IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
&
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

<u>CRIMINAL APPEAL No. 1202 of 2010</u>

<u>BETWEEN:-</u>

1. **ANTAR SINGH AND 2 ORS. S/O SHRIPUNA JI KIR, AGED ABOUT 36 YEARS, KHEDA LASUDIYA, TEH.TARANA, DISTT.UJJAIN (MADHYA PRADESH)**
2. **CHANDU S/O PUNA JI KIR, AGED ABOUT 70 YEARS, KHEDA LASUDIYA TEHSIL TARANA (MADHYA PRADESH)**
3. **BHANWAR BAI W/O POONAJI, AGED ABOUT 70 YEARS, KHEDA LASUDIYA TEH TARANA UJJAIN (MADHYA PRADESH)**

.....APPELLANTS

(MS. SHARMILA SHARMA, LEARNED COUNSEL FOR THE APPELLANTS

<u>AND</u>

THE STATE OF MADHYA PRADESH
GOVT. THROUGH POLICE
STATION KAYATHA,
DISTT.UJJAIN (MADHYA PRADESH)

.....RESPONDENT

SHRI MUKESH KUMAWAT APPEARING ON BEHALF OF A.G..
\

Reserved on 10.11.2022

Pronounced On 16.12.2022

This appeal having been heard and reserved for judgement, coming on for pronouncement this day, ***JUSTICE SHRI RAJENDRA KUMAR (VERMA)*** *pronounced the following:*

****

JUDGEMENT

01. Appellants have preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment of conviction and order of sentence dated 09.09.2010 passed in Sessions Trial No.190/2009 passed by 6th Additional Sessions Judge, Ujjain, whereby the all the appellants have been convicted for the offence punishable under Section 302 of I.P.C. and sentenced to undergo life imprisonment with a fine of Rs.500/-, in default of payment of fine, to further undergo 09 months R.I. In addition appellant no.1/Antar Singh and Appellant No.2 Chandu have also been convicted for the offence punishable under Section 498-A of IPC and 376 of IPC and sentenced to undergo 3 years and 10 years respectively with fine of Rs.200/-200/- and with default stipulations.

02. The prosecution story, briefly stated, is that on 28.12.2007 at about 2PM, when the injured/deceased Laxmibai was taking the kerosene oil for ablazing the stove, the kerosene oil was poured accidentally on her and she was ablazed on fire and on crying, her brother-in-law Kailash has tried to save her by pouring water and taken her to the Community Health Center, Tarana. After primary treatment at CHC, Tarana, the matter was intimated to the police station Tarana, Ujjain. Head Constable Bherulal (PW-15) of Police Station- Tarana reached to the hospital and recorded the statement of the injured Laxmibai and Kailash on 28.12.2007 vide Ex.D/5 and Ex.D/4 respectively. On 29.12.2007, at District Hospital Ujjain her statements were recorded vide Ex.D/6 by Assistant Land Measurement Officer, Prakash Bhotra (DW-1) at about 12.30 PM in which she has

narrated the story as narrated to PW-15 Bherulal. Thereafter, on 03.01.2008, Police Station Tarana has informed the SHO, Police Station Kaitha, Ujjain regarding the incident and Sanha Janch with Rojnamcha Sanha, MLC Report alongwith the statements of injured and Kailash. Thereafter, on 04.01.2008, C.S. Bamniya, SHO of Police Station Kaitha reached to the District Hospital Ujjain where a letter/application (Ex.P/22) was written by the injured to SHO for recording of her statements submitting that earlier statements were wrongly given by her in pressure. He recorded her statements at about 1.30 PM on 04.01.2008 and also called the Tehsildar, Ujjain who has also taken her statements vide Ex.P/16 wherein she narrated that her brother-in-law (applicant Chandu) has outraged her modesty, she told this incident to her mother-in-law (appellant Bhanwarbai) and thereafter, they have set her on fire by pouring kerosene oil and neighbor Dilip and Raysingh Gurjar have saved her and Dilip had taken her to the hospital. In the statements, she has also alleged that the appellants were demanding dowry again and again. On the basis of the aforesaid statements recorded on 04.01.2008, the police has registered the FIR against the appellants under Section 307, 376/34 of IPC. Thereafter, during treatment, the injured was died on 06.01.2008, hence later on, offence under Section 302 of IPC was also added.

