



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 194-195 OF 2012

PURSHOTTAM CHOPRA & ANR.

...APPELLANT(S)

V.

STATE (GOVT. OF NCT DELHI)

...RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

Preliminary

1. By way of these appeals, the appellants have called in question the judgment and order dated 23.05.2011 in Criminal Appeal No. 121 of 1999 and Criminal Appeal No. 139 of 1999 whereby, the High Court of Delhi has affirmed the judgment and order dated 30.01.1999 in Sessions Case No. 2 of 1998 by the Additional Sessions Judge, Delhi; and has upheld the conviction of the appellants for the offence punishable under Section 302 read with Section 34 of Indian Penal Code ('IPC').

2. In a brief outline of the material aspects, it could be noticed that in the present case, the appellants are accused of causing death of one Sher Singh

by putting him on fire. There had been no eye-witness to the incident but the prosecution has relied upon two statements said to have been made by the deceased after the incident: one when he was admitted to the hospital with 100% burns and another when he was under treatment, respectively to a doctor and to a police officer. The Trial Court as also the High Court have accepted these statements as being his dying declarations wherein the appellants were named as the assailants. Therefore, the appellants stand convicted essentially on the basis of the dying declarations of the victim. The reliability of such dying declarations has been assailed in these appeals apart from other contentions concerning the surrounding factors. The relevant facts and background aspects of the matter could be noticed, keeping in view of the points arising for determination in these appeals.

The relevant facts and background

3. Put in brief, the prosecution case had been that on 18.12.1997, at about 3.00-3.15 p.m., hearing the screams of a person and noticing smoke coming from plot no. 17 situated near Goverdhan Park, Uttam Nagar, Delhi, a lot of people gathered at the spot and saw that a man was ablaze with his entire body covered with fire; and the people so gathered made efforts to put out the flames by throwing water over the said person. The information as regards this incident was received in the Police Control Room ('PCR') through a phone call from some unknown person at 3.28 p.m. by Ct. Anju (PW-7), who made an

entry bearing No. 467 in Form I (Ex. PW-7/A) and passed on the information to the nearest Police Station. The concerned officers from PCR reached the spot and shifted the injured person to Safdarjung Hospital for treatment, where Dr. Sushma (PW-8) prepared the MLC (Ex. PW-8/A). While preparing the MLC, the injured person identified himself as Sher Singh and gave his address; and narrated the incident that had led to his current condition while accusing one Purshottam and another Suresh (telwala), both residents of A-block, Uttam Nagar, Delhi as his assailants¹.

4. Simultaneously, SI Rajesh Kumar (PW-16) and Ct. Vijay Parkash (PW-13) reached the site of incident and were apprised that the injured person had been shifted to the hospital. SI Rajesh Kumar left Ct. Vijay Parkash on the spot and himself reached the hospital, only to find that the injured person was admitted in ICU. SI Rajesh Kumar collected the MLC prepared for the injured person; and moved an application (Ex. PW-16/A) before the concerned doctor to take the statement of the injured person. When Dr. Rajesh Verma (PW-17) certified that the patient was fit to make the statement, SI Rajesh Kumar recorded his statement (Ex. PW-16/B) wherein the injured person – Sher Singh – gave out his name and address and then stated that he had purchased half a bottle of liquor from one Suresh (telwala), who had an oil depot; that he drank such liquor; that Purshottam also had an oil depot; and that while Suresh poured the kerosene oil over him and lit him aflame, Purshottam was present.²

1 These persons Purshottam and Suresh are the appellants herein.

2 The contents of this statement (Ex. PW-16/B) as also the MLC (Ex. PW-8/A) are taken as the dying declarations of the victim and shall be referred in detail hereafter later.

5. Thereafter, the SHO and Additional SHO of Police Station Vikas Puri reached the hospital. After recording the statement of injured, SI Rajesh Kumar left the hospital, only to arrive back at the site of incident and sent Ct. Vijay Parkash to register a complaint for the offence punishable under Section 307 read with Section 34 IPC and hence, FIR No. 780 of 1997 came to be registered. During this time, SI Rajesh Kumar got the site photographed; prepared the site plan; seized one piece of burnt cloth (white colour), one half bottle of liquor, one white colour container, one burnt sweater, one match box which contained match sticks; prepared seizure memo of the articles; and deposited the same with the Police Station at Vikas Puri.

6. On the basis of statement made by the injured Sher Singh, the appellants Purshottam and Suresh were arrested in the night intervening 18/19.12.1997 from their respective houses. In the morning hours of 19.12.1997, the information of Sher Singh's death was received which resulted in the case being converted to one under Section 302 read with Section 34 IPC and the investigation of the case was taken over by Inspector Om Prakash, Additional SHO, Police Station Vikas Puri, who conducted inquest proceedings over the dead body of Sher Singh before sending it for post-mortem on 19.12.1997. Dr. Arvind (PW-14) conducted the post-mortem and opined that the cause of death was due to shock consequent to 100% ante-mortem flame burns.

7. The investigating officer then prepared a scaled map; sent the articles seized to office of CFSL, Chandigarh and thereafter collected the report; and

filed the charge-sheet before the Magistrate, who committed the case to the Court of Sessions.

The evidence

8. After committal, the case was tried as Sessions Case No. 2 of 1998 in the Court of Additional Sessions Judge, Delhi. In prosecution evidence, a total of 19 witnesses were examined namely, PW-1 Raju (brother of deceased); PW-2 Paali (brother of deceased); PW-3 Ct. Mahender Singh; PW-4 Head Ct. Jagbir Singh; PW-5 L/Ct. Rajesh; PW-6 Rajesh (the shop owner near the place of incident who allegedly reached the spot and found the victim in flames); PW-7 L/Ct. Anju (who received the telephonic information in PCR and made an entry to that effect); PW-8 Dr. Sushma (who had been working in Plastic and Burns Ward in Safdarjang Hospital and who prepared the MLC as per the alleged version of the victim); PW-9 Dr. H. K. Sharma (who signed the death summary/discharge slip relating to the deceased victim); PW-10 Head Ct. Ved Parkash; PW-11 Gurdeep Kumar (the photographer); PW-12 Inspector Devender Singh (who prepared the scaled site plan); PW-13 Ct. Vijay Parkash (who reached the place of incident with SI Rajesh Kumar); PW-14 Dr. Arvind (who conducted post-mortem over the dead body of victim); PW-15 Ct. Joginder Singh; PW-16 SI Rajesh Kumar (who reached the place of incident with Ct. Vijay Parkash and thereafter reached the hospital and recorded the dying declaration of the victim); PW-17 Dr. Rajesh Verma (who declared the victim fit for giving statement); PW-18 Harish Ram (who transported the victim

to hospital from the place of incident in PCR van); and PW-19 Inspector Om Parkash (who took over the investigation from SI Rajesh Kumar).

9. Out of the aforesaid witnesses, PW-3 Ct. Mahender Singh; PW-4 Head Ct. Jagbir Singh; PW-5 L/Ct. Rajesh; PW-10 Head Ct. Ved Parkash; PW-11 Gurdeep Kumar; PW-12 Inspector Devender Singh; and PW-15 Ct. Joginder Singh had been the formal witnesses related with the process of investigation. However, in view of the contentions urged and the issues involved, we may take note of the salient features of the testimonies of other witnesses namely, the brothers of deceased, the person allegedly reaching the site upon noticing the incident, the medical officers, and the police personnel.

9.1. PW-1 Raju, the elder brother of the deceased Sher Singh, led in evidence, *inter alia*, to the effect that the appellants were the residents of same locality as that of his brother; that the appellants were having separate kerosene depots; that they were workers for BJP; and that prior to the murder of Sher Singh, dispute had taken place between his brother and Purshottam but no police complaint was filed due to fear. In his cross-examination, this witness stated that he came to know about the quarrels of deceased with Purshottam Chopra from his mother.

9.2. PW-2 Paali, also the brother of Sher Singh, led in evidence to the effect that he had visited the mortuary to identify the dead body of his brother. This witness stated that the deceased was living with him in the same premises; that he was not aware if deceased used to consume liquor but denied the suggestion that the deceased was a drunkard.

9.3. PW-6 Rajesh, having a shop across the road where the incident had taken place, in his examination-in-chief deposed that on hearing the screams

and seeing the smoke, he rushed to the spot; that other people from the market had also reached there; that he saw a person burning on fire; that they threw water from a nearby tap on the burning body of the victim who identified himself as Sher Singh; and that someone from the market telephoned at number 100 whereupon the police reached the spot.

9.3.1. In his cross-examination carried on behalf of the accused Purshottam, this witness PW-6 Rajesh deposed that one has to pass from the street in front of his shop to reach plot No. 17 and there was no other way/gali to reach plot No. 17 nor there was any other exit. This witness further stated that upon hearing the screams, himself as also his neighbourers Daljit Singh and Vicky from Ravindra Auto and one Rinku rushed to the spot; that he had not seen any person running or going from the spot. This witness further pointed out that they threw water on the victim, who stated his name and also gave out his address. This witness, *inter alia*, stated,-

“Some public persons had enquired from the victim as to who had put him on fire. He had told them that since he was dropped from the tempo, he had set himself on fire.....”

