

2. The accused is alleged, to, sprinkle diesel, upon, the body of his wife, and, thereafter set it aflame, hence ending her life. The afore occurrence happened, at the site, disclosed in the site plan, embodied in Ex.PW-27/B. The demise of the deceased occurred at PGI Chandigarh. The Doctor who conducted autopsy, on, the body of the deceased, in, his post mortem report embodied, in, Ex. PW-1/C, has, made an opinion therein, vis-a-vis, the demise of the deceased, becoming engendered by septicemia consequent, to, 90% thermal burns, hence occurring on her person. The Investigating Officer concerned, had moved, an application embodied, in, Ex.PW-27/A before the Doctor concerned, and, therethrough he had sought a declaration, vis-a-vis, the fitness, of, the deceased, to, make a statement. Upon the afore request, the Doctor concerned made an endorsement, embodied in Ex.PW-29/A, vis-a-vis, the patient/deceased, being fit, to make a statement. In consequence thereof, the deceased made her statement, statement whereof, becomes embodied in Ex. PW-25/A, and, also therein, in, red circle 'A' she appended her signatures, besides, her signatures became attested, by, Doctor Kavita Sharma. Moreover, one Seeta Kumari, whose, signatures exist at Ex. PW-5/A, hence, borne within Ex. PW-25/A, became a witness to the afore dying declaration, hence, made by the deceased. In

consequence to the afore made dying declaration by deceased Suman, hence, carrying therein narrations, vis-a-vis, the cause of her demise, in as much, as, its containing an echoing rather succoring the prosecution's propagation, qua, the accused pouring diesel, upon, her body, and, thereafter his setting it aflame, and, in consequence whereof, fatal burn injuries, as, described in, the, Post Mortem Report, borne in Ex.PW-1/C, became gained, upon, the body of the deceased.

3. The FIR, vis-a-vis, the occurrence is embodied, in, Ex.PW-17/C. From the relevant site of occurrence, one shawl Ex. P-2, one boru Ex.P-4, plastic can Ex.P-6, bed sheet Ex. P-3, mattress Ex. P-1, and, ashe(s) Ex.P-5, as, lying on the spot became recovered, through, memo Ex. PW-4/B. Further more, through Ex. PW-16/C, canny Ex. P-8, plastic jug Ex.P-12, plastic boru/bag Ex. P-13, all became recovered, in pursuance to the apposite disclosure statement, made by the accused, hence, in, the, presence, of, marginal witnesses' thereto(es).

4. The FSL in its report, embodied in Ex.PW-26/B, where-to-which, certain items were sent for examination, makes, therein, an opinion, vis-a-vis, traces of diesel, being detected, in, parcels P/1, P/2, and, P/3.

5. The learned counsel appearing, for the accused, has made a strenuous effort before this Court, for, coaxing a conclusion, vis-a-vis, the conviction, and, consequent therewith sentence, for life imprisonment, as becomes imposed, upon the accused, being infirm, in as much, as, (a) his conduct being in consistent with his guilt, arising, from the disclosures occurring, in, the respectively rendered cross-examinations, of, PW-1(Hari Ram), and, of PW-2 (Kanta Devi), rather suggestive, vis-a-vis, the accused accompanying his deceased wife up to PGI Chandigarh, the place, whereat, her demise hence occurred, in sequel, to, the fatal burn injuries, as, become embodied in Post mortem report borne in Ex. PW-1/C; (b) the effect(s), of, proven occurrence of fatal burn injuries, upon, the deceased's person, and, as become reflected in Ex.PW-1/C, rather becoming minimized, vis-a-vis, their incriminatory evidentiary worth, given the Investigating Officer (PW-27-SI Kundan Singh) in his cross-examination, rather, acquiescing, to, a suggestion put thereat to him, vis-a-vis, the accused attempting, to, douse the set aflame body, of, the deceased; (c) thereupon, also the charge against the accused failing, and, rather the defences' espousal, vis-a-vis, the deceased *suo moto* sprinkling diesel, on, her body, and,

thereafter setting it aflame, and, hence hers bringing end to her life, hence becoming proven.

