

SMT. LAXMI
v.
OM PRAKASH AND ORS.

JULY 9, 2001

[R.C. LAHOTI AND DORAISWAMY RAJU, JJ.]

Penal Code, 1860—S.302/34—Death of housewife due to burn injuries—Five statements said to be dying declarations implicating husband and in-laws—No other evidence in corroboration—Trial Court acquitting the accused holding that they dying declarations were not worthy of reliance—Held, justified—Evidence Act, 1872—S.32.

Evidence Act, 1872—Section 32.

Dying declaration—Admissibility of—Death of house wife due to burn injuries—Five dying declarations implicating husband and in-laws—Victim not in a fit physical and mental condition to make the statements—No other evidence in corroboration—Trial Court acquitting the accused holding that dying declarations were not worthy of reliance—On appeal, Held, a dying declaration is an important and reliable piece of evidence for recording conviction—But court can look for corroboration if it suffers from any infirmities—Main test for reliability is the fit physical and mental condition of the victim—On facts and circumstances of the case, Trial Court justified in acquitting the accused—Penal Code, 1860—Section 302/34.

Dying declaration—Admissibility of—More than one declaration—Though consistent yet infirm—Effect of—Held, it is not the number of dying declarations which will weigh with the court—Court not to act upon dying declarations merely because they are more than one and apparently consistent.

Dying declaration made to a police officer—Admissibility of—Held, though admissible, practice of dying declaration being recorded by investigating officer is discouraged unless the condition of victim is so precarious that there was no other alternative except to record the statement by investigating officer.

Respondents - accused were prosecuted for an offence under section 302/34 of the I.P.C. for unnatural death of a housewife due to extensive burn

A injuries. The respondents were husband, mother-in-law and sister-in-law of the deceased housewife. Accused-husband informed the police control room that his wife had set herself on fire by pouring kerosene oil. Police reached the place of occurrence and took the victim to the hospital. The victim had sustained 85% burn injuries involving front of truck, both thighs, arms, parts of face and the skin of the hands had peeled off. According to doctors attending on her, condition was constantly deteriorating due to dehydration. The deceased before succumbing to her injuries was said to have made five dying declarations to different persons implicating the accused persons for burning her. The first dying declaration was made to ASI (PW5) on her way to hospital in PCR Van. The second dying declaration was made to the Doctor (PW 9) in the hospital. The third dying declaration was recorded by Superintendent of Police and the fourth one was made to Sub-Divisional Magistrate (PW 16). The fifth dying declaration was an oral statement made by deceased to her brother (PW 3). Trial Court held that the dying declarations subjected to judicial scrutiny were not worthy of reliance to base conviction either collectively or individually, and acquitted the accused. The State did not challenge the acquittal. Hence the present appeal by the mother of the deceased.

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Dismissing the appeal, the Court

HELD : 1. High Court was justified in acquitting the accused persons holding that none of the dying declarations made by deceased subjected to judicial scrutiny was worthy of reliance so as to base conviction thereon either collectively or individually. [796-E; 785-G]

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2.1. A dying declaration not being a deposition in Court, neither made on oath nor in the presence of the accused and therefore not tested by cross-examination is yet admissible in evidence as an exception to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. The weak points of a dying declaration serve to put the court on its guard while testing its reliability and impose on the court and obligation to closely scrutinise all the relevant attendant circumstances. One of the important tests of the reliability of the dying declaration is a finding arrived at by the Court as to satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/ or recorded. If the court finds that the capacity of the maker of the statement to narrate the facts was impaired or the court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement the court may in the absence of

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corroborated evidence lending assurance to the contents of the declaration refuse to act on it. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as to render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming safe basis for conviction.

[793-G-H; 794-A-B; 784-A-B]

Kundula Bala Subrahmanyam v. State of A.P., [1993] 2 SCC 684; *Tapinder Singh v. State of Punjab*, (1971) 1 SCJ 871; *Bhagwan Das v. State of Rajasthan*, AIR (1957) SC 589; *Kake Singh @ Surrender Singh v. State of M.P.*, AIR (1982) SC 1021; *Darshan Singh v. State of Punjab*, AIR (1983) SC 554 and *Mahar Singh and Ors. etc. v. State of Punjab*, AIR (1981) SC 1571, relied on.

2.2. It is not the number of dying declarations which will weigh with the Court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand if every individual dying declaration consisting in a plurality is found to be infirm, the court would not be persuaded to act thereon merely because the dying declarations are more than one and apparently consistent.

[784-B-C]

2.3. A dying declaration made to a police officer is admissible in evidence. However, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or the police officer later on relied on as dying declaration. [794-G]

Munnu Raja and Anr. v. The State of Madhya Pradesh, AIR (1976) SC 2199 and *Dalip Singh v. State of Punjab*, AIR (1979) SC 1173, relied on.

