
Before Mehtab S. Gill & Baldev Singh, JJ.

HARBANS KAUR,—Appellant

versus

STATE OF PUNJAB,—Respondent

Criminal Appeal No. 309/DB of 2006 and Murder

Reference No. 2 of 2006

28th July, 2006

Indian Penal Code, 1860- S. 302-Murder reference—Allegations by deceased of setting her on fire after pouring kerosene on her mother-in-law aged about 82 years—Trial Court convicting & sentencing the accused to death—Major discrepancies on material facts regarding the occurrence in two dying declarations recorded on the same day—Motive in both dying declaration also at variance—Dying declarations suffer from infirmities which cannot be reconciled —No complaint made to police for five days by any of the close relatives of deceased—Dying declarations & prosecution version do not concur with each other—Nature of burn injuries on person of deceased also indicate a case of suicide—Murder reference declined—Conviction of appellant converted as one under section 306 IPC.

Held, that both the dying declarations do not inspire confidence. They have been made after Harpreet Kaur was tutored by her mother, brother and husband Gurjit Singh who from the time to occurrence i.e. 4th March, 2005 till the dying declarations were recorded i.e. 9th March, 2005 were with her. A suspicion is created as to their truthfulness. The dying declarations suffer from infirmities which cannot be reconciled. The dying declarations and the prosecution version do not concur with each other.

(Para 19)

Further held, that injuries are burn injuries on the back and right front portion of the deceased. It seems that deceased Harpreet Kaur picked up the jug full of kerosene oil with her right hand and thereafter poured kerosene oil on herself on the right shoulder and thereafter set herself ablaze. If kerosene oil had been poured by the appellant then not only the right shoulder but the left shoulder, left side abdomen, neck and the head would have also got burnt. Appellant,

would not have poured the oil on the right shoulder only, but would have emptied the jug of kerosene on the head and shoulders of the deceased; thereby the kerosene oil would have spread all over her body. The burn injuries then would have been not only on the right side of chest, right abdomen and back, but all over the body. The medical evidence does not corroborate the ocular account.

(Para 21)

Further held, that the motive for the commission of the offence, as stated by prosecution witnesses and as stated in the dying declaration is that the appellant was a woman of loose moral character and unwanted persons visited her for wrong deeds. These persons used to come to appellant for illegal sexual activities. Deceased as per prosecution witnesses was stopping the appellant from indulging in these illegal sexual activities. Appellant did not restrain herself, and both of them used to pick up quarrels. Three panchayats were convened. It has also come in evidence that house of the deceased is in the town of Kot Ise Khan. The motive for the commission of the offence in fact has demolished the prosecution case completely.

(Para 22)

Further held, that from the evidence on record it seems that appellant and deceased were not having cordial relations and due to this there was tension in the house. The deceased due to this quarrel and constant nagging by the appellant got frustrated and committed suicide.

(Para 23)

N. S. Sodhi, Advocate, counsel for the appellant.

S. S. Randhawa, Senior D.A.G. Punjab.

JUDGMENT

MEHTAB S. GILL, J.

(1) This is a Murder Reference sent by the Additional Sessions Judge, Moga under Sections 366/368 of the Cr.P.C. The learned trial Court,—*vide* its judgment/order dated 1st April, 2006/4th April, 2006 convicted appellant Harbans Kaur wife of Kartar Singh under Section 302 I.P.C. and sentenced her to death and directed that she be hanged by the neck till she is dead.

(2) We will be taking up Murder Reference No. 2 of 2006 and the appeal preferred by appellant Harbans Kaur, i.e. Criminal Appeal No. 309-DB of 2006 together and will be passing a common judgment, as both arise out of the same judgment/order.

