

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Criminal Appeal No. 290/2013

Salim S/o Shri Fakir Mohammad, B/c Musalman, R/o Andarkot,
Ajmer (Presently confined in Central Jail, Ajmer)

----Accused Appellant

Versus

State Of Rajasthan Through PP

----Respondent



For Appellant(s) : Mr. Vinay Pal Yadav

For Respondent(s) : Mr. R.S. Raghav, P.P. for State.

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR**

Judgment

//Reportable//

17/01/2018

(By the Court)

The instant criminal appeal has been filed by the accused appellant under Section 374 of the Code of Criminal Procedure against the Judgment of conviction and sentence dated 21.01.2013 passed by Sessions Judge, Ajmer in Sessions Cases No. 07/2011 whereby he was convicted for offence under Section 302 IPC and sentenced to life imprisonment and a fine of Rs.2,000/-, in default of payment of fine, he was further undergo simple imprisonment of six months.

Brief facts of the prosecution case are that Shri Narendra Bahadur Singh, ASI, Police Station Dargah recorded a parcha-bayan (Ex.P9) on 07.10.2010 at 7:15 P.M. of Smt. Shanno @ Shahnwaj w/o Salim, aged 24 years, R/o Near Sarvar Guest

House, Anderkot, Ajmer to this effect that in the evening that day at 4:00, she was cooking the food on 'sigadi' (hearth). Her husband Salim came. She demanded money from him for giving the rent to landlord Islam. Her husband gave Rs.20/-. She went to give the rent to the house owner. On returning to the room, she found that her husband had thrown curd and other eatables on the floor. When she asked the reason for this, he became angry and poured kerosene oil over her and lit the fire by match-stick. Her mother-in-law and mother got her admitted in hospital. Her husband also tried to save her and in the process his hands and legs were also burnt during this incident.



On the basis of aforesaid 'parcha bayan', a regular first information report bearing No. 109/07.10.2010 for the offence under Sections 324/307 IPC was chalked out. After completion of investigation, the police submitted charge-sheet against accused appellant under section 302 IPC. The learned trial court after hearing the arguments framed the charge against the accused appellant for offence under Section 302 IPC, who pleaded not guilty and claimed to be tried. The prosecution in support of its case produced 12 witnesses and exhibited 24 documents. In defence, the accused appellant produced one witness Jebunisa (DW1). The accused appellant was examined under Section 313 Cr.P.C. in which he denied allegations and alleged false implication. Learned trial court after hearing the final arguments, convicted and sentenced the accused appellant for the charge levelled against him vide impugned judgment dated 21.01.2013. The accused appellant aggrieved and dissatisfied with the impugned

judgment of conviction and sentence has preferred instant criminal appeal.

Mr. Vinay Pal Yadav, learned counsel appearing for the accused appellant has argued that the deceased herself in the 'parcha bayan' has admitted this fact that the appellant made efforts to save her and during such efforts, he also sustained burn injuries on his hands and legs. Therefore, it is clear that the appellant did not have any intention to kill her. He rather tried to save her wife. The deceased sustained burnt upto the degree of 70%. Therefore, it was not possible that she would be conscious and in a position to give her statement. Besides the statements

were recorded in the presence of her parents, therefore, it was a tutored dying declaration. Learned counsel further argued that at the time of incident, sons of deceased aged about eight and six years were present but the prosecution has not produced them in the witness box. An adverse inference should be drawn against it. Learned counsel argued that a bare perusal of the calendar of the witnesses reveals that most of the witnesses are interested witnesses. Their testimony cannot be relied to connect the accused appellant.

Learned Public Prosecutor appearing for the State supported the impugned Judgment of conviction and sentence passed by the learned trial court. He has read out relevant portions of the statements of prosecution witnesses and exhibits, reference of which shall be made at the appropriate place hereinafter.

We have bestowed our thoughtful consideration to rival submissions and carefully scanned the material on record.

Narendra Bahadur Singh (PW5), ASI of Police has stated that on receiving information from the Medical Jurist, he proceeded to J.L.N Hospital, Ajmer alongwith Constable Maniram. Copy of Rojnamcha Rapat is Ex.P8. He found Smt. Shanno in burnt condition. He asked the doctor whether victim was in a fit condition to give statement. When Doctor certified, he recorded 'parcha bayan' (Ex.P-9) and submitted the same to the SHO. On request of I.O, vide Ex.P-1 on the same day, Judicial Magistrate Mr. Vikram Singh (PW-1) recorded dying declaration of the victim at J.L.N Hospital, Ajmer.



