Delhi High Court
Sobaran Singh vs State (Govt. Of Nct) on 8 November, 2006
Author: M B Lokur
Bench: M B Lokur, A Suresh
JUDGMENT Madan B. Lokur, J.

1. The appellant is aggrieved by the judgment and order dated 29th October, 1998 passed by the Additional Sessions Judge in Sessions Case No. 172/1992. By the impugned judgment and order, the appellant was convicted of an offence punishable under Section 302 of the Indian Penal Code (for short the IPC).

2. On the next day, the appellant was heard on the question of sentence and by an order dated 30th October, 1998 he was sentenced to imprisonment for life and fine of Rs. 2,000/-, and in default of payment thereof, he was required to undergo rigorous imprisonment of one year.

3. The essential fact of the case is stated in the charge framed against the Appellant on 28th May, 1992 which reads as follows:

That on 15.9.91, between 9 a.m. and 11 a.m., at house No. RZ-53, Dwarka Puri, within the jurisdiction of PS Dabri, you intentionally or knowingly caused the death of Mamta Devi, your wife by pouring kerosene oil over her and set her on fire and thereby committed an offence punishable under Section 302, IPC and within my cognizance.

4. The charge was read over and explained to the appellant and he was asked whether he pleaded guilty or claimed trial to which he responded that he pleaded not guilty and claimed trial.

5. On 15th September, 1991, the date of the incident, the deceased Mamta Devi was admitted in DDL) Hospital by her mother-in-law Smt. Sarla Devi at about 9.25 a.m. At the time of admission she told the admitting doctor, as per the MLC (Exhibit PW-3/A) that she had sustained burn injuries when she was boiling milk on a stove. This statement is referred to as her first declaration. It must be mentioned here that in her third declaration made later in the day, the deceased stated that she had made this declaration because her mother-in-law Smt. Sarla Devi told her to do so, but in actual fact her husband (the appellant) had set her on fire after pouring kerosene over her.

6. Be that as it may, the DDU Hospital found that Mamta Devi had 50% burns with a superficial smell of kerosene. In view of her condition, she was referred to a specialist in the hospital but was later advised, after initial treatment, that she should be shifted to RML Hospital as there was no burn unit in DDU Hospital.

7. A little earlier in the day her elder sister Pushpa Devi (PW-1) and her cousin Satish (PW-2) had gone to visit the deceased since her son was ailing. When they reached her residence, the neighbours told them that the deceased had gone to DDU Hospital with her son. Accordingly, PW-1 Pushpa Devi and PW-2 Satish went to DDU Hospital. While they were standing at the emergency gate, they saw the deceased being taken in an ambulance van. They entered the ambulance van and travelled with

the deceased to RML Hospital. During the journey, the deceased narrated the incident that had taken place earlier in the day to PW-1 and PW-2. In this statement, which is referred to as her second declaration, she told these witnesses that her husband, the appellant had poured kerosene oil over her and set her on fire.

8. While in DDU Hospital on the same date, that is, 15th September, 1991, the statement of the deceased was recorded by the SDM Ms. Renu Sharma (PW-12). This is referred to as her third declaration and was her final statement before she succumbed to the burns on 28th September, 1991. A post-mortem was carried out on her body on 30th September, 1991 and it was noted, amongst other things, that her whole abdomen both front and back were burnt and both her legs up to ankle were burnt. The doctor who conducted the post-mortem opined that the infection caused by burns had spread up to the lower lobe of the lungs and that her death was due to ante mortem burn injuries and infection.

9. The case of the prosecution hinges on the third declaration of the deceased, her last statement before her death. According to learned Counsel for the appellant, the deceased had also given a statement after the second declaration but before the third declaration, but the prosecution suppressed that.

