



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Appeal (DB) No. 181/2018

Soma S/o Sh. Dungar, Aged About 25 Years, B/c Meena, R/o Gamdi, P.s. Jhallara, Dist. Udaipur (Presently Incarcerated In Central Jail, Udaipur)

-----Appellant

Versus

State, Through PP

-----Respondent



For Appellant(s) : Mr. Jayant Joshi for Mr. Vinod Sharma.

For Respondent(s) : Mr. Rajesh Bhati, PP

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA
Judgment

BY THE COURT: (PER HON'BLE MR. JUSTICE VINIT KUMAR MATHUR)

1.	Date of conclusion of argument	30.01.2026
2.	Date on which the judgment was reserved	30.01.2026
3.	Whether the full judgment or only operative part is pronounced	Full Judgment
4.	Date of Pronouncement	06.02.2026

1. The present Criminal Appeal has been filed under Section 374(2) Cr.P.C. by the accused-appellant Soma son of Shri Dungar, assailing the legality and validity of the judgment dated 06.06.2018 passed by learned Additional Sessions Judge, Salumber, District Udaipur (hereinafter referred to as 'learned trial Court'), in Sessions Case No. 122/2015 (State v. Soma), whereby the accused-appellant has been convicted for the offence under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment along with a fine of Rs.25,000/-, and in default of payment of fine, to further undergo three months' simple imprisonment.



2. As per the prosecution case, on 14.09.2015, the Police Station, Salumber, received an intimation from the General Hospital, Salumber, vide report Ex.P-15, to the effect that one Smt. Kanku devi, wife of Soma Meena, resident of *Naya Gaon Gavdi*, within the jurisdiction of Police Station Jhallara, had been brought to the hospital for treatment in burnt condition. Upon receipt of the said information, ASI Abdul Razzaq was deputed to go to the hospital to record the statement of the injured-victim. In view of the seriousness of her condition, the injured was thereafter, referred to Udaipur for advanced medical treatment and was accordingly shifted.

3. **Dying declaration** (Ex.P-1) of Smt. Kanku devi was recorded on the same day i.e. on 14.09.2015 at about 4:20 PM, in the presence of the attending doctor. In her statement, the injured disclosed that *"she was married about 5-6 years prior to the incident, had one child from the wedlock, and was residing with her in-laws. She stated that on the date of occurrence, at around 3:00 PM, her husband Soma poured kerosene oil upon her and set her ablaze. According to her, the accused had demanded money for purchasing liquor, and upon her refusal on the ground that she had no money, he committed the aforesaid act. She further stated that at the time of the incident no other family member was present in the house and that upon her raising alarm, her brother-in-law Narayan took her to the hospital at Salumber. She also alleged that her husband was in addiction of alcohol and used to subject her physical cruelty."* The dying declaration of the victim was forwarded along with the intimation letter Ex.P-15 issued by



the Police Station, Salumber, through Constable Kamal Kishore to Police Station Jhallara for necessary action, as the place of occurrence falling within its territorial jurisdiction i.e. Jhallara.

4. On the basis of the dying declaration of the injured (Ex.P-1), a formal First Information Report bearing No. 152/2015 (Ex.P-16) came to be registered at Police Station Jhallara, District Udaipur, against the accused-appellant for the offence under Section 307 of the Indian Penal Code. Subsequently, during the course of treatment, Smt. Kanku Devi succumbed to her injuries, having sustained approximately 90% burn injuries and therefore, the offence under Section 302 IPC was added.

5. After completion of investigation, Police filed a charge-sheet against the accused-appellant for the offences under Section 302 IPC.

6. Learned Trial Court framed, read over and explained the charges under Section 302 of IPC to the accused-appellant, who denied the charges and sought trial.

7. During the trial, the prosecution examined as many as 18 witnesses. In support of its case, the prosecution also produced documentary evidence, Exhibits P-01 to P-25.

8. The accused-appellant was examined under Section 313 Cr.P.C., wherein he denied the prosecution case and claimed false implication. He stated that Smt. Kanku Devi had not made any statement as she was unconscious and that he sustained burn injuries while attempting to extinguish the fire on her body. He accepted the testimonies of Dr. Nitin Shah and ASI Abdul Razzaq, as well as those of witnesses Narayan, Dungar, Nathu, Manohar



and Mahendra Singh, but denied the statements of witnesses Kanji, Shankar, Gautam, Vela and others, alleging false deposition. He admitted that the post-mortem of the victim was conducted and expressed his ignorance regarding the testimony of the Investigating Officer. The accused further stated that the prosecution witnesses had demanded compensation (*Mautana*) and, upon refusal thereof, he has been falsely implicated in the present case. He claimed that at the time of the incident he was attending a community feast (*Ram Rasoi Bhandara*) in the village and, upon hearing noise from his house, rushed there with family members and found his wife in flames. He asserted that he tried to save her by pouring water and using a blanket, in the process of which he also suffered burn injuries. He stated that Smt. Kanku Devi was taken to Salumber Hospital and thereafter, referred to Udaipur, where she died during treatment. He also claimed that she was suffering from mental illness and reiterated his innocence. The accused-appellant produced documentary evidence as Exhibit- D-1.

9. Learned Trial Court, after hearing the arguments advanced on behalf of both sides, upon appreciation of the oral and documentary evidence brought on record, convicted and sentenced the accused-appellant as aforesaid vide its judgment dated 06.06.2018.

10. Hence the present appeal.

Submissions/arguments advanced on behalf of the accused-appellant:



11. Learned counsel for the accused-appellant submitted that the impugned judgment dated 06.06.2018, whereby the appellant has been convicted and sentenced, is illegal, erroneous and contrary to the material available on record and, therefore, liable to be quashed and set aside. He submitted that the learned trial Court failed to properly appreciate the **material contradictions and material improvements in the statements of the prosecution witnesses recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C.**, which strike at the very root of the prosecution case and render the conviction unsustainable in the eyes of law.

