

2. It is pertinent to mention here that in the present case, co-accused Smt. Munni @ Hemlata Tomar and Ku. Shikha Bhadauriya are still absconding.

3. The facts necessary to be stated for disposal of the instant appeal are that deceased Archana was the wife of the appellant. Her marriage with the appellant was solemnized on 9.5.2004 and dowry was also given at the time of marriage. The deceased was residing with her husband and in-laws in the house situated at B-1188, Anand Nagar, Gwalior. The appellant and his family members were committing cruelty with her in regard to demand of dowry. The deceased had communicated cruel behaviour of her husband and his family members and 6-7 days prior to the date of incident she called her brother Raje and conveyed the demand of dowry made by her husband and his family members. The deceased's brother assured her to manage the demanded dowry items and he returned back. On 24.11.2005 the deceased was admitted in KRG Hospital, Gwalior. As per information received from the hospital, Police Station Bahodapur entered the information in Rojnamcha Sahna No. 1489 on 24.11.2005. Dying declaration of the deceased was recorded wherein the deceased had specifically mentioned each and every fact regarding commission of offence by the appellant. Police Station Bahodapur registered FIR in Crime No. 500/2005 for commission of offence under Sections 307, 498(A) of IPC. During investigation on 28.11.2005 deceased Archana passed away. On account of her death merg was registered, which is Ex.P/1. 'Lash Panchnama' (Ex.P/2) was prepared. Map of place of crime is Ex.P/8. Burnt clothing along with one match box were also seized. After investigation, charge sheet was filed for commission of

offence punishable under Sections 498(A), 307 and 304(B) of IPC.

4. Appellant was tried for the offences under Sections 304(B) and 302/34 of IPC. Appellant abjured his guilt. The trial Court after appreciation of evidence available on record, has convicted and sentenced the appellant as under :-

Name of accused	Section	Punishment	Fine	In default, punishment
Durgesh Singh Bhadauria	302/34 IPC	Life Imprisonment	1000/-	Three Months RI

5. The grounds raised are that the judgment of conviction and sentence passed by the trial Court is illegal. The trial Court has erred in analyzing the evidence of prosecution. There was no reliable or cogent evidence despite the trial Court has convicted the appellant. It is further submitted that the prosecution witnesses are closely related witnesses and no independent witness was examined. There are lots of contradictions and omissions in the statements given by the witnesses during investigation and during trial. There is no iota of evidence with regard to demand of dowry or harassment or cruelty. The entire prosecution case is based on dying declaration given by the deceased. First dying declaration (Ex.D/3) was recorded by Investigating Officer Shehjad Khan (PW-14), on 25.11.2005 in JA Hospital, Gwalior and another dying declaration (Ex.P/10) was recorded by K.K.Singh Gour, Tahsildar (PW-8). The deceased was not fully conscious at the time of recording of her dying declaration. In the second dying declaration the deceased had not stated that she was caught hold and was closed in a room.

Therefore, there is contradiction between first dying declaration and second dying declaration. The doctor who conducted autopsy has opined that the deceased was 95% burnt and at such stage no one can speak. Therefore, the dying declaration recorded is also suspicious. The deceased was 95% burnt, therefore, she was not able to narrate anything despite dying declarations were recorded. It is further submitted that there are contradictions and omissions in the statements of eye-witnesses. The eye-witnesses are interested witnesses, therefore, their testimony is not reliable. The appellant and his family members brought the deceased to the hospital for her treatment. The aforesaid conduct also reflects that the incident was an accident. The mandatory provisions of law were not followed. There is no clinching and cogent evidence to connect the appellant with the incident. There are various lacunae in the investigation. The deceased died due to cardio respiratory failure, therefore, the conviction under Section 302 of IPC is illegal. Hence, prayed for setting aside the impugned judgement of conviction and sentence.

6. Per Contra, learned State Counsel opposed the submissions and submitted that the prosecution has proved the case beyond doubt before the trial Court. The trial Court has based its judgment mainly relying upon the dying declaration given by the deceased. The dying declaration is very well proved and is well connected with the other evidence available on record. As there is sufficient corroboration of dying declaration, the trial Court has rightly convicted and sentenced the appellant. Hence, no case is made out for interference.