This witness further attributed knowledge about some of the facts to one Daljit and alleged that Daljit had seen the victim carrying kerosene oil in polythene towards the plot. The witness stated, *inter alia*, as under:

“Daljit had told me in the evening that he had seen the victim carrying the kerosene oil in a polythene towards that plot. (Objected to by Ld. Addl. P.P.) Police had recorded my statement and the statement of Rinku and Daljit in the same evening. Volunteered the police had also recorded statement of 10/12 persons. Daljit Singh and Rinku had not made these statement to the police in my presence.

After 2/3 days of the incident, the T.V. persons had come at plot no. 17 and had prepared a cassette. They had enquired about the incident from me and Daljit Singh. My interview was taken by City Cables. Interview of Daljit was taken by City Cables. Daljit Singh had

told city cables in his interview that he had seen the victim carrying kerosene oil in the polythene to that plot. (Objected to by Ld. Addl. P.P.)”

9.3.2. On being subjected to cross-examination on behalf of the accused Suresh, this witness stated that he was not present at the time when Sher Singh told the public that he had put himself on fire after being dropped from the tempo. The relevant portion of his statement in this cross-examination reads as under:

“....The victim Sher Singh had not told the public persons in my presence that he had put himself on fire as he was dropped from the tempo. About 100 or 120 persons had gathered at the place of incident within 5 minutes. Police had interrogated Tony and one other person from the same locality in my presence on the next day and had recorded their statements. Tony had stated to the police in his statement that victim was telling that he had put himself on fire as he was dropped from the tempo. (objected to) Tony had given the statement to police in my presence.”

9.4. In all, four medical officers were examined in this matter. PW-9 Dr. H.K. Sharma had been working in the Burns Ward of Safdarjung Hospital where the victim was admitted on 18.12.1997 and expired in the early hours of 19.12.1997. He got prepared the death summary/discharge slip (Ex. PW-9/A). The statement made by this witness in cross-examination as regards the critical condition of the victim and preparation of OPD slip have been referred in the contentions on behalf of the appellants and hence, it would be apposite

to take note of his testimony in the cross-examination that reads as under:

“It is correct that the patient was in a very critical condition right from the time of admission. It is correct that the condition of the patient went on deteriorating since time of his admission. It is correct that the patient remained admitted throughout in ICU. Death summary Ex. PW-9/A was prepared on the basis of the recording in the patient file. First document prepared at the time of the patient was OPD slip. The name of the informer was

mentioned on the opd slip. I mentioned the informant in Ex. PW-9/A to be 'police' from the OPD card."

9.5. PW-14 Dr. Arvind had conducted post-mortem over the dead body of the victim Sher Singh. In the external examination recorded by him, it had been recorded as under:

"...Burns injuries: (1) Cut down wound was present on the lower end of right upper arm. (2) Dermo-epidermal burns superficial to deep in nature were present all over the body. The total percentage of burns area was about 100%. The area of redness was present on four (sic) arms and front of chest. The area of blackening of skin was present on face, front of the chest. Peeling of skin was present on dorsum (sic) of hands, Front of legs. Heat split lacerations were present on front of left shoulder....No mark of violence of leg, signs of struggle were present on the body. Smell of kerosene was present in scalp hair."

9.6. PW-17 Dr. Rajesh Verma deposed that he had declared the patient to be fit for giving his statement and an endorsement was made by him on the requisition Ex. PW-16/A provided by the Investigating Officer at mark 'X'. In his cross-examination, this witness stated that after admission, the condition of the patient was continuously deteriorating; that he was under continuous medical watch; and that he ultimately died at 4.00 a.m. This witness also stated that the patient was under continuous medical attendance at ICU but denied the suggestion that the certificate regarding fitness to make statement was obtained from him by the police in a routine manner.

9.7. PW-8 Dr. Sushma, one of the members of the Plastic and Burns Ward had attended on the injured Sher Singh when he was admitted to the hospital. She deposed, in her examination-in-chief, that Sher Singh was initially brought to the burns causality; that Sher Singh himself gave *the alleged history that he had sustained burn injuries when Purshottam and Suresh (telwala) threatened*

him and then poured kerosene on him and set him on fire. She also stated that on examination, the patient was found conscious and oriented, though his general condition was critical, being that the entire surface area of his body was found with 100% deep burns. The relevant contents of the statement made by this witness PW-8 Dr. Sushma in her cross-examination may also be taken note of in requisite details as under:

"I do not know if the patient was removed earlier to the main casualty of Safdarjang hospital. Burns patient are brought directly to the casualty of burns ward. Victim Sher Sg. was not accompanied by any relative/attendant. Police had brought the patient in the casualty.

Death summary is prepared if the patient expires. Ex. PW-8/A is the first document prepared by me.

I do not remember if the patient was crying in agony when he was brought at the casualty. As soon as the patient arrives at the casualty, OPD slip is prepared by the Junior Resident. On the OPD card it is decided if the patient is to be admitted or to be sent back. MLC is prepared after the preparation of OPD card. OPD card was before me when I prepared the MLC Ex. PW-8/A. I have not recorded the fact in the MLC Ex. PW-8/A that the patient was brought by the police. I remember this fact by memory. It is possible that some relations might have accompanied the patient. The OPD card remains in the patient file. It is incorrect to suggest that the patient had not given any alleged history or that later at the suggestion of the police I have prepared this MLC. No mark of identification of the patient was obtained on the MLC Ex. PW-8/A. The whole of the body of the patient including his thumbs were burnt."

9.8. The testimonies of five police personnel related with this matter also need to be taken note of. PW-7 L/Ct. Anju deposed that on 18.12.1997, she received information through a telephone call that some unknown person had set himself on fire near Uttam Nagar bus stand and thereafter, she filled in the PCR form regarding this information at Serial No. 467. The statement of this witness was deferred for want of original record and she was further examined

alongwith the original proforma of PCR, photocopy whereof was taken on record as Exhibit PW-7/B.

9.9. PW-13 Ct. Vijay Parkash in his examination-in-chief stated that at the relevant time, he was on emergency duty at Police Station Vikas Puri and reached the spot with SI Rajesh Kumar after receiving information about an injured person lying at Dal Mill Road, Goverdhan Park; and on reaching the said spot, they were informed that the injured had already been shifted to the hospital by PCR Van. Thereafter, SI Rajesh instructed him to remain at the spot and left for the hospital. Upon his return from the hospital at about 09.50 p.m., SI Rajesh handed him one *rukka* for registration of an FIR at the police station whereupon he got recorded FIR at No. 780/97 and returned to the spot with a copy of FIR and thereafter assisted the Investigating Officer to collect/seize certain articles from the spot, which were later sealed in an envelope. In his cross-examination, this witness deposed as under:

“...There is a distance of about 1 ½ Km. between the PS and the spot. About 15/20 public persons were already present at the spot when we reached there. Insp. Rajesh had not recorded the statement of any person on reaching at the spot. After Insp. Rajesh had returned at the spot at 9.50 P.M. from the hospital, he did not record statement of any person in my presence....I.O. had not called any public person at the time of sealing the case property....”

9.10. PW-18 ASI Harish Ram stated in his examination-in-chief that at the relevant time on 18.12.1997, he was posted in PCR West Zone when they received a wireless message at around 3.30 p.m. that a person was in burnt condition near scooter market, Uttam Nagar and on receiving this information, they immediately reached the spot in the Van and found one male person in burnt condition at plot No. 17 Goverdhan Park where about 20-30 persons had

gathered; that they lifted the burnt person in the PCR Van and removed him to Safdarjung Hospital; that the name of victim came to be known as Sher Singh; that no public person accompanied them from the spot in PCR Van; and that the patient was crying in pain on the way, he did not have any talk with them. In his initial cross-examination, this witness stated that they did not make any effort to talk to the burnt person as he was not in a condition to speak; and that no relative of the patient met them at the hospital. In his further cross-examination, the witness admitted the fact that the first message as received had been about the person having set himself on fire whereupon they reached the spot. The witness pointed out that it took them about 5-7 minutes to put the victim in the PCR Van but denied the suggestion that the people present there informed that the patient put on the fire himself. The witness stated that at the time of admitting the victim to hospital, he had given the name of victim as Sher Singh, as was gathered from the persons present there; and repeated the assertion that the victim was not in a position to speak so long as he remained in the hospital and that the doctor had not enquired about the address of the victim in his presence.

9.11. PW-16 SI Rajesh Kumar, in his examination-in-chief deposed that after a copy of DD No. 21A was handed over to him, he left with Ct. Vijay Parkash for carrying out investigation; upon his reaching the site, he was informed that the injured had been shifted to the hospital in a PCR Van; he then left Ct. Vijay Parkash at the site and reached the hospital only to find that the injured was admitted in the ICU and thus had sought permission through requisition Ex. PW-16/A from the concerned doctor to record the statement of the injured. At

about 7.50 p.m. the same day, he was informed that the patient was fit for giving statement whereupon he recorded the statement Ex. PW-16/B verbatim and obtained the left thumb impression of Sher Singh. It was also stated by this witness that after recording the statement of Sher Singh, he went back to the spot to carry out investigation and handed over *rukka* to Ct. Vijay Parkash for registration of FIR. Thereafter, the site plan was drawn, the site was photographed and certain articles were seized and sealed. He further stated that he had effected arrest of the two accused persons named by Sher Singh in the night intervening 18/19.12.1997; and that after receiving information that Sher Singh had passed away in the morning of 19.12.1997, the investigation was handed over to the Inspector Om Parkash, Additional SHO.

