

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	Criminal Appeal No.333/2008
2	Parties Name	Devkaran Vs. State of M.P.
3	Date of Judgment	18/8/2021
4	Bench constituted of	Hon'ble Shri Justice Vivek Rusia and Hon'ble Shri Justice Shailendra Shukla
5	Judgment delivered by	Hon'ble Shri Justice Shailendra Shukla
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri Deepak Rawal, learned counsel for the appellant. Shri Amit Singh Sisodiya, learned Govt. Advocate for the respondent/State.
8	Law laid down	<p>(A) Conviction only on the basis of dying declaration recorded under Section 32 of Evidence Act – Before convicting only on the basis of dying declaration, the Court must act with prudence and due caution and care and in case doubt arises, then it is an obligation to closely scrutinise all the relevant attendant circumstances.</p> <p>Judgments relied upon :-</p> <p>(1) Khushal Rao Vs. State of Bombay [AIR 1958 SC 22].</p> <p>(2) Panchdeo Singh Vs. State of Bihar [AIR 2002 SC 526].</p> <p>(3) Tapinder Singh Vs. State of Punjab and another [1970(2) SCC 113].</p> <p>(B) Evidentiary value of dying declaration of injured who has survived – Such statements are inadmissible under Section 32 of Evidence Act but can be used for corroboration under Section 157 of the Evidence Act or for contradiction under Section 155 of the Evidence Act.</p> <p>Judgment relied upon :-</p> <p>(1) Ramprasad Vs. State of Maharashtra [(1999) 5 SCC 30].</p>
9	Significant paragraph numbers	18, 22, 23, 24 & 25.

(Vivek Rusia)
Judge

(Shailendra Shukla)
Judge

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(DIVISION BENCH: HON. MR. JUSTICE VIVEK RUSIA & HON. MR.
JUSTICE SHAILENDRA SHUKLA)

Criminal Appeal No.333/2008

Devkaran S/o Nathulal,
 Aged – 35 years,
 Occupation – Craftsman,
 R/o – Village Panchdehriya,
 P.S. - Awantipur, Badodiya,
 District - Shajapur (M.P.)

.... Appellant

Versus

State of Madhya Pradesh
 P.S. - Awantipur, Badodiya,
 District - Shajapur (M.P.)

.... Respondent

 Shri Deepak Rawal, learned counsel for the appellant.

Shri Amit Singh Sisodiya, learned Govt. Advocate for the
 respondent/State.

Whether approved for reporting :

JUDGMENT

(Delivered on 18/8/2021)

Per, Shailendra Shukla, J :-

1/ This appeal has been filed under Section 374 Cr.P.C. against the judgment of conviction and sentence dated 28.2.2008 pronounced in S.T. No.205/06 by the ASJ, Shujalpur, District Shajapur, whereby the applicant has been sentenced to Life Imprisonment and fine of Rs.200/- for committing offence under Section 302 of IPC. In lieu of payment of fine, the appellant has been directed to undergo one month's additional imprisonment.

2/ It is admitted that deceased Sangeeta Bai was the wife of the appellant (marriage contracted through Natra) and that she had succumbed to her burn injuries.

3/ The prosecution story, in short, was that on 22.8.2006 at about 12 to 12.30 pm deceased Sangeeta Bai resident of Village Panch Dehriya, District Shajapur was at her house and an altercation ensued between deceased and appellant, since the appellant had refused to give her 10 Rupees for purchasing clip and rubber. Appellant had also assaulted deceased and then as per prosecution story, he poured kerosene oil over Sangeeta Bai and set her ablaze. Sangeeta Bai was brought in burnt condition at Civil Hospital, Shujalpur. Her dying declaration was recorded by Naib Tehsildar. She was subsequently shifted to Hamidia Hospital at Bhopal but succumbed to her injuries on 25.8.2006. Merg intimation was sent to Coafiza Police Station at Bhopal. After instituting the Merg, the dead body was subjected to postmortem and that report was sent to police station Avantipur Badodiya, District Shajapur, in which case under Section 307, 302 IPC was registered at Crime No.191/06. Investigation was initiated by investigating officer, who drew spot map and seized incriminating items which were sent to FSL. After completing the investigation, the charge sheet was filed before the JMFC, Shujalpur who committed the case after taking cognizance to Sessions Judge, Shajapur, who made over the case to ASJ, Shujalpur.