7. Heard the learned counsel for the rival parties and perused the record.

8. It is admitted fact that present appellant is the husband of deceased Archana. Marriage was solemnized on 9.5.2004 wherein Rs.3,51,000/- along with one motorcycle and other domestic articles were given as dowry. It is also undisputed that the deceased was admitted in KRG Hospital, Gwalior for the treatment of her burn injuries and Dr. S.S.Jadon medically examined her and referred her to RSO Female Ward. Deceased Archana died on 28.11.2005.

9. Before proceeding with the case, it would be appropriate to discuss the relevant provisions of law.

10. Under Section 32 of Indian Evidence Act, 1872, a dying declaration is a relevant factor in evidence. It is adopted from English Law but there is distinction between English Law and Indian Law in regard to dying declaration.

11. In **Kishanlal vs. State of Rajasthan [AIR 1999 SC 3062]**, it is observed as under :-

“Now we proceed to examine the principle of evaluation of any dying declaration. There is distinction between the evaluation of dying declaration under the English Law and that under the Indian Law. Under the English Law, credence and the relevancy of a dying declaration is only when a person making such statement is in hopeless condition and expecting an imminent death. So under the English Law, for its admissibility, the declarant should have been in actual danger of death at the time when they are made, and that he should have had a full apprehension of his danger and the death should have ensued. Under the Indian Law, the dying declaration is relevant whether the person who makes it was or was not under expectation of death at the time of declaration. Dying declaration is admissible

not only in the case of homicide but also in civil suits. Under the English Law, the admissibility rests on the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. The general principle on which this species of evidence are admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak only the truth. If evidence in a case reveals that declarant had reached this state while making declaration then within the sphere of the Indian Law, while testing the credibility of such dying declaration weightage can be given. Of course depending on other relevant facts and circumstances of case.”

12. When a declaration is made by a person whose death is imminent, the principle attributed to Matthew Arnold that “truth sits upon the lip of a dying man” will come into play. The whole idea of accepting a statement in the name of dying declaration comes from a maxim “*Nemo moriturus praesumitur mentire*” which means- a man will not meet his maker with a lie in his mouth.

13. The principles relating to dying declaration are no longer res integra. In **Smt. Paniben vs. State of Gujarat [(1992) 2 SCC 474]**, it is observed as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.” **Mannu Raja v. State of M.P., [1976] 2 SCR 764.**

14. It is the moral duty of the Court to satisfy that the dying declaration is true and voluntary as observed in **State of UP**

vs. Ram Sagar Yadav [(1985) 1 SCC 552], wherein the Hon'ble Apex Court has observed as under :

“If the court is satisfied that dying declaration is true and voluntary, it can base conviction on it, without corroboration.”

15. In K. Ramachandra Reddy & Another vs. The Public Prosecutor [(1976) 3 SCC 618], it is observed that :

“This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.”

16. In State Of Maharashtra vs Krishnamurti Laxmipati Naidu [1980 Supp SCC 455], it is observed as under :

“Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. Similarly, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees the truth.”
Surajdeo Ojha And Ors. vs State Of Bihar [1980 Supp (1) SCC 769].

17. It is also very well observed in Nanhau Ram And Anr. vs State Of Madhya Pradesh [1988 Supp (1) SCC 152] that :

“Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration, look up to the medical opinion. But where the eye-witness has stated that the deceased was in a fit and conscious state to make dying declaration, medical opinion cannot prevail.”

18. In Mohanlal Gangaram Gehani vs State Of Maharastra [(1982) 1 SCC 700], it is observed as under :

“Where there are more than one statements in the nature of dying declaration, one first in point of time must be preferred.

Of course, if the plurality of the dying declarations could be held to be trustworthy and reliable, they have to be accepted.”