3.1. In the instant case, the deceased had made five dying declarations to different persons implicating her husband, mother-in-law and sister-in-law for burning her. The first one was made by the deceased to PW1, ASI on her way to the hospital in the PCR Van. In the ordinary course of things the message should have been transmitted to police control room and should have been recorded as the first information report of the incident disclosing the

A commission of a cognizable offence. But neither the information was conveyed to the control room nor the PCR Van rozanamcha had been produced. The facts told by deceased to PW3 were not stated by him to the investigating officer and no reason had been assigned for such material omission which is fatal to his testimony. The rukka sent by Superintendent of Police also did not make any mention about the declaration having made by deceased to ASI. Thus, the sole testimony to PW5 ASI uncorroborated by any other material evidence as to a dying declaration, implicating the three accused persons, is difficult to believe in the facts and circumstances of the case. The first dying declaration, therefore, stands discarded. [785-B; 789-A-B-C-D; 788-E]

C 3.2. The second dying declaration made to PW 9-Doctor is no dying declaration in the eye of law. Rather it appears that there was someone attempting to develop a story of deceased having been attempted to be strangled before she received burn injuries. The Doctor (PW 9) stated that the deceased was brought to the casualty ward "with the alleged history of being burnt by accused persons after pouring kerosene oil, after attempting to strangle her with rope." There is nothing in the statement to show that he had talked to the deceased nor the deceased had made any disclosure or declaration to him. The theory of strangulation was completely belied by Doctor who performed the autopsy. Thus, it is clear that there was no dying declaration made by the deceased to PW9. [790-B; 789-F; 790-A]

E 3.3. The third dying declaration made to PW21-Superintendent of Police between 9 to 10 a.m. on the day of incident was a detailed statement and has been signed by the deceased. When the statement was recorded, deceased was on drip and her condition was constantly deteriorating due to dehydration. Her hands were burnt and the skin of the hands had peeled off. In such condition, there were grave doubts, as the Trial Court has also expressed, if the deceased could have made a detailed statement to SI and could have put her signature on the same. Further the first and third dying declaration having been made to the police officer associated with the investigation of the case, were not worthy of credence. [790-C, G; 791-A-B; 795-F]

G 3.4. Similarly as regards the fourth dying declaration made to Sub-Divisional Magistrate between 1.30 and 1.45 p.m. which was also a detailed one, same grave doubt, if the deceased was in a fit mental and physical condition to make any statement can be raised with added force since the condition of deceased was constantly deteriorating. The recital that the statement was being given by deceased "in full consciousness and senses"

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was belied by the medical evidence. Thus, in the absence of medical evidence A
to show if deceased was in a fit state of mind and physical condition to have at
all made a statement and signed the same it is not safe to act upon such a
dying declaration. [791-H; 792-F; 793-A-B-C]

3.5. The fifth dying declaration is made by deceased to her brother PW- B
3. He admitted that he did not know that whether any offence was registered
regarding the incident and whether any investigation was undergoing. Yet he
did not try to contact or give information to the police which would have been
ordinary natural conduct on learning such ghastly incident having taken place
with his sister. Such conduct of the witness is fatal to reliability and
acceptance of any dying declaration by the deceased having been made to him. C
Moreover, there is grave doubt if deceased was in a position to speak and made
statement to PW5 at that point of time. [793-D-E-F]

3.6. Thus, none of the five statements attributed to the deceased and
coming from the mouth of different witnesses is worthy of being accepted and D
acted upon as dying declaration so as to form a safe basis to base conviction
of the accused. Thus, there is no requirement to reverse the well-reasoned
finding of not guilty recorded by the Trial Court. [796-A-B]

4. The principal accused, husband of deceased had informed the police
of the incident. In fact, he was the first to give any information relating to E
the incident to the police. It appears that the marriage between the accused and
the deceased proved to be failure and all efforts at restoring and re-
establishing the matrimonial home had failed leading to utter frustration in
the mind of deceased. She probably felt convinced in her mind that she had no
other escape except to finish herself which course would also enable her
avenging her grievance and settling scores with the accused persons whom F
she thought were responsible for spoiling her life and leading her into
immense misery. PW 1 friend of deceased had also disclosed that the deceased
had once told her that she would kill herself and get the accused persons
implicated. Thus, the possibility of deceased committing suicide and
implicating the accused persons cannot be ruled out in the facts and G
circumstances of the case. [795-D; 796-C-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 717
of 1994.

From the Judgment and Order dated 31.1.1985 of the Sessions Judge. H

A Delhi in Sessions Case No. 18/84.

