



2026:DHC:5275-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 29.04.2026*  
*Pronounced on: 02.07.2026*

+ **CRL.A. 909/2002**  
+ **CRL.A. 938/2002**

RAJ PAL & ANR. ....Appellants  
SMT. DHANPATI & ORS. ....Appellants  
Through: Mr.Naveen Yadav and  
Mr.Thakur Sumit, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) .....Respondent  
Through: Mr.Aman Usman, APP with  
Mr.Manvendra Yadav and  
Mr.Atiq Ur Rehman, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

### **J U D G M E N T**

#### **NAVIN CHAWLA, J.**

1. The present appeals have been preferred by the appellants, challenging the judgment of conviction dated 04.10.2002 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as, 'Trial Court') in Sessions Case No. 32/1996, arising out of FIR No. 235/1988, registered at Police Station Samaypur Badli, convicting the appellants of the offences punishable under Sections

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498-A and 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. The appellants further challenge the Order on Sentence dated 07.10.2002 passed by the learned Trial Court, sentencing the appellants to undergo life imprisonment along with a fine of Rs. 5,000/- each, for the offence under Section 302 of the IPC. In default of payment of the said fine, they have been sentenced to undergo further rigorous imprisonment for a period of one year. The appellants were also sentenced to undergo rigorous imprisonment for a period of three years along with fine of Rs. 1,000/- each, for the offence punishable under Section 498-A of the IPC. In default of payment of the fine, the appellants were sentenced to undergo further rigorous imprisonment for a period of three months. The sentences were to run concurrently.

3. At the outset, it is noted that appellant Raj Pal is the husband of the deceased-Kamlesh, appellant Jaswant is her brother-in-law (*jeth*), appellant Phoolwati is her mother-in-law (*saas*), appellant Dhanpati is her sister-in-law (*jethani*), and appellant Suresh is her sister-in-law (*nand*). We further highlight that appellant no.1 in Crl.A. No. 909/2002, namely, Raj Pal, and the appellant no.2 in Crl.A. No. 938/2002, namely, Smt. Phoolwati, have since passed away. The appeals have, therefore, abated *qua* them.

**CASE OF THE PROSECUTION:**

4. Briefly stated, it is the case of the prosecution that:

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- (a) On 30.10.1988, at around 08:46 A.M., information was received at Police Station Samaypur Badli, that someone had burnt his wife. The information was recorded *vide* DD No. 3A (Ex. PW-17/A).
- (b) On receipt of this information, PW-17/*SI Chhida Nand* was sent for investigation at the place of incident, from where he found that the deceased Kamlesh, has been taken to a hospital by her family members.
- (c) In the meantime, information was received from PW-5/*Balbir Singh*, the Duty Constable, that appellant Jaswant Singh had got the deceased-Kamlesh admitted at the J.P.N. Hospital in a burnt condition. The same was recorded *vide* DD No. 4A (Ex. PW-5/A).
- (d) The medical examination of the deceased was conducted at around 09:15 A.M., and it was recorded in the MLC Report (Ex. PW-2/A) that she had sustained burn injuries on approximately 90% of her body. It was also recorded that the deceased reported that she got burnt while cooking food.
- (e) The relatives of the deceased, including PW-1/*Bimla Yadav*, PW-7/*Smt. Patashi Devi*, and PW-8/*Parkash Singh*, also reached the hospital. PW-1/*Bimla Yadav* reached the hospital at around 11:30 A.M., and was allegedly told by the deceased that appellant Suresh put her on fire and that the other appellants were also present there.



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- (f) The MLC Report (Ex. PW-2/B) records that at 11:15 A.M., the deceased was opined to be unfit for statement. However, subsequently, at 2:30 P.M., the doctor declared her to be fit for statement.
- (g) Accordingly, the concerned SDM, PW-3/Smt. Satbir Silas, was informed, who reached the hospital at around 03:00-03:30 P.M.
- (h) Thereafter, the statement of the deceased, Ex. PW-3/A, was recorded by the SDM, in a question-and-answer form, and *vide* an endorsement, Ex. PW-3/B, she was again opined to be fit for statement at 3:30 P.M. In the said statement, the deceased was specifically asked as to who all were present at the time of the incident. In response, the deceased implicated all the appellants. In reply to questions regarding how she had caught fire, she informed that her sister-in-law, appellant Suresh, had put her on fire and that she had been kept hungry and was not given any food for the preceding three days. Upon being asked about the specifics of the incident, she elaborated that since around 04:00 A.M. in the morning, the appellants and the deceased were fighting, and that at around 08:00 A.M., she was set on fire. She further stated that she was in a room and was mopping the floor, when appellant Suresh called her, thereafter appellants Phoolwati and Dhanpati caught her, and appellant Suresh put her on fire. She further stated that appellant Jaswant was

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also present there. The deceased was also asked about dowry related harassment, to which she responded that the appellants used to demand a cupboard and a scooter from her. She was also asked whether her husband, appellant Raj Pal, used to assault her, to which she answered in the affirmative.

