PURAN CHAND

v.

STATE OF HARYANA

(Criminal Appeal No. 1818 of 2009)

MAY 13, 2010

[V.S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – s.302 r/w s.34 – Death of married woman due to burn injuries – Dying declaration recorded by Judicial Magistrate, First Class after Doctor gave medical certificate that deceased was in a fit mental state to give the dying declaration – Trial court convicted all the three accused viz., husband, brother-in-law and aunt-in-law of the deceased by placing reliance upon the dying declaration – High Court acquitted the aunt-in-law but confirmed the conviction of husband and brother-in-law – Further appeal by brother-in-law before Supreme Court on ground that the dying declaration was not credible – Held: The dying declaration was recorded by an independent witness, who was working as a Judicial Magistrate, First Class, and before it commenced, the Magistrate had satisfied himself about the ability of deceased to make a dying declaration – There was also an endorsement from the doctor as regards the fitness of the victim to give the dying declaration – Dying declaration was not only voluntary but truthful also and, hence, it could be relied upon as was done by the trial Court and the High Court – Conviction of appellant brother-in-law maintained.

Evidence Act, 1872 – s.32 – Dying declaration – Principles governing dying declaration re-iterated.

A married woman died of burn injuries. It was alleged by the prosecution that kerosene oil had been sprinkled on the deceased and thereafter she was set on fire.

A Pursuant to the incident, the deceased had been removed to a hospital where she gave a dying declaration. The dying declaration was got recorded by PW13, a First Class Judicial Magistrate, after PW14, the attending doctor, gave medical certificate that the deceased was in
B a fit mental state to give the dying declaration.

Trial court convicted all the three accused viz., husband, brother-in-law and aunt-in-law of the deceased u/s.302 r/w s.34, primarily, by placing reliance upon the said dying declaration. On appeal, the High Court
C acquitted the aunt-in-law but confirmed the conviction of husband and brother-in-law. The husband chose not to file any further appeal.

The brother-in-law, i.e. the appellant, however,
D challenged his conviction before this Court contending that the dying declaration was tutored and that there were intrinsic defects in the dying declaration which militated against its credibility.

It was contended that, firstly, the name of the
E appellant was not to be found in the dying declaration and there was a mere reference to the *Jeth* (elder brother of the husband); that there was one more brother of the deceased's husband, and it was not certain as to whether the deceased referred to appellant. It was further
F contended that the deceased had suffered 90 per cent of burns and, therefore, it was not possible that she would be in her senses while making the dying declaration; that no kerosene oil residues were found on the clothes which were seized; and also that the evidence of PW-5,
G PW-10 and PW-8, who claimed that an oral dying declaration was made to them, was also not reliable in view of the evidence of PW-4 who had stated that no such oral dying declaration was made by the deceased.

H Dismissing the appeal, the Court

HELD:1. Ordinarily, though the oral dying declaration is an extremely weak type of evidence, it would not be unnatural for a burnt woman, to confide in her near relations like her cousin, PW-5, father PW-1 and PW-8 who is also a near relation. The deceased would rather be keen to express herself regarding the cause of her death. Had the prosecution relied only on the oral dying declaration, things could have been different. However, there is a dying declaration, Ex. P.F/3, which is recorded by a Judicial Magistrate, First class.[Para 8] [31-F-H; 32-A-B]

2.1. The dying declaration has been recorded by an independent witness who was working as a Judicial Magistrate, First Class, and before it commenced, the Magistrate had satisfied himself about the ability of deceased to make a dying declaration. Also, there is an endorsement from PW14, who had examined deceased and had given a certificate that deceased was in a fit mental state to give the statement. He had also endorsed at the end of the dying declaration that she was conscious and was in the fit state of mind while giving her statement. He has been cross-examined in details without any breakthrough. Therefore, it cannot be said that deceased was not in a fit state of mind while making her statement. A feeble argument was raised that the accused was a Tailor, yet, his occupation was stated to be a Teacher by deceased. There is a simple explanation that usually a tailor is called Tailor Master. It may be that the same expression might have been used by deceased. Even elsewhere in the record of this case such expression seems to have been used. The confusion might have been created because of the use of the word "*master*". Even at the end of the dying declaration, a further endorsement was made by PW14 certifying that, firstly, the witness was conscious all through the time when her statement was being recorded and, secondly,