12. Learned counsel for the accused-appellant submitted that the sole basis of conviction is the alleged dying declaration (Ex.P-1), which is wholly unreliable, inasmuch as neither an Executive Magistrate nor a Judicial Magistrate was called for recording her statement, despite the fact that their offices were situated hardly about 500 feet away from the General Hospital, Salumber where the victim was admitted. Learned counsel further submitted that there is no other cogent evidence available on record to establish that the deceased was in a fit physical or mental condition to give a statement. Moreover, a serious contradiction exists in the prosecution story inasmuch as that in **Ex.P-1 it has been mentioned that the statement of the victim was recorded at Police Station Salumber, whereas during trial, PW-2 ASI Abdul Razzaq and PW-12, the doctor, stated that the statement was recorded at the General Hospital, Salumber.** This glaring inconsistency between the



documentary evidence and oral testimony, according to learned counsel, renders (Ex.P-1) highly doubtful, yet the learned trial Court overlooked this vital aspect of the matter.

13. Learned counsel submitted that the deceased was not mentally stable/fit and, in fact, committed suicide by pouring kerosene upon herself and setting herself ablaze. He further submitted that the accused-appellant made all possible efforts to save her, during which he himself sustained burn injuries, as reflected from arrest memo (Ex.P-17). However, this crucial defence evidence has neither been discussed nor appreciated by the learned trial Court. He also submitted that although the prosecution alleged that the accused-appellant was a habitual drinker and demanded money for liquor and, upon refusal, set the deceased on fire, but there is no iota of evidence available on record to establish either the alleged habitual alcoholism of the accused-appellant or the alleged act is the cause for committing the offence alleged against the accused-appellant.

14. Lastly, learned counsel for the accused-appellant submitted that the prosecution case is not supported by any eyewitness and is based solely on weak and fragile circumstantial evidence. All the witnesses examined are interested witnesses, and no independent witness has been produced. In such circumstances, it was submitted that the finding of guilt recorded against the accused-appellant is wholly unsustainable and deserves to be interfered with.

15. In view of the cumulative inconsistencies, contradictions and improvements in the evidence of prosecution witnesses,





coupled with serious infirmities in the manner of investigation, the sole foundation of conviction rests upon the alleged dying declaration (Ex.P-1). The reliability whereof is rendered doubtful in the absence of proof regarding the mental and physical fitness of the deceased, as well as due to glaring discrepancies concerning the place and manner of its recording. The defence version, supported by material on record indicating burn injuries on the accused himself and the alleged mental condition of the deceased, has not been adequately considered by the learned trial Court while passing the impugned judgment. Further, the prosecution has failed to adduce any independent or cogent medical and ocular evidence to conclusively establish the charge levelled against the accused-appellant. In the cumulative effect of these circumstances, the prosecution has not succeeded in proving the guilt against the accused-appellant beyond reasonable doubt. Consequently, the appeal deserves to be allowed and the accused-appellant is entitled to the benefit of doubt and acquittal.

Submissions on behalf of the learned Public Prosecutor:

16. Per contra, Learned Public Prosecutor submitted that the deceased, in her dying declaration (Ex.P-1) had categorically stated that on the relevant date her husband, accused-appellant Soma, demanded money for consumption of alcohol and, upon her refusal, poured kerosene upon her and set her ablaze. It was contended that the said statement was clear, consistent and directly discloses the cause of her death. Learned Public Prosecutor further submitted that the dying declaration was recorded in the presence of a doctor and stands duly corroborated



by the testimonies of the Investigating Officer, ASI Abdul Razzaq, as well as the medical witness, Dr. Nitin Shah, who supported the prosecution version during trial. It was argued that the deceased succumbed to her injuries later the same night while undergoing treatment in the Burn Ward at Udaipur, thereby establishing that her condition was critical at the time of making the statement and that the statement, having a direct nexus with the cause of death, squarely falls within the ambit of a dying declaration.

17. Learned Public Prosecutor further submitted that, apart from the dying declaration (Ex.P-1), the prosecution case also stands proved by the testimonies of witnesses Kanji (PW-4) and Shankar (PW-11), before whom the deceased Kanku Devi narrated the entire incident at the Salumber Hospital. Their statements are in complete consonance with the contents of Ex.P-1 and, therefore, not only lend corroboration to the dying declaration, but also, independently qualify as dying declarations made by the deceased. On this basis, he submitted that the prosecution has successfully established that Smt. Kanku Devi died as a result of the accused-appellant Soma pouring kerosene on her and setting her ablaze.

18. He further submitted that the presence of the accused-appellant at the place of occurrence stands established from the burn injuries found on his hands and other parts of the body, as recorded in Ex.P-2. Learned Public Prosecutor further submitted that an act of setting a person on fire after pouring kerosene is imminently dangerous and, in the ordinary course of nature, is likely to cause death, of which the accused was fully aware.



Therefore, it was submitted that the learned trial Court has rightly convicted and sentenced the accused-appellant for the offence under Section 302 of the Indian Penal Code and that no interference is warranted in the impugned judgment.

Assessment of the rival arguments and/or record of the case:

19. We have considered the submissions made before this Court and have carefully examined the relevant record of the case, including the impugned judgment dated 06.06.2018.