- (i) After recording the said statement of the deceased, FIR no. 235/1988 (Ex. PW-9/A) was registered against the appellants under Sections 498-A/307/34 of the IPC. Subsequently, as the deceased passed away, Section 302 of the IPC was also added against the appellants.
- (j) The deceased passed away on the same day at around 06:00 P.M. in the evening. The cause of death was opined to be 100% burns and hypovolemic shock. In the death summary recorded as Ex. PW-2/C, it was stated that, "*the patient stated that the burns were sustained when some of her relatives poured kerosene oil on her and set her on fire*". Information of the same was received and recorded *vide* DD No. 36/B (Ex. PW-5/B).
- (k) Investigation was conducted and the site plan exhibited as Ex. PW-17/B was prepared, which recorded that from the place of incident three burnt match sticks, one match box, a metal container containing some kerosene oil, burnt pieces of clothes, burnt hair of the deceased and one pair of rubber *chappal* (slippers) were seized.



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- (l) In the CFSL Report (Ex. PW-16/A), it was opined that the partly burnt pieces of clothes and scalp hair which were recovered from the place of incident, showed presence of kerosene residue. The CFSL Report (Ex. PW-16/C) also opined that the partially burnt pieces of clothes show “*loose & broken fibre ends at its torn edges, hence the same could have resulted due to unusual force*”.
- (m) PW-10/Dr. Anil Aggarwal conducted the post-mortem of the deceased and opined that there were superficial burns covering 100% of her body. He further noted that a strong smell of kerosene was coming from her scalp hair. Upon internal examination, he found that all the organs of the deceased were congested and that she was also carrying a foetus, whose age was around 4 weeks.
- (n) The appellants Dhanpati, Phoolwati, Raj Pal and Jaswant were arrested on 30.10.1988 from the place of the incident, and appellant Suresh was arrested the next day, that is, on 31.10.1988, on being produced by her relatives.

**PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:**

5. The learned Trial Court, *vide* the order dated 30.03.1989, framed the following charges against the appellants:

*“On 30.10.1988 and before at H.No. 171 Gali No.7 Samaipur Delhi you accused Raj Pal being the husband of Smt. Kamlesh and you other accused being the relations of Raj Pal subjected Smt. Kamlesh to cruelty by causing*



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*harassment and beating to her etc. and you thereby committed an offence punishable under section 498A IPC/34 IPC and within the cognizance of this court;*

*Secondly on 30.10.1988 at 8 A.M. at the aforesaid house you all the accused in furtherance of your common intention intentionally or knowingly committed the murder of Smt. Kamlesh by pouring kerosene oil on her person and setting her on fire and you thereby committed an offence punishable under section 302 read with section 34 IPC and within the cognizance of this court”*

6. The appellants pleaded not guilty before the learned Trial Court and claimed trial.

7. To prove its case, the prosecution examined 18 witnesses, including the relatives of the deceased and the concerned official witnesses.

8. Thereafter, the statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on 16.07.2001, wherein they claimed to be innocent and stated that they were being falsely implicated. The appellants stated that the deceased was residing separately with appellant Raj Pal on the ground floor of the house, while the other family members, that is, the appellants, resided on the first floor. It was also stated that appellant Suresh lived separately with her husband in Najafgarh, and had only come to her parental home (matrimonial house of the deceased) on the date of the incident for the purposes of childbirth. Further denying the allegations against them, the appellants stated that the deceased had received the

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burn injuries while cooking. They denied that the deceased was fit to make a statement and contended that she was not in a position to speak. They further stated that PW-1/*Bimla Yadav* was talking to the deceased and she, along with the other relatives of the deceased, were tutoring the deceased in the hospital. They further contested the testimony of the PW-1/*Bimla Yadav* and the police officials, by alleging them to be false and interested witnesses.

9. The appellants did not lead any evidence in support of their contention of false implication.

10. The learned Trial Court, in the impugned judgment of conviction, opined as under:

*“ 57. ...The police reached the hospital and SDM was also called to the hospital and then the dying declaration of Kamlesh injured was recorded by the SDM and she alleged that she has been burnt by her Nanand, Saas and Jethani and her jeth and her husband were also present there in the house and that she had been without meals for three days. The injured Kamlesh had already made one dying declaration to Bimla Yadav wherein she had alleged that she had gone to the house of her Bua at samaipur Badli and had told her that she apprehended her death at the hands of accused persons and that she should call her parents and another bua. This apprehension was expressed by Kamlesh two days prior to her death. This statement made to her Bua was not taken by her Bua seriously rather she advised her that everything will be all right and asked the deceased to return to her in-laws house and after two days this incident had taken place. The fact that she was hungry and was not having any meals in her stomach is proved by the medical evidence as per*



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*postmortem report. Her dying declaration made to Bimla Yadav has been supported by Bimla Yadav and her dying declaration made to the SDM has been proved by the SDM. From the dying declaration it becomes clear that the accused persons intended to kill her and they did not give any meals to her for three days and when she did not die of hunger she was put on fire by pouring kerosene oil on her. She alleged harassment on account of dowry as almirah and scooter were being demanded from her by her in-laws and thus harassment on account of demand of dowry, i.e. scooter and almirah stands proved from the dying declaration and also from the statement made by Bimla Yadav who clearly stated that her husband used to maltreat her after taking liquor and other accused persons used to join hands with him in maltreating her. So the case of prosecution that she was harassed for demand of dowry is proved against the accused persons. The charge of murdering the deceased by the accused persons is also proved from the dying declaration. The accused persons had common intention to kill her and that is the reason that they did not provide any meals to her and then put her on fire as a result of which she died in the hospital.”*

11. Thereafter, the impugned Order on sentence dated 07.10.2002 was passed by the learned Trial Court, imposing the sentence as noted hereinabove.

