State Delhi (Administration) vs Laxman Kumar & Ors on 23 September, 1985

Equivalent citations: 1986 AIR 250, 1985 SCR SUPL. (2) 898, AIR 1986 SUPREME COURT 250, 1985 (4) SCC 476, 1986 CURCRIJ 47, 1986 SCC(CRI) 2, 1985 (1) CRI LC 149, 1986 4 SCC 476, 1985 CRI APPR (SC) 304, (1985) 2 DMC 451, (1986) MAD LJ(CRI) 86, (1986) 1 RECCRIR 184, (1985) 28 DLT 500, (1986) 1 HINDULR 117, (1985) 2 CRIMES 758, 1986 CHANDLR(CIV&CRI) 77, (1986) SC CR R 30, (1986) EASTCRIC 241, (1986) 1 CRILC 149, (1986) 1 SUPREME 1, (1986) 1 ALLCRILR 111

Author: Misra Rangnath

Bench: Misra Rangnath, Amarendra Nath Sen

PETITIONER:
STATE DELHI (ADMINISTRATION)

Vs.

RESPONDENT:
LAXMAN KUMAR & ORS.

DATE OF JUDGMENT23/09/1985

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
SEN, AMARENDRA NATH (J)

CITATION:
1986 AIR 250 1985 SCR Supl. (2) 898
1985 SCC (4) 476 1985 SCALE (2)701
CITATOR INFO :
R 1988 SC1785 (15)

ACT:

A. Murder by burning - No eye witness to testify the act of setting fire to the deceased or to the defence version of deceased saree catching fire accidently, except the oral testimony of witnesses who ran to the spot soon after hearing the cries for help by the deceased, the three statements implicating the accused as the perpetrators of the crime made by the deceased before admission in the hospital, the conduct of the accused when the deceased

clothes were aflame, the alleged torture of the deceased for sometime preceding the occurrence over demands for cash and goods in kind and other circumstances on record - Circumstantial evidence corroborated by other evidence - Appreciation of evidence taking judicial notice of facts Sections 3, 11, 55 and 114 of the Evidence Act, Indian Penal Code section 302.

B. Dying declarations, relevance of - They can be used as corroborative evidence and need not be totally rejected - Evidence Act section 32 (1).

C. Appeal against acquittal and appeal against conviction, scope of and the powers of the Supreme Court to intervene under Article 136 of the Constitution.

D. Sentence - Imposition of proper punishment and passing a sentence while interfering in an appeal against acquittal by the Supreme Court - Time lag may be one of the factors to be considered.

HEADNOTE:

Shakuntala and Srinivas have four sons Subhash, Laxman, Vinod and Ram Avtar and two daughters. They ordinarily live at Barot about 50 miles from Delhi alongwith their two daughters. Subhash and his wife Madhu (DW5), are school teachers at Delhi and have two minor children. Sometime in May or June, 1979 these brothers came to live in ground floor flat No. 9B of the Janata flats in Ashok Vihar area. They purchased the First Floor Flat No. 9D previously occupied by Deven Dass and his wife Ishwari
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Devi (PW4) in 1980 and on their request Deven Dass moved over to Flat No. 28D in the same area in September October'80. On February 16, 1980 Laxman Kumar was married to Sudha, the deceased and they lived in one of the rooms in flat No. 9B. Sudha was in the family way and was expecting to deliver a child towards the end of the first week of December, 1980.

A little after 9 p.m. on December 1, 1980, on hearing a lady's voice crying "Bachao Bachao" (Save O Save) from flat No. 9B, the neighbours like Jaspal Singh (PW1) Satish Chopra (PW2) and Ishwari Devi (PW4) ran to the flat and Tarsem Jain (PW5) who was near about also came there. PW1 saw Laxman standing at the entrance door and attempting to close it while Subhash was standing with his hand on the latch of the door which opened to the courtyard. PW1 and others who had collected there forced their way inside and saw Sudha in a standing position but aflame. They attempted to extinguish the fire first by pulling out the saree from the body of the lady, put a gunny bag lying nearby on the burning body and later wrapped her up with a blanket brought by PW 2 Satish Chopra. When, after extinguishing the fire, they brought Sudha to the room where Shakuntala mother-in-law was

standing, Sudha made a statement to the effect that it was her mother-in-law who had set her fire after pouring kerosene on her body. Soon a taxi was brought and the respondents accused took Sudha for treatment to the Hindu Rao Hospital. While being shifted to the taxi, Sudha made another statement to the same effect as to the authorship of the crime. Again, when on the way they picked up Gayatri, one of the sisters of Sudha and PW3 and her husband, she repeated the allegation against her mother-in-law on seeing her sister PW3 in the taxi. At the suggestion of PW3 Sudha was taken to St. Stephen's hospital where Sudha was being looked after for her pre-maternity care. The witnesses on their own, believing that Sudha was being taken to Hindu Rao Hospital, went there and waited for some time but when they found that Sudha was not being brought there, they returned to their residences. However, soon after the distress cry for help, a telephone message to the police Control Room with telephone No. 100, that a lady had been set on fire was conveyed and on this First Information having been duly monitored to the mobile police van around the area in question, PW 17 was deputed to look into the matter. Learning that Sudha was shifted to the hospital, PW 17 reached the hospital straightway for investigation. At the hospital a written declaration is said to have been made which was proved and relied on by the defence. Sudha died in the early hours of December 2, 1980.
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After due investigation the respondents were prosecuted on a charge of murder. There is no eye witness to testify to the act of setting fire to Sudha which is the prosecution case, or to the factum that of Sudha's saree catching fire accidentally as alleged by the defence. At the trial, the prosecution has sought to rely upon the oral testimony of witnesses who ran to the spot soon after he ring the cries of deceased, the three statements made by her to the various witnesses implicating the accused persons as the perpetrators of the crime, the conduct of the accused persons as deposed to by the witnesses when the deceased clothes were aflame, the alleged torture of the deceased for some time preceding the occurrence over demand for cash and goods in kind, and other circumstances available on record and examined as many as 21 witnesses.

According to the defence version the deceased, while trying to lit the kerosine stove for heating up milk for one of the children of Subhash who was feeling hungry had her saree lit up by the stove fire which led to the incident; that Laxman her husband was away as he had accompanied the deceased sister up to the bus stand, that Subhash and Shakuntala did take reasonable care to put out the fire. To prove this defence they examined PW1, the doctor at the hospital, DW2 (same as PW 18) Record Keeper of the hospital, DW 3 a neighbour, DW4 the taxi driver and DW5 wife of Subhash and also relied on certain documents.

The trial Judge accepted the prosecution version, namely; (i) the authorship of the crime; (ii) the relationship of the deceased with Laxman and members of his family having become strained on account of demands for more dowry and therefore their decision to do away with her before the child was born; and (iii) the factum of failure on the part of the accused persons to take appropriate steps to save the deceased while the fire was put out by the neighbours PWs 1, 2, 4 and 5. Accepting the charges and convicting the respondents of murder, he was of the view that the appropriate punishment to be meted was death. He accordingly sentenced all the respondents to death and as required by law, referred the matter to the High Court of Delhi for confirmation of the death sentence. The respondents challenged their conviction by preferring an appeal.

The reference and the appeal were taken up together for hearing by the High Court. The High Court differed from the trial Judge on almost every aspect of the testimony of the prosecution witnesses, excepting the presence of PWs 1, 2, & 5 and their role
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in extinguishing the fire, accepted the defence version, and discharged the reference and allowed the appeal. The respondents were, therefore, acquitted. Hence the State appeal No. 93 of 1984 and the Indian Federation of Woman Lawyers appeal No. 94 of 1984.

Giving the benefit of doubt to the accused Subhash and when maintaining the conviction of Shakuntala & Laxman for the offence of murder under section 302 I.P.C. recorded by the Sessions Judge, allowing the appeal in part by altering the sentence of death into one of life imprisonment, the Court,
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HELD: 1.1 The scope of an appeal against acquittal and the scope of the Supreme Court's jurisdiction to interfere in Such a matter are well settled. There is not difference between an appeal against conviction and an appeal against acquittal except that when dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by acquittal and if the view adopted by the High Court in a reasonable one and the conclusion reached by it had its grounds well set on the materials on record. [929 A-D]

1.2 Once evidence has been read and the Supreme Court has proceeded to review the entire material, there is indeed not limitation in law in exercise of the jurisdiction under Article 136 of the Constitution for the matter of making a just decision. [929 D-E]

1.3 In the instant case, on the evidence it is clear: (i) that the relationship of the deceased with the members of the husbands' family had become strained and the had been

subjected to physical as well as mental torture for some time before the incident; The physical torture was the outcome of indifference to her health and the mental torture was on account of demand of dowry; (ii) that the deceased had not lighted the kerosene stove that evening and her wearing apparel had not caught fire accidently but kerosene had been sprinkled on her clothes and she had been brought into the open space where fire was lit to her clothes; (iii) that he deceased died not as an outcome of an accidental fire but on account of a designed move on the part of the members of the family of the accused persons to put an end to her life; and (iv) that the husband and mother-in-law or the deceased are responsible for the killing of the deceased by setting her on fire and therefore committed the Offence of murder and are liable to be convicted for the offence punishable under section 302 I.P.C., while the brother-in-law Subhash is
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entitled to the benefit of doubt, his case being on the border line. [924 A, H, 925 A, 928 A-B, G-H, 929 A-B, 930 B-D]

Barendra Kumar Ghosh v. The King Emperor, 52 I.A. 40 referred to.

