IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1242 of 2016

Arising Out of PS. Case No.-39 Year-2014 Thana- MEHANDIA District- Jehanabad

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1. Mahesh Pandit, Son of Shiv Pujan Pandiit,
2. Shiv Pujan Pandit, Son of Late Jagdeo Pandit,
Both are resident of village - Masuda Sakari, Police Station - Mehendia, Distict - Arwal

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Navin Prasad Singh, Advocate
Mr. Narayan Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-06-2024

We have heard Mr. Rama Kant Sharma, the learned Senior Advocate for the two appellants who are father and son amongst themselves and are the husband and father-in-law of the deceased/ Lalita Devi who is said to have died of burn injuries after being treated for four days at Arwal Hospital in the district of Arwal and thereafter at PMCH, Patna. The State has been represented by Mr. Binod Bihari Singh, learned APP.

2. Both the appellants have been convicted under Sections 498-A and 302/34 of the Indian Penal Code vide judgment dated 04.11.2016 passed by learned 2nd Additional Sessions Judge, Jehanabad and by order dated 05.11.2016, they have been sentenced to undergo RI for two years, to pay a fine of Rs. 5,000/- and in default of payment of fine to further suffer RI for three months for the offence under Section 498-A of the IPC and imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer RI for six months for the offence under Section 302/34 of the IPC.

3. Both the sentences have been ordered to run concurrently.

4. The deceased died of burn injuries which stands proved by the postmortem report (Exhibit-2) which clearly states that there was antemortem dermo-epidermal burn injuries all over the body of the deceased, except the right flank of abdomen, right

buttocks, right upper thigh, postero-lateral aspects of both foot and soles. The wounds were infected but partially healed. On dissection of the wounds, in general, all visceras were found to be congested. The cause of death as opined by the conducting doctor was burn and its complications.

5. The postmortem was conducted by Dr. Arun Kumar Singh (PW-7), who, in his deposition before the Trial Court, has stated that while he was posted as Associate Professor in the Department of Forensic Medicine, PMCH, Patna on 19.05.2014, he conducted the postmortem examination on the body of Lalita Devi (deceased) at 3:30 PM.

6. In his cross-examination, though he has said that the burn injuries were not 100 percent and he had not found any smell of kerosene oil, but those observations were not penned down in the postmortem report. He was not in a position to state whether the burn injuries were accidental or intentional, caused by

anyone. In the same breath, he has stated that the body of the deceased was completely burnt except the portions as mentioned in paragraph-3 of his examination, which has been referred to above.

7. We have referred to the postmortem report and the opinion of the conducting doctor for the reason that the major thrust of argument on behalf of the appellants is that the deceased died an accidental death and was completely burnt. With such burn injuries to the extent of 100%, as claimed by the defence, she would not have been in a position to make a detailed statement implicating the appellants and Shiv Bachan Devi (still absconding) and which statement has been relied upon by the Trial Court as the dying declaration of the deceased.

8. It would be apposite for us to refer to the *fardbeyan*/ dying declaration of the deceased which was recorded in presence of the brother of the deceased, viz., Benkatesh Kumar Pandit (PW-1) and Dr. Kumar

Purushottam Singh Nirala (PW-4), by S.I. Indrajeet Kumar (PW-6) at Sadar Hospital, Arwal in the district of Arwal on 15.05.2014 at 2:15 PM in the emergency ward of the hospital.

9. The statement, referred to above, discloses that when the deceased, after cooking food, went to clean up the room, her husband/ Appellant No. 1 came and started abusing and assaulting her. Shortly thereafter, Appellant No. 2, her father-in-law and her mother-in-law, viz., Shiv Bachan Devi came and all of them assaulted her and asked her to bring Rs. 2 lakhs from her father. Thereafter they set her on fire. Even before this incident, the deceased had stated, she was treated in a cruel manner for bringing money from her father. On the day of the occurrence also, she was assaulted and set on fire only because of such demand remained unfulfilled.