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE APPELLANTS**

12. The learned counsel for the appellants submits that the learned Trial Court has erred in placing reliance upon the dying declaration of

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the deceased recorded by the SDM. He submits that prior to the said statement, it was recorded in the MLC Report (Ex. PW-2/A), that the deceased had sustained the burn injuries due to an accident that occurred while she was cooking food, however, the SDM failed to question the deceased on this contradiction.

13. He further submits that it is a settled position of law that in cases where there are multiple dying declarations, the Court shall normally consider the first statement made by the deceased, particularly when the subsequent version introduces allegations implicating the accused persons. He contends that the learned Trial Court, however, failed to consider the other statements made by the deceased, wherein the appellants were not implicated. In furtherance of his submission, he places reliance on the judgment in ***Raghubiri Devi v. State (GNCT Govt. of Delhi)***, 2013:DHC:6062-DB.

14. He further relies upon the judgment of the Supreme Court in ***Uttam v. the State of Maharashtra***, (2022) 8 SCC 576, to contend that in cases where multiple and contradictory dying declarations are made, the Court must seek corroboration from other evidence produced, and scrutinise the scope of close relatives/family members influencing or tutoring the deceased. The learned counsel submits that the possibility of tutoring in the present case cannot be ruled out. He points out that PW-1/*Bimla Yadav* had met the deceased before her dying declaration was recorded by the SDM. In this regard, reliance is also placed on the testimony of the SDM (PW-3/*Smt. Satbir Silas*), who stated that she could not say whether the deceased had been

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tutored by her relatives prior to making the dying declaration. He submits that in such circumstances, the dying declaration should not have been accepted by the learned Trial Court as trustworthy.

15. He submits that even the testimony of PW-1/*Bimla Yadav* is inconsistent with the material on record and, therefore, does not inspire confidence. He points out that admittedly, PW-1/*Bimla Yadav* had reached the hospital at around 11:30 A.M. and had allegedly spoken to the deceased, who is stated to have informed PW-1/*Bimla Yadav* that she was burnt by the appellants. However, according to the MLC Report (Ex. PW-2/B), the deceased had been opined to be unfit for making statement at 11:15 A.M. itself. He submits that in these circumstances, it is highly doubtful that the deceased made a statement to PW-1/*Bimla Yadav* implicating the appellants. The learned counsel submits that this material inconsistency renders the testimony of PW-1/*Bimla Yadav* unreliable.

16. He further submits that the case of the prosecution is inconceivable insofar as appellant Suresh is considered. The learned counsel submits that the appellants have, in their statements under Section 313 of the Cr.P.C., categorically stated that the appellant Suresh lived separately with her husband and had come to the matrimonial house of the deceased only for the purposes of childbirth. He further points out that the appellant gave birth to a child on 13.11.1988, that is, merely 14 days after the alleged incident took place. He contends that considering her advanced stage of pregnancy



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at the time of the incident, appellant Suresh could not be in a position to participate in the alleged offence.

17. The learned counsel refers to DD No. 4A (Ex. PW-5/A), which records that the deceased was brought to the hospital by the appellant Jaswant. He contends that the conduct of appellant Jaswant in immediately taking the deceased to the hospital, is inconsistent with the conduct of a guilty person, and, in fact, is indicative of his innocence. He further submits that the allegations of dowry related harassment against appellant Jaswant are also untenable, as he had his own separate family and was living on a different floor. Therefore, he had no motive to harass the deceased for dowry.

18. The learned counsel submits that the allegations relating to dowry demand and cruelty are unsupported by any complaint made, either by the deceased or by her family members, prior to the incident.

19. He submits that even the father of the deceased, PW-8/*Prakash Singh*, and the mother of the deceased, PW-7/*Smt. Patashi Devi*, did not support the prosecution's case regarding dowry related harassment. He submits that, on the contrary, PW-8/*Prakash Singh* stated that the deceased was happy in her matrimonial house and there were no complaints or dowry demands. PW-8/*Prakash Singh*, further stated that the deceased was hot tempered and had died due to burn injuries. Similarly, PW-7/*Patashi Devi* stated that she had advised the deceased that she should not make a statement regarding her burning herself. The learned counsel submits that these inconsistencies



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indicate that the allegations introduced in the dying declaration to the SDM were to falsely implicate the appellants.

20. He also challenges the prosecution's case that the deceased had not been given any food for three days prior to the incident. He submits that the same is unnatural, as the deceased had herself stated that she was mopping the floor when the incident occurred. He submits that had the deceased truly been without food for three days, it would not have been possible for her to carry out household chores such as mopping the floor.

21. He further submits that PW-1/*Bimla Yadav* had stated that the deceased had visited her other *bua* two days prior to the incident and had expressed apprehension of death at the hands of the appellants. According to the learned counsel, had the allegations of starvation been true, the said other *bua* of the deceased would have provided the deceased with food. He further submits that despite being a material witness, the said other *bua* was not examined by the prosecution, thereby casting a doubt on the prosecution's case. He further submits that the prosecution's interpretation of the post-mortem Report is incorrect and the same does not establish that the deceased had remained without food for three days prior to the incident.

