



2026:AHC:120629-DB

A.F.R.

RESERVED

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4280 of 2011

Pawan Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Abhishek Sharma, Pankaj Kumar Srivastava, Ram Ashish Pandey
Counsel for Respondent(s)	: Aditya Kumar Misra, Aditya Kumar Tripathi, Govt. Advocate

Court No.43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.**

(Per : DR. AJAY KUMAR-II, J.)

1. The instant Criminal Appeal has been directed against the judgment and order dated 07.07.2011 / 11.07.2011 passed by Additional Sessions Judge / Special Judge (S.C./S.T. Act), Etawah in Sessions Trial No.394 of 2008 (State Vs. Pawan Kumar) arising out of Case Crime No.90 of 2008, under Sections 452, 354, 302 IPC, Police Station - Ekdil, District Etawah convicting and sentencing the appellant under Section 302 I.P.C. for life imprisonment and a fine of Rs. Rs.10,000/- with stipulation of default clause, under Section 452 IPC for seven years rigorous imprisonment and a fine of Rs.5000/- with stipulation of default clause and under Section 354 IPC for two years rigorous

imprisonment and a fine of Rs.2000/- with stipulation of default clause. All the sentences were directed to run concurrently.

2. Prosecution story, in nutshell, as unfolded in written report (Ex.Ka.-1), is as follows:

On 02.04.2008 at about 12:00 Noon, when [REDACTED], daughter of the complainant Santosh Kumar, aged about 16 years and a student of class XI returned home from school, kept her bag and was changing her clothes and the younger son of the informant namely, Vikas aged about 13 years was at home, the accused Pawan Kumar entered into the house of the complainant through the roof of the neighbour and started outraging the modesty of the daughter of the complainant. On being objected, he became annoyed. The son of the informant, who was outside the house came inside, to which **the accused Pawan picked the kerosene container, poured it on [REDACTED], lit the matchstick, set her ablaze and fled away from the roof of the house.** The son of the informant, who witnessed the incident, started shrieking, on which the neighbour Smt. Urmila came at the spot and extinguished the fire that broke out in the roof of the house. At the time of incident, the complainant was working as a labourer along with his wife. Urmila told that he had seen Pawan Kumar running from the place of incident.

3. On the basis of written report (Ex.Ka.-1), on 02.04.2008 at 16:30 hours, Chik First Information Report (Ex.Ka-5) as Case Crime No.90 of 2008, under Sections 354, 452, 307 IPC was registered against the accused at Police Station - Ekdil, District Etawah.

4. The complainant immediately took his daughter in burnt condition to Moti Jheel Hospital, Etawah by rickshaw and got her admitted there, where she was medico legally examined. On 02.04.2008 itself, the statement / dying declaration of the victim (Ex. Ka.3) was recorded by the Tehsildar. He also took her signature

over the same. Victim was conscious at the time of statement. On the very next day her daughter was referred to Kanpur Ursala Hospital, where she remained admitted for 6 - 7 days and during treatment, she took her last breath.

5. On 10.04.2008 at 3:20 P.M., the autopsy of the deceased [REDACTED] was performed by Dr. V.P. Chaturvedi, who found following injuries on her person :

(i) Superficial to deep burn injuries all over the body except some parts of chest, stomach, knee joints, legs and soles were saved from burning.

As per opinion of the Doctor, the cause of death of the deceased was due to septicemia, as a result of ante-mortem burn injury. The postmortem report is Ex. Ka.-17.

6. Sub Inspector Sajjan Singh P.W.6 started the investigation and after inspection of the spot, prepared the site plan (Ex.Ka.-7). He recorded the statements of witnesses Kiran, Urmilla Devi, Vikas, Satya Prakash, Raghuveer and Amar Singh. Thereafter he recorded the injury report of the victim in case diary and took remand of the accused on 20.04.2008. After the death of victim, inquest report was prepared and postmortem was performed. Thereafter, Investigating Officer recorded the proceedings of inquest in case diary and also recorded the statements of witnesses of inquest. In G.D. No.29 dated 22.04.2008 time 18:10 hours, Section 302 IPC was added and thereafter he handed over the investigation to Station House Officer. The then Station Officer Pradeep Kumar Sharma took over the investigation and after perusal of the case diary and conclusion of the investigation, submitted charge-sheet (Ex.Ka.-16) against the accused. Thereafter cognizance was taken upon the said charge-sheet and the case was committed to the Court of Sessions.

7. Accused appeared before the Court and after hearing both the parties, charges were framed under Sections 452, 354, 302 IPC

against the accused. The accused pleaded not guilty and claimed to be tried.

