

Delhi High Court

Shakuntia And Ors. vs The State on 3 November, 1983

Equivalent citations: 1985 58 CompCas 677 Delhi, 1984 (1) Crimes 261, 25 (1984) DLT 33, 1984 (6) DRJ 92

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Bench: R Aggarwal, M Sharief-Ud-Din

JUDGMENT R.N. Aggarwal, J.

(1) The appellants Laxman Kumar aged 25, Subhash Chander aged 28 and Smt. Shakuntala aged 53 were sent up for trial for an offence under Section 302 of the Indian Penal Code. The charge against them was that on 1st December, 1980 at about 9 p.m. they in furtherance of a common intention had caused the death of Sudha Goel (wife of the first accused). The learned Additional Sessions Judge, who tried the case found all the accused guilty of the offence charged with and has sentenced them to death. The accused have come in appeal. There is also the reference for confirmation of the death sentence. This judgment shall dispose of both the appeal and the reference.

(2) Laxman Kumar and Subhash Chander are brothers and Smt. Shakuntala is their mother, (3) The deceased Sudha was married to Laxman Kumar on 18th February 1980. After the marriage the couple started residing at 9-B, Janta Flats, Ashok Vihar, Phase III. Subhash Chander is the eldest brother. He is married and has two Children. D.W. 5 Madhu Goel, is the wife of Subhash Chander, Laxman Kumar has two younger brothers, namely, Vinod and Ram Avtar. He further has two unmarried sisters who lived in Barot, Meerut District with the parents, that is, Shakuntala and Srinivas.

(4) The accused family had shifted to 9-B. Flats Ashok Vihar sometime in May/June 1975. The Janta Flats in Ashok Vihar are in blocks of four flats. The flats on the ground floor are numbered as A and B and on the first floor C and D. Originally each flat was comprised of a living room, a toilet and a kitchen. In front of the kitchen there is an open courtyard. The accused had covered a portion of the courtyard in front of the kitchen with asbestos sheets. The living room by the side of the courtyard is about 10 x 8'. The accused had added a room by the side of the living room. 9-B is the number of the ground floor flat in occupation of the accused. 9-D, that is the flat above 9-B belonged to another person and Ishwari Devi (P.W. 4) was a tenant in the said flat. The accused family purchased 9-D sometime in 1980, Ishwari Devi became a tenant under the accused but she vacated the house a few months before the occurrence and shifted to 28-D.

(5) Subhash and his family and Laxman Kumar with his wife resided on the ground floor (9-B) and Vinod and Ram Avtar resided on the first floor (9-D.) (6) Public Witness I Jaspal Singh resided in the adjoining house on the first floor (10 C). Public Witness 2 Satish Chopra resided in 7-B. Public Witness 5 Tarsem Jain resided at 8-A (adjoining to 9-B).

(7) Two sisters of the deceased were married in Delhi. They are Smt. Gayatri Devi (P.W. 3) and Sneh Lata Gupta alias Shanno (P.W. 6) Public Witness 3 with her husband Shri Pawan Kumar Goel resided at house No. 73/6 Prem Nagar and Sneh Lata with her husband Shri Damodar Dass Gupta at C/48/B Janta Flats, Hari Nagar. The rest of the family of the deceased including the mother

Public Witness 7 Naraini Devi and the brother Dinesh Kumar (P.W. 8) resided at Calcutta.

(8) The deceased was in family way and she was expected to deliver a child within about a week of the occurrence. Dr. Bharat Singh who performed postmortem on the dead body of Sudha had found in the uterus a full term male dead fetus without any abnormality. Prosecution version of the occurrence :- "The case for the prosecution as unfolded by Public Witness I Jaspal Singh is that on 1st December, 1980 at about 9 p.m. he was standing near the window in the back room of his house. He heard the cries of a female 'BACHAO BACHAO'. He peeped out of the window which overlooks the courtyard of the house of the accused and he saw flames. He ran down the house. At the same time TArsern Jain, Satish Chopra, Gurcharan Singh Arora, etc. also came. He saw Laxman Kumar accused closing the door from inside. (Note :-the entrance door to the house opens outside the passage), that he and others opened the door and went inside the house, that he was Subhash accused putting his hand on the latch of the door which opened in the courtyard (there is a door connecting the living room and the courtyard. The door leading to the courtyard opens inside the room), that he and other pushed Subhash and opened the door and went inside the courtyard, that the was Sudha in standing position aflame, that he first attempted to extinguish the fire by pulling the saree from the body of Sudha, that a gunny bag was lying nearby and he and Tarsern Jain picked up the gunny bag and attempted to extinguish the fire by rubbing the gunny bag around the body of Sudha. that within a minute or two Satish Chopra brought a blanket and he and others wrapped the blanket around the body of Sudha and extinguished the fire, that they brought Sudha in the room of the accused where Shakuntala, mother-in-law of Sudha was standing. On seeing Shakuntala Devi, Sudha shouted that she had sprinkled kerosene oil on her and she along with Laxman and Subhash had set her on fire, that he and other brought Sudha outside the house where large number of people including Public Witness 4 Ishwari Devi (Bobby's mother) were standing, that Sudha immediately on seeing Bobby's mother shouted by pointing towards all the three accused that they had set her on fire to kill her. She also shouted that they had snatched all her ornaments and that her parents be informed. At that stage Laxman put his hand on the mouth of Sudha and said to her not to name any one. The witness further deposed that a taxi was called and Sudha was put in the taxi, that the accused also sat in the car and while leaving they said they were taking Sudha to Hindu Rao Hospital."

(9) Public Witness 2 Satish Chopra and Public Witness 5 Tarsern Jain substantially corroborated the statement of Jaspal Singh. Public Witness 2 stated that he Along with Prem Anand went to the house ofS. Ajit Singh and informed the police control room of the occurrence. He further deposed that he and some others went on scooters to Hindu Rao Hospital and made enquiries from the casually about the admission of Sudha but were told that no one with burn injuries had been admitted in the hospital, that after waiting for sometime at Hindu Rao Hospital they returned to their houses round about 12.30 in the night.

(10) Public Witness 4 Ishwari Devi supported the statement of Public Witness s. 1, 2 and 5. Ishwari Devi gave evidence that before shifting to 28-D she was residing at 9-D as a tenant of the accused and that on the day of the occurrence she was seeing television at house No. 22-A, situated opposite to the house of the accused, that on hearing the noise, 'AAG Lag Gayee Aag Lag GAYEE' she came out of the house and saw Sudha being brought out wrapped in a blanket by Jaspal Singh and

Tarsern Jain, that Sudha on immediately seeing her said 'BOBBY KI Mummy Bobby KI Mummy In Logon Ne Mujhe Marr Dala HAI. Meri Saas Ne Mare Upar Metti Ke Tel Dala Hai Aur Mere Pati Ne Mujhe Aag Lagai HAT'. She further deposed that Laxman accused put his hand on the mouth of Sudha and told her not to speak like that to go inside, that she removed the hand of Laxman from the mouth of Sudha and Sudha said to them that if she was taken back they would not leave her alive. Public Witness 4 further deposed that with the help of a scissor pieces of clothes which were sticking to the body of Sudha were cut and removed by Tarsern Jain and Jaspal near the staircase of house No. 9 B. She also deposed that after Laxman and Shakuntata had got into the taxi along with Sudha Subhash had tried to slip away saying that he was not at all concerned, he, however, was forced to sit in the taxi and thereafter all of them left for hospital.

(11) We may notice here that the statements of the aforesaid witnesses were recorded by the investigating officer Surender Dev on 2nd December at about one in the afternoon. The statement of Ishwari Devi was recorded twice, first in the morning after the inquest and the second time along with the statements of Public Witness s. 1, 2 and 5.

(12) The prosecution case further is that on the way to the hospital the accused went to the house of Gayatri Devi and took Gayatri and her husband along with them and went to St. Stephen Hospital where Sudha was admitted at 9.45 p.m. Sudha is said to have stated before Dr. Vijay Kumar Tikka (Ext. P.W. 17/B) that she got burnt while heating milk over a kerosene oil stove about half an hour ago. The deceased again at 10 p.m. is alleged to have stated that she was heating milk on a stove and the stove burst (the medical history sheet Ex. Public Witness 18/A4).

(13) SUB-INSPECTOR SurenderDev, (P.W.17) who was entrusted with the investigation reached the spot of occurrence at about 9.40 p.m. and on coming to know that the injured had been removed to the hospital reached St. Stephen hospital at about 11.20 p.m. Public Witness 17 made an application to the doctor to find out Sudha was in a condition to make a statement. Dr. Joseph (D.W. 1) certified that Sudha was in a fit condition to make a statement. Surender Dev is then alleged to have recorded the statement Ex. 9/DI of Sudha in the presence of D.W I Dr. Joseph. Sudha is alleged to have stated before the investigating officer that she was boiling the milk at home and when she lit the stove its flames leapt up (Bhupka utha) all of a sudden and her clothes caught fire as a result of which she got burnt. The aforesaid statement is attested by Dr. Joseph.

(14) Sudha succumbed to the injuries at 6.10 a.m. on 2nd December, 1980 Public Witness 17 held an inquest and recorded the statement of Damodar Dass husband of Sneha Lata (P.W. 6) and Pramod Kumar husband of Gayatri Devi (P.W. 3). The investigating officer wanted to record the statements of Gayatri Devi and Sneha Lata but they were not willing to make a statement. P.W. 17 has recorded that Smt. Sneha Lata is cursing the in-laws of Sudha for her untimely death and from her utterings it seems that she suspects foul play in death of Sudha (Ext. P. W.17/DN).

(15) The scene of crime was inspected and some burnt clothes, partly burnt gunny bag, a blanket, a stove with a Pateela lying over it were taken into possession. According to the report of the crime team the burnt clothes, the gunny bag and the blanket were smelling of kerosene oil. A tin containing about one and half litre of kerosene oil was found near the stove. A 16 litre tin full of

kerosene oil was seen lying in the corner of the courtyard and an empty bottle smelling of kerosene oil was found on a cemented sill along the window in the courtyard. On Chemical analysis kerosene oil was detected in the clothes and the gunny bag but no kerosene oil was found in the blanket.

(16) Dr. Bharat Singh performed autopsy on the dead body of Sudha. The doctor found first to second degree fire burns over the fore-head, face, neck, both shoulders, chest, abdomen and external genitalia, both thighs, buttocks and upper third of both legs on all sides. Patches of second degree fire burns on left foot. The doctor found no smell of kerosene oil or petrol from the hair of the skull which were partially singed. Eye brows and lashes were burnt. Pubic hair were also burnt. Stomach was found to contain semi digested food about 4 ounces in quantity. Uterus contained a full term male dead fetus without any abnormality. The doctor gave the opinion that the death was due to shock resulting from burn injuries. The doctor found the smell of kerosene oil persists for 36 hours in case it had been put in the scalp and the hairs are not fully burnt.

(17) The version of the occurrence as given by Subhash accused is that he with his family and his younger brother Laxman and his wife resided at 9-D. The wife of Laxman was expecting a baby and day before the occurrence he left his wife at Barot where his parents resided and brought his mother Shakuntala Devi. As regards the actual occurrence Subhash stated as follows :- "I am innocent. I am living in this house along with my wife and children. Laxman is my younger brother. His wife was expecting a child and an elderly lady was needed in the house and so, I had gone to bring my mother. My mother used to reside at Parot, U.P. and I had brought her from there a day earlier. On the day of incident, I had returned from outside and changed my clothes. Sudha said that she would just heat up the food and then give it to me. My mother was sitting in bedroom with my child in her lap. The child cried and my mother asked Sudha to heat up the milk before giving the food. She went in the courtyard. In the meanwhile, I went to bathroom to ease myself and after a few minutes, I heard the cries 'Hai Hai Aag Lag Gayee.' After doing needful in the bath room, I came out and found Sudha in flames. She was wearing nylon clothes and within seconds all her clothes were under great fire. The flames went suddenly so high that it was not possible to go near her. The door had caught fire and the flames had come in the adjoining room as well. I got perplexed and tried to search for some blanket, but I could not get it immediately. However, I managed to get it from the adjoining room and put it on her to extinguish the fire. Then some more blankets were placed on her to keep the fire under control. The fire was extinguished and since she was wearing nylon clothes and those had to be removed after cutting the same. She was immediately removed to hospital for treatment. We took her to nearby Hospital i.e. Stephen Hospital and on our way to Hospital, we also rushed to Sudha's sister's house and we took with her sister and her husband. In the hospital she made her statement to the police in the presence of the doctor. Unfortunately, she expired on the following day. I have nothing to do in this matter, nor I was interested in anything as concocted against me. Even at the time of marriage, I received normal gifts and I accepted them with great pleasure. My in-laws even talk very high about it and the in-laws of Laxman also used to praise us in this behalf which is evident from the letters produced in court during trial of the case. We paid Hospital charges after the death of Sudha. We preferred to take her to this hospital, as she had already been going for treatment to this hospital. I have been put in this case with a view to stop me to speak the truth."

(18) Laxman accused denied his presence in the house at the time of the occurrence and stated that Gayatri Devi had Come to meet Sudha and at about 8.45 p.m. he had gone to leave Gayatri at the bus stop. He further stated as follows :-- ".....I run a shop under the name and style of Geeta Provision Store where my brothers also sit. The residents of the locality purchase goods from my shop on credit at times. About a month earlier Devi Jagran was organized after getting donation from the residents. Tarsern Jain and others had demanded 20 K.G. of sugar from me and my brother which refused. We told them that we could donate only 5 K.G. of sugar and for the rest, they shall have to pay. This was not liked by the residents.