19. Whenever multiple dying declarations are recorded then Hon'ble Apex Court in **Kundula Bala Subrahmanyam And Anr vs State Of Andhra Pradesh [(1993) 2 SCC 684]**, has observed as under :

“Section 32 (1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not credit-worthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. 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. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same.”

20. In **Laxman vs State Of Maharashtra [(2002) 6 SCC 710]**, Five-Judges Bench of Hon'ble Apex Court has held that fitness certificate is not required while recording of dying declaration. Relevant para is as follows :

“Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is

recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

21. In Chacko vs State Of Kerala [(2002) 8 SCC 83],

Hon'ble Apex Court has observed as under :-

“We are aware of the judicial pronouncements of this Court that it is not always necessary that a dying declaration should be certified by a doctor before reliance could be placed on the same. But then in the absence of any such certificate, the courts should be satisfied that from the material on record it is safe to place reliance on such uncertified declaration.”
[See : **Ram Bai vs. State of Chhattisgarh, (2002 (8) SCC 83)**]

22. In Lella Srinivasa Rao vs State Of Andhra Pradesh [(2004) 9 SCC 713], it is held that :

“In the dying declaration which was recorded by the Magistrate, there was no mention about the appellant having treated the deceased with cruelty or having caused harassment. Appellant's name is not figured in the dying declaration. The deceased was in a position to make the statement. Five minutes thereafter another statement was recorded by the Head Constable, wherein the allegations were made against the appellant. It related to the immediate cause which led the deceased to commit suicide. The Court found that the witnesses including the father of the deceased did not support the case of the prosecution that the deceased was treated with cruelty by the accused, the Court did not act upon the second dying declaration.”

23. In Sayarabano @ Sultanabegum vs State Of Maharashtra [(2007) 12 SCC 562], it is held that “the offence involved was under Section 302 of IPC. There was a quarrel between the appellant/accused and the deceased, during which, it was the case of the prosecution that the appellant poured kerosene from lamp on the deceased, which resulted in the deceased catching fire and finally succumbed to the injuries. In the first dying declaration, the deceased attributed her catching fire to an accident. She absolved all the inmates of her husband's family of any wrong- doing. When the Special Judicial Magistrate was called on the next day for recording dying declaration, she stated a different version whereunder the accused was alleged to have thrown kerosene lamp on her and also her husband used to beat her after listening to his mother. **The deceased was asked by the Magistrate as to why she was changing her statement. The**

deceased told the Magistrate that she was told that she should not give any statement against the family members and she reiterated that the appellant/mother-in-law of the deceased had thrown kerosene lamp and she was burnt. The deceased died almost a week thereafter. The Court took the view that the judgment of the Court in **Lella Srinivasa Ra (supra)** was distinguishable noticing that in the said case there was no other evidence and this Court in **Sayarabano (supra)** also finally held as follows :

“In our opinion, criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. In our view, both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased Halimabi. In the light of the evidence of parents of the deceased (PW2 and PW3), Dr. Kishore (PW6) and Special Judicial Magistrate (PW5), it cannot be said that the Courts below had committed any error and the conviction deserves to be set aside.”

24. In relation to scrutiny of more than one dying declaration recorded in a case, the Hon'ble Apex Court in **Amol Singh vs State Of M.P [(2008) 5 SCC 468]**, has held as under :

“Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying

declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. (See: **Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684]**. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

25. In Lakhan vs. State of MP [(2010) 8 SCC 514],
Hon'ble Apex Court has observed as under :

“This Court was dealing with the case of death as a result of burn injuries suffered by the wife. In the first dying declaration before the Magistrate, the deceased stated that when she was cooking, kerosene oil had been put behind her back. In the next dying declaration, it was stated that the appellant/accused brought a metal container full of kerosene and poured it on her and fire was lit by him and she was burnt. This Court, after going through all the decisions held as follows :

“In view of the above, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit

physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”