2.1 The cause of any person being found aflame with fire could always be either of the three alternatives, namely, (a) suicide/self immolation; (b) accidental fire; and (c) "being put on fire by someone". In the instant case: (i) the deceased having been burnt is not in dispute; (ii) the plea of suicide has not been advanced either by the prosecution or by the defence. Suicide as the reason of death has rightly not been pressed into service in as much the deceased, in spite of the fact that she had been suffering physically without any assistance at the advanced stage of her pregnancy, was getting prepared to play the role of mother; (iii) the defence plea of accidental fire has to be rejected by taking judicial notice of the facts (a) the kerosene stove was in the open space (b) there was a gas stove in the kitchen and the same was in order but there was no evidence why the gas stove was not used (c) around 9 p.m. of December it would be unbearably cold outside the house in Delhi. To work the kerosene stove would take sometime and if milk for the crying child was immediately necessary, the kerosene stove would not be the proper heating medium. On the other hand, the gas stove would have served the purpose better. Not much of gas was likely to be consumed for heating the milk, nor even for heating up the food for brother-in-law Subhash; (d) the deceased did not have any warm clothings on her person and had only a nylon saree. Being pregnant lady at an advanced stage she was expected to keep properly robed to avert getting ill from exposure to cold, and therefore, it is not likely that she would have ventured going out to operate the kerosene stove; (e) the deceased being in an advance stage of pregnancy

would have found it difficult to squat on the floor itself; and (f) it would be natural human conduct for the deceased to have gone to the gas stove in preference to the kerosene stove. Once the explanation and the defence story of accidental fire has been discarded and there being no plea of suicide, the prosecution story that fire was set to the saree of the deceased is the only other way in which she must have been burnt. [909 B,E-F, 912 E,G-H, 913 A-D]

3. A dying declaration envoys almost a sacrosanct status as a piece of evidence as it comes from mouth of a person who is about to die and at that stage of life he is not likely to make a

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false statement. Ordinarily a document as valuable as a dying declaration is supposed to be fool proof and is to incorporate the particulars which it is supposed to contain. Conviction cannot be based purely on oral dying declarations, despite earlier cases of conviction solely based thereon. However, oral dying declarations cannot be totally rejected and the name can be used as corroborative material. In the instant case, the alleged written dying declarations cannot be accepted because the explanation of PW 17, the police officer who recorded the dying declaration himself contrary to the Delhi Police rules as to why he was not looking for a Magistrate or a near relation but getting lt endorsed by the doctor as "attested the recorded statement and without indicating the time of the statement and without the signature of the deceased who was an educated person is unconvincing and not reliable: Equally no reliance can be made on the oral statements made by the deceased until corroborated with other evidence. [913 F-G, 914 A,D,G-H, 915 G-H, 916 A-B]

Kushal Rao v. State of Bombay, A.I.R. 1958 S.C. 22; Dalip Singh & Ors. v. State of Punjab A.I.R. 1979 S.C. 1173; Pedda Narayna & Ors. v. State of Andhra Pradesh, [1975] 4 S.C.C. 153; Sat Paul v. Delhi administration 11976] 1 S.C.R. 727 referred to.

4. In a suitable case of bride burning, death sentence may not be improper. However, in the instant case the Trial Judge had thought it proper to impose the punishment of death but the High Court acquitted all the accused. In the fact situation following the acquittal in the hands of-the High Court and the time lag of two years since the respondents were acquitted must be taken into consideration while imposing a proper punishment. In the instant case the Court awarded sentence of imprisonment for life for the accused. [931 A-C]

OBSERVATION

(It is the obligation of every Court to find out the truth and act according to law once the truth is discovered. In that search for truth obviously the Court has to function within the bounds set by law and act on the evidence placed before it. What happens outside the Court room when the

Court is busy in its process of adjudication is indeed irrelevant and unless a proper cushion is provided to keep the proceedings within the court room dissociated from the heat generated outside the court room either through the news media or through flutter in the public mind, the cause of justice is bound to suffer. Mankind has shifted from the
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state of nature towards a civilized society and it is no longer the physical power of a litigating individual or the might of the ruler nor even the opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to rule of law is the outcome of cool deliberation in the court room after adequate hearing to afforded to the parties, accusations are brought against the accused, the prosecutor is given an opportunity of supporting the charge and the accused is equally given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the martial by the informed mint of the Judge that leads to determination of the lis. If the cushion is lost ant the Court room is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for truth is stifled.)

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 93 and 94 of 1984.

From the Judgment and Order dated 3.11.1983 of the Delhi High Court in Cr1. Appeal No. 131 of 1982 and Murder Reference No. 1 of 1983.

M.S. Gujral, Girish Chandra, R.N. Poddar and Mansoor Ali for the Appellant in Crl. A. No. 93 of 1984.

R.K. Garg, Mrs. Urmila Sirur, M.V. Katarke, Ms. Rani Jethmalani, Mrs. Urmila Kapoor and Mrs. C.M. Chopra for the Appellants in Crl. A. No. 94 of 1984.

Rajendra Singh, M.N. Shroff and Dilbagrai Sheti for the Respondents in both the appeals.

The Judgment of the Court was delivered by RANGANATH MISRA, J. These two appeals are by special leave. The Delhi Administration has preferred Criminal Appeal No. 93/84 and the Indian Federation of Women Lawyers and others have preferred the other Criminal Appeal. Both are directed against the same judgment of the Delhi High Court acquitting the respondents of a charge of murder of one Sudha by setting fire to her. The Trial court had accepted the prosecution case and considering it to be one of the atrocious dowry deaths, had sentenced each of the respondents to

death. The reference made by the trial Judge was discharged by the High Court and the appeal preferred by the respondents was allowed.

The three respondents are Shakuntala, the mother and two of her sons, Subhash Chandra and Laxman Kumar. Shankuntala is the wife of one Sriniwas. They have four sons Subhash, Laxman, Vinod and Ram Avtar, and two daughters. The parents ordinarily Live at Barot about 50 miles away from Delhi along with the two daughters. Subhash and his wife Madhu, PW.5, are school teachers at Delhi. They have two minor children. Laxman Kumar was married to Sudha over whose death the present case has arisen. Vinod and Ram Avtar were living with the two elder brothers at Delhi. Some time in May or June 1979 these brothers came to live in Flat No. 9-B of the Janata Flats in Ashok Vihar area. This flat is in the ground floor. Flat No.9-D which is the corresponding first floor flat was previously in occupation of tenant - Deven Dass - whose wife Ishwari Devi has been examined as PW.4. Some time in 1980, this flat was purchased by the family of the accused persons and on their request the tenant shifted to Flat No. 28-D in the same area about two months before the incident.

On February 16, 1980, Laxman Kumar was married to Sudha. After the marriage Subhash and members of his family (DW.5 and the two children) started living in one of the rooms in the ground floor while Laxman and Sudha lived in the other in the same flat. The upper rooms were occupied by the two other brothers, Vinod and Ram Avtar. As it appears, Shakuntala, the mother, was ordinarily staying with her husband at Barot but now and then came to Delhi and lived the sons.

Sudha's two sisters, Gayatri, P.W.3 and Snehlata, P.W. 6, were married to Pawan Kumar Goel and Damodar Dass Gupta, respectively. Pawan Kumar was living in Premnagar area while Damodar Dass lived in Hari Nagar, both parts of Delhi. Sudha was in the family way and was expecting to deliver a child towards the end of the first week of December 1980.

In Flat No. 9-B there was a small kitchen where a gas operated stove along with a cylinder was kept. A small portion of the open space in the courtyard by the side of the kitchen had been covered with asbestos sheets. There also cooking used to be done with the held of a kerosene stove as the kitchen was small. Certain other household materials, including smock of kerosene in tins were kept there.

A little after 9 P.M. On December 1, 1980, a shout was heard from Flat No. 9-B. lt was a lady's voice crying 'Bachao Bachao' (save O save). On hearing the cry neighbours like Jaspal Singh, P.W. 1, Satish Chopra, P.W.2 Ishwari Devi, P.W. 4 ran to the flat and P.W. 5 Tarsem Jain who was near about also came there. P.W. 1 saw Laxman standing at the entrance door and was attempting to close it while Subhash was standing with his hand on the latch of the door which opened to the courtyard. He and others who had collected forced their way inside and saw Sudha in a standing position but aflame. The neighbours attempted to extinguish the fire first by pulling out the saree from the body of the lady, put a gunny bag lying nearby on the burning body and when Satish Chopra brought a blanket, the same was wrapped around her body. After extinguishing the fire they brought Sudha to the room where Shakuntala was standing. According to the prosecution case, Sudha, on seeing the mother-in-law, made a statement to the effect that it was she who had set her on fire after pouring kerosene on her body. Soon a taxi was brought and the three members of the family (respondents here) took Sudha for treatment to the hospital. On the way they picked up

P.W.3 and her husband. Initially the accused persons had decided to take Sudha to Hindu Rao Hospital but on P.W. 3 suggesting that Sudha may be taken to St. Stephen's Hospital where she was being looked after for her pre-maternity care, she was ultimately taken there.

