



IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.08 of 2014

An appeal from the judgment and order dated 06.01.2014 of the District and Sessions Judge, Jajpur in C.T. (Sessions) No.75 of 2012.

Susanta @ Susil Kumar Sahu		Appellant
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-Versus-

State of Odisha		Respondent
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For Appellant:	-	Ms. Rita Singh (Amicus Curiae)
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For Respondent:	-	Mr. Aurobinda Mohanty Addl. Standing Counsel
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P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

AND

THE HONOURABLE MISS JUSTICE SAVITRI RATHO

Date of Judgment: 27.05.2025



Savitri Ratho, J.

The Hon'ble Supreme Court in order to emphasize the sanctity of Hindu Marriage and essence of Grihastha life, in the case of ***A. Jayachandra -Vs.- Aneel Kaur reported in (2005) 2 Supreme Court Cases 22***, has observed as follows:-

"2. Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy, it is sanskar - a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual."

The saying "marriages are made in heaven" suggests that compatible partners are destined to be together, implying fate or divine intervention in finding a suitable couple. When it is a love marriage, the bond is expected to be stronger as a successful marriage requires falling in love many times, always



with same person. Both partners recognize and value each other's individuality, opinions and feelings. They listen without judgment and show consideration for each other's needs and wishes. The emotional and intellectual connection between the two souls, shared values and mutual respect goes beyond superficial physical attraction.

2. Unfortunately such things did not happen in the present case. The appellant and the deceased got married one and half years before the occurrence, as they were in love. The deceased Jayanti Sahoo sustained extensive burn injuries on the night of 14.11.2011 while staying in the house of her husband (appellant) and was admitted in the hospital. She was in an advanced stage of pregnancy at that time and gave birth to a stillborn child on 16.11.2011 and while undergoing treatment in S.C.B. Medical College Hospital, Cuttack, she expired on 09.12.2011 due to complications arising out of the burn injuries which she had sustained in the night of 14.11.2011.

It is no one's case that the deceased sustained burn injuries on account of an accident. While it is the prosecution case that the appellant came home in a drunken condition, poured kerosene on the deceased and set her on fire, the



defence plea is that she set herself on fire from the dibri (lamp) as the appellant came home in a drunken condition and created a ruckus. To make matters worse, her family members did not support the prosecution case during trial and resiled from their earlier statements where they had stated about demand for dowry and harassment and ill-treatment and threats to kill by the appellant due to non-fulfillment of the demand of dowry, reducing the prosecution to a mockery. Relying on the dying declaration of the deceased recorded on 16.11.2011, the appellant was found guilty by the learned trial Court for commission of offences under sections 498-A, 304-B, 302 of the Indian Penal Code (in short 'I.P.C.') and Section 4 of the Dowry Prohibition Act (in short 'D.P. Act') .

3. The Supreme Court has best described this situation in a recent decision the case of ***Renuka Prasad -Vrs.- State represented by Assistant Superintendent of Police : 2025 SCC Online SC 1074 : 2025 INSC 657*** observing as follows:-

"1. Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign



ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye-witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants."

4. In this appeal, the appellant Susanta @ Susil Kumar challenged his conviction and sentence for commission of offences punishable under Sections 498-A, 304-B, 302 of the I.P.C. and Section 4 of the D.P. Act by the learned Sessions Judge, Jajpur in C.T. (Sessions) No.75 of 2012. The learned trial Court has sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- (Rupees five thousand), in default, to undergo R.I. for one month more for the offence under Section 302 I.P.C., to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for one month for the offence under Section 304-B I.P.C. read with Section 498-A of I.P.C. and to undergo R.I. for six months and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for one month each for the



offence under and Section 4 of the D.P. Act. It was further directed that the substantive sentences shall run concurrently.

Prosecution Case:

5. The case of the prosecution, in short, is that the deceased Jayanti Sahu was the niece of P.W.5 Brajakishore Sahu (informant) of village Narua. Prior to one year and six months of the incident, the deceased had married the appellant as they were in love. For about eight months, she lived happily in the house of her in-laws, but thereafter she was subjected to cruelty by her husband and in-laws, who demanded dowry of Rs.50,000/-, which neither she nor her parents could fulfill due to poverty. The informant visited the house of the appellant and tried to convince him and his parents not to ill-treat the deceased. While the matter stood thus, prior to 15 days of the incident, the deceased informed the informant over telephone that her husband (appellant) was assaulting her demanding cash of Rs.50,000/-and threatening her that in the event of non-fulfillment of such demand, she would be killed. The informant rushed to the house of the appellant and assured the in-laws to give the demanded amount at an earliest after arranging the same. While the matter stood thus, on 14.11.2011 at about 9.30 p.m., the informant received news that the appellant and his



parents had tied the hands of the deceased, poured kerosene on her body and set her on fire, as a result of which she received serious burn injuries. Hearing her shouts, the co-villagers reached there and sent her to Jajpur Hospital. As her condition got worsened, she was shifted to S.C.B. Medical College and Hospital, Cuttack for treatment. On 15.11.2011, on the report of P.W.5, uncle of the deceased, Bari Ramchandrapur P.S. Case No.73 of 2011 was registered against the appellant, his parents Bipin Sahu and Sumitra Sahu and his brothers Benu Sahu and Sudhir Sahu under Sections 498-A, 307 of the I.P.C. and Section 4 of the D.P. Act. In the hospital, she gave birth to a stillborn child. On 16.11.2011, her dying declaration was recorded by the Executive Magistrate (P.W.8) on requisition given by P.W.13, the Officer in-charge, Bari Ramchandrapur police station, who is also the Investigating Officer of the case, in the presence of woman constable (P.W.9) and staff nurse (P.W.11). The deceased stated in her dying declaration that the appellant had poured kerosene on her and set her on fire. She died in the hospital on 09.12.2011 during treatment. Her post mortem examination was conducted by P.W.4 Dr. Purnima Singh. After completion of investigation, charge sheet was submitted only against the



appellant for the offences under Sections 498-A, 304-B, 302 of the I.P.C and Section 4 of the D.P. Act.

