

Ramesh Vs. The State

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Court : Delhi

Decided On : May-01-2015

Judge : Sanjiv Khanna

Appellant : Ramesh

Respondent : The State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.635/1999 Reserved on:

13. h April, 2015 Date of Decision:

1. t May, 2015 % RAMESH ...Appellant Through Mr. Rakesh Walia, Advocate.
Versus THE STATE Respondent Through Ms. Aashaa Tiwari, APP along with ASI
Shyam Sunder, P.S. Mukherjee Nagar. CORAM: HONBLE MR. JUSTICE SANJIV
KHANNA HON'BLE MR. JUSTICE ASHUTOSH KUMAR SANJIV KHANNA, J.

Ramesh (the appellant, for short) impugns his conviction under Section 302 of the Indian Penal Code, 1860 (IPC, for short) vide judgment dated 29th October, 1999 passed in Sessions Case No.6/1999 arising out of FIR No.224/1998, Police Station Mukherjee Nagar. By the impugned order on sentence dated 1st November, 1999, the appellant-Ramesh has been sentenced to imprisonment for life and ordered to pay fine of Rs.500/and on failure to pay the same, undergo Simple Imprisonment for one month.

2. The appellant was also charge sheeted under Section 498A IPC, but was not convicted on the said charge.

3. The deceased Asha was wife of the appellant and the occurrence in question had taken place in the intervening night of 5th and 6th August, 1998 in her matrimonial house No.136, village Malik Pur. Asha, the deceased, was removed to JPN Hospital and had died after about eight days on 14th August, 1998 at 10.20 P.M.

4. The appellant challenging his conviction has submitted that the trial court has erred in relying upon the dying declaration of Asha, which is unreliable as it was not recorded by a Sub-Divisional Magistrate (SDM), but by a police officer. Deceased Asha had remained admitted to the hospital for about eight days and thus, there was ample time and opportunity to ask an SDM to record the dying declaration. Vijay (PW-3), son of the deceased and the appellant, has not supported the prosecution version and has stated that his mother, i.e., the deceased Asha had put herself on fire and the appellant, i.e., his father had opened the door and had tried to save Asha and in this process had received burn injuries.

5. We have examined the contentions of the appellant and perused the records, including the testimonies of witnesses. We begin with the statement of Vijay (PW-3), son of the deceased and the appellant. Vijay (PW-3) did not remember his age, neither could he remember the date of the occurrence. He accepted that the deceased Asha was his mother and he has one brother Ajay. At about 11.30 P.M. at night, his mother got burnt and at that time Vijay (PW-3) and his brother were sleeping. This shows that Vijay (PW-3) was not aware as to how Asha, his mother had caught fire. However, PW-3 did depose that his mother had put herself on fire and his father, the appellant herein, had opened the door and tried to extinguish the fire and in this process had suffered burn injuries. He was cross-examined by the Additional Public Prosecutor and accepted as correct that inquiries were made by the police from him and that his father had come home after consuming liquor. He also accepted as correct that his father had quarrelled with his mother, but claimed that at the time of the occurrence, his father was sitting outside the house.

CRL.A. No.635/1999 PW-3 denied as Page 2 of 17 incorrect that he was deposing falsely because the appellant was his father. The question which arises for consideration is whether the said deposition of Vijay (PW-3) is believable and should be accepted?. Is it the true and correct narration of events noticed by him?. Having given thoughtful consideration, we are not inclined to accept PW-3s deposition exonerating the appellant for several reasons, including social and economic pressure, which PW-3 was under. In fact, there is a contradiction in his statement as PW-3 has accepted that he and his brother were asleep, yet to propitiate and absolve his father, he has stated that Asha, his mother, had burnt herself. Affirmatively, contrary to PW-3s deposition, we find that there is no evidence or material to show that the appellant had suffered burn injuries in the intervening night between 5 th-6th August, 1998 and had received treatment. Thus, PW-3s version that his father had opened the door and had tried to extinguish the fire is false and incorrect. Ocular evidence deposed to by other witnesses and the evidence collected from the scene of crime speak and demonstrate involvement of the appellant.

