

**Inder Kaur and Another Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/680426](http://sooperkanoon.com/680426)

**Court :** Delhi

**Decided On :** Oct-10-1985

**Reported in :** 1986CriLJ743; 1986(2)Crimes83; 30(1986)DLT245

**Judge :** R.N. Aggarwal, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313 and 392

**Appeal No. :** Criminal Appeal No. 131 of 1981

**Appellant :** Inder Kaur and Another

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. Mathur

**Judgement :**

Aggarwal, J. (agreeing with Sachar, J.)

1. On a difference of opinion between Rajindar Sachar, J. (as his Lordship then was) and Malik Sharief-Ud-Din, J. this appeal has come to me for my opinion under S. 392 of the Criminal P.C.

2. Appellant I Inder Kaur and appellant 2 Harbans Kaur were tried and found guilty by an Additional Sessions Judge of the offence under S. 302 read with S. 34 of the Penal Code and sentenced to imprisonment for life.

3. The charge against the accused was that they had on 18th October, 1978 at about 2.30 p.m. in the Barsati floor of their house No. E6, Jangpura extension, after pouring kerosene oil on Hardeep Kaur set her ablaze and thereby caused her death. She died on 2nd November, 1978.

4. Sachar J. and Sharief-Ud-Din J., though for different reasons, agreed that the case against the appellant Inder Kaur is not proved and her appeal was allowed and she was acquitted. However, regarding the appellant 2 Harbans Kaur Sachar J. is of the opinion that the case against her is proved beyond doubt and he, accordingly, dismissed her appeal and maintained her conviction and sentence. Sharief-Ud-Din J. is of the view that the case against appellant No. 2 Harbans Kaur is also not proved and, accordingly, allowed the appeal by her acquitted her. Now, it is only the case of appellant No. 2 Harbans Kaur that is before me for consideration.

5. The deceased Hardeep Kaur was married to Gurcharan Singh on 6th February, 1977. She gave birth to a son on 22nd November, 1977. Appellant 2 is the mother-in-law of Hardeep Kaur. Appellant 1 Inder Kaur is the paternal grand-mother of Gurcharan Singh. I may notice here that Gurcharan Singh was also committed to the Court of Session, but was ordered to be discharged by the Additional Sessions Judge. Only Harbans Kaur and Inder Kaur were tried and convicted and sentenced as stated earlier.

6. The scene of crime is the Barsati floor of house No. E-6, Jangpura Extension, belonging to the family of Gurcharan Singh. Gurcharan Singh with his wife and the young son lived in the Barsati floor. They had separate food arrangements. On the first floor an aunt of Gurcharan Singh lived. On the ground floor appellant 1 Inder Kaur, the grand-mother-in-law, aged 80 along with another aunt, resided. The mother-in-law Hardeep Kaur resided in a separate house at a short distance from E-6, Jangpura Extension. The father of Gurcharan Singh had died a few months before the occurrence. P.Ws. 2 and 5 resided in house C13 situated opposite to the house E-6, across the road. P.W. 2 resided in the first floor and P.W. 5 the landlady resided on the ground floor. P.W. 1 resided in house C-14 adjoining C-13. P.Ws. 1, 2 and 5 are the witnesses to the cries, shouts and shrieks of the

deceased.

7. The unfortunate incident is alleged to have taken place between 2.30 and 3 p.m. in the afternoon. The prosecution case as unfolded in the dying declaration Ex. PC recorded by P.W. 4, Mrs. Mamta Sehgal, Metropolitan Magistrate on 19th October, 1978 at about 1.15 p.m., to put it in the words of the deceased, is as follows :

