* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 18 February 2025
Judgment pronounced on: 12 March 2025

\+ CRL.A.378/2002

SUSHIL KUMAR ALIAS RAJU ...Appellant

Through: Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Mr. Dhruv Chaudhry, Mr. Adeeb Ahmad & Ms. Eshita Pallavi, Advs.

versus

STATE .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav, Adv. with Inspector O.P. Bishnoi and SI Anil Kumar PS Najafgarh.

CORAM:
HON'BLE MS. JUSTICE PRATHIBA M. SINGH
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G E M E N T

DHARMESH SHARMA, J.

1. This judgment shall decide the above noted Criminal Appeal preferred by the appellant under Section 389 of the Code of Criminal Procedure, 1973 ["**Cr.P.C.**"] assailing the judgment dated 02.03.2002 convicting him for committing an offence under section 302 Indian Penal Code, 1860 [**"IPC"**] followed by the order on sentence dated 18.03.2002 passed by the learned Additional Sessions Judge, New Delhi (*hereinafter referred as the* ***'trial Court'***), whereby the appellant has been sentenced to undergo imprisonment for life with a fine of Rs. 3,000/- and in default of payment of fine, to undergo

Simple Imprisonment for a period of one month.

FACTS OF THE CASE:

2. In short, the appellant was married to the victim, Anita Rani, on 07.03.1991. He was primarily charged for committing an offence under section 302 of the IPC for allegedly dousing the victim with kerosene oil, using two makeshift kerosene lamps, setting her ablaze on 05.07.1998 at approximately 5:00 PM and fleeing the site through the back/rear exit of their house no. RZ-B-80, Old Roshan Pura, Najafgarh, Delhi, as a result of which she sustained burn injuries and eventually succumbed to the same after 48 days on 24.08.1998.

3. The prosecution case is that on 05.07.1998, PW-17/SI[1] Jaggu Ram, the Investigating Officer ["**IO**"] received DD[2] No. 26A Ex. PW-17/A at 18:05 hours to the effect that one Anita w/o Sunil R/o House No. 103, Old Roshan Pura, Nazafgarh was admitted in PHC[3] with 60% burns and on reaching PHC, Nazafgarh alongwith PW-12/Constable Naresh, they were informed that the injured had been shifted to Safdarjung Hospital, New Delhi. Upon that, PW17/SI Jaggu Ram reached Safdarjung Hospital, where he found the victim Anita admitted therein with deep burn injuries to the extent of 35%. The IO/PW-17 Jaggu Ram took into possession, MLC[4] Ex.PW-16/A prepared by PW-16 Dr. Parag Neyog, wherein the victim purportedly stated that her husband set her ablaze after pouring kerosine upon her. Upon the attending PW-14 Dr. Rajeev Rajput certifying that the patient/victim was "fit for giving statement" vide opinion Ex.PW-14/A, PW-17/SI Jaggu Ram recorded the

[1] Sub Inspector
[2] Daily Diary
[3] Primary Health Centre
[4] Medico-Legal Case

statement of the victim Ex.PW-17/B, which goes as under:-

> ब्यान आजाने श्रीमति Anita W/o Sushil Kumar R/o 103, Old Roshanpura, Najafgarh, New Delhi उम्र 27 साल
>
> "ब्यान किया की मैं उपरोक्त पते की रहने वाली हूँ और अपने पति तथा बच्चो के साथ RZB 80 New Roshan pura फूल सिंह राणा के मकांन में 2 साल से बतौर किरायेदार रह रहे है। मेरी शादी Sushil Kumar S/o चमनलाल R/o 103 old Roshanpura के साथ मार्च 91 मे हुई थी मेरे दो लड़कियाँ है। मेरा पति मुझको हमेंशा कहता था कि दहेज कम लाई हो और लाओ इसी बात पर मुझको हमेशा मारता पीटता था और घरेलू छोटी मोटी बातों पर भी मुझको मारता था और मैं तुमको छोड दूंगा आज समय करीब 5.30 बजे आज मेरा पति अपने काम से आया और मुझको पीटना शुरु कर दिया **मैंने 2 शीशि Emergency Light के लिए दिया बना कर रखी थी उसमे से मिट्टी का तेल छिड़क कर मेरे ऊपर माचिस की तिल्ली से मुझको जलाकर पिछले दरवाजा से भाग गया,** मैंने शोर मचायी तो हमारे पडोस में रहने वाले औरतों ने पानी डालकर आग बुझा दी उसके बाद मैं Dr निरंजन के पास चली गई जिसने मुझको कहा की आप PHC अस्पताल मे चलो जाओ मैं रिक्शा करके PHC अस्पताल में चली गयी। PHC अस्पताल वालों ने मुझको सफदरजंग अस्पताल भेज दिया। मेरे पति के खिलाफ कारवाई की जाये। ब्यान सुन लिया ठीक है।"

4. On the basis of the aforesaid statement, Rukka endorsement Ex.PW-17/A was made and the present FIR No. 341/1998 Ex.PW-9/A came to be recorded on 06.07.1998 at 12:20 am at PS Nazafgarh under Section 498A read with Section 302 IPC by PW-9 Constable Umed Rao. During the course of investigation, IO/PW-17 SI Jaggu Ram prepared the site plan Ex. PW-17/D and also called a private photographer at the spot and photographs were taken. On inspection of the place of occurrence, IO seized one jumper, matchsticks, and two bottles vide Memo Ex.PW-15/A and the same were kept in the

pullanda and sealed with the seal of 'JRB'. It is the prosecution case that matter was informed to the local SDM, namely, PW-6 Varsha Joshi who recorded the statement of the victim Ex.PW-6/A at 07:10 PM on 06.07.1998.

