

Rajendra Kumar Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-20-1996

Reported in : 1997CriLJ1120

Judge : N.L. Ganguly and ;R.N. Ray, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 161, 164 and 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 2068 of 1980

Appellant : Rajendra Kumar

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : G.S. Chaturvedi, ;Kamal Krishna, ;Vinay Saran and ;Amar Saran, Advs.

Disposition : Appeal dismissed

Judgement :

N.L. Ganguly, J.

1. The appellant Rajendra Kumar filed this appeal against the judgment and order dated 7-8-1980 convicting him under Section 302, I.P.C. and sentencing him

imprisonment for life by the Court of Session, Kanpur.

The appellant Rajendra Kumar was married about 3 1/2 years ago from the date of the incident with Smt. Asha Devi. Asha Devi's father's name is Ram Bali Gupta P.W. 1 and mother's name is Smt. Vijai Lakshmi P. W. 2. A son was born 1 1/2 years after remarriage but died alter some time. A daughter was also born thereafter to her, who was alive at the time of the incident. The appellant Rajendra Kumar was a man of suspicious nature. His behaviour towards his wife Smt. Asha Devi was not good. He used to beat her off and on and also threatened her. It is said that once the appellant had tied a Dhoti around her neck and hanged her but when her tongue protruded out he brought her down. The father of the deceased was called and she was sent with him. It has come in evidence that she lived there for 7-8 months and her parents did not send her to the house of the appellant. The appellant had sent several persons for sending back Smt. Asha Devi and had also assured that he would not mal-treat her in future. She was sent to the house of the appellant on his assurance.

2. On 17-10-1979 Smt. Asha Devi had asked the appellant to take down the fuel wood from the 'Tand' (rack) so that she could cook food for the family. The appellant refused. Thereafter Smt. Asha Devi could take down the fuel wood and started preparing food on the Dven. It was about 8 a.m. The delay in preparing the food annoyed the appellant. He picked up a burning piece of wood and touched it on her cheek. Thereafter he took her to the adjoining room and poured kerosene on her and set fire on her. The appellant tried to prevent her from running away and in the process also got some burns in his hand and other parts of the body. When she could run down burning with flames, her brother-in-law (Dewar) Brijesh extinguishing the fire by placing a blanket around her and tearing the saree. Her mother-in-law put wet clothes on her to extinguish the fire. She had received extensive burn injuries, was taken to U.H.M. Hospital for treatment. She was admitted in the emergency ward of the hospital by Smt. Nanhi Devi at about 9 a.m.

3. The younger sister of the deceased. Smt. Asha Devi is Km. Usha P.W. 10, who was a student of Class VIII in Babu Ram Dixit Vidyalaya, Naughara. Two other girls Km. Laxmi P.W. 12 and Km. Mecra belonging to Mohalla Dhan Kutti where

the appellant and deceased lived were also in the same class of Km. Usha. These girls had informed Km. Usha in the school about the burning of Smt. Asha Devi. After hearing from her class-mate that her sister was burnt, she rushed to the house of the appellant. Babu Ram and Manju were present. They refused to give any information. She went to the upstairs of the house, where one told her that her sister was first hit by burning wood and then burnt, thereafter was taken to the hospital. Her examination was going on. After appearing in the examination she went to the house and informed her parents.

