(2010) 04 AHC CK 0128

Allahabad High Court

Case No: None

Amar Singh		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: April 20, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 32, 60
- Penal Code, 1860 (IPC) - Section 176, 302, 307, 34

Hon'ble Judges: V.K. Dixit, J; Rakesh Tiwari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

V.K. Dixit, J.

By this appeal, the appellant Amar Singh seeks to challenge the judgment and order dated 25.11.1997 passed by the learned Vth Additional Sessions Judge, Aligarh in Sessions Trial No. 388 of 1995 holding him guilty of the charge u/s 302 IPC for the murder of Smt. Son Devi (hereafter referred to as "deceased") and the order sentencing him to undergo imprisonment for life.

2. Thumbnail sketch of the facts of the case is as mentioned herein below:

The complainant Kishan Lal resident of village Piwari Police Station Bharhara District Etah,father of the deceased lodged an FIR at Police Station Sikandra Rao District Aligarh on 07.04.1994 at 18.10 hrs. to the effect that deceased was married to Sri Pal Singh resident of village Chhonkara Police Station Sikandrarao District Aligarh about eleven years back. The deceased had two daughters. His daughter''s fatherinlaw appellant Amar Singh who was widower, had an evil eye upon her and since his daughter did not succumb to the desire of her fatherinlaw he often use to harass her. On 07.04.1994 at about 78 am. when his soninlaw Sri Pal Singh was sitting with his daughter (complainant''s grand daughter) outside the house, his daughter''s

fatherinlaw set his daughter on fire by sprinkling kerosene oil on her body with the intention to kill her. On raising alarm by his daughter, his soninlaw Sri Pal Singh and other neighbors of the village rushed in the house and extinguished the fire. On the fateful day at about 13.00 hours on getting information of the incident from one Ram Ji Lal, he alongwith Lokpal Singh, Ramesh Chandra, Pokhpal and Parchan Singh reached village Chhonkara and found that his daughter was lying in the house in a very critical burnt condition and his soninlaw Sri Pal Singh and appellant Amar Singh were not present there. He went to the Police Station Sikandrarao carrying his daughter (deceased) from where she was sent to Sikandrarao Hospital for her medical examination and treatment. Her dying declaration was recorded by Sri B.N. Chaudhary S.D.M., Sikandrarao at 18.50 hrs. Later on, she was referred to Malkhan Singh District Hospital, Aligarh for medical treatment. During treatment she died in the hospital on 10.04.1994. Initially the F.IR. at Crime No. 98 of 1994 was registered u/s 307 IPC. On receiving information regarding her death the case was converted into Section 302 I.P.C. After investigation the chargesheet u/s 302 IPC was filed against the appellant Amar Singh and his son (coaccused) Sri Pal Singh. On the basis of aforesaid chargesheet, the trial court framed charge u/s 302/34 IPC and 176/34 IPC, to which the appellant Amar Singh and coaccused Sri Pal Singh pleaded not guilty and claimed trial. Having denied the charge the appellant and his son coaccused Sri Pal Singh faced trial.

3. During the trial the prosecution examined in all ten witnesses. In the defence two witnesses were examined. The prosecution, in support of its case examined PW1 Kishan Lal (complainant), PW2 Ramesh, PW3 Ram Ji Lal, PW4 Dr. Yogendra Singh, PW5 Sri B.N. Chaudhary S.D.M., PW6 Sri P.C. Lal, PW7 Sri Atar Singh, PW8 Dr. Ashok Kumar, PW9 Sri M.R. Diwan S.D.M. and PW10 Kaushlendra Singh.

4. PW1 Kishan Lal, the father of the deceased, supported the prosecution version and proved the FIR (Exhibit Ka1).

5. PW2 Ramesh stated that Kishan Lal had told him that his daughter was set on fire. He along with Kishan Lal and other persons of the village came to her daughter''s in law''s house and saw that the deceased was lying in a burnt condition. They took her to Police Station Sikandrarao from where she was sent to Hospital for medical treatment.

