

Wahid Vs. State of Madhya Pradesh

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Court : Chhattisgarh

Decided On : Mar-04-2011

Judge : The Honourable Chief Justice Mr. Rajeev Gupta & Sunil Kumar Sinha

Appeal No. : Criminal Appeal No.934 of 1993

Appellant : Wahid

Respondent : State of Madhya Pradesh

Judgement :

SUNIL KUMAR SINHA, J.

1. This appeal is directed against the judgment dated 31th of August, 1993 passed in Sessions Trial No.379/91 by the Sessions Judge, Bilaspur. By the impugned judgment, the appellant has been convicted u/Ss.376 and 302, IPC and sentenced to undergo R. I. for 7 years and imprisonment for life, with a further direction to run the sentences concurrently.

2. The facts, briefly stated, are as under:-

Deceased - Kuntibai was wife of Ravindra Kumar (PW-12). They were residing in a house in Mohallah Bandhwapara, Sarkanda, Bilaspur. The appellant was their neighbour. On 15-2-1991 at about 5.15 a.m. Ravindra Kumar (PW-12) lodged a written report (Ex. P/12) in police station Sarkanda that on 14-2-1991 at about

10.30 p.m. when the deceased was all alone, the appellant entered into their house and committed forcible sexual intercourse against the deceased. This was witnessed by him. They had made complaint of the above act of the appellant to the sister-in-law (bhabhi) of the appellant. No report of the said incident was made. At about 4.30 a.m. he heard cries that somebody is burning in the verandah of the house of the appellant. Many persons including Chatrapal (PW-1), Gopiram Chandra (PW-3), Harshvardhan Bhonsle (PW-4), Ramdulare (PW-9) and Ghanaram (PW-10) were trying to extinguish the fire. Latter on, he came to know that she was his wife namely Kuntibai (since deceased). They asked as to how this happened? On which Kuntibai stated that she was put on fire by the appellant. Assistant Sub-Inspector Indranarayan Singh (PW-13) immediately rushed to the place of occurrence. He saw the deceased in burnt condition. At 5.30 a.m., he recorded the dying declaration (Ex.-P/5) of the deceased. The deceased stated that the appellant committed rape against her and he put her on fire by pouring kerosene on her body. A. S. I., then, prepared a requisition (Ex.-P/8) for medical examination of the deceased and the deceased was sent to Govt. Hospital, Bilaspur. She was examined by Dr. (Smt.) Anjali Gupta (PW-8) at about 6.30 a.m. She noticed that the deceased had received burn injuries on whole body; smell of kerosene was coming from the body of the deceased; blisters were present at some places; skin was found pealed off on some parts of the body; and the colour of the burns was black. The burns were superficial and also deep at some places. The deceased was conscious at the time of the examination. She was talking normally and was responding to the questions. The stiffness and presence of burn injuries prevented from recording blood pressure and pulse. Though she sustained burn injuries to the extent of 95%, she was in a position to give statement at the time of her examination at 6.30 a.m. The injury report is Ex. -P/8 - A. On 15-2-1991, another requisition (Ex. -P-9) was sent for further examination of the private parts of the deceased. The second examination of the deceased was also conducted by Dr. (Smt.) Anjali Gupta (PW-8) at about 11.15 a.m. She noted that the deceased was a married lady; she had two children; the last child was born about 2 years back; and her last monthly menses had taken place on 2nd of February. She could not examine the private parts of the deceased as the deceased could not give position for P. V. (internal) examination as she had

extensive burns and stiffness on the limbs. Two slides were prepared from the vaginal swab and were handed over to the concerned police officer. The second MLC report is Ex. -P/9-A. The deceased died in the hospital during the course of her treatment on 15-2-1991 itself. A merger intimation (Ex. -P/16) was lodged. After giving notice (Ex. P/17) to the Panchas, inquest (Ex. -P/18) on the body of the deceased was prepared. The dead body of the deceased was sent for post-mortem vide requisition Ex. -P/6. The post-mortem examination was conducted by a team of Doctors including Dr. P. C. Gupta (PW-6). The Autopsy Surgeons found burn injuries all over the body except the toes. Blisters were present on some parts of the body. They were ante-mortem burns. They opined that the cause of death was shock on account of the burn injuries sustained by the deceased. The post-mortem report is Ex. -P/6-A.