6. On the question of involvement of the appellant, we would like to refer to the testimonies of Jagwati (PW-1), Bachu Ram (PW-2), Suresh (PW-17) and Chanderpal (PW-18), in addition to the medical evidence available in the form of MLC of the deceased (Ex. PW-20/A), death summary of the deceased (Ex. PW-23/A) and the post-mortem report of the deceased (Ex. PW-16/A).

7. Jagwati (PW-1) has deposed that Asha, the deceased was her niece and was wife of the appellant. Ashas marriage was performed by one Ganesh and not by her father Chanderpal (PW-18). The couple had two children. The eldest one Vijay was about 8 years of age (PW-1s deposition was recorded on 8th March, 1999). PW-1 deposed that the deceased Asha had never complained to her about the behaviour of the appellant and relations between them were cordial. On 5th August, 1998, at about 11.45 P.M., deceased Asha had come to their jhuggi alone while she was burning and PW-1 had removed her to Irwin Hospital. Asha was then crying and stating that she had been burnt (Jala diya jala diya). Asha had wrapped a dari around her waist as she was burnt from chest to feet. PW-1 testified that she had asked Asha, who had burnt her, to which she responded that

she had been burnt without naming anyone. PW-1 along with Suresh (PW-17) and Chanderpal (PW-18) had removed the deceased Asha to the hospital. The deceased Asha had suffered loss of consciousness, by the time she was admitted. Asha regained consciousness on 7th August, 1998 at Irwin Hospital and had expired on 14th August, 1998. In the hospital, PW-1 had conversed with deceased Asha and was told that Ramesh i.e. the appellant had burnt her. PW-1 was cross-examined by the Additional Public Prosecutor and in her crossexamination she accepted as correct that on one or two occasions the appellant and the deceased had come together to their jhuggi and at that time the appellant was drunk. Further, deceased Asha had complained that the appellant had on one or two occasions beaten her after consuming liquor. PW-1 had then intervened. PW-1 accepted as correct that on the date of the incident, Asha had shouted and raised an alarm bachao bachao (save me save me), but PW-1 denied that Asha had at that time, informed her that the appellant had burnt her by pouring kerosene oil on her. PW-1 was confronted with her statement to the police but denied having stated the said fact. In her cross-examination on behalf of the appellant, PW-1 reiterated that Asha had told the doctors that she had been burnt by Ramesh, i.e., the appellant. PW-1s testimony narrates her two separate conversations with the deceased. The first conversation was at her jhuggi on 5th August, 1998 wherein the deceased had told her that she had been burnt which indicates that it was a case of homicidal burns and not suicidal or accidental burns. However, at that time, deceased Asha had not blamed or named the appellant. The second conversation was at the hospital (exact date is not mentioned in PW-1s testimony) wherein the deceased clearly implicated the appellant for causing the burn injuries. The second conversation is relevant to directly implicate and indict the appellant. Additionally, PW-1s testimony also corroborates the dying declaration of the deceased (Ex. PW-12/A) wherein, Asha had stated that she had been burnt by the appellant.

8. Bachu Ram (PW-2) has stated that he knew Asha, daughter of Chanderpal, and her husband, i.e., the appellant. He also knew Suresh and Chanderpal. They were neighbours, as he was residing in a rented accommodation in village Malik Pur at the time of the incident. On 5th August, 1998, at about midnight, PW-2 had come out of his jhuggi and had seen the deceased Asha crying in front of his jhuggi. She

had suffered burns and was uttering that she had been burnt; mujhe jala ke maar diya. Different persons from the locality had gathered there. Thereafter, Asha stopped talking and became speechless. She was removed to the hospital. PW-2 was cross-examined by the Additional Public Prosecutor, but denied as incorrect that the deceased Asha had told him that her husband had quarrelled with her and thereupon, after dragging and beating her, made her lie on the floor, and poured kerosene oil before setting her on fire. However, what is clear from the statement of PW-2 is that the deceased Asha had uttered that she had been burnt by a third person and she had not burnt herself. PW-2s deposition supports the prosecution version that Asha had not suffered accidental or suicidal burns.

