

[2014] 3 S.C.R. 673

JUMNI AND OTHERS

v.

STATE OF HARYANA

(Criminal Appeal No. 1159 of 2005 etc.)

MARCH 12, 2014

**[RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.]**

PENAL CODE:

s.302 - Death of a married woman by burns - Dying declaration - Relatives of husband of deceased convicted and sentenced - Plea of alibi of two of the appellants not accepted by courts below - Held: Testimony of alibi witnesses of two of the four appellants deserves acceptance - Further, the evidence of defence witness that the door of the room of the deceased was locked from inside and when he broke open it, he saw the deceased on fire, cannot be glossed over - Thus, it is not possible to discount the theory of suicide - Besides, with everybody being roped in for every event, it is not possible in this case to segregate or sever the actions of one from another - The two appellant setting up the plea of alibi are not found guilty of murder of deceased and are acquitted - The remaining two appellants are given benefit of doubt - Evidence - Plea of alibi - Severability of dying declaration.

EVIDENCE:

Plea of alibi - Held: Alibi witnesses have made out a strong case of demonstrating the improbability of the two appellants being involved in the incident of beating up the deceased and stopping her from going to police station the previous day and setting her on fire in the morning of the day of occurrence - Courts below proceeded on the basis that these two accused are required to prove their innocence -- It

A *is for the prosecution to prove the guilt of accused - Defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.*

B *Dying declaration - Evidentiary value of - Explained.*

Dying declaration - Severability of - Held: Role of two sets of accused can be segregated, if dying declaration is severable - In the instant case, role of accused persons cannot be segregated as it mentions all accused persons to have

C *been involved in all events - Deceased has referred to all of them as being involved in every incident - Alibi witnesses have made out a strong improbability for two of the appellants to have participated in the incidents - Further, if somewhat different roles were assigned to at least some of the accused*

D *persons, segregation or severance could have been possible- But with everybody being roped in for every event, it is not possible to segregate or sever the actions of one from another.*

The four appellants and two other relatives of the husband of the deceased, were prosecuted on the basis of the dying declaration of the deceased alleging that her father-in-law, mother-in-law, 'jeth' (brother-in-law) and his wife, and both 'devars' (brothers-in-law) had been harassing her and they planned to eliminate her; that on 4.4.1996 during noon time all six accused gave her severe beatings; that when about 3.00 pm she was about to go to the police station, all of them prevented her; that on the day of incident, i.e. 5.4.1996 at about 7.30 A.M. all the six accused tied her and poured kerosene on her and set her on fire. The victim died in the hospital with 100% burns. During the trial, the brother in law of the deceased and his wife took a plea of alibi. However, the trial court convicted all the six accused u/s 302 IPC and sentenced them to imprisonment for life. The High Court affirmed the conviction and the sentence.

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During the pendency of the appeals, the father-in-law and one brother-in-law of the deceased died. A

Allowing the appeals, the court

HELD:

Plea of alibi: B

1.1 Insofar as the appellants in Crl. A. No. 306 of 2005, who made a plea of alibi, are concerned, both the trial judge and the High Court proceeded on the basis that these two accused persons are required to prove their innocence. In fact it is for the prosecution to prove their guilt and that seems to have been lost in the consideration of the case. It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her. However the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty. [para 24-25] [684-A-D] C D E

Dudh Nath Pandey v. State of U.P. 1981 (2) SCR 771 = (1981) 2 SCC 166; *Binay Kumar Singh v. State of Bihar* 1996 (8) Suppl. SCR 225 = (1997) 1 SCC 283; *Jayantibhai Bhenkarbhai v. State of Gujarat*. 2002 (2) Suppl. SCR 255 = (2002) 8 SCC 165; *Mohinder Singh v. State* (1950) SCR 821- referred to. F

1.2 The alibi witnesses have made out a strong case of demonstrating the improbability of the two appellants being involved in the incident of beating up the deceased at about 12.00 noon and of stopping her at about 3.00 p.m. from going to the police to lodge a complaint on 4.4.1996, and setting her on fire at about 7.30 a.m. on 5.4.1996. In view of the material on record, the plea of alibi of these two appellants is accepted. [para 37 and 46] [689-C-D; 692-D] G H