26. In Sher Singh & Anr vs State Of Punjab [(2008) 4 SCC 265], the Hon'ble Court has held as under :

“This is also a case of burn injuries suffered by the deceased/wife of the appellant. Upon being taken to the hospital, the police officer recorded her statement, wherein it was stated that fire was accidental and it happened when she was preparing tea. When her Uncle met her on the next day, she informed that the accused had burnt her. On the very next day he moved an application for recording the statement which came to be recorded. Yet another application was moved requesting for re-examining the matter, as the deceased had made wrong statement initially before the police officer and another statement was accordingly recorded. In the second dying

declaration, the deceased had stated that she was burnt by her inlaws. It was stated that her father-in-law, brother-in-law and sister-in-law poured oil on her and burnt her. She further stated that her husband was not with her but in the next sentence, she stated that there were four persons. The fourth person was her husband. **She further stated that they had stated that unless she made wrong statement, they would not take her to the hospital.** It was thereafter that she made third dying declaration. The Court went on to hold as follows :

“In the present case, the first dying declaration was recorded on 18.7.1994 by ASI Hakim Singh (DW-1). The victim did not name any of the accused persons and said that it was a case of an accident. However, in the statement before the court, Hakim Singh (DW-1) specifically deposed that he noted that the declarant was under pressure and at the time of recording of the dying declaration, her mother- in-law was present with her. In the subsequent dying declaration recorded by the Executive Magistrate Rajiv Prashar (PW 7) on 20.7.1994, **she stated that she was taken to the hospital by the accused only on the condition that she would make a wrong statement.** This was reiterated by her in her oral dying declaration and also in the written dying declaration recorded by SI Arvind Puri (PW 8) on 22.7.1994. **The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was**

under threat and duress that she would be admitted in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural to us. Although it does not contain the certificate of the doctor that she was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue. The oral dying declaration made to the uncle is consistent with the second dying declaration implicating the accused persons stating about their involvement in the commission of crime. The third dying declaration recorded by the SI on the direction of his superior officer is consistent with the second dying declaration and the oral dying declaration made to her uncle though with some minor inconsistencies. The third dying declaration was recorded after the doctor certified that she was in a fit state of mind to give the statement.”

27. In Jagbir Singh vs State (Nct Of Delhi) [(2019) 8 SCC 779], it has been held as under :

“We would think that on a conspectus of the law as laid down by this court, when

there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a summersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relived of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered.”

28. In **Kanailal Sarkar vs. State of West Bengal [(2019) 13 SCC 435]**, it has been observed that the dying declaration only is sufficient to hold conviction. Similar observation has been made in **Prempal vs State Of Haryana [(2014) 10 SCC 336]**.

29. On the basis of above, following points are required to be considered :

- (a) Sole dying declaration may be the basis of conviction. No corroboration is required if the Court considers that the dying declaration is true.
- (b) In case of multiple dying declarations the Court analyzing the dying declaration is duty bound to analyze the dying declaration

recorded in surrounding facts of the case;

(c) The person while recording dying declaration is duty bound to first explain mental status of the victim;

(d) The person while recording dying declaration is duty bound to facilitate the favourable condition to the victim to express truth of the case;

(e) The person while recording dying declaration is duty bound to ensure that the dying declaration is not recorded in presence of any person who can directly or indirectly affect the freedom or free state of mind of victim;

(f) While considering the dying declaration the Court must satisfy that the statement is not the result of tutoring or prompting. In the eventuality of more than one dying declarations, the Court must analyze the facts and circumstances of the case in which the statement was recorded and should consider the dying declaration which has been given under most appropriate and reasonable situation;

(g) Any contradiction and omission, if exists in the dying declaration, will not be taken into consideration and the Court is free to link the circumstances of the case most reasonable and suitable to the dying

declaration.

30. In burn cases following observations made by Hon'ble Apex Court in various judgments are relevant to be mentioned here.

(i) In **Md. Farooq vs The State Of A.P.** [(2017) 1 SCC 529], it is observed by the Hon'ble Apex Court as under :

“The next argument was that the deceased suffered 90% burns and thereby she must have been administered with sedatives and hence she could not have given statement in a conscious and coherent state of mind. This argument, it must be said, holds no substance for the Magistrate deposed that the duty doctor informed him that they did not give any sedatives to the declarant. Further, PW12the post-mortem doctor stated that in case of burn injuries patient will speak until a few minutes or few hours before death. Above all, Ex.P13 shows that the duty doctor certified that the declarant was conscious, coherent and in a fit state of mind to give statement both before and after recording of the statement. In the light of strong evidence, there can be no demur about the fitness of the declarant to give statement.”