03. During investigation, the investigating agency prepared spot map, recorded the case diary statements of the witnesses and after following the due process, filed the charge-sheet was filed against the appellants.

04. Appellants were charged for offence under Section 302, 376 and 498-A of I.P.C. They abjured their guilt and took a plea that they have

been falsely implicated in the present crime and prays for trial.

05. In support of the case of prosecution, the prosecution has examined as many as 17 witnesses namely Dr. D.B. Purohit (PW-1), Gyaneshwari (PW-2), Sunder Singh (PW-3), Narendra Gome (PW-4), Bhanwarsingh (PW-5), Dr. Ajay (PW-6), Samanbai (PW-7), Vasudev (PW-8), Meharban (PW-9), Nanuram (PW-10), Gokulsingh (PW-11), Kailash Chandra (PW-12), A.K. Sharma (PW-13), Rajendra Shamra (PW-14), Bherulal (PW-15), Rajeev Singh (PW-16) and Chander Singh (PW-17).

06. In defense, the appellants have examined Prakash Bhothra DW-1, the then Tehsildar/Assistant Land Measurement Offier, Ujjain, Bherulal, Head Constable (DW-2) and Dr. Sunil Sultankar (DW-3).

07. Learned trial Court, on appreciation of the evidence adduced by the parties, pronounced the impugned judgment and finally concluded the case and convicted the appellants for commission of the said offence under the provisions of the I.P.C., as stated above.

08. Learned counsel for the appellants submits that the appellants are innocent and the learned Trial Court has convicted the appellants wrongly without considering the evidence available on record. There are material omissions and contradictions in the statements of the prosecution witnesses. The learned Trial Court has not considered the evidence in right aspect and convicted the appellants solely on the basis of the statements of deceased recorded almost after six days of the incident which prima facie is given after thought and after the influcne of the family members of the deceased. Earlier, her statements were recorded twice i.e firstly by Head

Constable Bherulal (PW-15) on 28.12.2007 and on next day i.e. on 29.12.2007, her statements were recorded by Prakash Bhothra. DW-1, but the learned trial Court has wrongly discarded the version of both the dying declarations which were taken firstly. It is further submitted that the learned trial Court has only convicted the appellants consider the dying declaration Ex.P/16 recorded by A.K. Sharma, (PW-13), the then Tehsildar, Ujjain. It is also submitted that no doctor was examined by the prosecution to prove that the injured/deceased was in a fit condition to give her statements. It is further submitted that the leaned trial Court has erred in convicted appellant No.2 Chandu for the offene punishable under Section 376 of IPC without appreciating the medical evidence as well as other material available on record. The learned trial Court has also erred in not relying upon the defense witness who has supported the case of the appellants. Learned counsel for the appellants further submits that the appellant/antar Singh has wrongly been convicted by the learned trial Court under the provisions of 498-A also because, during last 10 years of their marriage, the deceased had never been raised alarm to anyone regarding demand of dowry by the appellants and all the statements given on 04.01.2008 were after thought. It is also submitted that the defence of appellants have been totally ignored by learned trial Court and the prosecution has failed to prove its story beyond reasonable doubt. Therefore, prays for acquittal of the appellants.

09. Learned Public Prosecutor has opposed the prayer. Inviting our attention towards the conclusive paragraphs of the impugned judgment, learned public prosecutor has submitted that the learned trial Court has convicted the appellants rightly after considering each and every facts and

evidence available on record produced by the prosecution. It is further submitted that all the allegations leveled against the appellants have been found proved by the learned trial Court after appreciation of evidence. Hence, appellants are not entitled for any relief and prays for dismissal of the appeal.

