

**Kamal Kumar Vs. the State**

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**Court :** Delhi

**Decided On :** Feb-10-1995

**Reported in :** 1995IAD(Delhi)915; 1995CriLJ2204; 1995(1)Crimes735; 59(1995)DLT65

**Judge :** P.K. Bahri and; S.D. Pandit, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 45 and 47

**Appeal No. :** Criminal Appeal No. 90 of 1990

**Appellant :** Kamal Kumar

**Respondent :** The State

**Advocate for Def. :** N.K. Handa, Adv.

**Advocate for Pet/Ap. :** Ms. Geeta Mittal, Adv

**Judgement :**

**S.D. Pandit, J.**

1. Kamal Kumar s/o Ram Ji Lal r/o F-72. Gali No. 5, Dakshin Puri, New Delhi stands convicted of the offence punishable under section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay a fine of Rs.

2,000/- and in default to suffer RI for Six months by the Additional Sessions Judge, Delhi in Session's case No. 235/88.

2. Deceased Roop Kumari is daughter of P.W. 3 Dharam Pal r/o F-509 Dakshin Puri, Dakshin Puri, New Delhi. This P.W. 3 Dharam Pal s/o Kishan Lal has got in all seven children and deceased Roop Kumari was his second child. His eldest son Chandar Sen is married. It seems that as the appellant and deceased Roop Kumari were residing in one and the same locality, they came in contact of each other and the said contact developed into a love affair between the two. Roop Kumari had left her education after 9th Standard about a year prior to incident. Roop Kumari was writing love letters to the present appellant Kamal Kumar and appellant was reciprocating the same. But it seems that when the family members of both deceased Roop Kumari and appellant Kamal Kumar came to know about the said love affair between the two, they had opposed their union. Roop Kumari's parents were not ready and willing for her marriage with appellant Kamal Kumar. In order to divert her attraction towards appellant Kamal Kumar Roop Kumari was taken to her mother's parental village by her father and kept there for some time. He had also assaulted her to force her to give up affair with appellant Kamal Kumar. P.W. 3 Dharam Pal was also trying to settle her marriage with somebody else. He had brought one or two proposals but deceased Roop Kumari refused to accept the said proposals and she insisted that she would marry only with the present appellant.

3. It is the case of the prosecution that ultimately about four months to the incident which took place on 19th January, 1988, present appellant Kamal Kumar and Roop Kumari had performed a marriage ceremony in some temple. As there was opposition from his parents Kamal Kumar started residing with Roop Kumari in his paternal aunt's house in Trans Jamuna. About 20-22 days prior to the date of incident appellant Kamal Kumar and Roop Kumari shifted to her mother's sister's house at F-495, Dakshin Puri, New Delhi. The said house of P.W. 10 Bhoop Singh and P.W. 6 who is the sister of Roop Kumari's mother is a two storeyed building. On the ground floor there are two rooms and on the first floor there is one room. The staircase for going on the first floor is outside the two rooms on the ground floor. Thus any person can straightaway go on the first floor by making use of the

staircase without coming in the ground floor of the said building. According to the prosecution deceased Roop Kumari and present appellant Kamal Kumar were residing in the said room of the house of her maternal aunt in F-495, Dakshin Puri, New Delhi.

4. It is further case of the prosecution that the present appellant Kamal Kumar was not doing any business or occupation and had no source of income. But he used to indulge in drinking. He used to bring his friends at the house. Appellant Kamal Kumar used to raise quarrels with Roop Kumari and assault her. It is further claim of the prosecution that appellant Kamal Kumar was bringing his friends at his house and was asking Roop Kumari to indulge with them sexually and as he was refusing to do so the quarrels between the two used to take place and he used to assault her.

5. The incident in question is alleged to have taken place at about 10.30 p.m. on 19th January, 1987. On that day the appellant had brought his friends in the night at about 10.00 - 10.15 p.m. and after some time by about 10.30-10.35 p.m. P.W. 1 Bal Kishan s/o Kalu Ram who is real brother of Roop Kumari's mother, Roop Kumari's maternal aunt, Roop Mati P.W. 6 and Roop Mati's husband P.W. 10 heard shrieks 'bachao' 'bachao' coming from the first floor of the house. P.W. 1 Bal Kishan used to come to Delhi in order to earn as a labourer and used to sleep in the house of his sister P.W. 6 Roop Mati at night time. On hearing the said shrieks P.W. 6 Roop Mati opened the door of her house and went upstairs. At that time she found Roop Kumari in flames. When she was getting down she also found the present appellant going away. By that time P.W. 1 Bal Kishan was also climbing the staircase. He also saw the present appellant going away. P.W. 6 Roop Mati ran to her sister's house in order to inform the parents of Roop Kumari whereas Bal Kishan went upstairs. He opened the room which was closed from outside and then he put a quilt around Roop Kumari and extinguished her fire. When P.W. 1 Bal Kishan had gone upstairs he had asked Roop Kumari as to how she had sustained burns and at that time Roop Kumari had told him that Kamal Kumar had sprinkled kerosene on her. She had called Kamal Kumar a sharabi and after sprinkling kerosene on her he set fire on her and closed the door from the outside.

6. By that time P.W. 10 Bhoop Singh, parents of Roop Kumari, her elder brother Chander Sen, some neighbours gathered there. thereforee they decided to remove injured Roop Kumari to hospital. They got a vehicle and then they removed her to Safdarjang Hospital. The constable on duty in the hospital informed the police of Ambedkar Nagar Police Station about she being admitted in the hospital. Then Ram Pal Singh, Police Station Officer of Ambedkar Nagar Police Station went to Safdarjang Hospital and then he requested Shri I. S. Cheema, SDM, South Delhi to record her dying declaration. Accordingly SDM Shri I. S. Cheema had gone in the hospital and he recorded her dying declaration at 6.15 a.m. Her dying declaration was treated as first information report and the offence was registered at FIR No. 12/87 at 7.30 a.m.

7. In her dying declaration Roop Kumari had stated that on that day her husband had returned home along with a friend in drunken condition. He used to return home daily in a drunken condition and used to ask her to indulge in sexual intercourse with other men which she used to refuse. But on that action he set her on fire by pouring kerosene oil on her person and fled away after locking the room. She raised an alarm whereupon her maternal aunt and her husband Bhoop Singh extinguished the fire after opening the lock of the room and thereafter they called her parents who took her to the hospital.

8. When Roop Kumari was taken in the Safdarjang Hospital it was found that Roop Kumari was sustaining 100% burns. According to P.W. 8 Dr. Sunil Kalra, Roop Kumari had given the history at the time of her admission that her husband had poured kerosene on her and set on fire on 19th January, 1987 at about 11.00 p.m. Though Roop Kumari was given the necessary treatment, as she had sustained about 100% burns she ultimately met with death on 20th January, 1987 at about 4.45 p.m.

9. After registering the offence P.W. 15 SI Ram Pal had gone to the house of P.W. 6 Roop Mati and P.W. 10 Bhoop Singh. There he attached two bottles, one smelling of a Alcohol and another smelling of kerosene, a half burnt saree, a blouse, a bra, both smelling of kerosene and 2-3 other pieces of burnt cloth. He recorded statements of P.W. 1 Bal Kishan, P.W. 6 Roop Mati, P.W. 3 Dharam Pal,

father of Roop Kumari and P.W. 10, Bhoop Singh. Thereafter he had prepared inquest and had arranged to send the dead body for post-mortem. He recorded statements of other witnesses. He collected the MLC Report and he also arrested the present appellant and on completion of necessary investigation sent up the charge sheet against the present appellant for the offence punishable under Section 302 of the Indian Penal Code in the Court of Metropolitan Magistrate.

