2026:AHC:130820-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 296 of 2020

Tilluka @ Manoj

…..Appellant

Versus

State of U.P.

…..Respondent

Counsel for the Appellant	:	Mohammad Haadi Zaidi, Phoolbadan Yadav, Swati Agrawal Srivastava, Varsha Srivas, Zia Naz Zaidi
Counsel for the Respondent	:	G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.
(Delivered by Hon’ble J.J. Munir, J.)

1. This Criminal Appeal is directed against a judgment and order of Mr. Vivek, the then Special Judge (D.A.A.)/Additional Session Judge-III, Agra dated 25.10.2019 in S.T. No. 543 of 2015, arising out of Case Crime No. 173 of 2015, under Section 302 I.P.C., Police Station-Shamsabad, District- Agra. By the impugned judgment and order, the learned Additional Session Judge has convicted the appellant, Tilluka @ Manoj, under Section 302 I.P.C. and sentenced him to rigorous imprisonment for life along with a fine of Rs. 25,000/-; in default of payment, one year’ additional rigorous imprisonment has been ordered.

2. On the basis of a written report (Ex.Ka.1) dated 06.07.2015, submitted by the informant Mahipal (PW-1), an FIR dated 13.07.2015 (Ex.Ka.2) was registered against the accused, to wit, Tilluka @ Manoj

(appellant herein), Misrilal, Vinod and Smt. Hari Devi, under Sections 307, 506 I.P.C., Police Station- Shamsabad, District- Agra.

3. According to the prosecution, the informant Mahipal along with his wife Smt. Satyavati, two sons, and one daughter, reside in Village Hirner, Police Station- Shamsabad, District- Agra. The appellant, Tilluka @ Manoj S/o Misrilal, who is a cousin of the informant, is also a resident of the same village and lives in the neighbourhood. The appellant, Tilluka @ Manoj had been dismantling and renovating his house. About 7-8 days prior to the occurrence, the appellant Tilluka @ Manoj along with Misrilal, Vinod S/o Misrilal, and Smt. Hari Devi W/o Misrilal, approached the informant and requested that they may cook at his house, saying that due to the ongoing construction work, they had no place to cook food. Though the informant had limited space, his wife Smt. Satyavati, due to affinity of the family, allowed them to bring their supplies and cook food on her hearth (*Chulha*). It is further alleged that about one month ante-dating the incident, the appellant Tilluka @ Manoj had borrowed a sum of Rs. 5,000/- from Smt. Satyavati for the construction of his house, promising to repay the loan within a month. On 02.07.2015 at about 6:30 a.m., in the absence of the informant, all the accused came to the informant's house to cook food. At that time, when Smt. Satyavati demanded return of the borrowed money, the accused became agitated, and telling her threateningly that they would return all her outstandings right away, left the place. They returned half an hour later and all the accused with a common intention to kill, surrounded Smt. Satyavati. Misrilal exhorted the appellant Tilluka @ Manoj to pick up the kerosene Can, douse her (Satyawvati) with it and set her afire. Upon those words falling from Misrilal, Hari Devi and Vinod caught hold of the informant’s wife, Smt. Satyavati, and the appellant Tilluka @ Manoj doused the informant’s wife, Satyavati with kerosene oil and set her afire employing a matchstick. In consequence, the informant’s wife sustained substantial burn injuries. The emanating smoke led people from the neighbourhood to reach the spot, who conveyed the informant’s wife with burn injuries to the Ishwari Devi Memorial Hospital, Rajpur

Chungi, Agra, where she was undergoing treatment. The informant, who was at his workplace, received information about the incident and reached the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra at about 10:00 a.m., where his wife was undergoing treatment. Upon inquiry, Smt. Satyavati narrated the entire incident to him. The medical examination of the victim and her statement before the Magistrate was recorded on the same day, i.e., 02.07.2015. The incident is said to be within knowledge of the villagers and the nearby residents.

4. It is evident from the record of the case that, on 02.07.2015, when the victim, later deceased Satyavati, was admitted to the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra after the incident, the prosecution witness J.P. Chauhan, ACM-II, PW-7, recorded her dying declaration.

5. The incident occurred on 02.07.2015 at about 6:30 AM. The informant, Mahipal (PW-1), lodged an FIR against the accused, namely, Tilluka @ Manoj, Misrilal, Vinod and Hari Devi, under Sections 307, 506 IPC. However, during treatment at Sarojini Naidu Medical College (S.N.M.C.), Agra, the victim, Satyavati, died due to Septicemic Shock resulting from the ante-mortem burn injuries. Consequently, the case was converted from Sections 307, 506 IPC to one under Section 302 IPC.