4. Ram Bali Gupta P.W. 1, father of the deceased Smt. Asha Devi, after receiving information about the occurrence reached the emergency ward of U.H.M. Hospital with his wife at 1 or 1.30 p.m. Smt. Asha Devi was on the bed. Glucose was being given. She had extensive burns on her body. The appellant Rajendra Kumar and his parents were not there. Ram Bali Gupta P.W. 1 wanted to talk to Smt. Asha Devi but was not permitted by the nurses. However, he could talk with his daughter for 2-3 minutes. P.W. 2 Smt. Vijai Laxmi also could talk to her for a longer period. Smt. Devi gave out the entire story to her mother and Smt. Vijai Laxmi P.W. 2 in her turn conveyed all that information to P.W. 1 Ram Bali Gupta. Relations and mohalla people also reached hospital at that time. After staying 1 1/2 hours in the hospital Ram Bali Gupta wrote down a report of the incident in the verandah of the hospital and lodged it at the police station Collectorganj. The report was received by clerk constable Narendra Pratap Singh P.W. 9 and prepared chick report Ext. Ka. 7 at 4 p.m. The investigation of the case was taken by S.I. Om Prakash P.W. 13 Smt. Asha Devi died of the burn injuries on 18-10-1979. Her injuries were first examined by the doctor at the time of her admission in the hospital. Injury report was proved and marked as Ext. Ka. 12. Her dead body was sent for post-mortem examination after the inquest memo was prepared by the I.O. The post-mortem was conducted on 19-10-1979 at 4 p.m. The postmortem report was proved and marked as Ext. Ka. 6.

5. The statement of Smt. Asha Devi was recorded by P.W. 6 Sri K. N. Tandon, Addl. City Magistrate. The deceased was also interrogated by S.I. Om Prakash P.W. 13 under Section 161, Cr.P.C.

6. The case was committed to the Court of Session. The charge was framed on 27-3-1980 under Section 302, I.P.C. against the accused-appellant.

7. The appellant pleaded not guilty and stated to be implicated falsely in the case.

8. During trial the prosecution examined P.W. 1 Ram Bali Gupta, P.W. 2 Smt. Vijai Laxmi, P.W. 3 Ram Das Gupta, who are father, mother and Mama of the deceased Smt. Asha Devi. P.W. 4 Ashok Kumar, P.W. 12 Km. Laxmi Shukla besides the Magistrate Sri K. N. Tandon P. W. 6, who had recorded the statement of the deceased under Section 164, Cr.P.C. and doctor, who had examined the victim Smt. Asha Devi and conducted post-mortem. The burn injuries of Rajendra Kumar appellant were also proved by the witness Dr. Nafisual Hasan, who was examined as C.W. 1.

9. In this case there is no eye-witness of actual causing of the burns to the deceased Smt. Asha Devi. The case rests mainly on the basis of the dying declaration of the deceased Smt. Asha Devi. The evidence of P.W. 1 Ram Bali Gupta. and P. W. 2 Smt. Vijai Laxmi, father and mother of the deceased, shows that after receiving information about the burn injuries to Smt. Asha Devi through their daughter Km. Usha at their house these witnesses had rushed to the U.H.M. Hospital and had seen Smt. Asha Devi lying on bed and glucose was being given to her. P.W. I Ram Bali Gupta narrated in his statement the fact that, whenever Smt. Asha Devi visited his house she told that Rajendra Kumar appellant used to beat her and also threatened her to spoil her face by throwing acid. Earlier once the accused had tied a Dhoti in the neck of the deceased Asha Devi and hanged her. When the tongue protruded out he had put her down. The accused Rajendra Kumar had gone to meet P.W. 1 Ram Bali Gupta and asked him to take back Smt. Asha Devi. The witness had taken back Asha Devi. Asha Devi had told this fact to her father. She was not sent for 7-8 months. On the request of the accused and on his assurance that he would not harass her in future, she was sent 5-6 months prior to the date of the incident. Thereafter the fact about receiving information has been stated in the evidence in Court. The perusal of the entire statement of P.W. 1 Ram Bali Gupta shows that no cross-examination was made on behalf of the appellant about the facts of the earlier conduct and behaviour of the accused

towards Smt. Asha Devi. This fact shows that the earlier part of his statement has not been challenged on behalf of the appellant.

10. P.W. 1 Ram Bali Gupta stated that when he visited the hospital emergency ward he could talk to Smt. Asha Devi only for 2-3 minutes. The nurses were prohibiting and asked him not to talk to the patient. It has been stated by the deceased's father Ram Bali Gupta P.W. 1 that Smt. Asha Devi told him 'Babu, Hamko Ghar Walon Ne Jala Diya.

