



2026:AHC:81806-DB

A.F.R.

RESERVED

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1924 of 2013

Ashiq

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Abhishek Mayank, Ajay Dubey, Haridwar Singh, Manoj Yadav
Counsel for Respondent(s)	: Govt. Advocate

Court No.43

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

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

1. The instant Criminal Appeal at the instance of convict - accused has been directed against the judgment and order dated 30.03.2013 passed by Additional Sessions Judge, Court no.5, Agra in Sessions Trial No.1474 of 2008 (State Vs. Ashiq and others) arising out of Case Crime No.290 of 2008, under Sections 304/34, 326/34 IPC, Police Station - Rakabganj, District Agra convicting and sentencing the appellant under Section 304 I.P.C. read with Section 34 I.P.C. for life imprisonment and a fine of Rs. Rs.20,000/- with stipulation of default clause.

2. Brief facts, as culled out from the record, are that the informant Pradeep gave a written report on 21.07.2008 at the Police

Station Rakabganj, District Agra that his daughter Vineeta is a student of class IX in Anglo Bengali School and she had been photographed at a fair by her friend Pooja's brother Ashiq son of Raj Kumar with his friend Amit. Both Ashiq and Amit used to blackmail his daughter by showing her photograph. Amit also used to demand money and call her at his place. Kishore and Sethi are also involved with them. On 20.07.2008 in the evening, Ashiq came on the roof of the informant along with Amit, poured kerosene oil on his daughter and Amit set her ablaze and thereafter both of them fled away from the spot. At that time, the daughter of the informant was alone in the house. The whole incident was narrated to the informant by his daughter in severely burnt condition, who was admitted in emergency ward and according to Doctors, she has sustained 90% burn injuries.

3. On 20.7.2008, the victim was admitted in S.N. Medical College, Agra for treatment and on the same day at 10:30 P.M. the dying declaration (Ext. Ka-12) of the victim was recorded.

4. On the basis of the written report (Ext. Ka-1), First Information Report (Ext. Ka-12) was registered at Police Station concerned on 21.7.2008 at 3:10 A.M. as Case Crime No.290 of 2008 under Sections 326 IPC read with 34 IPC against the accused persons and the investigation was handed over to Sub-Inspector Lalit Kumar Tyagi.

5. Vineeta was admitted for treatment in the Emergency Department of S.N. Medical College, Agra on the date of incident i.e. 20.07.2008 at around 7:45 P.M., where her dying declaration (Ex.Ka.-17) was recorded by Additional City Magistrate-III, Agra, P.W.9 in presence of Dr. Brahmdev, P.W.10. at 10:40 P.M. During the course of treatment, the victim died at 6:20 A.M. on 21.7.2008 and in this matter offence of section 304 IPC was added.

6. Sub-Inspector Lalit Kumar Tyagi, P.W.7 started the investigation and during the course of investigation he prepared inquest report (Ex.Ka.-3) on 21.07.2008 and sent the body of deceased Vineeta for postmortem examination. Dr. Sunehri Lal, P.W.5 conducted the postmortem of the deceased and prepared her postmortem report (Ex.Ka.-11). The Investigating Officer inspected the spot and took possession of the plastic container and half burnt plastic mat and prepared it's recovery memo (Ex.Ka.-15). He also inspected the place of incident on 22.07.2008 and prepared the site plan (Ex.Ka.-14) on the spot. Thereafter, the investigation was transferred to Sub-Inspector G.C. Seth and was further transferred to Sub-Inspector Dinesh Pal Singh, who after recording the statement of various witnesses submitted charge-sheet (Ex.Ka.-16) against accused Ashiq, Kishore and Sethi under Sections 304, 326, 34 IPC and investigation against accused Amit was kept pending.

7. On 21.07.2008 at 3:15 P.M., the autopsy of the deceased was performed by Dr. Sunehri Lal, P.W.5 who found following injuries on her person :

(i) Superficial to deep burn injuries all over the body except skull region. Scalp hairs singed.

(ii) Surgical dressing all over the body except head.

(iii) Cut open mark is seen at right elbow area.

As per opinion of the Doctor, the cause of death of the deceased was due to shock, as a result of extensive burn injury. The postmortem report is Ex. Ka.-11.

8. The learned Magistrate took cognizance of the offences on 23.10.2008 and committed the case to Court of Session, as the charged offences were triable by the Court of Session.

9. After hearing both the parties, charges were framed against accused under Sections 304/34 and 326/34 IPC. However, the accused denied the charges and claimed trial.

10. Trial started and in support of it's case, prosecution examined as many as nine witnesses, who are as follows:

P.W.1 Pradeep (the informant of the case and father of the deceased), P.W.2 Dabbu (the uncle of the deceased), P.W.3 Mithilesh (aunt of the deceased and wife of P.W.2), P.W.4 Ashok Kumar (witness of Inquest), P.W.5 Dr. Suneheri Lal (autopsy surgeon, who conducted the postmortem of the deceased and prepared the autopsy report), P.W.6 Head Constable Dinesh Kumar (the scribe of the chik F.I.R.), P.W.7 S.I. Lalit Kumar Tyagi (first Investigating Officer, who prepared inquest report, site plan and recovery memo), P.W.8 S.I. Ganesh Pal Singh (the subsequent Investigating Officer, who completed the investigation and submitted the charge-sheet against accused persons), P.W.9 Garima Yadav, (the then Addl. City Magistrate-III, who recorded the dying declaration of the deceased) and P.W.10 Dr. Brahmdev (the then Chief Medical Officer, Emergency, S.N. Medical College, Agra, who gave fitness certificates prior to and after recording of dying declaration).

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

Written report (Ex.Ka.-1), letter sent to S.S.P. (Ex.Ka.-2), Inquest Report (Ex.Ka.-3), Copy of G.D. No.15 at 7:15 A.M. dtd. 21.07.2008 (Ex.Ka.-4), Letter sent to C.M.O. (Ex.Ka.-5), Police Paper No.13 (Ex.Ka.-6), Information to police regarding death of the deceased (Ex.Ka.-7), Copy of G.D. dtd. 21.07.2008 regarding death of victim (Ex.Ka.-8), Letter to C.M.O. by I.O. (Ex.Ka.-9), Photo Nash (Ex.Ka.-10), Postmortem Report (Ex.Ka.-11), Chik F.I.R. (Ex.Ka.-12), Copy of Report No.4 at 3:10 A.M. dtd.

