

Mohd.Ayub vs State

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Court : Delhi

Decided On : Apr-16-2026

Judge : Hon'Ble Mr. Justice Navin Chawla,Hon'Ble Mr. Justice Ravinder Dudeja

Appeal No. : CRL.A./986/2004

Appellant : Mohd.Ayub

Respondent : STATE

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20.03.2026

Pronounced on: 16.04.2026

+ CRL.A. 986/2004 MOHD. AYUBAppellant Through: Mr.Jitendra Sethi, Sr. Adv. with Mr.Sidhanth, Mr.Hemant Gulati, Mr.Shobit Dimri, Mr.Bharat, Mr.Keshav Sethi & Mr.Rajesh Kaushik, Advs.

versus

STATE N.C.T DelhiRespondent Through: Mr.Aman Usman, APP for the State with Mr.Manvendra Yadav, Adv. along with Insp. Chetan Mandia, PS Lajpat Nagar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

NAVIN CHAWLA, J.

1. The instant appeal has been preferred by the appellant,

challenging the Judgement dated 16.10.2004 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as Trial Court) in S.C. No. 216/2000 (MM) arising out of FIR No.

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which the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC).

2. The appellant further challenges the Order dated 18.10.2004

passed by the learned Trial Court, sentencing the appellant to undergo rigorous imprisonment for life with fine of Rs.5,000/- and in default of payment of fine, to undergo further simple imprisonment for one year.

FACTS OF THE CASE

3. Briefly stated, it is the case of the prosecution that:

(a) On 28.03.2000 at about 10:55 P.M. on receipt of DD No. 24

regarding information received from Safdarjung Hospital through Duty Constable Om Parkash that one lady has been admitted in the hospital by her neighbour Nirmala in 90% burnt condition, PW-15/S.I. Vijay Singh reached the hospital.

(b) Prior to that, in the MLC report of the deceased (Ex.PW-

13/A), the Doctor, PW-13/Dr.Upender Sharma opined that the deceased had been brought by her neighbour- PW- 2/Nirmala and that the deceased had herself stated that she was burnt when Ayub (her new lover) poured oil (kerosene oil) from stove and set her on fire she was pouring kerosene into the stove..

(c) PW-15/S.I. Vijay Singh thereafter recorded the statement of

the deceased (Ex-PW-15/C). She mentioned that she had lived at A 59/14, Shera Mohalla for the last 4 to 5 years. She had been married to one Dubar and had three children from her marriage. She stated that her husband had expired about

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six years ago. Since then, she had been supporting her children by cleaning houses. About three years ago she had met the appellant, who was the son of Rehman Elahi, resident of Sarnbhal Heda P.S- Mirapur, District Muzaffar Nagar, U.P. The appellant had sexual relations with her and used to provide weekly maintenance to her. He was working in some factory. On 28.03.2000 at about 8:00 P.M., the appellant came to her house with a bottle of liquor and started drinking. She told him not to take the same and he should pay for her expenses, but he did not listen and continued drinking. On that, an altercation took place between them.

During that time, the appellant picked up the kerosene oil can, poured the kerosene over her and pushed her on the burning stove, by which she caught fire. The appellant then fled from the spot. In the meantime, her neighbour- PW-2/Nirmala reached and poured the water on her and extinguished the fire. She stated that the appellant had poured the kerosene over her and pushed her on the burning stove with the intention to kill her.

(d) PW-15/S.I. Vijay Singh opined that the case was fit for

registration of an offence under Section 307 of the IPC.

(e) Thereafter, police officials went to the place of the incident.

A Seizure Memo (Ex-PW-2/A) was prepared and the crime team as well as the photographer were called.

(f) Unfortunately, the deceased passed away on 29.03.2000 at

around 6:30 A.M.

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(g) The Postmortem report recorded the cause of death as

shock caused by antemortem thermal burn injuries.

(h) The appellant was arrested at around 6:30 P.M. on

29.03.2000 from his house in Delhi.

(i) The Brief Facts (Ex.PW-15/DA) were recorded by PW-

15/S.I. Vijay Singh on 01.04.2000.

4. Upon completion of investigation, a chargesheet was filed

against the appellant under Section 302 of the IPC.

