

Mohinder Kumar Vs. State

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Court : Delhi

Decided On : May-02-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 498-A, 302; Code of Criminal Procedure (CrPC) - Sections 313, 311

Appeal No. : CRL.A.No.96/1999

Appellant : Mohinder Kumar

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Bhupesh Narula, Adv.

Judgement :

1. Vide impugned judgment and order dated 6.2.1999, appellant Mohinder Kumar, husband of deceased Seema has been convicted for the offence punishable under Section 498-A IPC and Section 302 IPC. As per the order on sentence dated 10.2.1999, he has been sentenced to undergo imprisonment for life and pay fine in sum of `1,000/- for the offence punishable under Section 302 IPC and to undergo RI for 1 year and pay fine in sum of `500/- for the offence punishable under Section 498-A IPC.

2. The conviction has been sustained on the evidence of the last dying declaration made by Seema which has been accepted by the learned Trial Judge as trustworthy and to which the learned Trial Judge has found corroboration with respect to the scene at the site/place of the incident.

3. The journey of the instant case commenced, when on 29.2.1992 at 22:07 PM, Lady Ct.Anju PW-1, on duty at the Police Control Room, received telephonic information from one Satish Kumar informing that a person has set his wife on fire at Gali No.41, Sant Nagar, Burari. The said information was conveyed by her over the wireless to the local police station i.e. PS Timarpur where it was recorded vide DD No.41-A, Ex.PW-9/B proved at the trial by HC Kanhiya Lal PW-9.

4. DD No.41-A was entrusted to ASI Rohtas Singh PW-15, who proceeded to the place of incident where he was informed that Seema was removed to J.P.N.Hospital and thus he proceeded to the hospital where he found Seema admitted and unfit for statement and thus he collected the MLC Ex.PW-11/A of Seema and requested the SHO to send a Sub-Divisional Magistrate to the hospital.

5. Simultaneously when aforesaid was happening, Seema was taken to the hospital by her sister Reena PW-21, a fact which finds corroboration from the MLC Ex.PW-11/A, proved at the trial by the record clerk of the hospital Sh.A.R.Mehta PW-11 since the doctor who wrote the MLC had left the hospital, wherein it is recorded that the patient was brought to the hospital by her sister Reena. The doctor concerned recorded on the MLC the history of the burns suffered by Seema in the following words: „Alleged H/o sustaining burn injuries when the stove on which she was cooking food got burnt. It also stands recorded, with respect to the identity of the person who gave the history of the burns, : „Informant - Pt. herself. It stands recorded on the MLC that Seema had suffered 100% burns.

Unfortunately, whether the burns were first, second or third degree burns have not been recorded.

6. It is obvious that the condition of Seema was fairly precarious. Seema was carrying a baby in her womb and at 7:45 AM the next day i.e. 1.3.1992, after the

baby was aborted, Seema gained consciousness and was declared fit for statement at 9:30 AM, upon which Kishan Kumar the Sub-Divisional Magistrate PW-13, recorded Seemas statement Ex.PW-13/A in Devnagri script; translation whereof reads as under:-

"A year ago I was married to Sh.Mohinder. After marriage we were living happily and peacefully. Since last two days my husband was away from the house. Last night at about 9:00 PM when I was cooking food the burner of stove burst and my clothes caught fire. My neighbours came to my rescue and doused the fire and informed my sister Reena about the incident who immediately took me to the hospital. This is only an accident which took place due to the explosion of the stove burner. Nobody is responsible for this accident. I was never harassed by my husband for dowry or any such demands. Nobody is responsible for this accident and I do not wish to make any criminal complaint against anybody."

7. The SDM also recorded Reenas statement Ex.PW-13/DA and which we find is in Devnagri script; translation whereof reads as under:-

"My husband works in Mehfil Restaurant, Vijay Cinema, Delhi. Today while I was watching television in my house, at about 8:45 PM, son of the landlady of my sister came rushing to my house and told me that my sister has caught fire. At that time my husband was not at home. I rushed to the house of my sister where she was lying in a burnt condition and crying in pain. With the help of her neighbours I took my sister to the Hospital. My sister got married to Mohinder 6 years ago in Delhi and has a 5 year old son from the wedlock. My sisters husband, Mohinder works in the Railways and for the last two days was away from the house. On asking my sister as to how she sustained burn injuries, she told me that while she was cooking food on the

stove its burner burst as a result whereof she caught fire. No one is to be blamed for the accident as she got burnt because of the stove burner bursting."

8. ASI Rohtas Singh PW-15 proceeded to the matrimonial house of Mohinder and Seema and lifted therefrom a stove Ex.P-1 as also burnt pieces Ex.P-2 of a saree.

9. It may be highlighted that Seema and her sister Reena have spoken at least one lie in unison. The lie pertains to Seema telling the SDM that for the last two days her husband was away from the house and Reena also so stating. The appellant i.e. Seemas husband, was very much in the house evidenced by the fact that as recorded in Ex.PW-14/A proved through the mouth of the author thereof, Dr.D.Sharma PW-14, the appellant got himself admitted at Central Hospital, Northern Railway on 1.3.1992 at about 11:20 AM with burn injuries on the left and right wrist as also the forearms and absconded on 10.3.1992 at 8:00 AM from the hospital. Indeed, it would be relevant to note that when examined under Section 313 Cr.P.C. the appellant stated:- „I am innocent. I had got good relation with my wife and this has been vouched by my in-laws and sister-in-law in their statements before the SDM. My wife was preparing food and I was sitting outside. The stove inflamed as the result of which her saree got burnt. I immediately went in and rescued her as a result of which my hands were burnt. This was all accidental.

10. Seema lived on. As per the prosecution on 2.3.1992 she desired to make another statement to the Sub-Divisional Magistrate and as per the prosecution on being certified fit for statement the learned SDM recorded her statement Ex.PW-13/C at 12:40 PM on 3.3.1992.

11. Since there is a controversy on Seemas fitness being certified, it may be noted at the outset that relevant documents pertaining to her being fit for statement were not filed along with the challan and during trial an application was filed under Section 311 Cr.P.C. read with Section 173(5) Cr.P.C. to file documents evidencing Seema being fit for statement, which application was allowed and two sheets i.e. two documents were taken on record purporting to be two applications submitted to the doctor at JPN Hospital Delhi on 2.3.1992 and 3.3.1992 on which certifications pertaining to Seema being unfit and fit for statement have purportedly

been issued. Record shows that application Ex.PW-15/C which is in Devnagri script was filed, not recording the time of it being filed on 2.3.1992, and there are two certifications recorded thereunder which have been proved as Ex.PW-17/A with the signatures of one Dr.Anju Bharti at point „A and point „B on Ex.PW- 17/A. The application Ex.PW-15/C (translation) reads as under:-

"To

The Doctor

J.P.N.Hospital, Delhi

It is requested that permission may be granted again to record statement of Smt.Seema, W/o Mohinder, R/o Gali No.39/40, Sant Nagar, Burari Delhi, who on 29.2.1992 was admitted in your hospital in a burnt condition.

