



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 08th April, 2026
Pronounced on: 07th July, 2026

+ CRL.A. 181/2004
BABITA DAGAR

.....Appellant

Through: Mr. Ramesh Gupta, Sr. Adv.
with Mr. Bharat Sharma, Mr.
Shailendra Singh, Mr. K. R.
Dogra, Mr. Ishaan Jain, Mr.
Surya Pratap Singh, Mr.
Manender Singh, Mr. Ashish
Chandla, Mr. Uday Yadav,
Adv. and appellant in person.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for
State with Mr. Manvendra
Yadav, Mr. Atiq Ur Rehman,
Adv. and Insp. O. P. Vishnoi,
PS Najafgarh.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal is filed by the appellant against the judgment of conviction dated 09.02.2004 and the order on sentence dated 12.02.2004 passed by the learned Additional Sessions Judge, New Delhi [**“Trial Court”**], in Sessions Case No. 03/2002, arising out of FIR No. 186/2002 registered under Sections 302/34 of the Indian



Penal Code, 1860 [“**IPC**”] at Police Station Najafgarh.

Brief Facts

2. The prosecution case, in brief, is that on 04.04.2002, an information was received at Police Station Najafgarh that one woman had been set on fire in Gopal Nagar. The said information was recorded *vide* DD No. 12A. SI Amrit Lal along with Ct. Satish [PW-4] proceeded to House No. RZ 102-103, Phase-II, Gopal Nagar, Najafgarh, Delhi, where it was discovered that the injured, namely, Bimla Devi, had already been shifted to Safdarjung Hospital for treatment. The doctor prepared the medico-legal case report [“**MLC**”] of the victim. Investigating Officer [“**IO**”], namely, SI Amrit Lal, reached the hospital and gave an application [Ex. PW-15/C] to the CMO, Safdarjung Hospital for permission to record the statement of the victim.

3. The doctor, upon being satisfied with the medical condition of the victim, declared her ‘fit for statement’ on the same day, that is, on 04th April, 2002 at 1:30 PM [Ex. PW-15/D]. IO SI Amrit Lal recorded the statement of the victim Bimla Devi [Ex. PW-16/C], wherein, she stated that she was married to one Anoop Singh about 11 years ago and has a daughter. Around 7-8 years ago, her husband Anoop Singh went missing and so the family got her married to Anoop’s younger brother, namely, Mr. Surinder Singh. She further stated that in the morning at about 10:30 AM, one Babita Dagar [appellant] R/o Jharoda Kalan village had come to her house along with two boys aged around 18-19 years. She knew Babita Dagar [appellant] since 3-4 years and Babita used to visit her house, but she did not know the



other two boys. It was stated that Babita wanted to marry her husband Surinder Singh. She further stated that she served them tea and talked with them for about half an hour. Babita told her about her engagement. Around 11.00 AM, suddenly, Babita and the two boys got up, threw chilli powder in her eyes, wrapped a *chunni* around her neck and attempted to strangulate her. Thereafter, she was set on fire. The assailants then fled away from the spot. At the time of the incident, her husband Surinder Singh had gone for duty and her daughter was at school.

4. After recording the statement of the victim Bimla Devi, IO SI Amrit Pal returned at the spot. Crime team was called and photographs were taken. MLC of the victim was collected. On the basis of the statement of victim Bimla Devi, FIR No. 186/2002 was registered under Sections 307/34 IPC at Police Station Najafgarh. During investigation, the site plan of the place of occurrence [Ex. PW16/D] was prepared, photographs were taken, pieces of burnt clothes and scattered chilli powder were lifted and sealed in different *pullandas*, which were duly sealed with the seal of “ALS”.

5. On the next day, that is, on 05th April, 2002, Ms. Indu Shekhar, Sub-Divisional Magistrate [“SDM”], Najafgarh (PW-11), filed an application [Ex. PW-11/A] before CMO, Safdarjung Hospital for confirming as to whether the victim Bimla Devi was fit for statement. Dr. Ajay Kumar made his endorsement Ex. PW-15/B that the “patient was fit for statement”. Thereafter, the SDM recorded the statement of victim Bimla Devi [Ex. PW-11/B], wherein, she stated that she had been married for 11 years and that on 10th April, 2002, at about 10.30



am, while she was sweeping the floor, there was no one present at the house, as her daughter had gone to school and her husband had gone for his job. She further stated that on hearing a knock on the door, she opened the door. Babita and two boys entered inside the house. She stated that she knew Babita, as few days back, she had come to her house for taking water and had introduced herself as Babita. She further stated that all three of them forcibly threw chilli powder in her eyes and when she tried to run away, they caught her and put a *chunni* around her neck in order to strangulate her. She was then set ablaze. On hearing her screams, her neighbour came there and called other neighbours, who helped in extinguishing the fire and then took her to the hospital. She further stated that she does not know the reason for the incident.

