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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on: 03-07-2024Judgment delivered on:15-07-2024**CRA No. 1732 of 2023**

Ajay Verma S/o Ganesh Verma, aged about 24 years, resident of Village Maldi, Police Station-Suhela, District Balodabazar-Bhatapara (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station Suhela, District Balodabazar-Bhatapara (C.G.)

---- Respondent

CRA No. 1857 of 2023

Amanchand Routiya S/o Motichand Routiya, aged about 23 years, resident of Village Lafa, Thana- Pali, District- Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Suhela, District- Balodabazar-Bhatapara (C.G.)

---- Respondent

For Appellant in CRA No.1732/2023 : Mr. Satya Prakash Verma, Advocate
For Appellant in CRA No.1857/2023 : Ms. Ruchi Nagar holding brief of
Mr. Pragalbha Sharma, Advocate
For Respondent/State : Mr. Shashank Thakur, Dy. A.G.

**Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Ravindra Kumar Agrawal, Judge**

C.A.V. Judgment**Per Ramesh Sinha, Chief Justice**

1. Since the above-captioned appeals arise out of a common factual matrix and impugned judgment, this Court is disposing of both the appeals by a common judgment.



2. These criminal appeals preferred under Section 374(2) of the CrPC are directed against the impugned judgment of conviction and order of sentence dated 25.08.2023 passed by the learned Additional Sessions Judge, Bhatapara, District – Balodabazar-Bhatapara (C.G.), whereby the appellant - **Ajay Verma** has been convicted under Sections 302 and 201/34 of the IPC and sentenced for life imprisonment & fine of Rs.1,000/-, in default of payment of fine, to further undergo R.I for 6 months and R.I. for 3 years & fine of Rs.500/-, in default of payment of fine, to further undergo R.I. for 1 month, whereas the appellant - **Amanchand Routiya** has been convicted under Sections 201/34 of the IPC and sentenced to undergo R.I. for 3 years & fine of Rs.500/-, in default of payment of fine, to further undergo R.I. for 1 month.
3. Case of the prosecution, in brief, is that the complainant Meghnath Yadav (PW-1) lodged a report in Police Station Suhela, alleging therein that Kumari Ganga Yadav (deceased), the daughter of her elder brother Buddha alias Umannath Yadav, aged 18 years, is having a love affair with accused Ajay Verma of the village. In the midnight of 16-17.08.2020, Ganga Yadav's brother Lalla Yadav came home and told that Ganga Yadav had come home running away from the fire. On being informed, he immediately went to her house and saw that she was in bad shape due to burnt in fire, then he went to call former Sarpanch Devcharan Soni and Khuman Dhruv for help and after calling, they took Ganga Yadav in 108 ambulance to Balodabazar, from where she was referred to Raipur. Ganga Yadav was not able to talk. After being taken to hospital, when she started talking, she told



her family that on 16-17.08.2020 at 12:00 pm, accused Ajay Verma had talked to her on phone and called her to meet at the Yadav Samaj building. She had gone there to meet. Accused had a fight with Ganga Yadav and with intention to commit her murder, he poured kerosene on her, set her on fire, burnt her and ran away. Then she came running home saying save me, save me. She told about burning by Ajay Verma.

4. Based on the information of Meghnath Yadav (PW-1), the First Information Report under Section 307 IPC was registered by Roshan Singh Rajput (PW-18) and on 18.08.2020 visual map (Ex. P-02) of the incident site was prepared and during the course of investigation, Panchnama (Ex. P-03) was prepared in front of the witnesses and notice (Ex.P-14) was given to witnesses Mahesh Kumar Verma (PW-04) and Devcharan Dhruv (PW-07) to remain present during interrogation of accused Amanchand Routiya and Ajay Verma. On date 18.08.2020, memorandum statement (Ex.P-17) of accused Ajay Verma was recorded in the presence of witnesses. On being told by the accused that the mobile through which Ganga Yadav was called to meet was kept in his pant's pocket, a mobile of Vivo Company was seized in front of the witnesses and a seizure sheet (Ex.P-19) was prepared. On date 18.08.2020, the memorandum statement (Ex.P-15) of accused Amanchand Routiya was recorded as stated by him. The black colored fullshirt used by accused Amanchand Routiya to clean the incident site was said to be hidden on top of Yadav Bhavan. When the accused took out from the roof of Yadav Bhavan in front of the



witnesses, a one liter water bottle which smelled of kerosene and some quantity of kerosene was left, a matchbox, a pair of red slippers, a black colored fullshirt were seized in the presence of witnesses and a seizure sheet (Ex.P-16) was prepared.