6. PW3 Ram Ji Lal did not support the prosecution case and he was declared hostile.

7. PW.4 Dr. Yogendra Kumar Medical Officer stated that on 07.04.1994 he was posted at Malkhan Singh Hospital, Aligarh and on the said date at about 20.45 hrs. he examined the deceased and found superficial to deep burn injuries all over her body except head, neck, face, some portion of upper part of chest and upper half of the left upper arm. The skin peeled up at places, blisters were present, about 85% of her body was burnt. The injuries were half day old. She was admitted in the hospital and her injury report was prepared by him, which he proved (Exhibit Ka2).

8. PW5 Sri B.N. Chaudhary, stated that on 07.04.1994 he was posted as Sub Divisional Magistrate, Sikandrarao District Aligarh. On that day, at about 18.50 hrs. he recorded the dying declaration of the deceased aged about 26 years, in the Government Hospital Sikandrarao. Before recording of her statement he had ensured that she was in a mentally fit condition to give her statement and the certificate to that effect was issued by Dr. P.C. Gupta. He has proved the said dying declaration of the deceased (Exhibit Ka3).

9. PW6 Dr. P.C. Gupta Medical Officer, Ursila Hospital, Kanpur City stated that on 07.04.1994 he was posted at Primary Health Center, Sikandrarao. On that day, Sri B.N. Chaudhary S.D.M. (PW5) had recorded the dying declaration of the deceased in the hospital. Before recording her statement he had ensured, by examining the deceased, that she was conscious and was in a fit mental condition to give her statement. During the entire period when her statement was being recorded, she remained conscious. He had appended the certificate on the dying declaration that the patient was fully conscious and remained conscious till the end of recording of the statement. He proved his said endorsement on the dying declaration of the deceased as (Exhibit Ka4).

10. PW7 SubInspector, Police Sri Atar Singh proved G.D. No. 35 at 18.00 pm. dated 07.04.1994 of Police Station Sikandrarao as (Exhibit Ka5) site plan (Exhibit Ka6) and chargesheet (Exhibit Ka7) prepared by the Investigating Officer.

11. PW8 Dr. Ashok Kumar, Medical Officer stated that on 11.04.1994 he was posted at Malkhan Singh Hospital, Aligarh and was on postmortem duty. On that date at 15.30 hrs. he had conducted the autopsy on the dead body of the deceased. He found second and third degree burn injuries on her entire body except face, neck, head and part of chest. Her skin was peeled off at different places and 85% of her body was found burnt. The postmortem report was prepared by him, which he proved as Exhibit Ka8. The cause of death is due to shock as a result of extensive burn. The postmortem was conducted under the direction of Dr. R.P. Singh, Senior Medical Officer and he was agreed with the findings.

12. PW9 Sri M.R. Diwan stated that on 11.04.1994 he was posted as Additional City Magistrate, Aligarh. On that day he got prepared the inquest report of the deceased. He had also expressed his opinion on the inquest report. He proved the inquest report (Exhibit Ka10).

13. PW10 Constable Kaushlendra Singh proved the G.D. No. 14 dated 02. 12.1994, time 11.30 of Police Station Sikandrarao as Exhibit Ka16.

14. In their statement u/s 313 Cr.P.C. the accused persons denied the allegations and stated that on account of enmity, the witnesses have deposed against them. They further stated that the deceased was cooking when she caught fire by accident. In their defence they examined two witnesses i.e. Dr. Yogendra Kumar (DW1) and Sri Pal Singh (accused himself) as DW2.

15. DW1 Dr. Yogendra Kumar Medical Officer stated that on 11.04.1994 he was posted as Medical Officer in Malkhan Singh Hospital, Aligarh. On that day at about 19.00 hrs. he had examined Sri Pal (accusednon appellant) son of Amar Singh resident of village Chhonkara Police Station Sikandrarao District Aligarh who was brought by one Garib Das along with the letter of Police Station Sikandrarao for medical examination. He found the following injuries on his person:

1. Superficial burn injury in an area of 3 1X11 cm. on the front of right side chest and upper part of right side abdomen. Blisters were present on few places.