A Severability of dying declaration:

B 2.1 Although at law there is no difficulty in segregating the role of two sets of accused persons if the dying declaration is severable, the instant case indicates that the role of the accused persons cannot be segregated. This is because dying declaration mentions all the accused persons as being involved in all the events that had taken place on 04-04-1996 and 05-04-1996. There is no distinction made in the role of any of the accused persons and they have all been clubbed together in every incident on 04-04-1996 and 05-04-1996. If somewhat different roles were assigned to at least some of the accused persons, segregation or severance could have been possible. But with everybody being roped in for every event, it is not possible to segregate or sever the actions of one from another. Notwithstanding this, it is not possible to accept the involvement of the appellants in Crl. A. No. 603 of 2005 in the events that took place on the two fateful days. [para 40-41] [690-C-G]

E *Godhu v. State of Rajasthan* 1975 (1) SCR 906 = (1975) 3 SCC 241 - referred to.

F 2.2 Further, neither the trial court nor the High Court adverted to the crucial evidence of DW-8 who stated that he saw smoke coming out of the tenement and children were making a noise. When he reached there, he saw flames and smoke coming out from the ventilator of the tenement and along with another person, he had to break open the door of the tenement which was locked from inside and they found the deceased on fire. The evidence of DW-8 has not been challenged and so it cannot be glossed over. In the face of this, it is not possible to discount the theory that the case might be possibly one of the suicide out of extreme frustration and not of murder. [para 41-42] [691-A-C, F]

2.3 It is true that when a person is on his or her death bed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death. In the instant case, it does appear that for some inexplicable reason the deceased put the blame for her death on all her in-laws without exception. Perhaps a more effective investigation or a more effective cross-examination of the witnesses would have brought out the truth but unfortunately on the record as it stands, there is no option but to give the benefit of doubt to the appellants and to hold that they were not proved guilty of the offence of having murdered the deceased. [para 43] [691-G-H; 692-A-B]

2.4 In the result, the appellants in Cri. A. 603 of 2005 are found not guilty of having murdered the deceased and are acquitted. The other two appellants are also acquitted giving them benefit of doubt, as the charge against them of having murdered the deceased has not been proved beyond reasonable doubt. [para 44 and 46] [692-B, D-E]

Case Law Reference:

1981 (2) SCR 771	relied on	para 26
1996 (8) Suppl. SCR 225	referred to	para 26
2002 (2) Suppl. SCR 255	referred to	para 26
(1950) SCR 821	referred to	para 27
1975 (1) SCR 906	referred to	para 39

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1159 of 2005.

From the Judgment and Order dated 25.10.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 524 DB of 1998.

A WITH
Criminal Appeal No. 603 of 2005.

D.P. Singh, Sonam Gupta, Salil Bhattacharya, Rajkiran Vats, Ravi Prakash Vyas, Sanjay Jain for the Appellants.

B Manjit Singh, AAG, Vikas Sharma, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

C **MADAN B. LOKUR, J.** 1. The two questions for consideration and discussion relate to the value of the testimony of alibi witnesses and the severability of a dying declaration.

D 2. In the present appeals, we are of the opinion that the testimony of the alibi witnesses of two of the four appellants deserves acceptance and the dying declaration so closely concerns all four appellants that it is not possible to sever the role of the sets of appellants, resulting in our giving the benefit of doubt to the remaining two appellants.

E **The facts:**

F 3. Six relatives (by marriage) of deceased Asha Devi were accused of having murdered her and thereby having committed an offence punishable under Section 302 of the Indian Penal Code. The accused persons were Rati Ram (father-in-law, now died), Jumni (mother-in-law and appellant in Criminal Appeal No. 1159 of 2005), Sham Lal (brother-in-law and appellant in Criminal Appeal No. 1159 of 2005), Balbir Prasad (brother-in-law and appellant in Criminal Appeal No.1159 of 2005, who, we were told has since died), Prem Nath (brother-in-law and appellant in Criminal Appeal No. 603 of 2005) and Raj Bala (wife of Prem Nath and appellant in Criminal Appeal No. 603 of 2005).