20. A close scrutiny of the record reveals that the material witnesses in the present case are (PW-2) Abdul Razzaq and (PW-1) Dr. Nitin Shah. (PW-2) Abdul Razzaq deposed that on 14.09.2015, while he was posted as ASI at Police Station Salumber, he received telephonic information from the Medical Officer, Salumber, regarding admission of a burn victim. He stated that upon reaching the hospital, he found the victim Smt. Kanku Devi in a burnt condition and recorded her statement. Considering her critical condition, he got the statement verified by the doctor and immediately referred her to Udaipur for further treatment. As the incident fell within the jurisdiction of Police Station Jhallara, he informed the Station House Officer thereof and subsequently, handed over the written statement of the deceased to Police Station Jhallara, which has been exhibited as Ex.P-1. He identified his own signature, the signature of the doctor and that of the deceased on the said document and stated that the contents of part "E" to "F" of Ex.P-1 were recorded as per the dictation of the deceased Kanku Devi by his *Munshi - Rajesh*. In his cross-



examination, PW-2 Abdul Razzaq, admitted that he **neither obtained any written endorsement from the doctor certifying that the deceased was in a fit state of mind to give a statement nor furnished any written requisition to the doctor in this regard**, claiming that he had only made a verbal inquiry. He further admitted that there is no document on record authored by the medical officer indicating the pulse rate, blood pressure or the percentage of burns suffered by the deceased at the relevant time. He also admitted that parts "E" to "F" of Ex.P-1 were written by his Munshi Rajesh, though he asserted that the same was dictated by him as per the version of the deceased. It was further admitted that Ex.P-1 does not bear any endorsement to indicate that it was written by the said Munshi. Significantly, PW-2 admitted that the offices of the Sub-Divisional Magistrate, Tehsildar and Judicial Officer were situated at a distance of about 500 feet away from the General Hospital, Salumber, yet none of them were contacted for recording the dying declaration of the deceased. **He further conceded that Ex.P-1 does not contain any specific endorsement either by him or by the doctor certifying that Smt. Kanku devi was conscious and in a fit state of mind at the time of giving the statement.**

21. From the testimony of PW-1 Dr. Nitin Shah, it emerges that he was the medical officer in whose presence the statement of the deceased was recorded and who had examined both the deceased as well as the accused-appellant. He deposed that on 14.09.2015, while posted as Medical Officer at the Government



Hospital, Salumber, Smt. Kanku Devi, wife of Soma, was brought to the hospital in a burnt condition by her family members. He stated that after commencing medical treatment, he informed the police and an ASI from Police Station Salumber arrived, who recorded the statement of the deceased in his presence as dictated by her. He identified his signatures on the dying declaration (Ex.P-1) and also identified the signatures of the deceased, stating that the same were affixed in his presence. He further stated that the portion containing the statement of the deceased was written by the ASI. However, in his cross-examination, **PW-1 admitted that he did not make any endorsement or verification on Ex.P-1 regarding the mental or physical fitness of the deceased to give a statement, explaining that he was busy in attending the other patients.** He further admitted that no written requisition was made by the police to him seeking an opinion on the fitness of the deceased, and **that there is no document on record indicating the pulse rate, blood pressure or percentage of burn injuries of the deceased at the relevant time.** He stated that after examining her condition, he referred the deceased to Udaipur for further treatment. He also categorically stated that he did not go to Police Station, Salumber on that day and that no statement of the deceased was recorded in his presence at the police station.

22. With regard to the injuries sustained by the accused, PW-1 referred to Ex.P-2 and stated that **the burn injuries found on the accused Soma could be sustained while attempting to save a person, who was on fire and such a possibility could**



not be ruled out. The testimony of PW-1, when read in its entirety, thus does not conclusively establish that the deceased was in a fit mental and physical condition to make a statement.

23. PW-12 Dr. Akhilesh Sharma, a medical jurist, deposed that on 15.09.2015 he was a member of the medical board, which conducted the post-mortem examination on the body of deceased Smt. Kanku Devi. He referred to the order constituting the medical board as Ex.P-13 and stated that the deceased had been admitted in the burn ward and was under treatment since 14.09.2015 prior to her death. He stated that upon external examination, about 90% of the body surface was found burnt and the skin over the burnt areas had peeled off. On internal examination, soot particles were found present in the trachea and both lungs were reddish, while the remaining internal organs were found to be in normal condition. PW-12 further stated that the medical board opined that the cause of death was burn shock and that the extent of burn injuries sustained by the deceased was sufficient in the ordinary course of nature to cause death. He proved the post-mortem report (Ex.P-12) and identified his signatures as well as the signatures of the other members of the medical board thereon, stating that he was acquainted with them through official work. **In his cross-examination, he admitted that burns to the extent of 90% are severe in nature and that such burn injuries can also occur accidentally.**

24. PW-4 Kanji and PW-11 Shankar are closely related to the deceased from her maternal side. PW-11 Shankar, the father of the deceased, deposed that Smt. Kanku Devi was his daughter



and that her marriage had been solemnised with the accused Soma resident of village Gamdi about 3-4 years prior to the incident. He stated that on the date of occurrence, at around 3:00 PM, he received a telephonic message informing him that his daughter had sustained burn injuries, whereupon he, along with his wife, proceeded to the Salumber Hospital, accompanied by PW-4 Kanji, the Sarpanch of the village and his brother. He stated that in the hospital, his daughter told Kanji to administer more injections so that she might feel better and further disclosed to him and his wife that her husband had demanded money for consumption of liquor and, upon her refusal, poured kerosene upon her, set her on fire and bolted the door. He further stated that the deceased was thereafter shifted from Salumber to Udaipur Hospital, where she was administered intravenous fluids, and that she succumbed to her injuries at about 9:00 PM. In his cross-examination, PW-11 Shankar stated that they first went to Salumber and thereafter to Udaipur. He initially stated that the police did not record his statement and must have written it on their own, but subsequently stated that his statement was recorded after the death of his daughter. When confronted with his police statement from portion 'A to B', he admitted the same to be correct. However, he denied the portion from 'C to D', wherein it was recorded that he and Kanji had gone directly to the burn ward at Udaipur, and asserted that they had first gone to the Salumber Hospital. He further stated that he did not speak to his daughter in the burn ward at Udaipur, but had spoken to her at Salumber Hospital. He denied the suggestions that the deceased was under



any emotional distress, that she had already been referred to Udaipur before his arrival at Salumber, or that he had not spoken to her at the Salumber Hospital.