Anoop G. Chowdhury and V.V. Vaza, D.N. Goburdhan, Ms. Pinky Anand, Ms. Geeta Luthra, K.K. Tyagi for K.R. Nagaraja, W.A. Quadri, S.N. Terdol, K.C. Kaushik and D.S. Mehra for the appearing parties.

B The Judgment of the Court was delivered by

C **R.C. LAHOTI, J.** "Nemo moriturus praesumitur mentire-No one at the point of death is presumed to lie." "A man will not meet his Maker with a lie in his mouth" - is the philosophy in law underlying admittance in evidence of dying declaration. "A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration"-is the statement of law summed up by this Court in *Kundula Bala Subrahmanyam v. State of A.P.*, [1993] 2 SCC 684. The Court added-such a statement, called the dying declaration, is relevant and admissible in evidence 'provided it has been made by the deceased while in a fit mental condition'. The above statement of law, by way of preamble to this judgment, has been necessitated as this appeal, putting in issue acquittal of the accused respondents from a charge under Section 302/34 IPC, seeks reversal of the impugned judgment and invites this court to record a finding of guilty based on the singular evidence of dying declaration made by the victim. The law is well settled: dying declaration is admissible in evidence. The admissibility is founded on principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the

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dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming safe basis for conviction. In the case at hand, the dying declarations are five. However, it is not the number of dying declarations which will weigh with the court. A singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction. On the other hand if every individual dying declaration consisting in a plurality is found to be infirm, the court would not be persuaded to act thereon merely because the dying declarations are more than one and apparently consistent.

The deceased Janak Kumari died an unnatural death on 8.3.1982 having sustained extensive burn injuries on 7.3.1982. She was aged about 25 years at the time of her death. Six years before the date of the incident she was married to the accused Om Prakash. The couple had a female child aged about 5 years at the time of the incident. They lived with Smt. Ram Pyari and Kumari Shakuntala, the two co-accused and respectively mother and sister of the accused Om Prakash. Unfortunately, Janak Kumari and Om Prakash could not carry on well and their marital relationship suffered a jolt so much so that on 14.11.1980 on a complaint made by Janak Kumari an offence under Section 385 IPC and Section 4 of Dowry Prohibition Act was registered at P.S. Pahar Ganj, Delhi against these three accused persons. However, the case was consigned to record room on 9.3.1982 under the order of the Metropolitan Magistrate. There were divorce proceedings also initiated by Om Prakash against Janak Kumari which ended in a compromise in December 1981 whereunder Janak Kumar joined back the matrimonial home.

On 7.3.1982 at about 7.20 a.m. the accused Om Prakash informed the police control room on telephone that his wife had set herself into fire having poured kerosene oil on herself. This information was received by S.I. Badri Nath, PW 19 who directed the police control room van (PCR Van) to rush to the place of the incident. Simultaneously he conveyed message to P.S. Pahar Ganj where it was recorded in the Roznamcha, Exhibit PW 14/E. SI Ramesh Chand Garg, PW 21 was handed over a copy of Exhibit PW 14/E for necessary

A action. ASI Shiv Charan PW 5 reached the residence of the accused persons along with the PCR van. SI Ramesh Chand Garg, PW 21 along with constable Raghbir Singh had also reached there. The three brought the victim Janak Kumari to LNJP Hospital at 8.10 a.m. Janak Kumari was attended to by Dr. C.M. Khanijau, PW9.

B On way from the residence of accused persons to the hospital, Janak Kumari made a dying declaration to ASI Shiv Charan, PW 5. This is her first dying declaration. Another dying declaration was made by Janak Kumari to Dr. C.M. Khanijau, PW9 which was recorded by him as Exhibit PW 9/A. SI Ramesh Chand recorded a statement of Janak Kumari between 9 and 10 a.m.

C This is the third dying declaration, Exhibit PW 21/A. At the request of SI Ramesh Chand, Ajit Shrivastava, Sub-Divisional Magistrate, PW 16 reached the hospital and recorded the statement of Janak Kumari between 1.30 and 1.45 p.m. This statement, Exhibit PW 16/A is the fourth dying declaration. Kishan Lal, PW 3, the brother of the deceased reached the hospital at about 5.30 p.m. and to him Janak Kumari made a statement which is the fifth dying

D declaration.

All the three accused persons were arrested by the police on 7.3.1982 itself. The half-burnt clothes of the deceased which she was wearing at the time of the incident as also the clothes of the accused, Om Prakash which were seized soon after the incident were sent to CFSL. Both the sets of

E clothes were found to contain residue of water and kerosene oil.

Janak Kumari succumbed to her injuries and died at about 12 noon on 8.3.1982. Post-mortem on her body was conducted by Dr. B.N. Reddi, PW12.

