(2024) 11 SHI CK 0033

High Court Of Himachal Pradesh

Case No: Criminal Appeal No.126 Of 2014

State Of Himachal Pradesh	APPELLANT
Vs	
Sheela Devi & Anr	RESPONDENT

Date of Decision: Nov. 7, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313, 437A
- Indian Penal Code, 1860 - Section 34, 107, 306
- Evidence Act, 1872 - Section 32, 32(1)

Hon'ble Judges: Vivek Singh Thakur, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Seema Sharma, G.R.Palsra

Final Decision: Dismissed

Judgement

Rakesh Kainthla,J

1. The present appeal is directed against the judgment dated 30.09.2013 passed by learned Additional Sessions Judge (I), Kangra at Dharamshala,

H.P.,(learned Trial Court), vide which the respondents (accused before the learned Trial Court) were acquitted of the commission of an offence

punishable under Section 306 read with Section 34 of Indian Penal Code (in short IPC). (The parties shall hereinafter be referred to in the same

manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that deceased Kamaljeet Singh used to drive the vehicle in Delhi. He visited his house

at Dev Bharadi 7-8 days before the incident. Sheela Devi (accused No.1) is his mother and Harindra Kumari (accused No.2) is his sister. He had a

dispute with his mother Sheela Devi over land. She filed a complaint before the police and the police called him to the Police Station on 28.05.2009 on

the complaint of his mother. Accused Sheela Devi and Harindera Devi and the deceased were residing in one house. They used to abuse the

deceased. The deceased was residing in another room. Accused Sheela Devi and Harindera Kumari (accused No. 1 and 2) abused him on the night

of the incident and continued abusing him till late night. The deceased woke up at 2:00 a.m. and poured kerosene oil on himself. He set himself on fire.

He cried for help. His wife Santosh Devi (PW-6) woke up and extinguished the fire. She also sustained injuries in the process. Kamaljeet had

immolated himself due to the harassment of Sheela Devi and Harindera Kumari. Statement (Ext. PW-4/A) of Kamaljeet Singh was reduced into

writing and sent to the Police Station where F.I.R. (Ext.PW-8/C) was registered. HC Kamlesh Chand (PW-10) filed an application(Ext.PW-5/A) for

obtaining the MLC of Kamaljeet Singh. Dr. Ashutosh Joshi (PW-5) conducted the medical examination of Kamaljeet Singh and found that he had

sustained 95% burns. He was given emergency treatment and referred to Dr. Rajendra Prasad Government Medical College, (RPGMC) Tanda.

According to Dr Ashutosh, the nature of the injury was grievous and could have been caused within 24 hours of the examination. He issued MLC

(Ext.PW-5/B). He also examined Santosh Devi (PW-6) and found superficial burns to the extent of 9% on the right forearm. The nature of the

injuries was simple, which could have been caused within 24 hours of examination. He issued the MLC (Ext.PW-5/C). Kamlajeet Singh was taken to

Sukh Sadan Hospital, where he succumbed to his injuries. Dr Suman Saxena (PW-1) conducted the post-mortem examination of Kamaljeet Singh and

found that the deceased had died due to antemortem burn injuries. She issued a post-mortem report (Ext.PW-1/B). Photographs of the deceased

Ext.P-1 to P-3 whose negatives are Ext.P-4 to P-6) were taken. HC Kamlesh Chand (PW-10) filed an application (Ext. PW-7/C) and obtained a

treatment summary (Ext.PW-9/B) from the hospital. Statements of witnesses were recorded as per their version and after completion of the

investigation challan was prepared and presented before the learned Sub Divisional Judicial Magistrate, Nurpur, who committed it for trial to learned

Sessions Judge, Kangra at Dharamshala, H.P. Learned Sessions Judge, Kangra assigned the case to learned Additional Sessions Judge (I), Kangra at

Dharamshala, H.P. (learned Trial Court) for its disposal as per law.

3. The learned Trial Court, charged the accused with the commission of an offence punishable under Section 306 read with Section 34 of IPC, to

which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven (11)witnesses to prove its case. Dr. Suman Saxena (PW-1) conducted the post-mortem of the deceased. Udha

Ram (PW-2) did not support the prosecution case. Rajinder Soga (PW-3) took the photograph of the deceased. Kavita Thakur (PW-4) was posted as

an Executive Magistrate, in whose presence statement was made by deceased Kamaljeet Singh, Dr. Ashutosh Joshi (PW-5) conducted the initial

medical examination of Kamaljeet Singh. Santosh Devi (PW-6) is the wife of the deceased, Hans Raj (PW-7) deposed about the complaints made by

Kamaljeet Singh regarding his harassment, ASI Durjesh Kumar (PW-8) partly investigated the case. Dr Avinish Kumar (PW-9) produced the

treatment summary of Kamaljeet Singh. HC Kamlesh Chand (PW-10) conducted the initial investigation of the case. Kishan Singh (PW-11) was

Pradhan of Gram Panchayat where the accused and the deceased were residing.