6. Even though, all the afore espousals' addressed before this Court by the learned counsel, for, the accused, do, withstand apposite evidence, in consonance therewith, existing on record, however, the afore propagation made by the defence yet cannot, for the reasons assigned hereinafter, rather withstand the vigor and weight, of, the dying declaration, as, made by the deceased, and, as embodied in Ex.PW-25/A. The signatures of the deceased occurs in red circle 'A' borne in Ex. PW-25/A, contents whereof are palpably reflective, vis-a-vis, the declarant attributing an incriminatory role, vis-a-vis, the accused, for hers' gaining burn injuries, on, her body, and, as, become reflected, in, post mortem report embodied in Ex. PW-1/C, (i) especially when prior thereto signed recitals made in Ex. PW-10/B, as, borne, within, Ex. PW-10/A, and, also in Ex. PW-29/A, as, borne within Ex. PW-27/A, hence by the respective Doctors concerned, rather make trite unveilings, vis-a-vis, the deceased being fit to make a statement. However before proceeding, to, make any formidable conclusion, vis-a-vis, the afore evidence holding the apposite evidentiary vigor, for, sustaining the charge against the accused, it also becomes incumbent, to,

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make a threadbare analysis, of, the testifications, of, prosecution witnesses concerned, besides, also it becomes imperative for this Court, to, analyze the efficacy of recovery of the incriminatory items, as become recovered, through the apposite memo, hence, at the instance of the accused.

7. In the afore endeavor, an allusion, is, enjoined to be made, to, the deposition recorded, on oath, by PW-10 (Dr. Kavita Sharma). In her examination-in-chief, she proves the factum of hers authoring, an endorsement embodied in Ex. PW-10/B, hence occurring within Ex. PW-10/A. Consequently, in her examination-in-chief, she, lends proof, vis-a-vis, hers authoring, a, declaration appertaining to the fitness, of, the deceased declarant, to, make a statement. Conspicuously, unless, the afore made testimony by PW-10, as, borne in her examination-in-chief, became shred of its efficacy, through vigorous cross-examination, becoming conducted upon her, (i) thereupon, the afore made narrations by her, and, appertaining to the veracity of hers' hence making a declaration, qua, the fitness of the deceased declarant, to, make a statement, would acquire solemn, and, grave evidentiary worth. However, a reading of the cross-examination, of, PW-10, does not unearth, qua hers therein(s) making echoings rather wherethrough(s) the

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afore narrations, hence, occurring in her examination-in-chief, can become construed, to be either shred of their efficacy, or, theirs becoming benumbed, vis-a-vis, their veracity. A deep and incisive reading, of, her testimony borne in her cross-examination, does not also unveil, vis-a-vis, hers being mentored by the Investigating Officer, to, make her endorsement, on, Ex. PW-10/B, borne upon, Ex. PW-10/A nor any affirmative echoings, in sequel to affirmative suggestions being meted to her, during, her cross-examination, by the learned defence counsel, and, appertaining to hers hence colluding or conniving with the Investigating Officer, for, hers taking, to, make the afore made endorsement, also do not noticeably hence occur in her cross-examination. The consequence thereof is, vis-a-vis, the deceased's fitness, to, make a dying declaration, and, as, becomes embodied, in, the proven endorsement, borne in Ex. PW-10/B, occurring within Ex. PW-10/A, hence coaxes this Court to make a conclusion, vis-a-vis, the afore neither concocting, nor, inventing the afore made endorsement, rather it holding an aura of truth and veracity.

8. Be that as it may, since the deceased declarant also became declared, through, Ex. PW-29/A hence occurring within Ex. PW-27/A, to be fit to make a statement, (i) thereupon, the afore declaration

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appertaining, to, the fitness of the deceased declarant, to, make a statement, is also enjoined to be gauged. In the afore endeavor, an advertence, is, to be made to the deposition of PW-27, who, authored PW-27/A, and, a reading thereof unveils, vis-a-vis, his, in his examination-in-chief, proving qua his authoring PW-27/A. The afore proven factum occurring in the examination-in-chief of PW-27 rather than becoming attempted, by the learned defence counsel, to be holding no truth, contrarily the defence upon holding PW-27, to, cross-examination, meted an affirmative suggestion to him, in as much, as, for the afore declaration being construable to be merit-worthy, and, also being validly made, it hence becoming incumbent, that prior thereto an ascertainment being made, vis-a-vis, the state of mind of the deceased, and, also, vis-a-vis, the functionality of her organs. Even though, an affirmative answer qua thereto emanated from PW-27, (i) however, the effect thereof, yet does not, adversely affect the defence's propagation, in as much, as, he thereafter proceeds, to, deny the further suggestion, put to him, by the defence, vis-a-vis, 90 per centum of the burn injuries, rendering unfit, or, depriving the patient, vis-a-vis, the functionality of her cognitive faculties, and, nor thereupon hers concomitantly becoming rendered mentally infirm, to, make a valid dying declaration, as,

