where the basis of conviction of appellant is dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that grave position in which he is placed, is reason in law to accept veracity of his statement. It is for

this reason that the requirements of oath and cross-examination are dispensed with.

Besides, should dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of statement would leave the court without a scrap of evidence.

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 dying declaration cannot form

the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

24. View taken by Hon'ble the Supreme Court in **Muthu Kutty's report (supra)** was reiterated by a three Judge Bench of Hon'ble the Supreme Court in the report **Panneerselvam Vs. State of Tamil Nadu, (2008) 17 SCC 190**. Further, in the report **Atbir Vs. Government of NCT of Delhi, (2010) 9 SCC 1**, Hon'ble the Supreme Court summed up law on the issue of a dying declaration by observing as under:-

"16) The analysis of above decisions clearly shows that,

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

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

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

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole

basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

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

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

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

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

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

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

25. Keeping in view above reproduced observations in respect of a dying declaration, we now examine value of dying declaration Ex.PF made by Shakuntala before PW3 Shri Tayyab Hussain, then JMIC, Hisar. A perusal of said statement shows that on intervening night of 05.05.2010 and 06.05.2010, Shakuntala stated that she was sleeping with her daughter Anu and someone poured kerosene on her at that time. She also says that all were present in the house at that time. Her brother-in-law (dewar) was there but her sister-in-law (jethani) was not there. She is specific that her husband was also present there. In reply to a question as to who put her and her daughter on fire, she stated that she does not know as to who put her on fire as she was sleeping at that time. Her such statement appears to be a true version of occurrence in question. Since she was sleeping, she could not see or observe as to who had put her and her daughter on fire. She therefore disclosed about occurrence in question as undergone by her and her daughter.

26. In respect of value to be attached to a dying declaration, Hon'ble the Supreme Court, in report **Kamal Khudal Vs. State of Assam, (2022) 20 SCC 654**, observed as under:-

"24. "Truth sits upon the lips of a dying man."

-Matthew Arnold

The whole idea of accepting a statement in the name of dying declaration comes from a maxim "Nemo

moriturus praesumitur mentire” which means that a man will not meet his maker with a lie in his mouth. It is believed that when a man is at the point of death and when every expectation of this world is gone, it hushes away every motive of lie.”

27. Keeping in view said observations of Hon’ble the Supreme Court and contents of statement Ex.PF, it comes out that version contained in said statement is a true version of occurrence in question and inspires confidence. No other evidence is required to corroborate said version and it in itself is sufficient to prove facts contained in it. If it is read in its true sense, it indicates that when occurrence in question took place, both appellants were present in their house. It specifically mentions that appellant Inder Singh and his brother (Devar of Shakuntala) were present in the house when kerosene was poured on Shakuntala and Anu and when they were put on fire. It is therefore more than sufficient to establish presence of appellants when occurrence in question took place. In view thereof, omission to name them specifically as pouring kerosene on the victims and putting them on fire has no significance. Such omission has rather been filled up by PW4 by deposing that appellants put them on fire. Contents of statement Ex. DA of said witness recorded on 5th of May 2010 is also evident in that regard.

28. As observed earlier, there is no dispute between parties that Shakuntala was legally married wife of appellant Inder Singh and real sister-in-law of appellant Amit whereas Anu aged about 8-9 months was daughter of appellant Inder Singh and niece of appellant Amit. Prosecution has established that on intervening night of 05.05.2010 and 06.05.2010, they both were sleeping in house of appellant Inder Singh wherein appellant Amit was also living. Dying declaration Ex.PF establishes that there was no one present in the house of appellant Inder Singh except his family members including appellant Amit when occurrence in question took place. Statement Ex.PF also establishes that kerosene was poured on Shakuntala and Anu when they both were sleeping. May be that there is evidence that mother of appellant Inder Singh was also sleeping with them. However, there is nothing on record to show that mother of appellants also received burn injuries or that kerosene was also poured on her. It therefore comes out that when kerosene was poured on Shakuntala and Anu when they were sleeping, appellants Inder Singh and Amit as well as their mother and their another brother were present in the house. No one else is alleged to be present in the house at that time. If that is so, appellant Inder Singh and Amit only knew as to who poured kerosene and as to who put Shakuntala and Anu on fire. Said facts, in facts and circumstances of present case, have to be treated as in special and exclusive knowledge of appellants. There is no eye-witness of occurrence in question.

Shakuntala was categorical that kerosene was poured on both of them when they were sleeping. In absence of anyone from outside present in the house in question, appellants only knew as to who poured kerosene on them and who put them on fire.