9.11.1. In his cross-examination, this witness stated that when he had gone to arrest the accused persons in the night and apprised them of the statement made by Sher Singh, the accused persons denied any involvement in the commission of the said offence. He also deposed as under:

“...On reaching at the spot, I did not make any investigation regarding the information recorded in DD No. 21A that one person had set himself on fire. I did not investigate this fact till the investigation remained with me.

...I had made enquires from the public persons present there during my stay for about 20 or 25 minutes at the spot. At that time, no evidence had come to show that injured Sher Singh had put on fire by someone.”

9.11.2. PW-16 also stated that on reaching the hospital at about 5.45 to 6 p.m., he collected the MLC of Sher Singh and came to know that Sher Singh had held Purshottam and Suresh responsible for his condition; he started recording the statement of the patient at about 8 p.m. and that no other doctor

or nurse was with them at the time of recording the statement. Though PW-16 stated that he did not put in any efforts to call for SDM or MM to record the statement of Sher Singh, yet he volunteered to state that he had sought opinion of the concerned doctor that if he could summon SDM or MM to record the statement but the doctor stated that the condition of the injured had become critical. He also stated that the injured Sher Singh had stopped talking by that time.

9.11.3. More specifically, in the cross-examination conducted on behalf of the accused Suresh, PW-16 stated that the whole body of Sher Singh was wrapped in bandages except his eyes, nose and mouth. He denied the suggestion that the thumb impression on the statement was forged and that the deceased was not in a position to put his thumb impression on the statement recorded. The relevant part of his testimony in this regard could also be usefully taken note of as under:

"The patient came out of the ICU at about 7.45 P.M. of 8 P.M..... When I had moved an application for recording statement of the patient, one doctor and one nurse were present beside the patient. I had not requested the doctor and nurse in writing to remain present at the time of recording dying declaration of the patient. (Volunteered I had requested them orally). I had not informed the doctor and nurse about the consequences for not joining the investigation. (Volunteered at that time I was not aware that the patient will be dying). When the patient was brought out of ICU I had seen him burnt all over the body.

The whole body of the patient excluding eyes, nose and mouth was wrapped with bandages. The ears were also not wrapped with bandage. It is incorrect to suggest that Patient Sher Singh did not make any dying declaration and I had forged and created falsely the dying declaration Ex. PW-16/B to be that of deceased Sher Singh. It is incorrect to suggest that the thumb impression at point A on Ex. PW-16/B has been forged afterwards and deceased was not in a condition to put his thumb impression. It is also incorrect to suggest that deceased Sher Singh had died in the ICU itself and was dead when brought out of ICU."

9.11.4. PW-16 also stated that he did not get the statement of other witnesses from the spot or the nearby residential houses nor did he make efforts to find out as to who had called the police to inform about the incident.

9.12. PW-19 Inspector Om Prakash had been the Additional SHO, Police Station Vikas Puri who took over the case from SI Rajesh Kumar on 19.12.1997. He prepared the inquest report in the presence of the brothers of the deceased and sent the dead body for post-mortem and after post-mortem handed over the same to his family members. This witness further pointed out that he recorded the statement of Rajesh at the spot and made further enquiries but no other person gave the statement. This witness, *inter alia*, stated that on 18.12.1997, he along with SHO Police Station Vikas Puri had reached the hospital on getting the information about the critical condition of victim and SI Rajesh Kumar met them; at that time the victim was lying in adjoining room of ICU. The witness further stated that when the doctor concerned was asked to attest the statement of injured Sher Singh as recorded by SI Rajesh Kumar, the doctor pointed out that the facts had already been mentioned in the MLC and there was no need to attest the statement recorded by SI Rajesh Kumar. In cross-examination the witness admitted the fact that in the related DD entry, the information recorded had been that one person had put himself on fire. In the other part of cross-examination, this witness was given the suggestions that when he was in-charge PP Matiala, hot words were exchanged with accused persons and further hot words were exchanged with them when he was in-charge PP East Uttam Nagar regarding

some demonstration of workers. It was yet further suggested that one week prior to the incident, he had an altercation with the accused persons. The witness, of course, denied such suggestions.

10. As noticed, the contents of two documents, namely, the MLC report said to have been prepared by PW-8 Dr. Sushma (Ex. PW-8/A) and the statement said to have been recorded by PW-16 SI Rajesh Kumar (Ex. PW-16/B), form the core of this case inasmuch as the prosecution has relied upon them as being the last statements made by Sher Singh after the incident and few hours before his demise. Hence, the contents of these documents also need to be taken note of.

10.1. In the MLC Ex. PW-8/A, said to have been prepared by PW-8 Dr. Sushma at 4.35 p.m. on 18.12.1997, the particulars of the patient were stated as *Sher Singh son of Ganpat Ram age 23 years M* and address as *H-603, Pankha Rd. N. Delhi*. While stating that the time of burning was approximately 3.30 p.m. and time of admission was 4.35 p.m., it was also stated therein that the informant was the patient himself. The doctor noticed that the patient was '*conscious, oriented*' and that he had suffered '*burn injuries involving whole of the body surface area-100% deep burn*'. On the significant part, the doctor stated the information given by the patient in the following terms:

"Alleged to have sustained burn injury when some Purshottam & Suresh (telwala)³ threatened him & then poured kerosene on him & set him on fire."

10.2. The statement of the injured Sher Singh (Ex. PW-16/B) is said to have been recorded by PW-16 SI Rajesh Kumar in the hospital in Hindi

³ In Ex. PW-8/A, the expression '*telwala*' is placed in parenthesis and is written in Hindi, though other contents are in English.

language. Its approximately accurate translation, as adopted by the High Court, reads as under:

“Statement of Sher Singh, S/o Ganpat Ram, R/o A-603, Pankha Road, J.J.Colony, Uttam Nagar, Delhi aged 23/24 years.

I reside with my mother and I am employed as a helper in vehicle No. DL-IL-0382 Tata 407 owned by Raghunath who resides opposite Chaddha Hotel, J.J.Colony, Uttam Nagar the drivers of which vehicle are Natthu and Raju. Suresh who runs an oil depot on Hastal Road gave me half bottle of liquor which I drank. Suresh and Purshottam who have an oil depot at Jeevan Park and Suresh resides at 795, J.J.Colony and Purshottam resides at 686, J.J.Colony, Pankha Road. Suresh poured kerosene oil on me and Purshottam was with him. Suresh thereafter set me on fire by lighting a match.”

10.3. Another relevant document for the present purpose is the PCR form (Ex. PW-7/B) wherein it was recorded in Part-I that the information was received that ‘near scooter market, Prem Nagar Bus Stand, Dall Mill Road, Uttam Nagar, one person has put himself on fire’. In Part-II, the information recorded had been that the victim was found to have suffered 100% burn injuries; he was being taken to the hospital; and was identified as ‘Sher Singh s/o Ganpat Ram age 23/24 years R/o 603 Pankha Road, Uttam Nagar’. In Part III, it was recorded that the patient was admitted in the hospital in 100% burn condition and he was not saying anything. However, in the last part of this document, it came to be recorded that as per the patient’s statement to the doctor, ‘Suresh and Purshottam threatened him and then put him on fire after pouring kerosene oil’.

11. In their statements under Section 313 of the Code of Criminal Procedure (‘CrPC’), both the appellants denied their involvement in the commission of the offence i.e., putting Sher Singh on fire.

11.1. The relevant portions of appellant Purshottam’s statement read as under:

“Q.3 It is further in evidence against you that you are active worker of BJP. On two or three occasions, prior to the incident quarrels/ disputes had taken place of yours with deceased Sher Singh. No report was got lodged with the police about the quarrels due to fear. What have you to say?”

Ans. It is correct that I am an active member of BJP. Second part is incorrect.

Q.20 It is further in evidence against you that patient Sher Singh (since deceased) had further stated in his statement to PW-16 SI Rajesh Kumar that co-accused Suresh had put him on fire with match stick and both of you were residing at A Block, Uttam Nagar. What have you to say?

Ans. It is correct that I am residing at A Block, Uttam Nagar. Rest is denied.

Q.43 Do you want to say anything else?

Ans. That being politically known person, I have been falsely implicated by certain persons adversely interested against me.”

11.2. The accused Suresh also submitted that he had been falsely implicated in the case and that the evidence led in against him was false. He gave out his version in the following:-

“Q.42 Do you want to say anything else?

Ans. I am innocent. I am running a business of hardware under the name and style of “M/S NEW DELUX PANTS and at no point time I have kerosene oil depot. The police has implicated me in this case falsely and I was picked up from my residence by the police of PS Vikas Puri on the false pretext that certain enquiries are to be made and they assured me to release on the same day. But after taking me forcibly from my residence the police involved me in this case. I do not know the deceased.”

The Trial Court found the appellants guilty

12. After conclusion of the trial and after having heard the parties, the Trial Court proceeded to determine the questions involved in the matter in its impugned judgment dated 30.01.1999. The Trial Court found that there was no direct evidence about the commission of offence; and that the entire

prosecution case was hinging upon the two dying declarations said to have been made by the deceased Sher Singh.