22. In view of the above submissions, the learned counsel submits that the prosecution has failed to establish its case beyond reasonable doubt and that the learned Trial Court erred in convicting the appellants. He, accordingly, prays that the judgment of conviction and

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the Order on Sentence be set aside, and the appellants be acquitted of all charges and allegations.

**SUBMISSIONS ON BEHALF OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR**

23. Mr. Aman Usman, the learned APP for the State, on the other hand, disputes the contention that the deceased sustained burn injuries accidentally while cooking food. He submits that the said plea is wholly unreliable and devoid of merit, particularly as the doctor who allegedly recorded the said history in the MLC Report (Ex. PW-2/A) was not examined.

24. He further submits that the deceased was brought to the hospital by her brother-in-law (*jeth*), appellant Jaswant, who was a Delhi Police personnel. In these circumstances, it is highly probable that the version of accidental burning was supplied by appellant Jaswant and was mechanically recorded by the doctor in the MLC Report (Ex. PW-2/A). He also submits that the deceased may have acquiesced to such a version under pressure, undue influence, or in the hope of survival and continuation in her matrimonial home. Therefore, the history recorded in the MLC Report does not inspire confidence and deserves to be discarded. He relies on the judgment of the Supreme Court in *Harbans Lal & Anr. v. State of Haryana*, AIR 1993 SC 819, to submit that the MLC Report cannot be regarded as a recording of the dying declaration of the deceased.

25. He further submits that the plea of accidental burning is also falsified by the surrounding circumstances, as no evidence could be

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brought on record to show that the deceased was cooking food. He points out that in the investigation, no stove was recovered, which would have been the most naturally recovered article, had the incident occurred due to an accident during cooking. He submits that on the contrary, a matchbox, matchsticks, burnt clothes, and slippers of the deceased were found scattered in different rooms, thereby clearly indicating signs of struggle. In support of his submissions, the learned APP relies on the judgment of this Court in *Aslam v. State*, 2017 SCC OnLine Del 11970, to submit that the surrounding circumstances falsify the appellants' version of accidental burning.

26. He submits that the prosecution's case primarily rests upon the dying declaration of the deceased recorded by the SDM, which forms the backbone of the prosecution's case. The same was recorded after the deceased had been certified by the doctor to be fit to make a statement. In this regard, reliance is also placed on the statement of PW-3/Smt. Satbir Silas, the SDM, who deposed that the deceased was conscious and in a fit state of mind when she made the statement. In the said statement, the deceased implicated individual roles upon the appellants and further made certain allegations of cruelty, harassment, and dowry demands. The learned APP submits that this statement was consistent, natural, and free from any tutoring. It is, therefore, sufficient to uphold the conviction of the appellants.

27. The learned APP further submits that said statement stands corroborated by the medical evidence, that is, the CFSL Report (Ex. PW-16/A), which indicates that kerosene oil had been poured upon the



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deceased, as smell of kerosene oil was coming from her scalp and kerosene oil residue was found in her hair and burnt clothes. He submits that this completely rules out the defence of the incident being an accident.

28. He submits that the dying declaration is further corroborated by the post-mortem Report, which shows presence of green coloured fluid material in the stomach of the deceased, thereby indicating that the deceased had not consumed anything and had an empty stomach.

29. The learned APP submits that corroboration to the statement of the deceased is provided by the testimony of PW-1/*Bimla Yadav*, who also stated that the deceased had informed her in the hospital regarding the harassment at the hands of the appellants and had implicated the appellants in the occurrence of the incident.

30. He further submits that no motive has been attributed to PW-1/*Bimla Yadav* to falsely implicate the appellants. She was not on inimical terms with the appellants and, therefore, her testimony is credible and sustains the conviction of the appellants.

31. He submits that the appellants did not disclose to PW-1/*Bimla Yadav*, where the deceased had been taken after the incident. In fact, at the hospital, appellant Jaswant falsely stated that the deceased had passed away, even though she was alive at that time. According to the learned APP, such conduct of the appellants is incriminating and indicative of a guilty mind.

32. Regarding the testimony of the mother and father of the deceased, PW-7/*Smt. Patashi Devi* and PW-8/*Parkash Singh*,



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respectively, the learned APP submits that such part of their testimonies which favour the appellants cannot be relied upon, as they have been declared hostile. He submits that even otherwise, the version put forth by PW-7/Smt. *Patashi Devi* is contrary to the material on record and does not inspire confidence. In this regard, he points out that PW-7/Smt. *Patashi Devi* stated that at about 12:00 noon, the deceased told her that she had burnt herself, however, as per the medical record, the deceased was declared unfit to make any statement at about 11:15 A.M. itself. Further, the surrounding circumstances, including the recovery of scattered slippers, burnt clothes and other articles, indicate that some struggle had occurred prior to the incident, which is inconsistent with the case of self-inflicted burns.

33. He submits that in view of the dying declarations, the medical evidence, the testimony of PW-1/*Bimla Yadav*, and the surrounding circumstances, the prosecution has proved its case beyond reasonable doubt. Therefore, the judgment of conviction and the Order on Sentence of the surviving appellants deserve to be confirmed.

**ANALYSIS AND FINDINGS:**

34. We have considered the submissions made by the learned counsels for the parties and have perused the record.

35. It is an undisputed fact that the alleged incident giving rise to the present appeal occurred on 30.10.1988, and was within seven years of the marriage of the appellant Raj Pal to the deceased. The death of the deceased had occurred due to burning.



