

Delhi High Court

Udai Singh vs State on 2 December, 2008

Author: P.K.Bhasin

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% CRL. APPEAL NO. 496 OF 2003

+ Date of Decision: 2nd December, 2008

UDAI SINGHAppellant
! Through: Mr. D.M. Bhalla,
Advocate

versus

\$ STATERespondent
^ Through: Mr. Sunil Sharma,
APP

CORAM:

* HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment?(Yes)
2. To be referred to the Reporter or not?(Yes)
3. Whether the judgment should be reported in the digest?(Yes)

JUDGMENT

P.K.BHASIN, J:

In this appeal the appellant assails his conviction and the sentences awarded to him by the Court of Additional Sessions Judge, Karkardooma Courts, Delhi for his having killed a young widow, who had spurned his advances for marriage after the death of her husband, by throwing acid on her and also for having caused acid burn injuries on her twelve years old daughter.

2. The facts leading to the trial and conviction of the appellant(hereinafter to be referred as „the accused) may first be noticed. The deceased Smt. Aruna was a widow whose husband had died about two years before the present occurrence which took place on the night of 17th May, 2000. After the death of her husband she was living with her two children in HMD Colony, Shahdara, Delhi and the accused started visiting her house and became close to her and her children. Taking advantage of that closeness the accused started asking the deceased that they should live as husband and wife but she rejected that proposal. The accused, however, instead of dropping the idea of marrying her from his mind threatened her that he would deform her face and body with acid to

such an extent that she would not be liked by anyone. On the night of 17th May, 2000 at about 10 p.m. the deceased was lying with her twelve years old daughter Sonia(PW-

1) in the balcony of her house on the first floor. At that time the accused came to the balcony scaling the wall near the staircase and poured acid on her and Sonia from a bottle which he was having in his hand. The deceased and her daughter felt burning sensation on their bodies and so they raised alarm upon which the accused threw the bottle in the room near the balcony and ran away. It was also the case of the prosecution that Aruna had tried to save herself by trying to prevent the accused from throwing acid on her and in that process some acid had fallen on the accused also. Both the mother and daughter poured water on their bodies and came down weeping and shrieking with pain. On hearing their shrieks their relative Tejpal(PW-12), living in the neighbourhood, rushed to their house and took both of them to GTB Hospital in Shahadara. The deceased when examined by the doctor(PW-3) at the GTB Hospital was found to be conscious and oriented. At that time her blood pressure was 112/76 and pulse rate was 92. On being asked by the doctor examining her she informed the doctor that somebody had thrown acid on her half an hour back. The doctor made a note of that in the MLC Ex.PW-3/A. The doctor noticed burn injuries on different parts of the body of Aruna covering approximately 55% area of her body which included whole of her face, part of the back, chest, both arms, part of forearms and part of left thigh. Similarly, acid burns to the extent of approximately 20% were noticed on the body of Sonia by the doctor who examined her.

3. On getting the information regarding the admission of the two injured in the hospital PW-16 Sub-Inspector Sanjay reached GTB Hospital. Aruna was declared fit by the doctor for making her statement and so PW-16 recorded her statement Ex. PW-16/A. Smt. Aruna stated that her husband had died two years ago and she alongwith her daughter Sonia and son Pankaj was residing in HMD Colony, Delhi. After the death of her husband, Udai Singh(the accused) started visiting her residence and became close to her family. A week ago he had started asking her to live with him as husband and wife but she had told him that she was to marry her children and in case she would live with him she and her children would have no respect in society and nobody would marry her children. Udai Singh on her refusal to live with him told her that he liked her too much and in case she would not agree to his proposal he would deform her face and body to such an extent that she would not be liked by anyone. She further stated that during that night at about 10 p.m. she alongwith her daughter Sonia was lying on the floor of the balcony of her house and at that time they were alone in the house as her son after taking meals had gone out to purchase Gutka. Udai Singh came to the balcony by scaling the wall near the staircase and poured something on her and on Sonia from a bottle brought by him because of which they felt burning sensation on their bodies. On their raising alarm, Udai Singh threw the bottle and ran away. She and her daughter poured water over themselves and came down crying and shrieking with pain and that on hearing the noise their relative Tejpal, living in the neighbourhood, brought them to GTB hospital in a three wheeler and got them admitted there.

4. On the basis of aforesaid statement of Aruna FIR under Section 307 IPC was registered at about 12.30 a.m. As per the further prosecution case the accused was arrested on 22/6/2000 when he had gone to GTB Hospital to see the injured Aruna. After his arrest he was got medically examined and at the time of his medical examination the doctor(PW-17) noticed multiple burn scars on the back of

elbow, middle of fore-arm and left wrist of the accused which appeared to be more than 21 days old. The doctor recorded in the MLC Ex. PW-17/A that those burns were likely to have been caused by acid. The doctor also recorded the history of the burn scars to be due to falling of acid. Since the family members of Aruna were not satisfied with the treatment which she was getting in Delhi she was removed from GTB Hospital and taken to Dehradun on 06-07-2000 and was got admitted in Doon Hospital there. She, however, died in that hospital on 13/07/2000. Her dead body was subjected to post-mortem examination by PW-18 Dr. Ajay Kumar Pathak at the Doon Hospital. PW-18 noticed that there were superficial to deep burn injuries involving whole body except right side of face, scalp, right and left hand, anterior abdominal wall and some parts of thigh. Slough was also present over burnt areas over chest and neck. As per post-mortem report Ex.PW-18/A the cause of death of the deceased was opined to be shock and secondary infection due to burn injuries.

