REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 766 OF 2008

Krishan ... Appellant

Versus

State of Haryana ... Respondent

J U D G M E N T

Swatanter Kumar, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 17th July, 2007 passed by the High Court of Punjab and Haryana at Chandigarh whereby the High Court reversed the judgment of acquittal passed by the Trial Court against the accused Krishan. However, it maintained the acquittal of another accused Shardi, mother of the accused Krishan.

2. In brief, the facts are that Ex. PH/1, FIR No. 134 was registered against accused Shardi and Krishan under Sections

307, 498A, 109 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC") on 30th March, 1998. This FIR was registered in furtherance of the r*ukka*, Ex.PH, received by the Police Station Sadar Narwana, from Civil Hospital, Jind. After receiving the *rukka* ASI Umed Singh, PW9 along with police officers reached the Civil Hospital, Narwana. That police officer obtained the evidence certificate in respect of Smt. Rani, wife of Krishan. She was admitted to the hospital with burn injuries. The doctor declared Rani fit to make the statement and also provided her medico-legal report to the Investigating Officer. Since Rani's condition was serious, the Investigating Officer summoned Sh. Baljit Singh, then SDJM Narwana for the purpose of recording the statement of Rani.

3. On the request of the police, the said SDJM came to the hospital and proceeded to record the statement of Rani. The statement of the deceased was recorded on 30th March, 1998 at about 11.40 a.m. As per the dying declaration, Ext. PR/2 she was married to Krishan approximately 18-19 years ago. Krishan was addicted to liquor and used to harass her. When she served food to Krishan, he would throw away the *thali* on the ground.

4. From this wedlock, two sons were born aged 9 years and 7 years respectively. According to Rani, accused Krishan used to give her beatings whenever he was under the influence of liquor. Krishan also used to make demands for a car, and used to ask Rani to bring money to purchase the car from her father. She also stated that her father-in-law used to help her, but mother-in-law never helped. Shardi, mother of the accused used to instigate him.

5. On the fateful day, Rani herself took kerosene oil from the store at about 7 a.m. in the morning to burn the stove. At that time, her husband poured the kerosene oil on her body and set her on fire. On the night previous to the occurrence, Krishan had come with his friend Bedu, son of Teka and asked her to prepare tea which she prepared and served to both of them. According to Rani, when she was set on fire by the accused, her father-in-law and sister-in-law extinguished the fire and seeing them even her husband helped in putting off the fire. The father-in-law and sister-in-law had come to the place of occurrence after hearing her screams, but none of them were present when the accused Krishan had sprinkled kerosene on her body.

6. Vide Ext. PJ, PW9 had sought the opinion of the doctor, which was recorded vide Ext. PJ/1 wherein it was stated that "patient is fit to make her statement". The Investigating Officer then requested the SDJM to record the statement of the deceased which then was recorded vide Ext. PR/2 and thumb impression of Rani was taken. This was signed by the SDJM.

7. Based upon the dying declaration made by the deceased, FIR was registered under Sections 498A, 307, 109 and 34 IPC. However, subsequently on 2nd April, 1998 Rani died and the offence was converted to Section 302 IPC and FIR accordingly amended. The Investigating Officer prepared the site plan, recorded statement of PWs and prepared the Inquest Report, Ext.PN, with regard to the dead body of Rani. The doctor, PW14, who performed the post-mortem upon the body of the deceased and noticed the condition of the body and injuries upon the body of the deceased stated in his statement as follows:-

> "On dated 3.4.98 vide PMR No. 325/98 I conducted the autopsy of the dead body of Rani wife of Krishan Balmiki by Caste, resident of Sudkan Kalan, District Jind. Dead body was brought by H.C. Om Parkash 451 and Identified by Rajinder and Wazir. I found the following on Post-mortem examination.

Dead body was 160 cm. Long. It was naked. Rigour mortis was present in all the limbs. There was a golden colour nazle coca. There were superficial to deep bones over the whole body except lower parts of both thigh, both legs, and foot. Line of demarcation was present. Singeing was present. Redning, blackning and peeling of skin was present. Vesication was present. Bones were superficial to deep and approximately 75%.

The cause of death was due to burns and its complications which were anti-mortem in nature and sufficient to cause death in ordinary course of nature.

The following were handed over to the police.

