Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 125 OF 2009

Vijay Kumar Arora ... Appellant

Versus

State Govt. of NCT of Delhi ... Respondent

J U D G M E N T

J.M. PANCHAL, J.

1. This appeal by special leave, questions the legality of Judgment dated May 15, 2008 rendered by Division Bench of High Court of Delhi in Criminal Appeal No.183 of 1992 by which Judgment dated September 29, 1992 passed by the Learned Additional Sessions Judge, Delhi in Sessions Case No.100 of 1989 convicting the appellant under Section 302

IPC and sentencing him to R.I. for life and fine of Rs.2000/- in default R.I. for one year, is confirmed.

2. The facts emerging from the record of the case are as under:

The marriage of deceased Shashi was solemnised with the appellant on January 30, 1982. After marriage, the deceased started living with the appellant at his place of residence situated at Chandigarh.

3. During the subsistence of the marriage, the deceased gave birth to a girl child on January 2, 1983 at New Delhi. Thereafter, the deceased went to Chandigarh to reside with the appellant. On April 4, 1983, the appellant with his wife and child came to Delhi from Chandigarh. After visiting the parents of the appellant, they went to the house of the parents of the deceased and took dinner there. After taking dinner, the appellant and the deceased with the child returned to the house of parents of the appellant at about 11.30 pm and retired to bed. At about 2.30 am on April 6, 1983, shrieks of the deceased were heard and she was found engulfed in the flames. At about 2.45 am on the

night intervening between April 5 and April 6, 1983, the deceased was admitted to Lok Nayak Jai Prakash Narain Hospital, New Delhi (LNJPN Hospital, for short) with burn injuries. The Duty Constable posted at the said hospital sent a telephonic message at about 3.00 am that Shashi, aged about 26 years, with burn injuries sustained in her house was admitted by her husband, i.e., the appellant. This message was recorded at DD No.6A. On receipt of the message, ASI Hans Raj along with Constable Umrao Singh went to the hospital. He collected MLC of injured Shashi wherein it was mentioned that the injured was got admitted at 2.45 am by her husband and Dr. S.K. Bindal. It was also mentioned therein that the accident occurred due to the exploding of the stove. It was further mentioned in the said certificate that her clothes were smelling of kerosene oil and she had received extensive burns all over the body and face.

4. As per the endorsement recorded on the MLC, the injured was declared unfit to make statement at about 4.30 am and 11 am on April 6, 1983. Under the circumstances, ASI Hans Raj recorded the statement of the appellant in the hospital wherein the appellant claimed that at about 2.15

am, his wife Smt. Shashi had got up for boiling the milk for their three months' old child and he had got up from the bed on hearing her shouts "*Raje Raje*". In his statement, the appellant mentioned that he immediately rushed and found his wife Shashi in flames in the kitchen and that her clothes had caught fire while Shashi was boiling the milk on the stove. It was also mentioned by the appellant in his statement that he had received burn injuries on palm when he had made attempt to extinguish the fire to save his wife. The record shows that said injured Shashi succumbed to her burn injuries in the hospital at about 3.15 pm on April 6, 1983. On the same day, Mr. Ram Nath Mehra, the father of the deceased submitted a written complaint before the Police mentioning that his daughter was burnt to death by Beena Arora who was her mother in law as well as by V.K. Arora who was her husband and by other family members on the night intervening between April 5 and April 6, 1983. It was mentioned by Mr. Mehra in his complaint that injured Shashi had regained her senses in the hospital at about 12.15 pm on April 6, 1983 and had declared weepingly in his presence and in the presence of his other

relatives that she had been set on fire by her mother-in-law, the appellant and his other family members. On the basis of the complaint, offences punishable under Section 302 read with Section 34 IPC were registered and investigation commenced. On completion of investigation, the appellant and his mother Mrs. Beena Arora were chargesheeted for commission of offence punishable under Section 302 read with Section 34 IPC. As the offence punishable under Section 302 is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Delhi for trial.