(19) Jaspal Singh is our neighbour. He had made unauthorised construction. Bricks and mortar used to fall from his portion into the courtyard in our possession and we had protected about it. There is a common drainage between my portion and the portion of Jaspal and the waste water flows from our portion towards the drains of Jaspal Singh. In order to cause inconvenience to us, housed to keep the drain blocked so that water may accumulate in front of our house and there was dispute over it. There was an association of residents of the locality which had so lit in two. Ram Avtar my brother had contested for the post of treasurer ship in November, 1980. Jaspal and Satish Chopra who had made a group against us and opposed him. In spite of their ' opposition, he was elected and they had to swallow the humble pie. In order to avenge themselves, they started making allegation for embezzlement against Ram Avtar whereupon I had told them that we would not tolerate them and in case they are not satisfied they may ask for his resignation. Sneh Lata is a quarrelsome and short tempered lady. She organized processions and demonstrations regarding this incident. When she visited the locality on the next day along with her brother, she pressurised the police by holding demonstration. She along with Jaspal Singh and Tarsern Jain made a common cause and falsely implicated us in this case.

(20) I had gone to see off sister of Sudha at the bus stop at about 8-30 p.m. and when I returned, I found a large crowd collected there. We immediately arranged for a taxi and removed Sudha to St. Stephen Hospital. On our way to Hospital, we also went to the house of the sister of Sudha and requested her sister and her husband to accompany us to Hospital. They also desired that Sudha should be taken to some good Hospital which was near to that place and consequently she was taken to the Hospital. The police came there and recorded her statement in the presence of the Doctor. She did not say anything to anybody's as alleged by the Public Witness s. I had no grievance or grudge either against her or against any of her family members. In fact, she was expecting a child within a day or two and I was very happy and anxious to see my newly born baby. Her death has caused a great shock and deep agony to me and my family members. Our mother was called from village Barot a day earlier so that she may look after Sudha. Even after her death, her jewellery which was removed from her body was given to me. Even the dead body was initially handed over to me and my signatures were obtained. Later on, false evidence was created and records were fabricated to involve us in this case. I was myself doing very well in business and I was not expecting any thing from my in-laws side. The case has been cooked up due to the pressure of our enemies who were instrumental in instigating the members of my in-laws side."

(21) Shakuntia accused made the following statement : "I am innocent. I was permanently residing at Barot, U.P. A day earlier, my son Subhash had gone to fetch me to Delhi. I came because Sudha

was expecting a child any day. I had no grievance against anybody, nor I was expecting anything from the side of in-laws of my son. I am too old to expect any such thing and normally I am not keeping well and I am so heavy and bulky that I find it difficult to move properly. My eyesight is also very weak. I was sitting inside a room of the house with a child who was sitting on my lap at that time. I heard cries and after hearing cries, I also shouted. My son Subhash was in the bathroom at that time. He came out after hearing our cries. We became totally upset and nervous after seeing flames of fire. My son rushed for blanket and put it on Sudha and extinguished the fire. She was immediately taken to hospital and on our way, we also informed the relations of Sudha."

(22) The accused in support of their defense examined D.W. 1 Dr. R. Joseph of St. Stephen hospital, D.W. 2 Nelson in charge, Medical record Branch, St. Stephen Hospital, Rakesh Sharma (D.W. 3), Jaswant Singh (D.W. 4) and Madhu Goel (D.W. 5) (wife of Subhash accused).

(23) Before discussing the evidence we may say that it is an admitted case that Public Witness 3 Gayatri Devi had come to meet the deceased Sudha on 1st December at 7 p.m. and they were together till about 8-35 p.m. when she left. P.W. 2 and Public Witness 4 had seen Sudha seeing off her sister outside the house. Laxman accused claims that he had gone with Gayatri Devi to see her off at the bus stop. Gayatri Devi denies that Laxman had accompanied her to the bus stop to see her off. Public Witness 4 Ishwari Devi gave evidence that she saw Sudha talking to Gayatri Devi outside the house. She deposed that she did not see Laxman. Public Witness 2 deposed that at about 8.35 pm. he had passed by the deceased and Gayatri Devi, and Laxman was not there.

(24) MOTIVE: The Additional Sessions Judge dealt with this part of the prosecution case last of all but we shall deal with it first of all. Public Witness s. 3, 6, 7 and 8 are the original witnesses regarding this part of the prosecution case. Public Witness 4 also throws some light and at the proper stage we shall discuss her evidence in this regard.

(25) Public Witness s. 3, 6, 7 and 8 have testified that about Rs. 60,000.00 to Rs. 70,000.00 including the amount of Rs. 21,000.00 given in cash at the betrothal ceremony were spent on the wedding of Sudha. We have no mean to find out the correct figure spent at the wedding but we can assume for the decision of the case that Rs. 50,000.00 to Rs. 60,000.00 were spent on the wedding.

(26) Public Witness 3 gave evidence that whenever she visited Sudha or Sudha visited her, Sudha complained of harassment by Subhash and his wife and sometime by her mother-in-law. The harassment according to the witness was that they used to ask Sudha for bringing more money from her brothers and also they used to take more work from her. Public Witness 3 further deposed that on 1st December 1980 she had gone to the house of Sudha at about 7 p.m. and was with her for an hour and during her stay Sudha's mother-in law had made several charges against Sudha.

(27) Public Witness 6 gave evidence that after about 2 or 3 months of the marriage of Sudha when she came to know that Sudha was in family way she called Sudha to her house and during her stay Sudha told her that as before her marriage she was not used to household work she was unable to do much work at home-mere so because she is in family way, that after about 10 days she went to the house of Sudha and requested Smt. Shakuntala accused to engage a maid servant for cleaning

utensils and offered to bear the expenses of the maid servant, that Sudha arranged for a maid servant but the accused did not pay the salary of the servant and terminated her services. The witness further deposed that Sudha had many a time complained to her that Mrs. Subhash would cook meal for the rest of the family and not for her and she had to cook her food later on. The witness further testified that after Sudha was in family way for 5 or 6 months Sudha told her that her in-laws had told her that in case she gave birth to a male child they would take a scooter and a fridge for Laxman and Rs. 10,000.00 in cash from her brothers, that she offered to give a fridge from her side and the remaining items would be given by the brothers. She also deposed that a number of times the in law had asked Sudha to ask for a sewing machine.

(28) Public Witness 7, the mother of Sudha, gave evidence that Sudha had come to Calcutta after two months of the marriage and she had told them that her in-laws, Subhash and Laxman had demanded Rs. 10,000.00 to Rs. 20,000.00 in cash and she had also complained of beating at their hands. P.W. 7 further deposed that Sudha also complained that when her brother-in-law (sister's husband) had taken fruits and sweets to the house of Laxman her in-laws had kicked the same and said that they had come from the house of a 'bitch'.

(29) Public Witness 8 Danesh Kumar deposed that he had visited Sudha at Delhi after about a month of the wedding and on that visit of his she had not made any complaint against her in-laws, that after about two months he had taken Sudha to Calcutta and she had complained that her mother-in-law and Subhash were complaining of insufficient dowry and had demanded a scooter and a fridge and sewing machine at the wedding of Ashok Kumar. The witness deposed that Sudha on her visit to Calcutta had not complained of any beating. The witness further stated that after about 6 months he had visited Sudha at Delhi and Sudha had complained that her mother-in-law. Subhash and Laxman would misbehave with her and would not allow her to go out of the house, that she also complained that her sister and brother-in-law had brought sweets and fruits on a festival but they were not accepted by her in law and they had thrown them outside saying that these were not sufficient. The witness added that he remembered that Sudha on her visit to Calcutta after two months of her marriage had told them that her in-laws had demanded Rs, 10,000.00 on the occasion of the birth of her first child.

(30) Public Witness 4 Ishwari Devi testified that Sudha used to visit her almost every day and she used to complain that she was being maltreated on the ground of insufficiency of dowry and that her husband and mother-in-law used to threaten her for setting her on fire. The witness in cross-examination refuted the suggestion that her above statement was not true.

(31) Left at this one could believe that the in-laws of Sudha were happy over the dowry given in marriage, but we have documentary evidence showing that till about the middle of October 1980 there were no serious differences between the two families, the only difference that can be spelt from the evidence is that the deceased was over-worked, she badly needed a helping hand-a maid servant was kept by the deceased but the services of the maid servant were terminated by the wife of Subhash.

(32) We shall here refer to the documentary evidence in detail.

(33) EX. D-2 is a letter written by the deceased to Geeta (sister of Laxman accused). The letter does not bear a date but the contents of the letter show that it was written sometime before the Dussehra of 1980. The letter is important and we are reproducing it in extenso and it reads as under: "Dear Didi, Compliments. It is to inform you that we had reached here that day quite safe and sound. I feel very sorry for not having any occasion even to talk to you and the respected mother. Any way, I have been feeling somewhat strange after reaching here The love and affection extended by you people have made me to feel that I cannot pass my time here without your company. Any way I would write to you in detail as now I have no time to concentrate my mind for writing a detailed letter. Please take this short note of mine as sufficient for the time being. But please do not forget to sent the chappal to me. I would get you a new one. Please convey my respects by touching the feet of respected mother. Also love to Goody whom I remember very much. sd/- Sudha The articles needed urgently. The Jhaller (shade) for the bulb. Red coloured Bahi (book) for Dussehra festivals Gur. Pattasha (sugar cakes) My chappals. Underwear.

(34) EX. D-3 is another letter written by the deceased to Geela. The letter was written on 12th September 1980. This letter is again important and is being reproduced in extenso. It reads as under : "Compliments, We are all well here and hope all of you to be in the same state. Please convey my 'Namaste' to mother by touching her feet. Dear sister, kindly write a letter to me. Now I have the desire to visit Barot. I want to avail your company throughout the day but Barot being far away hence desire has merely become a desire and cannot be fulfilled. Anyway my desire to visit you, has become so strong that I may visit any time at the earliest. You keep yourself happy and need not worry. Besides, you should also devote much time to the services of mother so she may not feel boredom. I always remember Goody very much. I often talk about Guddi. I would go to Shannu's home within 2/3 days as my Jija (brother-in-law) would come to take me there. Please do write a letter to me. Write something what mother dictates. (Didi (sister) please send mother over here after two or three days as yon knew that I have not been able to get any opportunity to have her company here. Excuse me for mistakes. Please do not care for my hand-writing. Kindly reply soon. Yours sister-in-law sd/- Sudha (In English)" .

(35) There are two more letters bearing Ex. Xx dated 17th October, 1980 and Ex. Xxx without any date written by the deceased to Geeta. These letters are also important and we reproduce them in extenso. The letter Xy reads as under: "Dear Didi, Compliments. I received your letter through him (my husband). I was very much pleased to go through its contents. I intended to post the reply of your letter but I preferred to send the same through him (my husband) when I came to know that he (my husband.) would again be leaving this place on Saturday. You please devote much time towards your studies. You are advised to please the mother by obeying her. It would be better if respected mother could visit me for 2/4 days. You would be glad to know that the work of my sheet (Chaddar) has since been accomplished. You would not mind if I ask you to take some money from him (my husband) for purchasing two woollen balls of white and black colour each and ensure that the same are kept by you in his (my husband(s) bag (thaila). Please do this job without fail. Any type of wool if lying at home may also be sent through him (my husband). Didi my foot-finger has completely been healed. I remember Guddi all the times. While talking about her (Guddi) with him (my husband) I feel much delighted. Really I remember very much. Convey my respect by touching feet of respected mother. Please do write to me if you stand in need of anything. I will manage the same and send it to



you. I do not recollect as to what more I should write to you. All are well over here. Vikki and Bittu including myself are also enjoying good health. I hope that all might be well over here. I badly miss the presence of all of you over here. One day I made a mention to the effect that I shall have to leave for Barot very soon. The talk on the subject in question takes place between myself and Bhabhiji daily. He (my husband) is of the view that I should give birth to the new baby over here. I beg your pardon for the mistakes, if any."

(36) The letter Ex. Xxx reads as under .- "Dear Didi, Non-receipt of any letter From your side made me to feel that you have forgotten me altogether. Anyhow I am of the view that the blood is thicker than water. I was pained to learn when dear brother came over here today and tola me that you were coming over here but have not been able to come due to certain reason, It would have been better if you would have been here at all costs. I was much worried about the health of respected mother and father, but the news that they are feeling well conveyed by brother today proved a source of solace to me. Convey my respects by touching the feet of respected mother and father. I remember Guddi very much. I would have posted a letter earlier but due to abdominal ailment I could not do so and hence this delay. I beg to be excused for this lapse on my part. You please do write a letter to me. Rest all is well. I, too, am feeling well these days. I ask pardon for the mistake, and request you to reply soon. Yours bhabhi (sister-in-law) sd/- Sudha (in English)" There Is evidence that Ashok brother of the deceased Was engaged to be married at Rohtak on 12th February 1981. The girl party was related to the accused and the engagement was brought about by the accused. The arrangement for the stay of the Barot at Delhi was being made and in this regard Danesh (P.W. 8) wrote letter Ex. D-1 on 25th September 1980 to Laxman and Subhash. The said letter reads as under ; "Dear Subhash Babu and Laxman Babu, Compliments. You are well here and pray to God for your Welfare ..... (torn) has reached here safe and sound. We have received your letter as well, and have gone through its contents. So it has been decided that the marriage should take place on the 12th February. The mother has desired that the place which you had suggested for our stay over there should be taken for 10 days by you people. A letter has been posted t Mausaji (meaning Laxman's father) at Barot. Convey my Namaste and love to Vinod Babu and Ram Babu. Please do write to us if we can be of any service to you people. We beg to be excused for any lapse on our part. Please reply soon. Yours, sd/- Danesh Aggarwal."

