

GAHC010161222019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./287/2019

SMT. MONI MAZUMDAR @ CHAMPA
W/O- SURYA KANTA MAZUMDAR, R/O- VILL.- DAKHIN RADHANAGAR,
P.S. AND DIST.- HOJAI, ASSAM.

VERSUS

STATE OF ASSAM AND ANR
REP. BY P.P., ASSAM.

2:SRI SANJOY PANDIT
S/O- LATE PRAFULLA PANDIT
R/O- VILL.- RADHANAGAR
P.S. AND DIST.- HOJAI
ASSAM
PIN- 782429

Advocate for the Petitioner : MR. I A TALUKDAR

Advocate for the Respondent : PP, ASSAM

Linked Case : CRL.A(J)/15/2020

MOHAN BISWAS
S/O. DAHINDRA BISWAS
R/O. DAKHIN RADHAANGAR
P.S. AND DIST. HOJAI
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MR A TIWARI (AMICUS CURIAE)
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 15-12-2023

JUDGMENT & ORDER (CAV)

[Kardak Ete, J]

Heard Mr. A. Tiwari, learned Amicus Curiae. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam.

2. This appeal is preferred by appellant Sri Mohan Biswas, from Jail, assailing the judgment and order dated 10.06.2019 passed by the Additional Sessions Judge, First Track Court, Hojai in Sessions Case No.16 (N)/2017 by which the appellant along with two others, namely – Smti. Moni Mazumdar @ Champa Mazumdar and Smti. Shyamoli Biswas have been convicted under Section 302 of the Indian Penal Code, 1860 for committing the murder of deceased Rubi Pandit and sentenced to undergo Rigorous Imprisonment for life and a fine of Rs.20,000/- (Rupees twenty thousands) only each and in default, to suffer Simple Imprisonment for four (4) months. The accused persons have also been sentenced to undergo Rigorous Imprisonment for one (1) year for the offence under Section 448 of the Indian Penal Code, 1860. The sentences to run concurrently.

3. The case set up by the prosecution, in brief, is that an ejahar was lodged by one Sanjay Pandit (PW1) on 18.08.2014 at 5:00 P.M., alleging that on 18.08.2014 at around 8:30 A.M.,

there was a quarrel between the accused persons and his sister-in-law (deceased Rubi Pandit) regarding laying eggs of a hen. Subsequently, the accused persons, in absence of his brother, entered into the house of the victim Rubi Pandit and set her ablaze by pouring kerosene oil. In order to save her life, his sister-in-law (deceased Rubi Pandit) jumped into a nearby pond. Upon hearing deadly scream, the neighboring people came to the place of occurrence and lifted her from the pond and took the victim to Jugijan PHC for treatment and thereafter, the attending Doctor referred the victim to the Gauhati Medical College and Hospital (GMCH) for better treatment, where she breathed her last. The informant also stated that his sister-in-law (deceased Rubi Pandit) has stated the names of the accused persons before the Doctor and the Police.

4. On receipt of the said ejahar, an FIR was registered being the Hojai Police Station Case No.400/2014, under Sections 448/302/34 of the Indian Penal Code, 1860. The dying declaration of the victim was recorded by the attending Doctor. The Investigating Officer recorded the statement of the witnesses. The accused persons were interrogated by recording their statements. Accused Smti. Shyamoli Biswas confessed her guilt at the time of examination and forwarded all the accused persons to jail custody.

5. On 19.08.2014, the Investigating Officer got the information about the death of victim Rubi Pandit at Guwahati. The Investigating Officer also recorded the statement of the witnesses, namely, Pijush Pandit, Smti Sikha Pandit, UBC Ajit Barman and GNM M. Gita Devi, who were present at the time of recording the dying declaration of the victim Rubi Pandit. The Investigating Officer collected the copy of the dying declaration as well as the post mortem report and after completion of the investigation, the Investigating Officer has filed the charge sheet against the accused persons, namely, Smti. Moni Mazumdar @ Champa Mazumdar, Sri Mohan Biswas and Smti. Shyamoli Biswas, under Sections 448/302/34 of the Indian Penal Code, 1860 on 19.11.2014.

6. The Judicial Magistrate, First Class at Hojai committed the case for trial to the Court of Sessions, Nagaon, who subsequently transmitted to the Additional Sessions Judge, First Track Court, Hojai.

7. On appearance of the accused persons based on the Charge sheet, charges under

Sections 448/302/34 of the Indian Penal Code, 1860 were framed against the accused persons and the contents of the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The matter went up for trial.