6. After lodging of the First Information Report, the Investigating Officer (I.O.) commenced investigation, inspected the place of occurrence and prepared a site plan. The I.O. collected incriminating materials from the place of occurrence. The I.O. also recorded statements of witnesses under Section 161 Cr.P.C. After completing all the formalities of investigation, the I.O. submitted a charge-sheet against the appellant Tilluka @ Manoj alone, under Sections 302, 506 IPC. The other nominated accused in the FIR, to wit, Misrilal, Vinod, and Hari Devi, were not charge-sheeted as the I.O. did not find any evidence against them. Their implication was found to be false.

7. Since, the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Session for

trial. In the Trial Court, charge was framed against the appellant Tilluka @ Manoj, only under Section 302 IPC by the Sessions Judge, Agra, on 16.12.2015. The appellant, Tilluka @ Manoj, denied the charge and claimed trial.

8. The prosecution produced as many as 10 witnesses, namely, Mahipal (PW-1), Avaran Singh (PW-2), Devi Singh (PW-3), Anand Ratan (PW-4), Dr. Pawan Paitreek (PW-5), Vinod Kumar (PW-6), J.P. Chauhan (PW-7), Indrajeet Singh (PW-8), Dr. SN Gupta (PW-9), and Bantoo (PW-10), to substantiate their case.

9. Apart from the oral evidence, the prosecution also produced and relied upon documents, such as, written report (Ex.Ka.1), chik first information report (Ex.Ka.2), carbon copy of the general diary (Ex.Ka.3), post-mortem report (Ex.Ka.4), inquest report (*panchayatnama*) (Ex.Ka.5), *challan nash* (Ex.Ka.6), photo *nash* (Ex.Ka.7), C.M.O. Report (Ex.Ka.8), R.I. Report (Ex.Ka.9), site plan (Ex.Ka.10), dying declaration of deceased (Ex.Ka.11), recovery memo of pieces of burnt blouse (Ex.Ka.12), charge-sheet (Ex.Ka.13) and the medico-legal report of the deceased (Ex.Ka.14). Apart from these, material evidence was also produced, such as, pieces of blouse marked Material Exhibit-1, plastic pieces marked Material Exhibit-2, and a cloth bundle marked Material Exhibit-3..

10. The Trial Court recorded the statement of the appellant, Tilluka @ Manoj, under Section 313 Cr.P.C., after hearing the prosecution evidence. In his statement, the appellant, Tilluka @ Manoj, claimed that he was falsely implicated in the case due to his relationship with Satyavati. He stated that when the deceased Satyavati was cooking, she sustained burn injuries accidentally on account of vegetable oil catching fire, and that he had committed no crime. In his defence, the appellant, Tilluka @ Manoj, has produced Meva Ram as DW-1.

11. After hearing evidence led on both sides and hearing learned Counsel for parties, the learned Trial Judge found the appellant, Tilluka @ Manoj, guilty of the offence under Section 302 IPC. He convicted the

appellant accordingly and sentenced him to rigorous imprisonment for life together with a fine of Rs. 25,000/-. In default of payment, he was ordered to serve one additional year of rigorous imprisonment.

12. Aggrieved by the judgement and order dated 25.10.2019 passed by the learned Trial Judge in S.T. No. 543 of 2015, the appellant has preferred the present criminal appeal.

13. Learned Counsel for the appellant submitted that there is a delay of eleven days in lodging the FIR, and no explanation for the delay has been given by the prosecution. In her dying declaration, Satyavati stated that the appellant had doused her in vegetable oil while she was cooking and set her afire. However, the post-mortem report indicates smell of kerosene, which brings in discrepancy. Learned Counsel for the appellant next submitted that the learned Trial Judge overlooked the fact that PW-1, PW-2 and PW-3 are not eyewitnesses and they had not seen the incident. The Trial Court wrongly relied on their evidence, contrary to the hearsay rule. It is also submitted that the appellant with the help of his mother, cousin and PW-10, got the deceased admitted to the hospital, a fact which the learned Trial Judge ignored without assigning any cogent reason about this crucial point figuring in the evidence.

14. The learned Counsel for the appellant further submitted that the appellant is innocent but the Trial Court, in a very casual manner, ignored material evidence available on record and passed an illegal order, which is unsustainable in law. Based on this, the learned Counsel argues that the judgment and order of conviction dated 25.10.2019 passed by the learned Trial Judge, is against the weight of evidence and the law, which deserves to be set aside and the appeal allowed.

15. Rebutting the submissions of the learned Counsel for the appellant, the learned AGA, appearing on behalf of the State, vehemently opposed the submissions advanced by the learned Counsel for the appellant and submitted that the learned Trial Judge, after perusing all the prosecution evidence, both oral and documentary, found appellant, Tilluka @ Manoj, guilty of the offence under Section 302 IPC.