On 16-2-1991 the appellant was also sent for his medical examination vide requisition Ex. -P/7. He was examined by Dr. Abhijeet Sen (PW-7). He noticed following injuries on the person of the appellant:-

- (i) There were several blisters on the palmar aspect of both the hands having size in between 1/2 inch x 1/2 inch to 1/4 inch x 1/4 inch;
- (ii) Grade-I burn on the distal 1/3rd area of right forearm, bluish red in colour;
- (iii) There were few blisters of the size of 1/8 inch x 1/8 inch on the anterior aspect of both forearms.

There were no signs of injury on the genital area. Smegma was not present. He was capable for performing sexual intercourse. The Doctor opined that the burn injuries were sustained within 36 hours of the time of examination (12.15 p.m. on 16-2-1991) and were caused by naked flames. The MLC report is Ex. -P/7-A.

The seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar vide memo Ex. -P/21, from where a report (Ex. -P/22) was received. According to the F. S. L. report semen and human spermatozoa were found in slides prepared from the vaginal swab of the deceased (Article-A).

After completion of usual investigation, the charge-sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur, who in turn committed the matter to the Court of Sessions Judge, Bilaspur, who conducted the trial and convicted and sentenced the appellant as aforementioned.

3. Admittedly, there were no eye-witness to the incident of causing burn injuries to the deceased and the case of the prosecution was based on circumstantial evidence. The following are the circumstances, on which, the Sessions Court relied to convict the appellant:-

- (i) The deceased was found in burnt condition in parchi (verandah) of the house of the appellant;
- (ii) The deceased made oral dying declaration before the persons residing in the locality including the prosecution witnesses;
- (iii) A written dying declaration was also recorded by the police officer;
- (iv) Presence of burn injuries on the person of the appellant also; and
- (v) Presence of semen and human spermatozoa in the slides prepared from the vaginal swab of the deceased.

4. Mr. V. C. Ottalwar, learned counsel appearing on behalf of the appellant; argued that the Sessions Judge erred in law in holding that the circumstances of oral and written dying declaration were proved beyond all reasonable doubts; the oral dying declaration allegedly made by the deceased before the prosecution witnesses was not proved; the written dying declaration was concocted and was a creature of afterthought; and though the deceased was found in burnt condition in the verandah of the house of the appellant, it would not be incriminating against the appellant because it was an open verandah and anybody can have an access to it. About the burn injuries sustained by the appellant, he argued that when the deceased was burning, the flames also came upon some portion of the house of the appellant and the appellant sustained burn injuries during the course of saving his house from the fire.

5. On the other hand, Mr. Kishore Bhaduri, learned Additional Advocate General appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

6. We have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

7. In *Hanumant v. State of M. P.* AIR 1952 SC 343 the Supreme Court held that “In dealing with circumstantial evidence there is always the danger that conjecture or suspicion may take the place of legal proof. It is therefore right to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

8. Thereafter in many decisions including the decisions of *Dhananjoy Chatterjee v. State of W. B.* (1994) 2 SCC 22: (1994 AIR SCW 510) and *Bodh Raj alias Bodha and others v. State of Jammu and Kashmir*, AIR 2002 SC 3164, the Supreme Court held, and it is almost well settled, that the circumstantial evidence, in order to sustain the conviction, must satisfy the following conditions:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime

was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

9. Now we shall examine the credibility of the prosecution case in light of the above principles laid down by the Supreme Court.

