

A.F.R.

Court No. - 4

Case :- CRIMINAL APPEAL No. - 1749 of 1988

Appellant :- Bhim Sen

Respondent :- State of U.P.

Counsel for Appellant :- G.N. Sharma, Jitendra Singh

Counsel for Respondent :- D.G.A.

Hon'ble Bala Krishna Narayana, J.

Hon'ble Vivek Varma, J.

Per Hon'ble B. K. Narayana, J.

Heard Sri Jitendra Singh, learned counsel for the appellant and Sri M.C. Joshi and Smt. Manju Thakur, learned A.G.A.-I for the State.

Appellant Bhim Sen has filed this appeal before this Court against the judgement and order dated 06.08.1988 passed by IInd Additional Sessions Judge, Mathura in S.T. No. 603 of 1987, 'State Vs. Gir Prasad and two others' arising out of Case Crime No. 157 of 2014 by which he has been convicted and sentenced to imprisonment for life u/s 302 I.P.C. and three years rigorous imprisonment u/s 498-A I.P.C. Both the sentences were directed to run concurrently.

Briefly stated the facts of this case are that appellant Bhim Sen son of Dhaniram was married according to Hindu rites and rituals to Smt. Bina (deceased), daughter of Sukha, resident of village- Pilua Sadikpur, P.S.- Farah, District- Mathura about three years before the incident and one Bainiram was the middle man. It is also alleged that Bainiram had given a loan of Rs. 14,000/- to Dhaniram, father of the three accused, prior to the said marriage and when Dhaniram showed his reluctance to return the loan amount, Bainiram asked him to return the same with a promise to give him loan again at the time of marriage of appellant Bhim Sen, as a result of which Dhaniram returned the said money to Bainiram.

It is further alleged that at the time of the marriage of appellant Bhim Sen when Dhaniram again demanded the loan from Bainiram, he refused to oblige him. However, for the said marriage of appellant Bhim Sen, Dhaniram took loan from some third person. The other two accused, Chhotey and Gir Prasad used to tell appellant Bhim Sen that he must compensate them for the money spent by their father in the marriage. It is further alleged that two months prior to May, 1986, appellant Bhim Sen went to Sukha, father of Smt. Bina (deceased) and asked him to arrange payment of Rs. 7,000/- spent by her father in the marriage but Sukha showed his inability to arrange the said money. Thereafter, all the aforesaid three accused, it is alleged, started harassing and maltreating Smt. Bina for the said amount. It is further alleged that on 19.05.1986 at about 7 a.m., P.W.1 informant Girraj Singh, Pradhan of village- Kharba along with P.W.2 Ram Gopal alias Ghora happened to pass from near the house of appellant Bhim Sen and they heard shrieks of a lady emanating from inside his house. When they went inside the house, they saw Smt. Bina in the courtyard, appellant Bhim Sen and accused Chhotey had caught hold of her while accused Gir Prasad had set her on fire as a result of which she was burnt. It is also alleged that before putting her on fire, kerosene oil had been poured on her body by accused-appellant Bhim Sen. The said occurrence was also witnessed by P.W.3 Saligram, P.W.4 Ram Dayal and other residents of village- Nagla. Smt. Bina was taken to P.S.- Raya by P.W.1 informant Girraj Singh to lodge the written report of the incident (Ext.Ka.1) containing the prosecution version of the case.

Smt. Bina was immediately taken to Civil Hospital, Mathura and from there, she was taken to Methodist Hospital, Jaisingh Pura, Mathura. There she made a statement which was recorded as her dying declaration by P.W.13 Dr. Solomon Chatterjee. On 23.05.1986, Smt. Bina died as a result of burn injuries received by her in the above occurrence.

After completion of the investigation of the aforesaid case, the Investigating Officer submitted charge-sheet against all the three accused

before the Chief Judicial Magistrate, Mathura (Ext.Ka.18).

Since the offences mentioned in the charge-sheet were triable exclusively by the Court of Sessions, Chief Judicial Magistrate, Mathura committed the accused for trial to the Court of Sessions Judge, Mathura where Case Crime No. 157 of 2014 was registered as S.T. No. 603 of 1987, "State Vs. Gir Prasad and two others", and made over for trial from there to the Court of IInd Additional Sessions Judge, Mathura who on the basis of material collected during the investigation and after hearing the prosecution as well as the accused on the point of charge, framed charge u/s 302 & 498-A I.P.C. against appellant Bhim Sen while acquitted co-accused Chhotey @ Om Prakash and Gir Prasad of all the charges. Appellant Bhim Sen abjured the charges framed against him and claimed trial.