10. Insofar as the first declaration is concerned, there is no doubt that the deceased told the doctor at DDU Hospital that she had sustained burn injuries because her sari caught fire when she was boiling milk. It was the contention of learned Counsel for the appellant that in view of this declaration made by the deceased, it cannot be said that her death was caused by the appellant by pouring kerosene on her and then setting her on fire. Before dealing with this contention, two things must be noted: one, that the declaration was made when the deceased was being admitted in the hospital by her mother-in-law Smt. Sarla Devi and, two, that later in the day the deceased stated that she had made the declaration at the instance of her mother-in-law Smt. Sarla Devi who had accompanied her to the hospital.

11. In Sakshi v. Union of India III , the Supreme Court observed:

Normally, the first reaction of a victim of a crime is to report the incident at the police station and it is the police personnel who register a case under the appropriate sections of the Penal Code.

Of course, there are notable exceptions to this general statement and some of those that immediately come to mind are instances of domestic violence, sexual assault including rape and elder abuse. Usually, the victim of such an offence does not have 'the first reaction' to lodge a complaint either with the police or to make a grievance of it to anybody else. The reason why the victim of such a crime does not complain about the incident varies from 'case to case, offence to offence and from person to person' it could be (for example) 'a family matter' in cases of domestic violence and elder abuse or 'social stigma' in cases of sexual assault.

12. For whatever reason, it is estimated that in America, between 1993 and 1998 only about half of the intimate partner violence against women was reported to police. Similarly, in Australia cases of

sexual assault are seldom reported. It is said:

While a variety of situational and personal factors influence a victim's decision to report an incident to police, the relationship between victim and offender may constitute one of the biggest impediments to reporting. The majority of women are sexually assaulted by men they know and often trust. The closeness of victim-offender relationships, together with the private context of attacks, may therefore set up personal barriers to reporting.

The position in India is no different. In a paper entitled "Criminal Victimization in Four Major Cities in Southern India" by K. Chockalingam, it is stated:

Reporting behavior on the part of victims of sexual offences and victims of assault or threat was poor. Only 4 per cent of the victims of sexual offences and 24 per cent of assault victims had reported the crimes to the police.

13. Our Supreme Court (in Sakshi) has recognized at least one reason for not reporting such incidents, and that is, extreme fear in the mind of the victim. The Supreme Court has even gone so far as to say that this extreme fear may also influence the witnesses to such a crime. That is why in Sakshi, the Supreme Court has suggested that the 'extreme fear' in the mind of the victim may not only be fleeting but may also be long term and that is why even during the trial of such an offence, the Supreme Court has given directions for protecting a victim of sexual assault from the perpetrator of the crime. This is what the Supreme Court has said:

The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused.

If such can be the extreme reaction of a victim of sexual assault, then, depending upon the nature of the offence, such an extreme reaction can also be expected from a victim of domestic violence or elder abuse. We are of the opinion that the burning of a woman by pouring kerosene oil on her can be one such cause for evoking an extreme reaction inducing such fear in the mind of the victim that she may not be able to make a truthful statement in the presence of the perpetrator of the crime or even before someone closely associated with the perpetrator of the crime.

14. In the National Victim Assistance Academy textbook (supra), it has been stated in Chapter 9 that the dynamics of domestic violence affects legal cases through victim behavior in which the victim denies anything ever happened or explains away all the documented abuse, or takes responsibility for the abuse by either saying she provoked or deserved it or explains its occurrence by saying she fell down or ran into a wall. Indeed, we recently decided a case S.K. Hanson v. State of Delhi Criminal Appeal No. 340 of 1998 decided on 29th September, 2006 where the accused caused a fracture in the arm of his wife, but she explained it away to the treating doctor by saying that she fell from a ladder and broke her arm.

15. Consequently, when a person (such as the deceased in the present case) is admitted to a hospital by the offender or his close relative, there is a 'fear factor' working on the mind of the victim, which is to say that the perpetrator of the crime continues to exercise control, through fear, over the thoughts and mind of the victim due to the authority that he or she wields over the victim because of their power equation. This is particularly so in situations of dependent relationships such as where the 'weak' is susceptible to undue influence from the 'strong' in situations of domestic violence and elder abuse, which show that undue influence may be exerted on a victim, where power relations exist between the perpetrator of a crime and its victim. (See 'Offenders and Victims: Accountability and Fairness in the criminal justice process' a working paper prepared by the Secretariat of the United Nations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders). At such a point in time, it would not be surprising if due to the 'fear factor' the victim is unable to speak the truth and this is what appears to have happened in the case of the deceased.

