2023 INSC 924

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1473 OF 2011

ABHISHEK SHARMA ...APPELLANT

Versus

STATE (GOVT. OF NCT OF DELHI) ...RESPONDENT

J U D G M E N T

SANJAY KAROL J.,

1. This appeal impugns a judgment and order of conviction passed by the High Court of Delhi in Criminal Appeal No. 431 of 2009 dated 31 May 2010, confirming the Appellant- Abhishek

Sharma's sentence of life imprisonment under Section 302 of the Indian Penal Code, 1860[1], as awarded by Additional Sessions Judge, Delhi, vide judgment dated 30 April 2009.

FACTS

2. The facts, as reflected in the judgments of the courts below, are: -

2.1 Abhishek Sharma[2] and Mandeep Kaur[3] were colleagues at M/s Sai Telecom at Saraswati Vihar, Delhi where the former was a customer care executive and the latter the team leader/operation manager. On the intervening night of 20th-21st September 2007, the deceased was found engulfed in flames near the Queen Mary School, Model Town, Delhi. Despite efforts to save her at two different hospitals, namely LNJP Hospital and Maharaja Agrasen Hospital, she passed away on 03 October 2007.

2.2 It is recorded that a friendship had developed between these two persons, and the convict-appellant would often

[1] For Short, IPC
[2] Hereinafter referred to as "convict-appellant"
[3] Hereinafter referred to as the "Deceased"

drive her home after work, which would end at around midnight. Allegedly, due to a quarrel in regards to her affections being not for him but instead for their boss, he took her to an open site near a school and, in the midst of an argument, set her on fire.

2.3 On the way to the hospital, the deceased told Anoop Singh (PW-16) that the convict-appellant had set her ablaze. SI Balwant Singh (PW-17), along with Constable Paramjit Singh, recorded her statement, based on which an FIR under Section 307 IPC, was registered. The convict-appellant was arrested on 21 September 2007. Upon completing the investigation, a challan was presented to the Trial Court for proceeding against him under Section 302 IPC on 06 February 2008.

FINDINGS OF THE TRIAL COURT

3. In support of its case, the prosecution examined a total of 25 witnesses. Following is a tabular representation thereof:-

Sr. No.	FORMAL WITNESSES	MATERIAL WITNESSES	MEDICAL WITNESSES
1.	PW1- HC Rajiv Kumar	PW16- ASI Anoop Singh	PW7- Dr. Lata Sr. Resident

	a duty officer	In charge PCR Van Commander 63	prepared the death summary of the deceased
2.	PW2- Ct. Dalbir Singh photographer	PW15- Ct. Subodh Kumar has accompanied PW16 in the PCR Van	PW8- Dr. S.N. Basna working as CMO in LNJP Hospital
3.	PW4- SI Manohar La draftsman	PW17- SI Balwant Singh he obtained the MLC of the injured	PW12- Dr. K. Goyal conducted the postmortem of the deceased
4.	PW9- Ct. Mukesh took sealed parcels to deposit the same at CFSI	PW13- Ct. Paramjit Singh did the investigation, along with SI Balwant Singh	PW18- Dr. Raj examined the deceased
5.	PW10- HC Pramod Kumar posted at MHC(M)	PW5- Smt. Jasmer Kaur mother of the deceased	PW19- Dr. Sanjay S.R. Surgery examined the accused, Abhishek Sharma
6.	PW11- HC Naresh Kumar accompanied SI Balwant Singh to Maharaja Agarsen Hospital	PW6- Sh. Yashin Nagpal partner of M/S Sai Telecom, where the deceased and accused were working	PW20- Dr. Geeta Ramakrisan Micro Biologist who examined the blood sample of the deceased
7.	PW14- ASI Suresh Chand he went to the spot for an inspection	PW3- Hemant Aneja brother-in-law of the deceased	PW22- Dr. Ashish Sharma proved the MLC
8.	PW21- Sh. K.K. Sharma record clerk from Maharaja Agarsen Hospital		PW24- Shri Pradeep Kumar Misra Junior Scientific Officer, CFSL, Calcutta, examined

			the blood and hair samples.
9.	PW23- Inspector Harish Chander got the site plan prepared by SI; recorded the statement of MHC(M);		PW25- Shri Bijayantra Mukhopadhyay Junior Scientific Officer, CFSL, Calcutta, examined the plastic bottle with burnt material.