The prosecution in order to prove its case against the accused-appellant Bhim Sen examined as many as 14 witnesses.

P.W.1 informant Girraj Singh, who is the father of the deceased, stated that on 19.05.1986 at about 7 a.m. when he along with P.W.2 Ghora alias Ram Gopal was passing from near the house of the accused, he heard shrieks of a lady from inside the house and when they went inside the house, they found that appellant Bhim Sen and Chhotey had caught hold of Smt. Bina whose body was on fire and accused Gir Prasad was also present there. He also stated that at that time, the three accused were taunting Smt. Bina that her father had not returned Rs. 12,000/- which he had promised to give. He also stated that in the said occurrence, appellant Bhim Sen also received burn injuries. He also stated that thereafter he lodged written report of the incident (Ext.Ka.1) at P.S.- Raya, District-Mathura.

P.W.2 Ram Gopal alias Ghora is also an eye-witness of the occurrence and he corroborated the statement of P.W.1 informant Girraj Singh to some extent but since he had not fully corroborated the statement

which he had given earlier u/s 161 Cr.P.C., at the request of public prosecutor, he was declared hostile and public prosecutor was allowed to cross-examine him.

P.W.3 Saligram and P.W.4 Ram Dayal were eye-witnesses of the occurrence but both of them turned hostile and did not support the prosecution case.

P.W.5 Keshav, who is the real brother of the deceased Smt. Bina stated that about three years ago, his sister was married with appellant Bhim Sen according to Hindu rites in which one Bainiram was middleman. He had also stated that Bainiram had given a loan of Rs. 14,000/- to Dhaniram, father of the three accused and he took the above loan amount from Dhaniram under the excuse that he would again advance money at the time of marriage of appellant Bhim Sen but he did not stand by his promise, as a result of which Dhaniram had to take loan from some other persons to meet the expenses of marriage of appellant Bhim Sen. He also stated that accused Gir Prasad and Chhotey used to ask appellant Bhim Sen to compensate them for the money spent by their father in his marriage and two months before the death of Smt. Bina, appellant Bhim Sen had come to his house and demanded Rs. 7,000/- from his father to arrange the money which had been spent in the marriage of Smt. Bina but his father refused. He also stated that thereafter, he saw his sister in a burnt condition in Methodist Hospital, Jaisingh Pura, Mathura.

P.W.6 Dr. P.K. Sharma stated that on 19.05.1986, he conducted medical examination of Smt. Bina and he found 1 to 3 degree burns over the face, neck, skull, hair of Smt. Bina and also on other portions of her body and the burns were about 80 to 85%. He also opined that the injuries found on the body of Smt. Bina could have been caused to her at about 7 a.m. on the same day and he proved his injury report as (Ext.Ka.2).

P.W.7 Constable Vinod Kumar stated that on 23.05.1986, he along

with Constable Bachu Singh had brought the dead body of Smt. Bina to Mathura for postmortem examination.

P.W.8 Head Constable Madan Lal is the scribe of check F.I.R. (Ext.Ka.3) and corresponding G.D. Entry (Ext.Ka.4). He also stated that on 28.05.1986, the present case was converted from u/s 307 I.P.C. to u/s 302 I.P.C. and he proved corresponding G.D. Entry (Ext.Ka.5). He also proved G.D. Entries (Exts.Ka.6 and Ka.7) which related to the factum of sending of special report to the concerned authorities and also entry regarding the return of the constable at the police station after delivery of the special report.

P.W.9 S.I. P.C. Chaturvedi stated that on 23.05.1986, he conducted inquest on the dead body of Smt. Bina and prepared inquest report (Ext.Ka.8) and other related documents (Exts.Ka.9 to Ka.13).

P.W.10 S.I. Satyapal Singh stated that the present case was registered at the police station in his presence and he was entrusted with the investigation of the case. He stated that during investigation of the case, he prepared site plan of the place of occurrence (Ext.Ka.14) and recovery memos of 'pipi' of kerosene oil (Ext.Ka.15), burnt dhoti (Ext.Ka.16) and kerosene oil stained earth (Ext.Ka.17). He also stated that thereafter the investigation of the case was handed over by him to P.W.12 Deputy S.P. Suresh Chandra Sharma as it was the case of dowry death.