The learned Trial Judge found evidence against the appellant to be reliable and trustworthy. It was found that before her death, the deceased Satyavati had named the appellant in her dying declaration (Ex.Ka.11), which was considered fully reliable and believable. The learned Trial Judge also found that the prosecution witnesses i.e. PW-1, PW-2 and PW-3 corroborated the prosecution story and the dying declaration made by the deceased Satyavati. The learned AGA also submitted that no illegality or perversity was committed by the Trial Court in appreciating the evidence and drawing plausible conclusion therefrom, which are countenanced by the law. To sum up, the learned AGA submitted that there is no merit in the appeal, which deserves to be dismissed and the conviction affirmed.

16. Upon hearing the submissions advanced by learned Counsel for both the parties, we find that the incident occurred on 02.07.2015 at about 6:30 a.m. After the incident, the injured Satyavati was admitted to the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra, for treatment. However, during treatment at the Sarojini Naidu Medical College (S.N.M.C.), Agra, shedied due to Septicemic Shock resulting from *ante-mortem* burn injuries. Her dying declaration was recorded by J.P. Chauhan, ACM-II, PW-7, on 02.07.2015. The FIR, which was registered for offences punishable under Sections 307 and 506 IPC upon PW-1's information at the concerned police station on 13.07.2015 at 10:10 a.m., was converted to a case under Section 302 IPC after Satyavati's death on 14.07.2015.

17. Upon examining the written report (Ex.Ka.1), it is evident that it was a typed-written document, comprising three pages and addressed to the S.H.O, Shamsabad, Agra. Copies of the same, were also sent to the Deputy Inspector General of Police, Agra Range, Agra and the Senior Superintendent of Police, Agra. The report bears the date 06.07.2015, with the name of the informant mentioned there as Mahipal Singh S/o Sri Charan Singh, resident of Village- Hirner, Police Station- Shamsabad, District- Agra.

18. The informant Mahipal (PW-1) supported the prosecution story in his examination-in-chief as stated in the written report (Ex.Ka.1). However, from his examination-in-chief, it is revealed that at the time of the incident he was not present on the spot (his home). At that time, he was engaged at his workplace, and reached the Ishwari Devi Memorial Hospital, Rajpur Chungi, Agra only after receiving the information. In his cross-examination, informant Mahipal (PW-1) confirmed that he had not seen the incident and after receiving the information, he reached the hospital on a motorcycle. Thus, it is clear that the informant Mahipal (PW-1) is not an eyewitness in this case as he was not present at the place of occurrence. In his cross-examination, PW-1 said:

> "I reached the hospital at about 10 o'clock. At that time, I did not lodge the report because I was perturbed and did not know what to do. I went to the police station to lodge a report on the following day, but they (the police) did not register my report telling me to get that done inside. I cannot remember how many days later I went to the police station again to lodge the report. When no action was taken, I got the report written by my Advocate, S.C. Saxena. This report was got written by S.C. Saxena (Advocate), who is present in court today."

19. Therefore, upon a perusal of the evidence of the informant Mahipal (PW-1), it appears that this witness is not an eyewitness of the incident as he was not present at home when it happened. This witness was working at another place when the incident occurred. Upon a perusal of the testimony of this witness, the question why he delayed lodging the FIR is not of much significance, when the totality of circumstances are seen. An FIR, in its essence, is the earliest information that the Police receive about the commission of a cognizable offence. All subsequent statements, in whatever form rendered, may not really and substantially reckon as an FIR. Even if a much later written information is entered as a check FIR, that information may not at all be regarded as the first information. The first information is an information that the Police receive for the first time about the commission of a cognizable offence, which is a little more than scanty news. In this case, it cannot be said that the Police were not in the know of details of the entire occurrence before the FIR was lodged. The occurrence happened on 02.07.2015 at 6.30 p.m. and the victim was rushed to Ishwari Devi

Memorial Hospital, Agra, immediately after sustaining the injury. The Additional City Magistrate, Agra, reached the hospital to record the victim's dying declaration on 02.07.2015 itself. The Additional City Magistrate, who recorded the dying declaration, has said in his testimony that he went to the hospital because he had received a memo from the District Magistrate's office to do so. It is impossible that the Police would not have information of the occurrence, if the District Magistrate had issued a memo to the A.C.M. to record the deceased's dying declaration.