5. The victim was discharged from Safdarjung Hospital in a 'satisfactory condition,' as per the 'Death Summary' Ex. PW-7/7 on 09.07.1998. Thereafter, on 19.08.1998, at 10:56 AM, she was re-admitted to Safdarjung Hospital for treatment but unfortunately, on 24.08.1998, at 6:45 PM, she succumbed to her injuries, leading to the conversion of the case from an offense under Section 307 IPC to one under Section 302 IPC. Subsequently, at 10:20 PM, Constable Sunil, who was posted at Safdarjung Hospital, telephonically intimated P.S. Najafgarh regarding her demise, pursuant to which the said information was recorded as DD No. 73B Ex. PW-18/A. Thereafter on 25.08.1998, SDM Arun Kumar Mishra PW-7 conducted inquest proceedings Ex. PW-7/1-7 and later the *post-mortem* examination was conducted at 1:00 PM by PW-8 Dr. Arvind Thergaonkar, who opined that the cause of death was '***septicaemia consequent upon 35-40% ante-mortem infected flame burns***' reflected in the *post-mortem* report dated Ex. PW-8/A.

6. During the ensuing investigation, the appellant was apprehended from his residence on 08.10.1998, and a personal search memo was duly prepared Ex. PW-11/A. Subsequently, on 11.12.1998, SI Madan Pal PW-5 undertook the preparation of a 'Scaled Site Plan' Ex. PW-5/A. Thereafter, on 22.12.1998, the final report was submitted before the Court, wherein it was recommended that the appellant, Sushil Kumar Raju, along with his mother, Kanta Rani, be subjected to trial for offences punishable under Sections 498A, 302, and 34 of the IPC, in conjunction with Sections 3 and 4 of the Dowry

Prohibition Act, 1961. Further, on 13.01.1999, the case properties were dispatched for forensic examination, and upon analysis, the CFSL report dated 17.03.1999 Ex. PX conclusively opined the presence of kerosene on the seized articles.

PROSECUTION WITNESSES

7. On completion of investigation, formal charges were framed against the appellant as well his mother Smt. Kanta Rani on 27.07.1999 for committing offence punishable under Section 498A read with Section 302 IPC to which they pleaded not guilty and claimed trial. During the course of the trial, the prosecution examined a total of 18 witnesses.

7.1 The main witnesses for the prosecution were the father and mother of the victim, namely PW-1 Mahinder Kumar and PW-2 Saroj respectively besides one neighbour PW-15 Naresh Kumar.

7.2 Medical/Expert Witnesses were: PW-4 Dr. R Ranjan, at PHC, who referred the victim to go to the hospital to get a proper treatment. PW16 Dr. Parag Neyog was the Sr. Resident in the Safdarjung Hospital, attended the injured initially and prepared the MLC Ex.PW16/A; PW-14 Dr. Rajeev Rajput was the junior resident in the Safdarjung Hospital, and he declared the victim 'fit' for recording of the statement at about 7:00 pm on 06.07.1998. PW-8 Dr. Arvind Therogaonkar, Chief Medical Officer, Safdarjung Hospital, he conducted the *post-mortem* on the body of the victim.

7.3 Formal/ Police Witnesses were: PW-17 SI Jaggu Ram commenced with the investigation of the case after receiving DD no. 26A Ex.PW17/A. PW12 Constable Naresh Pal accompanied PW-17 to the

PHC, Najafgarh, Delhi. PW-6 was Ms. Varsha Joshi, SDM, who recorded the statement of the victim Ex.PW6/A, Anita at the Safdarjung Hospital upon the information received by PW-17. PW-11 Inspector Kailash Chandra along with PW-18 SI Prabhu Dayal, arrested the accused, Sushil Kumar and his personal search was conducted vide personal search memo Ex.PW-11/A. PW-7 was Arun Kumar Mishra, SDM, who was informed by the IO about the death of the victim, who succumbed to her injuries and thereafter conducted inquest proceedings. Needless to state that we shall delve into the details of the testimonies of these witnesses later on in the judgement.

STATEMENT OF ACCUSED UNDER SECTION 313 Cr.P.C

8. On the closing of the prosecution evidence, the appellant was examined under Section 313 CrPC wherein he admitted to his marriage with the deceased Anita. However, he categorically denied ever subjecting Anita to cruelty or harassment on account of insufficient dowry. While he conceded that a complaint had been filed against him in the Crime Against Women (CAW) Cell, Nanak Pura, he also stated that following a compromise, the deceased resumed normal cohabitation with him. The appellant denied all other incriminating evidence brought against him. He further disclaimed any knowledge regarding the deceased sustaining burn injuries, being taken to the hospital, suffering 35% burn injuries, or succumbing to septicaemia. Additionally, he denied any knowledge of kerosene oil residues being detected in the exhibits that were sent for forensic analysis.

9. The appellant has taken the defence that he is innocent and that a false case has been fabricated against him at the behest of PW-1 and PW-2 who

tutored his deceased wife. In defence evidence, the accused elected to examine a total of 5 witnesses: DW-1 was Baby Shilpa, his seven year old daughter who testified that her mother had poured oil on herself and thereafter asked her to call the neighbourhood aunty; DW-2, Harbir Singh, a neighbour of the accused, testified that on 06.07.1998 at approximately 5:00–5:30 PM, while he was watching a film, DW-1 informed them that her mother was attempting to set herself on fire, and upon that he immediately proceeded to the accused's residence, where he observed that the house was locked from inside and shortly thereafter the victim emerged out running and calling for help, and he along with other neighbours, intervened and assisted in extinguishing the flames, DW-3 Ramesh Chand, *sabziwala,* who testified that he along with the accused went to the Mandi to sell sabzi and at about 7:00 pm the accused's younger brother informed them of an incident that had occurred at the accused's residence and the accused went back to his house with his younger brother; DW-4 Mahinder Singh, neighbour of the accused, corroborated the version of DW-2. DW-5 was Daulat Ram, a former Village Pradhan of Roshanpura, who testified that PW-1, Mahendar Kumar was not the biological father of the victim. He further stated that certain individuals approached him, requesting his intervention in facilitating a settlement, and indicated that they would alter their statements in exchange for monetary compensation.