8. Trial started and in order to prove it's case, the prosecution adduced P.W.1 Santosh Kumar, complainant (father of the deceased), P.W.2 Vikas (brother of the deceased), P.W.3 Panna Lal (Tehsildar, who recorded the dying declaration of the deceased), P.W.4 Dr. V.S. Agnihotri (who prepared injury report of the victim at District Hospital, Etawah), P.W.5 Virendra Pratap Singh (Head Moharrir, P.S. Ekdil), P.W.6 S.I. Sajjan Singh (Investigating Officer, who inspected the spot, prepared site plan and recorded the statements of the witness and prepared other papers), P.W.7 S.I. Girja Shanker (performed the inquest and prepared other papers), P.W.8 S.I. Pradeep Kumar (subsequent Investigating Officer who investigated the matter and submitted charge-sheet against the accused) and P.W.9 Dr. V.P. Chaturvedi (conducted the post-mortem of the deceased).

9. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report / tehrir dated 02.04.2008 (Ex.Ka.-1), inquest report dated 09.04.2008 (Ex.Ka.-2), dying declaration dated 02.04.2008 (Ex.Ka.-3), injury report (Ex.Ka.-4), chik first information report (Ex.Ka.-5), G.D. report dated 02.04.2008 (Ex.Ka.-6), site plan (Ex.Ka.-7), photo nash (Ex.Ka.-8), G.D. Entry dated 22.04.2008 (Ex.Ka.-9), sample seal (Ex.Ka.-10), challan nash (Ex.Ka.-11), Application to S.S.P. (Ex.Ka.-12), Letter to C.M.O. (Ex.Ka.-13), Report (Ex.Ka.-14), inquest report (Ex.Ka.-15), charge-sheet (Ex.Ka.-16) and postmortem report (Ex.Ka.-17).

10. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version

of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated. Investigation was not done in fair and impartial manner. Accused also pleaded that the statement of the victim was wrongly recorded, as she (victim) was not in a position to speak and did not say anything.

11. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

12. Heard Sri Abhishek Sharma, Amicus Curiae for the appellant, Sri Aditya Kumar Tripathi, counsel for the complainant and Sri Virendra Kumar Pal, the A.G.A. for the State.

13. The Amicus Curiae appearing for appellant argued that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that the learned trial court has misinterpreted the evidence available on record. No ingredient to bring home the guilt of the accused under Sections 452, 354, 302 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial court misread the evidence and convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 2011 and the appellant is languishing in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

14. The Amicus Curiae for the appellant further submitted that the injuries sustained by the deceased did not result into her instantaneous death. If, for the sake of argument, it is assumed that appellant has committed the offence, in that case also no offence under Section 302 IPC is made out. This case can maximum travel up to the limits of offence under Section 304 IPC, because the deceased died after 7 days of the occurrence due to developing the infection in her burn-wounds, i.e., septicaemia. As per catena of judgments of Hon'ble Apex Court and this Court, offence cannot travel beyond section 304 IPC, in case the death occurred due to septicaemia. He further submitted that autopsy report also shows that cause of death was septicaemia as a result of ante mortem burn injuries.

15. The counsel for the complainant as well as the A.G.A. for the State vehemently opposed the submissions made on behalf of the appellant and submitted that PW-1, the father of the deceased and P.W.-2, the brother of the deceased have fully supported the prosecution case in their testimony. Other witnesses of fact have also corroborated the prosecution version. Severe burn injuries were found on the body of the deceased. Hence, while going through the evidence on record, it cannot be said that the offence under Sections 452, 354, 302 IPC is not made out against the appellant. The learned trial court has not committed any error in convicting and sentencing the accused- appellant under Sections 452, 354, 302 IPC. There is no merit in the appeal and the same is liable to be dismissed.

Analysis

16. In the light of above, following questions arise for consideration in present appeal :

(i) Whether the dying declaration of the deceased is reliable or not ?

(ii) Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

Oral Evidence on Record.

17. Informant Santosh Kumar, who is the father of the deceased [REDACTED], has been examined by the prosecution as P.W.1. He is not an eyewitness of the incident. However, in his deposition, he has stated that the incident is of 02.04.2008. He and his wife had gone for labour work. At around 12:00 noon, a boy named Chaman came to this witness and asked him to come to his home immediately as some untoward incident had happened. He immediately returned to his home on the motorcycle of Chaman and found his daughter [REDACTED], aged about 16 years, lying completely burnt. He immediately took [REDACTED] in burnt condition to Moti Jheel Hospital, Etawah by rickshaw and got her admitted. He asked his daughter [REDACTED] and his son Vikas regarding the incident on which, both of them have told him that when [REDACTED] had returned from school as usual and was changing her clothes, just then accused, who is present in Court, came down from roof of adjacent house through stairs and molested his daughter with bad intention. When his daughter tried to save herself and resisted, the accused poured kerosene oil upon her and thereafter set her on fire with a matchstick. At that time his son had also entered the house. Accused Pawan Kumar fled away from the roof by taking stairs. Hearing the noise of his son Vikas, their neighbours Satya Prakash, Urmila Devi and others also came on spot. After getting his daughter [REDACTED] admitted to Moti Jheel Hospital, he came back to Etawah Court where he got typed his written report / Tehrir from typist. Aforesaid