10. As the offence punishable under Section 302 is exclusively triable by the Court of Sessions the learned Metropolitan Magistrate committed the accused to the Court of Sessions by his order dated 17th August, 1987. A charge was framed against the present appellant on 27th September, 1987 for the offence punishable under Section 302 of the Indian Penal Code. Appellant pleaded not guilty to the charge. His defense is of total denial and false implication.

11. In order to prove this case against the appellant the prosecution has examined in all 15 witnesses. As against this the appellant has examined himself on oath and he had produced 16 letters sent by Roop Kumari to him. According to him he and Roop Kumari had never married. They were never living together and the false case is concocted against him.

12. The learned Additional Sessions J. had found that dying declaration of Roop Kumari was consistent, cogent and clear. He found them to be believable and accepted. He accordingly accepted the same and held the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code and sentenced him as stated earlier.

13. (a) Being felt aggrieved by the said decision the appellant has preferred the present appeal before this Court. As appellant was not in a position to engage an advocate, Smt. Geeta Mittal was appointed as an amicus curiae to defend him. It is contended by Smt. Geeta Mittal, that the prosecution has failed to show that Roop Kumari and appellant Kamal Kumar were married and that they were living together as claimed by the prosecution. She contended that the alleged dying declarations are concocted and false. According to her from the circumstances on record it seems to be more probable that deceased Roop Kumari herself had committed suicide by setting fire to herself as her parents opposed her love affair

with the present appellant and had prevented her from marrying with him and had confined her illegally. thereforee in order to save their faces and to avoid the criticism from the society at large and relations, her parents have concocted this false case against the present appellant.

(b) As against this Shri Handa, the learned counsel for the State submitted before us that the prosecution has proved beyond reasonable doubt that deceased Roop Kumari and appellant were living together and there are clear dying declaration made by deceased Roop Kumari to P.W. 1 Bal Kishan, P.W. 7 SDM Shri I. S. Cheema and P.W. 8, Dr. Sunil. There are no circumstances on record to reject those dying declarations. thereforee, in the circumstances, the trial Court was quite justified in accepting the prosecution case and holding the appellant guilty of the offence with which she was charged. He, thereforee, contended that the present appeal be dismissed and the order of conviction and sentence passed by the trial Court be maintained.

14. Admittedly the present case is case in which there is no direct eye-witness for the alleged offence. The case of the prosecution is of the circumstantial evidence. It is settled law that in the case of circumstantial evidence the circumstances from which the conclusion is to be drawn are not only to be fully established but also that all the circumstances so established should be of the conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for being consistent with the innocence of the accused. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 . Their Lordships of the Supreme Court have considered the various cases of various High Courts as well as earlier decisions of the apex Court and have laid down the following principles in para Nos. 151 to 153 regarding the appreciation of circumstantial evidence :-

'151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental

and basic decision of this Court is Hanumant v. State of Madhya Pradesh, : 1953 CriLJ129 . This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail v. State of Uttar Pradesh, : (1969)3SCC198 and Ramgopal v. State of Maharashtra, : 1972 CriLJ473 . It may be useful to extract what Mahajan, J. has laid down in Hanumant's case (at pp. 345, 46 of AIR : (at p. 132 of Cri LJ) (supra) :-

It is well to remember, that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. 152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established;

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned must or should and not may be established. There is not only a grammatical but a legal distinction between may be proved and must be or should be proved as was held by this Court in Shivaji Sahebhrao Bobade v. State of Maharashtra, : 1973 CriLJ1783 , where the following observations were made :

'Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.'

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved;  
and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.'

15. thereforee, in view of the above principles the circumstances on which the prosecution has relied to prove its case against the present appellant will have to be considered by us. The prosecution has relied on the following circumstances in order to prove its case against the present appellant :

(1) That there was love affair between appellant Kamal Kumar and deceased Roop Kumari.

(2) Both appellant Kamal Kumar and deceased Roop Kumari had married about four months prior to the incident in question and they were living together as husband and wife since then till the date of incident.

(3) Both appellant Kamal Kumar and deceased Roop Kumar were living for about 19 days or thereabout in the house of P.W. 6 Roop Mati & P.W. 10, Bhoop Singh.

(4) Appellant Kamal Kumar and Roop Kumari were lastly seen together and Kamal Kumar was seen going away from the room where they were lastly seen together when Roop Kumari was burning in that room.

(5) Dying declarations of Roop Kumari.

(6) Roop Kumari had met with homicidal death.

16. The prosecution has examined P.W. 3 Dharam Pal, father of Roop Kumari, P.W. 1 Bal Kishan, maternal uncle of Roop Kumari, P.W. 6 Roop Mati, sister of

deceased Roop Kumari's mother, P.W. 10 Bhoop Singh, husband of P.W. 6. If evidence of these witnesses is seen then it would be quite clear that except P.W. 3 Dharam Pal, father of Roop Kumari the witnesses are not very frank to say that they were knowing about the love affair between appellant Kamal Kumar and Roop Kumari. According to them they came to know about the said love affair only after they had married. But as a matter of fact there is no dispute that there was love affair between appellant and Roop Kumari. Appellant has entered the witness box and has deposed on oath and he has admitted his love affair with deceased Roop Kumari. He has also produced 16 love letters written by Roop Kumari to him during his deposition on record. He has deposed that those letters are in the handwriting of Roop Kumari and they are also bearing her signatures. It is very pertinent to note that though P.W. 3 Dharam Pal is father of Roop Kumari, he is not frank and fair to admit, the fact that those letters are in the hand writing of his daughter and that they are also bearing her signatures. He goes to the length of saying that he did not know the handwriting and signatures of his daughter though he admits that both appellant and Roop Kumari were writing letters to each other. If the contents of the said letters are read then there is no difficulty in holding that those letters are written by deceased Roop Kumari to appellant Kamal Kumar. In the case of *Mobarik Ali Ahmed v. State of Bombay*, : 1957 CriLJ1346 , it has been held by the apex Court that one of the mode of proof of document is the contents of the document itself coupled with the circumstantial evidence on record by laying down the following principles :

'The proof the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Ss. 45 and 47 of the Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation of the person who is the recipient of the document, be in either a letter or a telegram, would be in a

reasonably good position both with reference of his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship.'

17. thereforee in view of the testimony of the present appellant and the admission of P.W. 3 Dharam Pal that there was love affairs between his daughter Roop Kumari and the present appellant and that they were writing letters to each other, the 16 letters produced by the appellant could be read into evidence as they are duly proved. If those letters are read then they also clearly show that there was love affair between appellant and deceased Roop Kumari. thereforee, in these circumstances, it will have to be held that the prosecution has proved the first circumstances namely, the appellant Kamal Kumar and deceased Roop Kumari had a love affair.