6. On 06th April, 2002, information was received that injured Bimla Devi [**“deceased”**] had succumbed to her injuries. Such information was reduced into writing as DD No. 19-A. Consequently, Section 307 IPC was replaced by Section 302 IPC. The post-mortem examination of the deceased was conducted. Accused Babita Dagar [**“appellant”**] was arrested on 07th April, 2002. She gave disclosure statement [Ex. PW 7/A]. Pursuant to such disclosure, accused Babita led the police to the house of the deceased from where she got recovered one steel gas stove, one gas lighter, one gas regulator, one gas cylinder and one rubber gas pipe [Ex. PW 14/B]. Subsequently, accused Surinder Singh [husband of deceased] was also arrested on 08th April, 2002.

7. The doctor prepared post-mortem report [Ex. PW 17/A]. The



cause of death was opined as shock caused by antemortem thermal burn injuries.

8. The Appellant Babita Dagar disclosed that on the fateful day, she was accompanied by her cousins Johnny and Vinnu. Non-bailable warrants were issued against both of them but they could not be traced by the police. Proceedings under Section 82/83 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”] were initiated against them.

9. Upon completion of investigation, charge-sheet was filed on 25th May, 2002 under Sections 302/34/120-B IPC against the appellant Babita Dagar and Surinder Singh. The names of Johnny and Vinnu were kept in Column No. 2 of the charge sheet.

10. The learned Trial Court after hearing arguments, framed charges under Sections 302/120-B IPC against the appellant Babita Dagar and accused Surinder Singh. They pleaded not guilty and claimed trial.

11. In order to prove its case, the prosecution examined 17 witnesses. The Appellant Babita Dagar and accused Surinder Singh were examined under Section 313 of Cr.P.C. Appellant Babita Dagar did not lead any evidence in her defence. However, accused Surinder Singh produced two witnesses in his defence.

12. After conclusion of trial and appreciation of the evidence on record, the learned Trial Court *vide* Judgment dated 09.02.2002 convicted the appellant Babita Dagar for offence under Sections 302/34 IPC, but acquitted the accused Surinder Singh holding that the prosecution could not prove its case against him and his presence at the spot at the time of occurrence could not be established. Further,



the learned Trial Court *vide* Order on Sentence dated 12.02.2002, sentenced appellant Babita Dagar to undergo Rigorous imprisonment for life for offence under Sections 302/34 IPC with fine of Rs. 5,000/-, in default to undergo Rigorous imprisonment for five months.

13. Feeling aggrieved, the accused Babita Dagar preferred the present appeal. The sentence of the appellant was suspended by this Court *vide* order dated 04th December, 2006.

Submissions on behalf of the Appellant

14. Mr. Ramesh Gupta, learned Senior Counsel for the appellant assailed the impugned judgment of conviction and stated that the learned Trial Court failed to appreciate the evidence in its proper perspective and convicted the appellant merely on conjectures and surmises. It was contended that the prosecution case suffered from serious infirmities and that the conviction is founded upon contradictory multiple dying declarations made by the deceased Bimla Devi before different persons.

15. It was submitted that the prosecution relied upon an oral dying declaration allegedly made to PW-2 Sukhvir Singh and PW-13 Devender Kumar, another oral dying declaration allegedly made before PW-6 HC Ishwar Singh while the deceased was being taken to the hospital, the statement recorded by the Investigating Officer on 04.04.2002, the statement recorded by the SDM on 05.04.2002, as well as the history recorded by the attending doctor in the MLC. According to learned Senior Counsel, these declarations are not consistent with each other and suffer from material variations, thereby rendering them unreliable.



16. It was contended that the statement recorded by the Investigating Officer depicts a narrative as per which the appellant Babita Dagar was known to the deceased for several years, had visited her house on earlier occasions, was served tea by the deceased, remained in the house for about half an hour and informed the deceased about her engagement before the alleged assault took place. However, in the statement recorded by the SDM on the following day, the deceased stated that the appellant and two boys entered the house forcibly and that she was unaware of the reason behind the incident. Learned Senior counsel submitted that these two versions are fundamentally inconsistent with each other and cannot be reconciled.