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36. There is no eye-witness to the incident. The case of the prosecution rests primarily upon the alleged dying declarations made by the deceased in the hospital to PW-1/*Bimla Yadav*, her *bua*, and to the SDM, PW-3/*Smt. Satbir Silas*, which is exhibited as Ex. PW-3/A.

37. The law applicable to a dying declaration has been explained by the Supreme Court in *Irfan @ Naka v. State of Uttar Pradesh*, 2023 SCC OnLine SC 1060, wherein it has been held that though the juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every motive to falsehood is silenced and the man is induced by the most powerful consideration to speak only the truth, notwithstanding the same, great caution must be exercised in considering the weight to be given to such evidence, on account of the existence of many circumstances which may affect its truth. Since the accused has no power of cross-examination, the Courts insist that a dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court should be on guard to see that the statement of the deceased was not a result of tutoring, prompting, or a product of imagination. The Court further held that though there is no hard and fast rule for determining when a dying declaration should be accepted, the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the statement. The Court also laid down certain factors that can be considered by the Court while weighing a dying declaration. We quote from the

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judgment as under:

*“43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See : Laxman v. State of Maharashtra, (2002) 6 SCC 710]*

xxx

*60. Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.*

*61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration*

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*while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.*

**62.** *There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—*

- (i) Whether the person making the statement was in expectation of death?*
- (ii) Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”*
- (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*
- (iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*
- (v) Whether the statement was not recorded properly?*
- (vi) Whether, the dying declarant had opportunity to clearly observe the incident?*
- (vii) Whether, the dying declaration has been consistent throughout?*
- (viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?*
- (ix) Whether, the dying declaration was itself voluntary?*
- (x) In case of multiple dying declarations,*



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*whether, the first one inspires truth and consistent with the other dying declaration?  
(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

**63.** *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

**64.** *It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.”*

38. In ***Sanjay Kumar Sharma v. State of Bihar & Ors.***, 2026 INSC 223, the Supreme Court reiterated that while a dying declaration is a very important species of evidence, capable of proving the crime and identifying the accused, for reliance, it should inspire confidence of the Court as to its credibility. The Court should be satisfied that the

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statement is made by the deceased without any prompting, tutoring or coercion. If there is even an iota of suspicion, the Court has to look for corroboration. It was held that a dying declaration recorded by a Judicial Magistrate adds credence since they are trained to record such declarations. We quote from the judgment as under:

*“13. From a conspectus of the above decisions, it is clear: That, a dying declaration is a very important species of evidence capable of proving the crime proper and identifying the accused, an exception to hearsay having been provided by Section 32 of the Indian Evidence Act. That, a dying declaration, for reliance should inspire confidence in the Court as to its credibility. That, the Court should be satisfied it is made by the deceased without any prompting or tutoring or coercion or is a mere figment of imagination. That, then conviction can be based solely on the dying declaration and there is no requirement of any corroboration. That, it can be reduced to writing or can be oral, as testified by reliable witnesses. That, it can be one or numerous and if more than one; exculpatory and inculpatory, it is for the Court to find out which is believable. That, it can be a lengthy one or a short one, so far as the crime is spoken of and identification of the perpetrator comes through. That, it can be a single narrative or in a question and answer form. That, it can either have a history of the rancour between the perpetrator and the victim or can be merely the brief statement of the incident. That, the capacity of the injured to make the statement, both physical and mental, need not be necessarily certified by a doctor and would rest again on the satisfaction of the Court on an analysis of the testimony of the various witnesses and the other evidence coming forth in trial. That, if*

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*the Court is satisfied of the fit state of mind of the injured from the evidence on record, a contrary medical opinion or an absence of it will be inconsequential. That, it can be made before a Magistrate; Executive or Judicial, a Doctor, a Police Officer, a relative or a third party whose presence is not doubtful. That, the desire of the declarant to live, through the truth despite fear of imminent death cannot be easily brushed aside. The decisions also caution us that if the statement is doubtful then one or more of the above aspects could result in the dying declaration being eschewed completely; based on the facts of each case.*

*14. As a corollary, it also has to observed: That, if there is an iota of suspicion the Court has to look for corroboration. That, the medical certification as to the physical and mental state always aids in arriving at a satisfaction. That, in the wake of multiple grievous injuries or a higher percentage of burns, the declaration could be in question and answer form, lending more credence as actually spoken of by the injured as opposed to a long drawn out narrative, which could be mistook as supplied by interested related parties. That, a dying declaration recorded by the Judicial Magistrate, adds credence since they are trained to record such declarations. That, as far as possible, the recording is to be done in the presence of the Doctor and definitely not in the presence of numerous bystanders; which could lead to a defence being raised of prompting and tutoring. That, the veracity of the declaration has to come forth from the attendant circumstances as brought out in evidence.”*

39. In *Abhishek Sharma v. State (Govt. of NCT of Delhi)*, 2023 INSC 924, the Supreme Court has also laid down the following principles for the Court to consider while dealing with a case

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involving multiple dying declarations:

*“9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:*

*9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*

*9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;*

*9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.*

*9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*

*9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*

*9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*

*9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”*

40. In the present case, the first dying declaration made by the deceased can be stated to be in the form of the MLC Report (Ex. PW-2/A), which records that on the information of the patient, the case