(3) The case of the prosecution is unfolded by the statement Ex.P33 of Harpreet Kaur wife of Gurjit Singh given to A.S.I. Darshan Singh of P.S. Kot Ise Khan on 9th March, 2005. She stated that she was married with Gurjit Singh about 7 years back. She has a son by the name of Rajwinder Singh who is about 5-1/2 years old. Gurjit Singh plied a taxi at Kot Ise Khan. On 4th March, 2005 at about 2 p.m. Gurjit Singh had gone to the Taxi Stand as usual. Harpreet Kaur and her mother-in-law Harbans Kaur were present in the house. Harpreet Kaur was preparing meals in the room. Her mother-in-law Harbans Kaur came in, all of a sudden, carrying a jug containing kerosene oil. As soon as she came in, she poured kerosene oil on her (Harpreet Kaur) and after extracting a match stick from a match-box, at once set her on fire. Harpreet Kaur's clothes caught fire. She quickly came out into the courtyard shouting for help. Because of the fire, clothes of Harpreet Kaur stuck to her body. She fell down in the courtyard and became unconscious. She further stated that her husband Gurjit Singh firstly took her to Dr. Dharampal at Kot Ise Khan. Then she was taken to Sharma Hospital, Dutt Road, Moga. On seeing that her condition was deteriorating, on 7th March, 2005 her brother Balwinder Singh and her husband Gurjit Singh brought her to Anil Baghi Hospital, Ferozpur City. She further stated that due to fire, she suffered burn injuries on her breast, abdomen, back, both thighs and both arms. The cause of grudge was that her mother-in-law was a lady of loose character and unknown persons used to visit her from different areas. Harpreet Kaur took ill of this and used to try to dissuade her from indulging in illegal activities. But instead of stopping, her mother-in-law picked up a quarrel with her and because of this she poured kerosene oil on her (Harpreet Kaur) and set her on fire with an intention to kill her. Further, she has stated in her statement, that she has heard the same, which is correct and it is thereafter she has put her left thumb impression on her statement.

(4) Statement Ex.P33 was recorded on the basis of a QST sent on 8th March, 2005 to the S.H.O., Police Station, Ferozpur City that Harpreet Kaur wife of Gurjit Singh was lying in Anil Baghi Hospital,

Ferozpur City, due to burn injuries. On this Darshan Singh A.S.I. alongwith a police party reached Anil Baghi Hospital, Ferozpur. Due to non-availability of the doctors at night, no action could be taken. On the next day i.e. 9th March, 2005, Darshan Singh, A.S.I. again got the opinion of the doctor in writing regarding fitness of injured Harpreet Kaur. The doctor declared Harpreet Kaur fit to make a statement. Before getting it thumb-marked, Darshan Singh, A.S.I. read over the statement to Harpreet Kaur, who after hearing it and admitting the same to be correct, affixed her left thumb impression. Her right thumb impression could not be affixed as it had got burnt. On the basis of the statement F.I.R. Ex.P35 was recorded on 9th March, 2005 at 3.05 p.m. Special report reached the C.J.M., Moga on 10th March, 2005 at 5 a.m.

(5) Shri Harish Anand, J.M.I.C., Ferozpur recorded another dying declaration Ex.P24 of Harpreet Kaur on 9th March, 2005 at 3.05 p.m. Harpreet Kaur stated that she is aged 30 years. She is a resident of Village Chuge Wali. (Again said, resident of Joga Wala). Her marriage was solemnized with Gurjit Singh seven years back. She has two sisters and a brother. On 4th March, 2005 at about 2 p.m. her mother-in-law Harbans Kaur poured kerosene oil on her contained in a jug. She started running, but Harbans Kaur ignited a match stick due to which she caught fire. She run out of the room. She raised hue and cry and thereafter became unconscious. Her husband was not present in the house and Harpreet Kaur herself and her mother-in-law alone were present. She was set on fire with an intention to kill her. The grudge being that her mother-in-law wanted to push her out of the house. The left thumb impression of Harpreet Kaur was affixed on this dying declaration.

(6) The prosecution to prove its case, brought into the witness-box Dr. Hem Raj Goyal, PW-1, Dr. Anil Kaushal, PW-2, Harish Anand, J.M.I.C. Ferozpur PW-3, Gursewak Singh PW-4, Dr. Jaswinder Singh PW-5, Dr. Naveen Sethi PW-6, Dr. Gursaranjeev Gulati PW-7, Kirpal Singh PW-8, Kuldeep Singh PW-9, Dr. Varidner Mohan PW-10, Harbans Kaur PW-11 and A.S.I. Darshan Singh PW-12.