5. In view of the death of Aruna and the post-mortem report regarding the cause of her death Section 302 IPC was also invoked by the Delhi Police against the accused. During the course of investigation the police had sent one broken glass bottle which had been seized from the spot and sealed on the night of the incident to Forensic Science Laboratory(FSL) where on examination by the chemical expert that bottle was found to contain a drop of sulphuric acid. One pillow and some clothes in burnt condition seized from the place of incident were also sent to FSL where on examination sulphate ions were detected on the same. On the completion of investigation the accused was charge- sheeted and in due course the case was committed to the Court of Sessions where charge under Section 302 IPC was framed against him for the murder of the deceased Aruna and another charge under Section 307 IPC was framed in respect of the injuries caused by him to Aruna's daughter Sonia. The prosecution examined 24 witnesses. After the prosecution evidence was over the statement of the accused was recorded under Section 313 Cr.P.C. and while refuting the correctness of the incriminating circumstances put to him he pleaded false implication by the police. Thereafter he examined three witnesses in defence, two of whom were examined to establish that at the time of the incident he was not at the place of occurrence. Third witness examined to show that the burn injuries noticed on his body by the doctor at the time of his medical examination after his arrest were, in fact, caused because of falling of some chemical on his body on 10-5- 2000 while working in a cable factory at Shahdara.

6. PW-1 Sonia was examined as an eye witness of the occurrence but she did not support the prosecution case. PW-2 Pankaj is the son of the deceased. He was examined by the prosecution to show that after he came back from the market just after the occurrence his mother had told him that Udai Singh had thrown acid on her and Sonia. This witness also did not support the prosecution case. PW-12 Tej Pal, who had taken the deceased and her daughter Sonia to hospital was examined as the deceased had told him on the way to hospital that accused Udai Singh had thrown acid on her but he also did not support the prosecution. PW-9 Raja Ram is the brother of the deceased and he was examined by the prosecution since the deceased had told him when he had met her in Doon Hospital that accused Udai Singh had thrown acid on her. This witness had supported the prosecution. The trial Court relied upon the statement of the deceased Aruna made to PW-16 SI Sanjay Kumar on 17-5-2000, Ex. PW-16/A, as her dying declaration and also on the statement of the brother of the deceased PW-9 Raja Ram and whatever he claimed to have been told to him by the deceased was also treated as another dying declaration of the deceased. The learned trial Judge

found the said two dying declarations of the deceased duly corroborated also from the presence of acid burn injuries on the body of the accused at the time of his medical examination after his arrest. The evidence of all the three defence witnesses was not found to be of any help to the accused. The learned Additional Sessions Judge thus relying upon the aforesaid two dying declarations of the deceased came to the conclusion that the accused was guilty of the offence of murder of Aruna and was also responsible for causing simple injuries to PW-1 Sonia and accordingly convicted the accused for the commission of the offences punishable under Sections 302 and 323 IPC vide judgment dated 22/03/03. Vide separate order dated 25/03/03 the accused was awarded life imprisonment under Section 302 IPC and fine of Rs.3,000/- and one year's rigorous imprisonment for his conviction under Section 323 IPC. In this appeal the appellant has assailed the correctness of the decision of the trial Court.

7. Learned counsel for the appellant, Mr. D.N. Bhalla, at the outset stated that he was questioning the correctness of the prosecution case and the findings of the learned trial Judge that it was the accused who had thrown acid on the deceased and her daughter. Mr. Bhalla further submitted that there is no reliable evidence to show that Smt. Aruna was in a fit condition to make any statement in the hospital and so the so-called dying declaration of the deceased in the form of her statement to PW- 16 SI Sanjay Kumar could not be relied upon as her dying declaration. It was also contended that when the deceased was brought to hospital and was examined by the doctor and had asked her as to how she had got burn injuries she had told him that „somebody had thrown acid on her and had not named the accused at that time which fact also shows that the statement Ex.PW-16/A was not a genuine document and had been fabricated by the police and that was also evident from the fact that even the children of the deceased examined by the prosecution including her injured daughter(PW-1) had not supported the prosecution case. As far as the statement of the deceased allegedly made to her brother PW-9 Raja Ram, which has also been relied upon as the dying declaration of the deceased by the trial Court, is concerned, Mr. Bhalla contended, the same cannot be relied upon since he had not claimed in his statement under Section 161 Cr.P.C. that the deceased had told him that the accused had thrown acid on her. Alternative submission put forth by the learned counsel was that even if it is accepted that the accused had thrown acid on the deceased and her daughter then also in the facts and circumstances of the case it cannot be said that the death of the deceased was as a result of the acid burn injuries caused by him since the deceased died about two months after the incident and that too because of some infection. It was also contended that if this submission is also not accepted and this Court holds that the death of the deceased was in fact as a result of the burn injuries caused by the accused still the offence would not amount to „murder and at the most it could be said that this is a case of culpable homicide not amounting to murder, and that too, punishable under the second part of Section 304 IPC. In the end, Mr. Bhalla also prayed on behalf of the accused that if the conviction of the accused for the death of the deceased is altered to Section 304(II) IPC the sentence of imprisonment for that offence may be restricted to the period which he has already spent in jail considering the fact that he is in jail for over eight years as also the fact that he was during the lifetime of the deceased visiting her in the hospital to enquire her welfare which is evident from the fact that he was, as per the prosecution case itself, arrested from GTB Hospital when he had gone there to meet the deceased.

8. Learned Additional Public Prosecutor for the respondent- State Mr. Sunil Sharma, on the other hand, submitted that despite the two children of the deceased and her neighbour Tejpal(PW-12) turning hostile the accused had been rightly convicted relying upon the two dying declarations of the deceased which were duly corroborated and so the conviction of the appellant deserves to be maintained and prayed that the appeal may be dismissed.

