

Vishnu Dutta Soni Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-20-2005

Reported in : 2006CriLJ1061; RLW2006(2)Raj1016; 2006(1)WLC780

Judge : B. Prasad and; S.P. Pathak, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 4(1), 154, 161, 313 and 374;
Indian Penal Code (IPC) - Sections 302, 307, 323 and 498A

Appeal No. : D.B. Criminal Appeal No. 73 of 2002

Appellant : Vishnu Dutta Soni

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.

Disposition : Appeal dismissed

Judgement :

S.P. Pathak, J.

1. This appeal under Section 374 of the Criminal Procedure Code has been directed against the judgment and order dated 18.1.2002 passed by the learned Addl. Sessions Judge, Anoopgarh in Sessions Case No. 12/2000 - State v.

Vishhnudutt Soni whereby the accused appellant has been convicted under Section 302 IPC and sentenced for life imprisonment with a fine of Rs. 1,000/-, in default thereof to further undergo two months rigorous imprisonment.

2. Briefly stated, the facts giving rise to the present case are that on 25.10.1999 at 11 PM complainant Manakchand Soni presenting himself at Police Station Anoopgarh lodged a written report to the effect that his two daughters named Meera and Seema have been married to the sons of Bhera Ram, resident of Ward No. 9, Anoopgarh about three years ago. It was further stated in the report that on that day at about 1:30 PM he received information at his home that his daughter Meera has received burn injuries and she has been admitted in the Anoopgarh Govt. Hospital and on that he went to the hospital and when asked his daughter Meera she told that her husband had earlier beaten her in the noon and thereafter after pouring kerosene oil on her lit the fire due to which she got burns. Her husband Vishnudutta was harassing and disturbing her and on that day had burnt her by pouring kerosene when she and her husband only were there at home. Her sister Seema was making cow-dung cakes outside and the mother-in-law had gone out of house on account of some work and the father-in-law and brother-in-law were at shop and the sister-in-law had gone to her school. He has inquired about the incident from his daughter and moving the application for initiating action etc.

3. On the basis of said report a regular FIR Ex. P/I 1 was chalked out. The report disclosed the offence committed under Sections 307 and 323 IPC a case was registered and investigation commenced.

4. During the course of investigation, site-plan and site- inspection note were prepared and from the spot half-burnt pieces of Saree and one jericane of 10 liters kerosene oil were seized. Accused Vishnudutt was arrested and on the basis of information voluntarily furnished by him, his one pant was recovered. Statements of mst. Meera were recorded in PBM Hospital, Bikaner and thereafter her dying declarations were recorded. On receiving information about the death of Meera, the police after reaching Bikaner, prepared memos of the condition of dead body of Meera, Panchayatnama of dead body and handed over the dead body to her

relatives. The articles recovered were deposited in FSL, Jaipur for examination. As Mst. Meera had died during her treatment in the hospital, offence under Section 302 was added and on completion of investigation, a challan for offence under Sees. 498A and 302 IPC was submitted in the Court of Judicial Magistrate, Anoopgarh who committed the case to the Court of Sessions. Thereafter, it came for trial before learned Addl. Sessions Judge, Anoopgarh, District Sri Ganganagar.

5. Charge under Sections 498A and 302 IPC was framed and read over to the accused, who denied the charge and claimed trial. In support of its case, the prosecution examined as many as 17 witnesses and tendered several documents in evidence. Accused in his statement under Section 313 Cr.P.C. denied to have committed any offence and got examined Premlata DW 1 and Vijay Singh DW 2 as defence witnesses.

6. The learned trial Judge after hearing both sides, convicted and sentenced the accused appellant as indicated hereinabove.

7. We have heard the learned Counsel for the appellant and also the learned Public Prosecutor at a great length and carefully examined the material available on record.

8. The learned Counsel for the appellant has made the following submissions.

(1). That the real sister of the deceased and the independent witnesses PW 2, PW 3, PW 6, PW 10 and PW 11 have not supported the case of prosecution rather their statements supported the defence version and in such circumstances the learned Trial Court ought to have relied on the version and story favourable to the accused appellant as per well settled principles of criminal jurisprudence.