21.07.2008 (Ex.Ka.-13), Site Plan (Ex.Ka.-14), Recovery Memo (Ex.Ka.-15), Charge-sheet (Ex.Ka.-16) and Dying Declaration of the deceased (Ex.Ka.-17).

Plastic bag and partially burnt mat were also produced and proved as Material Ex.-1 and Material Ex.-2.

12. After conclusion of evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they pleaded that on the basis of misunderstanding, a false incident has been accepted as true and on that basis a false report has been lodged. They have been falsely implicated in this case. They further pleaded that charge-sheet has been filed on the basis of flawed investigation. They further stated that a boy named Ashiq was chasing the deceased and because of wrong pronunciation of name of said boy the name has been wrongly recorded as Ashish, which fact is proved by the prosecution evidence available on record. The present appellant has specifically stated that as his name has been wrongly written in the dying declaration because of wrong pronunciation, therefore, he has been falsely implicated. The present appellant was specifically asked in question no.2 and 3 of his additional statement recorded under section 313 Cr.P.C. on 05.02.2013 that he has signed as Ashiq as well as Ashish Kumar on various dates on the order-sheets and the defence witness D.W.1 in his cross-examination has stated that he is acquainted with the father of the accused Ashish and after perusing Paper No.37, which was an affidavit available on record, he (D.W.1) stated that on the aforesaid affidavit photograph of the father of accused Ashiq alias Ashish namely, Raj Kumar is affixed and executant of affidavit has further been identified as Raj Kumar by D.W.1. In the said affidavit, in paragraph no.2, it was specifically written that Ashish and Ashiq are the names of his (executant's) son. The appellant in answer to the aforesaid question no.2 and 3 has stated that he was initially taken into custody with

the name Ashiq, therefore, on the asking of court moharrir, he was signing as Ashiq. As far as the said affidavit is concerned, he denied having any knowledge of the same, however, he has submitted that the aforesaid false affidavit was tendered on the asking of police. In support of its case, defence has examined D.W.1 Sunny and D.W.2 Ramesh Chandra.

13. Trial Court after having heard learned counsel for parties and after going through entire record, vide impugned judgment and order, convicted and sentenced only the accused-appellant under Section 304/34 IPC by observing that as per Section 71 of I.P.C. the offence under Section 326 I.P.C. has merged with the offence under Section 304 I.P.C. However, the other accused persons were acquitted by the trial court. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal. However, no appeal has been reported to be filed against the acquittal of accused Kishore and Sethi.

14. Heard Sri Abhishek Mayank, learned counsel for the appellant, Sri Nagendra Kumar Srivastava, learned A.G.A for the State and perused the entire record.

15. Assailing the findings, learned counsel appearing for appellant vehemently argued that the first information report was actually registered against one muslim boy named Ashiq from Mantola and appellant name is Ashish, who has been falsely implicated in this case because of wrong mentioning of his name while recording the dying declaration. This fact is duly admitted by informant Pradeep P.W.1 and informant's brother Dabbu P.W.2. It was further argued that the deceased was not in a fit state to give dying declaration and the dying declaration is also not recorded in question-answer form. The doctor, who gave fitness certificate, in his cross-examination has clearly stated that because of missing of alphabet, name of Ashiq might have been recorded as Ashish. It was

further submitted that no reliance can be placed on dying declaration of the deceased. It was Ashiq against whom the present F.I.R. was registered and appellant has been falsely implicated in this case. The prosecution case is totally baseless and from the evidence available on record, no case is made out as against the appellant. It was further argued that the learned trial court has misinterpreted the evidence available on record and has not given any weightage to the defence evidence which was against the norms of the established legal principles. No ingredient to bring home the guilt of the accused under section 304/34 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial court misread the evidence and wrongly convicted and sentenced the appellant. It was lastly argued that this appeal relates to the year 2013 and the appellant is in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

16. Learned A.G.A. for the State vehemently opposed the submissions made on behalf of the appellant and submitted that the present appellant is known by Ashish as well as Ashiq. There is no dispute regarding the identity of present appellant. The deceased in her dying declaration has categorically named appellant Ashish with necessary particulars that Ashish is her neighbour and resides in their street. The present appeal has been filed with the name of appellant as Ashiq and appellant himself is claiming that he is Ashish not Ashiq. The dying declaration of the deceased has been duly proved by the prosecution, which is a trustworthy piece of evidence and it alone is sufficient to convict the appellant. The appellant has committed a very gruesome act, as a result of which the deceased died on account of ante mortem burn injuries. Hence, while going through the evidence on record, it cannot be said that

the offence under Section 304/34 IPC is not made out against he appellant. The learned trial court has not committed any error of law or of fact, in convicting and sentencing the accused-appellant under Section 304/34 IPC. There is no merit in the appeal and learned A.G.A. thus urged for the dismissal of appeal.

Oral Evidence on Record.

17. Informant Pradeep is the father of the deceased Vineeta, who has been examined as P.W.1. Pradeep P.W.1, in his deposition, has stated that his daughter Vineeta was a IXth grade student. She was taken by her friend Pooja who is sister of Ashiq, to a fair on 14.04.2008, where Pooja called Ashiq and Amit, and got photographs taken of Vineeta with Amit. Thereafter, Ashiq, Amit, Kishore and Sethi started blackmailing her. On 20.07.2008 at 7:00 P.M., Amit and Ashiq came to his roof while Kishore and Sethi were standing on the Ashiq's rooftop. At that time, he was in his house downstairs and his daughter was on the rooftop. Ashiq and Amit poured kerosene oil on his daughter and set her on fire causing 90% burns. He thereafter admitted his daughter in the Emergency Ward. He got scribed the written report / Tehrir, which was read over to him and thereafter he signed the same. This witness proved the written report / Tehrir as Ex.Ka.-1. He further stated that his daughter in burnt condition told him that Ashiq and Amit have set her on fire. At the time of incident, his brother Dabbu and Dabbu's wife Mithlesh also came on spot. Earlier, an application regarding blackmailing was given by him to S.S.P., Agra on 03.07.2008, carbon copy of which bearing signature of this witness has been proved by him as Ex.Ka.-2. He further confirmed after looking at the photograph available on record that the said photograph was of his daughter Vineeta and Amit. The accused used to blackmail her on the strength of said photograph.