10. I have considered rival contentions of the parties and have perused the record.

11. In the case in hand, there are as many as 07 dying declaration as under:

> *(i) First one, just after the incident was recorded by Head Constable Bherulal (PW-15) of P.S. Tarana on 28.12.2007 which is exhibited as D/5.*
>
> *(ii) Second was recorded as Ex.D/6 by Prakash Bhothra, Assistant Land Measurement, Officer (DW-1) on 29.012.2007 at 12.30PM at District Hospital Ujjain in presence of Dr. Sunil Sultankar (DW-3).*
>
> *(iii) the deceased Laxmibai told the incident to her mother Samanbai (PW-7) on 29.12.2007 that appellant Chandu has committed rape upon her and thereafter, she was burnt by the appellants.*
>
> *(iv) the deceased Laxmibai narrated the incident to his brother Meharban Singh (PW-9) on 03.01.2008 that appellant Chandu has committed rape upon her and thereafter, she was burnt by the appellants.*

(v) a letter written by the injured/Laxmibai Ex.P/22 to the SHO, P.S. Kaitha on 03.01.2008.

(vi) statement (which is not proved by the prosecution) of deceased recorded under Section 161 of Cr.P.C by C.S. Bamniya (PW-17) on 04.01.2008.

(vii) Dying declaration recorded by Dr. A.K. Sharma vide Ex.P/16 on 04.01.2008 at District Hospital, Ujjain.

12. It is well settled that dying declaration is admissible in evidence and if found reliable and can form the basis of conviction. The apex Court while dealing admissibility of of dying declaration in the case of **Bhajju vs. state of M.P. [2012 4 SCC 327]** in para no.24 has held as under:-

> "The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excludes from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding governing the weighing of evidence. It in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the court, the same may be refused to be accepted as formic basis of the conviction."

13. In **Kushal Rao V. State of Bombay, AIR 1958 SC 22:1958 SCR 552** is a watershed judgment on the law on the evidentiary value of dying declarations. In this case the Apex Court laid down the following principles as to the circumstances under which a dying declaration may be

accepted, without corroboration:

> "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 depends upon oral testimony 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."
>
> The relevant facts of the said case are that the deceased therein had given three successive dying declarations within a span of two hours, which were, to a certain degree contradictory to each other. However, one of the aspects that remained common and was narrated by the deceased in all three dying declarations was that he was attacked by two persons, namely Kushal Rao and Tukaram with swords and spears. This Court, relying on the common thread running through all dying declarations, which was consistent with medical evidence revealing punctured and incised wounds on various parts of the body, held that the said declarations could be relied upon in

convicting the accused who had been named in all three dying declarations.

14. In **Paniben (Smt.) v. State of Gujarat (1992) (2) SCC 474,** Hon'ble The Apex Court on examining the entire conspectus of the law on the principles governing dying declaration, had concluded thus :

> "18. …….. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. **(Munnu Raja v. State of M.P. (1974) 4 SCC 264),**
>
> (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. **(State of U.P. v. Ram Sagar Yada[1981 sup SCC 25]; Ramawati Devi v. State of Bihar1981 8(2) SCC 654).**
>
> (iii) 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. **(K. Ramachandra Reddy v. Public Prosecutor 1980 supp SCC 455) .**
>
> (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. **(Rasheed Beg v. State of M.P. 1980 supp SCC 769).**
>
> (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M. P. [1988 Supp SCC 152].
>
> (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. **(Ram Manorath v. State of U.P. [1989 (2) SCC 390)**
>
> (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. **(State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 supp SCC 455]**
>
> (viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar25).
>
> (ix) 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 said that the

deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. **(Nanahau Ram v. State of M.P. [2001 (5) SCC 254).**

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. **(State of U.P. v. Madan Mohan [2003 (12) SCC 490].**

15. In the case of **Kamla vs. state of Punjab [(1993) 1 SCC 1**, the Honble Apex Court held as Under:

> "A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declaration they should be consistent particularly in material particulars."