9. We have given our thoughtful consideration to these rival submissions in the light of the evidence on record and have unhesitatingly come to the conclusion that the prosecution has been able to show, despite the fact that three material witnesses including the two children of the deceased had turned hostile, that it was the accused Udai Singh who had thrown acid on the deceased Aruna and her daughter Sonia and it was because of that act of the accused that the deceased had died. As far as the fact that the deceased and her daughter had sustained acid burn injuries is concerned the learned counsel for the accused did not dispute the same before us. Learned trial Judge has also noticed in para 10 of the impugned judgment that " The factum of Sonia and Aruna having suffered acid burn injuries during night of 17.5.2000 is not being disputed." Learned counsel for the appellant also did not dispute that statement made by some injured person after the incident to a police officer, like Ex.PW- 16/A in the present case, could be relied upon as a dying declaration in the event of death of the injured person and also that conviction can be based on such a dying declaration alone without any corroboration. Mr. Bhalla did not dispute this proposition, and in our view rightly so, in view of the fact that by now this proposition regarding the admissibility of statement made by some injured person to a police officer as a dying declaration after the death of the injured stands well settled by a catena of judicial pronouncements of the Apex Court. We may make here a useful reference to the following observations of the Hon ble Supreme Court made in the case of "Laxman vs State of Maharashtra", AIR 2002 SC 2973, while dealing with the value of a dying declaration in a criminal trial:

"The justice theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross- examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit

and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind....."

10. In a recent decision also of the Hon ble Supreme Court reported as AIR 2008 SC 1500, "Shaik Nagoor Vs.State of A.P. rep. by its Public Prosecutor, High Court of A.P., Hyderabad" the law relating to dying declarations laid down in various earlier decisions was noticed and re-iterated in the following paragraphs of the judgment:

"7. As observed by this Court in Narain Singh v. State of Haryana AIR2004 SC 1616 A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding the circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The dying declaration if found reliable can form the base of conviction.

8. In Babulal v. State of M.P. (2003) 12 SCC 490 this Court observed vide in para 7 of the said decision as under:

A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is 'a man will not meet his Maker with a lie in his mouth' nemo moriturus praesumitur mentiri). Mathew Arnold said, 'truth sits on the lips of a dying man'. The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when

every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

9. In *Ravi v. State of T.N.* 2004 (10) SCC 776 this Court observed that: (SCC p. 777, para 3) If the truthfulness of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever, in law.

10. In *Muthu Kutty v. State* (2005) 9 SCC 113 this Court observed as under: (SCC pp. 120-21)

15. 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 a 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....."

11. In the present case the prosecution is relying upon Ex. PW- 16/A which during the lifetime of the deceased Aruna was recorded as her complaint about the occurrence and made the basis for the registration of the FIR and which after her death has undisputedly become her dying declaration. Learned counsel for the appellant had submitted that making of the said statement by the deceased was highly doubtful. We, however, do not find any reason to entertain any doubt regarding the authenticity of the statement Ex. PW-16/A. PW-16 SI Sanjay Kumar had recorded this statement of the deceased. He has deposed that before recording the statement of Aruna he had confirmed it from the doctor on duty that Aruna was fit for making statement and further that it had been recorded so even in the MLC of Aruna. In cross- examination also he maintained that the doctor had told him orally also that the patient was fit for making statement. He denied the suggestion that since Aruna's hands were burnt she was not in a position to sign or that Aruna had not signed the statement Ex. PW- 16/A. We do not find any reason to reject the testimony of this police officer. He had no reason to fabricate a document purporting to be the statement of the deceased Aruna as was suggested to him in cross-examination. PW-3 Dr. Jaswant Singh had initially examined the deceased Aruna when she was brought to GTB Hospital. He has deposed that she was conscious and oriented and her cardio vascular system was also normal and she was fit for making statement and he had mentioned so in the MLC Ex. PW-3/A. In cross-examination also he claimed that she was in

a fit statement of mind. It was suggested to this doctor in cross-examination that Aruna was having burn injuries on her hands also and for that reason she could not have signed any document. The witness denied that suggestion and we have no reason to disbelieve him also. He is totally an independent witness being a doctor employed in a Government hospital. The autopsy surgeon (PW-18) had also not noticed the hands of the deceased to be burnt when she was subjected to post-mortem nor was any such suggestion given to him in cross-examination. In the post-mortem report as well as during his evidence in Court PW-18 had been clearly stated that there were some parts of the body of the deceased including her both hands which had no burn injuries. In these circumstances, it cannot be accepted that the deceased was not in a position to sign her statement recorded by PW-16 SI Sanjay Kumar. We are, therefore, of the view that Ex. PW-16/A was the statement made by the deceased Aruna when she was fit for making the statement. As far as the allegations made by her against the accused in this statement are concerned, we have already noticed the same in the earlier part of this judgment. She had clearly alleged that it was the accused who had thrown acid on her and on her daughter Sonia because of her having spurned his advances. PW-1 Sonia and PW-2 Pankaj, who are the children of the deceased, had both claimed in their evidence that the accused was on visiting terms with them and he used to come to their house. This part of their evidence was not challenged in their cross-examination on behalf of the accused. It is, thus, clear that the accused was not a stranger to the family of the deceased and that fact lends assurance to the statement of the deceased Aruna

