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AMIT KUMAR & ANR.
v.
STATE OF PUNJAB
(Criminal Appeal No. 62 of 2006)

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AUGUST 12, 2010
[B. SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]

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Penal Code, 1860 – s.302/34 – Murder – Conviction by courts below based on dying declaration and ocular testimony of witnesses – On appeal, held: Conviction was justified – The dying declaration and ocular evidence is reliable – Evidence – Dying Declaration.

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The two appellants-accused, alongwith other two accused persons, were prosecuted for commission of offences punishable u/s. 302/34 IPC. The prosecution case was that the appellant-accused (husband of the victim) alongwith his younger brother (another appellant-accused) his mother (accused since deceased) and his sister-in-law, set the victim on fire. The victim was taken to hospital. Her statement was recorded by the Judicial Magistrate, after taking opinion of the doctor regarding her fitness to make the statement. Subsequently, the victim succumbed to the burn injuries. The Mother-in-law of the deceased died before the committal proceedings. The other three accused were put on trial. The trial court convicted the appellants-accused u/s. 302/34 IPC and acquitted the third accused giving her the benefit of doubt. High Court upheld the order of the trial court. The instant appeal was filed by the appellants-accused.

Dismissing the appeal, the Court

HELD: 1. The trial court as also the High Court

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meticulously examined and re-examined the entire evidence to conclude that the two appellants are guilty of murdering the deceased by setting her on fire as she and her parents had failed to meet the wholly unlawful demands of dowry. The entire body of evidence leaves no doubt that the trial court as well as the High Court correctly concluded that the two appellants are guilty beyond reasonable doubt. There is no reason to interfere with the verdict recorded by the trial court as well as the High Court in convicting the appellants of murder. [Paras 10 and 19] [1095-D-E; 1106-G]

2. Both the courts below correctly relied on the dying declaration. The same cannot be disbelieved on the basis that it may be a result of tutoring by the family members of the deceased. It was specifically noticed in the judgment of the High Court that the statement of the deceased had been recorded after an application (Ex.P26) was moved before the Magistrate. The Judicial Magistrate also stated that all safeguards were observed by him before recording the statement. He was cross-examined at length but nothing fruitful could be extracted from his statement which would show that the dying declaration was a tainted one. The Magistrate has categorically stated in his evidence that the deceased was lying in the cabin at the time when the statement was recorded. The cabin was not accessible to the relatives of the injured. Thus, there is no occasion to disbelieve the dying declaration in the facts and circumstances of the instant case. [Paras 15 and 16] [1102-B-F; 1104-H]

Paniben (Smt.) vs. State of Gujarat (1992) 2 SCC 474, relied on.

3. There is also no reason to doubt the presence of the witnesses PW1, PW2 and PW5. PW2 had been told by the deceased that she had been burnt. Similarly, PW3 came into the compound after he saw the smoke from the

A fire in which the deceased was burning. The evidence of PW1, and PW5 is unflinching, coherent and consistent. Both the witnesses have withstood lengthy cross-examination without any loss of credibility. Their evidence cannot be discarded only on the ground that they are close relations of the deceased. Even PW2 had stated that the deceased had named the appellants as the persons who set her on fire. She seems to have changed her stand, during the long interval between the earlier statement and the time when she appeared in the court, for reasons best known to her, but not difficult to discern. But that is no reason to discard her entire evidence. [Para 17] [1105-A-D]

Sat Paul vs. Delhi Administration (1976) 1 SCC 727, relied on.

4. There is no doubt that the appellants had indeed set the deceased on fire. In the history recorded on the bed-head ticket (Ex. P13), it is stated that the patient had herself claimed to have set herself on fire by using kerosene oil on account of some fight within the family members. The High Court examined the bed-head ticket and observed that the whole record is made subsequently by the doctor as he is making repeated entries with regard to the previous history at different stages. This was not required at all. In his enthusiasm to help the accused, at one stage, he even goes to the extent of showing that fire was extinguished by husband and family members by using water and cloth. This was not even the case pleaded by the appellants who had put forward a plea of alibi to show that they were not even present at the time when the deceased received the burn injuries. Similarly, the testimony of DW8 has been held to be unreliable as he was trying to save his kith and kin. He has made improvements in his statement, while

stating that the deceased disclosed to his wife that she committed suicide and it was her mistake. The courts below have correctly held that this was an effort made by the witness to save his family. [Para 18] [1106-B-F] A

Case Law Reference:

(1992) 2 SCC 474 Relied on. Para 16 B

(1976) 1 SCC 727 Relied on. Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 62 of 2006. C

From the Judgment & Order dated 18.05.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 226-DB of 2002.