Thanking you."

12. The two endorsements beneath Ex.PW-15/C, which as noted herein above have been exhibited as Ex.PW-17/A bearing signatures of Dr.Anju Bharti at point „A and point „B record as under:-

" Pt. is fit for statement. She is oriented in time, place and person.

Sd/-

(DR.ANJU BHARTI)

WD-26, LNJP

2.3.1992 11:50 PM

Pt. is unfit for statement. She is not oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 01:30 AM"

13. The second application Ex.PW-15/D in Devnagri script, translation whereof reads as under:-

"To

The Doctor

J.P.N.Hospital, Delhi

It is requested that permission may be granted again to record statement of Smt.Seema, W/o Mohinder, R/o Gali No.39/40, Sant Nagar, Burari Delhi, who on 29.2.1992 was admitted in your hospital in a burnt condition.

Thanking you."

14. Beneath Ex.PW-15/D are 3 endorsements by way of certification, together exhibited as Ex.PW-17/B, bearing signatures of Anju Bharti at point „A and „B and one signature of Dr.J.L.Meena at point „C, record as under:-

"Patient (Seema) is unfit for statement. She is not oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 01:30 AM

Patient (Seema) is fit for statement. She is oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 08:25 AM

Pt. conscious, well oriented to time, place and person. She is fit for statement.

Sd/

Dr.J.L.MEENA

3.3.1992, 12:40 PM"

15. It may be highlighted that the first certification in point of time, being the first beneath Ex.PW-15/C, records the time 11:50 PM and the date 2.3.1992. The second certification beneath Ex.PW- 15/C bears the time 1:30 AM and the date 3.3.1992. The first certification beneath Ex.PW-15/D bears the date 3.3.1992 and the time 1:30 AM. The second certification beneath Ex.PW-15/D records the time 8:25 AM and the date 3.3.1992. The third certification beneath Ex.PW-15/D records the time 12:40 PM and the date 3.3.1992. It may further be highlighted that apparently it is the third certification afore-noted which prosecution relies upon as proof of Seema being fit for statement when the SDM recorded her statement Ex.PW-13/C.

16. A statement Ex.PW-13/C, stated to be made by Seema, was thereupon recorded by Sh.Kishan Kumar, the Sub-Divisional Magistrate concerned. Time noted is 12:40 AM. The same is in Devnagri script. Translation whereof reads as under:-

"A year ago I was married to Mohinder. After marriage my husband used to harass and beat me and doubted my character. He accused me of having illicit relations with my brother-in-law (Jija). A day or two before the incident my husband had beaten me. On 29.2.1992 my husband returned home from Laxmi Nagar in a drunken condition and asked me to serve him food. I told him to take the food himself as I was not feeling well upon which he got angry and poured kerosene oil on me from a can lying in the house and after setting my clothes on fire he ran away. On hearing my cries my landlady came and doused the fire and informed my sister, Munni about the incident. My sister brought me to the hospital. My husband is responsible for my condition and I want legal action against him. My statement recorded by you on 1.3.1992 was a lie as I feared that if I stated the truth the doctors would not give me proper medical treatment."

17. Seema lived on for another 2 days and died on 5.3.1992 at 5:15 PM and thereafter the Sub Divisional Magistrate went to the house of the deceased and recorded the statement Ex.PW-3/A of the landlady Shashi Bala PW-3 wherein she stated that the deceased and her husband were her tenants for the last 1 ½ months and that they lived happily together. On the date of the incident i.e. 29.02.1992 the appellant returned home at about 8:45 PM in a drunken condition and asked Seema to serve him food. Seema refused and told him to take the food himself. That appellant then sat outside his room which was adjacent to her room. On the request of the appellant she asked Seema to serve him food but Seema refused. Thereafter she went inside her room to attend to her children. After 10-15 minutes she heard the appellant shout „Aag lag gayi and on hearing the cries she came out and along with the appellant entered his room where she saw Seema lying on a cot and crying for help saying „Bachao Bachao. Appellant put a quilt on her and ran away from the spot. She then poured some water on Seema to douse the fire and sent her son to inform Seemas sister about the incident.

18. Seemas dead body was seized and sent to the mortuary of Maulana Azad Medical College where Dr.Satish Kumar conducted the post-mortem and as per the post-mortem report Ex.PW-12/A recorded that the dead body was burnt 98% and that cause of death was septicemia consequent upon infected burns. He recorded that:- Scalp hair singled and burnt in both temporal and frontal region. Kerosene oil like smell observed at the time of post-mortem examination. It be noted that the scalp hair and which we presume would be from the temporal and frontal region were handed over to the investigating officer for forensic examination.

19. For unexplainable reasons FIR Ex.PW-9/A for offences punishable under Section 498A and Section 302 IPC against the appellant was registered on 24.3.1992.

20. At the trial Shashi Bala PW-3, the landlady of the appellant and Seema deposed that the appellant was a tenant in her house and used to reside with his wife Seema. On 29.2.1992 appellant returned home at around 8:45 PM and after some time requested his wife to give him food and she replied that she was doing the needful. Appellant sat down on a chair outside his house while his wife cooked food and caught fire. She raised an alarm. She and the appellant went towards her. Appellant put his wife on a cot and she threw water on her and sent her son Deepak to call Seemas sister. Reena arrived at the spot.

21. At this stage Shashi Bala was declared hostile and was cross-examined by the learned prosecutor and she denied having told the police that the appellant was under influence of alcohol. But admitted that when appellant demanded food from Seema she retorted that he should take food himself and that the appellant had complained to her that his wife was not serving him food. She denied having knowledge of Seema refusing to serve food to the appellant for a second time when appellant was sitting outside on a chair. She admitted that she was busy with her children and that her statement Ex.PW-3/A was recorded by the SDM on 5.3.1992, but denied having told the SDM that for a second time Seema had refused to serve food to the appellant. Towards the end Shashi Bala contradicted herself with reference to appellant being drunk, first denying having told the police

that the appellant was under influence of alcohol, she admitted that the appellant was under the influence of alcohol.

22. It may be noted that on being cross-examined by the appellant, for the first time Shashi Bala stated that Seema disclosed that she got burnt due to stove. She stated that she never saw the appellant quarrel with his wife Seema. It may be highlighted that neither to the learned SDM nor in her examination-in-chief nor when she was cross-examined by the learned Public Prosecutor Shashi Bala disclosed said fact.

23. Reena PW-21 deposed in sync with her statement Ex.PW-13/DA made by her to the SDM and thus we need not note its contents. However, it needs to be highlighted that whereas in her statement Ex.PW-13/DA she had stated that for the last two days appellant was away from the house, on being cross-examined by the appellant she stated that appellant had burns on his hands while extinguishing the fire on Seema. She also deposed during cross- examination that Seema gave the history of her being burnt to the doctor who examined her.