12.1. The Trial Court accepted the genuineness of the evidence led in by PW-8 Dr. Sushma that the victim Sher Singh himself had informed her the reason and cause behind his injuries; that she had found the victim to be conscious and oriented though his general condition was critical; and that the veracity of the MLC Ex. PW8/A prepared by her could not be doubted. The Trial Court, *inter alia*, observed and held as under:

“16. From the entire testimony of PW-8 Dr. Sushma, I am of the considered view that she has fully proved the contents of MLC Ex. PW-8/A prepared by her. PW-8 Dr. Sushma was a responsible officer and was not expected to fabricate the vital piece of evidence against the accused persons with whom no ill-will or enmity has been alleged. No motive can be imputed to PW-8 Dr. Sushma to fabricate the dying declaration at the instance of the police. I have gone through the MLC Ex. PW-8/A which is in the handwriting of PW-8 Dr. Sushma. Same bears her sign at point A. The preparation of MLC by Dr. Sushma and examination of the deceased at the time has not been challenged in the cross-examination. There is no merit in the argument of the Ld. Defence counsel that since OPD card was not produced on merit, the MLC prepared by Dr. Sushma cannot be considered. Nothing has come on record about the contents of the OPD card. If the OPD card was so material or relevant in the case to falsify the MLC Ex. PW-8/A, there was no obstruction for the accused persons to summon the OPD card in their defence or at the time of cross-examination of PW-8 Dr. Sushma. Since OPD card is not on the file and the contents of the same are not known to the court, no adverse inference can be drawn against the prosecution and by no stretch of imagination, the veracity of MLC prepared by PW-8 Dr. Sushma can be doubted. Dr. Sushma had no axe to grind to falsely record the alleged history given by the deceased himself. Nothing has come on record to show if Dr. Sushma was known to the deceased or any of his family members to favour them..... PW-9 Dr. H. K. Sharma, PW-17 Dr. Rajesh Verma both from Safdarjang hospital have been examined by the prosecution. The MLC prepared by Dr. Sushma Ex. PW-8/A has not been challenged in their cross-examination also. So I am of this view that there is no doubt about

the preparation of the MLC Ex.PW8/A by Dr. Sushma and in view the same has been proved on record beyond reasonable doubt.”

12.2. The Trial Court also accepted the testimony of PW-16 SI Rajesh and the statement of the victim said to have been recorded by him as the dying declaration with the findings as under:

“18. Perusal of the above said testimony of PW-16 SI Rajesh Kumar reveals that statement of the injured (subsequently treated as dying declaration) was recorded by PW-16 SI Rajesh Kumar. The presence of SI Rajesh at the hospital has not been denied by the accused persons. PW-13 Ct. Vijay Parkash in his testimony has corroborated the version of PW-16 SI Rajesh that on receipt of DD, he alongwith SI Rajesh had reached at the spot at 3.15 P.M. and there they had come to know that the injured had already been removed by PCR van to the hospital. Insp. Rajesh had left him at the spot and he himself had left for the hospital. No suggestion was put by the accused persons to PW-8 Dr. Sushma, PW-9 Dr. H. K. Sharma and PW-17 Dr. Rajesh that SI Rajesh was not present at the hospital or that he had not recorded any statement of the injured Sher Singh. PW-16 SI Rajesh has proved on record the application Ex.PW-16/A moved by him before the doctor to record the statement of injured Sher Singh. Endorsement of PW-17 Dr. Rajesh Verma declaring the patient to be fit for statement at 7.50 P.M. appears at portion A on Ex.PW-16/A. Dr. Rajesh appearing before the court as PW-17 has also deposed that he had declared the patient to be fit for statement on the application of the IO Ex.PW-16/A. No suggestion was put to this witness in the cross-examination by the accused persons that no such application was moved by the IO at that time. PW-17 Dr. Rajesh Verma working as a doctor was having no motive to falsely make his endorsement at portion A on Ex.PW-16/A. The application Ex.PW-16/A categorically proves the presence of PW-16 SI Rajesh at the hospital at 7.50 P.M. Once the permission was obtained by SI Rajesh to record the statement of Sher Singh at 7.50 P.M. from PW-17 Dr. Rajesh he was supposed to right (sic) the statement of the injured and it does not lie in the mouth of the accused persons to state that the statement of the injured Sher Singh was fabricated afterwards by the IO. No suggestion was put to PW-17 in the cross-examination by the accused persons that even after endorsement made by him on Ex.PW-16/A, the IO had not record the statement of injured Sher Singh.....

19. *Nothing has come on record to show if any relative of the deceased was present at the time when injured Sher Singh was brought at hospital or when his MLC Ex.PW-8/A was prepared or when statement Ex.PW-16/B was recorded by PW-16 SI Rajesh. No motive has been imputed by the prosecution to this witness to falsely fabricate the statement of the deceased. At the time of recording the statement Ex.PW-16/B, there was nothing in the mind of SI Rajesh to show that injured Sher Singh would expire soon. SI Rajesh got recorded the case u/s 307/34 IPC against both the accused persons. Rukka was sent from the spot at 9.55 P.M. The FIR was registered thereafter at 10.20 P.M. The names of both the accused persons were mentioned in the MLC Ex.PW-8/A and in the statement Ex.PW-16/B. The death of injured Sher Singh had not occurred by that time. So it cannot be imagined that SI Rajesh Kumar would get the case registered giving the names of the accused persons at that time. The case had been registered on 18.12.97. The intimation about the death of injured Sher Singh was received at PS Vikas Puri on 19.12.97 in the morning. The accused persons admittedly were arrested on the intervening night of 18/19.12.97 from their respective houses even before the death of the deceased. All these facts clearly rule out the possibility of any manipulations or fabrications...."*

12.3. The Trial Court also did not find any adversity in the situation that no statement was made to PW-18 ASI Harish by Sher Singh when he was being transported to the hospital. The Trial Court also rejected the other contentions urged on behalf of the accused appellant and held that even if the victim had suffered 100% burn injuries, the dying declaration made by him was not to be rejected as there was nothing to show that the mental condition of injured Sher Singh was such that he was unable to speak and, *inter alia*, held as under:

"25..... I am of the view that despite suffering 100% burns, injured Sher Singh was mentally fit to make dying declaration. The certificate issued to that effect by PW-17, Dr. Rajesh clinches the entire issue.

26.Moreover, mere for the negligence of the IO to get record the dying declaration from the SDM, the dying declaration Ex. PW-8/A and Ex. PW-16/B cannot be rejected on that score

alone. It is not always mandatory for the police to get record the dying declaration from the SDM or Ld. M.M. though the recording of the dying declaration by these officers do expire (sic) much confidence....”

12.4. One of the principal submissions on behalf of the accused persons had been that as per the testimony of PW-6 Rajesh, the victim had at the first point of time made the statement to the effect that he had put himself on fire. The Trial Court rejected this part of the statement made by PW-6 Rajesh in his cross-examination while observing as under:

“29.....The testimony of PW-6 before the court is somewhat contradictory on many aspects. In the examination-in-chief, the witness merely stated that the victim had told his name to be Sher Singh. In the cross-examination, he has further disclosed that the victim had also given his home address i.e. A-603, J.J. Colony, Uttam Nagar. In the examination-in-chief, this witness did not depose that the victim had told to some public persons that since he was dropped from the tempo, he (Sher Singh) had set himself on fire. Again in the examination-in-chief, the witness did not state that the Daljit and Rinku were present at the spot and Daljit had told him in the evening that he had seen the victim carrying kerosene oil in a polythene towards that plot. Similarly, this witness did not depose about preparation of cassette by T.V. persons after 2/3 days after incident and about the disclosure of Daljit Singh to them in his interview about the victim carrying kerosene oil in the polythene to that plot. The witness did not disclose all these facts in the examination-in-chief to give an opportunity to the prosecution to confront him on the facts recorded in his statement u/s 161 Cr.P.C. The testimony of this witness on all these facts does not inspire confidence and does not shatter the dying declaration recorded subsequently by PW-8 and PW-16. In view of above discussion, I am fully of the view that dying declarations Ex.PW-8/A and Ex.PW-16/B were duly made by the deceased Sher Singh and the same were duly recorded by PW-8 Dr. Sushma and PW-16 SI Rajesh respectively.”

12.5. The Trial Court found that the two dying declarations inspired confidence and were worthy of reliance while observing that the same were

recorded at the earliest; that none of the relatives of the victim were present at that time; and that there was nothing to suggest if the deceased was influenced by any consideration to falsely name the accused persons while letting the real culprits go scot free.

12.6. The Trial Court, though found that the prosecution had failed to establish the motive of the accused persons for setting the deceased Sher Singh on fire, but observed that merely for want of proof of motive, the prosecution case could not be discarded and said as under:

“42. Though the prosecution has failed to prove specifically motive of the accused persons to put the deceased on fire, yet the same is not fatal to be prosecution case. SI Rajesh Kumar has deposed that he has made efforts to enquire the motive of the accused persons from the deceased but he had stopped talking by that time. However, it has come on record that the deceased was known to the accused persons. The deceased and the accused persons were the residents in the same locality. PW-1 Raju has categorically deposed that on 2/3 occasions earlier also dispute had taken place of the deceased with accused Purshotam. They had not lodged any report with the police about the quarrels due to fear. In the cross-examination the testimony of the witness regarding the quarrels to have taken place earlier with the accused Purshotam has not been controverted. Nothing has been suggested by the accused persons about the cause of quarrel with the deceased. It is very difficult for the prosecution to establish motive in the absence of the victim. The motive remains locked in the heart of the accused and in view of the categorically allegations in the dying declaration against them, the failure of the prosecution to prove the motive positively pales into insignificance....”