Charge:

6. Charge was framed against the appellant for commission of offences under Sections 498-A, 304-B and 302 of I.P.C. and Section 4 of the D.P. Act. The appellant refuted the charges, pleaded not guilty and claimed to be tried and accordingly, the Sessions Trial procedure was resorted to establish his guilt.

Defence plea:

7. The defence plea was one of denial and it was pleaded that the deceased had committed suicide by setting herself on fire. During his examination under Section 313 Cr.P.C, reply of the appellant to all the questions put by the learned trial Judge was a denial and at the end, he stated that as he had been shouting in a drunken state, the deceased set herself on fire from the dibiri (lamp). He tried to save her but was not able to put off the fire.

Prosecution Witnesses & Exhibits:

8. In order to prove its case, the prosecution examined thirteen witnesses and relied on Exhibits No.1 to 6.



P.W.1 Kedar Sahu did not support the prosecution case and was declared hostile.

P.W.2 Balaram Sahu, neighbour of the appellant stated that three to four months back around midnight, he heard hullah from the house of the appellant and went there to find burn injuries on the body of the deceased and she was carried to the hospital. He did not see the appellant at the spot. At this stage, he was declared hostile by the prosecution as he resiled from his earlier statement.

P.W.3 Fakira Charan Mohanty was the havildar of Bari Ramachandrapur Police Station who was a witness to seizure of the requisition given in the hospital for recording of the dying declaration of the deceased vide seizure list Ext.1 and in his cross-examination, he has stated that dying declaration of the deceased was recorded by the Magistrate.

P.W.4 Dr. Purnima Singh was the doctor attached to the F.M.T. Department of S.C.B. Medical College and she conducted the post mortem examination over the dead body of the deceased along with Dr. Agni Wesh on 09.12.2011. She has proved the post mortem examination report vide Ext.2 and stated about the external injuries on the deceased and condition of the internal organs on dissection. She also stated that the



burn injuries were ante mortem in nature and caused due to application of dry heat or fire. The total area was 80% to 90% and fatal in ordinary course to cause death. Death was on account of complications of the burn injuries and age of death was 12-18 hours of the post mortem examination. In the cross examination, she has stated that a person having 80-90% burn injuries would be incapable to talk.

P.W.5 Brajakishore Sahu is the informant in the case and uncle of the deceased. He has stated that due to blasting of kerosene stove during cooking, the body of the deceased caught fire and she died. He has proved Ext.3, the F.I.R. As he did not support the prosecution case, he was declared hostile and was cross-examined by the prosecution.

P.W.6 Prahallad Sahu, a co-villager of the appellant, did not support the prosecution case and was declared hostile.

P.W.7 Manoj Kumar Sahu is the brother of the deceased and he did not support the prosecution case.

P.W.8 Pradyumna Kumar Jena was working as Asst. Commissioner of Police, Zone-6, Cuttack on 16.11.2011. He has stated that the I.O. of this case submitted a requisition before the D.C.P., Cuttack for deployment of an Executive Magistrate to



record the dying declaration of the deceased and he was directed by the D.C.P., Cuttack to record the dying declaration. After receipt of the requisition, he went to S.C.B. Medical College and Hospital, Gynecology Department where the deceased was an indoor patient. Initially the deceased was being treated in Burn Ward, Bed No.14 but subsequently after termination of her pregnancy, she was shifted to Gyneac Ward. He further stated that there was about 50% burn bandage injury all over the body of the deceased. Dr. Asit Kumar Sethy opined that the patient was in a fit mental condition to give her statement and he gave a written certificate which he wrote in his presence. He has stated that he recorded the statement of the deceased in "Odia" as far as practicable as per her version in the presence of witnesses, namely, Sunita Das and one lady nurse. He has stated that the deceased stated in Odia that she was the wife of Susanta Sahu (appellant) of village Thakurpatna Bari. On Monday night at about 11.30 p.m., her husband (appellant) came home drunk and poured kerosene on her and set her on fire. She got burnt and started shouting. Her parents in-law came and put off the fire and she was taken to Jajpur Hospital and from there to 'Bada Medical'. She was nine months pregnant. He proved the certificate of Dr. Sethy as Ext.4 and signature of Dr. Sethy as



Ext.4/1, the dying declaration Ext.4/2 and his own signature Ext.4/3. He has also stated that he read over the contents of the dying declaration to the deceased and she admitted the same to be correct, but she could not put her signature on the paper as her thumb and fingers were bandaged due to burn injuries and he gave an endorsement to that effect as Ext.4/4 and his signature Ext.4/5. Sunita Dash, constable gave her signature as Ext.4/6 and staff nurse gave her signature as Ext.4/7 in his presence. He has also stated the dying declaration Odia Stanza was written by him in the bed head ticket. He denied the suggestions during cross-examination that the deceased was not able to talk on that day due to 80% to 90% burn injuries. He has also denied the suggestions that the patient was not in a fit mental condition to give her statement and that he had prepared the statement at the instance of the police.

P.W.9 Sunita Das was working as a constable on 16.11.2011 in Bari Ramchandrpur Police Station. She had accompanied Sri Bamadev Nanda, the I.O. from the police station to S.C.B. Medical College Hospital to assist him. The I.O. gave a requisition to D.C.P., Cuttack for deputation of an Executive Magistrate to record the dying declaration of the deceased. The A.C.P. Sri P.K. Jena was deputed to record the



dying declaration of the deceased. He recorded the dying declaration in her presence. She heard the deceased saying that that on the date of incident, her husband came being drunk and poured kerosene oil on her. The deceased was speaking slowly but she could understand her talk. She gave her signature on the dying declaration marked as Ext.4/6. She has denied the suggestions given by the defence counsel that no dying declaration of the deceased was recorded by Pradip Jena and that she was deposing falsehood.

