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Court : Himachal Pradesh

Decided On : Jan-06-2000

Reported in : 2001CriLJ1517

Judge : R.L. Khurana and; M.R. Verma, JJ.

Acts : Evidence Act, 1872 - Section 32(1); ;Indian Penal Code (IPC), 1860 - Sections 34, 302 and 307; ;Code of Criminal Procedure (CrPC) - Sections 125, 161 and 313

Appeal No. : Cri. Appeal No. 463 of 1997

Appellant : Pradeep Kumar and ors.

Respondent : State of H.P.

Advocate for Def. : Ashok Sharma and; B.B. Sharma, Asstt. Adv. Generals

Advocate for Pet/Ap. : Jagdish Vats and; Vinay Thakur, Advs.

Disposition : Appeal dismissed

Judgement :

M.R. Verma, J.

1. Feeling aggrieved the appellants-accused (here-in-after referred to as the accused) have preferred the present appeal against the judgment dated 24-11-

1997 passed by the learned Sessions Judge, Bilaspur whereby the accused persons have been convicted and sentenced under Section 302 read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for life and to pay fine in the sum of Rs. 5000/- each and in default of payment of fine to suffer further rigorous imprisonment for one year.

2. Case of the prosecution, in brief, is that on 18-4-1996 at 8-30 p.m. Dr. TVS. Chandel (PW-12), Medical Officer, CHC Bharari gave a telephonic information to Police Station, Bharari intimating that one Asha Devi (since deceased) resident of Dehra had been admitted in the Hospital in burnt Condition, therefore, some Investigating Of-ficer may be deputed in the matter. The information so received was entered in daily-diary of the Police Station vide Report Ex. PW-10/A and SI/SHO Anant Ram (PW-17) proceeded to the Hospital where he made an application Ex. PW- 17/B to the said Medical Officer to give opinion whether the injured was in a position to make a statement. However, the Medical Officer opined that she was not fit to make a statement. Another application Ex. P.W. 12/C was then made by PW-17 requesting for issue of the medical certificate in respect of Asha with his opinion as to the nature etc. of the injuries. On the said application PW. 12 issued the MLR Ex. P.W. 12/A mentioning therein that the general condition of Asha was poor and she was semi-conscious and was not responding to queries. The clothing she is wearing was shrunken due to burning and was smelling of kerosene. She was having burn injuries over the face, neck, abdominal wall, both legs sustained due to burning with fire lit by sprinkling kerosene over the body and clothes and the percentage of burns was about 70 to 75 percent.

3. In view of the poor condition of Asha she was referred to District Hospital, Bilaspur. There PW-17 moved another application Ex. PW-17/A to the Medical Officer to give his opinion whether Asha was capable of making a statement or not who opined that she was not fit to make a statement. The police then made inquiries from the mother of Asha, namely, Savitri Devi (PW-1) as to the circumstances in which Asha had sustained the burn injuries and her statement Ex. PW-1/A was recorded on the basis of which FIR Ex. PW-17/C under Section 307/34, IPC was recorded at Police Station, Bharari.

4. The case as disclosed to the Statement Ex. PW-1 /A is that Asha Devi was married to accused Pardeep Kumar in the year 1991. Till 1994 she was kept properly in her-in-laws house. Accused Pradeep Kumar who was serving in the Array came on leave to his house in March, 1995 and took his mother accused Amriti Devi along with him to Jammu for treatment. In the absence of the other two accused from the house, accused Roop Lal harassed said Asha, therefore, she came to her parents' house and did not agree to return to her matrimonial house unless her husband returned home. In the meanwhile accused Roop Lal brought his wife from Jammu to their house when accused Pradeep Kumar also came home in April, 1995. Thereafter accused Roop Lal and Amriti Devi started harassing and -maltreating Asha, therefore, she left her matrimonial house on 21-4-1995 alongwith her children and intimated her parents that she has been advised by her husband to reside in the parents house and to return to the matrimonial house only when he would again come on leave. In the month of July when accused came home he took Asha Devi to his house. However, after 2 or 3 days Asha Devi returned back and informed that accused Pardeep was asking her to stay with his parents but she was not prepared to live with them. Thereafter she started living in her parents house. In September accused Pardeep Kumar along with a few persons went to the parental house of Asha Devi and gave her beatings. Asha Devi thereafter continued to live in her parental house. She instituted proceedings for maintenance against her husband accused Pardeep Kumar in which finally he agreed to pay Rs. 1000/ - per month as maintenance to her. This compromise took place on 16-4-1996. Though the compromise between the parties was arrived at but accused Pradeep Kumar had said that he would not be responsible if in his absence Asha Devi commits suicide by taking poison or by burning herself. After the compromise Asha Devi along with her children went to her matrimonial house along with her brother Om Prakash (PW-5) on the same day. On Parkah returned home on 17-4-1996. On 18-4-1996 a telephonic message was received in the parental house of Asha Devi that she had received burn injuries and is admitted in the Hospital. PW-1 further alleged that her daughter Asha had been burnt by her father-in-law Roop Lal, mother-in-law Amriti Devi and husband Pradeep Kumar all accused in the case. '

