

Surinder Singh and ors. Vs. State

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Court : Delhi

Decided On : Dec-05-1985

Reported in : 30(1986)DLT397

Judge : R.N. Aggarwal and; Malik Sharief-ud-Din, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 128 of 1984

Appellant : Surinder Singh and ors.

Respondent : State

Advocate for Pet/Ap. : F. Anthony,; O.P. Saini,; Kamlesh Dutt and;

Judgement :

Malik Sharief-Ud-Din, J.

(1) Appellant Surinder Singh is the brother of the other two appellants. They were charged under Section 302 Indian Penal Code aided with section 34 Indian Penal Code and were sentenced to serve an imprisonment for life.

(2) One Smt. Sumitra, daughter of Chandroop Singh Malik Public Witness 9 is the victim in this case. She was 16 years old and on 6-5-1981, just a few months before the date of incident, she was married to the appellant Surinder Singh. As

the evidence of both the sides led in the case shows, there were acute difference between the couple and according to prosecution these differences arose because Surinder Singh appellant was aggrieved that the deceased's father had not given sufficient dowry on their marriage. He was allegedly demanding a T.V.set and Fridge. The differences seem to have widened as the deceased had kept all her jewellery including 20 tolas of gold which were given to her by her in laws, at her father's house and despite persistent demands by Surinder Singh she failed to fetch them back. After the marriage she paid quite a number of visits to her parents' house and on the last occasion she allegedly returned on 18th October 1988 to her husband's house at the intervention of the father of Surinder Singh. She was quite reluctant to return to the fold of her husband and she apprehended danger to her life but was persuaded to go to her husband at house No. 25, Sarai Peepal Thala, Delhi, Her father, Chandroop Singh Malik Public Witness 9 sent her maternal cousin Public Witness 8 Ramesh Kumar with her with the direction that if the deceased is maltreated any more he should report it to him.

(3) The date of incident in this case is 22-10-81 at 6.45 Pm and the place of incident is house No. 25, Sarai Peepal Thala belonging to the accused. The allegation against the appellants is that at that time the deceased was caught hold by Santosh and Saroj, two sisters of Surinder Singh, while Surinder Singh appellant poured kerosene oil on her person and set her ablaze. She was taken to hospital by some neighbours and was allegedly also accompanied by Ramesh Kumar PW8. Ramesh Kumar PW8 at the time of incident had been sent to fetch vegetable and on return he found the deceased ablaze and he wrapped her with a bed sheet around her.

(4) The duty constable at hospital informed the police station as a result of which daily diary No. 11-A at police station Adarsh Nagar was recorded and was handed over to S.1. Ram Niwas Public Witness 17 who thereafter investigated the case. The prosecution case further is that Sumitra was not fit to make statement but on the next morning at about 10 Am she was declared fit to make statement and her statement was recorded by Sbri Pradeep Kumar Shrivastav. A.C.P. PW1. This statement is marked Ex. Public Witness 1/A and was made the basis for Fir No. 824 dated 23-10-81. Thereafter another statement of the deceased was recorded

by Shri D.R Jain, Metropolitan Magistrate in the presence of Dr. Praveen Chander Sharma Public Witness 15, who also made a contemporaneous record in respect of what she alleged to be the cause of death in the case history of the deceased.

(5) The prosecution case further is that at the time when she was removed to hospital she also disclosed the cause of her burning incident to Ramesh Kumar Public Witness 8 and on the morning of 23rd October 1981 a similar statement was made by her to her father Public Witness 9 Chandaroop Singh Malik.

(6) The stand of the accused is that of alibi. The appellant Surinder Singh has stated that soon after their marriage the deceased asked him to live separately from his parents but he did not oblige and on this account she was not happy with him. He goes on to state that his parents had given her gold ornaments weighing 20 tolas which she had kept with her parents and in his asking to bring the said ornaments she gave evasive replies as a result of which he felt that her parents were not returning the ornaments. According to him, on 21st October 1981 he had told the deceased to go to Bahadurgarh to the house of her parents with his younger brother Raj Singh and fetch the ornaments; that he did not return to his house on 21st October, 1981 and stayed at the place of his posting at Daboda. On 22nd October 1981 also he did not return to his house but was informed by Master Karan Singh father-in-law, of his elder brother Dalpat Singh at 8 , Pm in his office at village Daboda ; that the deceased had caught fire and had been removed to some hospital, that he returned to the village and learnt that Sat Narain, their tenant, had been sent to inform the parents of the deceased by his 'Bhabhi Santosh and also learnt that the deceased had been removed to Irwin Hospital, that he then went to Irwin Hospital along with Master Karan Singh. He has stated that he never had any quarrel with her on the question of dowry and she has made a statement against him at the instance of her parents According to him, Santosh appellant was not living with him in his house while Saroj was admitted in the Kanjhawala Health Centre from 20-10-81 to 24-10-81.