12. Learned counsel for the appellant's main ground of challenge in respect of the authenticity of the deceased's statement Ex. PW-16/A was that when she was examined by PW-3 Dr. Jaswant Singh at the time of her admission in the hospital she had simply told the doctor that somebody had thrown acid on her and had not named the accused as the culprit which she would have done if actually he was the culprit. Introduction of his name as the culprit in the subsequent statement made by her to PW-16 SI Sanjay Kumar, counsel submitted, could be the idea of the said police official only and, therefore, no reliance should be placed on the statement Ex. PW-16/A. Learned counsel also submitted that since the prosecution was relying upon more than one dying declaration the one which was recorded first in time only should be relied upon and the first dying declaration in this case is in the form of MLC Ex. PW-3/A which does not implicate the accused and so his conviction cannot be sustained. There is no doubt that when the deceased Aruna was examined by PW-3 Dr. Jaswant Singh she had claimed that „somebody“ had thrown acid on her and had not named the accused as the culprit but, in our view, that would not show that her statement Ex. PW-16/A was fabricated one and not genuine. If the doctor had asked her as to who had thrown acid on her she might have named the accused. It could have been elicited from the doctor only as to whether he had asked her as to who had thrown acid on her. That was, however, not done when he was being cross-examined. Whenever a patient with any kind of injuries is brought to the hospital the primary concern of the doctor attending on the patient is to inquire as to how injuries had been sustained and not that who was responsible for those injuries. It is not really the concern of the doctor to find out from the patient as to who had caused injuries on his person. That is the job of the police officer who is entrusted with the investigation of the crime. In this regard we may make a reference to a decision of a Division Bench of this Court which is reported as 1970(6) DLT 566, "Sudershan Kumar v. State" wherein also the accused had thrown acid on some lady who subsequently died because of burn injuries and when she was examined in the hospital the name of

the accused was not recorded in the case history sheet prepared at that time by the doctor. Subsequently, when the statement of the deceased was recorded by the police the deceased had named the accused as the culprit and that statement was relied upon as her dying declaration upon her death. An argument was raised in that case also that since the name of the accused was not mentioned as the culprit in the case history sheet of the deceased the subsequent statement made before the police in which the accused was named could not have be relied upon. That argument was repelled by the Division Bench by observing as under:

"19. Much has been made of the fact that doctors in the hospital did not record in the case history sheet the name of the person who had thrown acid on Maya Devi. This argument is without substance, because the doctors are normally concerned with the injuries and their treatment and not with the fact as to who had caused the same."

This judgment in which also the conviction of the accused was based on the dying declaration of the deceased was challenged before the Hon ble Supreme Court but the judgment of this Court was upheld. The judgment of the Hon ble Supreme Court affirming the said judgment of this Court is reported as AIR 1974 SC 2328. We may here itself make a mention of another judgment also of a Division Bench of this Court which was cited by the learned counsel for the appellant himself, though in support of his alternative submission for converting his conviction to Section 304(II) IPC. In that case also a submission appears to have been made on behalf the convicted accused in appeal regarding the absence of the name of the accused in the medical papers prepared in the hospital at the time of admission of the victim. That point was dealt with in para no. 12 of the judgment of the Division Bench which is reported 114(2004) DLT 245 "Dharam Pal & ors. Vs State of Delhi" and the same is reproduced hereunder:

"12. Now in the case before us injured Ram Kumar had categorically told Doctor Surya Kant Pankaj(PW-23) that he(injured) has been forcibly pressed to take whisky mixed with acid. Obviously the doctor was not interested in knowing the details of the occurrence or the names of the assailants because his main duty was to give proper medical treatment and not to do investigation of the case but the words spoken by the injured when read as a whole with the statement recorded by HC Virpal and the postmortem conducted on the dead body leave no doubt that the statement given by Ram Kumar comprised of true facts and there was no reason for him to leave the real culprits and implicate innocent persons."

So, the dying declaration Ex.PW-16/A in the present case cannot be rejected since in the MLC of the deceased Aruna the name of the accused was not mentioned as the person who had thrown acid on her.

13. The deceased in the present case was brought to the hospital by her neighbour and when her statement was recorded by the police officer none of her relatives was present at that time and this was elicited from PW-16 SI Sanjay Kumar in his cross- examination. So, even tutoring or prompting of the deceased to make such a statement against the accused is also ruled out. PW-16 had no reason to fabricate the statement of the deceased in order to falsely implicate the accused. We, therefore,

reject the argument that Ex. PW-16/A should not be relied upon since the deceased Aruna had not named the accused as the culprit when she was being examined by the doctor at the time of her admission in the hospital.

14. The prosecution is also relying upon the evidence of PW-9 Raja Ram who is the brother of the deceased living in Dehradun. He had deposed that when he had met his sister Aruna in the hospital in Dehradun she had told him that Udai Singh had thrown acid on her. The submission of learned counsel for the appellant in respect of this dying declaration was that PW-9 had admitted in cross-examination that he had not told the police when his statement under Section 161 Cr.P.C. was recorded that his sister had told him that it was the accused who had thrown acid on her and, therefore, it was clear that this witness had made an improvement on a material aspect while giving evidence in Court and so his evidence should not be relied upon. For the reason put forth by the learned counsel for the appellant for not taking into consideration the statement of PW-9 Raja Ram we are inclined to exclude his statement from consideration but the accused would still not get any benefit from that exclusion since the statement made by the deceased before PW-16 has been found by us to be wholly reliable and by itself sufficient to sustain the decision of the learned trial Court to the effect that it was the accused who had caused acid burn injuries to the deceased as well as her daughter Sonia.

15. The statement made by the deceased before PW-16 SI Sanjay Kumar, although does not require any corroboration, is in any event corroborated by a very strong circumstance. That circumstance is the presence of healed acid burn scars on the person of the accused at the time of his medical examination after his arrest. He was examined by PW-17 Dr. T.R. Ramtek at GTB Hospital on 23-6-2000 and at that time his MLC was also prepared and the same is Ex. PW-17/A. As per this MLC there were multiple old burn scars which were opined to be more than 21 days old found on the person of the accused and the doctor was also of the opinion that those burns were likely to have been caused by acid. When the accused was examined under Section 313 Cr.P.C. and was put the circumstance of find of acid burn marks on his body as mentioned in his MLC Ex. PW-17/A he completely denied having received any burn injuries because of acid and his answer to question no. 25 was "It is incorrect". However, later on he examined one witness in defence to show that while working in a factory of PVC wire some chemical had fallen on him(the accused) on 10-5-2000. Since the accused had not taken any such plea when he was being examined under Section 313 Cr.P.C. the evidence of his defence witness DW-3 Bhaskar Pandey does not help him in explaining the burn injuries noticed on his body by the doctor on 23-6-2000. The explanation sought to be offered through DW-3 was, thus, clearly an afterthought and a false plea. In these circumstances, it can be safely said that the accused must have received burn injuries at the time of incident in question and the acid must have fallen on him also because of the deceased making an attempt to prevent him from throwing acid on her .