Sudha appears to have reached the hospital around 9.45 P.M. The witnesses on their own believing that Sudha was being taken to Hindu Rao Hospital, went there and waited for some time but when they found that the lady was not being brought there, they returned to their residences. Soon after he cry for help had been heard, a telephone message had been conveyed to the Police control room having Telephone No. 100 that a lady had been set on fire and this information had been duly monitored to the mobile police van around the area in question. P.W. 17 was deputed to look into the matter. By the time he reached the spot, Sudha had already been shifted to the hospital. Therefore, P.W. 17 went straight to the hospital from there.

It is further case of the prosecution that Sudha made statements soon after the witnesses gathered near the flat itself pointing to the mother-in-law as the killer She again made statement while she was being shifted to the taxi. When P.W.3 and her husband came into the taxi on the way to the Hospital, she is alleged to have repeated the statement about the incident. At the hospital a written declaration is said to have been made on which the prosecution does not rely but which the defence has proved.

Sudha died in the early hours of December 2, 1980. After due investigation the respondents were prosecuted on a charge of murder. There is no eye witness to testify to the act of setting fire to Sudha which is the prosecution case, or to the fact of Sudha's saree catching fire accidentally as alleged by the defence. Prosecution has sought to rely upon the oral testimony of witnesses who ran to the spot soon after hearing the cries of Sudha, the statements made by Sudha to the various witnesses implicating the accused persons as the perpetrators of the crime, the conduct of the accused persons as deposed to by the witnesses when Sudha's clothes were aflame, the alleged torture of Sudha for some time preceding the occurrence over demands for cash and goods in kind, and other circumstances available on record.

At the trial the prosecution examined 21 witnesses of whom P.Ws. 1, 2, 4 and 5 are neighbours who spoke about the incident from the stage they saw after being attracted by the cries raised by Sudha. P.Ws. 3 and 6 are the sisters of Sudha. P.W. 7 is her mother and PW 8 is the elder brother of Sudha and both of them lived in Calcutta. These four witnesses have been examined to speak about the relationship that existed between Sudha on the one side and the husband and other members of his family on the other. PW.9 is the doctor who conducted the post-mortem examination. PWs. 10, 11 and 14 are three constables who had a role to play in the process of investigation. PW. 12 was the Duty Officer at Ashok Vihar Police Station at the relevant time. He was called to prove the papers where the information from the hospital about Sudha's death had been recorded. PW. 13 is the receptionist at St. Stephen's Hospital who had passed on the message of Sudha's death to the duty Officer. PW. 15 had received the message given at 9.15 P.M. On December 1, 1980, about a lady being burnt by fire. PW. 16 is a Draughtsman attached to the Crime Branch of the Delhi Police who had measured the different places in and around the flat where the occurrence took place. PW. 17 is the Investigating Officer. PW. 18 is a doctor who had examined PW. 1 for burn injuries on his

person. PW 19 (wrongly shown in the paper- book as PW 18) was attached to the St. Stephen's Hospital as a Record Keeper and he produced certain documents. PW. 20 (wrongly shown as PW.19) was also a Duty Officer attached to the Ashok Vihar Police Station who on receiving the telephone message in the night of December 1, 1980, had monitored it to the mobile van. PW 21 (wrongly shown as PW.

20) was a formal witness from the Police Malkhana.

According to the defence version, Sudha while trying to lit the kerosene stove for heating up milk for one of the children of Subhash who was feeling hungry had her saree lit up by the stove fire which led to the incident. Laxman was away as he had accompanied Sudha's sister up to the bus stand. Subhash and Shakuntala took reasonable care to put off the fire. To prove this defence, they have examined five witnesses being DW.1, the doctor at the hospital, DW.2 (same person as PW.18), Record Keeper of the Hospital, DW.3, a neighbour, DW. 4, the driver of the taxi and DW.5, the wife of Subhash. They have also relied upon certain documents.

The learned trial Judge accepted the prosecution version. He believed that Sudha was about to deliver a child on account of the advanced stage of pregnancy had become somewhat immobile. Kerosene had been sprinkled on her body with a view to killing her and fire was set to her clothes at the time alleged. The relationship of Sudha with Laxman and members of his family had become strained on account of demands for more dowry and the accused had decided to do away with her before the child was born. He accepted the oral evidence on the side of the prosecution as to authorship of the crime. He also accepted the prosecution allegation that the accused person that not taken appropriate steps and it is the neighbours who put out the fire. Accepting the charge and convicting the respondents of murder, he was of the view that the appropriate punishment to be meted was death. He accordingly sentenced all the respondents to death and as required by law, referred the matter to the High Court of Delhi for confirmation of the death sentence. The respondents challenged their conviction by preferring an appeal. The reference and the appeal were taken up together for hearing by the High Court and the High Court discharged the reference and allowed the appeal. The respondents thus came to be acquitted.

The High Court differed from the trial Judge on almost every aspect excepting the presence of PWs.1, 2 and 5 had their role in extinguishing the fire. This is what the High Court stated :

> "We have no hesitation in agreeing with Mr. Teja Singh that PWs. 1, 2 and 5 had rushed to the rescue of the deceased on hearing her cries of 'Bachao Bachao'. They had actively helped in extinguishing the fire of the deceased, brought her out, and also probably one of them brought a taxi in which Sudha was taken to the hospital. PW. 2 states that he had gone to the house of Sardar Ajit Singh and from there telephone the police control room regarding the occurrence. We have no reason to doubt the correctness of the above statement of PW.2"

The High Court made clean division of its judgment into separate heads like : (1) Prosecution version of the occurrence; (2) Motive; (3) Dying declarations; (4) Medical evidence; (5) Conduct of

the accused; (6) Investigation; and (7) Conclusion. While dealing with the prosecution version of the occurrence, the High Court extracted substantial portions of the statements given under section 313, Cr. P.C. by each of the accused persons.

That Sudha was burnt at the relevant time has never been in dispute. There could be three alternatives for her being burnt (1) suicide; (2) accidental fire; and (3) being put on fire. The plea of suicide has not been advanced either by the prosecution or by the defence. It is true that Sudha had been suffering physically as found by the learned trial Judge and accepted by the High Court on account of the fact that there was no one to assist her in the work at home and the entire load came up on her. Yet, she had withstood all that and within a week or so she was about to be relieved of the heavy burden she carried on delivery of the child. Nature, it is said, processes the instincts of the mother to be in such a way that by the time she is about to deliver The child, a total transformation comes about. The record does not have any indication that Sudha ever thought of putting an end to her life. On the other hand, we are led to hold that like every expectant mother she was looking forward to see the fruit of the long waiting and the suffering she had undergone for begetting the child. There is material that she was preparing warm clothings for the baby to arrive and getting prepared to play the role of mother. Suicide as the reason of death has, therefore, rightly not been pressed into service leaving the two other alternatives of accidental fire as pleaded by the defence and the intentional killing by burning her as pleaded by the prosecution, for consideration.

Laxman Kumar in his statement under 8. 313 Cr. P.C. had suggested that Jaspal Singh, PW. 1 and Satish Chopra, PW. 2 had formed a group against him and his brothers. Subhash has, however, not stated in that strain. DW. 5 spoke about dispute with Jaspal over unauthorised construction and blockage of the water passage. PW. 1 Jaspal Singh has not been cross examined in this regard excepting a bare suggestion at one place. Jaspal Singh, as his evidence shows, is on a job which keeps him mostly out of Delhi and he did not appear to be involved in any politics of the locality. The animosity of the principal prosecution witnesses which the accused persons wanted to suggest has, therefore, not been established in this case.

We have already indicated that both the trial Judge as also the High Court have accepted the fact that PWs. 1, 2 and 5 rushed to the spot on hearing Sudha's cry for help. If relationship between these witnesses on one side and members of the family of the accused on the other had been strained as alleged, the spontaneous response which came from these witnesses would not have been found. We cannot lose sight of the fact that one of the curses of modern living, particularly in highly urbanised areas is to have a life cut off from the community so as even not to know the neighbours. Indifference to what happens around is the way of life. That being the ordinary behaviour of persons living in the city, if added to it there was animosity, these witnesses would certainly not have behaved in the manner they have. We, therefore, are not impressed by the doubts expressed by the High Court about the veracity of their evidence. these witnesses not only rushed to the spot but took a leading part in putting out the fire from Sudha's person and ensured her despatch for medical assistance at the shortest interval. As expected of a good neighbour, information was given to the police, a blanket was made available, a taxi was called and human sympathy and assistance to the extent possible was extended. If the accusation of animosity and ill-feeling is not accepted, these witnesses must be taken to be not only competent being present at the spot, but also acceptable in

respect of what they say as being truthful witnesses. The trial Judge had appreciated their evidence that way and we see no justification for the High Court to have differed from that. It is pertinent to notice that PW.1 suffered a burn injury and this is supported by medical evidence. Even the High Court accepted the position that this injury was suffered when PW 1 was attempting to put out the fire on Sudha's person.