(37) Danesh (P.W. 8) in cross-examination admitted that the marriage proposal was suggested by Sudha's in-law and the said proposal had found favor with his younger brother Ashok who had come to Delhi for that purpose and that Tikka ceremony was performed but no final date of the marriage was fixed. The witness also admitted that Laxman had written to him that a suitable accommodation for the stay of the marriage party before going to Rohtak was available at Delhi. The witness admitted to have written the letter Ex. D-1 to Laxman and Subhash. There is another letter Ex. Pw 6/DA dated 25th September 1980 written by Danesh to the parents-in-law of Sudha and it reads as under : "Shriman Mausaji & Mausiji, Please accept compliments from Danesh Kumar and Ashok Kumar. We are quite well here and hope the same for .you. The elder sister, namely, Gayatri was in Calcutta. She left for Delhi 3 or 4 days ago. Now, Shanno has come over here and she has appraised us of your welfare. Shanno has praised you people to the sky and we people also feel happy because only fortunate people happen to join such great and respectable families. Mausaji, I say it from the base of my heart that the families like you are hardly one or two in lacs. Having heard your

greatness, we are also trying to imbibe your good qualities. Mausaji, the marriage of younger brother has been fixed for 12th February, 1981. Marriage will take place at Rohtak. Arrangements for stay have been made in Delhi. Laxmanji has informed through a letter that some accommodation is available in neighborhood. He will go to Delhi for getting the accommodation booked for ten days. Please convey my love and affection to Sudha. ....Please convey my namaste to Geeta Rani and Vinod. Mausaji, please keep on writing letters. Mausaji, it is first chance for Sudha and that is why she is getting somewhat nervous. We should not have written it to you but it is purely out of motherly love and affection that we are requesting you to look after her. Please do write if we can do anything for you. We apologise if some mistake has been committed. Yours son. sd/- Danesh (38) Public Witness 6 Sneh Lata alias Shanno who was in Calcutta on 25th September 1980, also in the above letter appended a note for Sudha, and it reads as follows: "Dear Munni, Be happy, I have just received your letter and gone through it. You need not worry anything, everything will be okay. I will certainly reach there by 15th of next month I will surely bring your servant with me. Rest on meeting. I will invite you on KarwaChauth. You may come for two days. A sum of Rs.201.00 is with laxman. He will not give it to Gayatri. Munni you may take pickle, one coconut, one blouse, Rs: 10.00 in cash, and one white saree. Saree is of your mother-in-law and petticoat is yours. Live happily and enjoy your food to the maximum. Yours sd/- Shanno" 38. From the above letter it is apparent that till about middle of October 1980 Sudha was happy and had good relations with her parents-in-law, sister-in-law.(Geeta) and also Madhu wife of Subhash. The letters show that Sudha had affection for the mother-in-law and she had been expressing a desire for the mother-in-law to come to Delhi and spend a few days with them. The evidence on record is that the mother-in-law and the father-in-law with two unmarried daughters mostly resided in Barot. Barot is 50 miles from Delhi and it may be that the family members residing at Delhi and at Barot paid frequent visits to each other.

(39) The praises showered on the in-laws and Geeta in the letters by Danesh and Sudha, according to the learned Additional Sessions Judge, are by way of flattery and to keep them in good humour so that they be nice and kind to Sudha. There no basis for this observation. It is not possible to view the letters in the manner the learned Additional Sessions Judge has done. Some of the letters are by Sudha to her sister-in-law Geeta. The letters are full of affection. There was no need for Sudha to have written letters to Geeta to flatter her. There is independent evidence to show that the relations between the deceased and the in-laws were good at least till October 1980. The engagement of Ashok, brother of the deceased, at Rohtak was brought about by the accused and they were making the arrangements for the stay of Barot at Delhi. The marriage of Ashok was to take place in February 1981. The husbands of Public Witness s. 3 and 6 in their statements to the police on 2nd December 1980 have stated that the relation between Sudha and her husband were cordial.

(40) The letter Ex. Xx dated 17th October 1980 shows that the husband was keen on the delivery at Delhi. The expected date of delivery was in the first week of December and Shakuntala had come to Delhi only a day before this unfortunate occurrence. She had obviously come to help the deceased in the delivery of the child. Even Public Witness 3 admitted that Shakuntala Devi had come to look after delivery of Shakuntala.

(41) It may be that in September or October the mother-in-law or some other member in the family may have told the deceased that in case she gave birth to a male child they would expect a fridge and a scooter and some cash. It is customary in the Hindus that on the first delivery of a child, particularly on the birth of a male child the parents give presents. The in-laws or husband may have felt the need of a scooter and frigid ire, and, therefore, wanted the deceased to demand a frigid ire and a scooter. We find it impossible to agree with the learned Additional Sessions Judge that the accused finding no positive response from the brothers and the sisters of the deceased regarding their above demand had decided to kill the deceased. The observation of the Additional Sessions Judge that the accused decided to take the life of the deceased before the delivery of the child because after the child was born it would have become difficult for them to execute the plan is wholly without any basis. The learned Additional Sessions Judge in his judgment (page 302 of the paper book) observed as follows : "The aforesaid evidence oral and circumstantial, therefore, conclusively point out the common intention of all the three accused to join hands for extorting dowry and other valuables on one pretext or the other from the relations of the ill fated Smt. Sudha and to put an end to her life when no tangible offer or assurance to meet their insatiable demand was made or given by her parental relations. I am also of the considered opinion that no word or assurance having come from the side of Sudha's relations, the accused persons, it has to be inferred, were running out of time quite fast, as Sudha was to deliver their common intention kill Sudha in case their demands- remained unfulfilled would have been frustrated, because a living child from this wedlock would have been a grave hinderance on their way in claiming the expected dowry by second marriage of Laxman accused." The Judge further while giving reasons for imposing death sentence observed (page 312): . "The accused persons had committed 'this cold blooded murder motivated by their lust for monetary gain, having failed to receive any firm commitment from the parental relations of; Sudha, they ruthlessly executed their ill-conceived, but well planned murder not only causing the death of Sudha. but also causing the destruction of the child who, but for this incident, would have taken birth within a week or so in this wonderful world of ours, so that there could be no hinderance for claiming fresh dowry by second marriage of accused Laxman."

(42) We wish to say that the learned Additional Sessions Judge in making the above observations has given a flight to his imaginations and fantasies: There is; to say the least, no basis for these observations.

(43) The undisputed evidence is that the deceased was registered for delivery in the St. Stephen-Hospital (Ex. E)-W 2/A). She was going to the hospital regularly for check up, so much so just 3 days before death Sudha had gone with Madhu to St. Stephen Hospital for a check-up ; the doctors had probably told that the deceased may deliver a child within a few days and it was because of this that Madhu had gone to Barot and the mother-in-law had come to Delhi a day before the occurrence. Laxman and Madhu would not have shown that deep interest in Sudha had they plans to kill her. In our view, insufficiency of dowry has been made an issue only to create a motive for the crime. The record does not support the prosecution case that the accused had at any time made insufficiency of dowry an issue and harassed the deceased.

(44) The allegation by Public Witness 7 that Sudha on her visit to Calcutta had complained of beating is not supported by Public Witness s. 3, 6, 8. Public Witness s 3 and 6 were residing in Delhi

and were frequently visiting Sudha. They do not allege any beating by the husband or by the in-laws. The letters written by Sudha also belie this allegation. The allegation by Public Witness 7 that the in-laws had thrown out the fruits and sweets taken on a festive occasion and said that it had come from the house of a 'bitch' also seems to be made up version.

(45) We have earlier observed that the evidence is suggestive that near about September 1980 the deceased had a feeling of being over-worked and she badly needed a helping hand in the house-hold work. Public Witness 6 had in her letter Ex. Public Witness 6/DA from Calcutta written to the deceased that she need not worry and that she would be bringing a servant for her. We have a statement of Madhu that a maid servant was employed by the deceased but her services were terminated by Madhu.

(46) Public Witness 2 Satish Chopra gave evidence that on 1st December at about 8-35 p.m. when he passed in front of the house of the accused he heard Sudha telling her sister that her tolerance had reached its climax and that she had been mal treated and beaten by her in-laws and she apprehended danger to her life. The witness was confronted with his statement made before the police wherein he only had stated that he had heard Sudha telling that it was now beyond her tolerance. We are of the view that Public Witness 2 has improved upon the statement made by him before the police and what he had heard the deceased telling the sister was that her tolerance had reached the climax which had reference to her being made to do household work beyond her capacity particularly when she was about to deliver a child.

(47) Madhu (D.W. 5) stated that the deceased was not well conversant with the household work and mostly she did the household work. This may not be wholly true. D.W. 5 was employed as a teacher and she must be out between 8 and 3 to 4 in the evening. In her absence only the deceased could be doing cooking and other household jobs. We have in evidence that Subhash, his wife and two children, Laxman and his two younger brothers resided in 9B and 9D. Their messing was common ; obviously the deceased must have had to work hard and in all probability she was unable to cope with this work and that is why she wanted to have a servant and she did have a maid servant but her services were terminated by Madhu. This could have generated bitterness but could never have actuated or motivated the accused to take the life of Sudha including that of the child who was to take birth in a few days. Dying Declarations: There are two sets of dying declarations-one oral declarations and the second written declarations. The oral declarations were said to have been made to Public Witness s.1,2,3,4 and 5. The written declarations are the ones made before the doctors and Public Witness 17 Sub inspector Surender Dev.

(48) The occurrence, as already stated, took place at about 9 p.m. The deceased was admitted in the hospital at 9.45 p.m. She was attended to by Dr. Vijay Kumar Tikka. The history given of the burns in Ex. Public Witness 17/p (copy of Cpdys that Sudha Goel is alleged to have got burns while heating milk over a kerosene stove about half an hour ago. The doctor has recorded that the patient is conscious and is having approximately 70% burns. The next document is Ex. Public Witness 18/A-4 written at 10.00 p.m. in which the history of the burns given is that the patient sustained burns while heating milk on a stove and the stove burst. It is also recorded that the patient is fully conscious and answering questions. The patient was admitted in the intensive care unit. At 11.20

p.m. Dr. R. Joseph was approached by Surender Dev investigating officer to find out if the patient was fit to make a statement. Dr. Joseph gave a certificate that the patient is fit to make a statement. On that in the presence of the doctor Public Witness 17 recorded the statement Ex. Public Witness 9/DI of Sudha and the same on being translated into English reads as under : "I was boiling the milk at home. When I lit the stove the flames leapt up (Bhupka Utha) all of a sudden and my clothes caught fire as a result of which my body got burnt. At that time, my mother-in law and my Jeth (husband's elder brother) were present at home who extinguished the fire by wrapping a blanket (on me) and they brought me to the hospital. I got burnt when fire broke out all of a sudden and nobody is responsible for it. I have hear the statement and the same is correct."

(49) Dr. Joseph attested the above statement. Dr. Joseph though cited as a prosecution witness was not examined by the prosecution but examined in defense and he has stated that the deceased had made the above stated dying declaration in his presence.

(50) The second set of dying declarations are the oral declarations said to have been made by Sudha to P. Ws. 1, 2, 4 and 5 soon after the occurrence. (We shall take up the dying declaration said to have been to P.W. 3 separately) P. Ws. 1, 2 and 5 for the first time made the statements the police on 2nd December at about 1 p.m. (afternoon) Public Witness 4 on 2nd December 1980 made statement before Public Witness 17 twice first after the inquest was over and the second along with Public Witness s. 1, 2 and 5. Within a span of 5 to 10 minutes Sudha is alleged to have made oral declarations regarding the cause of her sustaining fire burns at three different times, firstly in the room on seeing the mother-in-law Shakuntala, second time outside the house to Bobby's mother (P.W. 4) and third time after Laxman had put his hand on the mouth of Sudha and asked her not to name any one and his hand was removed by Public Witness 4. Since all the witnesses were confronted with their statements made before the police regarding the oral declarations we would reproduce the exact statements of the witnesses before the police regarding the oral declarations made by Sudha.