(7) Similar has been the stand taken by the other two appellants. The defense case further is that at the time when the deceased was removed to the hospital she had also made a statement regarding her incident of burning by telling Bal

Singh Rana Dw 1 and Mohinder Singh Dw 2 that she caught fire while lighting a kerosene lamp.

(8) We have heard the learned counsel for the parties at great length and have carefully considered their respective contentions as also the evidence and the circumstances. In fact, the whole case is based on the dying declaration and the evidence of last scene tendered by Public Witness 8 Ramesh Kumar. But Before we discuss the prosecution case and evidence it is necessary from our point of view to make a reference to the defense witnesses. This is necessary because the appellants have pleaded alibi and the onus of proving it squarely lies upon them. If the appellants succeed in establishing that at the time of commission of crime they were not at the place of incident then nothing survives. On the other hand, if they fail in their plea of alibi then it will become necessary for them to explain as to how the deceased got burnt. As many as 13 witnesses have been examined in defense which include the appellant Surinder Singh.

(9) Dr. Parveen Chander Sharma was examined in defense, though from our point of view wrongly, as he had already appeared as prosecution witness and all that the defense wanted to ask him in cross-examination had been asked from him. In any case Dw 1 and Dw 2 Bal Singh Rana and Mohinder Singh are the neighbours of the appellants. They have both stated that immediately on her cries they found the deceased burning. According to them none of the appellants was present in the house at that time and they were told by the deceased that she caught fire by lighting a lamp. They further have stated that they took the deceased to the hospital and Dw 1 Bal Singh Rana wrapped a bed-sheet round the deceased. Both these witnesses were cited as prosecution witnesses earlier but were given up as having been won over. To us it appears that it is very unfortunate that the prosecution should have given them up. The prosecution ought to have examined them and if they were hostile, they could be confronted with their statements under section 161 Cr. P.C. That would have been a better option particularly in view of the fact that they have for the first time at defense state disclosed that a dying declaration was made to them by the deceased. Dw 2 Mohinder Singh has further stated that the appellants Saroj and Santosh were not present in the house for 7/10 days prior to the date of incident.

(10) Dw 3 Sat Narain is the tenant of the accused. He has deposed that when he returned at about 7 Pm on the date of incident the wife of the elder brother of the accused and his own wife told him that the clothes of the deceased caught fire while lighting a kerosene lamp. He further says that he was given Rs. 200.00 by the wife of the accused's brother who asked him to go to Bahadurgarh to fetch the parents of the deceased. According to him he brought the parents of the deceased. He further says that Saroj and Santosh appellants were not present in the house, for the last one month earlier to the date of incident.

(11) Dw 9 Karan Singh Dass is the father-in-law of the brother of the accused. He is a witness to an unimportant fact that the accused had arranged to fill up an examination form of the deceased together with Rs. 65.00 as fees ; that it was given to him for attestation by the Principal Sham Babu together with photographs ; that he got them attested and had come to deliver the same at the house of the appellants at 7.30 Pm on 22-10-81 ; that he met his daughter Santosh and found the house bearing a deserted look that he was informed by his daughter that the deceased caught fire while lighting a kerosene lamp and she asked him to fetch Surinder Singh from village Daboda where he had gone on duty ; that he went on his two-wheeler scooter and brought Surinder Singh appellant at 10.30 Pm and then they went to hospital. He also stated that on marriage the accused had presented to his wife gold ornaments weighing 20 tolas. He has also stated that the accused Surinder Singh had been complaining that the father of the deceased had retained the ornaments and had not returned the same to his daughter despite protest. He admits that while going to village Daboda one has to pass through Bahadurgarh. (12) Dw 4 Dr. R.C Panda has stated that Saroj appellant was admitted to his dispensary on 20-10-81 and she remained there till 24-10-81. He has proved the discharge slip Dw 4/A and the case sheet Dw 4/B as in his hand and has stated that there is an entry about this fact in the Indoor patients register. This fact is supported by Dw 5 Manphool Singh. (13) Dw 6 Azad Singh Rana, who was working in the department of the accused as an officer, has stated that the accused Surinder Singh was called to Bahadurgarh on 22-10-81 and was required to be present at 5.30 Pm to deposit the sale proceeds of fodder cutters; that he was paid T.A. for this trip that from Bahadurgarh the accused Surinder Singh went back to Daboda. He also produced a daily diary of the accused where significantly