written report / Tehrir was read out to him and thereafter he signed the same. This witness has proved the written report / Tehrir as Ex.Ka.-1. He gave the written report / Tehrir to Senior Superintendent of Police, Etawah. His daughter was referred to Ursala Hospital, Kanpur on the next day of her admission where she remained admitted for about 6 – 7 days and died therein. On the second day of [REDACTED]'s death, he was made the witness of the inquest along with Arvind, Raju and his wife Kiran Devi. He signed on the inquest report and has proved inquest report as Ex.Ka.-2. He had also shown the scene of crime to the Investigating Officer. He also identified signature of his daughter [REDACTED] Kumari on Paper No.10-Ka, which is the dying declaration of his daughter.

18. The cross-examination of P.W.1 was deferred on 20.01.2009 and was cross-examined at length on 03.03.2009. As this witness is not an eyewitness of the incident, therefore, his all cross-examination is with respect to timing of his arrival on the spot. However, in his cross-examination, he has confirmed that information of the incident was given to him by Chaman. He has also confirmed that when he arrived in his house, he found his daughter completely burnt. This witness is the informant and has proved his written report / Tehrir as Ex.Ka.-1 as well as inquest report as Ex.Ka.-2. This witness has also proved the fact that on his arrival in his home on the date of incident, he found his daughter lying in a burnt condition.

19. The younger brother of the deceased namely, Vikas has been examined as P.W.2. The trial Court after recording his age and putting some questions, came to the conclusion that he understands right and wrong and thereafter recorded its satisfaction that witness is capable of giving testimony. In his examination-in-chief, P.W.2 has stated that on the date and time of incident, he was in the gallery of his house. He did not go to school as he was unwell on that day.

Both of his parents had gone to work. His younger brother, aged about 2½ years at that time, was with him. His sister [REDACTED], who was aged about 16 years at that time, had returned from the school and was changing her clothes inside the room. On hearing shrieks of his sister [REDACTED], he went inside and saw that accused Pawan Kumar was molesting his sister and his sister was resisting, just then accused poured kerosene oil from a container kept there, on his sister and set her on fire with a matchstick. After setting her ablaze, accused went to the roof taking stairs and ran away from there. His sister [REDACTED] in a burning state came out of the room and went to the bathroom located in the courtyard. He tried to extinguish the fire by sprinkling water and raised alarm, then their neighbours Urmila Devi, Satya Prakash and other villagers came on spot and extinguished the fire. Chaman of his village brought his father on his motorcycle. Thereafter his father took his sister to the hospital. His sister [REDACTED] died in Kanpur Hospital about seven days after the burning. Accused Pawan Kumar's house is situated at a distance of 5 - 6 houses from his house. Accused Pawan Kumar is present in Court, whom he knew and identified.

20. On the request of defence, the cross-examination of P.W.2 was deferred, however, an adjournment application was moved, which was rejected. No cross-examination was done, therefore, cross-examination of this witness was closed. This witness was again recalled on 10.02.2010, however, no one came to cross-examine this witness. His cross-examination was again closed. On the application of defence, this witness was again recalled and his cross-examination was concluded on 14.07.2010. P.W.2 in his cross-examination has stated that on the date of incident, he had fever and, therefore, he was at home. He was cross-examined regarding the place of incident and its directions. He, in his cross-examination, again affirmed that his sister came from school and

was changing her clothes when accused Pawan Kumar came there. Before this incident, Pawan Kumar had never come to his house. He came to know about it when the noise started. Pawan Kumar was molesting his sister. When he reached, Pawan ran away after setting her sister ablaze. Therefore, this witness has confirmed the prosecution story in his cross-examination as well.

21. The then Naib Tehsildar, Etawah Pannalal P.W.3 in his deposition has stated that on 02.04.2008, he had recorded the dying declaration of [REDACTED] daughter of Santosh on the direction of S.D.M., Etawah. [REDACTED] was in a very burnt state. Whatever was stated by [REDACTED], he had recorded the same. He started recording her statement on 02.04.2008 at 2:30 P.M. and concluded the same at 2:46 P.M. After recording her statement, he obtained the signature of [REDACTED]. He also obtained the fitness certificate from Emergency Medical Officer, Etawah that injured / victim is in a fit state to give her statement and only thereafter he recorded her statement. After recording the statement of the injured / victim, he again obtained certificate from the same Medical Officer that she was in a fit state. This witness has proved the dying declaration of the deceased as Ex.Ka.-10. In spite of giving opportunity to the defence, no one turned to cross-examine this witness, therefore, his cross-examination was closed. However, on the application of defence, this witness was also recalled for cross-examination and in his cross-examination done on 21.11.2009, this witness has stated that when he arrived in hospital for recording the statement, family members of the victim were there, however, he had sent them outside. He had put questions to the victim to which she had answered. However, he had not recorded the dying declaration in question - answer form. The victim was promptly giving answers to the questions asked to her and was not taking time in giving the

answers. This witness has proved the dying declaration of the deceased.