P.W.10 Jayanta Parida has stated that he wrote the F.I.R. as per the instruction of P.W.5 Braka Kishore Sahu and after writing the same, he read it over and explained the contents to P.W.5 whereafter the later gave his signature. He has proved his own signature on the F.I.R. as Ext.3/2. He has stated that he knew nothing about the case and he did not know the appellant and wrote the F.I.R. as per instruction of the police.

P.W.11 Rossalini Mohanty was working as a staff nurse in the labour room at S.C.B. Medical College and Hospital, Cuttack. She has stated that the deceased was admitted on being referred from burn ward to labour room. The deceased gave a statement that her husband being drunk came in the



night, poured kerosene on her and set fire on her body for which she received burn injuries. She further stated that in her presence, the statement of the deceased was recorded and she gave her signature marked as Ext.4/7. She denied the suggestions given by the defence that she had told the police that the patient gave such statement to her in the labour room and that nothing was recorded in her presence and that the patient was not in a fit condition to give any statement.

P.W.12 Maheswar Mallik was a driver who stated that once he was coming with his vehicle and on the way, he was requested to carry a burn lady patient to Jajpur Main Hospital and accordingly, he brought that patient with burn injury and left her at Jajpur Main Hospital.

P.W.13 Bamadev Nanda was the O.I.C. of Bari Ramachandrapur P.S. and he is also Investigating Officer of the case. He stated that on 15.11.2011, he registered the F.I.R. on receipt of the written report from P.W.5 Braja Kishore Sahu. During investigation, he examined the informant and other witnesses, visited the spot and prepared spot map. He proved the formal F.I.R., his signature and the spot map. On 16.11.2011, he came to Cuttack hospital where the deceased was undergoing treatment. He sought for permission of the



Superintendent, S.C.B. Medical College & Hospital to record the dying declaration who was undergoing treatment in surgical burn ICU. In response to his requisition, the D.C.P., Cuttack deputed Sri Pradeep Kumar Jena, O.P.S, A.C.P., Zone VI, to be the Executive Magistrate and Superintendent, S.C.B. Medical College & Hospital deputed Dr. Asit Kumar Sethy to remain present during the recording of dying declaration. The Executive Magistrate recorded the dying declaration, in presence of Rojalin Mohanty, staff nurse and Sunita Das, lady constable and he examined the Doctor and the Executive Magistrate. He arrested the appellant on 09.12.2011 and on that day, he got telephonic information from Medical Outpost, S.C.B Medical College & Hospital, Cuttack that the deceased who was undergoing treatment had died and in this connection, Mangalabag P.S. U.D. Case No.1506/11 was registered. After the death of the deceased, the case turned to one under section 304-B of the I.P.C. The I.O. denied the suggestion that he did not record the statement of the deceased as she was unable to give such statement. He further stated that he was present in the hospital on the verandah, when the dying declaration was being recorded. He has also denied the suggestion that as the



deceased had sustained 90-92% burn injuries, she was not in a fit condition to give any declaration.

The prosecution exhibited six documents which have already been stated while discussing the evidence of the witnesses. Ext.1 is the seizure list, Ext.2 is the post mortem examination report of the deceased, Ext.3 is the written F.I.R., Ext.4 is the certificate of Dr. Asit Kumar Sethy, Ext.4/2 is the Odia dying declaration of the deceased, Ext.4/4 is the endorsement on Ext.4, Ext.5 is the spot map and Ext.6 is the prayer for addition of the offence under section 304-B of I.P.C.

Findings of Trial Court:

9. On an analysis of the facts, circumstances and evidence on record, the learned trial Court came to the conclusion that the oral evidence of P.Ws.9 and 11 about the cause of death of the deceased is not only relevant but also admissible in evidence under section 60 of the Evidence Act and the same has not been shaken in the cross-examination. Analysing the evidence of the doctor, the Executive Magistrate, the I.O. and also the independent witnesses, it was held that the deceased was in a fit and conscious state of mind to declare her cause of death. From the facts, circumstances and the evidence of P.Ws.6, 8, 9 and 11 and from other circumstances, the



learned trial Court came to the conclusion that having knowledge that the deceased was pregnant for nine months, the appellant put kerosene on her living body and set her on fire causing severe burn injuries to which she succumbed in the hospital. The intention of the appellant was not only to murder his wife but also to murder a living unborn baby in the womb of the deceased. Accordingly, it was held that the prosecution has successfully proved its case against the appellant for the offences punishable U/s.498-A/304-B/302 of I.P.C. and Section 4 of the D.P. Act beyond all reasonable doubt. The appellant was found guilty of commission of such offences and sentenced to imprisonment and fine in the manner as already mentioned above.

Submissions of Counsel:

10. Ms. Rita Singh, learned Amicus Curiae appearing for the appellant argued that there is no evidence regarding demand of dowry, torture on the deceased in connection with demand of dowry and that it is a case of accidental fire. She has challenged the conviction of the appellant on the following grounds:

- i) The doctor who gave the certificate of fitness on the dying declaration has not been examined;



ii) The Forensic Scientific Team has not visited the spot which is a grave lacuna in the prosecution case and as such benefit of doubt should be given to the appellant;

iii) The incident occurred on 14.11.2011, but F.I.R. was lodged on 15.11.2011;

iv) The deceased died on 09.12.2011 i.e. after 24 days during treatment, but her statement was not recorded by police;

v) Nothing incriminating has been seized from the spot;

vi) The dying declaration is liable to be rejected on the following grounds:-

a) No family members have been examined to prove the dying declaration;

b) The evidence of the staff nurse (P.W.11) and lady constable (P.W.9) who were alleged to be present when her dying declaration was recorded, cannot be accepted;



c) As the deceased was 80-90 percent burnt, as per medical jurisprudence, she could not have been in a condition to speak;

d) Neither the signature nor LTI of the deceased has been taken on the dying declaration.