(ii) In **Bhagwan vs. State of Maharashtra** [(2019) 8 SCC 95], it has been held by Hon'ble Apex Court as under :

“18. Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration? This question is also no longer res integra. In [Vijay Pal v. State \(Government of NCT of Delhi\)](#) 2015 (4) SCC 749, we notice the following discussion:

“23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may

profitably refer to the decision in [Mafabhai Nagarbhai Raval v. State of Gujarat](#); (1992) 4 SCC 69: 1992 SCC (cri) 810 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In [State of M.P. v. Dal Singh](#); (2013) 14 SCC 159: (2014) 4 SCC (Cri) 141, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

19. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable.”

31. It is also relevant to mention here that in burn cases “**Rule of Nine**” as defined in Mody's Medical Jurisprudence is as follows :-

" **Definition.**- Burns are injuries produced by the application of dry heat such as flame, radiant heat or some heated solid substance like metal or glass, to the surface of the body. Injuries caused by friction, lightning, electricity, ultra-violet or infra-red light rays, X-rays and corrosive chemical substances are all classified as burns for

medico-legal purposes.

Scalds are moist heat injuries, produced by the application to the body of a liquid at or near its boiling point, or in its gaseous form, such as steam. Water above 60 C if in contact with skin for 10 seconds will result in partial skin loss and above 70 C will cause full thickness skin loss.

Scalds are usually not as severe as burns. They mostly produce hyperaemia and vesiculation, as the liquids producing them run off the surface of the body, and rapidly cool on accounts of their evaporation. They, however, resemble burns in severity, when produced by oils or other sticky substances, which boil at a much higher temperature than water. Scalds produced by molten metals cause great destruction of the affected tissues, as they stick to the affected parts.

Modes that Cause Burns

- . Flame due to actual contact of flame with the body
- . Contact due to physical contact of body with hot object
- . Radiant heat due to heat waves and X-rays and microwaves
- . Scalding due to contact with hot liquids
- . Chemical due to chemical corrosive substances

Undue exposure to the sun can also cause burns. The chemical rays of light. for example, ultra-violet rays, may produce erythema of the exposed part, or vesication. This is independent of heat as seen among mountaineers, though darker persons are less affected. It also has a photochemical action on the lipids of the skin. Ordinarily, the operator uses special protective measures for himself and for his patient, but

accidents may give a chance for legal action. Severe burns due to infra-red rays may cause necrosis and subsequent toughening of the involved tissues. An expert radiologist should assess the damages or alleged negligence.

Burns produced by different chemical corrosive substances often show distinctive stains and are usually uniform in character. The resulting eschars are soft and moist, and readily slough away. In these burns, the red line of demarcation is absent; the hairs are not scorched, nor are vesicles formed. However, Greek fire, which results from dissolving phosphorus in carbon bisulphide, produces vesication by rapid oxidation and burning of the phosphorus. The characteristic stains found on the skin and clothing usually assist in determining the nature of the corrosive used. Chemical analysis of the stained clothing, sloughed skin, and corrosive is also of importance in establishing the identity of the substance used for causing the burn.

Classification of Burns.- Dupuytren classified burns into six degrees, according to the nature of their severity. Modern classification (Heba's classification) accords three degrees only by grouping the first and second (epidermal), third and fourth (dermo-epidermal), and fifth and sixth (deep) degrees together. Another classification grades burns into superficial and deep burns.

(i) Epidermal Burns

(a) First degree. - First degree burns consists of erythema or simple redness of the skin caused by the momentary application of flame or hot solids, or liquids much below boiling point. It can also be produced by mild irritants. The erythema marked with superficial inflammation usually disappear in a few hours, but may

last for several days, when the upper layer of the skin peels off but leaves no scars. They disappear after death due to the gravitation of blood to the dependent parts.

