

(2013) 11 DEL CK 0046

Delhi High Court

Case No: Criminal A. 320 of 1999

Raghubiri Devi

APPELLANT

Vs

State (GNCT Govt. of Delhi)

RESPONDENT

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**Date of Decision:** Nov. 25, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 113B
- Penal Code, 1860 (IPC) - Section 302, 304B, 307, 498A

**Citation:** (2014) 206 DLT 111 : (2014) 1 DMC 39**Hon'ble Judges:** Reva Khetrapal, J; Pratibha Rani, J**Bench:** Division Bench**Advocate:** Uday Gupta and Mr. Hiren Dasan, for the Appellant; Rajdipa Behura, APP, for the Respondent**Final Decision:** Allowed

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**Judgement**

Pratibha Rani, J

1. Whenever a case relating to unnatural death of a young bride within seven years of marriage is reported, it causes ripples not only in the pool of the conscience of the society at large but also throws an open challenge to the judicial system to speak deterrent language so that confidence of common man in the efficacy of law is not undermined. Such type of barbaric crimes against the bride by the husband or in-laws are a slur on the face of humanity in any civilized society. However, experience shows, of which we cannot lose sight of, that there is a growing tendency to give such death, colour of "murder" or "dowry death", even though the death may be accidental. There is no dearth of cases when on death of a bride in matrimonial home, taking advantage of stringent legal provisions applicable to cases of cruelty and dowry death, every effort is made by the family of the deceased bride to rope in not only the husband but his entire family including minor/young

school-college going unmarried "devar" and "nanad". Stories are concocted in such a manner that even bail eludes.

2. Misuse of provisions relating to matrimonial offence has been a matter of concern for all concerned. The Apex Court had an occasion to consider the repercussion of misuse of law to unleash harassment on the husband and his family in the case of [Sushil Kumar Sharma Vs. Union of India \(UOI\) and Others](#), wherein the constitutional validity of Section 498A IPC was challenged. In the alternative, prayer was made to formulate guidelines so that innocent persons are not victimized by unscrupulous persons making false accusations. In para 18 of the report, while declaring the provisions to be intra vires, how such cases need to be handled by the investigating agencies and the Court within the legal framework, has been expressed in the following words:-

18. The object of the provision is prevention of the dowry menace. But as has been rightly contented by the petitioner many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the anomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to

circumstantial evidence has to be kept in view.

3. Instant case is a glaring example of this tendency wherein immediately on the death of Rajni, a complaint was prepared accusing the husband and in-laws for harassment, cruelty and unnatural death of Rajni.

#### FACTS

4. This Criminal Appeal is directed by Appellant Raghubiri Devi against her conviction u/s 302 IPC and sentence of life imprisonment awarded to her in Sessions Case No. 46/1990.

5. Briefly stating, the case of prosecution is that on 21.11.1989 at about 12.55 pm Rajni (deceased) aged about 21 years was brought with burn injuries to LNJP Hospital by her husband Rajesh Kumar. On 23.11.1989 when young bride Rajni expired at about 11.15 am, her mother-PW-1 Smt. Brij Rani, father-PW-4 Sh. Om Prakash and maternal uncle-PW-6 Sh. Roshan Lal made the complaint narrating the incident as disclosed by Rajni to them in the hospital. The said complaint reads as under:-

Mahoday,

Nivedan hai ke hamari ladki Rajni ko tareekh 21.11.1989 ko uski saas Raghuvi tatha pati Rajesh putra Shri Raghuvir Singh niwasi 461/WZ Naraina Gaon Wale ne milkar jala diya hai. Rajesh tatha uske bhai baar baar ladki ke maa baap ke ghar tatha haspatal mein jakar dhamki de rahe hein ki ham pure pariwar ko khatam kar denge. Ladki ka aaj tareekh 23.11.89 ko 11.15 (din ke) baje swargawas ho gaya hai. Ladki ki saadi ko pure dhai saal ho gaye hein. Uske paas ek dedh saal ke bachi bhee hai. Ladki ko kayi baar marne ke dhamki dee gayi hai. Kayi baar ladki ka pati Rajesh ladki ko hamare paas chod jata tha tatha kahta tha saas bahu ka jhagra rahta hai, kai baar saaman ki maang karte thei. Ham ladki ko tatha ladke ko samjha bujha kar bhej diya karte thei. Jiase hi vardat ka pata chala hai, ladki ne bayan diya hai ki ladki ke dahej ke jewar tatha saaman saas sasur ne pahle hi apne kabje mein kar liya tha. Kuch din pahle ladki apne saas ke kahne par peeher se apni bhabhi ke jewar tatha bahan ka guchha sasural mein kisi shadi par pahnane ke liye le gayi thi. Saas Sasur ne yah jewar bhi apne paas jabta kar liye hein. Jiske magne par Saas Bahu mein kaafi jhagra hua baad mein pati Rajesh ne Rajni ko kamre ke andar dhakka de diya tatha saas ne mitti ka tel dalkar aag laga di thi. Ladki ne jab apne ko bachane ke liye bahar aane ki koshis ke to Sasur tatha badi jethani Bala ne dobara use andar dhakka de diya. Aag lagne par saara mohalla ikattha ho gaya tatha ek parosi Rajni ko aspatal le aaya tatha uske saath Rajesh bhi aa gaya tatha aspatal mein aakar likha gaya ki ladki khana banate samay stove se jal gayi hai tatha dhanki bhi de gaya ke yadi meri maa ka naam liya to pure pariwar ko jala dunga. Ladki ki behen jo ki Naraina mein rahti hai aakar hamko samachar diya, hamare aspatal jane par ladke Rajesh tatha uske dow bhayion ne hatapai ki tatha dhamki di ki hamne ladki ko jala diya hai ab tumko bhi jala denge. Hamari raksha ki jaye tatha ladke Rajesh tatha uske maa baap ko

ladki ke jalane ke apradh mein uchit dand diya jaye.

Prarthi

Pita ka naam: Om Prakash (Sd/-)

Maata ka naam: Brij Rani (Sd/-)

Ghar ka pata: 909E, Babarpur,

Shahdara, Delhi

Roshan Lal (Sd/-)

(maternal uncle)

(Highlighting by us)

6. We find that on investigation on the lines of accusation made in the complaints Mark-X and Y, there was no material to substantiate the same. The complaints Mark-X and Y were made to rope in the entire family in the case. Taking advantage of stringent provisions applicable to dowry death cases, allegations were made in the above complaints in an attempt to implicate in-laws of the deceased so much so that specific role had been attributed to the husband, mother-in-law, father-in-law and sister-in-law (jethani) Bala. Even PW-7 Dr. Prashant Singh who had recorded the history on the MLC had not been spared in the process by levelling the allegations that Rajesh (husband) had got recorded the history in the MLC that Rajni suffered injuries while cooking on the stove.

7. The statement of Rajni was recorded by the SDM a night prior to her death. On 22.11.1989 at 9.20 pm the SDM PW-9 Sh. Sudhir Mahajan recorded her statement to the effect that there was some dispute over jewellery with mother-in-law who kept the jewellery brought by Rajni from her Bhabhi for wearing in a marriage. When she insisted for return of the jewellery, her mother-in-law set her on fire. She stated before the SDM that she had a loving husband and there was never any dowry demand.

8. Prior to that on 21.11.1989 at 12.55 pm when brought to LNJP Hospital, the first dying declaration was made before PW-7 Dr. Prashant Singh. At that time, as per the MLC Ex. PW7/A, she was conscious and well oriented. The alleged history recorded on the MLC Ex. PW7/A is "burns during cooking food".

9. The police investigation culminated into filing a chargesheet against the Appellant for committing the offence punishable u/s 302 IPC. We note here that despite some allegations of harassment being made by the family of the deceased as well some demands made, the prosecution did not find it to be a case requiring prosecution of the Appellant under Sections 498A/304B IPC. Thus, it was not a case where presumption u/s 113B of Indian Evidence Act was to be drawn against the Appellant.