18. It is a case of the prosecution that there was a love marriage between appellant Kamal Kumar and deceased Roop Kumari about four months prior to the date of incident which took place on 19th January, 1988. This claim of the prosecution is denied not only during the cross examination of the prosecution witnesses by the appellant but also by making a statement on oath in his deposition. In order to prove this claim the prosecution is relying on the testimonies of P.W. 1 Bal Kishan, P.W. 3 Dharm Pal, P.W. 6 Roop Mati and P.W. 10 Bhoop Singh. All these four witnesses are close relations of deceased Roop Kumari. They are respectively maternal uncle, father, maternal aunt and maternal aunt's husband. Thus no independent witness is examined by the prosecution in order to show that there was a love marriage between appellant Kamal Kumar and Roop Kumari and that they were living together as husband and wife for about four months prior to the date of incident in question. We are aware of the legal position that merely because the four prosecution witnesses are related to deceased Roop Kumari their evidence could not be rejected on that count alone. It is expected by the law that their evidence need to be considered more scrupulously and then to find as to whether the same is believable or acceptable. If the evidence of all these four witnesses is seen then it would be quite clear that none of them is saying that their marriage had taken place on such and such date and at such and such place.

None of them has stated that she/he had attended the said marriage personally and had seen the performance of all the ceremonies of a valid marriage between the two. There is no documentary evidence like the registration of marriage or invitation card of the marriage or photographs of the marriage ceremonies or any letters giving admission of either appellant or Roop Kumari about the performing of the marriage. Hence there is no evidence to show that in fact there was marriage between appellant Kamal Kumar and Roop Kumari. It must be also further mentioned that no relation from Kamal Kumar's side has been examined to show that there was a marriage between Kamal Kumar and Roop Kumari and Roop Kumari and Kamal Kumar were known to him and were recognised by him as wife and husband. It is also very surprising that no neighbour of either P.W. 3 Dharam Pal or appellant Kamal Kumar is coming forth and saying that there was a marriage between appellant Kamal Kumar and Roop Kumari and he was knowing about the same for about four months prior to the date of incident.

19. It is also very pertinent to note that the father does not make a claim that Roop Kumari had run away with the present appellant and they had performed their marriage. He goes to the level of saying as under :-

'I had sent my daughter along with the accused, who started living with his maternal aunt intrans Jamuna before their legal marriage. I do not know if they performed any legal or social marriage later on or not.'

He has admitted in his cross examination that he had tried to persuade Roop Kumari not to indulge in the love affair with the appellant and bring bad name to the family. He had also given beatings to her and he had taken her to the native place where she had lived for a few days. He has also admitted that he was also trying to marry her somewhere else. If the letters of Roop Kumari are considered then it would be quite clear that therein also she has also written to the present appellant that her father was in search for a bridegroom and was making attempt to settle her marriage. If these things are taken into consideration then his above quoted evidence will only indicate that he is a great liar. A person who is not ready to admit even the signatures and hand writing of his daughter and who admits that he had assaulted his daughter on refusing to break her love affair with

the present appellant as according to him that would bring disgrace to the family still he wants us to believe that he allowed his daughter to go with the appellant and to live with him without performance of marriage. He clearly admits that there was no marriage between the two. The other witnesses also do not say that their marriage has taken place on a particular day or by performing any ceremonies. None of them say that as to what type of marriage they had performed and no independent witness is coming forth to support their claim. therefore, in the circumstances we are not prepared to accept and believe the claim of the prosecution that there was a marriage between appellant Kamal Kumar and deceased Roop Kumari as claimed by the prosecution.

20. It is the claim of the prosecution that after their marriage Kamal Kumar and Roop Kumari were living as husband and wife at trans Jamuna and thereafter in the month of January, 1988 they shifted to the house of P.W. 6 Roop Mati and P.W. 10 Bhoop Singh. Here again there is no evidence of any independent witness it support that claim of the prosecution witnesses, namely, P.W. 3 Dharma Pal, P.W. 6 Roop Mati, P.W. 10 Bhoop Singh and P.W. 1 Bal Kishan. The prosecution has not examined any witness from the side of the present appellant or any neighbour of him from Trans Jamuna to show that the appellant and Roop Kumari were in fact living together for about 3 1/2 months in the house of appellant's paternal aunt's house. The appellant Kamal Kumar has stated on oath as under :-

'I advised Roop Kumari that it was not good to leave the house against the will of her parents as parents of both of us were not agreeable for the marriage. I also, told her that it will not be possible for us to live anywhere after marriage when our parents and relatives were so against this marriage. I was working along with may father and brother in carpet cleaning job. As such we did not marry and I insisted her that she should make her parents agreeable to this marriage. I never stayed or resided in the house of maternal aunt of the deceased nor I ever visited her house. I had never resided with her together at any time at any place.'

If the cross examination of appellant is seen then it would be quite clear that his claim that they had not married is not at all challenged and disputed. What was

suggested to him in his cross examination was that in the month of January, 1988 he himself and Roop Kumari were living as husband and wife in House No. 459, Dakshin Puri, New Delhi on the first floor. That suggestion is denied by him. There is no suggestion to him that before residing there they were residing in the house of his paternal aunt. There is no suggestion to him that they had performed marriage about four months prior to the incident in question.

21. It is the claim of the prosecution that the present appellant and Roop Kumari were living in the house of P.W. 10 Bhoop Singh bearing No. F-495, Dakshin Puri, New Delhi. It is very pertinent to note that as regards this claim of the prosecution there is evidence of only close relations of deceased, namely, P.W. 1 Bal Kishan, P.W. 3 Dharam Pal, P.W. 6 Roop Mati and P.W. 10 Bhoop Singh. No neighbour of P.W. 6 Roop Mati has come forward to support the prosecution case. We have already discussed above that prosecution has miserably failed to prove that there was in fact marriage between appellant Kamal Kumar and Roop Kumari. When there is no marriage between them it is not at all probable that they were living together as husband and wife in the maternal aunt's house particularly when her father was pursuing her to give up her love affair with the present appellant as she was bringing disgrace to the family by doing so. It is also very pertinent to note that no material as brought by the prosecution on record to show that there were some articles in the said room of the first floor of the house of P.W. 10 Bhoop Singh from which it, could be inferred that appellant and Roop Kumari were living together. Admittedly a memorandum was prepared of the room where the alleged incident of burning of Roop Kumari had taken place the said memorandum does not mention any facts from which it is possible to hold that the present appellant and Roop Kumari were living together in that room. In the natural course of events and conduct if at all Roop Kumari and appellant were living together in that room as husband and wife then the clothes of both of them, the foodgrains and other articles belonging to both of them would have been found and would have been noted in the memorandum prepared when the said room was inspected after the alleged incident in question. Admittedly, the crime team had visited the said room and it is also admitted that photographs were taken of the said room but the said photographs are not produced on record. The failure of the prosecution to produce the said photographs on record entitled us to draw adverse inference against the

prosecution. In the circumstances of the case the adverse inference against the prosecution that could be drawn could be that if the said photographs were produced they would have shown that there were no articles belonging to both appellant Kamal Kumar and deceased Roop Kumari in the said room and there were no facts showing that both of them were living together in that room.

22. therefore, in view of the above discussion, we hold that prosecution has failed miserably to prove that there was a marriage between Kamal Kumar and Roop Kumari about four months prior to the date of incident and they were living together as husband and wife for about four months prior to the date of incident and lastly in the room in the house of PW-6 and PW. 10.