22. Dr. V.S. Agnihotri P.W.4 medico legally examined the deceased when she was admitted in District Hospital, Etawah on 02.04.2008 and prepared her medico legal examination report. This witness has proved the injury report of [REDACTED] as Ex.Ka.-4. He has found wounds of burn injuries, light on some places and dark on other places, both legs were positioned forward. Except knees, back side of both palms, some part of abdomen and head, the entire body was burnt. Colour was red and on some part blackening was present, hair of skull and eyebrows were singed. **Smell of kerosene oil was there on burn injuries.** Ulcers / sores were also present on some parts. The injured was conscious. Pulse and blood pressure was zero. Injuries were kept under observation and injured was admitted in the hospital. **In his opinion, [REDACTED] has sustained those burn injuries as a result of burning from kerosene oil on 02.04.2008 at 12:00 noon. This witness was not cross-examined by the defence.**

23. Head Constable Virendra Pratap Singh P.W.5, who was the scribe of the first information report, is a formal witness, who has proved the first information report as Ex.Ka.-5 and G.D. Report dated 02.04.2008 time 16:30 hours as Ex.Ka.-6.

24. Sub Inspector Sajjan Singh P.W.6 is the first Investigating Officer of this case, who after taking the investigation in hand inspected and prepared the site plan. He recorded the statement of various witnesses and took the accused on remand. When Section 302 I.P.C. was added after the death of deceased [REDACTED], he handed over the investigation to Station Officer of concerned police station. This witness has proved the site plan as Ex.Ka.-7.

25. Sub Inspector Girja Shanker Pandey P.W.7 conducted the inquest proceedings of deceased [REDACTED] and has prepared the

inquest report. He has proved various papers viz. Photo nash, G.D. Entry, sample seal, challan nash, Application to S.S.P., Letter to C.M.O., Report P.S. Kotwali, Kanpur Nagar as Ex.Ka.-8 to Ex.Ka.-14. This witness has also proved inquest report as Ex.Ka.-15 by verifying his signature. This witness has stated that Ex.Ka.-2 is already marked earlier on the inquest report.

26. The then Station Officer Pradeep Kumar Sharma P.W.8 concluded the investigation and submitted the charge-sheet, which has been proved by this witness as Ex.Ka.-16.

27. Dr. V.P. Chaturvedi P.W.9 is the autopsy surgeon, who has conducted postmortem examination of the deceased [REDACTED] and has proved the postmortem report as Ex.Ka.-17. Antemortem burn injuries found on the body of deceased and cause of death have already been mentioned in Para 5 of this judgment.

Question No.1 : Whether the dying declaration of the deceased is reliable or not ?

28. The then Naib Tehsildar, Etawah Pannalal P.W.3 has recorded the dying declaration of [REDACTED] on 02.04.2008 at 2:30 P.M. P.W. 3 in his deposition has categorically stated that prior to recording the dying declaration of [REDACTED], he obtained the fitness certificate from the Emergency Medical Officer that she is in a fit state to give statement. Only thereafter, he recorded her statement. He further deposed that after recording the statement of the injured / victim, he again obtained certificate from the same Medical Officer that she was in a fit state during recording of her dying declaration. Therefore, P.W.3, after obtaining the fitness certificate from the Emergency Medical Officer, started recording the statement of victim at 2:30 P.M. and concluded the same at 2:46 P.M. He, after recording the statement of victim, again obtained fitness certificate.

The dying declaration of the injured / victim [REDACTED] has been proved by this witness as Ex.Ka.-10.

29. Before going into the submissions made by both the parties on facts and law it would be proper to have a glance over the dying declaration of the deceased recorded by Naib Tehsildar P.W.3 and proved as Ex.Ka.-3, which contains the certification by Emergency Medical Officer, Sadar Hospital, Etawah regarding the medical fitness of the victim both prior to and after recording the dying declaration. The dying declaration of the victim is reproduced here-in-below :-

"बयांन कंचन पुत्री संतोष उम्र लगभग १६ वर्ष निवासी वमनपुरा ने किया की हम पढ़ने के लिये सुबह संत कबीर पब्लिक स्कूल नगला खादर में पढ़ने के लिये गई हुई थी जब हम घर लौट कर आई तो माँ व पिता घर पर नहीं थे मैं अपने कपड़े बदलने लगे तो पड़ोस के माकन जो मेरे पिता का मकान है उसके मकान के दक्षिण को दीवाल से ज़ालिम का मकान है उसी दीवाल से एक लड़का चढ़ आया और छीना झपटी करने लगा जब मैंने विरोध किया और चिल्लाई तो पवन पुत्र रामहंस ने आग लगा दिया और उसी रास्ते जिस रास्ते से आया उसी से भाग गया जब हम चिल्लाई तो पड़ोस से जो चाची थी वह छत से आई और मोहल्ले वाले आये जिन्होंने आग बुझाई मेरे पिता से किसी की कोई दुश्मनी नहीं है और न ही मैं किसी को फ़साने का बयांन दे रही हूँ "