9. Suresh (PW-17) has testified that Asha was her niece and married to the appellant Ramesh. Her marriage was performed by one Ganesh, as her father Chanderpal had strained relationship with his wife, i.e., the mother of Asha. The appellant was working as a sweeper and used to reside in a rented accommodation. The appellant and the deceased used to visit them at their residence in village Malik Pur. He has denied that the appellant and the deceased used to quarrel or the appellant had demanded dowry in his presence. However, PW-17 affirmed that Asha had got burnt on 5th August, 1998 and expired in the hospital on 14th August, 1998. PW-17 also affirmed that Asha was taken to the hospital in a burnt condition and that the appellant was arrested in his presence. PW-17 proclaimed that Asha had come to them in burnt condition and they had provided her with a cloth piece but Asha did not inform him or any other person as to how she had received burn injuries. In his cross-examination by the Additional Public Prosecutor, PW-17 accepted that the police had recorded his statement on three occasions and also the factum that he had told the police that the appellant used to consume liquor and whenever he would come back to his residence, he would be drunk. He used to beat the deceased Asha, when he was drunk. He also accepted as correct that the deceased in the hospital had stated that she was burnt but denied the suggestion that Asha had stated that she was burnt by the appellant. In his cross-examination on behalf of the appellant, PW-17 accepted as correct that he was not present when the appellant had given beating to deceased Asha after consuming liquor. The testimony of PW-17 would only show that the deceased Asha had suffered beatings and was mistreated by the appellant, who

was a drunkard. It is also clear from the testimony of PW17 that the deceased Asha had suffered burn injuries, which were inflicted on her. Asha had stated that she had been burnt. He affirms the prosecution case that the deceased had not suffered accidental or suicidal burns. PW-17 did not name or state that the appellant - Ramesh had caused burn injuries to Asha.

10. Chanderpal (PW-18) in his testimony had accepted that his cousin Ganesh had performed the marriage ceremony of deceased Asha with appellant-Ramesh. Two-three months prior to the incident, the appellant and deceased Asha had started residing at village Malik Pur. The relations between the two were cordial, but they used to quarrel on some occasions. Their residence was hardly at a distance of about 100/200 paces from PW18s house. On 5th August, 1998 at 11.30 P.M., he was sleeping in his jhuggi when Asha had come in a burnt condition. They had removed Asha to JPN Hospital in a scooter. She was not in a condition to speak and became unconscious and PW-18 did not make any inquiries from Asha to ascertain as to who had burnt her. On 7th August, 1998, Asha regained consciousness in the hospital and had stated that her husband, i.e., the appellant-Ramesh had burnt her. She had been asked to bring Rs.10,000/and when she had expressed her inability, she was burnt. On 14th August, 1998, Asha expired. Police had taken PW-18 to the place of occurrence and had seized one stove, burnt clothes and match sticks vide seizure memo Exhibit PW-12/D, which were sealed. In his cross-examination, PW-18 reiterated that Asha had regained consciousness on 7 th August, 1998. PW-18 had then inquired from Asha as to how she had been burnt. She had regained her senses at 6 A.M., when PW-18 gave her water to drink. PW-18 was the only person present at that time. Police reached the hospital at 10.30 or 11 A.M. She remained conscious thereafter. On 7th August, 1998, many relatives had met Asha. PW-18 denied the suggestion that Asha had not implicated the appellant or had positively denied that the appellant-Ramesh had burnt her. Thus, PW-18 reiterates and affirms that the deceased Asha after gaining consciousness had spoken that her husband i.e. the appellant herein, was the person who had burnt her.