IMPUGNED JUDGMENT

10. The learned Trial Court on appreciation of the evidence led by the prosecution held that there was history of marital discord between the deceased and the appellant, which fact was substantiated by the parents of

deceased,PW-1 & PW-2, and the defence version relying on the testimony of DW-1 Kumari Shilpa, daughter of the family, that the victim herself poured kerosine upon her and immolated herself was discarded in view of the abnormal behaviour of the neighbours, who stated that they arrived at the scene while the victim was engulfed in flames and crying for help. Learned Trial Court considered the fact that the victim herself went to the PHC on her own , with no one accompanying her or even calling the police.

11. Further, learned Trial Court found that the victim was 'fit for making statement' and she had given a statement to the attending doctor that she had been put on fire by her husband, which fact stood corroborated in the ***dying declaration*** made by the victim to PW-6 Varsha Joshi, SDM. It was held that the victim had no motive to falsely implicate her husband, and thus, holding that the death of the deceased occurred on account of injuries suffered consequent to the burn injuries, it was found that the prosecution has been able to bring the guilt of accused beyond reasonable doubt. Resultantly, the appellant was convicted for committing an offence under Section 302 of the IPC and sentenced accordingly for life imprisonment. However, both the appellant and his mother were acquitted of committing any offence under Section 498A of the IPC.

SUBMISSIONS BY LEARNED COUNSELS FOR THE PARTIES

12. Mr. Prabhakar, learned Counsel for the appellant emphasized that the two makeshift lamps, which were allegedly used to set the deceased ablaze, could not have been employed by the appellant in the manner suggested by the prosecution, thereby indicating a clear case of self-immolation and that it was urged that so called ***dying declaration*** of the victim, was not reliable in

terms of Section 32 of the Indian Evidence Act, 1872 as the deceased at the time of making it was not under any kind of apprehension of death.

13. It was further argued that the sequence of events, as established from the record, demonstrates that the deceased initially proceeded to the neighbourhood, thereafter to the PHC, where the police were informed—and was subsequently taken to Safdarjung Hospital. Learned defence counsel highlighted that the deceased had been discharged from Safdarjung Hospital in a satisfactory condition, thereby casting doubt on the claim that the burn injuries were the direct cause of death. It was emphasized that PW-8 Dr. Arvind Therogaonkar, the Chief Medical Officer, Safdarjung Hospital, who conducted the *post-mortem* examination on the body of the victim, in his cross-examination, acknowledged the possibility of survival in cases where burn injuries range between 35% to 40%, thereby further supporting the appellant's contention that the prosecution's version is not conclusive.

14. Learned Counsel for the Appellant also emphasized that none of the medical documents, including the MLC report or the post-mortem report, contain any conclusive opinion from the medical experts affirming that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause death. In support of his contention, he placed reliance on decision in the case of **Sanjay v. State of U.P.[5]; Prem Devi v. State 2017[6]** and **Dashrath Singh v. State of U.P[7].**

15. *Per contra* Mr. Bahri, the learned Additional Public Prosecutor ["**APP**"], has vehemently contended that the most crucial piece of evidence

[5] (2016) 3 SCC 62.
[6] SCC OnLine Del 8057
[7] (2004) 7 SCC 408

in the instant case is the dying declaration of the deceased Ex. PW-6/A, wherein she unequivocally implicates the appellant, her husband, which is corroborated by the seizure of two bottles vide memo Ex. PW-15/A from the spot. Learned APP has underscored that the deceased categorically stated that the appellant had previously demanded dowry, and on the fateful occasion, when she requested money for expenses, he set her ablaze. It was pointed out that the forensic analysis has confirmed the presence of kerosene in the seized bottles, thereby corroborating the prosecution's case.

16. It was urged that before administering any treatment, the MLC was duly recorded, ensuring procedural compliance. It was emphasized that PW-16, Dr. Parag Neyog, the resident doctor, had documented the alleged history as narrated to him by the deceased herself, confirming that she sustained burn injuries due to the appellant pouring kerosene oil on her.

17. It was urged that the dying declaration was recorded in strict adherence to the prescribed formalities under the Delhi High Court Rules, with the doctor certifying that the deceased was ‘fit to make the statement’. Additionally, the statement was duly recorded by the Magistrate while she was in a sound mental state. It was also canvassed that notwithstanding a gap of 49 days between the recording of the deceased’s statement and her subsequent demise, the prosecution has contended that such a statement retains its legal sanctity and ought to be read as a dying declaration, warranting due consideration in light of the surrounding circumstances.

18. Learned APP heavily relied upon the testimony of PW-1, Mahinder Kumar and PW-2 Saroj, the parents of the deceased, who reached PMC, Najafgarh upon learning of the incident and later accompanied the deceased

in the ambulance to Safdarjung Hospital and it was urged that their statements further reinforce the consistency of the deceased's account who was in severely burnt condition.

19. Mr. Bahri, learned APP, referred to the Explanation to Section 299 IPC, contending that the appellant, being the husband of the deceased, failed to take any reasonable steps to prevent the fatal consequences or mitigate the harm caused to the deceased. It is submitted that such inaction on the part of the appellant, despite being in a position to intervene, reinforces his culpability and substantiates the prosecution's case regarding his involvement in the offence.

ANALYSIS AND DECISION

20. We have given out our thoughtful consideration to the submissions advanced by the learned counsels for the appellant as also by the learned APP for the State. We have also perused the oral as well as documentary evidence placed on the record besides the case laws cited.