5. Half-burned clothes worn by Ganga Yadav at the time of the incident, which had the smell of kerosene, were collected from five places in the ground near the spot of the incident and seized in front of witnesses, vide seizure sheet (Ex.P-18) and on 09.09.2020, on presented by Taleshwar Yadav, a mobile phone of Micromax company given by the Chhattisgarh Government under Sanchar Kranti Yojana with a Vivo Company SIM No. 62682032778 was seized in front of witnesses vide Exhibit P-09. When Janaki Yadav went to the deceased Ganga Yadav in the burn ward, she was told about the incident, the video recording of which was done by Janaki Yadav and on presentation of Janaki Yadav, a black colored mobile of Micromax company which had SIM number of Jio company 9399385906 and a red black colored SanDisk company 16 GB's pendrive containing the video of Ganga Yadav giving information about the incident was seized in front of the witnesses and the seizure sheet (Ex.P-10) was prepared.
6. In order to obtain CDR, SDR and Section 65B certificate of the mobile numbers 9754210465 and 62682032778 seized in the case were transferred to the Nodal Officer Idea and Jio through Superintendent of Police by Roshan Singh Rajput (PW-18) vide Exs. P-33 and 34. Section 65B certificate (Ex.P-29 in respect of pendrive was given by Nand Kumar Tandon.



7. On 18.08.2020, when a letter (Ex.P-24) was sent by the Investigating Officer, Police Station, Balodabazar to take the dying declaration of deceased Ganga Yadav, Executive Magistrate, Anjali Sharma (PW-13) recorded the dying declaration of the deceased vide Ex.P-25. On being presented the body along with the post-mortem application, Dr. M Nirala (PW-14), after conducting postmortem on the body of the deceased Ganga Yadav, opined that the cause of death of the deceased was due to heart and respiratory failure due to burn wounds and complications arising therefrom and the time of death was reported to be within 24 hours of his autopsy and postmortem report was given vide Ex.P-26. On 04.09.2020, after registering the death intimation regarding the death of deceased Ganga Yadav during treatment, a memo was written to the Director of D.K. Hospital to obtain the bedhead ticket and treatment related documents vide Ex.P-30. On which Dr. D. Shah (PW-12) sent a photocopy of the bedhead ticket along with the memorandum to the Station in-charge, Suhela.
8. On 27.10.2020, a memo (Ex.P-23) was given by Harish Kumar Sahu (PW-16) to the Principal of Government High School, Maldi for providing the answer sheet of class 9th to identify the handwriting of the deceased and on 27.10.2020, from the Principal of Government High School, Maldi the answer-sheets of Science and Social Science of the half-yearly examination of deceased Ganga Yadav were seized vide Ex.P-05. On presentation by applicant Meghnath Yadav, three copies written by Ganga Yadav (Articles A 02, 03 and 04) were seized by Roshan Singh Rajput (PW-18) vide Ex.P-04 and on sending the



application (Ex.P-34) for providing report by the Superintendent of Police to Government Examiner in question, the report (Ex.P-40) was received. On 18.08.2020, accused Ajay Verma and Amanchand Routiya were arrested in front of witnesses vide Exs.P-20 and 21 and information of arrest were given vide Exs. P-31 and 32 respectively.

9. The statements of the witnesses were recorded and after completion of investigation, when it was found that due to the love affair between the accused and the deceased, the accused had called her near the Yadav Community Building, Maldi at 12:30 midnight on 17-08-2020. There, accused Ajay Verma had a fight with the deceased Ganga Yadav and with an intention of killing her, poured kerosene on her and set her on fire and ran away. Saying 'save me, save me', deceased Ganga Yadav came home after extinguishing the fire in the mud outside the field and informed about the incident and the accused Amanchand Routiya was found to be cleaning the incident spot with the aim of hiding the evidence, the charge sheet under sections 302/34, 201/34 was presented before the jurisdictional criminal Court and the case was committed to the Court of Sessions from where the Additional Sessions Judge, Bhatapara, District - Balodabazar-Bhatapara received the case on transfer for hearing and disposal in accordance with law.
10. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 19 witnesses and exhibited 39 documents. Statements of the accused/appellants were recorded under Section 313 of the Code where they denied the circumstances appearing



against them and pleaded innocence and false implication in the crime in question. The defence has not examined any witness.

11. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellants who have committed aforesaid offences, convicted and sentenced them in the aforementioned manner, against which the these two appeals under Section 374(2) of the CrPC have been preferred by the appellants.
12. Mr. Satya Prakash Verma, learned counsel for the appellant Ajay Verma vehemently argued that the learned trial Court has failed to appreciate that the disclosure in dying declaration Ex.P-25 and thumb impression put in the said dying declaration are highly doubtful, as according to the postmortem report, the dead body was covered with white bandage on all over body except head and face, which is duly proved as per the evidence of Dr. M. Nirala (PW-14), who has conducted post-mortem of the dead body of the deceased, who has specifically deposed that the dead body was covered with white bandage on all over body except head and face, in such a situation, it is not possible for the deceased to put her thumb impression over the so-called dying declaration. Moreover there are overwriting in the alleged dying declaration Ex.P-25, which is a clear violation of Section 163 CrPC. He further argued that the learned trial Court has failed to appreciate that the Emergency Consultation Record of DKS Bhavan, Shastri Chowk, Raipur dated 17.08.2020 (part of Ex.P-27), whereby it is evident that the deceased received accidental burn injury on home. He also argued the learned trial Court has also failed to appreciate the



evidence of Dr. D.Shah (PW-12), who specifically deposed that in the MLC No. 7433 dated 17.08.2020, it is mentioned that “Burn Injury During Cooking” and the said entry has been made on the basis of information provided by the family members of the deceased. In support of this submission, he placed reliance on the judgment passed by the Hon’ble Apex Court in ***Devinder @ Kala Ram and others Vs. State of Haryana***, reported in ***(2013) 1 CCSC 303 (SC)*** and the judgment passed by Co-ordinate Bench of this Court in ***Mohd. Iqbal alias Baratu Vs. State of Chhattisgarh***, reported in ***2008 CRILJ 1835***.

13. Learned counsel for the appellant submitted that the learned trial Court has failed to appreciate the evidence of Dr. Deepika Sinha (PW-6), who has specifically deposed that the deceased was admitted in D.K.S. Super Specialty Hospital on 17.08.2020 at about 10.00, who was 96% burnt and conditions of the deceased was very critical, who was kept in I.C.U. and the patient has informed her that the lamp fell down over her due to which, she has received burn injury. In support of this submission, he placed reliance of the judgment passed by the Hon’ble Apex Court in ***Bhadragiri Venkata Ravi Vs. Public Prosecutor, High Court of A.P., Hyderabad***, reported in ***2012(2) C.G.L.J. 183 (SC)***.
14. Learned counsel for the appellant further submitted that the learned trial Court has failed to appreciate that the prosecution has not proved that on the date of recording dying declaration, the deceased was in fit mental condition. Further the prosecution has not asked any question



from the Dr. Deepika Sinha (PW-6) to prove that on the date of recording dying declaration, the deceased was in fit mental condition, therefore, the dying declaration is highly doubtful and liable to be discarded. In support of this submission, he placed reliance on the judgment passed by the Hon'ble Apex Court in the matter of ***Sampat Babso Kale and another Vs. State of Maharashtra***, reported in ***2019 (3) CCSC 1407 (SC)***.

15. Learned counsel for the appellant also submitted that the learned trial Court has failed to appreciate that the witness Jagdev Kumar Sahu (PW-15) has recorded the merg intimation dated 20.09.2020, in which, nowhere mentioned about the statement of deceased recorded under Section 161 of Cr.P.C. He contended that according to prosecution case, while disclosing the incident by the deceased, the witness Ku. Janki Yadav (PW-9) has recorded the video of the deceased through mobile. While examining herself, the witness Ku. Janki Yadav (PW-9) has specifically deposed that the injured Ganga informed her that she (injured Ganga) has herself recorded video of the incident, which are contradictory to each other. In paragraph 3 of her cross-examination, she has categorically admitted that the Police has not seized any mobile from her. He further contended that the learned trial Court has failed to appreciate that the mother of the deceased was knowing the incident right from the beginning, but these witness has been given up by the prosecution, without any reason. In support of his submission, he placed reliance on the judgment passed by the Hon'ble Apex Court in ***Dev Kanya Tiwari Vs. State of U.P.***, reported in ***2018 (2) CCSC***



614 (SC), wherein it has been held that if two views are possible basing on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence of accused, the view which is favourable to the accused should normally be adopted.