(2) That the present case is a clear case of suicide but has been given the colour after concocting a false story.

(3) That the dying declarations relied upon for basing conviction by the learned Trial Court are contrary to each other and the conjoint reading thereof make the story of prosecution doubtful.

9. The learned Public Prosecutor made the following submissions:

- i) That the findings of guilt recorded by the learned Trial Court are based on cogent reasons.
- ii) That the accused was the only person who was present at the place of occurrence with the deceased and it has come in the dying declarations that the accused had lit fire on her after pouring kerosene oil on her, therefore, in these circumstances it will only be presumed that the accused has murdered his wife.
- iii) That the two dying declarations are sufficient to bring home guilt against the accused and only on the basis of minor contradictions, prosecution version cannot be considered to be not proved.
- iv) That the reason of going against prosecution by the younger sister of deceased Seema, who is wife of younger brother of the accused and living in the in-laws house might be the pressure of the in-laws.

10. We have considered the rival submissions made before us.

11. The case of the prosecution mainly rests on three dying declarations made by the deceased; first Ex. P/33 at about 12:45 PM in the Anoopgarh Hospital on 25.10.1999 before PW 12 Shri Ashok Yadav, SDO, second dying declaration was made before PW 15 Shri Om Prakash Jat, Addl. Chief Judicial Magistrate, Bikaner on 26.10.1999 Ex. P/13 at about 2:45 PM in the PBM Hospital, Bikaner and the third dying declaration under Section 161 Cr.P.C. was recorded by PW 9 Ram Singh, Sub-Inspector of Police, Police Station, Anoopgarh on 27.10.1999. It also rests on the oral testimony of the witnesses for corroboration of the statements made in the above said dying declarations.

12. The learned Counsel has contended that the dying declarations relied upon for basing conviction by the learned Trial Court are contrary to each other and are not trustworthy as according to the prosecution case itself the percentage of burn received by deceased were between 80 to 100%, therefore looking to the serious condition and the treatment given to her, the certificate of the doctor on first dying declaration Ex.P/33 that patient was fit to give statement is doubtful. It has next

been contended that another dying declaration is also not trustworthy for the reason that since the father of the deceased was present there and further the doctor who certified that the deceased was fit to give statement has not been examined, therefore the second dying declaration also becomes doubtful. It has further been submitted that the third dying declaration Ex.P/21 i.e. the statement recorded under Section 161 Cr.P.C. is also doubtful as the real sister of the deceased who is married in the same family with the brother of the accused has totally denied the prosecution version that the accused set her on fire after pouring kerosene oil on her.

13. On the other hand, the learned Public Prosecutor contended that the dying declarations in the present case proves the prosecution case in view of the statements of PW 12 Shri Ashok Yadav and PW 15 Shri Om Prakash Jat, Addl. Chief Judicial Magistrate and also by the medical evidence, therefore, only on the basis of certain minor discrepancies it cannot be said that the dying declarations are not worth reliance.

14. We have considered the above submissions made before us.

15. Before proceeding further, it would be apposite to go through the law laid down and the principles propounded by the Hon'ble Apex Court on the point of dying declaration in similar cases.

16. While resolving the conflict of opinion as to the manner of testing the credibility of a 'dying declaration', a Constitutional Bench of Hon'ble Apex Court in the case of Laxman v. State of Maharashtra : 2002 CriLJ4095 , said:

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the

veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the Courts insist that the dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court, however, has always to be on guard to see that the statement of the deceased was not as a result 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 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 the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. 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. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

17. The Court further said:

It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma v. State of A.P.* must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat*.

18. The aforesaid judgment of Constitution Bench has overruled the view taken in *Papparambaka Rosamma v. State of A.P.* : 1999 CriLJ4321 and has approved the view taken in *Koli Chunilal Savji and Anr. v. State of Gujarat* : 1999 CriLJ4582 . The Constitution Bench has said that the view taken in *Paparambaka Rosamma* (supra) that in the absence of medical certification as to the fitness of state of mind, it would be risky to accept a dying declaration on the subjective satisfaction of the Magistrate is too broadly stated and is not a correct law. In *Koli Chunilal Savji* (supra) a Bench of three learned Judges had rejected the contention that in the absence of a doctor while recording the dying declaration, the declaration loses its value and cannot be accepted. In that case the Hon'ble Court had observed that the aforesaid requirements are a mere rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given'.