17. It was further argued that in the statement recorded by the Investigating Officer, the deceased specifically attributed motive to the appellant by alleging that the appellant desired to marry Surinder Singh. In contrast, in the dying declaration recorded by the SDM, which is sought to be treated as the most reliable version by the prosecution, there is no allegation regarding any love affair, intention to marry, or dispute involving Surinder Singh. Rather, the deceased expressly stated that she did not know why the incident had occurred. According to the learned Senior counsel, such omission goes to the root of the prosecution case and destroys the alleged motive.

18. The learned Senior Counsel further submitted that the prosecution has attempted to improve its case through the testimony of PW-2 and PW-13, who are admittedly the real brothers of the deceased and therefore interested witnesses. It was argued that both witnesses introduced facts relating to the alleged relationship between



the appellant and Surinder Singh and attributed conspiracy to them. These allegations, according to the appellant, constitute material improvements over the dying declaration recorded by the SDM and therefore cannot be safely relied upon.

19. It was next contended that the evidence of PW-3 Shakuntala Devi, a neighbour who reached the spot immediately after hearing the screams of the deceased, does not support the prosecution version. The said witness did not depose that the deceased disclosed the identity of her assailants to her. Similarly, PW-1 Alok, son of shop owner having PCO telephone, also failed to support the prosecution case inasmuch as he denied having identified the appellant on 08.04.2002. It was submitted that the independent witnesses examined by the prosecution have turned hostile and have not corroborated the allegations against the appellant.

20. The learned Senior Counsel further argued that the prosecution failed to examine any witness who had actually seen the appellant entering or leaving the house of the deceased on the date of the incident. There is thus, no direct evidence connecting the appellant with the occurrence. The conviction rests solely on the dying declarations, which, according to the appellant, are themselves contradictory and unreliable. It was also pointed out that the Death Summary records that after chilli powder was thrown in the deceased's eyes, she was immobilised by tying her hands and legs with ropes. But, this is the first time the mention of ropes occurred and furthermore, no ropes were recovered at the place of incident, thereby weakening the prosecution case.



21. It was submitted that the prosecution has also failed to establish any credible motive. The allegation that the appellant intended to marry Surinder Singh is based entirely upon statements allegedly made by the deceased and her relatives. No independent evidence has been produced to show the existence of any such relationship or any dispute between the deceased and the appellant.

22. The learned Senior Counsel further contended that although the prosecution alleged that two other assailants, namely Johnny and Vinnu, had accompanied the appellant, neither of them could be arrested nor brought to trial. It was argued that the prosecution version regarding the participation of unknown associates remained unverified and casts serious doubt on the overall reliability of the investigation. It was also argued that since the co-accused Surinder was acquitted by the learned Trial Court, the charge under Section 34 IPC does not survive. Furthermore, it was argued that there were procedural lapses, inasmuch as, there was delay of two days in recording the statements of PW-6 and PW-13 and the absence of name of PW-6 in the MLC as the person who brought the victim to the hospital.

23. It was contended that the photographs do not display any signs of violence or struggle and that the recoveries effected at the instance of the appellant are wholly inconsequential. The articles recovered, namely the gas stove, gas regulator, gas cylinder, gas lighter and gas pipe, were ordinary household articles available at the house of the deceased and do not constitute incriminating evidence linking the appellant with the commission of the offence. Furthermore, the chilli powder was not recovered from the kitchen, but rather from the open



courtyard outside the kitchen.

24. It was also pointed out that PW-15 Dr. Reetesh Purwar in his cross-examination stated that he does not remember if any injury was caused by chilli powder and if there would have been presence of chilli, he would have mentioned that in MLC. But, the MLC is silent regarding presence of chilli in the eyes of victim, thereby casting serious doubt on prosecution version.

25. The learned Senior Counsel submitted that where multiple dying declarations exist, the Court is required to examine whether they are wholly consistent and inspire confidence. In the present case, the declarations contain significant omissions, additions and improvements. The deceased gave different accounts to different persons and the prosecution has failed to explain these discrepancies. The multiple dying declarations and their contents are mutually destructive to each other. It was, therefore, argued that it would be unsafe to sustain a conviction for the offence of murder solely on the basis of such inconsistent dying declarations, in absence of other reliable evidence.

26. It was accordingly prayed that the prosecution having failed to establish its case beyond reasonable doubt, the impugned judgment of conviction and order on sentence deserve to be set aside and the appellant be acquitted of all charges.