10. Trial Court Record reveals that PW-1 Smt. Brij Rani-mother the deceased was employed as Aaya in the same hospital where her daughter was brought for treatment of burn injuries. Concerned Police Station was duly informed by the Duty Constable on duty at the hospital and the information was recorded at PS Naraina vide DD No. 5-A which was assigned to PW-16 ASI Jagdish Singh.

11. Despite immediate admission in the Burns Ward of LNJP Hospital by the husband and prompt communication by the Duty Constable to the concerned Police Station, neither the statement of the deceased was recorded by the Investigating Officer nor Magistrate was immediately informed. After reaching the hospital, PW-16 ASI Jagdish Singh even did not record the statement of injured though from the MLC Ex. PW7/A he could ascertain the fitness of the patient. It was only on 22.11.1989 at about 9.00 pm the SDM was brought to the hospital who recorded the statement Ex. PW9/A of Rajni by 9.20 pm. The SDM recommended the registration of the case under appropriate sections of law on which PW-16 ASI Jagdish Singh made the endorsement and sent the rukka Ex. PW5/A for registration of the case. Thereafter case FIR No. 198/1989 u/s 307 IPC was registered at PS Naraina.

12. Subsequently, on 27.11.1989 statements of PW-1 Smt. Brij Rani and PW-4 Sh. Om Prakash-parents of the deceased and of PW-6 Sh. Roshan Lal-maternal uncle of the deceased was recorded (date of death of Rajni is 23.11.1989 at 11.15 am) and after completion of investigation, the Appellant was sent to face trial for committing the offence u/s 302 IPC.

13. Needless to state that the Appellant pleaded not guilty thereby requiring the prosecution to prove its case beyond reasonable doubt.

14. Prosecution examined 17 witnesses in all to bring home guilt to the Appellant. The Appellant, during her examination u/s 313 CrPC pleaded innocence and also denied her presence at the house at the time of occurrence. In her defence, she also examined her neighbour Sh. Ramesh and her son Sh. Rajesh (now dead, husband of deceased) as DW-1 and DW-2, who had removed Rajni to the hospital while she was fully conscious.

15. This is a case where the basis of conviction of Appellant is the dying declaration recorded by the SDM and made before the parents and maternal uncle. The learned Addl. Session Judge disbelieved the version recorded on the MLC Ex. PW7/A giving history of accidental fire. The dying declaration Ex. PW9/A recorded by the SDM was considered to be trustworthy holding that it was given by the deceased in fit state of mind and duly corroborated by PW-1 Smt. Brij Rani-mother, PW-4 Sh. Om Prakash-father and PW-6 Sh. Roshan Lal-maternal uncle of the deceased. The Appellant had been convicted by learned Addl. Session Judge for committing the murder of Rajni on the following reasoning:-

(i) On MLC Ex. PW7/A, PW-7 Dr. Prashant Singh has not recorded that it was recorded on the basis of disclosure by the patient;

- (ii) When the patient was brought to the hospital at 12.55 pm, she was unfit for statement, thus, it is obvious that the alleged history was given by husband of Rajni;
- (iii) The dying declaration Ex. PW9/A recorded by the SDM implicating the accused cannot be discarded for the reason that the history on the MLC has been held to be given by the husband. Moreover, there is nothing to suggest that PW-6 Sh. Roshan Lal-maternal Uncle of the deceased, though present in the Ward, tutored her; and
- (iv) Oral dying declaration before PW-4 Sh. Om Prakash has been corroborated by dying declaration Ex. PW9/A made before SDM.

## CONTENTIONS

16. On behalf of Appellant, Mr. Uday Gupta, Advocate has submitted that PW-7 Dr. Prashant Singh stated before the Court that he had recorded the history as burns suffered while making food, as per version of the deceased. Since at the time of admission in the hospital, Rajni was conscious and well oriented, the learned Addl. Session Judge committed grave error in rejecting the dying declaration of the deceased made before an independent and impartial person i.e. the attending doctor who prepared her MLC. It has been further submitted that at the time of recording dying declaration Ex. PW9/A, the SDM did not even question Rajni to satisfy himself about her physical/mental fitness. The dying declaration is not even in question-answer form and even no doctor was there to watch whether at the time of making statement, Rajni was coherent, well oriented and fit to make statement or that she was not under the effect of sedatives. He urged that Rajni was declared "fit for statement" at 6.00 pm whereas her statement was recorded at 9.20 pm i.e. after more than three hours. What was her condition after three hours of declaring her "fit for statement", remains unexplained. Learned counsel for the Appellant urged that the two defence witnesses examined by the Appellant could not have been lightly rejected especially when the presence of DW-1 Ramesh Kumar i.e. neighbour and DW-2 Rajesh Kumar i.e. son of the Appellant in the hospital on the day of admission of Rajni stands admitted even by PW-1 Brij Rani-mother of the deceased.

17. Learned counsel for the Appellant submitted that failure to prove the plea of alibi cannot form basis of conviction especially when the Appellant was arrested from her house and other members of the family were constantly present in the hospital.

18. Learned counsel for the Appellant has taken us through the statement of PW-7 Dr. Prashant Singh, PW-15 Dr. Shiv Prakash (correct name Dr. Chaman Prakash) as well PW-9 Sh. Sudhir Mahajan, SDM to highlight that the medical condition of Rajni at the time of her examination by SDM could not be determined to be fit in the absence of any question put by the SDM and answer given by her. He further submitted that the pamphlets or complaints made by the parents and maternal uncle of Rajni after her death, project a different version implicating all the family members including Jeth-Jethani, husband and father-in-law to be the persons

responsible for setting Rajni on fire and not letting her escape to save herself.

19. Ms. Rajdipa Behura, learned APP representing the State submitted that the appeal deserves to be dismissed. While referring to the seizure memo Ex. PW10/B, she submitted that broken pieces of bangle were found at the spot leading to the inference that there was some physical assault. Further the doctor, who conducted the postmortem, found smell of kerosene oil in the hair of the deceased and this corroborates the testimony of deceased that it was her mother-in-law who sprinkled kerosene on her and set her on fire.

20. While supporting the reasoning given by learned Addl. Session Judge for rejecting the version recorded on the MLC by the attending doctor i.e. PW-7 Dr. Prashant Singh, she read over to us the alleged history recorded on the MLC with a view to emphasise that the doctor has nowhere written that the history recorded by him was given by the patient and in that case, the history recorded on the MLC could not be termed to be the one given by the deceased.

21. Ms. Rajdipa Behura, learned APP for the State submitted that the SDM was equally impartial and had been especially requested to visit the hospital to record the statement of the deceased. It has come in his testimony that he questioned the deceased before recording the statement and the only flaw left is that he did not mention all these facts in Ex. PW9/A. But once clarification has come on record that he satisfied himself about the fitness of Rajni, cures this flaw. Learned APP for the State has relied upon [State of Karnataka Vs. Shariff](#), [M. Sarvana @ K.D. Saravana Vs. State of Karnataka](#), [Laxman Vs. State of Maharashtra](#), and [Smt. Paniben Vs. State of Gujarat](#), in support of her contention that irrespective of the dying declaration being not recorded in question-answer form or without obtaining "fitness" from the doctor, it can form sole basis of the conviction without requiring any corroboration.

22. We have considered the rival contentions in the backdrop of the evidence adduced by the prosecution and the defence to discharge their respective onus.