5. The accused in their statement recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. However, they admitted that the

deceased had set himself on fire and he died on 08.06.2009. They claimed that they took the deceased and his wife to the hospital. The witnesses

deposed against them falsely and they were falsely implicated in the case. No defence was sought to be adduced by the accused.

6. The learned Trial Court held that it was not disputed that Kamaljeet Singh had committed suicide by self-immolation. It was also established that

some heated exchange had taken place between the deceased and Kamaljeet Singh; however, there was nothing on record to suggest any abetment

to suicide.A mere dispute over the land or denial of the right of a person does not constitute abetment. The Executive Magistrate did not record the

statement in her hand but the statement of Kamajeet Singh was recorded by the Investigating Officer. The prosecution case was not proved beyond a

reasonable doubt. Hence, the accused were acquitted of the commission of an offence punishable under Section 306 read with Section 34 of IPC.

7. Feeling aggrieved and dissatisfied with the judgment passed by the learned Trial Court, the present appeal has been filed by the State asserting that

the learned Trial Court had not properly appreciated the evidence. The testimonies of prosecution witnesses were discarded due to untenable reasons.

It was duly proved on record that the deceased had died from the burn injuries. The doctor attending the deceased had issued the fitness certificate.

The statement of the Executive Magistrate proved the dying declaration. It was proved that the accused used to abuse the deceased, which compelled

him to commit suicide. Santosh Devi (PW-6) proved that the accused had abused the deceased on the date of the incident. They wanted to grab the

share of the deceased. Learned Trial Court failed to notice these aspects. Hence, it was prayed that the present appeal be allowed and the judgment

passed by the learned Trial Court be set aside.

8. We have heard Ms. Seema Sharma, learned Deputy Advocate General for the appellant-State and Mr. G.R. Palsra, learned counsel for the

respondents/accused.

9. Ms. Seema Sharma, learned Deputy Advocate General for the appellant/State submitted that the learned Trial Court erred in appreciating the

evidence led before it. It was duly proved that the accused used to abuse the deceased. They continuously harassed the deceased, which compelled

him to commit suicide. Learned Trial Court erred in discarding the dying declaration. She relied upon the judgments of the Honâ€™ble Supreme Court

in State of Jharkhand vs Shailendra Kumar Rai @ Pandav Rai, Criminal Appeal No. 14141 of 2022, decided on 31.10.2022 and Laxman vs

State of Maharashtra, 2002 (6) SCC 710 in support of her submission.

10. Mr. G.R. Palsra, learned counsel for the respondents/accused supported the judgment passed by the learned Trial Court. He submitted that the

testimony of Kamaljeet even if accepted in its entirety does not constitute any abetment of suicide. The statement of Dr. Ashutosh Joshi (PW-5)

makes it doubtful that the deceased was in a position to make the statement. Learned Trial Court had rightly held that dispute over the land cannot

constitute the abetment. Hence, he prayed that the present appeal be dismissed.

11. We have considered the submissions made at the bar and have gone through the records carefully.

12. The present appeal is filed against a judgment of acquittal. It was laid down by the Honâ€™ble Supreme Court inM allappa v. State of

Karnataka, (2024) 3 SCC 544: 2024 SCC OnLine SC 13 0that an appeal against acquittal cannot be allowed merely on the difference of opinion.

It was observed:

â€œ25. We may first discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal

principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused unless proven guilty. The presumption continues at all stages of

the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so

because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher

threshold is expected to rebut the same in appeal.

26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no

inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified

power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the

evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal

or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not

meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The â€œtwo-views theoryâ€ has been judicially

recognised by the courts and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved

in favour of the accused. For, the very existence of an equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of

the prosecution. Moreover, it reinforces the presumption of innocence. Therefore, when two views are possible, following the one in favour of the innocence of the

accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the

High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and

liabilities in the eye of the law.

28. In Selvaraj v. State of Karnataka [Selvaraj v. State of Karnataka, (2015) 10 SCC 230: (2016) 1 SCC (Cri) 19] : (SCC pp. 236-37, para 13)

â€œ13. Considering the reasons given by the trial court and on an appraisal of the evidence, in our considered view, the view taken by the trial court was a possible

one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in Jagan M. Seshadri v. State of T.N. [Jagan M. Seshadri v. State of

T.N., (2002) 9 SCC 639: 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a

reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus : (SCC p.