On completion of the usual investigation, the details whereof are not very material, a challan under Section 302/34 of the IPC was filed against the three accused persons. Charges were framed under Section 302/34 of the IPC against each of the three accused persons who pleaded not guilty. The prosecution examined 21 witnesses. 4 witnesses were examined in defence.

F We will refer to the relevant parts of the testimony at appropriate places. The learned Additional Sessions Judge having meticulously examined the prosecution evidence and having subjected each of the dying declarations to judicial scrutiny found none of them worthy of reliance so as to base conviction thereon either collectively or individually. On 31.1.1985 the learned Additional

G Sessions Judge recorded a verdict of not guilty and acquitted all the three accused persons.

H The State Government has not filed any appeal putting in issue the

acquittal of the accused respondents. However, Smt. Laxmi, the mother of the deceased Janak Kumari, filed a special leave petition under Article 136 of the Constitution before this Court. Leave was granted. A

Before taking up each of the dying declarations for consideration we will briefly set out the prosecution case as emerging from the evidence adduced so as to appreciate the worth of the dying declarations. We would also set out the nature of the injuries suffered and the condition of Janak Kumari after the incident i.e. during the time when she is said to have made dying declarations. B

The prosecution case opened with the statement of PW1 Trishla Kumari, aged 23 years, a close neighbour of the accused persons. She was friendly with the deceased being almost of the same age and was often talking to her. She stated that though at one point of time Janak Kumari and the accused Om Prakash had indulged into litigation and Janak Kumari had left the matrimonial home but after her returning back a few months before the date of the incident they were living well having sorted out their differences. At about 7 a.m. on the date of the incident while she was busy collecting water from the tap inside her house she heard the cries of Janak Kumari and she came out. She saw Janak Kumari burning. She threw water from her bucket on Janak Kumari and got the fire extinguished. The accused persons were also trying to extinguish the fire. Om Prakash accused had helped Janak Kumari in putting on a gown in place of her clothes which were burnt. Om Prakash had also put a blanket over Janak Kumari with a view to extinguish the fire. There are two very important disclosures made by her. Firstly, she stated, that before Janak Kumari left Om Prakash and the litigation started, Janak Kumari used to stand in the street and often abuse her in-laws. The other fact, revealed by her is that after her return although apparently Janak Kumari and Om Prakash were living well having sorted out their differences yet once Janak Kumari had confided in this witness by telling her that she would kill herself and get the accused persons implicated. C D E F

The five dying declaration made by the deceased on 7.3.1982, i.e. the date of the incident, pressed by the learned counsel for the appellants as reliable so as to provide basis for convicting the accused persons are as under:- G

S.No.	Time	To whom
1.	Between 7.30 a.m. and 8 a.m.	PW5, Shiv Charan, ASI in the PCR Van
2.	At 8.10 a.m.	PW9, Dr. C.M. Khanijau (Ex.PW9-A)

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- A 3. Between 9 & 10 a.m. PW21, Ramesh Chand, SI (Ex.PW21-A)
 4. Between 1.30 & 1.45 p.m. PW16 Ajit Srivastava, SDM (Ex.PW16-A)
 5. Between 5.30 & 6 p.m. PW3, Kishan Lal (oral)

B Before taking up the individual dying declarations for consideration we would place on record the physical and mental condition of the deceased soon after the incident and before her death, i.e. at the time when the dying declarations are said to have been made. The deceased brought in the PCR van to causality department of LNJP Hospital was admitted indoors by PW9 Dr. C.M. Khanijau. He examined the patient. According to Dr. Khanijau, Janak Kumari had superficial burns involving front of trunk, both thighs, arms, part of face and neck, scalp and hair. Her pulse was 102 per minute. The pupils were normal and reacting to light. The area of burns was 80-90% approximately. He gave the patient injection tetanus toxides and injection pathedine 75 ml *intra* muscular and admitted the patient in burns ward for detailed examination and treatment. On being transferred to burns ward from casualty at 9 a.m., she was placed in charge of PW18, Dr. I.N. Tiwari, Plastic Surgeon. According to Dr. Tiwari, Janak Kumari was admitted as a case of 85% deep burns and dehydration. She was to be *inter alia* on heavy sedation, anti biotics and *intra venus* fluids. According to the case sheet of Janak Kumari, maintained in the burn ward of the hospital, Ex.Pw18-A, and proved by Dr. I.N. Tiwari, PW18, Janak Kumari was under intense pain. Her tongue was dried. Her hands were burnt and the skin of the hands had peeled off. There was a complete loss of fluid and she was gasping for breath. Her condition was constantly deteriorating. She expired on 8.3.1982 at 12.10 p.m.