H 4. Asha Devi was married at the age of 16 to Jagdish who was employed in the army. According to her father, Asha Devi

lived with Jagdish for about one year and thereafter she lived in village Bhojpur in district Jagadhari, Haryana, in a one room tenement along with her two children aged 5 years and 1½ years. Her in-laws were staying in an adjacent tenement. There is no allegation or evidence of any matrimonial disharmony between Jagdish and Asha Devi who had been married for about nine years nor is there any allegation of any demand or harassment for dowry from Asha Devi.

5. The case of the prosecution is entirely dependent on the dying declaration of Asha Devi. In her statement, Asha Devi stated that at about 12.00 noon on 4th April 1996 she was given a severe beating by all her in-laws. Thereafter, at about 3.00 p.m. she wanted to lodge a complaint with the police but all her in-laws prevented her from doing so. Rather, they suggested that she should be set ablaze.

6. On the morning of 5th April 1996, Asha Devi seems to have had a quarrel and in a fit of anger she broke her bangles. Upon this, Jumni said that she should be finished. Consequently, all her in-laws tied her up and poured kerosene on her and set her on fire. This was at about 7.30 a.m.

7. At about 10.30 a.m. Asha Devi was taken to the Civil Hospital at Jagadhari. Seeing her condition with 100% burns, the doctor on duty, Dr. M.R. Passi (PW-1) immediately informed the police who took urgent steps for having her statement recorded. Ms. Sarita Gupta, Judicial Magistrate, 1st Class (PW-9) was deputed for this purpose. According to Ms. Sarita Gupta, she recorded the statement of Asha Devi in the Civil Hospital between 11.22 a.m. and 12.05 p.m. on 5th April 1996. The statement/dying declaration reads as follows:-

"Stated that I was married at the age of 16 years. I am 25 years old. I have two sons, one is 5 years old while the second is 1½ old. My husband is serving in military. Sometimes he visits us after a week and sometimes after 15 days. In my house, my father-in-law Rati Ram, mother-

A in-law Jumni, Jeth Prem Chand, Jethani Bala Rani, two
Devars Sham Lal and Balbir Parshad are staying. My
father-in-law, mother-in-law, Jeth Jethani and both the
Devers had been harassing me from the very beginning.
B My mother-in-law, father-in-law, Jeth Jethani and both the
Devers had been making plans to eliminate me. Last week
my mother-in-law, father-in-law, Jeth, Jethani and Devers
said, "let us get her bitten from a dog and in this way she
would be eliminated". Yesterday, during noon time, my
mother-in-law, father-in-law, Devers, Jeth and Jethani had
C given me severe beatings. Thereafter yesterday at about
3.00 PM when I was about to go to police station to lodge
a report, all of them prevented me and said, "if she is bent
upon to do so, she should be eliminated by setting her
ablaze". After getting up today morning, I went to my
D mother-in-law and in a fit of anger, I broke my bangles (a
sign of indignation against the married status). My mother-
in-law, said that fault lies with her (Asha) and she should
be finished. Mother-in-law, father-in-law, Jeth, Jethani and
both the devers after conniving with one another tied me
E with my Chuni (head gear) and poured kerosene oil upon
me. The kerosene oil also entered in my eyes. Mother-in-
law, father-in-law, Jeth Jethani and both the devers set me
on fire together. I made a lot of noise. The incident
occurred at 7.30 AM. My mother-in-law Jumni, father-in-law
F Rati Ram, Jeth Prem Chand, Jethani Bala Rani and both
the Devars Sham Lal and Balbir Parshad are responsible
for setting me on fire. After my death, both of my children
be handed over to my parents. Otherwise my in-laws
would kill them also."

G 8. Soon after the statement was recorded Asha Devi's
father Devi Dayal (PW-6) arrived in the Civil Hospital (although
he says that he reached the hospital at about 11.45 a.m. but
after the Magistrate left) and he made arrangements to take
her to Chandigarh but she died on the way.