5. The learned Trial Court, vide order dated 05.09.2000, framed

the following charge against the appellant: That on 28.3.2000 at about 8.30PM at A.59/14, Shera Mohalla, Garhi Village, New Delhi you set at fire to Madhu by pouring kerosene oil on her and by pushing her on the burning stove with an intention to kill her and thereby committed offence u/s 302 IPC and within my cognizance.

6. The appellant pleaded not guilty before the learned Trial Court.

7. To prove its case, the prosecution examined 15 witnesses,

including the purported eyewitnesses as well as the concerned public officials.

8. Thereafter, the statement of the appellant was recorded under

Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.). He denied the incriminating evidence appearing on record against him and claimed false implication. He stated that he was not present at the spot at the time of the incident and rather was called from the factory by the son of the deceased, that is, PW-5/Rajesh. He stated that when he reached the spot, the deceased was already in flames and that he

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along with PW-2/Nirmala, that is, the neighbour of the deceased, threw water on her to extinguish the fire. He stated that in the process of saving the deceased, he too sustained burn injuries. He stated that he is a married man and treated the deceased as his sister.

9. The appellant further opted to lead defence evidence and

examined two witnesses who were his fellow factory workers. They stated that they had accompanied the appellant to the spot after PW-5/Rajesh had come asking for help.

IMPUGNED ORDER OF CONVICTION:

10. The learned Trial Court, in the impugned order of conviction,

framed the facts required to be proved by the prosecution, as under: 30. In this case the prosecution is required to prove the three facts. First Smt. Madhu died and her death was unnatural by fire. Second the accused Mohd Ayub poured kerosene oil over Madhu and pushed her on the burning stove with intention to cause death of Madhu by fire. Third the deceased had certain motive behind the death of Madhu.

11. Relying on the MLC report, the post-mortem report, the

identification of the deceaseds body, as also the DD entry in this regard, the learned Trial Court held the first fact of the deceased dying an unnatural death due to fire, to be proved beyond reasonable doubt.

12. Having found the death to be unnatural, the learned Trial Court

proceeded to examine whether the appellant was responsible for the act. While acknowledging that the alleged eye-witnesses had turned hostile, the learned Trial Court relied on circumstantial evidence to hold the appellant guilty. It was held that the appellant had a close

relationship with the deceased, which fact was corroborated by the testimony of PW-4/Ran Singh, the landlord of the deceased. On the presence of the appellant at the spot, the learned Trial Court rejected the defence that he was called to the spot after the incident, citing an empty liquor bottle that was seized from the spot and the evidence of quarrel preceding the incident.

13. The learned Trial Court attached significance to the dying

declaration recorded by the doctor- PW-13/Dr.Upender Sharma in the MLC of the deceased, and opined that the shortfalls highlighted by the defence were not fatal.

14. It was further observed that although PW-15/S.I. Vijay Singh

recorded the statement of the deceased in a routine manner and should have been more careful and called the doctor, nurses or the Magistrate while recording the same, there were no glaring inconsistencies between the two dying declarations of the deceased.

15. It was held that the conduct of the appellant in fleeing to Meerut

immediately after the incident and seeking medical attention there instead of accompanying the deceased, was also an indication of his guilt.

16. The plea of absence of motive was disregarded and it was

opined that when the totality of circumstances were visualised, the motive became apparent that the appellant was unable to bear further expenses of the deceased and her children, and therefore he took the extreme step.

17. It was held that the circumstances form a complete chain and

every link proved strong by reliable evidence. Accordingly, the

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appellant was found guilty of committing offence under Section 302 of the IPC.

18. Thereafter, the Order on Sentence dated 18.10.2004 was passed,

imposing the sentences as noted hereinabove.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT

19. Mr. Jitendra Sethi, the learned senior counsel for the appellant,

submits that the learned Trial Court has erred in convicting the appellant by ignoring various material contradictions and an overall absence of incriminating evidence against him.

20. He submits that all the purported eye witnesses, that is, PW-

2/Nirmala, PW-5/Rajesh, and PW-6/Geeta were declared hostile by the prosecution. Further, both PW-2/Nirmala and PW-5/Rajesh have deposed in favour of the appellant, stating that he was called by PW-5/Rajesh from the factory to save the deceased, and in process thereof, sustained burn injuries himself. He submits that the said fact can be corroborated by the MLC report of the appellant (Ex.PW-14/A) as also by the statements of DW-1/Md. Noor Hasan and DW-2/Sh. Naseem.

