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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on 3rd July, 2013.*
Judgment delivered on 20th September, 2013

\+ **CRL.A. 765/2010**

KAMLA PRASAD ..... Appellant
Through : Mr.V.P.Singh Charak, Advocate with Mr.P.P.Singh and Ms.Shubhra Parashar, Advocates

versus

STATE (NCT) OF DELHI ..... Respondent
Through : Ms.Rajdipa Behura, APP for State.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL

G.S. SISTANI, J.

1. A woman married for 27 years with six children was burnt on 30th April 2006 at about 9:20 PM. DD No.18 was received at PP Metro Vihar regarding quarrel and the fact that one lady had got burnt. The information was received from the PCR which was marked to HC Anil Kumar who along with Ct.Phool Kumar informed SI Omvir Singh. HC Anil Kumar and Ct.Phool Kumar reached the spot i.e. H.No.A-1288, Phase II, Metro Vihar, and in one room of the said house, one empty plastic kerosene oil can was lying and one match stick was also lying on the floor. It was also made known that the PCR van had removed the deceased to the hospital. Thereafter, SI Omvir Singh, leaving HC Anil Kumar at the spot, along with Ct.Phool Kumar reached JPN Hospital where he obtained MLC of the injured Smt.Savitri Devi who had been opined fit for statement by the concerned doctor. The following statement was made by Smt.Savitri Devi:-

> "She was a labourer by profession and she got married 27 years ago, and she was having six children, and today due to some work, she had gone to the house of her daughter Gyan at B Block, and she came back at around 9 pm and her husband on coming back started abusing her and also assaulted her with danda. When she protested, her husband took kerosene oil can and poured the same over her and after lighting the match-stick put her on fire and her husband previously also used to beat her up and also used to threaten her that he would kill her and she thinking it to be the household affair used to keep mum, and before that also her husband had also tried to kill her by pouring kerosene oil over her."

2. On the basis of the statement, rukka was written by SI Omvir Singh to PS Narela for registration of the FIR. On 1st May, 2006 after registration of the FIR, appellant Kamla Prasad was arrested. Smt.Savitri Devi succumbed to her injuries and expired on 8th May 2006. Post mortem was conducted on the deceased on 10th May 2006. Charge-sheet under Section 302 IPC was framed. 18 witnesses were examined by the prosecution.

3. By the present appeal the appellant has challenged the judgment and order on sentence dated 14th January 2010 and 18.01.2010 respectively passed by the Court of Addl. Sessions Judge, District Court Rohini, Delhi, by which the appellant has been convicted under Section 302 IPC and was sentenced to undergo rigorous imprisonment for life with fine of Rs.3,000/- and in case of default of payment of fine appellant was further directed to undergo simple imprisonment for two months.

4. Counsel for the appellant contends that the impugned judgment of conviction and order on sentence are not sustainable and the apellant has been falsely implicated in the case by the IO to solve the case. It is contended that there are innumerable glaring contradictions and inconsistencies in the statements made by the witnesses. According to

the appellant, the judgment has been given on the basis of guesswork and the evidence is fabricated by the prosecution. It is submitted that the two public witnesses Smt.Raja Bai PW-2 and Smt.Bala PW-9 did not support the case of the prosecution and the witnesses turned hostile as the case was fabricated against the appellant by the prosecution. It is further contended that there is no eye-witness, the deceased first poured kerosene oil on herself while setting herself on fire and falsely implicated her husband who is innocent. At the time Savitri Devi poured kerosene oil on her body, she miscalculated that the burns would be serious and would lead to her death. It is contended that the deposition of Savitri Devi was not coherent and cogent as she was suffering with approximately 85% burns and she was not conscious nor was she able to speak either to the IO Inspector Omvir Singh or to Dr.Dev Kumar Borgdhaia who has stated in the MLC "*the patient herself stated to me that her husband poured kerosene oil on her body and put her on fire*". It is contended that the Trial Court has failed to appreciate the statement of the appellant recorded under Section 313 Cr.P.C. that he has been falsely implicated in the case and he was not present at his house at the time of the incident as he had gone to answer the call of the nature and when he came back a crowd had gathered near his house and later on he was wrongly shown to have been arrested from Metro Vihar area. It is urged before this Court that no statement was given by the deceased Smt.Savitri Devi as she was not in a condition to make such a statement and the IO has concocted a false statement against the appellant to solve the case. It is also contended that the Trial Court has wrongly relied upon the dying declaration of the deceased. The Trial Court did not consider that Smt.Savitri Devi died 8 days after the incident. It is submitted that on the one hand the Trial Court has justified the