In the dying declaration (Ex.P-2), which was recorded in question-answer form, it has been stated that a quarrel had taken place between them when she demanded money from him for paying rent to landlord. When she returned after paying rent, the accused had spread the eatables and other articles in the room. When she said to him that this has now become a daily routine with him, he poured kerosene over her and lit the fire. There was no one else in the house. Accused then himself tried to save her. In this process, his own hands and legs were also burnt. Her mother-in-law brought her to hospital. She had two children and that she currently had pregnancy of three months. Mr. Vikram Singh, the Judicial Magistrate who recorded aforementioned dying declaration (Ex.P-2) appeared in the court as P.W.1. He has stated that he recorded her statement after obtaining opinion from the doctor regarding fitness of the injured Smt. Shanno @ Shahnwaj. In cross-examination, this witness stated that injured was identified before him by ASI Narendra Bahadur Singh (PW-5).

Having noted the contents of dying declaration recorded by ASI Narendra Bahadur Singh (PW-5) leading to registration of case and dying declaration (Exhibit P-2) recorded by Vikram Singh (PW-1) Addl. Civil Judge (Jr. Division) & Judicial Magistrate Ist Class No.1, Ajmer, now we shall advert to the medical evidence.

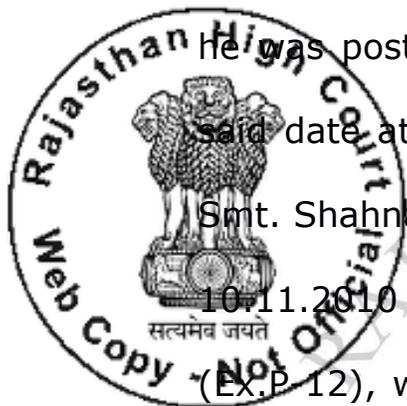
Dr. Sumer Singh (PW-8) deposed in the court that on 11.11.2010,

he was posted as Medical Jurist at J.L.N Hospital, Ajmer. On the said date at 3:10 PM, he had performed autopsy on the body of Smt. Shahnaj @ Shanno. He has stated that deceased had died on 10.11.2010 at 9:45 PM. This witness proved postmortem report (Ex.P-12), wherein it is recorded that the deceased had died due

to Septicemia as a result of antemortem dry heat burns involving approximately 70% of total body surface area and the burns were sufficient to cause death in the ordinary course of nature.

Evidence on record thus clearly brings it out that the present appellant also suffered burn injuries to his hands and legs in the same incident. Apart from admission of deceased in her 'parcha bayan' and dying declaration, this is also clear from the statement of defence witness Jaibunisa (DW-1). Deceased Smt. Shanno @ Shahnwaj, in dying declaration Ex.P-2 also admitted that she was brought to the hospital by her mother-in-law. Narendra Bahadur Singh (PW5) ASI, Police Station, Dargah, deposed that he recorded 'parcha bayan' (Ex.P-2) of Smt. Shanno @ Shahnwaj and reiterated the averments made in 'parcha bayan' (Ex.P-2).

Mirza Islam Beg (PW-4) owner of the house, deposed that deceased and accused used to live in his house as tenant. On



07.10.2010, he was at his house. As soon as he came out of the house, he heard shriek of deceased Smt. Shanno @ Shahnwaj that Salim set her ablaze and he saw her in flames. He further stated that accused and deceased used to often quarrel in connection with money matters. When he went into their room after the incident, an empty bottle of kerosene was lying there.

Mirza Islam Beg (PW-4) further stated that police obtained his signatures on the seizure-memo (Ex.P-6). From the statement of Mirza Islam Beg (PW4), who is landlord of accused Salim, it is clear that the presence of this witness was natural on the spot as he was residing in the same house and on hearing cries of Smt. Shanno, he went there.