5. The learned Additional Sessions Judge, to whom the case was made over for trial, framed charge against the appellant and his mother under Section 302 read with Section 34 of the Indian Penal Code. The same was read over and explained to them. The appellant and his mother did not plead guilty to the same and claimed to be tried. Therefore, the prosecution examined several witnesses and produced documents in support of its case against the appellant and his mother. On completion of recording of evidence of prosecution witnesses, the learned Sessions Judge explained to the appellant and his mother the

circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. As far as the mother of the appellant is concerned, she claimed that she was falsely involved in the case and was innocent. The appellant in his further statement claimed that when he was asleep, he was awakened by the shrieks of his wife and, therefore, had come out in the *verandah* and had seen his wife in flames. According to him, he tried to extinguish the fire with his hands and water and in that process received burn injuries on his hands. What was claimed by the appellant was that he called a doctor and rang up his father-in-law but he was not remembering the exact time at which the information about the deceased having sustained burn injuries was conveyed to his father-in-law. It was stated by him that he told the family of his father-in-law to come to the hospital and that his injured wife herself had told him that she had caught fire while she was boiling milk on the stove. It was also mentioned by him in his further statement that he was informed by his wife that the stove had inflamed (*bhabhak*

gaya). He claimed in his statement that he would file a written statement if so advised.

6. On appreciation of evidence adduced by the prosecution, the learned Judge of Trial Court held that ASI Mr. Hans Raj to whom DD report was marked at about 3 am on the night intervening April 5 and April 6, 1983 conducted himself in the most dishonest and partisan manner in making enquiry and in conducting investigation after registration of the first information report. The learned Judge further noticed that the conduct of Mr. V.P. Gupta, who was the then SHO of P.S. Moti Nagar and presently ACP was not above board. According to the learned Judge, the then SHO Mr. V.P. Gupta had passed on his entire burden on the shoulders of ASI Hans Raj without doing absolutely anything in the name of fair investigation. After noticing that the deceased had sustained accidental burns leading to her death on the night intervening April 5 and April 6, 1983 at her matrimonial home located at F-503, Karam Pura, Delhi, the learned Judge held that the case against the appellant and his mother was based on circumstantial evidence. The learned Judge considered the

circumstances established by the prosecution and held that the deceased had neither committed suicide nor received burn injuries accidentally but was set ablaze by the appellant. According to the learned Judge, the circumstances brought on record were inconsistent with the innocence of the appellant and established that, in all human probability, the act of murder of the deceased was committed by the appellant. The learned Judge noticed that no satisfactory evidence could be adduced by the prosecution to establish the guilt of original accused No.2 who was mother of the appellant. In view of the said conclusions, the learned Judge, by judgment dated September 29, 1992, convicted the appellant under Section 302 IPC and sentenced him to rigorous imprisonment for life and a fine of Rs.2,000/- (Rupees two thousand only) in default rigorous imprisonment for one year and acquitted his mother.

7. Feeling aggrieved, the appellant filed Criminal Appeal No.183 of 1992 before Delhi High Court. The Division Bench of the High Court has dismissed the appeal, giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeal.

9. It is not in dispute that the case against the appellant rests on circumstantial evidence. It would be advantageous to restate the well settled law relating to appreciation of circumstantial evidence. The evidence tendered in a court of law is either 'direct' or 'circumstantial'. Evidence is said to be 'direct' if it consists of an eye-witness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or *factum probandum*. Essential ingredients to prove the guilt of an accused by circumstantial evidence are :

The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and

suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances can not fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle, a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them, on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although, there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface

of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis, except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be.

There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

10. Having noticed the principles governing the case based on the circumstantial evidence, this Court proposes to consider the circumstances relied upon by the prosecution.

11. The first circumstance sought to be relied upon by the prosecution is that the deceased died a homicidal death. A human death may be a natural one or homicidal one or accidental or suicidal one. It is not the case of anyone that the deceased Shashi had died a natural death. Therefore, the question which falls for determination of this Court is whether she died a homicidal death or a suicidal death or an accidental death. The medical evidence on record shows that after the deceased had succumbed to her burn injuries, post mortem examination was conducted by Dr. G.K. Sharma on April 7, 1983 at 12 noon. On external

examination, the doctor found that there were superficial burns all over the body except patches over scalp, lower front of abdomen, perineum, left buttock and inner part of right buttock. According to the doctor, the approximate area of burn was about 90%. When the post mortem was being performed, the doctor could not smell kerosene oil. On internal examination, it was found by the doctor that all the organs were congested. According to the doctor, the death of the deceased was due to shock and toxemia due to burns by fire. What is important to notice is that the defence had not cross-examined Dr. G.K. Sharma at all.