16. In **Kishan Lal v. State of Rajasthan (2000) 1 SCC 310**, the Apex Court held has follows:

> "Examining these two dying declarations, we find not only that they gave two conflicting versions but there is inter se discrepancies in the depositions of the witnesses given in support of the other dying declaration dated 6.11.1976. Finally, in the dying declaration before a Magistrate on which possibly more reliance could have been placed the deceased did not name any of the accused. Thus, we have no hesitation to hold that these two dying declarations do not bring home the guilt of the appellant. High Court, therefore, erred in placing reliance on it by erroneously evaluating them."

17. In Lella Srinivasa Rao v. State of A.P. (2004) 9 SCC 713, Hon'ble Apex Court Court had occasion to consider the legality and acceptability of two dying declarations. Noticing the inconsistency between the two dying declarations, the Court held that it is not safe to act solely on the said declarations to convict the accused persons.

18. In Amol Singh v. State of Madhya Pradesh (2008) 5 SCC 468, Hon'ble Apex Court interfered with the order of sentence noticing inconsistencies between the multiple dying declarations. 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 but the statement should be consistent throughout. 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 and while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

19. In Sharda v. State of Rajasthan (2010) 2 SCC 85, Hon'ble Apex Court has dealt with three dying declarations. Noticing inconsistencies between dying declarations, the Apex Court set aside the sentence ordered by Sessions Judge as well as High Court and held as follows:

> "Though a dying declaration is entitled and is still recognised by law to be given greater weightage but it has also to be kept in mind that the accused had no chance of cross-examination. Such a right of cross- examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the court insists tha the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of the deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration."

20. In the case of **Jagbir Singh vs. State (NCT of Delhi),[(2019) 8 SCC 779,** the Apex Court had consider the law relating to the dying declaration and the problem of multiple dying declarations in detail. It was observed and held that merely because there are two/multiple dying declarations, all the dying declarations are not to be rejected. It was observed and held that when there are multiple dying declarations the case must be decided on the facts of each case and the court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of the different dying declarations. Ultimately, in paragraph 32, the Apex Court concluded as under:

> "Our conclusion on multiple dying declarations
>
> 32 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 somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved 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." Similar views have been expressed by this Court in the case of ***Ravi Chander & Ors. vs. State of Punjab (1998) 9 SCC 3032, Harjit Kaur vs. State of Punjab (1999) 6 SCC 545, Koli Chunilal Savji & Anr. vs. State of Gujarat (1999) 6 SCC 545 and Vikas & Ors vs. State of Maharashtra (2008) 2 SCC 516.***

21. In **Lakhan v. State of Madhya Pradesh [2010 (8) SCC 514,** where the deceased was burnt by pouring kerosene oil on her and was brought to the hospital by the accused and his family members, the Apex Court noticed that she had made two varying dying declarations and held thus :

> "9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross- examined. Such statements themselves are relevant facts in certain cases.
>
> 10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon.

22. Hon'ble Apex Court in the case of **Uttam vs. State of Maharashtra (2022) 8 SCC 576** in para no.15 and 19 has observed as under:-

> "15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion.
>
> 16...
>
> 17...
>
> 18..
>
> 19. It is thus clear that in cases where the Court finds that there exist more than one dying declarations, each one of them must be examined with care and caution and only after satisfying itself as to which of the dying declarations appears to be free from suspicious circumstances and has been made voluntarily, should it be accepted. As observed in the judgments quoted above, it is not necessary that in every case, a dying declaration ought to be corroborated with material evidence, ocular or otherwise. It is more a rule of prudence that courts seek validation of the dying declaration from attending facts and circumstances and other evidence brought on record. For the very same reason, a certificate by the doctor that the declarant was fit to make a statement, is treated as a rule of caution to establish the truthfulness of the statement made by the deceased."

23. In **Kundula Bala Subrahmanyam vs. State of A.P. [1993 (2)SCC 684**], Hon'ble Apex Court had observed that if there are more than one dying declarations, then the Court must scrutinize each one of them to find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying on the same. At the end

of the day, each case must be decided on its own peculiar facts. There can be no hard and fast rule on evaluation of the evidence brought before the Court, including the surrounding circumstances at the time when the deceased had made the dying declaration. The focus of the Court is of ensuring the voluntariness of the process, of being satisfied that there was no tutoring or prompting, of Criminal Appeal No.485 of 2012 being convinced that the deceased was in a fit state of mind before making the dying declaration, of ascertaining that ample opportunity was available to the declarant to identify the accused.