10. It is not disputed that the deceased was found burning in verandah of the house of the appellant and further that the appellant also received burn injuries as above. What would be impact of the above circumstances would be dismissed later on, but prior to that the credibility of the oral and written dying declaration are mainly to be examined.

11. The learned Sessions Judge believed the testimonies of Gopiram Chandra (PW-3) and Harshvardhan Bhonsle (PW-4) and has held that it was proved beyond reasonable doubt that the deceased made oral dying declaration before them stating that she was put to fire by the appellant after pouring kerosene on her body. The case of the prosecution is that at about 4-4.30 in the morning when the persons of the locality heard hue and cry, they came out from their houses and saw fire in the verandah of the house of the appellant. They extinguished the fire by pouring water and then came to know that some-body is burning in the said verandah. On further inquiry they could come to know that she was the deceased, who stated them that she has been put to fire by the appellant after pouring kerosene on her body. Gopiram Chandra (PW-3) deposed that when he heard hue and cry, he came out from his house and saw the fire in the verandah of the house of the appellant. Many persons were trying to extinguish the fire by pouring water. He also reached there, switched-on his torch and saw that a lady was lying in burnt condition. Two bicycles were kept in the verandah which was room like, and were on both the sides of the lady. He saw a container of kerosene and he also saw match-sticks. After sometime the lady started crying. One Tangha asked the lady as to who she is, on which, she replied that she is Kuntibai, wife of Ravindra. Tangha again asked as to how she came here and how the fire caught? The lady replied that in the night when she came out from her house for urination, the appellant caught her, took her to his house, committed rape against her and thereafter put her on fire. The husband of the deceased was also present there.

Husband of the deceased and Harshvardhan Bhonsle (PW-4) went to the police station to lodge the report and he returned back to his house. In the cross-examination, he admitted that the said verandah was covered from all the sides and a door frame was fixed at the entry point, but there were no doors in the frame. The height of the roof was about 5 feet. One corner of the roof was much higher. He called it as room and deposed that the room was of the size of 7 feet x 5 feet. It was having the tiles roof. Mr. Ottalwar has challenged the credibility of this witness on account of certain contradictions in his case diary statement (Ex. - D/1) and further that in the case diary statement he stated that the deceased made similar declaration to the police in his presence but, in the Court evidence, he did not make any statement about the dying declaration recorded by the police, therefore, his evidence was not reliable. We find that there is no discrepancy in the evidence of this witness so far as it relates to the oral dying declaration made by the deceased before the persons of the locality. As far as the omission relating to subsequent dying declaration before the police is concerned, that of course was not proved by the testimony of this witness. He has clearly deposed that after the first dying declaration, he left the place of occurrence. Therefore, he was right in saying that he does not know about the subsequent dying declaration made before the police. Only on account of the above omission in his Court evidence relating to the subsequent dying declaration before the police, which he stated in his 161 statement, entire evidence of this witness cannot be discarded. We are of the view that the evidence of this witness to the effect of oral dying declaration made by the deceased before the villagers, including this witness, was intact and that portion of his evidence can be taken into consideration and his entire evidence cannot be brushed-aside.

12. Harshvardhan Bhonsle (PW-4) also deposed in similar fashion. He was also a resident of the same locality. He deposed that he also participated in extinguishing the fire. He clearly deposed that after the fire was extinguished, they saw that a lady was lying in burnt condition in the verandah of the house of the appellant. Tangha asked the lady as to who she is, on which, she replied that she is Maharajin (wife of Ravindera Sharma). Thereafter Tangha further asked as to how she came here, on which, she replied that when she came out of her house for urination, the appellant caught her, took her to his house, committed rape against

