DAYAL SINGH

v.

STATE OF MAHARASHTRA

MAY 3, 2007

[G.P. MATHUR AND A.K. MATHUR, JJ.]

Constitution of India—Article 136—Penal Code, 1860—Sections 498A & 302—Criminal Procedure Code, 1973—Section 161—Evidence Act, 1872—Section 32—Accused charged for cruelty and murder of his wife on the basis of her dying declaration recorded by a Police Head Constable—Trial Court holding the accused guilty and sentencing him to imprisonment—High Court, in appeal, confirmed the conviction and sentence—Correctness of—Authenticity of Dying declaration—Held, Section 32 of the Evidence Act does not require that a dying declaration must be recorded by a Magistrate before treating it as evidence—On evidence on record, there is no reason to discard the dying declaration—Hence, the charge against the accused is fully established and thus conviction and sentence upheld.

Appellant was charged for offences under sections 498A and 302 IPC for committing cruelty on his wife for not bringing money from her parents and for murder by setting her ablaze in his house. The appellant was charged for the offences on the basis of a dying declaration given by her to PW 10-Head Constable. Trial Court, relying on the dying declaration, convicted the appellant under sections 498A and 302 IPC and sentenced him to six months R.I. and life imprisonment respectively. High Court, in appeal, confirmed the conviction and sentence awarded by the trial court.

In appeal to this court, the appellant contended that the dying declaration given by the deceased was a fabricated document to implicate him in the murder; that the deceased was a Sikh lady and hence she could have given a dying declaration in Marathi which was recorded by PW 10-Head constable; that the dying declaration is not safe to rely upon since it has not been recorded by a Magistrate; that the dying declaration has been recorded in a narrative form and not in a question-answer form; and that the Investigating Officer did not record the statements of PW 9-Doctor and PW 10 under section 161 Cr.P.C. during the course of investigation and, therefore, their

A testimony should not be relied upon.

Dismissing the appeal, the Court

HELD: 1.1. In an appeal under Article 136 of the Constitution of India, this Court will normally not enter into reappraisal or the review of evidence
B unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. This Court may interfere where on proved facts, wrong inference of law is shown to have been drawn. [Para 4] [1177-E-F]

Ramanbhai Naranbhai Patel v. *State of Gujarat,* [2000] 1 SCC 358;
C and *Chandra Bihari Gautam* v. *State of Bihar,* [2002] 9 SCC 208, referred to.

1.2. The evidence on recording the statements of PW 1 and PW 4, mother and brother of the deceased respectively, conclusively establish the fact that the appellant was ill-treating the deceased as his demand for bring money
D from her parental home had not been established. These witnesses have also deposed that the deceased gave a statement when she was admitted in the hospital that it was the appellant who had poured kerosene upon her and had set her on fire. A formal dying declaration of the deceased was recorded by PW 10-Head Constable in the presence of PW 9-Doctor in the hospital. PW 9 deposed that he had examined the victim and had talked to her and she was
E conscious throughout when her statement was being recorded by PW 10. There is absolutely no reason to cast any doubt on the testimony of PW 10 and PW 9. Both are government servants and they did not at all know the appellant and had no reason to fabricate the dying declaration to falsely implicate him in a murder case. [Para 8] [1180-B-E]

F 1.3. The evidence shows that the parents of the deceased were residing in a place in Maharashtra and is a Marathi speaking area. After marriage, she continued to live there. It has come in the statement of her brother PW 4 that the deceased had studied upto 10th class in a Marathi medium school. Having lived in Maharashtra and having studied upto 10th class in a Marathi
G medium school, there is nothing abnormal in the deceased giving her statement in Marathi language. The deceased gave a dying declaration has not only been deposed to by PW 10-Head constable but also by PW 9-Doctor. There is thus absolutely no reason to doubt the authenticity of the dying declaration. [Para 9] [1180-F-H]

H 1.4. Section 32 of the Evidence Act, 1872 nowhere states that the dying

declaration must be recorded in the presence of a Magistrate. In other words, any statement which has not been recorded before the Magistrate cannot be treated to be dying declaration. There is no ground on which the dying declaration recorded by PW 10 which contains a certificate by PW 9 which adds to its authenticity should be discarded or should not be acted upon.