'On Tuesday night i.e. on 17-10-78, my husband had picked up a quarrel with me while I was busy in my work when I asked my husband to lift the ten months old child for just ten minutes, he became quarrelsome with me and gave me beatings. Then in the night we slept. Waking up in the morning, I asked my husband to bring the milk for the child as the same has gone out of stock. On Wednesday (18th October) in the noon at about 2 p.m. he came to take lunch but he took the food after repeated requests and afterwards when I enquired about the milk, he started beating me and I was beaten up very badly. My tooth fell down as a result of his fist blow. My father-in-law died on 22-1-78. Later on my mother-in-law and grand-mother-in-law started harassing me very much. I was not even permitted to go out of the house. We reside in the 'barsati' and in the lower room resides the aunt of my husband while in the room below that resides the grand-mother and youngest aunt. My mother-in-law lives at a little distance from there. My uncle resides under the room in which (mother-in-law resides). The grand-mother of my husband on hearing the noise of quarrel sent a message to my mother-in-law who both came upstairs. My husband abused me in their presence and said that I would be no more there before the evening of that day. My mother-in-law went on speaking. My husband left for the shop. My mother-in-law Smt. Harbans Kaur and grand-mother-in-law Smt. Inder Kaur were upstairs. Earlier both of them abused me and when I told them that there is no fault of mine they gave me severe beatings. Thereafter, my grand mother-in-law, who is very stout, caught hold of me very strongly and my mother-in-law picked up a tin, containing the kerosene oil, which was lying nearby and thrown up the same upon my shirt and legs and lit the match stick. Then both of them went down stairs. I went on crying and I threw away my shirt after tearing it off and reached at the first floor while tearing the half portion of the Shalwar. My mother, grand mother, aunt Harnam Kaur and Shani, the daughter of the sister-in-

law (Nanad) of my mother-in-law were present there. I requested all of them to cut the (Nara) string of my shalwar, but the mother-in-law, grand mother, aunt and Shani, all of them refused. Afterwards the aunt taking pity on me cut down the string (Nara) of the shalwar with the scissors from the back, and I stood there after covering myself with the curtain. In the mean time my husband came there and was surprised to see all this. He brought a taxi immediately. I went on asking to cover me up with some clothes but the mother-in-law refused. After repeated requests, my aunt gave a sheet (Chaddar), and then I was removed to Jeewan hospital by my husband, mother-in-law, grand mother-in-law and both the aunts. They forced me in the way to give version to the effect, I when heating up the meals for my husband, was caught by fire. My husband used to raise quarrel with me at the instance of my mother-in-law and grandmother-in-law. When the authorities at Jeewan Hospital told them that they are not having proper equipment, they took me to Safdarjang Hospital. There used to be a clash at home throughout the day and night.'

8. Another statement (Ex. PZ) of the deceased alleged to have been recorded on 18th October, 1978 at about 9 p.m. by ASI Khilari Singh may also be reproduced and it is as under :

'I reside at the aforesaid address along with my husband. I was married one and a half year back. We have about ten months old son. Today at about 2.30 p.m. my husband came in the house and raised quarrel with me after taking the lunch and started beating me. I was severely beaten up by him with slaps and fists. He said that I would no more be there before the evening. In the meantime my grand mother-in-law Smt. Inder Kaur came upstairs and my husband Gurcharan Singh left for his shop. Meanwhile, my mother-in-law Smt. Harbans Kaur also came upstairs. Both of them grappled with me and I could not see as to who poured kerosene oil on my clothes and who lit the fire (who lighted the match stick). Then, I extricating myself from them ran downstairs tearing my clothes and went in the middle room. I threw away my clothes there, covered myself with a door curtain and remained standing there. In the meantime my 'Chachia Sas' (the wife of my husband's uncle) came there and she gave me a Chaddar (sheet) which I wrapped around my body. Meanwhile, my husband reached there and removed me to

Safdarjang Hospital by taxi. My husband, mother-in-law, grand mother-in-law, middle 'Chachia Sas' (the wife of my husband's uncle) used to quarrel with me after every week or ten days. Today, itself my mother-in-law and grand mother-in-law have deliberately done this act.'

9. There are two more dying declarations by the deceased : one said to have been made before the doctor at the time of the admission in the hospital and the second said to have been recorded by ASI Khilari Singh shortly after obtaining the certificate recording the fitness of the deceased to make the statement.

10. The deceased Hardeep Kaur was admitted in the Safdarjang Hospital on 18th October, 1978 at 3.40 p.m. Ex. PQ is the medico-legal report regarding Hardeep Kaur. The cause of the injuries recorded in the medico-legal report is as under :

'Informant patient herself.

Alleged to have sustained deep burn injury today at 3 p.m. when the kerosene stove she was using got burst and caught fire to her clothes.'

11. It may be noticed here that Gurcharan Singh was accompanying Hardeep Kaur when she was admitted in the hospital.

12. The second dying declaration over which a serious controversy ranges whether it was recorded or not by A.S.I. Khilari Singh is the document marked 'Z'. A.S.I. Khilari Singh denied to have recorded the statement marked 'Z' of Hardeep Kaur. The defense version is that ASI Khilari Singh had recorded the statement marked 'Z' of Hardeep Kaur on 18th October, before 7 p.m. and there is an endorsement of Dr. J. L. Srivastava to this effect on Ex. PG. the endorsement is as follows :

'Statement over 18th October, 7 p.m.'