## EVIDENCE

23. PW-1 Smt. Brij Rani and PW-4 Sh. Om Prakash-parents of the deceased and PW-6 Sh. Roshan Lal-maternal uncle of the deceased are not witnesses to the occurrence. The motive attributed to the Appellant for setting Rajni on fire was that Rajni had brought some ornaments from her Bhabhi for wearing in a marriage. Those ornaments were kept by the Appellant and she refused to part with when Rajni demanded from her mother-in-law leading to the quarrel and at that time, Rajni was set on fire by her mother-in-law i.e. the Appellant. While brother and bhabhi of Rajni have not been cited/examined as witnesses in this case to ascertain whether any jewellery was ever given to Rajni by her Babbhi or when was that marriage and when the jewellery was given to Rajni to be worn in the marriage, PW-1 Smt. Brij Rani-mother of the deceased claims that jewellery was demanded by Rajni from her and given to Rajni by her stating that:-

... Last she came to my house on the eve of Bhaiya Dooj i.e. after two-three days of Deepawali. She lived there for 8-10 days. While leaving for her in-laws' house, she asked me to give my gold set to her i.e. one necklace, ear-tops and ring by saying that there was a marriage in their family and she would return after 21st of the month. I gave her the ornaments. On the evening of 21st of November, 1989 when I was on duty in LNJP Hospital, my son came and informed that the deceased had been burnt and admitted in the Burns Ward. There I visited the Burns Ward and found my daughter lying in burnt condition. Her husband Rajesh was also there. She succumbed to the injuries on 23rd November, 1989 and died...

24. We note that in the identical complaints Mark-X and Y drafted on the date of death of Rajni i.e. on 23.11.1989, information of the incident has been claimed to be given by sister of Rajni residing in Naraina but before the Court, brother was named to be the person who informed her. However, neither the brother nor sister have been named nor it is stated through whom the duo came to know about the incident.

25. If DW-2 Sh. Rajesh Kumar-the husband of the deceased and his family members had any intention to hide the incident from Rajni's family, from Naraina, the injured could have been taken to Safdarjung Hospital by her husband. The mere fact that she was taken to LNJP hospital where her mother was employed, proves that whatever may be the cause of burns, there was no attempt by the family of the Appellant to hide the occurrence, delay the treatment or resort to any cover-up operation. In the normal course, immediately after getting her admitted in the hospital, the mother of the deceased would have been informed by Rajesh for the reasons i.e. (i) to apprise her about the occurrence; (ii) being staff of the same hospital to ensure better medical care/attention by making personal request to the doctors/staff; and (iii) to have access to the patient to ascertain as to how she suffered injuries.

26. Let us deal with the dying declarations stated to have been made in this case.

#### DYING DECLARATION AS RECORDED ON THE MLC

When Rajni was brought to LNJP hospital, she was examined by PW-7 Dr. Prashant Singh who prepared the MLC Ex. PW-7/A, the contents of which read as under:-

27. We are at a loss to understand the conduct of the local police in not taking any step to record the statement of the deceased before her condition deteriorated as it is a known fact that the doctors in Government Hospital remain present round the clock not only in Emergency but also in Burn Wards as the conditions of the patients at both the places require constant monitoring and supervision. It has been so stated by PW-7 Dr. Prashant Singh also. The IO has tried to put blame on the doctor that he could not contact the doctor till about 5.00 pm as doctor had gone for lunch. We notice that this is only to cover up the lapse on the part of local police in their failure to record the statement of the deceased. There may be another reason as to



why the statement of deceased was not recorded by the IO. While deceased Rajni was fully conscious and oriented, she had given the history of having caught fire accidentally while cooking on stove. No doubt, the doctor who prepared the MLC did not record in so many words that history was given by "self". But it is a matter of fact that whenever a patient is mentioned as conscious and oriented, the same is recorded by the doctor on the basis of assessment of the condition of the patient by questioning her. PW-7 Dr. Prashant Singh, LNJP Hospital, New Delhi stated that on examination, he found that the patient was conscious, well oriented. There was no bleeding from the eyes, nose or throat. The pupils were normal. The rate of pulse was 78 per minute. Respiration was normal and regular. In cross-examination, he stated that the alleged history is written on the disclosure of the patient. He further stated that "by well oriented, he meant that the patient was in a position to speak properly after understanding". The MLC was handed over to the Investigating Officer. There is always a constable on duty in the hospital. The said constable informs the police station on his own. The doctors are on duty round the clock in the hospital. Had it been a case of history being given by the husband, the doctor would have written the history being given by "Brought By" i.e. the husband in this case. It being a highly sensitive medico legal case where a young bride aged 21 years with burn injuries was brought to the hospital in conscious condition, the history could not have been recorded incorrectly by the doctor on duty on the MLC. The doctor knew that local police station had been informed and during investigation, the statement of the victim would be recorded as well the family members would also come to know through the injured as to how she suffered burn injuries.

28. The MLC Ex. PW7/A reflects that on 21.11.1989 while Rajni was conscious, well oriented at the time of her admission at 12.55 pm, she was unfit for statement at 4.45 pm on that very day and continued to remain so even on the next day i.e. 22.11.1989 when examined at 12.55 pm. PW-15 Dr. Shiv Prakash had stated that the effect of sedative lasts for six hours and during this time, the patient is unable to give statement. Rajni was declared fit for statement at 6.00 pm on 22.11.1989 by PW-15 Dr. Shiv Prakash but immediate steps were not taken to get her statement recorded at the earliest. What was her condition after more than three hours when the SDM arrived at the hospital to record her statement, is not known to us. We would have been able to ascertain her condition from the treatment record maintained by the hospital wherein the patient is examined at regular intervals, even on hourly basis, record is maintained about the condition as well the treatment given. The IO ASI Jagdish Singh (PW-16) stated that except MLC, he had not collected the medical record of the deceased. The MLC is the document prepared in Casualty at the time of admission. The doctors on duty in the Casualty advised admission in Burns Ward for management. We have been deprived of the treatment record maintained in Burns Ward. Thus there is no medical record to assess the medical condition/fitness of the deceased at the time of her examination by the SDM.

29. Till Rajni was alive, none of the family members of the deceased questioned the correctness of the history recorded by PW-7 Dr. Prashant Singh on the MLC or about some different version being given by the deceased accusing the Appellant, father-in-law, Jeth-jethani and husband despite her family members frequently meeting her in the Burns Ward by turn.

#### ORAL DYING DECLARATIONS:

30. The death summary placed on record by the prosecution records short history as:

Alleged H/o sustaining burns when patient was pouring kerosene oil in lighted stove and her clothes catch fire accidentally.

The condition of the deceased is also given in this death summary as:

Patient was admitted in a state of shock. Condition deteriorated progressively.

31. The oral dying declarations were claimed to have been made before PW-4 Sh. Om Prakash-father of the deceased and PW-6 Sh. Roshan Lal-maternal of the deceased. PW-1 Smt. Brij Rani-mother of the deceased, who was working in the same hospital, was the first family member to meet Rajni. Though she stated about the cause of quarrel between the deceased and the Appellant, she did not state that she inquired about the circumstances in which Rajni suffered burn injuries or the reply given by her daughter. This is despite the fact that PW-1 claims that Rajni was in a position to speak at that time. The relevant portion of testimony of PW-1 Smt. Brij Rani-mother of the deceased reads as under:-

Statement of PW-1 Smt. Brij Rani recorded in the Court on 02.07.1990

... Last she came to my house on the eve of Bhaiya Dooj i.e. after two-three days of Deepawali. She lived there for 8-10 days. While leaving for her in-laws' house, she asked me to give my gold set to her i.e. one necklace, ear-tops and ring by saying that there was a marriage in their family and she would return after 21st of the month. I gave her the ornaments. On the evening of 21st of November, 1989 when I was on duty in LNJP Hospital, my son came and informed that the deceased had been burnt and admitted in the Burns Ward. There I visited the Burns Ward and found my daughter lying in burnt condition. Her husband Rajesh was also there. She succumbed to the injuries on 23rd November, 1989 and died..... "