(b) Second Degree.- Second degree burns comprise acute inflammation and blisters produced by prolonged application of a flame, liquids at boiling point or solids much above the boiling point of water. Blisters can be produced by the application of strong irritants or vesicants, such as cantharides. Blisters may also be produced on those parts of the body which are exposed to decomposing fluid, such as urine or faeces, and subject to warmth, as seen in old bed-ridden patients. In deeply comatose persons, bullae may occur over pressure areas. If burns are caused by flame or a heated solid substance, the skin is blackened, and the hair singed at the seat of lesion, which assumes the character of the substance used. No scar results as only the superficial layers of the epithelium are destroyed. However, subsequently, some slight staining of the skin may remain.

(ii) Dermo-Epidermal Burns

(a) Third Degree. - Third degree burn refers to the destruction of the cuticle and part of the true skin, which appears horny and dark, owing to it having been charred and shrivelled. Exposure of nerve endings gives rise to much pain. This leaves a scar, but no contraction, as the scar contains all the elements of the true skin.

(b) Fourth Degree.- In fourth degree burns, the whole skin is destroyed. The sloughs which form are yellowish-brown and parchment-like, and separate from the fourth to the sixth day, leaving an ulcerated surface, which heals slowly forming a scar of dense fibrous tissue with consequent contraction and deformity of the affected parts. The burns are not very painful as the

nerve endings are completely destroyed.

(iii) Deep Burns

(a) Fifth Degree.- Fifth degree burns include the penetration of the deep fascia and implications of the muscles, and results in great scarring and deformity.

(b) Sixth Degree.- Sixth degree burns involve charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. This degree, it may be noted, is not necessarily related to danger to life. Charring of a limb may be compatible with recovery, once the initial shock s overcome

Effects of Burns.- Burns and scalds vary in their effects according to the following conditions:

(i) Intensity of the Heat Applied.- The effects are much more severe if the heat applied is very great.

(ii) Duration of Exposure.- The symptoms are also more severe, if the application of heat is continued for a long time.

(iii) Extent of Total Body Surface Area.- To estimate the amount of area affected by second or third degree burns in percentage, the body is divided into different areas, each representing nine per cent. This is called the rule of nine. There is marked fluid loss resulting in shock when over 20 per cent of the body is affected and usually over 50 per cent is fatal.

(iv) Site.- Extensive burns of the trunk, even though superficial, are much more dangerous than those of the extremities. Burns of the genital organs and the lower part of the abdomen are often fatal.

(v) Age of the Patient.- Children are more susceptible to burns, but stand prolonged suppuration better than adults.

Older people are more prone to fatal complications.

(vi) Sex.- Sensitive and nervous women are more susceptible to burns than strong women, however, women generally do not bear burns as well as men.”

32. Now, in the light of above, we have to analyze the present case.

33. It is an admitted fact that the deceased was the married wife of appellant. The marriage was performed on 9.5.2004. It is also undisputed that the deceased died on 28.11.2005 due to burn injuries, i.e., within one and half years of marriage the deceased died under unnatural circumstances.

34. Dharam Singh (PW-1) stated in his deposition that at the relevant time he was Head Constable at Police Station Bahodapur. He received an information on 28.11.2005 from JA Hospital, Gwalior that Archana W/o Durgesh Singh, who was admitted on 24.11.2005 for the treatment of burn injuries, died during treatment on 28.11.2005. Accordingly, merg intimation was registered as Ex.P/1. Mukul Gupta (PW-2) has proved the Panchnama of body of Archana, i.e., Ex.P/2. The relevant witnesses have also proved Ex.P/2.

35. Dr. Pushpendra Singh (PW-12) and Dr. Yogendra Singh (PW-16) have stated in their statements that on 29.11.2005 post-mortem of deceased Archana was conducted by them. Post-mortem report is Ex.P/12. The aforesaid witnesses have proved contents and their signatures on Ex.P/12, whereby they have stated that the deceased was 95% burnt. Her hair, face, neck, upper portion of chest, both hands, stomach, legs, back side of body were burnt. The deceased died due to cardio respiratory failure. They have also opined that the deceased died due to burn injuries.