5. Asha Devi deceased was referred .from District Hospital, Bilaspur to I.G.M.C. Shimla. When she was admitted in the Hospital at Shimla, Lakkar Bazar Police received intimation that statement of Asha Devi could be recorded. On receipt of this information ASI Mohinder Kumar. Incharge Police Post, Lakkar Bazar, Shimla (PW-16) proceeded to the Hospital and made an application Ex. PW-15 /A to obtain the opinion of the Doctor whether Asha Devi was fit to make a statement or not. On receipt of such application Dr, Mohan Lal Dhiman (PW-15) gave the opinion that Asha Devi was fit to make, statement. After receipt of the aforesaid medical opinion about the fitness of Asha Devi to make a statement ASI Mohinder Kumar (PW-16) recorded the statement of Asha Devi Ex. PW-15/C wherein she has by and large stated what has been stated by PW-1 in the statement Ex. PW-l/A. However, she has further stated that when she was residing with accused Roop Lal alone in the house, he gave her beatings and tried to commit rape on her, that is the reason why she had left her matrimonial house for the first time. About the occurrence she has stated that on 17-4-1996 during night she was beaten up by the accused persons and then caught hold of by accused Roop Lal and Amriti Devi and accused Pradeep Kumar Sprinkled kerosene on her and set her on fire. Thereafter, she fell unconscious. The reason for setting her on fire as assigned by her in the said statement is annoyance caused due to the litigation against Pradeep Kumar accused. This statement was attested by Dr. Mohan Lal Dhiman (PW-15). On the same day the Investigating Officer PW-17 made another application Ext. PW-17/F to get medical opinion whether the deceased was capable of making statement or not. The concerned Medical Officer certified her fit to make statement, therefore, Investigating Officer, PW-17, recorded statement of Asha Devi PW-17/E under Section 161, Cr. P.C.

6. Asha Devi succumbed to the burn injuries on 8- 5-1996 at about 11-30 p.m. On receipt of the information about death of Asha Devi the police visitd the spot and prepared 'Merg' reports Ex. PW-13/A and Ex. PW-13/B. The post-mortem examination of her dead body was got conducted. PW-14 Dr. V.K. Mishra who conducted the Post Mortem of the dead body of Asha prepared post mortem report Ex. PW-14/A and found the following ante-mortem external injuries on the dead body :--

1. Superficial partially healed burns (I and II degree) dermo epidermal burns present on the face, neck, shoulders, right arm, forearm and right hand on ventral aspect, lower half of left arm of complete forearm. With scab (dried) formation and parchmentisation of skin present. Burning and siging on scalp hairs, eye brows and eye lashes seen.

2. Superficial and deep partially healed burns (I, II and III degree burns of Wilson's classification) present, with muscle, nerves and blood vessels visible, present on the anterior aspect and partly on posterior aspect of both lower limbs (As shown in the diagram) with slough at places, foul smelling.

3. Faint smell of kerosene oil present in the scalp hairs and body of the deceased. Slight blackening present at places on the margins of burn injuries.

4. Line of demarcation present between the burnt and unburnt areas.

5. Total burnt area is approximately 55% on this date.

As per the opinion given by him, death of Asha Devi took place due to septe-cemic shock secondary to antemortem burn injuries.