16. Learned counsel for the appellant also contended that the learned trial Court as also failed to appreciate that firstly, the deceased was taken at Government Hospital, Balodabazar, from where she was taken to Medical College Hospital, Raipur and then she was taken to D.K.S Super Specialty Burn Centre, but no where any report or intimation was given before any of local Police Station regarding the incident, which creates highly doubtful and suspicious. The complainant (PW-5) has submitted that he has not made any complaint before any local Police Station. As such the findings recorded by the learned trial Court is baseless, perverse, erroneous and contrary to the material evidence available on record. In support of his contention, he placed reliance on the judgment passed by the Hon'ble Apex Court in **Umakant & Another Vs. State of C.G.**, reported in **2014 (3) C.G.L.J. 432 (SC)**.
17. Learned counsel for the appellant lastly submitted that the learned trial Court has failed to appreciate that there are material contradictions and omissions in the case-diary statements and Court deposition of prosecution witnesses, which cannot be relied upon and the same cannot be made basis for conviction of appellant. In support of his submission, he placed reliance on the judgment passed by Co-ordinate Bench of this Court in **CRA No. 976 of 2013 (Tejram Yadu & another Vs. State of Chhattisgarh) decided on 02.02.2023**.



18. Ms. Ruchi Nagar, learned counsel, appearing on behalf of the appellant Amanchand Routiya submitted that the maximum sentence awarded to the appellant is three years and he has already served out half of his jail sentence.
19. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General opposed the aforesaid submissions and submitted that the dying declaration Ex.P-25 is true and voluntary as it was recorded in the presence of the Executive Magistrate Anjali Sharma (PW-13) and it was prescribed by Jagdev Kumar Sahu (PW-15), who is a police personal and before starting the dying declaration at the top of alleged dying declaration (Ex.P-25), Dr. Deepika Sinha (PW-6) has certified that 'the patient is eligible to give statement' and only thereafter, the deceased Ganga Yadav stated the entire story and at the end of the said dying declaration (Ex.P-25), again Dr. Deepika Sinha (PW-6) has certified that 'the patient is eligible to give statement' and the said document also bears the thumb impression of the deceased. He further submitted that while examination of Dr. Deepika Sinha (PW-6), neither the prosecution nor the defence has put any question to this witness regarding whether the deceased Geeta Yadav was in a fit condition to give statement or not, as such it cannot be said that the deceased was not in a fit condition to give her statement. He also submitted that during cross-examination, the defence has examined Executive Magistrate Anjali Sharma (PW-13), wherein she has supported the dying declaration and in her examination-in-chief she has specifically stated that after obtaining opinion of Dr. Deepika



Sinha, a physician at D.K.S. Hospital, Raipur that the patient was fit to give a statement, the dying declaration of the patient was recorded by him at 12.39 pm as per her instructions and thumb impression of patient was taken by her because the patient was not able to sign due to having a burn case. In her cross-examination, this witness has stated that she cannot tell today that deceased was 94% burnt and her entire body except her head and face was covered with white bandage. She denied the suggestion that the thumb impression in Ex.P-25 is of someone else and not of the deceased. She further denied the suggestion that the relatives of the deceased contacted her in the office and got the statement of Ex.P-25 written in the office itself. She also denied the suggestion that she has not taken the statement of the deceased at the hospital, hence he was not able to tell that a white bandage was tied on the body of the deceased and she was 94% burnt. Another prosecution witness Jagdev Kumar Sahu (PW-15), who has prescribed the said dying declaration (Ex.P-25) has also supported the case of prosecution in his examination-in-chief and in cross-examination, the defence has not asked any question to him.