11. P.W. 2 Smt. Vijai Laxmi also stated and corroborated the statement of P.W. 1 saying about the previous conduct of the appellant about tying a Dhoti by the neck of Asha Devi and hanging her and then sending Smt. Asha Devi to her parent's house and later bringing her after giving assurance not to mal-treat her. P.W. 2 Smt. Vijai Laxmi stated that Asha Devi, when asked by her, had stated the full facts about the occurrence. She had said that I was in the kitchen. My husband Rajendra Kumar beat me badly at 8 a.m. I asked him to bring down fuel wood from the rack (Tand). There was scuffle and Rajendra Kumar beat her badly and hit with burning wood on the cheek and asked me to go to the parent's house I said I would not go, then Rajendra Kumar poured kerosene on me and he also said that if I would move 'I was not a genuine issue of my father'. Smt. Asha Devi also said that she was burning and wanted to run but Rajendra Kumar had caught her and left her only when his hand started burning. She ran down stairs making noise. Her mother-in-law, Dever Brijesh and Mohalla people were there. The fire was extinguished by the mother-in-law by putting wet clothes. P.W. 3 Ram Das Gupta also stated in his evidence about the earlier beating of Smt. Asha Devi and harassment caused to her. He also said about the tying of a Dhoti by the neck of Smt. Asha Devi by accused Rajendra Kumar and thereafter she lived with her parents and was again sent back on the assurance given by the accused not to mal-treat her in future. This witness had accompanied P.W. 1 Ram Bali Gupta to the police station at the time of lodging of the F.I.R. P.W. 4 Ashok Kumar appeared for the prosecution and stated to have been Rajendra Kumar's wife, who had received burns, being taken by Rajendra Kumar's brother and two ladies and one of two persons on a rickshaw. He was declared hostile and cross-examined by the prosecution.

12. Dr. J. N. Mehrotra P.W. 7 had examined the deceased Asha Devi in the emergency ward in between the nights of 17/18-10-1979 17/18-10-1979 and issued a certificate about mental condition and fitness of Asha Devi to give replies to the questions before recording of the statement under Section 164, Cr. P.C. P. W. 6 K. N. Tandon after receiving information for recording the statement of Smt. Asha Devi in the emergency ward of the hospital concluded the recording of statement at 1.15 a.m. Before recording the statement the mental fitness and ability to give statement was certified by Dr. J. N. Mehrotra P.W. 7. The dying declaration recorded on 18-10-1979 was proved and marked as Ext. Ka. 3-B.

13. The prosecution examined Ram Swarup Gupta, Dr. J. N. Mehrotra, Dr. R. P. Yadav, Narendra Pratap Singh, Km. Usha, Km. Laxmi Shukla, H. C. Prasad and Akhilesh Narain Shukla as prosecution witnesses. One Dr. Nafisul Hasan was examined by the Court as C.W. 1. The injuries of the deceased were examined at the hospital. The bed-head ticket was also prepared. The injuries of 'the deceased were 95% burn caused by flame superficial to deep injuries as proved by Dr. H. C. Prasad. The post-mortem report was also proved by Dr. R. P. Yadav P. W. 8, Senior Physician of the E.S.I, hospital, Since there is no controversy and dispute about the extensive 95% burn on the person of the deceased and the injuries were ante-mortem, the details of the injuries are not necessary to be quoted.