25. PW-4 Kanji deposed that the deceased Smt. Kanku Devi was the daughter of his brother PW-11 Shankar and that her marriage had been solemnised with the accused Soma, resident of village Gamdi. He stated that on 14.09.2015, at about 4:30 PM, his brother Shankar informed him that his daughter Kanku Devi had been set on fire by her husband after pouring kerosene upon her and that she was being taken to the hospital, whereupon he accompanied him. He further stated that they went to the hospital where Smt. Kanku Devi was admitted and, upon being asked as to how the incident had occurred, she disclosed that earlier in the day her husband had demanded money for consumption of liquor and, upon her refusal; he poured kerosene upon her and set her ablaze. PW-3 Kanji further stated that the deceased was subsequently shifted from Salumber Hospital to a hospital at Udaipur for further treatment, where she ultimately succumbed to her burn injuries.

26. PW-6 Gautam and PW-9 Nathu, son of Bhimji, were examined as attesting witnesses to the memorandum (Ex.P-7) relating to the recovery of kerosene-soaked soil, the site plan and the memorandum of verification of the place of occurrence, which were prepared at the instance of the accused-appellant Soma. Both the witnesses supported preparation of the said documents and admitted their signatures/thumb impressions thereon.

However, in their cross-examination, PW-6 Gautam stated



that at the time of the incident the accused Soma, along with other villagers, was taking the *Parsadi* at *Ram Devra Ki Parsadi*, and that the entire village was assembled there.

Upon receiving information that the clothes of Soma's wife had caught fire, he, along with the accused-appellant and other villagers, rushed to the house, where Soma extinguished the fire and in that process he also sustained burn injuries on his hands. Thereafter, they took the injured to Salumber Hospital for treatment, accompanied by Soma's brother Narayan (PW-3). He further stated that the injured had stopped speaking even before reaching Salumber Hospital and that no statement was recorded from her there. He also stated that from Salumber she was taken to Udaipur Hospital, where she died during treatment. **PW-6 further deposed that the deceased used to suffer from fits and was mentally ill, and that she was taken for treatment to Gwaliya Bhairav and also to traditional healers. He stated that on several occasions at Gwaliya Bhairav, she would throw burning lamps and incense sticks upon herself, as a result of which her clothes were used to caught fire.**

27. PW-9 Nathu, son of Bhimji, in his cross-examination, also stated that the deceased Kanku Devi used to suffer from fits and was mentally ill. He stated that she was being treated through exorcism and other traditional methods and further stated that on the date of the incident, **the accused Soma was present with them at the place where prasad was being distributed.**



28. PW-3 Narayan, PW-7 Dungar and PW-10 Smt. Punji are closely related to the accused, being the brother, father and the wife of the accused's brother, respectively. PW-3 Narayan deposed that on the date of the incident a religious ceremony was being organised near their house and food was being prepared. Upon hearing screams, he rushed to the spot and saw his brother's wife Kanku Devi coming out of the house engulfed in flames. **He stated that the accused Soma, who was present with them at the ceremony, also reached the spot and extinguished the fire by pouring water upon her.** In the process of saving Kanku Devi, Soma himself sustained burn injuries. He further stated that Jagdish's wife and other villagers also arrived at the scene and thereafter, Kanku Devi, along with Soma, was taken to Salumber Hospital. **According to this witness, Kanku Devi was not in a condition to speak at that time and was referred to Udaipur for further treatment.** He categorically stated that Kanku Devi did not make any statement to the police or the doctor in his presence and identified his signature on the inquest report of the deceased.

29. PW-3 Narayan specifically denied that any statement of Kanku Devi was recorded in his presence or that the accused Soma had set her on fire. In his cross-examination by the defence, he stated that Kanku Devi was suffering from mental illness and was taken to various places for treatment, including exorcism by traditional healers. **He reiterated that the accused Soma was present with them at the religious ceremony and that upon hearing the screams of his younger brother's**



wife Punji, he, along with Soma and others, rushed to the spot and found Kanku Devi burning. He stated that Kanku Devi had poured kerosene upon herself and set herself on fire, and that he and Soma made attempts to extinguish the fire, during which Soma sustained burn injuries. **He further stated that from the time Kanku Devi was taken from the village, she was unable to speak and did not speak even at Salumber Hospital, and therefore no statement was given by her to the police or the doctor.** He also stated that he remained present at the hospital until she was referred to Udaipur.

30. **PW-7 Dungar deposed that on the date of the incident a religious ceremony was being organised near their house and that he, along with his son Soma, was present there.** Upon hearing screams coming from the direction of his house, they rushed back and saw Smt. Kanku Devi coming out of the house engulfed in flames. He stated that his son Soma made efforts to save her by pouring water upon her, during which his hands also sustained burn injuries. He further stated that Jagdish's wife and other persons of the village were also present at the spot and thereafter all of them took Kanku Devi and Soma to the hospital, where Kanku Devi later died. He stated that beyond this, he had no further knowledge of the incident and that he affixed his thumb impression on the seizure memo relating to the jerrycan and kerosene-soaked soil as well as on the site plan, which were prepared on the basis of his statement at the place of occurrence. He also stated that the police did not recover any



jerrycan from them and that their thumb impressions were obtained on blank papers.