643, para 9)

â€˜9. â€¦ We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which

acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeals against acquittal have been overlooked by

the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the

order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be

said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.â€™â€

29. In Sanjeev v. State of H.P. [Sanjeev v. State of H.P., (2022) 6 SCC 294: (2022) 2 SCC (Cri) 522], the Hon'ble Supreme Court analysed the relevant decisions

and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus: (SCC p. 297, para 7)

â€œ7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the

appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see Vijay Mohan Singh v. State of Karnataka [Vijay Mohan

Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019)Â 2Â SCCÂ (Cri)Â 586]Â and AnwarÂ Ali v. StateÂ of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC

166 : (2021) 1 SCC (Cri) 395]).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P. [Atley v. State of

U.P., 1955 SCC OnLine SC 51: AIR 1955 SC 807]).

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan

v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320]).â€

13. The present appeal has to be decided as per the parameters laid down by the Honâ€™ble Supreme Court.

14. The prosecution is relying upon the dying declaration of the deceased. The law relating to dying declaration was considered by the Honâ€™ble

Supreme Court in Ifran vs State of UP 2023 SCC OnLine SC1016 and it was observed:

â€œ48. The justification for the sanctity/presumption attached to a dying declaration is two-fold; (i) ethically and religiously it is presumed that a person while at the

brink of death will not lie, whereas (ii) from a public policy perspective it is to tackle a situation where the only witness to the crime is not available.

49. One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock, (1789) 1 Leach

500: 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing:â€

â€œâ€¦the general principle on which this species of evidence is admitted is, that they are declarations 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 silent, and the mind is induced by the most powerful consideration to speak the truth; a

situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice.

(b) But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself

apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. â€¦.

Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence: but the degree of credit to which they are entitled must

always be a matter for the sober consideration of the Jury, under all the circumstances of the case.â€(Emphasis supplied)

50. Interestingly, the last observation of Judge Eyre showcases, even at the inception of this principle, that the Courts were wary of the inherent weakness of dying

declarations and cautioned for great care to be adopted.

51. It is significant to note the observations made by Taylor that â€œThough these declarations, when deliberately made under a solemn sense of impending death,

and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, if precisely identified, it should always be recollected

that the accused has not the power of cross-examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be, and that, where a

witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own

misconduct, may affect the accuracy of his statements and give a false colouring to the whole transaction. â€¦â€œ. [See: Taylor on â€œTreatise on the Law of

Evidenceâ€, 1931, 12th Edition Pg. 462]

52. It is observed in Corpus Juris Secundum Vol XL, Page 1283 that:

â€œIn weighing dying declarations, the jury may consider the circumstances under which they were made, as, whether they were due to outside influence or were

made in a spirit of revenge, or when declarant was unable or unwilling to state the facts, the inconsistent or contradictory character of the declarations, and the fact

that deceased has not appeared and accused has been deprived of the opportunity to cross-examine him, and may give to them the credit and weight to which they

believe, under all the circumstances, they are fairly and reasonably entitled.â€

53. In India in the relevant provision of Section 32 of the Act, 1872, the first exception to the rule against admissibility of hearsay evidence, is as under:

Â â€œ32(1). When it relates to cause of death.â€" When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the

transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who

made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his

death comes into question.â€

54. Jon R. Waltz, American Jurist observed that â€œIt has been thought, rightly or wrongly, that Dying Declarations have intrinsic assurances of trustworthiness,

making cross-examination unnecessary. The notion is that a person who is in the process of dying and knows it will be truthful immediately before departing to meet

his Maker. (Of course, the validity of these hearsay exceptions is open to some debate. What about the person who is not deeply religious? What of the person who,

as his last act, seeks revenge by falsely naming a life-long enemy as his killer? How reliable is the perception and memory of a person who is dying?)â€ [See Waltz,

J.R. (1975) Criminal Evidence, Chicago: Nelson-Hall. pp.75-76]

55. The Privy Council in Neville Nembhard v. The Queen, [1982] 1 All ER 183, on Section 32(1) of the Act, 1872 opined that the evidence of dying declaration under

the Indian law lacks the special quality as in Common Law and hence, the weight to be attached to a dying declaration admitted under Section 32 of the Act, 1872

would necessarily be less than that attached to a dying declaration admitted under the common law rules.