27. In support of his arguments, the learned Senior Counsel placed reliance on Chapter-13 A of Delhi High Court Rules titled as 'Dying Declarations' and also upon the following judgments:

- i. Paparambaka Rosamma & Ors. vs. State of U.P., (1999) 7 SCC



- 695;
- ii. Uka Ram vs. State of Rajasthan, 2001 I AD (Cr1.) SC 825;
 - iii. Kamla vs. State of Punjab, 1993 CrLJ 68;
 - iv. Ram Nath Madhoprasad & Ors. vs. State of M. P., 1953 CrLJ 1772;
 - v. Laxmi vs. Om Prakash & Ors., 2001 SCC (Cri) 993;
 - vi. Arvind Singh vs. State of Bihar, 2001 (2) Crimes 242 (SC);
 - vii. Kali Ram vs. State of Himachal Pradesh, AIR 1973 SC 2773;
 - viii. Sujit Biswas vs. State of Assam, AIR 2013 SC 3817;
 - ix. Suresh vs. State Rep. by Inspector of Police, AIR 2025 SC 1561;
 - x. Abhishek Sharma vs. State (Govt. of NCT of Delhi), AIR 2023 SC 5271.

Submissions on behalf of the State

28. *Per contra*, learned Additional Public Prosecutor [APP] for the State averred that the learned Trial Court has given detailed and well-reasoned findings and convicted the appellant after a fair trial upon proper appreciation of evidence. The learned APP supported the impugned judgment and submitted that the prosecution case stands established through a series of consistent and voluntary dying declarations made by the deceased before different persons, each of whom had no occasion to fabricate or distort the version given by the victim.

29. Learned APP submitted that immediately after the occurrence, the deceased, while being taken to the hospital, disclosed to PW-6 HC Ishwar Singh that the appellant, along with two associates, had entered



her house, thrown chilli powder into her eyes and set her on fire. She also stated that appellant had illicit relations with her husband Surinder. This statement was made at the earliest point of time and therefore carries a strong presumption of truthfulness.

30. It was further submitted that the attending doctor, PW-15 Dr. Reetesh Purwar, recorded the history narrated by the deceased herself while she was undergoing treatment. The deceased specifically named the appellant and described the manner in which she was assaulted. It was further submitted that the statement made to a doctor in the course of medical treatment carries high evidentiary value and there is no reason to disbelieve the same.

31. The learned APP argued that the statement recorded by the Investigating Officer on 04.04.2002 and the dying declaration recorded by the SDM on 05.04.2002 are substantially consistent with each other on all the material particulars. In both declarations, the deceased stated that the appellant came to her house accompanied by two boys, chilli powder was thrown into her eyes, a chunni was used to strangle her and she was thereafter set on fire. He submits that in both the declarations, these core allegations remained unchanged throughout.

32. It was submitted that the variations highlighted by the defence relate only to collateral matters such as, whether tea or snacks were served to the visitors, whether the appellant informed the deceased about her engagement, or whether the deceased elaborated upon the background relationship involving Surinder Singh. Such variations, according to the State, are natural and expected when a victim narrates



the same incident before different persons at different times.

33. The learned APP contended that the law does not require multiple dying declarations to be identical in every word or detail. The true test is whether the declarations are consistent regarding the genesis of the occurrence and the identity of the assailant. In the present case, every declaration unequivocally names the appellant as the principal offender and consistently narrates the acts of throwing chilli powder, attempting strangulation by *chunni* and setting the deceased on fire.

34. It was further argued that the dying declaration recorded by the SDM is highly reliable. Before recording the statement, the SDM obtained confirmation from the doctor that the deceased was fit to make a statement. The SDM was an independent public officer having no connection either with the deceased or with the accused. He further submits that there is also no allegation of tutoring, coercion or inducement.

35. The learned APP also relied upon the testimony of PW-2 Sukhvir Singh and PW-13 Devender Kumar (brothers of the victim), who stated that the deceased disclosed the incident to them while she was admitted in the hospital. Hence, both the witnesses corroborated the essential contents of the dying declarations and their evidence remained unshaken during cross-examination.

36. It was submitted that the medical evidence also lends complete assurance to the prosecution case. The post-mortem report establishes that the death occurred due to shock resulting from ante-mortem thermal burn injuries. The medical findings are wholly compatible



with the version consistently given by the deceased.

37. The learned APP argued that the acquittal of Surinder Singh by the learned Trial Court does not in any manner weaken the case against the appellant. The learned Trial Court merely held that the prosecution had failed to establish the presence of Surinder Singh at the place of occurrence. However, the evidence against the appellant stood on a completely different footing as she was specifically named in every dying declaration.

38. It was further submitted that there exists no reason whatsoever for the deceased to falsely implicate the appellant while sparing the actual offender. The dying declarations were made when the deceased was battling for her life and there is nothing on record to suggest anything that could have prompted a false accusation.