16. Coming now to the defence evidence, we find that the accused had examined two witnesses as DWs 1 & 2 to show that at the time of the occurrence he was not present at the scene of crime. The said plea of alibi was, however, not taken by the accused himself when he was examined under Section 313 Cr.P.C. It is, thus, clear that by examining two witnesses to establish alibi he had attempted to introduce a false defence and that is evident also from the fact that even the two

defence witnesses examined by him have not been able to even probabilise the absence of the accused at the place of occurrence. DW-1 Ishwar Chand stated that he knew the accused because one Upender who was the son of the maternal uncle of the accused was a tenant in his house and Udai Singh was also residing with that Upender since 1996. On the point of alibi of the accused he made a wholly vague statement that generally Udai Singh used to come back to his house from his job at about 7 p.m. and that on 17-5-2000 (which is the date of the incident) Udai Singh was present at his (accused's) quarter. This witness did not claim that the accused was present in his house at the time when the incident in question had taken place and merely on the basis of vague statement of this witness to the effect that on 17-5-2000 the accused was present in his house it cannot be said that it stands established or even probabalised that at the time of occurrence in question he could not be present at the place of the incident.

17. DW-2 is Upender Kumar whose name figures in the testimony of DW-1. This witness has deposed that on 17-5-2000 he was present at his shop and the accused was also with him upto night. The evidence of these two defence witnesses is, thus, totally contradictory inasmuch as according to DW-1 the accused was present in his house on 17-5-2000 while according to DW-2 the accused was with him that day at his shop upto night time. In any case, even DW-2 did not give the exact time upto which the accused was with him. Therefore, the evidence of DW-2 also does not establish that the accused could not be present at the scene of crime when the incident in question had taken place. Thus, making an attempt on the part of the accused to raise a false plea of alibi through defence witnesses also shows his guilty mind.

18. We are, therefore, of the firm view that it was the accused only who had thrown acid on the deceased Aruna and her daughter Sonia (PW-1) and no fault can be found with the findings of the learned trial Judge in that regard and the appellant's challenge to the findings of the trial Court holding him responsible for the acid burn injuries caused to the deceased Aruna and her daughter must fail.

19. We now come to the second limb of argument of the learned counsel for the appellant that the offence of murder in any event is not made out as far as the death of the deceased Aruna is concerned. As has been noticed already, the submission of the learned counsel for the appellant was that since the death of the deceased had taken place after about two months of the incident and the autopsy surgeon had opined that the cause of her death was secondary infection it is evident that the alleged act of the accused of throwing acid on the deceased was not really the cause of her death and, therefore, the accused cannot be held guilty of the offence of culpable homicide. We, however, do not find any substance in this submission of the learned counsel for the appellant. As per the post-mortem report which was proved on record by the autopsy surgeon himself who was examined as PW-18 there were superficial to deep burn injuries involving whole body of the deceased except some portions of the body and the cause of death was opined to be "shock and secondary infection due to burn injuries". It is not the case of the accused that the deceased had received fresh burn injuries after the incident in question. The prosecution case as deposed to by the investigating officer PW-24 SI Manoj Kumar is that the accused was arrested on 22-6-2000 from GTB Hospital where he had gone to see the deceased Aruna. This witness had further deposed that on 6-7-2000 injured Aruna was taken to Doon Hospital in Dehradun for further treatment. This part of the

statement of PW-24 was not challenged in his cross-examination which shows that the accused was not disputing the fact that the deceased continued to remain hospitalized in Delhi from the date of the incident till 6-7-2000. Even in his cross-examination PW-24 had stated that the deceased Aruna was removed from GTB Hospital on 6-7-2000 and then was admitted in Doon Hospital at Dehradun. PW-9 Raja Ram, the brother of the deceased, had also deposed that the deceased was brought to Dehradun where she was given treatment for about 8 days and then she had expired. It is the prosecution case and which has also not been disputed by the accused that the deceased expired on 13-7-2000 in the hospital at Dehradun. It, thus, stands established that ever since the date of the incident the deceased Aruna had remained hospitalized till the date of her death. Taking into consideration this fact as also the medical evidence to the effect that the cause of death of the deceased was shock and secondary infection due to the burn injuries which she had sustained on the night of 17-5-2000 as a result of the accused throwing acid on her it can be safely accepted that the death of the deceased was caused by the act of the accused in throwing acid on her body because of which 55% of her body had got burnt. It is, thus, clear that it is a case of culpable homicide.