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becomes embodied in Ex. PW-25/A. However, assuming that even if the afore denial does not hold any merit, (i) nonetheless, the pronouncements borne in the apposite post mortem report, especially the hereinafter alluded/made observations borne therein, do evince, a conclusion, vis-a-vis, no burn injuries becoming gained on the forehead, patchy areas over upper half of back of the chest, outer aspect of right upper limb, inner aspect of right forearm, lower third of front and inner aspect of right leg and both soles, and, excepting the afore portions, rather injuries occurring on the other portions of the body of the deceased, (ii) whereupon, even if 90 per centum of thermal injuries hence leading to the demise of the deceased, are, narrated in the post mortem report to be the cause of demise, of, the deceased. However, the afore magnitude of thermal burn injuries existing, upon, the body of the deceased, and, theirs sequelling her demise, cannot, per se, enable the defence, to, erect any inference, vis-a-vis, (a) it being yet incumbent upon the Doctor concerned, to, examine, the, enlivened functionality, of, the deceased's cognitive faculties, for, hence determining whether hers possessing the requisite acuity and sharpness of mind, to, volitionally understand the contents of the dying declaration, as, embodied in Ex. PW-25/A, and, thereafter, to, volitionally subscribe her signatures

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thereon, (b) nor also it can be concluded, vis-a-vis, the dying declaration embodied in Ex. PW-25/A, being either concocted or manufactured or doctored, rather, at the instance of the Investigating Officer concerned.

9. The reason for making the afore conclusion becomes embodied in, obviously, the afore extracted narrations, as occurring, in the post mortem report, rather, making assured and natural upsurgings, vis-a-vis, the hand, of, the deceased, with user whereof, she made her signatures, on, the dying declaration, rather remaining free from any burn injuries, (i) besides, when her upper half of her back of the chest is also free, from, burn injuries, thereupon, a conclusion, becomes fostered, qua, hence with the afore vital portions of the body of the deceased's, rather maintaining and regulating her cognitive faculties, besides ensuring the existence of sharpness, and, acuity of her mind, hence remaining unharmed, (ii) thereupon, she obviously became not bereft either of the apt sharpness and acuity of the mind, rather hers subscribing her signatures, on, the dying declaration with the fullest volition, and, also after hers understating all the contents occurring therein.

10. The afore made conclusion would suffer enfeeblement, upon, adduction of forthright evidence, through an expert, or, through, a,

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rigorous cross-examination becoming made upon the Doctor concerned, who, conducted, the, post mortem, on, the body of the deceased, or, through the Doctor who declared the fitness of the deceased, hence to, make a dying declaration, and, appertaining, to, despite the burn injuries occurring, upon, the vital organs, hence regulating and maintaining the cognitive faculties, yet, the, mere magnitude of 90 per centum of thermal injuries, as, gained on the person, of, the deceased, per se negating all the afore requisite faculties. However, the afore evidence remained un-adduced either, through the defence examining the expert concerned, nor, through the afore suggestion(s), being meted either, to PW-10, or, to PW-29, who, respectively authored the apposite declaration appertaining to the fitness of the dying declarant, hence, to, make a declaration, and, appertaining to the cause of her demise. The apt corollary thereof is, vis-a-vis, the declarant/deceased, being fit, to, make a dying declaration, vis-a-vis, the cause of her death, cause whereof, stands embodied in the apposite post mortem report.

11. Even if this Court, makes the afore invincible conclusion, yet, the prosecution also became enjoined, to, prove the factum of the deceased declarant, making her volitional signatures, as, become embodied in PW-25/A. However, a reading of the cross-examinations

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of PW-5 and of PW-27, does not respectively unearth, vis-a-vis, any person other than deceased Suman rather subscribing hence signatures within Ex. PW-10/E, of, Ex. PW-25/A, nor, any echoings occur, hence, in their depositions, vis-a-vis, the signatures, as, made by the deceased, within Ex. PW-10/E, as, existing within Ex. PW-25/A, becoming forged or fabricated by any Police official, or, by the Investigating Officer concerned. Moreover, PW-25 (SI Amit Angrish), who dictated the recitals borne therewithin(s) to the Investigating Officer, upon, his cross-examination, being conducted by the defence, also, remained omitted to mete any suggestion, hence appertaining to the afore factum, (i) thereupon, all the afore omission(s) ensure the fostering, of, an unflinching inference, vis-a-vis, the deceased declarant Suman, making her volitional signatures, upon, Ex. PW-10/E existing within Ex. PW-25/A, (ii) and, also the afore made signatures, being a sequel, of, hers possessing, the, relevant cognitive faculties.