10. On the basis of the aforenoted statement of the deceased, Mehdiya P.S. Case No. 39 of 2014 dated

15.05.2014 was initially registered for investigation for offences under Sections 342, 323, 324, 326, 307, 498-A, 504 and 34 of the IPC. The deceased was immediately referred to PMCH for higher treatment where she died at 10 O'clock on 19.05.2014. It was thereafter that the postmortem examination was conducted on her body.

11. Since the aforenoted statement was made in presence of her brother Benkatesh Kumar Pandit (PW-1) and Dr. Kumar Purushottam Singh Nirala (PW-4), we would be referring to their statements first.

12. PW-1 has stated before the Trial Court that his sister (deceased) was married about 18 years ago with Appellant No. 1. She died while undergoing treatment in PMCH on 19.05.2014. While PW-1 was at his home on 15.05.2014, he received a telephonic information from his uncle, viz., Jai Ram Pandit (not examined) that his sister has been burnt by her husband and in-laws. Hearing this, he went on a motorcycle

straight to Mehdiya Police Station and informed the police authorities that his sister has been burnt. The police personnel accompanied him to village Masuda, the matrimonial home of the deceased. There he saw his sister fully burnt and writhing in pain. The Officer-in-Charge of Mehdiya Police Station/ Shambhu Kumar (not examined) and other police officers including Indrajeet Kumar (PW-6) brought his sister to Sadar Hospital, Arwal where she was treated by Dr. Kumar Purushottam Singh Nirala (PW-4).

13. Since his sister was in a position to talk, the conducting doctor, viz., PW-4 granted permission to the police to record her statement. The statement was recorded by Indrajeet Kumar (PW-6) in his presence. By that time, his parents, viz., Bindeshwar Pandit and Janki Devi @ Sugiya Devi (PWs. 2 and 3 respectively) had also arrived. The thumb impression of the victim/ deceased was taken on the recorded statement. While her statement was being recorded, she also told him and

his parents that her husband and her parents-in-law had set her on fire for not bringing Rs. 2 lakhs from her home.

14. He has further averred that his sister was referred to PMCH for higher and specialized treatment. The deceased was taken on an ambulance to PMCH where she remained under treatment from 15.05.2014 to 19.05.2014. She died at 10 O'clock on 19.05.2014 whereafter postmortem examination was conducted upon her (Exhibit-2).

15. Two days prior to this occurrence, Appellant No. 1 had come to his house and had demanded Rs. 2 lakhs as accommodation loan and had also threatened that in case such amount was not paid, anything could happen to his sister. Even before this, his sister always complained about ill-treatment and cruel behaviour of the appellants and her mother-in-law. A case regarding this was also lodged with Mehdiya Police Station about 6-7 years ago. About four years ago, the family had to

approach the Mahila Helpline also, when such a complaint was made by his sister against her in-laws. His sister (deceased) had four children, the eldest being of nine years and the youngest of three years.

16. In his cross-examination, he has again reiterated that on receiving information about his sister on telephone, he straightaway proceeded to Mehdiya Police Station and took the police personnel along with him to the matrimonial home of his sister. He had found his sister to be completely burnt. The Officer-in-Charge of Mehdiya Police Station facilitated him by providing a staff for bringing a vehicle for taking his sister immediately to the hospital. His statement was not recorded by the police before his sister was taken to Arwal Hospital. By way of repetition, he has again stated before the Court that though his sister had received severe burn injuries but she was in her senses. The nearest hospital from village Masuda (matrimonial home of the deceased) was Mehdiya but his sister was taken

to Arwal.

17. At Arwal Hospital, Dr. Kumar Purushattam Singh Nirala bandaged his sister from neck to toe and also told him that his sister has received 100 percent burn injuries. He only had referred his sister to PMCH. She was brought to PMCH on an ambulance and admitted in the emergency ward.