20. Learned State counsel also submitted that while examination of the prosecution witness Dr. Deepika Sinha (PW-6), who has certified that while recording the alleged dying declaration that 'the patient is eligible to give statement', no question has been put to her either by the prosecution or the defence whether the deceased was eligible to give statement or not. It has been further stated that as per the statement of Taleshwar @ Lalla (PW-2), brother of the deceased, who first met



the deceased in the house as soon as she returned from the place of incident, he has clearly stated in his evidence that his sister (deceased) told him that she was set ablaze by accused Ajay Verma, with whom she was admittedly having some relations. He has narrated the story that the deceased was called over on phone in the pretext to meet her by the accused Ajay Verma and there was a quarrel between them and thereafter, the accused Ajay Verma set her ablaze. He also contended that the prosecution witnesses Revti Yadav (PW-3) and Janki Yadav (PW-9) have clearly stated that the deceased had told them that accused Ajay Verma had called her on phone and reaching, he poured kerosene and set her ablaze and it is a settled position of law that any person who is at death bed would not falsely implicate any person. In support of submission, he placed reliance on the celebrated judgment passed by the Hon'ble Supreme Court in ***Sharda Vs. State of Rajasthan***, reported in ***AIR 2010 SC 408***. He also submitted that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellants for offence as mentioned above and therefore, the appeals deserve to be dismissed.

21. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection and carefully as well.
22. The conviction of the appellants have been substantially based on the dying declaration (Ex.P-25), supported by the evidence of



Dr. Deepika Sinha (PW-6), who has certified that 'the patient is eligible to give statement', evidence of Executive Magistrate Anjali Sharma (PW-13), who has recorded the same and evidence of Jagdev Kumar Sahu (PW-15), who has prescribed the said document and evidence of Taleshwar @ Lalla (PW-2), Revati Yadav (PW-3), Ku. Janki Yadav (PW-9), who have specifically stated that the deceased had told them that accused Ajay Verma had called the deceased Geeta Yadav on phone to meet her and when she went to meet him, he set her ablaze by pouring kerosene on her and on the basis of memorandum statements of accused/appellants, supported by the evidence of seizure witnesses Mahesh Verma (PW-4) and Devcharan Dhruv (PW-7).

23. The first question for consideration would be, whether the trial Court was justified in holding that death of the deceased was homicidal in nature ?
24. The trial Court after appreciating oral and documentary evidence available on record, particularly, relying upon the statement of Dr. Deepika Sinha (PW-6), who has stated that the deceased has died and has been sent for postmortem and the statement of Dr. M. Nirala (PW-14), who has conducted postmortem of the dead body of the deceased Geeta Yadav and opined that cause of death was due to cardio-respiratory failure as a result of burn injuries and their complications and duration of death was within 24 hours prior to postmortem examination, has clearly come to the conclusion that death of deceased was homicidal in nature. The said finding recorded



by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

25. At this stage, it would be appropriate to notice Section 32 (1) of the Evidence Act which states as under: -

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—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 in the following cases:—

(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.

xxx xxx xxx”

26. The general ground of admissibility of the evidence mentioned in Section 32(1) of the Evidence Act is that in the matter in question, no



better evidence is to be had. The provisions in Section 32(1) constitute further exceptions to the rule which exclude hearsay. As a general rule, oral evidence must be direct (Section 60). The eight clauses of Section 32 may be regarded as exceptions to it, which are mainly based on two conditions: a necessity for the evidence and a circumstantial guarantee of trustworthiness. Hearsay is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence, namely, the oath and cross-examination. But where there are special circumstances which gives a guarantee of trustworthiness to the testimony, it is admitted even though it comes from a second-hand source. The Supreme Court emphasized on the principle enumerated in the famous legal maxim of the Law of Evidence, i.e., *nemo moriturus praesumitur mentire* which means a man will not meet his Maker with a lie in his mouth. Our Indian Law also recognizes this fact that “a dying man seldom lies” or in other words “truth sits upon the lips of a dying man”. The relevance of this very fact, is an exception to the rule of hearsay evidence. 12. Section 32(1) of the Evidence Act is famously referred to as the “dying declaration” section, although the said phrase itself does not find mention under the Evidence Act. Their Lordships of the Supreme Court have considered the scope and ambit of Section 32 of the Evidence Act, particularly, Section 32(1) on various occasions including in the matter of ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in ***(1984) 4 SCC 116*** in which their Lordships have summarised the principles enumerated in



Section 32(1) of the Evidence Act, including relating to “circumstances of the transaction”, which are as under: -

“21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:-

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come



to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.”