F PW12 Dr. B.N. Reddy, Associate Professor, Department of Forensic Medicine, conducted the post mortem examination on the body of deceased Janak Kumari at 10 a.m. on 9.3.1982. Dr. Reddy found extensive superficial burns spread over almost all the parts of the body. The cuticular layer peeled off from most of the areas of burns and inunpeeled areas, specially over the front of abdomen, was blackish. All the burns were ante-mortem. The diagrams of the body of Janak Kumari marked Ex.PW12-B drawn by Dr. B.N. Reddy go to show that Janak Kumari had 85% burn injuries. Her neck, mouth and both lips were also burnt.

H The above said condition of the deceased has been noted by the learned trial Judge also and dealt with in his judgment. We will refer back to this aspect and its impact on the credibility of dying declarations where necessary. We now take up and deal with each of the dying declarations

individually. A

First dying declaration-made to PW5 Shiv Charan, ASI, between 7.30 and 8 a.m.

PW19 Badrinath, SI, was on duty at Police Control Room at 7.20 a.m. on 7.3.1982 when he received an information from Om Prakash, accused, to the effect that his wife had set herself to fire by sprinkling kerosene oil over herself. The information was recorded as Ex.PW19/A. He sent the PCR van to the place of the incident by instructing PW5 Shiv Charan, ASI. Shiv Charan stated that on his reaching the place of the incident and finding Janak Kumari in a burnt condition, the latter, told him that her husband, mother-in-law and husband's sister had burnt her by pouring kerosene oil on her. In the PCR van a register is maintained termed as 'roznamcha'. The messages received and transmitted at and from the PCR van are entered in the register. The witness was asked to produce the register for which purpose he sought for time from the court. The cross examination was deferred on 12.10.1982 and resumed on 1.8.1984. On the adjourned date of hearing the witness did not produce the *roznamcha* and stated that the same was not traceable. The witness does not explain why it was not traceable. Nothing has been brought on record to show if an important document like *rozanamcha* maintained in PCR Van was missing what was follow up action, if any and whether this fact was brought to the notice of senior officials and any record of such missing of document came into existence. B C D E

The statement of this witness recorded during investigation. Shiv Charan, PW5 has admitted during cross-examination that the fact that he had enquired from Janak Kumari as to how she got burnt and what the victim had told him were not stated by him to the Investigating Officer when his statement was recorded. No reason has been assigned for this material omission, though his statement was recorded belatedly on 31.5.1982. F

A suggestion was given by defence during cross examination of this witness that he having reached the place of the incident, had made on the spot enquiries from different persons of neighbourhood, including Trishna Kumari, PW1, and he had come to know that Janak Kumari had committed suicide by pouring kerosene oil on herself and it was so recorded in the PCR van *roznamcha* and that is why it was being withheld from the court. Be that as it may, the fact remains that PW5 Shiv Charan, ASI, had proceeded to the place of the incident on being informed of a suicide having been committed by a woman. If a story to the contrary-a positive information of an attempt to commit murder by burning and that too having been received from the H

A mouth of the victim had come to the knowledge of PW5 Shiv Charan, ASI, then that should have been recorded in the *roznamcha* and also flashed to the Police Control Room. Neither the PCR van *roznamcha* has been produced nor such information conveyed to the Control Room and/or police station. If only a dying declaration was made by Janak Kumari to this witness then in the ordinary course of the things, message would have been transmitted promptly by ASI Shiv Charan to the Police Control Room and would have been recorded as a first information report of the incident disclosing commission of a cognizable offence by specified accused persons. The omission in the police statement of Shiv Charan is fatal to his testimony. Ramesh Chand SI, PW21, had reached the place of incident before Janak Kumari was lifted from her house and removed to hospital. The alleged dying declaration made to Shivcharan PW5 must have come to the knowledge of Ramesh Chand SI who sent the rukka Ex. PW14/A to the police station. This rukka also does not make any mention of any such dying declaration having been made by Janak Kumari. In our opinion, the sole testimony of PW5 Shiv Charan, ASI uncorroborated by any other evidence as to a dying declaration, implicating the three accused persons having been made by the victim to him, is difficult to believe in the facts and circumstances of the case. The first dying declaration, therefore, stands discarded.

Second dying declaration-made to PW9 Dr. C.N. Khanijau at 8.10 a.m. vide Ex.PW9-A.