16. Instances of the 'fear factor' abound in cases of sexual assault, as noticed by the Supreme Court, where the victim needs continuous protection from the offender so that she may tell the truth without any fear of reprisal - we have referred to instances of the 'fear factor' in cases of sexual assault and domestic violence. In cases of elder abuse, Bennett Blum M.D. has stated in his testimony given to the Senate Committee on Commerce, Science and Transportation Hearing on "Fraud : Targeting America's Seniors" that-

As in cases of child abuse and domestic violence, many victims of elder abuse try to protect their abusers. This is done for many reasons, including emotional manipulation by the abuser, fear of reprisal and dependence upon the abuser. These victims will not cooperate with medical personnel, investigators from adult protective services, or law enforcement. It is not unusual that they lie to protect the perpetrator.

We are of the view that it is this 'fear factor' that induced the deceased to make the first declaration in the manner that she did in the presence of her mother-in-law Smt. Sarla Devi and it is for this reason that the first declaration of the deceased cannot be given credence to.

17. We also feel that if in fact the deceased had caught fire while she was boiling milk, then there was no occasion for Smt. Sarla Devi to advise her to say so to the doctor in DDU Hospital. If that were the truth, the deceased would have in any case told the doctor so without the need for any prompting by her mother-in-law. The fact that the deceased needed some 'advice' in this regard goes to show that that was not what really happened and that in view of her position, Smt. Sarla Devi exercised undue influence over the deceased to give out a story that would protect her son, the perpetrator of the crime.

18. We also find that Smt. Sarla Devi was not even a witness to the incident, the subject matter of this appeal. Consequently, since she did not even know what had transpired between the appellant and the deceased, it was not possible for her to say that the deceased caught fire while boiling milk - except by way of a suggestion intended to unduly influence the thinking of the deceased.

19. Insofar as the second declaration is concerned, it was made by the deceased to PW-1 Pushpa Devi and PW-2 Satish in the ambulance van en route to DDU Hospital. In so far as PW-2 Satish is concerned, he had turned hostile in the witness box and stated that he had been told by the deceased that while she was boiling milk on the stove, she turned around and the pallu of her Sari caught fire. This witness was confronted with his statement during investigations that the deceased had told him that her husband had poured kerosene on her and set her on fire, but this witness insisted that the deceased and her husband were getting along well and that he was not deposing falsely in the witness b9x. The testimony of PW-2 Satish is by and large untrustworthy and the learned trial Judge has rightly discarded it.

20. Insofar as PW-1 Pushpa Devi is concerned, she too had stated during investigations that the deceased had told her, while they were traveling in the ambulance van, that the appellant had poured kerosene oil on the deceased and set her on fire after igniting her with a matchstick. When PW-1 Pushpa Devi entered the witness box for the first time on 17th August, 1992, she reiterated the declaration but during the subsequent portion of her examination-in-chief, she seemed to be resiling from her statement made during investigations and, therefore, she was cross-examined by the learned Additional Public Prosecutor for the State. Thereafter, learned Counsel for the Appellant sought time to cross-examine the witness.

21. At this stage, the record of the Trial Court shows a rather sorry state of affairs. On 14th October, 1992, the witness was present for her cross-examination but the appellant moved an application for an adjournment on the ground that he has trouble in his throat. The matter was then adjourned to 27th January, 1993 on which date the witness was again present but the appellant stated that his Counsel was busy in the marriage of his daughter and, therefore, moved an application for an adjournment, which was allowed. The case was then adjourned to 15th March, 1993 when the witness was against present but she sought an adjournment on the ground that there was a death of one of her relations. Thereafter, three adjournments were granted for the reason that work was suspended due to the death of Advocates; two adjournments were granted because the Presiding Officer was on leave; one adjournment was granted on the personal grounds of the witness and another on the ground that Lawyers were on strike. Resultantly, PW-1 Pushpa Devi could be cross-examined only after a gap of 1 year on 5th April, 1994.