39. The learned APP thus contended that the dying declarations made by the deceased are truthful, voluntary, consistent and fully corroborated by surrounding circumstances and medical evidence. It was accordingly prayed that the appeal being devoid of merit deserves to be dismissed and the conviction and sentence awarded by the learned Trial Court be affirmed.

40. The learned APP in support of his arguments relied upon the following judgments,:

- i. State of Jharkhand vs. Shailendra Kumar Rai, (2022) 14 SCC 299 ;
- ii. Jemaben vs. State of Gujarat, 2025 SCC OnLine SC 2299;
- iii. Sudru vs. State of Chattisgarh, (2019) 8 SCC 333



Reasoning and Analysis

41. We have heard the arguments advanced by counsels of both parties and have perused the material on record.

42. It is well settled that, while exercising appellate jurisdiction in a criminal appeal against conviction, this Court is required to re-appreciate the evidence to ascertain whether the findings recorded by the Trial Court suffer from perversity, material illegality, or result in miscarriage of justice.

43. The principal challenge raised by the appellant in the present case is regarding the reliability of the various dying declarations made by deceased Bimla Devi, before different persons at different times. The conviction of the appellant is substantially founded upon those declarations and, therefore, the Court is required to scrutinize the same with due care and caution.

44. Section 32 (1) of the Indian Evidence Act, 1872 makes relevant a statement made by a person as to the cause of his death or as to any of the circumstances resulting in his death. It is well settled that once a dying declaration is found to be voluntary, truthful and inspires confidence, the same can form the sole basis of conviction without requiring independent corroboration. At the same time, where multiple dying declarations are relied upon, the Court is required to examine whether they are mutually consistent on material particulars and whether they inspire confidence. The Supreme Court in *Atbir Vs. State (NCT of Delhi)*, (2010) 9 SCC 1, has laid down certain factors to be taken into consideration while upholding the conviction on the



basis of dying declaration. The relevant paragraph of the judgement is reproduced under:-

“22. The analysis of the above decisions clearly shows that:

(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 form 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.”

45. Keeping the above principles in mind, we now proceed to examine the various dying declarations made by the deceased Bimla



Devi.

46. In the present case, the prosecution relies upon multiple sets of dying declarations made by the deceased. The earliest version is the statement made by the deceased Bimla before PW-6 HC Ishwar Singh while she was being shifted to Safdarjung Hospital. The second is the history recorded by PW-15 Dr. Reetesh Purwar in the MLC. The third is the statement recorded by the Investigating Officer SI Amrit Pal on 04.04.2002. The fourth dying declaration is in the form of statement recorded by PW-11 (SDM) on 05.04.2002. The fifth is oral dying declarations made before PW-2 Sukhvir Singh and PW-13 Devender Kumar, that is, brothers of the deceased Bimla.

47. Admittedly, these declarations were made before different persons and at different points of time. PW-6 HC Ishwar Singh was the PCR official who reached the spot immediately upon receipt of information. He found the deceased in a burnt condition and removed her to Safdarjung Hospital. His testimony assumes significance because it records the spontaneous account furnished by the deceased during transit to the hospital. PW-6 deposed that the deceased informed him that Babita, accompanied by two boys, had come to her house, thrown chilli powder in her eyes and thereafter set her on fire by pushing her on a lit stove.

48. In cross examination, PW-6 stated that two more ladies, one the neighbour and the other, the *Jethani* of victim Bimla Devi accompanied him when Bimla was being removed to the hospital. The challenge to the testimony of PW-6 is that as per the MLC of Bimla Devi [Ex. PW-15/A], the victim was brought to the hospital by her



neighbour Shakuntala. There is no mention that PW-6 or the *Jethani* of Bimla had brought her to the hospital. In cross examination, PW-6 denied that the husband of Bimla took her to the hospital and got her admitted. If that is the stand of the accused, even the name of Surinder Singh also does not find mention in the MLC as the person who got the victim admitted in the hospital. Therefore, merely because the names of PW-6 and *Jethani* of Bimla are not mentioned in the MLC, is no reason to disbelieve the version of PW-6. In our view, there is no reason to disbelieve the testimony of PW-6, who is a neutral witness and had no prior connection either with the deceased or with the appellant. His evidence with regard to what was stated by the victim to him on way to the hospital, would therefore carry a great probative value.