11. Ganesh Dass (PW-11) has deposed that in the year 1990, Asha and the appellant had got married and he had performed the said marriage ceremony. The

appellant was a habitual drunkard and he had to intervene on several occasions. The appellant used to torture Asha and beat her for bringing money/cash. They had given money according to their capacity. After marriage, the couple had resided at different places and at the time of the incident they were residing in village Malik Pur near the house of Ashas father. After the occurrence, on 12th-13th August, 1998, PW-11 had received a telephone call from Chanderpal (PW-18) stating that Asha had been burnt by her husband. He went to JPN Hospital and had seen Asha in a burnt condition. PW-11 affirmed that he was told by the deceased Asha that the appellant-Ramesh had burnt her. In his cross-examination, PW-11 accepted as correct that he had not invited Chanderpal (PW-18) for the wedding ceremony. Further, at the time of marriage of Asha, her mother had already expired. Asha used to come to their residence on festive occasions and they had financially supported Asha by giving her cash as per their stature.

12. The dying declaration of deceased Asha was recorded by ASI Tek Chand (PW-12), who has stated that on 5th August, 1998 at about 1 A.M. in the night (the witness is referring to 6th August, 1998, 1 A.M. past midnight), he had received information that one Asha was admitted to JPN Hospital in burnt condition by her aunt. DD No.33A (Exhibit PW-5/A) was marked to him for investigation. He had collected MLC of injured Asha, who was declared unfit for statement. However, on 7 th August, 1998 Asha was declared fit for statement and PW-12 had recorded her statement (Exhibit PW-12/A) signed by him and also signed by Asha at point B. PW-12 had, thereafter, made endorsement (Exhibit PW-12/B) and the rukka was sent for registering the case under Sections 307 and 498A IPC vide FIR No.224/1998 (Exhibit PW-13/A). PW-12 had deposed about the dying declaration (Ex. PW-12/A) recorded by him and that the deceased Asha had signed the same statement. Nothing was added or omitted while recording the statement. Dying declaration (Exhibit PW-12/A) is clear and specific about the quarrel on 5th August, 198 at about 11.30 p.m. between the deceased Asha and the appellant and the fact that the appellant Ramesh had poured kerosene oil from the stove on the floor and dragged Asha to the said spot before setting her ablaze. Thereupon, deceased Asha cried for help but the appellant went out of the house. Asha untied her petticoat and had wrapped a dari around her waist. Thereafter, she went to her

fathers residence.

13. PW-12 had also visited the spot, i.e., the place of occurrence on 7th August, 1998 and one kerosene stove, burnt clothes, match box with match sticks were seized vide memo Exhibit PW-12/D. The appellant-Ramesh was apprehended on 21st August, 1998 in his presence vide arrest memo Exhibit PW-10/A. PW-12 has also deposed about the site plan prepared by the draughtsman on 24th August, 1998. In his cross-examination, PW-12 has deposed that he had visited the place of incident after the occurrence, but did not meet any witness there. At that time, the house was open and he had returned after locking the room. At that time on 6th August, 1998, he had not lifted any articles and the keys of the room remained with him from 7th August, 1998 to 8th August, 1998. Earlier the doctors had declared Asha unfit for statement. On 7th August, 1998, he had met Chanderpal (PW-18). Asha had given her statement Exhibit PW-12/A in the presence of her father-Chanderpal (PW-18) and uncle Suresh (PW-17). However, PW-12 had not got the statement countersigned by Chanderpal or Suresh. PW-12 had recorded the statement of Asha (Exhibit PW-12/A) at about 1 or 1.30 P.M.

