STATE OF RAJASTHAN

v.

SANTOSH SAVITA

(Criminal Appeal No. 1303 of 2006)

AUGUST 06, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Penal Code, 1860 – s. 304 (Part II) – Prosecution for murder – Conviction u/s. 302 by trial court and acquittal therefrom by the High Court – On appeal, held: In view of the two dying declarations implicating the accused, and the same having been corroborated by the circumstantial evidence regarding the recovery of articles and evidence of PWs 2, 3 and 8; the prosecution case is proved – However, in absence of proof regarding intention of the accused for causing death, the accused can be held guilty of culpable homicide not amounting to murder – His conviction altered to one u/s. 304 (Part II) – His sentence, in the circumstances of the case, reduced to period already undergone i.e. six years with fine of Rs. 2000/- – Evidence Act, 1872 – s. 32 – Dying declaration.

The respondent-accused was prosecuted u/s. 302 IPC. The prosecution case was that the deceased who was allegedly burnt by the accused had given two dying declarations to the doctors in the hospital in which she was admitted. In both the dying declarations, the deceased had mentioned that the accused poured kerosene on her and lighted her saree with a matchstick. Accused also produced defence witnesses, who stated that the deceased had burnt herself. Trial court convicted the accused u/s. 302 IPC and sentenced him to life imprisonment and fine of Rs. 2000/-. High Court reversed

A the order of trial court and acquitted him. Hence the present appeal by the State.

Allowing the appeal, the Court

HELD: 1.1. In the present case, the deceased has
B made two dying declarations (Ext. P-4 and Ext. P-10) and has consistently named the respondent as the person for the cause of her burn injuries and the two dying declarations are corroborated both by circumstantial evidence and direct evidence. Hence, even though the
C Magistrate was not requisitioned for recording the dying declarations, the High Court ought not to have discarded the dying declarations. [Para 19] [780-G-H; 781-A]

1.2. The dying declaration (Ext. P-4) was recorded by
D PW-9, within two to three hours of the incident. This dying declaration was recorded in the presence of Medical Jurist (PW-4) when the deceased was in a condition to make a statement. The High Court appears to have doubted this dying declaration because PW-4 has stated
E in his cross-examination that the deceased told him that she had got burnt on her own and he has also made a note in the injury report (Ext.P-3) that the deceased had got burnt on her own. The High Court lost sight of the fact that PW-4 has conducted the medical examination of
F the deceased at the hospital and, as has been stated by PW-4 in his evidence, the injury report (Ext. P-3) had been prepared before the dying declaration (Ext.P-4) was recorded. It is perhaps for this reason that in Ext.P-3, after the deceased gave her statement (Ex. P-4) to PW-9 in the
G presence of PW-4 that PW-4 corrected the injury report (Ext.P-3) by scoring out the words "by herself". In other words, after PW-4 came to know later from the statement of the deceased recorded by PW-9 in his presence that the deceased did not get burnt by herself, he corrected
H the injury report (Ext.P-3). The High Court has failed to

appreciate the evidence in this light. [Para 13] [777-F-H; 778-A-C] A

1.3. In the second dying declaration (Ext.P-10) also the deceased has named the respondent as having quarreled with her and as a result she has suffered the burn injuries. It is also found from the evidence of PW-11 that the deceased was in a condition to make the dying declaration. It is true that in patient case-sheet (Ext. P-13) of the deceased, PW-11 has written that it is a case of homicidal burns while she was preparing meal on stove four days back, but on a reading of Ext.P-13 it is found that it is also mentioned "her husband's younger brother, (respondent), quarrel with her". The High Court was, therefore, not right in coming to the finding that there were inconsistencies in the two dying declarations (Ext.P-4 and Ext.P-10). [Para 14] [778-D-G] B C D

1.4. The two dying declarations of the deceased, Ex. P-4 and Ex.P-10, are corroborated by recovery of a plastic can with some kerosene oil, burnt pieces of saree, blouse and bangles as well as the broken matchsticks from the room (khaprail) where the incident took place. PW-2, PW-3 and PW-8 have not seen what actually had happened inside the room (khaprail) because the door of the room was closed, but they had seen the respondent coming out of the room and the deceased was in a burnt condition. PW-2, PW-3 and PW-8, therefore, have corroborated the statements of the deceased in the two dying declarations (Ext.P-4 and Ext.P-10) that none other than the respondent-accused was in the room in which the incident took place. [Para 15] [778-H; 779-A-B] E F G