Tanuj Bagga Sharma (A.C.) for the Appellants. D

Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. This appeal has been filed by the two appellants challenging the judgment rendered by the High Court of Punjab and Haryana in Criminal Appeal No.226-DB of 2002 dated 18.5.2004. By the aforesaid judgment, the High Court has confirmed the judgment of the Sessions Judge, Faridkot dated 25.1.2002 in Sessions Case No. 48 of 16.12.1997 and Sessions Trial No. 390 of 7.4.1998 whereby both the appellants have been convicted under Section 302 IPC for the murder of Anita Rani, hereinafter referred to as "the deceased". However, Neelam Rani, sister-in-law of the deceased has been given benefit of doubt and acquitted of the charges framed against her. E F G

2. It appears that Anita Rani, deceased was married to Amit Kumar, appellant herein, about 4 ½ years prior to the date H

A when she was set on fire, which led to her death. Both the
 Courts have noticed the continuous history of torture and
 harassment of the deceased by the appellants and their
 deceased mother Kailash Rani as they were not satisfied with
 the dowry given to the deceased at the time of marriage. Both
 B the Courts have also noticed that continuous efforts had been
 made to bring about reconciliation between the deceased and
 the in-laws. Efforts had been made by the panchayat also to
 make the in-laws of the deceased accept the fact that her
 parents had given as much dowry as they could afford.
 C However, it appears that the family of the in-laws was not
 satisfied and, therefore, decided to do away with the young
 bride, merely 22 years of age. She was set ablaze in broad
 daylight on the morning of 26.6.1997, in the courtyard of the
 house belonging to her in-laws. The horror of the story lies in
 D the fact, that the victim lost her life, because her parents failed
 to provide a refrigerator and a television.

3. With the aforesaid tragic prelude, we can now proceed
 to decipher the events which culminated in the burning of Anita
 Rani on the morning of 26.6.1997.

E 4. According to Kimti Lal, PW1 and Gulshan Kumar, PW5,
 it was Asha Rani PW2, neighbour of the deceased, who told
 them that Anita Rani had been set ablaze with kerosene oil.
 Thereafter, they went to the house of the accused where they
 F saw Anita Rani lying in the courtyard, having been severely
 burnt. However, the fire had been extinguished by the time they
 reached. On enquiry made by Kimti Lal, PW1, Anita Rani stated
 "Kailash Rani, Amit Kumar, Brij Bhushan and Neelam Rani had
 put kerosene oil on her and set her on fire and she should be
 saved." At that time, all the accused were present in the
 G courtyard. Kimti Lal and Gulshan Kumar took Anita Rani to
 Dayanand Medical College/Hospital, Ludhiana and got her
 admitted there. ASI Rajpal Singh (PW 17) received information
 about the incident at about 12.15 p.m. He promptly reached the
 H hospital (DMC), and made preliminary enquiries. Thereafter, he

went to the Duty Magistrate and moved a request application (Ex.P26) at 4.30 p.m. for recording the statement of Anita Rani. (Endorsement Ex.P27 was made by Judicial Magistrate i.e. on the application). Within a short period, ASI Rajpal Singh alongwith Harjinder Pal Singh, PW13, the then Judicial Magistrate, 1st Class, Ludhiana, reached the hospital. Opinion of the doctor regarding the fitness of the patient was given at 5.05 p.m. (Ex.P28). After she was declared fit (endorsement Ex.P11), her statement (Ex.P29) was recorded at 5.25 p.m. Thereafter, ASI Rajpal Singh, PW17 recorded another statement of Anita Rani (Ex.P8) from 5.40 p.m. to 6.30 p.m. This statement was also recorded after obtaining the opinion of the doctor (Ex.P13). On the basis of the aforesaid statement, a ruqa was sent for the registration of the case at the Police Station, Moga resulting in the recording of a formal FIR (Ex.P7). Initially, the FIR was recorded under Section 307/498-A/34 IPC against all the four accused, namely, Amit Kumar, Brij Bhushan, Kailash Rani and Neelam Rani. However, Anita Rani died on 1st July, 1997. Therefore, the case was registered under Section 302 read with 34 IPC against all the four accused. However, Kailash Rani passed away before committal proceedings. Consequently, the proceedings against her was abated.