2. Superficial burn injury on an area of 14X15 cm. on the front of right upper arm.

3. Superficial burn injury 21X6 cm. on the front of medial aspect of right forearm. Blisters were present on two places.

4. Superficial burn injury in an area of 6X2.5 cm. near little ring finger.

5. Superficial burn on the thenar eminence of left thumb 2.5X2 cm.

Opinioninjuries are simple, caused by heat.

Durationabout four days.

16. He proved the injury report which was in his hand writing and signed by him as (Exhibit Kha 1).

17. DW2 Sri Pal (coaccused/non appellant) stated that on the day of incident at about 7/8 am. he was out side the house along with his daughter when his wife Son Devi caught fire while cooking food. On hearing her shrieks he rushed in side the house and tried to put off the fire by covering her with a blanket. On his alarm his father and neighbors reached there. His father Amar Singh sent one Ram Ji Lal to inform about the incident to his in laws. There was no doctor in the village. One Doctor was called from village Naujalpur who treated both of them. His fatherinlaw along with 56 persons came at about 13.00 hrs. and inquired from his wife. His fatherinlaw took his wife Son Devi to Sikandrarao, leaving him in the house. After twothree days of incident he went to Police Station and showed his injuries whereupon he was sent to Malkhan Singh Hospital, Aligarh for medical examination where his medical examination was conducted.

18. The learned trial Judge, as it appears from the discussion in the judgment, believed the prosecution case that it was the appellant accused Amar Singh who poured kerosene on the deceased and lit the match stick on account of which she suffered the vital burn injuries. Relying mainly on the dying declaration (Exhibit Ka3). The learned trial court found that appellant accused Amar Singh was guilty u/s 302 IPC and sentenced him to undergo imprisonment for life. Charge u/s 176 IPC was not proved, therefore, he was acquitted of the said charge. The coaccused Sri Pal Singh was acquitted, as the charge u/s 302/34 IPC and 176/34 IPC was not proved against him.

19. Feeling aggrieved by the said judgment and order of learned court below, this appeal has been preferred by the appellant Amar Singh.

20. We have heard the arguments at length advanced by the learned Counsel appearing on both the sides and perused the oral & documentary evidences available on records.

21. Sri Sarvesh Kumar Dubey, learned Counsel for the appellant argued that there is nothing on record to prove the guilt of the accused except the uncorroborated dying declaration of the deceased and in the absence of corroborative material the sole basis of dying declaration cannot entail a valid conviction. It is also argued that the coaccused, who is the husband of the deceased, has been acquitted and, therefore, on the basis of the same evidence, the conviction of the appellant cannot be legally sustained. The other point argued by the defence is that the appellant/accused was not present in the house at the time of occurrence and arrived subsequently on the spot and arranged for the medical treatment of the deceased by calling a doctor and such a conduct itself was sufficient to show his innocence. The next point urged on behalf of the accused appellant is the absence of adequate motive to commit this crime. Learned Counsel for the appellant submitted that it has come in the dying declaration that the accused appellant used to ask the deceased to go back to her parents home and in the light of this evidence, the allegation of his illicit intentions becomes unworthy of credence. According to the counsel for appellant, if the accused had an evil eye on his daughterinlaw, he would have been the last person to ask her to go back to her parents place. Lastly, it has been argued on behalf of the defence that the deceased in fact died because of some accidental fire which took place in the house as the cooking stove got burst on the fateful day and also that there is no independent witness of the village to support the prosecution case and it is only the father of the deceased who has deposed against accused.

22. Sri Karuna Nand Bajpai, learned Additional Government Advocate on behalf of the State has rebutted the arguments advanced on behalf of the appellant. Learned Additional Government Advocate argued that it is the settled law that the dying declaration of the deceased very well constitutes the sole basis to convict the accused provided it is found to be voluntary, truthful and untwittered one; that there is no rule of prudence, much less than law, which require corroboration of an authorized persuadely dying declaration.