This is a dying declaration so called; it is no dying declaration in the eye of law. It would be a misadventure to spell out a dying declaration made by the victim from the statement of Dr. C.N. Khanijau. All that he has stated is this much that Janak Kumari was brought to casualty ward by Shiv Charan, ASI “with the alleged history of being burnt by husband, mother-in-law and sister-in-law after pouring kerosene oil, after attempting to strangle her with rope”. Dr. Khanijau has nowhere in his statement deposed to having talked to Janak Kumari nor has he deposed to Janak Kumari having made any disclosure or declaration to the witness. A reading of the statement of the witness shows that such history may have been given to him by ASI, Shiv Charan who had accompanied the injured to the casualty ward. Strangely enough, the information given by Shiv Charan, ASI to Dr. Khanijau goes on to add the injured having been attempted to be strangled with rope before having been set on fire. This misleading information must have had an embellishing effect on the medico-legal examination of the injured by Dr. Khanijau. He went on to record that on local examination of the neck there

were marks of rope on the anterior half of the neck. However, Dr. B.N. Reddy, PW12, who performed the autopsy, has completely belied Dr. Khanijau on this point. He has stated that there were no strangulation ligature mark caused by rope on the neck of the victim. There was no evidence of ligature strangulation. There was no bruise in the neck muscles and no fracture of neck bones and cartilages. It is thus clear that there was no dying declaration made by injured Janak Kumari to Dr. Khanijau. Rather it appears that there was someone attempting to develop a story of Janak Kumari having been attempted to be strangulated before she received burn injuries.

Third Dying-Declaration-made to PW21, Ramesh Chand, SI between 9 & 10 a.m. vide Exhibit PW 21/A

According to Ramesh Chand, PW21 the police had swung into action on account of an information having been received regarding a woman having set herself on fire. We have disbelieved and discarded the prosecution case as to the injured Janak Kumari having made any declaration to PW5 Shivcharan ASI between 7.30 and 8 a.m. That being so, at the time when Ramesh Chand, SI interrogated Janak Kumari and recorded her statement till then he had not received any information from any one else as to the injured Janak Kumari having been set on fire by any one else than herself, that is to say, by her husband, mother-in-law and sister-in-law. On the contrary he admits that when he visited the place of the incident upon an information having been conveyed to him by the PCR van made enquiries from the neighbours and the persons of neighbourhood present at the scene of the incident who were 3 or 4 persons in number, none had told him of Janak Kumari having been set on fire by the accused persons. When he recorded the statement of Janak Kumari the doctor attending on her was not present in close vicinity of Janak Kumari or this witness but he was certainly present in the burns ward. He did not have the statement Exhibit PW21/A attested by the doctor. The statement is a detailed statement and purports to have been signed by the deceased. Below the statement Ramesh Chand, SI has made an endorsement that the doctor (not named) had given in writing "patient is fit for giving statement". However, such an endorsement made by any doctor has not been proved before the Court.

Ramesh Chand SI states that at the time of recording the statement Glucose drip was being given to Janak Kumari and the signature was obtained when she was lying on the bed.

We have already noted herein above that at 9 a.m., before the statement

A Exhibit PW21/A was recorded by Ramesh Chand, SI the patient had reached under the care of Doctor I.L. Tiwari who had kept her on heavy sedation on account of 85% deep burns and dehydration while her condition was constantly deteriorating. Dr. B.N. Reddy, PW 12 opined that neck, mouth and lips of the deceased were burnt. The records of the burn ward show that the hands of the injured were also burnt and the skin of the hands had peeled off. In such condition of the injured we have grave doubts, as the trial court has also expressed, if the injured could have made a detailed statement to Ramesh Chand, SI and could have put her signature on the same. The learned Sessions Judge, who tried the case, has arrived at the following finding, supported by reasons, based on detailed evaluation of evidence :

C “Until and unless it is proved that at the time of the making of the dying declaration the deceased was also mentally sound and physically fit to make a statement the dying declaration cannot be accepted. It is clear from the evidence on record that at the time of the making of the dying declaration Exts. PW21/A and PW16/A the deceased Smt. D Janak Kumari was neither mentally nor physically fit to make any statement.”

The learned Sessions Judge has in his judgment noted the question which remained unanswered, as under :-

E “Ever since Smt. Janak Kumari was taken to the hospital her general condition remained poor and it continued to deteriorate till she ultimately died by the noon of 8.3.1982. Under these circumstances how could Smt. Janak Kumari make her dying declarations Exts. PW21/A & PW16/A. Then her hands were burnt and the skin of the hands had peeled off, then how could she have signed Exts. PW16/A and F PW21/A. So on account of all these facts the dying declarations Exts. PW16/A & PW21/A also do not inspire confidence.”

G Having ourselves evaluated the evidence independently we do not feel inclined to disagree with the finding of the trial court in this regard specially in view of the absence of medical evidence showing that Janak Kumari was in a fit physical and mental condition between 9 and 10 a.m. on the date of the incident to make the statement.