22. In her cross-examination, PW-1 Pushpa Devi stated that the deceased told her that she had accidentally caught fire while she was boiling milk on the stove. On her re-examination, she stated that she was earlier under the influence of the police and that she was now giving a correct statement on oath. The learned trial Judge noted that the allegation made by this witness that she was influenced or tutored by the police was not made at any time for the last 1 year. We need not strain ourselves to assess the impact of the delay in the cross-examination of the witness and the reason for the turn around in her testimony. We only wish to point out, for the benefit of the trial Judges, Section 309(1) and the second proviso to Section 309(2) of the Criminal Procedure Code which read as follows:

309. Power to postpone or adjourn proceedings. - (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once

begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

23. In this context, the Supreme Court has said in State of Uttar Pradesh v. Shambhu Nath Singh II , We make it abundantly clear that if a witness is present in Court he must be examined on that day. The Court must know that most of the witnesses could attend the Court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the Court is generally a poor solace for the financial loss incurred by him.

In the same decision it is also said:

Thus, the legal position is that once examination of witnesses started, the Court has to continue the trial from day-to-day until all witnesses in attendance have been examined (except those whom the party has given up). The Court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in Court, as the requirement then is that the Court has to examine them. Only if there are 'special reasons', which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the Court to adjourn the case without examination of witnesses who are present in Court.

This view has been followed in Mohd. Khalid v. State of West Bengal III . In the case at hand, we find that the first adjournment was granted because the appellant had some trouble in his throat! This can hardly be a ground for an adjournment, more particularly when the appellant was on bail. We would request the trial Judges to keep the statutory mandate in mind and hope that on the administrative side, the High Court looks into these issues affecting the effective administration of justice.

24. Be that as it may, we are nevertheless of the view that the testimony of PW-1 Pushpa Devi and PW-2 Satish has a limited value and that their entire statement cannot be discarded merely because they had turned hostile. This is permissible in view of several decisions of the Supreme Court.

25. In Sat Paul v. Delhi Administration , the Supreme Court dealt with the issue of the testimony of a 'hostile witness' in the following words, and after analyzing the entire case law on the subject, held that the entire testimony of such a witness need not necessarily be discarded. It was said, From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party callinghim, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may,

after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

26. Similarly, in Koli Lakhmanbhai Chanabhai v. State of Gujarat IV , it was said:

It is settled law that evidence of a hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony rt corroborated by other reliable evidence.

27. The law laid down in Sat Paul has been followed in Gura Singh v. State of Rajasthan I (2001) CCR 12 (SC) : (2001) 2 SCC 205, and in K. Anbazhagan v. Superintendent of Police IV . Consequently, the statements of PW-1 Pushpa Devi and P W-2 Satish are acceptable to the extent that they show, undoubtedly, that the deceased was conscious when she was taken from DDU Hospital to RML Hospital and that she had suffered burns, presumably as a result of the appellant pouring kerosene over her and setting her on fire.

28. At this stage, it would also be worthwhile to keep in mind the fact that when the deceased was taken to DDU Hospital, the MLC recorded that her body smelt of kerosene. This, coupled with the fact that even the hostile witnesses stated that she had suffered burn injuries, could lead to the presumption that it was not a simple case of the pallu of the Sari of the deceased catching fire but there is something more to it than meets the eye. However, any presumption made in this regard cannot be conclusive, without further inculpatory evidence