no mention of the accused Surinder Singh having travelled from Daboda to Bahadurgarh has been made. (14) Dw 7 Kartar Singh has deposed that on the relevant date he was working as cashier and that the accused Surinder Singh came to him and deposited Rs. 5,700.00 with him, that he issued receipt Ex. Public Witness 7/A and this was done at 5.30 Pm on 22-10-81. (15) Dw 8 Dr. Parveen Chander Sharma has stated that the burns sustained by the deceased were physical burns and this he states on the basis of the fact that there was no kerosene oil smell and there was neither blackening nor black soot present; that when the patient was brought to him it was given out by the patient that it was a case of kerosene burn. Much was said about the absence of blackening and black soot on the body of the deceased. This is done to tell the court that this was not a burning by kerosene oil The proposition is a far-fetched one. Physical burns include burning by flames. The presence of 90% burns on the person of the deceased and the fact that she was found smelling with kerosene oil at the time when she was admitted, as recorded in the M.L.C., clearly goes to show that these injuries could only be inflicted by a highly inflammable matter such as kerosene oil. (16) Dw 10 Giani Ram is a witness to the fact that Santosh was present at Nangal Kalan on the date of incident and that she paid Rs. 81.00 by way of subscription for the school. It would further be seen that the receipt purported to have been issued by this man for Rs. 31.00 Ex. D-1 is in the name of Bhoop Singh, father of Santosh. He wants to tell the court that this collection was made by him between 6 to 7 Pm on 22-10-81. (17) Dw 11. Ashok Anand, Manager Syndicate Bank, testified to the deposit of Rs. 65.00 by Surinder Singh accused. Dw 12, Surinder Singh accused has made a similar statement as was made by him under section 313 Cr. P.C. Dw 12/A. Shri S.P. Verma Superintendent D.E.S.U., District Lawrence Road, Delhi, is a witness to the fact that from 10.15 p.m. on 21-10-81 to 7.05 p.m. on 22-10-81 electricity was off in Sarai Peepal Thala. (18) After carefully considering the defense evidence and after going through the documents produced in support of the same we are not at all impressed. One may straightway ask as to where was this defense version the case was being investigated, and why it was not brought to the notice of the investigating officer. This defense evidence has only surfaced at the time of the trial. It is surprising that if the defense version had been in existence, why the accused Surinder Singh, who is a

highly educated man and an officer, made no such information available to any authority or even to the Magistrate when he was taken before him for remand. It would be seen that the court is asked to believe that accused Surinder Singh was at Daboda village and was called to Bahadurgarh at 5.30 Pm to deposit Rs. 5,700.00 as sale proceeds of fodder cutters. There is a small slip which is supposed to have been written by Azad Singh Rana which from no imaginable point of view can be said to be an official correspondence. A receipt on a piece of paper purported to have been issued by Dw 7 Kartar Singh for Rs.5.700.00 is also on file. This is not an official receipt. It is only a piece of paper though indicating that Rs. 5,700.00 Were paid by Surinder Singh One is at a loss to understand the value of such evidence. This is supposed to be Government cash and is auditable. It is a common knowledge that this is not the way cash transactions take place in government departments. If cash in government departments is to be remitted, there will be a remittance voucher with counter-foil and if it is to be received, there would be a receipt book with a counter-foil and then this cash would be entered in the cash book and thereafter remitted to the treasury through treasury/remittance voucher. No such evidence has been placed on record and one can understand why it is so? In government departments for cash dealings cash remittance forms, printed receipts, printed cash books and treasury remittance vouchers are provided. Since these are auditable accounts they have to be dealt with in a manner provided by rules and not in this manner. All the records produced before the court are hand-written and none of them seems to be official. Further, therein no evidence that Rs. 5,700.00 have been entered either in the cash book or have been deposited in the treasury. There is no mention of this event in the daily diary of the accused, Surinder Singh. All the DWs in this connection have said from memory that Surinder Singh had come at 5.30 Pm which in fact is not the office time. It is suggested by Dw 6 Azad Singh that Surinder Singh thereafter went back to Daboda village. One fails to understand as to how does he know it? In any case assuming though not granting that it is true, the accused Surinder Singh knowing that his wife was alone and that he was away on 21st October 1981 would in all probability return to his home from Bahadurgarh and not go back to Daboda. Indeed, there is a T.A. bill and T.A. seems to have been drawn on the said forms but the simple fact that T.A. has been paid is not sufficient to show that he