A that no relatives of her were present at that time, which was also countersigned by the Magistrate who recorded the statement. The dying declaration was not only voluntary but truthful also and, hence, it could be relied upon as was done by the Trial Court and the Appellate B Court. [Paras 9, 10] [32-B-E; 33-B-E]

2.2. The Courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A C mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind D and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. Number of times, a young girl or a wife who makes the dying declaration E could be under the impression that she would lead a peaceful, congenial, happy and blissful married life only with her husband and, therefore, has tendency to implicate the inconvenient parents-in-law or other relatives. [Para 11] [33-F-H; 34-A-B]

F

2.3. Number of times the relatives influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the G Court must remain alive to all the attendant circumstances at the time when the dying declaration comes into being. When there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone H

can be accepted while the other innocuous dying declarations have to be rejected. Such trend will be extremely dangerous. However, the Courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests. [Para 11] [34-A-D]

2.4. Again, it is extremely difficult to reject a dying declaration merely because there are few factual errors committed. The Court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. Once the Court is convinced that the dying declaration is so recorded, it may be acted upon and can be made a basis of conviction. The Courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned. [Para 12] [34-E-G]

2.5. The law is now well settled that a dying declaration which has been found to be voluntary and truthful and which is free from any doubts can be the sole basis for convicting the accused. In the present case the dying declaration passes all the tests referred above. [Para 13] [34-H; 35-A-B; 36-C]

Sham Shankar Kankaria v. State of Maharashtra **2006) 13 SCC 165;** *Paniben v. State of Gujarat (***1992) 2 SCC 474;** *Munnu Raja v. State of M.P.* **(1976) 3 SCC 104;** *State of U.P. v. Ram Sagar Yadav* **(1985) 1 SCC 552;** *Ramawati Devi v. State of Bihar* **(1983) 1 SCC 211;** *K. Ramachandra Reddy v. Public Prosecutor* **(1976) 3 SCC 618;** *Rasheed Beg v. State of M.P.* **(1974) 4 SCC 264;** *Kake Singh v. State of M.P.***[(1981) supp. SCC 25;** *Ram Manorath v. State of U.P.* **(1981) 2 SCC 654;** *State of Maharashtra vs. Krishnamurti Laxmipati Naidu* **(1980) Supp. SCC 455;** *Surajdeo Ojha v. State of Bihar*

A (1980) Supp SCC 769; *Nanhau Ram v. State of M.P.*[(1988) Supp. SCC 152; *State of U.P. v. Madan Mohan* (1989) 3 SCC 390; *Mohanlal Gangaram Gehani v. State of Maharashtra* (1982) 1 SCC 700; *Gangotri Singh v. State of U.P.* (1993) Supp (1) SCC 327; *Goverdhan Raoji Ghyare v. State of* B *Maharashtra* (1993) Supp (4) SCC 316; *Meesala Ramakrishan v. State of A.P.* (1994) 4 SCC 182 and *State of Rajasthan v. Kishore* (1996) 8 SCC 217, relied on.

3. As regards the contention that on the half burnt clothes of deceased, there were no traces of kerosene C and, therefore, the whole story of burning her by pouring kerosene on her body has to be disbelieved, it is to be seen that the seizure of these clothes was proved by PW-8. He spoke about the seizure of an empty can, smelling of kerosene oil, a match box with 4 or 5 burn match sticks, D a quilted bed (probably meaning 'mattress'), smelling of kerosene from it which was semi burnt and some sample of soil. According to him, they were packed in the parcels separately and sealed. On this backdrop, when the recovery memo is seen, it mentions one empty tin box, E match box, two burnt match sticks, earth which was put in plastic *Dibbi,* clothing of the deceased of light blue colour, bed sheet (*Bichhona*) with marks of fresh burns. The witness, however, has not referred in his Examination-in-Chief to the cloth parcel (Exhibit 4) with F some partially burnt pieces of clothes. The FSL report suggests that kerosene residues were detected in Exhibit 5, which was a plastic bag containing a partially burnt coloured check cotton *gadda*. It clearly suggests that no kerosene residues could be detected on Exhibits 1, 2, 3, G 4 or 6. From this, it was urged that particularly, the parcel Nos. 1, 3 and 4 were bound to carry kerosene residues if the prosecution story was truthful. However, it is to be seen that the mattress did have kerosene residues. While this incident has taken place on 15.12.1997, parcels H seems to have been sent only on 29.12.1997 i.e. after about