21. The foremost thing to be noted is that there is no direct evidence led by the prosecution that the appellant was present at the time of incident. Nobody saw him fleeing away from the house after the incident. The legal principle in cases based on circumstantial evidence is well settled, requiring the prosecution to establish each circumstance cogently and firmly, demonstrating that they collectively constitute a complete and unbroken chain leading to the sole and inevitable conclusion—the guilt of the accused. It is well settled that the circumstances brought on the record must infallibly indicate the culpability of the accused that must be incompatible with any other reasonable hypothesis of innocence. The accused would be entitled to

benefit of doubt even if a single link in the chain of circumstances remains unproven. Likewise, if there exists any plausible alternative explanation, the continuity of the chain is disrupted, and would warrant the accused to the benefit of the doubt. Avoiding long academic discussion, in a recent case decided by the Supreme Court, titled **Darshan Singh v. State of Punjab**[8] it was held that:

> "The normal approach in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion, that within all human probability, the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.
>
> x x x x x x x x x
>
> 37. **Seen in this background, we need not go further and consider the evidence qua other circumstances sought to be proved by the prosecution since the failure to prove a single circumstance cogently can cause a snap in the chain of circumstances.** There cannot be a gap in the chain of circumstances. When the conviction is to be based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. **If there is a snap in the chain, the accused is entitled to benefit of doubt.** If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt." **{bold portions emphasized}**

22. In the light of the aforesaid proposition of law, reverting back to the instant matter, we find that the prosecution case on first blush seems to be quite consistent that the victim Anita, got admitted with burn injuries in Safdarjung Hospital and upon the attending medical officer, PW-14 Dr

[8] (2024)3 SCC 164

Rajeev Rajput declaring her 'fit to give a statement' *vide* Ex. PW-14/A, her statement marked Ex. PW-17/B was recorded by PW-17, wherein she stated that she had been residing with her husband, Sushil Kumar, at HZ-B-80, New Roshan Pura, since their marriage on 7th March 1991; and that she had two daughters and that her husband persistently harassed her for bringing inadequate dowry and subjected her to physical abuse over trivial matters and repeatedly threatened to abandon her. She stated that on the date of the incident, at approximately 5:30 PM, the accused, returned home and assaulted her. She further stated that she had stored two bottles of emergency light fuel, upon which the accused poured kerosene oil on her and set her on fire before fleeing through the back door; and that subsequently her neighbours intervened and doused the fire.

23. Axiomatically, it is the aforesaid statement Ex. PW6/A which is canvassed to be a 'dying declaration' consequent to the death of the victim on 24.08.1998. Thus, the entire prosecution case delicately hinges upon the so called 'dying declaration' made by the victim to PW-6 Ms. Varsha Joshi, SDM Ex.PW-6/A. It would be most relevant to re-produce the same which goes as under:

> "ब्यान श्रीमति अनीता w/o सुशील कुमार r/o 103 Old Roshanpura, Najafgarh, Delhi.
>
> Q. नाम क्या है तुम्हारा?
>
> A. अनीता
>
> Q. कैंसे जल गई?
>
> A. आदमी ने जला दिया। उसका नाम सुशील है। दो-तीन दिल से मैं उसे खर्चा मांग रही थी वह नहीं देता था। फिर लढाई होती थी। कल भी यही हुआ था। मैं 5-5.15 **बजे नीचे बैठी थी फिर वह आया, दो छोटी-छोटी शीशी में तेल रखा था, मेरे ऊपर डाल दिया, फिर आग लगा दिया। फिर वह वहाँ से भाग गया।** मैं चिल्लाती हुई बाहर आई तो पड़ोसियों ने मिट्टी पानी वगैरह

डालकर आग बुझाया?
Q.खर्चे को छोड़कर और कोई बाद भी थी?
A. हाँ, वे दहेज भी मांगते थे। मेरा आदमी पड़ोसियों को लेकर मेरे ऊपर शक करता था औ गंदी बातें करता था।
Q. दहेज कौन कौन मांगते थे
A. आदमी मांगता था, सास भी मांगती थी, वह सिखाती थी। वे पैसे मांगते थे, और मेरी मम्मी के घर में हिस्सा चाहिये।
Q. ऐंसा पहले भी कभी हुआ था?
A. हाँ, दे साल पहले भी उसने (मेरे पति ने) मुझपर तेल डाल दिया था। मैंने जब सास को बताया तो उसने कहा कि मैं क्या कर सकती हूँ, यह तुम्हारा आपस का झगड़ा है।"

24. The aforesaid dying declaration was recorded on 06.07.1998 at 7:10 p.m. by PW-6 after almost 24 hours of the alleged incident while her statement Ex. PW-17/B was recorded in sometime between 9:15 pm of 05.07.1998 to 12:05 am on 06.07.1998. What stares on the face of the prosecution record is that although the victim was admitted in the Hospital at 9:15 p.m. on 05.07.1998, there is rendered no explanation by PW-17 IO SI Jaggu Ram as to why the statement of the victim could not be recorded as expeditiously as possible as there is nothing on record to suggest that she was not 'fit for making statement' during the interregnum. Be that as it may, even assuming for the sake of convenience that the victim was not fit to make statement till about 07.00 p.m. a day after the incident on 06.07.1998, it is an admitted fact that she was discharged from the Hospital in a satisfactory condition as per death summary Ex.PW-7/7 on 09.07.1998 i.e. after just 4 days of the incident. It was only after a month that she was re-admitted in the Hospital on 19.08.1998 at about 10.56 a.m. and unfortunately succumbed to burn injuries on 24.08.1998 at 6.45 p.m.

25. At this juncture, it would be expedient to refer to the findings in the *post mortem* report conducted by PW-8 Dr. Arvind Thergaonkar, which was conducted on 25.08.1998 and proved the *post mortem* report Ex.PW-8/A giving the following deposition:

> "**General observations**:
> Rigormortis was present all over the body. Post mortem staining were present on back. Eyes were closed. State of superficial natural orrices like ear, nose and mouth were normal.
> **External examination**.
> **Burn injuries**:- Dermoepedrmal burn superficial to deep, infected in nature about 35 to 40% present on front of chest and abdomen and side and front of neck, patches on upper arm and chin. The area of infection present all over the burns. The hair were burnt and seised over the axillae and there was no mark of violence/sign of struggle seen on the body.
> **Internal examination**:- Scalp skull and brain was normal. Neck and thorax- trachea/neck structure/thorax wall were normal. Lungs showed patchy consolidation changes, heart was normal. Abdomen and pelvis-stomach was empty liver/spleen/kidney all over swollen and congested and pale. Bladder and pelvis normal. Uterus was empty.
> **Opinion**:- In my opinion the cause of death was septicaemia consequent upon about 35 to 40% ante-mortem infected flame burns. The time since death was about 19 hrs. The post-mortem report is in my handwriting signed by me and is correct. The same is Ex.PW-8/A. The I.O. had submitted 13 inquest papers at the time of post mortem examination which have been signed by me."