PW. 4 is a lady who had been living in the upper floor Flat No. 9-D until about October 1980. Sudha must have had occasion to know her very intimately because they lived together for about eight months. Sudha came from an urban background being a resident of Calcutta. In her new setting she must have looked for some company. DW.5, the only other lady in the family, worked in a School and possibly her relationship with Sudha was not very cordial though they lived together. In these circumstances it is only natural that Sudha would have turned to PW. 4 Ishwari Devi, for being in friendly terms. The evidence of PW.4 shows that they were quite close to each other and Sudha-used to open her mind to her every now and then. It is her evidence that even after she had shifted to her new apartment, they used to meet almost every-

day. A suggestion was made that PW. 4 had developed animosity against the accused persons as she and her husband had been forced to vacate the tenanted premises of Flat No. 9-D. There is no evidence of any pressure and consequently no ill-feeling. Knowing the difficulties which the family of the accused faced on account of want of space, PW. 4 and her husband appear to have volunteered to shift to the new residence. It was also suggested to this witness that they were owing Rs. 185 to the grocery shop of the accused Laxman and since the money was demanded, strained relationship had developed. The witness has clearly stated that the amount had been paid when Laxman had demanded the money about a month after the death of Sudha. A current credit of the type from the grocery shop could be no reason tor developing bad relationship. In the circumstances we do not see justification to hold that PW. 4 had strained relationship with the accused persons.

Mr. Rajendra Singh, Senior Advocate for the respondents with his usual persuasiveness contended that the evidence of these witnesses should be rejected as has been done by the High Court as each one of them has improved his version by a lot of embellishment. Statements under s. 161 of the Code of Criminal Procedure regarding the oral lying declarations made by these witnesses were to the effect that Sudha had stated that it was the mother-in-law alone who had sprinkled kerosene on the clothes and set fire to her clothes. But later these witnesses implicated the husband and his elder brother as being involved in the crime. He also contended that the documents contemporaneously prepared by the police in normal discharge of their duties where the cause of fire has been mentioned should be preferred to the oral evidence particularly when the witnesses have substantially changed their version and in the backdrop of a written dying declaration attested by the attending doctor. According to Mr. Singh, there is evidence that there was a meeting over the issue of Sudha's death held in the morning of the 2nd December, 1980, in which the local residents participated and the conduct of the witnesses before and after this meeting sharply differed. He suggested that the stand adopted by the prosecution in regard to Sudha's death was obviously evolved at this meeting and one uniform stand taken at an earlier stage was uniformly changed after the meeting. He pleaded that the oral evidence regarding Sudha's declarations should be discarded. He also supported the High Court's finding that the relationship between Sudha and her paternal

relations on one side and Laxman and his relations on the other was very cordial and, therefore, there could be no motive for killing the mother-to-be. According to Mr. Singh, once the neighbours knew, on the basis of Sudha's declarations, that she was set on fire by her husband, his brother and mother, they would not have permitted Sudha to be taken to the hospital in the taxi in their company only. We shall deal with these aspects and his other submissions in due course and at the relevant places.

The cumulative effect of the evidence of these four witnesses goes to establish that around 9 P.M. on December 1, 1980, Sudha had shouted tor help saying that she was on fire. On hearing this cry, PW. 2 telephoned the Police Control Room from a neighbour's telephone and these four witnesses rushed to the spot. On approaching the flat they found Laxman at the main entrance door trying to close it and Subhash at the connecting door between the room and the open space partially covered with asbestos sheets. They found Sudha in a standing posture aflame. Shakuntala was noticed standing in another room. They forced themselves into the room, came up to Sudha, started removing the saree on her body which had caught fire and finding a gunny bag lying on the floor, used the same for putting off the fire. PW. 2 managed to get a blanket in which they later wrapped Sudha and helped her in being removed to the hospital. There is clear evidence that on their own they went to the Hindu Rao Hospital thinking that Sudha would be brought there for treatment.

The evidence also indicates that there was a gas stove in the kitchen and the same was in order. It is the defence version that PW. 5 had gone to Barot on November 30, 1980, and respondent Shakuntala had come the previous day along with Subhash. When Subhash returned to the house a few minutes before 9 at night, Sudha wanted to warn up the cooked food for being served to him. At that point of time, the child of Subhash (the other had gone with the mother) cried for milk, Shakuntala wanted the milk to be heated up for the child and asked Sudha to give the milk first for the crying child and then attend to Subhash. It is at that point of time that Sudha wanted to light the kerosene stove. The kerosene stove was in the open space. Judicial notice can be taken of the fact that around 9 P.M. of December it would be unbearably cold outside the house in Delhi. To work the kerosine stove would take sometime and if milk for the crying child was immediately necessary, the kerosene stove would not be the proper heating medium. On the other hand, the gas stove would have served the purpose better. Not much of gas was likely to be consumed for heating the milk, nor even for heating up the food for Subhash. We have to take note of the position that Sudha did not have any warm clothings on her person and as the evidence shows, she had only a nylon saree. Being a pregnant lady at an advance stage she was expected to keep properly robed to avert getting ill from exposure to cold. It is, therefore, not likely that she would have ventured going out to operate the kerosene stove. There is another feature which also must be taken note of. She being in an advanced stage of pregnancy would have found it very difficult to squat on the floor for operating the kerosene stove which was on the floor itself. It is the defence version that the gunny bag was being used for Sitting purposes for operating the stove. That is a conjecture accepted by the High Court. There is no evidence worth the name to explain why the gas stove was not used. In the absence of an explanation as to why the gas stove was not being operated for this purpose and in the setting of events which we have indicated it would be natural human conduct for Sudha to have gone to the gas stove in preference to the kerosene stove. In these circumstances we agree with counsel for the appellants that the defence version explaining the manner in which Sudha's saree caught fire is not

acceptable. Once the explanation advanced by the defence that Sudha's saree caught fire from the kerosene stove is discarded, on the premises that the same had not been lighted, the prosecution story that fire was set to her saree is the only other way in which she must have been burnt.

Before we refer to the oral evidence, it is appropriate to deal with the dying declarations are both oral and written. The oral dying declaration are said to have been made first inside the residence; thereafter when Sudha saw PW. 4 (referring to her as Bobby's mother) and while coming by the taxi to the hospital after PW. 3 and her husband were picked up. The High Court has indicated improvements in the evidence with reference to what had been stated by Sudha on these occasions. A dying declaration enjoys almost a sacrosanct status as a piece of evidence as it comes from mouth of a person who is about to die and at that stage of life he is not likely to make a false statement. The evidence has been placed at length before us during the hearing by counsel for both the parties. We have also read the evidence again with a view to forming our own assessment of it. The fact that Sudha implicated Shakuntala as the person who poured kerosene on her and lit fire to the clothes is more or less spoken by every witness. Even Mr. Singh for the respondents in his submission has agreed that it is so. There is also evidence that she had indicated Laxman to have actually set fire though at a later stage. The role assigned to Subhash was not very specific.

The other part of the dying declaration is the written one in the handwriting of PW. 17 and said to have been attested by DW. 1. This is claimed to have been written at the hospital a couple of hours after Sudha had been taken there. PW. 17 approached the doctor for requisite permission and DW.1 after examining the condition of Sudha and after being satisfied that she was in a fit condition to make a declaration, permitted the same to be recorded. It has admittedly been written by PW. 17. It has not been signed by Sudha though she was literate enough. As the evidence shows, there is a partial impression of a finger tip said to be of Sudha on the document. This is said to have been put with the assistance of the Investigating Officer who recorded the statement and DW. 1. When the doctor was available there was no Justification for the police officer to record the statement. PW.17 was specifically asked by the prosecution as to why the statement was not got recorded by a Magistrate or a doctor. He gave the following answer :

> "So far as the Magistrate is concerned, I thought that during the night the Magistrate might not be easily available and in the mean time the injured might die. So far as doctor is concerned, generally they refuse to record a statement and in this case he had so refused to record the statement himself. He had, however, asked me to write the same under his permission."

The doctor, DW. 1 on the other hand stated :

> "I did not suggest or impress upon the police officer that he should called a Magistrate to record the statement or her own relation to be present at the time of her statement, nor I volunteered to record the statement myself. It would be incorrect that the police officer had requested me to record the statement of Sudha and that I had refused to do so."

The explanation of the police officer is, therefore, not accepted by the doctor. The justification advanced by the police officer for not looking for a Magistrate does not appear to be easily convincing. At any rate, when the doctor was available, he should have been requested to record the dying declaration and PW. 17 should not have taken the job on himself. We are prepared to prefer the evidence of the doctor to the police officer in this regard and we, therefore, hold that the police officer did not request the doctor to record the statement and had volunteered to do so all by himself.