14. There is only evidence of dying declaration against the accused-appellant. There are in all four dying declarations in the case. The first dying declaration is the oral statement of the deceased Asha Devi to her father P.W. 1 Ram Bali Gupta at 1.30 p.m. in the hospital on the date of incident itself wherein she is to have said 'Babu, Hamko Ghar Walon Ne Jala Diya'. This oral statement made by her when she was on the bed in the emergency ward and glucose was being given to her. She could only tell this much to P.W. 1 Ram Bali Gupta. The second dying declaration is the statement under Section 161. Cr.P.C. recorded by the I. O. Om Prakash P. W. 13. which was recorded on the night of 17/18-10-1979 17/18-10-1979 and was' proved and marked as Ext. Ka. 26. The other dying declaration was recorded by P.W. 6 Sri K. N. Tandon, Addl. City Magistrate at 1.15 a.m. on the night of 17/18-10-1979 17/18-10-1979 after obtaining a certificate from Dr. J. N. Mehrotra P.W. 7. The fourth dying declaration is the oral statement of the

deceased made to her mother Smt. Vijai Laxmi P.W. 2, which is a detailed statement of the incident.

15. Heard Sri Gopal Swarup Chaturvedi, learned counsel for the appellant at length and perused the record carefully. Sri Chaturvedi submitted that in the present case there are four dying declaration, which are all contradictory in material details. The evidence of dying declaration is a very weak type of evidence and no conviction could be recorded on such contradictory and doubtful dying declarations Sri Chaturvedi submitted that Smt. Asha Devi after having received burn injuries was taken to the hospital on 17-10-1979 by one Smt. Nanhi Devi. The first document is the bed-head ticket of the hospital. P.W. 11 Dr. H. C. Prasad, Radiologist, U.H.M. Hospital examined the injuries and prepared the injury memo. At the time of examination of the injuries of the deceased Smt. Nanhi Devi was present there. In the bed-head ticket it is noted 'C/O' alleged to have sustained burn injuries during cooking. The witness stated that this may have been written on the saying of the injured but the witness did not remember it. He stated that when the patient is mentally alert, the patient himself is asked but when the patient is not in senses the person attending to the patient is asked. In this case the patient was in senses. The witness also said that when the statement is recorded from the attendant a note is also made that the statement is received from the attendant of the patient. The learned counsel for the appellant submitted that this witness is an independent witness. He definitely stated that the injury was caused while the deceased was cooking. The learned counsel submitted that the evidence of the prosecution that the accused appellant when asked to put down some firewood from the 'Tand' had denied and at 8 O'Clock when there was delay in preparing food the appellant had assaulted the deceased and touched her cheek with burning wood, thereafter she was taken to the adjoining room, burnt after pouring kerosene is patently contradictory. The learned counsel submitted that in the dying declarations in the case are to be seen together. He submitted that in the statement of P.W. 1 the deceased had said 'Babu. Hamko Ghar Walon Ne Jala Diya'. This statement shows that the inmates of the house of the in-laws of the deceased burnt her. This statement does not clinchingly show that it was the accused only who burnt her. The learned counsel drew the attention of the Court to the statement of the deceased recorded by the Magistrate P.W. 6 K. N. Tandon.

The statement was proved as marked as Ext. Ka. 3-B This is a detailed statement made by the deceased to the Magistrate in which each and every detail of the incident has been given, as stated by P.W. 1 Ram Bali Gupta in his statement. At the time the statement under Section 161, Cr.P.C. was recorded by the I. O. no question had been put to P.W. 6 Sri K. M. Tandon, Addl. City Magistrate that there was no other person present, who might have hinted, suggested or in any manner assisted in giving statement by the deceased. It has not been suggested even in the cross-examination on behalf of the appellant that the statement was recorded not in accordance with the requirements of law. The statement recorded by the Magistrate shows that the mental and physical condition of the deceased was in perfect condition to make a statement. Thus there is no scope for the appellant to argue that the statement recorded by the Magistrate is not above board and not to be relied upon. The statement of the deceased recorded under Section 161, Cr. P. C, since the person had died, would also be treated as a dying declaration according to law, which is also proved and marked as Ext. Ka. 26. The statement under Section 161, Cr.P.C. is practically the same version as given before the Magistrate under Section 164, Cr.P.C.