12.7. The Trial Court also referred to the contention that no overt act was attributed to the accused appellant Purshottam but opined that in the proven circumstances, he could not escape liability while observing as under:

“50. From the law laid down by the Hon’ble Supreme Court in the above judgment, it is clear that accused Purshotam cannot escape the consequence simply because no overt act was attributed to him by deceased Sher Singh in his second dying declaration Ex.PW-16/B. Reading the substrum of both the dying declaration as a whole, I am of the view that the deceased has implicated both the accused persons for the offence committed by them. It was accused Purshotam who was having previous quarrels with the deceased. So all these proved circumstances on record clearly proved the involvement of both the accused persons in the commission of the offence.”

12.8. In the ultimate analysis, the Trial Court found proved the prosecution case beyond reasonable doubt and hence, convicted the accused-appellants for the offence under Section 302/34 IPC and sentenced them to life imprisonment.

The High Court affirmed the conviction and sentence

13. Assailing the order of conviction, the accused persons preferred separate appeals, being Criminal Appeal Nos. 121 of 1999 and 139 of 1999 before the High Court of Delhi. The High Court reappreciated the evidence and concurred with the decision of the Trial Court while holding that the statement made by the deceased Sher Singh to Dr. Sushma (PW-8) and recorded by her in the MLC (Ex. PW-8/A) as also the statement made by him to SI Rajesh Kumar (PW-16) in Ex. PW-16/B, which were considered to be the dying declarations, clearly established the crime alleged against the appellants.

13.1. The High Court particularly referred to the fact that in the PCR Form (Ex. PW-7/A) the entries came to be made by PW-7 Ct. Anju not only as

regards the information received at the initial stage but further to that about the nature of injuries as also the particulars of the victim with his name and address and the fact that he was admitted to the hospital. The High Court, in a comprehension of the material on record, found that PW-18 ASI Harish had not been truthful in his assertion that the victim did not say anything to him because the subsequent entries in the PCR Form (Ex. PW-7/A) could not have been made by PW-7 Ct. Anju but for the information passed on to her by PW-18 ASI Harish, who, in turn, ought to have gathered all such particulars from the victim only. The High Court, *inter alia*, observed as under:

“11.....To a person with ordinary commonsense and requiring no great process of reasoning, it would be apparent that Anju would write the name, the parentage, the age, the address, the 100% burnt condition of Sher Singh, kerosene oil being used to burn him and he being removed to Safdarjung Hospital only through the mouth of ASI Harish, who had dared to stare into the eyes of the judicial process and falsely state that on the way to the hospital he had no talk with the deceased.....”

13.2. The High Court further proceeded to analyse the description appearing in MLC Ex. PW-8/A and found that such entries were obviously made by PW-8 Dr. Sushma on the information divulged by the victim himself. The High Court said,-

“14. Dr.Sushma has contemporaneously recorded that Sher Singh told her that Purshottam and Suresh have set him on fire after pouring kerosene oil on him. How would Dr.Sushma know two names i.e. Purshottam and Suresh unless somebody told her so. Obviously it is Sher Singh who gave said names to her.”

13.3. The High Court also referred to the contents of the dying declaration Ex.PW-16/B and observed as under:

“21. That in the dying declaration Ex.PW-16/B not only the names but the avocation and even the residential address of the accused has been given with lethal precision lends assurance to the truthfulness of the dying declaration so recorded and this dying declaration is upon proof of Sher Singh being fit when he made the statement, notwithstanding his condition being critical for the reason a person may be in a critical medical state but may be mentally fully conscious.”

13.4. After rejecting the contention urged on behalf of the appellants as regards the reliability of the dying declarations recorded by PW-8 Dr.Sushma and PW-16 SI Rajesh Kumar, the High Court accepted the case of prosecution while observing as under:

“30. The settled legal position is that a dying declaration which inspires confidence needs no corroboration to sustain itself and in the instant case we have already discussed that there is sufficient evidence to bring luminance of gold to the two dying declarations made by Sher Singh and we do not find the same to be copper and that there is intrinsic evidence of truthfulness in the same for how could Dr.Sushma and SI Rajesh Kumar note the name, the parentage, the age and the address of the deceased unless the deceased told them so. How could SI Rajesh Kumar note the names of the accused, their avocation and their residential addresses unless the deceased told him so. These are tell tale pointers leading in the direction of the truthfulness of the two dying declarations made by Sher Singh and we have no evidence that Dr.Sushma has contrived a writing on the MLC. Why should she do so? There is no evidence why SI Rajesh Kumar would contrive a document? There is no evidence of any such contrivance on the part of the two. Though critical, but in a state of mind fit enough to make a statement is the evidence which has surfaced through the testimony of Dr.Rajesh Verma and he is the third person against whom no evidence of contrivance has emerged.

31...as per the post-mortem report Ex. PW-14/A the deceased died due to shock consequent upon 100% ante-mortem flame burns....The state of the hands of the deceased i.e., skin peeling on the dorsum of the hands shows the extent of the burn injuries on the hands on the dorsa side i.e. not the palm but the outer portion of the hand and therefrom there is an indication that kerosene was doused on the deceased by somebody else and not the deceased himself for if the deceased had poured kerosene oil on himself the same

could not fall on the dorsum of the hands and if this was so we would have not found peeling of the skin on the dorsum of the hand and this is an additional piece of evidence wherefrom it can be inferred that somebody else doused the deceased with kerosene and not the deceased self doused himself with kerosene.”

13.5. While rejecting the contentions urged on behalf of the appellants that the statement allegedly made by the victim Sher Singh to PW-6 Rajesh that for being dropped from the tempo he had set himself on fire may be accepted as the first dying declaration and, while approving the findings of the Trial Court in paragraphs 29 of the impugned judgment, the High Court said,-

“28. The contention that Rajesh PW-6 has categorically deposed that when he was near Sher Singh soon after Sher Singh was seen by him engulfed in flames, somebody in the crowd asked him as to how he had caught fire, Sher Singh replied that since he was dropped from the tempo he had set himself on fire and this is the first point of time on which Sher Singh made a dying declaration and thus the same had to be accepted is a plea which was raised before the learned Trial Judge and has been rightly rejected and for which we accept the reasoning of the learned Trial Judge in para 29 of the impugned order and since each and every reasoning of the learned Trial Judge is accepted by us, we need not burden our decision by re-penning the same and would comment that para 29 of the impugned judgment be read as an integral part of our present opinion.”

13.6. Therefore, the High Court, rather in its independent analysis of the evidence on record, concurred with the conclusion of guilt of the appellants and dismissed the appeals.

Rival Contentions

14. Assailing the conviction and sentencing in the impugned judgment, it has been contended on behalf of appellant No. 1 that the conviction of this appellant is based only on speculations and the prosecution had even failed to

prove his identity. As regards value and worth of the alleged dying declarations of the deceased, learned counsel would argue that such dying declarations are not reliable for various reasons and counts. The learned counsel has elaborated that the assertion occurring in the dying declaration Ex. PW-16/B that the deceased had consumed liquor is falsified by the post-mortem report Ex. PW-14/A stating that there were no traces of alcohol in the body of the deceased. Learned counsel has also argued that as per PW-8 Dr. Sushma, the deceased was suffering 100% deep burns involving whole of the body and the nature of the injury was grievous; and she had also testified that thumbs of the deceased were burnt. Thus, according to the learned counsel, in the given status of burns, including the thumbs, assertion of PW-16 about having obtained the thumb impressions of the deceased is clearly falsified; and dying declaration alleged to have been recorded by PW-16 appears to be a doctored and manipulated document. It has also been argued that PW-16 had ample opportunity to call for a Magistrate for recording the dying declaration as he was allegedly declared fit by the Doctor, but PW-16 did not do so and purportedly recorded the dying declaration himself that further casts serious doubt on the correctness of such alleged dying declaration. Learned counsel has referred to Chapter 13-A of the Delhi High Court Rules to submit that as per the requirements therein, PW-16 ought to have requested the Magistrate to record such dying declaration and in any case, ought to have taken the attestation from medical or para-medical staff in attendance but he did not do so, and this creates further doubt on the correctness of such statement.

Learned counsel has argued that for various infirmities and inconsistencies as also for want of corroboration, the alleged dying declarations cannot be relied upon; and that being the sole basis of conviction, the impugned judgments deserve to be set aside. The learned counsel has, *inter alia*, referred to and relied upon the decisions in ***State of Punjab v. Gian Kaur and Anr.*: AIR 1998 SC 2809**, ***Uka Ram v. State of Rajasthan*: JT 2001 (4) SC 472**, ***Dalip Singh and Ors. v. State of Punjab*: AIR 1979 SC 1173**, ***Gopal Singh and Anr. v. State of Madhya Pradesh and Anr.*: AIR 1972 SC 1557** and ***Thurukanni Pompiah and Anr. v. State of Mysore*: AIR 1965 SC 939**.

14.1. The learned counsel has further argued that there being no eye-witness and the entire matter resting upon circumstantial evidence, the appellants could not have been held guilty before establishment of the entire chain of circumstances and cogent corroboration of the alleged dying declarations. The learned counsel has contended that the place of incident was a crowded market and there were many shops in the area; and then, there was only one exit from the place of incident. Thus, according to the learned counsel, it was impossible for the accused to escape the place of incident without being spotted by any of the shopkeepers or people in the market; and they having not being spotted so, the prosecution case cannot be relied upon.