Though DW.1 has stated that he was present when the statement was made, a lot of argument has been advanced before the trial Court as also the High Court and even before us about the manner of attestation made by the doctor. DW.1 has endorsed: Attested the recorded statement. If the doctor was present and he had heard the statement being made by Sudha he would have ordinarily endorsed that the statement had been made to his hearing and has been recorded in his presence. The endorsement as made is indicative of the position that a statement had been recorded and the same was being attested by the doctor. As maintained, this statement has been given in the intensive care unit where apart from the patient, the doctor and the police officer, none else was present. There is sumptuous evidence that relations of Sudha were available in the hospital premises though not within the intensive care unit. Both the police officer as also the doctor were asked to indicate the reason for not calling one of those relations to the place when Sudha's statement was being recorded. In fact, ordinary human conduct would have required such a relation to be present when the statement was being made, particularly because it was not known by then to the police officer as to what statement Sudha would make in regard to the cause of her burning.

We have already pointed out that the document does not bear the signature of Sudha. Admittedly, burning was to the extent of 70% and there is medical evidence as to which parts of the body had been affected. There is not any positive evidence that the palms had been affected so badly that Sudha was not in a position to use any of her fingers. Nor is there clear evidence that the left hand thumb had been so affected that a full impression was not available to be taken. Mr. Singh has argued with emphasis that Sudha must have used both her hands to extricate herself from her wearing apparel when the same was burning and thus both the palms and the fingers including the tips must have been burnt. We do not think in the absence of evidence, such a submission should be accepted to explain away either a signature or thumb impression in the dying declaration.

Added to these features, the time of the statement has not been indicated in the document. PW. 17 must have known that the time aspect was very important feature in a document of this type. Ordinarily, a document as valuable as a dying declaration is supposed to be fool proof and is to incorporate the particulars which it is supposed to contain. No justifying reason has been given as to why the time was noted.

The summary of History Sheet, Ext. PW.17/0 indicates that a pethidine injection was given to Sudha at 10 P.M. and the doctor prescribed repetition of it every 8 hours. Judicial notice can be taken of the fact that after pethidine is given the patient would not have normal alertness. Appropriate care was not taken at the trial stage to cross examine DW.1 with reference to this aspect. We are inclined to agree with counsel for the appellants that the certificate of DW. 1 that Sudha was in a fit condition

to make a declaration cannot be given full credit. This Court pointed out in Khushal Rao v. State of Bombay A.I.R. [1958] S.C. 22, 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; 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 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 of 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.

In Dalip Singh & Ors. v. State of Punjab, A.I.R. [1979] S.C. 1173, this Court has pointed out :

> "We may also add that although a dying declaration recorded by a Police Officer during the course of the investigation is admissible under section 32 of the Indian Evidence Act in view of the exception provided in sub-section (2) of section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declarations out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor. As observed by this Court in Munnu Raja v. State of Madhya Pradesh, [1976] 2 S.C.R. 764; A.I.R. 1976 S.C. 2199) the practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. ..... "

We also find that under the relevant Rules applicable to Delhi area, the investigating officer is not to scribe the dying declaration. Again, unless the dying declaration is in question and answer form it is very difficult to know to what extent the answers have been suggested by questions put. What is necessary is that the exact statement made by the deceased should be available to the Court. Considered from these angles, the dying declaration in question is not acceptable. The High Court obviously lost sight of all these aspects when reversing the conclusion of the trial Court with regard to the document and agreeing to act upon it.

Considerable criticism has been advanced on behalf of the prosecution to the acceptability of this document on account of these draw backs. When PW. 17 was being examined in Court, the prosecution with leave of the Court asked him specific questions as if he was being cross-examined with reference to this document. That shows that grave doubts were entertained by the prosecution about the bona fides of this dying declaration. We have bestowed considerable thought on this aspect and we are led to accept the doubts indicated by the trial Court in regard to the authenticity of this document. We accordingly decline to attach any importance thereto.

While rejecting the written dying declaration, we would like to point out that we are also not prepared to attach full credence to the oral dying declarations. There have been instances where conviction has been based solely upon a dying declaration when it has been found to be totally acceptable. We are not prepared to attach that type of importance to the oral dying declarations in this case. We shall refer to these oral statements in the evidence of witnesses when we come to assess the oral evidence and we are of the opinion that the oral dying declarations would be available for use as corroborative material in this case.

The High Court utilised three other documents for finding out how Sudha caught fire. The first of these documents is the site inspection note Ext. PW.17/R where it has been indicated: "It is alleged that Sudha, 20 year old wife of Laxman Kumar, resident of 9-B Janata Flats, Phase III, Ashok Vihar, was heating milk on stove when her clothes caught fire..." The source of this information is not known. In the circumstances no importance can at all be attached to the her say record. The other document is the admission record of Sudha at the St. Stephen's Hospital, Ext. PW.18/A. There it has been indicated: "Sustained burns while heating milk on a stove". The document has admittedly been signed by Laxman Kumar, the husband of Sudha. One can assume that he was the source of information. Mr. Singh placed the evidence of PW.3, sister of Sudha where she said that she had talked to the doctor at the hospital and told her all the details. On the basis of this evidence, learned Senior Counsel, pleaded to accept PW.3 as the source of the information giving the cause of fire. He also argued with emphasis that it was for the prosecution to examine the doctor who had made the endorsement and adverse inference should have been drawn against the prosecution for with holding the witness from the trial. Admittedly, the endorsement was made by one Mr. Vijaya Kumar who was then working at the St. Stephen's Hospital. PW. 18 who works in the said Hospital has stated that Mr. Kumar had left the services and his whereabouts were not known. In these circumstances, no adverse inference is drawable. Nor can we assume that the information regarding the cause of fire was on the basis of what PW. 3 had stated. Since the husband of Sudha was present and was signing the form, it is legitimate to assume that the doctor made queries from him and filled up the form accordingly. Again, as we have said, Sudha was alive, the near relations were not prepared to expose the husband and his relations to prosecution and even PW.3 may not have stated the real cause. No importance, therefore, is also available to be attached to the narration in the document. The third document is the report received from the mobile van around 9.44 P.M. where it was said that a woman named Sudha, aged 21-22 years is said to have sustained burns by the bursting to stove or she caught fire accidentally. The stove has been found to be in good order at the time of the seizure and this fact goes a long way to indicate that the allegation of stove bursting was baseless. The source cf the information not being know, no importance is also available to be attached to this document. Mr. Singh was maintained that the bursting of the stove is an erroneous translation of the actual record. What exactly was said is that there was a sudden flicker in the kerosene stove as a result of which Sudha's saree caught fire. Perhaps the criticism is correct but nothing ultimately turns on it. At the hearing counsel for the appellants relied upon the entry in PW. 12/B which was a copy of the record maintained at the Ashok Vihar Police Station. The entry shows:

> "At 9.12 P.M. Shri Nahar Singh has informed from P.C.R. through telephone that some unknown person had informed from a public call telephone to the effect that one lady had been set on fire in a Janata Quarter,....."

No importance can be attached to this entry either. We would, therefore, keep out these documents from consideration while considering the case for finding out whether Sudha had an accidental catch of fire or fire was set on her clothes.

It is appropriate at this stage that we consider the background and the existing relationship between the parties with a view to ascertaining if there was any motive for perpetrating the crime.

The evidence in regard to the relationship between the parties so as to discover the presence of motive is both oral and documentary. The High Court referred to four letters written by Sudha to Geeta, sister of Laxman. Ext. D-2 is a letter without date but the contents suggest that it must have been written some time in the autumn of 1980. The letter indicates that Sudha's relationship with Geeta was quite close. They appear to be of the same age group and it is quite possible that while the relationship with the other members of the family was strained, Sudha's relationship with Geeta was particularly cordial. Such a situation is not unusual. This letter, however, contains a statement to the following effect :

> "Any way, I would write to you in detail as now I have no time to concentrate my mind for writing a detailed letter.
>
> Ext. D.3 is a letter of September 12, 1980. Here again Sudha has indicated her longing to be close to Geeta. Therein there is a second sentence reading thus: "You keep yourself happy and need not worry." Worrying, of course, would be with reference to Sudha. The High Court has underlined the following sentence of the letter :
>
> "Deedi (sister) please send mother over here after 2 or 3 days as you know that I have not been able to get any opportunity to have her company here."