Raj Kumar (PW-7) Head Constable deposed that he reached on the spot alongwith Purkharam (PW12). He stated that accused used to reside as a tenant in the house of Islam Beg (PW4). It was Islam Beg (PW4), who had broken open the lock of the room. In the room, there were empty bottle of kerosene oil, one match-box, a 'sigadi' in burnt condition. Other household articles were lying in scattered condition. Smt. Roshanara (PW11), mother of deceased, deposed that the marriage of Shanno with Salim (accused appellant) was love marriage. Mother of accused told that her daughter has been burnt. When she reached on the spot, she found Shanno in unconscious position lying in tempo. This witness has not supported the case of the prosecution and was declared hostile. Smt. Asma (PW3) has also not supported the case of the prosecution and was declared hostile. Purkha Ram (PW-12) I.O. has proved all the stages of prosecution and stated



that after collecting all the material he submitted charge sheet against the accused appellant. Mohd. Aslam (PW2) and Raj Kumar (PW-7) Head Constable are the attesting witness to the site plan (Ex.P-9).

Dr. Nand Lal (PW6) deposed that on 07.10.2010 he was posted as Medical Jurist in J.L.N Hospital and that he medically examined the deceased in seriously burnt condition. He has proved the injury report (Ex.P11). As per injury report (Ex.P11), following injuries were found on the person of deceased Smt. Shanno @ Salim:-

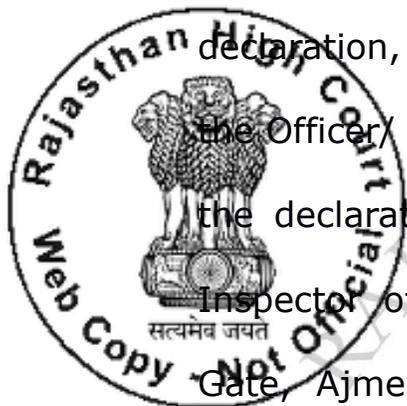
"Superficial to deep dry heat flame burns present over face, neck, front of back of chest, front of abdomen, upper 1/2 of back of abdomen, both upper limbs, front of burns though patchy burns over both leg and feet. Signing of scalp, hair and eye brows red line of demarcates present at places."

On the application of Investigating Officer Mr. Vikram Singh (PW1), statement (Ex.P2) of Smt. Shanno was recorded on 07.10.2010 at 8:30 P.M at Bed No. 1 of Female Burn Ward, JLN Hospital, Ajmer. Before recording her statement, she stated that "she is in condition to give the statement." Vikram Singh (PW-1), who recorded the dying declaration (Ex.P-2) of deceased Smt. Shanno @ Shahnwaj, also corroborated the statement made by Narendra Bahadur Singh (PW-5). Dr. Ramkesh Meena (PW-9) deposed that on 07.10.2010 he was posted as Resident Doctor in Female Burn Unit in JLN Hospital, Ajmer. He stated that Smt. Shanno @ Shahnwaj was physically and mentally fit to give the statement, which is also corroborated by the Judicial Magistrate Mr. Vikram Singh (PW-1).

We find that the prosecution evidence is consistent on the point that it was the husband (appellant) who set his wife ablazed, which led to her eventual death. We find no good reason to discard 'parcha bayan' (Ex.P-9) and statement (Ex.P-2) of deceased Smt. Shanno. The learned trial court, in our view, rightly relied on such dying declaration. In case of written dying declaration, the most important requirement is the satisfaction of the Officer/ Authority that the declarant is fit and conscious to give the declaration. Narendra Bahadur Singh (PW-5), Assistant Sub Inspector of Police, who was In-charge of Police Station Alwar Gate, Ajmer, has proved that he recorded the 'parcha bayan' (Ex.P-9) of the deceased and also gave the requisition for recording her dying declaration after obtaining fitness certificate from Dr. R.K. Meena (PW-9). Dr. Sumer Singh (PW-8) was Member of the Medical Board which conducted conducting post mortem on the dead body of the deceased and has proved the post-mortem report (Ex.P-12). Postmortem report (Ex.P-11) clearly states that the cause of death of deceased Smt. Shanno @ Shahnwaj was due to Septicemia as a result of antemortem dry heat burns involving approximately 70% of total body surface area and that the burns were sufficient to cause death in the ordinary course of nature.

The learned trial court rightly relied upon the statements of prosecution witnesses, such as, Vikram Singh (PW-1), Mirza Islam Beg (PW-4), Narendra Bahadur Singh (PW-5) and Purkha Ram (PW-12), which have further corroborated by the medical evidence.