19. In *Ravi Chander and Ors. v. State of Punjab* : (1998)9SCC303 the Hon'ble Supreme Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted and the Court had observed that the Executive Magistrate is a disinterested witness and is a responsible officer and as long as there is no material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration, no question arises to checking the genuineness of the dying declaration recorded by the Executive Magistrate.

20. The Hon'ble Supreme Court in the case of P.V. Radhakrishna v. State of Karnataka : 2003 CriLJ3717 dealing on the point of dying declaration and defining meaning and reasons behind its admission in evidence, has given guidelines quoting the principles laid down in several earlier judgments as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munriu Raja and Anr. v. The State of Madhya Pradesh : 1976 CriLJ1718 .

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh v. Ram Sagar Yadav and Ors. : 1986 CriLJ836 and Ramavati Devi v. State of Bihar : 1983 CriLJ221

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. See K. Ramachandra Reddy and Anr. v. The Public Prosecutor : 1976 CriLJ1548 .

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. See Rasheed Beg v. State of Madhya Pradesh : 1974 CriLJ361 .

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. See Kaka Singh v. State of M.P. : 1982 CriLJ986 .

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. See Ram Manorath and Ors. v. Sate U.P. : [1981]3SCR195

(vii) merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. See State of Maharashtra v. Krishnamurthi Laxmipati Naidu : 1981 CriLJ9

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. See *Surajdeo Oza and Ors. v. State of Bihar* : 1979 CriLJ1122 .

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye- witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. See *Nanahau Ram and Anr. v. State of Madhya Pradesh* : 1988 CriLJ936

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. See *State of U.P. v. Madan Mohan and Ors.* : 1989 CriLJ1485

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. See *Mohanlal Gangaram Gehani v. State of Maharashtra* : [1982]3SCR277 .

21. The Hon'ble Court said that 'though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in the correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination, the Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

22. The above principles laid down by Hon'ble the Apex Court, transpire that dying declaration is only a piece of untested evidence and must like any other evidence

for satisfying the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it if after careful scrutiny the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and further if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

23. Now we propose to examine the dying declarations recorded in the present case alongwith other evidence. The first dying declaration of Meera (Ex.P/33) was recorded in Anoopgarh Hospital under the direction of PW 12 Ashok Yadav, who at the relevant time was SDO, Anoopgarh. The dying declaration has been recorded in question-answer form. Before recording the dying declaration, the duty doctor was asked regarding the condition of patient as to whether she was in a position to give statement. On the dying declaration (Ex.P/33), at place 'A' to 'B' the duty doctor of the hospital has certified to the effect 'Patient is fit for statement'. The English version of the dying declaration is as under:

1. Question : what is your name What is the age Answer : My name is Meera. Age is 20 years.

2. Question : What is the name of your husband Answer : My husband's name is Vishnu.

3. Question : When your marriage took place Three years ago.

4. Question : Where is the in-laws house ?

Answer Ward No. 9 is not the correct address. It is often heard that it is near the Gadh behind lovely school in Anoopgarh.

5. Question : How you got burns ?

Answer My husband has burnt by pouring kerosene.

6. Question : Who were there at the time of incident ?

Answer : My husband and my sister who has been married to the younger brother of husband. My sister at that time was doing 'Li-payee' (spreading fluid made of

cow-dung) in the house. She came to know about my burning only after I had burnt because I could not cry.

7. Question : Why you have been set on fire Answer : My husband did not like me.

8. Question : Did he used to beat you ?

Answer: Yes, a day before incident he had beaten me.

9. Question : Whether your husband demanding dowry Answer : Yes, he used to demand dowry from Papa but he didn't.

10. Question : At what time you were burnt Answer: Exact time is not know.

11. Question : Who brought you to the hospital ?

Answer : Neighbourer Gulab Singh, Vijay Singh and my Devar Trilok Singh (husband's younger brother). My neighbour Prem Bai knows everything.

