

Smt. Gyano Devi Vs. State

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SooperKanoon Citation : sooperkanoon.com/714910

Court : Delhi

Decided On : May-12-2006

Reported in : 2006CriLJ4168; 133(2006)DLT353; II(2006)DMC705; 2006(89)DRJ445

Judge : Manmohan Sarin and; J.M. Malik, JJ.

Acts : Evidence Act - Sections 32; Indian Penal Code (IPC) - Sections 34, 302, 304B and 498A; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. A. No. 840/2002

Appellant : Smt. Gyano Devi

Respondent : State

Advocate for Def. : V.K. Malik, Adv.

Advocate for Pet/Ap. : R.N. Sharma, Adv

Disposition : Appeal dismissed

Judgement :

J.M. Malik, J.

1. This order shall decide the above said two appeals which arise from the same judgment.

2. The trial court handed down a verdict of guilty and sentenced appellant Gyano Devi to imprisonment for life for the offence under Section 302 IPC and to imprisonment for two years with fine of Rs.5,000/- for the offence under Section 498-A of I.P.C. in default simple imprisonment for a period of two months. Appellant Surender, son of Gyano Devi was sentenced to undergo imprisonment for seven years for the offence under Section 304-B of I.P.C. and imprisonment for two years with fine of Rs.5,000/- for the offence under Section 498-A I.P.C., in default simple imprisonment for a period of two months. Both the sentences were to run concurrently. In this appeal, the appellants have called into question the judgment passed by the trial court. The case swirls around two sets of dying declarations, one exonerating the appellants and second implicating them.

3. The genesis and sequence of the above said case is this. Sunita DW2 and her younger sister Kavita, the deceased were married to two real brothers namely Ravinder and appellant Surender, respectively. Both were living along with their parents-in-law and other members of their family in premises situated in Village Dariya Pur, Khurd, P.S. Jaffarpur Kalan, New Delhi. On 22nd February, 2001 at about 1.40 P.M., deceased Kavita was brought to Rao Tula Ram Memorial Hospital, Jaffarpur with the alleged history of 'burn injuries while preparing the tea, the tube burst open and patient got burnt' with 100% deep burns all over her body. She was brought to the hospital by Roop Singh, her father-in-law. Surender, Duty Constable sent the information to the Police Station Jaffarpur. Consequently, DD Ex.PW19/A was recorded. The investigation of this case was entrusted to Sub-Inspector Bhoop Singh. He went to Rao Tula Ram Hospital and after getting certificate that the deceased was fit for making a statement from Dr. Rakesh Gilyani, CMO, recorded the statement of Kavita. Kavita stated that at about 12.00 noon when she was preparing the food for the members of her family, her clothes caught fire on account of sudden rising of flames from the gas stove on which she rushed to her room and on hearing alarm raised by her, the members of her family and neighbours came there and extinguished the fire. The said statement bears right thumb impression of the deceased.

4. Thereafter, the patient was referred to Safdarjang Hospital at about 1.50 P.M. She was got admitted in the hospital by her husband Surender. Although, the SDM

of the area was requested to record the statement of Kavita immediately vide DD entry Ex.PW20/B, yet, the SDM did not arrive there. SDM informed the Investigating Officer that he would visit the hospital at 10.00 A.M. on 23rd February, 2001. Sub-Inspector Bhoop Singh moved an application before the CMO, Safdarjang Hospital. The Junior Resident made an endorsement, 'Patient was fit for statement at present' at 9.30 A.M. on 23rd February, 2001. He, however, did not affix his signatures as such but mentioned his designation as JR, DOD (Doctor on Duty). The SDM recorded the statement of the deceased Ex.PW6/A at about 11.37 A.M. The English translation of this dying declaration as recorded by the learned Trial Court runs as follows:

I Kavita state that I was married to Surinder two years back and I have been living with my husband from 7/5/2000 when my Gona was performed. From the very beginning my husband and my mother-in-law were harassing me. I was harassed for work. My mother-in-law used to say that she needs dowry as her wearing apparels were getting torn. I never brought any dowry because my parents are poor. My mother-in-law and my husband used to harass me and beat me for dowry. The incident of burning took place yesterday on 22/2/2001 in the afternoon. My mother-in-law asked my husband that I should be left at my parents house on which my husband slapped me two or three times. Thereafter, my mother in law poured kerosene oil from a plastic can on me and ignited the fire by lighting a matchstick and went out. My brother-in-law Ravinder who was sleeping in the adjoining room came there on seeing the smoke and in the meantime my husband also came back. They together extinguished the fire and brought me to the Jaffarpur hospital. Now I am being treated at Safdarjang hospital. My husband and my mother-in-law are responsible for the burning. I had made the statement out of my own free will without any pressure from anyone.