23. It has also been submitted on behalf of State that a dying declaration which has been reduced in writing is on a higher footing than the oral dying declaration as the scope of error in the exact words of the deceased gets minimized. The evidentiary value of a written dying declaration reduced in writing is further augmented if it is recorded by a Magistrate who is a high ranking officer. It becomes even more authentic when it contains a due certificate given by the doctor about the mental fitness of the deceased to give the dying declaration. Learned Additional

Government Advocate Sri Bajpai further argued that there is nothing on record to show that any tutoring was done or that there was any attempt by any one to influence or coerce the deceased to give the statement which she actually gave.

24. Learned Additional Government Advocate has placed reliance on the cases of Khushal Rao Vs. The State of Bombay, Lallubhai Devchand Shah and Others Vs. The State of Gujarat, Munnu Raja and Another Vs. The State of Madhya Pradesh, , State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, Smt. Paniben Vs. State of Gujarat, and Jai Karan Vs. State of (N.C.T. Delhi),

25. In the decision of Harijana Thirupala v. Public Prosecutor, High Court of Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P., Hyderabad, it was observed by the Hon''ble Apex Court in para 11 of the judgment as under:

In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

26. In the case of Khushal Rao (supra) the Hon''ble Apex Court laid down the following proposition of law relating to the test of reliability of dying declaration:

(1) That it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) That each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) That it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence;

(4) That a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) That a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration, which depends upon oral testimony which may suffer from all the infirmities of human memory and human character; and

(6) That in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

27. In the case of Lallubhai (supra) it was held by Hon''ble the Apex Court as under:

The law with regard to dying declarations is very clear. A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind on the one hand, that the statement is by a person who has not been examined in court on oath and on the other hand, that the dying man is normally not likely to implicate innocent persons falsely.

28. In the case of Paniben (Supra) Hon''ble the Apex Court has observed in Para 17 of the judgment as under:

Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of crossexamination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. The Court has laid down in several Judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. Munnu Raja and Another Vs. The State of Madhya Pradesh,

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, Ramawati Devi Vs. State of Bihar,

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. K. Ramachandra Reddy and Another Vs. The Public Prosecutor,

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. Rasheed Beg and Others Vs. State of Madhya Pradesh,

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. Kake Singh Alias Surendra Singh Vs. State of Madhya Pradesh,

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. 1981 SCC (Crl) 581).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. State of Maharashtra Vs. Krishnamurti Laxmipati Naidu,

(viii) Equally, merely because it is a brief statement it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Ojha and Others Vs. State of Bihar,

(ix) Normally the Court in order to satisfy whether deceased was in afit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in afit and conscious state to make this dying declaration, the medical opinion cannot prevail. Nanhau Ram and Another Vs. State of Madhya Pradesh,

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. State of U.P. Vs. Madan Mohan and Others,

29. In the case of Jai Karan (Supra) Hon''ble the Apex Court has observed in Para 10 of the judgment as under:

A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the

premiss that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premiss which is considered strong enough to set off the need that the maker of the statement should state so on oath and be crossexamined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of perSonl knowledge without being influenced by others and the court on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable.

30. In the decision of Sohal Lal @ Sohan Singh and Others Vs. State of Punjab, Hon''ble the Supreme Court has observed as under :

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 faslehood 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 crossexamination, 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 afit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in afit 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 afit 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.

31. Hon''ble the Apex Court in the case of Balbir Singh and Anr. v. State of Punjab reported in (2006) 12 SCC 283 has observed as thus:

Dying declaration, however, must be voluntary. It should not be tutored. It is admissible in evidence in special circumstances. But it must be borne in mind that its admissibility is statutorily recognised in terms of Section 32 of the Evidence Act.