(7) Learned counsel for the appellant has assailed the case of the prosecution on several counts. Learned counsel has argued that the dying declarations Ex.P33 given to A.S.I. Darshan Singh and

Ex.P24 given to the J.M.I.C., Ferozepur are not concurring with each other on material facts. They do not inspire confidence and could not be relied upon. They have material flaws which cannot be overlooked. In the dying declaration Ex.P33, Harpreet Kaur deceased, has given her age to be as 22 years and in the second dying declaration Ex.P24, she has given her age to be as 30 years. The dying declaration Ex.P33 was recorded on 9th March, 2005 at 12.30 p.m., while the second dying declaration Ex.P24 was recorded by Shri Harish Anand, J.M.I.C. Ferozepur on the same day, i.e. 9th March, 2005 at 2.50 p.m. In the dying declaration Ex.P33, deceased Harpreet Kaur has stated, **“I was preparing meals in my room. My mother-in-law Harbans Kaur came in all of a sudden carrying a jug containing kerosene oil. As soon as she came in, she poured kerosene oil on me and having extracted a matchstick from a match box at once set me on fire.”** In the dying declaration Ex.P24, Harpreet Kaur has stated, **“On that day it was about 2 p.m. My mother-in-law Harbans Kaur poured kerosene on me contained in a jug and I started running but Harbans Kaur ignited a match stick and set it on me and due to which I caught fire.”** Nowhere has it been stated in the dying declaration Ex.P24 that appellant Harbans Kaur came from the back when deceased Harpreet Kaur was cooking food and thereafter kerosene oil was poured on her. In the dying declaration Ex.P24, the deceased has stated that she ran away after kerosene oil was poured on her. This has not been stated in the dying declaration Ex. P33. Harpreet Kaur was a young girl of 22 years. If she had run away, as mentioned in the dying declaration Ex. P24 after kerosene oil was poured on her, she could not have been set on fire by an old lady of 82 years. Appellant could not have run after her because of her old age. It has come in evidence that appellant walked with the help of stick. Further, in the dying declaration Ex. P33, the grudge given is that unwanted persons used to come to the house to meet her mother-in-law Harbans Kaur, as she was a woman of loose character, but in the dying declaration Ex.P.24, it has been stated that Harpreet Kaur’s mother-in-law was desirous to push her out of the house. Nowhere has it been mentioned in Ex. P.24 that undesirable persons used to come to the house, as appellant Harbans Kaur was a woman of loose character.

(8) It has come in evidence that right from the time Harpreet Kaur was taken to the hospital i.e on 4th March, 2005 till her statements Ex. P33 and P24 were recorded, Harpreet Kaur's mother PW-11, her brothers Kuldeep Singh PW-9, Balwinder Singh and her husband Gurjit Singh were present with her. Appellant Harbans Kaur has stated in her statement given on the quantum of sentence, that Gurjit Singh husband of deceased Harpreet Kaur was her foster son and she was not his real mother. Gurjit Singh would naturally sympathise with his wife rather than his foster mother, if appellant had caused burn injuries. Harbans Kaur PW11 mother of the deceased and her brother Kuldeep Singh PW-9 and Balwinder Singh were all along with her. They also would not have spared appellant, but they did not want to register a case, as they knew that it was a case of suicide lest Gurjit Singh is implicated for mistreating his wife. This is the reason that Gurjit Singh husband of deceased Harpreet Kaur did not come into the witness-box so that the truth is not revealed to the Court. The prosecution though have cited him as a witness, but have given him up as being won over by the accused. If he had been won over by the accused, then he would have appeared as a defence witness to save his foster mother.