1.5. Section 32(1) of the Evidence Act, 1872 makes it clear that when a statement, written or verbal, is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death H

A comes into question, such statement is relevant. Hence, Exts. P-4 and P-10 are relevant for deciding as to what was the exact cause of the death of the deceased in the present case. [Para 16] [779-C-D]

2.1. Under first clause of s. 300 IPC, if the act by which B the death is caused is done with the intention of causing death, the act amounts to murder. Under the second clause, if the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is C caused, the act amounts to murder. Under the third clause, if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the act amounts to murder. In each of the D three clauses, intention to cause death or to cause the bodily injury is an essential ingredient of the offence of murder. Under the fourth clause, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury E as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, he is said to have committed murder. Hence, under the fourth clause, knowledge of the act committed by the accused that it is so imminently dangerous that it must, F in all probability, cause death or such bodily injury as is likely to cause death, is a necessary ingredient for the offence of murder. [Para 21] [781-G-H; 782-A-C]

2.2. In the facts of the present case, PW-2, PW-3 and PW-8 have not seen what exactly happened inside the G room (khaprail) in which the incident took place. From the two dying declarations (Ext.P-4 and Ext.P-10), therefore, it is difficult to record a finding that the respondent had any intention to cause death of the deceased or had any intention to cause any bodily injury. From the two dying H declarations, it is also difficult to come to a finding that

the respondent committed the act knowing that it is so imminently dangerous that it must, in all probability, cause death of the deceased. As found by the High Court, there was some delicate relationship between the respondent and the deceased and it was difficult to believe that the respondent had any intent to cause death or bodily injury to the deceased. Rather, it appears that the death of the deceased has been caused by a reckless act, of the respondent with the knowledge that it is likely to cause death and for this act, the respondent is guilty of culpable homicide not amounting to murder under Section 304, Part-II, IPC. [Para 22] [762-D-E, F-G; 783-A]

2.3. The respondent has undergone imprisonment of approximately six years and the incident is of the year 1997. In the peculiar facts and circumstances of the case, the period of imprisonment already undergone by the respondent-accused and a fine of Rs.2,000/- are sufficient punishments under Section 304 Part-II, IPC. [Para 22] [783-B]

Laxman vs. State of Maharashtra **(2002) 6 SCC 710 – followed.**

State of Kerala vs. Nazar **(2005) 9 SCC 246;** *Shri Gopal and Anr. vs. Subhash and Ors.* **(2004) 13 SCC 174: 2004 (1) SCR 1085 – distinguished.**

Paniben vs. State of Gujarat **(1992) 2 SCC 474: 1992 (2) SCR 197; Bhajju** *Alias Karan Singh vs. State of Madhya Pradesh* **(2012) 4 SCC 327: 2012 (5) SCR 37;** *Surendra Singh vs. State of Uttaranchal* **(2006) 9 SCC 531: 2006 (1) Suppl. SCR 490;** *State of Rajasthan vs. Maharaj Singh and Anr.* **(2004) 13 SCC 165;** *State of Uttar Pradesh vs. Banne @ Baijnath and Ors.* **(2009) 4 SCC 271;** *State of Andhra Pradesh vs. S. Swarnalatha and Ors.* **(2009) 8 SCC 383: 2009 (12) SCR 289 – referred to.**

A **Case Law Reference:**

1992 (2) SCR 197	**referred to**	**Para 8**
2012 (5) SCR 37	**referred to**	**Para 8**
2006 (1) Suppl. SCR 490	**referred to**	**Para 11**
B **(2004) 13 SCC 165**	**referred to**	**Para 11**
(2009) 4 SCC 271	**referred to**	**Para 12**
2009 (12) SCR 289	**referred to**	**Para 12**
(2005) 9 SCC 246	**distinguished**	**Para 18**
C **2004 (1) SCR 1085**	**distinguished**	**Para 18**
(2002) 6 SCC 710	**followed**	**Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1303 of 2006.

D From the Judgment & Order dated 10.04.2003 of the High Court of Judicature for Rajasthan at Jaipur bench, Jaipur in D.B. Criminal Appeal No. 660 of 1998.

Dr. Manish Singhvi, AAG, Amit Lubhaya, Milind Kumar for E the Appellant.