State of Karnataka **v.** *Shariff,* **[2003] 2 SCC 473;** *Kulwant Singh* **v.** *State of Punjab,* **[2004] 9 SCC 257; and** *Vidhya Devi* **v.** *State of Haryana,* **[2004] 9 SCC 476, referred to.**

1.5. PW 9 and PW 10 are not witnesses of actual occurrence, namely, the pouring of kerosene by the appellant on the deceased and setting her on fire. They are witnesses of recording of dying declaration and the certificate given by the doctor regarding the mental condition of the victim. It is not the case of the appellant that dying declaration was not immediately sent to the court of the concerned Magistrate or that its copy was not given to him in accordance with section 207 Cr.P.C. before the commitment of the case. In such circumstances, the mere fact that the Investigating Officer did not record the statement of the two witnesses under section 161 Cr.P.C. can hardly have any bearing. [1184-B-D]

Tilkeshwar Singh & Ors. **v.** *State of Bihar,* **AIR [1956] SC 238, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 244 of 2006.

From the Final Judgment and Order dated 28.01.2005 of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 91 of 1990.

M.N. Rao, Satyajit A. Desai, Anagha S. Desai, Anmol N. Suryawanshi and Venkateswara Rao Anumolu for the Appellant.

Manish Pitale and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. This appeal, by special leave, has been preferred against the judgment and order dated 28.1.2005 of Bombay High Court (Aurangabad Bench), by which the appeal filed by the appellant Dayal Singh was dismissed and his conviction under Section 498-A and 302 IPC and

A sentence of six months R.I. and imprisonment for life respectively, as recorded by the learned Second Additional Sessions Judge, Nanded, by the judgment and order dated 23.3.1990, were affirmed.

2. The case of the prosecution, in brief, is that the deceased Tejinder Kaur, daughter of the complainant PW.1 Chamanbai, was married to the B appellant five or six years prior to the incident and she had two daughters, Pritpal and Sharanpal. The appellant started ill-treating Tejinder Kaur right from the beginning and used to pressurize her to bring money from her parents. About four months prior to the incident, which took place on 22.3.1989, the appellant took Tejinder Kaur to her mother's house, who also resided in C Nanded, and after making a demand of Rs.5,000/- he came back alone leaving his wife there. On the next day, he went to the house of his mother-in-law Chamanbai with a naked sword in his hand and asked Tejinder Kuar to accompany him and also bring Rs.5,000/-. The money could not be paid by the mother of the deceased. It is alleged that after Tejinder Kaur came back to her husband's house, she sent some letters to her mother through a milk D vendor complaining about ill-treatment being meted out to her. At about 3.00 p.m. on 22.3.1989, Chamanbai received information that Tejinder Kaur had received burn injuries and she was admitted in the Civil Hospital. She immediately rushed to the hospital and on enquiry Tejinder Kaur disclosed that she was set ablaze by the accused by pouring kerosene on her person. E Chamanbai along with her son Sher Singh went to Police Station Wazirabad, where an FIR of the incident was lodged at 6.30 p.m. P.S.I. Murkute visited the house of the appellant at 7.00 p.m. on 22.3.1989 which consisted of only one room and seized half burnt sari, petticoat, woolen blanket, mattresses, quilt, pillow, etc. He found two sunmics cots partially burnt, a stove, a kerosene tin and an empty gas cylinder. He then visited the hospital and F instructed Head Constable PW.10 Dattatray Vinkar to record the statement of Tejinder Kaur when she regained consciousness. Tejinder Kaur regained consciousness at about 10.30 p.m., information regarding which was given by her brother PW.4 Sher Singh to Head Constable Dattatray Vinkar. The Head Constable immediately summoned PW.9 Dr. Mohammad Khursheed Ahmad, G Duty Medical Officer, who examined the injured and found her conscious. Thereafter, the statement of Tejinder Kaur was recorded by PW.10 where she gave details of the occurrence, namely, demand of dowry by the appellant and how the appellant had set her on fire by pouring kerosene. The statement Ex.31 was recorded by PW.10 and Dr. Khursheed Ahmad made an endorsement thereon that the patient was conscious throughout her statement. At about H 00.45 hours on 23.3.1989 Tejinder Kaur succumbed to her injuries. After