4/ The trial Court framed charge under Section 302 of IPC. The accused abjured his guilt and his defence was that it was deceased Sangeeta Bai who had put herself on fire and the appellant had tried to save her and in the process he himself suffered serious burn injuries.

5/ The trial court has examined 15 witnesses, whereas the appellant has not examined any defence witness.

6/ The presiding officer vide impugned judgment has found charge framed against the appellant proved on the basis of available evidence and convicted and sentence the appellant, as described earlier.

7/ In the appeal which has been filed, it has been stated that the trial Court has erred in appreciating the evidence available on record, that there was clear evidence that deceased had ablazed

herself and in the process of saving her, the appellant himself had sustained serious burn injuries and his defence has been accepted by the prosecution witnesses only, that the trial Court has gone on to convict the appellant only on the basis of dying declaration without assessing the truthfulness of the same and the citations which had been filed by the appellant in support were looked over by the trial court. On these grounds the appeal has been sought to be allowed.

8/ The question before us is, whether in view of the grounds contained in appeal and submissions made by learned counsel for the appellant, the appellant deserves to be acquitted?

9/ There are two sets of witnesses led by the prosecution. One set of witnesses have stated that they had seen smoke billowing out of the house of appellant Devkaran and Devkaran came rushing over, who was made to climb on the upper storey where the fire was raising, that Devkaran entered and tried to save Sangeeta Bai who was already in flames at that point of time and appellant also got burnt in the process. The other set of witnesses are the relatives of deceased Sangeeta Bai, who claimed to have heard Sangeeta Bai telling them that she was burnt by appellant. These witnesses apart, Naib Tehsildar Smt. Asha Parmar (PW-11) has also recorded the dying declaration of Sangeeta Bai, in which she has accused appellant by having set her ablaze.

10/ The set of witnesses in the first category are Chander Singh (PW-2), Amar Singh (PW-3) and Kailash (PW-4). All of them have stated that at the time of incident they were sitting in the courtyard of a temple, from where they had seen the incident as described earlier. All these witnesses have been declared hostile by the prosecution. They deny the police statements given by them which were supporting the prosecution story but they deny the suggestion that they are not stating truth because of their good neighbourly relations with appellant. Witnesses such as Chander Singh (PW-2) has described in great detail about the sequence of events leading to appellant rushing inside his house to save the deceased, got himself burnt seriously, that Sangeeta Bai having jumped from the gallery and

subsequent shifting of Sangeeta Bai to the hospital. These witnesses, however, do not know as to whether there was any dispute between Sangeeta Bai and Devkaran.