16. The Hon'ble Supreme Court in the case reported in 1958 Cri LJ 106 : AIR 1958 SC 22 Khusal Rao v. State of Bombay observed (Para 17):

In order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusions that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction.

17. Thus the necessity for corroboration arises from any inherent weakness of dying declaration as a peice of evidence as held in some of the reported cases.

18. The learned counsel for the appellant referred to the decision reported in AIR 1965 SC 939, Thuru Kanni Pompiah v. State of Mysore and also referred to the decision reported in AIR 1958 SC 22 at page 29, Sri Chaturvedi argued that the alleged statement of the deceased Smt. Asha Devi to her father and mother is contradictory to what has been recorded in the bed-head ticket of the hospital where she had said that she was burnt while cooking. In fact this is not her statement recorded and the doctor P.W. 11 H. C. Prasad had also not definitely said that the entry in the bed-head ticket was her statement. It is pointed out by Sri. K. C. Saxena, learned A.G.A. that the mention of the fact in the bed-head ticket that the deceased was taken to the hospital by Nanhi Devi W/o N. L. Gupta R/o 74/221, Dhankutti Halikuan, P. S. Collectorganj. This is evident that Smt. Nanhi Devi who had accompanied Smt. Asha Devi to the hospital is resident of the same house where the deceased had received burn injuries. Since she was burnt near the kitchen it may be that Nanhi Devi had told the doctor that she received injuries while cooking. It is also common knowledge that any inmate of the house would not generally like to implicate the members of the same house unless fully convinced. It is not the case of either of the parties that there was some eye-witness of the actual burning by the appellant. Thus the entry in the bed-head ticket is not to be treated as dying declaration nor this fact has been proved and treated as dying declaration in this case.

19. The Hon'ble' Supreme Court in the case reported in AIR 1965 SC 939 (supra) was pleased to observe at page 941 :

A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

20. The Hon'ble Supreme Court also referred to the test about reliability of the dying declaration as mentioned in 1958 Cri LJ 106 (SC) (supra).

21. Sri Chaturvedi relied on the case reported in (1992) 6 JT (SC) 707 : AIR 1993 SC 374 Smt. Kamla v. State of Punjab, and referred to para 8 of the said judgment. The Hon'ble Supreme Court was pleased to hold that the dying declaration can form the sole basis for conviction provided it is free from infirmities and satisfied various tests. The Supreme Court relying on the case reported in 1958Cri.LJ 106 (supra) was pleased to observe that (at P. 376 of AIR):

It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the Court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the Court has to examine the same in the light of the various surrounding facts and circumstances.

22. In the present case also it has to be examined and seen whether there was any irregularity or inconsistency in recording the statement under Section 164, Cr.P.C. by the Magistrate. It has not been put to the witness P.W. 6 K. N. Tandon that there was any tutoring or any aid, assistance given to Smt. Asha Devi when her statement was recorded. P.W. 6 Sri K. N. Tandon had also stated that her statement was recorded after examination of mental condition of the patient by Dr. J. N. Mehrotra P.W. 7 who had certified that the deceased Smt. Asha Devi was mentally alert and in a fit condition to give her statement. The statement is in narrative form. Sri Chaturvedi submitted that it has not been recorded in question and answer form and it renders the statement 'doubtful. We do not subscribe to the submission. We do not find that there is any material irregularity in recording the statement in narrative form. The statement given by the deceased is narrative of the facts of the incident. The recording without question answer said statement

is not to be shown to have prejudiced the case of the appellant in any manner nor it was pointed out that the statement recorded under Section 161, Cr.P.C. is not in accordance with law.