23. It is the claim of P.W. 1 Bal Kishan, P.W. 6 Roop Mati that on that fateful night of 19-1-1988 when they were asleep they heard cries Bachao Bachao raised by Roop Kumari and therefore they woke up. They further deposed that then P.W. 6 Roop Mati went upstairs and on seeing Roop Kumari burning in the room she got down and when she was getting down from the stair case P.W. 1 Bal Kishan had seen the present appellant coming down from the said stair case and the present appellant going away. It has come in the evidence of both Roop Mati and as well as Bal Kishan that at this time when the appellant was going away some of the neighbours of Roop Mati were present on the road in front of her house. Thus as per their evidence there were independent witnesses who had seen the appellant going away from the house of Roop Mati, but no independent witness is coming forth to support the claim of these two witnesses. 'We have already discussed the evidence of these two witnesses and other prosecution witnesses regarding their claim that there was a marriage between Roop Kumari and the present appellant and that they were living as husband and wife prior to the date of incident and that they were residing in the house of Roop Mati since the beginning of the month of January, 1988 and we have found that that claim of these witnesses and two other prosecution witnesses is not at all believable and acceptable. We have found that that version of professional witnesses is concocted and unbelievable. therefore, in view of the said finding of us it is not at all probable that the present appellant was present in the room where Roop Kumari was alleged to have been found burning at the time of the said incident.

24. Apart from the above, if the evidence of these two witnesses and their conduct is considered, then it would be quite clear that claim of them is not at all believable or acceptable. It is the claim of both these witnesses that they saw appellant Kamal Kumar getting down and going away. Both of them say that they did not question him in any manner. They also did not themselves detain him nor did they ask the persons who had gathered there to detain him and not to allow him to go away. In the natural course of human conduct when P.W. 6 Roop Mati had gone upstairs and found her niece Roop Kumari burning in the room and the appellant present outside that room on the terrace, she would have questioned him as what had happened, how she was burning. Similarly, she would have also questioned him as to way he was going away, as to where he was going. Similarly, when P.W. 1 Bal Kishan had seen him coming down on the stair case, in the natural course of human conduct, he would have questioned him as what had happened and why Roop Kumari had raised the shrieks 'Bachao' 'Bachao'. But he also did not behave like that. As per the evidence of P.W. 1 Bal Kishan, P.W. 6 Roop Mati was on the footsteps of the top of the said stair case whereas he was at the last footsteps of the said stair case when appellant was getting down. In that position, when Roop Mati had seen her niece burning and when she claims that there used to be quarrels between appellant and Roop Kumari and the appellant used to assault her, she would have asked her brother to detain the appellant and not to allow him to go away. Thus the conduct of these two witness who claim to have lastly seen the appellant in the company of Roop Kumari and going away from the place of burning is unnatural, improper and unacceptable. At the cost of repetition, it must be said that we have already discussed the claim of the prosecution that the appellant and Roop Kumari was residing in that room of P.W. 6 Roop Mati and found it to be false.

25. thereforee, in view of the above discussion, we are unable to accept the claim of the prosecution that deceased Roop Kumari was lastly found alive in the company of the appellant Kamal Kumar and that Kamal Kumar was present in that room at that time of her burning.

26. It is the claim of the prosecution that Roop Kumari has met with homicidal death and Roop Kumari has made dying declarations implicating the present

appellant. Before considering the question as to whether the evidence of dying declarations on record, could be accepted, it is necessary to consider as to whether in view of the material on record, it could be said without any hesitation of mind that Roop Kumari has met with homicidal death. There is no dispute of the fact that Roop Kumari had sustained burns on the night between 19th and 20th January, 1988 and on account of 100% burns she met with death of 20th January, 1988 at 4.45 p.m. Thus it is not disputed that her death is not natural and that she has met with unnatural death. But merely, because she has met with unnatural death, we cannot come to a definite conclusion that her death is homicidal. As her death is due to 100% burns, the said death might be either accidental or suicide or homicidal. In view of the material on record, it is quite clear that it is not the case of either of the accused or the prosecution that Roop Kumari has met with accidental death. It is not the claim that she had sustained accidental fire and due to the same, she had met with death. thereforee, in the circumstances, the possibility of her death being accidental is ruled out. thereforee, there remains the possibility of either suicidal burns or homicidal burns. It is the claim of the appellant that Roop Kumari has sustained suicidal burns and taking advantage of the said burns he has been falsely implicated in this case. According to him though there was love affair between him and Roop Kumari his parents as well as parents of Roop Kumari were not in agreement for their love and marriage. The parents of Roop Kumari as well as his own parents had opposed their love affair and had not permitted them to perform marriage with each other. The prosecution witness No. 3 Dharam Pal had tried to persuade Roop Kumari to give up love affairs with the present appellant and he had tried to do so by beating her and by removing her away from Delhi and keeping her to a far of village. He was trying to settle her marriage with another person and Roop Kumari was repeatedly informing him as well as her father that she would marry only with appellant and in case she was forced to marry with anybody else then she would commit suicide. Appellant Kamal has further stated in his testimony as a defense witnesses that their parents opposed their marriage and thereforee he had advised her that they should not marry. According to him she was repeatedly giving threats of committing suicide in her letters. The family of Roop Kumari had prevented her from meeting him and had even wrongfully confined her and thereforee, in the circumstances, she must

have ended her life by setting fire to her.

27. When there is question as to whether the death in question is suicidal or homicidal and when the plea is taken on behalf of the accused that the death in question is suicidal one then the Court will have to consider the material on record and find out as to whether the said claim is possible and probable. For that purpose it is necessary to consider the material on record. At the cost repetition it must be said that P.W. 3 Dharam Pal, father of Roop Kumari has admitted in his cross examination that he had tried to persuade her not to indulge in the love affair with the appellant and that she was bringing disgrace to the family by indulging in the love affair with the appellant. He has also admitted that he had also beaten her on some occasions. He has further admitted that he had taken her away from Delhi and kept her in a distant village at the native place of her mother. He has also admitted that he had searched for other proposals in order to settle her marriage. Along with these admissions of P.W. 3, 16 letters written by deceased Roop Kumari to the present appellant which are produced by him during his deposition will have to be considered. In her first letter she has written as under :-

'Oh, Kamal you are my life and you very well known when the life of some one goes, that person dies. I mean to say that if you ditch me I shall commit suicide. I shall depart from this world for ever. Now I want to see as to how long you will support me.'

In the second letter she has written as under :-

'In case, my family members do my marriage, I shall commit suicide. If your parents ask from you, you shall clearly tell them everything and on finding chance I shall also reject the marriage proposal arranged by my parents ..... If I marry, I shall marry with you and not any one else.'

Then in the 4th letter, she writes as under :-

'Kamal, your question 'with whom I was having physical relations earlier than you' burnt my inner portion. Tell me, whether I was having that condition earlier which I having at present or did you see me earlier in such a happy mood which at present

I seem to be.'

Then in the 5th letter she writes as under :-

'Kamal, you had asked from me as to what I could do if my parents arranged my marriage with some one else. My love, in that case, I will die but I shall never agree to become wife of any one else.'

Then in letter No. 6 she has asked appellant Kamal as to why he was not talking with her brother. In that letter and in the earlier letters she had written to him to talk to his brother. But in spite of that he was not seeing her brother. therefore, in this letter she was writing him again to see her brother and she makes remarks about him as under :

'I am a girl and still I don't feel fear whereas you are a boy and fearful one.'

Then she has requested him to see her brother as promised by him.