4. Testimonies of PW18, PW8, and PW12 (Doctors) have established that the deceased died due to burn injuries, ante mortem in nature which facts further stand corroborated by PW16, PW17, PW5, and PW6.

4.1 The deceased gave four dying declarations. The First[4] was given to a police officer PW16 i.e., the person who, in the PCR van, reached the spot of the crime and took the deceased to the LNJP Hospital. Even though the defense on the ground questioned the veracity of this declaration that PW15, who was with PW16 while the deceased was taken to the hospital, had not heard the statement being made, the Trial Court found the same to have been established since there was nothing to show

[4] For ease, DD-I

that she had been tutored to state thus or that there was no possibility of her having made such a statement.

4.2 The second[5] was given to Dr. Raj (PW-18), who had examined the deceased and prepared the MLC. She deposed that the deceased was fit to give a statement and that "by Abhishek" was not written subsequently. PW8 corroborated her statement. The doctors' testimonies remained unchallenged, and therefore, the defense's attempts to term the testimonies as unreliable were not found to be correct by the Trial Court.

4.3 The third[6] dying declaration was given to PW17, based on which the FIR was registered. The defense questioned this declaration on the ground that the police had obtained the signatures of the deceased on a blank paper, and the same was manipulated into an FIR. The argument of the defense that a doctor did not attest the same did not find favor with the court, which stated that as per "**Sher Singh Vs State of Punjab**"[7], the endorsement of the doctor is only a matter of

[5] For ease, DD-II
[6] For ease, DD-III
[7] (2008) 4 SCC 265

prudence. The court held that the deceased had clearly shown the motive and intention of the convict-appellant to kill her.

4.4 The fourth[8] dying declaration was given to PW 5 (mother of the deceased). In her deposition, examination-in-chief and cross-examination, it is clearly shown that the deceased was in a fit state of mind to give a statement. It has come forth that this statement was made on 22 September 2007, which was much prior to the deterioration of her condition, because of which she was put on ventilator support six days before her death on 03 October 2007.

4.5 Consequent to the above discussion, the Trial Court found all four dying declarations to be consistent, voluntarily made, and in a fit mental condition. Further, concerning the testimonies of PW6, namely Yasin Nagpal, it is established that the deceased was last seen in the convict-appellant's company when they left the office at around 12:30 AM. The convict-appellant's statement under Section 313 of the Code of Criminal Procedure,1973 stated that he left the office at 12:00 AM and the deceased was still in office.

[8] For ease, DD-IV

4.6 The Court found that the statement of the convict-appellant was not credible, and the statement of PW6 was unblemished and unchallenged.

4.7 In view thereof, the convict-appellant was found guilty and convicted under Section 302, IPC.

FINDINGS OF THE HIGH COURT

5. It was observed that the homicidal nature of the death is undisputed. In respect of each of the dying declarations, the High Court agreed with the conclusions arrived at by the Trial Court and observed that the appeal was devoid of merits. The High Court's reasoning per each such declaration is referred to below:-

5.1 DD-I given to PW16 was sought to be challenged on the ground that PW15 had not heard the statement being made. The court noted that in his cross-examination, PW15 had stated that the deceased "might have told the fact that convict-appellant was responsible for the incident". It was further observed that the driver of such a vehicle, when is focused on taking a patient with serious injuries to the

hospital with the siren blaring, it is no surprise that he did not hear what the deceased stated to PW16.

5.2 DD-II was made to PW18, which, it has been observed, was entirely in tune with DD-I made to PW16. The concerned doctor has also deposed regarding the deceased's fitness when making such a statement. The addition of "by Abhishek" was not found credible by the High Court as PW18 has denied the same, and no reason was found to disbelieve doctors.