29. The third declaration given by the deceased was to the SDM, PW-12 Ms. Renu Sharma. The learned trial Judge has placed considerable reliance upon this declaration to convict the appellant. Before dealing with this declaration, it is necessary to consider the contention of learned Counsel for the appellant that prior to this, the deceased had made a declaration which was withed by the prosecution. This contention is based on the statement of PW-11 Constable Mahender Singh. He has stated in his examination-in-chief that after he reached RML Hospital he informed the SDM who had come there at about 5.30 p.m. Thereafter, he was given the declaration of the deceased which he took to the police station for getting the case registered. In his cross-examination, he stated that in the presence of the SDM the Investigating Officer had recorded the statement of the deceased and that he was present at that time. This witness was declared hostile. It is significant to note that this witness states that he was given the declaration of the deceased which he had taken to the police station for getting the case registered. This witness did not produce the declaration that he was given at any point of time and given the fact that this witness completely resoled from his statement made during investigations, he is unreliable. Consequently, it cannot be accepted that the deceased had made another declaration which was suppressed by the prosecution, through this witness.

30. Coming back to the third declaration recorded by the SDM, the learned trial Judge has rightly relied upon it to convict the appellant. Before the declaration was recorded by the SDM, Dr. Amrinder Jha, PW-17 had examined the deceased and had found her fit for giving a declaration. The SDM, PW-12 Ms. Renu Sharma stated that she had contacted the doctor on duty if the deceased was fit to make a declaration and when the doctor declared the deceased fit, she obtained a certificate and the signature of the doctor thereon and then proceeded to record the declaration of the deceased. Under the circumstances, there can be no doubt that, subject to other objections that the learned Counsel for the appellant may have about the third declaration, the SDM proceeded correctly and in accordance with law.

31. Learned Counsel for the appellant criticized the procedure adopted by the SDM as being rather odd since the third declaration was recorded on a pro forma which contained the heading 'Court of the Sub-Divisional Magistrate, New Delhi, Room No. 18, Patiala House, New Delhi' and some cyclostyled questions. The suggestion was that the declaration was recorded by the SDM not in the hospital but in Patiala House and mechanically. This contention is clearly not a serious one in view of the testimony given by the witness. She categorically stated that she had picked up the pro forma from her office when she went to the hospital. The pro forma is kept in the office of the SDM for recording dying declarations. We do not find anything wrong in what the SDM has done. We have also seen the third declaration Exhibit PW-9/B and we find that it contains all relevant questions and the witness has stated that she had recorded the declaration of the deceased in her own hand. There is no fixed manner of recording a dying declaration and merely because the SDM, PW-12 Ms. Renu Sharma used the pro forma that appears to have been available in her office, does not detract from the value of the dying declaration.

32. In State of Maharashtra v. Sanjay IV (2004) CCR 249 (SC) : (2004) 13 SCC 314, the Supreme Court held that what is of importance is that a dying declaration must inspire full confidence of the Court as to its truthfulness and correctness - its qualitative worth is what is material. Once that objective is achieved, it hardly matters what procedure is followed in recording a dying declaration. For example, in Bolem Bhaskara Rao v. State of Andhra Pradesh 1995 Supp 4 SCC 211 and Goverdhan Raoji Ghyare v. State of Maharashtra III (1993) CCR 310 (SC) : 1993 Supp. 4 SCC 316, the mere failure of the Magistrate recording the dying declaration to question the deceased about his state of mind would not vitiate the dying declaration, if the answers to the questions put to the deceased showed that he was mentally fit. Similarly, in State of Rajasthan v. Bhup Singh I it was held that merely because the dying declaration was a translated record in a language different from the spoken language or that it was not recorded in the form of questions and answers, would not be sufficient ground to doubt its truthfulness. In Kulwant Singh v. State of Punjab I , it was held that a dying declaration need not even be recorded before a Magistrate because there is no such requirement in Section 32 of the Evidence Act, 1872 nor is it necessary that a dying declaration should be made only in the expectation of death. In Najjam Faraghi v. State of West Bengal IV , the deceased lived for twenty days after making a dying declaration and it was held that the statement does not lose its value merely because the deceased lived longer than expected. In Ravi v. State of Tamil Nadu (2004) 10 SCC 776 it was held that if the deceased affixes his thumb impression on a dying declaration, even though he was literate and could affix his signature, that by itself would not vitiate the dying declaration. Essentially, therefore, what has to be ensured by the Court while

accepting the contents of a dying declaration is that it generates the necessary confidence that what the deceased has stated is the truth. Once the Court is satisfied about that, then the dying declaration should be accepted, notwithstanding the procedures followed (or not followed) or any minor discrepancies in its contents. The Constitution Bench in Laxman v. State of Maharashtra III , has pithily stated the law in regard to dying declarations thus:

...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.