8. During the course of trial, the prosecution has examined in all thirteen (13) witnesses. The statement of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 were also recorded. The defence plea is of total denial and no evidence has been adduced by the accused persons. The learned Additional Sessions Judge, First Track Court, Hojai, after careful assessment of evidence on record in its entirety concluded that the prosecution could prove the offences under Sections 448/302 of the Indian Penal Code, 1860, beyond all reasonable doubt against the accused persons, namely - Smti. Moni Mazumdar @ Champa Mazumdar, Sri Mohan Biswas and Smti. Shyamoli Biswas by holding that in furtherance of their common intention, the accused persons entered into the dwelling house of the victim, committed an offence and thereafter intentionally caused death/murder of the victim Rubi Pandit by setting fire by pouring kerosene oil on her body. Therefore, held that the accused persons are guilty of the offence under Sections 448/302 of the Indian Penal Code, 1860 and convicted and sentenced them, as mentioned here-in-above.

9. Mr. A. Tiwari, learned Amicus Curiae, submits that the learned Trial Court has failed to appreciate the evidence available on record in its proper prospective and thereby erred in coming to the conclusion that the present appellant was involved in the commission of the offence charged with.

10. Mr. A. Tiwari, learned Amicus Curiae, after taking this court through the entire depositions and evidence on record put forwarded the following submissions:-

- (i) The learned Trial Court did not appreciate the evidence on record in its proper prospective in as much as the PW-1/informant corroborated the statements of PW-2, PW-3, PW-5 and PW-6 that from this appellant (Mohan Biswas) the PW-2 and PW-3 took gamusa and covered her private parts, the learned trial court overlooked the statement of the PW-1, wherein this witness stated that when he informed in the police station, the police came and took her statement, however the PW-12, ASI

Subarna Das had stated in his cross that when he reached the place of occurrence he found the injured person in the auto rickshaw in front of the house of the deceased on the road at a distance of 100-150 meters from the house of the deceased. The PW-1 in his cross examination had specifically stated that he did not talk with his sister in law on the bank of the pond and the learned trial court overlooked the statement of this witness and thereby relied on the statements of PW-2 and PW-3 stated in their statement u/s. 161 before the I/O and since this witness did not state that the victim shouted "jolale, jolale, jolale" for which the prosecution declared them as hostile.

(ii) The learned Trial Court manifestly committed error in holding PW-2 as hostile in as much as the other independent witness PW-5, PW-6 had also not stated that, while the victim was taken out from the pond she made any hue and cry stating "jolale jolale jolale" by the accused persons.

(iii) The learned Trial Court manifestly committed error in holding PW-3 as hostile in as much as the other independent witness PW-5, PW-6 had also not stated that while the victim was taken out from the water she made any hue and cry stating "jolale jolale jolale" by the accused persons.

(iv) The learned Trial Court committed gross irregularity and illegality at the time of appreciating the evidence of PW-4 i.e. Dr. K.J. Choudhury, the witness who treated the victim and took the dying declaration, the appellant states that as per Exhibit-3 being the medical report submitted by this witness. In the said medical report, this Doctor had not stated that he took dying declaration of the victim after the victim was brought to the hospital rather this witness in his medical report had stated that the victim was "Only Escorted by C/504 Ajit Barman of Jugijan Police. The Doctor further in his medical report had stated that the victim was conscious and responding to our question and she was almost 98-99% burnt and burnt is deep and thereafter this Doctor concluded his medical report that after giving first aid I have referred the case to GMCH.

(v) The learned Trial Court committed gross irregularity in believing the Exhibit-4 being prior to that he had stated that as per police requisition received from i/c Jugijan

P.P. under Hojai P.S. that Dr. Khaliqz Zaman Choudhury Jugijan P.O. have recorded the dying declaration of Smt. Ruby Pandit, 36 years w/o of Sri Pijush Pandit of Hojai on 18.08.14 in presence of Ajit Barman, Sikha Pandit, Pijush Pandit, this witness did not name the fourth being the PW-10 Geeta Devi being present at the time of recording the dying declaration. The learned Trial Court also committed error in relying in the statement of PW-7, PW-8 Pijush Pandit, allegedly said to be witness No. 3 in the dying declaration in as much as the PW-12, in his cross examination have specifically stated that "the husband of the deceased was not present at the time of the treatment given at Jugijan."

(vi) The learned Trial Court also committed error in relying the statement of PW-10 in as much as, as per the Dying Declaration, the said witness was not present while the victim made her Dying Declaration and as such the credibility of this witness cannot be trusted when the recorder disputes (Dr. K.Z. Choudhury PW-4) his presence at the time of recording the statements.

(vii) The learned trial court manifestly committed error in ignoring the evidence of PW-7 who was also a witness to the Dying Declaration and this witness in his chief as well as in cross examination stated that he along with Nipen Saikia went to the hospital however Nipen Saikia being PW-11 have stated in his evidence that he did not visit the hospital and the doctor in his medical report being Exhibit-3 has also stated that being the victim was only escorted by constable Ajit Barman PW-7, the learned trial court overlooked the cross of PW-7 the witness to the Dying Declaration who had categorically stated in his cross "the women was in a speechless state "I did not understand what she had said. I did not see whether her husband was present or not" "I put my signature when the doctor asked me to do so". I do not know whether the injured put her signature on the dying declaration or not.