24. Kishan Kumar PW-13, the SDM concerned deposed that on 1.3.1992 he recorded Seemas statement Ex.PW-13/A and that on the intervening night of 2nd and 3rd March 1992 he received information that Seema wanted to make a statement and he went to the hospital but since Seema was not conscious and was not fit for statement he could not record her statement and that on 3.3.1992 he had again gone to JPN Hospital and recorded Seemas statement Ex.PW-13/C and clarified that on the statement he wrongly recorded the time 12:40 AM whereas it actually was 12:40 PM. He deposed that the fitness Ex.PW-15/D was obtained at point „A before he recorded Seemas statement. That he passed the orders Ex.PW- 13/D for the case to be investigated, which order we note is dated 17.3.1992.

25. Relevant would it be to note that on being cross- examined Kishan Kumar stated that applications Ex.PW-15/C and Ex.PW-15/D were not in his handwriting and he was not aware as to who had moved the said applications.

26. ASI Rohtash Singh PW-15 deposed of being entrusted with DD No.14A and having collected Seemas MLC and on 1.3.1992 the SDM having recorded having Seemas statement and thereafter lifting the stove Ex.P-1 and burnt saree pieces Ex.P-2 as entered in the seizure memo Ex.PW-15/A. He deposed that on 1.3.1992 Seema gave birth to a dead female child and that on 3.3.1992 Seema gave statement to the SDM. That on 24.3.1992 the SDM directed FIR to be registered and thus he got the FIR registered for the offence punishable under Section 302/498A IPC.

27. It may be noted that as per the FSL report Ex.PW-22/C the stove Ex.P-1 was opined to be in working condition and in its tank 380 ml of kerosene was found and that kerosene residue was detected on the burnt cloth pieces Ex.P-2. Kerosene residue was detected on the scalp hair of Seema.

28. It would be apparent to a reader of the present judgment that arguments advanced on behalf of the appellant were that Seema made 4 dying declarations prior to the dying declaration Ex.PW-13/C, which was the 5th in point of time. As per the appellant first dying declaration made by Seema was to the landlady as deposed to by the landlady, the 2nd in point of time was the dying declaration made to her sister Reena as deposed to by Reena, the 3rd to the doctor who examined her who prepared the MLC and the 4th to Sh.Kishan Kumar when he reached the hospital on 1.3.1992 and all 4 were consistent that Seema suffered burn injuries when the stove burst when she was cooking food. It was thus pleaded that the 5th dying declaration had to be discarded being inconsistent with the first 4 consistent dying declarations. The second contention urged was that the certification relied upon as proof of Seema being fit for statement on 3.3.1992 when her 5th dying declaration was recorded was suspect and for which a 3 pronged attack was made. It was firstly pleaded that the 2 sheets of paper containing the application to the doctor requesting for certification qua Seemas fitness i.e. Ex.PW-15/C and Ex.PW-15/D were mysterious not only for the reason the scribe thereof remained unidentified but also for the reason the said documents were filed belatedly and additionally the reason that Seemas statement categorically bears the time 12:40 AM when it was recorded and the last certification where Seema was certified fit for statement records the time 12:40

PM. The second plea urged was that surprisingly on 2 applications, Dr.Anju Bharti purportedly gave 2 certifications recording the time 1:30 AM and certifying Seema being unfit for statement. The time thereon is 1:30 AM i.e. the middle of the night. It is followed by a certification time whereof is 8:25 AM that the patient was fit for statement and it remained unexplained as to why Seemas statement was not recorded at 8:25 AM. It was urged that under the circumstances the 3rd certification bearing the time 12:40 PM recorded on the second application Ex.PW-15/D was highly suspect. Lastly, as a further extension of the confusion created by there being 2 applications Ex.PW-15/C and Ex.PW-15/D, author whereof was a mysterious person and the fact that on 2.3.1992 at 11:50 PM Dr.Anju Bharti certified on the application Ex.PW-15/C that the patient was fit for statement it was urged that if Anju had desired to make another statement on 2.3.1992 and evidenced by the fact that the first certification on Ex.PW-15/C records the time 11:50 PM and the date 2.3.1992 it is apparent that, if at all, the SDM and the concerned police officer had reached the hospital and made the application Ex.PW-15/C and having obtained a certification by 11:50 PM of Seema being fit it remained unexplained as to why Seemas statement was not recorded at that point of time. It was highlighted that interestingly enough Sh.Kishan Kumar the SDM concerned categorically deposed that when the police told him of Seemas desire to make another statement he went to the hospital in the intervening night of 2nd and 3rd March 1992 but since Seema was unconscious and not fit for statement he could not record Seemas statement. This it was urged flies in the face of the first certification recorded beneath Ex.PW-15/C wherein at point „A Dr.Anju Bharti has signed noting the time 11:50 PM and the date 2.3.1992 while certifying Seema fit for statement. The third contention urged was that if indeed Seema had made the statement Ex.PW-13/C, the same was made on 3.3.1992 and there was no reason why the FIR was not recorded immediately thereon. From the fact that the FIR was registered on 24.3.1992 it was urged that it was apparent that the said statement was fabricated later on and ante-dated in point of time.

29. It is apparent as to what would be arguments for the State. With reference to the FSL report Ex.PW-22/C wherein it was noted that the stove was in working condition, contention urged was that it was obviously a case where the stove did not burst and thus the earlier stated dying declarations of Seema were obviously

wrong and the unfortunate lady stated wrong facts under some fear. That kerosene oil was detected on the scalp hair of the deceased would rule out Seema accidentally catching fire while cooking on the stove inasmuch as if Seema had accidentally caught fire, no kerosene would be detected on her scalp hair and the clothes she was wearing. Most strongly put was the conduct of the appellant in not rescuing his wife evidenced by the fact that the appellant did not remove Seema to the hospital and the next day morning got himself admitted at Central Hospital Northern Railway at 11:20 AM as recorded in Ex.PW-14/A and that as further recorded therein the appellant absconded on 10.3.1992 at 8:00 AM. The argument was taken forward by urging that the appellant admittedly did not take his wife to the hospital and absconded from the house when his wife was on fire. Seema's first dying declaration recorded before the learned SDM and Reena's statement wherein it stands recorded that for the last 2 days the appellant was away from the house where stated to be palpably false as the appellant was admittedly in the house and had received superficial burn injuries on both wrists and both forearms and wherefrom it was urged that it was apparent that Seema and Reena were in all probability threatened by the appellant. In a nutshell, the State very heavily relied upon the most unnatural conduct of the appellant to infer his guilt. Debunking the contentions urged on behalf of the appellant that Seema made 5 dying declarations, it was urged that the stated dying declaration introduced by Shashi Bala the landlady was a palpable falsehood inasmuch as Shashi Bala never told the SDM that Seema had told her that she accidentally caught fire while cooking food, nor did she say so in her examination-in-chief. At the fag end of her cross-examination she slipped in a stated dying declaration made by Seema. It was urged that Reena for the first time introduced a dying declaration while deposing in Court, a fact which we find is wrong for the reason in her statement to the SDM Reena has disclosed that her sister told her of having caught fire accidentally, but yet in spite thereof it was urged as aforesaid. The third stated dying declaration as per the MLC was refuted by urging that it was nowhere recorded that the history of the burns was given by the patient herself, an argument which is patently incorrect on the factual aspect, for the reason the MLC records that the informant about the history of the burns was patient herself. It was thus urged that there were only 2 dying declarations, the first being the statement Ex.PW-13/A and

the second being the statement Ex.PW- 13/C. The delay in registration of the FIR was explained by urging that the SDM took time to complete the investigation and pass the necessary orders on 17.3.1992.