31. PW-10 Smt. Punji, wife of the accused's brother Jagdish, deposed that at the time of the incident she was present at the place where *Ram Rasoda* (community kitchen) was being organised. She stated that the deceased Kanku Devi was alone at home and that the accused Soma was also present with them at *Ram Rasoda*. Upon hearing noise from the house, they rushed to the spot and found Kanku Devi in a burning condition. She stated that Soma poured water on Kanku Devi and extinguished the fire, during which his hands also sustained burn injuries. She further stated that when they reached the house, Kanku Devi was not in a condition to speak. Thereafter, she along with her brother-in-law Narayan took Kanku Devi to Salumber Hospital, where she did not make any statement either on the way or at the hospital. From Salumber, Kanku Devi was referred to Udaipur Hospital, where she later succumbed to her injuries. PW-10 further stated that although the deceased's father Shankar and Kanji were informed, they did not come to Salumber Hospital. She stated that the deceased's father and mother reached Udaipur, but by that time Kanku Devi had already expired. She also stated that the deceased was suffering from mental illness and used to behave abnormally at times.

32. PW-16 Mohan Singh and PW-17 Shaitan Singh are the Investigating Officers of the case, PW-16 being the first Investigating Officer. PW-16 deposed that on 14.09.2015, while posted as ASI and In-charge of Police Station Jhallara, he received



letter Ex.P-15 from Police Station Salumber along with the statement of Smt. Kanku Devi. He registered FIR No.152/2015 under Section 307 IPC (Ex.P-16) and commenced investigation. During investigation, he prepared the site plan, seized a jerrycan (Ex.P-6), kerosene-soaked and plain soil (Ex.P-7), prepared the inquest report (Ex.P-3), obtained the post-mortem report and handed over the dead body to the heirs (Ex.P-5). He stated that on finding a prima facie case under Section 302 IPC, the accused Soma was arrested. He further stated that at the instance of the accused, verification memos (Ex.P-18) and (Ex.P-19) were prepared and the shirt worn by the accused was seized vide Ex.P-13, after which further investigation was handed over to PW-17. In cross-examination, PW-16 admitted that he neither recorded the statements of the doctor or ASI Abdul Razzaq to verify the condition of the deceased at the time of recording Ex.P-1, nor ascertained whose handwriting Ex.P-1 was in. **He admitted that Ex.P-1 does not contain any endorsement regarding the fitness of the deceased and that no request was made to any Executive or Judicial Magistrate. He further admitted that no evidence was collected to show that the accused was a habitual drunkard, had demanded money for liquor, or had assaulted the deceased.** He also admitted that a community kitchen was being run near the place of occurrence and that **he specifically admitted that Kanji (PW-4) uncle of deceased and Shankar (PW-11) father of deceased reached directly to Udaipur Hospital, without any conversation with the deceased.**



33. PW-17 Shaitan Singh deposited that upon receipt of Ex.P-15, a case under Section 307 IPC was registered and, after the death of the victim, converted to Section 302 IPC, where after investigation was assigned to him. He stated that he recorded statements of certain witnesses, sent the seized articles to the FSL through proper channel, received the FSL reports and filed the charge-sheet under Section 302 IPC against the accused. **In his cross-examination, PW-17 admitted that he did not record the statement of ASI Abdul Razzaq under Section 161 Cr.P.C. and that Ex.P-1 neither mentions who identified the deceased nor bears any endorsement regarding her fitness or the identity of the scribe.** He further admitted that the accused had sustained burn injuries while attempting to save the deceased, as reflected in medical report Ex.P-2, and that **no evidence was found to establish demand of money for liquor or physical cruelty by the accused.** He stated that PW-4 Kanji and PW-11 Shankar departed from Ratakhet and proceeded directly to the Burn Ward of the Udaipur Hospital, where Smt. Kanku Devi had been admitted. **He also admitted that PW-4 Kanji and PW-11 Shankar did not go to the Salumber Hospital and went straight to the Udaipur Burn Ward.**

34. **Ex.P-3 is the Fard Panchayatnama of the deceased.** The same also assumes importance while appreciating the credibility of witnesses PW-4 Kanji and PW-11 Shankar. **The said document, when read conjointly with the testimonies of PW-16 Mohan Singh and PW-17 Shaitan Singh (both Investigating Officers) it clearly reflects that PW-4 Kanji**



and PW-11 Shankar had directly reached at the burn ward, Udaipur and were not present at Salumber Hospital at the time when the alleged dying declaration was allegedly recorded. This contemporaneous official document materially contradicts their claim of having met and conversed with the deceased at Salumber Hospital. Such contradiction goes to the root of their testimony and renders the alleged oral dying declarations attributed to them unreliable. This inconsistency further weakens the prosecution case.

35. Similarly, in view of the above assessment of the prosecution evidence the explanation furnished by the accused-appellant in his statement under Section 313 Cr.P.C. is also a relevant factor. The said statement is not only consistent but seems to be plausible and cannot be brushed aside as a mere denial. The accused has categorically stated that he was present at a community religious gathering (*Ram rasoda*) and, upon hearing cries, rushed to the house, found his wife engulfed in flames and attempted to save her, during which he sustained burn injuries. This explanation is in consonance with normal human conduct and finds substantial corroboration from the medical evidence as well as the testimonies of PW-1 Dr. Nitin Shah, PW-2 Abdul Razzaq, PW-3 Narayan, PW-6 Gautam, PW-7 Dungar, PW-9 Nathu, PW-10 Punji as discussed above. PW-17 Shaitan Singh admitted that accused-appellant also sustained burn injuries while attempting to save the deceased.