5. The aforesaid three accused were duly put on trial for the offence under Section 302 read with 34 IPC. At the trial, the prosecution examined 17 witnesses. Apart from giving their explanation under Section 313 Cr.P.C, the accused also examined 9 witnesses in defence. Upon meticulous examination of the entire evidence, the trial court convicted Amit Kumar and Brij Bhushan under Section 302 read with Section 34 IPC for the murder of Anita Rani. However, Neelam Rani was given benefit of doubt and acquitted.

6. The aforesaid judgment was challenged by the two appellants by way of Criminal Appeal No. 226-DB of 2002 before the High Court. Upon a complete reappraisal of the

A evidence, the High Court dismissed the appeal filed by the two appellants.

7. We have heard the learned counsel for the parties at length.

B 8. Challenging the findings and observations of the Courts below, the learned counsel for the appellants submitted that this is a case of a tainted investigation. The evidence of prosecution witnesses can not establish the guilt of the appellants as their evidence is only with regard to the maltreatment being given to the deceased. None of them being eye-witnesses can possibly state as to whether she committed suicide or not. Asha Rani only stated that Anita Rani had told her that she had been burnt by them. She did not name any person as an accused. Although she says that she saw Kailash Rani and Neelam Rani were present, she did not see any other accused in the house. Even otherwise her evidence is worthless as she was declared hostile, when she denied having made any previous statement, in which she had named the accused, as having set Anita Rani on fire. Learned counsel E further pointed out that evidence of Gulshan Kumar (DW8) who also sustained burn injuries has been wrongly ignored. He had given a true account of the events. He was the only eye witness. With regard to the investigation, it is submitted that Rajpal Singh, ASI was hand-in-glove with the parents of the deceased. F He pointed out a number of procedural irregularities. He actually doubted the manner in which Rajpal Singh, ASI came to know about the incident. The sum total of the submissions of the learned counsel seems to be that the investigation was unsatisfactory, as well being partial. Learned counsel also submitted that both the Courts below have committed a serious G error in relying on the dying declaration recorded by the Judicial Magistrate. He has submitted that Anita Rani was so badly burnt, she was in no fit state to make such a lengthy statement. It has been fabricated at the instance of ASI Rajpal Singh. Both H the Courts, according to the learned counsel, have erred in not

giving proper weightage to the statement made to the doctor which was recorded in the bedhead ticket of the patient. The doctor had clearly recorded the statement of Anita Rani that she had set herself ablaze. It was only subsequently at the instance of Rajpal Singh, ASI that the accused i.e. appellants had been named by Anita Rani. Learned counsel laid considerable emphasis on the fact that conduct of the appellants in removing the injured immediately to the hospital clearly shows that the accused made all efforts to save Anita Rani, after she had set herself on fire.

9. We have given our anxious thought to the submissions of the learned counsel. We are, however, unable to accept any of the submissions of the counsel of the appellants.

10. The trial court as also the High Court has meticulously examined and re-examined the entire evidence to conclude that the two appellants are guilty of murdering Anita Rani by setting her on fire as she and her parents had failed to meet the wholly unlawful demands of dowry. The entire body of evidence seems to leave no manner of doubt that the trial court as well as the High Court has correctly concluded that the two appellants are guilty beyond reasonable doubt.