18. P.W.1 Pradeep was cross-examined and in his cross-examination, which remained inconclusive on 29.09.2009, this witness has stated that he had not complained regarding Ashiq and Amit to their fathers regarding blackmailing, because their fathers are influential persons. A perusal of the cross-examination conducted by defence on 29.09.2009 reveals that no material cross-examination of this witness was done on this date. Remaining cross-examination of this witness was recorded thereafter on 20.04.2010 i.e. about 6½ months after recording of his examination-in-chief and cross-examination in part. In the remaining cross-examination conducted on 20.04.2010, this witness stated that accused, who is present in Court, is not Ashiq. Ashiq was a muslim boy of Mantola, who used to harass his daughter Vineeta. On the date of incident, he had seen him alongwith Amit coming out from his house. **It was Ashiq of Mantola who had burnt his daughter. Surprisingly this specific cross-examination was not done on first available opportunity i.e. 29.09.2009, however, when this witness was further cross-examined after a delay of about 6½ months then this witness stated that a muslim boy named Ashiq was the real assailant who had burnt his daughter.** This witness has also stated that his daughter told him the name of aforesaid Ashiq not the Ashiq present in the Court. On the request of A.D.G.C, an opportunity to cross examine this witness was provided to prosecution without declaring this witness as hostile. In his cross-examination by prosecution, this witness stated that the name of sister of accused Ashish present in the Court is Pooja. He has not named Ashish in the written report.

19. Brother of the informant Dabbu P.W.2 in his deposition has stated that he was standing downstairs at his house, when his wife shouted that Ashiq and Amit had burnt Vineeta. Vineeta was his niece and she was on the terrace. He went to terrace and saw that Vineeta was lying in a burned state. This witness is not an

eyewitness but arrived immediately on the spot and had seen Vineeta lying in a burned state. He even tried to extinguish the fire and had taken Vineeta to the hospital in a burnt condition who died during the course of treatment on 21.07.2008. This witness was declared hostile on the request of prosecution and was cross-examined. In his cross-examination by the prosecution, this witness stated that he had not seen Ashiq, Kishore and Sethi running from the spot. **However, this witness has stated that Ashiq, Kishore and Sethi, who are present in the Court, are the residents of his colony / mohalla. This witness was also cross-examined by defence in which he stated that accused Ashiq, who is present in Court, is Ashish of his colony.** Accused Ashiq is a muslim boy of Mantola.

20. Sister-in-law / bhabhi of the informant Mithlesh has been examined as P.W.3, who in her deposition has stated that on the date, time and place of incident, she heard the shrieks of her niece Vineeta and on reaching at the spot, she saw Vineeta burning. She had not seen anyone pouring kerosene on Vineeta and setting her on fire. This witness was also declared hostile and was cross-examined by the prosecution in which **she stated that Ashish is her neighbour** and she does not know Ashiq. This witness was not cross-examined by defence.

21. Ashok Kumart P.W.4 is a witness of inquest and has proved the inquest report as Ex.Ka.-3. This witness has not been cross-examined by the defence.

22. Dr. Sunehri Lal P.W.5 is the autopsy surgeon, who has conducted postmortem examination of the deceased Vineeta and has proved the same as Ex.Ka.-11 along with 10 police papers, which have been proved by this witness as Ex.Ka.-3 to Ex.Ka.-10. **This autopsy surgeon, in his deposition has stated that he found superficial to deep burn marks all over the body of deceased except her face as ante-mortem injuries. The hair on the head was singed.**

There was a cut mark on the right forearm. **No abnormality was found in the head and neck.** In the opinion of this doctor, shock as a result of ante-mortem burn injuries, was the cause of the death of the deceased. In his cross-examination, this witness has stated that burn injuries sustained by the deceased could have been caused in an effort to commit suicide by burning.

23. Head Constable Dinesh Kumar P.W.6, who was the scribe of the first information report, is a formal witness who has proved the first information report as Ex.Ka.-12 and G.D. Report No.4 dated 21.07.2010 as Ex.Ka.-13.

24. Sub Inspector Lalit Kumar Tyagi P.W.7 was the first Investigating Officer of this case who conducted the inquest proceedings and has prepared the inquest report Ex.Ka.-3. On 22.07.2008, he also recorded the statement of the informant, inspected the place of incident and prepared the site plan, which has been proved by him as Ex.Ka.-14. He also took into possession a plastic container and partial burnt plastic mat from the scene of the crime and prepared recovery memo, which has been proved by this witness as Ex.Ka.-15. This witness also seized a 5 litre blue plastic container without lid and a plastic mat which was compressed due to burning, from the place of incident. This witness has proved the blue plastic container as Material Ex.Ka.1, partially burnt plastic mat as Material Ex.-2 and bundle of cloth as Material Ex.-3.

25. Sub Inspector Ganesh Pal Singh P.W.8, the subsequent Investigating Officer of the case recorded further statement of the informant Pradeep and statement of witnesses of inquest and that of accused Kishore and Sethi and finally submitted the charge-sheet, which has been proved by this witness as Ex.Ka.-16.

26. Garima Yadav P.W.9 in her deposition has stated that on 20.07.2008, she was posted as A.C.M.-III and she recorded the

dying declaration of the victim Vineeta, who was admitted in the Emergency Ward of S.N. Medical College, Agra. After issuance of fitness certificate by the doctor, she started writing the dying declaration of the victim at 10:40 P.M. on that day and in her dying declaration she (deceased) told her name as Vineeta and has stated that “*Ashish had set her on fire. He is her neighbour and lives in the same lane. He has her photographs. He poured oil on her and set her ablaze. She did not know the time and there was no one else at the home at that time*”. Owing to bandage on the victim’s hands, thumb impression of her right leg toe was taken on the dying declaration and after her statement was completed, the doctor again certified that Vineeta was conscious during her statement. This witness has proved the dying declaration of Vineeta as Ex.Ka.-17. She was cross-examined by the defence and in her cross-examination she stated that victim Vineeta, was in general ward, where other patients were present. No one was beside her to tell. The curtain was drawn, preventing anyone from seeing her. She has specifically denied the defence suggestion that victim might have told the name of accused Ashiq but she may have written the same as Ashish.