5. On 23rd February, 2001, Bhoop Singh seized the plastic can, which was giving the smell of kerosene, match box, one kunda (latch), some ashes, some burnt pieces of clothes, broken bangles from the spot on 23rd February, 2001 in presence of Constable Virender. Bhoop Singh again went to the hospital and recorded statement of the appellant under the caption 'supplementary statement in question answer form.' She stated that her statement made on 23rd February,

2001 was true and her statement made on 22nd February, 2001 was false. She further explained that her parents-in-law Roop Singh and Gyano Devi were present and, therefore, due to their pressure she could not state the truth, on 22nd February, 2001. She explained that the statement made by her before the SDM was correct.

6. On 24th February, 2001 Kavita succumbed to her injuries. SDM J.S. Jolly recorded the statement of Jagdish, father of the deceased, Ex.PW1/B. He also supported the dying declaration.

7. Autopsy on the dead body was got done. The relevant portion of post-mortem report Ex.PW11/A runs as follows:

Scalp hair more on front partial region are burnt and singed. Eye lashes and eye brows of both eyes are burnt and singed. Smell of kerosene oil in scalp hair present.

Ante mortem external injuries:

Dermo Epidermal to deep burn (at places) all over the body except both soles of both foot and post side of head. Line of redness present.

Erythema and blackening seen at places. Approximate percentage of burns '95%.

The report of the Central Forensic Laboratory Ex.PX reveals that kerosene was detected in plastic can which contained blue coloured liquid (Approximately 25 ml.). Kerosene residues were detected in one match box with four unburnt matchsticks, burnt clothes, skin, hair and three pieces of red colour broken bangles.

8. Inspector Ishwar Singh recorded the statement of PW Devender, brother-in-law of the deceased on 28th February, 2001, under Section 161 Cr. P.C. to the following effect. On 22nd February, 2001 during the noon time he was sleeping in his room. He got disturbed when an alarm was raised 'Bacho Bacho'. He came out of his room and found that his adjacent room was full of smoke. The clothes of her sister-in-law Kavita had caught fire and she was lying on the floor near the door. In

the meantime, his brother Surender, appellant also came there. Both of them extinguished the fire. His parents Roop Singh and Gyano Devi also arrived in the room along with neighbours. Thereafter, Kavita was taken to Jaffarpur hospital and her sister-in-law breathed her last on 24th February, 2001. He could not say as to how his sister-in-law had caught fire.

9. Both the appellants were arrested on 25th February, 2001. The appellants were booked for offences under Sections 498-A/302/34 IPC. Charges under Section 498-A/302 read with Section 34 IPC and alternatively under Section 304-B of the IPC were framed against both the appellants. They have defended the present case.

10. The prosecution examined 21 witnesses. The significant factor about this case is that Jagdish, PW1, Smt. Phoolwati, PW2 and Sunil PW3, parents and brother of the deceased did not toe the prosecution line. They did not attribute any criminality on the part of the appellants.

11. Both appellants denied being present at the time of incident i.e. when deceased suffered burn injuries or having witnessed the incident. Appellants claimed to be innocent and a false case having been foisted on them. Appellants also did not state or mention the version of defense as set out during trial. Appellant Surender admitted that after post-mortem, dead body was handed over to her father as per directions of SDM.

12. The defense has produced five witnesses in order to scrub the charges against the appellants. According to Sunita, DW2, she was present at her house and washing clothes, while Kavita, the deceased was preparing food in the kitchen. She saw that Kavita had come out from the kitchen having burn injuries as her clothes had caught fire in the kitchen, she went inside the room and bolted the room from inside. Sunita raised an alarm on which her father-in-law and brother-in-law Devender arrived. Appellant Surender, who had just all of a sudden, returned from the fields to his house for having lunch, tried to extinguish the fire with the aid of gunny bags after breaking out the 'kundi' by pushing the door from outside. The family members and neighbours removed Kavita to hospital at Jaffarpur. She made an enquiry from Kavita in Safdarjang hospital and she replied that she had

bolted the door from inside for changing the clothes which had caught fire. Her parents and brothers also made enquiries from Kavita and she gave the same reply. Gyano Devi had gone to the house of Bimla for grinding wheat at that time. Kavita's statement implicating the appellants was made at the instigation of her parents who became annoyed/angry on seeing her condition. No harassment or dowry was demanded from Kavita or the witness herself.