24. Bherulal Head Constable (PW-15 has stated that after receiving the information from CHC Tarana regarding admission of injured in the said hospital, he was sent to the hospital for enquiry, MLC of the injured was done at the CHC and she was referred to the District Hospital, Ujjain due to serious condition. He has further stated that during enquiry, he has recorded statements of injured Laxmibai as Ex.D/5 and Kailash as Ex.D/4.

25. Dr. Prakash Bhothra DW-1 has recorded the statements of deceased Laxmibai vide Ex.D/6 and Dr. Sunil Sultankar DW-3 had had stated that during the statements, the injured/deceased was fit to give statements. As per DW-1, the reason stated by the injured in her statements/Ex.D/6 dying declaration was that the incident was happened due to an accident and due to which the kerosene oil was poured on her wrongly near the Chulha/stove.

26. Meharban Singh (PW-9) brother of the deceased has stated in his statements that he has received the information on 28.12.2007 then he came to her with his wife. After 3-4 days of the incident, when his

sister/injured was recovered to some extent then she narrated her that her brother-in-law Chandu has committed rape upon her and thereafter, her husband and mother in law have poured kerosene oil on her and set her ablazed. In his cross-examination, he has stated that he has regularly visited the hospital to see his sister on 28, 29, 30 and 31.12.2007 but there was no communication between them during this period. He admitted in his cross-examination that he had knowledge that between 28.12.2007 to 31.12.2007 the Magistrate has recorded the statement of her sister. This witness denied that he got information regarding the incident on 31.12.2007 however, he in his statements Ex.D/2 recorded under Section 161 of Cr.P.C. Stated that he got the information regarding the incident on 31.12.2007.

27. From the face of record, it is clear that Samanbai (PW-7) reached District Hospital, Ujjain after two days of the incident i.e. on 30.12.2007 and per her statements, when she asked the injured regarding the incident, she narrated the incident that the appellant Chandu has committed rape upon her and the appellants set her ablazed on fire, but in para no.14 and 15 of her cross-examination, she has admitted that within two days of admission of the injured in the hospital, one Officer *(Saheb*) had came there and he had taken the statements of the injured and thumb impression of the injured was also taken. She further stated that the injured informed him that she burnt in accident, but at that time, she was not present there. She further stated that her son-in-law regularly visited the hospital. Vasudev (PW-8) brother of the deceased has stated that he reached to the hospital alongwith his mother i.e. Samanbai (PW-7), but Samanbai (PW-7) denied that she and her son reached to the hospital together, hence,

material contradictions and omissions are apparently clearly in the statements of PW-7 and PW-8. Vasudev (PW-8) another brother of the deceased has turned hostile and has stated that he has reached to the hospital with his mother Samanbai and asked Laxmibai/injured regarding the incident but she was only crying and never told him about the incident.

28. C.S. Bamniya (PW-17), SHO Police Station Kaitha has stated in his statements that the injured informed him vide a written letter Ex.P/22 on 03.01.2008 for taking her statements again. He has recorded her statements and also requested the Tehsildar to record her statements again. A.K. Sharma, PW-13, the then Tehsildar, Ujjain on 04.01.2008 at about 01:30 PM, had recorded the statements of the inured at District Hospital, Ujjain vide Ex.P/16. It is further stated that at the time of giving statements, the injured was in conscious condition and was able to give her statements. As per PW-3, the statement of the injured was taken in the presence of a Medical Officer, but he forgot the name of that Medical Officer. The prosecution has not examined the said witness/Medical Officer.

29. It is also pertinent to note here that the prosecution has not been examined Prakash Bhothra (DW-1), the then Assistant Land Measurement Officer/Tehsildar who recorded the statements of the injured vide Ex.D/6 in presence of Dr. Sunil Sultankar (DW-3), but the prosecution has not listed both the witnesses as prosecution witness in the charge-sheet.