(51) Public Witness I in the statement Ex. Public Witness I/A which also is the basis for the first report stated as under : (1) When we brought her in the room, she seeing her mother in-law in front of her at once said 'this lady has put kerosene oil on me and set me ablaze and this lady has burnt me'; The actual words being 'ISNE Mujhe Mitti Ka Tel Dal Kar Aag Lagai Hai Isne Mujhe Jalaya HAI' (2) Sudha seeing Ishwari Devi amongst them who resides in flat bearing No. 28-D said addressing her as Bobby ki Mummy Bobby Ki Mummy 'my mother-in-law has burnt me'. (3) In the meantime Laxman Kumar placed his hand on her mouth and asked her not to name any one but Sudha went on crying and uttered 'my mother-in-law and both these fellows have grabbed the ornaments given to me by my parents and were killing me by way of setting me on fire' and she requested to call her brothers from her parents' house at Calcutta. P.W. I in court made the following statement regarding the dying declarations: (1) We then brought Sudha in the room of the accused, where we saw accused Shakuntala Devi mother-in-law of Sudha standing. Immediately on seeing Shakuntala, Sudha shouted that it is she who had sprinkled kerosene oil on her and she along with other two accused by pointing out towards them had set her on fire. (2) When we were taking out Sudha for being removed to the hospital, one lady who is Bobby's mother and was residing on the upper floor of the accused's flat was seen in the crowd. Sudha on seeing her shouted 'Bobby's

mother, they have set me on fire to kill me by pointing towards the three accused present in court. She also shouted that they had snatched all her ornaments and that her parents should be informed.

(52) Public Witness 2 Satish Chopra during the investigation made following statement regarding the dying declarations : (1) after extinguishing the fire when we after wrapping Sudha in the blanket brought her in the room, Sudha on seeing her mother-in law said 'she after pouring kerosene oil on me has set me ablaze. She has burnt me. She went on repeating the same. (2) When we were taking her out many men and women and Smt. Ishwari mother of Bobby had collected over there. Seeing her (Ishwari Devi) she shouted addressing her as 'Bobby Ki Mummy my mother-in-law has set me on fire.' (3) Whereupon Laxman placed his hand over her mouth and asked. her not to name any person. Sudha went on crying and uttered 'my mother-in-law and both these two persons have grabbed the ornaments given to me by my parents and were killing me by way of setting me on fire;' She requested to call her brothers from Calcutta.

(53) Public Witness 2 in court made the following statement regarding the dying declarations: (1) When we were taking out Sudha for removing her to the hospital she saw her mother-in-law Shakuntala sitting on the bed and the other two accused standing and pointing towards all of them she shouted that she has been put on fire by her mother-in-law and that the other two accused while pointing towards the 'USE Maar Dala HAL'. (2) When Sudha had been brought outside she shouted that her mother-in-law had sprinkled kerosene oil on her and she along with her two sons, that is the accused present in court, had all set her on fire. She also shouted that her ornaments had been snatched from her. (3) She saw Bobby's mother standing in the crowd and addressed her in the aforesaid manner, i.e. all the three accused i.e. her mother in law and two sons had set her on fire and snatched her ornaments and that her brothers living in Calcutta be called from there.

(54) Public Witness 4 in her first statement Ex. Public Witness 17/J stated as under regarding the dying declarations (1) We also came out and saw Smt. Sudha Gogi being brought out by the people from 9-B who was wrapped in a blanket and in burnt condition. She having recognised addressed me as 'Bobby Ki Mummy Mummy' and said 'MUJHE Meri Saas Ne Jala Diya (My mother-in-law has set me on fire)'. (2) In the meantime her husband Laxman Kumar placed his hand on her mouth and while dragging her inside the room asked her not to name any body. Thereupon she asked her husband not to take her inside the' room and that her mother-in-law would again set her on fire.

(55) Public Witness 4 in her second statement Ex. Public Witness 4/DA stated as follows : (1) She saw me and while recognising me told me addressing as Bobby's Mummy, Bobby's Mummy'1 have been burnt by my mother-in law'. (2) Meanwhile her husband Laxman putting his hand on her mouth asked her not to name any one. She further said that she might not be taken inside as her mother-in-law would again set her on fire.

(56) Public Witness 4 in Court made the following statement regarding the dying declaration: (1) On seeing me Sudha came forward and addressed me 'Bobby Ki Mummy Bobby Ki Mummy In Logon Ne Mujhe Maar Dala Hai Meri Saas Ne Mere Upar Metti Ke Tel Dala Hai Aur Mere Patti Ne Mujhe Aag Lagayee HAI.' (2) Instantly Laxman accused present in court put his palm on her mouth and told her not to speak like that and go inside. I removed the hand of Laxman from the mouth of

Sudha whereupon Sudha told us that if she was taken back they would not leave her alive.

(57) Public Witness 5 Tarsern Jain before the police had stated as follows : (1) In the room Sudha seeing her mother-in-law said that 'she had pored kerosene oil on me and set me on fire.' She repeated these words again and again. (2) When we were taking her out, a number of men, women and the mother of Bobby Smt. Ishwari Devi had also reached there. On seeing her (Ishwari) Sudha told her addressing her 'Bobby Ki Mummy, my mother-in-law has burnt me'. (3) Thereupon Laxman placed his hand on her mouth and asked her not to name any boody. Sudha went on crying that my mother-in-law and both these persons have grabbed the ornaments given to me by my parents and were killing me by way of setting me on fire.

(58) Public Witness 5 in court made the following statement regarding the oral dying declarations: (1) When Sudha was in the room noticing Smt. Shakuntala standing in the room, Sudha uttered that her mother-in-law had sprinkled kerosene oil on her and all these persons had set her on fire. (2) We brought Sudha out near the staircase of their house. Lot of crowd had assembled including Ishwari Devi i.e. Bobby's mother. Seeing her Sudha had shouted 'MERI Saas Ne Mere Par Mitti Ka Tel Dala Hai And Inhone Mil Kar Jalaya HAI'. (3) When we brought Sudha little ahead she again shouted 'MERI Saas Ne Mere Upar Mitti Ka Tel Dala Hai Aur Inhone Mil Kar Mujhe Jalaya Hai Mera Bahi Ko Calcutta Se Bula Do Mere Jewar Aur Paise Bhi Inhone Chin Live HAIN'. At that point Laxman put his hand on the mouth of Sudha and told her not to say like that. Sudha thinking that she was being taken back into the house shouted that if she was taken back in the house 'YE Mujhe Jaan Se Mar DALENGE'

(59) Sarvshri Gurcharan Singh and D.R. Selhi, learned counsel for the appellants, criticised the oral dying declarations inter alia, on the grounds (1) that the witnesses have made substantial improvements on their statements made before the police regarding the alleged oral declarations, (2) that in spite of the fact that the police had reached the spot at 9.40 p.m. and the crime team had reached at 10.30 pm. the witnesses made no effort to contact the police and tell them of the circumstances in which Sudha had sustained the burns, (3) that no effort was made by the witnesses to make a report till 1 p.m. on the next day, (4) that had Sudha made the alleged declarations witnesses would not have allowed the accused to accompany Sudha to the hospital and would have insisted on their taking her to the hospital.

(60) On the other hand. Shri Sodhi Teja Singh, advocate for the State, vehemently contended that Public Witness s. 1, 2, 4 and 5 are neighbours of the accused and they had no motive whatsoever to give false evidence against the accused. He further contended that the fact that Public Witness s. 1, 2 and 5 had reached the spot within minutes of the occurrence and helped in extinguishing the fire puts beyond doubt that they were present, they had brought out Sudha and Sudha had made the oral declarations in their presence.

(61) We have no hesitation in agreeing with Mr. Teja Singh that Public Witness s. 1, 2 and 5 had rushed to the rescue of the deceased on hearing her cries of 'Bachao BACHAO'. They had actively helped in extinguishing the fire of the deceased, brought her out, and also probably one of them brought a taxi in which Sudha was taken to the hospital. Public Witness 2 states that he had gone to

the house of Sardar Ajit Singh and from there telephoned the Police Control Room regarding occurrence. We have no reason to doubt the correctness of the above statement of Public Witness 2. Ex. Public Witness 15/A is a copy of the report received by the police control room. The information conveyed was that a lady has been set on fire in Janta quarters at Ashok Vihar Phase Iii behind Laxmibai College. The time given in the report is 9.15 p.m. The police control room had further transmitt (62) We have further evidence that the crime team headed by Sardar Balwant Singh Sub-inspector (though cited as a witness but given up by the prosecution) had reached the spot at 10.30 p.m. The crime team inspected the scene of crime, took photographs and discussed the case with the investigating officer. Ex.P.W. 17/R is the report of the crime team. This report mentions that it js alleged that Sudha wife of Laxman was heating milk on stove from which her clothes caught fire and she was rushed to St. Stephen hospital in burnt condition.

(63) The above evidence proves that the police van and Sub-Inspector Surender Dev had reached the spot latest by 9.44 p.m. and the crime team had reached the spot at 10.30 p.m. The information that they gathered from the spot and which is incorporated in Ex. Public Witness 15/B and Ex. Public Witness 17/R was that Sudha had caught fire while heating milk on a stove or by the bursting of the stove.

(64) Public Witness 4 gave evidence that the police had come to the spot at about Ii p.m. and that a number of persons from the locality had collected and the police had made enquiries about the incident and at that time Jaspal Singh, Tarsem Jain, Satish Chopra etc. were there. Public Witness I Jaspal Singh gave evidence that after Sudha was taken away in the taxi he had gone to this house since he had received burn injuries on his right hand fingers, right wrist and left leg in the process of extinguishing the fire. In cross-examination the witness stated that he did not see any police officer near the house of the accused on the night of 1st 2nd December. Public Witness s. 2 and 5 stated that when Sudha was taken in the taxi they were told that she was being taken to Hindu Rao Hospital and that they along with 10 to 15 other persons had on scooters gone to Hindu Rao Hospital and waited there till 11.30 p.m. but finding that Sudha was not in that hospital - they returned to their homes at about 11.30 p m. Public Witness s. 2 and 5 have stated that when they returned to the spot they did not find any police there. Assuming what is stated by Public Witness s. 2 and 5 is correct, at least Public Witness 4 was at the spot when the police came. According to Public Witness 4 P.W. I was also present. This otherwise too would be natural and probable. If the deceased has made the alleged oral declarations Public Witness s. I and 4 would definitely have told the investigating officer and the crime team the cause of the occurrence and not kept quiet and in that event the crime team would have in the report recorded the facts as disclosed to them by Public Witness s. 1 and 4.

(65) The contention of Mr. Gurcharan Singh that if the deceased has told the witnesses that Subhash, Laxman and their mother had burnt her the witnesses and other residents of the locality would not have permitted the accused to take Sudha to the hospital and they would have insisted in taking Sudha or at least insisted on one or two of them accompanying the accused in the car cannot be brushed aside lightly. The evidence is that when the deceased had named the mother-in-law. Subhash and Laxman as .the persons who had burnt her, Laxman had put his hand on the mouth of Sudha and asked her not to name any one and wanted to take her inside and on that Sudha had cried and said that she should not be taken inside as they would kill her. If this be true, it seems to



us, that Public Witness s. 1, 2 and 5 and the other residents of the locality who had gathered at the spot would not have allowed the accused to take Sudha and they would have insisted on their accompanying Sudha.

(66) We shall next deal with the improvements made by Public Witness s. 1, 2, 4 and 5 in their depositions in court on the statements made by them before the police regarding the oral declarations made by Sudha to them. The dying declaration is a statement made by a person regarding the circumstances leading to his/her death. A dying declaration whether oral or written is a solemn and important statement since it comes from a person at a time when he is apprehending death and, therefore, normally not expected to lie. We can understand that an oral declaration made by the deceased before a number of persons may be reproduced by them in different words and sequence but surely a witness is not competent to add or improve upon what he was told. If a person has made a statement regarding the cause of his death the witness must faithfully reproduce it and make no additions or improvements and incase he does a serious infirmity is introduced in the alleged dying declaration and the court shall have no option except to reject it.

(67) Reverting to the case in hand Public Witness 1 in the statement before the police had stated that the deceased on entering the room and seeing her mother-in-law had said that this lady had put kerosene oil on her and set he ablaze and burnt her.

(68) In court Public Witness I stated that Sudha on entering the room and seeing Shakuntala had shouted that she had sprinkled kerosene oil on her and she along with other two accused by pointing out towards them had set her on fire.

(69) Now there is a world of difference in the two statements. If the deceased had made the declaration that Shakuntala had poured kerosene oil on her and burnt her the statement of Public Witness I in court that Sudha had said that Shakuntala had poured kerosene oil on her and thereafter she along with other two (meaning Laxman and Subhash) had set her on fire would be a complete distortion of what the deceased had actually said. The oral declaration attributed to Sudha by Public Witness I in court is obviously not what Sudha had said.

(70) Some way in the second oral declaration Public Witness I before the police had said that Sudha on seeing Ishwari Devi had shouted 'Bobby Ki Mummy' her mother-in-law has burnt her whereas in court the witness has stated that Sudha had shouted 'Bobby's mother' by pointing out towards the three accused that they had set her on fire to kill her. Now this is clearly not the declaration that was made by the deceased.

(71) Mr. Teja Singh contended that Public Witness I in the statement Ex. Public Witness I/A before the police had stated that Sudha in front of Bobby Ki Mummy had stated that her mother-in law and the other two persons (meaning Subhash and Laxman) had grabbed ornaments given to her by her parents and were killing her by setting her on fire and that the statement made by P.W. I in court should be viewed in the context of the entire statement made before the police. We do not think that this will be the right way in reading the dying declarations. Each dying declaration has to be considered separately. We are of the view that P.W. 1 in court has substantially improved upon his

statement Ex. Public Witness 1/A made before the police.

(72) We find similar improvements in the statements made by Public Witness s. 2 and 5 in court.