conviction on the ground that people who fear God are unlikely to lie when they believe death is imminent, and on the other hand the victim died after 8 days of the incident and she has implicated her husband to teach him a lesson on account of a fight which took place a few days ago. Counsel for the appellant has also pointed out that the patient was examined at 10:45 PM and doctor had miscalculated the percentage of burns as 50-60% which is evident from the fact that in the post mortem report the burns were shown to be 85%. It is also contended that the Trial Court has given attention to the fact that the GCS of the patient was 15/15 when the statement of the deceased was recorded but it is not mentioned that the GCS of the patient was checked at 1:15 AM on 1.5.2006 when the patient was declared fit for statement, especially when Dr.Dev Kumar in his cross examination has stated that the GCS scale keeps on changing from time to time. Counsel submits that although a dying declaration is admissible under Section 32 of the Evidence Act but since it is a statement not on oath which cannot be tested by cross-examination the Courts have to apply the strictest scrutiny before acting upon it. Counsel submits that the Court has to ensure and satisfy itself that a concocted story to implicate an innocent person is not made nor the statement should be as a result of tutoring, prompting, and on account of bitterness to a relationship or a product of his/her imagination.

5. Counsel for the appellant further submits that dying declaration cannot be relied upon as the hands of the deceased were totally burnt therefore she could not have put her thumb impression on statement Ex.PW-10/A. Counsel further submits that the SDM concerned was not called for recording of the statement of the deceased by the IO despite the fact that deceased died 8 days after the incident.

6. Counsel further submits that the entire case of the prosecution is based upon the dying declaration, which is highly doubtful in nature, as the circumstances in which it was recorded are shrouded in mystery and there is no independent corroboration regarding the contents of the dying declaration, there was no attestation got done by the I.O. on the said statement from the attending doctors. It is also submitted that the dying declaration was not in question answer form, nor Smt.Savitri Devi was conscious and thus the dying declaration Ex.PW-10/A is not trustworthy. Counsel further submits that the appellant has been falsely implicated in the matter at the instance of the Police who wanted to solve the case at his expense.

7. Another argument raised by counsel for the appellant before us is that in the PCR form it is written *"Ek Aurat Ne Aag Laga Li"* and further in the crime team report Ex.PW-8/A in the column no.8 pertaining to the modus operandi, it is written "*self burnt by kerosene oil*" and thus the appellant has been wrongly convicted.

8. *Per contra*, counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The dying declaration is trustworthy and reliable. It is further submitted that it is not a requirement of law that a dying declaration must necessarily be made to a Magistrate, nor endorsement of the doctor is mandatory. It is also submitted that the Police had no interest in falsely implicating the appellant. It is submitted that the doctor had mentioned at 1:15 a.m. that the patient was fit for statement. This fact has been mentioned on the MLC, Ex.PW-5/A.

9. Counsel submits that it is settled law that in case the dying declaration is truthful, the same may alone form the basis of conviction without any corroboration. It is submitted that merely because PW-2 and PW-9 have

turned hostile, since the dying declaration is truthful no corroboration is required. Counsel also relies on the MLC, Ex.PW-5/A to show that the doctor had made an endorsement (as stated by the patient, her husband poured kerosene oil over her body and put her on fire) and submitted that on this basis alone the appellant has been rightly convicted.

10. We have heard counsel for the parties and considered their submissions. We are conscious of the fact that the Courts should be cautious in accepting the dying declaration as a trustworthy piece of evidence and only if such dying declaration inspires full credibility in its truthfulness and after testing the same on the basis of consistency and probability, it should be relied upon.

11. Since the main thrust of the argument of counsel for the appellant is that the dying declaration is not trustworthy, we deem it appropriate to discuss the law with regard to the dying declaration. The Apex Court in the case ***Ramilaben Hasmukhbhai Khristi And Anr. V. State of Gujarat, Suleman Yakubbhai Khrishti Parmar Vs. State of Gujarat and Dahyabhai Ashabhai Khristi Parmar & Ors. Vs. State of Gujarat,*** (2002) 7 SCC 56 has held as under:

> "Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of such a dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration."