P.W.11 Dr. S.K. Srivastava, Methodist Hospital, Jaisingh Pura, Mathura produced the dying declaration of Smt. Bina dated 19.05.1986 from the record of the hospital and proved the same as (Ext.Ka.20).

P.W.12 Deputy S.P. Suresh Chandra Sharma who had investigated the case in later stages, stated that after completion of investigation, he filed charge-sheet (Ext.Ka.18) against the three accused.

P.W.13 Dr. Solomon Chatterjee stated that on 19.05.1986 when he was working in Methodist Hospital, Jaisingh Pura Mathura, he recorded the dying declaration of Smt. Bina (Exts.Ka.19). He also stated that he

recorded the said dying declaration instead of calling a Magistrate because Smt. Bina had burn injuries of 95% and he was afraid that she may succumb to her injuries even before the arrival of the Magistrate.

P.W.14 Dr. M.K. Gupta stated that on 23.5.1986, he was posted as Medical Officer, Civil Hospital, Mathura and had conducted postmortem examination on the dead body of Smt. Bina and prepared her postmortem report (Ext.Ka.21) He noted following ante-mortem injuries on the person of Smt. Bina :-

Superficial two deep septic wound burns present on head and face, neck both sides, thorax both sides, including both breasts upper part of abdomen above the umbilicus both sides. Both upper limb, both side front and back including both hands lower part of both thighs and whole of leg on both sides. Foul smelling coming from septic wounds. Skin is peeled at places. Vesicles present at places.

According to P.W.14 Dr. M.K. Gupta, the death of Smt. Bina was caused due to shock and toxemia as a result of ante-mortem burn injuries.

The appellant and the other co-accused in their examination u/s 313 Cr.P.C. admitted that Smt. Bina was married to the appellant but rest of the allegations were denied by them. Appellant Bhim Sen also stated that P.W.1 informant Girraj Singh, Pradhan of the village, wanted to grab the land belonging to his family and for that reason, he and his brothers had been falsely implicated in the present case. The accused-appellant also examined Hoti Lal and Dr. H.K. Kulshrestha as D.W.1 and D.W.2.

Learned IInd Additional Sessions Judge, Mathura after considering the submissions advanced before him by the learned counsel for the parties and scrutinizing the evidence on record, both oral as well as documentary, by the impugned judgement and order, while acquitting co-accused Chhotey @ Om Prakash and Gir Prasad, convicted the appellant and awarded aforesaid sentences to him.

Hence, this appeal.

It is contended by Sri Jitendra Singh, learned counsel for the appellant that no one had actually seen the incident and after the deceased's clothes had caught fire while she was cooking food and taken to the hospital where she succumbed to her burn injuries, an absolutely false F.I.R. was lodged by P.W.1 informant Girraj Singh, the Pradhan of the village, falsely implicating his brothers with the sole malafide intention of grabbing their property. He next submitted that the glaring contradictions between the recitals contained in the F.I.R. lodged by P.W.1 informant Girraj Singh describing himself as the eye-witness and those contained in the dying declaration of the deceased which itself is a forged and fabricated statement, totally belies the prosecution story that the appellant had caused the death of his wife after pouring kerosene oil on her and setting her ablaze on account of her failure to bring the sum of Rs. 14,000/- which his brothers had allegedly spent on the marriage between the deceased and the appellant. He next submitted that there is no explanation why the dying declaration of the deceased was not recorded before the Magistrate although she had remained alive for more than four days after the incident and there is no cogent and reliable evidence on record indicating that the deceased who was admitted to the hospital and with more than 95 burn injuries, was in a fit mental condition to record her dying declaration or for that matter even to speak and hence, reliance placed by the learned trial Judge on the deceased's dying declaration is totally unjustified. He lastly submitted that the neither the recorded conviction of the appellant nor the sentence awarded to him can be sustained and is liable to be set-aside.