The in the 7th letter she writes as under'

'You, somehow talk with my brother at the earliest. Yesterday, some persons have come to my house for the purpose of seeing me and my papa is also going tomorrow to see the boy but I have refused the same and told them that they should not see any boy for me. So my parents want to select some boy for me at the earliest.'

'You at least can talk with my mother, Now, it is not time to crack jokes, it is the question of my life and the letter of yesterday had come in the hands of my papa. Now God knows what will happen ?'

In letter No. 9 she writes as under :-

'Today, an altercation ensued between me and my mummy, whereupon my mummy asked me as to why I do not elope with you (Kamal) when, I have already lost my modesty. These words sounded to me as my heart had been knifed. But what could I do I was helpless. Kamal, I am ready to co-operate you in all the circumstances. Please talk to my brother only once in my reference. I don't want to

die here.'

Then in 10th letter she writes as under :

'You are also among one of those lovers who only knows the art of making false promises and then to break them. Just think if some one had done like this with Guddi, (Guddi is the sister of Appellant Kamal Kumar) what would have been the conditions of your heart. This is only I who want to lead my life in a jolly manner. Death is preferable then this sort of sordid life. Like the other boys, were you also a hungry wolf only after the body of a female, you too behaved like a hungry wolf who in order to satisfy his lust, strikes on the unarmed people. It was only for you that I fall down in the eyes of my family, relatives and society. And what did you give me except false promises.'

Then in letter No. 11 she writes about her condition to the appellant by writing this :

'You had asked me to meet you and you also know how many checks have been put on my nowadays. It is you who are the reason of these checks put on me.'

Then in letter No. 12 she is writing about her being taken to the village and in the same letter she had also stated that she had told her father that she would marry only with appellant and she had made inquiries as to whether he had met her brother and she wanted him to meet her sister in law who had seen his photographs with her.

Then in 13th letter she has written as under :

'Now, you will never find tears in my eyes. You wrote about your friend. He, perhaps, were 'Kake' who said that the girl was mad who saw such days. I shall die before seeing such days. You will have to cross over my dead body before surrendering yourself to the influence of liquor.'

Then in the said letter she advised him to deposit some money in the bank every month for their future life and she again asked him to meet her brother and to write her about the same.

In the letter No. 14 she has written as under :

'When I again refused a marriage proposal suggested by my father, he spoke to me very harsh things but I paid no heed towards him. These people have stopped even my medical treatment. Still there is a deep wound present on my foot.'

Then in the same letter she also mentions that she does not get opportunity to meet him.

Then in 15th letter she has written that she feels suffocated in the four walls of her house and she writes as under :-

May I give my life You please suggest me what sort of death I shall embrace ?'

In the said letter again she is asking him as to whether he has any conversation with her brother.

In the 16th letter she writes as under'

'Your kindly arrange a Court marriage at the earliest as I am much harassed by the sarcastic remarks of the society. What else shall I write ?'

28. Unfortunately none of these 16 letters are having dates. thereforee, it is not known as to what is their sequence but the close reading and the analysis of the said letters clearly shows two things that she wanted to marry the present appellant at any cost and in case she was not allowed to do so then she was going to end her life. Her letters at Sl. Nos. 13, 14 and 15 also indicate and show that the present appellant was doubting her character. From the post-mortem notes it is quite clear that Roop Kumari was pregnant and the present appellant was doubting her character and was also avoiding to marry her. Though she was repeatedly asking him to convince her brother and to meet her brother, the appellant was avoiding the same. At the same time she was totally confined in the house and her father was trying to arrange her marriage with somebody else. In addition to this, her letters indicate that the present appellant was also avoiding her and failed to fulfill his promise to marry her. As appellant was not taking steps to seek that they are married at the earliest and as she was pregnant at the time of

the incident and all her family members, relations and even small children were passing sarcastic remarks against her it seems that she must have been induced to commit suicide as threatened by her in her letter.

29. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, : 1984 CriLJ1738 . Their Lordships have considered similar letters as well as the opinions of various psychiatrist experts and authors of human psychology and have made the following observations in para Nos. 40 to 45 as under :

'40. Thus, from the recitals in the letters we can safely hold that there was a clear possibility and a tendency on her part to commit suicide due to desperation and frustration. She seems to be tired of her married life, but she still hoped against hope that things might improve. At any rate, the fact that she may have committed suicide cannot be safely excluded or eliminated. It may be that her husband may have murdered her but when two views are reasonable possible the benefit must go to the accused. In order to buttress our opinion, we would like to cite some passages of an eminent psychiatrist. Robert J. Kastenbaum where in his book Death. Society and Human Experience, he analyses the causes, the circumstances, the moods and emotions which may drive a person to commit suicide. The learned author has written that a person who is psychotic in nature and suffers from depression and frustration is more prone to commit suicide than any other person. In support of our view, we extract certain passages from his book :

'The fact is that some people who commit suicide can be classified as psychotic or severely disturbed. (p. 242)

If we are concerned with the probability of suicide in very large population, then mental and emotional disorder is a relevant variable to consider. (p. 243)

And it is only through a gross distortion of the actual circumstances that one could claim all suicides are enacted in a spell of madness. (p. 243)

'Seen in these terms, suicide is simply one of the ways in which a relatively weak member of society losses out in the jungle like struggle. (p. 243)

The individual does not destroy himself in hope of thereby achieving a noble postmortem reputation or a place among the eternally blessed. Instead he wishes to subtract himself from a life whose quality seems a worse evil than death. (p. 245)

The newly awakened spirit of hope and progress soon became shadowed by a sense of disappointment and resignation that, it sometimes only, death could swallow. (p. 245)

Revenge fantasies and their association with suicide are well known to people who give ear to those in emotional distress.' (p. 251)

'People who attempt suicide for reasons other than revenge may also act on the assumption that, in a sense, they will survive the death to benefit by its effect.

.....

The victim of suicide may also be the victim of self-expectations that have not been fulfilled. The sense of disappointment and frustration may have much in common with that experienced by the person who seeks revenge through suicide ..... However, for some people a critical moment arrives when the discrepancy is experienced as too glaring and painful to be tolerated. If something has to go it may be the person himself, not the perhaps excessively high standards by which the judgment has been made ..... Warren Breed and his colleagues found that a sense of failure is prominent among many people who take their own lives. (p. 252)

41. The above observations are fully applicable to the case of Manju. She solemnly believed that her holy union with her husband would bring health and happiness to her but unfortunately it seems to have ended in a melancholy marriage which 'in view of the circumstances detailed above, left her so lonely and created so much of emotional disorder resulting from frustration and pessimism that she was forced to end her life. There can be no doubt that Manju was not only a sensitive and sentimental woman but was extremely impressionable and the letters show that a constant conflict between her mind and body was going on and

unfortunately the circumstances which came into existence hastened her end. People with such a psychotic philosophy or bent of mind always dream of an ideal and if the said ideal fails, the failure drives them to end their life, for they feel that no charm is left in their life.

42. Mary K. Hinchliffe, Douglas Hooper and F. John Roberts in their book *The Melancholy Marriage* observes that -

'Studies of attempted suicide cases have also revealed the high incidence of marital problems which lie behind the act. In our own study of 100 consecutive cases (Roberts and Hooper 1969), we found that most of them could be understood if the patients interactions with others in their environment were considered.' (p. 5) 43. Such persons possess a peculiar psychology which installs extreme love and devotion but when they are faced with disappointment or find their environment unhealthy or unhappy, they seem to lose all the charms of life. The authors while describing these sentiments observe thus :

' 'Hopelessness', 'despair', lousy and 'miserable', draw attention to the relationship of the depressed person to his environment. The articulate depressed person will often also struggle to put into words the fact that not only does there appear to be no way forward and thus no point to life - but that the world actually looks different.'