inquest had been held, the body was sent for post mortem examination, which was carried out by two doctors who found 83% burns thereon. According to the opinion of the doctors, the death was due to the extensive burns which caused hypovolenic and neurogenic shock leading to cardio- respiratory failure. The seized clothes were sent for medical examination and the report thereof indicated presence of kerosene.

3. After completion of the investigation, charge-sheet was submitted against the appellant under Section 498-A and 302 IPC. The appellant pleaded not guilty and claimed to be tried. His main defence was that he had never made any demand for money and in fact he had deposited some money in the account of Tejinder Kaur and had also purchased land in her name. He further stated in his statement which was given in writing that Tejinder Kaur caught fire when she was cooking food on stove and at that time he was not present in the house. He also stated that after coming to know about the fire, he rushed inside the house and tried to extinguish the fire, in which process he also received burn injuries and he remained admitted in the hospital for treatment till 8.4.1989. The learned Sessions Judge believed the case of the prosecution which primarily rested on the dying declaration recorded by PW.10 and convicted and sentenced the appellant, as stated above. The High Court affirmed the findings recorded by the learned Sessions Judge and dismissed the appeal.

4. The present appeal has been filed under Article 136 of the Constitution. It is well settled that in an appeal under Article 136 of the Constitution, the Court will normally not enter into reappraisal or the review of evidence unless the trial Court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. The Court may interfere where on proved facts, wrong inference of law are shown to have been drawn. (See *Ramanbhai Naranbhai Patel* v. *State of Gujarat,* [2000] 1 SCC 358 and *Chandra Bihari Gautam* v. *State of Bihar,* [2002] 9 SCC 208). We will, therefore, briefly refer to the evidence in order to examine whether the case comes within the parameters of Article 136 of the Constitution which may warrant interference by this Court.

5. PW.1 Chamanbai (mother of the deceased) has deposed that the marriage of Tejinder Kaur was performed with the appellant Dayal Singh about six years prior to the incident. After her marriage, she started living with the appellant at Gurdwara Gate No.2, Nanded. Initially, the parents, brothers and sisters of the appellant were all residing together but some time thereafter, the

A appellant started living separately. The appellant used to ill-treat Tejinder Kaur and used to ask her to bring money from her parents. Whenever Tejinder Kaur visited her parental home, she used to complain about the ill-treatment being meted out to her. About 4 months prior to the incident, the appellant came along with Tejinder Kaur to her parental house and demanded Rs.5,000/- from his mother-in-law. He held out a threat that Tejinder Kaur should not B return until she brought Rs.5,000/-. Next day at about 8.00 p.m. he came armed with a sword and threatened Tejinder Kaur that he would kill her if the amount was not given. She has further deposed that she begged the accused not to behave in that manner as she had no money. Thereafter the appellant took Tejinder Kaur along with him and went away on his motor cycle. She also C produced two letters which were allegedly sent by the deceased to her through a milk vendor. Regarding the main incident, she deposed that at about 3.00 p.m. on 22.3.1989 one Biru Singh came and informed that Tejinder Kaur had received burn injuries and was in the hospital. She immediately rushed to the Civil Hospital and saw Tejinder Kaur admitted in the ward. On enquiry she informed her mother that her husband Dayal Singh had set her D on fire by pouring kerosene on her body. After learning about the incident, the witness along with her son Sher Singh went to the Police Station Wazirabad and lodged an FIR of the incident. She has further deposed that some time after she had returned, Tejinder Kaur regained consciousness. Head Constable Dattatray Vinkar then asked the family members to leave the ward and thereafter E statement of Tejinder Kaur was recorded. Though she was subjected to a lengthy cross-examination, but she stuck to her statement that the appellant used to make demand of money and used to threaten Tejinder Kaur and she was afraid of him. PW.4 Sher Singh is brother of Tejinder Kaur. He has corroborated the statement of his mother Chamanbai regarding the ill-treatment being meted out by the appellant to his sister and the demand of money and F the earlier incident when the appellant had come armed with a sword and had given threats when the money was not paid to him. He has further deposed that at about 10.00-10.30 p.m. Tejinder Kaur regained consciousness and disclosed to him and his mother that the accused had sprinkled kerosene on her and had set her on fire. He has also deposed that when the Head G Constable had called the doctor for recording the statement of the victim, he and other relations were asked to leave the ward.