12. Having regard to the nature of injuries noticed by Dr. G.K. Sharma, who had performed autopsy on the dead body of the deceased, the Court will have to examine the question whether those injuries were received by the deceased while committing suicide. It may be mentioned that in the further statement recorded under Section 313 of the Code of Criminal Procedure, 1973, the case of the appellant is that the deceased had died accidentally while boiling milk for the infant and it was never claimed by him in his further statement that the deceased had committed suicide.

However, it was argued by the learned counsel for the appellant that personal diary maintained by the deceased indicates that she was a highly sensitive woman who expected wholehearted love and affection from the appellant but having been thoroughly disappointed, out of sheer disgust, frustration and depression, she might have chosen to end her life. The relevant passage from the diary of the deceased relied upon by the defence has been quoted in paragraph 24 of the impugned judgment. A critical analysis of those paragraphs from the diary does not indicate any suicidal tendencies on the part of the deceased. No suggestion was made by the defence to any of the prosecution witnesses that the deceased had developed suicidal tendencies. It is well to remember that the deceased was well educated and a teacher by profession. She had a three months old child. The paragraphs from the diary quoted in the impugned judgment make it more than clear that the relations between the deceased on the one hand and her husband and members of his family on the other, were strained one. However, those paragraphs do not indicate that the deceased was of feeble mind and had

developed tendency to commit suicide. It is relevant to notice that it is nobody's case that the deceased was not a caring mother. The lingering doubt about the uncertain future of the infant aged three months would surely deter the deceased from committing the suicide. As noticed earlier, the deceased in the company of the appellant and her child had come to the house of the parents of the appellant from the house of her parents after taking dinner. It could not even be remotely suggested on behalf of the appellant either to the father or to the mother or to the sister of the deceased that when the deceased, in the company of the appellant, had come for dinner, she was found to be disheartened or gloomy or nervous or depressed. The passages quoted in the impugned judgment from the diary maintained by the deceased indicate a firm resolve on the part of the deceased to lead a life for herself away from her husband and her in-laws. The testimony of the father of the deceased makes it more than clear that the behaviour of the father-in-law of the deceased towards the newly born child was not good at all. Under the circumstances, if the deceased had decided to put an end to

her life by committing suicide, in normal course, she would have left her daughter to the care of her own parents but no attempt, at any point of time, was made by the deceased to leave the infant child to the care of her parents. The evidence of the father of the deceased on the contrary makes it very clear that the appellant wanted to leave the infant daughter with the parents of the deceased but the deceased had not agreed to the said suggestion. Further, what is normally found in a case of suicide by a recently married woman who has given birth to a child shortly before the suicide is that she would bolt herself in a room or a kitchen or a bathroom to see that no one makes any attempt to save her and would commit suicide along with the child. However, the facts of the present case do not indicate that the deceased had locked herself inside a room or kitchen or bathroom nor the record shows that any attempt was made by her to commit suicide with her infant. As noticed earlier, the deceased was highly educated lady and was blessed with motherhood. Normally, a woman committing suicide will leave a suicidal note. But it is nobody's case that any suicidal note written by the deceased

was found after she had received burn injuries. Further, if the deceased had been fed up with her life and had decided to commit suicide, she would not have failed to inform the appellant that because of lack of love and affection on his part she had set herself ablaze.

On overall view of the circumstances brought on the record of the case, this Court is of the firm opinion that the deceased did not die a suicidal death.

13. The next question which falls for consideration of the Court is whether the deceased died an accidental death. As observed in the earlier part of this judgment, the case of the appellant is that while boiling milk for the infant, the clothes of the deceased caught fire accidentally because of the flames emanating from the stove as a result of which she died. The panchnama of the place of incident establishes that the place suggested by the defence where the deceased was found engulfed in fire is a narrow passage where several articles were lying. If the deceased had died because of the flames emanating from the stove, the other articles lying nearby would have been found to be burnt. However, admittedly the panchnama of place of incident