12. The Apex Court in the case of ***Shakuntala V. State of Haryana***, AIR 2007 SC 2709, has taken into consideration its various decisions and culled out the principles governing dying declarations. It would be useful to reproduce para 9 of the judgment:

> "9. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in ***Smt. Paniben V. State of Gujarat*** (AIR 1992 SC 1817):
>
> i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See ***Munnu Raja & Anr. V. The State of Madhya Pradesh*** (1976) 2 SCR 764)]
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> ii. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See ***State of Uttar Pradesh V. Ram Sagar Yadav & Ors.*** (AIR 1985 SC 416) and ***Ramavati Devi V. State of Bihar*** (AIR 1983 SC 1640]
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> iii. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The

deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See ***K. Ramachandra Reddy and Anr. V. The Public Prosecutor*** (AIR 1976 SC 1994)].

iv. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See ***Rasheed Beg V. State of Madhya Pradesh*** (1974 (4) SCC 264)].

v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See ***Kaka Singh V. State of M.P.*** (AIR 1982 SC 1021)]

vi. A dying declaration which suffers from infirmity cannot form the basis of conviction. [See ***Ram Manorath and Ors. V. State of U.P.*** (1981 (2) SCC 654)].

vii. Merely because a dying declaration does contain the details as to the occurrence. It is not to be rejected. [See ***State of Maharashtra V. Krishnamurthi Laxmipati Naidu*** (AIR 1981 SC 617)]

viii. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See ***Surajdeo Oza and Ors. V. State of Bihar*** (AIR 1979 SC 1505)]

ix. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See ***Nanahau Ram and Anr. V. State of Madhya Pradesh*** (AIR 1988 SC 912)].

x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. {See State of U.P. V. Madan Mohan and Ors. (AIR 1989 SC 1519)]

xi. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. {See ***Mohanlal Gangaram Gehani V. State of Maharashtra*** (AIR 1982 SC 839)]."

13. In the case of ***Paparambaka Rosamma v. State of A.P.***, reported at (1999) 7 SCC 695, the Apex Court has taken a view that since the certificate of the Doctor was not to the effect that the patient was in a fit state of mind to make the statement the dying declaration cannot be accepted by the Court to form the sole basis for conviction. Another three Judge Bench in the case of ***Koli Chunilal Savji v. State of Gujarat***, reported at (1999) 9 SCC 562, has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased could not be ignored merely because the Doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement. Since the decisions in the aforesaid two matters were somewhat contrary, the matter was referred to the Constitution Bench in the case of ***Laxman v. State of Maharashtra***, reported at (2002) 6 Supreme Court Cases 710. Paras 3 and 5 read as under:

> "3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and

cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

> 5. The court also in the aforesaid case relied upon the decision of this court in Harjeet Kaur v. State of Punjab case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in ***Paparambaka Rosamma and Ors. v. State of A.P.*** (at SCC P. 701, para 8) to the effect that
>
> > "...in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"
>
> has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this court in ***Paparambaka Rosamma and Ors. v. State of A.P.*** must be held to be not correctly decided and we affirm the law laid down by this court in ***Koli Chunilal Savji and Anr. v. State of Gujarat*** case."

14. We have examined the dying declaration, Exhibit PW-10/A, which was recorded by PW-10, Inspr. Ombir Singh. We have also examined the evidence of PW-10, as per which, on 30.04.2006 he was posted at Police Post Metro Vihar Police Station, Narela. Based on DD entry no.18 of Police Post Metro Vihar, which was marked to HC Anil, he reached at Metro Vihar, Phase II, when he learnt that the injured had been shifted to

the hospital. In the room he saw one plastic can with smell of kerosene oil; kerosene oil also was found in the can; a match box; burnt sticks; and stove were also found in the room. PW-10 then reached JPN Hospital and collected the MLC of the injured, Savitri. Doctors had opined that Savitri was fit for statement and thus he recorded her statement, Exhibit PW-10/A. He identified his signatures and the thumb impression of Savitri on the statement. He also testified that the Doctor had mentioned at 1.15 a.m. that patient was fit for statement, which was marked as 'X' on the MLC, Exhibit PW-5/A. This witness has also described that the crime team reached the spot, the scene was photographed, the articles were sealed and after making the search of the appellant he was arrested from Metro Vihar area. The injured succumbed to her injuries on 18.5.2006.