K.L. Janjani, Pankaj Kumar Singh, Ankit Gaur, M. Dubey for the Respondent.

The Judgment of the Court was delivered by

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A.K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 10.04.2003 of the Division Bench of the Rajasthan High Court, Jaipur Bench, in D.B. Criminal Appeal No. 660 of 1998.

G **Facts:**

2. The facts very briefly are that on 05.03.1997 Sudesh, wife of Gopal, was admitted at Bed No. 19 in Female Surgical Ward of General Hospital, Dholpur, because of burns and she H gave a statement to the police that she was married to Gopal

for about 10-12 years and she did not have any dispute with her mother-in-law, father-in-law, elder brother-in-law and younger brother-in-law and they had never harassed her. She, however, stated that Santosh, son of her uncle-in-law, used to frequently irritate her by joking with her and between 11.30 a.m. to 12.00 Noon he came to her and took her inside a room holding her hand and said that he will not leave her alive. In her statement, she also stated that Santosh had a kerosene oil can in his hand and he poured the kerosene on her by lifting the container and ignited fire to her *saree* with a matchbox and when she shouted, her mother-in-law and her younger sister, Suman, who was married to her brother-in-law, came running to her and Santosh ran away after igniting the fire. In her statement, she further stated that due to fire, her clothes and she herself got burnt badly and her mother-in-law brought her for treatment. Pursuant to this statement, an FIR was registered under Section 307 of the Indian Penal Code (for short 'IPC') by ASI Shyam Lal against the respondent. Subsequently, Sudesh was shifted to the Kamla Raja Hospital, Gwalior where she died on 10.03.1997. After investigation, charge-sheet was filed against the respondent under Section 302, IPC.

3. As the respondent denied the charge, he was tried by the Additional District and Sessions Judge, Dholpur, in Sessions Case No. 53 of 1997. At the trial, amongst other witnesses examined on behalf of the prosecution, Rakesh Kumar, who visited the place of occurrence and prepared the site plan and seized the plastic can, pieces of bangles, burnt *saree*, blouse, string and broken matches from the site of occurrence and prepared the seizure memo was examined as PW-1; Pinki, who was the sister of the husband of the deceased, was examined as PW-2; Shyamo, mother-in-law of the deceased was examined as PW-3; Dr. R.C. Goyal, who was the Medical Jurist in General Hospital, Dholpur, and conducted the medical examination of the deceased and prepared the injury report (Ext. P-3) was examined as PW-4; Shyam Lal, ASI,

A who recorded the statement of the deceased at the hospital at Dholpur, was examined as PW-9; Dr. J.N. Soni, who conducted the postmortem on the body of the deceased was examined as PW-10 and Dr. R. Gurmukhi, who recorded the dying declaration of the deceased (Ext. P-10) at the hospital at B Gwalior, was examined as PW-11. The respondent also examined defence witnesses DW-1, Ashok Kumar Sharma, said that the deceased had burnt herself. DW-2, Kalpana Tiwari, who was residing in the neighbourhood, said that the deceased told her that her mother-in-law has lit fire, DW-3, C Mahendra Kumar, Compounder of the General Hospital, Dholpur, said that the deceased told Dr. R.C. Goyal that she burnt herself by pouring kerosene oil and DW-5, Bhagwan, said that the doctor told him that the deceased died by burning herself. The trial court rejected the defence story and convicted D the respondent under Section 302, IPC and imposed sentence of life imprisonment and fine of Rs.2,000/- on the respondent.

4. Aggrieved, the respondent filed D.B. Criminal Appeal No. 660 of 1998 before the High Court. In the impugned E judgment, the High Court found that there was a delicate relationship between the deceased and the respondent. The High Court also found that when the deceased was initially examined by Dr. Goyal on 05.03.1997, she had told him that she herself set her aflame and she died five days thereafter, F but no attempt was made by the Investigating Officer to get her statement recorded by any Magistrate. In her dying declaration (Ext. P-10), however, she stated that the respondent had poured kerosene oil and set her aflame and there were therefore inconsistencies in the first statement of the deceased and her dying declaration. The High Court further found that DW- G 1 and DW-2, who were residing in the neighbourhood of the deceased, had deposed that the mother-in-law of the deceased told the *mohallawalas* that the deceased set herself aflame and DW-3 and DW-5 had deposed that in their presence, the deceased had told Dr. Goyal that she herself set her aflame. H

The High Court, therefore, held that the prosecution had not been able to establish beyond reasonable doubt that it was the respondent who had poured kerosene oil and acquitted the appellant of the charge under Section 302, IPC.