21. He submits that while it is mentioned in the MLC of the

appellant that he got treatment earlier from a hospital in Meerut, no such document has been produced or collected by the Investigating Officer. Further, the doctor who conducted the MLC of the appellant, namely, one Mr. Divesh Kumar, was not produced for evidence. Hence, the alleged statement made by the appellant to the said doctor

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that he was treated in Meerut, would not be admissible. Furthermore, PW-2/Nirmala as also PW-5/Rajesh have stated that the appellant accompanied PW-2/Nirmala to the hospital.

22. He highlights that the appellant has otherwise been shown to

have been arrested from his house in Delhi on 29.03.2000, which he states is unnatural for a person who has just committed murder. He submits that therefore, conduct of the appellant is wholly inconsistent with that of a perpetrator of a crime and raises suspicion on the case of the prosecution. Reliance to this effect is placed on the judgments of the Supreme Court in State of Rajasthan v. Prithvi Raj, 1995 SCC

(Cri) 934 and Aejaz Ahmad Sheikh v. State of Uttar Pradesh & Anr.,

2025 INSC 529.

23. He submits that no motive has been proved in the present case.

24. The learned senior counsel submits that nonetheless, even the

other evidence is insufficient and the circumstantial evidence relied upon by the prosecution fails to establish a complete chain of events pointing towards the guilt of the appellant.

25. He submits that the alleged dying declarations, that is, the

statement recorded by PW-13/Dr. Upender Sharma in the MLC of the deceased (Ex.PW-13/A), and the statement of the deceased as recorded by the Investigating Officer, PW-15/S.I.Vijay Singh (Ex.PW- 15/C), are implausible, inconsistent and riddled with procedural shortfalls.

26. With regard to the alleged dying declaration recorded in the

MLC of the deceased, the learned senior counsel highlighting the nature of the words such as new lover used in brackets therein,

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submits that the same is in fact a personal observation of PW-13/Dr. Upender Sharma and not a dying declaration made by the deceased. He submits that this is further affirmed by the fact that even the use of the word kerosene in the MLC has been admitted by the doctor as being written on his own accord as there was a smell of kerosene and not on account of the deceased uttering the same. He submits that the document was not attested by any witness and does not bear the signature or thumb impression of the deceased.

27. Coming to the alleged dying declaration recorded by PW-15/S.I.

Vijay Singh, he submits that it appears to be a manufactured document. It contains unusually detailed particulars, including the precise address of the appellant, which renders it highly improbable, particularly in light of the fact that a person sustaining more than 90% burns would not furnish such specifics. He submits that PW- 15/S.I.Vijay Singh has admitted that the application seeking opinion of the doctor if the deceased was fit to make a statement (Ex-PW-15/B), was not prepared by him. He submits that as the fitness of the deceased has not been proved on record, the said document cannot be relied upon. Additionally, PW-15/S.I. Vijay Singh also did not provide any information to the SDM regarding the

condition of the deceased during the four hours that he was at the hospital. Resultantly, the dying declaration itself is inadmissible.

28. He submits that both the alleged dying declarations are also in

complete contradiction to one another. While the MLC of the deceased records that the appellant poured oil on the deceased from the stove and set her on fire when she was pouring kerosene on the

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stove, Ex.PW-15/C records that the appellant poured kerosene oil on her from a can and pushed her towards the burning stove. Reliance is placed on the judgments of this Court in State v. Hori Lal & Anr., 2006 SCC OnLine Del 996, and of the Supreme Court in Kamla (Smt) v. State of Punjab, (1993) 1 SCC 1, and Panchdeo Singh v. State of Bihar, 2002 (1) SCC 577, to submit that this factor further reduces the evidentiary value of the documents.

29. He submits that even more damaging contradictions emerge

from the Brief Facts (Ex.PW-15/DA) recorded by PW-15/S.I. Vijay Singh. In the Brief Facts, PW-15/S.I. Vijay Singh has recorded that there was a scuffle between the appellant and the deceased, on account of which she fell on the stove and caught fire. He has also recorded that the appellant got burnt while trying to save the deceased. Placing reliance on Section 114(g) of the Indian Evidence Act, 1872 (IEA), the learned senior counsel submits that the Investigating Officer has therefore misled the Court by suppressing the statement of the deceased on basis of which the Brief Facts were recorded by him. Hence, an adverse presumption should be drawn against the case of the prosecution.