Sachar J. is of the view that the statement marked 'Z' is a fabricated document and that no such statement was recorded by ASI Khilari Singh. Sharief-Ud-Din J. has expressed a view to the contrary.

13. Thus, there are two conflicting dying declarations on the record one implicating the two appellants and the second showing that the deceased had caught fire accidentally. The dying declaration Ex. PC was recorded by PW 4 Smt. Mamta Sehgal Metropolitan Magistrate on 19th October, at about 1 p.m. The Said statement wholly implicates the two appellants. The said dying declaration, if believed to be true, would prove beyond doubt that Hardeep Kaur was intentionally burnt to death. Sachar J. has found the dying declaration Ex. P.C. to be voluntary and true. Sharief-Ud-Din J. has held that the dying declaration Ex. PC has been made under influence of the relations and it is not a truthful statement. Two main reasons given by him for this conclusion are : (i) that in the first statement Ex. PZ the deceased had not stated as to who had poured kerosene oil on her and who had lit the match-stick whereas in the statement Ex. PC she has stated that appellant No. 1 had caught hold of her firmly and appellant No. 2 had picked up a tin containing kerosene oil and thrown oil on her shirt and legs and lit the match stick. According to Sharief-Ud-Din J. this is a definite improvement and has been introduced under the influence of the relations, and (ii) that in the statement Ex. PC the deceased had stated that on the way to the hospital her mother-in-law had forced her to make a statement that when she was heating the food for her husband she caught fire. But, significantly, the deceased in her statement Ex. PZ makes no mention of it. The necessity, according to Sharief-Ud-Din, J., to introduce this fact in the subsequent statement arose because of the different statements made by the deceased before the doctor at the time of the admission in the hospital and the statement marked Z. This, according to the learned Judge, was done in all probability under the influence of her paternal relations.

14. The fact that the dying declaration Ex. PC was made by the deceased before P.W. 4 Smt. Mamta Sehgal, Metropolitan Magistrate, admits of no doubt. The real task, to my mind, that confronts us is 'how far it is true'.

15. The deceased in the first part of the statement referred to the quarrels that took place on 17th October, and 18th October, immediately before she was allegedly set on fire by the appellants. We have no independent evidence regarding the quarrels between the couple on the night of 17th October, 1978. But there is ample and convincing evidence on the record regarding there quarrels

between the couple at about lunch time on 18th October, The deceased regarding the said quarrel, in her statement Ex. PC, had stated that her husband came in the noon at about 2 p.m. to take lunch and that it was after repeated requests that he took the food and that afterwards when she enquired about the milk he started beating her and she was beaten up very badly, so much so, that her tooth fell as a result of his fist blow. There is no medical evidence regarding the last part of the above statement, that is the fall of the tooth.

16. P.Ws. 1, 2 and 5 are the neighbours living in houses Nos. 13 and 14 just opposite to E-6, across the road. P.W. 1 Shakuntala resident of C-14, gave evidence that at about 1 or 1.15 p.m. she was resting after taking meal when she heard cries of a woman from outside, that she came out in the verandah and she felt that the cries were coming from the top floor of houses E-6, that at the same time the voice of a man was also heard, that she heard the cries as well as the voice of the man for about 2 or 3 minutes and then all was quite and she went back to her room, that after about 15/20 minutes again she heard the cries of a woman, that she came out in the verandah and heard somebody calling out from the ground floor as to what had happened, that voice was of a woman, that again it became quite and she went inside. In cross-examination the witness stated that the voice of the woman that she heard from the ground floor seemed to be of the grand mother of Gurcharan Singh (appellant No. 1). The witness further deposed that the appellants are religious minded and God fearing.

17. P.W. 2 Smt. Subhadra Butalia, a senior lecturer in Dyal Singh College and who lived in the first floor of C-13, testified that on 18th October after she had just finished lunch at about 1.30 p.m. she heard screams from the opposite house, that she rushed out to see what the matter was, that she came on the balcony of her house, that from the screams she could guess and felt that some body had died in the house that she heard a female voice saying 'Menu Chhad Dyo' and a male voice saying 'Chali Ja apne pyo de Ghar', that she heard some more voices also coming from that house, that after sometime the screams stopped and she thought that it was some domestic quarrel between the husband and the wife and she went back to her room, that after few minutes of her going inside she again heard screams, and this time they were more desperate, that she again rushed out and