does not indicate that any article was burnt except a towel which was found partially burnt. Further, the story put forth by the appellant that at midnight the deceased had got up for boiling milk for the infant itself does not inspire confidence of the Court. The deceased who was a teacher by profession and well educated must be breastfeeding her three months old infant and it would not be reasonable to infer that the infant was being fed buffalo or any other milk. It may also be mentioned that the deceased in the company of the appellant had left her parental home between 11 pm to 11.15 pm on April 5, 1983 and must not have gone to sleep before 11.30 pm. From this fact, it would be reasonable to hold that before going to the sleep, the young infant child must have been fed and the child would not have required another feed within two hours. Thus, the story that deceased got up at 2.00 am in the night to boil the milk for the infant does not inspire confidence of the Court. The panchnama of the place of incident also makes it clear that there was a kitchen in which there was a gas cylinder. Therefore, even if it is assumed for the sake of argument that the deceased had got up at 2.00 am for

boiling milk for the infant, it does not sound reasonable to believe that she would attempt to light a kerosene stove in the dingy and cramped passage normally used for washing clothes, utensils etc. and would not go in the kitchen and use gas connection for the purpose of heating the milk. Further, as per the panchnama of place of the incident, the milk container without any handle was lying near the kerosene stove but no pliers or tangs were found. It is difficult to comprehend or entertain a belief by a prudent man that an educated lady like the deceased would use such a milk pot without a handle for boiling the milk. The photograph of the place of occurrence brought on the record of the case makes it more than clear that a small aluminium milk container was lying near the stove and a partially burnt towel hanging on a peg at a height of about 5½" from the floor level of the gallery was also found. But as noticed earlier, no other article lying nearby was damaged due to the burns. As the record does not show that other articles lying in the narrow passage were extensively burnt, it becomes highly doubtful whether the incident in question had at all took place in the passage as

suggested by the appellant. What is claimed by the appellant is that because of the *bhabhak* of the stove, the cotton garments put on by the deceased had caught fire. However, a brief burst of flames, i.e., *bhabhak* at the time when the stove is ignited first time would cause at the best first degree burns and could not have been sufficient to totally and completely ignite the cotton garments. Normally, it is inconceivable that the deceased would have received 90% burns in spite of the fact that she was wearing a cotton nightgown. Further, the evidence of prosecution witnesses establishes beyond pale of doubt that when the deceased was removed to the hospital, her clothes and her body were smelling of kerosene. It is also inconceivable that due to initial *bhabhak*, the clothes and body of the deceased would be soiled with kerosene unless it had burst. The CFSL report on the record shows that kerosene oil stove was found in normal working order. Therefore, the presence of kerosene oil on the body of the deceased and clothes put on by her, rules out the theory of accidental fire as suggested by the defence. The medical evidence on record makes it evident that soot particles were present in the stomach of

the deceased. According to Dr. Bernard Knight who has authored 'Medical Jurisprudence and Toxicology' if soot particles are found in Larynx Trachea or into stomach, it is commonly a case of conflagration. The presence of soot particles in the stomach indicates that the injuries could have been sustained by the deceased only in a conflagration and that too in a closed area. The instinct of survival would have made the deceased to run into an open place but in this case, the record does not indicate that any such attempt was made by the deceased to run towards any open space and positively establishes that she was found at the end of the passage which hardly admeasures 12' x 3'. The case of the appellant is that on hearing shrieks of the deceased, he was woken up and he found that the deceased was engulfed in the fire. It is also his case that he had made an attempt to extinguish fire on her and had received burn injuries on the dorsum and wrist of the right hand. Having regard to the common course of natural events and human conduct in their relation, when a loving husband finds his wife engulfed in fire, he try his best to extinguish the fire either with the help of a gunny bag or blanket or

sheet of cloth and would not make any attempt to extinguish the fire with bare hands. Even if it is assumed for the sake of argument that in the instant case, the appellant had made an attempt to extinguish fire with his bare hands, it is reasonable to infer that he would have received extensive burn injuries because the whole body of the deceased was on fire and ultimately it was found that she had received almost 100% burn injuries. The medical evidence on record indicates that Dr. R.P. Saraswat had examined the appellant on April 8, 1983 and found that the appellant had sustained first to second degree burns over the dorsum and wrist of his right hand with blisters at places, some of which had already burst. The case of the appellant that the deceased had informed him that she had sustained burn injuries because the kerosene oil stove had burst into a vaporized flame does not inspire the confidence at all. Any one who is little conversant with operation of a kerosene stove would understand that the brief inflammation which may be caused during the initial ignition of the stove is because of little excess oil escaping through the feeder hole and not for any other reason. The