1. Dead body after Post Mortem Examination.
2. Copy of PMR
3. 11 Police papers duly signed.

The probable time that elapse between the injury and death was between 3-4 day (as per record and between death) and post mortem was within 4-36 hours. Ext. PT is the carbon copy of the PMR which bears my signature. On police request Ex. PO I conducted the P.M. Examination on the dead body of Rani wife of Krishan which is also accompanied by the inquest report Ex. PN which are in total 11 pages and I initial the same.

xxxxxxxxxxxxxxx by defence counsel.

The burns were on the whole body except as mentioned in the statement. The burns are classified of three types. Epidermal, Dermo-epidermal and Deep. Burns were of superficial and deep burns. It is correct that due to burns there is severe pains, and the

> medication is prescribed. It is incorrect to suggest that I am deposing falsely."

8. The accused were directed to face trial before the Court of Sessions. The learned Trial Court vide its detailed judgment dated 15th November, 1999 confirmed the opinion that the prosecution had not been able to prove its case against the accused beyond shadow of reasonable doubt and, thus, while giving the benefit of doubt, acquitted both the accused. The Trial Court found that in the facts of the present case, it was not safe to rely upon the dying declaration of the deceased and acquitted both the accused. It will be useful to refer to the relevant findings of the trial court.

> "14.All the material witnesses examined by the prosecution namely, PW1 Ramdhari, PW3 Mamo, mother of deceased, PW4 Nirmala sister of accused Krishan have not supported the prosecution version in any manner and they were declared hostile on the request of the learned PP and were cross-examined by him but nothing favourable to the prosecution came out of them. The only piece of evidence against accused Krishan is the dying declaration recorded by Shri Baljeet Singh then SDJM, Narwana in which Rani has implicated her husband Krishan for the present occurrence. PW11 Dr. B.R. Kayat who admitted Rani has stated in the cross examination that Krishan accused was also admitted in the hospital at the same time on

the same and he also suffered burn injuries and Krishan remained admitted in the hospital for 21 days. From this it is proved that Krishan tried to extinguish the fire and that is why he also received burn injuries along with Rani. DW2 Ram Rati who is real sister of Rani has stated that Krishan was not present in the house at the time of occurrence but he came to the spot from outside and he also helped the other family members in extinguishing the fire. So, from the evidence it is proved that Krishan accused took part in extinguishing the fire and Rani was got admitted in the hospital alongwith Krishan. The parents of the deceased have clearly stated that accused Krishan was not addicted to liquor and he never harassed Rani for bringing less dowry and that accused Krishan never demanded any dowry articles although the marriage took place more than 18/19 years ago. Similarly sister of the deceased who was married with the brother of the accused Krishan and who appeared as DW2 has also stated that it was a natural death because Rani caught fire while preparing tea and Rani told the witness that Krishan was not at fault and accused Krishan took part in extinguishing the fire. The material witnesses were declared hostile on the question of the learned PP and were cross-examined by him but nothing favourable to the prosecution came out them. There is no evidence on record that accused Krishan or her mother Sardhi might have ever treated Rani with cruelty for bringing fewer dowries or for bringing more dowries. It is also not proved from the evidence of the prosecution that accused Krishan might be addicted to liquor. So now we are left with the dying declaration.....

> 15.....In the present case dying declaration cannot be believed because even parents of the deceased have not supported her versioning any manner. Similarly, even the sister of the deceased who was present at the time of occurrence has not implicated the two accused in any manner. Further she has stated that it was accidental fire and Krishan accused extinguished the fire."

9. The above reasoning of the Trial Court did not find favour with the High Court and the High Court while relying upon the dying declaration, the statement of SDJM PW10 and the statement of Dr. B.R. Kayat PW11, recorded the following reasoning:-

> "23. In this case, dying declaration does not leave anything vague. It is free from blemish. The act of the Magistrate cannot be suspected when he records the dying declaration as a part of the judicial function, which carries great sanctity. Opinion of the doctor was obtained and deceased remained fit to make statement during the course of recording the dying declaration. There is no evidence that there was any body else to influence her.
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> 24. Learned counsel for the accused-respondents, supporting the judgment of the trial Court, has pointed out that the benefit of doubt should be given to the husband because he was the person who tried to extinguish the fire and as a result thereof, he received burn injuries on his hands.