#### Cross Examination

...It is correct that the deceased always told me that her husband always loved her and she had no complaint against her husband.....It is wrong to suggest that I reached the Burns Ward at 3 P.M. In fact, I reached there at 5 P.M. It is correct that Ramesh, who is friend of Rajesh, was also present there. It is correct that when I reached there, the deceased was in a position to speak. My daughter did not tell me that one police officer had come to her at 2.45/3 P.M. However when I was there,

one or two police officer from P.S. Naraina had come there. It is wrong to suggest that my daughter told me that the police of P.S. Naraina had recorded her statement and obtained her signatures. She talked and was in a position to speak till 6/7 P.M. ....In between my daughter-in-law Kanta, my neighbours and Mohallawallas and my husband also visited the Hospital. My brother Roshan Lal and Mohan Lal also came there. About 30/40 persons visited the deceased in the Hospital. She was conscious till 9.30-10 P.M. of 22.11.1989 and after that she did not regain consciousness and was unconscious. When I reached the Hospital at 5 P.M. and when the police also came, she was in a position to speak and was conscious. However thereafter she was under treatment and was not speaking that much. She became unconscious on the next day at about 9.30/10 P.M. Thereafter she did not regain consciousness. When SDM came to the Hospital, my brother Roshan Lal was inside. At that time, I was outside in the staircase. The SDM came after three hours when the police came and told that they had sent for the SDM. ....

32. PW-4 Sh. Om Prakash-father of the deceased claims to have reached the hospital at about 7.30/8.00 pm. The relevant portion of his testimony reads as under:

Statement of PW-4 Sh. Om Prakash recorded in the Court on 09.01.1991

..... 8-9 days before the occurrence, my daughter Rajni came to our house and demanded certain jewellery for wearing as she was to go to attend a marriage party. Her mother gave her one gold necklace, and a set of ear rings and one bunch of keys. Thereafter, she never returned and I learnt about her burning by her mother in law. I came to know about this on 21.11.89 in the evening and went to LNJP hospital. The ornaments which were given to her in dowry were also not returned back and misappropriated by her mother in law. The ornaments i.e. necklace, pair of ear rings and bunch of keys were also not returned. When I reached the hospital, I found her admitted in the Burns Ward. On inquiry made by me from her, she told that when she had demanded back the ornaments from her mother in law, she quarreled with her and she gave her beating and thereafter her mother in law set her on fire. She succumbed to burn injuries on 23.11.89..... "

Cross Examination

...She had told me that kerosene oil was poured over her by her mother in law, who later on set her on fire. However, I do not remember if I told the police about the pouring of kerosene oil. (Confronted with Ex. PW4/DA where there is no mention of kerosene oil.). .... When I met my daughter in the hospital at about 7.30 pm for the first time, Rajesh and his sister in law was present. My wife, my son and his friends were also present in the hospital. Maternal uncle Roshan Lal, of my son in law was also there. There were 20/25 persons outside the Ward. Only one person was allowed to see her at a time. She was in senses and was speaking coherently. I had a talk with her ten minutes and thereafter, I came out. I remained in the hospital till her death outside the ward. However, I was told by my wife and children

that she had become unconscious on that day in the late night. In my presence, one SI came there on the next day. I do not know whether police had come prior to reaching myself. My wife had told me that police of Naraina P.S. had already visited, and met the deceased. It is wrong to suggest that deceased was telling everybody and also told me that she caught fire accidentally and no one had burnt her. She had studied upto 3/4th standard. She knew only how to write and sign. ....

33. PW-6 Sh. Roshan Lal-maternal uncle of the deceased claims that he reached the hospital at about 7.00 to 7.30 pm. He made the following statement:

Statement of PW-6 Sh. Roshan Lal recorded in the Court on 04.03.1991

..... Rajni-deceased was my niece. She was married to Shri Rajesh Kumar at Naraina about three years ago. Accused Smt. Raghubiri Devi present in the Court is the mother-in-law of the deceased. I came to know of the death of the deceased on 21.11.1989 at my house. On learning about her death, I went to LNJP Hospital. I noticed that the brother-in-law of the deceased and her husband Rajesh Kumar were threatening my sister Brij Rani that they would kill everybody and that they had already killed one. I met Rajni in the hospital. She told me that a dispute had taken place in the house. Later on, accused Smt. Raghubiri Devi poured kerosene oil and set her on fire. Her mouth was gagged with a quilt. Eventually on 23.11.1989 Smt. Rajni died in the hospital.

Cross Examination

..... On 21.11.1989, I had reached the hospital at around 7 to 7.30 pm. At that time, my sister Smt. Brij Rani was present. I had known no other person who was present there. I remained with the deceased from 21.11.1989 to 23.11.1989 morning. SI Jagdish Singh from Naraina Police Station had reached the hospital around 8.30 pm on 21.11.1989. Around the same time, SDM had also reached there. Mr. Sudhir Mahajan was the SDM.

I had first talked to the deceased at around 7.30 pm. She was under treatment. At that time, the conversation of the deceased was incoherent. I again talked to her at night around 11 P.M. By the afternoon of 22.11.1989, the deceased could speak with clarity. ....It is correct that neighbour was present in the hospital alongwith the husband of the deceased in the evening. ....

34. The incident as recorded in Mark-X and Y (identical complaints), are admitted documents jointly drafted by the parents and maternal uncle of the deceased. The relevant portion of the testimony of PW-6 Sh. Roshan Lal in this regard is extracted hereunder:

Mark-Y at point-A bears my signature. It is incorrect to suggest that I had met anyone from the women organization. It is further incorrect to suggest that the draft of Mark-Y was prepared by any of the women organization. Mark-Y was got typed at Shahdara through someone. It is incorrect to suggest that I got Photostat

copy of mark-Y. It might have been within one week of the death of the deceased. I cannot say if any date was mentioned on the document. Mark-Y was addressed to the SHO of PS Naraina and to the DCP.

35. The incident as detailed in Mark-X and Y is claimed to be on the basis of oral dying declarations made by Rajni before PW-4 Sh. Om Prakash (father) and PW-6 Sh. Roshan Lal (maternal uncle). Rajni was admitted in hospital at 12.55 pm on 21.11.1989. She remained alive till 23.11.89 (11.15 am). Even if it is assumed that she hoped for survival and had a loving husband and one daughter aged 1 1/2 years at that time and for that reason, she did not want to disclose to the doctor at that juncture that she had been set on fire by her mother-in-law, at least when her parents and close relations came to see her in the evening, she could have disclosed to them as to what happened. Had it been a case where she disclosed to her parents about she being set on fire by the Appellant and other family members, on noticing that the alleged history had not been correctly recorded in the MLC as disclosed by Rajni or subsequently revealed, they would have raised a demand to get her statement recorded before the Magistrate at the earliest. Not only that, whatever was disclosed by Rajni to her father and maternal uncle, they could have insisted for registration of the FIR against the offenders especially when the police officers had visited the hospital in their presence. Further if it was a case of incorrect recording of history at the behest of husband of Rajni, they could have demanded action against the attending doctor and even initiation of criminal proceedings in an attempt to harbor the criminals. Till Rajni was alive, none of her family members made any complaint either to the Hospital Authorities or to the police or even to the SDM of any attempt being made by the doctor to screen the offenders or preparing incorrect record.