18. Sometimes prior to the occurrence, the deceased and her husband resided at Jalandhar. He has denied the suggestion that while the deceased and Appellant No. 1 were at Jalandhar, he had taken a loan of Rs. 2,00,000/- from Appellant No. 1 for purchasing a land in the name of Appellant No. 1 and that the case was lodged only to appropriate that amount as no land was purchased.

19. Dr. Kumar Purushattam Singh Nirala (PW-4) claims to be posted as Medical Officer in Sadar Hospital, Arwal on 15.05.2014. On that day, at about 02:15 P.M., the Police Officers of Mehdiya Police Station

along with Sub-Inspector/Indrajeet Kumar (PW-6) had brought the victim/deceased and got her admitted in the emergency ward. Her statement was recorded in his presence by PW-6. He had also signed on such statement. The victim was in a position to make such statement. Thereafter, her LTI was taken. On that day, there were 15 Doctors on duty. He had never made any statement before the police prior to deposing before the Trial Court. He denied that there was any procedural requirement of mentioning the name of the person who brings the injured for treatment. Along with him in Arwal Hospital, one Dr. Chandra Shekhar Azad also was on emergency duty. Since he was a surgeon, the victim was kept under his supervision. The victim remained in the hospital for about one hour. She had not received 100 percent burn injuries. He admitted before the Trial Court that it is the practice to state the extent of the burn injuries in the admission register, which admission register was not before him and, therefore, he was not

in a position to state about the extent of the burn injuries of the victim. He only had referred the victim to PMCH. Such referral is not mentioned in the admission register. He has denied the suggestion that he has tried to bolster up the prosecution case by getting in collusion with PW-1. He also denied the suggestion that on that day, i.e. on 15.05.2014, he was not on duty in the hospital.

20. Indrajeet Kumar (PW-6), who is the first Investigating Officer of the case, has stated before the Trial Court that Shambhu Kumar/Officer-in-Charge of Mehdiya Police Station (not examined) had received an information on his mobile telephone that the sister of the caller, perhaps PW-1, has been burnt in her matrimonial home. On such information, he along with Shambhu Kumar and other police personnel proceeded to Masuda village and reached the place of occurrence where he saw Lalita Devi in an injured condition. She was brought on a pickup van for treatment to Sadar Hospital, Arwal.

Thereafter, he has stated what Dr. Kumar Purushattam Singh Nirala (PW- 4) had stated before the Trial Court, viz., the recording of the statement; the permission granted by the Doctor to record such statement and the referral of the patient to PMCH for higher treatment. He had visited the PO again in the evening and had arrested Appellant No. 1 on 21.05.2014 who was remanded to custody on 22.05.2014. Thereafter, he had to handover the investigation as he was given another responsibility in SC/ ST Police Station. He had handed over the investigation to Shambhu Kumar.

21. In his cross-examination, he has admitted that the information received at Mehdiya Police Station was never recorded. Only the information about burning of the victim was recorded in the Station Diary. Such statement was not reduced into FIR. The *fardbeyan* of the victim was sent to the Court on 16.05.2014. He had not recorded the statement of the victim in her matrimonial home even though she was conscious

because of the intensive burn injuries.

22. Surprisingly, he has also stated before the Trial Court that the statement of the elder son of the deceased, *viz.*, Sonu Kumar was recorded in the police diary by the SDPO.

23. Since the details of such statement were not stated by PW-6 before the Trial Court, we, for our information, went through the statement of Sonu Kumar who had stated that on seeing her mother under fire, he rushed to his father on a motorcycle and his father came running back home. An attempt was made to douse the fire but in the process, his father (Appellant No. 1) also got injured.