The dying declaration of the victim, originally made in hindi language is translated / reproduced in english as under :

"The statement was made by [REDACTED], daughter of Santosh, aged approximately 16 years, resident of Vamanpura, stating that : I had gone to study at Sant Kabir Public School, Nagla Khadar in the morning. When I returned home, my mother and father were not at home. I started changing my clothes. Then, from the south wall of the neighbor's house (which belongs to my father and is adjacent to Zalim's house), a boy climbed over and began scuffling with me. When I resisted and screamed, Pawan, son of Ramhans, set me on

fire and fled back the same way he had come. When I screamed, an aunt from the neighborhood came from the roof, and other people from the locality arrived and extinguished the fire. My father has no enmity with anyone, nor am I giving this statement to falsely implicate anyone.”

30. A dying declaration is admitted in evidence on the principle of “Nemo moriturus praesumitur mentiri i.e. a man will not meet his maker with a lie in his mouth. Dying declaration does not require any corroboration as long as it creates confidence in the mind of the Court and is free from any form of tutoring. In **Lakhan V. State of MP(2010) 8 SCC 514**, the Apex Court in para no.9 of it’s judgment has observed as under :-

“9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means ‘a man will not meet his Maker with a lie in his mouth’. The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as ‘the Evidence Act’) as an exception to the general rule contained in Section of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.”

31. In **Khushal Rao v. State of Bombay AIR 1958 SC 22**, **Kusa v. State of Orissa (1980) 2 SCC 207** and in **Meesala Ramakrishnan v. State of A.P. (1994) 4 SCC 182 (SCC p. 183, para 4)** it has been held that the law is well settled that the conviction can be founded solely on the basis of dying declaration, if the same inspires full confidence.

32. In **Ranjit Singh v. State of Punjab (2006) 13 SCC 130**, it has been held that: (SCC p. 134, para 13)

“conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards the correctness or otherwise of the said dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence.”

33. The Apex Court in **Nanhau Ram v. State of M.P. 1988 Supp SCC 152** has held that normally, the court, in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration, looks up to the medical opinion. But, where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. While dealing with the evidence of the declarant's mind, the Constitution Bench in **Laxman v. State of Maharashtra (2002) 6 SCC 710**, has laid down thus: (SCC pp. 713-14, para 3)

“The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite.”

34. In the **State of MP V. Dal Singh (2013) 14 SCC 159**, an issue arose regarding the acceptability of dying declaration where the victim suffered from 100% burn injuries and had placed her thumb impression on her statement and the ridges and curves were clearly

found on the thumb impression. The Apex Court in *para 30* of this judgement has observed that

“There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract can follow due to the inhalation of smoke.”

35. The Apex Court in para 16 of **PV Radhakrishnan V. State of Karnataka (2003) 6 SCC 443** has observed that

“The residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration and the improbability of its recording. There is no hard-and-fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making the dying declaration.”

36. In **Ram Bihari Yadav V. State of Bihar & Ors. MANU/SC0302/998** in para 9, the Apex Court has held that

“Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above-mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.”

37. The Hon’ble Apex Court in para 22 of **Atbir V. Govt. (NCT of Delhi) (2010) 9 SCC 1** has observed as under :

“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.*
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
- (viii) Even if it is a brief statement, it is not to be discarded.***
- (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
- (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”*

38. The Apex Court in **Paniben v. State of Gujarat (1992) 2 SCC 474** has laid down some factors, which can be considered to determine when a dying declaration should be accepted. The relevant para 18 of this judgment is reproduced herein below :-

- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])*
- (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164].)*
- (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994].)*
- (iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])*
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])*

- (vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])*
- (vii) *Merely because a dying declaration does not [Added by official Corrigendum No. F.3/Ed. B.J./107/2003 dated 28-10-03] contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617].)*
- (viii) *Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505].)*
- (ix) *Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912].)*
- (x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519].)*
- (xi) *Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839]."*

39. The Hon'ble Apex Court in **Irfan alias Naka Vs. State of Uttar Pradesh, 2023 SCC OnLine 1060** in para 62 has affirmed the aforesaid factors for determining when a dying declaration should be accepted. However, the Apex Court has made it clear that these factors will only affect the weight of the dying declaration and not its admissibility. In this case, there were two dying declarations, which were not found consistent and were rather found contradictory to the oral evidence on record.