That means, the deceased died within seven years of her marriage under unnatural circumstances, i.e., due to burn injuries.

36. K.K.Singh Gour (PW-8) has proved the dying declaration (Ex.P/10) and has also proved the contents as well as thumb impression of the deceased.

37. In the present case, there is no eye-witness account as the incident took place inside the house of appellant, therefore there is no possibility of presence of outsider in the house of the appellant. Under these circumstances, the present case is required to be considered only on the basis of circumstantial evidence.

38. Now the dying declaration of the deceased Archana is required to be considered in the light of above discussion.

39. It is settled principle that the dying declaration may be the sole basis of conviction. In the present case deceased Archana had stated in her dying declaration as under :

“ मृत्यु पूर्व – कथन”

नाम –	अर्चना सिंह उर्फ गुडिया
W/o	दुर्गेश सिंह भदौरिया
उ.प्र –	23 वर्ष
निवासी –	आनंद नगर बहोड़ापुर ग्वालियर (म.प्र.)

प्रश्न –तुम कैसे जल गई?

उत्तर–मैं घर पर T.V. देख रही थी, तभी मुझ पर पीछे से तेल डाल दिया एवं आग लगा दी। तेल मिट्टी का था।

प्रश्न –मिट्टी का तेल किसने डाला एवं आग किसने लगाई?

उत्तर–मिट्टी का तेल मेरे ऊपर मेरे पति दुर्गेश, बुआ हेमलता, एवं ननद–शिखा द्वारा डाला गया एवं इन्होंने आग लगा दी?

प्रश्न –घटना का समय क्या था?

उत्तर–रात्रि के 10 बजे के करीब का समय था।

प्रश्न –अस्पताल में भर्ती किसने कराया व कब कराया?

उत्तर—यही आग लगाने वाले लोग आग लगाने के बाद 20, 25 मिनट बाद मुझे अस्पताल लेकर भर्ती कराया, स्वयं कहा, ससुराल वाले दहेज लालची है कम्प्यूटर, एवं नई गाड़ी की मांग करते थे।

प्रश्न—इस घटना के पूर्व ससुराल वालो का तुम्हारे पति कैसा व्यवहार था?

उत्तर— मेरे पति का शुरू से ही मेरे प्रति व्यवहार ठीक नहीं था।

..... बांया निशान/अंगूठा”

40. On perusal of dying declaration it is apparent that the deceased had given the aforesaid dying declaration voluntarily and the statement given is trustworthy and needs no corroboration. The deceased had also stated in her dying declaration that the appellant along with other co-accused were demanding dowry and their behaviour was not good. Appropriate certificate is also affixed by the doctor concerned while recording dying declaration.

41. Learned counsel for the appellant has submitted that the deceased was under treatment and was given pain relief medicines and was under sedation and, therefore, was not able to give her dying declaration.

42. On perusal of dying declaration it is apparent that the dying declaration (Ex.P/10) was recorded at around 4.15 pm on 25.11.2005. K.K.Singh Gour (PW-8) was requested to take dying declaration in the morning at around 8.30 am and thereafter no medication was given. Therefore, the argument raised is not sustainable. Remaining eye-witnesses have proved all the relevant investigation and the defence version available on record is not reliable.

43. In the light of the foregoing discussion, we are of the considered opinion that the trial Court has properly and legally analyzed and appreciated the entire evidence available on record and did not err in convicting and sentencing the present appellant.

The appeal filed by the appellant appears to be devoid of any substance.

44. Consequently, the appeal filed by appellant Durgesh Singh Bhadauriya is hereby dismissed and his conviction and sentence are hereby affirmed. The appellant is in jail. He be intimated with the result of this appeal through relating Jail Superintendent.

With a copy of this judgment record of the trial Court be sent back immediately.

(Yog) **(G.S.Ahluwalia)**
 Judge

(Rajeev Kumar Shrivastava)
 Judge