27. In the matter of ***Purshottam Chopra and another v. State (Government of NCT of Delhi)***, reported in (2020) 11 SCC 489,



principles relating to recording of dying declaration and its admissibility and reliability were summed up in paragraph 21 as under: -

“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.”

28. Where several dying declarations are made the test is whether the version of the deceased is proved to be false in respect of the integral part of the case. A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declarations they should be consistent particularly in material particulars [See: ***Kamla v. State of Punjab, (1993) 1 SCC 1***]
29. In the matter of ***Mohanlal Gangaram Gehani v. State of Maharashtra***, reported in ***AIR 1982 SC 839***, their Lordships of the Supreme Court held that where there are more than one statement in the nature of dying declaration made by the accused, one first in time must be preferred.
30. In a recent judgment rendered by their Lordships of the Supreme Court



in the matter of ***Makhan Singh v. State of Haryana***, reported in ***AIR 2022 SC 3793 : 2022 SCC Online SC 1019***, while considering the issue of multiple dying declarations, their Lordships have held as under:-

“9. It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

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20. We therefore find that in the facts and circumstances of the present case, the first dying declaration (Ex. DO/C) will have to be considered to be more reliable and trustworthy as against the second one (Ex. PE). In any case, the benefit of doubt which has been given to the other accused by the trial court, ought to have been equally given to the present appellant when the evidence was totally identical



against all the three accused.”

31. In addition to this, a Constitution Bench of the Supreme Court in the matter of *Laxman v. State of Maharashtra*, reported in (2002) 6 SCC 710 has clearly held that 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. Their Lordships held in paragraph 5 of the report as under: -

“5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur v. State of Punjab* [(1999) 6 SCC 545] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma v. State of A.P.* [(1999) 7 SCC 695] (at SCC p. 701, para 8) to the effect that

"in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the



patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in *Paparambaka Rosamma* (supra) must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat* [(1999) 9 SCC 562].

32. The Supreme Court in the matter of ***Jagbir Singh v. State (NCT of Delhi)***, reported in **(2019) 8 SCC 779** following the principle of law laid down in ***Laxman*** (supra) has clearly held that even absence of the certificate by a doctor is not fatal to act upon a dying declaration, however, the requirement remains that the person who records dying declaration must ensure that the patient was in a fit condition, both mentally and physically, to give the declaration.
33. Returning to the facts of the present case in the light of principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that before recording the dying declaration of Geeta Yadav (deceased), she was certified by Dr. Deepika Sinha (PW-6) that she (deceased) is capable to give dying declaration. Thereafter her (deceased) dying declaration (Ex.P-25) has been recorded by the Executive Magistrate Anjali Sharma (PW-13) in which she has clearly state that it is the appellant – Ajay Verma who set her ablaze on fire after pouring kerosene oil on her body. While examination of Dr. Deepika Sinha (PW-6) before the trial Court, neither



the prosecution nor the defence has put any question to this witness regarding whether the deceased Geeta Yadav was in a fit condition to give statement or not. The contention of learned counsel for the appellant that in the statement of the Executive Magistrate, Anjali Sharma (PW-13), that the Doctor Dipika Singh was not present but had opined that the deceased could give her dying declaration, and put her signature, itself shows that the said declaration is forged one as the Doctor was not present. The aforesaid contention is noticed to be rejected as firstly, it appears to be merely typographical mistake as the name of the Doctor is Deepika Sinha which has been mentioned as Dipika Singh in the statement made before the Court. Further, from perusal of the dying declaration, it is apparently clear that there is signature of the said Doctor which is indicative of the fact that she was present when the dying declaration was recorded and she had given her opinion that the deceased was fit to give her dying declaration. The further contention of the learned counsel for the appellant that when the entire body of the deceased was covered with the bandage, except head and face, how her thumb impression could have been obtained and the thumb impression on the dying declaration is also not of the deceased, is also noticed to be rejected as there is no specific mention as to whether the entire palms including the thumb were also covered with bandage. Nothing has been extracted from the statements of Dr. Deepika Singh (PW-6) & Executive Magistrate Anjali Sharma (PW-13) to hold that the deceased was not in fit physical and mental state of mind to give dying declaration and she (deceased) had not given any



dying declaration. The statement given by the Executive Magistrate cannot be disbelieved as he is a Government Officer and has no vested interest in either of the parties. Even there is no suggestion as to why the Executive Magistrate would have deposed falsely against the appellant. As such, there is sufficient evidence available on record to believe that the dying declaration has been given by Geeta Yadav (deceased) and her dying declaration (Ex.P-25) is true and voluntary.