Having examined the third declaration in the light of the law down by the Supreme Court, we have no hesitation in saying that we accept its contents as true.

33. On the contents of the dying declaration, learned Counsel for the appellant raised three submissions. It was firstly submitted that according to the deceased her husband had closed the door before putting kerosene on her and setting her on fire. It was submitted that there is no door in the room as per the site plan that has been prepared (Exhibit PW-7/A) and, therefore, there is no question of the appellant closing the door, as stated. It was then contended that according to the deceased, the kerosene was lying in a green plastic can whereas in fact the green can is made of tin and not of plastic. Thirdly, it was submitted that according to the deceased, the appellant was having some relationship with his Jethani but she was not examined during investigations nor was she brought to the witness box by the prosecution.

34. We do not find any substance in any of these contentions urged by learned Counsel for the appellant on the third declaration. It is true that as per the site plan there is no door shown in the room where the incident took place but not much importance can be given to this because the incident took place on 15th September, 1991 and the witness who prepared the site plan visited the scene of the incident only on 9th December, 1991, that is, after almost about three months. Some changes could have been made during this period. But without speculating on this issue, we find that the learned trial Judge noted (and rightly so) that the point on the site plan which shows that a door did not exist, actually leads out in the open where the deceased ran after she caught fire. However, adjacent to the room in which incident took place there is a shed type room and also another room adjacent to it and there is nothing on record to suggest that there were no doors leading from the room in which the incident took place to the shed type room or to the adjacent room.

35. The second contention in this regard that kerosene was in a green plastic can, as stated by the deceased whereas in fact the green can was made of tin, is also not of much significance and cannot by itself de-value the third declaration. Finally, the contention that the Jethani of the deceased was not brought to the witness box is again of no consequence because it is nobody's case that the deceased was killed because she made a false allegation of this nature.

36. It was eventually contended by learned Counsel that the appellant had left the house at about 5 or 6 am on 15th September, 1991 and had gone to the vegetable market. According to the appellant,

he came to know about the incident only when he returned from the market and then went to the hospital. The learned trial Judge has noted, and we think rightly, that there is absolutely no evidence to show that the appellant was not in the house at the time of the incident or that he had gone to the market to purchase vegetables. The appellant did not produce any witness in his defense in this regard. It is only his bald and completely unsubstantiated statement made under Section 313 of the Code of Criminal Procedure. Even the appellant's mother who took the deceased to the hospital did not enter the witness box to support the theory that the deceased had accidentally caught fire while she was boiling milk on the stove and that the appellant was not in the house at that time.

37. It was also contended by learned Counsel for the appellant that in the facts of this case since there was more than one dying declaration, and since there was a conflict in the statements made by the deceased, the third declaration made by the deceased should not be believed. We do not agree with this view. In Kusa and Ors. v. State of Orissa , the Supreme Court held that if the statement of a dying person passes the test of careful scrutiny applied by the Courts, it becomes a most reliable piece of evidence which does not require any corroboration. It has further been stated in the same decision that-

...although a dying declaration should be carefully scrutinised but if after perusal of the same, the Court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration even if there is no corroboration.

This decision has been followed by the Supreme Court in State of Assam v. Muhim Barkataki ; Meesala Ramakrishan v. State of Andhra Pradesh II ; State of Rajasthan v. Kishore II , and in Betal Singh v. State of Madhya Pradesh II .

38. Taking all the facts and circumstances into consideration, we have no doubt that the third declaration given by the deceased was truthful and factually correct. Consequently, we have no doubt that the appellant had committed the offence for which he was charged. We, therefore, find no merit in this appeal and it is dismissed. The conviction and sentence awarded by the learned trial Judge are confirmed.