In support of her submissions, she has relied on the following decisions:

i) Laxman -Vrs.- State of Maharashtra : A.I.R. 2002 S.C. 2973;

ii) Paparambha Rosamma and Others -Vrs.- State of Andhra Pradesh : (1999) 7 S.C.C. 695;

iii) Uka Ram -Vrs.- State of Rajasthan : (2001) 5 SCC 254.

11. Mr. Aurobinda Mohanty, learned Additional Standing Counsel on the other hand , supported the impugned judgment and argued that the death of the deceased has been proved to be homicidal on the basis of cogent evidence adduced by the prosecution. The dying declaration has been recorded by an Executive Magistrate (P.W.8) and bears the certificate of a doctor that the deceased was in a fit and conscious state and able to make such statement, being blemish free, can form the sole basis of conviction as both P.W.8 and the doctor had got no



animosity against the appellant to falsely implicate him. The appellant being the husband should have given a plausible explanation for the burn injuries sustained by his wife (deceased) in his own house in view of section 106 of the Evidence Act. The defence plea of the appellant that the deceased set herself on fire and he tried to save her is not acceptable as he had not sustained any burn injury nor has he taken the deceased to the hospital for treatment even though she had sustained extensive burn injuries. Had he tried to save the deceased, she would not have sustained such extensive burn injuries . In support of the acceptability of dying declaration, he has urged as follows:-

- i) the dying declaration has been recorded by P.W.8, the Executive Magistrate, who does not have any personal animosity with the appellant so as to falsely implicate him;
- ii) The dying declaration is supported by the evidence of two witnesses who are government servants and have no reason to falsely implicate the appellant;
- iii) Certificate has been given by the doctor that the petitioner was fit, conscious and oriented to make dying declaration which has been rightly accepted;



iv) LTI and signature of the deceased could not be taken on the dying declaration as her hands were bandaged.

He has relied on the following decisions in support of his submissions:-

- i) Purshottam Chopra and another -Vrs.- State (Govt. of NCT Delhi) : (2020) 11 SCC 489;**
- ii) Vijay Pal -Vrs.- State Govt. of NCT : (2015) 4 SCC 749;**
- iii) State of Karanataka -Vrs.- Suvarnamma : (2015) 1 SCC 323;**
- iv) Gajoo -Vrs.- State of Uttarakhand : (2012) 9 SCC 532;**
- v) Amar Singh -Vrs.- Balwinder Singh and others : (2003) 2 SCC 518;**
- vi) Dhanaj Singh @ Shera and others -Vrs.- State of Punjab : (2004) 3 SCC 654.**

Judicial Pronouncements on Dying Declaration:

12. Section 32 of the Indian Evidence Act, 1872 deals with 'dying declaration'. A dying declaration made by person on the verge of his death has a special sanctity as at that special moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the



guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. It is an exception to the general rule that hearsay evidence is no evidence and the evidence which cannot be tested by cross-examination of a witness is not admissible in a Court of law.

Way back in the year 1958, the Supreme Court in the case of ***Khushal Rao -Vrs.- State of Bombay reported in A.I.R. 1958 S.C. 22***, examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and different judicial pronouncements, laid down the following principles:

- "(i) 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;*
- (ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;*
- (iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*
- (iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;*



(v) a dying declaration which has been recorded by a competent Magistrate in the proper manner 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;

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties."

In a recent decision, in the case of **Rajendra -Vrs.- State of Maharashtra** reported in **2024 SCC online SC 941 : 2024 LiveLaw (SC) 506**, the Hon'ble Supreme Court has referred to the decision in **Kushal Rao** (supra) and reiterated the settled position of law that a dying declaration can form the basis of a conviction . It has held as follows:

"25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and



credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

In the case of **Uka Ram** (supra), the deceased was a mental patient who had earlier attempted suicide, the Hon'ble Supreme Court defined what a dying declaration is and laid down the safeguards to be followed in case of dying declaration and the principle behind accepting a dying declaration without cross-examination of the maker, holding as follows:

"6. Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-sections (1) to (8) of Section 32 of the Act. When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question is admissible in evidence



being relevant whether the person was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Such statements in law are compendiously called dying declarations. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath – Nemo moriturus praesumitur mentire. Such statements are admitted, upon consideration that their declarations made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declarations are admitted in evidence, is based upon the legal maxim Nemo moriturus praesumitur mentire i.e., a man will not meet his maker with a lie in his mouth. It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that dying declaration should be of such nature as to inspire full confidence of the court in its



correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence."

In the case of **Purshottam Chopra** (supra), the Hon'ble Supreme Court held as follows:-

"21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.



21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of



evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

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*25.1....As laid down in **Vijay Pal's** case and reiterated in **Bhagwan's** case (supra), the extent of burn injuries – going beyond 92% and even to 100% - would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at*



the terminal point of life, every motive to falsehood is removed or silenced.

25.2. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration."

In the case of **Muthu Kutty -Vrs.- State reported in A.I.R. 2005 S.C. 1473**, the Hon'ble Supreme Court has held:

"where the Court is satisfied that the dying declaration was true and voluntary, it can rely on it to sustain the conviction without any further corroboration since the rule requiring corroboration is merely a rule of prudence".



In the case of **Betal Singh -Vrs.- State of M.P.** reported in (1996) 4 SCC 203, the Hon'ble Supreme Court has held:

"15. Legal position remains unaltered that dying declaration should be scrutinized very carefully and if the Court is satisfied after such scrutiny that the dying declaration was true and was free from any effort to prompt the deceased to make such a statement and is coherent and consistent, there is no legal impediment in founding the conviction on it. (Kusa -Vrs.- State of Orissa : A.I.R. 1980 S.C. 559). The position does not change even if such a dying declaration is put forward in a bride burning case whether or not it has been recorded by the police officer during investigation. (State of Punjab -Vrs.- Amarjit Singh : A.I.R. 1992 S.C. 1817, Charipalli Shankararao -Vrs.- Public Prosecutor, High Court of A.F., 1995 Suppl. (4) SCC 24).