According to the High Court, Sudha was longing for the company of the mother-in-law; otherwise there would be no necessity for that sentence in the letter. As we propose to deal with this aspect at a time, we shall indicate our comments after we have referred to the other two letters. The third letter marked Ext. XX is dated October 17, 1980. Therein again Sudha wanted the mother (of Didi) to visit Delhi for 2 or 4 days. Towards the end there is an indication that Laxman wanted the delivery to be effected at Delhi. The last letter in the series is Ext. XXX which does not bear a date. There are two sentences in the letter which we would like to extract in particular :

> "I am of the view that blood is thicker than water.. I would have posted a letter earlier but due to abdominal ailment I could not do so... The first of the sentences referred to above obviously was meant for Didi as she had failed to come and the second sentence referred to her ailment. There is nothing in these letters which is very material for the purpose of ascertaining the relationship that existed between Sudha on one side and members of her husband's family on the other. Geeta being the daughter of Shakuntala, the mother-in-law , Sudha as daughter-in-law was not expected to make complaints against her particularly when the letters were being sent to Barot where the mother-in-law was living. Similarly, a letter written by PW. 8

to Subhash and Laxman which has been marked as Ext.D-1, dated September 25, 1980, and another written by PW. 8 to Shakuhtala and her husband (Ext. PW.6/DA of the same date) have also been relied upon by the High Court. These letters are letters which PW.8 had written with reference to the marriage of Ashok (younger brother of PW.8). It appears that this marriage was negotiated and/or made to materialise with the assistance of the members of the family of the accused persons and the marriage had been fixed to February 12, 1981. In the letter Ext. PW.6/DA written to the parents of Laxman, PW.8 had spoken well about the family of the accused persons. That obviously one would expect when a brother-in-law of Laxman would be writing to the parents of the sister's husband. It is customary to write to elders in that strain. The contents of these letters may not reflect the true position and any undue emphasis on the contents thereof would really be misleading. Similarly, there is a letter written by PW. 6 to Sudha also dated September 25, 1980. Therein there is mention: "You need not worry about anything; everything will be okay... I will surely bring your servant with me.... The High Court has relying on these letters, come to the conclusion that the relationship was good till middle of October, 1980, and according to it the appreciation of the position by the trial Judge that the letters contained intentional flattery was not correct.

There is evidence that the deceased was being made to do most of the household work notwithstanding the fact that she was carrying and gradually the time for delivery of the child was nearing. PW. 6 had intervened to meet this situation by bringing a servant who could take Sudha's load to some extent and ease the position. DW. 5, however, terminated the services which meant that Sudha had to take the burden on her. There is evidence that PW. 6 had even gone to the extent of offering the salary of the servant. That possibly was not appreciated and may have been for good reasons.

Once we come to the conclusion that the letters have really no material bearing on the point at issue, the oral evidence of the four witnesses speaking on the topic has to be referred to. As pointed out, these four witnesses are PWs. 3 and 6, the two sisters of Sudha, PW. 7 Sudha's mother, and PW. 8 who is Sudha's brother. PW. 3 has stated :

"Whenever I used to-visit her or she used to visit me, Sudha always used to complain that she has not been treated properly. She used to complain about the harassment by her husband's elder brother Subhash, accused, and his wife and some times by her mother-in-law, both accused present in court, as they used to make demand from Sudha for bringing more money from her brothers and they also used to take more work from her. On 1.12.80, I had visited her in the house of the accused at about 7 P.M. and had remained with her for about an hour. At that time the doctor had advised and opined that she was likely to deliver within two or three days. When I was at the house of the accused, Sudha's mother-in-law, the accused present in the Court, made several charges to accuse and malign Sudha.

When I was coming out of the house my sister Sudha came out with me. She told me that on the previous day her brother-in-law, i.e. Mr. Vinod younger brother of Laxman had tried to forcibly remove her gold bangles when she had refused to hand them over to her in-laws. She had also told me that Vinod had given a twist to her right wrist. I had noted bluish mark on her wrist. When I wanted to take her to my house, accused Laxman and his mother Smt. Shakuntala refused to send her with me saying that Laxman would be dropping her to my house next morning.

In cross-examination it has been further brought out:

"I never saw wife of Subhash pleased with Sudha who always used to complain even against her whenever I used to meet her She further said :

"I had received two or three letters from my brother from Calcutta requesting me to look after Sudha as she was not happy in her in-laws' family. I did not preserve those letters.

PW. 6 is the other sister of Sudha. She has said : "She told me that she was not in a position to do that much of work due to her not having already worked before her marriage and also because of her being in the family way. Thereafter she returned to her in-laws. After 10 days I went to the house of Sudha in Ashok Vihar and requested Smt. Shakuntala, accused present in Court, and wife of accused Subhash to engage a maid servant for washing utensils and I offered to pay for the same. Sudha arranged for a maid servant who was, however, not paid the wages by the accused persons and was terminated. Many a time, Sudha had complained to me that Mrs. Subhash used to prepare meals for the rest of the family and she had to cook the food for herself later on. When Sudha was carrying a child for about 5 to 6 months, she told me that her in-laws had told her that if she gave birth to a male h child then they would take a scooter and Fridge for Laxman and Rs. 10,000 in cash from her brothers. I told her that I would gift a fridge from my side and the rest would be given by our brothers. On many occasions she had told me that her in-laws were making demand of a sewing machine although she did not know any stitching work and she had written a letter to her brother about which I came to know later."

PW. 7 is an elderly lady aged sixty. Obviously her husband was dead. She has stated that about two months after the marriage when Sudha was brought to Calcutta by PW. 8, she had stated that Laxman and the mother-in-law and Subhash have been demanding Rs. 10,000 to Rs. 20,000 in cash. PW. 8 is Sudha's brother. He lives at Calcutta and is by profession a Commission Agent. His evidence too was to the effect that Sudha had complained about the demand of cash on the occasion of the birth of the first child. Added to the evidence of these witnesses is the evidence of PW. 4. Ishwari Devi, as already pointed out, was a good friend of Sudha, being a close neighbour and Sudha having very much liked Bobby, the young child of Ishwari Devi. Ishwari Devi had been living in the upper flat until two months before the occurrence and even when she had shifted, Sudha and she were meeting almost every day. She has stated "Sudha almost daily used to visit me and used to

complain to me that she was being maltreated on the ground of insufficiency of dowry and that her husband and mother-in-law used to threaten her for setting her on fire.

There is no particular notification as to why PW. 4 would depose against the accused persons. Similarly, if there was really no basis for the accusation, the two sisters of Sudha, her mother who was an elderly lady and a widow, and her brother, PW. 8, would have not falsely implicated Shakuntala, Subhash and Laxman as the perpetrators of the crime. If Sudha had succumbed to burn injuries caused by accidental fire, it would have been an event for mutual sorrow for every one in the family both of the accused as also of Sudha. We cannot lose sight of the fact that the marriage of Ashok had already been settled and was an event to come on February 2, 1981. Only a couple of months after the incident. if there was no foundation in the allegation of maltreatment and harassment of Sudha, the four relations of Sudha would have really not strained the relationship by making false allegations. If it was indeed an accident one would expect Ashok's marriage to be performed as fixed so that the tie may be maintained. In that event false accusations against the accused persons would he wholly out of place. The High Court has obviously not kept these aspects in view while dealing with the evidence. We are, therefore, of the opinion that the material on record is indicative of the position that the relationship of Sudha with the members of the family in the husband's side was not cordial.

We may note here that even the High Court has not brushed aside the story of demand in the event of a child being born. It has observed :

> "It may be that in September or October the mother-in-law or some other members in the family may have told the deceased that in case she gave birth to a male child they would expect a fridge and a scooter and some cash. It is customary for the Hindus that on the first delivery of a child, particularly on the birth of a male child, the parents give presents. The in-laws or husband may have felt the need of a scooter and a frigidaire and therefore, wanted the deceased to demand a frigidaire and a scooter. We find it impossible to agree with the learned Additional Sessions Judge that the accused finding no positive response from the brothers and the sisters of the deceased regarding their above demand had decided to kill the deceased. The observation of the Additional Sessions Judge that the accused decided to take the life of the deceased before the delivery of the child because after the child was born it would have become difficult for them to execute the plan is wholly with out any basis.
>
> Perhaps the way the learned Additional Sessions Judge formed his conclusions on the basis of the evidence was not to be approved but in our opinion the High Court had really no justification to condemn the learned Additional Sessions Judge on that score. We do not approve of the conclusion of the High Court that insufficiency of dowry was made an issue only to create a motive for the crime. As a fact, the relationship had been strained. Shakuntala and Madhu had failed to show normal human considerations towards Sudha, a young girl who was for the first time going to be a mother. Both Shakuntala and Madhu had their own experience of being in the family way in their own time. They, however, forgot the same and their behaviour

towards Sudha during this period did amount to a sort of torture. Added to the physical strain, the demands advanced from time to time and the particular emphasis with which the same were reiterated as the period of delivery approached gradually strained the feeling between Sudha and the members of the husband's family.

We have also come to the conclusion that the High Court failed to take into account one material aspect while appreciating the evidence of the prosecution witnesses. It is a fact that Sudha had been burnt and according to the medical opinion that was to the extent of 70%. As the evidence shows, Sudha was in her senses and was capable of talking at the time when she was being removed to the Hospital or even after she had been admitted as an indoor patient. The two sisters or their respective husbands had no apprehension that Sudha would not live. In case Sudha came round, she was to have lived in the family of her husband. No one interested in the welfare of Sudha was, therefore, prepared to make a statement which might prejudice the accused persons and lead to the straining of relationship in an irreparable way. Therefore, the silence or avoidance to make a true disclosure about the cause of fire particularly so long as Sudha was alive, cannot be over emphasised and adverse inference drawn by the High Court from the conduct of the sisters was indeed not warranted in the facts of the case.