11. From the evidence on record, it would appear that the present two appellants and the two accused, namely, Kailash Rani and Neelam Rani were arrested on 29th June, 1997. Kimti Lal (PW1), who is the real brother of the deceased, has narrated the entire history of harassment of the deceased prior to her being set on fire by the accused persons. Gulshan Kumar (PW5) is a cousin of Anita Rani, deceased. He has corroborated the testimony of Kimti Lal, PW1 in all details. He has deposed about the demands made by the accused for dowry in the shape of television and refrigerator. He also talked about the continuous maltreatment given by the accused persons to Anita Rani. Asha Rani, PW2 had initially made a statement before the police giving a graphic account of how Anita Rani was set on fire by the accused persons after pouring

A kerosene oil on her. She, however, did not reiterate the entire sequence in Court, which in all probability, led to her being declared hostile. Even then, in Court, she unequivocally stated that due to the disputes over dowry, there always used to be quarrels between the accused and the deceased. The in-laws
 B were always asking for more dowry and used to taunt her. However, so far as the tragic incident of 26.6.1997 is concerned, she only stated that when she reached the house of Anita Rani, the fire had already been extinguished and Anita Rani did not disclose to her as to who had set her ablaze. In
 C the earlier statement, she had specifically named the present appellants actively participating in setting Anita Rani on fire by pouring kerosene oil on her. Another witness Satnam Singh, PW3, is a Carpenter, who had been working in the neighbourhood of the accused. He also stated that on the day
 D of the occurrence he had seen a fire burning in the house of the accused. When he pushed the door open and entered the house, he had seen one person trying to extinguish the fire. Thereafter, he also helped in extinguishing the fire. Afterwards, he went back to his place of work. PW4 Dr. U.S. Sooch, Medical Officer, Civil Hospital, Ludhiana conducted the autopsy
 E on the dead body of Anita Rani on 1.7.1997 at 4.40 p.m. He observed as follows:

“The dead body was 5 feet 4 inches long. It was naked, well built and well nourished, Eyes and mouth were partially open. Post mortem staining was present on the
 F posterior surface of viscera and was patchy. The rigor mortis was present in the upper limbs only. The vene section wound was on the left ankle and pad ink blue in colour was present on the right big toe. He found the
 G following injuries on the dead body :

(1) Superficial to deep infected burns all over the body except the grow in area, public area, vulva and both feet, singeing of hairs of body, Scalp and face were present.

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Puss and slough formation was present at multiple areas with crust formation of the superficial wounds of burns.”

He also observed that pleura larynx, tracheae and both lungs were congested. The stomach contained 250cc of fluids. The liver, spleen and kidneys were also congested. Urinary bladder and uterus were healthy and empty. He has opined that the cause of death was due to *septicaemia as a result of infected extensive burns, which were sufficient to cause death in ordinary course of nature and the burns were ante mortem in nature*. He further opined that the probable time between burns and death was about six days and between death and post mortem was about six hours. He has further deposed that the post mortem was conducted after observing normal formalities and upon an application made by the police (Ex.P6). The fitness of the deceased to make the statement was duly proved by PW7 Dr. Sanjiv Kumar Singla. At this stage, we must also notice that the bedhead ticket (Ex.P13) pertaining to Anita Rani prepared at DMC has been proved by Dr. Panjak Arora, PW8. In his cross-examination, he has stated that Amit Kumar had brought Anita Rani to the hospital and she was alleged to have sustained burn injuries after she set herself on fire because of some dispute with the family members on 26.6.1997 at 10 a.m. Ashish Gupta, PW9, Registrar, DMC, Ludhiana has deposed that Anita Rani was admitted in the hospital on 26.6.1997 at 11.20 a.m. He had sent the necessary intimation to the police station regarding Anita Rani being brought to the hospital having approximately 90% burns of second and third degrees. Although the patient had been burnt at about 10 a.m. on 26.6.1997, she was conscious and oriented. He opined that the nature of the injuries was dangerous. He has also stated that Anita Rani was shifted to burn Intensive Care Unit on 26.6.1997 at about 2.00 p.m. He had further stated, during cross-examination, that after a patient suffers 90% burn injuries, he goes into primary shock initially for 2 to 4 hours. He however further testified that according to the record, she remained conscious throughout the period. Raj Kumar PW10 is the

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A photographer, who has proved the photographs (Ex.P21 to P23). Ex.P18 to P20 are the negatives of the photographs. PW11, Gursewak Singh is the Draftsman, who prepared the scaled site plan of the place of occurrence. Subhash Chander, PW12 is another witness produced by the prosecution to the effect that he had intervened in the dispute of Anita Rani and her in-laws as she was being harassed on account of demand of dowry. PW14 Mangat Ram is again a witness with regard to the demand of dowry. He has narrated that there was a demand of TV and Refrigerator by the appellants. He had intervened in the dispute, it was as a result of his undertaking that Anita Rani was sent back to the matrimonial home.