36. Deceased Rajni was declared unfit for statement at 4.45 pm on the date of admission on 21.11.1989. She continued to remain unfit for statement till 6.00 pm next day. The investigating officer, though, claimed that he reached the hospital immediately on receiving the information vide DD No. 5-A dated 21.11.1989 but he did not make any attempt to record the statement of the injured himself or inform the SDM immediately before the patient became unfit to make a statement. The doctor at LNJP Hospital, the police officer investigating the case as well as the SDM all knew the gravity of the offence i.e. suffering burn injuries by 21 years old young bride at her matrimonial home. It has come in the testimony of PW-1 Smt. Brij Rani-mother, PW-2 Sh. Om Prakash-father and PW-6 Sh. Roshan Lal-maternal uncle of the deceased that right from the stage of getting the information about the admission of Rajni in Burns Ward till her death, they all remained in the hospital and had been visiting the patient by turn. As per MLC Ex. PW7/A, Rajni became unfit for statement at 4.45 pm same day and continued to remain so till 6.00 pm next day. In that circumstance, she could not have made any statement before her father or maternal uncle. Thus, the oral dying declarations stated to have been made by Rajni are worthy of no credence.

## DYING DECLARATION BEFORE SDM:

37. The third dying declaration is in the form of statement Ex. PW9/A recorded by the SDM, PW-9 Sh. Sudhir Mahajan. As per the SDM, he recorded the statement of Rajni in narrative form in her own words.

38. We need to reproduce the dying declaration Ex. PW9/A here to confirm this fact for the reason that as per PW-4 Sh. Om Prakash (father) Rajni studied upto 3rd or 4th standard.

39. Let us see whether the narrative form of statement Ex. PW9/A could be the words forming part of the language of the deceased, who as per mother of the deceased studied upto 3rd/4th standard and belonged to lower strata of the society. The statement Ex. PW9/A is extracted as under:-

Main yah bayan karti hoon ke meri shadi kareeb 2 1/2 saal pahle Rajesh Kumar se hui thi. Is shadi se meri ek ladki hai. Shadi ke kuch roj baad meri saas Raghubiri se choti-2 baton par jhagra suru ho gaya. Aksar muje maar peet karti thi aur 15 din mein ek baar mujhe jabarjasti mere pita ke ghar chor dene ko majboor karti thi. Kal (21.11.89) ko dophar meri saas ne mujhe aag laga di. Jab aag lagai us samay mein stove ke paas bethkar khana ityadi bana rahi thi. Kal jhagda jevar gahne par hua tha jo ki mein apni bhabhi Kamla se shadi par jane ke liye layi thi. Shadi ke baad mere gahne mere saas ne hi rakh liye thei aur jab mene usse gahne wapas maga to usne jhagra kiya aur mara peeta aur phir aag laga di. Mera aadmi Rajesh mujhe bahut pyar karta tha aur kabhi bhi dahej ki maang wagherah nahi ki. Rajesh ne hi mujhe haspatal mein dakhil karwaya tha. Mera Sasur bhi mujhe nahi chahta tha aur mujhe ghar se bahar nikal jane ke liye kahta tha"

Before me

RTI

Sd/-

Rajni

22.11.89

9.20 pm

In view of the recorded dying declaration of Smt. Rajni W/o Rajesh Kumar, wherein she had stated that she had been burn by her mother-in-law, case under appropriate Section of law may be registered.

Sd/-

(SDM)

22.11.89"

40. The relevant portion of the deposition made by PW-9 Sh. Sudhir Mahajan before the Court reads as under:-

Statement of PW-9 Sh. Sudhir Mahajan, SDM recorded in the Court on 11.11.1991

On 22nd November, 1989 I was working as SDM, New Delhi, Delhi Administration. On that day, information was received from police station Naraina upon which I reached Ward No. 36 J.P.N. Hospital, where I met injured Smt. Rajni, W/o Sh. Rajesh Kumar. Smt. Rajni made her statement Ex. PW9/A which I recorded in my handwriting. It bears the thumb impression of Smt. Rajni at point-"A". I signed the statement at point-"A". Thereafter I made my endorsement Ex. PW9/B for registration of a case according to law. ....

Cross Examination

.....I do not remember the person whom I first contacted on reached the hospital. Perhaps I had contacted the Doctor. When I was passed on the information by the police on telephone. I had noted the name and ward number of the injured as also the DD number. I do not have that piece of paper on which I had recorded the above particulars. I had disclosed to the injured that I was SDM and had come to record the statement. I did not record this fact in the statement recorded by me. I had asked injured whether she was able to understand my questions and whether she was in a position to answer the same. However, I do not quote this fact in the statement. I do not remember if I had taken a certificate from the Doctor that the injured was fit to make a statement. However, as per practice we normally obtain such a certificate. In this case also I might have taken the certificate. Generally the doctors give the certificate of fitness in writing. ....

I did not put any questions to the deceased. Whatever she had stated, I recorded in the narrative form. I had recorded the statement of the deceased word by word. I do not remember at what time I received the information in this case. I cannot tell whether I received the information at 2 P.M., 6 P.M. or 10 P.M., but it is a matter of record. (After seeing the statement Ex. PW9/A, the witness states that he must have received the information an hour prior to 9.20 P.M.). Prior to this, I had no information regarding this case. I reached the Hospital at about 8.45 P.M. I do not remember who were present in the Ward at that time.

..... I took 20 to 25 minutes in recording the statement of the deceased. I do not remember the name of the doctor whom I contacted on reaching the Hospital. I did not inquire from the doctor which medicines were given to Rajni.....

41. The opening sentence "Main yah bayan karti hoon" creates a serious doubt in our mind as to whether a lady who suffered burn injuries on 21.11.89 and become unfit for statement at 4.45 pm same day and continued to remain unfit till 6.00 pm on 22.11.1989, could begin her statement with the opening words "Main yah bayan karti hoon". Further from the words "Kal (21.11.89) ko dophar" we can understand

that she could refer the incident to be of previous day but not by specifying the date, month and the year. Further the words are "Jab aag lagai us samay mein stove ke paas bethkar khana ityadi bana rahi thi". The language attributed to the deceased could not be that of a lady who had studied upto 3rd/4th standard.

42. Certain aspects of the case are troubling our mind and we prefer to pen down the same. The record reveals:

(i) The date, time and place of occurrence is 21.11.1989 at about 12.00 noon at the matrimonial home of deceased Rajni at Naraina.

(ii) She was brought to LNJP Hospital by her husband Rajesh Kumar (DW-2) and neighbour Ramesh Kumar (DW-1) in the TSR driven by her husband (he was TSR driver by profession) where mother of Rajni was employed as "Aaya".

(iii) While PW-7 Dr. Prashant Singh promptly attended the patient and prepared the MLC, the Duty Constable immediately informed the concerned Police Station vide DD No. 5-A for necessary action in the matter as it was a case of young bride aged about 21 years being brought in burnt condition from her matrimonial home by her husband.

(iv) PW-16 ASI Jagdish Singh, to whom DD No. 5-A was assigned, reached the hospital with PW-10 Ct. Om Prakash on motorcycle within 15-20 minutes but for inexplicable reasons, did not record the statement of injured.

(v) The MLC Ex. PW7/A shows that at 4.45 pm the injured became unfit for statement. However, we do not find any request by PW-16 ASI Jagdish Singh to know the condition of the injured so as to record her statement.

(vi) We do not find any communication by PW-16 ASI Jagdish Singh to PS Naraina to apprise about the condition of injured and urgent need to record her statement either by him or by SDM or request to SHO to depute someone to guard the crime scene. We also do not find record of visit to LNJP Hospital by SHO till Rajni was alive

(vii) We do not find any communication to the SDM either on 21.11.1989 or 22.11.1989 till late evening requesting him to reach the hospital to record the statement of Rajni.

(viii) From the version of PW-1 Smt. Brij Rani-mother, PW-4 Sh. Om Prakash-father and PW-6 Sh. Roshan Lal-maternal uncle of the deceased, we gather that they were present in the hospital on 21.11.1989 itself. Mother of the deceased was employed in the same hospital and other family members from her paternal side remained in the hospital till her death. But none of them approached the police or hospital authorities till Rajni was alive, to inform that Rajni had told them about her being set on fire by her in-laws including husband, father-in-law, Jeth-jethani as described in complaints Mark-X and Y (Admitted documents).