Per contra Smt. Manju Thakur, learned A.G.A.-I for the State submitted that it is fully proved from the evidence of the three eye witnesses of fact that the appellant had set his wife (deceased) ablaze after pouring kerosene oil on her on account of non-fulfillment of demand made by him from her family members. It is further established from the medical evidence that the deceased had died as a result of the burn

injuries received by her in her matrimonial home. She also contended that even if it is assumed for the sake of arguments that there are contradictions in the statements of the eye-witnesses and the facts stated by the deceased in the dying declaration, even then the appellant is not entitled to be acquitted of the charges for the simple reason that there being no denial on the part of the appellant that at the time of the incident, he was not present in the house and hence, the facts relating to the unnatural death of the deceased were within his special knowledge and he having failed to come up with any explanation for the circumstances under which the deceased had caught fire and received burn injuries to which she later succumbed, the appellant cannot escape fastening of guilt of the murder of his wife on him. Even otherwise, contradiction if any vis-a-vis the F.I.R. recitals and the dying declaration of the deceased are not so material so as to render the entire prosecution case unreliable and untrustworthy. This appeal lacks merit and is liable to be dismissed.

We have heard learned counsel for the parties present and perused the entire lower court record very carefully.

The only question which arises for our consideration in this appeal is that whether the prosecution has been able to prove its case against the accused-appellants beyond all reasonable doubts or not ?

The conviction of the appellant in the present case is essentially based upon the dying declaration of the deceased (Exts.Ka.19 & Ka.20).

Before testing the grounds on which the learned counsel for the appellant has challenged the veracity of the dying declaration of the deceased, we consider it useful to have a glance at the law on the issue of admissibility of dying declaration for the purpose of conviction of appellant.

The doctrine of dying declaration is enshrined in the legal maxim '*Nemo moriturus praesumitur mentire*', which means 'a man will not meet his maker with a lie in his mouth'. The doctrine of dying declaration is

enshrined in section 32 of the Indian Evidence Act, 1872 (hereinafter called as, 'Evidence Act') as an exception to the general rule contained in section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e., it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

In the case of ***Munnawar and others v. State of Uttar Pradesh and others*** reported in ***2010 (70) ACC 853 (SC)***, the Apex Court held as under:

“that a dying declaration can be relied upon if the deceased remained alive for a long period of time after the incident and died after recording of the dying declaration. That may be evidence to show that his condition was not overtly critical or precarious when the dying declaration was recorded.”

It would be pertinent to note the case of ***Bhajju alias Karan Singh v. State of M.P.*** reported in ***2012 (77) ACC 182 (SC)*** before the Apex Court which had almost identical facts. The dying declaration of the deceased was relied upon as the witnesses of fact did not support the prosecution case and were declared hostile and similar defence was taken that the deceased had caught fire while she was cooking food. The Hon'ble Court referring to the case of ***Munna Raja and another v. The State of Madhya Pradesh*** reported in ***(1976) 3 SCC 104*** relied upon by the learned counsel for the accused-appellant observed as under:

*“Reliance placed by the learned counsel appearing for the appellant/accused upon the judgement of this Court in the case of ***Munnu Raja and another v. The State of Madhya Pradesh*** reported in ***(1976) 3 SCC 104*** to contend that a dying declaration cannot be corroborated by the testimony of hostile witnesses is hardly of any help. As already noticed, none of the witnesses or the authorities involved in the recording of the dying declaration had turned hostile. On the contrary, they have fully supported the case of the prosecution and have, beyond reasonable doubt, proved that the dying declaration is reliable, truthful and was voluntarily made by the deceased. We may also notice that this very judgement relied upon by the accused itself clearly says that*

the dying declaration can be acted upon without corroboration and can be made the basis of conviction. Paragraph 6 of the said judgement reads as under:-

*“.....It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated (see **Khushal Rao v. State of Bombay**). The High Court, it is true, has held that the evidence of the two eye-witnesses corroborated the dying declarations but it did not come to the conclusion that the dying declarations suffered from any infirmity by reason of which it was necessary to look out for corroboration.”*

In para-22 of this report the Hon'ble Court has further held that-

“The law is very clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused. This Court has clearly stated the principle that section 32 of the Evidence Act, 1872 (for short 'the Act') is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of section 32 makes the statement of the deceased admissible, which is generally described as a 'dying declaration'.”

The Apex Court relying upon the dying declaration of the deceased being consistent with the prosecution case which was fully corroborated by medical evidence did not disturb the concurrent findings of guilt of accused-appellant recorded by the two Courts. In view of the aforesaid preposition of the law the dying declaration of the deceased recorded in this case fulfills all the legal requirements and it is in consonance with the prosecution story as also the medical evidence.

Thus, what follows from the reading of the aforesaid authorities on the issue is that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court could form a sole piece of evidence resulting in the conviction of the the accused.