30. He submits that as far as PW-4/Ran Singh is concerned, he has

tried to improve his statement by mentioning therein that the deceased told him that a quarrel took place between the deceased and the appellant and that he pushed her on the burning stove. PW-4/Ran Singh has been duly confronted during cross-examination with his statement under Section 161 of the Cr.P.C., wherein he did not mention the same. Hence, no reliance can be placed on this part of his

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testimony. Reliance is placed on the judgment of the Supreme Court in *Laxmi (Smt) v. Om Prakash & Ors.*, (2001) 6 SCC 118.

31. He highlights that another major lacuna in the case of the

prosecution is that while the Seizure Memo (Ex.PW-2/A) records the recovery of only four items, namely, one iron stove, one green colour plastic can, burnt clothes of the deceased, and one empty bottle of liquor; the pullanda opened in Court also included a match box tied with a chunni. He submits that the alleged liquor bottle stated to have been recovered from the spot does not find mention in the site plan nor was the said bottle sent to the FSL for determining if it even contained alcohol or not. This casts serious doubts on the integrity of the entire investigation.

SUBMISSIONS OF THE LEARNED ADDITIONAL PUBLIC

PROSECUTOR

32. Mr. Aman Usman, the learned APP for the State, submits that

there is no infirmity in the conviction and sentence awarded to the appellant. He submits that the death of the deceased is admittedly unnatural and caused due to burn injuries, which stands proved by the

MLC of the deceased as also by the postmortem report.

33. He states that the testimony of a hostile witness can be relied

upon in so far as it supports the prosecutions case. The presence of the appellant at the spot stands admitted and corroborated from the testimonies of the prosecution witnesses, including PW-2/Nirmala and PW-5/Rajesh, who were declared hostile.

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34. He states that the dying declarations are consistent inasmuch as

they clearly implicate the appellant. Minor variations in the manner of occurrence do not ipso facto diminish the core allegation that it was the appellant who burnt the deceased. He highlights that the police could have in no way influenced PW-13/Dr. Upender Sharma at the time of recording of the statement of the deceased in the MLC, as the police did not even know of the incident having taken place at that time. He submits that a dying declaration can be acted upon without corroboration. There is also no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. He submits that in the present case, both the dying declarations are consistent on the fact that it was the appellant who had set the deceased on fire. Therefore, the appellant has rightly been convicted. In support of his plea, he places reliance on the judgments of the Supreme Court in *The State of Jharkhand v. Shailendra Kumar Rai*, (2022) 14 SCC 299, and *Jemaben v. The State of Gujarat*, 2025 SCC OnLine 2299.

35. He states that the conduct of the appellant in fleeing from the

spot instead of aiding the injured deceased, is also indicative of his guilty mind. The appellant cannot rely on his MLC to substantiate his own injuries, while asking for the same to be discarded as far as it records his

statement that he had been treated in Meerut.

36. He highlights that the recovery of the liquor bottle from the spot

corroborates the altercation that took place between the deceased and the appellant prior to the incident taking place.

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37. He submits that therefore, the chain of circumstantial evidence,

when viewed in entirety, clearly points towards the guilt of the appellant and he has been rightly convicted and sentenced by the learned Trial Court.

ANALYSIS AND FINDING

38. We have considered the submissions made by the learned

counsels for the parties and have perused the record.

39. It is undisputed that the death of deceased was unnatural and

occurred due to burn injuries. The primary issue for determination, therefore, is whether the prosecution has been able to establish that it was the appellant who caused the death of the deceased.