(ix) The cases of bride burning though being highly sensitive, we do not find any DD entry or any other documentary evidence to prove the visit of the SHO to the hospital till Rajni was alive. Only when the case was converted from Section 307 IPC to Section 302 IPC, the SHO conducted the investigation.

(x) Despite meticulously going through the entire record, we are unable to find any oral or written complaint by the parents or brother or maternal uncle of the deceased to the hospital authorities that the history recorded on the MLC has been incorrectly recorded by the doctor or that it was not as per version of the deceased.

(xi) PW-9 Sh. Sudhir Mahajan, the SDM has recorded the statement Ex. PW9/A of Rajni in narrative form without even mentioning as to when he was informed to visit the hospital for purpose of recording the statement, when and with whom he reached the hospital, who met him in the hospital, whether he ascertained about the time of sedatives being administered to the patient and effect of the same, if any, on the patient's fitness to make statement, whether any doctor or nurse was requested to be present to monitor the condition of the patient during recording of her statement by the SDM. Further how he satisfied himself about the fitness of Rajni to make statement.

43. PW-16 ASI Jagdish Singh, to whom DD No. 5A dated 22.11.1989 (Ex. PW-16/A) was assigned, had deposed that on 22.11.89 at about 12 noon the Duty Officer assigned DD Ex. PW-16/A to him and he along with one Ct. reached LNJP hospital on official motorcycle. On that day, between 4-5 PM, the doctor declared Rajni unfit for statement and thereafter he reached the spot and conducted the proceedings regarding seizure of the articles lying at the scene of crime. He further stated that on 22.11.89 at about 12 noon again along with Ct. Mahanand, he reached LNJP hospital and requested the doctor for taking the statement of Rajni, but she was declared unfit. However, the doctor told him that she could make statement after 5-6 PM. He informed the SHO, P.S. Naraina in this regard and also informed the SDM Shri Sudhir Mahajan. The SDM came to the hospital at about 6 P.M. The doctor declared Rajni fit for statement and the SDM recorded the statement of Rajni at 8.40 P.M. Again said, the SDM started recording the statement (Ex. PW-9/A) at 8.40 P.M. and after SDM made his endorsement on the statement of Rajni (Ex. PW-9/B) he prepared the rukka (Ex. PW-5/A) and sent the same through Ct. for registration of the case.

44. In cross-examination, when questioned about time taken by him to reach the hospital and the investigation done thereafter, PW-16 ASI Jagdish Singh replied as under:-

It took me 15-20 minutes to reach LNJP Hospital from the P.S. on motorcycle. I cannot tell the distance in kms. even by approximation. We started from the P.S. at about 12.15 or 12.20 p.m. On reaching the Hospital, I did not meet any doctor because the doctor had gone for lunch. At about 4 p.m. one doctor met me whose

name I do not know. I did not move any application to the doctor to record the statement, but on my oral request, the doctor had declared the Rajni (since deceased) unfit for statement on the MLC itself. I did not collect any medical papers showing as to what treatment was given to her, nor did I inquire from the doctor as to what treatment was given to her. It is correct that on 21.11.1989, I did not go to the hospital again. No relations of Rajni had met me when I had gone to the Hospital. On 21.11.1989 I had stayed in the Hospital for 4-5 hours. Even the relations of the accused did not meet me in the Hospital. Again said, the husband of the deceased was present there. I did not record the statement of the husband of the deceased.....

On 22.11.1989, I had left the P.S. for the Hospital between 12 noon and 1 p.m. I did not do any paper work regarding this case before going to the Hospital. No relations of the deceased or the accused met me in the Hospital till the time I remained in the Hospital i.e. 9 p.m. On 22.11.1989, I did not record the statement of any one. I did not make any application on 22.11.1989 before any doctor for recording the statement of Rajni. Upto 6 p.m. on that day, I was busy in giving messages on telephone and I did not do any paper work. On 21.11.1989, I did not contact the SDM. On 22.11.1989, I did not inform the SDM. However, I had informed the SHO that Rajni is likely to be fit for statement around 6 p.m. I had reached the house of the SDM as directed by the SHO, at 5 p.m. and had brought him to the Hospital in police vehicle at about 8.30 p.m. When I reached the house of the SDM, he was present there. It took half an hour to reach the Hospital from the house of the SDM. The SDM after reaching the Hospital had obtained the opinion of the doctor as to the fitness of Rajni for making statement. The opinion was obtained on the MLC. The SDM did not obtain any endorsement from the doctor after recording the statement of Rajni. The SDM took about 20 to 30 minutes in recording the statement of Rajni and at that time, only Rajni and the SDM were present there. (Volunteered: I was standing outside the Ward). I had only collected the MLC in this case and no other medical papers were collected by me showing the medical treatment given to her. On 22.11.1989, neither the SDM nor myself recorded the statement of any witness. On 21/22.11.1989, the SHO did not visit the Hospital in my presence. (Vol:-On 22.11.1989, the SHO had told me that he had gone to the Hospital and had seen the patient-Rajni.....)

45. PW-17 Inspector Jasbir Malik, the then SHO, P.S. Naraina and I.O. of the case stated that he took over the investigation of the case on 24.11.1989. In cross-examination, he stated that prior to 21.11.1989 he visited the hospital but did not sign any paper. He further stated that on 21.11.1989, he had gone to the hospital and met Rajni and many persons were present there, but did not remember if parents and relations of Rajni were present there or not. PW-16 ASI Jagdish was already present when he reached the hospital.

46. We were baffled on reading the testimony of PW-16 ASI Jagdish Singh, the first investigating officer as to how he could leave for the hospital at 12.00 noon on receiving DD No. 5-A on 21.11.1989 i.e. even before receiving the information about the occurrence and also on other aspects. Being conscious of the fact that time gap between the day of investigation and day of deposition could lead to this situation, we called for the case diary. We did not know at that time as to what was in store for us.

47. Revelations are startling. A cover-up operation started on 22.11.1989 i.e. next day (at midnight). First case diary has been written on 22.11.1989 at 11.55 pm i.e. after registration of FIR. We will just record the gist of the case diary written on 22.11.1989 as it is of utmost concern to us to do justice in this case. The case diary of the date 22.11.1989 (11.55 pm) reveals that it has been written from point 1 to 15 at one go. It does not refer to any visit by SHO to the hospital and meeting the injured. It cannot be an omission as on 22.11.1989 at 11.50 pm the SHO was briefed and at 11.55 pm, case diary was written. The gist of the same is as under:

(i) Brief facts already apprised (to SHO) through FIR but again in brief recorded that on receipt of DD No. 5-A on 21.11.1989, ASI Jagdish alongwith Ct. Om Prakash reached JPN Hospital on official motorcycle No. DIX-9066.

(ii) Reached JPN Hospital at 1.45 pm, obtained and perused the MLC. Reached Ward No. 26 and informed by Duty Nurse that the doctor had left for afternoon rest and only on return of doctor, he could be informed about the fitness of injured to make statement. ASI Jagdish waits for the doctor.

(iii) At 4.45 pm, Doctor reached the Ward, checked the patient Rajni and declared her unfit for statement. ASI left the hospital for the spot.

(iv) ASI Jagdish reached the spot at 5.30 pm, waited for the Crime Team which reached at 6.30 pm and after inspection of the spot, handed over the report to ASI Jagdish.

(v) At 7.35 pm, seizure of some articles from the spot vide seizure memo and depositing the case property in Malkhana.

(vi) At 8.35 pm reached the police station and briefed the SHO and ACP, Delhi Cantt and they also visited the spot for inspection.

(vii) At 10.30 am, ASI Jagdish alongwith Ct. Mahanand left for hospital to record the statement of injured.