30. The learned Trial Judge accepted the arguments of the State and rejected those of the appellant and the reasoning is to be found in paragraphs 38, 39, 40, 42, 50 and 54 of the impugned judgment and hence we note the same.

31. The rival versions pertaining to how many dying declarations were made by Seema and which one had to be accepted has been discussed by the learned Trial Judge in paras 38, 39, 40 and 42 of the impugned decision, relevant portions whereof read as under:-

"38. To my view, the contention of Ld.Counsel for the accused is not well founded, particularly because the said statements are not corroborated by any other evidence whereas the second dying declaration Ex.PW-13/C stands corroborated by other material and cogent evidence. As far as the first alleged dying declaration by deceased to PW-3 Shashi Bala is concerned, I do not find that she made any dying declaration to said Smt.Shashi Bala at any point of time. She admitted that her statement Ex.PW-3/A was recorded by the SDM on 5.3.1992 but surprisingly she nowhere stated in her entire statement before the SDM that Smt.Seema ever disclosed to her that she sustained burns due to the bursting of the stove burner. She simply stated that too in the last line of her cross-examination that Seema disclosed to her that she had burns due to stove. This is the only one sentence in her entire statement which appears to have been taken as dying declaration by Ld.Counsel for the accused.

39. The second oral dying declaration made as per the contention of Ld.Counsel for the accused, was made to

Smt.Reena by the deceased Smt.Seema. Smt.Reena, the sister of the deceased, has been examined as PW-21. She nowhere stated in her entire chief-examination that her sister ever told her as to how she sustained injuries. However, in her cross-examination she deposed that when she had gone to the house of her sister, Smt.Seema, on receipt of information from the daughter of her landlady, her sister on her enquiry told her that she was burnt as the stove was highly inflamed suddenly and she caught fire as she was wearing a nylon saree. She also admitted in her cross-examination itself that her statement Ex.PW-13/DA was recorded by the Magistrate. Now as per her statement Ex.PW-13/DA, which has been got exhibited by Ld.Defence Counsel, in her cross- examination, it is nowhere found mentioned that her sister told her that she was burnt as the stove was highly inflamed suddenly and she caught fire as she was wearing nylon saree; rather the said statement contained some different and contradictory facts. As per her statement Ex.PW-13/DA, made before the SDM, she stated that when she asked about the reason about her burns Smt.Seema told her that when she was making food the burner of the stove burst suddenly and she caught fire. This contradictory version, therefore, shows that, in fact, no dying declaration was ever made by Smt.Seema to her sister Smt.Reena.

40. The third dying declaration, as claimed by Ld.Counsel for the accused, is the alleged history of Smt.Seema, the injured, recorded in her MLD Ex.PW-11/A by the doctor. No doubt, it is mentioned in the MLC that there is alleged history of sustaining burn injuries, when the stove, on which she was cooking food, got burst, but this too cannot be termed as a dying declaration of Smt.Seema. As per this MLC Smt.Seema, the patient was brought to hospital by Smt.Beena, her sister. Normally the history of the patient is either explained by the person who brings the patient to the hospital or the patient himself reveals

the fact to the doctor on his asking. In the instant case, the doctor, who prepared the MLC, has not been examined though the MLC has been proved through the record clerk. So it is not clear whether the alleged history was given by the patient or Smt.Reena, who had brought the patient to the hospital. In the absence of any such clarity it cannot be said that Smt.Seema ever made any statement to the doctor. Even otherwise as per the alleged history of the patient recorded in MLC Smt.Seema sustained burn injuries when the stove, on which she was cooking food, got burst. It means the version put forth before the doctor in the hospital was that the stove was burst because of which Smt.Seema sustained burn injuries."

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"42. Now for consideration there remains two dying declarations Ex.PW-13/A and PW-13/C, both recorded by PW-13 Krishan Kumar, the SDM on 1.3.1992 and 3.3.1992, respectively. Like the oral, so called dying declarations, discussed above, the first dying declaration Ex.PW-13/A made by Smt.Seema, the deceased to the SDM on 1.3.1992 also cannot be relied upon as the same consist of some omissions and commissions. In this dying declaration also Smt.Seema stated to the SDM that when she was cooking food the stoves burner suddenly burst and her clothes caught fire. This clinching part of her statement does not sound to reason particularly because it is not corroborated by any other evidence. It is so, because the prosecution nowhere relies upon the fact that Smt.Seema ever sustained burns due to fire by the bursting of stove or its burner. In the instant case, the scalp hair of the deceased Smt.Seema, which were preserved and sealed by the doctor, who conducted the autopsy, as is evident from the post-mortem report Ex.PW-12/A and were sent for chemical analysis to rule out kerosene oil, to CFSL. Similarly,

the stove P-1 and pieces of saree P-2 were also sent to CFSL for analysis and opinion. The scalp hair and the pieces of saree P-2 on physico chemical method of analysis show the presence of kerosene residual as per the CFSL report Ex.PW-22/B. Similarly, the stove P-1, on scientific examination, did not reveal any sign of bursting and the same was in normal working order, as is evident from the CFSL report Ex.PW-22/C. These clinching pieces of evidence corroborate the version of Smt.Seema the deceased, made in her second dying declaration Ex.PW- 13/C, so recorded by PW-13 Shri Krishan Kumar, the SDM, on 3.3.1992. Therefore, under the circumstances I am of the considered view that the second dying declaration Ex.PW-13/C recorded by PW-13 Krishan Kumar, SDM on 3.3.1992 is reliable, convincing and inspires confidence."