her and thereafter put her on fire. He deposed that the above declaration was made before many persons of the locality. Mr. Ottalwar argued that there are many contradictions in the evidence of Harshvardhan Bhonsle (PW-4). We have examined the contradictions in light of his case diary statement (Ex. -D/2). We find that the contradictions, which Mr. Ottalwar has referred to, are not the material contradictions. Those contradictions are small variations which are natural in recording the statement of a person at 2 different occasions. Such contradictions are likely to come, as, in normal circumstances, nobody can give stereo type evidence of one incident at 2 different point of time. Natural variations in the evidence of Harshvardhan (PW-4) do not make his evidence unreliable. We find that his evidence is fully intact, so far as the oral dying declaration of the deceased is concerned. If we look together the evidence of Gopiram Chandra (PW-3) and Harshvardhan Bhonsle (PW-4), it would appear that they corroborated each other on the material point of oral dying declaration. They are the witnesses of the same locality. Their houses are situated near the house of the appellant. Their presence at the place of occurrence was natural. Their conduct also appears to be natural. There is lengthy cross-examination of Harshvardhan (PW-4), but the defence has not been able to elicit any such circumstance in the cross-examination on which either his evidence relating to the oral dying declaration may be discarded or it may be said that for any ulterior motive he was falsely implicating the appellant in this matter.

13. Now we shall look into the credibility of the written dying declaration (Ex. -P/5).

14. The written dying declaration was recorded by Assistant Sub-Inspector Indranarayan Singh (PW-13). At the relevant time, A.S.I. Indranarayan Singh (PW-13) was posted in P.S. Sarkanda. He deposed that on the fateful day, Ravindra Kumar Sharma (PW-12-husband of the deceased) came to the police station and lodged a written report (Ex-P/12). First Information Report (Ex.-P/12) was registered on the basis of said written report. After the report, he reached to the place of occurrence at about 5.30 a.m. and recorded the dying declaration of deceased - Kuntibai, wife of Ravindra Kumar Sharma. This dying declaration was recorded before 2 witnesses namely Chatrapal (PW-1) and Ghanaram (PW-10). The dying declaration is in question answer form. Questions 1 to 7 relate to the

identity of the appellant and the deceased and the place etc. Question No.8 relates to the cause of injuries sustained by the deceased. The deceased made declaration that the appellant committed rape against her and put her on fire by pouring kerosene. He deposed that the dying declaration was recorded in the hand writing of Head Constable Tejam Bhasker on his dictation. He has asked the deceased as to whether she can put her thumb impression or signature, on which she replied negative. The dying declaration bears his signature at the bottom.

15. Mr. Ottalwar has argued that the 2 witnesses of written dying declaration (Ex.-P/5) i.e. Chatrapal (PW-1) and Ghanaram (PW-10) have turned hostile and have not supported the dying declaration recorded by A.S.I. Indranarayan Singh (PW-13). He has also argued that the above dying declaration has been held to be proved only on the evidence of concerned police officer i.e. A. S. I. Indranarayan Singh (PW-13). We do not find any force in the above argument. There is no proposition in law that the evidence of the police officer cannot be relied either on the ground that he was the police officer or on the ground that he was “interested witnesses” having an interest in the success of the prosecution. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy and he appears to be a natural witness on a particular instance, his testimony, can be accepted and acted upon accordingly.

16. Mr. Ottalwar argued that after the alleged dying declaration (Ex. -P/5) was recorded by A. S. I. Indranarayan Singh (PW-13), he prepared the requisition (Ex. -P/8) for examination of the deceased. In the relevant column, he did not mention that the deceased was put to fire by the appellant or she had made a dying declaration to the said effect. According to Mr. Ottalwar the above omission was fatal to the prosecution. In *Pedda Narayan v. State of A. P.*, (1975) 4 SCC 153: (AIR 1975 SC 1252) acquittal was recorded by the Sessions Court on the ground of absence of details in the inquest report of overt acts committed by the accused in the relevant column. The Supreme Court while considering the matter observed that “the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the