H *Fourth dying declaration-recorded by PW16 Ajit Shrivastava, SDM between 1.30 and 1.45 p.m. vide Exhibit PW16/A.*

According to Ajit Shrivastava he was working for one month as Sub-Divisional Magistrate (SDM). He was holding his court when SI Ramesh Chand came to him in his court and requested him to record the statement of Janak Kumari. There was no request made in writing. It was the first and the last dying-declaration recorded by him till the date of his examination before the Court. He had not recorded any other dying-declaration in any case at the request of the police. Ajit Shrivastava admitted that Ramesh Chand, SI often used to come to him. To test the veracity of the witness he was confronted with the fact that 7.3.1982 was a Sunday and he was not in the court room but at his home and therefore what was being stated by him was false. To this suggestion the witness responded by saying that he could not say if it was Sunday because sometimes he had to go to the court even on Sunday. He was again asked if he could tell any reason for his visit to court on 7.3.1982, a Sunday? The answer was in negative. However, he hastened to add that it was perhaps to clear the pending work. The fact remains that the statement Exhibit PW16/B recorded by this witness is again a detailed one and in a narrative form. The narration of the incident is generally on the same lines as is to be found contained in the statement Exhibit PW21/A recorded by Ramesh Chand, SI. At the end of the statement Shri Ajit Shrivastava records as the words of Janak Kumar-"I have given this statement in my full consciousness and senses. Read over to me and found correct". This statement, Exhibit PW 16/A also does not bear any endorsement by any doctor either in charge of the burns ward attending on the victim of present in the hospital verifying the physical and mental condition of the injured so as to make the statement.

While discussion the third dying declaration, Exh PW 21/A, we have already stated that we have on the material available on record grave doubts if the injured Janak Kumari was in a position to make any statement or to sign the same between 9 & 10 a.m. The same observation applies with added force to the statement Exhibit PW16/B which is said to have been recorded between 1.30 and 1.45 p.m. on the same day. "Added force" - we say-because the material available on record shows that the condition of the injured Janak Kumari was continuously deteriorating and obviously between 1.30 and 1.45 p.m. she must have been in a condition more worse than what she was in between 9 and 10 a.m.

According to the dying declaration Exhibit PW21/A there was a scuffle between the deceased and the accused Om Prakash on the night preceding the date of the incident while according to the dying declaration Exhibit

A PW16/A such scuffle had taken place in the morning soon before the victim was set on fire. The recital that the statement was being given (by the injured) "in full consciousness and senses" recorded in Exhibit PW16/A is belied by the medical evidence. These are additional factors casting doubt on credibility of dying declaration Exh. PW16/A.

B Absence of medical evidence to show if Janak Kumari was in a fit state of mind and physical condition to have at all made a statement and signed the same, doubtful setting of the place court of home-wherefrom the inexperienced SDM accompanied the investigating officer to record the statement, inconsistency though a bit little with the earlier statement and
C *prima facie* unsustainable truth of some of the recitals contained in the statement do not permit the conscience of the Court to accept the dying declaration Exh. PW16/A as safe to act upon.

Fifth dying-declaration (oral) - made to PW 3, Kishan Lal between 5.30 and 6 p.m.

D PW3, Kishan Lal is the brother of the deceased Janak Kumari. According to him, he having learnt of the incident reached the hospital at about 5.30 or 6 p.m. where Janak Kumari was admitted and on her enquiry the injured Janak Kumari revealed to him that her husband, mother-in-law and sister-in-law had
E poured kerosene on her and set fire unto her. He did not know that any offence was registered regarding the incident and was under investigation. Yet he did not try to contact, or give information to, the police which would have been his ordinary natural conduct on learning such ghastly incident having taken place with his sister. Kishan Lal admitted that he never informed to the police what was told to him by Janak Kumari. Such conduct of the
F witness is fatal to reliability and acceptance of any dying-declaration by the deceased having been made to him. Moreover, we also have grave doubts if Janak Kumari was in a position to speak and make statement to Kishan Lal at about 5.30 or 6p.m.

G A dying-declaration not being a deposition in Court, neither made on oath nor in the presence of the accused and therefore not tested by cross-examination is yet admissible in evidence as an exception to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. The weak points of a dying declaration serve to put the court on its guard while testing its reliability and impose on the court an
H obligation to closely scrutinise all the relevant attendant circumstances. See