Contentions of the learned counsel for the parties:

5. Dr. Manish Singhvi, learned counsel appearing for the State of Rajasthan, submitted that there were two dying declarations of the deceased, one (Ex.P-4) recorded by ASI, Shyam Lal, (PW-9) at 2.30 p.m. on 05.03.1997 in the hospital at Dholpur in presence of Dr. R.C. Goyal and the other (Ex.P-10) recorded by Dr. R. Gurmukhi (PW-11) recorded on 08.03.1997 soon after her admission in the hospital at Gwalior and in both these dying declarations, the deceased clearly named the respondent Santosh as having poured kerosene on her and ignited fire on to her *saree* with a match. He further submitted that Dr. R.C. Goyal (PW-4) has stated in his evidence that at the time of recording the statement of the deceased her condition was critical but she was not unconscious and an injury report (Ex.P-3) recorded at 1.45 p.m. on 05.03.1997 would also show that she was not unconscious. He further submitted that Dr. R. Gurmukhi (PW-11) has similarly stated in his evidence that on 08.03.1997 the condition of the deceased was not good and she was not in a position to put a signature and therefore he got her thumb impression on the dying declaration (Ex.P-10) recorded on 08.03.1997. He submitted that Dr. R. Gurmukhi (PW-11) has also stated in his evidence that the deceased was in full senses and she became unconscious and stopped talking only one hour prior to her death on 10.03.1997.

6. Dr. Singhvi further submitted that the two dying declarations of the deceased to the effect that the respondent Santosh had poured kerosene on her and ignited the fire on to her *saree* with a match box had been corroborated by eye-witness accounts of Pinki (PW-2), Shyamo (PW-3-mother in law) and Suman (PW-8-sister and sister in law of the

A deceased). He submitted that from the evidence of PW-2, PW-3 and PW-8 it will be clear that there was some relationship between the deceased and the respondent and the deceased was spurning the overtures of the respondent because of which the respondent got angry and burnt the deceased. He submitted
B that the deceased died due to extensive burns as would be evident from *post mortem* report (Ex.P-9) and the injury report (Ex.P-3) prepared at the hospital at Dholpur at 1.45 p.m. would show that there was smell of kerosene from the clothes of the deceased when she was brought to the hospital. He argued
C that, therefore, it is not a case of fire accident. On the contrary, recovery of plastic can, kerosene, pieces of burnt *saree*, blouse and strings, pieces of broken bangles and broken match sticks from the spot (Ex.P-1) are circumstances which corroborate the dying declarations as well as the evidence of PW-2, PW-3 and
D PW-8.

7. Dr. Singhvi vehemently argued that considering the overwhelming evidence to establish beyond reasonable doubt that the respondent was responsible for pouring kerosene on
E the deceased and lighting the fire to the *saree* of the deceased, the High Court could not have acquitted the respondent only on the statement of Dr. R.C. Goyal (PW-4) that the deceased had told him that she got burnt herself. He submitted that the High Court should not have placed reliance on the evidence of the
F defence witnesses DW-1 and DW-5 who had never witnessed the incident inside the house where the deceased was burnt and arrived at the spot only after the incident had taken place. He submitted that the High Court ought not to have also placed any reliance on the evidence of PW-3 who was a Compounder
G at the general hospital at Dholpur, when the deceased herself gave a statement (Ext.P-4) on the cause of her death.

8. Dr. Singhvi submitted that the two dying declarations of the deceased (Ex.P-4 and Ex.P-10) were relevant under Section 32 of the Indian Evidence Act on the issue of the cause
H of death of the deceased. He submitted that the High Court

could not have discarded the dying declarations only on the ground that they were not recorded in the presence of Magistrate. In support of his evidence, he cited the decision of this Court in *Laxman v. State of Maharashtra* [(2002) 6 SCC 710] for the proposition that there is no requirement of law that the dying declaration is made to the Magistrate. He also cited the decision in *Paniben v. State of Gujarat* [(1992) 2 SCC 474] wherein this Court has culled out various principles governing dying declarations. He submitted that if the principles of dying declaration are taken into consideration, it is a fit case in which this Court should rely on the two dying declarations and restore the conviction of the respondent by the trial court. In this context, he also referred to the decision of this Court in *Bhajju Alias Karan Singh v. State of Madhya Pradesh* [(2012) 4 SCC 327] for the proposition that a dying declaration is a substantive piece of evidence and the conviction of the accused can also be based solely on the dying declaration.