(viii) When all the witnesses to the Dying Declaration did not corroborated each other's statements and when major discrepancies such as presence of witness Pijush Pandit, Geeta Devi is found doubtful at the time of recording the Dying Declaration, then such a declaration cannot be accepted. Further one of the witness to the dying declaration namely Sikha Pandit was not even examined by the prosecution. The

appellant further states that PW-7 states that the victim was in a speechless state and he did not understand what she said in those circumstances the dying declaration does not deserve any credibility and ought not to have been relied on to convict the accused to the offence charged with.

(ix) Further the Hon'ble Supreme Court have held that a patient with 98%-99% burn injury and if he is injected with pain killer/other medicines then it is presumed that the victim would be in an unconscious state.

11. In support of his submissions, Mr. A. Tiwari, learned Amicus Curiae, has placed reliance of the following case laws:-

(i) **Sampat Babso Kale & Anr. vs. State of Maharashtra**, reported in **(2019) 4 SCC 739**, wherein the Hon'ble Supreme Court has observed which is reproduced here-in-below:

“14. No doubt, a dying declaration is an extremely important piece of evidence and where the court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the court can convict the accused only on the basis of a dying declaration. We need not refer to the entire law but it would be apposite to refer to the judgment of this court in the case of Sham Shankar Kankaria v. The State of Maharashtra, [(2006) 13 SCC 165] held as follows :

“11. 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 deceased was not as a result of either tutoring or prompting or a produce 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....”

(ii) **Jayamma & Anr vs. State of Karnataka**, reported in **(2021) 6 SCC 213**, the Hon'ble Supreme Court has observed which is reproduced here-in-below:

“14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex-P5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.”

12. It is further submitted by Mr. A. Tiwari, learned Amicus Curiae that in the case of **Sham Shankar Kankaria v. State of Maharashtra**, reported in **(2006) 13 SCC 165**, it was restated that the dying declaration is only a piece of untested evidence and must any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it absolutely safe to act upon it. Further, relying upon the decision in **Paniben v. State of Gujarat**, reported in **(1992) 2SCC 474**. In para 15 and 16, the Hon'ble Supreme Court held as under:

“15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and it Clause (1) makes the statement of the deceased admissible. Such statement, classified as a “dying declaration” is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premises that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

16. We may also take note of the decision of this court in the case of Surinder Kumar (Supra). In the said case, the victim was admitted in hospital with burnt injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95-97 per cent burn injuries. Thereafter, it was noted that “at the time of recording the statement of the deceased no endorsement of the doctor was made about her position to make such statement,” and only after the recording of the statement did the doctor state that the patient was conscious while answering the questions, and was “fit to give statement.” This

court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.”

13. In the case of **Poonam Bai vs. State of Chhattisgarh**, reported in **(2019) 6 SCC 145**, the Hon’ble Supreme Court has held which is reproduced here-in-under :-

“10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemish less and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence,. To be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires the full confidence of the court.”

14. Mr. A. Tiwari, learned Amicus Curiae submits that the learned trial court ignored the evidence of PW-5 in as much as this witness in his chief had only stated that Nitendra Bhomick and Biren Hira only lifted the victim from the pond, the victim requested the persons to throw her in water again, this independent witness did not corroborated 161 statement of Nitendra Bhomick and Biren Hira that the victim stated that the accused persons have burnt the victim and in the cross the victim stated that “ the woman the victim was not in the state of speaking.” He further submits that the learned trial court also committed gross irregularity and misread the evidence of PW-6 who in his chief had stated that when he rushed to the bank of the pond he saw a women lying on the pond and PW-2. PW-3 lifted the woman, this witnesses also corroborated the statement of PW-5 that the woman was in an unconscious state when she was lifted from water. Learned counsel, Mr. Tiwari submits that the learned

trial court has committed gross mistake and wrongly came to the conclusion that PW-7 has corroborated the Dying declaration in as much as this witness had stated in the cross examination that the "the women was in a speechless state" I did not understand what she had said" I did not see whether her husband was present or not" "I put my signature when the doctor asked me to do so" I do not know whether the injured put her signature on the dying declaration or not.

15. Further, it is contended by Mr. A. Tiwari, learned Amicus Curiae that the learned trial court ignored the evidence of PW-7 who was also a witness to the Dying Declaration and this witness in his chief as well as in cross examination stated that he along with Nipen Saikia went to the hospital however Nipen Saikia being PW-11 have stated in his evidence that he did not visit the hospital and the doctor in his medical report being Exhibit-3 has also stated that the victim was only escorted by constable Ajit Barman PW-7, the learned trial court overlooked the cross of PW-7, the witness to the Dying Declaration who had categorically stated in his cross that the woman was in a speechless state" I did not understand what she had said "I DID NOT STATE WHETEHR HER HUSBAND WAS PRESENT OR NOT" 'I PUT MY SIGNATURE WHEN THE DOCTOR ASKED ME TO DO SO" I DO NOT KNOW WHETHER THE INJURED PUT HER SIGNATURE IN THE DYING DECLARATION OR NOT.