44. Coleridge in 'Ode to Dejection' in his usual ironical manner has very beautifully explained the sentiments of such persons thus :

'I see them all so excellently fair -

I see, not feel, how beautiful they are.' Personal relationships play a major part in the clinical picture and in this connection observed thus :

'Initially we applied these ideas to study of case of attempted suicide (Roberts and Hooper 1969) and although we did not assume that they were all necessarily depressed, we looked for distal and proximal causes for their behavior and found that ruptured personal relationships played a major part in the clinical picture.' (p. 50). The observations of the authors aptly and directly apply to the nature, mood and the circumstances of the unfortunate life of Manju which came to an end

within four months of her marriage.'

30. If those tests are applied to the above stated circumstances then the possibility of the deceased Roop Kumari committing suicide in the present case could not be said to be not at all probable.

31. If the situation of the room where the burnt body of Roop Kumari was found is taken into consideration then it becomes difficult to accept the claim of the prosecution that present appellant had poured or sprinkled kerosene on her and then he had set fire to her. If the evidence of P.W. 1 as well as the investigating officer is considered then it would be quite clear that in the room from where the burning body of Roop Kumari is alleged to have been taken to the hospital there were no spots of kerosene on the flooring. There were also no spots of any fire on the flooring as well as on the side wall of the said room. It has also come in the evidence of the prosecution witnesses that neither the curtains in the room nor any article in the room had any burning or even blackish spot or marking. If at all the present appellant had sprinkled or poured kerosene on Roop Kumari then there would have been definitely some spots of kerosene oil on the flooring of the said room. The incident alleged to have been taken place at about 10.30 p.m. It is not the case of the prosecution that Roop Kumari was fast asleep and when she was fast asleep appellant sprinkled kerosene on her and set fire to her. It is not also the case of the prosecution that hands and legs of Roop Kumari were tied by the accused. therefore, in these circumstances, in the natural course of human conduct she would not have remained stationary. She would have tried to run and move around the room when appellant was sprinkling kerosene on her and in those circumstances there would have been some spots of kerosene on the flooring. But no such spots are detected.

32. As per the evidence led by the prosecution one wick stove and one bottle smelling of kerosene was found in the room. The stove was found totally empty. It is also very pertinent to note that it has not been mentioned that the wicks of the stove were wet and that the stove seems to be in the use. If the kerosene from the stove is to be sprinkled or thrown then it would have been definitely fallen on the floor of the said room. In that case there would have been spots of kerosene oil on

the floor.

33. The two bottles which are attached from the said room were not lying on the floor. The bottle smelling of kerosene was lying on the shelf affixed towards western side of the wall of the room. If the appellant had sprinkled or thrown the kerosene on Roop Kumari as claimed by the prosecution if he would not have gone to keep the bottle on the shelf then in that period Roop Kumari would have definitely run away and she would have also raised hue and cry. It is very pertinent to note that as per the evidence of three relative witnesses they went to her room within a few seconds after they heard the cries bachao bachao and at that time she was completely in burn condition. It must be also remembered that if she was set on fire and as her body is shown to be found near the door of the said room she would not have allowed the present appellant to go out of the room. She would have embraced him with burning flame in order to catch him and in that case he would have also sustained burns but nothing of that sort had taken place.

34. Memorandum further shows that one half burnt, saree, one blouse smelling kerosene without any markings of burning and one bra smelling kerosene without marking of burning were found lying there on the floor. Admittedly, Roop Kumari had 100% burns and no clothes were found on her body when she was found in that room. therefore, it is surprising as to how these clothes, namely, the blouse, the bra and her half burnt saree could be lying there. The presence of these article indicates that they must have been placed there in order to support the prosecution claim that kerosene was sprinkled on Roop Kumari and then she was set on fire. The said clothes and the wick stove seems to have been planted there in order to support the prosecution case. The room in question is measuring only 9 x 11 and if fire was set to Roop Kumari there then these articles which were on the floor, namely, the bra smelling kerosene, saree and blouse smelling kerosene and the wick stove could have also caught fire and they would have been found in burnt condition.

35. As per the evidence of P.W. 1 Bal Kishan and P.W. 6 Roop Mati they had found one jute gunny bag burning by the side of Roop Kumari then as per their evidence as well as the evidence of P.W. 3 Dharam Pal and P.W. 10 Bhoop Singh

the fire on the body of Roop Kumari was extinguished with the help of a guilt. But memorandum of the attachment of the articles in the said room do not show the attachment of the said guilt and the jute gunny bag. Here again it will have to be mentioned, that the photographs of the said room were taken by the crime team and the said photographs are not produced on record. The failure of the prosecution to produce those photographs on record entitles us to draw adverse inference against the prosecution and the adverse inference that could be drawn against the prosecution in this case would be that the said photographs would have falsify that Roop Kumari had caught fires in the said room.

36. thereforee, if above discussed evidence coupled with the letters written by Roop Kumari and her physical condition of being pregnant are taken into consideration then it seems that the case that Roop Kumari herself setting fire to her body, is more probable, believable and acceptable and the claim of the prosecution that fire was set to her by the present appellant could not be accepted beyond reasonable doubt. thereforee, in view of the material on record we are unable to hold that the burn injuries sustained by Roop Kumari were homicidal one. We are unable to rule out the possibility of the said burns being suicidal. thereforee, in the circumstances, though the death of Roop Kumari is not natural we are unable to hold that it is homicidal one.

37. Then the last and the foremost evidence on which the prosecution is relying to prove its case against the present appellant is the evidence of alleged dying declarations made by Roop Kumari. It is by now well established that after the careful scrutinysation of a dying declaration if the Court is satisfied that the dying declaration is true and free from any effort to prompt the deceased, then there is no legal impediment is basing conviction on such a dying declaration even if there is no corroboration. 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 a 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 has no opportunity to test its veracity by cross examination. If the Court finds that the declaration is not wholly reliable and a material integral portion of the deceased version of the entire occurrence is untrue, the Court may in

circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. (see Pompeian v. State of Mysore, : 1965 CriLJ31 . thereforee bearing this aspect regarding the dying declarations we proceed to consider the evidence of dying declarations laid down by the prosecution in this case.

38. According to the prosecution deceased Roop Kumari had made oral dying declaration to P.W. 1 Bal Kishan, P.W. 3 Dharam Pal, P.W. 6 Roop Mati, P.W. 8 Dr. Sunil Kalra and P.W. 15 S.I. Ram Phal. Then prosecution is also relying on the alleged dying declaration of Roop Kumari recorded by P.W. 7 Shri I. S. Cheema. Sub-Divisional Magistrate. We will consider the dying declarations made before P.W. 7 Shri I. S. Cheema, SDM and P.W. 8 Dr. Sunil Kalra separately in subsequent paragraphs. We first deal with the oral dying declarations made to other prosecution witnesses.