36. PW-13 Manohar Lal and PW-15 Mahendra Singh are the attesting witnesses to Ex.P-13, the seizure memo pertaining to



the recovery of burnt shirt produced by the accused. Both the witnesses have deposed in support of the seizure and have identified their signatures thereon. It has come in their evidence that the accused stated that while attempting to save his wife, Smt. Kanku Devi, he himself sustained burn injuries. Ex.P-13 reveals that the seized shirt was found burnt on the right-hand side and had a hole therein, which, according to the witnesses, could have been caused during the process of rescuing his wife from the fire. Though a statement under Section 313 Cr.P.C. is not substantive piece of evidence, it can be considered to test the veracity of the prosecution case. In the present case, the defence version articulated in the Section 313 statement successfully introduces a reasonable and credible alternative hypothesis, which the prosecution has failed to dislodge through cogent evidence.

The failure of the prosecution to negate this explanation further strengthens the doubt surrounding its case.

37. Upon an anxious, meticulous and holistic re-appraisal of the entire evidence on record, this Court is unable to persuade itself to concur with the conclusion arrived at by the learned trial Court. The prosecution case, when tested on the anvil of settled principles of criminal jurisprudence, suffers from serious infirmities, which go to the very root of the matter and render the finding of guilt wholly unsustainable.

38. At the heart of the prosecution case lies the alleged dying declaration Ex.P-1. **It is well settled that a dying declaration, if found to be voluntary, truthful and recorded in a fit state of mind, can form the sole basis of conviction.** However, the



converse is equally true: where the dying declaration is surrounded by suspicious circumstances, lacks procedural safeguards and is not free from doubt, it would be unsafe to place implicit reliance upon it. In the present case, the evidence of PW-2 Abdul Razzaq and PW-1 Dr. Nitin Shah, far from inspiring confidence, exposes grave procedural lapses. **There is a complete absence of any contemporaneous medical endorsement certifying that the deceased was conscious, oriented and mentally fit to make a statement. No record of pulse rate, blood pressure or extent of burns at the relevant time has been produced.** The prosecution witnesses themselves admitted that no written opinion regarding fitness was obtained and that the dying declaration was neither recorded nor certified by any Executive or Judicial Magistrate, despite their offices being located in close proximity to the hospital. The identity of the scribe, the manner of recording and even the place of recording the statement remain clouded by contradictions, thereby striking at the authenticity of Ex.P-1.

39. The alleged dying declaration Ex.P-1, which constitutes the principal foundation of the prosecution case, does not inspire confidence when examined in the light of the evidence of PW-2 Abdul Razzaq and PW-1 Dr. Nitin Shah and the law laid down by the Hon'ble Supreme Court in the case of **Manjunath and others v. State of Karnataka (2023) 14 SCR 727**. The Supreme Court in para 29.1 has observed that:

29.1. "the dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as



the person who took down such declaration was not examined, nor did the police officer endorse the said document with details of who took down the declaration. It is also not clear as to in front of which of the relatives of deceased was the same taken down."

40. In the present case, PW-2 Abdul Razzaq has admitted that the statement was reduced into writing by his Munshi-Rajesh, who was never examined, and Ex.P-1 does not disclose the identity of the scribe. PW-1 has further admitted that no endorsement was made certifying the mental or physical fitness of the deceased at the time of recording the statement. There is also no material on record to show the presence of any relative at the time of recording Ex.P-1. **These infirmities are strikingly similar to those noticed by the Supreme Court in Manjunath (supra) and, applying the said ratio, the dying declaration Ex.P-1 cannot be treated as a reliable piece of evidence. Consequently, the prosecution case, resting substantially on such a tainted dying declaration, fails to inspire confidence.**

41. The medical evidence, though establishing the cause of death as "burn shock" due to extensive burns, does not unequivocally support the prosecution version regarding the manner in which the burns were caused. PW-12 Dr. Akhilesh Sharma has categorically admitted that burns to the extent of 90% can occur accidentally. The presence of soot particles in the trachea merely establishes that the deceased was alive when the burns were sustained; it does not, by itself, establish homicidal death. **Equally significant is the uncontroverted medical**



evidence of burn injuries on the hands of the accused, which PW-1 Dr. Nitin Shah admitted could be sustained while attempting to save a person on fire. This circumstance lends substantial support to the defence version and materially weakens the prosecution narrative.

42. The oral testimonies of the relatives of the deceased and those of the accused consistently testified that the accused-appellant was not present at the time when the deceased poured kerosene and lit fire. While PW-4 Kanji and PW-11 Shankar claim that the deceased made oral statements implicating the accused, their testimonies are marred by material contradictions regarding the place, timing and circumstances in which such statements were allegedly made. Their own admissions in cross-examination, particularly with respect to their movement directly to Udaipur and absence from Salumber hospital, seriously undermine their version. On the other hand, a consistent line of defence evidence emerges from PW-6 Gautam, PW-9 Nathu, PW-3 Narayan, PW-7 Dungar and PW-10 Punji, all of whom speak of a religious ceremony being held at the relevant time, the accused's presence there, his immediate response on hearing the screams, and his efforts to extinguish the fire, resulting in injuries to himself. Their testimony also brings on record the mental illness of the deceased and her past erratic behaviour, a circumstance which cannot be brushed aside lightly, particularly when corroborated by multiple witnesses.