16. Mr. A. Tiwari, learned Amicus Curiae further contends that the trial court committed gross irregularity in believing the PW-9 in as much as per the statement of PW-12 ASI Subarna Kumar Das the husband was not present at the hospital when the victim was given treatment and as such the presence of this witness at the hospital at the time of recording the dying declaration remains doubtful and as such evidence of this witness is not credible. He further submitted that the learned court below committed gross irregularity in relying the evidence of PW-9 neither this witness is eye witness to this incident and in the chief this witness has stated that he went and picked up Ruby Pandit and laid her on a banana leaf and however as per the statement of PW-2, PW-3 corroborated by PW-5. PW-6, it was only PW-2 & PW-3 who had lifted the victim from the pond. This witness in the cross have stated that her face was not completely burnt however PW-7 in his cross have stated that I have seen burnt injuries on her fact and PW-13 the doctor who conducted the post mortem have stated in the injury column that burnt injuries were there on the face and neck and as such this

witness credibility remains to the doubtful further this witness have stated that Ruby Pandit gave her statement in the hospital the presence of the witness in the hospital have not been corroborated by any of the witness. The appellant also argued that the learned trial court committed gross mistake and further went on to rely on the evidence of PW-10 being the Nurse in as much as the first part of the Dying declaration which as recorded by PW-4 prior to writing of the dying declaration had stated that the name of Ajit Barman, Pijush Pandit and Sikha Pandit only present at the time of recording dying declaration however the doctor did not name PW-10 nurse being present at the time of recording the dying declaration and further this witness PW-10 in her cross have also corroborated the first part of the dying declaration that "I cannot say who did write her statement. I put my signature after writing, I have forgotten who did tell me to put my signature. I did not notice who did take her thumb impression, this statement made in the cross by the PW-10 corroborates the portion of the dying declaration where it was written that the dying declaration was written in the presence of 3 (three) witnesses in as much as this witness had rightly stated that who did write her statement and took her thumb impression she did not notice, which indicates that she was not present at the time of recording the dying declaration.

17. It is further submitted by Mr. A. Tiwari, learned Amicus Curiae that the evidence of PW-11 is not that credible in order to sustain the conviction of the appellant in as much as this witness has stated in the cross he has submitted the charge sheet basing on the investigation of ASI Subarna Das and partly on his own and as such his evidence is not credible.

18. Mr. Tiwari, learned Amicus Curiae further submits that the learned trial court while passing judgment has ignored the report of PW-13 in as much as PW-13 has also corroborated the medical report of PW-4, that the victim was 95%-99% burnt and this witness in the cross had correctly stated that he cannot say that after sustaining such kind of injuries how long would be survived. It is further contended that the discrepancies which have been highlighted hereinabove would show that the dying declaration was nothing but an manufactured document in order to put the appellants behind the bar in as much as the witnesses to the dying declaration have not corroborated each other's statement and it is crystal clear that thumb impression of the victim in the dying declaration was taken at an unconscious state and that the victim never gave any dying declaration in the hospital, the

said aspect of the dying declaration being a manufactured document also attains no weightage when the doctor in the medical report (Exhibit-3) does not speak about recording of the dying declaration and the doctor (PW-4) withheld the medical prescription/ medicines which he administered to the victim while she was admitted in the hospital knowing fully well that if the medicines/ injections which were given to the victim at the hospital would evidently prove that the victim was at an unconscious state after being provided with such medicine.

19. Mr. A. Tiwari, learned Amicus Curiae submits that in present case, the prosecution has failed to prove the case beyond reasonable doubt and the evidence of the witnesses which have been mentioned herein above also demonstrates a crystal clear picture that the prosecution has failed to prove the case beyond reasonable doubt as the prosecution has miserably failed to bring out any single evidence to implicate the appellant being involved in the commission of the offence charged with. The appellant in his statement recorded under Section 313 of Code of Criminal Procedure, 1973, had specifically stated that after coming from paddy field, he saw the victim in burnt condition and from his head Sanjay took his gamucha and covered her private parts. The appellant had denied all other questions, which were put forward by the learned Trial Court.

20. In view of the above, Mr. A. Tiwari, learned Amicus Curiae prays that the appellant may be acquitted from the charges labelled against him and be set at liberty forthwith.

21. Per contra, Ms. B. Bhuyan, learned Additional Public Prosecutor, has argued that PW-1, namely Sanjay Pandit, is the brother-in-law of the victim and informant of the case and before whom oral dying declaration was made by the victim Rubi Pandit. PW.1, had stated that "when we asked her she said that Mohan, Shyamoli and Moni Mazumder set her ablaze". According to PW.1, at the time of the incident, the husband of the deceased was at Hojai. PW.1 stated in his examination-in-chief that taking a gamucha from Mohan, he covered the private parts of the victim. He had also stated in his cross-examination that he met Mohan, Nitendra (PW.2) and Biren Hira (PW.3).