40. Admittedly, the purported eye witnesses, that is, PW-2/Nirmala,

the neighbour, who admittedly took the deceased to the hospital; PW-5/Rajesh, the son of the deceased; and, PW-6/Geeta, the daughter of the deceased, have turned hostile. Hence, the conviction of the appellant has been based on circumstantial evidence as well as the alleged dying declarations made by the deceased to PW-13/Dr. Upender Sharma and

41. As far as the law concerning dying declarations is concerned, it

is no longer *res integra* that dying declarations, if found to be voluntary, truthful and made in a fit state of mind, can form the sole basis of conviction; however, where such declarations suffer from inconsistencies, procedural infirmities and improbabilities, Courts must exercise caution in placing reliance on them. In *Irfan v. State of Uttar Pradesh*, 2023 SCC OnLine SC 1060, the Supreme Court

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explained the juristic principle on basis of which dying declaration is accepted as an important piece of evidence, capable of leading to conviction on its own and without further corroboration, but at the same time also cautioned that the Court must first be satisfied that the dying declaration is reliable and truthful before placing reliance on it. We quote from the judgement as under:- 43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always 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. [See : Laxman v. State of Maharashtra, (2002) 6 SCC 710] xxxxx

48. The justification for the

sanctity/presumption attached to a dying declaration, is two fold; (i) ethically and religiously it is presumed that a person while at the brink of death will not lie, whereas (ii) from a public policy perspective it is to tackle

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a situation where the only witness to the crime is not available. xxxxx

60. Since time immemorial, despite a

general consensus of presuming that the dying declaration is true, they have not been stricto - sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.

61. In India too, a similar pattern is

followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.

62. There is no hard and fast rule for

determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:-

(i) Whether the person making the

statement was in expectation of death?

(ii) Whether the dying declaration was

made at the earliest opportunity? Rule of First Opportunity

(iii) Whether there is any reasonable

suspicion to believe the dying declaration was put in the mouth of the dying person?

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(iv) Whether the dying declaration was

a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not

recorded properly?

(vi) Whether, the dying declarant had

opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has

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

(ix) Whether, the dying declaration was

itself voluntary?

(x) In case of multiple dying

declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it

would have been impossible for the deceased to make a dying declaration?

63. It is the duty of the prosecution to

establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on

the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material

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available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant- convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.

42. Most recently, the Supreme Court in Sanjay Kumar Sharma v.

State of Bihar & Ors., 2026 INSC 223, has summarized the principles applicable to the scrutiny and effect of a Dying Declaration, as under: 13. From a conspectus of the above decisions, it is clear: That, a dying declaration is a very important species of evidence capable of proving the crime proper and identifying the accused, an exception to hearsay having been provided by Section 32 of the Indian Evidence Act. That, a dying declaration, for reliance should inspire confidence in the Court as to its credibility. That, the Court should be satisfied it is made by the deceased without any prompting or tutoring or coercion or is a mere figment of imagination. That, then conviction can be based solely on the dying declaration and there is no requirement of any corroboration. That, it can be reduced to writing or can be oral, as testified by reliable witnesses. That, it can be one or numerous and if more than one; exculpatory and inculpatory, it is for the Court to find out which is believable. That, it can be a lengthy one or a short one, so far as the crime is spoken of and identification of the perpetrator comes through.

That, it can be a single narrative or in a question and answer form. That, it can either have a history of the rancour between the perpetrator and the victim or can be merely the brief statement of the incident. That, the capacity of the injured to make the statement, both physical and

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mental, need not be necessarily certified by a doctor and would rest again on the satisfaction of the Court on an analysis of the testimony of the various witnesses and the other evidence coming forth in trial. That, if the Court is satisfied of the fit state of mind of the injured from the evidence on record, a contrary medical opinion or an absence of it will be inconsequential. That, it can be made before a Magistrate; Executive or Judicial, a Doctor, a Police Officer, a relative or a third party whose presence is not doubtful. That, the desire of the declarant to live, through the truth despite fear of imminent death cannot be easily brushed aside. The decisions also caution us that if the statement is doubtful then one or more of the above aspects could result in the dying declaration being eschewed completely; based on the facts of each case.

14. As a corollary, it also has to observed:

That, if there is an iota of suspicion the Court has to look for corroboration. That, the medical certification as to the physical and mental state always aids in arriving at a satisfaction. That, in the wake of multiple grievous injuries or a higher percentage of burns, the declaration could be in question and answer form, lending more credence as actually spoken of by the injured as opposed to a long drawn out narrative, which could be mistook as supplied by interested related parties. That, a dying declaration recorded by the Judicial Magistrate, adds credence since they are trained to record such declarations. That, as far as possible, the recording is to be done in the presence of the Doctor and definitely not in the presence of numerous bystanders; which could lead to a defence

being raised of prompting and tutoring. That, the veracity of the declaration has to come forth from the attendant circumstances as brought out in evidence.