26. In order to appreciate the state of the body of the victim and cause of death, it would also be expedient to reproduce the entire cross-examination of PW-8 Dr. Arvind Thergaonkar, which goes as under:

> "xxxxxx by counsel for accused.
> Septicaemia means in this case whenever burns takes place, they get infected and this infection goes into the blood and various system of the body and causes multisystem failure leading to death. Infection is present in the air it can contemplate any injury or any burns. It cannot be always be negligence. **It is known specially in the causes of burns specially after 48/72 hrs. The patient suffering from 35 to 40% often survives.** Any burn exceeding 20% in children and elder may end to any eventuality. Calculation of burns are done as per the area of burns but age is not part of this. Septicaemia and pymaes are more or less same thing. There is no

standard practice of mentioning the age and period of septicaemia but it can be ascertained on the basis of examination of the burns and sepctic formation. **The symptoms of septicaemia are fever, body ache, giddiness, loss of appetite sometimes deterioration level of functioning failed by the patient. I cannot say exactly when these symptoms are realised by the patient.** The patient in this case has died of septicaemia occurred due to burns. **{bold portions emphasized}**

27. Upon careful perusal of the aforesaid opinion on cause of death, it is evident that it does not specify whether the injuries were sufficient, in the ordinary course of nature, to cause death. The said aspect assumes significance since PW-8 Dr. Arvind Thergaonkar rather acknowledged in his cross-examination that patient suffering 35 to 40% burn injuries often survives. In the light of the aforesaid foundational facts, the core issue is:: whether the aforesaid statement Ex.PW-6/A can be considered as 'a dying declaration' and a clinching piece of evidence so as to nail the appellant for commission of the alleged offence. It is pertinent to indicate that in the authoritative text authored by Jaising P. Modi "**MODI: A Textbook of Medical Jurisprudence and Toxicology, Twenty-Seventh Edition**,", it is explicitly stated that deep burns are categorized as fifth and sixth-degree burns. Furthermore, it is pertinent to note that the victim's demise was attributed to septicaemia, which, upon a perusal of the aforementioned textbook, is recognized as one of the delayed causes of death. The relevant excerpts are reproduced herein::

"22.2 CLASSIFICATION OF BURNS
Dupuytren classified burns into six degrees, according to the nature of their severity. Modern classification (Heba's classification) accords three degrees only by grouping the first and second (epidermal), third and fourth (dermo-epidermal), and fifth and sixth (deep) degrees together. Another classification grades burns into superficial and deep burns.
22.2.1 EPIDERMAL BURNS
22.2.1.1 FIRST DEGREE

First-degree burns consists of erythema or simple redness of the skin caused by the momentary application of flame or hot solids, or liquids much below boiling point. It can also be produced by mild irritants. The erythema marked with superficial inflammation usually disappear in a few hours, but may last for several days, when the upper layer of the skin peels off but leaves no scars. They disappear after death due to the gravitation of blood to the dependent parts.

22.2.1.2 SECOND DEGREE

Second-degree burns comprise acute inflammation and blisters produced by prolonged application of a flame, liquids at boiling point or solids much above the boiling point of water. Blisters can be produced by the application of strong irritants of vesicants, such as cantharides. Blisters may also be produced on those parts of the body which are exposed to decomposing fluid, such as urine or faeces, and subject to warmth, as seen in old bed-ridden patients. In deeply comatose persons, bullae may occur over pressure areas. If burns are caused by flame or a heated solid substance, the skin in blackened, and the hair singed at the seat of lesion, which assume the character of the substance used. No scar results as only the superficial layers of the epithelium are destroyed. However, subsequently, some slight staining of the skin may remain.

22.2.2 DERMO- EPIDERMAL BURNS

22.2.2.1 THIRD DEGREE

Third-degree burn refers to the destruction of the cuticle and part of the true skin, which appears horny and dark, owing to it having been charred and shrivelled. Exposure of never endings gives rise to much pain. This leaves a scar, but no contraction, as the scar contains all the elements of the true skin.

22.2.2.2 FOURTH DEGREE

In fourth-degree burns, the whole skin is destroyed. The slough which form are yellowish-brown and parchment-like, and separate from the fourth to the sixth day, leaving an ulcerated surface, which heals slowly forming a scar of dense fibrous tissue with consequent contraction and deformity of the affected parts. The burns are not very painful as the nerve endings are completely destroyed.

22.2.3 DEEP BURNS

22.2.3.1 FIFTH DEGREE

Fifth-degree burns include the penetration of the deep fascia and implications of the muscles, and results in great scarring and deformity.

22.2.3.2 SIXTH DEGREE

Sixth-degree burns involve charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. **This degree, it may be noted, is not necessarily related to danger to life. Charring of a limb may be compatible with recovery, once the initial shock is overcome**.

22.2.5 CAUSES OF DEATH
22.2.5.2 DELAYED CAUSES OF DEATH
22.2.5.2.1 Inflammation.-Inflammation of serous membranes and internal organs, such as meningitis, peritonitis, oedema glottis, pleurisy, bronchitis, bronchopneumonia, pneumonia, Exhaustion from suppurative discharges lasting for weeks or months.
22.2.5.2.4 Lardaceous Disease- Lardaveous disease of the internal organs resulting from supprative exhaustion.
22.2.5.2.5 **Erysipelas septicaemia**, pyaemia gangrene and tetanus."