24. It may be noted here that Sonu Kumar was withheld and not brought to the witness-stand on behalf of the prosecution. Per force, the defence got him examined as D.W. 1. PW- 6 had not recorded the statement of Sonu Kumar as he had become busy in the treatment of the victim/deceased. He had but recorded

the statement of villagers Kanti Devi, Bijendar Singh and Ram Bachan Pandit, none of whom have been examined and all of them had told him that there was a fight between the husband and the wife but they did not confirm that the victim/deceased was put on fire by the appellants and the mother-in-law of the deceased.

25. For the sake of continuity, we would also refer to the deposition of Sudhir Kumar (PW-5), the second IO, who submitted the charge-sheet against Appellant No. 1 under Section 498-A and 306 of the IPC and did not send up Appellant No. 2 and the mother-in-law of the deceased for facing trial. He had taken over the investigation on 28.06.2014 from Shambhu Kumar, the Officer-in-Charge of Mehdiya Police Station. On looking at the police papers prepared up-till his taking over the investigation, he learnt that no material was forthcoming against Appellant No. 2 and Shiv Bachan Devi (mother-in-law of the deceased) and they were found to be innocent. He was in receipt of progress

report too of the Superintendent of Police, Arwal, in which there was an opinion that only Appellant No. 1 was guilty whereas Appellant No. 2 and his wife/Shiv Bachan Devi were innocent.

26. As directed by superior police officers and also on the basis of the materials in the police papers, he submitted charge-sheet No. 44 of 2014 dated 30.06.2014 against Appellant No. 1 under Section 498-A and 306 of the IPC and did not send up Appellant No. 2 and his wife for trial.

27. Before we address ourselves to the major plank of argument on behalf of the appellants that the deceased could not have made any statement with such extensive burn injuries, we deem it appropriate to refer to the exhibits by the defence, which were admitted without any objection of the prosecution. The information exhibited, *viz.*, Exhibits- A/1, B and C were obtained by the defence under the Right to Information Act.

28. Exhibit- B is the admission register of Sadar Hospital, Arwal, which indicates that Lalita Devi (35 years-F), wife of Mahesh Pandit, was admitted for extensive burn injuries who was referred to PMCH for the needful at 2:00 PM on 15.05.2014.

29. Exhibit-C is the copy of the treatment register of Awral Hospital which clearly states that the victim had suffered thermal burns and she was primarily treated at Sadar Hospital, Arwal. The extensive burn on the whole body was to the extent of 100 percent.

30. On a composite reading of the deposition of the witnesses, referred to above, and the exhibits brought forth by the defence, few things emerge very clearly and few of the statements of the aforenoted witnesses start appearing to be doubtful.

31. The victim/deceased had received 100 percent burn injuries which is borne out by the admission register as also the treatment slip. Even then, SI Indrajeet Kumar (PW-6) has repeatedly stated before

the Trial Court that the injuries were not to the extent of 100 percent and that the patient was conscious and capable of making statement. Similar certification has been given by Dr. Kumar Purushattam Singh Nirala (PW- 4). Both of them have signed the *fardbeyan* of the victim.

32. That apart, we have also found that the evidence is not consistent with respect to PW-1 having gone to the matrimonial home of the deceased first and the deceased, while she still survived, being in a position to talk and give her statement. We have already referred to the statement of PW-1 that on hearing the information about his sister being burnt by her parents-in-law and husband, he did not go to the matrimonial home of the deceased, but straightaway proceeded to the police station and brought the police personnel to the PO, *viz.*, the matrimonial home of the deceased.

33. It raises eyebrows on two counts. The police authorities would not have otherwise proceeded to

the PO without first recording the statement of PW- 1. Even otherwise, it appears from the deposition of S.I. Indrajeet Kumar (PW-6) that telephonic information had arrived at the police station early in the morning which was also recorded in the station diary. It appears to be rather strange that on the asking of the brother of the victim and without recording any detailed statement, the police proceeded to the matrimonial home of the deceased.

34. There is yet another aspect to it which needs to be noticed. If the victim was found to be conscious, it would have been the best possible step to get her statement recorded there only before taking her to the hospital. Some time had elapsed in arranging for a vehicle.