Admissibility of the dying declaration of the deceased has been assailed by the learned counsel for the appellants on four grounds. Firstly, it was not recorded before the Magistrate although the circumstance did

not warrant any such urgency as shown by P.W.13 Dr. Solomon Chatterjee in recording deceased's dying declaration without waiting for the Magistrate to arrive. In our opinion, the dying declaration of the deceased is not liable to be discarded solely on the aforesaid ground because there is no law which requires that dying declaration in order to be reliable, should be recorded before the Magistrate. Before drawing any adverse inference against the prosecution on account of the dying declaration having been recorded by the doctor attending her and not before the Magistrate, we will have to examine the other attending circumstances also.

The second ground on which the deceased's dying declaration has been challenged is that there was evidence on record showing that when she was admitted to the hospital, she was injected pethidine injection and as such she was not in a position to speak and hence, her dying declaration could not have been recorded there. In this regard, learned counsel for the appellant invited attention of the court to the verdict of Hon'ble Supreme Court rendered in the case **State (Delhi Administration) vs Lachhman Kumar & others** reported in 1986 **SCC (Cr1) page 2**. In the aforesaid case before the Hon'ble Supreme Court, pethidine injection had been given to the deceased and the doctor prescribed repetition of it every eight hours. It was observed by Hon'ble Supreme Court in para 26 of the judgement on page 17 that a judicial notice can be taken of the fact that after pethidine injection is given, the patient would not have normal alertness and thus, the certificate of the doctor that deceased was in a fit condition to make a dying declaration can not be given full credit. The above observation was made by Hon'ble Supreme Court on the basis of the peculiar facts of that case. In that case, a dying declaration of a lady had been recorded by a police officer in suspicious circumstances which was contradictory to her earlier oral dying declaration and the court while dis-believing the said dying declaration took the above fact also in view that she had been given a

pethidine injection before her dying declaration was recorded. So far as the present case is concerned, P.W.13 Dr. Solomon Chatterjee was cross-examined quite in detail regarding the effect of pethidine injection and on pages 5 and 6 of his statement, he stated that if pethidine injection of small dose of 50 mg is given to a patient then the patient need not in every case become unconscious. He also opined that main function of the pethidine injection is to reduce the pain of the patient. He specifically stated that when he recorded the dying declaration of Smt. Bina, she was fully conscious. A certificate to this effect was also recorded by the doctor below the dying declaration of Smt. Bina (Ext.Ka.19) that the patient was in a fully lucid condition. A reading of the entire evidence of P.W.13 Dr. Solomon Chatterjee leaves no doubt that when he recorded the dying declaration (Ext.Ka.19) of Smt. Bina, she was fully conscious and, therefore, merely because a pethidine injection had been given to her earlier to reduce her pain, from this fact, no presumption can be drawn that she was not in a fit condition to give the said dying declaration.

We further find that there is nothing on the record indicating anything on the file to show that when her dying declaration was recorded by P.W.13 Dr. Solomon Chatterjee, Smt. Bina was not in a fit condition to make the said dying declaration.

The next ground raised on behalf of appellant Bhim Sen is that it is admitted to P.W.13 Dr. Solomon Chatterjee that when Smt. Bina was brought to Methodist Hospital, she had about 90 to 95% burns and thus, according to learned counsel for the appellant, when a patient has suffered such burn injuries, it is apparent that he/she cannot be in a fit condition to make a dying declaration. When in this regard, P.W.13 Dr. Solomon Chatterjee was cross-examined, he stated that in spite of 90 to 95% burns, Smt. Bina was in a condition to make a dying declaration. In **Liyakat Ali vs State** reported in 1988 (1) Crimes page 647, Hon'ble Delhi High Court observed that a patient having even 90% burns may even be in a position to give a statement depending on nature and depth of the burns

and thus simply because a patient has 90 to 95% burns, it does not lead to the only conclusion that he/she is not in a fit condition to make any statement. P.W.13 Dr. Solomon Chatterjee who is an absolutely honest an independent witness and who has no motive whatsoever either against appellant Bhim Sen or against any other accused and who had no opportunity to record dying declaration (Ext.Ka.19) of Smt. Bina has stated clearly that when he recorded her statement, she was in a fit condition to make the statement and there is nothing on the record to disbelieve the above contention of P.W.13 Dr. Solomon Chatterjee and, therefore, simply because she had 90 to 95% burns on her body, it will not be enough to believe that she was not in a fit condition to make a statement when her dying declaration was recorded.