39. According to P.W. 1 Bal Kishan Roop Kumari had made an oral dying declaration to him. He says in his examination in chief as under :

'I tried to extinguish the fire by guilt and in the meantime my brother in law, my sister and many other persons reached there. When I asked the deceased about fire she told me that accused Kamal Kumar after setting her on fire ran away after closing the door from outside. While telling this she used the word and addressed the accused as Kamal Kumar Sharabi.

40. Then this witness states in his cross examination that Roop Kumari had told about the said incident, only when he had talked with Roop Kumari after the fire was extinguished and she had no talk with her father.

41. If the above quoted evidence of P.W. 1 Bal Kishan is seen then it would be quite clear that as per his evidence he had questioned Roop Kumari in the presence of her father, his sister i.e. Roop Kumari's mother, his brother in law and others who reached there. Thus as per his evidence for that dying declaration his sister, sister's husband, P.W. 3 Dharam Pal and others were also witnesses. But if the evidence of P.W. 3 Dharam Pal is taken into consideration then it would be quite clear that he does not say that in his presence this P.W. 1 Bal Kishan had

asked Roop Kumari about her fire and Roop Kumari told him that she was set by her husband. No doubt it has not been specifically asked in the cross examination of P.W. 1 Bal Kishan as who was that sister and who was that brother in law because admittedly besides Roop Kumari's mother, P.W. 6 Roop Mati is also sister of Bal Kishan and besides P.W. 3 Dharam Pal. P.W. 10 M Bhoop Singh is also brother in law of the said witness. But if the evidence of P.W. 6, Roop Mati and P.W. 10 Bhoop Singh is taken into consideration both of them also do not say that P.W. 1 Bal Kishan had asked in their presence to Roop Kumari as to how she caught fire and Roop Kumari had replied that her husband had set fire to her and he ran away. It is also very pertinent to note that these three witnesses P.W. 3 Dharam Pal, P.W. 6 Roop Mati and P.W. 10 Bhoop Singh also do not claim that P.W. 1 Bal Kishan had told them that he had asked Roop Kumari about her fire and Roop Kumari had told that fire to her was on account of her husband setting fire to her.

42. It must be also mentioned that Roop Kumari had 100% burns. If the post mortem notes on record are taken into consideration then it would be quite clear that as per the said post mortem note trachea contained blackish mucous material. If this condition of her is taken into consideration then it becomes very doubtful that she was in a position to make any statement at that time. When the witness claims that there were other independent persons there when the alleged dying declaration was made by her, it would be naturally expected that some independent witness ought to have been examined by the prosecution to prove the same. We have already discussed above the material on record and we have come to the conclusion that the claim of this witness and other witnesses that Roop Kumari and appellant were living there is false one. We have also found the claim that Roop Kumari was set on fire in room and that her burns were homicidal is not acceptable. therefore, in the circumstances, the evidence about the alleged dying declaration made to P.W. 1 Bal Kishan could not be believed and accepted.

43. P.W. 3 Dharam Pal had stated in his examination in chief that when he came there he found that his daughter was found in a burnt condition wrapped in a quilt and then he asked her as to what had happened to her and she had told him that Kamal Kumar Sharabi had burnt her. But in his cross examination he says as

under :

'Roop Kumari had told others who were present there prior to my reaching there as well as Roop Mati the younger sister of my wife, who had come to call us at our house, that Kamal Kumar had burnt her. However, I could not have any talk with her when I reached there because she was in a perplexed state of mind on seeing her condition and immediately were arranging for taking her to the hospital. Roop Kumari deceased herself did not tell me as I could not have any talk with her that she had been burnt by Kamal Kumar.'

44. therefore, in view of the above evidence of the said witness in his cross examination his claim in his examination in chief that Roop Kumari had made a dying declaration before him could not be believed and accepted.

45. P.W. 6 Roop Mati says in her examination in chief as under :

'When I came back along with the parents of the deceased, the fire had already been extinguished and Roop Kumari was lying in burnt condition. When we asked as to what had happened, she told that her husband Kamal Kumar had burnt her after taking drinks and she addressed her husband as sharabi Kamal Kumar.

But she is contradicted by all the other witnesses namely, P.W. 1 Bal Kishan, P.W. 3 Dharam Pal and P.W. 10 Bhoop Singh who do not say that after return of Roop Kumari's parents all of them had asked her that what had happened to her and she made dying declaration as claimed by other witnesses. As a matter of fact the three other witnesses do not say that this witness had asked her anything and she had said anything regarding her fire.

46. Then Ex. 4-A D.D. No. 19 mentions that P.W. 15 Ram Phal had asked her in the hospital as to how she had sustained fire and at that time she named the present appellant but P.W. 15 SI Ram Phal himself does not say that he had asked anything to her and that she had made any dying declaration before him. therefore, in the circumstances, the claim of the prosecution that there was dying declaration before SI Ram Phal could not be accepted.

47. Thus the evidence of the oral dying declarations made before P.W. 1 Bal Kishan, P.W. 3 Dharam Pal and P.W. 6 Roop Mati could not be believed and accepted and consequently it could not be said that there was any dying declaration by Roop Kumari to any of these witnesses or any other person in the house of P.W. 6 Roop Mati.

48. The prosecution is relying on the dying declarations alleged to have been made to P.W. 8 Dr. Sunil Kalra and before P.W. 7 Shri I. S. Cheema, SDM. The MLC prepared by Sunil Kalra and his evidence on oath show that Roop Kumari gave history that her husband poured kerosene and set her on fire on 19th January, 1988 at about 11.00 p.m. What is mentioned by Dr. Kalra in the MLC regarding the said dying declaration is as under :

'Information given by patient herself alleged to have burn injuries at 11.00 p.m. on 19th January, 1988 at her residence F. 495, Dakshin Puri where her husband poured kerosene oil on her and lighted her clothes with match stick.

49. If the said MLC is carefully read then it would be quite clear that it has been mentioned therein that condition of patient is very critical. Pulse and B.P. could not be verified. Dehydration very high (dehydration ++) and cap. cir poor. It also further mentioned that the superficial and deep burn present over forehead, neck, chest, abdomen, back both upper limbs and lower limbs. 100% burns. It is very pertinent to note that in the said MLC it is nowhere mentioned that the patient is conscious and fit to make a statement. The recording of the history further shows that the case paper prepared at OPD which is usually prepared as soon as the patient is brought to the hospital does not mention that the patient was conscious and fit to make a statement and that patient had given any history regarding burns. In view of all above circumstances, it does not seem at all probable that in such a condition the patient would give the history as claimed by the doctor. Then the doctor's endorsement shows that patient had stated that she was set on fire at 11.00 p.m. whereas as per the case of the prosecution and the witnesses P.Ws. 1, 3, 6 and 10 she had sustained burns between 10.30 to 10.45 p.m. We have also found that there was no marriage between her and appellant and appellant was not her husband and that he was not at all present in that room of house No. F-

495, Dakshin Puri at the time of the incident. thereforee in these circumstances no reliance could be placed on the said endorsement made by doctor in the MLC as well as in his deposition regarding the same. It is quite probable that the said history might have been given by her other relations who wanted to take revenge. Against the present appellant who had caused her to take the drastic step of ending her life. It is quite probable that they might have taken this step to implicate the accused in order to save their own humiliation in the society as they had wrongfully confined her and prevented her from marrying with the present appellant. They might have been also motivated to take revenge against the present appellant as deceased Roop Kumari had become pregnant. In the absence of specific endorsement on the MLC that the patient was fully conscious and was in a position to make a statement along with the fact that the patient had 100% burns and the post mortem note showing that the trachea was containing blackish mucoid material it becomes very doubtful that Roop Kumari could have made that statement.