went to the balcony and saw fire in the first floor room of that house, that it was a pyramid of fire, a big blaze going up to the ceiling, that she kept on asking people what had happened but it seemed no one knew anything. In cross-examination a suggestion was made to the witness that Kirtan was performed at the house of the accused with the help of loud speakers and she had objected to the use of loud-speakers and that she was giving evidence because of being aggrieved on that account. The witness candidly admitted that she had sent some persons requesting the accused not to use the loud speakers since they disturbed their peace but she emphatically denied that she had any bias or prejudice against the accused on that account. Another suggestion made to the witness was that a water pump was stolen from the ground floor of the house of the accused and they suspected the servant of the witness and on that account there were exchanges of hot words between her and the family of the accused. The witness expressed her ignorance about this fact.

18. P.W. 5 Prem Kaur, who is the owner of house No. C-13, testified that she had heard noise from the Barsati floor of property No. E6, but she could not make out what the noise was and it stopped after a short while, that in the meantime Mrs. Butalia cried out that there was fire, that she did not see any fire, but after sometime a taxi arrived and one girl wrapped in a bed sheet was put in the taxi. The witness further deposed that she had heard both the accused present in court crying out from the ground floor of their house as to what had happened. The witness in cross-examination stated that she had not seen any quarrel between the family members of the accused in the house and that the accused are very religious and they always go to Gurdwara and meet every body in a friendly manner.

19. Both the accused in their statements at the trial denied that there was any quarrel on 17th and 18th October, They further stated that Hardeep Kaur (deceased) was a girl of hot temperament and she was fond of modern ways and wanted to be completely independent whereas they are orthodox in their way of life and this was not liked by Hardeep Kaur and she was always annoyed with them and other family members. Gurcharan Singh examined himself as a defense witness and he denied that there were any quarrels on 17th October, and 18th

October. He stated that on 18th October he had not gone for lunch, and that it was at about 2.30 p.m. that he was sent for through a servant from his shop.

20. The testimony of P.Ws. 1, 2 and 5 puts it beyond any pale of doubt that there was a quarrel at about lunch time at the Barsati floor of E-6. P.Ws. 1 and 2 have in clear word stated that they heard the cries of a woman and the voice of a man P.W. 2 further testified that she heard the woman saying 'Menu Chhad Dyo' and the male voice saying 'Chali ja Apne pyo de Ghar'. The cries were heard first round about 1.30 p.m. and thereafter after a lapse of few minutes.

21. The presence of P.Ws. 1, 2 and 5 at their houses at the time of the occurrence cannot be doubted. These witnesses have no reason to make a false statement against the accused. Sachar, J. has put implicit reliance in the testimony of P.W. 2. Sharief-Ud-Din J. has termed her as 'not an independent witness'. The reason for this given by Sharief-Ud-Din, J. is the two incidents, that is, the witness objecting to the use of the loud speakers and the theft of the water pump and the accused suspecting the hand of the servant of P.W. 2 in that theft. Sachar, J. has called the said incidents as insignificant. I have very carefully gone through the statement of P.W. 2. I am in complete agreement with Sachar, J. that P.W. 2 is a witness of truth. There is no reason at all for doubting the veracity of her statement. Regarding the fact that there was a quarrel round about 1.30 p.m. P.Ws. 1, 2 and 5 unanimous. P.W. 2 has only added that she heard the female voice saying 'Menu Chhad Dyo' and male voice saying 'Chali Ja Apne Pyo De Ghar'. P.W. 2 resided on the first floor and she could have heard the cries more vividly and distinctly. The statement of the appellants that there was no quarrel is definitely not true. Further the statement of Gurcharan Singh (D.W. 5) that he had not gone to the house at lunch time on 18th October, also is not true. There can be no doubt that he had gone to the house at about 1.30 p.m. and there was a serious quarrel between the husband and the wife and the cries and shrieks of the deceased were heard by P.Ws. 1, 2 and 5.

22. As regards the maltreatment of the deceased by the appellants and Gurcharan Singh, P.Ws. 3 and 6 have substantially corroborated the statement of the deceased that after the death of her father-in-law, mother-in-law and the grand

mother-in-law has started harassing her and would not permit her to go out of the house. P.W. 3 Harbhajan Kaur (mother of the deceased) testified that Hardeep Kaur was mal-treated from the very beginning of the marriage by her husband and his family, and that whenever Hardeep Kaur visited her after her marriage she used to tell her that she was being treated very badly and that her husband Gurcharan Singh frequently gave her beating at the instigation of his mother and grand mother. In cross-examination P.W. 3 deposed that it is correct that one day before the incident there was marriage of her sister's daughter and both Gurcharan Singh and Hardeep Kaur had come and attended the marriage and also came to her house. She further stated that both Gurcharan Singh and the deceased had attended the marriage in a normal way and had stayed there till late night.