27. Dr. Brahmdev P.W.10 is the doctor who has certified the fitness of Vineeta both prior to recording of her dying declaration and after recording of her dying declaration. P.W.10 in his examination-in-chief has stated that on 20.07.2008, he was posted as Chief Medical Officer (Emergency) at S.N. Medical College, Agra and on that day at 10:35 P.M. the victim Vineeta was admitted in Emergency Ward in a burnt condition for treatment. Before recording her dying declaration by the Magistrate, this witness was asked to provide a written report regarding the victim, which was given by him as under :

“ The victim Vineeta was fully conscious to give statement and she was having some difficulty in pronouncing the words.

After completing the statement of the victim, this witness certified that “the victim remained conscious during her statement and she remained conscious even after her statement.”

He further stated that aforesaid two reports are in his handwriting and signed by him prior to and after recording of the statement of the victim on Ex.Ka.-17. He also stated that there may be a difference in the alphabet while being pronounced by victim.

This witness was cross-examined by the defence and in his cross-examination, he deposed that because of mistake of alphabet, instead of name of Ashiq it could have been Ashish. However, there was no cross-examination on the point of fitness of victim of this witness by defence.

28. The main contention / arguments of the learned counsel for the appellant was that the first information report was registered against one muslim boy named Ashiq, who was from Mantola and appellant has been falsely prosecuted and wrongly convicted. The second argument was that the dying declaration is very brief and it is not recorded in question-answer form and as the deceased was burnt more than 90%, therefore, in the totality of the circumstances the dying declaration is not reliable. Last contention was that the sentence awarded to the appellant is excessive.

Analysis

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

(i) Whether Ashiq named in the first information report and Ashish named by the deceased in her dying declaration is one and the same person or not and whether Ashiq of Mantola is the real accused not the appellant ?

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

(iii) Whether the prosecution could be said to have proved its case against the appellant - convict beyond reasonable doubt ?

(vi) Whether the sentence awarded to the appellant is excessive or not ?

30. The most crucial aspect of the present case is that all prosecution witnesses of facts have turned as hostile, a fact which has been strongly pressed by the defence in its favour by arguing that Ashiq of Mantola was the real accused, not the appellant, which is admitted by father and uncle of victim in their deposition as P.W.1 and P.W.2.

31. The word 'hostile' or 'hostile witness' has not been used in the Evidence Act. The word 'hostile witness' carries a specific significance under the English Law, but the position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of hostility. Hon'ble Apex Court in **K.P. Tamilmaran Vs. The State Rep. by Deputy Superintendent, 2025 INSC 576 / 2025 SCC OnLine SC 958** in para 31 has observed that :

“The phrase ‘hostile witness’ is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term ‘hostile witness’ in our judgment. We do it for pragmatic reasons. Some words like ‘hostile witness’ in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase ‘hostile witness’ has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared ‘hostile’. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of ‘hostility’. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of ‘hostility’ or not, one thing is clear

that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.”

32. Hon'ble Apex Court in **Koli Lakhmanbhai Chandabhai vs. State of Gujarat 1999 (8) SCC 624**, has held that evidence of hostile witness can be relied upon to the extent it supports the version of prosecution and it is not necessary that it should be relied upon or rejected as a whole. It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony, if corroborated by other reliable evidence.

33. In **Ramesh Harijan vs. State of U.P. 2012 (5) SCC 777**, the Hon'ble Apex Court has also held that it is settled legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether.

34. In **State of U.P. vs. Ramesh Prasad Misra and another 1996 AIR (Supreme Court) 2766**, the Hon'ble Apex Court held that evidence of a hostile witnesses would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

35. Hon'ble Apex Court in **Sat Paul V. Delhi Administration (1976) 1 SCC 727 in para 52** has observed that :

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record

altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.”

36. A 3-Judge Bench of Apex Court in the case of **Khuji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627**, relying on its previous cases of **Bhagwan Singh v. State of Haryana (1976) 1 SCC 389**, **Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233**, **Syad Akbar v. State of Karnataka (1980) 1 SCC 30**, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. Relying on the aforesaid judgments, Apex Court has taken a similar view in the case of **Selvamani v. State Rep. by the Inspector of Police (2024) 19 SCC 112** and has held that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

37. Thus, the law can be summarized to the effect that evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence. The maxim “falsus in uno, falsus in omnibus” i.e. “false in one thing, false in everything”, is not applicable to our criminal justice system. It is for the Court to

distinguish the wheat from the chaff while dealing with the deposition of a hostile witness. A witness may be allowed to be cross-examined by the party who calls him under Section 154 (1) of the Evidence Act and sub-section 2 of this section makes it clear that nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. Law is well settled that the evidence of a witness, who has been cross-examined by the side which produced him, cannot be totally discarded. It is also settled law that the evidence of hostile witness can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witness cannot be treated as washed off the records; it remains admissible in trial and there is no legal bar to even base the conviction of the accused upon such testimony, if corroborated with other reliable evidence. There can be several reasons for a witness to turn hostile and the Court must look into these factors while evaluating the evidence given by a hostile witness. Therefore, we will be evaluating the depositions of P.W.1, P.W.2 and P.W.3 in the light of above noted well settled position of law regarding admissibility and reliability of hostile witnesses.

Question No.1 : Whether Ashiq named in the first information report and Ashish named by the deceased in her dying declaration is one and the same person or not or whether Ashiq of Mantola is the real accused not the appellant ?

38. In the present case this is the strongest argument of the defence and, therefore, we have considered oral and documentary evidence in this regard very minutely and we find that in written report / Tehrir Ex.Ka.1, Ashiq son of Raj Kumar has been described as brother of Pooja, who is stated to be the friend of the deceased. The deceased Vineeta in her dying declaration (Ex.Ka.-17) has

described Ashish as the only accused, whom she stated to be her neighbour and resides in her street. It has also been stated by her that he is having photographs of the deceased.

39. Informant Pradeep P.W.1 in his examination-in-chief has stated that his daughter's friend Pooja who is also the sister of Ashiq, took his daughter in a fair on 14.04.2008 where Pooja called Ashiq and Amit and took photographs of deceased with Amit. Thereafter Ashiq, Amit, Kishore and Sethi were blackmailing his daughter. In his examination-in-chief he has supported the contents of the written report / Tehrir and has alleged that Amit and Ashiq have burnt his daughter. He also stated that Amit and Ashiq came on her rooftop and Kishore and Sethi were standing on the rooftop of Ashiq, which clearly signifies that Ashiq was his neighbour and was having his home nearby.