43. The investigation conducted in the present case is replete with glaring lapses. The Investigating Officers PW-16 Mohan Singh



and PW-17 Shaitan Singh have admitted that they neither examined nor recorded the statements of the most crucial witnesses to the dying declaration, nor did they verify the handwriting or authorship of Ex.P-1. No effort was made to collect evidence regarding the alleged motive, namely habitual alcoholism, repeated demands for money or prior acts of cruelty. The so-called recoveries and verification memos do not disclose any new or incriminating fact and, therefore, do not advance the prosecution case. Such perfunctory and selective investigation casts a serious shadow on the fairness of the prosecution.

44. A conjoint and careful reading and considering the recovery memo (Ex.P-06), prepared by PW-16 ASI Mohan Singh of Police Station Jhallara, and the testimonies of the recovery witnesses PW-6 Gautam (Gola) and PW-9 Nathu with the evidence of PW-7 Dungar, who has been projected as an eyewitness, certain significant circumstances emerge, which materially dent the prosecution version. **As per Ex.P-06, a kerosene tin, a matchbox and as many as three burnt matchsticks were found lying at the place of occurrence.** The presence of these articles, particularly three used matchsticks, unmistakably suggests that more than one attempt was made to ignite the fire. This circumstance assumes importance, for if the deceased was allegedly overpowered and forcibly set ablaze by the accused, the natural human conduct would not reasonably permit repeated attempts at striking matches without resistance or an opportunity for the victim to raise alarm. The recovery thus probabilises the defence version that the deceased had sufficient time and



opportunity, and that the act was not sudden or instantaneous. It lends credence to the inference that the incident was not the result of a unilateral and abrupt act by the accused, but one where the deceased had the ability to react, cry for help or resist, which militates against the prosecution theory of homicidal burning. This recovery evidence, therefore, when appreciated in the backdrop of the ocular testimony of PW-7 Dungar and other defence witnesses, introduces a serious doubt regarding the manner of occurrence and materially weakens the prosecution case.

45. The invocation of Section 106 of the Indian Evidence Act is wholly unwarranted in the facts of the present case. The evidence on record, particularly the testimonies of PW-3 Narayan, PW-6 Gautam, PW-7 Dungar and PW-10 Smt. Punji, consistently establishes that at the relevant time the accused was present at a community religious gathering (Ram rasoda) and not inside the house where the incident occurred. Once the prosecution evidence itself suggests that the accused was not present at the place of occurrence, the burden cannot be shifted upon him to explain the incident by resort to Section 106 of the Evidence Act. The foundational facts necessary to attract Section 106 having not been proved by the prosecution, the said provision cannot be used to cure the inherent weaknesses in the prosecution case. **The burden to prove the presence and culpability of the accused squarely lay upon the prosecution, which it has failed to discharge.**

46. It is well settled that the principle underlying Section 106 of the Indian Evidence Act can be invoked only where the



prosecution has first succeeded in establishing the foundational facts, namely, the presence of the accused at the place of occurrence at the relevant time and the existence of circumstances pointing towards his exclusive knowledge of the incident. Only thereafter can the burden shift upon the accused to explain such facts in his statement under Section 313 Cr.P.C. In the absence of proof of such foundational circumstances beyond reasonable doubt, the onus cannot be reversed and fastened upon the accused. Applying the aforesaid principle to the facts of the present case, the invocation of Section 106 of the Evidence Act is wholly misconceived. The prosecution evidence itself, particularly the testimonies of PW-3 Narayan, PW-6 Gautam, PW-7 Dungar and PW-10 Smt. Punji, consistently establishes that at the relevant time the accused Soma was present at a community religious gathering (*Ram Rasoda*) and not inside the house when the incident occurred. Both the Investigating Officers PW-16 Mohan Singh and PW-17 Shaitan Singh have also brought on record that a Prasadi ceremony was being held in the vicinity and that upon hearing the commotion, family members rushed to the spot. In such circumstances, where the prosecution's own witnesses negate the presence of the accused inside the house at the crucial time, no adverse inference can be drawn against him by shifting the burden under Section 106 of the Evidence Act.

47. The Hon'ble Supreme Court in **Gargi v. State of Haryana (AIR 2019 SC 4864)** has categorically held that Section 106 of the Evidence Act cannot be pressed into service to fill up lacunae in the prosecution case and that the burden of



proving the guilt of the accused always rests upon the prosecution. In the present case, the prosecution has failed to prove beyond reasonable doubt the presence of the accused at the place of occurrence immediately prior to the incident or any circumstance suggesting his exclusive knowledge of the incident. Consequently, the foundational facts necessary to attract Section 106 of the Evidence Act are conspicuously absent. The burden to establish the presence and culpability of the accused squarely lay upon the prosecution, which it has failed to discharge.

“28.1. Insofar as the 'last seen theory' is concerned, there is no doubt that the Appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the Appellant, by itself, does not mean that a presumption of guilt of the Appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act directly operates against the Appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das* (supra) in the following:

10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the Accused.....”

48. The Hon’ble Supreme Court in the case of **Jayamma and Ors. vs. State of Karnataka** reported in AIR 2021 SC 2399 in para No.14 has held as under:-

“Before we advert to the actual admissibility and credibility of the dying declaration (Ex. P-5), it will be beneficial to brace



ourselves of the case-law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

A. In **P.V. Radhakrishna. v. State of Karnataka (2003) 6 SCC 443** para 16, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast Rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

B. In **Chacko v. State of Kerala (2003) 1 SCC 112** para. 3 & 4, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before



the court for the first time, in any manner improve the prosecution case.