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was recorded to arise out of ‘*getting burnt while cooking the food*’. The learned APP has prayed for us to discard this dying declaration, by contending that the deceased had been brought to the hospital by appellant Jaswant who was a police personnel and, therefore, it may be that he influenced the doctor to record the above history by attributing it to the deceased. He has further contended that no cooking material was reported to be found by PW-17/SI *Chhida Nand*, who had gone to the house of the deceased and seized various articles including a matchbox, burnt matchsticks and a kerosene can. He submits that, therefore, there was no question of any food being cooked by the deceased or she getting accidentally burnt in the process of such cooking. He has further submitted that the post-mortem Report and the CFSL Report (Ex. PW-16/A) show that even the hair and clothes of the deceased had kerosene oil, which is not likely to be there in case of an accidental fire while cooking.

41. The above submissions may cast some doubt on the veracity of the recording of the MLC Report, however, Dr. Deepak Sabharwal, who is stated by PW-2/*Shri Sashi Dharan*, Record Clerk of the JPN Hospital, to have made the said recording in the MLC Report, has not been produced by the prosecution as a witness. Therefore, doubt, if any, on the veracity of the recording in the MLC, has to flow in favour of the appellants and not the prosecution.

42. As far as non-recovery of cooking stove etc. is concerned, while the witnesses speak of things that have been seized from the place of occurrence, there is no mention of the absence of the stove or cooking



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material at the place of occurrence. This positive evidence of absence of cooking material had to come from the prosecution. The Court cannot, in absence of such positive evidence and only because any cooking material was not seized by the IO, assume that there was no cooking material at the site of the incident. PW-1/*Bimla Yadav*, *bu*a of the deceased, in her cross-examination has stated that the deceased and her husband used to reside on the ground floor of the building, that is the place of the incident. Therefore, her presence there and the possibility of her cooking, cannot be completely ruled out on the basis of the submissions made by the learned APP.

43. Equally, no adverse inference against the prosecution can be drawn and the MLC Report is ignored only because appellant Jaswant was working in the Delhi Police.

44. The second dying declaration comes in the form of the alleged statement/information given by the deceased to PW-1/*Smt. Bimla Yadav*, her *bu*a. PW-1/*Bimla Yadav*, deposed that as and when the deceased met her, the deceased complained that appellant Raj Pal used to maltreat her after consuming liquor and that the other appellants also joined hands with him. She stated that on 30.10.1988, her daughter received a telephone call from the daughter of her sister, who asked her to call back when PW-1/*Bimla Yadav* and PW-1/*Bimla Yadav*'s husband returned. When PW-1/*Bimla Yadav* and her husband returned, her sister's son came there and told them that the deceased-Kamlesh was burnt. Upon learning about the incident, she, along with her husband, went to the house of her sister/other *bu*a of the deceased,

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at about 08:30 P.M., where her sister was not available. She then proceeded to the house of the deceased, where she made enquiry from appellant Phoolwati and the father-in-law of the deceased, but they showed their ignorance. She then went to the Police Post, from where she came to know that the deceased had been admitted in the hospital. On reaching the hospital, appellant Jaswant falsely informed them that the deceased had passed away and that no one was allowed inside the room. However, she managed to go inside and upon entering the room of the deceased, she found the deceased alive. She further stated that on being asked about the incident, the deceased stated that appellant Suresh had put her on fire while the others were also present. The deceased further told her that she had not eaten for the past three days and had visited her other *bua*'s house in Samaypur Badli, two days prior to the incident, where she had expressed her apprehension of death at the hands of the appellants and had asked for her father, mother, and *bua* (PW-1/*Bimla Yadav*) to be called. She stated that the deceased further stated that the said other *bua* of the deceased advised her and then left her at her matrimonial home.

45. In her cross-examination, PW-1/*Bimla Yadav* also stated that she had earlier visited the house of the deceased and advised appellant Raj Pal to consume liquor in moderation. She stated that at that time, the deceased was residing on the ground floor with her husband. She further stated that she reached the hospital at around 11:30 A.M., whereas the parents of the deceased reached at around 01:00 P.M. She denied the suggestion that the deceased was not in a condition to

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speak when she met her. She also stated that she had informed the SDM that appellant Suresh had poured kerosene oil and set the deceased on fire. She was then confronted with Ex. PW-3/DA and PW-3/C, wherein the same was not recorded. She further stated that the deceased had told her that the other appellants were also present at the spot and that she had informed of this fact to the police and also to the SDM. However, she was again confronted with Ex. PW-3/C and PW-1/DA, wherein the same was not recorded.

46. In her statement at Ex. PW-1/DA and Ex. PW-3/C, she had stated that the deceased informed her that she had been burnt by throwing oil. She had also stated that she had been informed on phone that the deceased had been burnt by the elder sister-in-law of the deceased and all other family members.