14 days of the incident, which reached the FSL Laboratory on 31.12.1997. The FSL report bears a date 5.6.1998. There is thus the possibility of the articles losing the kerosene residues due to the long interval of time, yet it has to be noted that the mattress which undoubtedly a thick material, did have the kerosene residues. Ordinarily, there was no reason for the mattress having the kerosene residues unless kerosene was poured on the same. It is again to be noted that even the plastic container, containing kerosene, was also found not having any kerosene traces. Therefore, this circumstance will not help the accused as some kerosene traces have been found on the mattress where deceased was sleeping. Even if this circumstance is ignored, the fact of the matter is that the dying declaration has been found to be voluntarily truthful and unblemished. That would clinch the issue against the accused. [Para 14] [36-D-H; 37-A-E]

4. The appreciation by the Trial Court and the Appellate Court on the overall circumstances and their finding of conviction is correct. [Para 15] [37-E-F]

Case Law Reference:

(2006) 13 SCC 165	relied on	Para 13
(1992) 2 SCC 474	relied on	Para 13
(1976) 3 SCC 104	relied on	Para 13
(1985) 1 SCC 552	relied on	Para 13
(1983) 1 SCC 211	relied on	Para 13
(1976) 3 SCC 618	relied on	Para 13
(1974) 4 SCC 264	relied on	Para 13
(1981) supp. SCC 25	relied on	Para 13
(1981) 2 SCC 654	relied on	Para 13

A	**(1980) Supp. SCC 455**	**relied on**	**Para 13**
	(1980) Supp SCC 769	**relied on**	**Para 13**
	(1988) Supp. SCC 152	**relied on**	**Para 13**
B	**(1989) 3 SCC 390**	**relied on**	**Para 13**
	(1982) 1 SCC 700	**relied on**	**Para 13**
	(1993) Supp (1) SCC 327	**relied on**	**Para 13**
	(1993) Supp (4) SCC 316	**relied on**	**Para 13**
C	**(1994) 4 SCC 182**	**relied on**	**Para 13**
	(1996) 8 SCC 217	**relied on**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
D No. 1818 of 2009.

From the Judgment and order dated 27.03.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 565 of 1999.

E Sibo Sankar Mishra, for the Appellant.

Rao Ranjit (for Kamal Mohan Gupta) for the Respondent.

The Judgment of the Court was delivered by

F **V.S. SIRPURKAR, J.** 1. The judgment of the High Court confirming the conviction and sentence for the offences under Section 302 read with Section 34, Indian Penal Code is in challenge in this appeal. Originally, there were three accused persons, namely, Gurdial (accused No.1), Puran Chand
G (accused No.2), the present appellant and Rajo Devi (accused No.3). However, accused No.3, Rajo Devi was acquitted by the High Court and accused No.1, Gurdial has not chosen to file an appeal. It is only Puran Chand (accused No.2) who is in appeal before us.

H

2. Gurdial got married to one Santosh on 08.12.1997. According to the prosecution, she was harassed for dowry just after one week of the marriage and was set to fire on the fateful day i.e. on 15.12.1997 by as many as three accused persons, they being, Gurdial, her husband, Puran Chand, her elder brother-in-law and Rajo Devi, the paternal aunt of accused No.1, Gurdial. The incident took place at about 4 a.m. in the morning. According to the prosecution, accused No.1 and accused No.2 sprinkled Kerosene Oil and in this conspiracy even Rajo Devi (accused No.3) was a party. All this was done on account of the less dowry received in the marriage which had taken place hardly a week earlier to the incident. Santosh was taken to the General Hospital, Sector-13, Chandigarh by Pawan Kumar, PW-4 and ultimately she breathed her last in the evening on the same day. It was found that she had suffered 90 per cent of burns but before that her dying declaration was got recorded by PW-13, Shri A.K. Bishnoi. According to the prosecution, before recording this dying declaration, an opinion was taken about her fitness by Dr. Siri Niwas, PW-14. The said dying declaration is Ex.P.F/3 and the medical certificate is Ex.P.F/5. Fourteen witnesses were examined at the trial including her relations, investigating team, Magistrate and the Doctor. The Trial Court convicted all the three accused persons. However, the High Court acquitted Rajo Devi, giving her the benefit of doubt and that is how accused No.2, Puran Chand has come up before us challenging his conviction.