(73) Public Witness 4 in the statements Exts. Public Witness 17/J and Public Witness 4/DA stated that Sudha on seeing her had said 'Bobby Ki Mummy Mujhe Meri Saas Ne Jala Diya' and again that in case she is taken inside the room her mother-in-law would again set her on fire. Public Witness 4 in court stated that Sudha had said 'Bobby Ki Mummy Bobby Ki Mummy In Logon Ne Mujhe Maar Dala Hai Meri Saas Ne Mere Upar Metti Ke Tel Dala Hai Aur Mere Patti Ne Mujhe Aag Lagayee HAI'. There is, in our opinion, a world of difference in the two statements. The witness in her statements during investigation had only said that Sudha had said to her that her mother-in-law had burnt her whereas in court she states that the deceased has said that her mother-in-law had poured kerosene oil on her and her husband had put her on fire. If the statement of the witness before the police be correct then Sudha had never named the husband as having put her on fire.

(74) We have no means to judge the truth except from the evidence. From the statements of Public Witness s. 1, 2 and 5 before the police and in court it is clear that Public Witness s. 1, 2 and 5 have put in the mouth of the deceased statements which she had not made. Public Witness s. 1, 2 and 5 has no right while giving evidence to mix from their own imagination or thinking with what Sudha had actually stated. One can see the danger involved in so doing. If the oral declarations attributed by Public Witness s. 1, 2 and 5 to the deceased in court are accepted they implicate all the accused but if their statements regarding the oral declarations during investigation are taken to be correct at least in the first two dying declarations the deceased had only accused the mother-in-law. Regarding the third dying declaration made before Ishwari Devi there is a lot of variation in the statements of the witnesses. Public Witness 4 stated that Sudha had said that she had been burnt by her mother-in-law, whereas Public Witness s. 1, 2 and 5 have stated that Sudha had said that the mother-in-law and the other two accused had grabbed the ornaments given to her by her parents and they were killing her by setting her on fire. It is difficult to find as to what the deceased had actually said. It is not possible to believe that the same dying declaration was heard and understood by the witnesses differently.

(75) The learned Additional Sessions Judge, in our view, is not correct in holding (para 47) that Sudha in the dying declaration before Public Witness . 4 had implicated all the accused. Public Witness 4 in court stated that Sudha had said 'IN Logon Ne Mujhe Maar Dala Hai Meri Saas Ne Mere Upar Metti Ke Tel Dala Hai Aur Mere Pati Ne Mujhe AAG. Lagayee HAI'. The above statement only implicates Shakuntala and Laxman and not Subhash. It would be straining the statement by reading into it the involvement of Subhash.

(76) The Additional Sessions Judge has doubted if Public Witness 17 had correctly recorded the statements Exts. Public Witness 17/J and Public Witness 4/DA of Ishwari Devi. The reason given for this is that the statement Ex. Public Witness 17/J which was recoded at about 10 a.m. was not sent along with other inquest papers to Dr. Bharat Singh. We are not impressed with this reason. The inquest was held at the hospital sometime between 7 and 8 a.m. The statement of Ishwari Devi was recorded at the spot at 10 a.m. on 2nd December (according to Public Witness 4). The

supplementary statement was recorded after 1 p.m. Along with the statements of Public Witness s. 1, 2 and 5. Public Witness 17 had gone to the spot after sending the dead body Along with the inquest papers to the mortuary. Public Witness 17 has testified that the statement Ex. Public Witness 17/J was recorded after the inquest papers had been sent to the police Surgeon. From the above evidence it is clear that P.W. 17 could not have sent the statement Ex. Public Witness 17/J of Ishwari Devi along with inquest papers to the police Surgeon and the criticism of the learned Additional Sessions Judge of the investigation in this respect is not justified.

(77) The oral dying declarations are said to have been made by Sudha just within a few minutes of the occurrence. Public Witness s. 1, 2 and 5 made the statements before the police on the next day at about 1 p.m. that is almost after 16 hours of the occurrence. We have it in evidence that on 2nd December at about 9 a.m. Public Witness s. 1, 2 and 5 and other residents had held a meeting and thereafter the statements were made by Public Witness s. 1, 2 and 5 before the police. The said Public Witness had sufficient time to compose themselves and make statements before the police. The statements were not made in a hurry, but after full deliberation. If the deceased had named all the accused as responsible for her burning the witnesses would not have faltered in reproducing the oral dying declarations correctly before the police.

(78) We shall here discuss the oral dying declaration said to have been made by the deceased to her sister Gayatri Devi (P.W. 3). According to Gayatri Devi at about 9.15 p.m. Subhash and his brother Vinod came and told them that Sudha had received fire burns, that she and her husband accompanied Sudha in the same car to St. Stephen Hospital. Public Witness 3 gave evidence that as soon as she got into the car the deceased told her that she had been burnt by these people (meaning Shakuntala, Laxman and Subhash who were in the car).

(79) Gayatri deposed that she and her husband were with Sudha in the Emergency Ward for about two hours and she had a talk with the doctor. Gayatri further deposed that she was in the Emergency Ward for about two hours and thereafter Sudha was taken to some other place where she was not permitted to accompany Sudha. We may mention that Sudha was taken to the intensive care unit. Public Witness 3 testified that she was in the same room where her sister was admitted till about 12 or 1 in the night and that she had told the doctor whatever she knew, that in her presence the police arrived in the hospital and the police officer had a talk with her sister and he had recorded something, that at the time both the doctor and the nurse were also there when the police officer had a talk with her sister, that she cannot say if the police officer had obtained the signatures of the doctor or not, that the police officer had remained in the hospital for about one hour or one and half hours, that she did not have any talk with the said police officer.

(80) We have earlier stated that at the time of the admission in the hospital and later before the investigating officer in the presence of Dr. Joseph the deceased had stated that she had been burnt while heating milk. . We shall discuss the written dying declarations a little later but the fact remains that although admittedly Public Witness 3 was in the hospital till about 12 or 1 in the night and she had talked to the doctor but she never mentioned that Sudha had been burnt by the accused who were also in the hospital. It is also perplexing that in case Sudha had told Public Witness 3 that she was burnt by the accused Public Witness 3 and her husband would have left Sudha in the company

of accused and themselves gone back to their home. Mr. Teja Singh stated that P W. 3 had left small children in the house and, therefore, she had out of necessity to go back. This is understandable but in the circumstances stated by her, if true, she would have at least left her husband behind. We asked Mr. Teja Singh to let us know what is the distance between the house of Public Witness 3 and the hospital and also the distance between her house and the house of the accused. After inquiry Mr. Teja Singh told us that the distance between the house of the accused and the house of Public Witness 3 is about 2" kilometers and the same is the distance between the house of Public Witness 3 and the hospital.

(81) We shall in this respect refer to another important fact. Sudha died at 6.10 a.m. on 2nd December. Public Witness 17 on getting the report of the death of Sudha reached the hospital and help an inquest. During the inquest P.W. 3 and 6 and their husbands Promod Kumar and Damodar Das were present. The investigating officer wanted Public Witness 3 and 6 to make a statement but they refused to make a statement Public Witness 17/PMP.W. 17 however, recorded in the brief history and the inquest report (Exts. and Public Witness 17/DN) that Sneh Lata is crying loudly and cursing the in law of Sudha for her untimely death, that she is in sorrow and grief and despite request is not willing to make a statement, that however, from her utterings it is apparent she suspects foul play. He has further recorded that Damodar Das Gupta brother-in-law of Sudha who too was present in the hospital says that the death was due to domestic abnormal relations and he too is not prepared to give any statement It seems, however, Damodar Das later made a statement and Exts. Public Witness 17/K. and 17/L are statements respectively of Damodar Dass and Pramod Kumar.

(82) Both Pramod Kumar and Damodar Das made no mention of the alleged dying declaration made by Sudha to Public Witness 3. In fact, they expressed their ignorance about the cause of death. They stated that the relations between the husband and the wife were cordial. Now it is impossible to believe that if Sudha had made the alleged dying declaration to Public Witness 3 and even assuming that Pramod Kumar husband of Gayatri had not heard the dying declaration made by Sudha Public Witness 3 would have definitely told her husband in the hospital and if not in the hospital at least in the house about the oral dying declaration made by Sudha. The silence of P. W.3.regarding the alleged dying declaration at the time.of the inquest is completely not understandable. Another strange aspect is the Public Witness s. 3 & 6 made statements before the investigating officer only on 8th December i.e. after 7 days of the occurrence. The above circumstance leads to only one conclusion that no dying declaration was made by Sudha before Public Witness 3. The fact that Public Witness 3 and her husband left the hospital at about 12 are suggestive that they had no suspicion at least till then that there was any foul play in Sudha sustaining the burns.

(83) The learned Additional Sessions Judge has explained the above infirmity by observing (Para. 45 of the judgment that Gayatri who was grief stricken was not probably ab'le to keep her balance to make a specific allegations of foul play and her husband may not have liked to get himself involved when he was not an eye witness to the occurrence. The learned judge has further observed that it is natural and plausible that being under shock and grief Gayatri did not think it proper to broach this subject with the accused persons at the delicate moment. We are not satisfied with the above

reasoning. If the deceased had made the alleged oral declaration to Public Witness 3 after the death of Sudha at 6.10 a.m. on 2nd December Gayatri was bound to tell not only to her husband, her sister and brother-in law but also to the police of oral declaration made to her by Sudlia. There is no explanation why she kept quiet till 8th December.

(84) Here a small incident may be noticed which by itself may appear insignificant but if judged in the totality of the circumstances assumes importance. P.W. 6 has deposed that at about 11.30 a.m. she had accompanied the Police Officer to the house of the accused to bring a saree for covering the body of Sudha. We may say that in Hindus it is customary that a married woman on death is covered by a saree or a shawl from the husband's side. Mr. Gurcharan Singh, in our view, rightly points out that in case Sudha had been burnt by her in-laws Public Witness .6 would not have gone with the Police to the house of the accused for bringing a saree to cover title dead body of Sudlia.

(85) In contrast to the oral dying declarations we have the written dying declaration Ex. Public Witness 9/DI said to have been made by the deceased Sudha before Public Witness 17 and D.W. 1 Dr. Joseph. Public Witness 17 gave evidence that he had readied the St. Stephen Hospital at 11 20 p.m. and made an application to Dr. Joseph to find out if Sudha was in a fit condition to make a statement. Dr. Joseph certified that Sudha was in a fit condition to make a statement. On that Public Witness 17 in the presence or Dr. Joseph recorded the statement of Public Witness 9/DI of Sudha which we have earlier reproduced and need not recapitulate.

(86) The investigation made by Public Witness 17 has been a subject of severe criticism by the learned Additional Sessions Judge and we shall discuss it a little later separately. Dr. Joseph has categorically stated that the statement Ex. Public Witness 9D1 of Sudha was recorded by the Police Officer in his presence and she had made the said statement. The doctor deposed that the thumb impression of Sudha was taken on Ex. Public Witness 9/DI and he had attested the said thumb impression. D.W, I further deposed that at the time of recording of the statement, except the Police Officer no other person was present. The doctor deposed that he does not remember if the sister of Sudha was present in the hospital but two persons one an elderly lady and a young man between 20 to 30 years were preseat. The doctor identified the said persons as Laxman and his mother Shakuntla. The doctor further deposed that Sudha had 70% burns and was in a state of shock but she was in full senses. The doctor further stated that he may have put certain questions to Sudha before certifying her to be fit to make the statement but he does not remember the questions that he put to Sudha.

(87) Shri Teja Singh contended that the dying declaration Ex Public Witness 9/DI was not recorded at about 11.30 pm. in the night but in fact this document was fabricated later by Public Witness 17 in collusion with the doctor. We have no material to sustain this argument. The investigating officer had sent the dying declaration Ex. Public Witness 9/DI and the statements of the witnesses recorded during the inquest proceedings to Dr. Bharat Singh who had performed the post-mortem on the dead body. There is evidence that the dead body was received by the doctor at 12 p.m. and the papers at I p.m. It is thus clear that the document-Ex. Public Witness 9/DI could only be fabricated between 12 midnight and before the papers were received by Dr. Bharat Singh.

(88) There has been lot of criticism that Public Witness 17 had colluded with the accused and fabricated the evidence. We find no material to support this contention. All the accused were with the deceased right from 9 p.m. till she died. The record shows that Laxman had made repeated attempts to receive the dead body but there was a protest and ultimately the dead body was given, to the police Sub Inspector. It seems to us that Laxman and Subhash were at the hospital or at the mortuary till the post-mortem was over and that was sometime in the evening of 2nd December.

(89) The record shows that Public Witness 17 immediately on receiving the report of the occurrence had reached the spot at about 9.43 p.m. After inspecting the spot which lasted till about 11 p.m. he had gone to St. Stephen hospital. He made an application at 11-20 p.m. to the doctor for knowing if the deceased was fit to make a statement and thereafter he recorded the statement. There is further evidence that at about 1.15 a.m. on 1st/2nd December he had returned to the police station and an entry (22-A) was made in the Roznarncha. On the next morning after coming to know of the death of Sudha he had gone to the hospital, held the inquest recorded the statements of the witnesses, sent the dead body to the mortuary for post-mortem. He had gone to the spot sometime round about 1 O'clock and recorded the statements of Public Witness s. 1, 2, 4 and 5 and some others. The above sequence of the investigation would show that Public Witness 17 had proceeded with the investigation promptly. There is no evidence that he had at any time tried to favor the accused. There was no opportunity with the accused to collude with Public Witness 17. We cannot imagine that Dr. Joseph would have colluded with the accused and the Sub-Inspector just within 2 hours of the admission of Sudha in the hospital and become a party to fabricate a false dying declaration.