56. The below cited observations from the decision of Nembhard (supra) are of significant importance:

â€œfinal observation should be made concerning the cases already mentioned that have been decided in the Court of Appeal for Eastern Africa. It appears that a rule

of practice has been developed that when a dying declaration has been the only evidence implicating an accused person a conviction usually cannot be allowed to

stand where there had been a failure to give a warning on the necessity for corroboration: seeÂ for example Pius Jasunga s/o Akumu v. The Queen (1954) 21

E.A.C.A. 331and Terikabi v. Uganda [1975] E.A. 60. But it is important to notice that in the countries concerned, the admissibility of a dying declaration does not

depend upon the common law test: upon the deceased having at the time a settled hopeless expectation of impending death. Instead, there is a very different

statutory provision contained in section 32 (1) of the Indian Evidence Act, 1872. That section provides that statements of relevant facts made by a person who is

dead are themselves relevant facts:

â€œWhen the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases

in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when

they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.â€(emphasis

added).

In Pius Jasunga s/o Akumu v. The Queen, it was pointed out (for the reason associated with the italicised words in the subsection) that the weight to be attached to a

dying declaration admitted by reference to section 32 of the Indian Evidence Act, 1872 would necessarily be less than that attached to a dying declaration admitted

under the common law rules. The first kind of statement would lack that special quality that is thought to surround a declaration made by a dying man who was

conscious of his condition and who had given up all hope of survival. Accordingly, it may not seem surprising that the courts dealing with such statements have felt

the need to exercise even more caution in the use to be made of them than is the case where the common law test is applied.â€

57. This Court in Muthu Kutty v. State by Inspector of Police, T.N., (2005) 9 SCC 113, while discussing the decision in Woodcock (supra) referred to above had

cautioned the courts to ensure that a dying declaration is reliable before relying on it, with the following observations: -

â€œ13. â€¦ The general principle on which this species of evidence is admitted is that they are declarations 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 mind is induced by the most powerful considerations to speak the

truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court

of justice. These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500: 168 ER 352). Shakespeare makes the wounded Melun,

finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

â€œHave I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure â€˜gainst the fire?

What is the world should make me now deceive,

Since I must lose the use of all deceit?

Why should I then be false since it is true

That I must die here and live hence by truth?â€

(See King John, Act V, Scene IV)

The principle on which dying declaration is admitted in evidence is indicated in the legal maxim â€œnemo morituruspraesumiturmentire â€" a man will not meet his

Maker with a lie in his mouthâ€.

14. â€¦ The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law

to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration

be excluded it will result in a miscarriage of justice because the victim being generally the only eyewitness in a serious crime, and the exclusion of the statement would

leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for

eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire the full

confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a

product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant.

Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid

down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is

merely a rule of prudence. â€¦â€(Emphasis supplied)

58. This Court in NallapatiÂ Â Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh, (2007) 15Â Â SCC 465 and BhajjuÂ aliasÂ Karan Singh v. State ofÂ

Madhya Pradesh, (2012) 4 SCC 327 had explained the meaning and principles of dying declarations upon which its admissibility is founded, with the following

observations:â€

â€œ20. There is a historical and literary basis for the recognition of the dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of

Shakespearian origin. In The Life and Death of King John, Shakespeare had made Lord Melun utter â€œHave I met hideous death within my view, retaining but a

quantity of life, which bleeds away, â€¦ lose the use of all deceitâ€ and asked, â€œWhy should I then be false, since it is true that I must die here and live hence by

truth?â€ William Shakespeare, The Life and Death of King John, Act 5, Scene 4, lines 22-29.

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22. It is equally well settled and needs no restatement at our hands that a dying declaration can form the sole basis for conviction. But at the same time, due care and

caution must be exercised in considering the weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the

truth. This Court in more than one decision has cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either

tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In

order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

23. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For

example, any sanction of the oath in the case of a living witness is thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said,

would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be the last to give untruth as he stands

before his creator.

24. There is a legal maxim â€œnemo morituruspraesumiturmentireâ€ meaning, that a man will not meet his Maker with a lie in his mouth. Woodroffe and Amir Ali, in

their Treatise on Evidence Act state:

â€œWhen a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-

examination are dispensed withâ€.

25. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to the court, which on assessment

of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by

sign or by gestures.â€(Emphasis supplied)

59. This Court in Bhajju (supra) has observed as under:

â€œ23. The â€œdying declarationâ€ essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction

resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same

feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in

extremity, when the maker is at the point of death and when every hope of this world is gone when every motive to file a false suit is silenced in the mind and the

person deposing is induced by the most powerful considerations to speak the truth.