3. The defence was that of denial and it was stated to be an accident. It was also stated by the present appellant that he was staying separate from his brother Gurdial and had unnecessarily been implicated. Three defence witnesses were also examined.

4. The defence did not prevail and that is how accused No.2 is before us.

5. The main thrust of the argument of the Learned Counsel was against the dying declaration. It was claimed that the dying

A declaration was tutored one. Learned Counsel earnestly argued that there were some intrinsic defects in the dying declaration which militated against its credibility. It was pointed out that, firstly, the name of Puran Chand, the present appellant was not to be found in the dying declaration and there was a mere
B reference to the *Jeth* (elder brother of the husband). It was suggested by the Learned Counsel that there was one more brother of accused No.1, Gurdial and it was not certain as to whether the deceased referred to accused No.2, Puran Chand. It was then pointed out that Santosh, the deceased had suffered
C 90 per cent of burns and, therefore, it was not possible that she would be in her senses while making the dying declaration. Lastly, it was pointed out that there was no Kerosene Oil residues found on the clothes which were seized. It was also suggested further that the evidence of Mohan Lal (PW-5),
D Chand Kiran (PW-10) and Mam Chand (PW-8), who claimed that an oral dying declaration was made to them, was also not reliable in view of the evidence of PW-4, Pawan Kumar who had stated that no such oral dying declaration was made by Santosh.

E 6. We will first examine the claim regarding the oral dying declaration. It has come in the evidence that after Santosh got burnt, she was reached to the Yamuna Nagar Hospital. The information of the burning was given by PW-4, Pawan Kumar to PW-5, Mohan Lal in the morning itself on which both went to
F the Hospital. According to Mohan Lal (PW-5), he was told orally by Santosh that she was burnt by the two accused persons while accused No.3, Rajo Devi held her hands. The Trial Court has disbelieved this part of the evidence of Mohan Lal (PW-5) about the participation of accused No.3, Rajo Devi. However,
G the rest of the testimony about the participation of accused No.1, Gurdial and accused No.2, Puran Chand has been believed by the Trial Court. It is to be noted that at the time she made oral dying declaration, she did not merely refer to Puran Chand as *Jeth* but had specifically taken his name.

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7. We have closely examined the evidence of PW-5, Mohan Lal. The evidence of Mohan Lal (PW-5) has been corroborated by Mam Chand (PW-8) who is another witness who was present at the time of seizure of material objects at the spot, which, according to him, were smelling of kerosene. This witness has not stated anything about any dying declaration in his examination-in-chief but, strangely enough, it was brought in his cross-examination by the defence that he reached the Post Graduate Institute at about 3 p.m. He also referred to a dialogue between Chand Kiran and Santosh wherein Santosh told her father that she was burnt by her brother-in-law and her husband. This witness has referred to the active advice having been given by her Phupha Saas, meaning sister of her father-in-law. He also asserted that Gurdial and Puran Chand were not present at the Post Graduate Institute at that time. It is extremely strange that such material things should have been brought on record in cross-examination.

8. The last witness in this line is Chand Kiran (PW-10), the father of Santosh who had spoken about the oral dying declaration made to him by Santosh involving all the three accused persons. He had also referred to the evidence of Mam Chand, who was the brother-in-law and had claimed that his daughter told him that she was burnt by her husband Gurdial and her *Jeth*, Puran Chand at the instance of Rajo Devi. Nothing has been brought in the cross-examination of this witness. The evidence of these three witnesses is complimentary to each other and, thus, is more acceptable in comparison to the evidence of Pawan Kumar (PW-4). Ordinarily, though the oral dying declaration is an extremely weak type of evidence, it would not be unnatural for a burnt woman, to confide in her near relations like her cousin, Mohan Lal (PW-5), father Chand Kiran (PW-1) and Mam Chand (PW-8) who is also a near relation. Santosh would rather be keen to express herself regarding the cause of her death. Had the prosecution relied only on the oral dying declaration, things

A could have been different. However, there is a dying declaration, Ex. P.F/3, which is recorded by a Judicial Magistrate, First class and that will have to be critically examined in this case.