5.3 DD-III was made at 3.30 AM to PW17. This statement also names the convict-appellant. It was observed that between 1.40 AM and 3.30 AM, three consecutive statements were given by the deceased, and the time from when she was found in a burnt condition to the registration of an FIR is barely two hours.

5.4 DD-IV was sought to be discredited on the ground that PW5 was an interested witness. This argument has been termed "hardly any argument," and therefore, in view of the High Court, DD-IV also stood proven.

6. An additional ground taken before the High Court was that a person with 25 % burn injuries could not have given detailed statements. This was disregarded by the court, considering that a doctor had specifically deposed to her fit mental condition. Additionally, the submission in respect of Chapter 13 of Punjab and Haryana High Court Rules, which prescribe the procedure for recording of dying declarations, was held not to be of any aid to the convict-appellant as it was observed that simply because the rules were not complied with, the dying declarations could not be discarded if they had withstood strict scrutiny after applying all cautions.

7. For the aforesaid reasons, the judgment of the Additional Sessions Judge, Tis Hazari, West Delhi, was affirmed.

OUR VIEW

8. Before proceeding to the merits of this matter, it would be appropriate to appreciate the various principles of law laid down by this court in regard to cases involving multiple dying declarations.

8.1 This Court in **Kamla v. State of Punjab**[9] has held:

> "5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide Khushal Rao v. State of Bombay [AIR 1958 SC 22 : 1958 SCR 552 : 1958 Cri LJ 106]). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

8.2. In **State of Punjab v. Parveen Kumar**[10]**,** this court further observed**:**

> "10. .... The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have considered such corroborative evidence to test the truthfulness of the dying declarations..."

8.3. In **Amol Singh v. State of M.P.**[11]**,**

> "13. ... However, if some inconsistencies are noticed between one dying declaration and the other, the court

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[9] (1993) 1 SCC 1(2-Judge Bench)
[10] (2005) 9 SCC 769 (2-Judge Bench)
11 (2008) 5 SCC 468 (2-Judge Bench)

> has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

8.4. Faced with multiple dying declarations, this Court in **Lakhan v. State of M.P**[12] observed-

> **"21.** ... In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

This judgment was also referred to by this court recently in **Makhan Singh v. State of Haryana**[13]**.**

8.5. In **Ashabai v. State of Maharashtra,**[14] the court observed:-

> "15. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other."

[12] (2010) 8 SCC 514 (2-Judge Bench)
[13] (2022) SCC OnLine SC 1019 (2-Judge Bench)
[14] (2013) 2 SCC 224 (2-Judge Bench)

8.6. In **Jagbir Singh v. State (NCT of Delhi),**[15] the following principles were observed:

> 31. A survey of the decisions would show that the principles of declarations can be culled out as follows:
> ....
> 31.6. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.
> 31.7. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;
> 31.8. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration buta dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two."

8.7. In **Uttam v. State of Maharashtra,**[16] this court observed:

> **"15.** In cases involving multiple dying declarations made by the deceased, the question that arises for

[15] (2019) 8 SCC 779 (2-Judge Bench)
[16] (2022) 8 SCC 576 (2-Judge Bench)

> consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion."

9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.

10. We must also notice certain judgments of this court where the extent of burn injuries sustained by the deceased was considered.

10.1 In **Chacko v. State of Kerala**[17] this court declined to accept a dying declaration made by a person, 70 years of age, having sustained 80% burns. Therein, the declaration was recorded 8-9 hours after burns, giving minute details as to motive and manner. It was opined that the condition of the patient described as "conscious, talking" in the wound certificate would in and of itself not testify to the condition of the patient making such declaration, nor would the oral evidence of the doctor or Investigating Officer.

10.2 In **P.V. Radhakrishna v. State of Karnataka** [18] it was observed that there cannot be any hard and fast rule, lending itself to uniform application on the question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration. The same would depend on the nature of the burns, the body parts affected, and the effect thereof on mental faculties, as well as other factors.