14.2. The learned counsel has further relied upon the testimony of PW-6 Rajesh to submit that in the very first instance, the victim made the statement to the effect that he was dropped from the tempo he was working with and had set himself on fire. The learned counsel would contend that PW-6 having not

been declared hostile, the statement made by the deceased to PW-6 ought to be considered as the first dying declaration and therein, the cause of incident having been stated by the deceased as self-immolation, the prosecution case ought to fail on this count alone. The learned counsel has also contended that the prosecution has failed to examine the other persons Rinku and Daljeet whose names have occurred in the testimony of PW-6 and who were present at the site when the deceased made his statement about self-immolation.

14.3. The learned counsel has also referred to the fact that as per PW-18, who took the deceased in his PCR Van from the place of incident to the hospital, the deceased was crying the whole way and was unable to speak and this version, according to the learned counsel, contradicts the testimony of PW-16 that the deceased was in a fit state of mind and was conscious to give his statement.

14.4. It has also been contended that the prosecution proved only Part I of the document Ex. PW-7/A but not Parts II, III and IV thereof and such other parts appear to be doctored and manipulated. The learned counsel has also argued that the prosecution has failed to prove any motive on part of appellant No. 1 to commit the alleged offence and the hearsay testimony of PW-1 about his having heard from his mother about the quarrel between appellant No. 1 and the deceased is not of any value or substance. Learned counsel would also contend that deceased himself had nowhere mentioned in any of the alleged dying declarations about the motive behind the crime; and the prosecution also having failed to prove any such motive, the prosecution case cannot be

said to have been established beyond reasonable doubts. It has also been argued that the appellant No. 1 being shorter in height than the deceased, there was no likelihood of him throwing kerosene on the head of the deceased.

14.5. Lastly, with reference to the decision in ***Sharad Birdhi Chand Sarda v. State of Maharashtra: (1984) 4 SCC 116***, learned counsel has contended that when two views are possible on evidence, one pointing to the guilt of the accused and another to his innocence, the accused is entitled to the benefit of the one which is favourable to him.

15. While assailing the conviction and sentencing, learned counsel for the appellant No. 2 has argued that the alleged dying declarations are not reliable and conviction could not have been based thereupon. It has been contended that the dying declarations are unreliable for various reasons that: (a) the OPD Card which was the first document prepared by the Hospital was not produced on record; (b) the tone and tenor of the language used in Ex. PW-8/A shows that it could not have been the statement of the deceased since he was in critical condition; (c) that the document Ex. PW-16/B, recorded almost three hours after the alleged first statement could not have been more detailed when the condition of deceased was critical and as per the treating Doctor PW-9, the condition of the deceased was continuously deteriorating; (d) that the thumb impression of the deceased on the dying declarations is entirely doubtful when he had suffered 100% burns all over the body; (e) that there were no indication of liquor consumption in MLC or post-mortem report; (f) that if the deceased

had consumed half bottle of liquor, his making long narrative with intelligible and coherent statement remains doubtful; (g) and that no effort was made to requisition the services of Magistrate for the purpose of recording the dying declarations. Thus, according to the learned counsel, the dying declarations do not pass through the test of truthfulness and reliability and cannot be acted upon.

15.1. The learned counsel for appellant No. 2 has also strongly relied upon the testimony of PW-6 Rajesh who was not declared hostile; and has contended that the entire prosecution case fails when it is noticed that his version about self-immolation by the deceased is in sharp contrast to the contents of the alleged dying declarations.

15.2. The learned counsel for the appellant No. 2 has further contended that the prosecution has failed to establish any motive for commission of crime by this appellant and, with reference to the decision in ***Kalabai v. State of Madhya Pradesh: 2019 SCC ONLINE SC 621***, has argued that motive having not been proved, conviction under Section 302 IPC is not sustainable.

15.3. Learned counsel has also urged in the alternative that in the given set of facts and circumstances, even if the conviction of the appellant No. 2 is to be maintained, the same may be altered to the one under Part II of Section 304 IPC.

16. *Per contra*, the learned senior counsel for the respondent has strenuously argued that the prosecution case clearly stands established by the two dying declarations independently recorded, one by PW-8 Dr.Sushma and

another by PW-16 SI Rajesh. Learned counsel has referred to the Constitution Bench decision of this Court in the case of ***Laxman v. State of Maharashtra: (2002) 6 SCC 710*** as also other decisions of this Court in ***State of Madhya Pradesh v. Dal Singh: (2013) 14 SCC 159*** and in ***Bhagwan v. State of Maharashtra: (2019) 8 SCC 95*** to submit that on the settled principles relating to acceptability of a dying declaration, the contentions urged on behalf of the appellants deserve to be rejected. The learned counsel would submit that the two dying declaration are consistent on material points and features and the same have rightly been accepted by the Trial Court as also by the High Court. The learned counsel would also submit that at the time of recording of Ex. PW-8/A, no relative or acquaintance of the victim was present and any possibility of tutoring is totally ruled out. According to the learned counsel, there was no occasion for PW-8 Dr.Sushma to record the particulars of the deceased and other information of her own imagination; and such particulars and information could have occurred in Ex. PW-8/A only when divulged by the victim himself. Learned counsel further submitted that even the question regarding thumb impression pales into insignificance when it is noticed that there is no such thumb impression on Ex. PW-8/A.

16.1. In regard to the thumb impression on Ex. PW-16/B, the learned senior counsel has contended that even if the victim had allegedly suffered 100% burns, the evidence is not to the fact that inner side of the hand/palm was also burnt to the extent that the victim could not have put his thumb impression; and post-mortem report would also show that dorsum of the hand was burnt

and therefore, taking of thumb impression on Ex. PW-16/B is not ruled out. The learned counsel has contended that, again, there was no occasion for PW-16, to record all the particulars of the victim as also the offenders including their addresses, unless given out by the victim himself; and there is no reason to discard this dying declaration Ex. PW-16/B either.

16.2. As regards the possibility of the victim having set himself on fire and the want of evidence of other persons named by PW-6, the learned senior counsel has contended that such theory of self-immolation as also the names of other persons essentially came to be introduced in the cross-examination of PW-6 Rajesh and therefore, the burden was on the accused persons to establish such theory and to examine such alleged persons; and no fault could be fastened on prosecution if such persons were not examined. According to the learned counsel, the defence having failed to establish the theory of self-immolation, the contentions urged on behalf of the appellants deserve to be rejected.

16.3. The learned senior counsel has further argued that so far as the question of motive is concerned, though the possibility of motive has come on record in the testimony of PW-1 Raju but in any case, even if the prosecution has not been able to lead cogent evidence as regards motive, the accusations against the appellants do not fail, particularly in view of the facts occurring in the two dying declarations.

16.4. Thus, according to the learned counsel for the respondent, the dying declarations have rightly been accepted in this case and the conviction of the appellants on that basis calls for no interference.

17. Having given thoughtful consideration to the rival submissions and having examined the record, we find no reason to consider interference in the conviction of the appellants and, in our view, these appeals must fail.

Admission and acceptability of dying declaration: the principles

18. The principles relating to admission and acceptability of the statement made by a victim representing the cause of death, usually referred to as a dying declaration, are well settled and a few doubts as regards pre-requisites for acceptability of a dying declaration were also put at rest by the Constitution Bench of this Court in the case of ***Laxman v. State of Maharashtra: (2002) 6 SCC 710.***

18.1. In the said case of *Laxman*, conviction of the appellant was based on dying declaration of the deceased which was recorded by the Judicial Magistrate. The Session Judge and the High Court found such dying declaration to be truthful, voluntary and trustworthy; and recorded conviction on that basis. In appeal to this Court, it was urged with reference to the decision in ***Paparambika Rosamma and Ors. v. State of Andhra Pradesh: 1999 CriLJ 4321*** that the dying declaration could not have been accepted by the Court to form the sole basis of conviction since certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement. On the other hand, it was contended on behalf of the State, with

reference to the decision in ***Koli Chunilal Savji and Anr. v. State of Gujarat: 1999 CriLJ 4582***, that the material on record indicated that the deceased was fully conscious and was capable of making a statement; and his dying declaration cannot be ignored merely because the doctor had not made the endorsement about his fit state of mind to make the statement. In view of these somewhat discordant notes, the matter came to be referred to the Larger Bench. The Constitution Bench summed up the principles applicable as regards the acceptability of dying declaration in the following:-

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

is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

18.2. The Constitution Bench affirmed the view in *Koli Chunilal Savji* (supra) while holding that *Paparambaka Rosamma* (supra), was not correctly decided.

The Court said,-

“5.....It is indeed a hyper technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in Paparambaka Rosamma v. State of A.P.(1999) 7 SCC 695 must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat (1999) 9 SCC 562.”

19. In the case of *Dal Singh* (supra), this Court has pointed out that the law does not provide as to who could record dying declaration nor is there a prescribed format or procedure for the same. All that is required is the person recording dying declaration must be satisfied that the maker is in a fit state of

mind and is capable of making such a statement. This Court also pointed out that as to whether in a given burn case, the skin of thumb had been completely burnt or if some part of it will remain intact, would also be a question of fact. This Court said,-

“20. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case.