(9) There is an unexplained delay of 5 days in recording of the F.I.R. Harbans Kaur PW-11 mother of deceased Harpreet Kaur, Kuldeep Singh PW-9, Balwinder Singh both brothers of the deceased and Gurjit Singh husband of the deceased were present all along from 4th March, 2005 till her statements Exs. P33 and P24 were recorded on 9th March, 2005. Name of Balwinder Singh figures in the F.I.R. Ex. P35. None of them went to the police to file a complaint against the appellant. It has come in the evidence of Dr. Ham Raj Goyal PW-1 that Gurjit Singh persuaded the doctors not to prepare a M.L.R., and also not to inform the police. If Harpreet Kaur had been injured by appellant Harbans Kaur, who was the step-mother of Gurjit Singh, he would have been the first person to inform the police. Neither Harbans Kaur PW-11, nor Kuldeep Singh PW-9, nor Balwinder Singh informed the police. It was after Harpreet Kaur's condition got serious that Gurjit Singh got afraid that he may be accused for the murder of his wife, that they got appellant Harbans Kaur implicated and persuaded Harpreet Kaur to give statements Exs. P24 and P33, falsely implicating her.

(10) The motive for the commission of the offence was that appellant Harbans Kaur as alleged was a woman of loose character, which was not liked by deceased Harpreet Kaur. Harpreet Kaur tried to dissuade her and due to this there was quarrel in the house. This does not appeal to our mind and it is not comprehensible that an old lady of 82 years and as per Asha Rani DW-1, a neighbour, she (Harbans Kaur) had even difficulty in walking and used a stick. Accusing an old woman of 82 years of being a woman of loose character, is not believable.

(11) Learned counsel for the State has argued that there is no delay in lodging of the F.I.R. Dr. Hem Raj Goyal PW-1 has stated that Gurjit Singh husband of the deceased requested the doctors not to inform the police, so that the matter could be reconciled. The doctor has given a note in this regard on the Bedhead ticket Ex.P10. It has been signed by Gurjit Singh. The M.L.R. was also not prepared on the request of Gurjit Singh. This was natural as the mother of Gurjit Singh was being blamed for the injuries on Harpreet Kaur. The serious condition of the patient was explained to Harbans Kaur PW-11 and a note to this effect was given on 8th March, 2005 which is Ex.P11. Gurjit Singh again made a request that the police be not informed. This was the sole reason why the F.I.R. got delayed.

(12) Both the dying declarations Exs.P33 and Ex.P24 inspire confidence. The dying declaration Ex.P33 has clearly stated that Harpreet Kaur was preparing food. Appellant Harbans Kaur came from the back and after pouring kerosene oil, set her on fire with a match stick. This is the reason that injuries on the person of the deceased are on the back till the buttocks and on the right shoulder going from the right side to the abdomen. Asha Rani, DW-1 has also stated that it is correct that kerosene oil was sprinkled on deceased Harpreet Kaur. Burn injuries on the person of the deceased corroborate the ocular account. The main ingredients of both the dying declarations, corroborate each other. Kuldeep Singh PW-9 and Harbans Kaur PW-11 have also corroborated the version put forward in the dying declarations. The motive for the commission of the offence was that appellant was a lady of loose moral character and suspicious persons used to come to her, which was objected to by the deceased.

(13) We have heard the learned counsel for the parties and perused the record with their assistance.