6. PW.2 Dr. Sanjay has deposed that he is M.S. in General Surgery and was posted in Civil Hospital, Nanded, as a Duty Medical Officer on 22.3.1989. He had admitted Tejinder Kaur in the hospital in Ward No.4 and at that time H she was conscious. PW.10 Head Constable Dattatray Vinkar has deposed that

he was posted on duty in the hospital from 8.00 p.m. on 22.3.1989 till 8.00 a.m. on the next day. At about 10.30 p.m. he received orders from P.S.I. Murkute to record statement of Tejinder Kaur. He, therefore, went to Ward No.4 where Tejinder Kaur was admitted and after finding her in a conscious state, he went to Dr. Khursheed Ahmad, Duty Medical Officer, and requested him to come and examine the victim as her statement had to be recorded. Dr. Khursheed Ahmad then examined the victim and informed him that she was conscious and he could record her statement. The witness has further deposed that he put questions to Tejinder Kaur to which she gave replies in Marathi, which he recorded in his own hand. In her statement (Ex.31) Tejinder Kaur stated that her marriage with the appellant had taken place 5 years back. At 2.00 p.m. on that day i.e. 22.3.1989 there was a quarrel between her and her husband on account of domestic reasons, namely, about visiting her mother's house and she was asked to bring money from her mother. The appellant then tore her blouse and sari and tried to drag her out of the house. She protested and said that she will not leave the house. At that stage, the appellant poured kerosene upon her and set her on fire by lighting a match stick. When she caught fire, she cried for help, on which her mother-in-law and neighbours came there and extinguished the fire by pouring water. Her daughter Sharanpal, who was sitting near her, had also sustained some burns and was taken outside by the appellant. She further stated that as she was wearing a polyester sari, she immediately caught fire and sustained burns in her chest, abdomen, legs and private parts. Her father-in-law brought her to the hospital for treatment. The statement was thumb marked by the victim. Thereafter, Dr. Khursheed Ahmad made an endorsement on the same and put his signatures thereon. The witness has categorically deposed that whatever was stated by Tejinder Kaur was recorded in her own words. In his cross-examination, he stated that the information had earlier been sent to Special Judicial Magistrate for recording statement of the victim. The recording of the statement commenced at 22.50 hours on 22.3.1989 and it took about 15-20 minutes.

7. PW.9 Dr. Mohammad Khursheed Ahmad has deposed that he is MBBS & MD and was posted as Medical Officer in SGGM Hospital, Nanded for the past four years. He was on duty on 22.3.1989 when he was called to Ward No.4. He examined Tejinder Kaur at about 11.00 p.m. and found that she was conscious and was in a position to give her statement. The Head Constable then recorded her statement and he was throughout present by her side. After the statement had been recorded, he put an endorsement on the same to the effect "Patient is conscious throughout statement". He had put his signature below that endorsement. In his cross-examination he has reiterated that he

A had examined Tejinder Kaur and had a talk with her and after being satisfied that she was conscious, he asked the Head Constable to record her statement. He was subjected to a fairly lengthy cross-examination but nothing has come out which may discredit his testimony.