14. Dr. Ashwani Kumar (PW-20) has deposed that on 6th August, 1998 he was posted as Medical Officer in JPN Hospital and had examined patient Asha. She was brought to the hospital in a burnt condition at about 12.30 A.M. on 6th August, 1998. At that time, the patient had given the cause of burns as stove burst. The patient was conscious and had 30-40% burns on lower limbs and abdomen. PW-20 had prepared the MLC Exhibit PW-20/A. The MLC Exhibit PW-20/A records that the deceased was brought to the hospital at 12.30 A.M. on 6th August, 1998 by Jagwati (PW1) with alleged history of burns when the stove had burst suddenly as stated by the patient herself. The patient was declared to be unfit for statement on 6th August, 1998 at 3.30 P.M. She was, however, declared fit for statement on 7th August, 1998 at 11.55 A.M as per the endorsement made on the MLC by Dr. Jaspreet Singh Gujaral. The said doctor did not depose as a witness. As per the deposition of Dr. M.S. Chopra (PW-23), CMO, JPN Hospital, Dr. Jaspreet Singh left the hospital and had gone to USA for further studies. Dr. Nirupam Adlakha had also left the hospital and his whereabouts are not known. PW-23, however, proved the handwritten opinion recorded by Dr. Nirupam Adlakha that the patient was unfit

for statement at 3.30 A.M. on 6th August, 1998 and also the endorsement of Dr. Jaspreet Singh at point C that the patient was fit for statement on 7th August, 1998 at 11.55 A.M. PW-2 had identified signatures and handwriting of Dr. Jaspreet Singh. He also identified the death summary Exhibit PW-23/A, which was in the handwriting of and signed by Dr. Nirupam Adlakha. The said death summary records history of homicidal burns by husband by pouring kerosene oil over her. Document i.e. the death summary marked Ex. PW-23/A, therefore records that the deceased Asha had died due to homicidal burns caused by the appellant.

15. Thus, on the question of dying declaration by the deceased Asha implicating and stating that the appellant-Ramesh, her husband had poured kerosene oil on her and burnt her, we have affirmative statements of Chanderpal (PW-18), Jagwati (PW-1) and ASI Tek Chand (PW-12). Ganesh Dass (PW-11) in some ways has also supported the said version and the dying declaration of Asha. The said dying declaration also finds credence in the death summary report Exhibit PW-23/A, which was prepared by Dr. Nirupam Adlakha. The aforesaid version gets corroborated by Bachu Ram (PW-2) to the effect that the deceased Asha had been burnt by somebody and it is not a case of self-inflicted or accidental burns. The prosecution version gets confirmation and merits acceptance in view of the report of Central Forensic Science Laboratory (CFSL) marked Exhibit PX. As per the CFSL report, one kerosene stove and one cloth packet containing partly burnt pink coloured cloth pieces were examined. The kerosene stove was intact and gave a positive report for petroleum hydrocarbon residues resembling those of kerosene. Burnt pink coloured cloth also tested positive for presence of petroleum hydro carbon residues resembling those of kerosene. Constable Yogesh Kumar (PW-13) has stated that on 7th August, 1998 they had gone to the place of accident, i.e., first floor of house No.136, village Malik Pur and from the said house one kerosene stove, some burnt pieces of clothes, one match box containing match sticks were seized. They did not recover a burst kerosene stove from the spot to substantiate the version of accidental burns on account of kerosene stove explosion, propounded by the appellant. The non-recovery of burst kerosene stove also falsifies the alleged history of accidental burns due to stove explosion recorded in the MLC Report (Exhibit PW-20/A). It is apparent that the deceased Asha at that time did not want to name her husband, the appellant Ramesh. Social

constraints and pressure, uncertain future of her small children etc. had apparently initially predominated and swayed her. Subsequently, Asha did speak and name the appellant as the perpetrator who had deliberately burnt her.

16. Post-mortem on the dead body of the deceased was conducted by Dr. S.P. Mandal (PW-16). He could not detect any external injuries and noticed that the smell of kerosene oil was not present on her scalp and hair, which was not burnt and singed. However, extensive dermo epidermal burns were present on lower portion of the chest, abdomen and lower limbs except soles. Burns were also present on lower half of back, buttock, perineum, left forearm and hand. The death was due to septicaemia and shock as a result of burns. The post-mortem report was marked Exhibit PW-16/A. In view of the aforesaid discussion, we find that the burn injuries, etc. and the evidence collected at the site corroborate and completely support the dying declaration.