PW.2 was declared hostile, who denied that he had stated before the police that after lifting from water, the woman had told "Mohan, Shamna and Moni set me on fire".

PW.3 namely Biren Hira, who had also been declared hostile has denied in his cross-

examination that, "I stated before police that later when people gathered, Mohan, Shamna and Moni fled away".

PW.4 is the most crucial witness to the prosecution case, before whom the victim was taken for treatment immediately after the occurrence had taken place. PW.4 had deposed before the Court that on 18.08.2014, while he was working as Senior Medical and Health Officer, he examined the injured person Rubi Pandit on the basis of police requisition of Jugijan P.P. The injured person was indentified and escorted by constable/504 Ajit Barman of Jugijan P.P. and he found Rubi Pandit was responding to his questions and she was having 98% to 99% deep burn injury. After giving first-aid treatment at Jugijan PHE, he referred the victim to GMCH. At the time of examination of the victim, he recorded the dying declaration of the victim, as she was found willing to give the statement. And she was found capable of giving statement/declaration. As per her declaration, persons namely, Mohan Biswas, Shyamoli Biswas and Moni Mazumdar set her ablaze by pouring kerosene by entering into her house on 18.08.2014 at 8.00 A.M. According to PW.4, he obtained the thumb impression of the victim woman. In his cross-examination he stated that at the time the victim was found talking with other persons. At the time of recording the dying declaration, the hospital staffs and three witnesses were present. He questioned the victim. He did not interfere the victim when she was telling the fact. As the victim could not move her hand, so he held her hand to put her thumb impression in the declaration. In his cross-examination he has stated that he did not sign after endorsing thumb impression, he recorded the dying declaration immediately after the patient was admitted into the hospital.

PW.5 namely Ratish Sarkar, has deposed that he heard shouting of Mohan Biswas saying that one person has fallen down in the pond. In his cross-examination he has stated that the husband of the deceased was not at home.

PW.6 namely, Bikash Sarkar, in his examination-in-chief has deposed that accused Mohan Biswas on the day of occurrence at around 8.00 to 9.00 A.M. shouted saying that someone had felled down in the pond. In his cross-examination he stated that the husband of the victim had gone out from house about half an hour before the occurrence took place. In his cross-examination, he has further deposed that it is not a fact that the woman had not said anything and that she was not in a state of speaking.

PW.9 namely, Ajit Barman has deposed that he does not know the accused persons and he knew the complainant since after the case. He deposed that on 18.08.2014 he was working at Jugijan P.P. and he along with the I.O. Nipen Saikia went to Jugijan Hospital. He deposed that the Doctor recorded the statement of the injured person in front of him and he was present at the time of recording the statement. He has deposed that victim woman had named accused Moni Mazumder and two other names of the accused persons. The victim said that they set her on fire. He has also deposed that the Doctor took her signature after recording her dying declaration. He has reiterated that Nipen Saikia (the I.O.) and he went to the hospital.

PW.8 is the husband of the deceased, had deposed that on the day of occurrence he went out for his work after taking meal. After getting information that the condition of his wife is critical, PW.8 came home and saw burn injury on her person. According to him, his co-villagers came and took her to Jugijan hospital. When the victim was asked, she said that at the time of occurrence, Shyamali was stealing egg and when she was caught, the accused persons came and set her on the fire by pouring kerosene oil inside his house and the accused said that "if you want to save yourself jump into the pond". He had also deposed that the Doctor wrote the statement and took his signature. In his cross-examination he had stated that after receiving of the information, he along with his helper came to his house by riding a Motor-cycle.

PW.9 is the VDP secretary namely Madhu Sudhan Chakravarty and in his examination-in-Chief he deposed that when the Doctor at Jugijan Hospital asked, Rubi the (victim) had said that the three accused persons set her on fire. In cross-examination, he has deposed that when he went, Rubi was in a state of speaking.

PW.10 namely, Ms. M. Gita Devi who was working as Staff Nurse (G.N.M) at Jogijan P.H.C., wherein the victim gave dying declaration before the Doctor i.e. PW.4 deposed about recording of dying declaration by PW.4 and giving her signature in the dying declaration. PW.10 has also deposed that the victim was in a state of speaking when she was taken to the hospital and that the victim had deposed that 2/3 persons entered into her house and set her on fire by pouring kerosene oil. She had also deposed that the utterance of the victim were intelligible.

PW.11 is the Investigating Officer of the case and during the relevant time he was working as the In-Charge of the Jugijan P.P. PW.11 made the G.D. Entry No. 309 dated 18.08.2014 at 4 P.M. PW.11 also deposed that A.S.I. Subarna Das had also made one G.D. entry being the G.D. Entry No. 304, dated 18.08.2014 after getting verbal information. In his cross-examination he has stated that he lodged the F.I.R. at 5 P.M. on 18.08.2014.