20. There is absolutely no cavil that the dying declaration was recorded on 02.07.2015, and that was the day of the occurrence. The dying declaration itself carries whatever is said in the FIR about the assault. The delay, therefore, that occurred in lodging the FIR, for which PW-1 has given an explanation, looses much of its importance considering these circumstances, particularly the promptly recorded dying declaration of the victim. PW-1 has said that he had panicked when he reached the hospital at 10 p.m. on 02.07.2015 upon getting the news of the incident. He did go to the police station to lodge the FIR the following day, but his report was not registered and he was told to go inside and get it lodged. It was then that he took assistance of Mr. S.C. Saxena, Advocate, to draft and lodge the FIR and this no doubt took a long period of time. It is not uncommon that the Police resist and show a reluctance in registering an FIR, sometimes even in heinous offences. The reluctance shown by the Police the second day and the fact that PW-1 was the deceased's husband, who had panicked on account of the turn of events, where the deceased was still battling for her life in hospital, the delay of thirteen days in lodging the FIR cannot be said to be fatal or one that puts the prosecution under a serious cloud of suspicion. The deceased passed away on 14.07.2015. The FIR was lodged a day earlier. It is also relevant that according to the testimony of PW-9, who attended to the deceased in the Medico-legal Department of Ishwari Devi Hospital, Agra, information was sent to the Police to record the victim's dying declaration as she had freshly received burn injuries.

In our opinion, the delay in lodging the FIR, in the totality of circumstances, is well explained.

21. The prosecution witness Avaran Singh (PW-2), in his examination-in-chief, has testified that the incident occurred on 02.07.2015 at about 6:30 a.m. He has testified that while he was at his home, he heard cries regarding the fire coming from the informant's house. Upon hearing noise about the fire, he rushed to the spot and saw the victim Satyavati in flames. At that time, the appellant, Tilluka @ Manoj, besides the non-appellant, Vinod, and Misrilal, were present there. He further testified that several villagers had also gathered at the place of occurrence upon hearing the distress calls.

22. In his cross-examination, PW-2 admitted that he did not see any one dousing the victim Satyavati in kerosene or setting her afire. He, however, stated that the victim Satyavati was crying repeatedly and saying that the appellant Tilluka @ Manoj had doused her in kerosene and set her afire. PW-2 further said in his cross-examination that he had disclosed this facts to the Investigating Officer. The witness was shown his statement under Section 161 Cr.P.C., upon reading which he said that if it has not been recorded, he could not say the reason why it has not been done. This is not a contradiction of the witness with reference to his previous statement as contemplated by the proviso to Section 162 Cr.P.C. Section 162 Cr.P.C. reads:

> "**162. Statements to police not to be signed: Use of statements in evidence.** —(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.
>
> *Explanation*.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

23. The proviso to Section 162 Cr.P.C. makes it clear that a statement of the witness reduced to writing under Section 161 Cr.P.C. by a police officer in the course of investigation, can be used to contradict such witness with reference to what he testifies in Court, if the earlier statement before the Police is duly proved in the manner provided under Section 145 of the Indian Evidence Act. Section 145 of the Evidence Act reads:

> "**145. Cross-examination as to previous statements in writing.** — A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

24. The credit of a witness can be impeached in the manner provided under Section 155 of the Evidence Act. Section 155 reads:

> "**155. Impeaching credit of witness.**—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—
>
> (1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
>
> (2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
>
> (3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
>
> *Explanation*. — A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence."

25. What is relevant in this case are the provisions of sub-section (3) of Section 155 read with Section 145 of the Evidence Act and the proviso to Section 162 Cr.P.C. It is these three provisions of the law that carry the complete charter how a witness is to be contradicted during

cross-examination with reference to a previous statement of his reduced to writing by a police officer.

26. The law on how a witness is to be contradicted with reference to his previous statement was long ago explained by a Constitution Bench of the Supreme Court in **Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17**, where it was observed:

> "**13.** The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment of this Court in Shyam Singh v. State of Punjab10. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:
>
> > "Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."
>
> It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he

> admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure."

27. A fully illustrated statement of the law on the point is to be found in a very recent decision of the Supreme Court in **Vinod Kumar v. State (NCT of Delhi), (2025) 3 SCC 680**, where it was held:

> "**15.** Before we part with the judgment, we must refer to a peculiar practice followed by the trial court. PW 1 and PW 3 were confronted in the cross-examination with their statements recorded under Section 161CrPC. In the depositions, it is mentioned that the attention of the witness was invited to a particular portion of the prior statement. After recording the answer of the witness, the portion of the prior statement used to contradict the witness has been reproduced in brackets. The law is well settled. The portion of the prior statement shown to the witness for contradicting the witness must be proved through the investigating officer. Unless the said portion of the prior statement used for contradiction is duly proved, it cannot be reproduced in the deposition of the witnesses. The correct procedure is that the trial Judge should mark the portions of the prior statements used for contradicting the witness. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved."