17. The contention of the appellant that the dying declaration was not recorded by a Magistrate cannot be a ground to disbelieve and disregard the dying declaration, which implicates and states that the appellant Ramesh had poured kerosene oil and burnt the deceased. Rejecting a similar argument in *Balbir Singh and Another versus State of Punjab*, AIR 2006 SC3221 it was observed that law does not provide that dying declaration should be made in any prescribed manner and only because the dying declaration is not recorded by a Magistrate, the same by itself cannot be a ground to disbelieve the entire prosecution case. The effect of the statement not being recorded by a Magistrate would depend upon factual matrix of each case and no hard and fast rule can be laid down. Similarly, in *Anjanappa versus State of Karnataka*, JT (2013) 14 SC340 it has been observed that while examining testimony of witnesses, the court must scan through the evidence with care and caution and accidental fire or death theory should not be accepted when it is a mere pretence or a cover up.

18. The Supreme Court in *Crl. Appeal Nos. 534-535/2012* titled *Banarasi Dass and others v. State of Haryana*, decided on 18th December, 2014, has held that a dying declaration can be relied upon and treated as a primary and core incriminating evidence for conviction provided the Court concludes that the same

is truthful and credible. Caution is required as the declarant who had made the statement pertaining to the cause or circumstance relating to his death is no more. Court does not have the advantage or benefit of his oral deposition and the accused does not get a chance of cross-examination. Dying declaration is therefore an exception to the rule of hearsay, and thus, due deliberation and guarded approach is required to rule out any possibility of tutoring or prompting by perfidious and intriguing parties. The statement should not be prompted by any motive of vengeance. The deliberation is to ensure, the incorruptibility and purity of the dying declaration. Decisions do observe and highlight the importance of a dying declaration being recorded by an SDM. There may be hesitation and question mark, if the investigating officer records the dying declaration, for he may have vested interest in solving a case. However, as noticed above, this is not a mandatory stipulation of law but a rule of prudence as it curtails challenge that the dying declaration is tutored, prompted, motivated by vengeance or is not the true version/statement of the deceased. But when the court is satisfied that the dying declaration was in fact made to a person including a police officer and the version given is true and can be relied upon, it would not be fair to acquit the accused on the ground that the declaration could have been recorded by an SDM. A Dying declaration, when it is believable and inspires the confidence, can be accepted and relied as was held in *Bhagwan Tukaram Dange vs. State of Maharashtra* (2014) 4 SCC270 after referring to the decision in *State of U.P. v. Ram Sagar Yadav* (1985) 1 SCC552. If required and necessary, corroboration of the dying declaration can be called for and surrounding facts can be considered to support the same. Further, minor incoherence also would not be a ground for not relying upon the dying declaration which is otherwise found to be genuine. Dying declaration is based upon the maxim that a person will not meet his Maker with a lie in his mouth. However, it is not the law in India that the dying declaration can be only acted upon when the statement is made soon before death or under expectation of death. Proximity of time would depend upon the facts of each case and no time limit can be prescribed for the same. Dying declaration made soon after the incident would be admissible, where the medical evidence shows that the injuries were the cause of death.

19. As noticed in the present case, the dying declaration was made before the Investigating Officer, endorsed by him and became substratum of the FIR. However, the dying declaration specifically implicating the appellant as the perpetrator was also made to others namely, Chanderpal (PW18), Jagwati (PW1) and this evidence finds credence and support from the deposition of Ganesh Dass (PW11) as well as death summary report (Ex. PW23/A). The appellants version was that he was present, but outside the house at the time of offence, has to be disbelieved for the scene of crime does not indicate that the deceased Asha was preparing food or the stove was burning. There is no evidence to show that the appellant had tried to save the deceased Asha and/or in the process had suffered injuries (See the MLC of the appellant Ex. PW-22/E).