(At serial No. 7, on this carbon copy of the case diary, date 22.11.89 is written with pen. Thus, we infer that from there onwards CD pertains to the investigation conducted on 22.11.1989).

(viii) At 12.55 pm, doctor declared the injured to be unfit at that time but further informed that she would be fit to make statement by 5.00 pm.

(ix) At 6.00 pm, doctor declared the injured fit for statement. ASI telephonically informed SDM Sh. Sudhir Mahajan to come for recording the statement of injured. The SDM requested for providing the transport, the duty officer informed telephonically about the request of SDM. Officials vehicle No. DBC-2698 left the police station at 7.50 pm for the place of SDM to ferry him to hospital.

(x) SDM reached Ward No. 26, JPN Hospital at 9.00 pm and recorded the statement of the injured.

(xi) At 9.35 pm, ASI Jagdish made endorsement for registration of the case u/s 307 IPC, sent rukka through Ct. Mahanand and accompanied SDM in the official vehicle to drop him at his residence. Ct. Mahanand was directed to reach the spot after registration of the case.

(xii) At 10.40 pm, Ct. Mahanand reached the spot alongwith rukka and copy of FIR.

(xiii) At 10.45 pm they reached House No. 462, Naraina Village where the incident took place but the house was found locked, hence site plan could not be prepared.

(xiv) At about 11.30 pm, they reached the police station where ASI recorded the statement of Ct. Mahanand.

(xv) At about 11.50 pm, ASI briefed the SHO about the investigation. 48. Case diary at serial number (viii) records that at 12.55 pm the doctor said that the patient would become fit by 5.00 pm. The doctor is not an astrologer so as to make predictions. The opinion regarding fitness can be formed only on examination of the patient. The condition of a patient suffering burn injuries deteriorates with the passage of time and it has been so recorded in the death summary that "Condition deteriorated progressively". Even if this recording in the case diary at serial No. 8 has some grain of truth then at least PW-16 ASI Jagdish Singh or SHO, PS Naraina would have ensured the presence of SDM by that time and if that was not done, at least PW-16 ASI Jagdish who claims to be present in the hospital at the time of Rajni being declared fit at 6.00 pm, could have recorded the statement as there is no mandatory requirement to get the statement recorded only by the SDM. PW-16 ASI Jagdish Singh has recorded in case diary at serial No. 9 that at 6.00 pm when the patient was declared fit for statement, he informed the SDM who requested for arranging the vehicle which was immediately communicated to the duty officer. This must have happened within a few minutes of the patient being declared fit for statement but case diary at serial No. 9 shows that the vehicle was sent from the police station to take the SDM to hospital only at 7.50 pm and he reached the hospital at 9.00 pm.

48. As per case diary, PW-16 ASI Jagdish did not move from the hospital till the SDM recorded the statement. This falsifies his statement before the Court. We do not find testimony of PW-9 Sh. Sudhir Mahajan, SDM to be trustworthy for the reason that he had been making contradictory statements before the court as to how he satisfied himself about the fitness of Rajni to make statement. Initially he stated that he put

certain questions to Rajni to ascertain her fitness but when examined after gap of some time, he came out with another version that he did not ask any question from the patient. If the record speaks that he simply started recording the name and other particulars of Rajni and thereafter proceeded to record the complete statement in narrative form without putting any question, how he could claim that he satisfied himself about the fitness of the person to make the statement. There is also contradictory version given as to whether he contacted the doctor before commencing the job or he simply went to the bed of the patient and started recording the statement.

49. In the instant case, if we accept the testimony of PW-9 Sh. Sudhir Mahajan and consider it to be worthy of credence, in the absence of any question and answer put to ascertain about state of fitness of Rajni not emerging on record in any manner whatsoever, we would be constrained to hold that fitness of Rajni to make a dying declaration Ex. PW9/A is not established by any objective material.

50. Ultimate object of the justice is to find out the truth so as to punish the guilty and protect the innocent. The criminal trials lead to immense suffering not only to the complainant but also to the accused and if the accusations turn out to be false even ultimate acquittal of the accused, may not be able to restore the loss of self-esteem, social stigma and the deep scars suffered because of the occurrence.

51. We have already noticed that prior to the incident there was no complaint of ill-treatment, harassment or dowry demand either by the parents of the deceased or by the deceased so much so that even at "Biradari" level no such matter was being discussed despite the fact that the deceased was a frequent visitor to her parental house (We are not entering into the controversy as to whether the visit to the parental house was voluntary or at the behest of in-laws as claimed). It is not even established on record as to whether the alleged jewellery i.e. one necklace, one pair of ear rings and one ring, was given to the deceased for wearing in the marriage by her mother, as stated by PW-1 Smt. Brij Rani (mother) or by her bhabhi, as stated in the dying declaration Ex. PW9/A. Brother and bhabhi of the deceased have not been examined u/s 161 CrPC in this regard or cited as witnesses.

52. The creditworthiness of dying declaration depends on proof of state of fitness of the maker of the statement which has to be proved objectively. The judgment of fitness of the person making the statement has to be by the person before whom such statement is made and it is an opinion based on rationale on the basis of which it is formed. The foundation being the set of questions put to the maker of the statement and the opinion formed on the basis of the answers given to such questions.

53. From the case diary, we gather that the SDM had reached the hospital at 9.00 pm. By 9.20 pm, the dying declaration running into one full page was recorded. Not only the language of the dying declaration creates a doubt as to whether it had

been recorded as per narration of the deceased, presence of PW-6 Sh. Roshan Lal-maternal uncle of the deceased in the ward at that time does not rule out the possibility of same being tutored. Except writing on the statement "before him 9.20 pm", there is not even an assertion that on reaching the Burns Ward, PW-9 Sh. Sudhir Mahajan, SDM put certain questions and after satisfying himself with the answers given, he recorded the statement. In the absence of opinion by the doctor and failure on the part of SDM to record his satisfaction, the fitness of deceased to make the statement, shrouds the dying declaration Ex. PW9/A with suspicion. There is not even an assertion that the statement was read over to the maker and she affirmed it to be correct. PW-9 Sh. Sudhir Mahajan, SDM has stated that at the time of recording of statement, the voice of Rajni was feeble. Again a question arises whether task of recording the dying declaration could be completed within 20 minutes of reaching the hospital, to our mind the answer should be negative.

54. It is settled that if the judgment of the Trial Court is well reasoned and valid and not suffering from perversity or based on correct law, it should not be set aside. However, we note that the learned Addl. Session Judge failed to note that when Rajni arrived in the hospital at 12.55 pm on 21.11.1989, she was conscious and well oriented. Thus, the finding of learned Addl. Session Judge in the judgment to the effect that at 12.55 pm, when Rajni was brought to the hospital, she was "unfit for statement", hence it was obvious that the alleged history was given by the husband of Rajni, is contrary to the record. The error seems to have crept in for the reason that Rajni was medically examined on 21.11.1989 at 12.55 pm when she was fit and again examined on 22.11.1989 at 12.55 p.m. but at that time she was unfit. The dying declaration made before PW-7 Dr. Prashant Singh has been made on 21.11.1989 in fit state of mind.

55. We have already observed the material discrepancies appearing in the version of PW-1, 4 and 6 as well as version of PW-1, 4 and 6 recorded in Mark-X and Y which were drafted immediately on the day of death of Rajni, is in stark contrast to the dying declaration made before the SDM. Learned Addl. Session Judge had wrongly concluded that the dying declaration Ex. PW9/A recorded by the SDM has been corroborated by PWs 1, 4 and 6.