(90) Mr. Teja Singh has tried to build an argument out of the words 'attested the recorded statement' used in Ex. Public Witness 9/D1. The contention is that Dr. Joseph had only attested a recorded statement and later falsely become a witness to the statement. We have examined the document Ex. P.W. 9/DI and in our view, the meaning sought to be given to the words attested the recorded statement' is not borne out by the record. Dr. Joseph has in clear words stated that the dying declaration Ex. Public Witness 9/DI was recorded in his presence and the said statement was made by Sudha. We, in the circumstances of this case, find no reason to disbelieve the statement of Dr. Joseph.

(91) Another criticism levelled was that though Public Witness 17 and the doctor had put some questions to Sudha to find out if she was capable of making a statement but the said questions and the answers have not been recorded. In our view, the recording of questions and answers is necessary when the person recording the statement puts questions to the maker of the dying declaration and obtains the answers and records the same. This becomes necessary to find out in what form the questions were put to which the answers were given. We do not think it would be necessary to record the questions and answers put to a patient for finding if the patient was fit to make a statement.

(92) Another small criticism made was whether the deceased was in a fit condition to lift the arm and put the thumb impression. It was also contended that Sudha was lineate and knew how to sign and, therefore, why her thumb impression was taken and not the signatures. We cannot ignore that Sudha had sustained burns almost on all parts of the body and in that state surely she could not be

expected to sign the document. Even for putting the thumb impression she must have had to be helped. The thumb impression appended on the document does not appear to be a full thumb impression. It is only a partial thumb impression.

(93) The learned Additional Sessions Judge has dubbed Ex. Public Witness 9/DI a fabricated document on the ground that it was physically impossible for P.W. 17 to have recorded the statements of the accused and also recorded the dying declaration after reaching the hospital at about 11.15 p.m. within a short time of about 45 minutes. We may say that the learned Additional Sessions Judge while making the above observation has overlooked the statement of Public Witness 3. Public Witness 3 has in cross-examination stated that she was with her sister in the same room till about 12 or 1 in the night and that a police officer had come to the hospital and he had a talk with her sister and recorded something. P W. 3 has further deposed that at the time both the doctor and the nurse were with the police officer and had a talk with her sister. This part of the statement of Public Witness 3 in our view conclusively proves that Public Witness 17 had gone to the hospital at about 11.20 p.m. and he had recorded some statement of Sudha in the presence of the doctor.

(94) In addition to the dying declaration Ex. Public Witness 9/DI we have in evidence that at the time of the admission the history given of the burns was that the patient had received the burns while heating milk. In the medical history sheet the history given is that the burns were received while she was heating milk on the stove and the stove burst. We do not have dear evidence whether the history was given by the patient herself or by the persons accompanying her and if so whether by the accused or by Public Witness 3 and her husband, since there was no other person with Sudha at the time of her admission. The important fact is that Public Witness 3 and her husband were with Sudha when she was admitted. If the above noted history was given by the accused Public Witness 3 would have definitely contradicted them and stated that Sudha had been burnt by the the husband and the in-laws. Shri Teja Singh tried to build an argument that there is no evidence that The stove had burst and, therefore, the recital that the burns were sustained by the bursting of stove is not true and has been falsely introduced. Shri Teja Singh blamed the investigating officer for this. He attempted to fortify his contention from the report Ex. Public Witness 15-B made at the police station at 9.41 p.m in which it is stated that Sudha had caught fire by bursting of stove or accidentally. Shri Teja Singh connects the two and states that Public Witness 17 had falsely given the cause of fire as due to stove burst.

(95) The deceased in the dying declaration Ex. Public Witness 9/DI had stated that when the stove was lit the flame had leapt up (the actual words used are 'BHUPKA U'THA'). We are of the view that the words 'BhupkaUtha' could be understood to mean the stove burnt.

(96) We shall next discuss the evidence of D.W. 4 Jaswant Singh, the driver of the taxi. Undisputedly, Jaswant Singh had taken Sudha in his taxi to the hospital. D.W. 4 testified that on 1st December 1980 at about 9 p.m. his taxi was hired and taken to a flat behind Laxmibai College, that on his enquiry he was told 'KOI Aurat Ko Aag Lag Gai Hai, that after 5 to 7 minutes a lady wrapped in blanket was brought out of the house, that in the meantime accused Laxman came there and the people present there pointing towards Laxman said 'OH Bhi Aa GAYA', that the lady with burns was put in the taxi and all the three accused also sit in the taxi, that Laxman enquired from the lady as to

what had happened and she said that she caught fire while she was heating milk on the stove, that in the way lie was asked to take the taxi to Shakti Nagar near Prem Gali, that Subhash went out and returned with the sister and brother in-law of the lady with burns, that on an enquiry by the sister, the lady with burns said that she had received burns while heating milk. that at the suggestion of the sister of the lady with burns he took the car to the St. Stephen Hospital and dropped the passengers, that after 1 or 2 days he was called by the police and he made a statement before them. In cross-examination the witness refuted the suggestion that the lady with burns had not stated to Laxman or to her sister that she had received burns while boiling the milk. The witness deposed that the lady was saying nothing except crying in pain.

(97) The witness was cited as a prosecution witness but was not examined. The accused took the risk to examine the driver of the taxi in which admittedly the deceased was taken to the hospital. The witness has supported the dying declaration said to have been made by the deceased before Public Witness 17 and D.W. 1. We have earlier while discussing the evidence observed that it is natural for a sister to enquire from Sudha how she had sustained the burns. We have medical evidence that Sudha till about 11.30 pm. was conscious and was answering questions. During the inquest inspite of the request of the investigating officer Gayatri made no statement. Sneh Lata also chose to remain silent. The husbands of Gayatri and Sneh Lata were examined and they made no allegation that Sudha declared before Gayatri that she had been burnt by her husband and in-laws. We have earlier observed that in case the deceased had made any oral declaration before Public Witness 3 she would not have missed to tell her husband in the night and to her sister and brother-in-law in the morning of what she had been told by Sudha. Viewed in this background the evidence of D.W. 4 becomes important. There is nothing in the statement of Jaswant Singh to show that he had any motive to favor the accused or give evidence against the prosecution. We find no sufficient reason why the testimony of D.W. 4 should be disbelieved.

(98) The learned Additional Sessions Judge has rejected the testimony of D.W. 4, inter alia, on the grounds (1) that he claims to have remembered the... date of the incident though he could not remember the dates of Guru Nanak Jayanti and Guru Tegh Bahadur Birthday, (2) that the statement of the witness that Laxman reached near the taxi when the lady in burns was held by accused Subhash and his mother for being put in the taxi is proved to be false, (3) that the presence and arrival of accused Laxman at that stage is falsified by the testimony of the neighbours whom he is believing in toto, (4) that the oral declaration said to have been made by the deceased to Laxman when she was put in the taxi was not put to Jaspal Singh and Satish Chopra, Public Witness s. (5) that although the public prosecutor has not confronted D.m with his statement recorded under Section 161 of the Code of Criminal Procedure but he had not made any such statement (meaning the oral dying declaration) in his statement under Section 161 of the Code of Criminal Procedure.

(99) We are not convinced with the reasons given by the learned Additional Sessions Judge for rejecting the testimony of D W. 4. We have not understood what the Additional Sessions Judge means by saying that the oral declaration said to have been made by the deceased to Laxman in the presence of D.W. 4 was not put to Public Witness s. Jaspal Singh and Satish Chopra. The investigating officer is not required to confront the witnesses regarding the inconsistencies in their statements to the police. The statement of D.W. 4 was recorded by the police after one or two days of



the occurrence. The Additional Sessions Judge was also not justified in reading the statement of the witness recorded under Section 161 Criminal Procedure Code . without the witness being confronted with what he is supposed to have stated before the police. The statement of D.W. 4 recorded under Section 161 Criminal Procedure Code . was not proved in accordance with law. The learned Judge has completely ignored the state ment made by D.W. 4 regarding the oral declaration made by Sudha to Public Witness 3. P.W. 3 has stated that on her enquiry Sudha had told her that all the accused (sitting in the car) had burnt her. D.W. 4 who was driving the car was bound to hear whatever the deceased had stated. D.W. 4 has categorically stated that on the enquiry by the sister the lady with burns had said that she had received burns while heating the milk. We have earlier given reasons for not believing, Public Witness 3 regarding the oral declaration, said to have been made by Sudha to her. Judged in this background the statement of D.W. 4 becomes important and gives support to the written dying declaration Ex. Public Witness 9/DI.

(100) Mr. Teja Singh referred to *Amba Shanker Dave v. State of Rajasthan*, I.L.R. (1971)2i Rajasthan 541 and contended that the facts of the said case are v?ry near to the facts of the case in hand and in the said case the court had rejected the written declarations recorded by a doctor and relied upon the oral declarations Miss Jethmalani representing Mahila Dakshta Samiti, New Delhi, whom we allowed to address us, relied upon *Bhayani Lahana Radhabai v. State of Gujarai*, 1977 Supreme Court Cases (Cr.) 181. We have perused the cited authorities with care and we find that the said cases are decision on their own peculiar facts and they are not applicable to the case in hand. We are of the view that previous decisions in criminal cases can be precedents in law but not precedents on facts. Medical Evidence:- "Dr. Bharat Singh on examining the body of Sudha has found, first to second degree fire burns over the forehead, face, neck, both shoulder? on all sides, chest, abdomen, external genitalia, both thighs, buttocks and upper third of both legs on all sides. Patches of second degree fire burns were found on the left foot. The doctor also found base of burn red, soft and there was soot deposit on the surface of the body at places. The doctor gave evidence that there was no smell of kerosene oil or petrol from the hair of the skull which were partially singed. The doctor deposed that the smell of kerosene oil will persis. for 36 hours in case kerosene oil had been put in the scalp and the heirs are not fully burnt.

(101) According to Modi's Medical Jurisprudence and Toxicology the burns can vary from first degree to sixth degree. The first degree burns consists of erythematic or simple redness of the skin caused by the momentary application of flames or hot solids, or liquids much below the boiling point. It can also be produced by mild irritants The second degree burns comprises of acute inflammation and formation of blisters produced by the prolonged application offlame, liquids at a boiling point or solids much above the boil- ing point of water. The third degree burns refers to the destruction of the cuticles and part of the true skin, which appears horny and dark, owing to it having been charred and shriveled up. In the fourth degree burns the whole skin is destroyed. The fifth degree burns results in great scarring and deformity. The sixth degree burns involves charring of the whole limbs including the boxes and ends in inflammation of the subjacent of tissues and organs.

(102) The learned Additional Sessions Judge has observed that clothes of the deceased were soaked with kerosene oil. This finding does not get support from the medical evidence. If Kerosene Oil had

been thrown on the body of the deceased in substantial quantity the burns on the body of the deceased would have been much severer and not from first to second degree. Dr. Bharat Singh did not sell any kerosene oil on the hairs on the scalp. The hairs on the scalp according to the doctor, were partially singed. If any kerosene oil had been poured on the head of the deceased there would have been smell of kerosene from the hairs.

(103) The Chemical analyst detected kerosene oil in the clothes of the deceased and gunny bag. No kerosene oil was detected in the blanket recovered from the spot.

(104) A question arises how kerosene oil came on the clothes of the deceased. During inspection of the scene of crime by the crime team, a stove with milk pot on it, match box containing match sticks, burnt and wet pieces of clothes some of them smelling of kerosene oil, an empty bottle smelling of kerosene oil lying on a small wall a 16 litre tin full of kerosene oil and one gallon can containing 1" litre of kerosene oil were found near the place of occurrence. Besides the above articles a funnel and a pin (used for clearing obstacle in the flow of the oil in the stove) were found near the stove. A gunny bag was also found at the spot. We may mention here that we sent for the gunny bag and we found that it was a full size gunny bag and not a cement gunny bag. A full size gunny bag is sometime used by women for sitting while cooking food. The presence of funnel (used for pouring kerosene oil in the stove) and the pin near the stove are indicative that probably kerosene oil was poured into the stove and there was obstruction in the flow of kerosene oil and, therefore, the pin was used for clearing the obstruction. We cannot say with certainty in what position (while standing or sitting) the deceased may have put kerosene oil in the stove but looking to the fact that the deceased was carrying a full term child it is more likely that she may be sitting when she poured the kerosene oil or was attempting to remove the obstruction in the flow of the kerosene oil in the stove. The possibility that some kerosene oil may have fallen on the clothes of the deceased cannot be ruled out.

(105) The learned Additional Sessions Judge from the presence of a full size tin full of kerosene oil and a can containing 1" litres of kerosene oil has concluded that the accused had collected all that oil with a pre-plan to burn the deceased. We are sorry to say that this observation of the learned Judge is wholly unfounded. No doubt the accused family had a gas stove but there would be hardly a family in Delhi, especially a family of the class to which the accused belonged who do not have kerosene oil stored for use in case of emergency. After a gas cylinder is exhausted one may not get a gas cylinder for weeks and then - only kerosene oil can be used for cooking the food. The accused family is a large family and for them to possess a tin or a tin and half of kerosene oil cannot be said to be unusual. The presence of funnel and the pin is very important and that shows that the funnel was used for pouring kerosene oil in the stove, some obstruction or difficulty was experienced in the burning of the stove and the pin was used to clear the obstruction.