40. The Apex Court in **PV Radhakrishnan V. State of Karnataka (2003)6SCC443** in para 12 and in **Naeem V. State of UP (2024) 3 SCR 36** in para 6, has observed that a dying declaration carries great evidentiary weight but lacks the safeguard of cross-examination, so courts must ensure it inspires full confidence. The declaration must be free from tutoring, prompting, or imagination,

and the deceased must have been in a fit mental state with a clear opportunity to identify the assailant. Once the court is satisfied of its truth and voluntariness, a conviction can be based solely on it without corroboration. The rule requiring corroboration is not an absolute rule of law but merely a rule of prudence. Thus, a credible and reliable dying declaration alone is sufficient to sustain a conviction.

41. The Apex Court in **Surajdeo Ojha & Ors. V. State of Bihar 1980 (Supp) SCC 769** in para 3 observed that

“Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself, appears to be the guarantee of its truth. Even the Doctors who examined the deceased do not say, that having regard to the injuries, the deceased would have become unconscious immediately. In this view of the matter we are fully satisfied about the truth of the dying declaration.”

42. Law thus can be summarized that a credible and reliable dying declaration alone is sufficient to sustain a conviction. The rule requiring corroboration is not an absolute rule, but merely a rule of prudence. A dying declaration, even if brief or short in nature, holds significant evidentiary value under Indian law and is well recognized as an exception to the hearsay rule under Section 32(1) of the Indian Evidence Act, 1872. It is well settled that the value of a dying declaration depends not upon its length but upon its truthfulness, clarity, and the conscious state of the declarant. The absence of elaborate detail does not diminish its legal sanctity. Whenever there is a brief dying declaration it is indicative of the fact that it is neither the result of tutoring nor prompting. The shortness of the statement is itself a guarantee of its veracity.

43. Generally, the dying declaration ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the

maker the mere fact that it is not in questions-answer form cannot be a ground against its acceptability or reliability.

44. If a person recording the dying declaration finds the victim / deceased to be in a fit physical and mental condition to make a statement, absence of fitness certificate in respect of such state of deceased is not essential in every case. The percentage of burns marks on the deceased is not a determinative factor in assessing the credibility of a dying declaration, as mental fitness depends on various factors such as the nature and impact of injuries, not solely on the extent of physical harm. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted. Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted.

45. In the light of above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true

and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

46. The incident happened on 02.04.2008 at about 12:00 noon, immediately thereafter injured / victim [REDACTED] was admitted to District Hospital, Etawah where she was medico legally examined by Dr. V.S. Agnihotri P.W.4 at 12:15 P.M. and prepared her injury report Ex.Ka.-4. Thereafter, Naib Tehsildar Panna Lal P.W.3 recorded her dying declaration at 2:30 P.M. Meaning thereby, the dying declaration of the victim was recorded within 2 hours 30 minutes of the occurrence of the incident. The victim was referred to Ursala Hospital, Kanpur on the next day of her admission where she remained admitted for 6 - 7 days and died therein during the course of treatment. [REDACTED] in her dying declaration has specifically stated that she was burnt by Pawan son of Ramhans. She in her dying declaration has also briefly and precisely stated the manner of incident that when she returned home after attending her school and was changing her clothes, one boy entered into their house and started scuffling with her, to which she resisted and raised noise, on this Pawan son of Ramhans set her on fire and ran away. Victim's dying declaration is a brief statement in which she has not only named her assailant, but even the manner of incident has been precisely stated by her. P.W.3 has proved the aforesaid dying declaration and it has come in his deposition that he obtained requisite fitness certificates from the Emergency Medical Officer both prior to and after recording of dying declaration of the victim. The veracity of her dying declaration further strengthens the fact that Dr. V.S. Agnihotri found burn injuries on the body of the victim with smell of kerosene oil on her burn injuries. Therefore, we are of the opinion that prosecution has been able to prove the dying

declaration of [REDACTED] as Ex.Ka.-10 and the same is brief, precise and reliable. **Accordingly, Question No.1 is answered in the affirmative.**

Question No.2 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

47. In the present case, prosecution has successfully proved the dying declaration of the deceased Ex.Ka.-3. As per the aforesaid dying declaration, it was accused Pawan Kumar, who has burnt her. The aforesaid dying declaration has been found by this Court to be reliable and conviction of the appellant can be sustained only on the strength of aforesaid dying declaration without there being any corroboration. However, P.W.2 Vikas, who is the younger brother of the deceased [REDACTED], has also deposed regarding the incident. Vikas P.W.2 in his deposition has stated that on the date of incident, he was in his house. He, on hearing shrieks of his sister [REDACTED], went inside and saw accused Pawan Kumar molesting his sister. His sister was resisting and just then accused Pawan Kumar poured kerosene oil from a container upon his sister and set her on fire with the matchstick. Accused Pawan thereafter ran away from the spot.