20. Another argument which was also advanced by the learned counsel for the appellant was that even if it were to be held that the accused was responsible for the death of deceased Aruna and further that her death was a culpable homicide he would still not be guilty of the offence of murder and at the highest it could be a case of culpable homicide not amounting to murder punishable under the second part of Section 304 IPC. In support of this submission learned counsel had cited three judgments of this Court which are reported as "Dharam Pal Vs State", 141 (2007) DLT 478; "Dharampal and Ors. Vs State of Delhi", 114 (2004) DLT 245 and "Satya Parkash Dubey Vs State", 1997 II AD (Delhi)

293. We have gone through all the three judgments and we have noticed that in these three cases this Court had on the basis of facts of those cases converted the convictions of the accused from Section 302 IPC to 304(II) IPC. Learned counsel had made special reference to the facts of the judgment in Dharam Pal's case(supra). In that case the accused had forced the deceased to drink acid mixed with whisky and as a result thereof the deceased had died only a few hours after the incident. The Sessions Court convicted the accused under Section 302 IPC. In appeal a Division Bench of this Court had converted the conviction of the accused from Section 302 IPC to Section 304(II) IPC and the learned counsel for the appellant in the present case placed strong reliance on the reasons given by the Division Bench for converting the offence of murder to one of culpable homicide not amounting to murder punishable under Section 304(II) IPC and submitted that in the facts of the present case that reasoning applies on all fours and so on the principle of consistency in judicial precedents the same benefit should be extended to the appellant in the present case also. We find from the judgment in Dharam Pal's case that the reason for converting the conviction of the accused from Section 302 IPC to 304(II) IPC is given by the Division Bench in the penultimate para of the judgment which is re-produced hereunder:

" 22. Now, the question is whether it was a case of culpable homicide amounting to murder or culpable homicide not amounting to murder. Considering the totality of the facts and circumstances, we are of the view that the appellants after administering the acid mixture ran away leaving him in pain. May be they had no

intention of causing his death but they did have knowledge that acid mixed with liquor would result in such injuries to the stomach as are likely to cause death. We, therefore, alter the offence and conviction from Section 302/34 IPC to Section 304-II/34 IPC."

21. Relying upon the above-quoted observations of the Division Bench in Dharam Pal's case learned counsel for the appellant had submitted that in the present case also the appellant-accused had run away from the spot after throwing acid on the deceased and her daughter leaving them in pain and that fact in the present case should also show that he had no intention to kill the deceased. It was also contended that despite the fact that in Dharmpal's case the death of the deceased after he had been made to drink whisky mixed with acid had taken place after a few hours of the incident this Court had converted the conviction of the accused to Section 304(II) IPC while in the present case the deceased survived for almost two months after the incident and so taking into consideration that fact the present case is on a stronger footing than Dharampal's case for scaling down the offence to culpable homicide not amounting to murder punishable under Section 304(II) IPC. There is no doubt that in the decisions of this Court cited by Mr. Bhalla the convictions of the accused persons were converted from 302 IPC to 304(II) IPC but simply relying upon these decisions the appellant in the present case cannot claim the same relief. Regarding the relevance and applicability of earlier decisions in criminal cases as precedents in subsequent cases the Hon'ble Supreme Court had observed in "Sayarabano @ Sultanabegum vs State of Maharashtra", JT 2007(3) SC 106, that criminal cases are decided on facts and on evidence rather than on case law and precedents. In this regard reference can also be made to an earlier decision of the Hon'ble Supreme Court which is reported as (2004) 11 SCC 305, "Ramesh Singh @ Photti v. State of Andhra Pradesh" wherein the question of precedents in criminal cases was addressed and the Hon'ble Supreme Court observed as under:

"11. A reading of the above judgments relied upon by the learned Counsel for the appellants does indicate that this Court in the said cases held that certain acts as found in those cases did not indicate the sharing of common intention. But we have to bear in mind that the facts appreciated in the above judgments and inference drawn have been so done by the Courts not in isolation but on the totality of the circumstances found in those cases. The totality of circumstances could hardly be ever similar in all cases. Therefore, unless and until the facts and circumstances in a cited case are in pari-materia in all respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion....."

(emphasis laid by us)

22. In "Prakash Chandra Pathak Vs. State of U.P.", AIR 1960 SC 195, also it was observed that no case on facts can be on all fours with another case and so each case should be decided on its own facts and circumstances. The observations in this regard were made in para 8 of the judgment which is reproduced here under:-

" 8. Learned counsel for the appellant cited before us a number of reported decisions of this Court bearing on the appreciation of circumstantial evidence. We need not refer to those authorities. It is enough to say that decisions even of the highest court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts. The general principles governing appreciation of circumstantial evidence are well-established and beyond doubt or controversy. The more difficult question is one of applying those principles to the facts and circumstances of a particular case coming before the Court. That question has to be determined by the Court as and when it arises with reference to the particular facts and circumstances of that individual case. It is no use, therefore, appealing to precedents in such matters. No case on facts can be on all fours with those of another. Therefore, it will serve no useful purpose to decide this case with reference to the decisions of this Court in previous cases. We have to determine whether on the facts and circumstances disclosed in the evidence which has been accepted by the courts below; the crime charged against the appellant has been made out....."(emphasis laid by us)

23. In view of the aforesaid decisions of the Hon ble Supreme Court we are not inclined to accept the submission of the learned counsel for the appellant that we should convert the conviction of the accused from Section 302 IPC to Section to 304 (II) IPC simply relying upon the three decisions of this Court cited by him and particularly the one in Dharampal's case(supra). We shall have to examine the prosecution case in the case in hand with reference to the evidence adduced to find out whether in the facts and circumstances of the present case the accused Udai Singh can be said to have committed the offence of murder or whether he is guilty of culpable homicide not amounting to murder. In this regard we shall have to notice the relevant provisions of the Indian Penal Code dealing with the offences of culpable homicide, culpable homicide amounting to murder and culpable homicide not amounting to murder and then we shall examine as to which offence is actually made out in this case. Sections 299 and 300 IPC are the relevant sections.