12. ASI HC Hardial Singh, PW15 delivered the special report to the Ilaqa Magistrate on 26.6.1997 at 10.00 p.m. HC Gurmail Singh, PW16 produced the Roznamcha for the period from 20.6.1997 to 11.7.1997 of Police Station, Moga City – I. ASI Rajpal Singh is the investigating officer. We may notice at this stage that the statement (Ex.P29) recorded by the Judicial Magistrate in the vernacular language was treated as a dying declaration upon the death of Anita Rani. The translated version of the dying declaration is:-

“There used to be a quarrel on trivial matters. My younger Darani (my husband’s brother’s wife) had gone to her parents after quarrelling. I have been residing separate from my in-laws in the same house. My husband’s younger brother washed his *banyan* (under garment) himself. It happened a day before yesterday that my husband had slapped me and given fist blows and he had refused to take meals from me. I had said that I should work as well and bear the beatings. My husband was also saying that I was a clung (i.e. clunk) to him. A day before yesterday when I had asked my husband to take meals then he had told that “*Tere Maan bap da siapa kar ke awanga*” (he will go and protest before her parents.) My husband had also told me that if I died, he will have no

worry. My husband's younger brother Babbu, mother-in-law Kailash Rani, my husband, my husband's sister were also standing there (*uni kol khari see*). Then my husband's elder brother came there and put off the fire. Kerosene oil was sprinkled upon me by my mother-in-law, my husband's younger brother and my husband after taking me near the kacha kotha in the courtyard of our house. When my husband, my mother-in-law and my husband's younger brother set me on fire, then my sister-in-law was standing there. My husband's elder brother and his wife, both saved me. When a mattress (Gadha) was demanded for placing the same upon me, then my mother-in-law told that she had no mattress. My in-laws were saying that neither the refrigerator nor a television has been given in dowry and only a scooter has been given. Now I have brought utensils from my parental house, then they said that why she had brought utensils by demanding the same and why these utensils were not given at the time of Marriage? I do not want to say anything more. R.O.A.C. Sd/- JMIC(Duty) 26.6.1997 statement recorded between 5:10 p.m. to 5:25 p.m.)".

13. It has also come in the statement of Judicial Magistrate Harinder Pal Singh (PW 13) that since all the finger tips of the hands of Anita Rani were burnt, she had put the impression of her right toe on the dying declaration. A note (Ex.P30/1) was recorded by the Magistrate in this regard. Another note (Ex.P30/3) was also recorded, which indicated that Anita Rani had made her statement voluntarily and which contains the true account of the statement made by her. In court the Judicial Magistrate reiterated that upon reaching the hospital, he had sought the information about the fitness of Anita Rani from Dr. Sanjiv Kumar Singla, who was present in the burn Intensive Care Unit of DMC, Ludhiana. The witness has duly proved the opinion (Ex.P11) made by the doctor declaring that Anita Rani was fit to make a statement. It is categorically stated by the Judicial Magistrate that Anita Rani understood the questions

- A and the answers that were being recorded. He has also stated that the statement was made by Anita Rani out of her free will. He has proved the statement (Ex.P29) and the endorsement (Ex.P30) by which he had certified that Anita Rani had put impression of her right toe on the dying declaration as
- B impression of the finger tips of her hands could not be taken because all the finger tips were burnt.