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26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. â€¦â€

60. Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general

course of action has been that the judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the

court to see the extent to which the dying declaration is entitled to credit.

61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful

before placing any reliance upon it. Thus, a dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there

is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence

but cannot be the basis for conviction alone.

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and

surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the

same, however, they will only affect the weight of the dying declaration and not its admissibility:â€

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? â€œRule of First Opportunityâ€

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether the dying declarant had an opportunity to clearly observe the incident?

(vii) Whether the dying declaration has been consistent throughout?

(viii) Whether the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether the dying declaration was itself voluntary?

(x) In the case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of the doubt must always go in favour of

the accused. It is true that a dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and

the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as

the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in cases where suspicion, like the case on hand, is raised, as regards the correctness

of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence.

The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the

case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances

render such a statement of the declarants very doubtful.

65. In Sujit Biswas v. State of Assam, (2013) 12 SCC 406, this Court, while examining the distinction between â€œproof beyond reasonable doubtâ€ and

â€œsuspicionâ€ in para 13 has held as under:

â€œ13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that â€œmaybeâ€ proved and

something that â€œwill be provedâ€. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the

reason that the mental distance between â€œmaybeâ€ and â€œmust beâ€ is quite large, and divides vague conjectures from sure conclusions. In a criminal case,

the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between â€œmay beâ€ true and â€œmust

beâ€ true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before an accused is condemned as a convict, and

the basic and golden rule must be applied. In such cases, while keeping in mind the distance between â€œmay beâ€ true and â€œmust beâ€ true, the court must

maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a

complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must

ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of the doubt must be given to the accused,

keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.â€

66. It may be true as said by this Court, speaking through Justice Krishna Iyer in Dharm Das Wadhwani v. State of Uttar Pradesh, (1974) 4 SCC 267, that the rule of

benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the

legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-

convict in the crime.â€

15. A similar view was taken in Shailendra Kumar Rai and Laxman (supra)

16. Dr. Ashutosh Joshi (PW-5) examined the deceased Kamljeet Singh on 29.05.2009 at 4:30 a.m. and found that the patient was conscious and was

responding to stimuli. He has suffered 95% burns. His blood pressure and pulse were not recordable. He was given treatment and was referred to

RPGMC Tanda. He stated in his cross-examination that the condition of the patient was critical. His signatures were not obtained on the MLC

because he was not in a condition to sign. A person is not in a position to make a statement in these conditions.

17. The statement of this witness shows that the patient Kamaljeet was not in a condition to make a statement or put his signatures on 29.05.2009 at

4:30 a.m. He was referred to RPGMC, Tanda for further management.

18. Dr Avinish Kumar (PW-9) stated that the patient had suffered 90% of the total body surface burn injuries i.e. mostly second-degree and third-

degree involving the entire body except part of feet, perineal region and back. He declared the patient fit to give a statement on 29.05.2009 on the

application of the police. He admitted in his cross-examination that 90% of burns are considered serious burns. He admitted that no application for

seeking the fitness of the deceased to make the statement was available on record. He stated that a carbon copy of the application was available in

the hospital record. He admitted that the patient was in a critical condition and his lips and face were burnt; however, he was able to speak. The

Tehsildar did not move any application for seeking an opinion on whether the deceased was fit to make the statement or not. He had administered a

non-seductive painkiller to the patient.

19. The statement of this witness shows that the deceased had sustained 90% burn injuries including the injuries on his lips and face. The condition of

the patient was critical. He has not mentioned the treatment given by him to the deceased. Keeping in view the statement of Dr Ashutosh Joshi (PW-

5) that the patient was unable to speak and to put his signatures at 4:30 a.m., it is highly doubtful that he would have been in a position to make the

statement and put his signatures on the same day at 12:30 p.m., especially when he succumbed to the burn injuries subsequently.

20. Kavita Thakur (PW-4) stated in her cross-examination that she had not obtained a certificate from the doctor that the deceased was fit to make

the statement. She admitted that the condition of the deceased was critical but stated that he was able to speak well. The police did not ask her to

record the statement of the deceased. She volunteered to say the deceased made a statement before her. She asked the question from the deceased

in Hindi and the deceased also replied in Hindi. It took about 20-25 minutes to record the statement. She had not appended any certificate that the

statement was made by the deceased voluntarily.

21. HC Kamlesh Chand (PW-10), who recorded the statement of the deceased stated that he informed SHO for recording the statement of

Kamaljeet Singh. Executive Magistrate reached the hospital but he could not tell the time. Treatment of the patient had started before his arrival. He

also admitted that the whole body including the hand of the deceased was burnt.