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9. On these broad facts, investigations were carried out and a charge sheet was filed against the six accused persons for having murdered Asha Devi. A

Proceedings in the Trial Court:

10. Before the Additional Sessions Judge, in Case No. 35 of 1996, the principal argument of the prosecution was that in view of the dying declaration there was no doubt at all that the accused persons were guilty of having murdered Asha Devi. B

11. Prem Nath and Raj Bala produced alibi witnesses before the Trial Judge to show that Prem Nath was an employee in the HMT factory in Pinjore and that on 4th April 1996 as well as on 5th April 1996 he was in Pinjore and there was no question of his or his wife's involvement in the incident. The accused also produced Chandan Singh, Sub-Inspector, Food Supply, Yamunanagar as DW-7 to prove, on the basis of the ration card issued to Jagdish and Rati Ram, that they lived in the same neighbourhood but not together as stated by Asha Devi. Similarly, Puran Chand a neighbour of Jagdish was produced as DW-8 and his testimony was to the effect that he saw smoke coming out of Jagdish's house and he heard some children making a noise. Thereupon he went to Jagdish's house and found that the door of the tenement was bolted from inside. He, along with one Gurbachan broke open the door and found Asha Devi lying burnt in the tenement. They put out the fire and called Rati Ram who was working in the nearby fields. Thereafter, Rati Ram took Asha Devi to the Civil Hospital. Puran Chand also stated that Prem Nath and Raj Bala were not present at the spot. C
D
E
F

12. One of the questions considered by the Trial Judge was whether Asha Devi was in a fit condition to make a statement, particularly since, according to Dr. M.R. Passi, she had 100% superficial as well as deep burns. The Trial Judge noted that Dr. Passi testified that Asha Devi was fit to make a dying declaration and that he was present when Ms. Sarita Gupta H

A was recording her dying declaration. He stated that Asha Devi was responding to the questions put to her by the Magistrate.

B 13. The Trial Judge also considered the statement of Ms. Sarita Gupta who had confirmed from Dr. Passi regarding the fitness of Asha Devi to make a statement. Ms. Sarita Gupta stated that only after Asha Devi was declared fit to make a statement that her statement was recorded and read over to her. According to Ms. Sarita Gupta, during the recording of her statement, Asha Devi was conscious and responding to verbal commands. She also stated that Dr. Passi was present throughout when Asha Devi's dying declaration was being recorded.

14. On these facts, the Trial Judge concluded that Asha Devi was fit to make a dying declaration.

D 15. The next question addressed by the Trial Judge was whether the dying declaration contained any falsehood. In this regard, the Trial Judge came to the conclusion that there was nothing to suggest that the dying declaration was incorrect in any manner or that Asha Devi made allegations out of some vengeance.

E 16. Finally, the Trial Judge examined the plea of alibi raised by Prem Nath and Raj Bala and in this regard he concluded that there was every possibility of both of them being present in village Bhojpur both on 4th April 1996 when Asha Devi was given a beating as well as in the early morning of 5th April 1996 when Asha Devi was set on fire.

F 17. On the above conclusions, the Trial Judge held, in his judgment and order dated 28th October 1998, that all the accused were guilty of having murdered Asha Devi.

G 18. Feeling aggrieved, the accused persons filed Criminal Appeal No. 524-DB of 1998 in the High Court of Punjab & Haryana. By its judgment and order dated 25th October 2004,

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the High Court dismissed their appeal.

A

Proceedings in the High Court:

19. The High Court considered the evidence of Dr. Passi as well as the evidence of Ms. Sarita Gupta and upheld the conclusion of the Trial Judge that Asha Devi was in a fit state of mind to make a statement before the Magistrate.

B

20. The High Court also upheld the conclusion that Asha Devi was in a condition to speak coherently and was capable of making a statement. Consequently, the High Court accepted the validity of the dying declaration.

C

21. The High Court then considered the question whether it could be held, despite the dying declaration, that Prem Nath and Raj Bala were not involved in the incident concerning Asha Devi. Relying upon a few decisions of this Court, the High Court was of the view that there was no error in law in accepting a part of the dying declaration and rejecting another part of the dying declaration. The High Court then examined the evidence of the alibi witnesses in an attempt to 'bifurcate' the dying declaration. However, the High Court rejected their testimony and concluded that there was every possibility of Prem Nath and Raj Bala being present both on 4th April 1996 when Asha Devi was subjected to a beating as well as on 5th April 1996 when she was allegedly set on fire.