15. In the cross-examination PW-10 testified that he had recorded the statement of the deceased within 10-15 minutes of her having been declared fit by the Doctor. He has also testified that no relative or family member was present near the bed of Savitri. He denied the suggestion that the hands of the patients were bandaged and he further denied that she was unable to give the thumb impression.

16. On careful examination of the evidence of PW-10 we find his evidence to be reliable and trustworthy. He has categorically deposed that at the time when the statement was being recorded she was fit for making the statement and such an endorsement had been made within 10 or 15 minutes of her being declared fit by the Doctor. During cross-examination PW-10 has answered that no relative or family member was present near the bed of Savitri when her statement was being recorded. The MLC of the patient at the portion marked 'X' shows that the Doctor had given his opinion that the patient was fit for statement and in view

thereof it cannot be said that the patient was unfit for statement. The evidence of PW-10 also shows that no relative or family member was present and, thus, it cannot be said that Savitri was tutored.

17. It has been repeatedly held by the Supreme Court that it is not mandatory that a dying declaration should be recorded in a question-answer form, or that it requires corroboration if it is trustworthy and inspires confidence. In view of the law laid down by the Supreme Court, which has been extracted above, the submissions made by learned counsel for the appellant are without any force and the same are rejected.

18. Another argument, which has been raised before us, is that Savitri Devi was in an unconscious state with 85% burns which is evident from the post-mortem report, she was not fit to make any statement before PW-10 and the GCS mentioned as 15/15 at 10.45 p.m. in the MLC has unnecessarily been highlighted as the GCS recorded could have been different at 1.15 a.m., when the Doctor had made an endorsement on the MLC that Savitri Devi was fit to make the statement. The Glasgow Coma Scale or GCS has been defined by 'Wikipedia' as under:

> "The **Glasgow Coma Scale** or **GCS** is a neurological scale that aims to give a reliable, objective way of recording the conscious state of a person for initial as well as subsequent assessment. A patient is assessed against the criteria of the scale, and the resulting points give a patient score between 3 (indicating deep unconsciousness) and either 14 (original scale) or 15 (the more widely used modified or revised scale).
>
> GCS was initially used to assess level of consciousness after head injury, and the scale is now used by first aid, EMS, nurses and doctors as being applicable to all acute medical and trauma patients. In hospitals it is also used in monitoring chronic patients in intensive care.
> The scale was published in 1974 by Graham Teasdale and Bryan J. Jennett, professors of neurosurgery at the University of

> Glasgow's Institute of Neurological Sciences at the city's Southern General Hospital."

19. Exhibit PW-15/A shows that the GCS of Savitri Devi at the time of recording of MLC was 15/15. Since the doctor had declared her fit to make the statement, it is not necessary that GCS was to be recorded at that time as well. Moreover, PW-10, Inspr. Ombir Singh, who recorded the statement found her to be fit.

20. It would be useful to refer to the observations made by the Supreme Court in the case of ***Laxman v. State of Maharashtra*** (supra) wherein the Apex Court has held that "*but where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable*". We may add that in the present case a fitness certificate has been given by the Doctor and merely because that GCS level has not been specifically stated it cannot be said that the dying declaration is unreliable.

21. With regard to the submission made by counsel for the appellant that because Smt.Savitri Devi suffered 85% burns she would not be in a position to make a statement, we deem it appropriate to refer to a recent decision of the Supreme Court in the case of ***Surinder Kumar v. State of Punjab***, reported at 2013 (1) RCR (Criminal) 191, wherein the Supreme Court has noticed various cases where the dying declaration was held to be reliable when the burns were 90% or even 100%. Paras 16 to 22 of the judgment read as under:

> "16. We are not at all impressed by any of these submissions. There are a large number of decisions that have been cited before us by learned counsel for the State where persons with 90% burns

have given a dying declaration and that has been accepted. For example, in ***Amit Kumar v. State of Punjab***, (2010) 12 SCC 285 the victim had 90% burns and yet her statement was accepted. This Court noted, inter alia, that the victim did not unfairly implicate anybody who had not participated in the crime. This Court relied on ten principles governing a dying declaration as mentioned in ***Paniben v. State of Gujarat,*** (1992) 2 SCC 474 to conclude that there was no reason to disbelieve the dying declaration given by the victim in that case.