40. In the site plan prepared by the Investigating Officer, house of appellant is shown to be the adjacent one with a gap of mere 2 feet and it is shown that from the rooftop of appellant, he alongwith other accused came on rooftop of informant's house by using stairs. However, in his cross-examination P.W.1 has specifically stated that father of both Ashiq and Amit are very influential and, therefore, he had not made complaint against Ashiq and Amit either to their fathers or to the residents of his colony.

41. P.W.1's cross-examination on 09.07.2009 remained unconcluded and was deferred for next date. However, he was cross-examined thereafter only on 20.04.2010 and in the very beginning of his cross-examination, he stated that Ashiq was a muslim boy of Mantola. It seems that during this period from 09.07.2009 to 20.04.2010, this witness was won over by the defence and that is why in the very beginning of his cross-examination done on 20.04.2010, this witness has stated that accused present in the Court is not Ashiq and thereafter stated that Ashiq is a muslim boy

of Mantola. This question could have been asked very easily on the previous date of his cross-examination i.e. 09.07.2009. In his remaining cross-examination on 20.04.2010, he has stated that it was Ashiq of Mantola who has burnt his daughter. He further stated that he does not know Pooja. Surprisingly, during his cross-examination, this witness stated that his daughter has informed him the name of Ashiq, however, accused present in the Court is not Ashiq. At this juncture, when this witness deviated from the prosecution story, on the request of A.D.G.C., the prosecution was granted permission to cross-examine this witness and in the cross-examination done by A.D.G.C. he stated that he does not know that name of sister of accused Ashiq, who is present in Court is Pooja or not. Then, he himself stated that he was Ashish. He further stated that he know accused Ashish whose father name is Raj Kumar. This witness was not asked any question regarding his statement made in examination-in-chief, when he stated that Pooja is the sister of Ashiq and his said statement remained uncontroverted in his cross-examination. However, in the cross-examination done by A.D.G.C., he has stated that name of brother of Pooja is Ashish, meaning thereby that brother of Pooja is Ashiq and Ashish both.

42. P.W.2 Dabbu has stated in his examination-in-chief that Ashiq and Amit burnt Vineeta. However, this witness was declared hostile and nothing material came out in his cross-examination done by A.D.G.C. **However, in the cross-examination done by the defence, this witness specifically stated that accused Ashiq present in Court is Ashish of his colony.** But Ashiq of Mantola, who was a muslim boy, was the culprit. However, the fact remains that in the cross-examination by the defence, this witness has fairly conceded that accused Ashiq present in Court is Ashish of their colony.

43. P.W.3 Mithlesh, who is the wife of P.W.2 and sister-in-law of P.W.1, was declared hostile and in her cross-examination by

A.D.G.C., she stated that Ashish is her neighbourer and Ashiq is not her neighbourer.

44. Perusal of the trial court record reveals that father of appellant namely, Raj Kumar has given an affidavit on 30.08.2008, wherein he has specifically stated that Ashiq and Ashish Kumar are the names of his son and his school name is Ashish, whereas he is called Ashiq in their home. The aforesaid affidavit is still available in original records of the learned trial Court, which was filed in support of the application moved by appellant - convict for declaring him as juvenile and sending his case to Juvenile Justice Board. The aforesaid application is dated 29.08.2008 and affidavit is dated 30.08.2008. To rebut this contention, Raj Kumar has not been examined as defence witness. In the written report / Tehrir Ex.Ka.-1 as well as in the charge-sheet Ex.Ka.-16, the name of accused is mentioned as Ashiq son of Raj Kumar. The deceased in her dying declaration Ex.Ka.-17 has named the assailant as her neighbour and resident of their street. P.W.1 in his cross-examination has admitted that the name of father of accused Ashish present in Court is Raj Kumar. P.W.2 in his cross-examination by A.D.G.C. has stated that accused Ashiq, Kishore and Sethi present in Court are his neighbours and accused Ashiq present in Court is Ashish of their colony. P.W.3 in his cross-examination by A.D.G.C. has stated that Ashish is her neighbourer.

45. Perusal of the record of the trial Court reveals that the case was committed by the name of accused Ashiq. Charge was framed against appellant Ashiq as accused Ashiq on 15.01.2009. Appellant – convict Ashiq signed as Ashiq continuously from 19.12.2008 to 22.11.2011 and it is only on 02.12.2011, he firstly signed as Ashiq alias Ashish. Thereafter he signed as Ashiq alias Ashish on 15.12.2011, 23.12.2011, 16.01.2012 & 31.01.2012 and thereafter he started signing as Ashish Kumar from 22.02.2012 onwards.

46. Informant Pradeep P.W.1 remained present for recording of his deposition on 06.03.2009, 06.04.2009, 13.05.2009, 22.05.2009, 16.06.2009 and his examination-in-chief was recorded only on 09.07.2009 and his cross-examination was deferred for the next date i.e. 29.07.2009. However, on 29.07.2009, learned defence counsel failed to turn up to cross-examine him, inspite of availing specific opportunity of 15 minutes at 2:30 P.M., therefore, opportunity to cross-examine this witness was closed by learned trial Court vide it's order dated 29.07.2009. Thereafter application of defence for recalling P.W.1 for remaining cross-examination was allowed by the trial court on 03.12.2009 and informant was accordingly summoned. On 20.04.2010, informant came present and was cross-examined and prosecution also cross-examined this witness. It is first time on 20.04.2010, the alleged consensual defence was developed that Ashiq was a muslim boy of Mantola colony. However, even on 20.04.2010 the appellant Ashiq has signed as Ashiq and continued to sign as Ashiq till 22.11.2011. Criminal Misc. Bail Application No.3265 of 2009 filed by appellant Ashiq was rejected by this Court on 22.01.2010 and even before this Court, no such plea was taken by the appellant accused Ashiq. Thus, it appears that, on account of a long gap between the examination-in-chief and remaining cross-examination, the informant and his family members were won over by the accused and that is why informant resiled from the version as deposed in the examination-in-chief, which fully incriminate the appellant – convict.