(106) The stove was examined by an expert from the Central Forensic Science Laboratory and he found that kerosene oil leaks from one of the joints when the stove is lighted.

(107) Mr. Teja Singh contended that the container said to be lying on the stove was examined by the Central Forensic Science Laboratory and no soot or smoke was found on the outer circular boundary

of the container. This circumstance, according to the counsel, shows that the stove was not lighted. The accused, if telling the truth, were not present when Sudha caught fire. It would be very difficult for the accused to explain each and every circumstance. The clothes of the deceased may have caught fire in the process of lighting the stove or the kerosene oil may have leaked from the stove and some part of the saree may have caught fire. It is in evidence that some one had suggested to throw water and it may be that water was thrown and the stove got extinguished.

(108) The investigating officer recorded the statements of all the accused. Their statements purport to have been recorded on, 1st December, 1980. There is a criticism that the investigating officer could not have recorded the lengthy statements of the accused by 12 p.m. It is possible that the investigating officer may have recorded the statements of the accused a little after 12 p.m. but given the date 1st December. We are certain of one thing and that is that the statements of all the accused were recorded before 12 noon of 2nd December since the statements of all the accused were sent along with the inquest papers to Dr. Bharat Singh. At worst the statements of the accused may have been recorded during the inquest. The fact remains that the statements of all the accused were recorded before the version of the deceased having been burnt by her husband and the inquest came into existence in other words before the statements of Public Witness s. 1, 2, 4 and 5 were recorded by Public Witness 17 Subhash accused in his statement Ex. Public Witness 9/D4 gave his version of the occurrence. So did Shakuntala and Laxman. Laxman from the very start has been saying that he had gone to see off the sister of Sudha and that when he was returning he was told that Sudha had caught fire. Laxman stated that on his enquiry Sudha had told him that she was lighting the stove for heating milk when her clothes caught fire from the flames.

(109) The learned Additional Sessions Judge has severely criticised the conduct of Subhash in trying to close the door when Sudha was burning in the courtyard. According to the learned Judge it is the defense's true case that Sudha had caught fire while heating the milk Subhash and his mother Shakuntala would have rushed out and thrown themselves on the body of Sudha and tried to extinguish the fire. This is easy to say and difficult to do when faced with such a situation. We have earlier noticed that the courtyard is about 11'x9' and the living room in which Shakuntala was sitting with a child in her lap about 10'x8'. There is evidence that the outer side of the door (opening in the courtyard) had got partially burnt. We have in the statement of Public Witness 2 that he had seen some clothes lying on a string inside the room the fire and had pulled down the clothes and extinguished the fire by tucking the clothes under his feet. Subhash in the statement before the police stated that after he had changed his clothes to take the meal he heard shrieks of Sudha Jal Gayee that his mother was sitting in the inner room with his son in her lap and was giving him the milk, that he rushed and saw clothes of to get inside the room, that apprehending lest the whole house may fire he tried to stop Sudha from entering the room and closed the door.

(110) Public Witness s. 1, 2 and 5 have deposed that when they entered the room they saw Subhash closing the door from inside and after pushing him away entered the courtyard and saw Sudha flame. The above would be consistent with the version given by Subhash to the police. The fact that clothes lying inside the room a string caught fire supports the statement to Subhash before the police that Sudha was attempting to get inside the room. In such a situation people may react differently. In a small room 10' x 8' (if the version of Subhash is correct) there was Shakuntala with a small child in her

Ip and Subhash In such a situation Subhash may have got completely unnerved and spontaneously closed the door. If Sudha had entered the small room It is possible that all of them may have been burnt. Admittedly, Shakuntala Devi is aged 53 and a fat woman. If Shakuntala had attempted to rescue Sudha by falling on her or come into contact with her in any other way she may have burnt herself. If in that process her clothes had once caught fire she could not have rescued herself at all.

(111) The crucial fact and circumstances remains that it was the accused who had first given out the circumstances in which Sudha had caught fire The prosecution version that Sudha had been set on fire by Laxman, Subhash and Shakuntala came long after the version given by the accused. All the accused right from the time when Sudha caught fire and till she died in the hospital were with Sudha. They could not have in these circumstances invented a false version of the occurrence. Conduct of the accused: "Laxman,Subhash and Shakuntala had accompanied Sudha in the car to the hospital. They first went to the house of Gayatri and taken Gayatri and her husband along with them. Gayatri and her husband left the hospital at about 12 in the night but the accused stayed back. Now this is not the conduct of a guilty man. The police also recorded the statement of Vinod Kumar (brother of Laxman). Vinod Kumar had stated before the police that Subhash had asked him to give a ring to Bhabhi's Didi (sister) at Prem Nagar and since he could not contact her on telephone he boarded a bus and informed her about the occurrence, that when he was returning along with Gayatri his both the brothers and mother reached there along with Sudha in a car and the sister and brother-in-law of Sudha accompanied them to the hospital"

(112) We find the above statement to be true. Public Witness 3 in court stated that she Had left the house of Sudha at about 8.45 p.m. and just after about 15 minutes of her readying home Subhash and his younger brother Vinod Kumar informed her that Sudha had received burns. Admittedly, Vinod had not gone in the car along with Sudha ; only Laxman, Subhash and Shakuntala were accompanying her in the car. It is clear from the evidence of Public Witness 3 that Vinod had gone t) her house and told her that Sudha had received burns. This would mean that Vinod immediately after the occurrence bad left to inform Public Witness 3 about Sudha having sustained fire burns. This he says he did at the asking of Subhash. The above conduct of Subhash is not the conduct of a guilty man. Investigation: "On 1st December 1980 at 9.15 p.m. a report Was received at the police control room from an unknown person that a lady has been set on fire in Janta quarters at Ashok Vihar Phase Iii behind Laxmibai College. The said report was conveyed to the police station Ashok Vihar at 9,14 p.m. It appears that there is some error in the noting of the time. The time recorded in Ex. Public Witness 15/ A is 9.15 p.m. Ex. Public Witness 18/A is the copy of the report recorded at the police station. The report was entrusted for investigation to Sub-Inspector Surender Dev (P. W.I 7). The police control room had simultaneously transmitted the message to van No. 3-2 at 9.31 p,m. Surender Dev Sub-Inspector reached the spot at 9.40 p.m. (See Ex. Public Witness 17/R column 6). The crime team was sent for and it reached the spot at 10.30 p.m. The crime team was headed by Sub-inspector Balwant Singh. The scene of crime was inspected and photographed by the crime team. The in charge of crime team discussed the case with Public Witness 17 and made certain suggestions which are contained in Ex. Public Witness 17/R. The in charge of the van sent his report and which is recorded in Ex. Public Witness 15/B. The report received from the van at 9.44 p.m. was that a woman named Sudha aged 20/22 is said to have sustained burn", by the bursting of the stove or she caught fire accidentally. The report also mentions that Sub-Inspector Surender Dev had

reached at 9.44 p.m. It also mentions that Sudha had been removed to some hospital. The report prepared by the in charge, crime team mentions that it was alleged that Sudha caught fire while heating milk and was rushed to the St. Stephen hospital in burnt condition."

(113) Public Witness 17 reached St. Stephen hospital at 1 1.20 p.m. and made an application to Dr. Joseph to know if Sudha was in a fit condition to make the statement. On receiving a certificate that Sudha was fit to make a statement P.W. 17 in the presence of Dr. Joseph recorded the dying declaration of Sudha. Public Witness 17 recorded the statements of Laxman, Shakuntala and Subhash. He also seized the articles from the spot and reported back at the police station at 1.15 a.m. We may say, the investigation conducted till 1.15 a.m. revealed that Sudha had caught fire while heating milk. Gayatri and her husband who had accompanied Sudha to the hospital and were in the hospital till 12 mid-night made no complaint that Sudha had been burnt.

(114) The second stage of investigation commenced after Public Witness 17 received the report of the death of Sudha. Public Witness 17 on receipt of the report of the death of Sudha went to the hospital and held an inquest Public Witness 17 recorded the statements of the husbands Public Witness s. 3 and 6. He also wanted to record the statements of Public Witness s. 3 and 6 but they refused to make any statement. P.W. 17 in the brief history prepared by him (Exts. Public Witness 17/M and 17/DN) after reciting all the facts stated that Smt. Gayatri was cursing the in-laws of Sudha Goel for her untimely death and from her utterings it seems that she suspects some foul play in the death of her sister Sudha. Both the above said documents were sent along with inquest papers to the police Surgeon and, therefore, the authenticity and the fact that the said documents were prepared before 12 noon on 2nd December cannot be doubted. We may add that the report prepared by Sub-inspector Balwant Singh, in charge Crime Team (Ex. Public Witness . 17/R) was also sent along with the inquest papers to Dr. Bharat Singh and, therefore, the authenticity of the said document also is not open to challenge.

(115) It is pertinent that during the inquest Public Witness s. 3 and 6 and their husbands had not told the investigating officer regarding the oral declaration said to have been made by the deceased to Public Witness 3. Beyond suspecting a foul play no definite statement was made by Public Witness s. 3 and 6 and their husbands before the investigating officer. We have earlier observed and, at the risk of repetition, we repeat that at about 11 a.m. Public Witness 6 had gone with the investigating officer to the house of the accused to bring a saree for covering the body of Sudha. This circumstance shows that even upto 11 a.m. the investigating officer was not told by Public Witness s. 3 and 6 regarding the oral declaration made by Sudha. Only Public Witness 4 during her interrogation by the Police had stated that Sudha had said to her that her mother-in-law had burnt her. P.Ws. 1, 2 and 5 made their statements at about 1 p.m on 2nd December. After recording the statement of Public Witness I Jaspal Singh the investigating officer submitted a report (Ex. Public Witness 17/A) for the registration of a case under Section 304 read with Section 34 of the Indian Penal Code. It is not understood as to why a report under Section 304 of the Indian Penal Code was sent after recording the statement of Jaspal Singh a case under Section 302 of the Indian Penal Code was clearly made out. Surender Dev was not cross examined as to why he had sent a report under Section 304 read with Section 34 of the Indian Penal Code but it may well be that by mistake he had written 304 instead of 302. Public Witness s. 3 and 6 made their statement before the police only on

8th December. There is no explanation why they kept silent for such a long time. Although the brother and the mother of Public Witness s. 3 and 6 had reached Delhi on 2nd or 3rd December, they made statements to the police on 8th December, 1980.

(116) Our appreciation-of-evidence would show that except in the report to the police control room that Sudha had been set on fire, till about 11 a.m. on 2nd December the investigating officer had not been told by any one that Sudha had been set on fire by the accused. On the contrary the investigation revealed that Sudha had caught fire while heating milk. As soon as the Investigating officer recorded the statement of Jaspal Singh he sent a report for the registration of the case. The same day he arrested all the accused. . Subhash was arrested at 2 p.m. Laxman was arrested from the hospital sometime between 2 and 4 p.m. Shakuntala was arrested from Inter State has Terminus at 4 p.m. (117) Shri Teja Singh contended that there was a collusion between the investigating officer and the accused and also Dr. Joseph. We find no material to support this contention. As already stated, the first to reach the spot was the police van J-2. The in charge of the police van in the report transmitted to the police control room at 9.44 p.m. gave the information that Sudha had sustained burns by the bursting of the stove. The crime team headed by Balwant Singh reached the spot at 10.30 p.m. and Sub-Inspector Balwant Singh in his report which he had probably prepared after a discussion with the investigating officer had stated that it is alleged that the clothes of Sudha had caught fire while she was heating milk. The dying declaration Ex. PW9/DI was recorded at about 11.30 p.m. by Public Witness I? in the presence of Dr. Joseph. In the said dying declaration the deceased is said to have stated that she received the burns while heating milk. The investigating officer recorded the statements of all the accused who were in the hospital. After the death of Sudha Public Witness 17 had held an inquest and submitted his report. Public Witness 17 took care to send all the documents with the application for post-mortem to the police Surgeon. The dead body was received in the mortuary at 12 and the request papers, at 1 p.m. We fail to see how the learned Additional Sessions Judge had come to the conclusion that Public Witness 17 and Dr. Joseph had colluded with the accused. We see no taint in the investigation. Sub inspector Balwant Singh was cited as a witness but was not produced by the prosecution. He was an important witness and we find no reason why he was not examined by the prosecution. The crime team had reached the spot at 10.30 p.m. and held investigation. The prosecution has withheld a number of important witnesses from the Court. The accused were forced to examine Dr. Joseph and the driver of the taxi.