D

E

22. The High Court affirmed the conviction of the accused as well as the sentence imposed upon them.

F

23. Unfortunately, the High Court overlooked the evidence of Puran Chand (DW-8) who stated that Asha Devi's tenement was locked from inside and that the door had to be broken open by him and Gurbachan who found her burning.

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Plea of alibi

24. On a consideration of the material before us, what

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A strikes us as a little odd is that insofar as Prem Chand and Raj
Bala are concerned, both the Trial Judge and the High Court
have given us the impression that they proceeded on the basis
that these two accused persons are required to prove their
innocence. In fact it is for the prosecution to prove their guilt
B and that seems to have been lost in the consideration of the
case.

C 25. It is no doubt true that when an alibi is set up, the burden
is on the accused to lend credence to the defence put up by
him or her. However the approach of the court should not be
such as to pick holes in the case of the accused person. The
defence evidence has to be tested like any other testimony,
always keeping in mind that a person is presumed innocent
until he or she is found guilty.

D 26. Explaining the essence of a plea of alibi, it was
observed in *Dudh Nath Pandey v. State of U.P.*¹ that:

E “The plea of alibi postulates the physical impossibility of
the presence of the accused at the scene of offence by
reason of his presence at another place. The plea can
therefore succeed only if it is shown that the accused was
so far away at the relevant time that he could not be
present at the place where the crime was committed.”

F This was more elaborately explained in *Binay Kumar
Singh v. State of Bihar*² in the following words:

G “We must bear in mind that an alibi is not an exception
(special or general) envisaged in the Indian Penal Code
or any other law. It is only a rule of evidence recognised in
Section 11 of the Evidence Act that facts which are
inconsistent with the fact in issue are relevant.”

Illustration (a) given under Section 11 of the Evidence Act

1. (1981) 2 SCC 166.

H 2. (1997) 1 SCC 283.

is then partially reproduced in the decision, but it is fully reproduced below: A

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant. B

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant." C

This Court then went on to say,

"The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality H

A and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”

B This view was reiterated in *Jayantibhai Bhenkarbhai v. State of Gujarat*.³

C 27. On the standard of proof, it was held in *Mohinder Singh v. State*⁴ that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words:

E “Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.”

F 28. The defence put up by Prem Nath and Raj Bala needs to be examined in the light of the law laid down by this Court. What is the defence put up by them? Subhash Saini, Office Assistant with HMT in Pinjore appeared as DW-1 and stated that Prem Nath was on duty on 4th April, 1996 from 2.00 p.m. to 10.00 p.m. On the next day that is on 5th April, 1996 he was on half day leave and was on duty from 6.00 p.m. to 10.00 p.m.

G 29. This witness also stated that the entry and exit of an employee to and from the factory premises is recorded in a

3. (2002) 8 SCC 165.

H 4. 1950 SCR 821.

punching machine and two employees of the factory supervise the machine to avoid proxy punching. If there is any suspicion about any employee, the identity card is demanded from him or her. The Trial Court and the High Court had observed that it is possible to 'manipulate' the punching machine. While this may be so, there is nothing to suggest that despite the presence of employees and other safeguards having been set up by HMT, Prem Nath had manipulated the punching machine. The view of both the courts was speculative in nature and cannot form the basis for rejecting the alibi.

30. Jagan Nath Mishra (DW-2) is the tenant of Prem Nath and he stated that he met Prem Nath at about 10.30 p.m. on the night of 4th April 1996.

31. This witness further stated that he left his residence to attend duty the next morning at about 7.45 a.m. (This has wrongly been mentioned as 5.45 a.m. in the impugned judgment and we have verified from the original record that it is actually 7.45 a.m.) At that time he met Prem Nath and Raj Bala. He also stated that when he returned at about 5.45 p.m. he was given sweets by Raj Bala because they had purchased a new scooter.

32. On 5th April 1996 Prem Nath had taken half day leave for the purpose of purchasing a scooter. This was testified by Bhim Sen Verma (DW-3). It was stated by K.N. Sharma (DW-5) that Prem Nath was on duty on 4th April 1996 up to 10.00 p.m. and on half day duty on 5th April 1996.

33. K.K. Kanwal from Hind Motors Ltd. in Chandigarh entered the witness box as DW-6 and affirmed that at about 11.00 a.m. on 5th April 1996 Prem Nath had purchased and taken delivery of a scooter from his company. He further stated that prior to taking delivery of a vehicle, it takes about an hour to complete all procedural formalities in this regard.