(14) The two dying declarations Exs.P33 and P24, one given to A.S.I. Darshan Singh and the second given to Shri Harish Anand, J.M.I.C. Ferozepur respectively have been scrutinized by us very carefully. Both the dying declarations came into existence on 9th March, 2005, Ex.P33 was recorded at 12.30 p.m. and Ex.P24 at 2.50 p.m. It is alleged that Harpreet Kaur was burnt on 4th March, 2005 at 2 p.m. by pouring kerosene oil on her by the appellant. She was first taken to Shakuntla Nursing Home, Kot Ise Khan at 2.30 p.m. and as per Dr. Gursaranjeev Gulati PW-7, there were burn injuries on the back except head and face of Harpreet Kaur, because of her serious condition, she was referred to Moga after giving her first-aid. As per Dr. Varinder Mohan PW-10 Medical Officer, S.D. Sharma, Memorial Hospital Moga, who had brought the bed-head ticket pertaining to the admission of Harpreet Kaur, she was admitted to that hospital on 4th March, 2005. She was accompanied by Gurjit Singh her husband and Harbans Kaur mother. She was given first-aid at 7.30 p.m. on 4th March, 2005. Signatures of Gurjit Singh, Ninder Singh (Balwinder Singh) brother of the patient (Harpreet Kaur) were obtained on the bed-head ticket. The relevant note is Ex.P31. This was also thumb-marked by Harbans Kaur, mother of the patient. Harpreet Kaur at that time had received 72% burns. She was given treatment in this hospital till 7th March, 2005. Harpreet Kaur was then taken out of the hospital to be treated somewhere else and signatures of Gurjit Singh were taken on the note Ex.P32. This was thumb-marked by Harbans Kaur, mother of the patient also. Dr. Varinder Mohan PW-10 has further stated that no information was given by him regarding admission of Harpreet Kaur in the hospital, as he was under the impression that police must have been informed by the doctor who had treated her at Kot Ise Khan. Harpreet Kaur at that time was well-oriented and her thumb impression and signatures was taken on the opening sheet and the bed-head ticket Ex.D1.

(15) Thereafter Harpreet Kaur was taken to the Anil Baghi Hospital, Ferozepur City and Dr. Hem Raj Goyal PW-1 in his testimony before the Court has stated that he had brought the bed-head ticket Ex.P1 pertaining to the admission of Harpreet Kaur on 7th March, 2005. She was admitted with 75% burns and in a serious condition. On 9th March, 2005 on police request Ex.P3, Harpreet Kaur was

declared fit to make a statement by Dr. Jaswinder Singh, Medical Officer of the hospital. On 9th March, 2005 on another police request Ex.P5 it was declared that patient Harpreet Kaur had 75% burns,— *vide* endorsement Ex.P6. The patient was examined by Dr. Naveen Sethi PW-6, who had also sent information to the S.H.O., Police Station, Ferozepur. Dr. Hem Raj Goyal PW-1 examined Harpreet Kaur during her stay. Harpreet Kaur expired on 30th March, 2005 at 2.45 p.m. Consent to treat Harpreet Kaur was given by her husband Gurjit Singh on consent form Ex.P9 on 7th March, 2005 at the time of admission at about 9.30 p.m. Gurjit Singh husband of the patient requested at 9.45 p.m. that information to the police be not given for the time being, in order to reconcile the matter. Information to the police was postponed and a note to this effect was recorded at 9.45 p.m. on the bed-head ticket Ex.P10. This note was signed by Gurjit Singh. The M.L.R. of Harpreet Kaur was not prepared on 7th March, 2005 on the request of Gurjit Singh. The serious condition of the patient was explained to the mother of the patient and the note in this regard is Ex.P11. On 8th March, 2005, Gurjit Singh husband of Harpreet Kaur again requested to wait till the other party did not come. On 9th March, 2005 at 11 a.m. Dr. Hem Raj Goyal PW-1 conducted the medico-legal examination of Harpreet Kaur. He found burn injuries on her back till the buttocks, on the right hand, shoulder, on the front chest and abdomen extending to the right shoulder. There were burn injuries on the left arm, left fore-arm, right upper arm and right fore-arm. Face and neck of the patient did not have any burn injuries. There were no burn injuries on palms of both the hands of the patient. This doctor has categorically stated that when Harpreet Kaur was admitted in the hospital, her mother Harbans Kaur PW-11 was accompanying her.