8. The statements of PW.1 Chamanbai who is the mother and PW.4 Sher B Singh who is the brother of the deceased, conclusively establish the fact that the appellant was ill-treating the deceased Tejinder Kaur as his demand for bringing money from her parental home had not been fulfilled. These witnesses have also deposed that Tejinder Kaur gave a statement when she was admitted in the hospital that it was the appellant who had poured kerosene upon her C and had set her on fire. A formal dying declaration of Tejinder Kaur was recorded by PW.10 Dattatray Vinkar, Head Constable in the presence of PW.9 Dr. Khursheed Ahmad who was the Duty Medical Officer in the hospital. Dr. Khursheed Ahmad is a highly qualified person being MBBS and MD and was posted in the Civil Hospital, Nanded, and his duty hours were from 8.00 p.m. on 22.3.1989 to 8.00 a.m. on the following day. He has clearly deposed that D he had examined the victim and had talked to her and she was conscious throughout when her statement was being recorded by PW.10. There is absolutely no reason to cast any doubt on the testimony of PW.10 Dattatray Vinkar and PW.9 Dr. Md. Khursheed Ahmad. Both are government servants and they did not at all know the appellant Dayal Singh and had absolutely E no reason to fabricate a document, viz., the dying declaration to falsely implicate him in a murder case.

9. Shri M.N. Rao, learned senior counsel for the appellant, has submitted that the original dying declaration is in Marathi language and Tejinder Kaur being a sikh lady, she could not have made a statement in the said language F as in normal course of events, she would have spoken in Gurmukhi. The evidence shows that even the parents of Tejinder Kaur were residing in Nanded which is in Maharashtra and is a Marathi speaking area. After marriage she continued to live in the said place, viz., Nanded. It has come in the statement of her brother PW.4 Sher Singh that Tejinder Kaur had studied upto 10th class in a Marathi medium school. Having lived in Nanded and having G studied upto 10th class in a Marathi medium school, there is nothing abnormal in Tejinder Kaur giving her statement in Marathi language. That apart, the fact that she gave a statement Ex.31 has not only been deposed to by PW.10 Dattatray Vinkar, Head Constable, but also by PW.9 Dr. Khursheed Ahmad who is highly qualified and responsible government servant. There is thus H absolutely no reason to doubt the authenticity of the dying declaration.

10. Shri Rao, learned senior counsel, has next submitted that the dying declaration has not been recorded by a Magistrate but by a Head Constable and, therefore, it will not be safe to rely upon the same. He has also challenged the dying declaration on the ground that the same was not recorded in a question-answer form but has been recorded in the form of a narrative. A

11. The law regarding the dying declaration and the value which is to be attached to it has been examined in considerable detail in *State of Karnataka* v. *Shariff*, [2003] 2 SCC 473, by a Bench of which one of us was a member and paragraphs 18, 19, 20, 22 and 23 of the decision are being reproduced below :- B

> 18. The earliest case in which the law on the point of dying declaration was considered in detail by this Court is *Khushal Rao* v. *State of Bombay*, AIR (1958) SC 22. The Court ruled that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. It has been further held that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. C D E F
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> 19. In State of *Uttar Pradesh* v. *Ram Sagar Yadav*, [1985] 1 SCC 552 the Court speaking through Chandrachud, C.J. held as under: G
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> > "It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. See *Khushal Rao* v. *State of Bombay*, AIR (1958) SC 22; *Harbans Singh* v. *State of Punjab*, AIR (1962) SC 439; *Gopalsingh* v. *State of M.P.*, [1972] 3 SCC 268. There is not even a rule of prudence which has hardened into a H

A rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration....."

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20. In *K. Ramachandra Reddy and Anr.* v. *The Public Prosecutor,* [1976] 3 SCC 618 it was held that a great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. It was further held that the Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. In *Pothakamuri Srinivasulu* v. *State of AP,* [2002] 6 SCC 399 it has been held that if the deceased made statement to the witnesses and their testimony is found to be reliable the same is enough to sustain the conviction of the accused. In *Mafabhai Nagarbhai Raval* v. *State of Gujarat,* [1992] 4 SCC 69 it was held that the Doctor who has examined the victim was the most competent witness to speak about her condition.