49. PW-15 Dr. Reetesh Purwar was the attending doctor who medically examined the deceased upon her admission to Safdarjung Hospital on 04.04.2002. The MLC prepared by him records that the victim suffered 45% burn injury including chest, abdomen, right side arms, buttock, thigh and hand. He also recorded the presence of ligature mark on the left side of the victim's neck. PW-15 stated that the history in the MLC was narrated by the deceased herself. He stated that the patient/injured Bimla Devi informed him that one lady namely Babita had come to her residence alongwith two unknown males. After having snacks, Babita threw chilli powder into her eyes, a chunni was put around her neck and she was thereafter set on fire. PW-15 further stated that the deceased also referred to the relationship between the appellant and her husband Surinder Singh. In cross



examination, PW-15 stated that sedatives were given to the patient after her statement. He denied that the patient was not in a position to speak. He further denied that the alleged history was given by Shakuntala and not by the patient. Significantly, this statement/history was recorded in the course of medical examination and even before the arrival of family members and therefore cannot be regarded as tutored version.

50. Now, coming to the statement recorded by the then IO SI Amrit Lal. Unfortunately, SI Amrit Lal could not be examined as a witness as he died in a road accident. The statement of Bimla, recorded by SI Amrit Lal, was shown to the second IO, that is, Inspector M.S. Shekhawat [PW-16]. He identified the handwriting of SI Amrit Lal. Not only this, he identified the handwriting and signatures of SI Amrit Lal on the *rukka* [Ex. PW-5/A] and application [Ex. PW-15/C] filed by SI Amrit Lal before CMO, Safdarjung Hospital, seeking permission to record the statement of Bimla Devi. Thus, we take note that prior permission was sought from the CMO, Safdarjung Hospital to record the statement of the victim Bimla Devi. The attending doctor certified that the patient was fit for making a statement and only thereafter was the statement recorded. In such statement, the deceased gave a detailed account of the occurrence and specifically named the appellant as the principal offender. She stated that the appellant came to her house along with two boys, remained there for some time, chilli powder was thrown into her eyes, a *chunni* was wrapped around her neck and she was set on fire. The statement further contains the alleged motive attributed by the deceased, namely that the appellant



desired to marry her husband Surinder Singh.

51. The most significant dying declaration is the one recorded by PW-11 SDM Ms. Indu Shekhar. The record reveals that before recording the statement, the SDM sought a fresh opinion regarding the fitness of the patient. The attending doctor certified at 10:15 AM on 05.04.2002 that the deceased was fit to make a statement. The SDM thereafter recorded her statement. As per the said statement, the deceased was alone in the house when the appellant and two boys entered her residence forcefully, threw chilli powder in her eyes, attempted to strangulate her by a *chunni* and thereafter set her on fire and then ran away. PW-11 was an Executive Magistrate acting in discharge of official duties. Nothing has been brought on record to suggest any tutoring, coercion or influence. The statement of the victim Bimla appears natural, coherent and voluntary.

52. Generally, the dying declarations ought to be recorded in the form of questions-answers. However, the statement [Ex. PW-11/B], recorded by the SDM, is not in question-answer form. The fact that dying declaration is not in the question-answer form, does not impact either its admissibility or its probative value as held in ***Ram Bihari Yadav Vs. State of Bihar*** (1998) 4 SCC 517.

53. The evidence of PW-2 Sukhvir Singh and PW-13 Devender Kumar, who are brothers of the deceased, also assumes relevance. Both witnesses deposed that when they met the deceased in the hospital she informed them that Babita and her two associates had thrown chilli powder into her eyes, attempted to strangulate her and thereafter burnt her. Their testimony further indicates that disputes had



arisen because of the relationship between the appellant and Surinder Singh. A two-judge bench of the Supreme Court in *Pulicherla Nagaraju alias Nagaraja Reddy Vs. State of Andhra Pradesh*, (2006) 11 SCC 444 while dealing with reliability of interested witnesses who are relatives observed that the evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be trustworthy and credible.

54. The defence has argued that the declarations are inconsistent because some of them mention that tea or snacks were served to the appellant whereas others do not. It has also been argued that the motive concerning the relationship between the appellant and Surinder Singh finds mention in some declarations but not in others.

55. We are of the opinion that, the aforesaid variations do not affect the substratum of the prosecution case. A distinction must always be drawn between contradictions touching the core of the prosecution case and variations relating to unimportant details. Courts cannot expect photographic reproduction of an event from a victim who is narrating a traumatic incident before different persons at different points of time.