20. The aforesaid evidence was put to the appellant-Ramesh when his statement under Section 313 Cr.P.C. was recorded. The appellant accepted that in the intervening night of 5th and 6th August, 1998 his wife Asha was residing with him at their matrimonial home, i.e., house No.136, village Malik Pur and had suffered burn injuries. He accepted the said position as correct and has also accepted that he had got married to Asha in the year 1990. He accepted as correct that Vijay (PW-3) was sleeping at the time of the incident. He also accepted that he had come to the house after consuming liquor and that some minor quarrel had taken place between him and his wife Asha. He claimed that he went outside the house and after some time saw the smoke emitting from his room. He opened the door and put off the fire and in the process had received injuries. Out of fear, he had ran away from the spot. He had claimed that his wife was illiterate and could not sign.

21. The Appellant has contended that deceased Asha was illiterate and used to put thumb impression and hence, couldnt have possibly signed her dying declaration. To repel this contention, we have the testimony of PW18, father of deceased Asha, who had testified that his daughter knew Hindi to some extent. Secondly, we have closely looked at the signature of deceased Asha on her dying declaration (Ex. PW-12/A) and we find that such a signature could have been made by an uneducated and virtually illiterate person who could only write her name. Thus, we reject the challenge to the validity of the dying declaration (Exhibit PW-12/A).

22. As noted above, on the question of injuries, there is no evidence or material whatsoever to show that the appellant had suffered any injuries. Noticeably, the deceased after suffering the injuries had covered her body and had run to the residence of Jagwati (PW-1), etc. and only thereafter, taken to the hospital. Several others in the neighbourhood, as per the testimony of Jagwati (PW-1), Bachu Ram (PW-2) etc. had come and collected at the spot. Police came much later. Initially, Asha did not name her husband, i.e., the present appellant as a perpetrator. She had tried not to blame and implicate the appellant, as is apparent even from the MLC Exhibit PW-20/A. The implication was subsequent in point of time after she became fit for statement on 7th August, 1998. The abscondence of the appellant, therefore, in the present case was even before any finger had been raised and the appellant was indicted as a person responsible.

23. The Supreme Court in *Sujit Biswas vs. State of Assam* (2013) 12 SCC406 has observed that mere abscondence does not lead to a firm conclusion that the person who has absconded is the perpetrator, for abscondence may be in order to evade arrest. Abscondence does not necessarily lead to an assertive or affirmative conclusion regarding guilt of an accused as an innocent person, who is not guilty, may abscond in a state of panic or on account of instinct of self-preservation. Abscondence, when there is evidence of last seen, may in a specific case, have a different connotation and legal effect. However, when facts justify, abscondence can be treated as a minor link in the chain of evidence. The appellant in the present case accepts that he was the husband and was present at the matrimonial house when his wife suffered extreme burn injuries. He did not take her to the hospital. Deceased Asha rushed out of the house and had sought refuge and help from neighbours including her father. Appellants conduct at that stage and abscondence even before had police reached the spot or anyone had suspected him are relevant facts. We clarify that we have not taken the abscondence as a primary or even substantive reason to implicate and hold that the appellant is the perpetrator but cumulative effect of all incriminating facts has been taken into account, for arriving at our finding.

24. The dying declaration is, therefore, corroborated by the nature of injuries, evidence found at the place of occurrence as well as failure of the appellant to

extinguish fire and take the deceased to the hospital. The testimonies of the neighbours show that the appellant did not take steps to save and ensure prompt medical treatment. The appellant ran away and absconded. Chander Pal (PW-18) and Jagwati (PW-1) have testified that to them also, the deceased Asha had named and blamed the appellant Ramesh as the perpetrator.

25. In view of the aforesaid discussion, we do not find any merit in the present appeal. We uphold the conviction of the appellant for the murder of his wife, Asha. We also uphold the order on sentence. Appeal is dismissed.

26. During the pendency of the present appeal, the appellant was on bail pursuant to suspension of sentence. He will surrender within a period of four weeks from today to undergo the remaining sentence and in case the appellant does not surrender in the aforesaid period, appropriate steps in accordance with law will be taken by the trial court. Trial court record will be sent back. (SANJIV KHANNA) JUDGE (ASHUTOSH KUMAR) JUDGE MAY1t, 2015 VKR/kkb

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