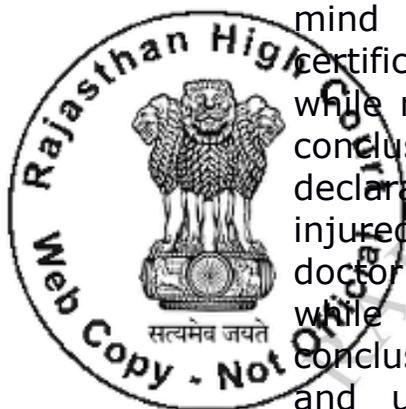
The Supreme Court in the case of **Laxman vs. State of**



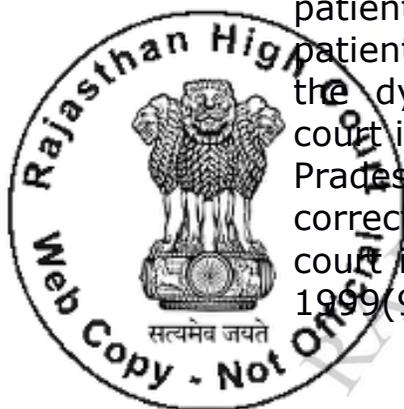
Maharashtra (AIR 2002 SC 2973) has held as under:-

"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 & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 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. 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 also had 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 & Another vs. State of Gujarat 1999(9) SCC 562 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 vs. State of Punjab 1998 (9) SCC 303 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 is 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 Harjeet Kaur VS. State of Punjab 1999(6) SCC 545 case 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 & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 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 much risky to accept the subjective satisfaction of a who opined that the injured was in a fit state of at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical 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 specially 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 where-after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji & Another vs. State of Gujarat 1999(9) SCC 562 case."



Relying on the observation made by the Supreme Court in Laxman's case (supra), we are of the considered opinion that the dying declaration recorded by Judicial Magistrate has to be given due credence. There is no doubt that the appellant had poured kerosene oil and had put the deceased on fire. The appellant in statement under Section 313 Cr.P.C. has admitted his presence at the spot and furthermore stated that he also received injuries in the occurrence while he was trying to save her.

Having failed to persuade us to discard the dying declaration, the learned counsel for the appellant has advanced an alternative argument and submitted that it cannot be from peculiar facts of the case inferred that the appellant had intention to commit murder of his wife. Referring to the dying declaration Ex.P2 along with the testimony of witnesses, learned counsel contended that it is admitted case of the prosecution that it was a love marriage between the accused and the deceased. Taking human conduct

into consideration, it can be safely said that deceased Smt. Shanno made some such remarks about inability of accused appellant to earn enough money in connection with amount of rent. The appellant was annoyed because of low earnings and lost self control and poured kerosene oil upon body of his wife. Admittedly, deceased Smt. Shanno remained hospitalised for eleven days and she died after thirty five days of the occurrence. Had proper and timely treatment been given to her, she could be saved. Case of the appellant would fall either in first or fourth exception to Section 300 IPC and would be an offence of culpable homicide not amounting to murder punishable maxim under Section 304 Part-I IPC.

We have given due consideration to the above alternative submissions advanced before us.

'Parcha bayan' (Ex.P-9) recorded by Narendra Bahadur Singh (PW-5) and dying declaration (Ex.P-2) recorded by Vikram Singh (PW-1) reveals that deceased herself stated that the appellant also sustained burn injuries on different parts of the body such as hands, legs etc. while he was trying to save Smt. Shanno @ Shahnwaj, which is reflective of his intention and shows that he did not intend to kill his wife. Smt. Shanno @ Shahnwaj died 35 days after sustaining the burn injuries on her body. As per allegations in the prosecution story, she sustained injuries on 07.10.2010 and thereafter died during the course of her treatment on 10.11.2010. The cause of death, according to the post-mortem report (Ex.P-12), was Septicemia as a result of ante-mortem dry heat burn, which involved 70% of body surface area, though the



burn injuries were opined to be sufficient to cause her death in ordinary course of nature. It has also come in evidence that it was love marriage between the accused and the deceased. Financial crisis was the root cause of the quarrel between them and occurrence flared over a trivial issue when deceased demanded money from the husband for payment of rent of Rs. 20/- to the landlord.