13. Har Lal, DW3, the employer of Surender who accompanied him and got the door opened, Bimla, DW4, Jaipal, who also accompanied Surender, DW5, have supported the defense story. Anil, another brother of the deceased DW1 stated that the deceased had made the dying declaration at their instigation.

14. We have heard the learned Counsel for the parties. The main plank of appellants' submission is the incongruity between the dying declarations. Accordingly, it would not be at all safe to attach implicit reliance to the dying declaration recorded by the SDM. He argued that the case of the prosecution bristles with various infirmities. He submitted that, as a matter of fact, the deceased made as many as six dying declarations. The first dying declaration was made before Doctor Rakesh Gilyani, CMO, PW4. Although, MLC Ex.PW4/A is conspicuously silent as to who had given the history, yet, when the Doctor appeared in the witness box, he admitted that the deceased herself had given the above said history. Second dying declaration was made before the IO and the Doctor had certified at 1.50 P.M. that the patient was 'fit for statement'. The learned Counsel opined that there is no reason to disbelieve these dying declarations.

15. He argued that the third dying declaration made before the SDM has too many holes. Firstly, it did not bear medical certificate regarding her fitness. Dr. Rajesh Kumar Bharti, PW18, admitted that it bears endorsement in his hand writing, which is Ex.PW18/A, but it does not bear his signature. In his cross-examination Bhoop Singh IO explained that he had asked the Doctor to put his signature but the Doctor had refused on the ground that as per the directions of the Senior Doctor/Head of Department, Junior Resident (Doctor) was not authorised to sign the said endorsement. The endorsement was made by the Doctor at 9.45 A.M.

and the examination of the deceased by the SDM concluded at 11.37 A.M. There is a gap of about two hours in getting the certificate from the Doctor and recording of the statement by the SDM. The learned Counsel vehemently argued that no reasons are forthcoming as to why there was so much delay. He also argued that the above said dying declaration is unreliable due to two other reasons. Firstly, the conduct of the SDM is difficult to fathom. IO Bhoop Singh stated that he informed the SDM of the area on 22nd February, 2001 and requested him to record the statement of the injured immediately. He admitted that the SDM did not reach the hospital on 22nd February, 2001. He deposed that SDM told him that he would be coming at 10.00 A.M. on 23rd February, 2001. However, in his cross-examination SDM, PW6 deposed that he received the information in the night at about 1.00 A.M. to 2.00 A.M. He also explained that he was on Election Duty and was put to special duty in this case. Learned defense counsel vehemently argued that the SDM stated that he did not know the distance between Rao Tula Ram Hospital and his house. He submitted that it, therefore, means that he had never visited the spot.

16. Learned defense counsel also questioned and doubted the affixation of her right thumb impression by deceased when the evidence revealed that her whole of the body was bandaged. It may, however, be mentioned that the SDM stated in his cross-examination that the thumbs of the deceased were not bandaged. He also argued that she made the second statement before the SDM under the influence of her parents as is apparent from the above mentioned evidence. Lastly, the SDM committed an egregious mistake by not recording the statement in question and answer form. Again SDM admitted that IO was present when he recorded the dying declaration of the deceased. Counsel for appellants contends that it vitiates the dying declaration. Learned Counsel also pointed out that cause of the death came to the knowledge of the prosecution on 23rd February, 2001 after her dying declaration was recorded by the SDM, yet the subsequent documents prepared by the prosecution go to show that post-mortem report Ex.PW11/A and brief history etc. of the case still mentioned, 'history of sustaining burn injuries upon the body while preparing tea on 22nd February, 2001 at 1.00 P.M.' However, the other side of the page goes to show that cause of death was ante mortem thermal burns.

17. According to the defense counsel the next dying declaration was made by the deceased before her father Jagdish PW1. He stated that her daughter had told him that she was burnt due to bursting of gas tube. Likewise another declaration was made to her brother Anil, DW1. The last dying declaration was made to the IO at about 5 / 6.00 P.M., which was proved on record as Ex.PW21/E.