Tapinder Singh v. State of Punjab, (1971) 1 SCJ 871. One of the important tests of the reliability of the dying declaration is a finding arrived at by the Court as to satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded. The statement may be brief or longish. It is not the length of the statement but the fit state of mind of the victim to narrate the facts of occurrence which has relevance. If the court finds that the capacity of the maker of the statement to narrate the facts was impaired or the court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement the court may in the absence of corroborate evidence lending assurance to the contents of the declaration refuse to act on it. In *Bhagwan Das v. State of Rajasthan*, AIR (1957) SC 589 the learned Sessions Judge found *inter alia* that it was improbable if the maker of the dying declaration was able to talk so as to make a statement, This Court while upholding the finding of the learned Sessions judge held the dying-declaration by itself insufficient for sustaining a conviction on a charge of murder. In *Kake Singh @ Surendra Singh v. State of M.P.*, AIR (1982) SC 1021 the dying declaration was refused to be acted upon when there was no specific statement by the doctor that the deceased after being burnt was conscious or could have made coherent statement. In *Darshan Singh v. State of Punjab*, AIR (1983) SC 55 this Court found that the deceased could not possibly have been in a position to make any kind of intelligible statement and therefore said that the dying declaration could not be relied on for any purpose and had to be excluded from consideration. In *Mohar Singh and Ors. etc. v. State of Punjab*, AIR (1981) SC 1571 the dying declaration was recorded by the investigating officer. This Court excluded the same from consideration for failure of the investigating officer to get the dying declaration attested by the doctor who was alleged to be present in the hospital or any one else present.

A dying declaration made to a police officer is admissible in evidence, however, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or the police officer later on relied on as dying declaration. In *Munnu Raja and Anr. v. The State of Madhya Pradesh*, AIR (1976) SC 2199, this Court observed - "investigating officers are naturally interested in the success of the investigation and the

- A practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to be encouraged". The dying declaration recorded by the investigating officer in the presence of the doctor and some of the friends and relations of the deceased was excluded from consideration as failure to requisition the services of a Magistrate for recording the dying declaration was not explained. In *Dalip Singh v. State of Punjab*, AIR (1979) SC 1173 this Court has permitted dying declaration recorded by investigating officer being admitted in evidence and considered on proof 'that better and more reliable methods of recording dying declaration of injured person' were not feasible for want of time or facility available. It was held that a dying declaration in a murder case, though could not be rejected on the ground that it was recorded by a police officer as the deceased was in a critical condition and no other person could be available in the village to record the dying declaration yet the dying declaration was left out of consideration as it contained a statement which was a bit doubtful.

- The principal accused Om Prakash had himself informed the police of the incident. In fact, he was the first to give any information relating to the incident to the police. Unfortunately, none of the accused could have escorted the victim to the hospital nor could remain present by her side as the case diary revealed (as has been noticed by the trial court) that the accused persons were arrested on the same day. The house of the accused persons which is the site of the incident is situated in a thickly populated locality in a narrow lane where the houses are located like a cluster. The neighbours must have collected soon at the place of the incident. This is borne out from the statement of Shiv Charan, ASI who had made on the spot inquiries. None of the neighbours has been examined excepting Trishla Kumari, PW1 to whom the injured Janak Kumari has not made any statement implicating the accused persons, although she had the opportunity of doing so. We have also dealt with each of the five dying declarations to find out their worth. We have found the second dying declaration to be no dying declaration, the first and third ones having been made to police officers associated with investigation and also not worthy of credence. We have disbelieved the fifth dying declaration said to have been made to PW3, Krishan Lal. We have found it not safe to act on the fourth dying declaration said to have been made to a Magistrate as we entertain grave doubts if the injured Janak Kumari was in a position to make any statement at the time at which this fourth, as also the third and the fifth dying declarations are alleged to have been made. We have found some inconsistency between the statements said to have been made by the injured Janak Kumari and recorded as third and fourth dying declaration.

We have also found that from the beginning there was an effort to develop a story of Janak Kumari having been attempted to be stragulated which story finds a mention in the record as prepared by Dr. Khanijau but which story has been found to be false. None of the five statements attributed to Janak Kumari and coming from the mouth of different witnesses has been held worthy of being accepted and acted upon as dying declaration so as to form a safe basis to base conviction of the accused thereon. We find ourselves not persuaded to reverse the well-reasoned finding of not guilty recorded by the trial court and convert the same into a finding of guilty simply because the statements alleged to be dying declarations are five in number. Needless to say there is no other shred of evidence connecting the accused with the crime.

It appears that the marriage between the accused Om Prakash and the victim Janak Kumari proved to be a failure and all efforts at restoring and re-establishing the matrimonial home had failed leading to utter frustration in the mind of Janak Kumari. She probably felt convinced in her mind that she had no other escape except to finish herself which course would also enable her avenging her grievance and setting scores with the accused persons whom she thought were responsible for spoiling her life and leading her into immense misery. She had indicated what was transpiring in her mind to Trishla Kumari, PW1. The possibility of her committing a suicide and implicating the accused persons cannot be ruled out on the facts and circumstances of the case as available on record.

For the foregoing reasons, the appeal is dismissed. The judgment of acquittal, along with the findings recorded by the trial court, is maintained.

S.V.K.

Appeal dismissed.