32. The debate between the parties pertaining to Seemas fitness when her dying declaration Ex.PW-13/C was recorded has been discussed in para 50 and thus we note the same. It reads as under:-

"50. Ld.Counsel for the accused also argued that PW-13 Kishan Kumar, the SDM, did not obtain the fitness certificate from the doctor before recording statement of Smt.Seema, the deceased. According to him, the endorsements regarding the patient as fit for statement Ex.PW-17/A&B were subsequently procured and placed on record much later after filing of the challan in the Court of the Magistrate. A perusal of record shows that the endorsements regarding the fit for statement Ex.PW-17/A&B were given by the concerned doctors from time to time and that the said documents were placed on record with due permission of the Court. The filing of these two documents and for summoning the doctors permission was sought by the prosecution by way of moving application under Section 311 Cr.P.C. as well as under Section 173(5) Cr.P.C. After hearing the

parties Smt.Aruna Suresh, the then Presiding Officer allowed the application holding that the filing of the documents, i.e. Certificate of Fitness for statement of Dr.Meena and Dr.Anju Bharati dt. 2-3-92 and 3-3-92 and the examination of these witnesses was very much necessary for proper disposal of the case on merits and it was found that it was not only in the interest of the prosecution but in the interest of the accused as well. This order dt. 18-4-94 has not been challenged till date. So the documents, i.e. the certificates for fit for statement of the patient Smt.Seema given by the doctors vide these two documents cannot be said to have been procured and filed on record with some ulterior motive, particularly when the accused had every opportunity to test and challenge the same. Therefore, as far as the admissibility of these two documents are concerned that again cannot stand to any challenge. Ld.Counsel for the accused also argued that the dying declaration of Smt.Seema Ex.PW-13/C reveals that the same was recorded by PW-13 Krishan Kumar, SDM on 3-3-92 at about 12:00 a.m. and that this is not practically possible as the certificate for fit for statement of the patient was given on 3-3-92 at 1:30 a.m. This, to my view, is not a discrepancy at all but a fact that the time inadvertently noted as 12:40 a.m. instead of 12:40 p.m. PW-13 Krishan Kumar, SDM explained in his examination-in-chief itself that though the time mentioned in Ex.PW-13/C about the recording of statement is 12:40 a.m. but on verifying the record, the said statement, in fact, were recorded by him at 12.40 p.m. on 3-3-92. No doubt the doctors who gave certificate unfit or fit for statement regarding the patient have not been examined but the said documents Ex.PW-7/A&B have been clearly proved on record through the concerned record clerk, who identified their handwriting and signature and stated that their present addresses were not known having left the services of the hospital. So, these documents were proved on record by the

prosecution by way of secondary evidence, which is admissible in evidence. Apart from this, PW-13 Krishan Kumar, SDM, stated in his cross-examination that before recording the statement, the doctor confirmed that injured Seema was fit for statement. Though he admitted that he did not remember as to who obtained the writing about the fitness of Smt.Seema for making statement, but he stated therein that the doctor wrote in his presence. He further stated in his cross-examination that he satisfied himself while making queries from Smt.Seema that she was able to make a statement. He further clarified that too in his cross-examination that he had enquired from Smt.Seema as to what had prompted her to make second statement and that she had relied that she had an apprehension that if she would give the correct statement she might not be given proper treatment. He further confirmed that Smt.Seema was quite stable when he recorded her statement.

33. The debate pertaining to the delay in registration of the FIR has been discussed by the learned Judge in para 50 as under:-

54. Ld.Counsel for the accused also tried to persuade this Court that there was a considerable delay in lodging the FIR and that there was ample time for the prosecution to concoct a story. I do not find any substance in this contention. The dying declaration of Smt.Seema was recorded on 3-3-92 and she died in the hospital on 5-3-92 and since then the enquiry remained with the concerned SDM, who not only conducted the inquest proceedings but also recorded the statements of various witnesses. It was only on 17-3-92 when the then SDM passed the order Ex.PW-13/D for the registration of the case. The then SHO Shri R.C.Saini made his endorsement referring the order to ASI Rohtas Singh, who thereupon made his endorsement Ex.PW-15/B over the dying declaration of Smt.Seema Ex.PW-13/C and

got the case registered. The FIR was recorded on the basis of the same dying declaration Ex.PW-13/C which was sent to the police by the SDM. So the delay in lodging the Fir, if it stands automatically explained because of the fact that the enquiries during this period remained with the concerned SDM."

34. During argument of the appeal, Sh.Bhupesh Narula Advocate urged that the learned Trial Judge has overlooked the fact that as per the post-mortem report and the evidence on record kerosene was detected on the scalp hair but pertaining to the temporal and frontal region evidenced by the fact that it was recorded in the post-mortem report: „Scalp hair singed and burnt in both temporal and frontal region. Kerosene oil like smell observed at the time of post-mortem examination. Therefrom, counsel urged that what has happened could be gathered. Explaining what could have possibly happened, learned counsel submitted that the stove Ex.P-1 is the ordinary stove used in India which consists of a tank in which kerosene oil is poured and a pipe connects the burner to the tank. The head of the pipe has a constriction and the said forms a head which ends at the base of the burner. A hand operated pump is attached to the tank of the stove and air is pumped into the tank. This creates a pressure in the tank and due to which the kerosene oil is pushed up the pipe. Sufficient pressure is created so that as the kerosene oil on coming out of the head, at the base of the burner, forms a spray, on the well-known principle of physics that a liquid sprays as it comes out of a constriction under pressure (a phenomenon well observed during the festival of colours i.e. Holi when children use piston (pichkari) to spray the coloured water on friends). The deft hands strike a match on the matchbox and as the lit match is brought near the burner, the kerosene oil which oozes out as a spray and is virtually in vapor form catches fire. This is the way a kerosene stove operates. It is observed that carbon deposits at the nozzle i.e. the head of the pipe at the base of the burner and due to which the aperture of the nozzle gets constricted and virtually clogs the flow of kerosene outside and the burner stops burning inasmuch as adequate kerosene oil is not sprayed out. A pin is used to sweep the head of the nozzle and this dislodges the carbon deposits and as a result the constriction regains its original size and facilitates the kerosene oil spray being formed. But here lies a danger and a risk. As the pin enters the nozzle, the pressure is blocked