28. What the aforesaid expert opinion brings out is that even in cases of fourth degree burns, as in the instant matter, there are good chances of healing of injuries. Although it is well settled that an offender is liable for the direct and proximate causes of his act or omission, the issue concerning death due to septicaemia after long delay and its legal consequences was discussed by the Supreme Court in the case of ***Sanjay v. State of U.P (supra)***, wherein it was held that**:**

"14. However, in the instant case, it is apparent that the death occurred sixty-two days after the occurrence due to septicaemia and it was indirectly due to the injuries sustained by the deceased. The proximate cause of death on 13-10-1998 was septicaemia which of course was due to the injuries caused in the incident on 11-8-1998. As noted earlier, as per the evidence of Dr Laxman Das (PW 9), Roop Singh was discharged from the hospital in good condition and he survived for sixty-two days. **In such facts and circumstances, the prosecution should have elicited from Dr Laxman Das (PW 9) that the head injury sustained by the deceased was sufficient in the ordinary course of nature to cause death. No such opinion was elicited either from Dr Laxman Das (PW 9) or from Dr Gulecha (PW 3). Having regard to the fact that Roop Singh survived for sixty-two days and that his condition was stable when he was discharged from the hospital, the Court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause Thirdly of Section 300 IPC.**
XXXX XXXX XXXX
16. In the instant case, the appellants used firearms, countrymade pistol and fired at Roop Singh at his head and the accused had the intention of causing such bodily injury as is likely to cause death. As the bullet injury was on the head, vital organ, the second appellant intended of causing such bodily

injury and therefore, conviction of the appellant is altered from Section 302 IPC to Section 304 Part I IPC. The learned counsel for the appellant Sanjay submitted that it was only Narendra who fired at Roop Singh at his head, appellant Sanjay fired on Sheela (PW 2) on her neck, stomach and leg. The learned counsel for the appellant Sanjay contended that as Sanjay fired only at Sheela, he could not have been convicted for causing death of Roop Singh under Section 302 IPC read with Section 34 IPC. There is no force in the above contention. The common intention of the appellants is to be gathered from the manner in which the crime has been committed. Both the appellants came together armed with firearms in the wee hours of 1 1-8-1998. Both the appellants indiscriminately fired from their countrymade pistols at Roop Singh, deceased and Sheela (PW 2) respectively. The conduct of the appellants and the manner in which the crime has been committed is sufficient to attract Section 34 IPC as both the appellants acted in furtherance of common intention. The conviction of the appellant Sanjay under Section 302 IPC read with Section 34 IPC is modified to conviction under Section 304 Part I IPC.

17. The conviction of the appellants Narendra and Sanjay under Section 302 IPC and Section 302 IPC read with Section 34 IPC respectively is modified to Section 304 Part I IPC and Section 304 Part I IPC read with Section 34 IPC respectively and each of them are sentenced to undergo rigorous imprisonment for ten years and the same shall run concurrently along with sentence of imprisonment imposed on the appellants. The conviction of the appellants for other offences and the respective sentence of imprisonment imposed on the appellants and fine is affirmed. The appeals are partly allowed to the above extent." **{bold portions emphasized}**

29. In another case titled **Prem Devi v. State 2017**[9], on the aspect of death on account of septicaemia, it was held that:

"17. From the testimony of PW 13 Dr. B.N. Acharya, it is found that the cause of death was cardio respiratory failure consequent to septicaemia resulting from infected burn. PW 13 had stated that he found the burn injuries to be old and infected which led to the death of the deceased. Thus **it is apparent that the deceased did not die immediately on the day of burning and was certainly on his way to recovery at his home and not at the hospital.** Further, it is also evident from the facts of the case that the appellant was already in judicial custody when the deceased succumbed to his injuries and this was due to his unhealed injuries developing an infection. The deceased while trying to recover at his home, did not tend to his injuries in the right manner owing to the lack of necessary and needed medical attention and care for want of both financial help and lack of

[9] SCC OnLine Del 8057

support of his wife who was in judicial custody at that time. Thus, it is apparent that due to the deficiency of outside yet imperative factors the deceased failed to heal and succumbed to his injuries and did not die an immediate death due to the alleged burning on the intervening night of 24/25th March,1995." **{bold portions emphasized}**

30. Reliance can also be placed on decision in **Dashrath Singh v. State of U.P**[10], wherein it was held that:

"25. He prescribed post-operative treatment. PW 8 stated that the death was on account of the head injury which caused brain abscess and such injury could lead to the occurrence of death in the ordinary course of nature. The evidence of PW 8 leaves no doubt that the skull and brain injury caused to the victim was sufficient in the ordinary course of nature to cause death. PW 6 who attended on the victim on the day of occurrence itself noticed the incised wound of 15 cm x 5 cm x brain tissue-deep found on the head of the patient. He stated that the injury was appearing to be dangerous to life and the injury must have been inflicted by a sharp-edged object thrust with sufficient force.

26. The medical evidence, however, does not establish beyond reasonable doubt that the ultimate cause of death was the aforesaid injury. From the date of the surgery, the victim was alive for 23 days and undergoing treatment in the hospital. He survived for 38 days after the injury was received. Not a word has been said and no report or case-sheet has been filed to indicate the condition of the patient after the surgery. No doubt, there was no cross examination of the doctor (PW 8) on this aspect. **Yet, it was the primary duty of the prosecution to adduce evidence in regard to the post-operative condition of the patient so that the scope for any intervening ailment unconnected with the injury is ruled out.** This becomes all the more important because of the long time lag and the omission to hold post-mortem. Apparently, there was a callous indifference or lack of vigilance on the part of the investigating officer in failing to ensure the post-mortem examination in a case of this nature. PW 8 came forward with the explanation that postmortem is not absolutely necessary to ascertain the cause of death. But, then, the prosecution has to establish beyond reasonable doubt that the eventual cause of death was only the injury inflicted by the appellant and nothing else, but it has failed to do so.