23. P.W. 6 Surinder Singh, brother of the deceased, gave evidence that on two or three occasions Hardeep Kaur in his presence had complained to her father against her mother-in-law and said that she was not treated well and not given proper meals. The witness further deposed that in December, 1977 Hardeep Kaur had come without the son and said that she was not treated well and that she stayed at the parents house for 3 or 4 days without the child and that she had gone to her husband's house at the persuasion of her father and father-in-law, and that after she never made any complaint. The witness was declared hostile and was cross-examined by the Additional Public Prosecutor and he was confronted with the statement made earlier by him regarding the mal-treatment of the deceased by the appellants but the witness denied to have made those statements.

24. Mr. Mathur, learned counsel for the appellants, contended that the statement of the deceased in Ex. PC. that on Tuesday night her husband had quarrelled with her and given her beating is belied by the testimony of P.W. 3 who has stated that on 17th October, the deceased and her husband had attended the wedding of her sister's daughter and they were there till late night. I do not agree in this contention. It is possible that the deceased and her husband had quarrelled after the deceased and her husband had returned from the wedding. I have carefully gone through the statement of P.W. 3 and I find no reason to disbelieve her. Her

statement is straightforward and worthy of belief. P.W. 6 has not wholly supported the earlier statement made by him before the police and it seems that he has tried to favor the accused. The statement of the deceased that the appellants ill-treated her seems to be true.

25. It is an admitted case that the deceased with her husband resided in the Barsati floor, and on the first floor the aunt of her husband lived and the grand-mother lived on the ground floor and the mother-in-law lived at a short distance in another house.

26. The statement of the deceased further is that on hearing the noise of the quarrel the grand-mother of her husband sent a message to her mother-in-law and both of them came upstairs and her husband abused her in their presence and said that she would be no more there before the evening of that day and that thereafter her husband left for the shop and the appellants stayed back and that both of them abused her and gave her severe beating and thereafter her grand mother-in-law caught hold of her and the mother-in-law picked up a tin containing kerosene oil and threw kerosene oil on her shirt and legs and thereafter lighted match-stick and then both of them went down.

27. Ex. PQ is the medico-legal report in respect of Hardeep Kaur. She was admitted in the Safdarjung Hospital at 3.40 p.m. on 18th October, 1978. The doctor who examined her found 60% deep burn injury involving lower part of the front of the abdomen, back of chest, right upper limb, patches over left upper limb, patches over right thigh and patches over left lower limb.

28. As earlier stated, Hardeep Kaur died on 2nd November, 1978. Ex. PU is the post-mortem report. The doctor who examined the body found deep burns present on lower part of the abdomen, back of chest and buttocks, right upper limb, patches over lower limb both sides involving an area of 60% of total body surface. The doctor found that the death was due to toxemia and septicemia as a result of burns. The doctor further opined that burns are ante-mortem and can be produced by flames.

29. The counter-version is that the deceased had caught fire while warming food on the stove by accident and for that support is sought from the alleged declaration said to have been made by the deceased before the doctor at the time of the admission in the hospital and the statement marked 'Z'. The statement marked 'Z' is said to have been recorded by ASI Khilari Singh a little before 7 p.m. The document marked 'Z' is a photo copy. The defense version is that ASI Khilari Singh had recorded the statement of the deceased a little before 7 p.m. and that thereafter he had got a photo copy of that statement prepared and given the photo copy marked 'Z' to Gurcharan Singh. ASI Khilari Singh has denied to have recorded any such statement. He stated that he only recorded the statement Ex. PZ of the deceased and that statement was recorded at about 8.30 p.m. and it was sent to the police station at 9.30 p.m. on the basis of which a formal report was recorded at 11.17 p.m.

30. Sachar, J., has found the document marked 'Z' to be a fabrication. Sharief-Ud-Din, J. has held that the statement marked 'Z' was recorded by ASI Khilari Singh at about 7 p.m. Sharief-Ud-Din, J. for this conclusion has relied upon the enforcement in Ex. PG ('statement over 7 p.m.'). He has further observed that the doctor had certified at 6.55 p.m. that the patient was fit to make the statement and that ASI Khilari Singh could not have waited till 8.30 p.m. to record the statement. Sharief-Ud-Din, J. has not accepted the Explanationn given by ASI Khilari Singh that the deceased was being given the drip and the doctor advised to record the statement after the drip was over. He has further accepted the statement of P.W. 6 that the statement of the deceased was recorded at about 6.30 or 7 p.m.