24. Section 299 IPC reads as under:

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide"

Section 300 IPC which provides the distinction between culpable homicide amounting to murder and culpable homicide which does not amount to murder reads as under:

"300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

secondly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

thirdly.-If it is done with the intention of causing bodily injury to any person and the bodily injured intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

fourthly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1: Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:--

First- That the provocations not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2: Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3: Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4: Culpable homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5: Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

25. Referring to these Sections it was submitted by the learned Additional Public Prosecutor that since this is a case of culpable homicide and the accused had neither claimed the benefit of any of the five exceptions provided under Section 300 IPC nor is there any circumstance brought on record which might have brought the case of the accused within any of those exceptions it has to be held that this is a case of culpable homicide amounting to murder and, therefore, there is no scope for altering the conviction of the accused from Section 302 IPC to Section 304 IPC. We, however, do not find this submission of the learned prosecutor to be acceptable in view of the decision of the Hon ble Supreme Court in "Kishore Singh and Anr. vs. State of Madhya Pradesh", AIR 1977 SC 2267 wherein the Hon ble Supreme Court while considering the provisions of Section 299 and 300 IPC and the effect of absence of any plea of the accused for giving him the benefit of any of the five exceptions under Section 300 IPC observed in para no. 13 as under:

"13. The distinction between culpable homicide (Section 299 IPC) and murder (Section 300 IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 IPC. Under the category of unlawful homicides fall both cases of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 IPC. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 IPC, namely, firstly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 IPC."

(emphasis laid by us)

26. Learned counsel for the appellant, on the other hand, had contended that since there is no opinion either of the doctor who had examined the deceased at the time of her admission in the hospital on the night of the incident or of the autopsy surgeon who had conducted post-mortem examination on the dead body of the deceased that the burn injuries noticed on her body were sufficient to cause death in the ordinary

course of nature and further that the deceased died after about 2 months of the incident and the prosecution had also not produced the record of treatment given to her during that period none of the four clauses of Section 300 IPC which convert the offence of culpable homicide into „murder“ can be said to be existing and consequently the conviction of the accused under Section 302 IPC cannot be sustained at all. The reply to this submission given by the learned Additional Public Prosecutor was that despite the fact that none of the two doctors examined by the prosecution had claimed the injuries sustained by the deceased to be sufficient to cause death in the ordinary course of nature and the prosecutor in-charge of the trial had also not bothered to elicit from the doctors their opinion in that regard the offence committed by the accused would still be „murder“ since the very fact that the deceased had received burn injuries to the extent of 55% the Court itself can safely arrive at the conclusion that the injuries sustained by the deceased were sufficient to cause death in the ordinary course of nature and also that the accused had the intention to kill the deceased and the trial Court had rightly held so. Further submission was that the mere fact that the deceased had survived for a long period after the incident would not make any difference.

It was also submitted that from the fact that the deceased had survived for about two months after the incident despite her having sustained 55% burn injuries it can be safely inferred that she must have been given proper treatment as otherwise she might have succumbed to the burn injuries within a couple of days after the incident as is most likely in case of 55% burn injuries and since despite proper medical aid the deceased could not ultimately survive it becomes all the more certain that the burn injuries sustained by her must have been severe and dangerous enough to have caused death in the ordinary course of nature. Thus, learned prosecutor submitted, even the non-production of treatment record in respect of the deceased would not help the accused in his attempt to get his conviction altered to Section 304 IPC.

27. In this case, we have already noticed that the first doctor(PW-3) who had examined the deceased on the night of the incident when she was brought to GTB hospital had noticed in the MLC Ex. PW-3/A that the burn injuries sustained by the deceased were to the extent of 55% approximately. In the cross-examination of PW-3 Dr. Jaswant Singh this fact was not challenged. Similarly the evidence of the autopsy surgeon to the effect that at the time of post-mortem examination of the deceased he had found „superficial to deep burn injuries involving whole body except right side face, scalp, right and left hand, anterior abdomen valve and some parts of thigh“ was not challenged in his cross-examination. However, none of these two doctors gave any opinion as to whether the burn injuries sustained by the deceased were sufficient to cause death in the ordinary course of nature, benefit of which omission on part of the doctors as well as the failure on the part of the prosecutor to elicit their opinion when they were being examined by the trial Court is being sought to be derived by the convicted accused. Now, the question is what should be held in the absence of medical opinion in this case regarding the nature of injuries which the deceased had sustained? This kind of a situation had arisen in some cases coming up before the Supreme Court also and here itself we would like to refer to those cases and the decision taken therein. The first judgment to which we would like to refer is that of "Bunnilal Chaudhary v. State of Bihar", AIR 2006 SC 2531. In this case

the doctor who had conducted the post-mortem examination had not opined the injury found on the body of the deceased to be sufficient in the ordinary course of nature to cause death and so it was held that the offence of murder for which the accused had been found guilty by the Courts below was not made out.

28. In "Kishore Singh and Anr. V. State of Madhya Pradesh", AIR 1977 SC 2267 (reference to which has been made earlier also for some other point.) one of the three doctors examined by the prosecution, who was the autopsy surgeon, had opined the injuries inflicted on the person of the deceased to be sufficient to cause death in the ordinary course of nature while one of the other two doctors who had examined the injuries of the deceased while he was alive had opined that the injuries were „likely to cause death (and not sufficient to cause death in the ordinary course of nature) and the third one had claimed that he could not give any opinion in that regard. Hon ble Supreme Court also took notice of the fact that the death of the victim had taken place after a month of the occurrence and came to the conclusion that since the injuries sustained by the deceased could not be said to have been shown as sufficient in the ordinary course of nature to cause death in view of the discrepant opinions of the doctors the conviction of the accused under section 302 IPC could not be sustained and the same was altered to 304(I) IPC.

29. In the case of "Jayaraj v. State of Tamil Nadu", AIR 1976 SC 1519, the autopsy surgeon had deposed in his examination-in- chief that the injury sustained by the deceased was fatal but in cross-examination he claimed that that injury was only likely to cause death and so the Hon ble Supreme Court did not consider the injury to be sufficient to cause death in the ordinary course of nature and further considering the fact that the deceased died after 9/10 days of the incident the conviction of the accused was altered from Section 302 IPC to Section 304 (I) IPC.