11/ The other set of witnesses are Gopalsingh (PW-5), Sanjay (PW-6) and Binda Bai (PW-7) who have stated that while Sangeeta Bai was being shifted from Shujalpur to Bhopal, Sangeeta Bai had told them that it was appellant who had set her ablaze pursuant to dispute ensued because of not giving of 10 Rupees to her by appellant. These are relatives of Sangeeta Bai i.e. Gopal Singh (PW-5) and Sanjay (PW-6) being the brothers of Sangeeta Bai and Binda Bai (PW-7) being the mother of the deceased. Gopal Singh (PW-5) has admitted in cross-examination that Sangeeta Bai was earlier married to one Karan Singh, who was of unsound mind and then she had contracted Natra marriage with the appellant. He admits that after marriage Sangeeta Bai used to come for some time to her parental house and then used to go to stay with her brother-in-law Badri and her association with Badri was disliked by the witness and her family members, who wanted Sangeeta Bai to stay more in her parental house. This witness in Para-6 has stated that when he went to Shujalpur hospital, he saw Sangeeta Bai lying inside a jeep and was sleeping. He does not state as to when Sangeeta Bai had woken up or regained consciousness during her journey from Shujalpur to Bhopal, when she levelled allegations against appellant Devkaran. Another witness namely Sanjay (PW-6) states that Sangeeta Bai during the course of journey from Shujalpur to Bhopal had levelled allegations against Devkaran. This witness states that Sangeeta Bai had told him that accused after assaulting her had poured kerosene oil over her and set her ablaze and when Sangeeta Bai shouted, he locked the door from outside and went away and then when villagers arrived on the spot, the accused came to the spot to save her. However, in statements Ex.D/2 the witness has stated that the aforesaid dying declaration had been made to him by Sangeeta Bai at Shujalpur hospital and not in the jeep. Similarly Gopal Singh (PW-5) in his police statements has stated that when he arrived at the Shujalpur hospital, he saw Sangeeta Bai lying in pain in a jeep and at

that point of time only Sangeeta Bai had told him about the incident. He does not state that during the course of journey from Shujalpur to Bhopal the incident was narrated by Sangeeta Bai. A perusal of Ex.D/1 also shows that the witness has stated that it was the villagers who had told the witness about what Sangeeta Bai was alleging against Devkaran but then the words “गांव वालो ने बताया” have been scored off and in its place “गांव वालो के सामने संगीता ने बताया”, have been substituted. The last related witness is Binda Bai (PW-7) who is the mother of deceased, who states that she was told by Sangeeta Bai at Bhopal hospital that she had been set ablaze by Devkaran. In her cross-examination she denies the suggestion that Badri, the brother-in-law of Sangeeta, used to frequent her house at Panch Dehriya, where Sangeeta Bai used to live and appellant used to dislike such frequenting of Badri to the house of Sangeeta Bai.

12/ It has been seen that there are discrepancies in court statements and police statements of Gopal Singh (PW-5) and Sanjay (PW-6). The dying declaration of deceased were recorded at Shujalpur by Smt. Asha Parmar (PW-11), who was posted as Naib Tehsildar at Shujalpur on 22.8.2006. The witness states that she had received a letter from Shujalpur police seeking to record the dying declaration of Sangeeta Bai. She states that she arrived at Shujalpur hospital and recorded the dying declaration in question and answer form as per Ex.P/12. This she recorded after obtaining certificate by Dr. K.K. Joshi (PW-8) that the victim was in fit state of mind to make statements. She has not narrated as to what questions were asked and what answers were given, for that Ex.P/12 would have to be seen. In Ex.P/12 Sangeeta Bai has stated that she was set on fire by her husband after pouring kerosene oil over her. She has been asked the reason for the same, to this question she has replied that appellant was quarrelling with her from the previous night as she had asked for 10 Rupees from him for purchasing rubber and clip but appellant declined and started assaulting her. She has further been asked as to whether she was tried to be rescued by someone? She answers that it was appellant Devkaran who had tried to rescue her and that neighbours had come

to the spot on hearing her shrieks. She has been asked as to whether she wants to say anything else? To this she answers that she is wife of Devkaran by Natra and as per such contract she was to be given Rs.15,000/- which were collected by her brother-in-law Badri Prasad and then the appellant bought buffalo from Badri Prasad for Rs.9,000/- but this money was never paid by appellant to Badri Prasad and quarrel used to ensue on this ground.

13/ On the top of dying declaration (Ex.P/12) there is remark by the concerned doctor that Sangeeta Bai is in fit state of mind to give her statements. This remark has been written by Dr. K.K. Joshi (PW-8), who admits that he had made such statements. In cross-examination he admits that he has not written about the general condition of Sangeeta Bai but has stated in examination-in-chief that the extent of burn injuries was 60 to 70%.