23. The learned counsel for the appellant submitted that there is patent inconsistency in the statement of the deceased before P.W. 2 Smt. Vijai Laxmi and P.W. 1 Ram Bali Gupta. The learned counsel submitted that Smt. Vijai Laxmi P.W. 2 in her statement stated that when the deceased had come down the stairs, on the asking by Mohalla people the mother-in-law put clothes on her for extinguishing the fire. A question was put to Smt. Vijai Laxmi P.W. 2 and she said that Smt. Asha Devi had told her that her father-in-law and mother-in-law had also said to set fire on her so that she may be burnt and the daily dispute may come to an end. This witness had denied that Smt. Asha Devi ever said to her that she got the burns while cooking food. She also denied that Smt. Asha Devi deceased ever said that her husband and Devar tried to save her. The Court has to examine whether the statement of Smt. Vijai Laxmi, P.W. 2 is any manner contradictory to the statement recorded by the Magistrate. We have perused the statement of P.W. 2 Smt. Vijai Laxmi and the dying declaration recorded by the Magistrate and the statement recorded under Section 161, Cr.P.C. by the I.O. It cannot be said that there is any material contradiction in the three statements referred to above. The learned counsel for the appellant submitted that the statement of P.W. 1 Ram Bali Gupta in which he stated that the deceased Smt. Asha Devi had said that 'Babu, Hamko Ghar Walon Ne Jala Diya' amounts to a material contradiction with the statement recorded by the Magistrate and the I.O. and P.W. 2 Smt. Vijai Laxmi. The Court cannot ignore the fact and the statement of P.W. 1 Ram Bali Gupta wherein he stated that in the emergency ward the patient Smt. Asha Devi was lying on the bed and glucose was being given to her. The nurses were prohibiting him from talking to the deceased. He could only talk for 2-4 minutes as said by this witness and only this much was said that 'Babu, Hamko Ghar Walon Ne Jala Diya.' The statement referred to above is said to have been made by the deceased to her father at the time when she was on the bed, administered glucose and nurses were prohibiting P.W. 1 Ram Bali Gupta to talk to the patient. From all this it is abundantly clear that the physical and mental condition of the patient was not normal. She was under strain and nurses were not permitting anyone to talk to

her. Whatever was said by the deceased at that time was not full disclosure but was a disclosure about burning in a cryptic way. It is also clear from the evidence of the mother of the deceased D.W. 2 Smt. Vijai Laxmi that the deceased in her statement before the Magistrate clearly stated that she had no complaint against Manju, her Nanad, mother-in-law and father-in-law. She only complained that her only grievance was against her husband.

24. The decision reported in (1992) 4 JT (SC) 555 : AIR 1992 SC 2186 Mafabhai Nagarbhai Raval v. State of Gujarat is of no assistance to the appellant. The statement of the deceased was not recorded in the form of question-answer. In that case also the defence had not attacked on the mode of recording dying declaration. The Hon'ble Supreme Court affirmed the judgment of the High Court and refused to interfere with the judgment merely on the ground that the dying declaration was not recorded in the form of question-answer.

25. The most important factor in the present case is that the injuries on the person of the appellant were there, which have been proved by C.W. 1, Dr. Nafisul Hasan. The said injuries are quoted as under:

- (1) Septic wound tip of nose upper and lower lips, right side face lower part chin.
- (2) Scorching 7 cm x 5 cm right lower front of neck.
- (3) Scorching upper part of sternum right side upper part of chest 16 cm x 18 cm.
- (4) Septic wound 9 cm x 5.5 cm upper part right arm above right ant. axillary fold.
- (5) Scorching and blister in 10 cm x 6 cm area just below injury No. 4.
- (6) Blisters and scorching dorsum of right head.