30. In "Willie (William) Slaney v. State of Madhya Pradesh, AIR 1956 SC 116 the deceased had died after ten days of the occurrence. The doctor s opinion regarding the nature of injury sustained by the deceased was that the injury was of a very serious nature and was „likely to result in fatal consequences . The Hon ble Supreme Court came to the conclusion that since the deceased had survived for ten days after the incident and the doctor had also opined that the injury sustained by deceased was „likely to result in fatal consequences the injury could not be considered to be „sufficient to cause death in the ordinary course of nature and so the conviction of the accused under Section 302 IPC was set aside and altered to Section 304(II) IPC.

31. In "Inder Singh Bagga Singh vs. State of Pepsu", AIR 1955 SC 439, even though the medical opinion was that the injury sustained by the deceased was sufficient in the ordinary course of nature to cause death the Hon ble Supreme Court taking into consideration the fact that the deceased had died after three weeks of the occurrence converted the conviction of the accused from Section 302 IPC to Section 304 (I) IPC

32. From the aforesaid judgments of the Hon ble Supreme Court it is clear that in deciding the question whether the offence of culpable homicide amounts to murder or not the Hon ble Supreme Court considered the medical opinion regarding the nature of injuries as well as the period after which death of the victim takes place as very important factors and depending upon the facts and

circumstances of each case the conviction of the accused was converted from Section 302 IPC to either 304(I) IPC or 304(II) IPC. In the case before us, the medical opinion as to whether the burn injuries sustained by the deceased were sufficient in the ordinary course of nature is absent and not only that, as noticed already, even the death of the deceased had taken place after two months of occurrence and the cause of death was opined by the autopsy surgeon to be due to shock and secondary infection due to burn injuries. There is no evidence adduced by the prosecution regarding the treatment given to the deceased from the date of the incident till her death. In these circumstances, we are of the view, that none of the four clauses of Section 300 IPC which convert the offence of culpable homicide to „murder“ can be said to be existing. Therefore, the offence which the accused can be said to have been committed is culpable homicide not amounting to murder.

33. We shall now have to examine further if the death of the deceased was caused by the accused by intentionally causing injuries which were likely to cause death or by causing injuries with the knowledge that the injuries which he would be causing were likely to cause death. This question has to be examined since the quantum of punishment to be awarded to the accused would depend on its answer. The punishment for the offence of culpable homicide not amounting to murder is prescribed in Section 304 of the IPC which reads as follows:

"304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

34. The manner in which the accused caused the death of the deceased, in our firm view, brings the case of the accused within the first part of Section 304 IPC. The accused had gone to the house of the deceased at night time by scaling the wall. He was carrying with him a bottle of acid which he threw on the deceased and her daughter. That shows that it was a pre-planned and pre-meditated decision of the accused to go to the house of the deceased with the intention of throwing acid on her to cause injuries on her body which were likely to cause her death. We have already accepted the dying declaration of the deceased, Ex. PW- 16/A, wherein she had claimed that the accused had been threatening her to kill her and to disfigure her face with acid because of her having refused to live with him as his wife. Even otherwise, it is well settled that whenever a question arises as to whether the accused had intended to cause injuries which are actually found on the body of the victim it will be presumed that the accused did intend to cause those very injuries unless he is able to show that he did not cause those injuries intentionally. In this regard we may make a reference to a decision of the Hon ble Supreme Court in "Harjinder Singh @ Jinda v. Delhi Admn.", AIR 1968 SC 867

wherein the following observations in an earlier decision in the case of "Virsa Singh v. State of Punjab", 1958 SCR 1495 were noticed with approval while considering the question as to when some injury found on the person of an injured can be said to have been caused intentionally:

"12. The learned Judge further explained the third ingredient at p. 1503 in the following words :

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inferences, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

The accused in this case has not been able to show that acid burn injuries found on the body of the deceased were unintentional or accidental. We do not find any merit in the submission of the learned counsel for the appellant that in the facts of this case it can only be inferred that the accused threw acid on the deceased without any intention of causing any injury which was likely to cause her death. We cannot turn Nelson's eye to the fact that the deceased had sustained 55% burn injuries on different parts of her body including her face and chest which are vital parts. In this regard we may notice here that it has been mentioned in Modi's Medical Jurisprudence and Toxicology (Sixteenth Edition) at page 196 (reference to which has been made in the case of Sudershan Kumar (supra) by the Division Bench of this Court as well as by the Hon'ble Supreme Court) that "the involvement of one third to one half of the superficial surface of the body is likely to end fatally." In these circumstances there can be no escape from the conclusion that the accused threw acid on the deceased with the intention of causing injuries which were likely to cause her death.

35. In the result, this appeal succeeds only partly. While maintaining the conviction of the accused-appellant under Section 323 IPC as well as the sentence awarded to him for the injuries caused to PW-1 Sonia, we convert his conviction for causing the death of the deceased Aruna from Section 302 IPC to Section 304(I) IPC. We are, however, not at all inclined to take a lenient view on the point of sentence. The appellant-accused deserves no leniency. In this nation of great traditions and cultures it is believed from ancient times that where woman is given respect only in that place God resides but the appellant-accused has shown least respect for the deceased woman who was a widow and not only that he took undue advantage of her being a widow by first extending her a helping hand and then becoming devilish towards her. The appellant-accused is directed to undergo rigorous imprisonment for ten years for causing the death of the deceased Aruna and also to pay fine as directed by the trial Court. The appeal stands disposed of accordingly.

P . K . BHASIN , J

December 2, 2008
sh

MUKUL MUDGAL , J