In the case of **Sukanti Moharana -Vrs.- State of Orissa** reported in (2009) 9 SCC 163, the Hon'ble Supreme Court after referring to a number of its earlier decisions on acceptability of dying declaration and how to deal with a dying declaration, has held as follows :



"32. The doctor who recorded the dying declaration was examined as a witness and he had in his deposition categorically stated that the deceased while making the aforesaid statement was conscious and in a fit mental condition to make such a statement. The aforesaid position makes it therefore clear that the aforesaid dying declaration could be relied upon as the same was truthfully recorded and the said statement gave a vivid account of the manner in which the incident had taken place.

33. There was another objection raised by the counsel appearing for the appellant regarding the admissibility of the aforesaid recorded dying declaration contending inter alia that the signature or the thumb impression of the deceased was not taken on the said dying declaration. The said objection according to us also is without any basis. The deceased had suffered about 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface. The post mortem report also indicates that there was bandage in her thumb as it was burnt. In such a situation, it was not possible to take her signature or LTI on the dying declaration. There is also no reason why a dying declaration which is otherwise found to be true, voluntary and correct should be rejected only because the person who recorded the dying declaration did



not or could not take the signature or the Left Thumb Impression of the deceased on the dying declaration. Once it is found that the dying declaration is true and made voluntarily and as also trustworthy, there is no reason why the same should not be believed and relied upon. In this case, the said dying declaration is corroborated by the oral dying declaration made by the deceased before P.W.1 and P.W.3 which is also corroborated by the medical evidence and the facts contained in the FIR."

In the case of **Nallapati Sivaiah -Vrs.- Sub-Divisional Officer, Guntur, A.P. reported in A.I.R. 2008 S.C. 19**, it is held as follows:

"18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration in as much as there could be any number of circumstances which may affect the truth. This Court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order



to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion."

In the case of **Laxman** (supra), the Hon'ble Supreme Court has held as follows:

"3....A dying declaration can be oral or in writing and 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 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. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

In the case of **Paparambaka Rosamma** (supra), the parents of the deceased as well as other close relatives had turned hostile. Her mother in-law was also her grandmother. None of the neighbours came forward to support the prosecution and so there was no evidence that the deceased was subjected to ill-treatment or there was any dowry demand. The only grievance made in the dying declaration was that she wanted to live separately but her husband (acquitted earlier) was not prepared and had beaten her in the afternoon on the previous day. The dying declaration was not accepted in the absence of certificate of the doctor that the injured was in a fit state of mind to give the declaration. The relevant portion of the judgment is extracted below:

"In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.



Vishnupriya Devi (P.W.10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that patient is conscious while recording the statement. In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind."

In the Case of **Koli Chunilal Savji -Vrs.- State of Gujarat reported in (1999) 9 SCC 562**, the Hon'ble Supreme has held as follows:

"8. In view of the aforesaid decisions of this Court, we are unable to accept the submission of Mr. Keshwani that the two dying declarations cannot be relied upon as the doctor has not been examined and the doctor has not made any endorsement on the dying declaration. With regard to the condition of the deceased, the Magistrate who recorded the dying declaration has been examined as a witness. She has categorically stated in her evidence that as soon as she reached the hospital in the Surgical Ward of Dr. Shukla, she told the doctor on duty that she is required to take the statement of Dhanuben and she showed the doctor the Police



yadi. The doctor then introduced her to Dhanuben and when she asked the doctor about the condition of Dhanuben, the said doctor categorically stated that Dhanuben was in a conscious condition. It further appears from her evidence that though there has been no endorsement on the dying declaration recorded by the Magistrate with regard to the condition of the patient but there has been an endorsement on Police yadi, indicating that Dhanuben was fully conscious. In view of the aforesaid evidence of the Magistrate and in view of the endorsement of doctor on the Police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, we see no justification in the comments of Mr. Keshwani that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon...."

In the case of **Vijay Pal** (supra), the Supreme Court has held as follows:

"20. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same."



Standard of Proof:

In the case of ***Trimukh Maroti Kirkan -Vrs.- State of Maharashtra reported in (2006) 10 SCC 681***, which was a case where the wife of the appellant was found dead in his house but direct evidence regarding her death was not available, the Hon'ble Supreme Court while confirming his conviction under Section 302 I.P.C. has held as follows:

"12. In the case in hand, there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently



coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as



*noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See **Stirland Vs. Director of Public Prosecution : 1944 AC 315** quoted with approval by Arijit Pasayat, J. in **State of Punjab Vs. Karnail Singh : (2003) 11 SCC 271**). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case."*

Hostile Witness:

In the case of **M. Saravan -Vrs.- State of Karnataka reported in (2012) 7 SCC 636**, it has been held by the Supreme Court that merely because a witness has turned hostile, it would not be fatal to the prosecution case, if the prosecution has been able to prove its case by other cogent and reliable evidence. The relevant portion is extracted below:

"10...The mere fact that one of the witnesses produced by the prosecution had been declared hostile and did not support the case of the prosecution would not be fatal to the case of the



prosecution, particularly when the prosecution has been able to prove its case by other cogent and reliable evidence..."

In the case of ***Bhajju -Vrs.- State of M.P. reported in (2012) 4 SCC 327*** and ***Govindaraju @ Govinda -Vrs.- State reported in (2012) 4 SCC 722***, it has been held by the Hon'ble Supreme Court that the Court can take into consideration the part of the statements of witnesses which supports the case of the prosecution.

Defective Investigation:

In the case of ***Suvarnamma*** (supra), the Hon'ble Supreme Court held as follows:-

"11. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence."

In the decision in ***Dhanaj Singh @ Shera*** (supra), the Hon'ble Supreme Court has held as follows:-

"In the case of a defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing



into the hands of the investigating officer if the investigation is designedly defective."

In the case of **Gajoo** (supra), the serological report had not been produced for which Supreme Court directed that action should be taken against the Investigating Officer, while holding as follows:

"A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court."