In the opinion of the doctor Nafisul Hasan C.W. 1 the injuries were 36 hours old, caused by hot object simple in nature. These injuries could have been the result of flame burn and time was also fixed around 8 O' Clock on 17-10-1979. All the injuries were on the right side of the body. There was no injury on the right palm or on the 'Inner side of the right arm. C.W. 1 Dr. Nafisul Hasan further added that these injuries could be caused to the accused if he forcibly tried to prevent a

burning woman from running away. He further added that these injuries could also be caused if the accused tried to hold the burning woman with his right hand to prevent her from going out in the open where the flames could further spread. The location and nature of injuries found on the body of the accused were, in the opinion of the doctor, not consistent with the fact that the accused had tried to extinguish the fire of the deceased. They are on the other hand consistent with the version that the accused had tried to hold the burning woman in order to prevent her from going out of the room. The learned counsel for the appellant has not been able to explain the injuries on the person of the appellant. He submitted that the circumstances of presence of injuries on the person of the appellant could not be taken into account as no opportunity was given to the appellant after the Court witness Dr. Nafisul Hasan was examined. The learned counsel for the appellant is not correct. The accused was given opportunity thrice in the case. The statement of the I.O. who recorded the statement under Section 161, Cr.P.C. of the deceased and the statement of C.W. 12 Dr. Nafisul Hasan, who had recorded the statement were put to the accused, who in his statement under Section 313, Cr.P.C. stated that he has nothing to say nor to adduce any evidence in defence.

26. Sri K. G. Saxena, cited the case reported in 1993 (1) SVLR (Cri) 26 : 1993 AIR SCW 766 *Jarnail Singh v. State* and submitted that Sri Chaturvedi argued there was no special motive for the appellant to have burnt the deceased on a trifling matter like the present one. Sri Saxena placed the following para (at p. 769 and 770 of AIR SCW):

It is true that normally there is a motive behind every criminal act and that is why the investigating agency as well as the Court while examining the complicity of an accused, first try to ascertain as to what was the driving force which compelled the accused to commit the crime in question. But with complex growth of society and which has also produced complex characters, the actions and reactions of persons either on the accused side or on the prosecution side are not very easy to ascertain and Judge. It is a matter of common experience that even a small or trifle incident has different reaction on different persons. That is why it is not always easy for the Court to weigh and Judge as to whether under the circumstances brought on record by the prosecution, in normal course the

accused concerned could have acted as alleged by the prosecution.

That is why this Court has repeatedly expressed the view that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. Reference may be made to the cases of Gurcharan Singh v. State of Punjab AIR 1956 SC 460, Narayan Nathu Naik v. State of Maharashtra AIR 1971 SC 1656 : (1971) 1 SCR 133, Podda Narayana v. State of A.P. AIR 1975 SC 1252 : (1975) 4 SCC 153, Faquire v. State of U.P. AIR 1976 SC 915 : (1976) 1 SEC 662 and Molu v. State of Narayana AIR 1976 SC 2499 : (1976) 4 SCC 362. But at the same time it must be impressed that motive behind a crime is a relevant fact and normally prosecution is expected to adduce evidence in respect thereof. Experience shows that one or other motive moves the culprit to a certain course of action. In cases where prosecution is not able to establish a motive behind the alleged crime it assumes importance especially in cases where the prosecution rests on circumstantial evidence or on witnesses who have an inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies the judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the Court to have a deeper search. But if the Court is satisfied that evidence adduced oral or circumstantial establishes the charge against the accused, the prosecution case cannot be rejected saying that there was no immediate impelling motive on the part of the accused persons to commit the crime.

27. Sri Saxeria further cited the case reported in (1993) 1 SVLR (Cri) 157 : 1993 AIR SCW 1321 Kundula Bala Subrahmanyam v. State of Andhra Pradesh. He submitted that in a trial for prosecution of a case of this nature, there is no eye-witness in the case, the case is sought to be established by the prosecution from the circumstantial evidence. In a case based on circumstances from which conclusion of the guilt is drawn should be fully proved and these circumstances must be conclusive in nature. Moreover all the circumstantial evidence should be pleaded and there should be no gap in the chain of evidence. The caution that Court has to take is to carefully scrutinise the evidence and deal with the circumstances carefully and thereafter find whether the chain of established circumstances is complete or not before passing an order of conviction. The