9. Learned counsel for the respondent, Mr. K.L. Janjani, on the other hand, submitted that the deceased was admitted in the hospital on 05.03.1997 and her injuries were examined by Dr. R.C. Goyal (PW-4) and an injury report (Ex.P-3) was prepared and Ex.P-3 has an endorsement that deceased herself got burnt with kerosene oil but the word "herself" was subsequently erased and this fact has been admitted by PW-4 in his cross examination. He further submitted that PW-4 has also deposed that he had asked the deceased as to how she got burnt and she had told him that she had herself got burnt. He submitted that the dying declaration (Ex.P-4) was recorded by PW-9, ASI, Shyam Lal without obtaining any certificate from Dr. R.C. Goyal with regard to the condition of the deceased and therefore the dying declaration (Ex.P-4) cannot be relied upon.

10. Mr. Janjani next submitted that immediately before the dying declaration (Ex.P-10) was recorded on 08.03.1997 an entry was made in the patient case sheet of the deceased in the hospital in Gwalior (Ext.P-13) that a homicidal incident took

A place while she was preparing meal on stove. He submitted that both Ex.P-13 and the dying declaration (Ex.P-10) has been recorded by Dr. R. Gurmukhi (PW-11) and yet Ex.P-10 and Ex.P-13 contained different versions about the incident in which the deceased was burnt. He also argued that the cross-
B examination of Dr. Gurmukhi would show that the deceased was in a bad condition on 08.03.1997 and her blood pressure was below 40% and she was drowsy and unconscious and hence she could not have given the statement in Ex.P-10. He argued that PW-12 who was in-charge of the deceased at the Gwalior
C hospital denied knowledge of any statement of the deceased having been recorded by PW-11.

11. Mr. Janjani further submitted that in fact the evidence of PW-2, PW-3 and PW-8 was that the door of the room in
D which the deceased got burnt was closed from inside by lathi and stones and hence none of the prosecution witnesses PW-2, PW-3 and PW-8 could have seen as to how actually the deceased got burnt. He submitted that therefore there is no proof of the intent of the respondent to cause the death of the
E deceased and the respondent cannot be held guilty of the offence of murder under section 302, IPC and he could only be punished for the offence under Section 304, IPC. He submitted that PW-3 has clearly stated that prior to the incident which took place on 05.03.1997 she had not noticed any mischievous act
F on the part of respondent. In this context, he submitted that the respondent has already undergone imprisonment for six years which may be sufficient punishment for the offence under Section 304, IPC. He further submitted that the respondent is a married person and has three grown up daughters and will
G suffer immense hardship if he is sent back for life imprisonment. In support of this submission, he relied on the decision of this Court in *Surendra Singh v. State of Uttaranchal* [(2006) 9 SCC 531] and *State of Rajasthan v. Maharaj Singh and Another* [(2004) 13 SCC 165] in which this Court has taken a view on similar facts that the offence committed by the
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accused was one under Section 304, IPC and not under Section 302, IPC. A

12. Mr. Janjani, relying on *State of Uttar Pradesh v. Banne @ Baijnath & Others.* [(2009) 4 SCC 271] and *State of Andhra Pradesh v. S. Swarnalatha and Others* [(2009) 8 SCC 383], B finally submitted that the scope of interference by this Court under Article 136 of the Constitution in a judgment of acquittal passed by the High Court is very limited. He submitted that this is a case where two possible views on the evidence are possible, one that the respondent is guilty and the other that C the respondent is not guilty and in such cases this Court has held that if the High Court has taken a view in favour of the accused and has acquitted him of the charges, this Court should not interfere with the same. In support of his proposition, he relied on *State of Kerala vs. Nazar* [(2005) 9 SCC 246] and D *Shri Gopal and Another vs. Subhash and Others* [(2004) 13 SCC 174].