48. Vikas P.W.2 in his deposition has stated that on the date of incident, he tried to extinguish the fire of his sister by sprinkling water and also raised alarm, then their neighbours Urmilla Devi, Satya Prakash and others came on spot. However, victim in her dying declaration has clearly stated that on her shrieks, one auntie from their neighbourhood came from the roof and other people from the locality also arrived and extinguished her fire. It is important to observe here that victim has not stated anything about the presence of her younger brother Vikas on the spot or even at the time of extinguishing her fire. Victim in her dying declaration has

stated that accused was scuffling with her. However, Vikas P.W.2 has deposed that accused was molesting her. We have already found the dying declaration to be truthful and, therefore, when deposition of P.W.2 is tested in the light of specific averments made in the dying declaration of the deceased, a serious doubt arises in our mind regarding the presence of P.W.2 on the spot at the time of incident. We have carefully perused and evaluated the deposition of P.W.2 in the light of dying declaration of the deceased and are of the opinion that the presence of P.W.2 on the spot at the time of incident is doubtful, therefore, his deposition cannot be relied upon.

49. Informant Santosh Kumar P.W.1 is the father of the deceased, who in his deposition as P.W.1, has categorically stated that when he arrived on spot, he found his daughter [REDACTED] lying completely burnt. Therefore, the aforesaid evidence of P.W.1 also partially corroborates the prosecution version.

50. Ocular as well as documentary medical evidence prove it on record that the deceased [REDACTED] sustained burn injuries and she died due to septicemia as a result of antemortem burn injuries. Therefore, ocular as well as documentary evidence corroborate this part of the prosecution story that the deceased suffered burn injuries on the date and time of the alleged incident and she finally succumbed to her injuries due to septicemia, as a result of antemortem burn injuries.

51. Site plan Ex.Ka.-7 also proves that towards southern side of the house of informant, house of Zalim Singh is there, from where appellant - convict Pawan Kumar climbed over and thereafter ran away from the same route after committing the crime, which further corroborate the contents of dying declaration of deceased.

52. In the totality of the circumstances, the prosecution has been able to successfully prove the dying declaration of the deceased, which is a reliable piece of evidence, which in the present case is in

itself sufficient to convict the appellant. However, in the instant case, the aforesaid dying declaration also finds partial corroboration from the deposition of P.W.1. The ocular as well as documentary medical evidence strengthen the prosecution version that the deceased sustained burn injuries on her body at the time of incident and ultimately she died due to septicemia, which was a result of burn injuries. It is also clear from the dying declaration (Ex. Ka.3) of the deceased that no allegation whatsoever regarding molestation has been made by the victim and this Court has found the presence of P.W.2 on the spot at the time of incident as doubtful, therefore, the prosecution has not been able to prove the charge of molestation framed against the appellant - convict. Prosecution has been able to prove the charge of house-trespass passed against the appellant - convict and the aforesaid house-trespass by the appellant - convict has been committed for assaulting the deceased and she was even set on fire. Therefore, the prosecution has been able to prove the charge under Section 452 I.P.C. against the appellant - convict. Therefore, we are of the opinion that in the present case, prosecution has been able to prove its case against the appellant - convict beyond reasonable doubt so far as charges of culpable homicide and criminal trespass are concerned, however, the prosecution has not been able to prove the charges under Section 354 I.P.C. Question No.2 is, therefore, accordingly decided.

Question No.3 : Whether the present case is a case of culpable homicide not amount to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

53. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not

amounting to murder in **Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500** in paras 39-44 has held that-

“39” *This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between ‘murder’ and ‘culpable homicide not amounting to murder’ has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-*

<u>Section 299</u>	<u>Section 300</u>
<i>A person commits culpable homicide if the act by which the death is caused is done-</i> <i>(a)with the intention of causing death; or</i> <i>(b)with the intention of causing injury as is likely to cause death; or</i> <i>(c) with the knowledge that the act is likely to cause death</i>	<i>Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done-</i> <i>Intention</i> <i>(1)with the intention of causing death; or</i> <i>(2)with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or</i> <i>(3)with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or</i> <i>Knowledge</i> <i>(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above</i>

“40”*Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the ‘intention to cause death’ is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the of ender's knowledge of the likelihood of such injury causing the death of the particular victim,*

is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

“41” Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299 of the IPC, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word ‘likely’ in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words “bodily injury.....sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.

“42” For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of *Rajwant Singh v. State of Kerala*, AIR 1966 SC 1874, is an apt illustration of this point.

“43” The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in *Virsa Singh* (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

“44”Analysing clause thirdly and as to what the prosecution must prove, it was held in *Virsa Singh* (supra) as under:-

“15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended...

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

It was further observed as under:-

“20. ... If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.” (Emphasis supplied)

The Apex court also observed in para 66 that

“66”Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

“66.1”When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

“66.2” Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. **It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC.** Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. **It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.**

“66.3” To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is ‘guilty intention,’ whereas the second part would apply when there is no such intention, but there is ‘guilty knowledge’.