so called *bhabhak* of the stove would not result into release of kerosene from the stove in such a large quantity so as to fully drench the whole body and the clothes of the deceased with kerosene. As observed earlier, a gas cylinder and a gas stove were available in the kitchen. Therefore, the use of kerosene stove by the deceased becomes highly improbable and doubtful. Mr. M.R. Kundal, PW5, has mentioned in his testimony that he had visited the site on April 8, 1983 and found the gas cylinder and the gas stove in working order with no gas leakage. The established facts of the case abundantly indicate that kerosene oil stove was planted at the site in a fake attempt to hide the homicidal death. The record of the case, as noticed earlier, establishes beyond pale of doubt that the deceased had suffered more than 90% burns of 3rd to 5th degree category. If the deceased had suffered extensive burns because of her clothes catching fire accidentally, she would have run for her life either in the open backyard or rolled on the floor or would have wrapped a curtain or any mattress around herself to extinguish the fire. However, the record does not indicate that any such attempt was made by the deceased. The presence of

extensive burns with more than 90% burn injuries out the theory of accidental fire. Applying the principle laid down in *Surinder Kumar* v. *State (Delhi Administration)* AIR 1987 SC 692 to the facts of the present case, it becomes clear that if the stove had burst as suggested by the defence, the deceased would not have sustained burns on the face, neck, trunk, upper limbs etc. and her clothes would not have been found containing kerosene oil. Further, at no point of time, any complaint was made either by the appellant or his family members to the company which had manufactured the stove or the owner of the stove from which the store was purchased that the stove was defective or faulty or had burst causing death of the deceased. Thus, the circumstances proved by the prosecution establish beyond pale of doubt that the deceased had died a homicidal death and not an accidental death as suggested by the defence.

14. The evidence of Ram Nath Mehra who is father of the deceased would indicate that the deceased was subjected to physical and mental cruelty for bringing insufficient dowry. According to the said witness, he had given dowry worth Rs.75,000/- to the appellant and his family members at the

time of marriage of the deceased. On one occasion, the deceased was asked to bring gold set for her mother in law but the witness was not able to make arrangement of the funds for gold set and had, therefore, purchased a gold chain and given it to the appellant. His evidence further shows that the appellant had demanded scooter from the deceased and he was not able to meet the said demand of the appellant because of his weak financial conditions. The evidence of B.L. Sharma, PW6, who is friend of the father of the deceased shows that in order to fulfil the demands made by the appellant, the father of the deceased had sought financial assistance from him but he could not render any financial help to the father of the deceased because of his own weak financial conditions. The testimony of the father of the deceased regarding physical and mental cruelty meted out to his daughter gets corroboration from the testimony of the mother of the deceased and the sister of the deceased. The record further shows that 22 letters were recovered from the tenanted premises of the appellant. Those letters were written by one Ms. Chhaya from Bangalore. A close analysis of those letters makes it very

clear that the appellant was very much fond of and infatuated with Ms. Chhaya. The very fact that the appellant had preserved all these letters even after one year and two months of his marriage with the deceased persuades this Court to infer that he was carrying on and wanted to carry on a quite affair with Ms. Chhaya notwithstanding his marriage with the deceased. Some of the letters show that the appellant was simultaneously carrying affairs with two/three girls. The evidence relating to cruelty meted out by the appellant to the deceased for bringing insufficient dowry and his extra-marital relations with Ms. Chhaya would show that he had a strong motive to do away with the deceased. Thus, the second circumstances of motive sought to be relied upon by the prosecution is also firmly established.

15. Yet another circumstance relied upon by the prosecution against the appellant is that the deceased had made a verbal dying declaration to (1) Ram Nath Mehra, her father; (2) Ravi Kanta Mehra, her mother; (3) Meena Mehra, her sister; (4) B.L. Sharma; (5) Kamlesh Sharma; and (6) Sudarshan Lal at about 12.00 Noon in Burns Ward of LNJP

Hospital on April 6, 1983. It may be stated that the Trial Court found that deceased was conscious and had made statements. The Trial Court further held that the quality of evidence lead to establish the oral dying declaration was insufficient to record conviction but the same could be used as a corroborative piece of evidence. From the impugned judgment, it becomes evident that the High Court considered the question whether acquittal of mother of the appellant was proper or not in view of the principles laid down in Sunder Singh vs. State of Punjab AIR 1962 SC 1211. After considering the evidence led by the prosecution to prove oral dying declaration of the deceased, the High Court has come to the conclusion that the oral dying declaration is not reliable. On the facts and in the circumstances of the case, this Court also proposes to consider the evidence led by the prosecution witnesses for the purpose of satisfying whether the deceased had made oral dying declaration before her close relatives and others.