28. Now, what the Trial Court did is that they did not mark the relevant part of the witness's statement under Section 161 Cr.P.C., where he had omitted to mention the fact that he heard Satyavati shout and say that it was Tilluka, who had set her afire after dousing her in kerosene oil. What was required was that after marking this portion by brackets and alphabets or whichever way it could be identified, the omission in

the previous statement should have been put to the witness. If he admitted the omission, the portion of the witness's statement previously reduced to writing by the Police, would stand proved and used for the purpose of contradicting PW-2. If he denied, as he did here, the Investigating Officer, who took down the statement carrying this material omission, should have been required to prove it. If he proved it then also, the marked portion would become part of the evidence and could be used. This is not what has been done by the Trial Court. A casual confrontation of a witness in the dock by the statement taken down by the Police, where there was an omission, cannot serve the purpose of the proviso to Section 162 Cr.P.C. The witness could, therefore, not be held discredited on the basis of his statement under Section 161 Cr.P.C. regarding the fact that he said in Court that he heard Satyavati shout that Tilluka had doused her in kerosene oil and set her afire.

29. We would, therefore, hold that the testimony of PW-2 in the dock regarding the fact is absolutely admissible and also reliable.

30. It is true that this witness is not an eye-witness of the incident. He arrived there soon after the assault and when Satyavati was already in the anguish of flames. She was crying. He arrived soon after Tilluka's assault, and, in fact, saw him around the place. PW-2 is a witness of *res gestae* and not the fact in issue. His testimony nevertheless is valuable and weighty because soon after the occurrence, he saw Satyavati in flames, conveying in her agony the identity of her assailant, who was still about the place.

31. PW-3 is also a witness of *res gestate*. On 02.07.2015 at about 6.30 in the morning hours, he was returning home after answering the call of nature, when he saw some people running towards his brother Mahipal's house. He also raced towards his brother's house and found his sister-in-law Satyavati in flames. He attempted to douse the fire with the assistance of other residents of the village and arranging a car, rushed Satyavati to Ishwari Devi Hospital, Rajpur Chungi, Agra. He has said in

his examination-in-chief further that at the time of occurrence, he had seen Tilluka @ Manoj at the place of occurrence. He has further said in his examination-in-chief that at the time of occurrence, he saw Tilluka's brother Vinod and father Mishri Lal running away from home. Tilluka's mother Har Devi had already escaped from the scene of occurrence. In his cross-examination, the witness has clearly said that he did not see his sister-in-law being set ablaze, but it was she who told him that Tilluka had set her afire. This witness too stated that in his statement given to the Police, he had said that Satyavati had told him that Tilluka had set her afire and he could not say the reason why the Investigating Officer had not recorded it. This statement, casually confronting him without proof of the statement carrying the omission recorded by the Investigating Officer, cannot be read to discredit this witness, as already held in the case of PW-2. What, therefore, appears is that this witness is again a witness of *res gestate* and arrived soon after the occurrence. He saw Tilluka around the place, but his brother and father fleeing their homes. He saw his sister-in-law up in flames, who told him that she was set afire by Tilluka. The evidence of this witness of whatever weight, he is a truthful witness.

32. Two prosecution witnesses, that is to say, Avaran Singh, PW-2, and Devi Singh, PW-3, are witnesses of *res gestae* as they arrived soon after the assault and saw the deceased up in flames. She was also shouting or telling the name of her assailant. It could be thought that there being no eye-witnesses, it would be utterly unsafe to convict the appellant on the basis of the testimony of these witnesses of *res gestate*. PW-1, of course, is not a witness of anything.

33. Now, we turn to the dying declaration (Ex.Ka.11) of the deceased Satyavati. The dying declaration of the deceased Satyavati was recorded on 02.07.2015 by J.P. Chauhan, ACM-II, PW-7, Agra, while she was undergoing treatment at Ishwari Devi Nursing Home, Agra. It is worthwhile to produce the dying declaration as recorded by PW-7, which is in question answer form:

"1. आपका नाम क्या है?

सत्यवती है।

2. आपके पति का क्या नाम है?

महीपाल है।

3. आग कैसे लगी। किसी ने लगाया तो नहीं?

मैं सब्जी बना रही थी। मेरे देवर टिलुवा ने मेरे ऊपर सब्जी का तेल डाल करके आग लगा दी। मेरा किसी से झगड़ा नहीं थी। मेरे पति से भी कोई लड़ाई नहीं थी।"

34. The deceased Satyavati's dying declaration was recorded by J.P. Chauhan, ACM-II, Agra (PW-7) at the Ishwari Devi Nursing Home, Agra on 02.07.2015. Below the last answer, PW-7 made his initials and endorsed the date as 02.07.2015. The thumb impression of the deceased's right foot was also taken on the right side of the dying declaration. There is an endorsement by a doctor of Ishwari Devi Hospital, Rajpur Chungi, Agra, certifying to the following effect:

> "Pt. Satyavati Devi is conscious. She is able to give her D/D."