(118) The criticism by the learned Additional Sessions Judge regarding the investigation is contained in paras 70 to 77 of the judgment. We feel it necessary to touch some of the aspects of the criticism made by the learned judge. The Additional Sessions Judge in para 70, the relevant portion of which is reproduced observed as follows :- ".....The dying declaration reproduced hereinabove is very brief and even less than half in space than the enquiry statements of the accused persons, all purported to have been recorded on 1-12-1980 i.e. before the stroke of 12 in the night. This dying declaration does not give any other relevant facts as to when Sudha was married, how her relations with her husband and in-laws were, when she was expecting a child, who was helping her in the kitchen and how kerosene oil came to soak her clothes, gunny bag etc. The Investigating Officer was under a legal duty having known the presence of so much kerosene oil at the site and presence of kerosene oil on the burnt pieces of clothes and gunny bags to have confronted Smt. Sudha and I believe he must have done it to find an answer from Sudha. The fact that no such interrogation finds mention in the

written dying declaration proves the written dying declaration to be a mere concoction brought into existence much later. We have also to keep in our mind that next day at about noon, Jaspal Singh, a stamped and star witness had given his first information statement ruling out the possibility or existence of any other dying declaration. The Investigating Officer was under a duty to have confronted him that Sudha had made such a dying declaration and what he had to say about it."

(119) Sudha had admittedly sustained 70% burns and there can be little doubt that she must be in great pain and agony. Public Witness 17 on reaching the hospital rightly thought it advisable to record the statement of Sudha and P.W. 17 after obtaining a certificate from Dr. Joseph that Sudha is fit to make a statement recorded the statement Ex. Public Witness 9/DI of Sudha in the presence of the doctor.

(120) The criticism of the Judge is that the statement is very brief. According to the Judge Public Witness 17 should have enquired from Sudha when she was married, the state of her relations with her husband and in-laws, when she was expecting a child, who was helping her in the kitchen and how kerosene oil fell on her clothes and gunny bag. We doubt if it would have been proper at all for Public Witness 17 to have interrogated the deceased looking to the condition in which she was. The purpose of recording the statement of Sudha was to find out the circumstances in which she had sustained the burns. If Sudha was in a position to make a detailed statement and she had made such a statement Public Witness 17 was duty bound to record it. But we cannot think that in the circumstances of this case there was any duty on Public Witness 17 to obtain a detailed statement from Sudha regarding her married life, her relations with the in-laws, etc. The dying declaration is normally a brief document. A lengthy dying declaration is always viewed by the courts with suspicion.

(121) The second reason given by the learned Judge that Public Witness 17 should have confronted Jaspal Singh with the dying declaration Ex. Public Witness 9/DI is not understandable. We fail to see how it would have helped if P.W. 17 had confronted Public Witness I with the earlier written dying declaration said to have been made by Sudha. The witness would have simply expressed his ignorance about it and maintained that his statement is true. The function of an investigating officer is to collect all the material and then it is for the court to decide what is true and what is false. Any such confrontation would have been meaning less and open to criticism by the courts.

(122) The learned Additional Sessions Judge in para 73 has disbelieved that the investigating officer was in the hospital between 11.20 pm. and 12 midnight. Part of the criticism contained in this paragraph has been dealt with by us earlier and we need not repeat the same. The learned Judge has observed that Public Witness 14 who had photographed the scene of crime has deposed that he had reached the spot at 11.30 p.m. and at the instance of Sub-Inspector Surender Dev had taken five photographs. According to the Judge if the above statement is correct then Surender Dev could not have been in the hospital at 11.20 p.m. Public Witness 14 Sushil Kumar gave evidence that he had reached the spot on the 1st December at the instance of Sub-Inspector Surender Dev and had taken five photographs at 1 1.30 p.m. In cross-examination the witness stated that he had stayed at the house for about half an hour and that Sub-Inspector of crime branch had accompanied him when he took the photographs Public Witness 14 never stated that Sub-Inspector Surender Dev was present

when he took the photographs. In fact, his statement is that Sub-Inspector of crime branch meaning the Sub-Inspector in charge of the crime team had accompanied him when he took the photographs. It is possible that Public Witness 14 may be making a mistake regarding the time he reached the spot and he may have gone there along with the crime team. The crime team had reached at 10.30 p.m. (123) We have earlier observed and we repeat that Public Witness 3 has in clear words stated that she was in the hospital till about 12 mid-night or I and that a police officer had come, talked to Sudha and recorded something and the doctor and the nurse were present at that time. The above statement puts it beyond any controversy that Sub-Inspector Surender Dev was in the hospital by about 11.30 p.m. The truth has trickled in the above statement of P.W. 3.

(124) The learned Additional Sessions Judge in para 76 had thrown doubt on the veracity of the investigation on the ground that though Public Witness 17 alleges that he had seized the articles from the spot before returning to the Police Station at 1.15 am. and deposited the same in the Malkhana the entry in the Malkhana register shows that the seized articles were deposited sometime after 1 p.m. on 2nd December 1980. The learned Judge has reached this conclusion on the ground that in the entry Ex. Public Witness 20/A the number of the first information report and the section under which the case is registered is mentioned. The learned Judge goes on to say that the above showed that the case property was in the possession of the investigating officer and he had deposited the case property only after the case was registered and that the blanket which had not formed part of the case property was planted by P.W. 17.

(125) We regret to say that the above observation and the conclusion of the learned Judge are not borne out by the record. P. W.I 7 has testified that after recording the statement of Sudha Goel he had gone back to the police station and before that he had taken the articles lying at the site into his possession and deposited the case property in the Malkhana. The investigating officer was not cross-examined regarding his above statement.

(126) Public Witness 20 Dhanender Kumar head constable gave evidence that he had been Malkhana register and that entries at serial No. 1339, in respect of the case property of Fir 609/80 under Section 304/34 of the Indian Penal Code of Police Station Ashok Vihar are in the hand writing of head constable Ho Ram who was working as Moharar Malkhana in December 1980. The witness deposed that Ex. Public Witness 20/A is a true copy of the said entry. The prosecution has not examined head constable Ho Ram with whom the case property was deposited. The entry Ex Public Witness 20/A shows the deposit of the case property by Surender Dev on 2nd December 1980.

(127) We may point out that at the time the case property is alleged to have been deposited no case had been registered and, therefore, the entry in the Malkhana register may have been made later on. It is pertinent that in the seizure memo Ex. Public Witness 17/H the reference made is to daily dairy No. 17A dated 1/2 and December 1980. The learned Judge seems to be of the impression that in the seizure -memo the recovery of the blanket is not mentioned but this is not so. It is specifically mentioned at serial 'No. 3. We are gathering this impression from the following lines in the judgment just above para 77 but he had no option except to deposit the case property, as it is, plus planting a blanket which was not noticed by the crime team, as by that time he had already sent his



seizure memo Ex. Public Witness 17/H and the report of the crime team Ex. Public Witness 17/R". If the learned Judge meant what we are understanding he is clearly wrong. We find nothing suspicious in the recovery of the case property and its deposit in the Malkhana. We fail to understand why Public Witness 17 should plant the blanket in the recoveries made from the spot. The importance of planting the blanket could only be realised after Public Witness 17 had recorded the statement of Public Witness I Document Ex. Public Witness 17/H had left the hands of Public Witness 17 long before he recorded the statements of Public Witness s. 1, 2 and 5 Ex. Public Witness 17/H was sent along with the inquest papers. We have, in our experience, come across very few cases where an investigating officer took care to send all the important documents along with the inquest papers to the police Surgeon. This shows a fair investigation.

(128) We have dealt in detail with the entire investigation and we find nothing suspicious. The brief history (Ex. Public Witness 17/M) prepared by Public Witness 17 and sent along with the inquest report to the police surgeon in our view, is a testimony to the honest investigation. The said brief history was prepared by Public Witness 17 long before he recorded the statements of Public Witness s. 1, 2 and 5. It is possible that this document was prepared even before Public Witness 17 recorded the statement of Public Witness 4. We say this because the statement of Public Witness 4 was recorded at the spot after Public Witness 17 had completed the inquest which was gone in the hospital.. Public Witness 17 has in Ex Public Witness 17/M, noted all the facts that had come to light till he wrote the said document. Public Witness 17 has noted in the said document that a stove with a pot containing milk and covered with a lid was found. It was in undisturbed condition and probability of its having been planted subsequently cannot be ruled out. We venture to say that if Public Witness 17 was in collusion with the accused he would have never noted the above fact in the brief history. This small circumstance shows that Public Witness 17 was conducting the investigation honestly.

(129) From an examination of the record it is clear that the prosecution has led two sets of evidence; (1) that the deceased had made oral dying declarations that she was burnt by all the accused and (2) written declarations that she had caught fire while heating milk. There can be no doubt that each of the said two versions contradicts and strikes at the other and shows it to be unreliable; in these circumstances the court is left with no reliable and trustworthy evidence upon which the conviction of the accused can be sustained. (See Harchand Singh and another v. State of Haryana ).

(130) The charge against the accused was that they had pursuant to a common intention caused the death of Sudha Goel by setting her on fire and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The Learned Additional Sessions Judge has convicted all the accused of the offence under Section 302 with the aid of Section 34, Indian Penal Code The learned Judge has found that the crime was calculated and pre-planned. We do not agree in this finding of .the learned Additional Sessions Judge. On an appreciation of the evidence we are of the view that there was no pre-plan and whatever happened has happened between 8.45 and 9 p.m. Subhash is a married man with two small children. We fail to see why he would be a party to such a heinous crime. The unimpeachable evidence on the record is that Shakuntala Devi lived mostly in village Barot with her husband and two young unmarried daughters. She had come to Delhi only a day before the occurrence to help Sudha in the delivery of the child. It is impossible

to think and imagine that Shakuntala an aged woman of 53 would join hands for burning Sudha. The husbands of Public Witness s. 3 and 6 in clear words stated before the police that the relations of Sudha with her husband were cordial. Sudha was to deliver a baby within about a week of the occurrence. The arrangements for the delivery had been made sometime in November in St. Stephen hospital. Sudha was going regularly for check up to the hospital, so much so even 3 days before the occurrence she had gone with the wife of Subhash to St. Stephen hospital. This conduct is completely in keeping with the innocence and not guilt.

(131) We have a little earlier observed that whatever had happened between 8.45 and 9 p.m. Laxman says that he had gone with Gayatri to see her off at the bus stop. D.Ws. 3 and 4 support this plea of Laxman. We may notice here that in the dying declaration Ex. Public Witness 9/D I the deceased stated and after she had caught fire her mother-in-law and her Jeth who were present in the house had extinguished the fire by wrapping a blanket on her and they brought her to the hospital. The above statement does support the plea of Laxman.

(132) There is another small circumstance which supports the above dying declaration and which has been rejected by the Additional Sessions Judge as a fabrication and it is that a blanket was found at the spot. The evidence of Public Witness s. 1, 2 and 5 is that a blanket was brought by Public Witness 2 and Sudha was wrapped with that blanket and taken to the hospital wrapped in that very blanket. Subhash stated that he had also put a blanket on Sudha. We know nothing about the blanket with which Public Witness s. 1, 2 and 5 alleged to have wrapped Sudha. The blanket recovered from the spot could be the blanket which Subhash had brought and put on Sudha. We have earlier discussed in detail the recovery of blanket and rejected the finding of the learned Additional Sessions Judge that it is fabrication. Conclusion: "The sentence of death awarded to three persons including a woman in a wife burning case was given wide publicity both by the national and international news media. The verdict .of acquittal, which we are about to deliver, is bound to cause flutter in the public mind, more particularly amongst women social bodies and organisations. We are performing our constitutional duty. Judges have no special means of finding out the truth. We entirely depend on the evidence produced on the record and do our best to discover the truth within the limitations laid down by law. Judges are human beings and can err. The satisfying factor is that we are not the final court and there is a court above us and if our judgment is wrong it shall be set right. For the reasons stated we allow the appeal, set aside the conviction and sentence of the appellants and direct that they be released forthwith."

(133) The Reference is declined. Cr. M. 1848 of 83 : "Before we take leave of the case we may notice that Miss Rani Jethmalani moved an application for permission to intervene on behalf of Mahila Dakshta Samiti. We find no sufficient reason to allow a private party to intervene in these proceedings. The state is represented by Standing Counsel Shri Teja Singh Sodhi. The standing Counsel has addressed us at length and fully assisted the Court. However, looking to the keen interest shown by Miss Jethmalani we permitted her to address the Court. Mr. Teja Singh stated that it may be taken that Miss Jethmalani has assisted him in the case."

(134) We appreciate the anxiety displayed by some of the women organisations in causes of wife burning-a crime to be condemned by one and all if proved deserving the severest sentence. The evil

of dowry is equally a matter of concern for the society as a whole and should be looked upon contemptuously both on the giver and the taker. This evil is in vogue in our society since time immemorial and shall take time to be curbed. The social and economic conditions are main emebly of women desperation sometime compelling her to commit suicide. These evils prevailing in our society have to be fought at different levels. Once economic independence comes in women the evil of dowry will die a natural death. Without education economic independence cannot be achieved and, therefore, education at all levels of the society-upper class, middle class, lower class, is a must. We hear of no wife burning case in western countries, obviously because women there are economically independent.

(135) The Courts cannot allow emotional and sentimental feelings to come into the Judicial pronouncements. Once sentimental and emotional feelings are allowed to enter the judicial mind the judge is bound to view the evidence with a bias and in that case the conclusion may also be biased resulting in some cases in great injustice. The cases have to be decided strictly on evidence howsoever cruel or horrifying the crime may be. All possible chances of innocent man being convicted have to be ruled out. There should be no hostile at mosphere against an accused in Court. A hostile at mosphere is bound to interfere in an unbiased approach as well as a decision. This has to be avoided at all costs. We are sorry for the above diversion but it has become necessary in this case.