12. Question : How many children do you have Upto which standard you have studied ?

Answer : One son is of one and a half years. I have studied upto class IV/V.

13. Question : What is your father's name and which is the village ?

Answer: My father's name is Manak Chand Soni and the village is 465 Head.

A note has been appended on the foot of statement by the SDO stating that the above dying declaration has been recorded under my directions and that the deceased was asked to sign the statement but on account of burns on the palm she showed her inability to pick the pen and as such she was asked to put her thumb impression.

24. The above dying declaration has been recorded by PW 12 Ashok Yadav. He has stated that on 25.10.1999 while he was SDO, Anoopgarh, he recorded the dying declaration on the information of SHO, Anoopgarh. He stated that he recorded the dying declaration after seeking opinion from doctor regarding fitness

of the deceased to give statement and the doctor certified that she was in a fit condition to give her statement. He has further stated that the dying declaration so recorded was sent through Ex.P/34 to the Civil Judge (Jr. Div.) and Judicial Magistrate, Anoopgarh on 17.11.1999. In the cross-examination, he has stated that the SHO requested him on telephone to record the dying declaration and he went to the hospital alongwith Clerk Shankerlal and Driver Babu and there under his directions the dying declaration was recorded by Clerk. He further stated that at the time of recording of dying declaration, doctor was present but the police was not there. He has denied the suggestion that in fact the dying declaration was not recorded on 25.10.1999 but was recorded later on in consultation with some advocate.

25. PW 8 Dr. R.S. Bansal, who has certified the condition of the deceased, has stated that he was Medical Officer in the Govt. Hospital, Anoopgarh on 25.10.1999 and on that day at 12:45 PM the SDO Anoopgarh had inquired from him about the condition of Smt. Meera, the deceased, for recording her dying declaration and he opined that the patient was fit for statement. The witness has stated that his opinion is available on Ex.P/33 at place 'A' to 'B' and his signatures are available at place 'C' to 'D'. In the cross-examination, he has stated that he cannot tell who had prepared the admit ticket of Meera that can only be said seeing it. He has denied the suggestion that he had certified the condition of Meera without examining her. He has further denied the suggestion that SDO never sought his opinion but in fact some time after recording the dying declaration Ex.P/33 he made note regarding the condition of the patient on Ex.P/33.

26. The second dying declaration is Ex.P/13 which was recorded by PW 15 Om Prakash Jat, Addl. Chief Judicial Magistrate No. 1, Bikaner in PBM Hospital on 26.10.1999 as the patient was referred for further treatment from Anoopgarh to Bikaner on 25.10.1999. PW 15 Om PRakash Jat has stated that on 26.10.1999 while he was ADJM No. 1, Bikaner, on that day at about 2:30 PM in the noon, Kana Ram, Sub-Inspector, Police Station, Sadar, Bikaner moved an application Ex.P/36 before him with the request to record statement of Smt. Meera w/o Vishnudutt, who was admitted in PBM Hospital, Bikaner at Bed No. 40 and in pursuance of said requisition Ex.P/36 he immediately rushed to the hospital and

obtained report from the doctor regarding the condition of the patient as to whether she was in a condition to give her statement. An endorsement to that effect is available on Ex.P/36 at place 'A' to 'B' and his signatures is at place 'C' to 'D'. the doctor reported that the patient was 'fit for statement' at place 'E' to 'F'. He recorded the dying declaration at 2:45 AM on 26.10.1999. This dying declaration is also in question-answer form, the English version of which is as under:

1. Question : What is your name ?

Answer: Meera

2. Question : What is husband's name ?.

Answer: Vishnuji.

3. Question : Where is in-laws house ?

Answer: Anoopgarh.

4. Question : When did you burn ?

Answer: Yesterday.

5. Question : What was the time ?

Answer : 12 O'clock in the day.

6. Question : How did you burn ?

Answer : My husband burnt by kerosene oil.

7. Question : What you were doing at that time ?

Answer: Boiling the water.

8. Question : Why burnt you ?

Answer : Don't know. She said thereafter that her husband wanted someone else.