29. Above referred to defence version about occurrence in question has not been believed. Rather, depositions of PW11 and SI Dharambir (Retd.) and PW6 SI Radhey Shyam are categorical that after registration of FIR, PW11 SI Dharambir reached place of occurrence where PW6 ASI Radhey Shyam was present and he handed-over investigation to him. PW11 SI Dharambir is also categorical that after reaching said place, he prepared a rough site-plan Ex.PN, lifted one carpet and a plastic tin of kerosene, some burnt pieces of carpet and few clothes in burnt condition etc from the spot which were sealed and were taken into police possession through recovery memo Ex.PK. PW6 ASI Radhey Shyam has also corroborated him in that regard. There is nothing in their respective cross-examinations to doubt them about their said depositions. FSL report Ex.PU establishes that kerosene was detected on said carpet and clothes as well as in the said can. PW2 Subhash Chand, Draftsman from DPO, Police Lines, Hisar deposed that on 27.05.2010, he, with SI Dharambir, visited place of occurrence and prepared scaled site-plan Ex.PB with correct marginal notes. A perusal of scaled site-plan Ex.PB shows that place of occurrence shown in it is courtyard of house of appellant Inder Singh and not kitchen thereof. Said two

prosecution witnesses have not been set-forth to have recovered anything from kitchen of the said house. Whatever was recovered by them was from courtyard where Shakuntala and Anu are stated to be sleeping. Therefore, depositions of said witnesses establish that occurrence in question took place as set-forth in dying declaration Ex.PF and not in the manner alleged by appellants in their defence.

30. There is no other explanation or stand taken/set-forth by appellants as to who poured kerosene on and as to how Shakuntala and Anu were put on fire. Once it has been observed that they had a special and exclusive knowledge of said circumstances, they were required to put true facts before the Court. However, they have failed to do so. In terms of Section 106 of the Indian Evidence Act, 1872 (for brevity "1872 Act"), putting said fact before the Court was responsibility of appellants. Said section is reproduced as under:-

"106. Burden of proving fact especially within knowledge -When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

31. So far as interpretation of said section is concerned, Hon'ble the Supreme Court, in the report **Nagendra Sah Vs. State of Bihar, (2021) 10 SCC 725**, observed as under:-

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances...."

32. In the report **Tulsiram Sahadu Suryawanshi Vs. State of Maharashtra, (2012) 10 SCC 373**, Hon'ble the Supreme Court, in respect of inferences to be drawn under Section 106 of the 1872 Act, observed as under:-

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved

facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872

*. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote following observation in **State of W.B. v. Mir Mohammad Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516]: (SCC p. 393, para 38)***

*"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In **Shambu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794]** the learned Judge has stated the legal principle thus: (SCC Online SC para 9)*

'9. This lays down general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within

his knowledge.” (emphasis in original and supplied)”

33. In the report **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681**, while considering a case of homicidal death in the confines of house, Hon’ble the Supreme Court observed as under:-

"14. If an offence takes place inside privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. 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. Both are public duties. (See **Stirland v. Director of Public Prosecutions [1944 AC 315 : (1944) 2 All ER 13 (HL)]** - quoted with approval by Arijit Pasayat, J. in **State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]**.) The law*

does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character.

In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. (Emphasis supplied)”

34. In respect of approach to be adopted while applying Section 106 of the 1872 Act to a case, Hon’ble the Supreme Court,

in the report **State of West Bengal Vs. Mir Mohammad Omar, 2000 (8) SCC 382**, observed as under:-

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a

fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody. (Emphasis supplied)”

35. Said observations, if are applied to case in question, it comes out that appellants Inder Singh and Amit, at the time of and on the date of occurrence in question, were in the house and no other person except their family members, was present there. If it was so, it was for appellants to explain as to who poured kerosene on and who put Shakuntala and Anu on fire or as to how they received burn injuries. However, there is no explanation forthcoming from them. They have rather taken a stand which has been found false. Once it is so, it comes out that it were appellants who poured kerosene on them and put them on fire resulting in burn injuries to them and their ultimate death on 05.05.2010 and 06.05.2010 respectively. Simply that appellants are stated to have intimidated PW4 Dharambir after the occurrence is not at all a ground to belie dying declaration Ex.PF and deposition of PW4 Dharambir. Even if it is treated that appellants took them to hospital, they were bound to explain as to who poured kerosene on them and as to who put them on fire. May be that another brother of appellant Inder Singh was not arrayed as an accused. At the same time, his non-arrayal can be of no benefit to appellant Amit. By non-arrayal of another brother of appellant Inder Singh as an accused despite there being dying declaration Ex.PF implying his presence in the house when occurrence in question took place as well as deposition of PW4 Dharambir made before the Court, damage has been done to prosecution case. If appellant Amit is given benefit thereof, it will

cause double damage to it. A wrong cannot be used to repeat another wrong.

36. We may also state that we have perused impugned judgment minutely. After its perusal, we find that it is as per evidence on record and law applicable to the case in question. Prosecution has proved charges in question against both appellants beyond a shadow of reasonable doubt. Judgment of conviction dated 17.01.2015 and order of sentence dated 21.01.2015 passed by Learned Sessions Court, Hisar are accordingly upheld.

37. We, therefore, find no substance in the present appeal warranting interference under Section 386(b) Cr.P.C. It is therefore dismissed. All pending interim or suspension of sentence application(s), if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

February 18, 2026
Sailesh/Sunil

Whether speaking/reasoned: Yes
Whether Reportable: Yes