[17] (2003) 1 SCC 112(2-Judge Bench)
18 (2003) 6 SCC 443(2-Judge Bench)

10.3 In **Surinder Kumar v. State of Haryana**[19] the dying declaration made by a person having 95-97% burn injuries was not accepted given that at the time of making the declaration, the deceased was under the influence of Fortwin and Pethidine injections, because of which she could not have had normal alertness.

11. This Court in **Uttam(supra)** followed the principle as held in **Khushal Rao v. State of Bombay**[20] that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the fact stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

19 (2011) 10 SCC 173 (2-Judge Bench)
20 AIR 1958 SC 22 (3-Judge Bench)

12. Having meditated on the above-extracted principles, we now proceed to examine them in the instant facts.

13. DD-I reads as under:

> "DD No. 8A dt 21/09/07 PS Model Town Delhi
>
> Information from PCR and despatch.
>
> Received in the night at 1:55. 058 Operator came in the DO room and reported that ASI Anoop Singh No. 5331/PCR has reported that on girl was burning behind Queen Mary School, Model Town Quarter. Her name is Mandeep D/o Late Harender Singh r/o AJ-55C, Shalimar Bagh, Age 22 years. Works at Call Center. She told that my friend Abhishek Sharma has done this. On reaching LNJP, Burari a PCR call information was recorded in Roznamacha and a copy of the report was sent to SI Balwant Singh through Ct. Rameshwar, 5053/DHG.
>
> Sd/-
>
> HC/DO
>
> //True Translated Copy//"

14. A perusal of the dying declaration as above shows it to have been recorded in the third person, that is to say, that ASI Anoop Singh had reported on the incident of the victim being burned and that she had told him that her friend Abhishek Sharma had done so. Undoubtedly, Section 32 IEA is an exception to the rule of hearsay, however, the same would not be applicable in the present case.

15. The statement before the court is that the operator came into 'DO room' and reported that ASI Anoop Singh (PW16) had found a girl burning, and it is to him that she stated that Abhishek Sharma, convict-appellant, had done this to her. So, as is evident, this statement is three degrees removed from the deceased and thereby unprotected by this exception as the statements far removed from the original maker of the statement cannot be exempted more so when reliance on the same results in a penal consequence. Had the statement of the deceased, as told to PW16, been before the court as it is, the same could have been considered a dying declaration within the meaning of this section.

16. DD-II is, in fact, an entry in the Medico-Legal Inquiry Register made by Dr. Raj (PW8) at 2:15 AM dt. 21.09.2007, which records "alleged h/o burn at …in front of Queen Mary School, North Campus, Model Town, Delhi at around 1:40 AM dated 21/09/07 as told by the patient" then considerable gap exists in this record and below this is recorded "by Abhishek."

17. It is true that a dying declaration is not to be discarded on account of brevity, but it is equally true that it must contain the proximate cause of the deceased's condition and the reason

therefor. Here, it states the presence of burn injuries and says that the same was caused by Abhishek, which, arguably, is insufficient. There is no particular identification of the convict-appellant, nor is there a mention of the means through which the injuries were inflicted (petrol).

18. DD-III was made at 3:30 AM to PW-17, and the same is extracted below:

> "Statement of Mandeep Kaur D/o Sardar Harinder Singh R/o AJ-55C, Shalimar Bagh, Delhi aged 22 years, Mobile No. 9811448556.
>
> I am residing with my brother Inderjeet Singh on the abovementioned address and working as office manager in call centre of said telecom at Saraswati Vihar. Today I got free from my duty at 1 AM, I was coming back from duty with my friend Abhishek Sharma who is residing at Model Town. Abhishek Sharma was threatening me from so many day to kill and today he forcibly took me to Queen Mary School Model Town III inspite of dropping me at my residence in Shalimar Bagh and after stopping the car at Queen Mary School Model Town III, he got down from his car also got me down from the car poured the bottle of oil on me which he had kept in his car and told me that you don't love me and you only love to the company's boss. At this point we got into heated argument and quarrelled between us and Abhishek put me on fire with matchstick to the poured oil. I got injured from back portion of my body with burning of Kameej and salwar and in the meantime PCR van came at the site and Abhishek absconded from the place of occurrence and PCR van got me admitted at JPN Hospital. Abhishek has attempted to kill me after pouring the oil. Legal action may kindly be taken against Abhishek Sharma. Statement heard right. Sd/English Mandeep Kaur attested Balwant Singh SIPS Model Town Delhi 21.09.07 Duty Officer PS Model Delhi it is