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43. In light of the aforesaid principles, we shall now proceed to

examine the merits of the instant appeal.

44. The first purported Dying Declaration relied upon by the

prosecution is alleged to be contained in the MLC of the deceased (Ex.PW-13/A). The same is reproduced herein below:-

45. The deceased had come to the hospital with 90% burns. Would

she use the words her new lover for describing the appellant as the person who poured kerosene oil on her? This itself creates a doubt on whether the above history was indeed recorded on the statement of the deceased herself. The expression her new lover appears to be recorded by the PW-13/Dr. Upender Sharma himself, maybe on being informed like this by PW-2/Ms. Nirmala, rather than being the words of the deceased herself. This apprehension is further strengthened by

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the fact that PW-13/Dr. Upender Sharma in his testimony has admitted that the reference to kerosene in the MLC was based on smell noticed by him rather than any statement made by the deceased. In the MLC, where this purported dying declaration is made, the word Informant is not aligned with the words pt herself and appears to have been added later. This further creates a doubt if the above narration of the manner in which the deceased got burnt, was narrated to PW-13/Dr. Upender Sharma by

the deceased herself or by PW- 2/Nirmala. This is also coupled with the absence of the deceaseds signature or thumb impression on document. We, therefore, have our doubt if this can be regarded as a dying declaration of the deceased.

46. The second alleged dying declaration (Ex.PW-15/C), recorded

by the Investigating Officer - PW-15/S.I. Vijay Singh, also suffers from material infirmities. It contains unusually detailed particulars, including the precise parentage and address of the appellant, which renders it inherently improbable, particularly in light of the fact that a person sustaining more than 90% burns would be unlikely to furnish such specifics. Added to this is the fact that there is no cogent evidence on record to establish that the deceased was in a fit condition to make the statement. PW-13/Dr. Upender Sharma in his statement does not state that he gave a certificate of medical fitness of the deceased to give her statement. PW-15/S.I. Vijay Singh states that the application seeking such certificate (Ex. PW-15/B) was prepared by PW-9/HC Nassu Ahmed, who does not say so. Added to this is the lack of explanation by the prosecution for non-involvement of the SDM or the doctor while the said statement was allegedly being

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recorded. The veracity of the said statement is therefore, highly doubtful.

47. More importantly, we find that both declarations are not

consistent with each other in material particulars. While the MLC of the deceased records that the appellant poured oil on the deceased from the stove and set her on fire while she was pouring kerosene on the stove, Ex.PW-15/C records that the appellant poured kerosene oil on her from a can and pushed her towards the burning stove.

48. What is more important and puts a further doubt on the veracity

of either of the above two alleged dying declarations, is the Brief Facts

recorded by PW-15/S.I. Vijay Singh (Ex-PW-15/DA), which introduces yet another version of the incident, stating that the deceased had informed that the appellant had fought with the deceased and poured kerosene oil on her, whereafter in a scuffle, the deceased fell on the stove and while putting off the fire the appellant also got burned badly. This version indicates that the appellant did not intentionally push the deceased towards the stove, but she fell on the same during the scuffle and in fact the appellant even tried to save her, thereby casting a doubt if the appellant had any intention of causing death of the deceased. These inconsistencies not only create a doubt with regard to the manner in which the incident occurred, but more importantly on the veracity of the alleged dying declarations.

49. Added to the above are the photographs of the site, wherein

from Ex. PW-8/3, the kerosene can be seen next to a stove with a gas pipe and kept in a straight and neat condition, while in other photographs, more particularly Ex. PW-8/4 to 8/7, the articles near the

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kerosene stove are found scattered. This casts a doubt on the prosecutions version that the appellant had poured kerosene on the deceased from the can, as if it was so, he would not have taken pains of keeping it neatly at a distant place before burning the deceased or thereafter.