The evidence of above witnesses would indicate that the deceased had stated before them that she was held by

her husband, i.e., the appellant and her mother-in-law had poured kerosene oil over her before she was set on fire.

Witness Ravi Kanta Mehra, the mother of the deceased, stated before the Court that she had met her daughter Shashi at about 12.00 Noon who had told her that her husband had caught hold of her while her mother-in-law had sprinkled kerosene oil on her. Her evidence further shows that she had beseeched Sub-Inspector Bakshi to record the statement of her daughter but Sub-Inspector Bakshi refused to record the same saying that the doctor had declared Shashi unfit to make the statement. Her evidence also shows that thereafter she in the company of her relative had searched for the doctor and some quarrel had ensued between them and the doctor.

The reliable testimony of Mr. B.L. Sharma shows that he had enquired with injured Shashi as to what had happened whereupon Shashi had told him that she had been set on fire by the accused and other family members. The witness has asserted before the court that on seeing Shashi's condition, he felt that she was not likely to survive for a long and thought that it would be proper to call a

Magistrate to record her statement. What is mentioned by the witness is that he, therefore, rushed to Moti Nagar Police Station and met the SHO and took along with him one Sub-Inspector in a jeep to reach Tees Hazari Courts and contacted the SDM whose name perhaps was Mr. Mathai. The witness has further mentioned that from the court premises, they reached the hospital at about 3.15 pm by which time Shashi had expired.

The assertion made by witness Sudarshan Lal on oath is that he had rushed to LNJP Hospital on learning that the deceased was admitted in the said hospital with burn injuries. According to him, he had met Shashi and Shashi told him about the incident implicating the appellant. What this witness has asserted is that thereupon he had requested one Assistant Sub-Inspector who was sitting inside the ward to record the statement of Shashi but the said Assistant Sub-Inspector had refused to do so and, therefore, he immediately had left the hospital and gone to the shop where he was serving which is situated in Canaught Place to bring a tape recorder. The witness has, further stressed before the Court that he had reached the

hospital at about 1.30 pm with tape recorder to record the statement of injured Shashi but the hospital staff and nurses had not permitted him to take a tape recorded inside the burns ward.

The reliable testimony of witness Ram Nath Mehra, father of the deceased shows that the deceased had made a statement to him in trembling voice that the appellant, his mother and other members had set her on fire. His testimony would further show that thereafter he had requested Mr. Khan, Assistant Commissioner of Police to record the statement of Shashi but the Assistant Commissioner of Police had refused to oblige saying that on her MLC, it was mentioned that she was unfit to make a statement. The witness has further stated that thereafter he had met Doctor Tiwari who was in charge of Burns Ward and requested him to record the statement of the deceased but he had refused to record the same saying that he had to attend some operation.

The High Court, while disbelieving the evidence adduced by the prosecution to prove oral dying declaration of the deceased held that “ASI Hans Raj, it is plain to us, is

both an untrustworthy witness and also an incompetent investigator". Having held so, it was noticed by the High Court that he was not suggested by the prosecution that Shashi was conscious at various times and periods and that she had spoken to several members of her family and her neighbour who had entered the room where she was being treated. Therefore, the High Court held that the assumption that Shashi was conscious to make a statement would run foul to court's duty. The High Court further concluded that the evidence of four witnesses before whom oral dying declaration was allegedly made did not indicate as to who had set the deceased on fire whereas Police statements of Mr. B.L. Sharma PW6, Mrs. Kamlesh Sharma PW10 and Sudarshan Lal PW11, were recorded after the passage of about one month from the date of the death of Shashi and, therefore, the evidence adduced by the prosecution to prove dying declaration was not satisfactory. On reappraisal of the evidence, this Court finds that it is true that the police statements of the above-named three witnesses were recorded after one month from the date of the death of the deceased. However, neither an explanation was sought