14/ There is no reason to controvert the certificate given by doctor that Sangeeta Bai was in fit state of mind to make statements. Suggestion is being given to Naib Tehsildar Smt. Asha Parmar (PW-11) that Sangeeta Bai was in fact unconscious and this suggestion has been denied by her. She categorically states in cross-examination that when she was recording statements, she had asked the family members of Sangeeta Bai to go out of the room.

15/ Thus, there is no dispute regarding the fact that Sangeeta Bai was in fit state of mind to give her dying declaration and it is also apparent that the dying declaration was recorded by Naib Tehsildar Smt. Asha Parmar (PW-11) in question-answer form, in which the victim levelled allegations against the appellant as the one who had poured kerosene oil over her and set her ablaze.

16/ The witness Smt. Asha Parmar (PW-11) has also stated that she had recorded the dying declaration of appellant Devkaran as well, as per Ex.P/13. The format of examination of Devkaran was also in question-answer form. As per Ex.P/13 the appellant had stated that Sangeeta had in fact poured kerosene oil over him and it was Sangeeta who had set him ablaze and then she had poured kerosene oil over herself and set herself also ablaze. Thereafter he was asked as

to why both of them had got burnt? To this the witness replies that at around 12 p.m. Sangeeta Bai had asked him to give 10 Rupees for purchasing rubber and clip, to this Devkaran told her to get these items from the money which he had given to her a day before. To this Sangeeta Bai told him that if he cannot bear her expenses, then why she was brought at all by him and that she does not want to stay with him and then she went inside the house before Chander and Kailash and she bolted the front door of the lower storey of the house and went upstairs and set herself on fire. Then appellant was made to climb over by Chander and Kailash and then Devkaran tried to douse the fire and save her but got burnt in that process. Further question has been asked as to whether both had entered into a quarrel? To this Devkaran has stated that there was no quarrel but there was some altercation. He has further been asked as to whether there was dispute relating to money? The appellant replies that there was no dispute and that he had volunteered to pay back Natra money from selling of Soyabeen crop. He has been asked as to whether he want to say anything else? To this he replies that his wife did not want to stay any more in his house. The aforesaid statements have also been preceded by certificate from Dr. K.K. Joshi (PW-8), who has stated that he had given certificate that Devkaran was in fit state of mind to depose.

17/ As far as the admissibility of statements of Devkaran is concerned, clearly such statements cannot be considered to be dying declaration because the appellant has survived the injuries. However, the statements made to Naib Tehsildar and not to police, do not suffer from the restrictions of Section 162 Cr.P.C. because these are not statements made to police under Section 161 Cr.P.C. Hence, these statements are nevertheless admissible.

18/ Hon'ble Supreme Court in the case of **Ramprasad Vs. State of Maharashtra [(1999) 5 SCC 30]** has laid down that although the dying declaration of the injured who survives, cannot be considered to be the dying declaration admissible under Section 32 of Evidence Act but it would be included as a former statement made by a witness relating to the same fact and can be used for corroborating or

contradicting the testimony of such a witness. The relevant paras are excerpted as under:-

“15. Be that as it may, the question is whether the Court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before “any authority legally competent to investigate the fact” but its use is limited to corroboration of the testimony of such a witness. Though a police officer is legally competent to investigate, any statement made to him during such an investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such a statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.

16. In *Maqsoodan v. State of U.P.* [(1983) 1 SCC 218] a three-Judge Bench of this Court has stated the legal position thus: (SCC p. 223, para 11)

“11. When a person who has made a statement, may be in expectation of death, is not dead, it is not a dying declaration and is not admissible under Section 32 of the Evidence Act. In the instant case, the makers of the statements Exts. Ka-22 and Ka-23, are not only alive but they deposed in the case. Their statements, therefore, are not admissible under Section 32; but their statements however are admissible under Section 157 of the Evidence Act as former statements made by them in order to corroborate their testimony in court.”