(16) It is clear from the testimony of the doctors that from the time the occurrence had taken place i.e. on 4th March, 2005 and when she was taken to S. D. Sharma, Memorial Hospital, Moga and Anil Baghi Hospital, Ferozepur City, Harbans Kaur PW-11 mother of the deceased, Balwinder Singh, Kuldip Singh PW-9, brothers of the deceased and her husband Gurjit Singh were accompanying her. Appellant Harbans Kaur has stated in her statement that **“Gurjit Singh is not my real son. I have brought him up being his**

foster mother. At this moment Gurjit Singh is 25/26 years old. Harbans Kaur PW-11, Balwinder Singh, Kuldeep Singh PW-9 and her husband Gurjit Singh were not related in any way to appellant Harbans Kaur, but were very closely related to deceased Harpreet Kaur, as they were no other persons than the mother, brother and husband of the deceased. If appellant Harbans Kaur had poured kerosene oil and burnt the appellant, the police would have been informed immediately by them individually or collectively. But it has come out from the statements of the doctors that all along, Gurjit Singh and Harbans Kaur PW-11 were persuading the doctors not to inform the police. It is only on 9th March, 2005 when the condition of Harpreet Kaur deteriorated that the doctor at Anil Baghi Hospital, Ferozepur City, informed the S.H.O. Police Station City, Ferozepur. Complainant party was trying to hush up the case for the reasons best known to them. They did not want the truth to come out.

(17) Both the dying declarations Exs.P33 and P24 have major discrepancies on material facts regarding the occurrence. In the dying declaration Ex.P33, Harpreet Kaur has stated, **"I was preparing meals in my room. My mother-in-law Harbans Kaur came in all of a sudden carrying a jug containing kerosene oil. As soon as she came in, she poured kerosene oil on me and having extracted a matchstick from a match box at once set me on fire."** This has not been mentioned in the dying declaration Ex.P24. In the dying declaration Ex.P24, she has stated, **"On that day it was about 2 p.m. My mother-in-law Harbans Kaur poured kerosene on me contained in a jug and I started running but Harbans Kaur ignited a match stick and set it on me and due to which I caught fire."** Harpreet Kaur deceased was a young girl of 22 years. If she had started running after kerosene oil was poured on her, as stated in Ex.P24, it would not have been possible for appellant Harbans Kaur to set her on fire as she was an old lady of 82 years who walked with the help of a stick. She could not have poured kerosene oil and then lit a match stick, to set Harpreet Kaur on fire. Nowhere has it been mentioned in the dying declaration Ex.P24 that Harpreet Kaur was preparing meals. In the dying declaration Ex.P33 it has been mentioned that appellant Harbans Kaur came from the back and

poured kerosene oil and thereafter set her on fire. Taking what has been stated in the dying declaration Ex.P33 into consideration, it could not be possible for the appellant first to pour kerosene oil on the back of the deceased and thereafter, ignite a matchstick and then set her on fire. This would have taken a few seconds. Harpreet Kaur a young girl, would have run away to save her life. It has come in the evidence of Asha Rani DW-1 that appellant Harbans Kaur walked with difficulty and that also with a stick in her hand. Motive in both the dying declarations is also at variance. In the dying declaration Ex.P33 the grudge as stated was that deceased used to stop appellant meeting strangers as appellant was a woman of loose character. In Ex.P24 deceased has stated that her mother-in-law wanted to turn her out of the house.

(18) The Hon'ble Apex Court in **Smt. Paniben versus State of Gujarat** All India Criminal Law Reporter 610, has laid down the principles governing dying declarations which are as under :—

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration [**Mannu Raja versus State of M.P.**, (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 (**State of U.P. versus Ram Sagar Yadav**, AIR 1985 SC 416); **Ramavati Devi versus State of Bihar**, AIR 1983 SC 164).
- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration (**Ram Chandra Reddy versus Public Prosecutor**, AIR 1976 SC 1094).
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. [**Rasheed Beg. versus State of Madhya Pradesh**, 1974(4) S.C.C. 264].

-
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected (*Kake Singh versus State of M.P.*, AIR 1982 SC 1021).
 - (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction [*Ram Manorath versus State of U.P.*, 1981 SCC (CrL.) 581].
 - (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra versus Krishnamurthi Laxmipati Naidu*, 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. (*Surajdeo Oza versus State of Bihar*, AIR 1979 SC 1505).
 - (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail (*Nanahau Ram and another versus State*, 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 (*State of U.P., versus Madan Mohan*, AIR 1989 S.C. 1519)."