7. During the course of investigation the police took into possession copies of the order dated 16-4-1996 passed by the Additional Chief Judicial Magistrate, Hamirpur on the basis of a compromise between Asha Devi and another and accused Pardeep Kumar in proceedings under Section 125, Cr. P.C. compromise Ex. PW-2/C, statment of Asha Devi Ex. PW-2/D and Statement of Pradeep Ex. PW-2/E in the said proceedings, copies of complaints Exts. PW-2/F and PW-2/G made by the deceased to the Gram Panchayat Pradhan about the atrocities committed on her and a similar complaint to S.P. Hamirpur Ext. PW-2/H vide Memo Ext. PW-2/A. At the time of inspection of the Room where the deceased was burnt the police took in possession one bottle, match box, lamp, broken glass pieces, stopper, batti in glass nip, burnt part of cover of a guilt and a 'chader' vide memo Ex. PW-5/A. Subsequently, on instructions given by Deputy Superintendent of Police, the police took in possesion the remaining part of the cover of the guilt vide Memo Ext. PW-9/A. The articles which were taken in possession by the police

vide memos Exts. PW-5/A and PW-9/A were sent for chemical analysis to the State Forensic Science Laboratory, Shimla. As per the report Ex. PW- 17/H received from the said Laboratory the bottle, the clothes, broken bottle, dorri (Batti), stopper and a nip were found to have contents of kerosene but such contents or contents of any other cumbustible substance were not found on other. After the death of the deceased in the Hospital the case which was earlier registered under Section 307/34, IPC was converted to one under Section 302/34, IPC.

8. On completion of investigation and on being satisfied of the commission of the offences punishable under Sections 302, 307/34, IPC by the accused, the Officer Incharge of the concerned Police Station submitted a charge-sheet against them.

9. The accused were tried by the learned Sessions Judge, Bilaspur on a charge under Section 302/34, IPC.

10. To prove the charge against the accused prosecution examined 18 witnesses.

11. The accused were examined under Section 313, Cr. P.C. wherein the incriminating evidence has been denied. It is their common version in defence that they tried to save the deceased and one Parveen Kumar brother of accused Pradeep Kumar also tried to extinguish the fire and in the process accused Pradeep Kumar also sustained injuries. The parents of the deceased were telephonically informed. They have further claimed that deceased wanted to live with parents and the parents wanted to enjoy the fruits of the earning of Pradeep Kumar. The accused Pradeep Kumar has further claimed that on 17-4-1996 in the evening hours he told the deceased that he wanted to go to Nahan in the morning on 18-4-1996 to see his sister Nirmala Devi. The deceased however objected to it but accused Pradeep Kumar prevailed upon her. However, she continued to be annoyed on this score. The accused persons have thus claimed to be innocent and to have been falsely implicated in the case. They have led defence and examined DW-1 Praveen Kumar.

12. Learned Sessions Judge convicted and sentenced the accused as aforesaid. Hence, the present appeal.

13. We have heard the learned counsel for the accused persons and the learned Assistant Advocated General for the State and have also gone through the records.

14. There is no dispute that Asha Devi had sustained burn injuries to which she ultimately succumbed. The dispute is as to the circumstances under which the injuries were sustained by her. As already stated, according to the prosecution, the fatal injuries were caused by the accused persons, whereas according to the accused persons, when on bearing the cries of the deceased they reached in the room, they saw her clothes burning and then accused Pradeep Kumar and his brother Parveen Kumar tried to extinguish the fire. It is further case of the defence that the deceased was annoyed on bearing from accused Pradeep Kumar that he was to go to Nahan to see his sister. Thus, what emerges from the defence plea is that the injuries sustained by the deceased may be suicidal or accidental.

15. The prosecution in support of its version has mainly relied on the dying declaration Ext. PW- 15/C and reliance has also been placed on the evidence regarding the strained relations between the accused persons and the deceased almost immediately before the incident of burning and the medical-evidence.

16. In case Raj Kumar v. State of Himachal Pradesh (2000 (1) Shim LC 391) (Criminal Appeal No. 18 of 1999, decided on 13-8-1999) a Division Bench of this Court while dealing with the question of evidentiary value of a dying declaration, has held as under :

It is by now well settled that dying declaration is admissible in evidence and can form the basis for conviction, if found to be reliable. While, it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admittd on the premises that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. This premise, which is based on the maxim 'A man will not meet his maker with a lie in his mouth' is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without need for indepedent corroboration, it must be shown that person making it had the

opportunity of identifying the person implicated and it is thoroughly reliable and free from blemish. If, on the facts and in the circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by other and the Court, on strict scrutiny, finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence should not be acted upon unless it is corroborated. A dying declaration by itself is an independent-piece of evidence and can be acted upon, without seeking any corroboration, if it is found to be otherwise true and reliable.