35. All these raise doubts whether the police had brought the victim to the hospital or she was brought to the hospital under another circumstance. We say so for the reason that there is nothing mentioned in

the hospital records about the person who had brought the victim. The normal procedure is that it is stated in the hospital documents.

36. Assuming that the police party had brought the victim, there would have been no necessity of making any further inquiry; but then, the prevaricating statements of witnesses and the circumstances indicate that something has been kept hidden from the Trial Court. S.I. Indrajeet Kumar, even though knew about the SDPO having recorded the statement of the elder son of the deceased, did not incorporate it in the case diary; rather such statement was allowed to be recorded at the back of paragraph No. 27 of the case diary by the SDPO. The explanation given by PW-6 of not recording the statement of the son of the victim is absolutely unacceptable. Otherwise also, we have found it to be strange that he was not brought to the witness-stand on behalf of the prosecution.

37. Sonu Kumar as a DW-1 has stated that

while his mother was straining the rice, she caught fire. He immediately rushed to call his father from his shop, who came running to home and tried to douse the fire.

38. This was one of the most important facts for the Investigator to have noticed and recorded in the police papers.

39. The statement of the independent witnesses were also recorded by him but none of them confirmed that the victim was deliberately and forcibly put on fire. All these suggest that an attempt was made by the prosecution to bring out a case of dying declaration, which would have been the most easy and effortless task of an Investigator in making the case an open and shut one.

40. Though it was argued before the Trial Court that since the deceased died after four days of treatment, she was not under the expectation of death and, therefore, her *fardbeyan* would not have been treated as admissible piece of evidence under Section

32(1) of the Indian Evidence Act, 1872. This argument definitely is based on a wrong premise.

41. Section 32(1) of The Indian Evidence Act, 1872 is extracted hereunder for the sake of completeness and ready reference:

> ***"32 (1) When it relates to cause of death.-*** *When the statement is made by a person as to the 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.*
>
> *Such statements are relevant whether the person who made them 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."*

42. In Bhajju alias Karan Singh vs. State of Madhya Pradesh (2012) 4 SCC 317, it has been held as follows :-

> ***"25.*** *There is a clear distinction between the principles governing the evaluation of a dying declaration under the English law and the Indian law. Under the English law, credence and relevancy of a dying declaration is only when the person making such a statement is in hopeless condition and expecting an*

imminent death. So under the English law, for its admissibility, the declaration should have been made when in the actual danger of death and that the declarant should have had a full apprehension that his death would ensue. However, under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration. The dying declaration is admissible not only in the case of homicide but also in civil suits. The admissibility of a dying declaration rests upon the principle of nemo moriturus praesumitur mentire (a man will not meet his Maker with a lie in his mouth).

26. *The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the*

court, the same may be refused to be accepted as forming basis of the conviction.

27. *Another consideration that may weigh with the court, of course with reference to the facts of a given case, is whether the dying declaration has been able to bring a confidence thereupon or not, is it trustworthy or is merely an attempt to cover up the laches of investigation. It must allure the satisfaction of the court that reliance ought to be placed thereon rather than distrust.*

29. *In Jaishree Anant Khandekar v. State of Maharashtra [(2009) 11 SCC 647 : (2010) 1 SCC (Cri) 116] , discussing the contours of the American law in relation to the "dying declaration" and its applicability to the Indian law, this Court held as under: (SCC p. 654, paras 24-25)*

"24. Apart from an implicit faith in the intrinsic truthfulness of human character at the dying moments of one's life, admissibility of dying declaration is also based on the doctrine of necessity. In many cases victim is the only eyewitness to a crime on him/her and in such situations exclusion of the dying declaration, on hearsay principle, would tend to defeat the ends of justice.