and it is observed that small quantities of kerosene leak out and gets accumulated in a cap beneath the burner. The flame goes off. The moment the pin is removed from the nozzle, oil sprays out with force and since the burner is not lit the kerosene may spray into the face of the person concerned, which we note is position fairly close to the nozzle inasmuch as the eye has to be focused very carefully on to the head of the nozzle into which the pin has to be inserted to clean the carbon deposits on the head of the nozzle. But since the burner is hot, it is observed that suddenly the kerosene sprayed out catches fire and since by then fair amount of kerosene vapor is around the stove, a muffled bang sound is created: „Bhup. This is for the reason a lot of kerosene vapor burns all of a sudden and consumes the oxygen around and this creates a partial vacuum resulting in the vacuum being filled up by air around collapsing into the void i.e. the vacuum and hence the sound „Bhup. Counsel urged that a lay man would call this phenomenon by telling that the stove burst. Learned counsel highlighted that the learned Trial Judge read, too literally, the expression used by Seema that the stove burst as if she said that the tank of the stove burst. Counsel highlighted that whereas the learned Trial Judge was perhaps justified in disbelieving any dying declaration made by Seema to Shashi Bala for the reason Shashi Bala never claimed any such dying declaration made to her till she slipped in one at the fag end of her cross-examination by the accused, but the learned Trial Judge was not justified in holding that Seema made no dying declaration to Reena by holding that Reena never claim so before. Counsel highlighted that in para 39 of the impugned decision the learned Trial Judge has observed that there was a contradiction in the manner Reena disclosed Seemas dying declaration made to her while deposing in Court and as per her statement Ex.PW-13/DA. Drawing our attention to Reenas testimony in Court and the statement Ex.PW-13/DA learned counsel urged that substantially same fact was told by Reena. Learned counsel urged that had the learned Trial Judge understood what was meant by the stove being burst and had the learned Trial Judge taken note of the fact that only the frontal and temporal hair of the scalp of Seema had kerosene thereon, the learned Trial Judge would not have found any conflict, which the learned Trial Judge has found, in the dying declaration made by Seema to her sister Reena. Learned counsel drew our attention to the recording on the MLC Ex.PW-11/A wherein the doctor concerned

has clearly written that the patient herself had given him the information as recorded by the doctor pertaining to the history of the burns suffered by Seema and urged that the learned Trial Judge has overlooked the same while forming an opinion in para 40 that since the doctor concerned could not be examined, it was not clear whether the history was given to the doctor by Seema or Reena. With respect to the controversy pertaining to Seema's fitness on the 2nd and 3rd of March 1992, with reference to the reasoning of the learned Trial Judge as per para 50 of the impugned decision, learned counsel submitted that the learned Trial Judge ignored the well recognized distinction in law that admissibility of a document is different than the proof of its contents and highlighted that merely because vide order dated 18.4.1994 two sheets of paper proved at the trial as Ex.PW- 15/C and Ex.PW-15/D and Ex.PW-17/A and Ex.PW-17/B were admitted in evidence, did not mean that the contents thereof were proved. Counsel urged that the learned Trial Judge has just not discussed the effect of the evidence through the testimony of ASI Rohtas Singh and the testimony of Kishan Kumar the learned SDM, both of whom stated that they do not know who is the scribe of the applications Ex.PW-15/C and Ex.PW-15/D. Learned counsel further urged that the learned Trial Judge has simply not discussed as to what necessitated two applications being filed seeking certification by the doctor qua Seema being fit for a statement. Further, the learned Trial Judge, as urged the counsel, did not even discuss the testimony of Kishan Kumar who stated that in the intervening night of 2nd and 3rd March he received information that Seema wanted to make a statement and I went to the hospital but since she was not conscious he could not record her statement vis-à-vis the fact that there exists Anju Bharti's signatures at point A on Ex.PW-17/A certifying Seema fit for statement at 11:50 PM on 2.3.1992. Thus, counsel urged that there was a grave doubt to the genuineness of the certification relied upon qua Seema being fit for statement. Learned counsel would highlight that the reasoning of the learned Trial Judge in para 54 of the impugned decision is perverse. Counsel submitted that there was the need for any investigation when Seema would make the dying declaration recorded on 3.3.1992 and the fact that she died on 5.3.1992 was all the more necessary for the FIR to be registered promptly and the fact that the FIR was registered on 24.3.1992 would impinge upon the purity of Ex.PW-13/C i.e. the dying declaration

purportedly made by Seema on 3.3.1992. Learned counsel urged that the reason for delay accepted by the learned Trial Judge that the learned SDM had to conduct the inquest proceedings and record statements of various witnesses is surmises and conjectures inasmuch as we find that on 5.3.1992 the statement of the landlady Shashi Bala was recorded and on 6.3.1992 the statements of parents of Seema were recorded and there is no evidence that thereafter any inquiry was made or completed. It was highlighted that on 6.3.1992 even the post-mortem report was available and body of Seema was handed over to her parents for the last rites to be performed.

35. Sh.Pawan Sharma learned standing counsel for the State urged that the conduct of the appellant was most suspicious and incriminating. His running away from the house and not removing Seema to the hospital was highlighted. That not only Seema but even her sister Reena wrongly stated at the first instance that appellant was away from the house for 2 days was highlighted by learned counsel to urge that it was but apparent that the appellant was a terror for the two ladies or had threatened them at the spot and this is the reason why in her first statement Ex.PW-13/A Seema wrongly said that the appellant was away from the house for the last two days and even Reena in her statement Ex.PW-13/DA wrongly stated the same. From the fact that both wrists and forearms of the appellant had burns and not the palms, learned counsel urged that two facts can be deducted therefrom. Firstly that the appellant was near his wife when the unfortunate lady was in flames and secondly that the appellants hands were being prevented by somebody to touch the body of Seema, an inference which could be drawn by recreating the scene at the time when Seema was burning: „As the hands were being prevented to touch Seema the wrist and the forearms suffered burn injuries. Counsel would highlight that this suggests the fact that Seema resisted by using her palms to push away the extended open palms of her husband or may be resisted the hands of her husband by catching the wrists and thereby resulting in both wrists and the forearms being burnt and the palms being unaffected by the fire. With reference to a plausible argument that as deposed to by Shashi Bala the appellant doused the flames on his wife by covering her with a blanket, and thus when he was so doing, may cause the burn injuries on the wrists and forearms of the appellant, learned counsel highlighted that there is no evidence of any burnt

blanket being found at the scene of the crime and that no suggestion was made to ASI Rohtas Singh that when he went to the house on the day of the occurrence he saw a burnt blanket in the house. With reference to the stated controversy pertaining to Ex.PW-15/C, Ex.PW-15/D and Ex.PW-17/A and Ex.PW-17/B, learned counsel urged that the appellant never confronted either ASI Rohtas Singh or Kishan Kumar the learned SDM with reference thereto and thus Sh.Pawan Sharma would urge that without giving an opportunity to the two witnesses to render an explanation no argument could be predicated with respect to the alleged controversy projected by learned counsel for the appellant.

36. We propose to first deal with the issue of Seemas fitness for making a statement on 3.3.1992 for the reason if it is doubtful whether Seema was fit to make a statement on 3.3.1992, that would be the end of the statement Ex.PW-13/C i.e. the incriminating dying declaration of Seema.

37. The reasoning of the learned Trial Judge is no doubt faulty for the reason admissibility of a document is a different issue vis-à-vis proof thereof. Merely because vide order dated 18.4.1994 the learned Trial Judge had permitted two additional documents to be filed which were later on proved as Ex.PW- 15/C and Ex.PW-15/D as also Ex.PW-17/A and Ex.PW-17/B would not mean that the contents thereof became immune to a challenge qua proof thereof.