9. Question : How many years have passed since your marriage ?

Answer : Three years have passed.

10. Question : How many children you have ?

Answer: One son.

11. Question : Who others were at home when you were burnt ?

Answer: One sister and a child were there. The sister was outside.

12. Question : Where were the mother-in-law and father-in- law ?

Answer: Father-in-law was at the shop and mother-in-law had gone to give him meal.

13. Question : Whether your husband, father-in-law and mother-in-law harassed you ?

Answer: The husband used to harass and beat and the mother-in-law used to abuse.

14. Question : Who was the another woman to whom your husband liked ?

Answer: Don't know;

15. Question : How were you burnt ?

Answer : I was filling oil in the stove at that time my husband came from behind and snatching the tin poured the oil and lit the fire. When I started running, I was pushed back by him. I went running to my sister Seema. Seema was applying the 'Gara'. Thereafter, the husband poured water from a pitcher and extinguished the fire.

16. Question : Who others came when you was burnt ?

Answer: Hearing shouting Vijay Singh, Gulab Singh and Prem Bai had come. I do not know the names of others.

17. Question : Who took you to the hospital ?

Answer: Neighbourers had taken.

27. The aforesaid dying declaration bears the thumb impression of Smt. Meera. Signatures of Manakchand, the father of deceased, were also obtained at place 'A' to 'B'. In the cross-examination, the witness has stated that no statement of Meera was produced before him while submitting application Ex.P/36 by Kanha Ram S.I. and whatever was stated by Meera has been recorded by him in his handwriting. At that time, her father was sitting nearby. He also stated that he neither saw the bed-head ticket nor asked about treatment or the medicine given to Meera but the doctor on his asking told that there were 80% burns on the person of the deceased and he was also of the opinion that deceased sustained 80% burns. The suggestion has been denied that on account of extensive burns she was not in a position to give statement. He has stated that father of the deceased was in the hospital but where he was, he does not remember. The witness denied the suggestion that in fact he has recorded the statement as per the version given by the father of the deceased Shri Manak Chand.

28. The third dying declaration is Ex.P/21 recorded by PW 9 Ramu Singh. The witness has proved that he recorded the statement in the PBM Hospital, Bikaner on 27.10.1999. Whatever she stated was reduced into writing by him. In this statement under Section 161 Cr.P.C, the deceased Meera has confirmed about the incident that happened with her on 25.10.1999. Whatever she stated was reduced into writing by him. In this statement under Section 161 Cr.P.C, the deceased Meera has confirmed about the incident that happened with her on 25.10.1999. She stated that in the noon her husband poured kerosene oil on her and thereafter set her on fire. At that time her father-in-law and mother-in-law were not at home. Her sister was there. She was taken to the hospital by her neighbourers.

29. PW 1 Seema is the sister of deceased Meera who was married to the brother of the accused. She has turned hostile and has not supported the prosecution case she has stated that she and her deceased sister Meera were married in one family. Meera who was two years elder to her, had a son at the time of incident.

Her sister meera was boiling water and thereafter when she heard her cry and came there from outside and saw that Meera was burning. At that time Meera's husband was in a room. She has further stated that after knocking the door he opened the door and came outside and poured water on her from a pitcher and extinguished the fire and thereafter she was taken to the hospital by the neighbours.

30. A perusal of statement and cross-examination of this witness gives an impression that because she has been married to the brother of the accused, she has not given the correct version of the incident as she has to live with them. She has denied her police statement in its totality.

31. PW 4 Manak Chand is the father of the deceased. He has stated that on 25.10.1999 when on being informed that her daughter has been burnt and she has been admitted in the hospital, he went there and asked his daughter about the incident then she disclosed that her husband had poured kerosene oil and set her on fire. He has further stated that he submitted report Ex.P/9 of the incident in the Police Station, on the basis of which regular first information report was chalked out. He further stated that her condition was serious, therefore on 25.10.1999 she was referred to Bikaner Hospital and after 14 days she died there. In the cross-examination, this witness has stood the test of cross-examination regarding the fact that her daughter had disclosed him the fact that accused was responsible for the incident.