(19) Both the dying declarations Exs.P24 and P33 do not inspire confidence. They have been made after Harpreet Kaur was tutored by her mother, brother and husband Gurjit Singh who from the time of occurrence i.e. 4th March, 2005 till the dying declarations were recorded, i.e. 9th March, 2005 were with her. A suspicion is created as to their truthfulness. As per the observations made above,

the dying declarations suffer from infirmities which cannot be reconciled. Dying declarations Exs.P33 and P24 fall within the categories as per Rules III, IV, VI and X, as enumerated by the Hon'ble Apex Court in *Smt. Paniben versus State of Gujarat (supra)*. In the case in hand, the dying declarations and the prosecution version, as spelt out by Harbans Kaur PW-11 and Kuldeep Singh PW-9, do not concur with each other.

(20) The nature of burn injuries on the person of deceased Harpreet Kaur also indicate that the appellant did not pour kerosene oil on her, but it seems that Harpreet Kaur, committed suicide by firstly pouring kerosene oil on herself, and thereafter lighting a match-stick. The injuries are reproduced as under :—

- (1) Burns over front chest and abdomen extending on the right shoulder but sparing the upper part of the chest near the neck and front of left shoulder.
- (2) Burns over medial aspect of left upper arm and front of the left fore arm and back of left hand and thumb. Swelling on the limb was present.
- (3) Burns over back of right upper arm and front of right forearm and back of right hand. Swelling of whole of limb was present.
- (4) Burns present over whole of left lower limb except a small area over the anterior aspect of left knee and left thigh. Swelling of the limb was present.
- (5) Burns present over whole of the posterior aspect of the right lower limb and lateral aspect of right thigh. Swelling of the whole limb was present.
- (6) Burns present over whole of the back of the chest and abdomen including buttocks. Head neck perineum and both the feet were not involved in the burns.

(21) Injuries are burn injuries on the back and right front portion kerosene of the deceased. It seems that deceased Harpreet Kaur picked up the jug full of kerosene oil with her right hand and thereafter poured oil on herself on the right shoulder and thereafter set herself ablaze. If kerosene oil had been poured by the appellant,

then not only the right shoulder but the left shoulder, left side abdomen, neck and the head would have also got burnt. Appellant, would not have poured the oil on the right shoulder only, but would have emptied the jug of kerosene on the head and shoulder of the deceased; thereby the kerosene oil would have spread all over her body. The burn injuries then would have been not only on the right side of chest, right abdomen and back, but all over the body. The medical evidence does not corroborate the ocular account.

(22) As already observed, the motive for the commission of the offence, as stated by Kuldeep Singh PW-9, Harbans Kaur PW-11 and as stated in the dying declaration Ex.P33, is that the appellant was a woman of loose moral character and unwanted persons visited her for wrong deeds. These persons used to come to appellant Harbans Kaur for illegal sexual activities. Deceased Harpreet Kaur as per Kuldeep Singh PW-9 and Harbans Kaur PW-11 was stopping the appellant from indulging in these illegal sexual activities. Appellant did not restrain herself, and both of them used to pick up quarrels. Three panchayats were convened. It has also come in evidence that house of the deceased is in the town of Kot Ise Khan. The motive for the commission of the offence as discussed above in fact has demolished the prosecution case completely.

(23) From the evidence on record it seems that appellant and deceased were not having cordial relations and due to this there was tension in the house. The deceased due to this quarrel and constant nagging by the appellant got frustrated and committed suicide.

(24) With the above observations and discussion, Murder Reference No. 2 of 2006 is declined.

(25) In Criminal Appeal No. 309-DB of 2006, ends of justice would be met by convicting the appellant under Section 306 I.P.C. Taking the age of the appellant into consideration, as at the time of trial she was 82 years old, we sentence her to undergo RI for two years and to pay a fine of Rs. 10,000. In default, to further undergo RI for 3 months.

(26) Criminal Appeal No. 309-DB of 2006 is dismissed with the modification in conviction and sentence, as stated above.