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

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

19.1. In the case of *Bhagwan* (supra), this Court accepted the dying declaration made by a person having suffered 92% burn injury and whose continued consciousness was certified by the doctor. This Court referred to the decision in ***Vijay Pal v. State (Government of NCT of Delhi): (2015) 4 SCC 749***, where the statement made by the victim having suffered 100% burn injury was also accepted. This Court said :-

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

24. *This question is also no longer res integra. In Vijay Pal v. State (NCT of Delhi): 2015 (4) SCC 749, we notice the following discussion: (SCC p. 759, paras 23-24)*

‘23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat: (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh: (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.’

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

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

“5. The High Court disbelieved the dying declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration had clear ridges and curves. The High Court found the evidence of

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

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

“8. But even if we assume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required.....”

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

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

therefore, safe to leave out of consideration this dying declaration....”

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

“10. Under clause (1) of Section 32 of the Indian Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is therefore relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that 'it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.”

20.4. In the case of *Uka Ram* (supra), this Court again emphasised on the requirement that the Court should be satisfied about trustworthiness of the

dying declaration, its voluntary nature and fitness of the mind of the deceased and it was held that:

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

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

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

- i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.
- ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.
- iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.
- iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

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

vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

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

viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

22. Applying the relevant principles to the facts of the present case, we have not an iota of doubt that the appellants have rightly been convicted on the basis of the statements of the victim Sher Singh, as recorded by PW-8 Dr. Sushma and PW-16 SI Rajesh Kumar.

Testimony of PW-8 and the contents of Ex. PW-8/A

23. As noticed, it is clearly established on record that the victim Sher Singh, when found engulfed in fire, information was received in PCR and its Van reached the place of incident within minutes of incident; and the victim was immediately placed in the Van and was taken to Safdarjung Hospital. Though it appears from the testimony of PW-9 Dr. H.K. Sharma as also of PW-8 Dr. Sushma that the first document prepared at the time of admission of the patient is OPD slip; and such OPD slip in this matter has not been produced on record. However, such omission of the prosecution, in our view, has no bearing on the substance of the matter because immediately after preparation of the OPD slip, the victim was taken to the Burns Ward and detailed Medico-Legal Case Report was prepared by PW-8 Dr. Sushma. The incident had taken place at about 3.00-3.15 p.m. and the MLC report (Ex. PW-8/A) was prepared by Dr. Sushma at 4.35 p.m. There had not been unnecessary time gap between the occurrence and the preparation of MLC particularly when major part of time was spent in the process of transportation.

23.1. The significant feature of the case is that in the said MLC report (Ex. PW-8/A), PW-8 specifically mentioned the particulars and information as given out by the victim himself. As noticed, in the information particulars, this doctor clearly stated the version of the victim that he sustained burn injury '*when some Purshottam & Suresh (telwala) threatened him & then poured kerosene on him & set him on fire*'. It is noticed that in Ex. PW-8/A the word '*telwala*' came to be mentioned within brackets and was written in Hindi (being vernacular expression), although other contents of this document were filled

up in English. PW-8 had been categorical in her assertion that the patient had himself informed her about the alleged history behind his sustaining burn injuries. There is absolutely nothing on record to disbelieve or even doubt the statement of PW-8 Dr. Sushma. On the contrary, such recording of the expressions verbatim by the doctor lends credence to her testimony and the document prepared by her. In our view, with this testimony of PW-8 it is established beyond doubt that in his first version in the hospital, the victim Sher Singh asserted that Purshottam and Suresh poured kerosene oil on him and set him on fire. It is also established that Suresh was identified by the victim as '*telwala*' and it has not been doubted that in the slang expressions, the reference had been to the one dealing in some kind of oil business. These are the first traces with names and slight particulars of the assailants. As shall be noticed hereafter, in the sequence of circumstances, the expressions have rightly been fastened on the appellants.

23.2. It is also noteworthy that in Ex. PW-8/A, the doctor PW-8 Sushma mentioned all other features relating to the medical condition of the patient and recorded that he had suffered '*burn injuries involving whole of the body surface area-100% deep burn*'. However and even while mentioning that the general condition of the patient was '*critical*', it was also recorded in Ex. PW-8/A that the patient was '*conscious, oriented*'. It is but clear from the contents of Ex. PW-8/A about the condition of the victim Sher Singh that though the doctor found him to be in critical condition with 100% deep burns yet, he was conscious and oriented. In other words, he was neither unconscious nor

disoriented. In yet other words, he was neither insensate nor confused. Such significant noting about the mental faculties of the victim at the time of giving out the narratives to the doctor makes it clear that even when he was suffering from the agony of 100% deep burns, he was not in an unfit state of mind; and there appears no reason to disbelieve his first version as recorded in Ex. PW-8/A.

Testimony of PW-16 and the contents of Ex. PW-16/B

24. The statement (Ex.PW-16/B) said to have been made by the victim Sher Singh to PW-16 SI Rakesh Kumar, as recorded in hospital in Hindi language, has in fact been the pivot of the prosecution case. This statement as also the testimony of PW-16 SI Rakesh Kumar has undergone thorough scrutiny by the Trial Court as also by the High Court, as noticed in the extraction hereinbefore. We have yet again examined the testimony of PW-16 as also the contents of Ex. PW-16/B and find no reason to take any view different. The presence of PW-16 in that hospital at the relevant point of time has not been questioned and it is clearly established on record that before recording the statement of the victim, he moved the application Ex. PW-16/A whereupon PW-17 Dr. Rajesh Verma declared the patient fit for making statement. Thereafter, PW-16 proceeded to record the statement of victim and it has not been shown on record if anyone related with deceased was present at the time of recording of his statement by PW-16. Any possibility of tutoring or prompting is totally ruled out. As noticed, in the statement, the victim even stated the registration number of the vehicle he was employed and gave out the names and

addresses of the appellants while stating their respective roles in the incident in question. At the time of making the said statement, the victim Sher Singh was suffering from 100% deep burn injuries and was in a critical condition. In the given state, elaboration on the motive etc., was least expected from him. PW-16 appears to have recorded whatever was given out by the victim; and there appears nothing of any manipulation by him.

The two statements Ex. PW-8/A and Ex. PW-16/B are dying declarations

25. For what has been observed hereinabove, it is but clear that in his first version before the doctor, the victim Sher Singh named Purshottam and Suresh as his assailants and particulars of these persons were fully described by him in the statement made to PW-16 only a few hours before his demise. It has not been disputed that particulars and addresses as stated by the victim in his statement Ex. PW-16/B had been of the appellants only. It, therefore, emerges that the victim, before his demise, alleged that the appellant No. 2 had put him on fire and the appellant No. 1 was his accomplice. While recording his version in Ex. PW-8/A, the doctor PW-8 mentioned that he was conscious and oriented. On the other hand, before recording the statement of the victim (Ex. PW-16/B), PW-16 obtained the certification from PW-17 Dr. Rajesh Verma that the patient was fit to give his statement. In the given set of circumstances, we find no infirmity that the Trial Court and the High Court accepted that the victim was in a fit state of mind to give the statement. It has also not been established on record that the statements of the victim were an outcome of tutoring or figment of imagination. In other words, the statements

appear to be voluntary and were given in a fit state of mind. In the given set of circumstances, the statements so made by the victim could be acted upon as dying declarations. However, before reaching to the conclusion on the basis of these statements, it would be appropriate to deal with the criticism offered on behalf of the appellants.

25.1. It has been contended that the statement Ex. PW-16/B cannot be accepted for the same having not been recorded by or in the presence of Magistrate nor any attestation having been obtained. Chapter 13-A of Delhi High Court Rules has also been referred. In our view, the said rules as regards the expected manner of recording of dying declaration, by their very nature, could only be considered directly and it cannot be laid down that want of compliance of any of the expectation therein would result in discarding of a recorded dying declaration. The expectations in the said rules that the dying declaration be recorded by a Judicial Magistrate; the fitness of the declarant be examined; the statement be in the form of simple narrative; signature or thumb impression of the declarant be obtained etc. are all, obviously, intended to ensure that the dying declaration is recorded in the manner that its credence does not remain questionable. However, a particular statement, when being offered as dying declaration and satisfies all the requirements of judicial scrutiny, cannot be discarded merely because it has not been recorded by a Magistrate or that the police officer did not obtain attestation by any person present at the time of making of the statement. Even in this regard, the witness PW-19 Inspector Om Prakash has pointed out that when asked to

attest the statement of Sher Singh as recorded by SI Rajesh Kumar, the doctor pointed out that the facts had already been mentioned in the MLC and there was no need to attest the statement. Taking an overall view of the matter, we find no reason that the statement Ex. PW-16/B be discarded only for want of its recording by a Magistrate or for want of attestation.

25.2. Another emphasis laid on behalf of the appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in *Vijay Pal's* case and reiterated in *Bhagwan's* case (supra), the extent of burn injuries – going beyond 92% and even to 100% - would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced.

To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect⁴ for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.