12. For waning the effect of the afore made inference, it became incumbent upon the defence, to, ensure comparison(s) being made by the expert concerned, inter-se the admitted handwriting, of, the deceased, vis-a-vis, her contested signatures existing within Ex. PW-10/E, as, borne upon Ex. PW-25/A. However, even the afore endeavor

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remained un-recoursed, by the defence, thereupon, the invincible conclusion, as, becomes sparked, therefrom, is, qua, the defence acquiescing, vis-a-vis, the validity of the making, of, valid volitional signatures, by the deceased one Suman, within, Ex.PW-10/E hence existing within Ex.PW-25/A. The apt corollary thereof is, vis-a-vis, the afore made dying declaration by the deceased, and, containing narrations therein, hence, ascribing an incriminatory role to the accused, in as much, as, of his sprinkling diesel, on, her person, and, thereafter setting her body aflame, whereupon, the fatal injuries, as, become reflected in the post mortem report, hence sequelled her demise, rather naturally assuming, firm evidentiary worth, or, the afore apposite echoings hence firmly proving the charge against the accused.

13. The signatures, of, one Seeta Kumari, who appeared as PW-5, also occur upon the afore made dying declaration. PW-5 reneged from her previous statement recorded in writing, and, hence upon the learned public prosecutor's prayer, for, hers being declared hostile, hence becoming accepted by the learned trial Court, thereupon, the learned PP concerned proceeded to conduct cross-examination upon her. Even if, the afore Seeta Kumari was in attendance in contemporaneity, vis-a-vis, the authoring of, the, apposite dying

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declaration by the deceased, and, even if she reneges from the afore factum, (i) however, yet in her cross-examination, she was enjoined, to, make, a, firm denial, vis-a-vis, the authenticity, of, her signatures borne upon Ex. PW-25/A. However, in her cross-examination, though recitals occur, vis-a-vis, her signing on a blank paper, however, the defence yet omitted to advance the afore endeavor, through, eliciting the apposite report, of, the hand writing expert, (i) thereupon, wants' thereof hence bolsters an inference, vis-a-vis, the signatures made by one Seeta, upon, the dying declaration being concludable to be authentic. In any case the factum, of, the afore reneging, from her previous statement recorded in writing becomes subsumed hence within(s) the afore invincible inference, appertaining, to, the deceased declarant making valid voluntary signatures, upon, the dying declaration.

14. Beyond the afore assured proof becoming adduced by the prosecution, for, sustaining the charge against the accused, it also became incumbent upon it, to, lend efficacious proof, vis-a-vis, the validity of drawing of Ex. PW-4/B, wherethrough (i) Ex. P-1(Mattress), Ex. P-2 (Shawl), Ex.P-3(bedsheet), Ex. P-4 (boru), Ex.P-5(half burnt cloth) and Ex. P-6 (plastic container) became recovered, besides, it is also enjoined to prove the validity, of, authoring of Ex.

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PW-16/C, wherethrough (ii) Ex. P-8 (plastic can), Ex. P-12 (plastic jug) and Ex. P-13 (Plastic boru/bag), became recovered, and, it also became enjoined, to, lend assured proof, vis-a-vis, the efficacious drawings, of, Ex. PW-16/C, by the Investigating Officer concerned, and, wherethrough one plastic jug, and, one plastic container containing therewithin 10 liters, of, diesel, became recovered, at the instance, of, the accused, hence, from the relevant site of occurrence. Contrarily the defence was enjoined, to, adduce evidence, vis-a-vis, the afore recoveries(s) being inefficacious, and, also lend proof, vis-a-vis, the drawing(s) of the afore memo(s), being inefficacious.