Supreme Court in the case referred to above affirmed the conviction and sentence on being satisfied that the different dying declarations were consistent with each other. In the present case we have examined the dying declarations referred to above. We do not find any inconsistency in the said dying declarations. The motive and the previous conduct of the appellant was not challenged in the cross-examination of P.W. 1 Ram Bali Gupta. This fact thus is established that before the incident some 6-7 months the deceased had to stay with her parents after she was tied with a Dhoti from the neck and hanged and the same was removed only when her tongue has protruded out. She was sent to her parents house by the appellant and after 7-8 months on the assurance of the appellant she was taken back at the house of the appellant. These facts have not been contradicted or challenged by the defence in cross examination. The fact that the appellant received injuries in the hand and other portion of the body, which C.W. 1 Dr. Nafisul Hasan indicated that it was likely that the injuries on the person of the appellant were caused while 'gripping with the deceased when she was trying to escape from the fire flame on her person. The conduct of the appellant after the incident that he has not been either in the hospital or even cared to see the deceased shows that he was trying to keep himself away.

28. She learned counsel also drew the attention of the Court to the case reported in AIR 1982 SC 839, Mohanlal Gangaram Gehani v. State of Maharashtra. In that case the victim named a person as assailant to the doctor who had examined him. Subsequently have given another person's name as his assailant not knowing him before the occurrence. It was held that the statement made by victim to the doctor being first in point of time must be preferred to his subsequent statement. Here this authority is of no assistance in this case. There is no statement of the deceased victim to the doctor. The entry in the bed-head ticket is not the statement of the deceased recorded in her words. It is also doubtful whether the statement was given by the deceased to the doctor or it was the person attending the patient in the hospital. It appears that Smt. Nanhi Devi, who is a resident of the same house, where the deceased lived, thought it proper not to implicate anyone of the same house or she did not know anything about the incident at the time when the patient was taken to the hospital.

29. The other important case cited by the learned counsel is (1992) 4 JT (SC) 397 : AIR 1992 SC 1817 Smt. Paniben v. State of Gujarat. The Hon'ble Supreme Court laid down the principles governing dying declaration, which could be summed up as under (at P. 1821 of AIR):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration (Mannu Raja v. State of M.P. (1976) 2 SCR 764 : AIR 1976 SC 2199.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (State of U.P. v. Ram Sagar Yadav AIR 1985 SC 416); Ramvati Devi v. State of Bihar AIR 1983 SC 164.

(iii) This Court has to scrutinize 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 assailant and was in a fit state to make the declaration. (Ram Chandra Reddy v. Public Prosecutor AIR 1976 SC 1994).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of Madhya Pradesh (1974) 4 SCC 264 : AIR 1974 SC 332.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected, (Kaka Singh v. State of M.P. AIR 1982 SC 1021.

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

(vii) Merely because a dying declaration does not contain the details as to the occurrence it is not to be rejected (State of Maharashtra v. Krishnamurthi Laxmipati Naidu AIR 1981 SC 617).

(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. Saraj Deo Oza

v. State of Bihar AIR 1979 SC 1505).

(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 his dying declaration, the medical opinion cannot prevail (Nanahau Ram v. State AIR 1988 SC 912).

(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. v. Madan Mohan AIR 1989 SC 1519).

30. Examining the evidence on record and in the light of the observations of the Hon'ble Supreme Court also we do not find any inconsistency or contradiction in the dying declaration referred to above. The facts and circumstances injuries on the person of the appellant, motive, earlier conduct and subsequent conduct of the appellant cumulatively show and prove that the appellant is the person, who caused the burn injuries resulting the death of Smt. Asha Devi. This was deliberate and intentional act of the appellant. We are of the view that the judgment of the learned Sessions Judge is perfectly based on evidence and proper appreciation of the evidence and we do riot find any merit in the appeal.

31. The appeal is dismissed. The appellant is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him by the learned Sessions Judge, referred to above.

R. N. Ray, J

32. I agree.