32. A scrutiny of above statements clearly indicates that the contentions raised by the learned counsel for the appellant that dying declarations are not worth reliance and same suffer from material contradictions in view of the statement of PW 1 Seema, the sister of the deceased, who has not supported the prosecution case, and that the present case is one of suicide, is not tenable for the reason that PW 12 Ashok Kumar, SDO and PW 15 Om Prakash Jat, Addl. Chief Judicial Magistrate, have recorded the dying declarations after taking due case and after satisfying themselves about the condition of the deceased that she was in a position to give statement. The Doctor Mr. R.L. Bansal (PW 8) has also stated that she was in a fit condition to give statement.

33. In the case of P.V. Radhakrishna v. State of Karnataka (supra), the Hon'ble Supreme Court has held that if the Court is satisfied that the dying declaration is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction even if there is no corroboration. It has further been observed by the Hon'ble Apex Court that if the person recording the dying declaration is satisfied that the declarant is in a fit mental condition to make a dying declaration then such a dying declaration will not be invalid solely on the ground that the condition is not certified by a doctor.

34. In Sohanlal's case (supra), the Hon'ble Supreme Court has considered almost all the arguments which have been raised before us by the learned Counsel for the appellant and it has been held that where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

35. The principles which have been laid down by the Hon'ble Supreme Court in the above referred authorities indicate that what is required is the satisfaction of the Court regarding the truthfulness of the dying declaration. The three dying declarations in the present case are clearly suggestive of the fact that in all the three dying declarations it has been stated by the deceased that it was her husband who poured kerosene oil on her and thereafter set her on fire. Nothing has been elicited in the cross-examination to show that the dying declarations were not trustworthy. There is no reason why the deceased would entangle her husband when she was on the death-bed. The motive as per the above dying declarations appear to be her husband's involvement somewhere else. In criminal cases, motive is not relevant but whatever motive which has come in the dying declarations is to the effect that her husband used to harass her and he was responsible for the incident. The criticism which has been advanced regarding the testimony of the above three dying declarations appears to be of no substance.

36. It is not necessary that a dying declaration cannot be acted upon in the absence of doctor's certificate. It is also further not the requirement of law that a doctor who certified about the condition of the patient should be examined. On the contrary, the principles which emerge out from the decisions referred to hereinabove is that the dying declaration is recorded by a Magistrate after satisfying himself about the condition of the patient regarding making statement and thereafter if the statement has been recorded then that can be acted upon even without corroboration.

37. In the instant case, the first and second dying declaration recorded by PW 12 Ashok Kumar, SDO, Anoopgarh and PW 15 Om Prakash Jat, ACJM No. 1, Bikaner, go to show that both these authorities were satisfied about the condition of the patient and they have stated that the deceased was in a fit condition to give statement. If that is so, then no need is there even for any corroboration. If any corroboration is required, then that corroboration is available from the statement of the PW 8 Dr. R.L. Bansal. he has clearly stated that the patient was admitted in the hospital and her statement was recorded after obtaining his opinion by PW 12 Ashok Kumar and that the patient was in a fit condition to give her statement. The witness has denied the suggestion that on account of severe burns she was not in a position to make a statement.

38. In view of above, we are of the opinion that the dying declarations recorded in the present case particularly Ex.P/13 and P/33 are reliable.

39. Another contention of the learned Counsel for the appellant that on account of independent witnesses PW 1 Smt. Seema, PW 2 Gulab Singh, PW 3 Devi Singh, PW 6 Surajmal, PW 10 Manohar Singh and PW 11 Harjinder Singh having turned hostile, and some of the witnesses having supported the defence version that the deceased committed suicide, and therefore the accused was not liable to be convicted, too has no substance for the reason that out of the the above witnesses PW 1 Seema is the sister of the deceased and was married to the brother of the accused and when she has to live in the same house, she is expected to depose in favour of her in-laws. As regards other witnesses, most of them are of recovery memos etc. and are of formal nature. Thus, it appears that the dying declarations

alongwith other evidence clearly suggest that the deceased died on account of pouring kerosene oil on her and the accused set her on fire which resulted in extensive burn injuries on her person.