25. This Court does not concur with the contention of the learned counsel for the accused-respondents. When burn injuries are found on the hands etc. of the accused in case of bride burning etc. it shall be a relevant circumstance to be taken into consideration along with other circumstances pointing to the innocence of the husband or whoever is accused of the crime of causing death by burning. It was stated by the deceased in her statement (Exhibit PR/2) that her father-in-law and Nanad extinguished the fire. Her husband also extinguished the fire. Since father and sister of Krishan accused-respondent tried to extinguish the fire, Krishan husband had no option but to join them in extinguishing the fire. Had there been any falsity in the statement (Exhibit PR/2) of Rani, she would have been the last person to say that her husband also (*sic*) extinguished the fire. It is one of the factors, which strengthens the consideration that the dying declaration was spontaneous and truthful. Dr. R.K. Wadhwa (PW14) conducted the Post Mortem on the dead body of Rani on April 3, 1998 and opined that the death occurred due to burn injuries and the injuries were ante mortem and sufficient to cause death in the ordinary course of nature. The circumstance would further strengthen the duly proved and unequivocal dying declaration. Learned trial judge, in this case, fell in serious error by putting the circumstance of presence of burn injuries on the hands of the accused at a higher but unmerited pedestal and putting the dying declaration in the background. The importance and emphasis, which ought to have been put on the dying declaration, were wrongly put on the said circumstance of burn injuries on the hands of the accused in negation of the settled proposition of law

> governing dying declaration. The entire approach of the trial judge was lopsided and rather contumacious."

10. The High Court convicted the accused Krishan while maintaining the acquittal of Shardi, mother of accused Krishan.

11. In light of the diametrically opposite views recorded by the Trial Court and the High Court, the primary question that arises for consideration in the present case is as to whether the court can safely rely upon the dying declaration and make the same as the basis for conviction of the accused Krishan, though other witnesses like PW1, PW3 and PW4 have not fully supported the case of the prosecution. In order to examine this aspect, it is necessary for us to bifurcate this proposition into the following two heads:-

a. Firstly, whether as a principle of law, a dying declaration can form the sole basis for conviction of an accused or not?

b. Secondly, whether the facts of the present case fully satisfy the settled principles and it would be safe to convict the accused Krishan solely on the basis of the dying declaration of the deceased?

DISCUSSION :

12. The learned counsel appearing for the appellant relied upon the judgment of this Court in the case of *Khushal Rao v. State of Bombay* [AIR 1958 SC 22] to contend that it is not safe to convict an accused merely on evidence furnished by a dying declaration, without further corroboration because such a statement is not made on oath and because the maker of it might be mentally and physically in a state of confusion and, therefore, the value to be attached to such a dying declaration cannot be such so as to form the sole basis of conviction of an accused.

13. On the contrary the counsel appearing for the State relied upon the judgment of this Court in the case of *State of Uttar Pradesh v. Ram Sagar Yadav and Ors*. [(1985) 1 SCC 552] and argued that primary effort of the Court has to be to find out whether the dying declaration is true and if it is so, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the court may, for its assurance, look for corroboration of the dying declaration.

14. We are not able to see any contradiction in these two judgments of this Court. The three-Judge Bench judgment in the case of *Khushal Rao* (supra) had stated the principle in paragraphs 16 and 17, which reads as under:

> "16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (*1*) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (*2*) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (*3*) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (*4*) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (*5*) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (*6*) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the

opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.

If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from

such other infirmities as may be disclosed in evidence in that case."

15. A bare reading of the above paragraphs shows that the Court opined that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. The Bench further clarified that where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. But where the dying declaration itself is attended by suspicious circumstances, has not been recorded in accordance with law and settled procedures and practices, then, it may be necessary for the court to look for corroboration of the same.

16. In the case of *Ram Sagar Yadav* (supra), this Court had followed the same principle and, in turn, specifically referred to the judgment of *Khushal Rao* (supra). Not only this, even in the

case of *Munnu Raja and Anr. v. State of Madhya Pradesh* (1976) 3 SCC 104, this Court referred to the judgment in *Khushal Rao's* case (supra). In paragraph 6 of the judgment, the Court stated the same principle that where the dying declaration suffers from an infirmity, the Courts will have to adopt a different course to adjudicate the matter in accordance with law. In the case of *Ramilaben Hasmukhbhai Khristi v. State of Gujarat* (2002) 7 SCC 56, this Court held as under:

> "28**.** Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration."

17. In this regard, reference can also be made to a recent judgment of this Court in the case of *Bhajju @ Karan Singh v. State of Madhya Pradesh* (2012) 4 SCC 327.

18. From the above judgments, it clearly emerges that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused when such dying declaration is true, reliable and has been recorded in accordance with the established practice and principles.