31. I have very carefully perused the record and I am inclined to agree with the reasoning and conclusion of Sachar, J. that the document marked 'Z' is a dubious and suspicious documents and is a fabrication.

32. The statement marked 'Z' does not bear the signatures of ASI Khilari Singh. If Khilari Singh had recorded the statement marked 'Z' in the normal course as alleged he would have definitely signed it and sent it to the police station. The deposition of DW 5 of the manner in which the statement marked 'Z' came into existence and was delivered to him is not convincing. DW 5 testified that after ASI

Khilari Singh had recorded the statement marked 'Z' he was going to the police station and he accompanied him and in the way ASI Khilari Singh said that he (the witness) may require a copy of the statement and since it will take time to prepare a copy by hand it would be better to get a photostat copy of the same and that they went to Bhogal and got a photostat copy marked 'Z' of the statement and which ASI Khilari Singh gave to him. I am not at all impressed with this statement. It seems the document marked 'Z' was prepared sometime after 18th October, either with the help of ASI Khilari Singh or under advice of some other person.

33. The statement marked 'Z' is a brief document and it reads as under :

'I reside at the above mentioned address along with my husband and we got a son who is about 10 months old. Today at 2.30 p.m. I lit the stove to heat up the meal (subzi), as my husband was about to reach home from the shop to take the lunch. First I heated up the milk for my child and took it down from the stove. Thereafter, the stove went off and the oil started flowing in excess. As soon as I lit the stove with match-stick, the fire flames blasted suddenly, and my polyester suit which I was wearing caught the fire. In the meantime I cried for help saying 'Bachao Bachao'. Then the grandmother of my husband came upstairs running from the ground floor and she wrapped me into a cloth. Thereafter, my grandmother-in-law sent a servant to the shop, who while informing my mother-in-law at E-29, Jangpura Extension, went to the shop and came back with my husband Gurcharan Singh. Then they removed me to Safdarjung Hospital by a taxi and got me admitted. Neither there had been any quarrel between me and my husband, nor I had any complaint against the family. I do not have any enmity with any one. This occurrence has taken place only because of catching of fire by the clothes from the stove. I have heard the statement and the same is correct.

Left thumb impression at two places.

Sir,

The right thumb is burnt.'

34. There are obvious false statements in the document marked 'Z'. The deceased is alleged to have stated that she had lit the stove to warm the meal (subzi) as her husband was about to reach home from the shop to take the lunch. D.W. 5 deposed that he did not go to home for lunch. We have definite evidence that Gurcharan Singh had gone home. There was violent quarrel between the husband and the wife. The screams and cries of the deceased were heard by the neighbours P.Ws. 1, 2 and 5. I have earlier dealt with the statement Ex. PC and found that the statement of the deceased that her husband had come and taken the food and thereafter there was a quarrel and she was beaten is true, and, therefore, the statement in the document marked 'Z' that she was heating the vegetables when she caught fire is definitely not true. It is further stated in the statement marked 'Z' that on catching fire the deceased cried for help saying 'Bachao Bachao' and the grand mother of Gurcharan Singh came running from the ground floor and wrapped her in a cloth.

35. The evidence produced by the accused during the trial is that the grand mother was physically incapable to climb the stairs. Appellant No. 2 in her statement under S. 313 of the Cr.P.C. stated that when she reached the house appellant 1 was on the ground floor as she could not climb the stairs and she went up and found Hardeep Kaur standing naked in the stairs. The above would prove (if the accused are to be believed) that the statement in document marked 'Z' that the grand mother of Gurcharan Singh had come upstairs running from the ground floor is not true. It is further stated in the document marked 'Z' that the grandmother after wrapping her in a cloth sent a servant to the shop who while informing her mother-in-law at E-29, Jangpura Extension, went to the shop and came back with her husband Gurcharan Singh. Appellant 2 in her statement under S. 313 of the Cr.P.C. stated that her brother-in-law's daughter Amrit Kaur had come to call her. It is not understandable how the deceased could know (unless told by Gurcharan Singh) that appellant No. 1 had sent a servant to call appellant No. 2 and Gurcharan Singh. Towards the end it is stated that there was no quarrel between her and her husband, nor she had any complaint against the other members of the family. This part of the statement is proved to be false by the deposition of P.Ws. 1, 2 and 5. There is absolutely no doubt that at about 1.30 p.m. the husband had gone home and there was a violent quarrel between the husband and the wife and

the cries of the wife were heard by P.Ws. 1, 2 and 5 living in the houses across the road.