50. The same doctor has come before the Court to say that P.W. 7, SDM shri I. S. Cheema had come and he had found the patient in a fit condition to make a statement before him but he had not given that certificate on the dying declaration of Ex. P.W. 7A. If the case papers of the said patient are seen then it would be quite clear that in the case paper there is no mention that SDM had come at such and such time and SDM had recorded statement of the said patient at a particular time. Now this witness as well as P.W. 7 SDM Shri I. S. Cheema have deposed that doctor had examined the said patient in the beginning and had given an endorsement on the application in the hand of Shri Cheema that the patient was in a fit condition to make a statement. It is very pertinent to note that neither the doctor nor the SDM has stated that doctor was present there throughout the recording of the said dying declaration and has given an endorsement on the dying declaration that the patient was conscious throughout the recording of the said dying declaration.

51. If the case papers on record are seen then it would be quite clear that in the case paper it has been clearly mentioned that this Dr. Sunil Kalra had advised to give her pain killing medicines and his endorsement on the case paper shows that

he had prescribed morphine. The case paper further shows that 10 ml. of morphine was injected at 2.30 a.m. Even witness P.W. 10 Bhoop Singh has deposed that she was given pain killing medicines on 2/3 occasions before recording of the dying declaration. Now when she was given morphine at 2.30 a.m. and when the patient had 100% burns the claim of SDM that she made the dying declaration recorded by him could not be accepted without any hesitation of mind. The evidence of P.W. 10 Bhoop Singh clearly shows that the relations as well as the police were present all around the patient during the recording of the said dying declaration. In these circumstances even if the claim of P.W. 7 Shri I. S. Cheema that dying declaration recorded by him was made by her is accepted the possibility of the same being on account of tutoring of her relations as well as the police could not be ruled out. If her last 3-4 letters at Nos. 12 to 15 are seen then it would be quite clear that she was a bit fed up with the present appellant. Appellant was not meeting her brother. He was not trying to convince his mother. He was also doubting her character and her marriage with him could not take place on account of his not taking active part for arranging the same. She was also pregnant by him. therefore, in these circumstances if she was induced to say against the present appellant that he was responsible for her taking the drastic step or ending her life and therefore she should name him, then the possibility of her doing so could not be said to be an impossibility.

52. The dying declaration recorded by P.W. 7, SDM Shri I. S. Cheema is not in a question and answer form. The said dying declaration does not bear the endorsement of the doctor, in the beginning of the said dying declaration of having examined the said patient and found the same to be in a fit mental condition to make a statement. At end of the said dying declaration there is no certificate of the doctor that he was present by the side of the said patient at the time of the recording of the dying declaration and that the patient was conscious throughout. At the cost of the repetition it must be stated that the hospital case paper nowhere contains any endorsement or entry of Roop Kumari being conscious and being in a fit condition to a make a statement. On the contrary there are endorsement all along that her condition is very critical and there was high dehydration. therefore, in view of this position of the case paper, the absence of the certificate of the medical officer on the dying declaration does not permit us to accept the said

dying declaration without any hesitation of mind.

53. If the said dying declaration recorded by SDM Shri I. S. Cheema is considered along with other material on record then it would be quite clear that the contents therein are false. In the said dying declaration it has been mentioned by Roop Kumari that she had married Kamal Kumar but in view of the material on record, it is quite clear that claim of her is false. Then in the said dying declaration she has stated that on the day of the incident i.e. on 19th January, 1988 at about 10.30 p.m. Kamal Kumar returned along with another person in a drunkard condition and her husband was asking her to have sexual intercourse with other persons and at that time on her refusal her husband had poured kerosene oil set fire to her. In that case it that time of the incident there must be another persons present with her. If the cross examination of P.W. 6 Room Mati is considered then it would be quite clear that she has admitted she was keeping close watch on the visitors of the house of Roop Kumari. In that case if appellat had come on that night at about 10.30 p.m. with another person, the same would have teen noticed by P.W. 6 Roop Mati and other occupants of her house but neither Roop Mati nor her husband Bhoop Singh nor her brother Bal Kishan has deposed that on that night appellat had come at about 10.30 p.m. along with another person. As per the version given by Roop Kumari in her dying declaration that another person must be present there but neither Bal Kishan nor Roop Mati has deposed that when they rushed upstairs they found one more person present with appellat or that when they were going up they had seen one more person going away from the house. It is also very pertinent to note that neither P.W. 1 Bal Kishan nor P.W. 6 Roop Mati has deposed as to when appellat Kamal Kumar, as per their claim, had passed by their side on the stair case they had found him drunk. The width of the staircase was hardly of about 2 x 2.5. Had he been drunk as stated by Roop Kumari in her dying decision, then that fact 'would have been definitely noticed by P.W. 1 Bal Kishan as well as by P.W. 16 Roop Mati. We have also found that Roop Kumari and present appellat were not staying in that room on the upper storey of the house of P.W. 6. therefore, in these circumstances, it is quite obvious that the dying declaration in question is not containing an honest account and consequently the same could not be believed and accepted.

54. therefore, in view of the above discussion we hold that the prosecution has also failed to prove the circumstances of the valid and legal dying declaration made by Roop Kumari implicating the present appellant. The learned advocate for the appellant has cited before us various cases regarding non acceptance of dying declaration. None of the case cited before us are applicable on all forces to the facts before us and therefore, it is not necessary to discuss the cases cited by her, namely, Ganga Bishan v. State (1986) 1 Crimes 2 (Delhi), Surender Singh v. State (1989) 4 DL 279 : 1990 Cri LJ 170, Smt. Amrit Kaur v. State , Edward John v. State (Delhi Administration) , Vinod Kumar v. State : 1992(23)DRJ247 and Raj Bahadur v. State (1991) 2 A I Cri LR 985, in details particularly in view of the fact that the dying declaration on which the prosecution has relied in this case are found by us to be not believable for the reasons stated above. Similarly the learned counsel for the State has cited before us the case of Meesala Ramakrishan v. State of Andhra Pradesh (1994) 2 AD SC 93 : AIR 1994 SCW 1978. In that case on facts a dying declaration recorded on the basis of gestures was taken into consideration and accepted in view of the other circumstances on record. But we have already discussed above the circumstances which do not permit us to accept the dying declarations in question. In our opinion dying declarations in question are not true and correct statements. We have also found that the said dying declarations are falsified as well as have become improbable and unbelievable in view of the circumstances and material on record.

55. Thus we find that all the circumstances on which the prosecution is relying to prove its case against the present appellant have failed and they are not proved by the prosecution beyond reasonable doubt. We have found that the learned trial Court has not properly considered the circumstantial evidence on record and has therefore, erred in holding that the prosecution has proved its case against the appellant beyond doubt.

56. In these circumstances the appellant is entitled to get the benefit of doubt and we are in least hesitation to give the same to him. We, therefore, hold that the present appeal will have to be allowed.

57. Thus we allow the appeal. The order of conviction and sentence passed against the present appellant for the offence punishable under Section 302 of the Indian Penal Code is set aside. The appellant is acquitted of the offence with which he was charged. He be set at liberty forthwith, if not required in any other case. An intimation to the jail authorities be sent forthwith regarding this decision.

58. Appeal allowed.

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