undertook this trip. It would be seen that this T.A. bill was prepared towards the end of March 1982, that is perhaps the time when a sustained effort was made to fabricate the defense evidence. The T.A. bill at the most would show that T.A. was paid. It is no guarantee that the trip was undertaken. (19) Dw 4 Dr. R.C. Panda says that Saroj was admitted to his dispensary from 20.10.81 to 24.10.81. If this record was in existence and was not fabricated then why it was not brought to the notice of the investigating officer or to the notice of any other authority including the Magistrate. Surprisingly, Dw 1 Bal Singh Rana would like the court to believe that both the ladies were not there in the house 7 to 10 days before the incident. DW3 Sat Narain would like the court to believe that he did not see them for about a month prior to the incident in the house. He is a tenant in the house. On the other hand, we are asked to believe that Saroj was in the hospital only from 20.10.81 to 24.10.81 while Santosh on the date of incident was living with her parents at Nangal. Dw 10 Giani Ram's evidence is of no avail. Under such circumstances one fails to understand as to when all these records were fabricated. If these had been in existence on the date of incident, the accused Surinder Singh, who was an officer, his brother, his brother's father-in-law Dw 9 Master Karan Singh, who also is a teacher's would have never remained silent in a matter of life and death like this. We are not able to appreciate as to why the accused Surinder Singh, if he was fetched from Daboda, on his way back to his house makes no attempt to inform the parents of the deceased when he had to pass through Bahadurgarh. That would have been quite natural and normal on his part, particularly in view of his own statement that he only came to know that Sat Narain had been sent to fetch the parents of the deceased when he reached his home. Why, if we may so ask, does Surinder Singh appellant not find it necessary to go to hospital and why he did not inform the police about the incident? All this behavior on his part is not only abnormal and unnatural but seems to be mysterious. Surprisingly, immediately after the incident the police has visited the house of the appellants but the house was locked and none of the appellants including Santosh was seen around. If Santosh 'Bhabi' of the appellants was not there how then she could meet her father Master Karan Singh at 7.30 P.M. or ask Sat Narain Dw to fetch the parents of the deceased and pay him Rs. 200.00 for this. She has not come to the witness box to support this part of the story. All

these facts go to indicate that the entire family fled away from the house immediately after the incident. From our point of view, therefore, the whole defense version is a fabricated one. (20) We are, therefore, of the view that the appellants have failed to establish the plea of alibi. Under the circumstances of this case, we must say that inmates of the house are bound to explain as to how the deceased got burnt. (21) Adverting to the dying declaration made before Dw 1 Bal Singh Rana and DW2 Mohindar Singh, we would like to state that we do not believe that such a declaration was made by the deceased regarding the cause of his death and this we do for the simple reason that they have not disclosed this fact at any stage to any one before and have said so for the first time in defense. Both of them were prosecution witnesses and were given up as having been won over. They are close neighbours of the accused and are interested in saving them. Their defense is false as they have gone a step further than the accused in stating that accused Santosh and Saroj were not in the house 7/10 days before the date of incident. Dw 2 Mohinder Singh has gone a little further while stating that these two accused were not in the house for about a month. This is so said even though Saroj only says that she was admitted to hospital from 20th to 24th October 1981 while Santosh says that she did not come to house from 19th to 22nd October 1981. The story given out by these two DWs is that the deceased told them that she caught fire while lighting a kerosene lamp. It is impossible to believe that the deceased could catch fire by lighting a kerosene lamp. The one seized in the case was inspected by us. It is a home-made kerosene lamp. It is made of a bottle, 4' inches in size with 1' inch circumference and a stopper. In the stopper there is a hole from which a wick is passed. It seems that the bottle is filled with kerosene so as to soak the wick/and it is lighted at the top. We found that while lighting it there was no possibility of the oil coming out of the same or getting sprinkled on the body of the deceased. How then could the deceased tell them this impossible story. It appears that Dw 1 Bal Singh Rana right from the beginning had decided to come to the rescue of the accused. That seems to be the reason for his having given out a similar story to casualty doctor Pawan Kumar of Irwin Hospital who drafted the M.L.C in which he made the following note:

ALLEGED getting burnt while she was lighting a kerosene lamp.