36. The above would show that most of the statements in document marked 'Z' are factually not true. This would lead to the conclusion that the deceased had not made the alleged statement marked 'Z' and it is a fabrication.

37. Great reliance has been placed on the statement of the deceased alleged to have been made to the doctor at the time of the admission in the hospital that she had sustained deep burn injuries at 3 p.m. when the kerosene stove she was using got burst and her clothes caught fire. Admittedly, Gurcharan Singh, the appellants and other relations of the husband were accompanying Hardeep Kaur to the hospital. There is no doubt that in the document PQ it is specifically stated that the above information was given by the patient herself, but in the circumstances of this case it seems that either the said information was given by the husband or the deceased was persuaded to make that statement. The endorsement on Ex. PG 'statement over 7 p.m.' is not above suspicion. The patient was certified to be fit for making the statement at 6.55 p.m. The statement marked 'Z' could not have been recorded in 5 minutes. It seems that from the very start the line of defense had been thought out and thereafter all efforts were made to show that the incident was accidental.

38. My conclusion on this aspect of the case is that the document marked 'Z' is a fabrication and the statement before the doctor that the deceased had caught fire while heating food on the stove was actually made by Gurcharan Singh and his family members accompanying him or under their pressure by the deceased.

39. The deceased in Ex. PC has stated that after she was set on fire she cried and tore her shirt and threw it away and that only after repeated requests that the daughter of the sister-in-law of her mother-in-law had cut the string of her Salwar and that she covered herself with a curtain and that only after repeated requests her aunt gave a sheet (chadar) and she was first removed to Jeevan Hospital and thereafter to Safdarjung Hospital. Ex. PL is the seizure memo regarding the articles that were produced by Gurcharan Singh before the police at the Safdarjung Hospital. The seizure memo shows recovery of one big size curtain of

light almond colour. The recovery of the curtain supports the statement of the deceased reproduced above.

40. The statement of the deceased in Ex. PC that her aunt covered her with a sheet (chadar) finds corroboration from the testimony of P.Ws. 1, 2 and 5. The said witnesses testified that they saw a woman wrapped in a bed sheet coming out of the house and being taken away in a taxi.

41. As regards that actual act of burning the deceased stated before the Magistrate that her mother-in-law picked up a tin containing kerosene oil, threw oil on her shirt and legs and lit the match-stick. The medical evidence supports the above statement. The post-mortem report shows that deep burns were found on lower part of the abdomen, back of chest and buttocks, right upper limb and patches over lower limb, both sides, involving an area of 60% of total body surface.

42. Mr. Mathur vehemently contends that the deceased in the statement Ex. PZ had not ascribed any individual role to the appellants whereas in the statement Ex. PC the deceased has made a marked improvement and ascribed particular role in the crime to both the appellants and this would show that the statement Ex. PC was made under the influence of her parental relations. The environment and the conditions in which the two statements were made and recorded must not be overlooked. The statement Ex. PZ was made at about 8.30 p.m. before ASI Khilari Singh. The deceased must be in a great agony at that time. She was further surrounded by the husband and other relations. The statement Ex. PC was made on 19th October, at about 1 p.m. The said statement was before a Magistrate. Only persons present at that time were the Magistrate and the doctor. The deceased must be mentally composed when she made the statement Ex. PC. The statement Ex. PC is a detailed statement. We also must not ignore that the role of ASI Khilari Singh in the investigation is not completely above board. There is a serious doubt that the statement marked 'Z' might have been procured with the connivance of ASI Khilari Singh. It is true that in the statement PZ the deceased has stated that she could not see as to who poured kerosene oil on her clothes and who lit the fire whereas in EX. PC she has stated that her grand mother-in-law

had caught her firmly and the mother-in-law had thrown kerosene oil on her and lit the match stick. The deceased must have been at the time of the making of the statement Ex. PC able to recollect all the facts and make a coherent and clear statement. The statement Ex. PC was made before a Magistrate at the earliest opportunity and was not in the result of tutoring by interested parties. I find that the dying declaration Ex. PC is true. It is substantially corroborated by the deposition of P.Ws. 1 and 2 the medical evidence.