25.3. The suggestions have also been made that the victim was in 100% burnt condition and therefore, the alleged statements Ex. PW-8/A and PW-16/B are manipulated and manufactured. We find nothing of substance in such suggestions for there had not been shown any reason for which PW-8 Dr.Sushma and PW-16 SI Rajesh Kumar would manufacture any such document. Interestingly, certain suggestions were made to PW-19 Inspector Om Prakash in his cross-examination about his previous exchange of hot words or altercation with the accused persons. However, there was no such suggestion to PW-16 or to PW-8. For the same reason, the doubts sought to be suggested about availability of thumb impression of the victim on the statement Ex. PW-16/B deserve to be rejected. In the case of *Dal Singh* (supra), this Court has pointed out that in the case of burns, the skin of a small

⁴ As had been in *Dalip Singh's* case (supra).

part of the body like thumb may remain intact; and it is essentially a question of fact as to whether skin of thumb had also been burnt completely. In this regard, it is also noticeable that even when the victim was carrying 100% deep burns, as per the post-mortem report, peeling of skin was noticed on dorsum of hands and therefore, taking of thumb impression on Ex. PW-16/B is not ruled out. The concurrent findings of the Trial Court and the High Court in accepting the thumb impression on Ex. PW-16/B do not appear calling for any interference. It gets, perforce, reiterated that there appears no reason for PW-16 to go to the extent of manufacturing the document with a false thumb impression.

25.4. Another contention urged on behalf of the appellants has been that the victim, as per his statement, had allegedly consumed half bottle of liquor before being put on fire but, as per post-mortem report, no such liquor was found in the dead body. This apart, if he had consumed liquor, there was less probability of his talking coherently. We find these contentions also lacking in substance. It had been a case of fire injury and as per the post-mortem report, the liver, spleen, kidney and other body-parts were found congested. In such fire injury case, no adverse conclusion can be drawn against the statement made by the victim about his having consumed some liquor and for this reason, the reliability of all other facts stated in his statement cannot be doubted. As noticed, he had given his complete particulars including address at the time of admission to the hospital and it has not been shown if such particulars were narrated by anyone else. He had stated in his statement Ex.

PW-16/B even the vehicle registration number on which he was employed and then had given the names and addresses of both the appellants while stating that appellant No. 2 Suresh poured kerosene on him and appellant No. 1 Pushottam was also there; and the appellant No. 2 set him on fire by lighting of match. It is difficult to say that victim was unable to make the statement coherently.

25.5. For what has been discussed hereinabove, we are clearly of the view that the two statements Ex. PW-8/A and Ex. PW-16/B have rightly been accepted as dying declarations of Sher Singh, as made few hours before his demise and there is no reason to discard the same. In the given set of facts and circumstances, where these two dying declarations inspire confidence, we are clearly of the view that they could be relied and acted upon even without corroboration.

Testimony of PW-6

26. A great deal of emphasis has been made in this case with reference to the testimony of PW-6 Rajesh and it has been contended on behalf of the appellants that as per this testimony, the victim had at the first point of time made the statement about self-immolation for the reason of himself having been dropped from tempo. It is contended that such statement by the victim ought to be taken as his first dying declaration. Having closely scrutinized the testimony of this witness PW-6 Rajesh, we are satisfied that the version as attempted to be given by him in the cross-examination has rightly been rejected by the Trial Court and by the High Court.

26.1. Noticeable it is that this witness PW-6, in the examination-in-chief deposed that on hearing the screams and having seen the smoke, he reached the spot; that other people from market also reached the spot; that he saw a person burning on fire; that water was thrown on the burning body of the victim from a nearby tap and the victim identified himself as Sher Singh; and that someone from the market telephoned at number 100 whereupon the police reached the spot. This witness did not state anything in his examination-in-chief about the victim having told anyone about self-immolation and therefore, there was no occasion for the prosecution to declare him hostile and to confront him with his previous statement. Moreover, though the story about the victim having asserted that he had set himself on fire came to be introduced by this witness in his cross-examination on behalf of the appellant No. 1 but the value and worth of such suggestion was effectively demolished by this witness himself in his further statement in cross-examination on behalf of the appellant No. 2 where he categorically stated that *“victim Sher Singh has not told the people present in my presence that he had put himself on fire”*. In this cross-examination, the witness attempted to impute the knowledge about such statement to one Tony. Obviously, the suggestion as occurring in the statement of PW-6 about self-immolation by the victim had been of a remote hearsay and is not of any worth at all.

26.2. In the same sequence, the contentions urged on behalf of the appellants about want of examination of other persons named by PW-6 falls to the ground because such names and their roles came to be introduced only in

the statement made by PW-6 in his cross-examination. In the given context, it has rightly been contended on behalf of the respondent that the theory of self-immolation as also the names of the other persons, who allegedly reached the spot, having come up by way of cross-examination of PW-6, the burden was on the accused persons to establish such theory by cogent evidence. No such attempt was made on behalf of the accused-appellants to prove any such fact or to examine any such named person.

26.3. As noticed, the appellant No. 1 attempted to suggest in his statement under Section 313 CrPC that he was a politically known person and was falsely implicated by certain persons 'adversely interested' against him. No such evidence is placed on record as to who were such persons and as to why they would be falsely implicating him in a murder case. Thus, the incomplete and uncertain defence theory has rightly been rejected and we have no hesitation in endorsing the findings recorded in the impugned judgments in that regard.

Other Contentions

27. Although we have found that the two statements made by the victim and recorded in Ex. PW-8/A and Ex. PW-16/B could be relied upon as his dying declarations and thereby the complicity of appellants in the crime is established; and we have also rejected the contentions urged with reference to the testimony of PW-6 yet, the other contentions urged on behalf of the appellants need to be examined before reaching to a final conclusion.

27.1. It has been argued that the prosecution has not been able to establish the identity of assailants in this crime. The submission has no substance when the particulars as occurring in the two statements Ex. PW-8/A and Ex. PW-16/B are examined and analysed, wherein occupation of at least one of the assailant and then the names and addresses of both the appellants came to be mentioned. For this very reason, the other contention that the incident took place in a crowded market place and the appellants were not seen by anyone also pales into insignificance.

27.2. The submission that prosecution has not been able to establish the motive for crime is also of no effect because, in the first place, in a death case, the motive remains essentially known to the deceased and to the offender; and a prosecution case cannot fail only for want of proof of motive. This apart, in the present case, the indications of an existing dispute of the deceased with appellant No. 1 do appear in the testimony of the brother of the deceased, PW-1 Raju. It is also noticed that the deceased and the accused persons were the residents of the same locality.

27.3. The contention that only Part I of the PCR is proved and not the other parts is also not correct. It is noticed from the record that PW-7 Ct. Anju was examined on 12.08.1998 when her statement was deferred for summoning the concerned record and then, her statement was further recorded on 31.08.1998 when she brought the original proforma of PCR and the photocopy of the same was taken on record as Ex. PW-7/B. In our view, the High Court has rightly relied upon the information reflected in Parts II, III and IV of PCR form, which

clearly show that not only the initial information was recorded about the victim being on fire but further information were recorded from time to time during the course of transporting and admitting the victim to hospital, where not only his address came to be mentioned but the names of the assailants also surfaced. The said document having been produced before the Court and its copy having been taken on record, with PW-7 having proved that same, it would not be justified to discard the same.

27.4. A substantial deal of argument had been with reference to the statement of PW-18 ASI Harish who asserted that the victim, while being taken to hospital in PCR Van and even in hospital, did not speak to him and was only crying in pain. The High Court has made scathing remarks about this witness PW-18. Some of the remarks appear justified, particularly when PW-18 attempted to say that he came to know the name of the victim in the hospital from the persons present there. No such persons were otherwise shown on record and from the testimony of PW-8 Dr. Sushma, it is established that the particulars in MLC report came to be mentioned by her as per the information divulged by the victim himself. For the reasons best known to him, PW-18, who had taken the victim to hospital, attempted to say that the victim was not in a condition to speak and thereby, attempted to disown whatever information that was given by the victim during the process of transportation. However, this aspect does not require further dilation for the other facts established on record, including the fact that the victim was conscious and oriented at the time of admission to the hospital and made the statements in a fit state of mind.

27.5. Another contention urged on behalf of the appellants about converting the present case to that under Section 304 Part II for the offence of culpable homicide not amounting to murder has only been noted to be rejected. The act of pouring kerosene over a person and then putting him on fire by lighting a match has all the ingredients of doing an act with the intention of causing death of a person in a gruesome manner. The conviction of the appellants for the offence of murder appears justified and we find no reason to convert the same into any offence of lesser degree. Therefore, the submissions made on behalf of the appellants with reference to the decisions in *Sharad Birdhi Chand Sarda* and *Kalabai* (supra) also deserve to be, and are, rejected.

27.6. Another suggestion on behalf of the appellant No. 1 that in any case, he has not been assigned the role of pouring the kerosene or lighting the fire also deserves to be rejected for the facts and circumstances noticed above and particularly when it has come on record that he was with the appellant No. 2 when the victim was threatened and was put on fire. The conviction of this appellant under Section 302/34 IPC remains unexceptionable. For what has been noticed hereinabove, the suggestion of no likelihood of appellant No. 1 throwing kerosene on the head of the deceased deserves to be rejected without much dilation.

Conclusion

28. For what has been discussed hereinabove, we are clearly of the view that the appellants have rightly been held guilty of causing death of Sher Singh

by putting him on fire and have also rightly been convicted for the offence under Section 302/34 IPC. No case for interference is made out.

29. Accordingly, and in view of the above, these appeals fail and are, therefore, dismissed.

.....J.
(A.M. KHANWILKAR)

.....J.
(DINESH MAHESHWARI)

New Delhi
Date: 07th January, 2020