35. It is no doubt true that the doctor has signed the certificate without mentioning his name or appending the date or time, but that is a matter of little consequence.

36. At the end of the dying declaration, the same doctor endorsed another certificate, which reads to the following effect:

> "Pt. Satyavati Devi is conscious for D/D."

37. There was much debate at the Bar if this dying declaration qualifies as valid, because the doctor has not properly certified the patient fit to give her dying declaration. We do not think that the law is any longer in a flux on the subject and the dying declaration, that is on record as Ex. Ka-11, suffers from any infirmity.

38. The prosecution have produced J.P. Chauhan, the then Additional City Magistrate-II, Agra as PW-7. He has testified that on 02.07.2015, while posted as ACM-II, he received a memo from the District Magistrate's office to record the dying declaration of injured Satyavati at Ishwari Devi Hospital. He recorded her statement in his own handwriting, asking her the three questions. He read over the statement

to Satyavati and took the thumb impression of her right foot. This dying declaration, as already remarked, in our opinion, is unimpeachable.

39. There was earlier some conflict of opinion between two decisions of the Supreme Court in **Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695** and **Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562**. What that conflict is about, can best be understood the way it is expressed by the Constitution Bench of their Lordships in **Laxman v. State of Maharashtra, (2002) 6 SCC 710**. In **Laxman** (*supra*), the conflict of opinion has been introduced in the following words:

> "**1.** In this criminal appeal, the conviction of the accused-appellant is based upon the dying declaration of the deceased which was recorded by the Judicial Magistrate (PW 4). The learned Sessions Judge as well as the High Court held the dying declaration made by the deceased to be truthful, voluntary and trustworthy. The Magistrate in his evidence had stated that he had contacted the patient through the medical officer on duty and after putting some questions to the patient to find out whether she was able to make the statement; whether she was set on fire; whether she was conscious and able to make the statement and on being satisfied he recorded the statement of the deceased. There was a certificate of the doctor which indicates that the patient was conscious. The High Court on consideration of the evidence of the Magistrate as well as on the certificate of the doctor on the dying declaration recorded by the Magistrate together with other circumstances on record came to the conclusion that the deceased Chandrakala was physically and mentally fit and as such the dying declaration can be relied upon. When the appeal against the judgment of the Aurangabad Bench of the Bombay High Court was placed before a three-Judge Bench of this Court, the counsel for the appellant relied upon the decision of this Court in the case of *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] and contended that since the certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement, the dying declaration could not have been accepted by the Court to form the sole basis of conviction. On behalf of the counsel appearing for the State another three-Judge Bench decision of this Court in the case of *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] was relied upon wherein this Court has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. Since the two aforesaid decisions expressed by two Benches of three learned Judges was somewhat contradictory the Bench by order dated 24-7-2002 [*Laxman* v. *State of Maharashtra*, (2019) 11 SCC 512] referred the question to the Constitution Bench."

40. Setting at rest this conflict, their Lordships of the Constitution Bench held:

> "**4.** Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to

the Constitution Bench. In *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] the dying declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The Court relied upon the earlier decision in *Ravi Chander* v. *State of Punjab* [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise.

5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur* v. *State of Punjab* [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] (at SCC p. 701, para 8) to the effect that

> "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432]."

41. The holding of the Constitution Bench would show that it is broadly to be gathered by the Magistrate on the questions put to the injured that he/ she is in a fit state of mind, whereafter the Magistrate could record the dying declaration. If he had medical opinion about the victim's state of mind and he testified to it that would be enough. There is no particular form of the medical certificate to be insisted upon in order to regard a dying declaration valid. All that is to be seen, therefore, is whether the dying declaration can be held to be one that is truthful and voluntary. Of course, the Magistrate or the Officer, recording the dying declaration, must find that the declarant was in a fit condition to make a statement.