34. The evidence of the alibi witnesses clearly brings out

A that on 4th April 1996 Prem Nath was in his factory from 2.00 p.m. onwards till 10.00 p.m. and later in the night he was seen by his tenant at about 10.30 p.m. On the next day that is 5th April 1996 Prem Nath and Raj Bala were seen by their tenant at 7.45 a.m. and about 11.00 a.m. Prem Nath purchased and
 B took delivery of a scooter from Hind Motors Ltd., Chandigarh before going to the factory at about 6.00 p.m. On 5th April 1996 his wife Raj Bala distributed sweets on the purchase of a new scooter.

C 35. The Trial Court and the High Court have disbelieved the entire case put up by Prem Nath and Raj Bala by holding that they could very well have been in village Bhojpur at 12.00 noon on 4th April 1996 when Asha Devi was given a beating and they could have travelled back to Pinjore to enable Prem Nath to be in the factory at 2.00 p.m. Nothing is said about how
 D they could have stopped Asha Devi at 3.00 p.m. from going to the police to lodge a complaint. The same night, they could have left Pinjore to be in village Bhojpur early morning on 5th April 1996 at about 7.30 a.m. when Asha Devi was set on fire. Thereafter, they could have come back to Pinjore to enable
 E Prem Nath to be in Hind Motors at about 10.00 a.m. to purchase a scooter at 11.00 a.m. There is nothing on record to indicate the distance between Pinjore and village Bhojpur but we were orally told that it takes more than a couple of hours to cover that distance. Prem Nath did not have any means of personal
 F conveyance which could have enabled him to undertake these journeys.

G 36. Apart from the conclusions of the Trial Court and the High Court appearing far-fetched, the testimony of Jagan Nath Mishra (DW-2) the tenant of Prem Nath has not been correctly appreciated because of a typing error in transcribing it from the original record. As mentioned above, Jagan Nath Mishra had seen Prem Nath and Raj Bala at 7.45 a.m. on 5th April 1996 (and not at 5.45 a.m. as wrongly transcribed in the impugned
 H judgment). Consequently, Prem Nath and Raj Bala could not

have been in village Bhojpur at 7.30 a.m. on 5th April 1996. A
This evidence has gone unchallenged.

37. It seems to us that although the High Court has given
due weightage to the dying declaration of Asha Devi but having
accepted it, it has tried to pick holes in the defence evidence B
to justify the contents of the dying declaration. Given the law laid
down by this Court, this was not the correct manner of
approaching the evidence brought forth by Prem Nath and Raj
Bala. In our opinion, the alibi witnesses have made out a strong
case of demonstrating the improbability of Prem Nath and Raj
Bala being involved in the incident of beating up Asha Devi at C
about 12.00 noon on 4th April 1996, of stopping her at about
3.00 p.m. from going to the police to lodge a complaint and
setting her on fire at about 7.30 a.m. on 5th April 1996.

Severability of a dying declaration: D

38. The next question is whether Asha Devi's dying
declaration can be split up to segregate the case of Prem Nath
and Raj Bala from the case of the other accused persons.

39. In *Godhu v. State of Rajasthan*⁵ this Court found itself E
unable to subscribe to the view that if a part of the dying
declaration is found not to be correct, it must result in its
rejection in entirety. It was held,

"The rejection of a part of the dying declaration would put F
the court on the guard and induce it to apply a rule of
caution. There may be cases wherein the part of the dying
declaration which is not found to be correct is so
indissolubly linked with the other part of the dying
declaration that it is not possible to sever the two parts. In G
such an event the court would well be justified in rejecting
the whole of the dying declaration. There may, however,
be other cases wherein the two parts of a dying
declaration may be severable and the correctness of one

5. (1975) 3 SCC 241.

A part does not depend upon the correctness of the other
part. In the last mentioned cases the court would not
normally act upon a part of the dying declaration, the other
part of which has not been found to be true, unless the part
relied upon is corroborated in material particulars by the
B other evidence on record. If such other evidence shows that
part of the dying declaration relied upon is correct and
trustworthy the court can act upon that part of the dying
declaration despite the fact that another part of the dying
declaration has not been proved to be correct.”