32. In the case of Sunder Lal Vs. State of Rajasthan, Hon''ble the Apex Court has observed in para 8 of the judgment as under:

...it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short "the Evidence Act") which deals with cases in which statement of relevant fact by a person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen, it must be the evidence of the witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it; if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 [of the Evidence Act]. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eyewitness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. 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 . Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of Dauphin Lewis explain:

''Have I met hideous
death within my view,
Retaining but a quantity of life,

Which bleeds away
even as aform of wax,
Resolveth from his figure
''gainst the fire?
What in 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?

The principle on which dying declaration is admitted in evidence is indicated in legal maxim ''nemo moriturus praesumitur mentirea man will not meet his Maker with a lie in his mouth''.

33. In the case of Mohan Lal and Others Vs. State of Haryana, Ho''ble the Apex Court has observed

The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and crossexamination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

34. In the decision of State of U.P. Vs. Santosh Kumar, it was observed by the Hon''ble Apex Court:

Dying declarations must be construed in proper perspective

The statement of the deceased made to the Tahsildar/Magistrate, PW 13 cannot be brushed aside. He was totally an independent witness and there was no reason for him to cook up any false story.

In any criminal case where statements are recorded after a considerable lapse of time, some inconsistencies are bound to occur. But it is the duty of the court to ensure that the truth prevails. If on material particulars, the statements of prosecution witnesses are consistent, then they cannot be discarded only because of minor inconsistencies.

35. In the decision of Sharda Vs. State of Rajasthan, it was observed by the Hon''ble Apex Court in para 24 of the judgment as under:

...The principle on which dying declarations are admitted in evidence is indicated in legal maxim:

Nemo moriturus praesumitur mentire - a man will not meet his Maker with a lie in his mouth.

It is indicative of the fact that a man who is on a deathbed would not tell a lie to falsely implicate an innocent person. This is the reason in law to accept the veracity of her statement. It is for this reason, the requirements of oath and crossexamination are dispensed with. Besides, if the dying declaration is to be completely excluded in a given case, it may even amount to miscarriage of justice as the victim alone being the eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

36. In the decision of Jayabalan Vs. U.T. of Pondicherry, it was observed by the Hon''ble Apex Court in para 24 of the judgment as under:

it is wellestablished legal position that a dying declaration can be made the sole basis of conviction of an accused provided the dying declaration is found to be true and voluntary and is not a result of tutoring or prompting or a product of imagination.

37. In the light of the aforesaid well settled legal position, we have carefully scrutinized the evidence on record in detail.

38. The dying declaration of the deceased was recorded on 07.04.1994 at 18.50 hrs. by PW.5 Sri B.N. Chaudhary, Sub Divisional Magistrate, Sikandrarao District Aligarh in the presence of PW.6 Dr. P.C. Gupta, Medical Officer, Primary Health Center, Sikandrarao. PW.5. Sri B.N. Chaudhary, stated that before recording the statement of the deceased he had ensured himself that the deceased was mentally fit to give her statement. Certificate to that effect was appended by Dr. P.C. Gupta (PW.6) on the dying declaration. He has proved the said dying declaration of the deceased as Exhibit Ka3. The same bears signature of PW.5 Sri B.N. Chaudhary and the thumb impression of the deceased.

39. PW.6 Dr. P.C. Gupta deposed that on 07.04.1994 while he was on duty in the Primary Health Center, Sikandrarao dying declaration of deceased was recorded by Sub Divisional Magistrate in his presence. He had also issued a certificate to the

effect that the deceased was fully conscious and was in a mentally fit condition to get her statement recorded. PW.6 Dr. P.C. Gupta, further stated that during the entire period when statement of the deceased was being recorded, and upto the end of her statement, the deceased remained fully conscious. He proved his said endorsement on the dying declaration of the deceased as Exhibit Ka4.