19. Having answered the first question, now we have to deal with the facts of the present case. As already noticed, the dying declaration had been recorded in accordance with the established practice and procedures. To its correctness and authenticity, there can hardly be any challenge. After receiving the *rukka* at the police station, PW9 had rushed to the hospital and vide Ex.PJ/2 submitted application for recording the statement of the deceased. The doctor vide Ex. PJ/1 issued a certificate of fitness to record the statement of Rani. They dying declaration is Ex.PR/2 and photocopy thereof was marked as Ex.PK. This was recorded by the SDJM in his handwriting after questioning the deceased. Ex.PR/2 was signed by the SDJM as well as the thumb impression of Rani was taken, which was duly identified by the Investigating Officer. The proceedings to that effect were duly recorded as giving complete details as to how the dying declaration came to be

recorded and the proceedings were submitted to the SDJM and the Area Magistrate. The truthfulness of the dying declaration can further be evaluated from the fact that the same was recorded on 30th March, 1998 while Rani died on 2nd April, 1998, i.e. she survived for another two-three days after the statement was made from which it can reasonably be inferred that she was in a fit condition to make statement at the relevant time, as stated by PW9 and PW11. In the dying declaration, the deceased did not unnecessarily involve the other family members of the accused Krishan. On the contrary, she specifically stated that her father-in-law and sister-in-law were always helping her and, in fact, even tried to douse the fire. She did not even make any allegations against her mother-in-law, except that she did not help Rani. She only attributed the acts of cruelty and beating to her husband and that too, when he was under the influence of liquor.

20. Dr.B.R. Kayat, when examined as PW11, specifically stated that the patient was conscious but the B.P. could not be recorded because of burns. She had 75% burns. The doctor issued the endorsement, Ex.PJ/1, declaring that the deceased was fit to make statement and he also permitted the Magistrate

to record the statement of the deceased and she remained fit during the recording of her statement. According to this witness, he had granted endorsement (Ex. PJ/1) at 11.15 a.m. and then he granted the other certificate, Ex.PR/3 at about 11.42 a.m. certifying that she remained fit during recording of her statement. He also stated that the Magistrate remained present in the hospital for about 30 minutes.

21. The learned counsel appearing for the appellant heavily relied upon the answer of the doctor in his cross-examination, where he stated that "it is correct that both hands of Rani were burnt, including fingers and thumb." The deceased is stated to have suffered 75% burns. This answer of the witness in face of his statement in examination-in-chief does not bring any advantage, inasmuch as no specific question was put to the doctor that the extent of burns was such that her thumb impression could not have been taken. No such question was put to this witness. Not even a suggestion was made to the doctor and the Investigating Officer to the effect that it was not possible to take the thumb impression of the deceased in the state of health that she was in. Dr. R.K. Wadhwa, PW14, who performed the autopsy on the dead body of Rani clearly noticed

that there were superficial to deep burns all over the body except her lower parts of both thighs, both legs and feet. In other words, it is not only possible but quite feasible that her thumb impression could rightly be taken by the SDJM.

22. The next submission was that since PW1, PW3 and PW4, the relatives of the deceased had themselves turned hostile, it cannot be said that the prosecution has been able to prove its case beyond any reasonable doubt. On the contrary, this will also take this case outside the category of cases where an accused can be convicted solely on the basis of a dying declaration.

23. No doubt, these three witnesses were declared hostile by the prosecutor with the leave of the court. However, this Court can still rely on and refer to the statements of these three witnesses to the extent that they support the case of the prosecution. PW1, father of the deceased, stated that he had four daughters and one son. His daughters, Rani and Ram Rati were married to Krishan and Sat Narain about 19 years back. He denied that Krishan used to treat his daughter with cruelty. But two vital pieces of information that clearly surfaced from his examination-in-chief are inferred by the following statement

“about two years ago, Krishan came to me and demanded money for purchase of vehicle, but I refused. ..... Statement of my daughter was recorded before my arrival.” It was, thereafter, that the witness was declared hostile and cross-examined. Similarly, PW3, mother of the deceased stated that her daughter was never harassed by the accused for bringing less dowry and was declared hostile. PW4 is the sister of Krishan and she stated that Krishan was not at home and the deceased caught fire while she was preparing the tea. Maybe, it was not possible for the Court to convict the accused on the basis of the statements of PW1, PW3 and PW4 respectively. These witnesses support the case of the prosecution to a limited. Rani and Ram Rati were two sisters who were married to two real brothers, i.e. Krishan and Sat Narain. This fact has duly been noticed by the Trial Court in its judgment. However, its impact on the case of the prosecution and the reason for not supporting of the prosecution case by these witnesses was completely ignored by the Trial Court. PW1 supports the dying declaration to the extent that money was demanded for purchase of a car and he had refused to meet the demand. To that extent, this fully corroborates the dying declaration made