The fourth ground on which the dying declaration has been castigated by the learned counsel for the appellant is that there are material contradictions between the facts stated by the deceased in her dying declaration and those in the written report of the incident. Inviting our attention to the written report of the incident (Ext.Ka.1) and the deceased's dying declaration (Ext.Ka.19), he submitted that while in the written report of the incident, it has been recited that when the informant reached the house of the deceased on hearing her shrieks at about 7 p.m., he saw that appellant Bhim Sen and Jyoti had caught the hands of Smt. Bina and set her ablaze shouting that her family members had failed to fulfill their demands of dowry of Rs. 10,000/- and the incident was the result of the aforesaid omission on their part. However, the deceased in her dying declaration had stated that her brother-in-law and sister-in-law (jeth and jethani) used to quarrel with her everyday and ask her to bring Rs. 12,000/- from her paternal home which was spent on her marriage. On 19.05.1986 when she had returned after answering the call of nature in the morning, her brother-in-law and sister-in-law had again quarrelled with her and thereafter her husband Bhim Sen had sprinkled kerosene oil on her and set her ablaze. The villagers had saved her.

We do not find any reason to disbelieve the dying declaration of the deceased on the ground of aforesaid contradictions. The written report of the incident was not lodged by the deceased and hence, the defence cannot get any advantage of the aforesaid discrepancy especially when we have found her dying declaration to be a valid document.

The dying declaration in this case, in our opinion, has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events.

Thus, in view of the above, we do not find that the learned trial Judge committed any illegality or legal infirmity in relying upon the deceased's dying declaration (Ext.Ka.19) for the purpose of recording the appellant's conviction. Apart from the dying declaration of the deceased (Ext.Ka.19), we find that there is yet another extremely glaring incriminating circumstance pointing at the guilt of the appellant.

The appellant had neither stated in his examination u/s 313 Cr.P.C. nor he had given any suggestion to any of the witnesses or adduced any evidence to show that he was not present in the house at the time of the incident. There is complete absence of any denial from the side of the appellant about his presence in his house at the time of the occurrence. In such a case, Section 106 of the Evidence Act comes into play. Section 106 of the Evidence Act reads as hereunder :-

Section 106 in The Indian Evidence Act, 1872

106. Burden of proving fact especially within knowledge—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Now, since we have already noted that it stands admitted to the appellant that he was present in the house and he has failed to come up with any explanation with regard to the deceased's clothes having caught fire, the Court can validly draw an adverse inference against him on the presumption that the appellant has concealed material information pertaining to the death of the deceased from the Court.

Thus, the complicity of the appellant in committing the deceased's murder is proved from the facts stated by the deceased in her dying declaration.

Although there is no law which requires that a conviction can be based upon a dying declaration only when corroborated by other evidence. In the present case, the facts deposed by the deceased in her dying declaration finds corroboration from the other circumstances as well. The presence of the appellant at the time and place of the incident is not only established from the evidence of P.W.1 informant Girraj Singh but also from the testimony of Dr. H.K. Kulshreshtha, who was examined as D.W.2. and who had proved the injuries of the deceased as well as the appellant Bhim Sen which he is alleged to have received in the same occurrence.

Learned counsel for the appellant has endeavoured to persuade us that the factum of the deceased also having received injuries in the same incident is a very strong circumstance indicating that the appellant could not have set the deceased on fire as he himself had received injuries in the occurrence trying to douse the fire in order to save her.

The aforesaid ground deserves to be rejected forthwith. It is evident from the injury report of the appellant as well as the evidence of D.W.2 Dr. H.K. Kulshreshtha that the appellant had got his injuries examined at 6.45 p.m. although the incident had taken place at 7 a.m. No explanation is coming forth for the inordinate delay of almost 12 hours on the part of the appellant in getting his injuries examined promptly. Under such

circumstances, the possibility of the burn injuries noted by D.W.1 and the appellant's body being self-inflicted with the object of saving himself, cannot be ruled out.

Thus, upon a holistic view of the facts of the case, attending circumstances and the evidence on record, we do not find that the learned trial Judge committed any other illegality in convicting the appellant and awarding aforesaid sentences to him.

This appeal lacks merit and is accordingly **dismissed**.

Appellant Bhim Sen is on bail. His bail bonds are cancelled and his sureties discharged. Chief Judicial Magistrate, Mathura is directed to get appellant Bhim Sen arrested and sent to jail for serving out the remaining part of his sentences.

There shall however, be no order as to costs.

Order Date :- 11.11.2019

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