PW.12 during the relevant time was working at Jugijan P.P., as A.S.I. has deposed that he made the G.D. Entry No.304 on 18.08.2014, on the verbal information received by him from the V.D.P. Secretary Madhu SUDhan Chakraborty. He deposed that he arrived at the place of occurrence and found the victim Rubi Pandit in a critical condition. He made necessary arrangement to sent the victim to Jugijan P.H.C. for her treatment. PW.12 prayed the doctor of Jugijan P.H.C. to record the dying declaration of the victim who was in a very critical condition. He again visited the place of occurrence at 11:00 A.M. and drew rough sketch of the place of occurrence and seized some articles like a gallon of kerosene, a bed sheet partially burnt. He prepared the seizure list after seizing the articles in presence of witnesses. He also recorded the statement of witnesses. After getting information that the accused persons tried to flee away and they were detained by local public, he along with lady constable apprehended them. In his cross-examination, he had deposed that while he visited Jugijan P.H.C., two constables, namely Dipak Das and Ajit Barman (PW.7) went with him.

PW.13 is the Doctor who did autopsy over the body of the deceased, deposed that 95% to 98% of the body of the deceased was burnt.

22. Ms. B. Bhuyan, learned Additional Public Prosecutor, submits that prosecution case is based on the dying declaration made by the deceased which is recorded by the treating Doctor (PW.4) which is completely credible, reliable and trustworthy. The victim also made oral dying declaration before the PW.1 and PW.8.

23. Ms. B. Bhuyan, learned Additional Public Prosecutor submits that the Doctor who recorded the dying declaration, scrupulously followed all the requirement/formalities while recording dying declaration. According to PW.4 he found the victim in a conscious state and responding to their questions. He took signature of constable PW.7 and PW.8 along with another Sikha Pandit who was present at the time of recording the dying declaration and

PW.7, PW.8 and PW.10 along with one Sikha Pandit were witnesses and put their signatures in the dying declaration. In his substantive evidence the PW.4 has deposed that at the time of examination of the victim, he recorded the dying declaration as the victim was found willing to give the statement and also she was found capable of giving the statement. He reiterated whatever the victim has declared in her dying declaration. He deposed that he obtained thumb impression of the victim on the declaration and he also endorsed the thumb impression. He deposed that at the time of recording the dying declaration, the Hospital Staffs and 3 (three) witnesses were present. As the victim could not move her hand, so he held her hand to put the thumb impression on the declaration. But in cross-examination he deposed that after endorsing thumb impression he did not sign it. The victim also made oral dying declaration before the PW.1 and PW.8. PW.8 who is the husband of the victim has deposed that in her oral dying declaration, the victim told him that at the time of the occurrence Shyamoli was stealing eggs and when she was caught, the accused persons came and set her on the fire by pouring kerosene inside their house and accused said, "if you want to save yourself jump into the pond." PW.2 and PW.3 although declared hostile, they were cross-examined by the prosecution and in their cross-examination, PW.2 has stated before the Police, "after lifting from water, the woman had told screaming, Mohan, Shyamali and Moni set on fire' and shouted." PW.3 who is also declared hostile and was cross-examined by the Prosecution has stated that he had not stated before the police, "After lifting from water the women has told, 'Mohan, Shamna and Moni set me on fire".

24. Ms. B. Bhuyan, learned Additional Public Prosecutor, submits that the Investigating Officer who has recorded the statement of PW.2, has deposed that PW.2 has stated before him that the victim was making outcry by shouting that "*Jolale Jolale Jolale*" by Shyamali, Mohan and Moni. He has also reiterated that PW.3 has also stated before him that after recovery of the victim from water she was screaming that Mohan, Shyamali and Moni burnt her. Thus, taking into account the statement of PW.1, PW.2, PW.3 and PW.8, it could be enunciated that before those witnesses the victim made oral dying declaration.

25. Ms. B. Bhuyan submits that although there was no previous enmity which is discernible from the prosecution case, the motive to kill the deceased was because of the incident which was taken place due to stealing of eggs by Shyamoli and when she was caught, the accused

persons came and set her on fire by pouring kerosene oil. She submits that that residence of the accused persons are situated at the distance of 20—30 meters away from the place of occurrence in the North, whereas the residence of accused Champa is situated approximately 15—20 meters away from the place of occurrence in the South.

26. She submits that taking into account the entire materials on record, there is no infirmity in the prosecution case and it is respectfully submitted that the accused persons set the victim on fire at the place of occurrence by pouring kerosene oil. The incident has taken place due to stealing of eggs by accused Shyamoli. The dying declaration suffers from no infirmity and was made by the maker with truthfulness. There is nothing to disbelieve the dying declaration made by the deceased prior to her death. The grounds of admission are, firstly, necessity for the victim being generally the only principal eye witnesses to the crime; the exclusion of the statement might deflect the ends of justice and secondly, the sense of impending death which create a sanction equal to the obligation of an oath. When the party 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 is induced by the most powerful considerations to speak the truth the situation so obligation equal to that which is imposed by a positive oath administered in a court of justice and as such considering the materials on records, she prays that conviction and sentenced by the learned Additional Session Judge, Fast Track Court, Hojai in Session Case No. 6 (N)/2017 vide the Judgment dated 10.06.2019 be upheld.