by the deceased. Keeping in view the social set up in rural areas, the fact that another daughter Ram Rati, sister of the deceased Rani, had been married in the same family, gives a definite indication as to the reason why these witnesses turned hostile. The hostility of these witnesses would, in no way, render the dying declaration doubtful, much less inadmissible or of no evidentiary value. The hostility of the witnesses is a relevant consideration, but is not the sole determinative factor for deciding the guilt or otherwise of an accused. PW9, PW11, PW14, SDJM, the other police witnesses and to some extent PW1 have also supported the case of the prosecution and partially the dying declaration.

24. The judgment of this Court in the case of *Bhajju @ Karan Singh* (supra) can usefully be referred again as it has some similarity on facts. There also two witnesses had turned hostile and a dying declaration was involved. Considering the cumulative effect of hostile witnesses and the reliability of a dying declaration, the Court held as under:

> "33. As already noticed, none of the witnesses or the authorities involved in the recording of the dying declaration had turned hostile. On the contrary, they have fully supported the case of the prosecution and have, beyond

reasonable doubt, proved that the dying declaration is reliable, truthful and was voluntarily made by the deceased. We may also notice that this very judgment, *Munnu Raja* (1976) 3 SCC 104 relied upon by the accused itself clearly says that the dying declaration can be acted upon without corroboration and can be made the basis of conviction.

34. Para 6 of the said judgment reads as under: (*Munnu Raja case*, SCC pp. 106-07)

> "*6*. … It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated (see *Khushal Rao* v. *State of Bombay AIR 1948 SC 22*). The High Court, it is true, has held that the evidence of the two eyewitnesses corroborated the dying declarations but it did not come to the conclusion that the dying declarations suffered from any infirmity by reason of which it was necessary to look out for corroboration."

35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 Cr.PC, the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the

witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

a. *Koli Lakhmanbhai Chanabhai v. State of Gujarat* (1999) 8 SCC 624.

b. *Prithi v. State of Haryana* (2010) 8 SCC 536.

c. *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi*) (2010) 6 SCC 1.

d. *Ramkrushna v. State of Maharashtra* (2007) 13 SCC 525."

25. Even in the case of *Mrinal Das v. State of Tripura* (2011) 9 SCC 479, this Court held as under:

> "68. In our case, the eyewitnesses including the hostile witnesses, firmly established the prosecution version. Five eyewitnesses, namely, PW 1, PW 4, PW 6, PW 7 and PW 8 clearly identified two convicts, appellants Tapan Das (A-5) and Gautam Das (A-11). PWs 1, 4, 7 and 8 identified accused Pradip Das (A-9). PWs 1 and 7 identified accused Somesh Das (A-7). PWs 1 and 4 identified Mrinal Das (A-4). PWs 4 and 8 identified Anil Das (A-1). It is clear that 6 accused persons including two convicts/appellants had been identified by more than one eyewitnesses. It is also clear that 6 accused could have been identified by the eyewitnesses though all of them could not have been identified by the same assailants. However, it is clear that two or more than two eyewitnesses could identify one or more than one assailants. The general principle of

> appreciating evidence of eyewitnesses in such a case is that where a large number of offenders are involved, it is necessary for the court to seek corroboration, at least, from two or more witnesses as a measure of caution. Likewise, it is the quality and not the quantity of evidence to be the rule for conviction even where the number of eyewitnesses is less than two.
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> 69. *It is well settled that in a criminal trial, credible evidence of even hostile witnesses can form the basis for conviction. In other words, in the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence."*
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> (emphasis supplied)

26. In view of the settled position of law, we are of the considered view that the hostility of PW1, PW3 and PW4 cannot demolish the value and reliability of the dying declaration of the deceased, Ext. PR/2. The dying declaration has been proved in accordance with law, is a truthful version of the events that occurred and the circumstances leading to her death. The same is reliable and in fact, to some extent, finds corroboration from the statements of other witnesses.

27. For these reasons, we see no merit in the present appeal and the same is dismissed.

.....J.
(Swatanter Kumar)

.....J.
(Madan B. Lokur)

New Delhi,
December 13, 2012.