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22. The other reason given by the High Court is that the dying declaration was not in question-answer form. Very often the deceased is merely asked as to how the incident took place and the statement is recorded in a narrative form. In fact such a statement is more natural and gives the version of the incident as it has been perceived by the victim. The question whether a dying declaration which has not been recorded in question-answer form can be accepted in evidence or not has been considered by this Court on several occasions. In *Ram Bihari Yadav* v. *State of Bihar and Ors.,* [1998] 4 SCC 517, it was held as follows:

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"It cannot be said that unless the dying declaration is in question answer form, it could not be accepted. Having regard to the

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sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon...."

23. In *Padmaben Shamalbhai Patel* v. *State of Gujarat,* [1991] 1 SCC 744 it was held that the failure on the part of the medical men to record the statement of the deceased in question-and-answer form cannot in any manner affect the probative value to be attached to their evidence. This view was reiterated in *State of Rajasthan* v. *Bhup Ram,* [1997] 10 SCC 675 and *Jai Prakash and Ors.* v. *State of Haryana,* [1998] 7 SCC 284.

12. In *Kulwant Singh* v. *State of Punjab,* [2004] 9 SCC 257 it has been held that it is not essential that a dying declaration should be made only before a Magistrate. Section 32 of the Evidence Act nowhere states that the dying declaration must be recorded in the presence of a Magistrate or in other words any statement which has not been recorded before the Magistrate cannot be treated to be dying declaration. In *Vidhya Devi* v. *State of Haryana,* [2004] 9 SCC 476 challenge to a dying declaration recorded by a police officer in the presence of doctor, who had given an opinion that the deceased was in a fit state of mind to make the statement, was held to be credible and reliable and sufficient to establish the guilt of the accused.

13. PW.10 Head Constable Dattatray Vinkar has deposed that information was sent to the Magistrate. The date of incident viz. 22.3.1989 was "Holi" and being an occasion of festivity it is possible that the Magistrate may not have been present at his residence or the information may not have been conveyed to him personally. We do not find any ground on which the dying declaration recorded by PW.10 which contains a certificate by PW.9 Dr. Khursheed

A Ahmad which adds to its authenticity should be discarded or should not be acted upon.

14. Mr. Rao has next submitted that Investigating Officer did not record the statements of PW-9 Dr. Mohammad Khursheed Ahmad and PW-10 Dattatray Vinkar under section 161 Cr.P.C. during the course of investigation B and, therefore, their testimony should not be relied upon. In support of his submission he has relied upon certain observations made in *Ram Lakhan Singh and Ors* v. *State of Uttar Pradesh,* [1977] 3 SCC 268. It may be noticed that PW-9 and PW-10 are not witnesses of actual occurrence, namely, the pouring of kerosene by the appellant on Tejinder Kaur and setting her on fire. C They are witnesses of recording of dying declaration and the certificate given by the doctor regarding the mental condition of the victim. It is not the case of the appellant that dying declaration was not immediately sent to the court of concerned magistrate or that its copy was not given to him in accordance with section 207 Cr.P.C. before the commitment of the case. In such circumstances the mere fact that the Investigating Officer did not record the D statement of the aforesaid two witnesses under section 161 Cr.P.C. can hardly have any bearing. In *Tilkeshwar Singh and Ors.* v. *The State of Bihar,* AIR (1956) SC 238 statements of three witnesses were jointly recorded by the Investigating Officer in violation of section 161(3) Cr.P.C. It was contended that the evidence of the said three witnesses in court was inadmissible as there was no record of their statement under section 161 Cr.P.C. The contention E was repelled and it was held that while the failure to comply with the requirements of section 161(3) Cr.P.C. might affect the weight to be attached to the evidence of the witnesses, it does not render it inadmissible. In the facts and circumstances of the present case we are of the opinion that the testimony of PW-9 and PW-10 cannot be discarded on the ground urged by F the learned counsel for the appellant and the trial court and the High Court rightly relied upon their statement which was given in court.

15. We have given out careful consideration to the material on record. We are fully satisfied that the charge against the appellant is fully established from the evidence on record and there is absolutely no ground to take a G different view from what has been taken by the learned Sessions Judge and also by the High Court.

16. In the result, the appeal fails and is hereby dismissed.

B.S. Appeal dismissed.

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