50. The third alleged dying declaration was propounded by PW-

4/Ran Singh, landlord of the deceased, who stated that the deceased had told him that the appellant had poured kerosene oil on her and pushed her on the burning stove. We are in agreement with the learned Trial Court that the alleged dying declaration before PW-4/Ran Singh cannot be believed, the same finding no mention in his statement under Section 161 of the Cr.P.C., wherein he had stated that it was PW-2/Nirmala who had informed him that the appellant had thrown kerosene oil on the deceased and pushed her on the stove because of which she died. Therefore, alleged dying declaration was not made to or in front of PW-4/Ran Singh, but was a hearsay.

51. Turning to the other circumstantial evidence, we find that the

same do not cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant. The presence of the appellant at the spot, by itself, is insufficient to establish his culpability, particularly when the defence of him attempting to save the deceased finds

corroboration from the burn injuries he sustained, the Brief Facts

recorded by PW-15/S.I. Vijay Singh (Ex.PW-15/DA), and the statements of the alleged eye witnesses and defence witnesses. The

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motive attributed to the appellant as stated in the impugned judgment

is also not supported by any substantive evidence.

52. Added to this are factors such as the presence of an

unaccounted matchbox (per the seizure memo exhibited as Ex. PW- 2/A) in the sealed pullanda, and the liquor bottle alleged to have been consumed by the appellant prior to the incident taking place not finding mention in the site plan exhibited as Ex. PW-15/E. The documents regarding the alleged treatment of the appellant at a hospital in Meerut have also not been traced.

53. As noted hereinabove, the case of the prosecution is based on

circumstantial evidence, and the alleged dying declarations made by the deceased. In a scenario where none of the alleged dying declarations inspire confidence to form the sole basis of conviction, the prosecution is required to make out a case basis circumstantial evidence which is inconsistent with the innocence of the accused and consistent only with his guilt. The incriminating circumstances should be such as to lead only to hypothesis of guilt and must exclude every other possibility of innocence of the accused. The complete chain of circumstance should be fully established and mere suspicion cannot take place of proof. Reference in this regard may be made to the judgments of the Supreme Court in Narendrasinh Keshubhai Zala v. State of Gujarat, (2023) 18 SCC 783 and Manoj@ Munna v. The State of Chhattisgarh, 2025 INSC 1466.

54. Basis the above state of evidence and applying the above

mentioned tests, we find that the prosecution had been unable to prove

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its case against the appellant beyond reasonable doubt. The appellant is entitled to be accorded the benefit of doubt.

55. In Shailendra Kumar Rai (supra), the Supreme Court held that

a dying declaration can be acted upon without corroboration. The primary effort of the Court has to be to find out whether the dying declaration is true and if it is, no question of corroboration arises. However, if the circumstances surrounding the dying declaration are not clear or convincing, the Court may look for corroboration to the dying declaration. The Court further held that although a dying declaration ought to be ideally recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The Court at the same time cautioned that the issue of whether a dying declaration recorded by the police is admissible, must be decided after considering the facts and circumstances of each case. It was further held that there is no format prescribed for recording a dying declaration and it is not obligatory that it should be recorded in a question-answer form as there can be occasions when it is not possible to do so.

56. In the present case, however, keeping the entire evidence in

view, we find that the alleged dying declarations of the deceased do not inspire much confidence and the required corroboration is missing. There is also no reason supplied by PW-15/S.I. Vijay Singh as to why the dying declaration was not recorded before the Magistrate or in a question-answer form though according to him the deceased was in a condition to give a long and detailed dying declaration. The said judgment, therefore, does not support the case of the prosecution.

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57. In *Jemaben (supra)*, the Supreme Court found the dying

declarations to be consistent and even corroborated by other evidence on record. The Court held that merely because there are minor discrepancies in the version given by the prosecution witness with regard

to the dying declaration and with regard to the manner of occurrence of the incident, the dying declaration given by the deceased before the independent witness, that is, the doctor cannot be ignored.

58. In the present case, we find that the discrepancies in the dying

declarations cannot be stated to be minor and, as noted hereinabove, they are also not supported by other evidence on record. The said judgment, therefore, again would have no application to the facts of the case.

59. The impugned orders dated 16.10.2004 and 18.10.2004 are,

therefore, set aside. The appellant is acquitted of the Charge against him. His personal bond and the surety are also discharged.

60. The appeal is allowed in the above terms.

61. A copy of this judgment be communicated to the concerned Jail

Superintendent as also to the learned Trial Court for necessary compliance and information.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

APRIL 16, 2026/ns/ik

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