17. In case Kundula Bala Subrahmanyam v. State of Andhra Pradesh, (1993) 2 SCC 684 : (1993 Cri LJ 1635), while dealing with a similar question, the Hon'ble Supreme Court held as follows (para 2) :

Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are

more than one dying declarations then the Court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same....

18. We now proceed to examine the value of the dying declaration Ext. PW-15/C in the light of the above settled proposition of law.

19. The statement Ext. PW-15/C was recorded by PW-16 Mohinder Kumar, ASI on 30-4-1996 in IGMC. Shimla. PW-16 Mohirider Singh has stated that on 30-4-1996 on receipt of telephonic information from IGMC, Shimla that patient of burn injuries wanted to make a statrnent, he went there and presented application Ext. PW-15/A to the doctor to know about the fitness of the patient to make the statement. He has further stated that Dr. Mohan Lal (PW-15) who was present, gave the written opinion that the patient was fit to make the statement. The aforesaid application moved by PW-16 is Ext. PW-15/A and the opinion given by PW-15 is Ext. PW-15/B which reads as follows :

Patient is fully conscious, oriented to time place and person and fit to give statement.

20. PW-16 Mohinder Kumar, ASI has further stated that after obtaining the opinion about fitness of Asha Devi to make a statement, he recorded the statement Ext. PW-15/C of Asha Devi in the presence of the doctor (PW-15) who attested the statement vide endorsement Ext. PW-15/D.

21. PW-15 Dr. Mohan Lal Dhiman has stated that at the relevant time he was posted in IGMC. On 30-4-1996 Asha Devi, who was admitted there, desired to give her statement and he asked the Casuality Medical Officer to inform the police. Thereafter, application Ext. PW-15/A was given to him by ASI. Incharge Police Post, Lakkar Bazar, Shimla (PW-16) and on the said application he recorded the enforsement Ext. PW-15/B about the fitness of Asha Devi to make the statement. He has further stated that the statement Ext. PW-15/C was made by her in his presence and was recorded by PW-16.The statement was read over to Asha Devi

who thumb-marked the same with the thumb of her left-hand as her right-thumb was injured (burnt) arid that he attested and signed the said statement vide endorsement Ext. PW-15/D.

22. It was contended by the learned counsel for the accused that accused Pradeep Kumar had explained in his statement under Section 313 of the Criminal Procedure Code that prior to the recording of Ext. PW-15/C the deceased had made a statement exonerating the accused person. PW-15 Dr. Mohan Lal Dhiman in his cross-examination has admitted that he knew that Asha Devi had earlier made a statement in question-answer form at Bilaspur. On the strength of this admission, the learned counsel urged that the statement so recorded has not been produced in evidence, therefore, an inference can legitimately be drawn that such statement was not favourable to the prosecution and the statement Ext. PW-15/C which had been recorded subsequently is just an engineered affair to falsely implicate the accused persons in the case and in any case the admission made by PW-15 renders the statement Ext. PW-15/C highly suspicious, untrustworthy and. unreliable, therefore, could not ha.ve been relied upon to convict the accused persons. Reliance was Laid by the learned counsel on State of Assam v. Mafizuddin Ahmed, AIR 1983 SC 274 : 1983 Crl LJ 426).

23. It is true that PW-15 in his cross-examination has admitted that he knew that Asha Devi had given some statement in question answer form at Bilaspur, but she wanted to give fresh statement to clear some confusion. However, this admission appears to have been made due to misconception and without knowledge of the facts thereby admitted. There in no dispute that this witness at the relevant time was posted in IGMC, Shimla and was not associated with investigation of the case and treatment of Asha Devi at Bilaspur. At the relevant time he is not shown to be at Bilaspur even in his individual capacity. Thus, what happened at Bilaspur, cannot be known to him. He claims to have this information from the patient. This claim also does not seem to be correct. There is no reason as to why the patient should tell him about her having made any such statement at Bilaspur. Secondly, it clearly emerges from the records that Asha Devi was not in a position to make any statement at Bilaspur. The deceased admittedly sustained the burn injuries on the night intervening 17th and 18th of April, 1996. She was removed to the hospital at