27. We are, therefore, of the view that the appellant Raja Ram cannot be held guilty of an offence under Section 302 or Section 304. He must be held guilty under Section 326 for voluntarily causing a grievous hurt by means of a dangerous weapon. Accordingly, his conviction is modified to Section

[10] (2004) 7 SCC 408

> 326 and he is sentenced to undergo rigorous imprisonment for six years and to pay the fine of Rs 1000. In default of payment of fine, he shall undergo further imprisonment for four months. The accused will have the benefit of set-off of the period of imprisonment undergone in terms of Section 428 CrPC." **{bold portions emphasized}**

31. In light of the proposition of law that long delay in death of the victim due to injuries might be a mitigating circumstance, the issue that begs an answer is whether the statement made by the victim Ex. PW-6/A can be said to be a 'dying declaration' within the purport of Section 32[11] of the Indian Evidence Act, 1872. It is well settled that a statement to be treated as a dying declaration, must have been made by the victim who was apprehending imminent death at the time of making it. In the case of **Laxman v. State of Maharashtra**[12], it was held that**:**

> "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

[11] 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —

(I) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

[12](2002) 6 SCC 710

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 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. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. **Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.** What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

{bold portions emphasized}

32. In the case of **Uka Ram v. State of Rajasthan**[13], it was held that:

"6. Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-sections (1) to (8) of Section 32 of the Act. When the

[13] (2001) 5 SCC 254

> statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question is admissible in evidence being relevant whether the person was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Such statements in law are compendiously called dying declarations. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath — nemo moriturus praesumitur mentire. Such statements are admitted, upon consideration that their declarations are made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declarations are admitted in evidence, is based upon the legal maxim nemo moriturus praesumitur mentire i.e. a man will not meet his Maker with a lie in his mouth. **It has always to be kept in mind that though a dying declaration is entitled great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or a product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement.** Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as a rule requiring corroboration is not a rule of law but only a rule of prudence."
>
> **{bold portions emphasized}**

33. In light of the aforesaid judicial pronouncements, the proposition of law that emanates is that although a dying declaration is attached substantial weight yet considering that the maker of such statement was not subjected to cross-examination, the prosecution must satisfy the Court that the dying declaration is of such nature as to inspire full confidence about its correctness. It is evident that the victim at the time of making statement Ex.PW-17/A to the IO as well as Ex.PW-6/A to Ms. Varsha Joshi (SDM), was not

apprehending her imminent death. Be that as it may, what causes a substantial crack in the prosecution case is that there is no evidence that the victim when she was engulfed in fire implicated her husband of having put her on fire by throwing kerosene oil in front of her neighbours. It is in evidence that firstly she approached PW-4 Dr. R. Ranjan at PHC and there is nothing in the evidence of PW-4 that she implicated her husband of having set herself on fire. It is in evidence that from the PHC she was removed in an ambulance to Safdarjung Hospital along with her parents. The possibility that the victim may have decided to blame her husband owing to the previous acrimony cannot be ruled out.

34. We find that the prosecution case suffers a serious setback when we consider the testimony of DW-2 Harbir Singh, who was the immediate neighbour, and who testified that when they came out after watching a movie on TV, they found Shilpa (DW-1), who told them that her mother had put herself on fire. He testified that they found that the door was locked from inside and after some time mother/victim came out of the room in the chowk shouting "बचाओ-बचाओ" and he along with other used some clothes which were put up for sun drying and diffused the fire; and then the victim went inside her house. DW-2 Harbir Singh stated in his testimony that he asked the victim for a family member's phone number to call for help and also offered to take her to the hospital, but she declined his assistance.

35. DW-4 Mahinder Singh also corroborated the said version, who testified that Shilpa daughter of the appellant told them that her mother had put herself on fire and when they went to the house of the accused, the door was opened and deceased came out, who was up in flames and he tried to extinguish the

fire with a piece of cloth, and thereafter, she went to the dispensary, Nazafgarh on her own. The aforesaid testimony has to be read coupled with the deposition by the daughter of the appellant DW-1 Kumari Shilpa recorded on 07.05.2001 at which time she was about 7 years old that goes as under:

> "Shilpa d/o Sushil Kumar aged 7 years r/o Najafgarh.
> Q.1. What is your name?
> Ans. Shilpa
> Q. What your father's name?
> Ans. Sushil Kumar
> Q. What is your age?
> Ans. Seven years
> Q. In which school do you study?
> Ans. Hind Bal Bharti Najafgarh.
> Q. Is good to tell truth or not?
> Ans. To tell truth is good.
> Q. What is your house address?
> Ans. House No.103, Old Roshanpura, Najafgarh, Delhi
> (From the above facts I am satisfied that the witness is capable of understanding the questions and she can reply. Let her statement me recorded without oath)
> पहले मेरी मम्मी तेल ले कर अपने ऊपर डाल लिया फिर मुझे कह आंटी को बुला लाओ मैं बुला कर लायी आंटी का नाम न मालूम है वहाँ पर दो तीन चीजें नीचे पड़ी थी। मेरी मम्मी ने जल्दी से आग लगी दी पडौसी लोगों ने मिल कर आग बुझाई फिर मम्मी चली गयी। कहाँ मुझे नहीं पताय़
> x x x APP
> मेरा जन्मदिन 15 जुलाई को आता है। साल याद न है। मेरा जन्म Hospital में हुआ था पर दिल्ली में हुआ या कहीं और न मालूम है। हम किराये पर रहते थे address याद न है। जहाँ हम किराय़े पर रहते थे उसके अगल बगल की आंटी का नाम याद न है। यह कितने साल पहले की बाद है याद न है। न कह सकती हूँ साल दो साल या पाँच साल पहले की जिस आंटी को बुलाने गयी थी उनका नाम न पता है। यह गलत है कि मेरी दादी माँ से मार पिटाई करती थी। यह गलत है कि उस दिन मेरे पापा ने मेरी मम्मी पर Kerosene Oil डाल कर आग लगा दी थी। यह गलत है कि कुझ न देशा और दादी माँ के कहने पर झूठा ब्यान दे रही हूँ। मैंने जो देखा वही बती रही हूँ। मैरी मम्मी शाम के time उसी दिन घर में मर गयी थी यह कहना गलत है कि पापा को बचाने के लिए दादी माँ के कहने पर झूठी गवाही दे रही हूँ।"