56. It is not the requirement of law that multiple dying declarations must reproduce each fact in identical language or contain a verbatim account of every circumstance. The test is whether the declarations are consistent on material particulars. In *Jagbir Singh Vs. State (NCT of Delhi)*, (2019) 8 SCC 779, the Supreme Court had an occasion to consider the law relating to the dying declaration and the problem of



multiple dying declarations in detail. It was held that merely because there are two/multiple dying declarations, all the dying declarations are not to be rejected. It was observed that when there are multiple dying declarations the case must be decided on the facts of each case and the court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of the different dying declarations. The relevant para reads as under:-

“Our conclusion on multiple dying declarations

32. We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered.”

57. Examined in that light, the multiple declarations in the present case seem to be consistent. The essential details of the occurrence remain unchanged throughout all the declarations. The identity of the appellant is consistently disclosed. The presence of two associates is consistently mentioned. The throwing of chilli powder, the attempted



strangulation by means of a *chunni* and the act of setting the deceased on fire are repeated in every material version. These are the circumstances which constitute the gravamen of the offence.

58. The variations highlighted by the defence relate mainly to insignificant details. In one statement, the deceased stated that she served tea to the appellant and her associates. In another, she mentioned that they remained in the house for some time. In one version, she referred to the appellant's desire to marry Surinder Singh, whereas in another she stated that she did not know why the incident had occurred. These aspects do not affect the basic prosecution narrative. At the highest, they represent elaborations or minor omissions and not contradictions touching the core of the occurrence.

59. The challenge raised regarding the mental and physical condition of the deceased also does not persuade this Court. The record demonstrates that before both the statement recorded by the Investigating Officer and the declaration recorded by the SDM, the concerned doctors certified that the deceased was fit to make a statement. No material has been brought on record to show that the deceased was unconscious, disoriented or incapable of understanding the questions put to her.

60. Equally important is the fact that the history recorded in the MLC was furnished by the deceased herself. Such statement was made at the earliest available opportunity while she was undergoing treatment. The spontaneity attached to the statement recorded by the doctor furnishes an additional guarantee of reliability.

61. Learned counsel for the appellant has sought to contend that



PW-2 Sukhver Singh and PW-13 Devinder Kumar are interested witnesses being brothers of the deceased. The submission, though attractive at first, is not persuasive. The prosecution case does not rest exclusively upon their testimony. Their evidence merely corroborates the declarations already made before the PCR official, the doctor, the SDM and the Investigating Officer.

62. The Supreme Court in *Khushal Rao v. State of Bombay, AIR 1958 SC 22* is a watershed judgment on the law on evidentiary value of dying declarations. In this case, the deceased therein had given three successive dying declarations within a span of two hours, which were, to a certain degree contradictory to each other. However, one of the aspects that remained common and was narrated by the deceased in all three dying declarations was that he was attacked by two persons, namely, Khushal Rao and Tukaram with swords and spears. The Supreme Court, relying on the common thread running through all dying declarations, which was consistent with medical evidence revealing punctured and incised wounds on various parts of the body, held that the said declarations could be relied upon in convicting the accused who had been named in all three dying declarations.

63. Co-relating the said facts to the facts of the present case, we find that the dying declarations receive assurance from the surrounding circumstances. PW-4 Ct. Satish deposed that upon reaching the spot, burnt clothes and chilli powder were found lying on the floor. These articles were seized and taken into possession. The recovery of chilli powder from the place of occurrence is a circumstance which directly corroborates the narrative consistently



appearing in every declaration made by the deceased.

64. The medical evidence also furnishes corroboration. PW-17 Dr. Alexander F. Khakha conducted the post-mortem examination and opined that death occurred due to shock consequent upon ante-mortem thermal burn injuries. The medical findings are wholly compatible with the prosecution version that the deceased had been intentionally set on fire.

65. Therefore, we find that there runs a common thread in the statements of the deceased, being that she was attacked by the appellant. Further, we also find that the statements made by the deceased in her dying declaration are consistent with medical evidence which reveals that there were 45% burn injuries on her body and ligature mark on left side of her neck. The presence of burn injuries on certain parts of body and ligature mark portray that a person other than the deceased tried to strangle her and set her on fire. We therefore find the dying declarations to be reliable.

66. Much emphasis was laid by the appellant on the fact that PW-1 Alok and PW-3 Shakuntala Devi did not support the prosecution. However, their turning hostile does not materially dent the prosecution case. Neither of these witnesses was an eyewitness to the actual occurrence. The prosecution case cannot fail merely because some witnesses did not support it if reliable evidence otherwise exists on record. As noted previously, the dying declaration was recorded by the SDM in victim's words and read it to her, after which, she affixed her thumb mark on it. In the present case, the prosecution case is founded primarily upon the dying declarations of the deceased, which stand



corroborated by medical and circumstantial evidence.