from any of the witnesses as to why their police statements were recorded after a delay of one month nor the Investigating Officer was questioned about the delay in recording statements of those witnesses. The law on the point is well settled. Unless the Investigating Officer is asked questions about delay in recording statements and explanation is sought from the witnesses as to why their statements were recorded late, the statements by themselves did not become suspicious or concocted. The evidence of the above-mentioned witnesses would indicate that though they are neighbours of the father of the deceased, they were neither got up or concocted witnesses. Even remotely, it was not suggested to any of the witnesses that the witness was close to the father of the deceased and, therefore, out of love and affection for him, he was falsely deposing before the Court. No enmity is suggested to any of the witnesses with the appellant. Under the circumstances, this Court is of the opinion that their evidence could not have been rejected on the ground stated by the High Court unless the same was found suffering from inherent improbability. The evidence of Ram Nath Mehra, the father

of the deceased, Ravi Kanta Mehra, the mother of the deceased, B.L. Sharma and Sudershan Lal would indicate that each of them had entreated and implored different authorities to get the statement of the deceased recorded. The testimony of B.L. Sharma would indicate that he had gone to the extent of visiting Tees Hazari Courts in the company of one Sub-Inspector deputed by the SHO of Moti Nagar Police Station and had gone to the hospital with an SDM to record the statement of the deceased. The testimony of Sudershan Lal satisfactorily establishes that when the Assistant Sub-Inspector sitting inside the Burns Ward had refused to record the statement of the deceased, he had immediately gone to the shop being run in the name of M/s. Bright Electricals situated at Cannaught Place to bring a tape recorder and had returned to the hospital with tape recorder but the hospital staff and nurses on duty had prevented him from taking the tape recorder inside the burns ward and, therefore, he could not record the dying declaration of the deceased. The statements made on oath by these witnesses as well as Kamlesh Sharma and Meena Mehra would indicate that the deceased Shashi was in a fit

state of mind to make a statement and was talking and, therefore, the four witnesses had made frantic efforts and craved different authorities to record the statement of the deceased. There is no manner of doubt that if the deceased was not talking and was not in a fit state of mind to make statement, these witnesses would not have run helter skelter or contacted different authorities to get the statement of the deceased recorded. This aspect of the matter has been totally lost sight of by the Trial Court and the High Court. It is true that on MLC of the deceased, it was endorsed that she was unfit to make a statement at about 4.30 am and 11.00 am on April 6, 1983. However, keeping in view the statements on oath made by the above-named witnesses which are not seriously challenged in their searching cross-examination, it would be safe to infer and conclude that medical record at about 12.00 Noon or 12.30 pm did not mention at all that the deceased was not in a fit state of mind to make a statement. On the facts and in the circumstances of the case, this Court has no hesitation in relying upon the truthful testimony of the relatives and neighbours of the deceased which unerringly establishes

that the deceased had made dying declaration before those witnesses implicating the appellant. This Court, on reappraisal of the evidence on record, comes to the conclusion that the circumstance, namely, deceased had made dying declaration before six witnesses implicating the appellant is firmly established.

16. On reappraisal of the evidence adduced by the prosecution, this Court finds that the circumstances from which the conclusion about the guilt of the appellant is to be drawn are fully proved. The circumstances proved are conclusive in nature. All the facts so established are consistent only with the hypothesis of guilt of the appellant and inconsistent with his innocence. The circumstances proved exclude the possibility of guilt of any person other than the appellant. As noticed earlier, the appellant had taken the defence that the deceased had received burn injuries accidentally. The defence is disbelieved by the Sessions Court and the High Court as well as by this Court. This false plea/defence of the appellant is called into aid only to lend assurance to this Court that the circumstances

taken in cumulative suggest that it was the appellant who had murdered his wife.

17. On the facts and in the circumstances of the case, this Court is of the opinion that no error is committed either by the Trial Court or the High Court in convicting the appellant under Section 302 IPC for committing murder of his wife. Therefore, the appeal which lacks merit deserves dismissal.

18. For the foregoing reasons, the appeal fails and is dismissed.

.....,J.
[Harjit Singh Bedi]

.....,J.
[J.M. Panchal]

New Delhi;
January 13, 2010