details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report". And that such "omissions in the inquest report are not sufficient to put the prosecution out of Court". The above analogy can be applied in the present case also. In the present case, the A. S. I. has mentioned in the requisition form (Ex. -P/8), that the injured (since deceased) has received multiple burn injuries by fire; the injuries are all over the body; therefore, she be examined and the report be given. In an injury case, the very purpose of the requisition is merely to send the injured for his/her examination as the medico legal case so as to ascertain the nature and cause/causes of the injury/ injuries sustain by him/her. However, in the relevant column, the officer who is preparing the requisition is required to point out as far as possible the details of such injuries and the place of injuries on the body so that the medical examination goes in correct direction and any injury seen and marked by the police/investigating officer may not remain unexamined. The question regarding details as to how the victim was dealt with or who caused the injuries to the victim or under what circumstances the victim received such injuries are not legally required to be filled in the requisition form. We are of the view that on account of the above omission in the requisition form for medical examination of the deceased (Ex. -P/8), no doubt is created on the testimony of Indranayarayan Singh (PW-13).

17. Mr. Ottalwar then argued that the dying declaration was not written in the hand writing of A. S. I. Indranarayanan Singh (PW-13). It comes in his evidence that it was written in the hand writing of Constable Tejram Bhasker, who was accompanying him, therefore, it was fatal to the prosecution. We are unable to accept the above arguments. If we examine the position in law, Section 32 of the Indian Evidence Act 1872 speaks that the statements both written or verbal, of relevant facts made by a person who is dead as to the cause of his death or as to any of the circumstance of the transaction which resulted in his death would be relevant and admissible and as such an oral dying declaration, in the purview of Sec.32 was permissible. In case on hand, an analysis of the exercise undertaken by the police officer would show that the deceased made an oral dying declaration

before him i.e. before A.S.I. Indranarayan Singh (PW-13), he put the questions one by one, understood the answer to the question and dictated it to be reduced into writing by the Constable one by one. When oral dying declaration is permissible under the law, then the dying declaration which has been simultaneously reduced into writing by a 3rd person after the dictation of the person to whom the oral dying declaration was made cannot be held to be inadmissible or irrelevant, unless it is shown that the correct version, as dictated by the person taking the dying declaration, has not been recorded in the written dying declaration. Such written dying declaration would be fully admissible u/S.32 of the Indian Evidence Act, 1872.

18. Mr. Ottalwar also argued that the deceased had sustained 95% burn injuries, therefore, she was not in fit mental condition to record the above dying declaration at 5.30 a.m. This argument again cannot be accepted in view of the oral testimony of Gopiram Chandra (PW-3), Harshvardhan Bhonsle (PW-4) and further on the testimony of Dr. (Smt) Anjali Gupta (PW-8). The above 2 witnesses of the locality deposed that the deceased was talking at the time of oral dying declaration before them. That must be the time of few minute prior to 5.15 a.m. which is the time of lodging the F.I.R. by the husband of the deceased. The written dying declaration was recorded at 5.30 a.m. Thereafter the requisition for medical examination was prepared and the deceased was examined by Dr. (Smt.) Anjali Gupta (PW-8) at 6.30 a.m. She found the above burn injuries on the body of the deceased and she specifically mentioned in her report (Ex.P/8-A) that the deceased was conscious at the time of examination and she was talking normally and was responding to the questions. The above evidence are unassailed. Therefore, it was established that the deceased was throughout in conscious condition from the morning when she talked with the villagers till 6.30 a.m. when she was examined by Dr. (Smt.) Anjali Gupta. If a written dying declaration was recorded in between this period, that cannot be assailed on the ground of unfit mental condition of the deceased.