25. American law on dying declaration also proceeds on the twin postulates of certainty of death leading to an intrinsic faith in truthfulness of human character and the necessity principle. On certainty of death, the same strict test of English law has been applied in American jurisprudence. The test has been variously expressed as 'no hope of recovery', 'a settled expectation of death'. The core concept is that the expectation of

death must be absolute and not susceptible to doubts and there should be no chance of operation of worldly motives."

30. *It will also be of some help to refer to the judgment of this Court in Muthu Kutty v. State [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] where the Court, in para 15, held as under: (SCC pp. 120-21)*

"15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] (SCC pp. 480-81, para 18)

'(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376])

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169] .)

(iii) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473] .)

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does

not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519] .)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585] .)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334] .)'"

43. Coming back to the case at hand, taking into account the fact that the defence exhibits, admitted without any objection from the prosecution reflecting 100 percent burn injuries; no statement of the victim/ deceased having been recorded at the matrimonial home of the deceased while she was still surviving and somewhat lingering doubt about PW-1 having straightaway gone to police station and bringing along with him police personnel of Mehdiya Police Station to the PO as also the opinion of the doctor who conducted the postmortem examination, we are faced with a situation where even the certification of the doctor (PW-4) and the presence of the police officer (PW-4) at the time of recording of the *fardbeyan* of the victim/ deceased, does not appear to be truthful for us to accept the *fardbeyan* as dying declaration, having been made by the victim/ deceased.

44. That apart, the delay in sending the FIR (The CJM has endorsed it on 17.05.2014) and no

recovery of any burnt articles by PW-6 when he had visited the PO in the evening also further confounds the issue.

45. We have also taken into account that no independent person has been examined to prove the prosecution case.

46. Bindeshwar Pandit and Janki Devi @ Sugiya Devi (PWs. 2 and 3), who are the parents of the deceased, have also narrated the same story as PW-1.

47. Dr. Vijay Pratap Singh (DW-2) has also made a disclosure which, if accepted, falsifies the statement of PW-4, the doctor who proved that the victim/ deceased was in a position to make the statement. He has said before the Trial Court that it was he who had referred the patient to PMCH because of extensive burn injuries suffered by her. He was also not in a position to state whether the victim could speak at that point of time. Even the story of demand of Rs. 2 lakhs has not been consistently told by the witnesses.

This, therefore, does create a doubt that the *fardbeyan* was manipulated.

48. Thus, the entire basis for the Trial Court to convict the appellants vanishes in thin air.

49. The statement of PW-4 was never recorded before the Trial.

50. To tie the strings :

(i) Delayed sending of the FIR

(ii) Non-examination of independent witnesses, non-producution of Sonu Kumar as a prosecution witness

(iii) The deceased having suffered 100 percent burn injuries and the unnecessary insistence of PW-4 and PW-6 about the fit mental and physical health of the victim/ deceased to make such statement, renders the prosecution case doubtful or at-least the implication of the appellants to be not beyond shadow of doubts.

51. We may also reiterate here that the police after investigation found no evidence against Appellant No. 2 and against Appellant No. 1, the charge suggested

was 498-A and 306 of the IPC.

52. We have also taken note of the fact that Appellant No. 2 absconded and, therefore, the Trial had to be separated. However, in the Trial of both the appellants, same witnesses were examined and, therefore, the Trial Court passed a composite judgment on the basis of the evidence on record.

53. For the aforenoted reasons, which has made us doubt about the correctness of the claim of the prosecution that the *fardbeyan* was not manipulated, we are left with no option but to give benefit of doubt to the appellants. We say so also for the reason that the offence under Section 498-A could not be proved beyond all reasonable doubts and the conviction under Section 302 of the IPC is primarily based on the dying declaration which has been found to be doubtful.

54. Giving benefit of doubt to the appellants, the judgment and order of conviction and sentence is set aside.

55. The appellants are acquitted of the charge.

56. Since both the appellants are in jail, they are directed to be released forthwith from jail, if not wanted or detained in any other case.

57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The records of this case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Saurav

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.06.2024
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