67. The appellant has emphasised that the alleged associates, namely Johnny and Vinnu, could not be apprehended. In our opinion, the inability of the investigating agency to arrest the absconding associates does not dilute the evidence available against the appellant. Similarly, the acquittal of co-accused Surinder Singh also does not advance the case of the appellant. The Trial Court acquitted Surinder Singh because the prosecution failed to establish his presence at the spot and failed to prove conspiracy beyond reasonable doubt. However, the evidence against the appellant stands on an entirely different footing. She was specifically named by the deceased at every stage and her role remained consistent throughout the investigation and trial. It is pertinent to note that at the instance of Surinder Singh, a letter [Ex. PW 14/G] written by the appellant stating her desire to marry Surinder was recovered. On an application moved by the IO PW 16 for obtaining handwriting of the appellant [Ex. PW 16/G], she refused to give her specimen handwriting and categorically stated that she is the author of the letter [Ex. PW 14/G]. This lends credence to the assertion made by deceased Bimla in her various dying declarations that the appellant wanted to marry her husband and thereby constitutes a motive for the offence committed.

68. We are also unable to accept the suggestion that the deceased falsely implicated the appellant. No material has been brought on record to establish any prior enmity of such magnitude as would impel a dying woman to falsely name the appellant out of spite and allowing the real offenders to escape. On the contrary, the consistent attribution



of a specific role to the appellant across multiple declarations inspires confidence regarding their truthfulness.

69. In cross examination, PW-15 Dr. Reetesh Purwar, who had examined the victim and prepared her MLC, stated that he does not remember whether there was any injury caused by chilli. He clarified that if there would have been any chilli, definitely, he would have mentioned it in the MLC. Similarly, PW-17 Dr. Alexander F. Khakha, who had conducted the post-mortem of the deceased, stated in cross examination that there was no injury in the eye of the victim at the time of post-mortem examination. According to him, no traces of chilli powder were found in the eyes of the deceased. Based upon such opinion of the doctor, the learned Senior Counsel vehemently argued that the statements by the deceased in multiple dying declarations that chilli powder was thrown in her eyes, is not supported by the medical evidence, and therefore, such dying declarations cannot be relied upon to convict the accused. Lack of medical evidence as to the presence of chilli powder in the eyes of the victim, cannot be taken to mean that chilli powder was not thrown in her eyes. Her dying declaration unequivocally state that accused and her two associates threw chilli powder in her eyes before setting her on fire and there is no rule mandating the corroboration of the dying declaration through the medical or other evidence when the dying declaration is not otherwise suspicious.

70. In *Vishnu Vs. State of Maharashtra* (2006) 1 SCC 283, the Hon'ble Supreme Court held that the medical expert's opinion is not conclusive so as to existence of any fact. The opinion of the medical



officer is to assist the court as he is not a witness of the fact and the evidence given by the medical officer is really of an advisory character and not binding on the witness of fact.

71. Upon cumulative consideration of the entire evidence, we are satisfied that the dying declarations made by the deceased are voluntary, truthful, consistent and reliable. The minor variations relied upon by the defence do not detract from the consistency of the core prosecution story. The evidence of PW-6, PW-11 and PW-15, provide substantial assurance regarding the authenticity of the declarations. The same stand further corroborated by the testimony of PW-2 and PW-13, the recovery of chilli powder and burnt articles from the spot, and the medical evidence on record. The submissions advanced on behalf of the appellant do not create a reasonable doubt sufficient to dislodge the prosecution case.

72. We are, therefore, of the considered view that the prosecution has succeeded in establishing beyond reasonable doubt that it was the appellant Babita Dagar who, acting in furtherance of common intention with her associates, assaulted the deceased by throwing chilli powder into her eyes, attempted to strangle her by *chunni* and thereafter set her on fire, resulting in injuries which ultimately caused her death.

73. The findings recorded by the learned Trial Court are based upon proper appreciation of the evidence on record and do not suffer from any perversity or illegality warranting interference by us.

74. Consequently, the conviction of the appellant Babita Dagar under Sections 302/34 IPC merits affirmation.



75. The appeal is accordingly dismissed.

76. Appellant is directed to surrender before Superintendent Jail within a period of two weeks from the date of the judgment for serving the remaining sentence, and in the event of failure to surrender in terms of this judgment, appropriate steps be taken by the Jail Superintendent and by the learned Trial Court for ensuring the arrest of the appellant for serving the remaining sentence.

77. A copy of this judgment be sent to Superintendent Jail as also the learned Trial Court for information and necessary action.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

JULY 07, 2026/AK/RM