56. In her first dying declaration, Rajni stated before PW-7 Dr. Prashant Singh that "Burns during making food". PW-7 Dr. Prashant Singh has specifically stated that the history was given by the patient. Had it been given by the husband, he could have written as given by "Brought By". Learned Addl. Session Judge has committed grave error in rejecting the dying declaration recorded by the doctor immediately on arrival to the hospital on the ground that it was given by husband. If on the MLC, PW-7 Dr. Prashant Singh has not written that the history has been given by patient, at the same time, he has also not written that the history has been given by the husband. PW-7 Dr. Prsahant Singh has categorically stated before the Trial Court that the history was given by the injured herself and at that time she was fully

conscious and well oriented.

57. Normally a first dying declaration made either before Magistrate or doctor is preferred to any subsequent statement made by the deceased, however, prosecution can always prove that a particular dying declaration is truthful and convincing so as to be relied upon to base the conviction. However, if the Court finds the dying declaration to be shrouded by suspicion, conviction cannot be based on such dying declaration.

58. In what circumstances the dying declaration can be sole basis of conviction were enumerated in the case of [Chirra Shivraj Vs. State of Andhra Pradesh](#), as under:

13. A mechanical approach in relying upon the dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by other persons and where these ingredients are satisfied, the Court expressed the view that it cannot be said that on the sole basis of a dying declaration, the order of conviction could not be passed.

59. We are unable to find answer to the question that if the Appellant planned murder of Rajni, she would not have kept the door of the house open to let the neighbours enter on hearing the cries and take the injured to hospital in "conscious" condition. Secondly, the Appellant would not have allowed her son to take Rajni to the hospital, where mother of Rajni was employed, to provide immediate medical aid in an attempt to save her. As she suffered 50% burns, chances of her survival were bright. PW-3 Dr. M.P. Sarangi, Associate Professor, Forensic Medicine Deptt., Maulana Azad Medical College, New Delhi, who conducted the postmortem of the deceased, stated that normally 50% burns are not fatal, but in this particular case death was due to super added infection. He also confirmed that the meaning of the word "patient is conscious and well oriented" means that the patient is in full senses and can speak and understand nature of questions put to him/her.

60. We have seen the photographs Ex. PW14/A4 to A6 which show that a small room was being used for residence and small space in the corner of the room behind the door was being used as kitchen. In the photographs, utensils lying under the single bed, kerosene stove placed near the single bed can be seen and nothing lying there has been touched by flames. These photographs rule out the possibility of any physical assault by the Appellant on the deceased followed by sprinkling kerosene oil and setting her on fire. Recovery of some small pieces of a bangle, which even do not make a complete bangle, does not prove physical assault as it can get broken even while doing household work. It rather supports the version of the deceased given to the doctor and recorded on the MLC Ex. PW7/A that it was an accidental fire. It is a matter of common knowledge that kerosene would leave smell in the

hands while being filled in stove. If that person happens to touch the head even for purpose of scratching or touch the hair, it would leave its smell. Presence of kerosene "faintly" in the hair with only 20% of the hair being burnt, confirms that kerosene was not poured on deceased.

61. We agree with the submissions made by Ms. Rajdipa Behura, learned APP for the State that dying declaration can be sole basis of conviction and that the dying declaration need not be in question-answer form as well the absence of obtaining the certificate of fitness from the doctor in itself cannot be the grounds to discard the dying declaration provided the observation by the person about the mental condition of the maker at the time of making the statement can be ascertained from the record.

62. While there cannot be any quarrel about the legal principles laid down in the various reports relied upon by learned APP for the State, the question staring at the face is whether the dying declaration Ex. PW9/A recorded by the SDM satisfies the tests laid down in the reports on which learned APP for the State is strongly relying upon.

63. In the case of [Smt. Paniben Vs. State of Gujarat](#), it was observed as under:

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

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [Munnu Raja 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 and Others Vs. State of Uttar Pradesh,](#) .

(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 to 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 a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. ( [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,](#) )

19. In the light of the above principles, we will consider the three dying declarations in the instant case and we will ascertain the truth with reference to all dying declarations made by the deceased Bai Kanta. This Court in [Mohanlal Gangaram Gehani Vs. State of Maharashtra,](#) referred to held:

Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred.

20. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, they have to be accepted.

64. Learned APP has laid great emphasis on the conduct of the appellant in not being found at the house when the police officer visited the house in the night on the date of incident. This conduct in itself is not sufficient to presume the Appellant to be guilty for the reason that in such type of cases, absence may be due to fear of mob fury, she might be hiding somewhere and would not like to disclose about that

place. In the instant case, perusal of the case diary reveals that nothing happened till late night on 22.11.1989. It is also in doubt whether SHO visited the hospital on 21.11.1989 or 22.11.1989 to meet the injured. This is confirmed from the fact that PW-16 ASI Jagdish Singh, in his deposition, states that SHO told him that he (the SHO) visited the hospital in his absence whereas PW-17 Inspector Jasbir Malik, the SHO has given his version that he visited the hospital and ASI Jagdish Singh was already present in the hospital when he reached there. The case diary does not refer to visit of SHO to hospital till Rajni was alive. Had it been so, the departure entry by the SHO for the hospital and arrival entry thereafter would have apprised us about the condition of the injured and steps taken to get her statement recorded. From the case diary recorded on 22.11.1989 at 11.55 pm it is also discernible that IO ASI Jagdish Singh, after getting statement of the injured recorded through SDM at 9.20 pm, was more interested in extending courtesy to the SDM by accompanying him in the official vehicle to drop him at his residence, rather than conducting further investigation in this regard. We are aghast to see the conduct of the local police in investigating this case where no effort was made to record the statement of the injured so long she was conscious and well oriented. Rather they allowed the time to lapse and subsequently, the statement running into a full page has been got recorded hurriedly in just 20 minutes through the SDM without ascertaining her fitness by the SDM, either by himself or through a doctor. The possibility of the same being prompted and tutored by the close relations present in/outside the Ward, cannot be ruled out.

65. The learned Addl. Session Judge has held the dying declaration Ex. PW9/A to be the sole basis for convicting the Appellant for committing the offence punishable u/s 302 IPC. We find that the subsequent dying declaration Ex. PW-9/A being recorded when the deceased Rajni was not even in a fit state of mind, is totally in conflict with her version made before and recorded by PW-7 Dr. Prashant Singh on the MLC Ex. PW-7/A when she was conscious and well oriented. Thus, the dying declaration Ex. PW-9/A, recorded by SDM when Rajni was not even in fit state of mind, was not sufficient to convict the Appellant.

66. The first dying declaration before the doctor immediately on arrival to the hospital that it was a case of accidental fire, was made when she was conscious and well oriented, is trustworthy which fact even can be corroborated with the aid of the photographs Ex. PW14/A4 to A6 of the room where the incident has taken place. While the other dying declaration Ex. PW9/A being shrouded by suspicious circumstances especially in the backdrop that the patient Rajni remained unfit to make statement from 4.45 pm previous day to 6.00 pm next day and must be under the effect of sedatives.

67. We find that the dying declaration Ex. PW9/A to be suffering from such infirmities as to make it liable to be rejected. Such dying declarations cannot form basis of conviction in heinous crimes like offence punishable u/s 302 IPC. If

conviction is based on such a weak dying declaration, the effect would be to convict the appellant only on the basis of suspicion and not on evidence.

68. In the light of above discussion, we are of the considered view that the first dying declaration recorded by PW-7 Dr. Prashant Singh deserves to be given credence over the dying declaration recorded by the SDM or the oral dying declaration alleged to have been made before PW-1 Smt. Brij Rani-mother, PW-4 Sh. Om Prakash-father and PW-6 Sh. Roshan Lal-maternal uncle of the deceased.

69. Resultantly, the appeal succeeds. The judgment dated 19.05.1999 and order on sentence dated 20.05.1999 passed by learned ASJ in Sessions Case No. 46/1990 are hereby set aside.

70. The Appellant is set at liberty. Her bail bonds stand discharged. TCR be sent back alongwith with a copy of this order.