Findings of the Court:

13. We have perused the first dying declaration (Ext. P-4) E and we find therefrom that the deceased has clearly stated that the respondent Santosh poured kerosene on her from a can and ignited the fire by a match stick on her *saree* and as a result she got burnt. The dying declaration (Ext. P-4) was recorded by ASI, PW-9, within two to three hours of the incident at 2.30 F p.m. on 05.03.1997 at the Female Surgical Ward General Hospital. This dying declaration (Ext.P-4) was recorded in the presence of Dr. R.C. Goyal, Medical Jurist (PW-4) when the deceased was in a condition to make a statement. The High Court appears to have doubted this dying declaration because G PW-4 has stated in his cross-examination that the deceased told him that she had got burnt on her own and he has also made a note in the injury report (Ext.P-3) that the deceased had got burnt on her own. The High Court lost sight of the fact that PW-4 has conducted the medical examination of the deceased at H

A the hospital at 1.45 p.m. and, as has been stated by PW-4 in his evidence, the injury report (Ext. P-3) had been prepared before the dying declaration (Ext.P-4) was recorded at 2.30 p.m. It is perhaps for this reason that in Ext.P-3, after the deceased gave her statement (Ex. P-4) to PW-9 in the B presence of PW-4 that PW-4 corrected the injury report (Ext.P-3) by scoring out the words "by herself". In other words, after PW-4 came to know later from the statement of the deceased recorded by PW-9 in his presence that the deceased did not get burnt by herself, he corrected the injury report (Ext.P-3). The C High Court has failed to appreciate the evidence in this light.

14. On a reading of the second dying declaration (Ext.P-10) recorded by Dr. R. Gurmukhi, PW-11, at the hospital at Gwalior, to which the deceased was shifted, we find that the D deceased reiterated that there was a quarrel between her and the respondent and the respondent poured kerosene oil on her and ignited the fire and as a result she got burnt. We also find from the evidence of PW-11 that the deceased was in a condition to make the dying declaration on 08.03.1997. It is E true, as has been submitted by the learned counsel for the respondent that in patient case sheet (Ext. P-13) of the deceased, PW-11 has written that it is a case of homicidal burns while she was preparing meal on stove four days back, but we find on a reading of Ext.P-13 that it is also mentioned F "her husband's younger brother, Santosh, quarrel with her". Hence, in the second dying declaration (Ext.P-10) also the deceased has named the respondent Santosh as having quarreled with her and as a result she has suffered the burn injuries. The High Court was, therefore, not right in coming to G the finding that there were inconsistencies in the two dying declarations (Ext.P-4 and Ext.P-10).

15. The two dying declarations of the deceased, Ex. P-4 and Ex.P-10, are corroborated by recovery of a plastic can with some kerosene oil, burnt pieces of *saree*, blouse and bangles H as well as the broken matchsticks from the room (*khaprail*)

where the incident took place. PW-2, PW-3 and PW-8 have not seen what actually had happened inside the room (*khaprail*) because the door of the room was closed, but they have seen the respondent coming out of the room and the deceased was in a burnt condition. PW-2, PW-3 and PW-8, therefore, have corroborated the statements of the deceased in the two dying declarations (Ext.P-4 and Ext.P-10) that none other than Santosh was in the room in which the incident took place.

16. Section 32(1) of the Indian Evidence Act, 1872 makes it clear that when a statement, written or verbal, is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, such statement is relevant. Hence, Exts. P-4 and P-10 are relevant for deciding as to what was the exact cause of the death of the deceased in this case. In this case, Exts. P-4 and P-10 were also corroborated by both circumstantial evidence regarding the recovery of plastic can with some kerosene oil, burnt pieces of *saree*, blouse and bangles and broken matchsticks from the place of occurrence as well as the direct evidence of PW-2, PW-3, PW-4 and PW-8, who had seen the respondent coming out of the room where the incident took place. In our view, therefore, the High Court could not have acquitted the respondent by the impugned judgment.

17. In *State of Kerala v. Nazar* [(2005) 9 SCC 246], cited by the learned counsel for the respondent, this Court found that the conclusion of the High Court was based on the evidence on record and there was no error in the appreciation of the evidence by the High Court and for this reason this Court did not interfere with the decision of the High Court saying that the view was a reasonable one taken on the basis of the evidence on record. In this case, on the other hand, we have found that the High Court could not have taken the view that the respondent was not guilty at all when there were two dying declarations of

A the deceased corroborated by both circumstantial and direct evidence.