15. In determining the afore facet, this Court proceeds to make a reference, to, the testification, of, PW-4 (Naresh Kumar), wheretowhom during his examination-in-chief, all the items mentioned in Ex. PW-4/B, became produced, and, also became shown to him. All the items recovered through memo Ex. PW-4/B, upon, becoming produced/shown, to, PW-4, hence in the latter's examination-in-chief, rather become produced in a sealed condition, and, all enclosed therein items, upon, the parcel being opened, became proven by him, to be recovered through memo Ex. PW-4/B. Since the seals embossed, upon, the cloth parcel, hence containing therewithin(s) the afore items, rather

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were intact, in contemporaneity, vis-a-vis, the apposite parcel becoming produced in Court, for, thereafter, upon, opening thereof, the items enclosed therein, hence becoming shown to him, (i) thereupon all the items occurring therewithin, and, also mentioned in the apposite memo, are construable to be the proven apposite incriminatory items, hence recovered from the site of occurrence. The afore proof lent by PW-4, a witness to Ex. PW-4/B, does also foster an inference, vis-a-vis, the relevant occurrence, happening at the site of occurrence, as, disclosed in site map embodied in Ex. PW-27/B, conspicuously when no cross-examination, vis-a-vis, the afore aspect, became conducted upon PW-4.

16. PW-16 (HC Jai Singh) a witness to the drawing of memo Ex. PW-16/C, lends assured proof, vis-a-vis, all recitals borne therein. The afore exhibit carries in its heading, a narration, qua the accused Babu Ram disclosing the site of occurrence, thereupon, all the narrations borne in PW-16/C, in as much, as, recoveries being made therethrough, of, Ex. P-8 (plastic can), Ex. P-12 (plastic jug) and Ex. P-13 (Plastic boru/bag), do acquire formidable incriminatory evidentiary worth, (a) AND, moreso, with the defence omitting, to, mete suggestion to him, hence, in his cross-examination, vis-a-vis, the afore narrations being concocted or invented, by the Investigating Officer concerned, and, also

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with its omitting, to, mete suggestion(s), to him, vis-a-vis, the seals borne on the cloth parcel being tampered, in as much, as, theirs becoming broken or remaining not intact, (b) thereupon, an inference becomes erected, vis-a-vis, the accused acquiescing qua the validity of drawing of Ex. PW-16/C. The afore made inference gathers momentum from the further factum of despite the accused's signatures hence occurring upon Ex. PW-16/C, yet, the defence failing to contest the authenticity thereof, (i) whereupon, all the incriminatory recitals rather occurring within Ex. PW-16/C, when reiteratedly remain un-contested, rather by the accused, hence renders open an inference, vis-a-vis, the accused acquiescing, vis-a-vis, his guilt. Since prior to the afore alluded recoveries being made, through, Ex. PW-16/C, the accused made a disclosure statement embodied in Ex. PW-16/A to the Investigating Officer, and, with thereon also his uncontested signatures existing, and, also with the signatures of the marginal witnesses thereto one Mangat Ram also existing thereon, (i) thereupon, with one Jai Singh a witness to the drawing, of, Ex. PW-16/A, in his examination-in-chief making firm echoings, vis-a-vis, the validity of drawing of Ex. PW-16/A, and, rather no suggestion becoming meted to him vis-a-vis, the apposite disclosure statement being inefficaciously made ,or, it being concocted, by the

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Investigating Officer, (ii) thereupon, the disclosure statement borne in Ex. PW-16/A does not lose its apt vigour and tenacity. In aftermath all the incriminatory items recovered from the site of occurrence, through, memo Ex. PW-16/C, and, preceding wherewith Ex. PW-16/A became drawn, at, the instance of the accused, are, all to be concluded to hold apt incriminatory tenacity.

17. Since the FSL in its report embodied in PW-26/B, hence, made an opinion that the plastic canny recovered, through, memo Ex. PW-4/B, carrying traces of diesel, thereupon, the afore made opinion by the FSL concerned also lends succor to the dying declaration made by the deceased, wherein, she ascribes an incriminatory role, to, the accused, in as much, as, his sprinkling diesel on her person, and, thereafter setting her aflame, (i) in consequence thereof, she, as proven in the post mortem report, sustained 90 per cent thermal injuries, leading to septicemia hence ultimately causing her demise. In nutshell, all the afore proven incriminatory evidence against the accused negates and nullifies the effect, if any, of the afore alluded evidence appertaining to his conduct being in consistent with his guilt.

18. In view of the above, there is no merit in the appeal, and, the same is accordingly dismissed. The impugned judgment of

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conviction and sentence, as, become imposed upon the convict, by the learned trial Court, stands maintained and affirmed. Records be sent down forthwith. All pending applications stand disposed of accordingly.

(Sureshwar Thakur),
Judge.

7th September, 2020
(karan/priti)

(Chander Bhusan Barowalia),
Judge.

High Court