We came across sumptuous reference to statements of witnesses recorded under Section 161 of the Code of Criminal Procedure during Investigation in the judgment of the High Court. It is interesting to notice that the High Court found fault, and very rightly, with the trial Court for using such statements as evidence; yet, it fell into the same error and freely referred to such statements for coming to findings on material aspects. It is unnecessary to indicate reference to specific instances at length but one or two illustrative occasions we would like to point out "The husband of PWs. 3 and 6 in their statements to the police on 2nd December, 1980, have stated that the relations between Sudha and her husband were cordial."

The husbands have not been examined as witnesses at the trial. Similarly the High Court extracted in extenso the inquest statements as if they were evidence proper. Section 162(1) of the Code of Criminal Procedure provides :

"No statement made by any person to a police officer in the course of investigation under this chapter, shall, if reduced to writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the

> Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872..."

This Court pointed out in Pedda Narayana & Ors. v. State of Andhra Pradesh, [1975] 4 S.C.C. 153, that a statement recorded by the police officer during investigation is inadmissible in evidence and the proper procedure is to confront the witness with the contradictions when they are examined and then ask the Investigating Officer regarding the contradictions. This Court reiterated the position in Sat Paul v. Delhi Administration, [1976] 1 S.C.R. 727, by again pointing our that the statement made to a police officer during the investigation can be used only for the purpose of contradicting the prosecution witnesses under s. 145 of the Evidence Act. It cannot be used for the purpose of cross-examination. The mandate of the law of procedure and the law laid down by this Court have obviously been overlook ed by the trial Court as also the High Court although the High Court was cognizant of the legal position and had found fault with the trial Court. We would like to point out that the trial Court has marked large portions of the statements recorded by the police without confiding to the actual contradiction. If attention had been bestowed at the appropriate stage, this situation would not have arisen.

We shall now refer to the evidence regarding Sudha's burning. It has already been indicated that the evidence consists of statements of PWs. 1, 2, 4 and 5. These are neighbours. The High Court has found three of these witnesses to have been present and we have already indicated that PW. 4 was also attracted to the spot by the cries raised by Sudha. Mr. Singh, it may be noted, challenged this finding of the High Court but we see no force in the challenge. These witnesses, according to the High Court, came and helped in putting out the fire and expeditiously removing Sudha to the hospital. We have already indicated our reasons for accepting the evidence of these witnesses as being trustworthy. The learned trial Judge who had occasion to see the demeanour of the witnesses, believed them to be truthful and the reasoning advanced by the High Court to discard the evidence has been rejected by us. On the evidence of these witnesses it follows that at the time then PW. 1 came, Subhash was standing at the door connecting the room with the outer covered space where Sudha had been aflame. Undue importance was given by the High Court to the fact that there was no smell of kerosene on the head or hair of Sudha. Sudha had been found in a standing posture by these witnesses when her wearing apparel was burning. There is some evidence that the clothes emanated the smell of kerosene. At no stage Sudha had even suggested that kerosene had been poured or sprinkled on her head. The observation of the High Court that if kerosene had been poured on her body or over the wearing apparel the burns would have been of a greater dimension is not a conclusion based upon expert evidence. The medical examination conducted does not appear to have been made keeping this aspect in view. Admittedly, every part of the body had not been equally burnt. Therefore, it is quite possible that presence of kerosene on the wearing apparel had damaged certain parts of the body more than the other parts. Non-presence of kerosene on the head is not a material feature and presence of smell in the clothes probabilises the prosecution case that on Sudha's clothes kerosene had been sprinkled. The suggestion that the gunny bag and the clothes had come in contact with kerosene leaking from the stove is indeed not acceptable in the absence of evidence that Sudha had squatted on the floor while using the kerosene stove. We have already found that Sudha had not lighted the kerosene stove that evening. Evidence that the stove was leaking when lighted is of no assistance to explain the presence of kerosene in the gunny bag as well

inasmuch as we have rejected the plea of lighting of the stove. Mr. Singh has placed some passages from Taylor's Medical Jurisprudence in support of his submission that in view of the medical evidence that Sudha's burns were either of the first or the second degrees, use of kerosene which would have aggravated the burns was untrue. We are not much impressed by this argument. How much of kerosene was sprinkled is not known. For how long Sudha actually burnt is also not exactly known. To work backwards from the injured condition of Sudha's body may not in the premises lead to a correct conclusion.

One more feature which must be duly taken note of at this point is the place where Sudha was found aflame. Admittedly it was not the room where she lived but it was the covered space on the back side. Once we have rejected the defence plea of accidental fire while heating milk with the kerosene stove, Sudha's presence in the outer space at that time is not natural. Sudha was apparently brought to that place from the room to be put on fire so that the articles in the rooms would not be damaged and there would be the minimum of loss to property.

The evidence of the witnesses clearly indicates that the accused persons appeared to be indifferent even when Sudha had been aflame. If the mother in-law was really interested in a child being born to Sudha an event likely to happen within a few days thereafter she would have been the most disturbed person at the sight of fire on the body of Sudha. Similarly, Laxman must have been terribly upset and would not have been leaving any stone unturned to bring safety to Sudha. The evidence of the prosecution witnesses is indicative of the position that there was no sense of grief or anxiety in their conduct and, therefore, the neighbours who gathered had to take the lead in the matter for providing relief to her.

There is some amount of discrepancy in the evidence of the witnesses in regard to the details and Mr. Singh highlighted this aspect in his submission. It is common human experience that different persons admittedly seeing an event give varying accounts of the same. That is because the perceptiveness varies and a recount of the same incident is usually at variance to a considerable extent. Ordinarily, if several persons give the same account of an event, even with reference to minor details, the evidence is branded as parrotlike and is considered to be the outcome of tutoring. Having read the evidence of these witnesses with great care, we are of the view that the same has the touch of intrinsic truth and the variations are within reasonable limits and the variations instead of providing the ground for rejection, add to the quality of being near to truth. On the evidence, therefore, we come to these conclusions : (1) the relationship of Sudha with the members of the husband's family had become strained and she had been subjected to physical as well as mental torture for some time before the incident; the physical torture was the outcome of indifference to her health and the mental torture was on account of demand of dowry; (2) Sudha had not lighted the kerosene stove that evening and her wearing apparel had not caught fire accidently but kerosene had been sprinkled on her clothes and she had been brought into the open space where fire was lit to her clothes. Thus Sudha died not as an outcome of an accidental fire but on account of a designed move on the part of the members of the family of the accused persons to put an end to her life. Mr. Singh has pleaded forcefully that we should not interfere with the judgment of acquittal as it is based on a reasonable view of the matter merely by re-appreciating the evidence. The scope of an appeal against acquittal and the scope of this Court's jurisdiction in such a matter are well settled.

The preponderance of judicial opinion in this Court is that there is no difference between an appeal against conviction and an appeal against acquittal except when dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set on the materials on record, the acquittal may not be interfered with. Upon reading the record and after hearing learned counsel we are of the view that the judgment of the High Court cannot have the immunity which Mr. Singh claimed. Once evidence has been read and this Court has proceeded to review the entire material, there is indeed no limitation in law in the exercise of the jurisdiction under Article 136 of the Constitution for the matter of making a just decision.

Now comes the time to find out as to who are the persons responsible for the killing of Sudha. We have already indicated that DW. 5 had been taken to Barot by Subhash and on his return he brought Shakuntala to Delhi. Subhash appears to have been living in a different room. Though they were living under the same roof, there does not appear to have been much of cordiality and close relationship between Subhash and Laxman; each one appeared to be living in his own world within the small premises. It is significant that Subhash had made a statement as reiterated by the prosecution witnesses that he had nothing to do with what happened to Sudha and on that ground had declined to enter into the taxi when Sudha was being removed to the Hospital. Even such a statement had been repeated earlier. It is true that the prosecution witnesses have suggested that Subhash was closing the door when they wanted to enter the back space. Subhash has explained that he was trying to avoid the spread of fire. Keeping these aspects in view, we are inclined to treat his case somewhat differently from that of the husband and the mother-in-law of Sudha.

Mr. Garg appearing for the appellants in Criminal Appeal No. 94/84, had emphatically relied upon the observations of the Judicial Committee in the case of Barendra Kumar Ghosh v. The King Emperor, 52 I.A. 40, and contended that in view of the fact that Subhash stood and waited exhibiting a conduct of indifference when positive action for help to Sudha was warranted, he must be imputed with sufficient motive and be ranked at par with the accused persons. We are, however, prepared to give him the benefit of doubt treating his case to be on the border line. His acquittal by the High Court, therefore, shall not be interfered with. As far as the mother-in-law is concerned, the position is very different. Sudha in her dying declarations made contemporaneously as deposed to by the witnesses had stated that kerosene had been poured by the mother-in-law and fire had also been lit by her. This has been repeated by her more than once before she reached the hospital except that she assigned that lighting of fire to her husband. We have already dealt with this aspect of the matter and have come to the conclusion that though we would not have been prepared to base the conviction on the oral dying declarations alone, such dying declarations, in our opinion, were not to be totally rejected and the same can be used as corroborative material.