18. In *Shri Gopal & Another v. Subhash & Others.* [(2004) 13 SCC 174] relied on by the learned counsel for the B respondent, this Court found that there were certain discrepancies in the prosecution case because of which the High Court had doubts with regard to the participation of the accused persons and this Court took the view that a possible view has been taken by the High Court, which should not be C interfered with by this Court under Article 136 of the Constitution. In this case, on the other hand, we have found that the view taken by the High Court was not a possible one when the name of the respondent is taken in the two dying declarations of the deceased as the cause of the fire in which the deceased was D burnt and the dying declarations were corroborated by both circumstantial and direct evidence.

19. The High Court has taken a view in the present case that the Magistrate should have been requisitioned for recording the dying declaration and has considered this lapse on the part E of the prosecution as a reason for not believing the dying declaration. The Constitution Bench of this Court in *Laxman v. State of Maharashtra* (supra) has, on the other hand, held that there is no requirement of law that a dying declaration must necessarily be made to a Magistrate and what is essentially F required is that the person who records the dying declaration must be satisfied that the deceased was in a fit state of mind. In this case, the Constitution Bench, however, has held that what evidential value or weight is to be attached to a dying declaration necessarily depends on the facts and circumstances G of each particular case. In this case, as we have found, the deceased has made two dying declarations (Ext. P-4 and Ext. P-10) and has consistently named the respondent as the person for the cause of her burn injuries and the two dying declarations are corroborated both by circumstantial evidence H and direct evidence. Hence, even though the Magistrate was

not requisitioned for recording the dying declarations, the High Court ought not to have discarded the dying declarations. A

20. The only other question which remains to be decided in this case is whether the respondent should be held guilty of the offence under Section 302, IPC, or Section 304 IPC. A person could be held to be guilty of offence under Section 302, IPC, if he commits murder. The relevant portion of Section 300, IPC, which defines "murder" is extracted hereunder: B

> **"300. Murder.—** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- C
>
> *Secondly-* If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- D
>
> *Thirdly-* If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- E
>
> *Fourthly*,- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. F

21. Under first clause, if the act by which the death is caused is done with the intention of causing death, the act amounts to murder. Under the second clause, if the act is done G with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the act amounts to murder. Under the third clause, if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted H

A is sufficient in the ordinary course of nature to cause death, the act amounts to murder. In each of the three clauses, intention to cause death or to cause the bodily injury is an essential ingredient of the offence of murder. Under the fourth clause, if the person committing the act knows that it is so imminently B dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid, he is said to have committed murder. Hence, under the fourth clause, knowledge of the act committed C by the accused that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, is a necessary ingredient for the offence of murder.

D 22. In the facts of the present case, PW-2, PW-3 and PW-8 have not seen what exactly happened inside the room (*khaprail*) in which the incident took place. The deceased has, however, stated in the two dying declarations (Ext.P-4 and Ext.P-10) that the respondent poured kerosene on the E deceased and ignited fire on the *saree* of the deceased. The two dying declarations (Ext.P-4 and Ext.P-10) are very sketchy and do not narrate the details as to how the incident took place except stating that there was a quarrel between the deceased and the respondent. From the two dying declarations (Ext.P-4 F and Ext.P-10), therefore, it is difficult to record a finding that the respondent had any intention to cause death of the deceased or had any intention to cause any bodily injury. From the two dying declarations (Ext.P-4 and Ext.P-10), it is also difficult to come to a finding that the respondent committed the G act knowing that it is so imminently dangerous that it must, in all probability, cause death of the deceased. As found by the High Court, there was some delicate relationship between the respondent and the deceased and it is difficult to believe that the respondent had any intent to cause death or bodily injury to the deceased. Rather, it appears to us that the death of the H

deceased has been caused by a reckless act of the respondent with the knowledge that it is likely to cause death and for this act the respondent is guilty of culpable homicide not amounting to murder under Section 304, Part-II, IPC. The respondent has undergone imprisonment of approximately six years and the incident is of the year 1997. In the peculiar facts and circumstances of the case, the period of imprisonment undergone by the respondent-accused and a fine of Rs.2,000/- are sufficient punishments under Section 304 Part-II, IPC.

23. The appeal of the State is allowed. The impugned judgment of the High Court is set aside and the respondent-accused is held guilty of the offence under Section 304 Part-II, IPC, and is sentenced for a period of six years undergone by him and a fine of Rs.2,000/- to be paid within two months from today, failing which he will be liable for imprisonment for a further period of two months.

K.K.T. Appeal allowed.