22. Thus, all the witnesses admitted that the deceased had sustained burn injuries on his body including his hands, face and lips. Therefore, in these

circumstances, the statement of Dr Ashutosh Joshi (PW-5) assumes significance that the deceased would not have been in a position to put his

signatures and make the statement. The fact that the statement (Ext.PW-4/A) bears the signatures of the deceased makes it suspicious.

23. Even if the statement (Ext.PW-4/A) is taken as it is, it is difficult to say that the same would constitute the abetment. The statement freely

translated reads as under:-

â€œ Stated that I am residing at the above-mentioned address and I drive the vehicle in Delhi. I had visited my house at Dev Bharadi 7-8 days ago. I have a

dispute over the land with my mother Smt. Sheela Devi, due to which we have frequent altercations. On 28.05.2009, I was called to the police station on the

complaint of my mother. Thereafter, I went to my home. My widowed sister Harindra Kumari and her children reside with my mother. She also abuses me and my

family members. I and my mother reside in one house wherein one room has been allotted to me. My mother and sister abused me during the night and they

continued to abuse me till late night. I woke up at 2:00 a.m. and poured kerosene upon my body and put myself on fire. When my body started burning I cried. My

wife Santosh Devi woke up on hearing my cries and extinguished the fire with the help of a Khind (blanket). She sustained burn injuries on her arm and stomach.

I have put myself on fire due to the harassment of my mother and my sister. Action should be taken against my mother and sisterâ€

24. This statement only shows that there was a land dispute between the deceased and his mother and the accused used to abuse the deceased.

There is no recital that any of the accused had asked him to commit suicide. It was laid down by the Honâ€™ble Supreme Court inC hitresh Kumar

Chopra v. State (NCT of Delhi), (2009) 16 SCC 605: (2010) 3 SCC (Cri) 367: 2009 SCC OnLine SC 148th6a t the mere abuses or altercations

do not constitute abetment. It was observed at page 611:

â€œ20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of suicide has no easy answers because

suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of

the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner

subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end

his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

21. In the present case, the charge against the appellant is that he along with the other two accused â€œin furtherance of common intentionâ€, mentally tortured

Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a

quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the

deceased to take an extreme step to bring an end to his life.â€

25. A similar view was taken in Velladurai v. State, (2022) 17 SCC 523: 2021 SCC OnLine SC 715 wherein it was observed at page 526:

â€œ12. Now so far as the offence under Section 306IPC is concerned, in a case where any person instigates another person to commit suicide and as a result of such

instigation the other person commits suicide, the person causing the instigation is liable to be punished for the offence under Section 306IPC for abetting the

commission of suicide. Therefore, in order to bring a case within the provision of Section 306IPC, there must be a case of suicide and in the commission of the said

offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to

facilitate the commission of suicide. As observed and held by this Court in Amalendu Pal [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896],

mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence

under Section 306IPC.

13. Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created

such circumstances that the deceased was left with no other option except to commit suicide. In the instant case, the allegation against the appellant is that there was

a quarrel on the day of the occurrence. There is no other material on record which indicates abetment. There is no material on record that the appellant-accused

played an active role by an act of instigating the deceased to facilitate the commission of suicide. On the contrary, in the present case, even the appellant-accused

also tried to commit suicide and consumed pesticide. Under the circumstances and in the facts and circumstances of the case and there is no other material on record

which indicates abetment, both the High Court as well as the learned trial court have committed an error in convicting the accused for the offence under Section

306IPC.â€

26. Section 306 of the IPC provides for the abetment of suicide. This Section was explained by the Honâ€™ble Supreme Court in Kumar v. State of

Karnataka, 2024 SCC OnLine SC 216 as under:

â€œ64. Suicide is distinguishable from homicide inasmuch as it amounts to the killing of self. This Court in M. Mohan v. State (2011) 3 SCC 626 went into the meaning

of the word suicide and held as under:

37. The word â€œsuicideâ€ in itself is nowhere defined in the Penal Code, however, its meaning and import are well known and require no explanation. â€œSuiâ€

means â€œselfâ€ and â€œcideâ€ means â€œkillingâ€, thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective

of the means employed by him in achieving his object of killing himself.