14. Upon completion of the prosecution evidence, the trial court examined the accused under Section 313 of the Criminal Procedure Code and the incriminating circumstances appearing against the accused in the prosecution evidence were put to them. All the accused pleaded that they were innocent and that the witnesses being relations of the deceased are only interested in the success of the case. The appellants Amit Kumar and Brij Bhushan run cloth shop at
- C Village Daroli Bhai. It was further stated by them that on the date of the occurrence Poonam w/o Brij Bhushan had gone to her parental house. Therefore, when Amit Kumar asked his wife Anita Rani to prepare the food for them, she had flatly refused to do so. Consequently, both of them did not have their meal
- D and left for the shop at 8.30 a.m. It was only when Brij Bhushan and Amit Kumar were standing at the tempo stand, Moga for going to Village Daroli Bhai that they received a message that Anita Rani has set herself ablaze by sprinkling kerosene oil on her. On the return to the house, they saw that Anita Rani had
- E been burnt and their brother Gulshan Kumar had also got burn injuries while extinguishing the fire. Then Amit Kumar called her parents and arranged a jeep and took Anita Rani to DMC, Ludhiana in order to save her life. It was also stated that Gulshan Kumar, Brother-in-law of Amit Kumar, Purshottam Lal
- F and Kimati Lal had also accompanied Anita Rani and Gulshan Kumar to DMC. They denied making any demands for dowry from Anita Rani or from her parents. It was also the case of Amit Kumar that Anita Rani had told the doctor, who prepared the case history that she had set herself on fire. This was all
- G changed at about 1.30 p.m. when his father-in-law Sant Lal
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reached there alongwith ASI Rajpal Singh, who is close to them. A
It is also alleged that he was illegally detained by Rajpal Singh, A
ASI. The appellants also examined DW1 to DW9 in their
defence. DW4 Dr. Ashok Kumar has proved the burn injuries
suffered by Gulshan Kumar at the time of extinguishing the fire
of Anita Rani on 26.6.1997. He has also proved bed head ticket B
of Gulshan Kumar (Ex.D17) and Anita Rani (Ex.D18). DW8,
Gulshan Kumar, who is the brother of the accused stated that
he with the help of Satnam Singh and his wife put off the fire.
He had further stated that Anita Rani had disclosed to his wife C
that she had herself set ablaze. DW9, Harish Kumar is a
witness to prove the plea of Alibi set up by the accused Neelam
Rani. Since she has been acquitted, the High Court treated this
as irrelevant. We need say no more on this issue.

15. The High Court while examining the various D
submissions made on behalf of the appellants has come to the
conclusion that the dying declaration is a clinching piece of
evidence as it was recorded by the Judicial Magistrate within
a few hours of the occurrence. We have also seen the contents
of the dying declaration. This statement which was recorded E
in the vernacular has been translated into English with
exactitude. A bare perusal of the same would show that whole
statement is spontaneous and sets out the correct version of
the events leading to her being set on fire. She does not unfairly
implicate anybody who had not participated in the crime. She F
clearly stated that her younger Darani i.e. husband's brother's
wife had gone to her parents after quarrelling. She also states
that there was a quarrel between her and her husband. He had
slapped her and refused to take any food from her. She had
retorted that she does all the work in the house and still she
has to bear the beatings with shoes. He had earlier informed G
her that he was going to protest to her parents about her
misbehavior. He had categorically told that if she dies, he would
have no worries. She stated that her husband's younger
brother, mother-in-law, her husband and her husband's sister
were also standing there. But she then correctly states that her H

A husband's elder brother tried to save her by extinguishing the fire. In the very next line, she again states that kerosene oil was sprinkled upon her by her mother-in-law, her husband's younger brother and her husband. This was done by taking her near the "kacha kotha". She stated that her mother-in-law, her husband and younger brother set her on fire. But her husband's elder brother and his wife, both tried to save her. In our opinion, both the Courts below have correctly relied on the dying declaration. We are unable to accept the submission of learned counsel for the appellant that the aforesaid dying declaration ought to be disbelieved on the basis that it may be a result of tutoring by her family members. In fact, this very objection has been considered by the High Court. It has been specifically noticed in the judgment of the High Court that the statement had been recorded after an application (Ex.P26) had been moved before the Magistrate. The Judicial Magistrate also stated that all safeguards were observed by him before recording the statement. He was cross-examined at length but nothing fruitful could be extracted from his statement which would show that the dying declaration was a tainted one. The Magistrate has categorically stated in his evidence that Anita Rani was lying in the cabin at the time when the statement was recorded. The cabin was not accessible to the relatives of the injured and she could be seen from outside only through the glass of the cabin. It must be remembered that at the time Anita Rani had been taken to the Intensive Burn Injury Unit, she had received 90% burn injuries of second and third degrees. Therefore, she was isolated in the burn unit to avoid any chances of infection. She was so badly injured that her statement had to be identified by the right toe print of her foot.