C. In **Sham Shankar Kankaria v. State of Maharashtra (2006) 13 SCC 165** para. 10 & 11, it was re-stated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in **Paniben v. State of Gujarat (1992) 2 SCC 474** para.18 wherein this Court summed up several previous judgments governing dying declaration, the Court in **Sham Shankar Kankaria** (Supra) reiterated::

(i) There is neither Rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (**Munnu Raja v. State of M.P. (1976) 3 SCC 104**);

(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. v. Ram Sagar Yadav (1985) 1 SCC 552 and Ramawati Devi v. State of Bihar (1983 1 SCC 211)**)

(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. (**K. Ramachandra Reddy v. Public Prosecutor (1976) 3 SCC 618**);

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (**Rasheed Beg v. State of M.P. (1974) 4 SCC 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 v. State of M.P. 1981 Supp SCC 25);

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. **(Ram Manorath v. State of U.P. (1981) 2 SCC 654);**

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. **(State of Maharashtra v. Krishnamurti Laxmipati Naidu 1980 Supp SCC 455);**

(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 Ojha v. State of Bihar 1980 Supp SCC 769);**

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up 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. **(Nanhau Ram v. State of M.P. 1988 Supp SCC 152);**

(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. v. Madan Mohan (1989) 3 SCC 390);**

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. **(Mohanlal Gangaram Gehani v. State of Maharashtra (1982) 1 SCC 700)."**

17. Consistent with the cited principles, this Court refused to uphold the conviction in the case of **Sampat Babso**



Kale and Anr. v. State of Maharashtra 2019 (4) SCC 739 para. 14 & 16. The dying declaration in that case was made by a victim who had suffered 98 percent burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that **"the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around."**

49. The Hon'ble Supreme Court in the case of State of **Madhya Pradesh Vs. Ramveer Singh** reported in **2025 INSC 952** while observing when there are circumstances surrounding the recording of the dying declaration create a grave doubt, and where there are two views possible, the view favourable to the accused-appellant is required to be taken, held in para Nos.17 and 21 as under:-

"17. We are in full agreement with the aforesaid observations and findings of the High Court and are of the firm view that the circumstances surrounding the recording of the dying declaration create a grave doubt making the said evidence unworthy of credence. On a perusal of the testimony of Dr. A.K. Gupta (PW-13), we are convinced that the victim was in such a precarious physical condition that it would have been virtually impossible for her to have narrated the story in the manner claimed by the prosecution. It may be noted that the Doctor admitted that neither the pulse nor the blood pressure of the victim were recordable. The Naib Tehsildar (PW-8) admitted that the victim's voice was barely audible when he was trying to record the dying declaration (Ex. P-13). Thus, the very factum of



recording of the dying declaration (Ex. P-13) comes under a grave doubt making it totally unreliable.

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that in an appeal against acquittal unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the Accused only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible i.e., one consistent with the acquittal and the other holding the Accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of **Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka** (2024) 8 SCC 149; **H.D. Sundara and Ors. Vs. State of Karnataka** (2023) 9 SCC 581 and **Rajesh Prasad Vs. State of Bihar and Anr.** (2022) 3 SCC 471."

50. In the light of the foregoing discussions and the factual matrix emerging from the evidence on record, we find ourselves in agreement with the settled principles governing appreciation of dying declarations. In the present case, the circumstances attendant to the recording of the alleged dying declaration (Ex.P-1) creates a serious and substantial doubt as to its genuineness and reliability. The evidence of the medical witnesses unequivocally establishes that the deceased had sustained about 90% burn injuries and was in a critically precarious condition. The absence of any contemporaneous medical certification regarding her mental and physical fitness, non-recording of vital parameters such as pulse rate and blood pressure, uncertainty regarding the authorship of the document, and contradictions as to the place and manner of recording the statement, collectively render the



very factum of recording of the dying declaration doubtful. In such circumstances, it would be wholly unsafe to rely upon the said dying declaration as the foundation for conviction, as it does not inspire confidence and cannot be said to be free from suspicion.

51. It is equally well-settled that where the evidence on record is capable of giving rise to two plausible views—one pointing towards the guilt of the accused and the other consistent with his innocence—the view favourable to the accused must prevail. Though the present case arises from an appeal against conviction, the underlying principle remains that criminal liability must be established beyond reasonable doubt. The cumulative effect of the infirm dying declaration, lack of medical corroboration regarding the fitness of the deceased, consistent defence evidence suggesting an alternative hypothesis, and serious lapses in investigation, clearly give rise to a reasonable doubt. The prosecution has failed to exclude the possibility consistent with the innocence of the accused too. Applying the settled canon of criminal jurisprudence that suspicion, however grave, cannot take the place of proof, we hold that the evidence on record does not meet the standard required for sustaining a conviction. Consequently, the accused-appellant is entitled to the benefit of doubt. Criminal law mandates proof beyond reasonable doubt. Suspicion, however strong, cannot take the place of proof.

52. The learned trial Court, in convicting the accused-appellant, failed to appreciate these vital aspects in their proper legal perspective and proceeded on assumptions not borne out by the evidence on record. The impugned judgment dated





06.06.2018, therefore, suffers from manifest errors of law and appreciation of evidence.

53. Accordingly, this Court holds that the prosecution has failed to prove the charge against the accused-appellant Soma under Section 302 of the Indian Penal Code beyond reasonable doubt. The benefit of such doubt must necessarily ensure to the accused-appellant.

54. Consequently, the appeal is allowed. The judgment of conviction and sentence dated 06.06.2018 passed by the learned trial Court is hereby set aside. The accused-appellant Soma is acquitted of all the charges. He shall be released forthwith, if not required to be detained in any other case.

55. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellant is directed to forthwith furnish a personal bond in the sum of Rs.50,000/- and a surety bond in the like amount, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellant, on receipt of notice thereof, shall appear before Hon'ble the Supreme Court.

56. Office is directed to send the record of the trial court forthwith.

(CHANDRA SHEKHAR SHARMA),J

(VINIT KUMAR MATHUR),J

67-Kartik Dave/C.P. Goyal/-