34. Further the contention of learned counsel for the appellant that firstly, the deceased was taken at Government Hospital, Balodabazar, from where she was taken to Medical College Hospital, Raipur and then she was taken to D.K.S Super Specialty Burn Centre, but no where any report or intimation was given before any of local Police Station regarding the incident, creates suspicion. For the sake of argument, even if the aforesaid fact is taken to be true, that would not make any much difference as the deceased had sustained 96% burn injuries and looking to her condition, it is possible that those Hospitals might have referred the patient in order to avoid any delay in providing the deceased better treatment at a higher centre, without informing the police authorities. When the life of the patient is at a high risk, the first and foremost thing that is to be done is to save the patient anyhow and to do all the other formalities later. There is no disagreement with the ratio laid down by the Apex Court in the judgments relied upon by learned counsel for the appellant – Ajay Verma, however, they are distinguishable on the facts of the present case.



35. Moreover, on the basis of memorandum statement of accused Ajay Verma in the case, seizure of mobile phone and on the basis of memorandum statement of Amanchand Routiya, confiscation of an empty bottle of kerosene from the building near place of incident, a pair of red slippers of deceased Ganga Yadav and a black fullshirt used in cleaning the incident spot, have been proved by the evidence of prosecution witnesses Mahesh Verma (PW-4) and Devcharan Dhruva (PW-7). Thus, on the basis of the memorandum of the accused, it has been proved that the property has been recovered. The burnt clothes of the deceased, which were seized as per the seizure sheet (Ex.P-18), have also been proved. The copy of the handwriting of the deceased in which she had written 'Ajay Verma' has been proved to be in her handwriting and as per the report of the State Forensic Science Laboratory (Ex.P-39), Ganga Yadav's clothes (Article-A), plastic bottle (Article-B) and old black colored fullshirt used for mopping the incident spot were found to have kerosene and its fraction.
36. In that view of the matter, we are of the considered opinion that the trial Court has rightly held that it is the appellant – Ajay Verma who is the author of crime in question relying upon the dying declaration (Ex.P-25) made by Geeta Yadav (deceased) before Executive Magistrate Anjali Sharma (PW-13) after getting fitness certificate by Dr. Deepika Sinha (PW-6) that she is capable to give statement and the accused/appellant – Amanchand Routiya was found to be guilty for helping the accused – Ajay Verma in destroying the evidence.



Consequently, we do not find any infirmity in the impugned judgment of conviction and order of sentence in convicting the accused – Ajay Verma for offence under Section 302, 201/34 of the IPC for committing murder of Geeta Yadav and destroying of evidence and /appellant – Amanchand Routiya for offence under Section 201/34 of IPC for destroying of evidence.

37. For the foregoing reasons, both the criminal appeals are **dismissed**. The appellant – **Ajay Verma** is in jail, he shall serve out the remaining sentence as ordered by the concerned trial Court.
38. Appellant - **Amanchand Routiya** is on bail. His bail bonds stand cancelled and sureties discharged. He shall surrender within a period of three weeks from today, failing which he shall be taken into custody to serve out the remaining sentence as has been awarded by the learned trial Court.
39. The trial Court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Judgment Date : 15/07/2024



Head – Note

If the dying declaration has been recorded in presence of the Executive Magistrate after the Doctor holding the patient to be fit for giving the statement, reliance can be placed upon the same.

यदि डॉक्टर द्वारा मरीज को बयान देने के लिए फिट मानने के बाद कार्यकारी मजिस्ट्रेट की उपस्थिति में मृत्युपूर्व बयान दर्ज किया गया है, तो उस पर भरोसा किया जा सकता है।