19/ The prosecution has exhibited the statements recorded by appellant Devkaran, thereby admitting to the fact that Devkaran was also injured in the process. The witnesses Chander Singh (PW-2), Amar Singh (PW-3) and Kailash (PW-4) all have stated that the appellant had entered the house to save his wife. The aforesaid statements stand corroborated by statements made by Devkaran as per Ex.P/13. Vice-versa the statements in Ex.P/13 have been corroborated by Chander Singh (PW-2), Amar Singh (PW-3) and Kailash (PW-4).

20/ From conjoint reading of the dying declaration of Sangeeta Bai and statements Ex.P-13 of Devkaran, one common thread which emerges is that there was indeed an altercation prior to the incident

between Sangeeta Bai and Devkaran which ultimately led to engulfment of Sangeeta Bai in flames. While Sangeeta Bai has stated that she was set ablaze by appellant, the appellant states that it was Sangeeta Bai only who herself had set on fire and that appellant had got burnt in the process of saving her. As already seen, appellant's story has been corroborated by Chander Singh (PW-2), Amar Singh (PW-3) and Kailash (PW-4). Out of them Chander Singh (PW-2) and Amar Singh (PW-3) have also been named by the appellant in Ex.P/13 purporting to be his dying declaration.

21/ It has already been found that the story of dying declaration made by Sangeeta Bai to Gopal Singh (PW-5) and Sanjay (PW-6) suffers from contradictions and omissions, as far as the court deposition of the witnesses and their police statements are concerned. As far as Binda Bai (PW-7) is concerned, she has stated that the dying declaration was made to her by her daughter Sangeeta Bai at Bhopal. However, there is no statement recorded by the investigating officer or any doctor at Bhopal, who would have described the condition of Sangeeta Bai when she was admitted at Bhopal. The only medical specialist is Dr. Arnit Arora (PW-15) who had conducted the postmortem examination of Sangeeta Bai on 25.8.2006 and had found that the death was due to burn injuries sustained by her and complications thereof, resulting in stoppage of her heart. The report is Ex.P/20 carrying signatures of the witness at A to A part. In absence of any evidence as to the general condition of Sangeeta Bai, the statements of Binda Bai (PW-7) become doubtful. In her police statements (Ex.D/3) she has made no such statement that Sangeeta Bai had given any statement to her.

22/ Thus, the only evidence against the appellant is the dying declaration of Sangeeta Bai made to Smt. Asha Parmar, Naib Tehsildar (PW-11). As far as the sanctity of dying declaration is concerned, the general perception is that a dying person would be speaking the truth. Matthew Arnold in a very old English case **Lyre LCR InRe Vs. Woodstock [(1789) 1 Leach 500]** expounded upon the latin principle of *nemo moriturus praesumitur mentire*, which broadly translated would

mean that truth sits on the lips of a dying person. Section 32 of the Evidence Act specifies that such dying declarations are admissible and can be relied upon even for convicting the accused persons. However, the Apex Court, in its various judgments, has held that before convicting the accused only on the basis of dying declaration, the Court must act with prudence and due caution and care. The locus classicus in this regard is **Khushal Rao Vs. State of Bombay [AIR 1958 SC 22]**, in which the Hon'ble Apex Court has held as under:-

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) 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; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that 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; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

23/ Thus, the Court has caution that if the order test the reliability of dying declaration, the Court has to keep in view the circumstances :-

“17. Hence, 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.

If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities, referred to above or from such other infirmities as may be disclosed in evidence in that case.”

24/ Further in the case of **Panchdeo Singh Vs. State of Bihar** [AIR 2002 SC 526] it has been held that if there is some infirmity, howsoever negligible it be, the court unless satisfied with the credibility thereof, ought to look for some corroboration. The relevant Para 3 is excerpted as under:-