Bharari in the morning on 18-4-1996 and was medically examined there between 8-00 a.m. to 9.00 a.m. The police for the first time attempted to record her statement on 18-4-1996 when application Ext PW-17 was made by PW-17 Anant Ram, SI to PW-12 Dr. T.S. Chandel to give opinion whether Asha Devi was fit to make a statment or not. The doctor opined that she was not fit to make statement and was semi-conscious. On the same day, vide Ext. PW-12/A she was referred to District Hospital Bilaspur. After her admission there, PW-17 made another application Ext. PW-17/A on 18-4-1996 for opinion about her fitness to make statement. The opinion again was in the negative. Therefore, the police recorded statement of the mother of the deceased PW-1 Savitri Devi under Section 154 of the Criminal Procedure Code Ext. PW-1/A on the basis of which First Information Report was recorded and investigation followed. From the records it appears that thereafter till Asha Devi remained admitted at Bilaspur District Hospital, no opinion about her fitnes to make a statement was obtained. From District. Hospital Bilaspur the deceased was referred to IGMC, Shimla for treatment. It was thereafter that her statement Ext. PW-15/C was recorded on 30-4-1996. It has not been put to the Investigating Officer (PW-17) that any statement whatsoever of the deceased was ever recorded at Bilaspur. It has not been suggested even to PW-1 Savitri Devi, mother of the deceased who remained with her in the hospital at Bilaspur and at Shimla, that any statement was made by the deceased to any authority whatsoever at Bilaspur. It is, thus, evident that no statement of the deceased was recorded by any authority at Bilaspur or elsewhere before recording of the statement Ext. PW-15/C by PW-16.

24. It has been suggested to PW-17 Anant Ram, Investigating Officer, by the accused in his cross-examination that Asha Devi had not made any statement. Thus, the plea of the accused that Asha Devi had made a statement in question-answer form at Bilaspur is belied by their own suggestion. Had there been any such statement within the knowledge of the accused as pleaded under Section 313 of the Criminal Procedure Code, it could be suggested at least to the Investigating Officer and it could also be suggested as to who recorded the alleged statement. The person who might have recorded such statement could be produced in defence. Nothing, however, has been done.

25. Even PW-15 when further cross-examined for the accused about the said admission, has stated that he did not remember exactly where the earlier statement was made by her. Against the aforesaid background, the admission by the witness is clearly a case of misconception or is a flight of fancy and not fact a within his knowldge. Therefore, the accused cannot derive any benefit out of it nor the dying declaration Ext. PW-15/C is thereby rendered unreliable. The ratio of Mafizuddin's case (supra) wherein the dying declaration was found untruthful and acquittal of accused on this ground was maintained, is not attracted in this case.

26. The dying declaration Ext. PW-15/C has been recorded by PW-16 Mohinder Kumar, ASI of Shimla police, unconcerned with the investigation of the case, on receipt. of telephonic request from the hospital authorities and after Asha Devi was declared fit by PW-15 to make a statement.

27. The learned counsel for the accused had further contended that accused Pradeep Kumar and his brother Parveen Kumar (DW-1) in fact tried to extinguish the fire whereby accused Pradeep Kumar sustained burn injuries. Accused persons have duly explained this fact in their statements under Section 313 of the Criminal Procedure Code and Parveeri Kumar (DW-1) has supported this version in his statement. It was further contended that the injuries was removed to the hospital by the accused for treatment and this conduct of the accused is inconsistent with the allegations against them. Therefore, not only the dying declaration but the entire case of the prosecution is rendered unreliable and the accused are entitled for acquittal. In support of his contention the learned counsel relied on State of Gujarat v. Mohan Bhai Raghbhai Patel, AIR 1990 SC 1379 : (1990 Cri LJ 1462) wherein the Supreme Court, held as under :

