PETITIONER:
RAJENDRA KUMAR

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 21/11/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:
THE 21ST DAY OF NOVEMBER, 1997
Present:
Hon'ble Mr. Justice M.M. Punchhi
Hon'ble Mr. Justice M. Srinivasan
R.K. Jain, Sr. Adv., P.K. Jain, Adv. with him for the appellant
Vishwajit Singh, Adv. for A.S.Pundir, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
M. SRINIVASAN, J.
The appellant married one Asha Devi in 1976. He used to beat his wife off and on and was threatening to throw acid on her fare. Once he tied a Dhoti in her neck and hanged her. When her tongue protruded out, he put her down. On 17.10.1979 she requested him to get fuel wood from the Tand (rack) so that she could cook food for the family. He refused to do so. she had herself taken the wood and started preparing food in the oven at about 8.0 AM. Apparently being annoyed with the delay in the preparation of the food he took a burning piece of wood and touched her check with it. He took her to the adjoining room and poured kerosene oil over her and set her on fire. He also prevented her from running out of the room whereby he incurred burn injuries in some parts of her body. She ran out when her brother-in-law extinguished the fire by placing a blanket around her and tearing the saree. Her mother-in-law wrapped her with a wet cloth to extinguish the fire. She was taken to the hospital for treatment as she had received burn injuries to the extent of 95%. She died on 18.10.1979. Her father had given a complaint to the police on 17.10.1979. Four statements were made by her which were treated as dying declarations. The first was to her father son after the incident, the second was to the investigating Officer on the next day, the third was to the Magistrate on 18.10.1979 and the fourth was her mother when she was in the hospital.
2. The above was the prosecution case. The appellant denied the same and contended that his wife sustained burn injuries while cooking and when he tried to extinguish the fire, he also sustained injuries. According to hem, he took her to

the hospital along with the other members of the family.
3. The Court of Sessions found that the appellant was quilty, convicted him under Section 302 IPC and sentenced him under Section 302 IPC and sentenced him to imprisonment for life. On appeal, the High Court of Allahabad confirmed the conviction and sentence. This appeal has been preferred by the appellant on obtaining Special Leave.
4. The learned counsel for the appellant has vehemently reiterated the contentions put forward before the High Court by his counter Part. It is argued that there ar material discrepancies between the various statements given by the deceased in the hospital. Considerable reliance is placed on the entry found in the bed head-ticket in the hospital made at t he time of her admission. PW 11 Dr. H.C. Prasad has stated that the entry was made by him which read ""alleged to have sustained burn injuries during cooking". According to PW 11 he must have written the note on the information given by the injured but he did not remember it correctly. The Courts below were therefore justified in not attaching any importance to the entry in the bed-ticket, particularly in view of the detailed statements made by her. We do not find any error in the view taken by the Courts below.
5. It is next argued that in the four statements given by the deceased which are treated as dying declarations there are several discrepancies. In the statement made by the deceased to her father at about 1.30 PM on 17.10.1979 when he went to the hospital to see her she had merely said that "Hamare ghar walon ne jala diya" " (I am burnt by our family members). It is argued that if the case of the prosecution is true she would not have stated like that and it being her very first statement after the incident should be given more weight than her subsequent statements. We are unable to accept this contention. At that stage she was not in a position to speak for long. She made a short statement to her father to convey to him that she was burnt by somebody in the house which showed clearly that he did not get herself burnt when she was cooking.
6. We have gone through the statements given by her to the Investigating Officer, the Magistrate and her mother who was examined as PW 2. we do not find any material discrepancies therein. It is clear from the said statements that the appellant poured kerosene oil over her and set fire.
7. It is next contended that the only eye witness, namely, Manju, a sister of the appellant was not interrogated or examined and therefore the case of the prosecution should not be accepted. There is no substance in this contention. No adverse inference can be drawn against the prosecution from the non-examination of the appellant’s younger sister who was aged only about 1. When the evidence on record is sufficient to prove beyond doubt the case of the prosecution, the failure to examine another person does no affect the credibility of the prosecution.
8. The factual circumstances established by the prosecution in this case and adverted to by the courts below are sufficient to old that the charge against the appellant is proved beyond doubt. Learned counsel for the appellant contends that the injuries suffered by the appellant as spoken to by CW-1 Dr. Nafisul Hasan prove that the appellant attempted to put off the fire to save his wife. According to the learned counsel if the appellant had set fire to his wife, he would not have attempted to save her and get injured in the process. There is no merit in this contention. The said doctor has opined that the location and nature of injuries found on the body of the accused were not consistent with the claim that he had tried to extinguish

the fire of the deceased but on the other hand he had tried to hold her by his hands and prevent her from going out of the room. The High Court has found that the appellant had three opportunities after the Court Witness Dr. Nafisul Hasan was examined. The appellant, however, stated under Section 313 Cr. P.C. that he had nothing to say, nor to adduce any evidence in defence.

9. On a perusal of the entire record in the case we have no hesitation to agree with the concurrent findings of the Courts below and hold that the appellant was quilty of the offence under Section 302 IPC. In the result the appeal fails and is dismissed.