17. Similarly, in ***Govindappa v. State of Karnataka***, (2010) 6 SCC 533 the victim had 100% burn injuries and yet she was found to be in a fit state of mind to give her statement and affix her left thumb impression on the statement. The dying declaration was accepted by this Court on the evidence of the doctor that the victim was in a position to talk.

18. In ***Sukanti Moharana v. State of Orissa***, (2009) 9 SCC 163, the victim had 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface and yet her dying declaration was accepted after considering the principles laid down in Paniben.

19. In ***Kamalavva v. State of Karnataka***, (2009) 13 SCC 614, reference was again made to Paniben. It was noted that the doctor who was present at the time of recording the dying declaration had attached a certificate to the effect that it was recorded in his presence. This Court rejected the technical objection regarding the non-availability of a certificate and endorsement from the doctor regarding the mental fitness of the deceased. It was held that the view taken by this Court in numerous decisions is that this is a mere rule of prudence and not the ultimate test as to whether or not the dying declaration was truthful or voluntary.

20. In ***Satish Ambanna Bansode v. State of Maharashtra***, (2009) 11 SCC 217, the victim had 95% superficial to deep burns and after referring to Paniben, her dying declaration was accepted by this Court.

21. Insofar as the case before us is concerned, we may only note that there is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question-answer form. There may be occasions when it is possible to do so and others when it may not be possible to do so either because of the prevailing situation or because of the pain and agony that the victim might be suffering at that point of time.

22. It is also not obligatory that either an Executive Magistrate or a Judicial Magistrate should be present for recording a dying declaration. It is enough that there is evidence available to show that the dying declaration is voluntary and truthful. There could be occasions when persons from the family of the accused are present and in such a situation, the victim may be under some pressure while making a dying declaration. In such a case, the Court has to carefully weigh the evidence and may need to take into consideration the surrounding facts to arrive at the correct factual position."

22. It may further be noticed that the statement made by Savitri to PW-10 is corroborated by the endorsement made by PW-17, Dr.Deva Kumar Borgohain on the basis of the statement of Savitri that her husband poured kerosene oil over her body and put her on fire. The statement of PW-17 reads as under:

"PW-17, Dr.Deva Kumar Borgohain, Senior Resident, Neuro Surgery, AIIMS, New Delhi.

On SA.

On 30.04.2006, I was posted as Senior Resident Neuro Surgery at LNJP Hospital. At 10:45 p.m. one patient Savitri W/o. Kamla Prasad was brought in the hospital by HC Abbas Raza of PCR with the alleged history of assault (flame burn) injury at her home at around 7:30 p.m. The patient herself stated to me that her husband poured kerosene oil over her body and put her on fire. On examination, the patient was found conscious oriented and I prepared the MLC, which is already exhibited as Ex.PW-5/A, which is in my hand writing and which bears my signature at point

encircled B. When I was examining the patient she was speaking properly at that time. The local police has also arrived. I also referred the patient to burns and plastic surgery ward for further management.

XXXXXXX by Ms.Sadhna Bhatia, Ld. Amicus – curiae for the accused.

It is wrong to suggest that I have added the words, mentioned at point Z to Z encircled in red at the instance of the I.O. It is wrong to suggest that at that time patient was not speaking, as she was not in a condition to say anything, due to 60% burn injuries. It is wrong to suggest that the patient was not conscious and oriented at that time. It is correct that the Glasgow coma scale (GCS) keeps on changing from time tome (sic 'to time'). It is correct that I had not mentioned the B.P or pulse rate of the patient at the time of her examination."

23. Another reason why we find the dying declaration to be credible and trustworthy is that when the deceased, Savitri, was brought to the hospital on 30.4.2006, she had herself made a statement to the Doctor that her husband poured kerosene oil over her body and put her on fire. The evidence of PW-17, Dr.Deva Kumar Borgohain, thus, lends support to the dying declaration.

24. In view of the testimony of PW-17 that the deceased's husband poured kerosene oil over her body and put her on fire, and the endorsement made by him in the MLC, Exhibit PW-5/A, there is no room for doubt that the dying declaration is reliable and trustworthy.