42. In his cross-examination, PW-7 has testified thus:

> "उनका नाम पूछता हूँ। किसी घटना में वजह का प्रश्न पूछना जरूरी है। हमने सत्यवती से यह पूछा आग कैसे लगी किसी ने आग लगाई मै सब्जी बना रही थी। मेरा देवर टिलुआ मेरे ऊपर सब्जी का तेल डालकर आग लगा दी। ब्यान देते समय कोई हिचकिचाहट घबराहट नही थी सीधा बोल रही थी। डाक्टर के रिपोर्ट के अनुसार उस समय सत्यवती होश हवाश में थी और ब्यान देने में सक्षम थी। मैंने यह प्रश्न नही किया कि तुम्हारे देवर टिल्लुका उर्फ मनोज ने तुम्हारे ऊपर सब्जी का तेल डालकर आग क्यो लगायी। मुझे नही पता ब्यानकर्ता के ऊपर किसी असम्यक असर का प्रभाव हो। मैंने यह सन्तुष्टि कर ली थी वह ब्यान बिना किसी दबाव मे दे रही है। मेरे पास कोई खबर नही आयी। ब्यान के बाद कितने दिनो बाद उनकी मृत्यु हुयी थी। हमे नही मालूम किसी का ब्यान दुबारा हो सकता हो। यह कहना गलत है ब्यान लेते समय मृतका के परिवारीजनो पति, जेठ और देवर मौजूद हो। यह कहना भी गलत है उनके कहने पर यह प्रश्न किये हो। यह कहना गलत है मैंने आज वजह जान बूझकर न पूछी हो।"

43. From the testimony of PW-7 and a reading of the dying declaration, there is not a shadow of doubt in our mind that the dying declaration was made by Satyavati in a fit state of mind and she did so voluntarily. It was not also influenced by any extraneous factor. It is entitled to all the weight that attaches to a dying declaration that passes the threshold. It is, therefore, entitled to great weight.

44. The next witness, whose testimony is of some importance on the issue, is Dr. S.N. Gupta. He is a retired doctor of the S.N. Medical College, Agra and has, after retirement, taken up employment with the Ishwari Devi Memorial Hospital, Agra, where he has been employed to look after medico-legal cases. These facts appear in his examination-in-chief. Further on in his examination-in-chief, PW-9 has testified:

> "उस दिन मैने सुबह 9.30 पर सत्यवती (उम्र 28 वर्ष) w/o महीपाल निवासी हिन्नौर थाना शमशाबाद आगरा के शरीर पर आई चोटो का डाक्टरी परीक्षण किया उनको लेकर मोहन सिंह s/o चरन निवासी उपरोक्त आये थे उनके शरीर पर निम्न चोटे थी मरीज superficial से deep जला हुआ था मरीज के दोनो गाल, ढोड़ी, गर्दन, दोनो ऊपरी भुजाए सीना, पेट, पूरी पीठ दोनो जांग व दोंनो टॉग जली हुई थीं करीब 80% जली हुई थी मिट्टी के तेल की बू आ रही है कही कही फफोले, चमड़ी उधरी हुई थी मरीज होश मे था मरीज को ईश्वरी देवी हास्पिटल में भर्ती किया गया था। हालत बहुत गम्भीर थी सम्बन्धित अस्पताल को प्लास्टिक सर्जन को उपचार हेतु बुलाने की व पुलिस को मृत्यु पूर्व व्यान नोट करने के लिए सूचना दी गई मरीज ताजा जला हुआ था।"

45. PW-9, Dr. S.N. Gupta, in his cross-examination has said:

> "मै घटना के समय प्राइवेट हास्पीटल मे प्राइवेट डाक्टर के रूप में काम करता था मुझे टेलीफोन से सूचना मिली उस समय मैं घर पर था पत्रावली देखकर समय बताया कि 9-00 बजे हास्पीटल (ईश्वरी देवी) में पहुंच गया था. ..... मै हास्पीटल पहुँचा चुटैल सत्यवती इमरजेन्सी वार्ड मे थी मैने हास्पीटल प्रबंधक के कहने पर मेडीकल किया था हास्पीटल अन्य मरीज थे उनकी संख्या ध्यान नही है।
>
> जब मैने चुटैल सत्यवती का मेडीकल किया तो उस समय पूर्ण होश में थी मैंने चोटो का इसरजेन्सी वार्ड में निरीक्षण किया चोटों का विवरण याद नहीं है। मूल मेडिकल सर्टिफिकेट तैयार किया था जो मैने 80% जला बताया है।"

46. The testimony of PW-9, who was the doctor who attended on the victim Satyavati, soon after she was admitted on 02.07.2015, has clearly stated that she was fully conscious, a stand which he has maintained in his cross-examination. PW-9, who is a doctor and attended on Satyavati, is the best person who speak about her position regarding being conscious or not. The testimony of this witness, together with the doctor's certificate endorsed on the dying declaration, which we do not know if it was by Dr. Gupta, and the testimony of PW-7, the Additional City Magistrate, who found Satyavati conscious and capable of making a statement, place the matter beyond all cavil of doubt that the dying declaration given by Satyavati was in possession of her full senses and while she was conscious and capable of making it. She has clearly attributed the assault to Tilluka. The discrepancy about the kind of of oil, that was poured on her, is logical. She has said in her dying declaration that it was vegetable oil, whereas elsewhere it has been reported as kerosene, a fact which the doctor, who examined her, also suggests. Any person in the victim's position, who has suffered an assault by fire, sustaining 80% burn injuries, could mistake the kind of oil, that was employed in the assault. On this score, the worth of the dying declaration cannot be discounted.