“66.4” Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

“66.5” Section 304 of the IPC will apply to the following classes of cases:

- (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,
- (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,
- (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

“66.6” To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of

the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

“66.7” The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

“66.8” The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC

“66.9” The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

“66.10” Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

“66.11” When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

“66.12” Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

“66.13” In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

54. In the present case, in the statement recorded under section 313 Cr.P.C. in the year 2011, the accused has stated his age to be about 21 years. Therefore, at the time of commission of offence i.e. 02.04.2008, the appellant was about 18 years of age and the deceased was a school going girl of about 16 years at the time of incident. The prosecution has successfully proved that the deceased was set on fire by the appellant - convict. The victim [REDACTED] sustained extensive burn injuries and she died after 7 days of the incident due to septicemia, as a result of ante mortem burn injuries. Therefore, it is clear that burn injuries were caused to the deceased by appellant with the knowledge that his act is likely to cause death. Any reasonable person by any stretch of imagination can easily come to a conclusion that burning someone alive is likely to cause death.

55. In the present case, P.W.4 although found smell of kerosene oil on burn injuries, but no container of kerosene either empty or partially filled was found on spot. Moreover, no traces of kerosene oil were found on spot by the Investigating Officer.

56. It is an admitted fact that the deceased died after 7 days of burning and her postmortem report (Ex. Ka.-17) clearly goes to

show that she died due to septicemia as a result of antemortem burn injuries. Autopsy Surgeon Dr. V.P. Chaturvedi P.W.9 in his deposition has affirmed the aforesaid finding recorded by him in postmortem report (Ex.Ka.-3) of the deceased. It is crystal clear that death of deceased was a homicidal death. Now the question remains that whether homicidal death of the deceased would fall within the four corners of murder or culpable homicide not amounting to murder. In the present case, there is no such evidence that appellant - convict was previously known to the deceased or her family members. Therefore, it is not a case of any previous enmity or earlier harassment. The deceased in her dying declaration has not stated any allegation of her molestation at the hands of appellant - convict. The victim has clearly stated that the appellant - convict was scuffling with her. The victim has stated that when she resisted and screamed, then appellant - convict set her on fire. The victim has not stated that how she was set on fire i.e. whether any kerosene oil or any other inflammable material was poured upon her or not.

57. We have carefully gone through the entire dying declaration of the deceased, which is the principle foundation for conviction of the appellant - convict. However, we are of the opinion that that the incident had happened in a spur of moment, that too during scuffle with no prior bad intention or planning. In this background, when evidence is again scrutinized, the victim was immediately shifted to hospital for treatment and she ultimately died due to septicemia as a result of burn injuries. As the death caused by the appellant - convict was not a premeditated and there being no previous enmity or instances of earlier harassment, therefore the present case falls under clause (c) of Section 299 I.P.C. We have carefully gone through the entire evidence and thus are of opinion that in the present case none of clause of Section 300 I.P.C. is attracted in the peculiar facts of the present case, therefore the offence committed

by the appellant - convict falls under Part - II of Section 304 I.P.C. Resultantly, we are of the view that present appeal is liable to be partly allowed and the conviction of the appellant under Section 302 I.P.C. is liable to be converted into conviction under Section 304 Part-II I.P.C. However, fine amount imposed by learned trial Court is liable to be maintained. The appellant - convict is in jail for the last more than 18 years.

58. We have already arrived on the conclusion that prosecution has not been able to prove the charge under Section 354 I.P.C. against the appellant - convict. Therefore, the appellant - convict is liable to be acquitted so far as offence under Section 354 I.P.C. is concerned.

59. Accordingly, present Appeal is **partly allowed** and the appellant is convicted for the offence under Section 304 Part-II I.P.C. and is sentenced to undergo maximum imprisonment provided therein i.e. 10 years imprisonment without remission and is acquitted for the offence under Section 354 I.P.C. However, fine and default sentence imposed upon the appellant - convict by learned trial Court under Section 302 I.P.C. is maintained under Section 304 Part-II I.P.C. with default sentence. Therefore, a fine of Rs.10,000/- is imposed upon appellant under Section 304 Part-II I.P.C. and in case of his failure to deposit the same, he shall undergo an additional imprisonment of one year. However, we affirm the conviction and sentence imposed upon the appellant by learned trial Court under Section 452 I.P.C. along with the fine and sentence imposed under default clause. The appellant / convict is in jail for the last more than 18 years and as such has completed his sentence alongwith the default sentence for Section 304 Part-II and Section 452 I.P.C., therefore, he shall be set at liberty forthwith, if he is not wanted in any other case.

60. Let a copy of the judgment be provided immediately to the appellant through Superintendent Jail, free of cost.

61. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

62. Lastly, the Court records its word of appreciation for the able assistance rendered by Sri Abhishek Sharma, Amicus Curiae for the appellant, who assisted the Court in reaching to its logical conclusion. Sri Abhishek Sharma, learned Amicus Curiae for the appellant shall be paid Rs.15,000/- by the High Court Legal Services Committee as fee, if not already paid in this case and if any amount has already been paid to him, the same shall be adjusted.

May 26, 2026

ss

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)