36. This Court is of the opinion that the testimony of DW-2 Harbir Singh

and DW-4 Mahinder Singh raises a serious challenge to the prosecution case as they apparently had no motive to falsely depose in favour of the appellant and thereby attempt to exonerate the appellant of having committing such offence. It is in evidence that the house of the appellant was located in a densely populated area and it is surprising that the PW-17 IO did not examine any neighbours who had doused the fire. What is also baffling is that despite there being two minor children present at the house, though DW-1 must have been about 4 years of age, the said child was not questioned by the IO. During the course of arguments, this Court looked into the Case Diary of the IO and found that at no point of time during Investigation the minor daughters of the appellant were questioned.

37. Another interesting facet of the matter which casts a shadow on the prosecution case are the photographs of the crime scene. They depict a table placed in the corner of the room holding a small black-and-white TV, a plastic envelope containing what appears to be some fruits, an empty glass, and two 200 ml glass bottles, marked as Ex.P-1 and P-2. The description of the two bottles are indicated in the CFSL report Ex-PX dated 17.03.1999, wherein the two glass bottles are described ***as empty small glass bottles each having wick which passed through holes in their lid*** seem to be used as a burning lamp marked as Ex.P1and P2. The analysis of gas liquid chromatography indeed shows the presence of kerosene residue in Ex.1. Incidentally, it is also recorded in the testimony of IO that besides seizure of the two bottles, there were seized eight or ten unburnt matchsticks Ex.P4/1 to 4/8 and burnt sticks Ex.P4/9 to 4/12 vide seizure memo Ex.PW-15/A.

38. An issue arises as to how the appellant could have poured kerosene

oil on the victim in a short span of time. Given that the two small bottles had wicks passing through holes with intact lids, it defies logic that the appellant could have sprinkled kerosene oil drop by drop on the victim and simultaneously used matchsticks to set her on fire without the victim attempting to save herself or shouting for help. This circumstance lends credibility to the defence theory that the victim herself poured kerosene oil on her body and blamed her husband, the appellant, to settle her grievances.

39. In summary, nobody saw the appellant present in the house at or around the time of incident. The version of the victim that her husband had fled away through the back door is not substantiated by the site plan Ex.PW-17/D as well as scaled site plan Ex.PW-5/A, which shows existence of no back door/rear door of the premises where the incident occurred. The testimony of DW-2 Harbir Singh and DW-4 Mahinder Singh that the door of the room was latched from inside and the victim came out engulfed in fire was not challenged.

40. Furthermore, the testimony of PW-1 and PW-2 that deceased was being harassed for dowry is contradicted inasmuch as PW-1 acknowledged that the appellant never harassed his daughter to bring money or things from them. Although, it may not be ruled out that in cases of domestic violence, daughters mostly confide to their mothers, but the testimony of PW-1 and PW-2 read as a whole would show that except for a solitary incident that occurred sometime in 1994 when a complaint was also lodged with PS Mayapuri, and the parties buried their differences, there is no allegation of there being constant fights or bickering between the victim and her husband. There is nothing in the testimony of either PW-1 or for that matter PW-2 to

show that victim was continuously being harassed for or on account of demand of dowry or that he appellant was otherwise impulsive or temperamental, subjecting his wife to constant domestic violence.

41. Lastly, the lackadaisical investigation in the present matter causes serious damage to the credibility of the prosecution case. To reiterate, PW-17 IO/SI Jaggu Ram failed to examine any witness from the neighbourhood, who could corroborate that the appellant was fleeing away from the spot. Likewise, no witness came forward to corroborate that it was the appellant who put the victim on fire after pouring kerosene oil upon her. Evidently, no such accusation was made by the victim when the neighbours doused the fire. No significant efforts were made to apprehend the appellant immediately after the incident was reported, and he was ultimately arrested at his residence on 08.10.1998. During the course of investigation there was no attempt made by the IO to examine the elder daughter (DW-1) of the deceased and the appellant. At the cost of repetition, there is no evidence on the record that the appellant was impulsive of temperamental and used to indulge in domestic violence for one reason or the other. Indeed, the whereabouts of the appellant at the time of incident is a relevant fact but then it is nowhere in the testimony of IO that he was absconding. The appellant was a vegetable vendor and there was no evidence led as to what were the hours of his occupation involving selling vegetables. It is in the said context, the testimony of DW-3 Ramesh gains significance, who testified without any challenge that the appellant's brother came to the Mandi and informed him about an incident at home, prompting the appellant to leave his place of business at around 07:00 p.m.

42. In view of the foregoing discussion, this Court has no hesitation in

holding that there are several links in the chain of circumstances that remain unproven; rather, there is sufficient substantial doubt as regards the complicity of the appellant for the offence with which he has been charged, and therefore, the appellant is entitled to be accorded the benefit of reasonable doubt.

43. Accordingly, the present appeal is allowed and the impugned judgment dated 02.03.2002 convicting the appellant for the offence under Section 302 IPC is hereby set aside. Consequentially, the impugned order on sentence dated 18.03.2002 whereby the appellant has been sentenced to undergo life imprisonment is also set aside. The appellant be set at liberty forthwith if not required in any other case.

44. A copy of this judgment be uploaded on the website forthwith.

45. A copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.

DHARMESH SHARMA, J.

PRATHIBA M. SINGH, J.

MARCH 12, 2025/*Sadiq*