We are not prepared to accept Laxman's plea of alibi. He had pleaded that he had gone along with PW. 3 upto the bus stand and by the time he returned the incident had taken place. Laxman was present and his conduct of indifference does exhibit his complicity. In fact, when Laxman was available in Delhi, without his active association Shakuntala could not have managed the event all by herself. We are, therefore, of the definite view that Shakuntala and Laxman are responsible for the

killing of Sudha by setting her on fire. They have, therefore, committed the offence of murder and are liable to be convicted for the offence punishable under section 302 of the Indian Penal Code as has been found by the trial Court. Mr. Singh had very ably attempted to persuade as to accept the position that when admittedly PW. 3 had come to the house that evening, it would be normal to expect Laxman to go with her upto the bus stand when she was returning to her residence. He also commended to us to accept the evidence of the taxi driver DW. 4 who stated that Laxman appeared in the scene after the taxi had come to the spot. We have pondered over this submission for quite some time but we find the evidence of the prosecution witnesses who saw Laxman standing at the front door more acceptable.

The next relevant aspect for consideration is what should be the proper punishment to be imposed. The learned trial Judge had thought it proper to impose the punishment of death. Acquittal intervened and almost two years have elapsed since the respondents were acquitted and set at liberty by the High Court. In a suitable case of bride burning, death sentence may not be improper. But in the facts of the case and particularly on account of the situation following the acquittal in the hands of the High Court and the time lag, we do not think it would be proper to restore the death sentence as a necessary corollary to the finding of guilt. We accordingly allow both the appeals partly and direct that the two respondents, Smt. Shakuntala and Laxman Kumar shall be sentenced to imprisonment for life. Both the appeals against Subhash stand dismissed and his acquittal is upheld. Steps shall be taken by the trial Judge to give effect to this judgment as promptly as feasible.

Before we part with these appeals we may refer to some portions of the judgment of the High Court under the heading 'Conclusion'. The High Court observed :

> "The sentence of death awarded to three persons including a woman in a wife burning case was given wide publicity both by the national and international news media. The verdict of acquittal which we are about to deliver is bound to cause flutter in the public mind more particularly amongst women's social bodies and organisations. We are performing our constitutional duty. Judges have no special means of finding out the truth. We entirely depend on the evidence produced on record and do our best to discover the truth within the limitations laid down by law. Judges are human beings and can err. The satisfying factor is that we are not the final Court and there is a Court above us and if our judgment is wrong it shall be set right."

What the High Court had visualised has perhaps partly come to happen but the way the High Court took cover of the existence of a higher forum is not available to us as law does not prescribe another forum beyond this Court. We are, however, disturbed by the fact that the High Court took notice of publicity through the news media and indicated its apprehension of flutter in the public mind. It is the obligation of every Court to find out the truth and act according to law once the truth is discovered. In that search for truth obviously the Court has to function within the bounds set by law and act on the evidence placed before it. What happens outside the Court room when the Court is busy in its process of adjudication is indeed irrelevant and unless a proper cushion is provided to keep the proceedings within the court room dissociated from the heat generated outside the court room either through the news media or through flutter in the public mind, the cause of justice is

bound to suffer. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical power of a litigating individual or the might of the ruler nor even the opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecutor is given an opportunity of supporting the charge and the accused is equally given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed mind of the Judge that leads to determination of the lis. If the cushion is lost and the Court room is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for truth is stifled.

In the penultimate and the last paragraphs the judgment of the High Court it has been said as follows :

> "We appreciate the anxiety displayed by some of the women organisations in cases of wife burning a crime to be condemned by one and all and if proved deserving the severest sentence. The evil of dowry is equally a matter of concern for the society as a e and should be looked upon contemptuously both on giver and the taker. This evil is in vogue in our society since time immemorial and shall take time to be curbed. The social and economic conditions are the main enemy of woman desperation sometime compelling her to commit suicide. These evils prevailing in our society have to be fought at different levels. Once economic independence comes in women the evil of dowry will die a natural death. Without education economic independence cannot be achieved and, therefore, education at all levels of the society upper class, middle classes, lower classes is a must. We hear of no wife burning cases in western countries, obviously because women there are economically independent.
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> The Courts cannot allow an emotional and sentimental feelings to come into the judicial pronouncements. Once sentimental and emotional feelings are allowed to enter the judicial mind the Judge is bound to view the evidence with a bias and in that case the conclusion may also be biased resulting in some cases in great injustice. The cases have to be decided strictly on evidence howsoever cruel or horrifying the crime may be. All possible chances of innocent man being convicted have to be ruled out. There should be no hostile atmosphere against an accused in court. A hostile atmosphere is bound to interfere in an unbiased approach as well as a decision. This has to be avoided at all costs. We are sorry for the above diversion but it has become necessary in this case.
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> With the opinion in the ultimate paragraph of the judgment we agree. But we have not been able to see any reason as to why the High Court was obsessed with the idea that the diversion became necessary in the case. It cannot be gain said that the Court must proceed to discharge its duties uninfluenced by any extraneous consideration.

Debate has no place in a judgment though invariably a debate precedes it and a judgment may occasion a debate. Every one in the country whether an individual or an organisation should contribute to social metabolism. It is our considered opinion that this Court has obligation within reasonable limits and justifying bounds to provide food for thoughts which may help generate the proper social order and hold the community in an even form. The High Court was of the view that the evil of dowry in our society has been prevailing from time immemorial. This does not seem to be correct. In the olden days in the Hindu community dowry in the modern sense was totally unknown. Man and woman enjoyed equality of status and society looked upon women as living goddesses. Where ladies lived in peace, harmony and with dignity and status, Gods were believed to be roaming about in human form. When a bride was brought into the family it was considered to be a great event and it was looked upon as bringing fortune into the family not by way of dowry but on account of the grace the young lady carried with and around her.

The High Court has indicated that once education and economic independence for women are achieved, the evil of dowry would meet a natural death. There seems to be force in what the High Court has said. We propose to add a few concluding paragraphs to our judgement to highlight our concern about the evil.

Marriage, according to the community to which parties belong, is sacramental and is believed to have been ordained in heaven. The religious rites performed at the marriage alter clearly indicate that the man accepts the woman as his better-half by assuring her protection as guardian, ensuring food and necessaries of life as the provider, guaranteeing companionship as the mate and by resolving that the pleasures and sorrows in the pursuit of life shall be shared with her and Dharma shall be observed. If this be the concept of marriage, there would be no scope to look for worldly considerations, particularly dowry.

Every marriage ordinarily involves a transplant. A girl born and brought up in her natural family when given in marriage, has to leave the natural setting and come into a new family. When a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is suitable and not far different from the soil where the plant had hitherto been growing; care is taken to ensure that there is not much of variation of the temperature, watering facility is assured and congeniality is attempted to be provided. When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. Plant has life but the girl has a more than developed one. Human emotions are unknown to the plant life. In the growing years in the natural setting the girl - now a bride - has formed her own habits, gathered her own impressions, developed her own aptitudes and got used to a way of life. In the new setting some of these have to be accepted and some she has to surrender. This process of adaptation is not and cannot be one-sided. Give and take, live and let live, are the ways of life and when the bride is received in the new family she must have a feeling of welcome

and by the fond bonds of love and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into a new mould; the mould which would last for her life. She has to get used to a new set of relationships - one type with the husband, another with the parents-in-law, a different one with the other superiors and yet a different one with the younger ones in the family. For this she would require loving guidance. The elders in the family, including the mother-in- law, are expected to show her the way. The husband has to stand as a mountain of support ready to protect her and espouse her cause where she is on the right and equally ready to cover her either by pulling her up to protecting her willingly taking the responsibility on to himself when she is at fault. The process has to be a natural one and there has to be exhibition of cooperation and willingness from every side. Otherwise how would the transplant succeed.

There is yet another aspect which we think is very germane, Of late there is a keen competition between man and woman all the world over. There has been a feeling that the world has been a man dominated one and women as a class have been trying to raise their heads by claiming equality. We are of the view that woman must rise and on account of certain virtues which Nature has endowed them with to the exclusion of man, due credit must be given to women as possessors of those exclusive qualities. It is the woman who is capable of playing the more effective role in the preservation of society and, therefore, she has to be respected. She has the greater dose of divinity in her and by her gifted qualities she can protect the society against evil. To that extent woman have special qualities to serve society in due discharge of the social responsibility. While all these are true and the struggle for upliftment has to continue, can it be forgotten that men and women in the human creation are complementary to each other and it is only when a man and a woman are put together that a unit is formed? One without the other has no place in the community of homosapiens. Therefore, in a world where man and woman are indispensable to each other and the status of one depends upon the existence and longing of the other, to what extent is competition between the two justifiable is a matter to be debated in a cool and healthy setting.

S.R. Appeal partly allowed.