47. When we consider whether to rely on the alleged dying declaration made by the deceased to PW-1/*Bimla Yadav*, we have to remain mindful of the fact that in the MLC Report (Ex. PW-2/B), at about 11:15 AM, it was recorded that the '*Pt. is not fit for statement*'. Further, as noted hereinabove, in Ex. PW-1/DA as also in Ex. PW-3/C, PW-1/*Bimla Yadav* had stated that she had been informed on telephone that the deceased had been burnt by her sister-in-law and that the other family members of the appellant Raj Pal were also present there. We also take note of the fact that while PW-1/*Bimla Yadav* has stated that two days before the incident, the deceased had gone to the house of her other aunt (*bua*) and had informed the *bua* that the appellants were not giving her food and that she felt



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threatened that they might kill her. This other aunt was never examined in the trial. Further, the information of the burning of the deceased was allegedly given to PW-1/*Bimla Yadav* by the son of her sister and prior to that by a telephone call from the daughter of this sister. PW-1/*Bimla Yadav* had also gone to the said sister's house before going to the house of the deceased but did not find her there. Curiously, this sister/other *bu*, thereafter, disappeared from the scene and from the trial, and is even not produced as a witness. The fact that the appellants were not feeding the deceased or that the deceased was feeling threatened that they may kill her, could have been deposed by the said other *bu*, however, she was not examined. Non-examination of this important and material witness casts further doubt on the statement of PW-1/*Bimla Yadav*.

48. What is even more important is that even the parents of the deceased, PW-7/*Smt. Patashi Devi* and PW-8/*Parkash Singh* do not support the case of the prosecution or the story narrated by the PW-1/*Bimla Yadav*.

49. Given the above circumstances, we find the statement of PW-1/*Bimla Yadav* regarding the deceased having made a dying declaration to her to be doubtful and not wholly credible.

50. Coming now to the third dying declaration of the deceased, that is, the statement made to PW-3/*Smt. Satbir Silas*, the then SDM. We would first take note of the deposition of PW-3/*Smt. Satbir Silas*, who deposed that on 30.10.1988, she was informed by PW-17/*SI Chhida Nand* that the deceased had been admitted in the JPN Hospital in a



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burnt condition. She went to the hospital to record the statement of the deceased and the nurse took her to the deceased. She met the doctor attending to the deceased, who declared her fit to make a statement. She then recorded the statement of the deceased (Ex. PW-3/A), and obtained her thumb impression thereon. She thereafter came across PW-1/*Bimla Yadav*, PW-7/*Smt. Patashi Devi*, and PW-8/*Parkash Singh*, and recorded their statements- Ex. PW-3/C, Ex. PW-3/D and Ex. PW-3/E, respectively. In her cross-examination, she admitted that she did not make any application to the doctor in-charge seeking his opinion if the deceased was fit to make a statement. She further stated that she recorded the statement of the deceased after the deceased had been declared fit for statement, which was at 03:30 P.M. She admitted that she has mentioned in Ex. PW-3/A that she had finished recording the statement of the deceased at 03:30 P.M.

51. Therefore, the fitness certificate seems to have been taken by PW-3/*Smt. Satbir Silas* after recording the statement of the deceased and not before. The said exhibit (Ex. PW-3/A) also indicates that the report of the doctor regarding the deceased being fit for making the statement was taken after the statement had been recorded. While this, by itself, is not sufficient to cast a doubt on the dying declaration recorded by PW-3/*Smt. Satbir Silas*, in our view, when considered with the other circumstances discussed hereinbelow, it plays an important part in not relying upon this dying declaration.

52. PW-3/*Smt. Satbir Silas* admitted that she had seen the MLC Report, and despite the fact that in the MLC Report, the manner of the



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deceased getting burnt was, allegedly, on the information of the deceased, described as getting burnt while cooking food, PW-3/*Smt. Satbir Silas* did not seek any explanation from the deceased on the contradiction in her two statements about the cause of the burns.

53. PW-3/*Smt. Satbir Silas* also did not inquire from the deceased regarding if she had met any of her relatives prior to making the statement, so as to rule out the possibility of her being tutored. In fact, it is the prosecution's own case that PW-1/*Bimla Yadav* had remained in the company of the deceased for a substantial time before her statement was recorded. PW-3/*Smt. Satbir Silas* also stated that she could not say if the deceased had been tutored by her relatives to implicate the appellants. Therefore, possibility of tutoring the deceased, could not be completely ruled out.

54. From the statement of PW-3/*Smt. Satbir Silas*, it would be apparent that there is a contradiction on whether the opinion of the doctor about the deceased being fit to make the statement, was taken by the SDM or was she merely informed of the same by PW-17/*SI Chhida Nand*. Further, the doctor who has given the fitness certificate to the deceased has not been examined by the prosecution, as she was not available in the hospital anymore.

55. Further, the manner in which the alleged dying declaration, Ex.PW-3/A, has been recorded by PW-3/*Smt. Satbir Silas*, also leaves us with a sense of doubt on the credibility to be placed on the same. For the sake of ready reference, we reproduce it hereinbelow:



EX/113

I was informed telephonically by S.I. Gidda Nand, P.S. Samaspur Badli at 2.45 pm on 11/30/10.88 that one lady no. d Smt. Kamlesh w/o Rajpal, w/o H. no 171, Gali no. 7, Samaspur Delhi has been admitted to JPN Bux Ward no 26. and doctor has declared her fit for statement. I reached the hospital & recorded the statement of Smt. Kamlesh

- तुम्हें कैसे आग लगी?

गन्ध नै लगा दी, मुझे तीन दिन से सूखा रखा। खाना नही देते थे।

- कैसे?

