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Cr1.A.No. 992 OF 2001  
ITEM NO.102

COURT NO.09

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.992/2001 @@  
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WASEEM & ORS ... APPELLANT (S)

VERSUS

STATE OF M.P. ... RESPONDENT (S)  
(With office report)

Date : 08/08/2002 This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Appellant(s): Mr. R.K. Kaura,Adv.(A.C)

For respondent(s): Mr. Siddartha Dave,Adv.  
Ms. Vibha Datta Makhija,Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Mr. R.K. Kaura, learned counsel started his arguments at 12.05 P.M. and concluded at 1.00 P.M.  
The appeal is dismissed in terms of the signed order.

Mr. R.K. Kaura, learned amicus curiae be paid Rs.750/- as fee of his appearance in this case.

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(Ganga Thakur)  
P.S.to Registrar

(Jasbir Singh)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.992 OF 2001@@  
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WASIM & ORS.

..... APPELLANTS

-Versus-

STATE OF MADHYA PRADESH

..... RESPONDENT

O R D E R@@  
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The appellants in this appeal and two others named Sahid and Bahadur were accused of having committed the murder of one Shyam, son of Jaikishan on 12th May,1993 at about 7.45 P.M. Out of the said accused persons since Bahadur was declared as absconding, the trial proceeded against three appellants and Sahid. The learned IInd Additional Sessions Judge, Ratlam, Madhya Pradesh found all the accused persons guilty under Section 302 IPC read with 34 IPC and sentenced them to undergo imprisonment for life.

In appeal to the High Court of Madhya Pradesh, the High Court allowed the appeal of Sahid while it confirmed the conviction and sentence in regard to these appellants, therefore these three appellants are before us in this appeal.

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The courts below relied upon the dying declaration made by the deceased at Exhibit P-18. It also relied upon the evidence of PW 1, the brother of the deceased to whom prosecution states that the deceased stated that two of them, namely, appellant No.1 and absconding accused Bahadur and about 5 others poured kerosene on him while he was cooking his dinner at home and set him on fire consequent of which he suffered burn injuries. The trial court also relied upon the evidence of doctor, PW 8 as well as Naib Tehsildar to come to the conclusion that the deceased was in a fit state of mind to make the dying declaration. It is on this basis the trial court found the appellants guilty. As stated above, the High Court acquitted Sahid on the ground that the dying declaration does not implicate him of the crime.

Shri R.K. Kaura, learned counsel appearing for the appellants contended before us that it is not safe to rely upon the dying declaration Exhibit P-18 because of the fact that before the statement was made he was in the company of his relatives, therefore, in all probability he must have been coached to make the statement. He also submitted that there has been considerable delay in

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making dying declaration which throws doubt on coming into existence of the dying declaration. Both the trial court as well as the High Court have considered these two aspects have come to the conclusion that these two circumstances does not vitiate the credibility of the dying declaration hence placed reliance on the same. We find no reason to differ from the findings of the Courts below on this count.

Learned counsel further pointed out that there is considerable discrepancy in the prosecution case inasmuch as PW 19 and PW 21 in their statement before the court have stated that when they witnessed the incident, they found the room in which the deceased was said to have been set on fire was locked from inside and it is only after the door was broke open, that the deceased was brought out. We do not think that these statements made by these two witnesses can be accepted. According to the prosecution he has been examined as witness who has attested Exhibit P-22, i.e. the arrest memo in regard to the appellants and it is not his case that he was an eye witness to the incident. Even in his examination in chief he has not stated anything to do with the incident in question and it is only in his cross examination, on suggestions being made by the defence, he has come out

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with the case which is not consistent with the statement in the examination in chief. Therefore, we do not find it safe to rely upon this evidence. It is true as contended by the learned counsel for the appellant that PW 21 has also stated similarly that the deceased was found in locked room when he was set on fire and the door was broke open to get the deceased out. This witness again is a witness who has gone behind his previous statement made to the police the prosecution has treated him as hostile witness and we do not think it safe to rely upon his evidence. We have considered the dying declaration Exhibit P-18 and also the evidence of PWs 8 and 19. We find they are independent witnesses, they have no reason whatsoever to depose against the appellants. These witnesses independently stated that the deceased was in a fit condition to make the statement and the statement recorded as Exhibit P-18 is duly recorded. This dying declaration is supported by the evidence of PW 1 who is the brother of the deceased who has stated in his evidence that when he came to know that his brother was set on fire, he went to his house and on being enquired he found that two appellants and some others have set him on fire. This evidence having

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been accepted by the courts below, we find no reason to differ from the same. For the reasons stated above, we accept the findings of the courts below and that of the High Court and dismiss this appeal.

We appreciate the assistance given by Shri R.K.Kaura, learned Advocate who has appeared as amicus curiae in this case and direct he be paid a sum of Rs.750/- as fee of his appearance in this case.

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.....J.  
(N. SANTOSH HEGDE)

New Delhi,  
August 8, 2002.

.....J.  
(BISHESHWAR PRASAD SINGH)