27. Ms. B. Bhuyan, learned Additional Public Prosecutor, in support of her submissions, has placed reliance upon the following decisions of the Hon'ble Apex Court:

- (i) **Sree Vijayakumar & another Vs State by Inspector of Police, Kanyakumari**, reported in **2005 (10) SCC 737**;
- (ii) **Rambai Vs. State of Chhattisgarh** reported in **2002 (8) SCC 83**;
- (iii) **Muthu Kutty & Another Vs. State by Inspector of Police, Tamil Nadu**, reported in **2005 (9) SCC 113** &
- (iv) **Ravi & Another Vs. State of Tamil Nadu**, reported in **2004 (10) SCC 776**.
- (v) **Umesh Vs. State of Maharashtra** reported in **2007 (15) SCC 393**, and

(vi) **Yanob Sheikh alias Gagu Vs. State of West Bengal**, reported in **2013 (6) SCC 428**.

28. We have considered the submissions advanced by the learned counsel for the parties and also carefully examined the evidence on record.

29. To appreciate, we would refer to the depositions of PWs.

30. PW-1, Sanjay Pandit, the informant of this case, had deposed that the occurrence took place on 18/08/14 at about 8:30/9 A.M. Upon hearing screaming of victim Rubi Pandit, he immediately rushed to the place and found the victim, Rubi Pandit in the bank of a pond in burnt and naked condition. He covered her private parts by taking a "Gamucha" from one accused Mohan. Upon asking the victim Rubi Pandit told him that, accused Mohan, Shyamoli and Champa @ Moni Mazumder burnt her. Victim Rubi was his brother's wife. After sometime, Police came to the place of occurrence and recorded the statement of victim. As per direction of police, they took the victim to Jugijan Hospital for treatment but she was referred to G.M.C.H. but the victim died on the way to Guwahati. Police seized a Gallon of kerosene, a burnt bedcover, ashes of cloths and plastics from the house of victim Rubi Pandit. He put his signature in the seizure list. He lodged Ejahar on the day of occurrence and exhibited his Ejahar as Ext.-1 and Ext.-1(1) is his signature. Ext.-2 is the seizure list and Ext.- 2(1) is his signature. Accused persons are neighbours of the victim Rubi Pandit.

31. PW-6, Bikash Sarkar, had deposed that the occurrence took place about 2 years ago at about 8/9 A.M. in the morning. Accused Mohan Biswas was shouting that a lady was fallen down in the pond. He went there and saw that a lady was in the pond. Then Nitindra and Biren Hira recovered the victim. She was burnt and was in an unidentified condition. She was the wife of Pijus Pandit and later on she died. He heard that, the accused persons burned her and the same was told by the victim. PW-5, Rothish Sarkar, had deposed that the occurrence took place about 3 years ago at about 8 A.M. while he was getting ready to go for work, he heard shouting of Mohan Biswas that a lady has fallen down in the pond. Immediately, he rushed to the bank of the pond. In the meantime, one Nitindra Bhowmik and Biren Hira recovered the victim and brought out from pond to the bank. The victim was the wife of Pijus Pandit. Later on, she was taken to hospital. He saw burnt injuries over the body of the victim

and later on, she died. In the cross, they reiterated the same fact and stood firm on it. PW-9, Madhusudan Chakraborty, had deposed that the occurrence took place in the year 2014 at about 8:30 A.M. He was at his shop. At that time the nephew of Pijus Pandit came and informed him that, the victim was burnt. He went there and saw that the victim was in burnt condition and kept on a banana leaf. He informed the police. Police told them to take the victim to hospital and accordingly, they took the victim to hospital. Police came there and victim was referred to GMCH, but she died on the way. Upon asking by doctor, victim Rubi Pandit stated that all the three accused burned her.

32. PW-8, Pijus Pandit, husband of the victim, had deposed that the victim was his wife. The occurrence took place on 18/08/14 at about 8:30 A.M. On that day, he went out after taking meal for his daily work. In his work place, he was informed that, his wife is in critical condition for which he had to go to his house. He immediately came and saw the burnt injuries on the body of his wife. The villager took her to Jugijan hospital. In the hospital upon asking Rubi Pandit told him that, before the occurrence, accused Shyamoli was stealing an egg. After sometime, the accused persons entered into their house. The accused Shyamoli caught and hold her tightly and then other two accused took kerosene gallon from her house and poured on her body and set ablaze. The accused told the victim to jump into the pond if she wants to be alive. Doctor recorded her statement where he put his signature as witness. Ext.-4 is the dying declaration and Ext.-4(3) is his signature.