“3. One of the latest pronouncement of this Court pertaining to the subject find place in the decision of Arvind Singh v. State of Bihar (J.T. (2001) 5 SCC 127) wherein, this court observed that apart from the care and caution factors as noticed earlier the dying declaration ought otherwise to be treated as trustworthy. The issue thus becomes as to whether the dying declaration has been able to bring about a confidence thereon or not - is it trustworthy or it is a mere attempt to cover up the latches of investigation: it must allure to the satisfaction of the court that reliance ought to be placed thereon rather than a distrust: The confidence of the court is the summum bonum and in the event of there being any affirmation thereto in the judicial mind, question of any disbelieve or distrust would not arise. In the event however of there being some infirmity, howsoever, negligible it be, the Court unless otherwise satisfied about the credibility thereof, ought to look for some corroboration, if however it is otherwise, question of requirement of a corroboration would not arise: dying declaration alluring confidence of the court would be a sufficient piece of evidence to sustain conviction. There is no format as such of dying declaration neither the declaration need be of any longish nature and neatly structured. As a matter of fact, perfect wording and neatly structured dying declaration may bring about an adverse impression and create a suspicion in the mind of the court since dying declarations need not be drawn with mathematical precision - the declarant should be able to recollect the situation resulting in the available state of affairs.”

25/ Going further in the case of **Tapinder Singh Vs. State of Punjab and another** [1970(2) SCC 113], the relevant para is Para-5 of the aforesaid judgment which is excerpted as under:-

“5. The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Section 32(1) of the Indian Evidence Act in a case in which the cause of that person's death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances.....”

26/ As already found, the statements of appellant that he had entered the house on seeing fire in the upper storey of the house and had tried to save his wife Sangeeta Bai, has been corroborated by two other prosecution witnesses. In view of such discordant evidence between the dying declaration and the aforesaid available evidence, it would be appropriate to look for further corroborative piece of evidence available on record.

27/ Dwarika Sharma (PW-13) is the investigating officer, who had drawn the spot map (Ex.P/16) and had collected a plastic bag and another plastic bag containing bra of Sangeeta Bai as well as a burnt yellow colour blouse. The witness states that the seized items had been sent to FSL and the FSL report is Ex.P/17. A perusal of spot map s(Ex.P/16) does not show any vessel/tumbler carrying kerosene oil. However the seizure memo (Ex.P/14) shows recovery of a plastic bag which has been found to be singed at various places and as per FSL report (Ex.P/17) it is this half burnt plastic bag (Article A) in which traces of kerosene oil have been found, meaning thereby that the kerosene oil was in fact kept in plastic bag. As per FSL report (Ex.P/17) kerosene oil traces were also found on the bra and blouse of Sangeeta Bai. This shows that kerosene oil had already been kept in the room in plastic bag, which was used for enflaming the deceased. The extent of burn injuries on Devkaran are also quite extensive i.e. up to 35% showing overt act on his part to save Sangeeta Bai. Coupled with the aforesaid facts, the statements of appellant Devkaran supported by prosecution witnesses Chander Singh (PW-2) and Amar Singh (PW-3)

land credence to the defence story that Devkaran was helped by these witnesses to climb the upper storey of the house to save Sangeeta Bai and in the process Devkaran suffered injuries while trying to douse the fire. The incident had occurred in the day time and it does not appear that the witnesses Chander Singh (PW-2), Amar Singh (PW-3) and Kailash (PW-4) are planted witnesses or chance witnesses. It does appear that the already running dispute between Sangeeta Bai and Devkaran had assumed serious proportions just prior to the time of incident. However, it has not been proven that appellant had doused his wife Sangeeta Bai in kerosene oil and had set her ablaze. The dying declaration requires corroboration in this particular case but lacks in this regard.

28/ After duly considering the evidence on record, we are of the considered view that the prosecution has not been able to prove beyond reasonable doubt that it was appellant who had set Sangeeta Bai ablaze and committed her murder. Consequently his conviction and sentence under Section 302 IPC is set aside. The appeal stands **allowed**. The appellant, if is in jail, be released forthwith.

29/ Let a copy of this judgment along with original record be sent to the trial Court for compliance.

30/ The disposal of the property shall be as per the order of trial Court.

(Vivek Rusia)
Judge

(Shailendra Shukla)
Judge