38. Dealing with the submissions urged by learned counsel for the appellant as to why should the two applications be made and that the author of the two applications is an unknown person would not by itself be of any relevance for the reason we find that on the application Ex.PW-15/C made on 2.3.1992 two endorsements have been recorded and signed by Dr.Anju Bharti, which endorsements have been proved as Ex.PW-17/A through the testimony of Hardayal PW-17 the record clerk of LNJP Hospital who has deposed that the endorsements and signatures on Ex.PW-17/A; signatures at point A and B thereon are in the handwriting of Dr.Anju Bharti. Relevant would it be to note that Hardayal has not been cross- examined on the subject of proof that the endorsements are in the handwriting of Dr.Anju Bharti and the signatures thereunder are those of Dr.Anju Bharti. The first endorsement bears the time 11:50 PM and the date

2.3.1992. The second endorsement bears the time 1:30 AM and the date 3.3.1992. It is the endorsements which are relevant for the reason what requires to be established with reference to a dying declaration of a person seriously injured is the person being fit to make a statement and even if no application in writing is moved and at an oral request the doctor gives a written endorsement on the subject, it would be sufficient compliance with law. Thus, the testimony of Hardyal which has not been challenged clearly proves that indeed Dr.Anju Bharti made two endorsements as follows:-

" Pt. is fit for statement. She is oriented in time, place and person.

Sd/-

(DR.ANJU BHARTI)

WD-26, LNJP

2.3.1992 11:50 PM

Pt. is unfit for statement. She is not oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 01:30 AM"

39. The first endorsement would be in harmony with the case of the prosecution that Seema desired to make a statement as the said endorsement shows that at 11:50 PM Seema was fit for statement. The second endorsement where Seema has been certified unfit for statement at 1:30 AM i.e. in the middle of the night finds corroboration from the testimony of Kishan Kumar who has stated that in the intervening night of 2nd and 3rd March 1992 he received information that Seema

desires to make a statement and that when he went to the hospital, Seema being declared unfit for statement he could not record the statement and thus he could record the statement the next day afternoon i.e. at 12:40 PM on 3.3.1992.

40. No doubt, the second application Ex.PW-15/D is also not proved to be scribed by a known person, but the fact of the matter remains that the three endorsements beneath the application, two written and signed by Dr.Anju Bharti and the third by Dr.J.L.Meena; the three endorsements collectively exhibited as Ex.PW-17/B with Dr.Anju Bhartis signatures at point „A and „B thereon and Dr.J.L.Meenas signatures at point „C thereon have been duly proved by Hardayal PW-17, the Record Clerk of JPN Hospital whose testimony to said effect has not been challenged. The three endorsements record as under:-

"Patient (Seema) is unfit for statement. She is not oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 01:30 AM

Patient (Seema) is fit for statement. She is oriented in time, place and person.

Sd/

(DR.ANJU BHARTI)

WD-26, LNJP

3.3.1992 08:25 AM

Pt. conscious, well oriented to time, place and person. She is fit for statement.

Sd/

Dr.J.L.MEENA

3.3.1992, 12:40 PM"

41. We may highlight that a visual comparison of the writings of the 2 applications Ex.PW-15/C and Ex.PW-15/D are in the same hand and are signed by some police officer of PS Timarpur. The fact that the author of the applications has not been examined and neither ASI Rohtash nor SDM Kishan Kumar could throw light thereon is neither here nor there for the reason the endorsements constituting the certifications pertaining to the writings of Dr.Anju Bharti and Dr.J.L.Meena have been duly proved.

42. The controversy as to why 2 applications were filed is a useless controversy for the reason it may have happened that after Dr.Anju Bharti had certified Seema fit to make statement at 11:50 PM on 2.3.1992, when asked to re-certify fitness at 1:30 AM on 3.3.1992 she may have asked for another application to be made and when the second application was being made, she had second thoughts and made the second endorsement beneath the first recorded on the application Ex.PW-15/C and since by that time the second application was also drawn up, made the same endorsement on the second application as well.

43. The matter can be looked at from another angle. The four certifications of Dr.Anju Bharti are completely irrelevant for the reason Seemas statement Ex.PW-13/C was recorded on 12:40 PM on 3.3.1992 and the only relevant certification would be the one given by Dr.J.L.Meena on 3.3.1992 at 12:40 PM. If at all the prosecution had to fabricate a fitness certification pertaining to Seema, what was the need to go round and round by recording 4 earlier certifications qua fitness/unfitness of Seema to make a statement? The fact that from time to time attempts were made to obtain Seemas state of fitness makes it all the more natural for the two documents to be genuine. It is true that the final Investigating

Officer who filed the charge-sheet was negligent in not ensuring the said documents to be filed along with the charge-sheet, but it is settled law that procedural lapses by the Investigating Officer cannot be a ground to disbelieve a relevant evidence if otherwise duly proved as required by law.

44. We conclude on the issue by noting that though not argued during hearing of the appeal, a controversy was raised inasmuch as Dr.J.L.Meenas certification qua Seemas fitness records the time 12:40 PM and this is the time as deposed to by Kishan Kumar the SDM when he recorded Seemas statement Ex.PW-13/C, but on which the time recorded is 12:40 AM. We agree with the learned Trial Judge that the time 12:40 AM got incorrectly recorded and in proof of the error is the fact that Kishan Kumars testimony that when in the intervening night of 2nd and 3rd March 1992 he reached the hospital but could not record Seemas statement because she was unfit to make a statement and thus the question of his recording Seemas statement at 40 minutes past 12 in the night does not arise.

45. No motive has been brought out for Kishan Kumar to contrive or connive with the police officers to fabricate documents. As observed by the Supreme Court in the decision reported as 2010 (8) SCC 514 Lakhan vs. State of M.P. there is no reason to doubt the credibility, unless there is evidence to the contrary, of Sub Divisional Magistrates or Gazetted Government Servant who record statements of injured which ultimately are proved as dying declarations.

46. It is true that the learned Trial Judge has overlooked a writing on the MLC of Seema that the patient herself gave the information to the doctor of the cause under which she suffered the burn injuries as also the fact that the learned Trial Judge has given reasons contrary to facts pertaining to testimony of Reena regarding Seemas stated dying declaration made to Reena and indeed we find Reena having told at the very first instance to the SDM that her sister told her that she caught fire while cooking food and this is what Seema told the doctor who examined her at the casualty of JPN Hospital. But the question would arise whether there is any credibility in the said statements of Seema or whether there is evidence that the unfortunate lady told a lie, whether deliberate or out of fear or compulsion.