18. It was argued on behalf of the defense that it stands proved that deceased had bolted the door from inside, in order to change her clothes after catching fire from the gas or might be after attempting to commit suicide by pouring kerosene oil upon herself. The learned Counsel drew the attention of the court towards the fact that appellant Gyano Devi is an old lady having frail body. How could she commit this offence single handedly? However, it must be borne in mind that according to the dying declaration made by the deceased before the SDM, her husband was present before the kerosene oil was splashed upon her, he had given her two-three slaps. This must have thrown scare in her mind. By no stretch of imagination, it can be said that the above said act was committed by Gyano Devi, appellant alone. The facts and circumstances clearly depict that Gyano Devi sprinkled the kerosene oil while working in cahoots with her co-appellant.

19. The learned Counsel further submitted that the prosecution has failed to prove any motive. The evidence of the record clearly goes to show that nothing was demanded from the deceased. Both the prosecution and witnesses supported this defense. There is no reason to disbelieve her real sister DW2. The mother-in-law Gyano Devi was not present and it stands proved that she had gone to her neighbour's house. Constable Virender and I.O. testified that no traces of kerosene oil were noticed by them on the spot. However, their testimony pales into insignificance in view of post-mortem report and C.F.S.L. report, reporting kerosene residue.

20. The learned defense counsel stressed that the statement recorded by the IO is not admissible in evidence. After he found out that some portion is left out, he should have called the SDM again instead of recording the statement himself. Moreover, the statement recorded by the IO on 23rd February, 2001 is not attested by any Doctor.

21. Finally, the learned Counsel for defense argued that the post incident conduct of the appellants and their family members was not that of guilty persons. Roop Singh took the deceased to Rao Tula Ram Hospital and Surender took her to Safdarjang hospital. Learned defense counsel argued that curiously though she was burnt, yet, she did not raise any alarm and did not ask the people to save her.

22. In support of his case, learned defense counsel has cited number of authorities, viz. T.K. Reddy v. State of A.P. 2002 (4) Crimes 27 (SC); Chacho v. State of Kerala 2003 (2) Crimes 497 (SC); Subhash Chand v. State 2005 (2) LRC 199 (Del.); Lella Sri Niwasa Rao v. State of A.P. 2004 (1) JCC 645; State of Punjab v. Praveen Kumar 2005(1) C.C. C 325 SC; R.H. Khristi and Anr. v. State of Gujrat 2002 (3) Crimes 206 SC; Surinder Kumar v. State 1992 (1) CC Cas 63 (HC); Ram Singh v. The State 1996 JCC 584; B.A. Farate v. State of Maharashtra 1992 (2) Crimes 267 Bombay High Court; Arvind Singh v. State of Bihar 2001(2) Crimes 242 SC; K.R. Reddy v. Public Prosecutor : 1976 CriLJ1548 ; Dandu Lakshmi Reddy v. State of AP AIR 1999 SC 3225.

23. The ratio of some of the authorities cited is that where there were conflicting dying declarations, it would be unsafe to place reliance upon the same. In such cases, the court should be satisfied that deceased was in a fit state of mind and capable of making the dying declaration. While assessing the reliability of the dying declaration, the court should consider whether others had opportunity to influence the minds of the deceased. The dying declaration can be disregarded if the contents are contrary to the facts available on record. In case there is a higher degree of burns, the court has to consider the feasibility of affixation of the thumb impression by the deceased. The dying declaration recorded by the SDM is preferably to be in question and answer form. However, non adherence to the same is not fatal and by itself does not provide ground for disregarding it. These are some of the salient factors which are required to be considered while assessing the reliability of the dying declaration.

24. The authorities cited have been perused. They would not advance the case of the appellants in the present instance. Reference is invited to Nallam Veera Stayanandam and Ors. v. The Public Prosecutor, High Court of A.P. 2004 III AD

(S.C.) 476, wherein it was held:

In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

Although in the cited case the appellant was acquitted, yet, reliance was placed on the statement recorded by the SDM favoring the appellant.

25. Duty is cast on the court is to winnow truth from falsehood. The court has to find out which of the dying declaration is true. The presence of kerosene oil on the spot, from the scalp hair and body of the deceased is a fact of utmost importance. This is the main pillar, the backbone and the heart of the prosecution case. Indisputably no stove was recovered from the spot. Again burst tube was not recovered. PW7 took photographs of the spot and proved the same on record as Ex.PW7/A-1 to Ex.PW7/A-8. These photographs show the gas stove pipe and gas cylinder in intact correct position. Non recovery of the plastic can from the kitchen is yet another factor which discredits the defense version of the deceased having caught fire in the kitchen. Post-mortem report Ex. PW11/A and C.F.S.L. report Ex. PX hit the nail on the head. The scalp hair being singed and smell of kerosene in scalp hair are the best corroborative piece of evidence. It goes a long way to embolden the prosecution story. It, therefore, means that all the remaining contrary dying declarations are false. Deceased made a false statement before the Doctor on 22nd February, 2001 at Rao Tula Ram Hospital as well as at Safdarjang hospital because of presence of Roop Singh and her husband respectively.

