HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPURD.B. Criminal Appeal No. 425/2015Amin s/o Shri Kallu Khan by caste Muslim r/o Kheryia Mod, P.S.Kavaspura, Dhanauli, Agra (U.P.), presently Tel Ghar, BhimganjMandi, Kota Junction, Kota, Rajasthan.(Presently in Kota Central Jail since 27-09-2011)----AppellantVersusState Of Rajasthan Through Pp----RespondentFor Appellant(s) : Mr. M.P. Singh, AdvocateFor Respondent(s): Ms. Rekha Madnani, for the StateHON'BLE MRS. JUSTICE SABINA HON'BLE MR. JUSTICE GOVERDHAN BARDHARJudgment/Order23/10/2019Appellant faced trial in FIR No.271 dated 15.8.2011,registered at Police Station Bheemganj Mandi, District Kota Cityunder Section 307 IPC. FIR was registered on the basis ofstatement (Exhibit-P.2) of injured Nafisa. In her statement Exhibit-P.2 injured Nafisa stated that herhusband Amin was resident of Agra and was a liquor addict. Herhusband used to beat her under the influence of liquor and usedto throw her out of the matrimonial home. On 14.8.2011 herhusband came home under the influence of liquor and gavebeatings to her and poured kerosene oil on her and set her on fire.The incident had occurred at about 8-9 PM. At that time herchildren were sleeping. She raised an alarm. Appellant fled away

from the spot. She was removed to the hospital by herneighbours. Statement of injured was also recorded by the Magistrateunder Section 164 Cr.P.C. The said statement is Exhibit-P.3.Injured had stated that she had been set on fire by her husbandafter pouring kerosene oil on her. She further stated that herhusband used to take liquor and used to beat her. Her father wasa poor person and the appellant used to say that her father hadnot given her anything. On a question put to the injured as to whohad saved her, she had replied that she was saved by herneighbours. She stated that the occurrence had

occurred at about8-9 PM and at that time her children were sleeping.After the death of injured Nafisa on 15.8.2011 at about 3.30AM, offence under Section 302 IPC was added in the FIR.After completion of investigation and necessary formalities,challan was presented against the appellant. Charge was framedagainst the appellant under Section 302 IPC by the trial court.Appellant did not plead guilty to the charge framed againsthim and claimed trial.In order to prove its case, prosecution examined sixteenwitnesses.Appellant when examined under Section 313 Cr.P.C. after theclose of prosecution evidence, prayed that he was innocent andhad been falsely involved in the case. His wife had prepared mealsand had served the same to the children. He did not know how hiswife had caught fire. He had tried to extinguish the fire and hadsuffered injuries on his face and hands. Appellant examined parents of the deceased as in hisdefence as DW.1 and DW.2.

Trial court vide judgment/order dated 22.12.2014 orderedconviction and sentence of the appellant under Section 302 IPC.Hence, the present appeal by the appellant.Learned counsel for the appellant has submitted that all thematerial witnesses including children of the deceased have notsupported the prosecution case during trial. Rather, the witnesseshad stated that the appellant had tried to extinguish the fire andas a result he had suffered burn injuries. As per Exhibit-P.23,medico-legal examination report of the appellant, appellant hadalso suffered burn injuries on his hands and forearm. Learned State counsel has opposed the appeal.Present case relates to murder of Nafisa. Deceased is wife ofthe appellant. FIR was lodged on the basis of statement of Nafisa.Statement of Nafisa was also recorded under Section 164 Cr.P.C. In the present case, all the material witnesses includingchildren of the deceased who have been examined as PW.3 (Sohil)and PW.15 (Shaheen) have not supported the prosecution caseduring trial. PW.3 and PW.15 have deposed that their mother hadcaught fire and their father had tried to extinguish the fire. Parents of the deceased while

appearing in the witness boxas DW.1 and DW.2 have deposed that their daughter had nevercomplained to them that the appellant used to give beatings toher under the influence of liquor. When they had reached thehospital, their daughter was unconscious and could not speak andhad died during treatment. Children of Nafisa had told them thattheir mother had caught fire while preparing meals and she hadnot been set on fire by anyone. Appellant had tried to extinguishthe fire and had suffered burn injuries. Nafisa had been removedto the hospital with the help of neighbours. Thus, the present
case, now rests on dying declarations of the deceased sufferedbefore the police as well as the Magistrate.It has been held by the Hon'ble Supreme Court in MuthuKutty And Another Vs. State By Inspector of Police, T.N. in(2005) 9 Supreme Court Cases 113, as under:-"Though a dying declaration is entitled to greatweight, it is worthwhile to note that the accusedhas no power of cross-examination. Such a poweris essential for eliciting the truth as an obligationof oath could be. This is the reason the Court alsoinsists that the dying declaration should be of sucha nature as to inspire full confidence of the Courtin its correctness. The Court has to be on guardthat the statement of deceased was not as a resultof either tutoring, or prompting or a product ofimagination. The Court must be further satisfiedthat the deceased was in a fit state of mind after aclear opportunity to observe and identify theassailant. Once the Court is satisfied that thedeclaration was true and voluntary, undoubtedly, itcan base its conviction without any furthercorroboration. It cannot be laid down as anabsolute rule of law that the dying declarationcannot form the sole basis of conviction unless it iscorroborated. The rule requiring corroboration ismerely a rule of prudence. This Court has laiddown in several judgments the principlesgoverning dying declaration, which could besummed up as under as indicated inSmt. Panibenv. State of Gujarat, AIR(1992) SC 1817:(i) There is neither rule of law nor of prudence thatdying declaration cannot be acted upon withoutcorroboration. (See Munnu Raja & Anr. v. The Stateof Madhya Pradesh, [1976] 2 SCR 764)(ii) If the Court is satisfied that the dyingdeclaration is true and voluntary it can baseconviction on it, without corroboration. (See Stateof Uttar Pradesh v. Ram Sagar Yadav and Ors., AIR(1985) SC 416 andRamavati Devi v. State of Bihar,AIR (1983) SC 164)(iii) The Court has to scrutinize the dyingdeclaration carefully and must ensure that thedeclaration is not the result of tutoring,