> submitted that today after receiving DD No.8A, I went to JPN Hospital with Ct. Paramjeet Singh No. 2678/NW, found patient Mandeep Kaur fit for statement vide MLC No. 105892 and Kumari Mandeep Kaur gave her statement, her statement was read by me in front of her. She got her statement right and signed in English. I got it verified, from the statement, conditions and MLC the occurrence of crime U/s 307 IPC is made out. Thus, rukka is sent with Ct Paramjeet No. 2673/NW to register the FIR and to inform IO with FIR No and crime team be directed to the place of occurrence. Date & Time of occurrence 1.40 AM dated 21.09.07, Place of occurrence in front of Queen Marry School, Model Town, Delhi, Date & Departure of Rukka: 2.50 AM dated 21.09.07 SI Balwant Singh D-800 PS Model Town Delhi PIS No. 29680224. After registering the FIR the original rukka with FIR copy was sent to SI who was busy in investigation at the place of occurrence. The information of the FIR will be sent to senior officer by post."

19. Despite this being the third statement given, no attempt was made to have the same made before a doctor or magistrate, which, as a rule of prudence, lends support to the prosecution. It reflects from the record that at the time when the third statement was recorded, the deceased had been administered treatment for her injuries. However, it has not come forth as to the nature of treatment and what kind of medicines were given to her. In the absence of a positive statement by the medical team responsible for her treatment, it cannot be stated, with certainty, that the medicines administered had no effect of impairing the mental fitness of the deceased. There is no medical opinion placed on

record in this behalf. Therefore, with the cloud of doubt surrounding DD-III, it is but natural that the court looks to other circumstances and evidence to satisfy the requirement of the statement made as being true and voluntary. The other circumstances present shall be discussed at a later stage.

20. The credibility of DD-IV has been assailed on the ground that it is, in fact, the statement of the deceased to the mother and that the latter would be an interested witness. The statement of the mother given to the police is reproduced below:

> "**TRUE TRANSLATED COPY OF STATEMENT OF SMT JASMAIR KAUR**
>
> FIR/DD NO. 615/07 DATE: 21.09.2007 U/s 307,302 Indian Penal Code, Police Station : Model Town, Delhi.
>
> Statement of Jasmair Kaur W/o Late Sardar Harvinder Singh, age 61 years, R/o House No. 17-F, Ward No.15, Govind Nagar, Roped, Punjab
>
> **STATEMENT**
>
> Made the statement that I use to stay in the above address with my family and I am housewife. There was set in fire by pouring petrol on my daughter on 21.09.2007 by Abhishek Sharma, who was admitted in LNJP Hospital by police, on the same day, I along with family members made the arrangements to admit her in Maharaja Agersain Hospital with the intention to give her good treatment. During the treatment, my daughter namely Km. Mandeep Kaur died in the hospital today as on 03.10.2007 at about 3.35 am at Maharaja Agarsain Hospital, I identified her dead body at BJRM Hospital. This is the dead body of my daughter namely Km. Mandeep Kaur, who died due to set in fire.
>
> Heard the statement and found correct.

Sd/-
Jasmair Kaur

Attested by

Sd/-
SI,
Balwant Singh
Police Station: Model Town, Delhi
Date: 03.10.2007

Sd/-
SI, Balwant Singh
Police Station: Model Town, Delhi
Date: 03.10.2007"

21. We notice that in her cross-examination, this witness denies ever having made any statement to the police on 03 October 2007. Be that as it may, assuming that she actually made such a statement, we are of the view that still, such a statement, in no manner can be said inculpatory towards the accused, for it is lacking in particulars with regard to the person mentioned therein, i.e., Abhishek Sharma and having no linkage for the same which could lead to the accused person.