Cause of death:

13. To ascertain as to whether the prosecution has been successful in proving that the death of the deceased was homicidal in nature, the evidence of P.W.4 Dr. Purnima Singh who conducted post mortem examination of the deceased on 09.12.2011 is very relevant.

The deceased died on 09.12.2011 while undergoing treatment in the S.C.B.M.C.H. for burn injuries, which was more than three weeks after the occurrence. The injuries noticed by P.W.4 on the deceased and her opinions are extracted herein below:



External Injuries:

Infected dermo epidermal burn injuries involving complete neck, the lower half of the face, the anterior aspect of the chest, both the thighs, back of both the legs, the whole left upper limb, the rt, mid of forearm up to the hand, whole of the abdomen and whole of the back side.

The pubic hair was intact, the left side axillary hair had burnt and rt. side was singed, scalp hair was-also singed. The eyebrows and eyelash singed, The bum hounds were looking unhealthy with slough formation emating putrid odour.

There were signs of periferial healing at the margins of the wound, No mechanical injury or ay bodily deformity was detected at the time of P.M, examination.

On dissection:

The internal structure of neck were intact. On opening the chest cavity there were plural effusion of about 200 ml. clear, colourless fluid of both sides. Both the lungs were intact and edematous. The pericardial sack was contained about 100 C.C. of colourless fluid. Heart was intact, containing fluid blood in both the chambers. The uterus was enlarged up to 6 week size. It was empty and consistent with of



size of post delivery of one and half months back as alleged.

Opinion:

The burn injuries detailed above are antemortem in nature and might have been caused due to application of dry heat in form of fire or flame.

The total burn surface area is about 80 to 90% of the total body surface area and is fatal to cause death of a person in ordinary course of nature.

The death is due to the complications of burn injuries sustained.

The age is was within about 12 to 18 hours from the time of P.M. examination."

She has attributed the cause of death to complications of the burn injuries and has also stated that the burn injuries were ante mortem in nature and caused due to application of dry heat or fire. She has also stated that the total burn area was 80% to 90% and fatal in ordinary course to cause death. So it is clear that the death of the deceased was due to the burn injuries but the doctor who has conducted post mortem has not and could not have stated if the burn injuries were homicidal or suicidal or even accidental.

As the witnesses who had stated during investigation that the appellant had poured kerosene on the deceased and set



her on fire, did not support the prosecution case while deposing in Court, so we have to look at other evidence which has been adduced by the prosecution to prove its case.

Motive:

14. In the present case, as the family members of the deceased and neighbours of the appellant have not supported the prosecution case and turned hostile, the prosecution has not been able to prove any motive on the part of the appellant to commit the offence. Law is well settled that motive increases the probability of commission of an offence, but motive alone cannot prove an offence and similarly, in absence of proof of motive, it cannot be a ground to set at naught the other evidence pointing towards the guilt of the accused.

Evidence relating to dying declaration:

15. The law regarding dying declaration is governed by Section 32 of the Indian Evidence Act. Importance is attached to a dying declaration as it is the presumption and belief that a person who is going to die and meet his/her maker will not utter falsehood, just before his death.

As the relevant witnesses have turned hostile and the prosecution case rests solely on the dying declaration of the deceased, we therefore have to be very careful while examining



the dying declaration as to whether it is genuine, true and free from all doubts and inspires confidence and whether it was recorded when the injured was conscious and in a fit state of mind. For this, we have to carefully examine the dying declaration itself, the evidence of P.W.8, the Executive Magistrate who recorded the dying declaration, the evidence of P.W.9, the woman constable and P.W.11, the staff nurse, the two witnesses, who have signed on the dying declaration sheet. The evidence of P.W.13, the I.O. is also necessary to be examined for the purpose of corroboration. The evidence of these witnesses has already been referred to in extenso earlier and is not being repeated, but the relevant portions are required to be referred to while discussing the acceptability or otherwise of the dying declaration.

16. The dying declaration contains the certificate of Dr. Asit Ku Sethy in English vide Ext.4, the declaration of the deceased in Odia vide Ext.4/2 and the certificate of P.W.8 in English vide Ext.4/4. The contents of the declaration (Ext.4) are extracted below:

"Certified that Patient Jayanti Sahoo, w/o Susanta Sahoo of Thakurpatna, P.S.- Bari-Ramchandrapur, Dist.- Jajpur initially admitted to surgery treated in Burn ICU Bed No.14 and



transferred to Dept. of Obstetrics and Gynecology for delivery on 16.11.2011.

She is conscious, oriented and fit to give dying declaration. Time 6.45 p.m. 16.11.2011. Pt delivered a dead male child at 4.30 p.m. - 16.11.2011.

*Indoor Regd. No.
430/15.11.11*

*Sd/-
(Dr. Asit Ku Sethi)
16.11.2011*

Pt having 50% burn

Asst. Prof. Surgery."

The dying declaration which is in Odia is extracted below:

"ମୋର ନାମ ଜୟନ୍ତୀ ସାହୁ, ସ୍ବାମୀ-ସୁଶାନ୍ତ ସାହୁ, ଗ୍ରାମ-ଠାକୁରପାଟଣା, ବରି / ଗଡ଼ ସୋମବାର ଦିନ ରାତି ପ୍ରାୟ ସାଢ଼େ ଏଗାରଟା ହେବ (ରାତି ୧୧.୩୦) ମୋ ସ୍ବାମୀ ମଦ ପିଇ ଆସି ଯୁଁ ଶାଶୁଘରେ ଥିବାବେଳେ ମୋତେ କିରୋସିନ୍ ଡାଲି ନିଆଁ ଲଗାଇଦେଲା / ଯୁଁ ପୋଡ଼ି ହୋଇଗଲି, ପାଟିକଲି ଓ ଶାଶୁ ଶ୍ୱଶୁର ଦୋଡ଼ିଆସି ନିଆଁଲିଭାଇ ଦେଲେ ଓ ଯାଜପୁର ଡାକ୍ତରଖାନା ନେଇଗଲେ ଓ ସେଠୁ କଟକ ବଡ଼ ମେଡିକାଲ ଆସିଲି / ଯୁଁ ନଅ ମାସର ଗର୍ଭବତୀ ଥିଲି ।"

The certificate given below by P.W.8, the Executive Magistrate with signatures of the two witnesses is reproduced below: -

"Recorded by me as per her version. On 16.11.2011 at 7 p.m. at Labour Room Gyneac (O & G), SCBMCH Cuttack in presence of witness. I am to note here that the abovenamed



victim sustained burn injury throughout her body and her palms have been bandaged for which she could not put her thumb impression.