promptingor imagination. The deceased had an opportunity toobserve and identify the assailants and was in a fitstate to make the declaration. [See K.Ramachandra Reddy and Anr. v. The PublicProsecutor, AIR (1976) SC 1994].(iv) Where dying declaration is suspicious, it shouldnot be acted upon without corroborative evidence.(See Rasheed Beg. v. State of Madhya Pradesh,[1974] 4 SCC 264).(v) Where the deceased was unconscious and couldnever make any dying declaration the evidence
(5 of 7) [CRLA-425/2015]with regard to it is to be rejected. [See Kaka Singhv. State of M.P., AIR (1982) SC 1021].(vi) A dying declaration with suffers from infirmitycannot form the basis of conviction. (See RamManorath and Ors v. State of U.P., [1981] 2 SCC654)(vii) Merely because a dying declaration does notcontain the details as to the occurrence, it is not tobe rejected. [See State of Maharashtra v.Krishnamurthi Laxmipati Naidu, AIR (1981) SC617].(viii) Equally, merely because it is a briefstatement, it is not to be discarded. On thecontrary, the shortness of the statement itselfguarantees truth. [See Surajdeo Oza and Ors v.State of Bihar, AIR (1979) SC 1505].(ix) Normally the Court in order to satisfy whetherdeceased was in a fit mental condition to make thedying declaration look up to the medical opinion.But where the eye-witness said that the deceasedwas in a fit and conscious state to make the dyingdeclaration, the medical opinion cannot prevail.[See Nanahau Ram and Anr. v. State of MadhyaPradesh, AIR (1988) SC 912].(x) Where the prosecution version differs from theversion as given in the dying declaration, the saiddeclaration cannot be acted upon. [See State ofU.P. v. Medan Mohan and Ors., AIR (1989) SC1519].(xi) Where there are more than one statement inthe nature of dying declaration, one first in point oftime must be preferred. Of course, if the plurality ofdying declaration could be held to be trustworthyand reliable, it has to be accepted. [See MohanlalGangaram Gehani v. State of Maharashtra, AIR(1982) SC 839]."Let us examine the dying declarations suffered by thedeceased to come to a conclusion as to whether the same inspireconfidence. A perusal of statement Exhibit-P.2 reveals that the deceasedin her dying declaration before the police had stated that herhusband used to beat her under the influence of liquor. On the dayof incident her husband had beaten her under the influence ofliquor and had poured kerosene oil on her and had set her on fire.The appellant then ran

away from the spot and she was taken tothe hospital by the neighbours. To the similar effect is the statement Exhibit-P.3 of the deceased recorded by the Magistrateunder Section 164 Cr.P.C.PW.1 Dr. Tej Pratap Singh deposed that on 14.8.2011 he wason duty in Burns Ward. On that day on a request made by theSHO, Police Station Bheemganj Mandi, he had declared the injuredfit to make the statement and thereafter her statement had beenrecorded by the police official. The said statement was also signedby him. He further stated that on 15.8.2011 at about 12.30 AM,the Magistrate had enquired from him about the condition of theinjured and he had stated that the injured was fit to make astatement. Statement of Nafisa Exhibit-P.3 was also signed byhim.PW.13 Swati Sharma deposed that on 14.8.2011 she was onremand duty and had gone to record the statement of Nafisa onan application moved by ASI Udham Singh. Statement of injuredhas been recorded as stated by her and it was signed by theinjured. This witness proved the statement Exhibit-P.3.Thus, from the dying declarations suffered by the deceased itis evident that she had been set on fire by the appellant afterpouring kerosene oil on her. The deceased had no reason to falselyinvolve the appellant in this case if he had actually not set her onfire especially when she was on death bed. The dying declarationsof the deceased were recorded after obtaining her fitnesscertificate from the Doctor. Dying declarations suffered by thedeceased inspire confidence. Statements of DW.1 and DW.2 fail torebut the dying declarations suffered by the deceased. From thedying declarations suffered by the deceased it is evident that theyhad been made voluntarily by the deceased and there is no reasonto doubt the truthfulness of the same

The plea taken by the appellant that his wife had caught fireand he tried to extinguish the same appears to be anafterthought. A perusal of Exhibit-P.23 reveals that the appellantwas got medically examined on 28.9.2011 at about 10.40 AMwhereas the incident had occurred on 14.8.2011 at about 8-9 PM.A perusal of Exhibit-P.23 further reveals that the appellant hadsuffered burn injuries on both hands and forearm. Duration ofinjuries has been given as one to two months. In case appellanthad actually tried to save his wife, then in normal circumstances,he would have also got himself admitted in the hospital alongwithhis wife and got treatment. However, in the present case,appellant was medico-legally examined on 28.9.2011 whereas,the incident had occurred on 14.8.2011. It is possible thatappellant might have suffered injuries while he had set his wife onfire and after committing the crime, he had fled away from thespot instead of taking his wife to the hospital for treatment.Deceased had categorically stated in her dying declaration thatshe had been taken to the hospital by her neighbours and theappellant after setting her on fire, fled away from the spot. Hence,the trial court while relying on dying declarations suffered by thedeceased has rightly ordered for conviction and sentence of theappellant under Section 302 IPC.Accordingly, the appeal is dismissed. The impugnedjudgment/order dated 22.12.2014 passed by the trial court areupheld.(GOVERDHAN BARDHAR),J(SABINA),J