47. In this background, the deposition of two defence witnesses is also very important. Sunny D.W.1 in his cross-examination by the prosecution has stated that accused Ashiq resides at a distance of 8 to 10 houses from his house, whereas in his examination-in-chief he has stated Ashiq to be resident of different colony. After stating that

accused Ashiq resides at a distance of 8 to 10 houses from his house, this witness himself stated that he is not residing near the house of Ashiq but resides near the house of Ashish. He confirmed the name of accused present in Court as Ashish and name of his father as Raj Kumar. This witness in his cross-examination has fairly conceded that there is an affidavit available on record on which photograph of father of accused Ashish alias Ashiq is affixed. In paragraph 2 of the said affidavit, it is specifically mentioned that Ashish and Ashiq are the names of his son. Therefore, this witness has confirmed the fact that Raj Kumar, the father of appellant, has admitted in his affidavit that appellant Ashiq is known by both names i.e. Ashish and Ashiq.

48. Ramesh Chandra D.W.2 in his examination-in-chief toed the line of defence, however, in his cross-examination he has fairly admitted that his house situate at a distance of 7 to 8 houses from the house of Ashiq. **He (D.W.2) further stated that he know Ashiq very well and name of his father is Raj Kumar.** Therefore, even the defence witnesses are supporting the prosecution story that appellant is known by both names Ashiq as well as Ashish.

49. The most important scenario in this case, which emerged from the very beginning i.e. from written report / Tehrir, is that Ashiq son of Raj Kumar is the brother of Pooja. The accused-appellant in his statement recorded under section 313 Cr.P.C. has not denied that his sister name is not Pooja. When accused Ashiq's father name is mentioned as Raj Kumar and his sister name is specifically mentioned as Pooja in the written report / Tehrir, then it is clear that the aforesaid Ashiq was not a muslim boy, rather a hindu boy. It is only after the defence has won over father of the deceased after a considerable lapse of time that a consensual defence version was agreed upon that Ashiq was a muslim boy of Mantola. The deceased Vineeta in her dying declaration has specifically stated that it was

Ashish, who is her neighbour and is having her photograph, who has actually burnt her. The dying declaration is, therefore, clear that her neighbour Ashish has burnt her. Therefore, in the totality of the circumstances, it is apparent that the appellant is having two names Ashiq and Ashish and is also the neighbour of informant.

50. The informant Pradeep P.W.1 in his written report / Tehrir has specifically mentioned that accused Ashiq is the brother of Pooja and Pooja was the friend of his daughter Vineeta. In the first information report, father's name of Ashiq is specifically written as of Raj Kumar. However, he (P.W.1) later on in his deposition as P.W.1 seems to be won over by defence and, therefore, he toed the consensual line of defence that aforesaid Ashiq was a muslim boy of Mantola. Therefore, he toed into this consensual defence version to the fullest extent and his brother Dabbu P.W.2 also toed in the same. Pradeep P.W.1, Dabbu P.W.2, Mithlesh P.W.3, Sunny D.W.1 and Ramesh Chandra D.W.2 all have specifically stated that appellant Ashish is their neighbour. The trial court has considered this aspect of defence and rightly found that Ashiq and Ashish is the one and the same guy. In our considered opinion appellant Ashiq is Ashish and he is known by both names.

51. It is the case of defence that Ashiq, a muslim boy from Mantola, was the real culprit. However, in the first information report, aforesaid Ashiq is specifically stated to be the brother of Pooja as well as son of Raj Kumar. Therefore, this defence version does not inspire any confidence and cannot be accepted at all. It was Ashiq, who was a hindu boy, whose father name is Raj Kumar and sister name is Pooja, who is the neighbour of informant, who is alleged to have committed the crime. Therefore, we are of the opinion that alleged Ashiq, a muslim boy of Mantola, was not the real accused and appellant is known by Ashish as well as Ashiq.

Question No.1 is answered accordingly. The trial court has thus rightly found that Ashish is also having another name Ashiq.

Question No.2 : Whether the dying declaration of the deceased is reliable or not ?

52. Garima Yadav P.W.9 has recorded the dying declaration of Vineeta on 20.07.2008 at 10:40 P.M. Before recording the dying declaration, P.W.9 obtained the fitness certificate of Dr. Brahmdev P.W.10 and only after issuance of fitness certificate, she recorded the dying declaration of Vineeta. After recording the dying declaration, she again obtained the fitness certificate of Dr. Brahmdev P.W.10. It is the contention of learned counsel for the appellant that the victim was having some difficulty in pronunciation, therefore, P.W.9 wrongly recorded the name of accused Ashish instead of Ashiq. To buttress this argument, learned counsel for the appellant drew the attention of this Court on the statement of P.W.10, wherein he has specifically stated that there may be a difference in the alphabet while pronouncing and because of mistake of alphabet, instead of name of Ashiq it could have been recorded as Ashish. It is pertinent to mention here that the dying declaration was recorded by Garima Yadav, P.W.9, who in her cross-examination has denied the suggestion of defence in this specific respect that victim might have told the name of Ashiq and she might have written the name of Ashish instead. P.W.10, in his deposition, has not stated that the victim told the name of accused in her dying declaration as Ashiq, moreover P.W.10 is not the witness, who has recorded the dying declaration, but a medical expert, who has given certificate of fitness. It was P.W.9, who has recorded the dying declaration of victim and she has firmly stated that victim has told the name of Ashish. Moreover, it is the case of prosecution from the very beginning that it was Ashiq son of Raj Kumar, who

was the assailant and a neighbourer of victim. Therefore, there is no force in the argument so raised by learned counsel for the appellant that name of Ashish has been wrongly recorded instead of Ashiq due to pronunciation difficulty. The dying declaration of the deceased recorded by P.W.9 is proved as Ex.Ka.-17, which is reproduced verbatim here-in-below :-

"नाम विनीता। आशीष ने जलाया। पड़ोसी है गली में रहता है। फोटो है मेरी उसके पास। तेल डालकर जलाया। टाइम नहीं पता है घर में कोई और नहीं था।"

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

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

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

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

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

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

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

communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite.”

57. In the **State of MP V. Dal Singh (2013) 14 SCC 159**, an issue arose regarding the acceptability of dying declaration where the victim suffered from 100% burn injuries and had placed her thumb impression on her statement and the ridges and curves were clearly found on the thumb impression. The Apex Court in *para 30* of this judgement has observed that

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

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

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

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

“Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the

above-mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.”

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

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

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

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

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164].)

(iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting

or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994].)

(iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not [Added by official Corrigendum No. F.3/Ed. B.J./107/2003 dated 28-10-03] contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617].)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505].)

(ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519].)

(xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839]."

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

which were not found consistent and were rather found contradictory to the oral evidence on record.