Sd/-

Sunita Dash

16.11.11

Sd/-

(16.11.2011)

(P.K. Jena) O.P.S.

Sd/-

R. Mohanty

16.11.11

ACP Zone-VI Cuttack (Em)

Camp (O & G), SCBMCH,

Cuttack."

17. P.W.13, the I.O. has stated that the Superintendent, SCBMCH, Cuttack deputed Dr. Asit Kumar Sethi to remain present at the time of recording of dying declaration. We find from a perusal of the dying declaration that Dr. Asit Kumar Sethi has given a certificate vide Ext.4 that the deceased was conscious, oriented and fit to give the dying declaration and his certificate and signature have been proved by P.W.8, the Executive Magistrate.

18. Though the said Dr. Sethi is a chargesheet witness, but the prosecution has not examined him. However, there is no challenge to the evidence of P.W.8 that Dr. Sethi was not present at the time of recording the dying declaration and that he had not given any such certificate vide Ext.4. P.W.8 has specifically denied the defence suggestion that the deceased was not in a fit mental condition. The contentions raised by the



learned counsel for the appellant that for non-examination of Dr. Sethi, it cannot be said that the prosecution has proved that the deceased was in a fit state of mind, cannot be accepted.

After recording the dying declaration in Odia, P.W.8, has given a certificate at the end that as the palms of the deceased were bandaged due to burn injuries, her LTI could not be taken. The declaration has also been proved by P.W.9 Sunita Das, the police constable and P.W.11 Rojalin Mohanty, Staff Nurse of SCBMCH, Cuttack who were present at the time of recording and put their signatures on the dying declaration sheet. P.W.13, the I.O. has stated during his cross-examination as follows:

"... I was absent when the dying declaration was taken down. When the dying declaration was recorded, I was present in the hospital but on the verandah."

19. As held by the Hon'ble Supreme Court in the case of **Purushottam** (supra), no hard and fast rule can be laid down that a person with 100% burn injuries cannot be in a fit state of mind to make a dying declaration and it depends on the facts and circumstances of the case and that normally a person who is going to die will not state falsehood unless the contrary is proved.



20. In the present case, in view of the certificate of Dr. Asit Kumar Sethi, we have no reason to reject the dying declaration on the ground that the deceased was not in a fit state of mind to give such declaration.

21. After perusal of the dying declaration and the evidence of P.Ws. 8, 9, 11 and 13, we find no reason to doubt the certificate of Dr. Asit Kumar Sethi vide Ext.4, the certificate of P.W.8 vide Ext.4/4 or the declaration vide Ext.4/2 itself. The dying declaration inspires confidence and there is no material that it was the result of either tutoring, prompting or vindictive or product of imagination. We are not only satisfied that the deceased was in a fit state of mind to make the statement, but also that the dying declaration was true, voluntary and not influenced by any extraneous consideration and therefore, on the sole basis of dying declaration, conviction of the appellant can be sustained.

Defence Plea:

22. During his examination under Section 313 Cr.P.C., the appellant has taken a plea that as he came home drunk, the deceased set herself on fire by using the dibri (lamp) and he had tried to put off the fire but was not able to do so.



This plea has been taken only to be rejected. P.W.2 Balaram Sahu, neighbour of the appellant has stated that hearing hullah at midnight, he had come to the house of the appellant and saw burn injuries on the deceased but did not see the appellant. He has also stated that the deceased was carried to the hospital. He has not been cross-examined by the defence on this aspect.

P.W.5, the informant has stated that while cooking food, the kerosene stove blasted, as a result of which, the body of the deceased caught fire. As he did not support the prosecution case, he was declared hostile. He has however proved the F.I.R. and his signature on the F.I.R. Neither it is the defence plea of the appellant nor it is there in the dying declaration that any kerosene stove blasted causing injuries to the deceased. Therefore, the evidence of P.W.5 on this aspect is to be outrightly rejected.

The plea of the appellant does not inspire confidence for the following:-

- i) The deceased was 8 to 9 months pregnant and she would have not put her unborn child in danger;
- ii) The deceased sustained extensive burns which would not have happened if the appellant had tried to save her;



iii) The appellant has not stated to have sustained any burn injuries while rescuing the deceased nor has he stated to have taken the deceased to hospital;

iv) In the dying declaration, the deceased has stated that hearing her shout, her parents in-law came and put off the fire and took her to Jajpur Hospital.

Whether the contentions of the learned Amicus Curiae for acquittal of the appellant are acceptable?

23. The contentions of the learned Amicus Curiae for acquitting the appellant are not acceptable for the following reasons:

i) A conviction can be based only on a dying declaration if it inspires confidence;

ii) Even if the relations of the deceased have turned hostile, it will not be fatal to the prosecution case since other evidence pointing to the guilt of the appellant more particularly dying declaration are available;

iii) Non-examination of the doctor who gave the certificate on the dying declaration regarding fitness of mind of the deceased is not fatal to the prosecution case as his certificate and signature have been duly proved by the Executive Magistrate (P.W.8);



iv) The failure of the forensic team to visit the spot may be a lacuna in the investigation but the same will not be fatal to the prosecution case as it is the settled principle of law that any defect in investigation cannot be a ground to reject the prosecution case in toto;

v) There is no delay in lodging F.I.R. as the incident occurred on 14.11.2022 night and the deceased was first taken to Jajpur Hospital and then to SCBMCH, Cuttack on 15.11.2011 and the F.I.R. has been lodged also on 15.11.2011 which was after such admission in the Hospital at Cuttack and it cannot be lost sight of the fact that the primary concern of the family members was to save the life of the deceased.