The case of the prosecution in the present case is largely founded on the dying declaration (Ex.P-2) of deceased Smt. Shanno @ Shahnwaj. Her earlier statement in this behalf is 'parcha bayan' (Ex.P-9) recorded by Narendra Bahadur Singh (PW-5), Assistant Sub Inspector Chowki Prabhari, Tripolia Gate, Police Station Dargah. Therein she alleged that in the evening around 4:00 P.M. on 07.10.2010 while she was preparing food on 'sigadi' (hearth), her husband Salim came. She demanded money from him for paying rent to the landlord. Salim said that he did not have any money. Whereupon she told him that the landlord had reminded several times for unpaid rent. Then Salim gave Rs.20/- to her which she gave to the landlord. When she returned back to the room, she found that her husband spread the curd and other eatable items in the room. When she asked him why he spread all these things, he got infuriated and poured kerosene oil over her and lit the fire by match-box. Her mother-in-law Jaibunisha (DW-1) and her own mother Roshanara (PW-11) brought her to hospital. In the last line of 'parcha bayan', deceased Smt. Shanno @ Shahnwaj stated that her husband then tried to save her and in that process, his own hands and legs also got burnt. When we see

the second dying declaration (Ex.P-2) recorded by Vikram Singh (PW-1) Judicial Magistrate in the question and answer form, we find that in answer to first question as to what happened to her, she stated that her husband burnt her. Quarrel took place between them and then her husband poured kerosene over her body. This happened when she demanded money from him for paying rent to the landlord. On this her husband became angry and poured kerosene over her body and lit the fire. In answer to the second question as to who saved her, she stated that there was no-one in the house. Her husband himself tried to save her and in that process his own hands and legs got burnt.

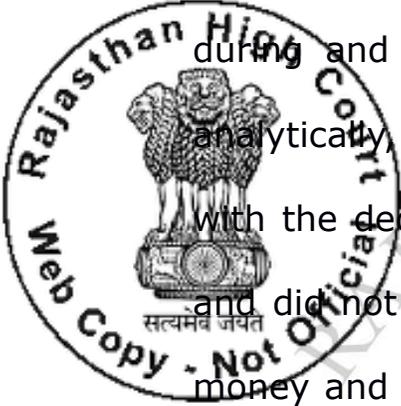


Arrest memo (Ex.P-19) of accused Salim clearly shows that he had burn injuries on both sides of ankle of right hand, wrist of left hand and thigh of right leg upto knee. Though incident took place on 07.10.2010 but accused was arrested on 12.10.2010, the Investigating Officer has not given any explanation for the injury of the accused. On such question put to him, he merely pleaded ignorance and even went to the extent of saying that he did not know that the accused had sustained injuries while saving his wife. Nonetheless, this clearly shows that the incident in the present case has taken place in a sudden fight at the spur of moment at the heat of the passion, as admitted by the deceased in the Parcha-bayan (Ex.P-9) and dying declaration (Ex.P-2) that quarrel took place between both when she virtually forced her husband, who was hard pressed for money to part with Rs. 20/- which she gave as rent to the landlord. Mirza Islam Beg (PW-4), the landlord has also stated that they were his tenants and paying

a sum of Rs.20/- per day. On 7.10.2010 he heard the sound of hue and cry. When he came out of the house, the wife of Salim came in the street in burnt condition. Salim was trying to put-off her fire by pouring water from the pitcher. In that process he also got his hands and legs burnt.

The conduct of the accused-appellant in the immediate past, during and after the incident in the present case, if examined analytically, transpires that the accused had picked up a quarrel with the deceased out of frustration because he was unemployed and did not have any source of income. He was hard pressed for money and in that state of mind, when the deceased scolded him for not giving the money to the landlord, he gave the money, but then he, having sense of helplessness, spread curd and other eatable items in the room, which was the trigger point of quarrel between husband and wife. This although does not justify conduct of the accused appellant in litting fire on the wife but at the same time, allegation of the wife both in 'parcha bayan' (Ex.P-9) and dying declaration (Ex.P-2), has to be appreciated in the manner the accused conducted himself pre and post incident. Against the back-drop of these facts and also keeping in view the consistent statements made by her that firstly the accused himself poured kerosene over her body and lit the fire and then he himself tried to save her and in this process also got his own hands and legs burnt.