43. Another fact which cannot be overlooked is that the deceased after making the statement Ex. PC lived for 15 days. Numerous relations and fiends must have visited the deceased in this interval of 15 days, but not one person has been produced to whom the deceased may have said that she had received burn injuries by accident. There was no request on behalf of the appellant or Gurcharan Singh to have another statement of Hardeep Kaur recorded by a Magistrate.

44. Shri Mathur contends that Sachar, J. has misread the statement of P.W. 2 To appreciate the contention, of passage from the judgment of Sachar, J. has to be extracted and it reads as follow :

'She has, however, corroborated two important facts which go to support the version of the prosecution that the death was caused by unnatural means. She has deposed that the female voice coming from inside the house was shouting 'Menu Chad Deo' (Release me). Now this statement is inconsistent with the fact that death was caused by accidental fire and that the appellants were not present at the time of fire. Rather it shows clearly that somebody was holding the deceased and she was making effort to extricate herself - thus it shows that there was something sinister happening inside the house and this is also supported by this witness. Now this witness states that she heard a voice shouting 'Chali Ja Apne Pyo De Ghar' which, however, is recorded in her earlier statement as 'Tuje Tere Bhap Ke Pas Bhej Kar Chorenge' (will see to it that you are sent to your father). But this minor difference is of no consequence. Both expression broadly have the same significance. Thus, we have a situation where the deceased is struggling to free herself and also being threatened and abused and being turned out of the husband's house, and at the same time big blaze of fire burns the

deceased and she is removed to the hospital, are deposed to by this witness. Is any conclusion possible except that here was the deceased being beaten and put on fire, as is mentioned in the dying declaration ! This witness P.W. 2, therefore, corroborates in material particulars, if corroboration was at all necessary, which in law of course it is not, that burning of the deceased was not an accidental act, but was rather a deliberate one.'

Shri Mathur contends that according to the statement of P.W. 2 the incident was in two stages, in the first stage, cries and shrieks were heard and the female voice was heard saying 'Menu Chad Deo' and the male voice saying 'Chali Ja Apne Pyo De Ghar' and that according to P.W. 2 thereafter there was calm for sometime and after a few minutes again shrieks were heard and this time the shrieks were more desperate. The contention of Shri Mathur is that Sachar, J. on the basis of the above statement has wrongly come to the conclusion that the deceased was struggling to free herself and the husband was abusing and threatening her to turn her out of the house and at the same time big blaze of fire was seen.

45. On a careful perusal of the statement of P.W. 2 I find that P.W. 2 had heard shrieks and cries two times. It was during the cries heard first time that a female voice was heard to say 'Menu Chad Deo' and the male voice saying 'Chali Ja Apne Pyo De Ghar'. According to P.W. 2 after 2 or 3 minutes these cries and shouts had died down and after a few minutes she had again heard cries which were more desperate and soon thereafter she saw a big blaze of fire. Both P.Ws. 1 and 2 have stated that they again heard cries. P.W. 2 further added that the cries this time were more desperate and soon thereafter she saw a pyramid of fire. The above evidence strongly corroborates the statement of the deceased that the appellants, after her husband left, had beaten her. Her cries must have become desperate when she saw oil being thrown on her. If the deceased was committing suicide there would be no occasion for her to scream and cry. The above discussed evidence rules out the possibility of suicide.

46. As regards the theory that the deceased caught fire by the bursting of the stove, I find no evidence of stove bursting. The scene of the crime was inspected in the evening of 18th October, and no cooked food or cooked vegetables were

seen at the scene of the crime. I have disbelieved the defense version that the deceased was warming the food for her husband when her clothes caught fire from the stove. There appears to be no doubt that the appellants were in the Barsati floor when the occurrence took place.

47. Having excluded the possibility of the deceased committing suicide or her clothes catching fire accidentally the only alternative left that she was intentionally set on fire, as alleged by the prosecution, is to be accepted as true.

48. For these reasons, I agree with the opinion expressed by Sachar, J. that the appeal by Harbans Kaur should be dismissed and the conviction and sentence awarded by the trial Judge should be affirmed.

49. The appeal shall now go before the Bench of Sachar, J. and Malik Sharief-Ud-Din, J. They will make the order on the appeal. The appeal by Harbans Kaur will have to be dismissed in view of what I have said in my opinion. The appellant is on bail. Her bail bonds will be cancelled. She shall be taken into custody forthwith to serve the sentence awarded to her.

50. Order accordingly.

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