In the case of **Amar Singh** (supra), it is held that there is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the



distance of the hospital and the police station etc. have to be taken into consideration.

vi) The reason for absence of LTI of the deceased in the dying declaration sheet has been explained by P.W.8 stating that her palms were bandaged. This explanation also holds good for absence of her signature on the declaration sheet;

vii) Failure of the I.O. to record the statement of the deceased under Section 161 Cr.P.C is not fatal to the prosecution, as the dying declaration has been recorded promptly.

Conviction of appellant under Section 304-B and Section 498-A I.P.C. and Section 4 of the D.P. Act:

24. It was the prosecution case that there was demand of dowry and the deceased was being harassed and treated with cruelty as the demand was not fulfilled. Soon before her death, the appellant had threatened to kill her if the demand of the appellant and his family members for dowry was not fulfilled.

None of the relatives of the deceased and the co-villagers have supported the prosecution case as regards demand of dowry and ill-treatment and torture of the deceased.

Law is well settled as held in case of **Madhusudan Singh -Vs.- State of Bihar reported in A.I.R. 1995 S.C.**



1437, that the F.I.R. does not constitute substantive evidence, however it can be used as a previous statement for the purpose of corroboration/contradiction to the maker thereof. The allegation has to be proved at the trial. Conviction cannot be based only on the allegation in the F.I.R. In the case of **Utpal Das -Vs.- State of West Bengal reported in (2010) 46 Orissa Criminal Reports (SC) 600**, it is held that the first information report does not constitute substantive evidence. It can, however, only be used as a previous statement for the purposes of either corroborating its maker or for contradicting him and in such a case, the previous statement cannot be used unless the attention of witness has first been drawn to those parts by which it is proposed to contradict the witness. In the case of **Chaitu Naik -Vs.- State of Orissa reported in (2015) 60 Orissa Criminal Reports 906**, it is held that a statement recorded under Section 161 of Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 of Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Such a statement cannot be treated as evidence in the criminal trial but may be used for the limited purpose of impeaching the credibility of a witness.



It is pertinent to note that even the deceased herself has not stated about such demand and torture in her dying declaration. Thus, we find sufficient force in the contention of the learned counsel for the appellant that there is absence of evidence regarding motive to commit the crime and harassment and ill treatment on account of demand for dowry soon before the death of the deceased. Thus, we have no choice but to acquit the appellant from the charges under Sections 498-A, 304-B of the I.P.C as well as Section 4 of the D.P. Act.

Conviction of the appellant under section 302 of I.P.C.:

25. Even though the charge under Section 498-A of I.P.C. and Section 4 of the D.P. Act could not be proved, the motive to kill the deceased has also not been proved, but as discussed above, availability of motive is not mandatory for convicting an accused of an offence under Section 302 of I.P.C.

In the case in hand, as per the dying declaration, the appellant came home drunk and poured kerosene on the body of the deceased and set her on fire. Hence absence of motive in these circumstances will not be a ground to disbelieve the dying declaration, as it is otherwise reliable.

Death of the deceased was due to burn injuries. There are no eye witnesses who have seen the appellant setting



the deceased on fire her on fire. But in her dying declaration, she has implicated the appellant to have poured kerosene on her and set her on fire. The dying declaration has been recorded by P.W.8, an Executive Magistrate who was deputed by the D.C.P. to record the same and he has recorded the declaration in the presence of two witnesses who are government servants i.e. P.W.9, a woman constable and P.W.11, a staff nurse. None of these three witnesses have any animosity with the appellant so as to falsely implicate him, nor has any suggestion to that effect been put to them. That apart, the dying declaration has been recorded by P.W.8 himself in his own handwriting and contains the certificate of a doctor that the deceased was a in a fit condition to give the same. It has also been mentioned below the dying declaration by P.W.8 that the LTI of the deceased could not be taken on the declaration sheet as her palms were bandaged. Merely because the relatives of the deceased are not witnesses to the dying declaration or the doctor who gave the certificate has not been examined, the dying declaration cannot be disbelieved as the certificate and signature of the doctor has been proved by P.W 8 and this has not been challenged in cross-examination by the defence.



The dying declaration proves that the appellant by pouring kerosene on the deceased and setting her on fire, has intentionally committed her murder and therefore, the prosecution has successfully established the charge under section 302 of I.P.C. against the appellant.

Conclusion:

26. In view of the foregoing discussions, we are of the humble view that the conviction of the appellant for commission of the offences under Section 498-A and Section 304-B of the I.P.C and Section 4 of the Dowry Prohibition Act is liable to be set aside and accordingly, we set aside the same and acquit the appellant of the charges under Sections 498-A/304-B of the I.P.C. and Section 4 of the Dowry Prohibition Act.

27. The conviction of the appellant for commission of the offence under Section 302 I.P.C and sentence passed thereunder by the learned trial Court stands confirmed.

28. In the result, the JCRLA is partly allowed.

Trial Court records with a copy of this judgment be sent to the concerned Court forthwith for information and necessary action.

29. Before parting with the judgment, we put on record our appreciation to the efforts of Ms. Rita Singh, learned Amicus



curiae and Mr. Aurobindo Mohanty, learned Additional Standing Counsel who have prepared the case thoroughly and argued sincerely and rendered their valuable assistance in arriving at the above decision. The learned Amicus Curiae shall be entitled to the professional fees, which is fixed at Rs.10,000/- (rupees ten thousand).

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Savitri Ratho, J.

S.K. Sahoo, J. I agree.

.....
S.K. Sahoo, J.

Orissa High Court, Cuttack
The 27th May 2025/Subhalaxmi/Sukanta