26. The prosecution version draws support from the authority reported in Ashok Kumar v. State of Rajasthan : 1990 CriLJ2276 , it was held:

Time and place of unnatural death, of Asha Rani, by burning, at her in laws' small house with at least six inmates, could not and was not disputed. Both the trial Judge and the High Court held that the prosecution succeeded in proving this. It was further found by them that she did not die of accident nor she committed suicide. Burning by kerosene stove or gas or even firewood may not be unusual due to synthetic wear which has become very common. But when post mortem

report indicates, as was in this case, that smell of kerosene was coming from body and even burnt hairs smelt kerosene then it not only belied the statement of her sister-in-law (Nand) that she was burnt while making tea but it ruled out remotest possibility of accident. That is why the findings were not seriously challenged by the accused.

27. In an another authority reported in Thumallapally Koti Reddy v. State of Andhra Pradesh 1993 (1) AWR.131 , the facts were these that earlier statement as to the cause of death was recorded from the deceased by the Police Head Constable and subsequent statement recorded by the Magistrate nearer in point of time to the death of the deceased. It was held that there would no such rule that earlier statement has necessary to be accepted in preference to the subsequent statement. It was further held that dying declaration recorded from the deceased in her own words by Magistrate after taking all precautions and after satisfying himself that the deceased was making a voluntary statement and was in a fit condition to make it, it can be acted upon without any further corroboration.

28. In an authority reported in Rajpal v. The State II (1988) DMC 513, it was held that where deceased gave various dying declarations that which was given before the Magistrate has to be preferred.

29. It must be borne in mind that the real sister of the deceased, her parents and brother had to support the defense story because of an apparent fact. They were scared of the appellants and their family members. They were making statements under pressure from the appellants. They had to take care of their second daughter. Had they stated anything against the appellants, the life of their second daughter would have also ruined. That is why all of them preferred to latch on to the defense version.

30. There is no inkling in the evidence on record that SDM had got enmity or hostility with the appellants. He is an independent public officer and I see no reasons to discard his statement. He appears to be a guileless witness. He should have recorded the statement of the deceased in question answer form. However, this is well settled that this mere omission is not fatal.

31. In an authority reported in *Laxman v. State of Maharashtra* 2002 VII AD (S.C.) 1, it was held:

The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.

It was further observed,

There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.

Similar view was taken in *Rambir v. State of Chattisgarh* 2002 VIII AD S.C. 358.

32. It must be borne in mind that it comes from the defense evidence itself that the SDM had recorded the statement of the deceased. In his cross-examination Anil Kumar admitted in clear, specific and unequivocal terms that Kavita made a statement before the SDM, though he was not present at that time. Consequently, the argument of the learned defense counsel that the SDM did not visit the hospital at all is lame of strength. Again, the SDM has to work day in and day out. He remains busy round the clock. It is very difficult to keep in mind the distance between his house and every place visited by him after the expiry of so much time. It must also be borne in mind that he was not Area Magistrate. He was given this additional duty while he was working as an Election Officer.

33. At the request of both the counsel, the record of MLC, Safdarjang hospital was called at the fag end, when the learned Counsel had concluded their arguments on 1st May, 2006 for 3rd May, 2006. We have perused the record of medical treatment which has been placed on the file. It clearly goes to show that Kavita was in a position to make a statement before the SDM. It is not anywhere endorsed/ recorded that she was drowsy or unconscious or it was a case of intermittent consciousness and getting unconscious, pertaining to 23rd February, 2001. However, it was mentioned that she was 'critical'. A person having 95% burns would always be critical. It is, thus, clear that she was in a position to make a statement before the SDM.