47. The fact that Seema told the SDM who soon reached the hospital that she accidentally caught fire when the stove burst as she was cooking food and that her husband was away from the house for 2 days, a fact also deposed to by Reena and which fact is a blatant lie shows that both Seema and Reena were under some kind of a fear of the appellant and deliberately told a lie that the appellant was not present in the house. On the presence of the appellant in the house the best evidence would be appellants admission to said effect when examined under Section 313 Cr.P.C., contents whereof have been noted by us in para 9 above. Even Shashi Bala PW- 3 the landlady has deposed to appellants presence in the house when his wife got burnt. Further, as noted by us in para 23 above, contrary to her statement Ex.PW-13/DA made to the SDM, while deposing in Court even Reena admitted appellant being present in the house when Seema got burnt.

48. Thus, no credence can be given to the statements made by Seema to the doctor who examined her as also her first statement recorded by the SDM i.e. the statement Ex.PW- 13/A. There is unimpeachable evidence of fear resulting in a deliberate lie stated by Seema in the 2 statements.

49. Having opined positively that Seema was fit for statement at 12:40 PM on 3.3.1992, the question would arise whether credence should be given to Seemas statement Ex.PW-13/C which has been proved through the testimony of the scribe thereof i.e. Kishan Kumar the SDM concerned.

50. As disclosed therein by Seema she gives a reason why she mis-stated the correct facts at the first stage. She misbelieved that by suppressing the truth she would get proper medical treatment.

51. The presence of the appellant in his house when Seema got burnt is a fact proved on the evidence as noted in para 47 above and his conduct assumes great significance. He did not accompany Seema to the hospital. He immediately ran away from his house. For simple superficial burns on his wrist and forearms he got himself admitted at Central Hospital Northern Railway and being a railway employee managed to remain admitted there till 10th March 1992 i.e. for 9 days and then absconded from the hospital. The contemporaneous conduct of the appellant is that of a fugitive who flees from justice and shows the guilt in the mind

of the appellant.

52. Conscious of the fact that the normal Rule of Law is to treat conduct as weak evidence for the reason evidence pertaining to conduct is presumptive evidence and by its very nature presumptive evidence is weak evidence, but in the facts of the instant case, the circumstances enwombing the conduct of the appellant render the inference to be drawn from the conduct to be inferred not on the normal Rule of Law but on the Rule of Appreciation of Evidence that the incriminating value of a fact may be enhanced with reference to the circumstances enwombing the fact.

53. As Seemas husband the appellant would certainly know that Seema was an expectant mother and if indeed Seema caught fire accidentally the normal conduct of the appellant would be to rush his wife for medical aid not only to save the wife but even the unborn child. That Seema told a lie at the first instance that her husband was away from the house for two days, shows that the appellant was Seemas tormentor and so terrified or under fear was she that she told a lie.

54. Agreeing with the possibility of the stove enflaming as urged by learned counsel for the appellant and for which we need not re-note the submissions as we have extensively noted the same in para 34 above, but the question would be whether the same is a mere argument advanced by learned counsel for the appellant with reference to the fact that the post-mortem report record scalp hair singled and burnt in both temporal and frontal region.

55. In our opinion the argument is purely hypothetical of a situation and is based upon the principle of the working of the stove Ex.P-1. If indeed Seema was cooking food when the stove enflamed in the possible manner as was argued by learned counsel for the appellant; not that the stove literally burst as understood by the learned Trial Judge, there would have been a utensil to be found near the stove or on the stove in which uncooked, semi-cooked or fully cooked food would be found. No suggestion was given to ASI Rohtash Singh that he saw a utensil with uncooked or semi-cooked or fully cooked food and he deliberately did not record its presence on or next to the stove which ASI Rohtash Singh picked up from the house on the next day when Seema suffered burn injuries in her house.

That kerosene was detected only on the frontal and temporal region of the scalp hair is explainable when kerosene is thrown on a person from the front i.e. the person throwing kerosene and the person on whom kerosene is thrown are face to face. Thus, nothing turns thereon.

56. Though for reasons different than the ones given by the learned Trial Judge and for the fact appellants presence in the house when Seema got burnt is a proved fact and that Seema maintained initially that her husband was away from the house for 2 days and so did Reena falsely state we have evidence that the initial statements of Seema were wrong and thus the same have to be discarded for said reason alone and not the reason given by the learned Trial Judge who construed Seema saying that the stove burst as literally to be understood; we hasten to add that we are not to be read to be understood as if we are accepting the bursting of the stove as was urged by learned counsel for the appellant and as recorded in para 34 above. We clarify that from the falsity in the initial statements made by Seema pertaining to the appellant not being in the house we are concluding that Seemas initial statement were contrived by her either out of fear or under the wrong belief disclosed by Seema in her second statement recorded by the learned SDM.

57. We find credibility in Seemas statement Ex.PW- 13/C and more than that we can infer the guilt of the appellant with reference to his contemporaneous conduct which we have discussed fully herein above.

58. Undoubtedly there is a delay in registration of the FIR, but we note that it is not a case where an eye witness has been introduced by the prosecution. Shashi Bala and Reena who were the two persons in close proximity of Seema when she suffered burn injuries had at the very inception given a version favourable to the accused and it is not that they gave a different version to the police and deposed contrary to the same, meaning thereby, no witness has been examined who claims to be an eye witness and thus the issue of delay in registration of FIR has to be considered only with respect to Seemas dying declaration Ex.PW-13/C for the reason it is this declaration which could be planted.

59. Vide Ex.PW-13/D Kishan Kumar the learned SDM passed an order on 17.3.1992 for FIR to be registered and we find that he has deposed that Mr.Z.U.Siddique conducted the inquest proceedings i.e. some other Sub Divisional Magistrate and he has categorically deposed that this was in his absence. The cross-examination on the subject is very sketchy. Kishan Kumar was the witness whom the defence had to cross- examine on the issue of delay and having done a very cursory cross-examination the obvious thing which has happened is that Kishan Kumar has not got an opportunity to explain the delay and thus we feel that in the peculiar facts of the instant case the defence cannot get any mileage on this point and for the additional reason lapses by the prosecution have to be ignored if otherwise credible evidence surfaces at the trial.

60. The dying declaration of Seema Ex.PW-13/C nowhere records of dowry harassment. She speaks about appellants ill-treatment towards her on the false allegation that she was having illicit relationship with her brother-in-law and thus we concur with the argument advanced and thus we held that the appellant cannot be convicted for the offence punishable under Section 498A IPC ingredients whereof would be proof of subjecting the wife to cruelty of the kind as per clause „A or clause „B of the Explanation i.e. such conduct which is of such nature as is likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or harassment with a view to coerce the woman or any person related to her to meet an unlawful demand for any property or valuable security.

61. Maintaining the conviction of the appellant for the offence of having murdered Seema and the relatable sentence imposed thereon we dispose of the appeal acquitting the appellant for having committed any offence punishable under Section 498A IPC and quash the conviction relatable thereto.

62. Since the appellant has been admitted to bail we cancel the bail bond and surety bonds furnished by the appellant and direct him to surrender the remaining sentence pertaining to the offence punishable under Section 302 IPC.