19. Mr. Ottalwar further argued as to why any dying declaration was not recorded by the executive Magistrate, whereas the deceased remained alive for sufficient time? Ex. P/14 is an application written by the investigation officer to the Sub-Divisional Magistrate regarding recording of the dying declaration. There is an

endorsement in this application on the name of Executive Magistrate Dewangan, directing him to record the dying declaration. There is also an endorsement of the concerned Doctor, i.e. Dr. K.K. Sao (PW-14) at 9.00 a.m. that the deceased was not fit to give statement. Dr. K.K. Sao (PW-14) deposed that the deceased was admitted in the Government Hospital as a burn case. He had examined her at 9.00 a.m. on 15-2-1991 and has found that she was not fit to give statement. The endorsement to this effect was made in the application/requisition (Ex.P/14). Shri Dewangan, Executive Magistrate, had met him to examine the deceased whether she was in a condition to give statement. It is on this, he had examined the deceased and had made an endorsement as above in the said document Ex.P/14. This shows that the police had made all efforts to record another dying declaration by the Executive Magistrate, but the same could not be recorded on account of unfit mental condition at about 9.00 a.m. when the Executive Magistrate had visited the Hospital and had requested the Doctor to examine the deceased, who made above certification on the requisition memo.

20. Mr. Ottalwar argued that when the deceased was not in a fit condition to record the dying declaration at 9.00 a.m., how she became conscious to respond the questions of Dr. (Smt.) Anjali Gupta (PW-8) when she was examined for the second time at about 11.15 a.m. We note that there is a gap of more than 2 hours in between these 2 examinations and it cannot be denied outrightly that the deceased may not have improved in 2 hours 15 minutes to respond the questions asked by Dr. (Smt.) Anjali Gupta (PW-8) while her second examination in which she told the number of her children and the date of her last menses.

21. In *Puran Chand v. State of Haryana*, (2010) 6 SCC 566: (2010 AIR SCW 3677), the Supreme Court observed that “The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in

the success of investigation or which may be negligent while recording the dying declaration. When there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocuous dying declarations have to be rejected. Such a trend will be extremely dangerous. However, the Courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests. The Court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. The Courts must bear in mind that each criminal trial is an individual aspect. If after careful scrutiny the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it a basis of conviction, even if there is no corroboration. The dying declaration of S passes all the tests.”

22. Further in *Atbir v. Government of NCT of Delhi*, (2010) 9 SCC 1: (AIR 2010 SC 3477) the Supreme Court culled out following 10 principles on the basis of earlier decisions:-

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.
- (ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

23. We have examined the dying declarations of the present case in light of the above principles laid down by the Supreme Court. We do not find any infirmity in the 2 dying declarations made by the deceased at 2 different point of time. In both the dying declarations the deceased clearly stated that she was subject to forcible intercourse by the appellant and thereafter the appellant set her on fire by pouring kerosene on her.

24. Now we shall examine the conduct of the appellant. As stated above, the appellant also sustained burn injuries which are established from his medical report (Ex.-P/7). Let us find out as to how he received such injuries. Mr. Ottalwar argued that the appellant has given explanation that when he got an idea that fire is coming up to the portion of his residential house, he tried to save the house and in the said process, he received the above injuries. The said conduct of the appellant is quite un-natural and the explanation appears to be false. In normal human nature if a person finds that somebody is burning alive in the verandah of his house, he would firstly try to save the life of said person by extinguishing the

fire from his/her body and not that he would go for saving his house. Moreover, when the center point of the fire is extinguished, the fire will not spread to the adjacent portions. Had the appellant offered explanation that he received the burn injuries explanation that he received the burn injuries while saving the life of the deceased, we would have accept the same. But, the above explanation offered by the appellant while recording his 313 Cr. P.C. statements cannot be accepted. This was an additional circumstance, incriminating against the appellant.

25. Mr. Ottalwar lastly argued that the husband of the deceased namely Ravindra Kumar Sharma (PW-12) has turned hostile and has not supported the case of the prosecution. The above factual position is not denied. But, we are of the view that it never effects the credibility of the 2 dying declarations made by the deceased which we have already held to be proved.

26. For the foregoing reasons, we do not find any substance in this appeal. The appeal, therefore, is liable to be dismissed and is hereby dismissed.

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