30. Meharban Singh (PW-9), has stated in his statements that he got the information about the incident on 02.01.2008 that the appellants have committed the alleged offence with the injured. He further stated that he visited the hospital regularly on 28, 29, 30 and 31/12/2007, but he could

not contact/talk with the injured and only could talk on 02.01.2008. The witness has admitted that between 28.12.2007 to 02.01.2008, he had no knowledge about the fact that statements of his sister had been recorded by the Magistrate.

31. It is pertinent to note that Samanbai (PW-7) reached at the hospital on 30.12.2007 and incident was narrated to her by the deceased. Similarly, Meharban Singh (PW-9) reached had knowledge on 02.01.2008, but they both had never informed regarding the incident before any authority till 21.01.2008.

32. On perusal of the letter dated 03.01.2008 Ex.P/22, written by the deceased, it is clear that Nanuram S/o Bhagirath (PW-10), Meharban Singh S/o Ranchod (PW-9) and Prabhulal S/o Balramji alongwith Vasudev S/o Ranchod (PW-8) are having their signed on the back side of the said letter Ex.P/22, but they never deposed the same before any authority concerned or before the Court. For convicting the appellants, the Court primarily relied upon dying declaration of the deceased recorded by PW-13 Dr. A.K. Sharma vide Ex.P/16.

33. Gokul Singh (PW-11) son of the deceased has admitted in his cross-examination that his uncle Chandu/appelalnt no.2 and his grandmother appellant no.3/ Bhanwarbai were living separately and he, alongwith mother and father were living together and first time, he deposited before the Court and prior to it he never stated to anybody regarding the incident. He admitted that his mother was not burnt in his front and also agreed that he and his father/ appellant Antar Singh regularly visited District Hospital, Ujjain.

34. It is also pertinent to note here that this is case of burn injuries by kerosene oil as alleged by the prosecution and definitely, there should be some scuffle between the appellants and the deceased when the appellants were pouring kerosene oil on her, but the prosecution nowhere has recovered the container of the kerosene oil, cloths having some kerosene oil spots/marks neither of the deceased nor of the appellants and the prosecution has completely failed to recover these things.

35. Prakash Bhothra (DW-1) has recorded the dying declaration on 29.12.2007 and Dr. Sunil Sultankar (DW-3) has supported DW-1 and clearly stated that in his presence, DW-1 has taken the statement of the injured and she was medically fit to give her statement at that time. It is pertinent to note that Dr. A.K. Sharma (PW-13) has recorded the statement of the deceased on 04.01.20008 in presence of one Medical Officer *(whose name not mentioned)* and also stated that at the time of giving statement, the injured was fit, but the prosecution has failed to produce the concerned Medical Officer in whom presence the PW-13 has recorded the statement of the deceased on 04.01.2008. In his cross-examination, he has stated that he has no knowledge about the name of such Medical Officer in whom presence the statement was recorded on 04.01.2008 and denied that no such Medical Officer was presence at that time. The witness also denied the knowledge regarding the fact that by which hand the signature was given by the injured/deceased.

36. Therefore, in view of the aforesaid elaborate discussions, in our considered opinion and being mindful of the principles governing appreciation of the evidence related to multiple dying declarations, we find

it difficult to endorse the conclusion arrived at by the learned Court below. The Evidence of Samanbai (PW-7) and Meharban Singh (PW-9) as well as the first dying declaration and other dying declarations which are contradictory to each other, cannot be treated as stellar enough to hold the appellants guilty for the offence as alleged.

37. Therefore, as a result, the appeal is allowed and the impugned judgment is quashed and set aside. Consequently, the appellants are acquitted from the offences under Section 302, 498-A and 376 of IPC respectively.

38. They be set at liberty forthwith immediately, if not required in any other case in jail. Their bail bond, if any stands discharged.

39. The impugned judgment is confirmed regarding the disposal of the seized property.

40. A copy of this order be sent to the Court below concerned.

41. Record be sent back to the concerned trial Court.

42 Certified copy, as per rules.

(Vijay kumar shukla)
Judge

(Rajendra Kumar (Verma))
Judge

amit