63. The Apex Court in **PV Radhakrishnan V. State of Karnataka (2003)6SCC443** in para 12 and in **Naeem V. State of UP (2024) 3 SCR 36** in para 6, has observed that a dying declaration carries great evidentiary weight but lacks the safeguard of cross-examination, so courts must ensure it inspires full confidence. The declaration must be free from tutoring, prompting, or imagination, and the deceased must have been in a fit mental state with a clear opportunity to identify the assailant. Once the court is satisfied of its truth and voluntariness, a conviction can be based solely on it without corroboration. The rule requiring corroboration is not an absolute rule of law but merely a rule of prudence. Thus, a credible and reliable dying declaration alone is sufficient to sustain a conviction.

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

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

65. Law thus can be summarized that a credible and reliable dying declaration alone is sufficient to sustain a conviction. The rule requiring corroboration is not an absolute rule, but merely a rule of prudence. A dying declaration, even if brief or short in nature, holds significant evidentiary value under Indian law and is well recognized as an exception to the hearsay rule under Section 32(1) of the Indian Evidence Act, 1872. It is well settled that the value of a dying declaration depends not upon its length but upon its truthfulness, clarity, and the conscious state of the declarant. The

absence of elaborate detail does not diminish its legal sanctity. Whenever there is a brief dying declaration it is indicative of the fact that it is neither the result of tutoring nor prompting. The shortness of the statement is itself a guarantee of its veracity.

66. Generally, the dying declaration ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in questions-answer form cannot be a ground against its acceptability or reliability.

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

tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted.

68. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

69. The incident happened on 20.07.2008 at 7:00 P.M., thereafter victim Vineeta was admitted to hospital and her dying declaration was recorded by P.W.9 on the same day i.e. 20.07.2008 at 10:40 P.M. Meaning thereby that the dying declaration of the victim was recorded within 3 hours 40 minutes of the occurrence of incident. The victim expired at 6:20 A.M. on the next day i.e. 21.07.2008. Vineeta in her dying declaration has specifically stated that **“My name is Vineeta. Ashish has burned her. He is a neighbour and lives in the street. He has my photo. He burned her by pouring oil. I don't know the time, there was no one else in the house.”**. Her dying declaration is a brief and precise statement in which she has not only named her neighbour Ashish but even the manner of incident has been precisely stated by her that she was burnt by pouring oil. Victim has also specifically stated that accused is having her photograph. The reliability of aforesaid dying declaration Ex.Ka.-17 is further strengthened by the fact recorded in her statement that at the time of incident, there was no one else in the house. The then Additional Additional City Magistrate-III, Agra, Garima Yadav P.W.9 in her deposition has proved the dying declaration of the

victim Vineeta as Ex.Ka.-17. Prior to recording of dying declaration she obtained the fitness certificate of Dr. Brahmdev, P.W.10. and only after issuance of fitness certificate, she started writing the dying declaration and after writing down the same, she again obtained the certificate of P.W.10 that victim Vineeta was conscious during and after her statement. There was no suggestion by the defence to this witness P.W.9 that victim Vineeta was not in a fit state of mind at the time of giving her dying declaration. Informant has deposed that Ashiq and Amit have burnt his daughter, whereas Vineeta has named only Ashiq. Therefore, this fact further confirms that dying declaration of Vineeta is not the result of tutoring.

70. Dr. Brahmdev, P.W.10. has given certificates on the dying declaration i.e. Ex.Ka.-17. This doctor P.W.10 firstly gave a certificate prior to recording of dying declaration of victim and also gave a certificate after recording of the dying declaration. This doctor certified that Vineeta was fully conscious to give statement prior to recording of dying declaration and after completing the statement of Vineeta, this witness again certified that victim remained conscious during her statement and also remained conscious even after her statement. Although word 'fitness' is missing in the deposition of this witness as well as in his certificate, but there is not an iota of evidence available either in the deposition of this witness or in the deposition of P.W.9 that victim was not mentally fit to give statement. No suggestion to this witness was also given by the defence that victim was not mentally fit to give statement. Surprisingly, autopsy surgeon Dr. Suneheri Lal P.W.5 was also not cross-examined on the point of possibility of fitness of the deceased / victim at about 10:40 P.M. on 20.07.2008.

71. We have perused the postmortem report of the deceased as well as deposition of P.W.5, the autopsy surgeon and it is clear that there was no burn injury on the face of the victim or even on her

skull. It is specifically mentioned in deceased's antemortem injuries that there was superficial to deep burn injuries all over her (deceased) body except skull region. It was also observed that scalp hair were singed, which is indicative of the fact that scalp was not burnt and only hair were singed. P.W.5 has specifically stated that there were no burn marks on her face. He further stated that no abnormality was found in the head and neck of the deceased. **Resultantly, we are of the considered opinion that victim though was fully conscious before, during and after recording of her dying declaration but was also medically fit to give statement.** The victim / deceased in her dying declaration has clearly stated that only the appellant was involved in the incident. **Therefore, from the totality of the circumstances, we are of the opinion that prosecution has been able to prove the dying declaration of the deceased Vineeta as Ex.Ka.-17 and the same is brief, precise and reliable. In her dying declaration, the deceased has specifically named the appellant as an assailant, who has burnt her by pouring oil. The deceased has also given sufficient particulars from which the appellant could be very easily identified i.e. the appellant is her neighbour.** Question No.2 is answered in the affirmative and the learned trial court has rightly found the dying declaration of deceased as reliable one.

Question No.3 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

72. The prosecution has successfully proved the dying declaration of the deceased as Ex.Ka.-17 and as per aforesaid dying declaration, it was accused Ashish, who has burnt the deceased Vineeta by pouring oil upon her. The dying declaration Ex.Ka.-17 of the deceased is brief, precise and having necessary particulars to identify the assailant. Her dying declaration Ex.Ka.-17 is a reliable evidence and conviction of the appellant can be sustained only on

the strength of aforesaid dying declaration without there being any corroboration. However, from the record, the prosecution has also been able to sufficiently corroborate the aforesaid dying declaration from the depositions of P.W.1, P.W.2 and P.W.3 along with ocular and documentary medical evidence.

73. The first information report was lodged against Ashiq son of Raj Kumar, who is the brother of victim's friend Pooja, clearly meaning thereby that Ashiq was a hindu boy. Prosecution has been able to prove that Ashiq named in the first information report is the same guy, who has been named as Ashish by the victim in her dying declaration. We have already arrived on this conclusion that appellant Ashiq is one and the same guy having two names i.e. Ashiq and Ashish.