5. In this case we find absolutely no motive for accused No. 1 to cause the death of the deceased. According to the prosecution, accused No. 1's younger brother was having illicit intimacy with accused No. 2 with the connivance of accused No. 1 and the deceased was objecting to the same. In such a situation it is rather opposed to human nature to suggest that accused No. 1 would think of causing the death of the deceased. According to the witnesses, particularly P.W. 2, the deceased was found under a mattress and accused No. 1 was pressing the same

on her and in the process he also got burns. The High Court has rightly observed that the culprits who had decided to put an end to the life of the deceased would never go to the extent of extinguishing the fire after throwing a mattress on her, and in this view, according to the High Court, the prosecution has not proved beyond reasonable doubt that this was a case of homicide and not suicide. In this context it is also pertinent to note that in the earlier stages the deceased did not implicate the accused. Even when the Doctor PW-10 asked her she did not give any reply and it is only at a later stage she came out with this story. According to the prosecution case, the occurrence took place in the bathroom and the deceased stated in Ex. P. 58 that she was filling in water tank in the bathroom and that accused No. 1 came and poured kerosene, but panchanama of the scene of occurrence does not make any mention about kerosene in the bathroom but kerosene was found outside the bathroom. The clothes of accused No, 2, who was holding the deceased when accused No. 1 poured kerosene did not show any smell of kerosene. Therefore, it becomes doubtful whether accused No. 2 held the deceased in the manner alleged. The High Court has adverted to number of these details and doubted the prosecution case. The High Court has rightly held that these features would not lend any corroboration to the dying declaration but, on the other hand, cause suspicion. There is no other corroboration corning forth. The conduct of the accused in throwing the mattress over the burning woman is an important circumstance which creates a doubt about the prosecution version. Having regard to these circumstances the High Court has given the benefit of doubt to the accued. We have also gone through the details of the dying declaration recorded by the police officer. We are unable to persuade ourselves to disagree with the findings of the High Court particularly when this is an appeal against acquittal....

28. On police request, accused Pradeep Kumar was medically examined by PW-12 Dr. T.S. Chandel. Medicolegal Certificate about such examination is Ext. PW-12/B. Accused Pradeep Kumar had superficial burns over anterior aspect of left fore-arm and dorsum of fingers of left-hand and anterior aspect of left-knee and there was kerosene oil smell from the burns. The extent of burns was 4 to 5 per cent. It has been further opined by PW-12 that these burn injuries could be sustained while putting a person on fire and could also be sustained while

extinguishing fire. In view of these two opinions, the deciding factor must be the surrouding circumstances of the case. The accused in their statements under Section 313 of the Criminal Procedure Code had stated that Pradeep Kumar sustained burn injuries while extinguihing the fire. On the contrary DW-1 Parveen Kumar, brother of accused Pradeep Kumar, has though stated about sustaining of burn injury himself while extinguishing the fire but he has not stated that in the alleged process of extinguishing the fire accused Pradeep Kumar sustained any burn injury. He has stated that accused Pradeep Kumar entered the room and covered the deceased with a quilt. In this process of extinguishing the fire even if truely stated, it does not appear probable that a person who is extinguishing fire by putting a quilt on the person on fire will sustain burn injuries becaue the guilt with afford cover and protection to him. Had the injuries been received by accused Pradeep Kumar, DW-1 Parveen Kumar would have stated about It whereas he does not state about sustaining of any injury by accused Pradeep Kumar rendering the version of defence suspicious. It is admitted by DW-1 Parveen Kumar that when they were extinguishing the fire, in the meantime so many villagers had gathered on the spot. None of such villagers has been examined to support the version about the alleged attempts to extinguish the fire. The mere circumstance that accused removed the deceased to the hospital is a very weak circumstance to lend any credibility to the defence version for the simple reason that when after the villagers had collected on the spot, the motive to show that they were innocent was sufficient reason for the accused to remove the deceased to the hospital.

29. This is evidently not a case of accidental fire. There is no doubt that the deceased sustained burn injuries in the bedroom whereas the kerosene was kept in the kitchen room. Thus the injuries sustained by the deceased were either suicidal or homicidal. The medical opinion given by PW-12 Dr. T.S. Chandel is that from the pattern of burnings it is possible that Asha Devi was burnt by third person. Similarly, PW-14 Dr. V. K, Mishra has opined that the pattern of the burn injuries over the body of the deceased was more towards homicidal burns. These opinions not only rule out the improbability of the defence version but also lend corroboration to the dying declaration Ext. PW-15/C wherein the deceased had clearly and unambiguously stated that in the night on 17-4-19965 she was beaten

by the accused persons and was caught hold of by accused Amaro and Rup Lal and accused Pradeep Kumar poured one kerosene bottle over her and set her on fire with a match stick and she was burnt for dragging them to the Court.