Obviously, it is not the deceased who has given out this version It is the person, Dw 1 Bal Singh Rana, who was accompanying her and whose name figures in the M.L.C., who has in all probability given the story to the doctor. The defense cannot in this regard derive any benefit from the testimony of Pw 4 Dr. Jaita Dass who has written in the case history of the patient Public Witness 4/A and Public Witness 4/B:

C/O alleged history of getting burnt while lighting a kerosene lamp.

PW 4 Dr. Jaita Dass in his testimony has stated that this alleged history was given out by those who were around the patient. Thereafter, Dr Jaita Dass backed out by saying that this in fact was copied by him from the M.L.C. received from casualty. surprisingly the words 'C/o' meaning thereby complains of are not figuring in the casualty record Public Witness 4 Dr Jaita Dass 'by including these words seems to have bungled. Dr Jaita Dass further goes on to say that he declared the patient unfit to make a statement. If this was so, how then could the deceased give this story? Reliance is also sought to be placed on the testimony of Public Witness 17 S.I. Ram Niwas, investigating officer wherein he has said that from 7.30 Pm to 10.30 Pm he made enquiries from the local people and from that enquiry it appeared to him to be a case of accidental fire. Preceding to this part of testimony he has stated that this case was actually registered at 11.35 Am on 2310 81. That would go to show that by stating that he had made enquiries from local people he was only trying to introduce a false Explanationn for the delay in registering the case. There is no record of his having made any enquiry nor has he named any one from whom enquiry was made. All this, therefore, does not help the appellant and does in no way lead to the conclusion that this was a case of accidental fire. There is a note in the M.L C. that she smelled of kerosene oil. The kerosene oil was also found in the bed-sheet' and 'Dupatta with which the deceased was wrapped after the incident. This clearly goes to show that kerosene had been poured and thereafter she was set ablaze. From all what goes on before us we are of the view that this incident cannot be attributed to the incident of the kind as alleged by DWs 1 and 2. We are not prepared to believe Dw 1 and Dw 2 Bal Singh Rana and Mohinder Singh. (22) Next we may advert to the test moony of Public Witness 8 Ramesh Kumar and Pw 9 Chandroop Singh Malik, maternal cousin and

father of the deceased respectively. Both state that the deceased had told them that she was caught hold by Saroj and Santosh appellants and Surinder Singh set her on fire after pouring, kerosene oil. Public Witness 8 Ramesh Kumar has stated that soon after he returned from the market, where he was sent to fetch vegetables, he found the deceased having been burnt. He then put a bed-sheet around her and she complained to him that the appellants Santosh and Saroj caught hold of her and appellant Surinder Singh burnt her after pouring kerosene oil on her. He further has stated that some neighbours came and removed her to hospital and that he also accompanied them. Public Witness 9 Chandroop Singh Malik, father of the deceased, has stated that after the sun rise on 23rd October, 1981 the deceased told him that the appellants have burnt her. She is also stated to have told him that if he had not sent her back she would not have met this fate. Both these witnesses are the witnesses to the oral dying declaration made before them by the deceased. Public Witness 8 Ramesh Kumar is also witness in respect of the fact that the deceased was sent with the appellants at the time of offence. He has gone on record to state that when he was sent to fetch vegetables the deceased together with the appellants were on the house; and when he returned back he found that the appellants had disappeared from the scene. (23) These two witnesses Public Witness 8 and Public Witness 9 are also witness to the maltreatment that was being meted out to the deceased by Surinder Singh appellant. Pw 8 has clearly stated that the accused Surinder Singh in his presence had beaten the deceased on 17.10.81 and also on 21.10.81 and the reason was that the deceased had not brought dowry according to his expectations. Public Witness 9 Chandroop Singh Malik has gone on record to state that within a little more than five months of her marriage deceased only went to her in-laws' house four times and whenever she would return to her fold she complained of being tortured on the ground that she had not brought with her sufficient dowry. She had also complained to him that she was/being beaten for not fetching a T.V. set and a Refrigerator. He also stated that his daughter was very much apprehensive and specifically told him that in case she was sent to her in-laws she would get killed and it was only on the request of Bhoop Singh, father of the appellants, that she was sent back to the in-laws on 15.10.81 with Public Witness 8 Ramesh Kumar who was asked to go with her and report in case she was being mal-treated. (24)