सास ने गन्ध (सूखा) ने पकड़ा, मिट्टी का तेल दिया और आग लगा दी

- देखने के लिये तारा करते थे?

अलमारी के लिये, स्कूटर के लिये

- आदमी तुम्हें मारवा था?

हूँजी।

- आज कौन-2 था?

मेरी गन्ध जिहानी और जेठ जसवन्त, और मेरा आदमी था।

- तुम्हें यहाँ कौन लाया?

मेरा जेठ।

- तुम्हारे बच्चे हैं?

दो लड़की हैं 2 1/2 साल की

(165)



तुम्हें आज आग कहाँ लगायी ?  
 नीचे कमरे में । मैं पोंछा लगा रही थी ।  
 बन्द नै बुलाया और मिट्टी का तेल बिड़वा  
 घेरी सास , और डिबानी नै पकड़ा मे  
 जेठ । मैं था । और आग लगा दी ।  
 कितने बजे हुआ यह ?  
 लगभग चार बजे सुबह शुरु हुई थी । आठ  
 बजे आग से जला दिया , मुझे पता नहीं प  
 → मुझे यहाँ कितने बजे लीये ।  
 मैं जो कहाँ कहाँ रही हूँ , सोच - समझ के  
 कहाँ रही हूँ ।

123

fit for statement  
 3.30 PM  
 30/10/88  
 (Signature)  
 B

RTI  
 of  
 Kamlesh

Received orders to  
 register case from  
 S.D.M / K.W. Ramp.  
 @Mhida 140-a  
 S1  
 P.S. Samai Pur Badli  
 30-10-88

Signed  
 30/10/88  
 3:30 pm  
 S.D.M (K.W.C)

56. From a reading of the above, what strikes us is the manner in which the leading questions were put to the deceased. It appears as if



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the SDM, PW-3/*Smt. Satbir Silas*, had been informed of the exact statement that was to be taken from the deceased.

57. Applying the test regarding the acceptance of dying declarations, which we have set out in detail above, we, therefore, are of the opinion that the dying declarations of the deceased alleged to have been made to PW-1/*Bimla Yadav* and to PW-3/*Smt. Satbir Silas* cannot be accepted.

58. The learned APP has also stated that the post-mortem Report had also reported that the bladder of the deceased was empty and there was green colour fluid in the stomach, which, according to him, corroborates the statement of PW-1/*Bimla Yadav* that the deceased had informed her that she had not been fed any food for last three days. We are not impressed by the said submission. While seeking the post-mortem Report, as is evident from the requisition for the same, opinion on any signs of starvation was specifically asked for. However, in spite of the same, the post-mortem Report does not give any specific opinion of the deceased being starved. On the other hand, it says that though the bladder of the deceased was empty and there was presence of a green liquid, no abnormality was detected.

59. We would also like to examine the case of the prosecution in light of the statements of the parents of the deceased, that is, PW-7/*Smt. Patashi Devi* and PW-8/*Parkash Singh*.

60. PW-7/*Smt. Patashi Devi*, the mother of the deceased, deposed that the deceased had never complained of any dowry-related harassment or ill-treatment by the appellants. She denied making any



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statement before the police or the SDM, and stated that she had become unconscious on hearing about the death of her daughter. She further stated that she along with others present in the hospital had advised the deceased not to make statement regarding her burning herself as otherwise she might not be put to some trouble. She stated that the appellants are on visiting terms with her even after the incident.

61. PW-8/*Parkash Singh*, the father of the deceased, deposed that the deceased was happy in her matrimonial home and there were no dowry demands made by the appellants, nor were there any complaints against them. He further stated that the deceased was hot-tempered and had died due to burn injuries at the house of the appellants. He denied having made any statement before the SDM and alleged that his signatures had been taken on blank papers.

62. Therefore, the parents of the deceased have supported the appellants' case. Having lost their daughter, they would ordinarily be more inclined to implicate the appellants in the offence rather than to give them a clean chit. Though they were cross-examined by the learned APP appearing before the learned Trial Court, no reason for them to falsely depose in favour of the appellants could be gathered. This also casts a doubt on the case of the prosecution.

63. From the above, we find that the alleged dying declarations made by the deceased are not wholly reliable and have an element of doubt. The other surrounding circumstances alleged by the prosecution also do not form a complete chain that can persuade us to



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form an opinion that the appellants are guilty of the offence charged beyond reasonable doubt. Therefore, we hold that the prosecution has been unable to establish the charge against the appellants beyond reasonable doubt.

64. We again note that, unfortunately, appellant no.1 in Crl.A. No. 909/2002, namely, Raj Pal, and the appellant no.2 in Crl.A. No. 938/2002, namely, Smt. Phoolwati, have since passed away, and the appeals have, therefore, abated *qua* them.

65. The appeals are allowed *qua* the surviving appellants.

66. The impugned judgment of conviction dated 04.10.2002 and Order on Sentence dated 07.10.2002, insofar as they relate to the surviving appellants, are set aside. The surviving appellants are acquitted of the charges framed against them.

67. Their personal bonds and surety stand discharged.

68. A copy of this judgment be communicated to the concerned Jail Superintendent as also to the learned Trial Court for necessary compliance and information.

**NAVIN CHAWLA, J.**

**RAVINDER DUDEJA, J.**

**JULY 2, 2026/ns/Yg**

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