34. It stands established that the dying declaration made before the SDM is voluntary and the dying declaration made before the IO or before the Doctor on 22nd February, 2001 were given under pressure and influence of the in-laws. Roop Singh and Surender Kumar, respectively, were present at the time of both the dying declarations. SDM PW6 stated that he had confirmed from the Doctor whether patient was fit for statement and Doctor had opined that patient was fit for statement. The statement made by the SDM remains unrebutted on the record. In his cross-examination, in no uncertain terms, the SDM stated that there was none else present when he recorded the statement of Kavita. He, however, admitted that he had borrowed stamp pad from the IO. IO also stated that he was present at the time when SDM recorded the above said statement. No questions were put to them that somebody else was present from the side of the deceased and they had pressurised the deceased to make a statement against the appellants. We have also gone through the statement of Jagdish, PW1. In his cross-examination, he stated that on 22nd February, 2001, he visited Safdarjang hospital, met his daughter Kavita and stayed with her for about one hour. He did not state having visited her daughter on 23rd February, 2001. His statement made before the SDM is at variance with the statement made in Court. The volte face on his part is quite fathomable. Besides he was present with the deceased only for a duration of an hour and could hardly exercise any influence specially in the presence of other persons like Doctors, nurses and family members of the accused.

35. It must be borne in mind that the statement recorded by the IO in respect of the deceased Ex.PW20/E is admissible in evidence. Moreover, it appears to be correct and true and is according to the circumstances existing at that time. In *Om Parkash @ Bittoo Bhatia v. State* 15 1997 DLT 277, in *Mange Ram @ Mahindra Singh v. State* 1984 Crimes 1, it was held by this Court that it may be permissible to convict a person on the basis of a statement made under Section 161 Cr. P.C., which is treated as dying declaration under Section 32 of Evidence Act. Consequently, this statement can be considered and relied upon.

36. Now, we turn to the defense version. The defense story appears to be false from clew to earing. It must be borne in mind that the incident took place at about 12.00 noon as is apparent from her statement made before the Investigation Officer Ex.PW21/B. Her MLC Ex.PW4/A clearly goes to depict that she was brought to the hospital at about 1.40 P.M. Besides the appellants took unusual long to bring the deceased to the hospital i.e. nearly an hour and forty minutes considering the distance being of nearly 8 kilometers. The plea of the appellants that they had promptly rushed deceased to the hospital and their conduct was not of guilty persons does not cut any ice.

37. Now, I advert to the statement of PW5 Devender, who is son and brother of the appellants. This witness has admitted his statement under Section 161 Cr. P.C. partly. In his cross-examination, he admitted that he heard the noise of 'Bacho Bacho' and the noise of weeping. The argument advanced by the learned defense counsel was that if it was a case of murder, the deceased should have raised an alarm. The argument of the learned defense counsel, under the circumstances does not hold. PW5 further deposed that he got up and saw the smoke was there inside the room and the clothes of his Bhabhi Kavita were burning and she was lying on the floor of the room near the door. According to him and his others kith and kin, whose evidence has been discussed above, Surrender had suddenly returned. Surrender's appearance on the spot is by chance and this part of the defense story appears to be unreliable and false. It is surprising to note that according to PW5 smoke was coming from the room and not from the kitchen, where according to them this incident had taken place. There is not even an iota of evidence that anybody saw her changing the clothes. There is no evidence that

she had made an attempt to pick up fresh clothes. Those fresh clothes did not see the light of the day.

38. Again Devender Singh stated that Surender and he himself broke open the door. He stated that his mother and father also came there and many people had collected there. Even Sunita DW2 could not tell what was the cause of her burning. A bare look on the site plan clearly goes to show that the room in question is situated at a distant place. There were other rooms situated nearby. Bathroom is situated near the kitchen. Sunita deposed that the fire was extinguished with the aid of gunny bags. Those gunny bags were not recovered by the police. She made an enquiry from Kavita as to why she had bolted the door from inside. She replied that she bolted the door because she was changing the clothes which had caught fire. When her sister wanted that she should open the door, she should have opened the door immediately irrespective of the fact whether or not she was changing the clothes. She did not state that her mother-in-law came back along with Bimla and she did not state about the presence of Hira Lal and Jaipal.

39. What has raised eyebrows further is as to why all the DWs did not report the matter to the police or higher authorities. Sunita stated that she asked the police to record the statement but the same was not recorded. If her statement is true, she should have moved a written complaint/application. For the above stated reason the presence of Har Lal, Bimla and Jaipal is open to doubt. They appear to be procured witnesses. Lastly their evidence does not match with the circumstances existing at the time of incident.

40. In view of the afore going discussion the appellants have failed to make out any case or ground for setting aside the reasoned judgment of the trial court. The appeal is accordingly dismissed. Appellant Gyano Devi is in judicial custody undergoing her sentence. Appellant Surender, who is on bail be taken into Judicial custody forthwith and sent to jail to undergo the remaining sentence. File be consigned to the Record Room.