Challenge thrown to the testimony of Public Witness 8 Ramesh Kumar is that he was not present in the house and was introduced by Public Witness 9 Chandroop Singh. This is so said for the reason that in the statement under section 161 Cr.P.C. PW9 has not stated anything about PW8 having gone with the deceased on 15th and also on the ground that Public Witness 8 Ramesh Kumar has not named the accused persons in his statement under section 161 Cr.P.C. We do not agree with the contention. Public Witness 8 Ramesh Kumar has, as will be seen, given out many details in respect of the family and the business of the accused which go to show that on the date of incident he had been there for quite some time. According to him earlier he had never visited their house. He has gone on record to state that the appellant Surinder Singh even deputed him to open his shop (seed/ fertilizer shop) many times on the pretext that he could not do it himself as he was a government employee. In these circumstances, we have every reason to believe that he had accompanied the deceased on 15.10.81 when she was sent back to her husband's house. That also goes to strengthen the suggestion of Chandroop Singh Malik Public Witness 9, father of the deceased, that the deceased had grave apprehension and was very reluctant to return to her in-laws and that it was in these circumstances that Ramesh Kumar Public Witness 8 was sent with her to keep a watch if she was treated well. The deceased was a young girl of 16 years of age and as such in this situation it was natural for her fairer to depute her maternal cousin Public Witness 8 to go with her confidence and assurance. (25) The testimony of Public Witness 8 Ramesh Kumar is quite natural and once it is believed that Public Witness 8 was there it was also quite natural for the deceased to inform him as to how she came to be burnt. Ramesh Kumar Public Witness 8 stated that he also accompanied the deceased to hospital. That also is quite natural. He says he went to inform her parents. That this too is a natural conduct and we do not see any reason to disbelieve him. Public Witness 9 has also said that Ramesh accompanied by someone also informed him of the event. Could under the circumstances of this case Public Witness 8 and Public Witness 9 be simply disbelieved because at defense stage Sat Narain Dw 3 was introduced to contradict them by stating that he was given Rs. 200.00 by Santosh, wife of Dalpat, elder brother of Surinder Singh, to fetch the parents of the deceased. Sat Narain DW3 wants the court to believe that he

returned from his work at 7 Pm on 22.10.81 and was held by his wife and Santosh that deceased had burnt while lighting a lamp. Surprisingly, neither his wife nor Santosh, wife of Dalpat, was present in the house when police visited the house at 7.30 PM. The house was found locked. One may ask, why had all of them disappeared? These facts alone are sufficient to discredit Dw 3 Sat Narain. He is a tenant in the house of the appellants and one can understand his anxiety to help the accused. Daily diary report at police station Adarsh Nagar is recorded at 7.15 Pm after duty constable Ram Dev Singh telephoned from hospital. It was given to Public Witness 17 Ram Niwas S.L Who immediately reaches the spot at 7.30 PM. (26) Indeed, it is true that Public Witness 9 has not said anything about the dying declaration having been made before him by the deceased while making a statement under section 161 Cr. P.C. but that does not make any difference. If in the morning she was fit to make a statement she would naturally tell her father as to how she came to be burnt. There is no scope as such for any doubt being entertained about the testimony of Public Witness 8 and Public Witness 9. Moreover, in respect of the dying declaration imputed by them to the deceased, they have not said anything more than what deceased had ultimately stated in her two dying declarations, one before Shri Pradeep Kumar Shrivastav, ACP. (Public Witness 1) and the other before Shri D.R. Jain, Metropolitan Magistrate (Public Witness 3) which both were recorded in the presence of Dr. Praveen Chander Sharma Public Witness 15. In his turn, Dr. Praveen Chander Sharma while recording case history of the deceased also made a mention therein as to what the patient had stated about the cause of her death which also is to the effect that she was burnt by the appellants. (27) This brings us to the next limb of the prosecution case It would be seen that soon after the deceased was removed to hospital she was declared unfit to make a statement by Public Witness 4 Dr. Jaita Dass. It was only on the next morning, that is 23rd October 1981, at about 10 A.M. that Dr. Praveen Chander Sharma Public Witness 15 declared her fit to make a statement. It was thereafter that her statement Ex. Public Witness I/A came to be recorded by Public Witness I Pradeep Kumar Shrivastav, A.C.P. We may at this stage reproduce what she stated before the aforesaid witness and we quote:

THE name of my husband is Surinder and I live at H. No. 25 Sarai Peepal Thala, Adarsh Nagar, Delhi, My marriage took place on 6th May 1981. I came for the

fourth time to my husband's house after marriage. Now I have been staying for the last eight days. My husband usually quarrels with me as my father had not given T.V. and Fridge in the dowry. In the night of 21.10.81. a quarrel took place between me and my husband. He broke his radio that day, In the evening at about 6.45 I had a quarrel with my husband yesterday. He told me that whatever was demanded by him, my father had not given. He will divorce me. Thereafter both of my sisters-in-law whose names are Santosh and Saroj caught hold of me in the verandah and my husband Surinder poured kerosene oil on me and lit a fire. The oil was in a big bottle and half of it was poured. The oil was poured, on me from my shoulders. The oil did not fall on my head. My brother had gone to get the vegetables. He is the son of my maternal uncle. The name of my brother is Ramesh. My neighbours and tenants took me to the hospital. Whatever I am stating is true.

(28) Between 10.40 Am to 11.15 Am the second dying declaration of the deceased in the presence of Dr. Praveen Chander Sharma Public Witness 15 was recorded by Public Witness 3 Shri D.R. Jain, Metropolitan Magistrate, which reads as under:

I was sweeping the floor of my house at 6.45 P.M. yesterday. My husband and his two sisters namely Saroj and Santosh started beating me and thereafter they started hitting me with fists and gave slaps and I was brought out in the court-yard where I was caught hold by both sisters i.e. Saroj and Santosh and Surinder sprinkled Kerosene oil on me and set me on fire. Before it happened my cousin Ramesh (my mother's brother's son) had come over there and was sent by Surinder to get vegetables. When he returned with vegetables I was still burning. He tried to save me with the help of bed sheet (khes). Then Surinder and his sisters ran away. I was shouting and the neighbour gathered there but I do not know their names. The neighbours took me to the hospital in a taxi. I got married about six months back. Surinder and two sisters beat me and set me on fire because all the three declared that my parents have given less dowry.

(29) As already stated. Dr. Praveen Chander Sharma Public Witness 15 simultaneously made an entry to this effect in the case history of the patient. All these dying declarations have been proved by Public Witness 1 Shri Pradeep

Kumar Shrivastav A.C.P., Public Witness 3 Shri D.R. Jain, Metropolitan Magistrate and Public Witness 15 Dr. Praveen Chander Sharma. It will be seen that in substance both the aforesaid written dying declarations are similar and implicate the appellants in the commission of this crime. (30) Challenge to the truthfulness of these dying declarations as such could not be thrown. It is however, stated that these are prompted and since her father had the opportunity to meet her before these dying declarations were made, she was probably tutored by him. This is suggested also on the ground that she did not say so till 9.25 Pm when for the first time she was declared unfit to make a statement. We do not find ourselves in agreement with the contention raised by the learned counsel. This contention is raised on the assumption that before 9.25 Pm the deceased was fit to make a statement. Nobody has said so nor such question had been asked from Dr. Jaita Dass Pw 4. It would be seen that the deceased had suffered 90% burns. One can understand her abject condition, agony and confusion she must have been overwhelmed with. Not even Public Witness 4, Dr. Jaita Dass has said that she was in a fit state. It cannot be presumed that she was fit to make a statement, simply because Dr Jaita Dass opined that she was conscious. To be conscious is one thing but to be fit to make a statement is altogether different. For making a statement, a patient's mind must be medically in order and not clouded. The fact that she was declared unfit to make a statement for the first time at 9 25 in all probability came to be recorded for the first time at that stage only because it was at that time that an attempt was made by the police to record her statement and the doctor declined to issue fitness certificate. (31) Adverting again to the contention that these dying declarations were made on the prompting of her father, Public Witness 9, we may at once point out that this is based on a far-fetched assumption. It would be seen that Public Witness 9 had arrived somewhere after 12.30 when she was not medically fit at all. Another attempt to find if she was fit was made at 5.55 A.M. She was again found unfit and the last attempt was made at 10 A.M. on 23rd October 1981 when she was for the first time declared fit. This clearly goes to show that the police officers were around waiting to find out when she is fit to make a statement. Public Witness 13 Dr. Praveen Chander Sharma was also there at times. The first statement of the deceased was recorded by Public Witness I in the presence of Dr. Praveen Chander Sharma Public Witness