40. In her dying declaration (Exhibit Ka3) deceased Son Devi had stated that at the time of occurrence she was alone in the house. Kerosene oil was poured on her body by her fatherinlaw and she was set on fire by him by lighting a match stick. She suffered burn injuries on account of her fatherinlaw. When she cried for help, her husband came and tried to extinguish fire by throwing water on her. In her statement she had also stated that her fatherinlaw had an evil eye on her and since she did not succumb to his evil desires, he often used to harass her. Dying declaration Exhibit Ka3 of the deceased is reproduced as under:

esjs llqj Jh vej flag iq= lqEesj fuoklh Nksadjk eq>ls 1 <U+FFFD> ekg ls dg jgs Fks] fd ;gkWa ls vius ek;ds pyh tkvks] eS ugha x;h A og dgrs Fks pyh tkvks] ;gkWa ugh j[ksaxs A eS ?kj esa vdsyh Fkh A izkr% lk s 8-30 cts yxHkx fnukad 7-4-1994 dks ?kj Nksadjk esa esjs <U+FFFD>ij feV~Vh dk rsy fNM+ddj ekfpl ls vkx yxk nh A ml le; dejs dk njoktk cUn Fkk A vkx yxkdj esjk llqj dejk dk njoktk [kksydj Hkkx x;k A eSa Hkkxdj njoktk ij vk;h vkSj fxj x;h] FkksM+h nsj esa esjs ifr vk;s mUgksusa esjs <U+FFFD>ij ckYVh ls ikuh Mky fn;k A bl le; rd eS gks''k esa Fkh A ikuh Mkydj esjs ifr Hkh Hkkx x;s] eS iM+h jgh A xkWao okys vk;s rks mUgksus mBkdj Hkhrj fyVk;k A cM+h yM+dh fiUdh ufulkj fiokjh xkWao esa x;h Fkh A mldh mez 5 o''kZ gS A esjs ifr nwljh iq=h ftldk uke ugh j[kk gS vkSj N% ekg dh gS] dks f[kykus ckgj x;s Fks A

eq>s ''kknh gq, 10&12 o''kZ gks x;s gS A esjs llqj jaMqvk gS] jkf= esa vkdj eq>ls xyr dk;Z djus dk ncko Mkyrs Fks vFkkZr~ cykRdkj ij tksj nsrs Fks A eSa bldk fojks/k djrh Fkh] blfy, llqj ukjkt jgrk Fkk A llqj dh mez ugh ekywe A esjs ifr Hkh llqj dk lg;ksx bl dk;Z esa djrs Fks A tc eS fojks/k djrh Fkh rks llqj ekjrk Fkk A esjs ek;dk fiokjh esa gS A vU; dksbZ ckr ugha dguh gS A c;ku lqudj rLnhd fd;k A

fu0v
lksu nsoh
07-04-1994
7-10 p.m.

41. We are of the considered opinion that the dying declaration recorded by the Magistrate is voluntary statement, uninfluenced by any outside element and we also find that the mental condition of the deceased was unimpaired and she gave a coherent statement about the happenings which took place on the fateful day and the manner in which she was set ablaze.

42. We have also taken a note of one inherent circumstance which lends corroboration to the contents of the dying declaration. It has been stated by the deceased in her dying declaration that at the relevant time of the incident her

husband was outside the house along with her child/daughter who was playing with him. It has also been stated by the deceased that hearing her shrieks, the husband rushed inside and tried to dozeaway the fire. This dying declaration was given on the day of incident itself. Subsequently after the lapse of about three and half years when the statements of the appellant/accused and coaccused/husband were recorded u/s 313 Cr.P.C. and also when the coaccused husband examined himself as defence witness it was stated by him that it is true that at the time of the incident he was playing with his daughter outside the house and on hearing the cries of his wife he rushed inside and attempted to extinguish the fire. These details of the circumstances that existed at the time of occurrence have been so accurately stated by the deceased at the time of the dying declaration that they have been completely admitted by the defence side and the husband of the deceased himself. This gives not only a complete corroboration to every part of the dying declaration, but also inherent veracity and truthfulness of the contents of the dying declaration. We cannot imagine any reason or motive which the deceased could have had for giving this statement relating to the position of her husband at the time of occurrence, what he was actually doing and what he actually did subsequent to the incident. To our mind, she stated before the Magistrate what had actually been done by her husband and was not concocting or fabricating any artificial story. For this reason even years after her dying declaration was recorded, the defence admitted this narration to be true and could not deny its truthfulness.