40. PW 8 Dr. R.L. Bansal has proved the injuries n the person of deceased. The injury report Ex.P/18 prepared by him shows the following injuries on the person of Smt. Meera, the deceased:

Superficial and deep burn with blackening of skin - Blister formation and peeling of skin at places. There is red line of demarcation. Scalp hair surged with kerosene like smell present in scalp and clothes. Eye brow and eye lashes surged. Public hair surged. Burn Lesion present over face, scalp, neck all over upper extremity as a whole.

Chest and Abdomen - Chest almost complete with upper 2/3 of abdomen. Back upper 2/3 having burn Lesion. Lower extenuation - medial Part of both thigh unburned. Rest almost complete. Food and both sole burned.

Opinion - Dry plain burns about 80% of body surface area and dangerous for life.

41. The Post-mortem Report Ex.P/35 has been proved by PW 14 Ashok Parmar. He has stated that on 9.11.1999 he was serving as Assistant Professor of Surgery at PBM Hospital, Bikaner. The post-mortem on the dead body was got conducted under the orders of Superintendent of Hospital. A Medical Board was constituted and the postmortem of the dead body was got conducted by the Board. The cause of dead was extensive burns and septicemia. In the cross-examination, the witness has stated that a person can speak even after receiving extensive burns to the extent of 95 to 100%. He has proved post-mortem report Ex.P/35. The Post-mortem Report reads as follows:

There is burn ulcers of different size and different depth present all over body except part of abdomen blow the umbilicus to public symphysis, public hair, axillary hair surged. There is pus present in ulcerts.

Total body surface are involved is about 95-100%.

Cause of death is septicemia due to extensive burns.

42. In view of above, we do not find any substance in the contention of the learned Counsel that on account of several witnesses having turned hostile, the defence version that the deceased committed suicide requires to be accepted. The defence witnesses produced in the case i.e. DW 1 Premlata and DW 2 Vijay Singh are not reliable in view of the evidence led by the prosecution and the dying declaration recorded by the Magistrate because DW 1 Premlata says that when she reached at the spot, where incident had taken place, the deceased told her that she got burns herself whereas in the cross-examination she states that the deceased did not tell her as to how the incident took place and what was the reason for setting her to fire. Statement of DW 2 Vijay Singh is also vague and not reliable in view of the dying declarations recorded in the present case which have been considered reliable and trustworthy.

43. In the statement under Section 313 Cr.P.C. the accused has stated that he did not put kerosene oil on her wife whereas she herself had set fire and a false statement has been given by her on account of her parents' tutoring her. He has also stated that the matter has been compromised between them. Alongwith statement under Section 313, Cr.P.C. on a non-judicial stamp of Rs. 10/- a compromise arrived at between the parties has been filed. This document itself is suggestive of the fact that this was prepared on 20.1.2000 whereas the incident had taken place on 25.10.1999. How this document, which was filed alongwith statement under Section 313 Cr.P.C, can be considered as a proof to draw a conclusion that deceased has falsely implicated the accused in her depositions in her several dying declarations, as discussed hereinabove is not trustworthy.

44. Be that as it may, the dying declarations coupled with the medical evidence and recovery in the case inspire confidence and even if the several witnesses have turned hostile that will not in any manner effect the prosecution case.

45. The further contention of the learned Counsel that in fact the report Ex.P/9 was lodged after due consultation and in fact the wireless message received earlier at the Police Station regarding incident, which has not been produced, was the first information report. According to learned Counsel, both PW9 Ramu Singh, Sub-

Inspector, who was conducting investigation in the case and PW 13 Ismail Khan, who at the time of incident was SHO, Anoopgarh, have stated that they reached at the spot in the noon whereas the first information report was lodged at about 11 PM in the night by the father of the deceased PW 4 Manak Chand, as such the entire prosecution case becomes doubtful.

46. On the other hand, learned Public Prosecutor has submitted that a telephonic message received at the Police Station not to be treated always as a FIR. It has further been submitted that the father of the deceased was throughout busy in the treatment of her daughter and he submitted the report on the very same day at 11 PM and took her daughter to Bikaner as her condition was serious, therefore, to draw a conclusion that report Ex.P/9 in this case is a result of due deliberation in view of the facts and circumstances is not correct.