30. There is cogent, reliable and trustworthy evidence to prove that the accused had a strong motive to do away with the life of the deceased. PW-1 Savitri Devi, mother and PW-6 Jai Gopal, father of the deceased had stated about the marriage of the deceased with accused Pradeep Kumar and the ordeals she had to undergo as a consequence of such marriage particularly in and after 1995. The sum and substance of their statements in this regard is that in March 1995 Amaro accused fell ill and was taken by accused Pradeep Kumar to Jammu for treatment. Thus, the deceased and accused Rup Lal remained at home. Accused Rup Lal started beating the deceased and even attempted rape on her. This conduct of accused Rup Lal was brought by the deceased to the notice of her parents through her brother Om Prakash who had gone to her house in April 1995 around 'Baisakhi'. Parents of the deceased went to the house of the deceased and made inquiries about the allegations which were denied by the accused. PW-6 Jai Gopal brought the matter to the notice of accused Pradeep Kumar who came home and sent the deceased to her parental house advising her to stay there. When he came again on leave in July 1995, then he took the deceased to his house but due to conduct of accused Rup Lal, the deceased returned to her parents' house within three or four days. On 7-8-1995, Jai Gopal made a complaint copy whereof is Ext. PW-2/G to the Pradhan of his Gram Panchayat about the said misbehaviour of accused Rup Lal, but the said Panchayat had no territorial jurisdiction in the matter, therefore, another complaint copy whereof is Ext. PW-2/F was made to the concerned Panchayat Pradhan who took him to the house of the accused but they misbehaved with him. These copies of complaints were produced to the police by Jail Gopal and were taken in possession vide memo. Ext. PW-2/A and such production and seizure is duly proved in view of the statement of PW-2 Amin Chand who has not been cross-examined about the production and taking in possession of these documents along with a few other documents. PW-3 Harnam Singh has proved the copy of complaint Ext. PW-2/G to be a photo copy of the original complaint kept on the Panchayat record. He has further proved Ext. PW-2/J a photo copy of another complaint made by the deceased to the Panchayat.

These two documents contain the allegations about the beating of and attempt to commit rape on the deceased by accused Rup Lal. These complaints had been made in August 1995. These allegations, whether right or wrong, are capable of affording a motive to the accused to nurse serious grouse against the deceased.

31. The matter did not end with these complaints. The deceased, admittedly, filed a petition under Section 125 of the Criminal Procedure Code against accused Pradeep Kumar which finally ended in a compromise vide order of Chief Judicial Magistrate dated 16-4-1996. It was on this day that the deceased accompanied by her brother, admittedly, returned home. Her brother returned to his house on 17-4-1996 and the deceased was set on fire on the night following his return. This circumstance in itself is sufficient to raise the accusing finger on the accused.

32. It was contended by the learned counsel for the accused that as stated by accused Pradeep Kumar in his statement under Section 313, Criminal Procedure Code and by DW-1 Praveen Kumar, accused Pradeep Kumar had told on 17-4-1996 that he wanted to go to Nahan to see his sister which offended the deceased which might have led her to commit suicide. Apparently, the contention is far from affording a reason to commit suicide, much less in the case of a woman who having serious complaints and grouses against her in-laws still agreed to live with them.

33. In view of the above discussion, the irresistible conclusion is that the dying declaration Ext. PW-15/C is proved to have been made by the deceased voluntarily while in a fit State of mind and is corroborated by other circumstances and medical evidence, therefore, it is trustworthy and reliable. The injuries sustained by accused Pradeep Kumar, thus, were not sustained while extinguishing the fire but in the process of setting the deceased on fire. The ratio of Mohan Bhai Raghubhai Patel's case (supra) is, thus, not applicable to the facts and circumstances of this case.

34. Thus, we do not find any merit and , substance in the contention raised for the accused. The learned Sessions Judge has rightly relied on the dying declaration and other circumstances in convicting the accused persons, therefore, the impugned conviction and sentence do not call for any interference by us.

35. As a result, the appeal merits dismissal and is accordingly dismissed.

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