74. Informant P.W.1 in his deposition has specifically stated that Ashiq is the brother of Pooja. P.W.1 has also proved that on the date, place and time of incident, his daughter Vineeta was burned and had sustained burn injuries because of which she died on the next day. We have already arrived on the conclusion that after a period of about 6½ months of recording his examination-in-chief and part cross-examination, this witness was won over by the defence and that is why he toed into a consensual line of defence that Ashiq was a muslim boy of Mantola. However, the defence has miserably failed to prove that Ashiq named in the first informant report was a muslim boy of Mantola.

75. P.W.2 and P.W.3 have also supported the prosecution version as far as date, place, time and manner of incident is concerned i.e. their niece Vineeta was burned on the date, place and time of incident.

76. Ocular as well as documentary medical evidence proved it on record that the deceased Vineeta sustained burn injuries and she died due to shock, as a result of extensive burn injuries. Therefore,

ocular as well as documentary medical evidence corroborate this part of prosecution story that the deceased suffered burn injuries on the date and time of the alleged incident and she finally succumbed to her injuries due to shock, as a result of extensive burn injuries.

77. Site plan Ex.Ka.-14 also proves that the house of appellant is adjoining to the house of informant and, therefore, appellant is the immediate neighbour of the victim / deceased. Moreover, P.W.7 also recovered a plastic container and partially burnt plastic mat from crime scene, which also strengthen the prosecution story.

78. In the totality of the circumstances, the prosecution has been able to successfully prove the dying declaration of the deceased, which is a reliable piece of evidence. In the present case, the dying declaration Ex.Ka.-17 is in itself sufficient to convict the appellant, however, in the present case, the aforesaid dying declaration also finds sufficient corroboration from the depositions of P.W.1, P.W.2 and P.W.3. The depositions of P.W.1, P.W.2 and P.W.3. are consistent as far as date, time and place of incident is concerned. All of these witnesses have also consistently deposed that deceased sustained burn injuries on the date, time and place of incident. The prosecution has been able to successfully prove that the appellant Ashiq is also known by Ashish. The ocular as well as documentary medical evidence strengthen the prosecution story that the deceased sustained burn injuries on her body at the time of incident and ultimately she succumbed to her burn injuries within 12 hours of the incident. The case of the defence was that it was Ashiq, a muslim boy of Mantola, who was the real culprit, but the defence has miserably failed to prove the very defence taken by it. It has been proved on record that Ashiq alias Ashish is son of Raj Kumar and brother of Pooja, therefore, he is a hindu boy having necessary particulars both in the first information report as well as deceased's dying declaration, therefore, the prosecution has been successfully

able to prove its case against the appellant - convict beyond reasonable doubt. Question No.3 is accordingly decided in the affirmative.

Question No.4 : Whether the sentence awarded to the appellant is excessive or not ?

79. The appellant was charged under Section 304/34 IPC and has been convicted under the same section. The appellant has been sentenced to undergo life imprisonment with a fine of Rs.20,000/- and in case of default in deposit of fine amount, he has been further sentenced to undergo additional imprisonment of two years R.I. The trial Court has not specified that the appellant has been convicted under Part-I or Part-II of Section 304 IPC. However, it is apparently clear that as appellant has been sentenced for life imprisonment, therefore, he has been convicted under Part-I of Section 304 IPC. A person can be sentenced to imprisonment for life or imprisonment of either description which may extend to 10 years and shall also be liable to fine.

80. In the present case, in additional statement recorded under section 313 Cr.P.C. in the year 2013, the accused has stated his age to be about 23 years. Therefore, at the time of commission of offence i.e. 20.07.2008, the appellant was about 18 years of age and the deceased was a school going girl of about 16 years at the time of incident. The prosecution has successfully proved that appellant poured oil on the deceased and thereafter deceased was burned. The appellant was immediate neighbour of the victim. The victim Vineeta sustained such extensive burn injuries that she died within 12 hours of the incident. Therefore, it is clear that burn injuries were caused to the deceased by appellant with intention to cause such bodily injuries as were likely to cause death. The accused is presumed to know the consequences of his actions, of having poured oil on the deceased and setting her on fire. Burning a person

alive, is a gruesome act. No one in such cases, can claim that he did not act in a cruel and unusual manner. It is a case of burning a person alive and therefore, it is the duty of the Court to deal with it in most severe and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such heinous crimes. Though the trial court did not frame charge under section 302 IPC, which could have been lawfully framed, but the present case is a case, where a minor school going girl has been burned alive by appellant, therefore, the trial Court has rightly awarded the maximum penalty prescribed under section 304 Part-I i.e. life imprisonment to the appellant and no ground to interfere in the sentence so awarded to the appellant is made out. Therefore, question no.4 is decided in the negative.

81. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present appeal. Consequently, the judgment and sentence dated 30.03.2013, passed by Additional Sessions Judge, Court No.5, Agra is hereby **'Affirmed'**.

82. The appellant is in jail. He shall undergo the remaining jail sentence.

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

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

85. The appeal fails and is hereby **Dismissed**.

86. Before parting with this case, we direct State Government to consider the case of appellant - convict for grant of remission, if not considered already, in the light of directions issued by Hon'ble Supreme Court in Suo Moto Writ Petition (Crl.) No. 4 of 2021 titled In Re : Policy Strategy for Grant of Bail, 2025 INSC 239. The

appellant is continuously languishing in jail from the date of his arrest. As per custody certificate dated 14.11.2025, the appellant – convict had already undergone a period of 17 years 3 months and 15 days without remission and his total sentence including remission as per aforesaid custody certificate was 19 years 11 months and 27 days as on 14.11.2025. Therefore, order on remission shall be passed within a period of two months from the date of receipt of copy of this judgment, as per existing State policy of remission. Chairman and Secretary, District Legal Services Authority, Agra are also directed to ensure compliance of directions issued by Hon'ble Supreme Court in aforesaid case qua appellant - convict.

87. Registrar Compliance is directed to send a copy of this judgment to Chief Secretary, Government of Uttar Pradesh and a copy to Chairman / Secretary, District Legal Services Authority, Agra for ensuring compliance of directions issued in Para 86 of this judgment.

April 15, 2026.

ss

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