B 9. Learned counsel appearing on behalf of the defence, firstly, pointed out that the written dying declaration did not mention accused No.2 by his name. Even accused No.3, Rajo Devi was referred as '*Bua*'. It was also pleaded that there was another brother named Chandiram and, therefore, the benefit of doubt, on account of this, must go to accused No.2, Puran C Chand. The evidence of Dr. Satbir Singh (PW-9), who was the post-mortem doctor and who examined Santosh, has referred to superficial to deep burns on various parts of her body. He has also asserted that the superficial to deep burns were about 90 per cent and they were sufficient to cause her death in the D ordinary course of nature. However, Dr. Siri Niwas (PW-14), was the most material witness who examined Santosh and had given a certificate that Santosh was in a fit mental state to give the statement. He had also endorsed at the end of the dying declaration that she was conscious and was in the fit state of E mind while giving her statement. He has been cross-examined in details without any breakthrough. Therefore, it cannot be said that Santosh was not in a fit state of mind while making her statement.

F 10. What impresses us most about the dying declaration is that, firstly, it has been recorded by an independent witness like Shri A.K. Bishnoi who was working as a Judicial Magistrate, First Class, and secondly, before it commenced, the Magistrate had satisfied himself about the ability of Santosh to make a dying declaration. There is an endorsement G obtained of Dr. Siri Niwas. The said dying declaration is in the question & answer form and we do not see any suggestive questions having been put excepting question No.4 which is to the effect "*is anyone else responsible for this incident?*". However, it must be said that this question was more with an H

idea to seek more information which could have been legitimately put. This is apart from the fact that the Courts below ultimately gave the benefit of doubt to accused No.3, Rajo Devi. What impresses us is that in the dying declaration, Santosh specifically exonerated her mother-in-law and the father-in-law by saying that tney treated her well. A feeble argument was raised that the accused was a Tailor, yet, his occupation was stated to be a Teacher by Santosh. There is a simple explanation that usually a tailor is called Tailor Master. It may be that the same expression might have been used by Santosh. Even elsewhere in the record of this case such expression seems to have been used. The confusion might have been created because of the use of the word "*master*". Even at the end of the dying declaration, a further endorsement was made by Dr. Siri Niwas certifying that, firstly, the witness was conscious all through the time when her statement was being recorded and, secondly, that no relatives of her were present at that time, which was also countersigned by the Magistrate who recorded the statement. At the instance of the defence counsel, we have ourselves seen the original dying declaration as also the First Information Report based on the same. In our opinion, the dying declaration was not only voluntary but truthful also and, hence, it could be relied upon as was done by the Trial Court and the Appellate Court.

11. The Courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. Number of

A times, a young girl or a wife who makes the dying declaration could be under the impression that she would lead a peaceful, congenial, happy and blissful married life only with her husband and, therefore, has tendency to implicate the inconvenient parents-in-law or other relatives. Number of times the relatives B influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the Court must remain alive to all the attendant circumstances at the time when the dying declaration comes C into being. When there are more than one dying declarations, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocuous dying declarations have to be rejected. Such trend will be extremely dangerous. However, the Courts below are fully D entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests.

12. Again, it is extremely difficult to reject a dying E declaration merely because there are few factual errors committed. The Court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. Once the Court is convinced that the dying F declaration is so recorded, it may be acted upon and can be made a basis of conviction. The Courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be G shunned. We have tested the dying declaration with all these factors in mind and we are satisfied that even the Trial Court and the Appellate Court have fully satisfied themselves in respect of the acceptability of this dying declaration.