25. Another argument, which has been raised by learned counsel for the appellant, before us is that the PCR form and the crime team report, Exhibit PW-8/A in column no.8 would clearly show that the appellant has been falsely implicated by the police as the aforesaid two documents are the first piece of evidence in which the appellant has not been named.

26. Elaborating his argument further Mr.Charak submits that in the PCR form it is written that "**Ek Orat Ne Aag Laga Li**" and further in the crime team report Ex.PW/8-A in the column no.8, pertaining to *modus operandi*, it is written that "**self burnt by kerosene oil**". Thus, the submissions that the deceased had herself poured kerosene oil on her body and committed suicide is rejected as the information so supplied to the PCR was by PW-6, Ramesh Chand. It would be useful to reproduce the evidence of PW-6 which throws light as to how information was sent to the police. The evidence of PW-6 reads as under:

> "PW6 Ramesh Chand, S/o. Late Sh.Ram Narayan, aged 37 years, R/o.A 1394 Metro Vihar Phase-II Holambi Kalan Delhi.
>
> On S.A.
>
> I am a driver by profession. In the month of April, 2005 I do not remember the exact date. I was present in my house when I heard the noises in the back gali, I came outside my house. Some one informed me that a lady had got burnt in back gali after a quarrel. I informed the police on 100 number through my mobile phone no.9213711724. IO recorded my statement in this case.
>
> Xxxxxx by counsel for accused.
>
> Nil opportunity given as counsel for the accused is not present till 1.106"

27. A mere reading of the evidence of PW-6 would show that he was not present at the spot of the incident but he was present at his house, he had heard noises in the back gali, when he came outside his house he was informed by an unknown person that a lady had got burnt in the back gali after a quarrel and he informed the Police at No.100. The evidence of PW-6 would establish that he made a call to the PCR at No.100 and on the basis of his statement the PCR form and Exhibit PW-8/A were filled up. Since he was not present at the spot he could not have stated as

to who poured kerosene oil on Savitri. Accordingly the argument of the learned counsel for the appellant is without any force.

28. It has also been argued before us that two material witnesses, PW-9, and PW-2, have turned hostile and, thus, the case of the prosecution is highly doubtful. In view of the statement made by the injured before PW-10, Ombir Singh, and the endorsement made in the MLC by the Dr.Deva Kumar Borgohain, PW-17, we feel that the appellant has gained no advantage by the fact that PW-9 and PW-10 have turned hostile.

29. A faint argument has also been made that no kerosene oil was found on the clothes of the appellant nor the clothes of the appellant were seized. It has been repeatedly held that on account of the lapse on the part of the investigating agency, no advantage can be derived by the appellant. Mere defective investigation or discrepancies in the evidence cannot result in acquittal of the accused. Thus, this submission of the learned counsel for the appellant is without any force.

30. Another argument, which has been raised by the learned counsel for the appellant is that the appellant has been falsely implicated by the police and further the dying declaration recorded by PW-10, Inspr. Ombir Singh, should be rejected.

31. In the case of ***Girja Prasad v. State of Madhya Pradesh***, AIR 2007 Supreme Court 3106, it has been held that "*there is no rule of law, which lays down that no conviction can be regarded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy*".

32. In a recent decision rendered by the Supreme Court of India in the case of ***Govindaraju alias Govinda v. State By Sriramapuram Police Station***, reported at (2012) 4 SCC 722, it has been reiterated that there is no rule of law, which lays down that no conviction can be recorded on

the testimony of a Police official and it is only when the interest of the police officer in the success of the case is motivated by overzealousness to an extent of his involving innocent people, that no credibility should be attached. Relevant portion of the judgment reads as under:

> "30. It cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness."

33. There is no evidence on record or any fact to show that in this case PW-10, Inspr.Ombir Singh, acted in a motivated or overzealous manner to the extent that he would involve an innocent person just to solve the case. Thus, the argument of counsel for the appellant is unacceptable.

34. In the light of the above, we find that there is no merit in the appeal and the same is accordingly dismissed.

(G.S. SISTANI)
JUDGE

(G.P. MITTAL)
JUDGE

SEPTEMBER 20, 2013
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