43. One more circumstance which impresses ourselves is that even though she has stated that her husband had a tacit consent in the lecherous overtures of her fatherinlaw, Amar Singh (appellant) has maintained the honesty in not leveling the allegation of murder against her husband. If she was actuated by the feeling of revenge or if her parents had any motive to coach or tutor her to falsely implicate the family members of her inlaws house, then she could very well have implicated her husband also. The very fact that even in the agony of death she maintained her integrity and did not allow her pain to falsely implicate everybody indiscriminately goes along way to prove that what she stated in her dying declaration deserves creditability.

44. Testing the case in hand on the touch stone of the principles laid down in the decisions noted above the position that emerges is that the prosecution evidence rests solely on the dying declaration said to have been made by the deceased.

45. This is true that the dying declaration is never available to be tested by crossexamination. It is also true that before acting upon the dying declaration it must be adjudged on the sound principles of judicial evaluation of evidence. But the law has still declared the statement of the deceased as to the cause of her death or as to any of the circumstances of the transaction which resulted in her death as admissible and relevant. Section 32 of Indian Evidence Act is an exception to the rule of hearsay. It is generally supposed that the dying person who has only limited

words and sentences at his disposal will not like to waste the last sentences of his life in telling lies and committing the sin by falsely implicating people in cases of murder. The man normally does not like to meet his maker with lies on his lips. Such reasoning put the statement of a dying man on a superior footing and that is the reason perhaps which persuaded the framers of law to carve out such an exception to the rule of hearsay, but in their wisdom have enacted Section 32 of Indian Evidence Act and made dying declaration relevant. There may be any considerations and they are artistic to adjudge the reliability of dying declaration. There may be circumstances in a given case where the record may show that the mental faculty of the deceased was impaired because of the injuries sustained by him. There may be cases where more than one dying declarations have been recorded. In such cases the consistency in them will also be one of the factors to be reckoned with. There may be cases where the record may demonstrate that there were agencies who tried to influence the statement of the deceased and the dying declaration is the result of tutoring by them. There may be other instances where the contents of the dying declaration may get falsified by some other material evidence of independent character. The list of the circumstances cannot be exhaustive which may go to discredit a given dying declaration. We have tested the instant dying declaration given by deceased Son Devi on touchstone of above noted considerations. We have no hesitation to hold that this dying declaration survives the known and recognized tests to adjudge its reliability.

46. Another submission made by learned AGA is that the post crime conduct of the accused is also a relevant factor to adjudge his complicity in the crime . The incident took place at 7/8 am. in the morning. It has come on record that she was never taken to any hospital by the accused or anyone in his family. The deceased has received 85% burns. The deceased was carried to the hospital for medical treatment etc only by her father who could come to the village at about 5.00 p.m. as he lived at a distant place. There is no reason to explain this extreme complacency demonstrated by the accused regarding the welfare of the deceased. A lady having received extensive burns would have inevitably died even otherwise if specialized medical treatment was not provided to her for a long time. Had she been taken to the hospital earlier may be she could have survived. In any view of the matter to allow a helpless lady in extensively burnt condition to lie in the house from morning to evening is a conduct which can be compatible only to the guilt of the accused. Such a conduct is entirely irreconcilable to any hypothesis suggesting the innocence of the accused. If the subsequent conduct of the accused is at all any indication to his guilt or innocence the post crime conduct of the accused in the present case is wholly repugnant to his innocence. To substantiate this submission the learned A.G.A. has placed his reliance on Paniben v. State of Gujarat (supra).