13. The law is now well settled that a dying declaration H which has been found to be voluntary and truthful and which is

free from any doubts can be the sole basis for convicting the accused. This Court in *Sham Shankar Kankaria v. State of Maharashtra* [(2006) 13 SCC 165] has taken stock of the following cases where the principles governing dying declaration have been laid down:

(i) *Paniben v. State of Gujarat* [(1992) 2 SCC 474;

(ii) *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104;

(iii) *State of U.P. v. Ram Sagar* Yadav [1985] 1 SCC 552;

(iv) *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211

(v) *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618]

(vi) *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264;

(vii) *Kake Singh v. State of M.P.* [(1981) supp. SCC 25;

(viii) *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654;

(ix) *State of Maharashtra vs. Krishnamurti Laxmipati Naidu* [(1980) Supp. SCC 455;

(x) *Surajdeo Ojha v. State of Bihar* [(1980) Supp SCC 769]

(xi) *Nanhau Ram v. State of M.P.* [(1988) Supp. SCC 152

(xii) *State of U.P. v. Madan Mohan* [(1989) 3 SCC 390;

(xiii) *Mohanlal Gangaram Gehani v. State of Maharashtra* [(1982) 1 SCC 700]

In para 12 of the abovesaid judgment, this Court has held that dying declaration is the only piece of untested evidence and must like any other evidence, satisfy the court that what is stated

A therein is the unalloyed truth and that it is absolutely safe to act upon it. This Court has further reiterated that if after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal B impediment to make it a basis of conviction, even if there is no corroboration. In that behalf, this Court has referred the reported cases of *Gangotri Singh v. State of U.P.* [(1993) Supp (1) SCC 327]; *Goverdhan Raoji Ghyare v. State of Maharashtra* [(1993) Supp (4) SCC 316]; *Meesala* C *Ramakrishan v. State of A.P.* [(1994) 4 SCC 182]; and *State of Rajasthan v. Kishore* [(1996) 8 SCC 217]. We are in respectful agreement with the law laid down and would hasten to add that in the present case the dying declaration of Santosh passes all the tests referred to by us above.

D 14. Lastly, a point was raised by the learned defence counsel that on the half burnt clothes of Santosh, there were no traces of kerosene and, therefore, the whole story of burning her by pouring kerosene on her body has to be disbelieved. It is to be seen that the seizure of these clothes was proved by E Mam Chand (PW-8). He spoke about the seizure of an empty can, smelling of kerosene oil, a match box with 4 or 5 burnt match sticks, a quilted bed (probably meaning 'mattress'), smelling of kerosene from it which was semi burnt and some sample of soil. According to him, they were packed in the F parcels separately and sealed. On this backdrop, when the recovery memo is seen, it mentions one empty tin box, match box, two burnt match sticks, earth which was put in plastic *Dibbi,* clothing of the deceased Santosh of light blue colour, bed sheet (*Bichhona*) with marks of fresh burns. The witness, however, G has not referred in his Examination-in-Chief to the cloth parcel (Exhibit 4) with some partially burnt pieces of clothes. The FSL report suggests that kerosene residues were detected in Exhibit 5, which was a plastic bag containing a partially burnt coloured check cotton *gadda*, It clearly suggests that no H kerosene residues could be detected on Exhibits 1, 2, 3, 4 or

6. From this, the learned counsel urged that particularly, the parcel Nos. 1, 3 and 4 were bound to carry kerosene residues if the prosecution story was truthful. However, it is to be seen that the mattress did have kerosene residues. While this incident has taken place on 15.12.1997, parcels seems to have been sent only on 29.12.1997 i.e. after about 14 days of the incident, which reached the FSL Laboratory on 31.12.1997. The FSL report bears a date 5.6.1998. There is thus the possibility of the articles losing the kerosene residues due to the long interval of time, yet it has to be noted that the mattress which undoubtedly a thick material, did have the kerosene residues. Ordinarily, there was no reason for the mattress having the kerosene residues unless kerosene was poured on the same. It is again to be noted that even the plastic container, containing kerosene, was also found not having any kerosene traces. Therefore, this circumstance will not help the accused as some kerosene traces have been found on the mattress where Santosh was sleeping. Even if we ignore this circumstance, the fact of the matter is that the dying declaration has been found by us to be voluntarily truthful and unblemished. That would clinch the issue against the accused.

15. The appreciation by the Trial Court and the Appellate Court on the overall circumstances and their finding of conviction is correct. The appeal has no merits and it deserves to be dismissed. It is accordingly dismissed.

B.B.B. Appeal dismissed.