G 16. In view of the above, we are unable to disbelieve the statement (Ex.P29) which has ultimately been declared as a dying declaration. This Court while stating the principles of testing the authenticity of a dying declaration has observed in the case of *Paniben (Smt.) Vs. State of Gujarat* (1992) 2 SCC 474 as follows:-

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

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Munnu Raja v. State of M.P.* (1976) 3 SCC 104).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P. v. Ram Sagar Yadav* (1985) 1 SCC 552; *Ramawati Devi v. State of Bihar* (1983) 1 SCC 211).

(iii) This 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 opportunity to observe and identify the assailants and was in a fit state to make the declaration. (*K. Ramachandra Reddy v. Public Prosecutor* (1976) 3 SCC 618).

- A (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (*Rasheed Beg v. State of M.P.* (1974) 4 SCC 264).
- B (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (*Kake Singh v. State of M.P.* (1981) Supp SCC 25)
- C (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (*Ram Manorath v. State of U.P.* (1981) 2 SCC 654)
- D (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra v. Krishnamurti Laxmipati Naidu* (1980) Supp SCC 455)
- E (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. (*Surajdeo Oza v. State of Bihar* (1980) Supp SCC 769)
- F (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (*Nanahau Ram v. State of M.P.* (1988) Supp SCC 152)
- G (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (*State of U.P. v. Madan Mohan* (1989) 3 SCC 390)."

H Applying the aforesaid ratio of law we find that there is no occasion to disbelieve the dying declaration in the facts and circumstances of the present case.

17. We also see no reason to doubt the presence of the witnesses PW1, PW2 and PW5. Asha Rani had been told by Anita Rani that she had been burnt. Similarly, Satnam Singh, PW3 came into the compound after he saw the smoke from the fire in which Anita Rani was burning. The evidence of PW1, Kimti Lal and PW5, Gulshan Kumar is unflinching, coherent and consistent. Both the witnesses have withstood lengthy cross-examination without any loss of credibility. Their evidence cannot be discarded only on the ground that they are close relations of the deceased. Even Asha Rani, PW2 had stated that Anita Rani had named the appellants as the persons who set her on fire. She seems to have changed her stand, during the long interval between the earlier statement and the time when she appeared in court, for reasons best known to her, but not difficult to discern. But that is no reason to discard her entire evidence. In our opinion, the course adopted by the Courts below can not be said to be erroneous. In similar circumstances, this Court has in the case of *Sat Paul Vs. Delhi Administration* (1976) 1 SCC 727, has observed as follows:

“From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it.”

Without reference to any case law, the Courts below have

A correctly applied the aforesaid principle to the facts of the present case.

B 18. There remains no doubt that the appellants had indeed set the deceased on fire. Much emphasis was placed by the learned counsel for the appellant on the history recorded on the bedhead ticket (Ex.P13). In this history, it is stated that the patient had herself claimed to have set herself on fire by using kerosene oil on account of some fight within the family members at 10.00 a.m. on 26.6.1997. The High Court examined the bedhead ticket and observed that the whole record is made C subsequently by the doctor as he is making repeated entries with regard to the previous history at different stages. This was not required at all. In his enthusiasm to help the accused, at one stage, he even goes to the extent of showing that fire was D extinguished by husband and family members by using water and cloth. This was not even the case pleaded by appellant Amit Kumar and Brij Bhushan, who had put forward a plea of alibi to show that they were not even present at the time when Anita Rani received the burn injuries. Similarly the testimony of E Gulshan Kumar (DW8) has been held to be unreliable as he was trying to save his kith and kin. He has made improvements in his statement (Ex.DE), while stating that Anita Rani disclosed to his wife she committed suicide and it was her mistake. In our opinion, the courts below have correctly held that this was F an effort made by the witness to save his family. Clearly the appellants had resorted to telling one lie after another to escape the conviction for the murder which they had clearly committed.

G 19. In view of the aforesaid, we find no reason whatsoever to interfere with the verdict recorded by the trial court as well as the High Court in convicting the appellants of murder.

20. The appeal is accordingly dismissed.

K.K.T.

Appeal dismissed.