65. In Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, this Court delved into the meaning of the word â€˜instigateâ€™ or â€˜instigationâ€™ and held as

under:

20. Instigation is to goad, urge forward, provoke, incite or encourage to do â€œan actâ€. To satisfy the requirement of instigation though it is not necessary that

actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable

certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a

continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may

have been inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

66. Thus, this Court held that to â€˜instigateâ€™ means to goad, urge, provoke, incite or encourage to do â€˜an actâ€™. To satisfy the requirement of

â€˜instigationâ€™, it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the

consequence. But, a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused by his act or omission or by his

continued course of conduct creates a situation in that the deceased is left with no other option except to commit suicide, then instigation may be inferred. A word

uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

67. Again, in the case of Chitresh Kumar Chopra v. State (2009) 16 SCC 605, this Court elaborated further and observed that to constitute â€˜instigationâ€™, a person

who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by â€˜goadingâ€™ or â€˜urging forwardâ€™. This Court held as

follows:

17. Thus, to constitute â€œinstigationâ€, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by â€œgoadingâ€

or â€œurging forwardâ€. The dictionary meaning of the word â€œgoadâ€ is â€œa thing that stimulates someone into action; provoke to action or reactionâ€ (see

Concise Oxford English Dictionary); â€œto keep irritating or annoying somebody until he reactsâ€ (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, â€œurgeâ€ means to advise or try hard to persuade somebody to do something or to make a person move more quickly and or in a particular direction,

especially by pushing or forcing such a person. Therefore, a person who instigates another has to â€œgoadâ€ or â€œurge forwardâ€ the latter with the intention to

provoke, incite or encourage the doing of an act by the latter.

68. Thus, this Court has held that in order to prove that the accused had abetted the commission of suicide by a person, the following has to be established:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased

reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction;

and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, the

presence of mens rea is the necessary concomitant of instigation.

69. In Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707, this Court after referring to some of the previous decisions held that it has been the

consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the

case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other

alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement

to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the

accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as

under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to

have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under

Section 306 IPC.

70. Similar is the view expressed by this court in Ude Singh (supra).

71. In Rajesh v. State of Haryana (2020) 15 SCC 359, this Court after referring to Sections 306 and 107 of the IPC held as follows:

9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on

the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of

suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of

instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved

and established by the prosecution before he could be convicted under Section 306 IPC.

72. Reverting back to the decision in M. Mohan (supra), this Court observed that abetment would involve a mental process of instigating a person or intentionally

aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under

Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide

seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.

73. Sounding a note of caution, this Court in State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73 observed that the court should be extremely careful in

assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim

had in fact induced her to end her life by committing suicide. If it transpires to the court that the victim committing suicide was hypersensitive to ordinary petulance,

discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to

induce a similarly circumstanced individual to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of

abetting the offence of suicide should be found guilty.â€

27. This position was reiterated in Rohini Sudarshan Gangurde v. State of Maharashtra, 2024 SCC OnLine SC 1701 wherein it was observed:

â€œ8. Reading these sections together would indicate that there must be either an instigation or an engagement or intentional aid to the â€˜doing of a thingâ€™.

When we apply these three criteria to Section 306, it means that the accused must have encouraged the person to commit suicide or engaged in a conspiracy with

others to encourage the person to commit suicide or acted (or failed to act) intentionally to aid the person to commit suicide.

9. In S.S. Chheena v. Vijay Kumar Mahajan (2010) 12 SCC 190, this court explained the concept of abetment along with the necessary ingredient for an offence

under Section 306 of IPC as under:

â€œ25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the

accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is

clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which

led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.â€

10. In Amalendu Pal v. State of W.B. (2010) 1 SCC 707, this court explained the parameters of Section 306 in the following words:

â€œ12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously

examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to

the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there

must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action

proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not

sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to

have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under

Section 306 IPC.â€

11. In Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, while explaining the meaning of â€˜Instigationâ€™, this court stated that:

â€œ20. Instigation is to goad, urge forward, provoke, incite or encourage to do â€œan actâ€. To satisfy the requirement of â€œinstigationâ€, though it is not

necessary that actual words must be used to that effect or what constitutes â€œinstigationâ€ must necessarily and specifically be suggestive of the consequence.

Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of

conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an â€œinstigationâ€ may have to be

inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.â€

12. These principles and necessary ingredients of Section 306 and 107 of theÂ Penal Code, 1860 were reiterated and summarized byÂ this courtÂ in the recent case

of Gurucharan Singh v. State of Punjab (2020) 10 SCC 200.â€

28. In the present case the statement does not show any instigation. It also does not show that the deceased was left with no option except to commit

suicide. The disputes over the land are frequent amongst the family members and in the absence of any further evidence mere abuse or the dispute is

not sufficient to constitute the abetment.

29. Santosh Devi (PW-6) stated that the deceased was called by the police to the Police Station. He returned at 9-10 p.m. He took dinner and sat

down for some time. Thereafter, the accused started abusing him and the abuses continued till 12:00-12:30 a.m. She went to bed with her children.