C 40. Although at law there is no difficulty in segregating the
role of two sets of accused persons if the dying declaration is
severable, the present case indicates that the role of the
accused persons cannot be segregated. This is because Asha
Devi's dying declaration mentions all the accused persons as
D being involved in all the events that had taken place on 4th April
1996 and 5th April 1996. There is no distinction made in the
role of any of the accused persons and they have all been
clubbed together with regard to the harassment of Asha Devi;
making plans to eliminate her; Asha Devi being beaten up on
E 4th April 1996; all the accused persons preventing her from
lodging a complaint with the police; all the accused persons
tying up Asha Devi with her chunni and pouring kerosene oil
on her and then setting her on fire. Asha Devi has referred to
F each one of them as being involved in every incident on 4th
April 1996 and 5th April 1996. If somewhat different roles were
assigned to at least some of the accused persons, segregation
or severance could have been possible. But with everybody
being roped in for every event, it is not possible in this case to
segregate or sever the actions of one from another.

G 41. Notwithstanding this, as we have seen, it is not possible
to accept the involvement of Prem Nath and Raj Bala in the
events that took place on the two fateful days. Nevertheless, it
is quite possible that the other four accused were involved in
H beating up Asha Devi on 4th April 1996 and setting her on fire

A on 5th April 1996. But, what is of equal importance is that A
neither the Trial Court nor the High Court adverted to the crucial
evidence of Puran Chand (DW-8) who stated that he saw
smoke coming out of Jagdish's tenement and children were
making a noise. When he reached there, he saw flames and
B smoke coming out from the ventilator of Jagdish's tenement B
and along with Gurbachan, he had to break down the door of
the tenement which was locked from inside and they found
Asha Devi on fire. If this statement of Puran Chand is correct,
and there does not seem any reason to doubt it since nothing
C was put to him in this regard in cross examination, a case of C
suicide by Asha Devi is a possibility. At this stage, it may be
noted that the investigating officer Gurdial Singh (PW-10) could
not say if the bolt of the tenement was broken or not.

D 42. On a reading of the dying declaration it is quite clear D
that Asha Devi was very disturbed on the morning of 5th April
1996 and that is why she broke her bangles in the presence of
Jumni. This may be because of the events of the previous day
or her being a victim of continuous harassment. This, coupled
with a lack of response from Jumni on the morning of 5th April
E 1996 may have completely frustrated Asha Devi leading her to E
commit suicide. Whatever be the cause of Asha Devi being
upset, the evidence of Puran Chand has not been challenged
and so it cannot be glossed over. In the face of this, it is not
possible to discount the theory suggested by learned counsel
F that the case was possibly one of the suicide out of extreme F
frustration and not of murder.

G 43. It is true that when a person is on his or her death bed, G
there is no reason to state a falsehood but it is equally true that
it is not possible to delve into the mind of a person who is
facing death. In the present case the death of Asha Devi and
the circumstances in which she died are extremely unfortunate
but at the same time it does appear that for some inexplicable
reason she put the blame for her death on all her in-laws without
H exception. Perhaps a more effective investigation or a more H

A effective cross-examination of the witnesses would have brought out the truth but unfortunately on the record as it stands, there is no option but to give the benefit of doubt to Jumni (and Sham Lal) and to hold that they were not proved guilty of the offence of having murdered Asha Devi.

B 44. Insofar as Prem Nath and Raj Bala are concerned there is sufficient material to accept their alibi and they must be acquitted of the charges made against them.

C 45. As mentioned above Rati Ram and Balbir Prasad are already dead and nothing need be said about their involvement in the incident. Were they alive, they too would have been entitled to the benefit of doubt since the facts pertaining to them were similar to those of Jumni and Sham Lal.

D **Conclusion:**

E 46. The plea of alibi set up by Prem Nath and Raj Bala deserve acceptance and are accepted. They are found not guilty of having murdered Asha Devi. Jumni and Sham Lal are given the benefit of doubt and the charge against them of having murdered Asha Devi is not proved beyond a reasonable doubt. Both the appeals are accordingly allowed.

R.P.

Appeals allowed.