47. Another circumstance relating to the subsequent conduct of the accused is that according to the statement of the complainant none of the accused persons were present at the spot when he arrived there and the circumstance of leaving the

deceased unattended and absconding after the event is also quite inconsistent with the innocence of the accused/appellant

48. We find force in the very painstakingly submission made by Sri K.N. Bajpai learned A.G.A. when he pointed out that the accused has completely failed to show anything that he took any steps to give medical succor to the deceased after the incident. The bald statement of the accused that he brought a doctor is completely unsubstantiated by any evidence on record. Neither the doctor has been examined nor there is any prescription shown or proved which may indicate what treatment she was given by the said doctor. In fact, the complete absence of any evidence on record to show that any steps were taken on behalf of the accused to give medical treatment to the deceased completely disentitle the accused to raise any such hypothetical argument that some doctor was called to give her medical treatment. Such a suggestion of the defence deserves outright rejection.

49. We have also taken note of the fact that the spot examination by the Investigating Officer does not show any such circumstance or fact which may be indicative of any accidental bursting of the stove. Even the suggestion of accident is wholly uncorroborated and unsubstantiated by any evidence on record.

50. Now we come to the last limb of the argument advanced on behalf of the appellant about the insufficiency of motive to commit this crime. We are in fact surprised to have such an argument. It is in unambiguous terms stated in the dying declaration that the accused/appellant was a lascivious person who nurtured a lustful proclivity towards her and had made several illicit advances towards her. The deceased always resisted his licentious misconduct. It is very much clear from the perusal of the dying declaration that it was only in order to exert undue pressure on the deceased and coerce her to succumb to the lust of accused that the threats to go back to her parents must have been given. To our mind there is no inconsistency between the threats to turn her out or ask her to go back to her parents and his illicit designs. In fact both are quite consistent. We have no difficulty to understand that an immoral person having a disproportionate proclivity for flash and a person who is blinded by his lust to the extent of dishonoring his own daughterinlaw can very well be a person to set her ablaze. The deceased was persistently refusing to succumb to his illicit ambition. There is thus sufficient motive for the accused to commit this crime.

51. Apart from this the statement of PW 1, father of the deceased, in all material particulars lends corroboration to the dying declaration. The FIR itself contains sufficient details and the statement of PW1, father, also gives sufficient details about the illicit intentions of the accused/appellant and also about the fact that the accused had absconded after the incident and when the complainant arrived on spot he found his daughter lying in the agony of pain unattended. It is also deposed by the complainant that he carried his daughter and lodged the FIR and took her to the hospital where she was treated and medically examined and where a dying

declaration was recorded. Thus, the complainant''s statement gives corroboration in all material particulars to the prosecution story.

52. It is settled law by a series of judgment of the Hon''ble Apex Court that the dying declaration, if after carefully scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if the same were to inspire full confidence, coherence and consistency is no legal impediment to form such dying declaration the basis of conviction even if there absence of corroboration.

53. We do not find any substance in the submissions made by the learned Counsel for the appellant. The trial court exhaustively dealt with the entire evidence and document on record. To satisfy our conscience and to ensure that even the miscarriage of justice should not take place, we have carefully scrutinized the entire evidence and document on record in detail. The evidence proves the prosecution case beyond reasonable doubt that the appellant had poured kerosene on the deceased, lit the fire with match box causing 85% burn injuries and resulted in her death. We find that the facts and circumstances from which the conclusion about the guilt of the appellant is to be drawn are fully proved. All the facts so established are consistent only with the hypothesis of guilt of the appellant and inconsistent with his innocence. The circumstances proved exclude the possibility of guilt of any person other than the appellant.

54. The learned trial court''s view and very well reasoned judgment is the only possible view in the facts and circumstances of the case.

55. On consideration of the totality of the facts and circumstances of the case, we are of the considered view that no error is committed by the trial court in convicting the appellant u/s 302 IPC for committing murder of deceased. Therefore, the appeal which lacks merit deserves dismissal. For the foregoing reasons, the appeal fails and is dismissed. The conviction and the sentence awarded to the appellant Amar Singh by the learned trial court is affirmed. The appellant is on bail. The Chief Judicial Magistrate concerned is directed to take the appellant Amar Singh into custody forthwith to serve out the sentence as awarded by the trial court and as affirmed.

56. Office is directed to communicate this order to the court concerned within three weeks along with lower court record.