22. It is evident from the above that the dying declaration does not exist in any written or other verifiable form. Here, only we may refer to the examination-in-chief of PW-5 (mother of the deceased) post, which, taking both the statement and the testimony together, the evidentiary value of DD-IV shall be examined.

23. The relevant portion of her testimony (examination-in-chief) allegedly implicating the accused is extracted as follows:-

> "Mandeep had told me that Abhishek had taken her in car from her office. He did not leave her at her resident but had taken her to a place in Model Town. She was made to come out of the car. Since she did not come out, she was beaten up by Abhishek. As soon as she came out from the car, Abhishek poured petrol on her and set her on fire".

24. It is important to appreciate the law on interested witnesses as enunciated by this court. In **Hari Obula Reddy and others v. The State of Andhra Pradesh**[21], a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can only form the basis of conviction if corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. Suppose on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable. In that case, it may, by itself, be sufficient,

[21] (1981) 3 SCC 675 (3-Judge Bench)

in the circumstances of the particular case, to base a conviction thereon.

25. Further, in **Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh**[22], while dealing with the liability of interested witnesses who are relatives, a two-judge Bench observed that it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased if it is otherwise found to be trustworthy and credible. The said evidence only requires scrutiny with more care and caution so that neither the guilty escapes nor the innocent is wrongly convicted. If, on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the convict-appellant, his testimony should have corroboration regarding material particulars before it is accepted.

26. DD-IV is the statement of the mother (who is not a resident of Delhi and would have only reached Delhi upon being informed of such an incident) wherein the deceased had disclosed specific

[22] (2006) 11 SCC 444 (2-Judge Bench)

facts about the occurrence to her mother. When making the declaration, there is nothing on record to indicate a) further deterioration in condition and b) non-availability of a third party, such as a doctor before whom such a statement could be recorded. The Convict-appellant has assailed the statement's veracity on the ground that, being the mother of the deceased, PW5 is an interested witness. The general rule for appreciation of evidence rendered by an interested witness is that the same should be corroborated by other independent evidence. Considering the nature of the statement made by the deceased to the mother, independent corroboration is difficult. Keeping in view the two factors enumerated above and the lack of independent corroboration, particularly when the person making the statement is the mother of the deceased, the court cannot rule out, to a positive degree, the role played by a sense of loss and possibly even anger, to rely on such statement. Had there been some sort of corroboration with other persons being present, the same could have been relied on. However, in the absence thereof, reliance on the same would prejudice the convict-appellant, and therefore, the same cannot be justified.

27. Such unreliability of this statement is enhanced by the fact that there is a material difference between the statement of the mother treated as DD-IV and her deposition in which she claims the convict-appellant to have physically assaulted the deceased before setting her on fire. In contrast, none of the other statements made to the police officials or the doctor reflect such an occurrence. Also, the MLC does not record any physical injury apart from the 30% burns sustained. This can be said to be an improvement/exaggeration that originates in a desire to see the convict-appellant punished for a crime he has allegedly committed. Another crucial difference between the statement and the testimony is that in the statement made to the police, the fact that "Abhishek poured petrol on her and set her on fire" is conspicuously absent from there.

28. DD-I raises only questions and provides no context or answers to the incident. It is a statement that only mentions that one person, i.e., the convict-appellant, was the person responsible for the injured condition of the deceased. Keeping this in view and then taking note of subsequent conduct of the hospital as well as the investigating authorities forces us to ask certain questions- a)

Given that the declaration only mentioned the name Abhishek Sharma and not any other particulars which may be relevant and helpful in the process of identification such as telephone, address details, description of convict-appellant, place of work, etc., how is it that the investigating authorities got in touch with the employer? b) If such a call was made, why is there no record of the same? c) The statement was recorded at 1:55 AM, and the manager of the call centre where both the convict–appellant and the deceased were employees was contacted at 2:00 AM as is evident from his uncontroverted testimony- in view of the above, how was this possible? The record does not reflect as to how the police zeroed in on him.