47. The question, whether conviction can be solely based on a dying declaration, has often come up before Courts for consideration and the law is well settled. The principles are clearly adumbrated in **Panneerselvam v. State of T.N., (2008) 17 SCC 190**. In **Panneerselvam**, it was observed by the Supreme Court:

> "**7.** This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.
>
> **8.** Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
>
> **9.** This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben* v. *State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)
>
> (*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 scrutinise 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 the 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 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 itself whether the deceased was in a fit mental condition to make the dying declaration looks to the medical opinion. But where the eyewitness has 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 statement in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, they have to be accepted. (See *Mohanlal Gangaram Gehani* v. *State of Maharashtra* [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .)

48. The law being what it is, we have already held that the dying declaration in this case is one that inspires confidence with us and is free from the blemish of vitiating factors, like tutoring, prompting or imagination. PW-7, the Magistrate who recorded the dying declaration, has clearly said in his cross-examination that it is incorrect to say that at the time of recording it, the deceased's family, to wit, her husband or brothers-in-law were present. There was, thus, reason to infer any kind of prompting or influence that could have made the deceased speak falsehood. Her statement is very clear and in the question and answer form. She has clearly said that she was cooking vegetables, when her *devar* (brother-in-law), Tilluka, poured vegetable oil on her and set her afire. She has also said that she did not have any quarrel or dispute with any one, not even her husband. This kind of a dying declaration made by a person in a fit state of mind, to which there is ample testimony, both medical and non-medical, is hard to ignore. It is also supported by the

evidence of *res gestage* offered by PW-2 and PW-3, who reached the scene of occurrence, shortly after the assault and while the deceased was suffering the flames. She was shouting that she had been set afire by Tilluka.

49. This takes us to the testimony of the last witness of fact, PW-10. This witness goes by the name Bantoo. There is no quarrel about the fact, even from the testimony of PW-2 and PW-3, that it was his car that was used to convey the victim to the hospital. This witness has said that he took Satyavati in his car, bearing registration No. UP-80AB-0153, to the Ishwari Devi Hospital, Agra. Tilluka @ Manoj, Tilluka's mother and the son of an uncle of his, called Bhura, got Satyavati admitted to the hospital. He has also said that Bhura went away, leaving behind Tilluka @ Manoj and Tilluka's mother, besides the injured at Ishwari Devi Hospital. In his cross-examination, the witness says that he had heard about the sudden incident of accident by fire suffered by the victim and his house is one house away from the victim's. There was a big crowd there and it was Tilluka's mother, who asked him that Satyavati had to be conveyed to the hospital as she had suffered burn injuries. He has said in his cross-examination that at that time Tilluka, Avaran, Chhotu and Tilluka's mother, helped Satyavati sit in his car and it was Tilluka and his mother, who got her admitted to the hospital and paid his fare too.

50. Though, this witness has not been cross-examined by the prosecution for some inexplicable reason, but his evidence on one fact is apparently incorrect, that is, where he says that it was Tilluka and his mother, who got Satyavati admitted to the hospital. PW-9, the doctor, who attended on Satyavati on the basis of records, said that it was Mohan Singh son of Charan Singh, who had brought Satyavati for her medical examination. There is no mention of either Tilluka or his mother in the doctor's statement. This is a fact, which somewhat derogates from the reliability of this witness. This witness is otherwise an independent man and has no reason to speak falsehood. Even if it is accepted that Tilluka and his mother helped Satyavati's conveyance to the hospital, the contention of the learned Counsel for the appellant that this belies the

entire prosecution case that Tilluka was involved in setting Satyavati afire, cannot be accepted in the face of clear, cogent, reliable and damning dying declaration made to the Magistrate. Tilluka's presence or that of his mother, might be odd or clever behaviour, falsehood or even half truth, but it cannot be accepted in the face of the overbearing weight of a very clear dying declaration by Satyavati against the appellant.

51. In the totality of circumstances, we are of opinion that there is no error in the judgment and order impugned passed by the learned Sessions Judge.

52. In the result, this appeal fails and is **dismissed**.

53. Let this order be communicated to the sole appellant in the Jail, where he is serving, by the Registrar (Compliance) through the Chief Judicial Magistrate, Agra.

54. The Trial Court record, along with a copy of this judgment and order, be transmitted to the Court concerned **forthwith**.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 02, 2026
Anoop/ Aditya