15 at 1040 AM. This would show that the police officers as well as Dr. Praveen were around. A.C.P. Shri Pradeep Kumar Shrivastav Public Witness I is a responsible officer, so is Dr. Praveen Chander Sharma. They have not been asked if Public Witness 9 had a talk with the deceased after 10 A.M. How then can it be said that Public Witness 9 had an occasion to talk to her before her dying declarations were recorded. She could not have talked to her father Public Witness 9 at any time before 10 A.M. when she was found fit for the first time. That goes to show the confusion in the mind of Public Witness 9 when he says that she talked to him at sun-rise. It is impossible for the court to believe that Public Witness 9 could have tutored he with responsible police officers and the doctor around. That a part it is difficult to believe that in that state she could be receptive to any suggestion even from her father. One can imagine her mental and physical condition keeping in view the fact that she had suffered 90% burns. There further does not seem to be any reason that a tender dying girl likes the deceased would involve innocent persons. One of the strangest thing we have noticed in this case is that even though the court is told by appellant Surinder singh that he returned from Daboda at 10 Pm and went to hospital, we and neither he nor any of his family members is seen around either in the hospital or in their house. One may ask as to why lie felt so unconcerned? One would expect of him and his family members to be at her side but none is seen around. Under the circumstances of this case we are unable to agree with the contention that these dying declarations are not truthful and prompted. There is no reason for us to brush these dying declarations aside. (32) Having found that the dying declarations are truthful and have been made by the deceased voluntarily of her free will, these are sufficient to warrant a conclusion that the accused persons are involved in the commission of this crime. That apart, the evidence of Public Witness 8 Ramesh Kumar about last scene and the treatment meted out to the deceased by the appellants and the reasons for it and also the testimony of Public Witness 9 in respect of the motive, we find that there is no scope for the assertion that the accused are innocent. On the basis of our observations, we find that the accused are sufficiently linked with this incident. We have refrained from reproducing the post-mortem report as the cause of death of the deceased is not in dispute. (33) Having dealt with this, the next aspect to be considered is as to how those found involved in the commission

of this crime should be dealt with. The case of the prosecution is that appellant Surinder Singh was unhappy with the deceased for the reason that she had not brought with her dowry according to his expectations. We need not discuss the evidence again in this regard. The case of the defense is that accused Surinder Singh was complaining that all the jewellery including gold ornaments weighing 20 tolas which the deceased had been given by her in-laws on marriage were deposited by her with her parents and despite his repeated demands she had not being these back and the accused Surinder Singh had been complaining about it. This is even admitted by Dw Master Karan Singh and accused Surinder Singh. This Would go to show that accused Surinder Singh was harbouring real good grudge against the deceased and for this reason she was being given constant beating as a result of which in five months' period of her marriage she was driven to take refuge at her parents' house and had returned to the husband's house only four times, last being 15th October 1981. a few days prior to the fateful day. We find no reason for a young wife to remain away from her husband for such a long interval and so often unless she was facing some real trouble at the hands of her husband. She had even expressed her apprehension of danger to her life but unfortunately her father did not take any notice of it. This is not unusual in our society. It is the desire of every father to make efforts for ensuring that their daughters do settle in life. In any case, if at all anybody was aggrieved on this account against the deceased it was her husband and not appellants Santosh and Saroj. There is absolutely no evidence on record to the effect that they ever joined their brother, Surinder Singh appellant in making such demands from the deceased nor do we have any history that they have even quarrelled with the deceased on this account. That would go to show that if at all any one had a motive for the commission of this crime it was appellant Surinder Singh and none else. The only thing that is proved against the appellants Santosh and Saroj is that they caught hold of her and thereafter it was accused Surinder Singh who not only sprinkled kerosene oil on her person but also set her ablaze. We do not have any further details before us as to why and under what circumstances appellants Santosh and Saroj caught hold of the deceased. It is not even suggested by the deceased in her dying declarations that they caught hold of her to facilitate the appellant Surinder Singh in pouring kerosene and setting her ablaze. All these

facts viewed in their totality would make it difficult to infer that accused Santosh or Saroj had any motive to kill her. Accused Santosh and Saroj have been convicted and sentenced with the aid of section 34 Indian Penal Code but on facts of this case it cannot be said with certainty nor is it proper to infer that they knew about the intentions of the appellant Surinder Singh nor can it be said that the murder of the deceased was planned and in that planning they were a party. Least that can be said is that on the facts and the circumstances of this case it is very unsafe to bring in aid section 34 Indian Penal Code against them. We are, therefore of the view that this appeal is to be partly accepted and partly disallowed. We disallow the appeal of Surinder Singh appellant and confirm the conviction and sentence passed against him by the learned trial Judge.

(30) The appeal of Santosh and Saroj appellants is allowed and they are acquitted of the charges of which they have been convicted and sentenced.

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