29. Another question that may be asked is that when DD-I was reported, and a doctor took DD-II, why was it only after the recording of DD-III that an FIR was lodged? We must also consider that, as per DD-II, the burns received by the deceased were on the back, arm, shoulder, and hair, resulting in superficial and deep burns amounting to 30%. In such a situation, can it be said that there was a reasonable apprehension of death, making the statements admissible as dying declarations?

30. The convict-appellant was not seen at the spot of the crime, nor has the last seen theory been invoked by the prosecution to establish that the deceased and he were together at the time and place of the incident. There is no evidence on record to show what transpired in the investigation of the police from the time of DD-I when, allegedly, the police came to know of the convict-appellant having committed this crime against the deceased and when he was finally arrested at 8 PM.

31. From the aforesaid discussion, it is clear that DD-I and DD-IV must entirely be ruled out on the grounds of a degree of hearsay and that of an interested witness with no corroboration. Regarding DD-II, the suspicion of interpolation and subsequent insertion of the first name of the convict-appellant has not been sufficiently dispelled, for no satisfactory explanation stands accorded for the prominent gap. Regarding DD-III, it is found that the mental state in which it is made cannot be ascertained as there is no discussion on the treatment given to the deceased. In the absence of such clarification, such a statement cannot be relied on without corroboration.

32. Further, on perusal of the record, we find inconsistencies to be dotted throughout. For instance, PW13 states that he, along with PW17, had left the police station at about 1:55 AM to go to the hospital where the deceased had been admitted. Upon reaching there, it is PW13's case that the brother of the deceased was present there. However, on the contrary, PW17 states that while he was in the hospital, "no relation of the injured had arrived in the emergency." It is unclear how and when the authorities obtained contact details of the brother and got him to come to the hospital. Further confusion arises from the statement of PW5, who stated that she did not live in Delhi and came here in the company of her son and visited the hospital the next day, i.e. on 22 September 2007. Intriguingly, the prosecution did not find it fit to examine the brother, which could have thrown light upon the deceased's relationship with the convict-appellant, among other essential facts.

33. It is undisputed that the deceased was in a position to speak up until six days prior to her death when she was put on life support. Yet the non-recording of the deceased's statement in the

presence of the Magistrate or actual ascertainment of her fitness to make statements by doctors remains unexplained.

34. Additionally, we may note that apart from the alleged dying declarations of the deceased, there is no evidence on record to point to the guilt of the convict-appellant. It is an established principle that a dying declaration, if it is free of tutoring, prompting, etc. can form the sole basis of conviction. However, having perused the record minutely, we do not find even a scintilla of evidence by which we may uphold the judgments of the courts below. For instance, nothing on record indicates- the ownership of a vehicle by the convict-appellant; any disagreement or animosity between the convict-appellant and the deceased, that is of such an extreme nature as to set her on fire; any connection between the convict-appellant and the inflammable substance used to kill the victim such as the record of purchase or statement of any person to show such substance to be in possession of the convict-appellant, etc. These factors and the fact that the crime in question occurred at an open public access place cast doubt on the prosecution case.

35. Considering the aforementioned factors, placing the gauntlet of guilt upon the convict-appellant based on dying declarations when no other material particulars, apart from his name, could be elicited therefrom would be unjustified. Furthermore, when considering other circumstances that may or may not point to the guilt of the convict-appellant, as discussed above, we find gaps unexplained in the prosecution case, which cast sufficient doubt as to leave the case short of the threshold of beyond reasonable doubt.

36. Consequently, the Appeal is allowed. The bail granted to the convict-appellant vide order dated 21.10.2013 is confirmed, and the bail bonds stand discharged.

37. Interlocutory Applications, if any, stand disposed of.

.....J.
(ABHAY S. OKA)

.....J.
(SANJAY KAROL)

Dated : 18th October, 2023;
Place : New Delhi.