47. We have considered the submission of the learned Counsel.

48. It is correct that in the present case PW 9 Ramu Singh, S.I., in his statement has admitted this position that he alongwith PW 13 Ismail Khan had visited the place of incident in the noon of 25.10.99. PW 9 Ramu Singh has conducted part of the investigation in the matter and PW 13 Ismail Khan in the cross-examination has stated that on 25.10.99 when he was in the SDO Court, Anoopgarh, one telephonic message was received to the effect that one lady in burnt condition was admitted in the hospital and thereafter informing to the SDO he went to the hospital and there PW 12 Ashok Yadav, SDO recorded the statement of the deceased.

49. To appreciate the contentions, it shall be proper to have a glance over some of the provisions of the Criminal Procedure Code, Section 154 of Cr.P.C. prescribes recording of information received oral or in writing by an officer incharge of the police station in respect of commission of a cognizable offence. Section 161 authorizes such an officer to investigate any cognizable offence prescribed therein. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. Under Section 4(1) of the Cr.P.C. investigation includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person

other than a Magistrate who is authorized by a Magistrate in this behalf.

50. A perusal of above provisions indicates the following steps of investigation.

(1) To reach at the spot;

(2) Verify the facts and circumstances of the case;

(3) Arrest of the suspected offender and recoveries;

(4) Collection of evidence relating to the commission of the offence which may be consisting of (a) Examination of various persons, and (b) Search of places of seizure; and

(5) Formation of opinion as to whether on the material collected, a charge-sheet can be filed.

51. Thus, it appears that on an information through telephonic message etc. received at the police station will not always be considered to be a First Information Report and even if it is entered in the Rojnamcha it cannot be treated as an FIR. On receipt of an information at the police station regarding some offence being committed and if the officer incharge of the police station on the basis of that information is prima facie satisfied about a cognizable offence and proceeds to the place of occurrence to find out the detail nature of the offence then it can be said that the information received on the telephone is the First Information Report. What is required is that officer incharge of the police station should be prima facie satisfied about the commission of the cognizable offence and if he after recording prima facie satisfaction proceeds from the police station then said information can be treated as an FIR. In the present case, PW9 Ramu Singh, Sub-Inspector and PW 13 Ismail Khan, SHO, who had gone at the spot to verify the Q.S.T. received, as stated by the PW 13, then in that factual aspect the telephonic message received at the police station cannot be treated as FIR infact. Even if, some statements were recorded for the purpose of verifying the information then also those statements cannot be treated as an FIR.

52. We also do not find any merit in the contention of the learned Counsel that in the present case the FIR lodged by PW 4 Manak Chand was lodged after due consultation and on account of alleged delay the prosecution case is liable to be rejected.

53. In view of above discussions, we find the dying declarations made in the present case viz. Ex.P/13, P/21 and P/33 reliable. PW 12 Ashok Kumar and PW 15 Om prakash Jat, ACJM, Bikaner, have both after seeking opinion of the doctors regarding condition of the deceased and after being satisfied that she was in a position to give statement have recorded the dying declarations. The dying declarations so recorded clearly indicate that she was mentally fit and she answered to all the questions put without any hesitation and there appears no reason why she should entangle her husband without any rhyme or reason. It has not been disputed in the present case that the deceased died on account of burn injuries which the deceased received while she was at her house, therefore the defence version that the deceased herself committed suicide, in our view, is not reliable.

54. The learned Trial Court after appreciation of evidence came to the conclusion that the dying declarations in the present case are reliable and we after having carefully examined the same do not find any reason to differ on the conclusion drawn by the learned Trial Court. The evidence in the case is sufficient to hold the accused-appellant guilty for the offences for which he has been convicted and sentenced. The learned Trial Court has properly appreciated the matter and therefore, in our considered opinion, no interference is called for in the findings of guilt recorded against the accused appellant by the learned Trial Court.

55. In view of the foregoing discussion, we do not find any merit in this appeal.

56. In the result, the appeal stands dismissed.