Facts of the present case are nearer to the facts of ***Kalu Ram Vs. The State of Rajasthan - (2010) 10 SCC 324***. In that case also, the appellant asked his second wife to spare her



ornaments for raising some more money for buying liquor. When she refused to part with her ornaments, that infuriated the appellant. Despite his insistence, when she refused to oblige, he poured kerosene over her and lit the match-stick. When the flames were up, he brought water in a frantic effort to save her from death. His conduct cannot be seen divorced from the totality

of the circumstances, held the Supreme Court. It was therefore, the Supreme Court was persuaded to bring down offence from culpable homicide amounting to murder to culpable homicide not amounting to murder. Relevant discussion is to be found in paras 5, 6 and 7 of the report, which are reproduced ad-infra:-

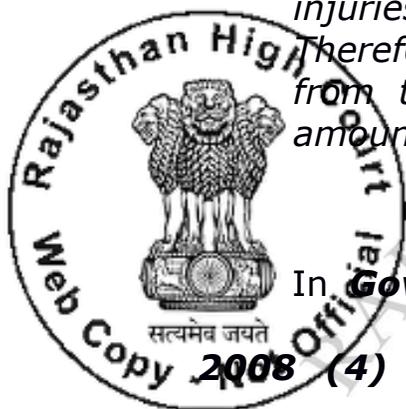


"5. Learned Counsel for the appellant contended that the contents in the dying declaration are contrary to the testimony of all the witnesses who rushed to the scene on hearing the wailings of the dying lady. It is true that all those witnesses have said that the deceased told her that she herself committed the act of lighting the match-stick but all those witnesses were confronted with their earlier version recorded by the Investigating Officer under Section 161 of the CrPC. The version of those witnesses in Court stands discredited by such earlier statements and the two Courts below have rightly declined to place any reliance on the testimony of those witnesses. Out of those witnesses PW-5 Indu was not declared hostile formally. But that does not matter because she too was confronted with her first version recorded by the police and thereby her testimony in Court was contradicted by the prosecution.

6. We find no good reason to discard the two dying declarations given by the deceased regarding the actual occurrence. The Courts below have rightly acted on such dying declarations.

7. But then, what is the nature of the offence proved against him. It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and

frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all what the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder."



In **Govind Narayan & Others Vs. State of Rajasthan,**

2008 (4) WLC 128, a Coordinate Bench of this Court in

somewhat similar circumstances held in para 11 and 12 ad-infra:-

"11. From the totality of circumstances it appears that in the odd hour of night Govind and Vinita had a quarrel on some matter and after quarrel Govind poured kerosene on her and ignited lighter but when the flames were up he suddenly and frantically made attempt to save her from the tongues of flames and himself received burn injuries. This conduct cannot be seen divorced from the totality of circumstances. Very probably Govind would not anticipated that the act done by him would have escalated to such proportion that Vinita might die. If he had ever intended her to die he would not have alerted his senses to make effort to rescue her and took her to the hospital. We are inclined to think that all that Govind thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and went to the fatal extent. Govind would not have intended to inflict the injuries which Vinita sustained on account of his act. Therefore, we are persuaded to bring down the offence to culpable homicide not amounting to murder. In a similar situation the Apex Court in *Kalu Ram Vs. State of Rajasthan* (2000) 10 SCC 324 altered the conviction from 302 to 304 Part II IPC.

12. It also appears that appellant Hari Narain, (father-in-law of deceased Vinita), also made attempt to save Vinita and sustained burn injuries. Since the Investigating Officer himself persuaded Vinita not to speak the truth, possibility of over implication of other family members in the case cannot be ruled out. The prosecution failed to

establish charges against appellants Ram Janki (Mother-in-law), Hari Narain, Indra Devi, Smt. Santosh and Ganesh Narain and they are entitled to benefit of doubt."

In the peculiar facts of the case, therefore the case of the accused appellant can be said to fall in Exception IV to Section 300 IPC. We are therefore persuaded to hold the accused appellant guilty of culpable homicide not amounting to murder with both intention and knowledge.

Consequently, this appeal deserves to succeed in part and is partly allowed. Conviction of appellant for offence under Section 302 IPC is converted into one under Section 304 Part-I IPC.

Sentence of life imprisonment award to the appellant is set aside. He is instead sentenced to ten years rigorous imprisonment with fine of Rs.10,000/-. In default of payment of fine, the appellant shall undergo further simple imprisonment of one year.

With the above modification in the offence and sentence, the present appeal stands disposed of.

(GOVERDHAN BARDHAR)J.

(MOHAMMAD RAFIQ)J.