Her husband was sitting with the accused in their home. She heard the cries of her husband at 1:30 a.m. She rushed to the room of the accused and

saw that her husband had caught fire. She put the quilt on the body of her husband to extinguish the fire. She was duly confronted with her previous

statement wherein it was not mentioned that the deceased was sitting in the room of the accused, which shows that the statement made by her in the

Court was an improvement. Her statement that the deceased had set himself on fire in the room of the accused is contrary to the dying declaration

where the deceased stated that he woke up in his room and set himself on fire. Therefore, it is difficult to rely upon her testimony that the accused had

abused the deceased due to which he was compelled to commit suicide.

30. She admitted in her cross-examination that the accused accompanied her to Civil Hospital Nurpur. This statement shows that the accused never

intended that the deceased should commit suicide otherwise they would not have accompanied him to the hospital. The conduct of the accused is

inconsistent with their guilt. It was laid down by the Honâ€™ble Supreme Court in State of Rajasthan v. Prithvi Raj, 1995 Supp (3) SCC 410:

1995 SCC (Cri) 934 that where the accused took the deceased to the hospital, it is quite consistent with their innocence. It was observed at page

412:

â€œ5. It is true, as contended by the learned counsel, that the manner of appreciation of the evidence in respect of the dying declaration is not altogether sound. But

the High Court has rightly held that the immediate conduct of the accused and his parents in rushing the deceased to the hospital immediately by arranging a jeep is

quite consistent with their being innocent. However, we find that the overall reasoning of the High Court in giving the benefit of the doubt to the accused cannot be

said to be wholly unsound and does not stand judicial scrutinyâ€¦â€

31. Kishan Singh(PW-11), stated that he was Pradhan of the Gram Panchayat, there was a land dispute between the parties and Kamaljeet Singh

complaint to the Panchayat many times. Parties moved an application on 26.05.2009 and he advised the accused to hand over two kanals of land to

Kamaljeet Singh but they refused by saying that they were getting ₹15,00,000/-. Kamaljeet Singh telephonically informed him on 27.05.2009 that the

accused was harassing him. He stated in his cross-examination that Kamaljeetâ€™s family resided separately from his parents in the same house and

Kamaljeet Singh was working as a driver at Delhi. He used to come to his house 2-3 times in the year. He did not hand over any record of the

complaints made to him.

32. The statement of this witness only shows that there was a land dispute between the parties and this dispute existed since the time of the father of

the deceased. As already stated, mere pendency of the dispute over the land does not constitute the abetment and this statement will not help the

prosecution.

33. Hans Raj (PW-7) stated that Munshi Ram, father of the deceased, had purchased the land in the name of Sheela Devi. The accused and the

deceased used to quarrel over the land. The matter was settled by the Panchayat. One room was given to Kamaljeet Singh and he used to live in a

separate room. The accused used to torture Kamaljeet Singh and he told him (Hans Raj) many times about the harassment. He stated in his cross-

examination that he used to visit the house of Kamaljeet Singh frequently. He had also accompanied Kamljeet Singh to Sukh Sadan Hospital.

Kamaljeet Singh was badly burned. He admitted that accused had moved an application (Mark-D1) against him before SHO, Nurpur. He admitted

that Munshi Ram had filed an application (Mark-D3) against him but volunteered to say that the application was about the dispute regarding the house.

34. The statement of this witness also shows the existence of some dispute and the complaint made by the deceased regarding the harassment. As

per this witness, the deceased used to visit his house 3-4 times a year and the harassment was not a series of acts but intermittent.

35. Udha Ram (PW-2) did not support the prosecution case. He was permitted to be cross-examined. He admitted that Kamaljeet was living with his

family in the house. He denied that the accused were residing in the same house. He denied that the accused wanted to oust the accused from the

house. He denied the previous statement recorded by the police.

36. The statement of this witness does not prove any abetment. He has even denied the dispute over the land, therefore, no advantage can be derived

from his testimony.

37. There is no other evidence to show the abetment and the learned Trial Court had taken a reasonable view based on the evidence led before it.

Even if another view is possible, this Court will not interfere with the reasonable view of the learned Court while deciding an appeal against acquittal.

38. No other point was urged.

39. In view of the aforesaid discussion, the present appeal fails and the same is dismissed.

40. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the

appellants are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Trial

Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this

judgment, or on grant of the leave, the appellants on receipt of notice thereof, shall appear before the Honâ€™ble Supreme Court.

41. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith. Pending applications, if any, also stand disposed

of.