33. PW-2, Nitendra Bhowmik,(declared hostile) had deposed that the occurrence took place in the year 2014 at about 8 A.M. while he was going to collect grass, then he heard hue and cry in the bank of the pond. He went to the place of occurrence and Biren Hira and Rotish Sarkar also went there. Then he along with Biren Hira recovered the lady from the pond. Initially he could not identify the victim as she was totally burnt. Later on, he could identify that, she was the wife of Pijus Pandit namely Rubi Pandit. After recovery, the victim told them why they recovered her from the pond and let her be again thrown in the water. Later on, he left from the bank of pond. Similarly, PW-3, Biren Hira (declared hostile) had deposed that the occurrence took place about 2 years ago at about 8/8:30 A.M. in the morning. Mohan was shouting about falling of a person in the pond. Upon hearing hue and cry, he along with Nitendra went to the bank of the pond and both of them recovered the

victim lady from the pond. She told them to throw her back to the pond. The victim was in an unidentified condition. But later on, she was identified as Rubi Pandit the wife of Pijus Pandit.

34. PW-4, Dr. K. Jaman Choudhury, had deposed that on 18/08/14 he was working as Sr. Medical & Health Officer at Jugijan PHC. On that day he examined the injured person Smt. Rubi Pandit a 36 years old woman on the basis of police requisition of Jugijan P.P. The victim was identified and escorted by Constable 504 Ajit Barman of Jugijan P.P. During examination, victim Rubi Pandit was responded to question and she had 98 to 99% deep burnt injury. After giving first aid treatment at Juginan PHC, he referred the victim to GMCH, Guwahati. As per his opinion, the injuries were grievous in nature caused due to burnt. He exhibited the medical certificate as Ext.-3 and Ext.-3(1) is his signature. At the time of examination of the victim, he also recorded the dying declaration of the victim Rubi Pandit in presence of witness as she was willing to give her statement and was capable to give her statement/declaration. As per her declaration, the person namely Mohan Biswas, Shyamoli Biswas and Moni Mazumder set her ablaze by pouring kerosene by entering into her house at 8 A.M. on 18/08/14. He obtained the thumb impression of the victim on the dying declaration statement. He endorsed the thumb impression. Ext.-4 is the dying declaration of victim Rubi Pandit and Ext.-4(1) is his signature along with the endorsement note. PW-13, Dr. Aditya Madhab Barua stated in his evidence that, on 19/08/2014 Dr. Arun Mazumder Demonstrator of Forensic Medicine, G.M.C.H. Guwahati had conducted the Post Mortem over the dead body of Rubi Pandit a female body aged about 36 years in connection with Bhangagarh P.S. G.D. Entry No. 403 dated 19/08/14. The dead body was identified by the husband of the deceased, Pijus Pandit and constable Ajit Das. The findings and the contents of the P.M. reports are external appears female dead body average built covered with bed sheet. Eyes were closed. Mouth is opened. Red and white bangles present on both wrists. Smell of kerosene was present. Singeing of hairs were present. Rigor mortis was present and fully developed. Injuries:- Burnt injury present over the dead body as follows: 1. Face and neck. 2. Entire front of chest and abdominal wall. 3. Entire back of chest and abdominal wall. 4. Both upper limbs. 5. Both lower limbs sparing soles. 6. Genitalia. Epidermis of the burnt areas is peeled off at places. The burnt areas are congested. The burnt injuries are epidermal to dermo-epidermal in nature covering 95 to 98% of the total body surface area. Organs were

congested. He opined that death was due to shock as a result of ante-mortem burnt injuries sustained over the body as described. All the injuries were epidermal to dermoepidermal in nature causing 95 to 98 % of the total body surface area. Time since death was 12 to 24 hours. Exhibit-9 is the Post Mortem Report. In the cross, he deposed that no other external injuries were found except burnt injuries. About 95 to 98% of the body of the deceased was burnt. In the P.M. report, they have mentioned that smell of kerosene was found over the dead body. They have also mentioned that the face and the neck of the deceased were burnt. He has stated that he cannot say that after sustaining such typed of injuries how long she was surviving, but if she survives she could speak.

35. PW-7, UBC 504 Ajit Barman, had deposed that on 18/08/14, he was working at Jugijan P.P. as constable and on that day upon getting information that one lady Rubi Pandit admitted in burnt condition at Jugijan PHC and accordingly, he along with I/O Nripen Saikia went to Jugijan Hospital and saw the victim there. In his presence, Doctor recorded the statement of the victim. The victim stated before Doctor that the accused Moni Mazumder and two other accused(s) burnt her. After recording the dying declaration of the victim, Doctor took his signature in the said dying declaration as witness. Ext.-4 is the said dying declaration and Ext.-4(2) is his signature.

36. PW-10, Gita Devi (GNM) had deposed that, on 18/08/14 she was working as GNM Nurse at Jugijan P.H.C. At that time, a lady in burnt condition was taken to hospital. Doctor K. Zaman Choudhury was on duty and she informed him about the patient. The patient was Rubi Pandit. Police also came to the hospital. Doctor Choudhury after examination referred the victim to GMCH as she was in critical condition. Doctor K. Zamman Choudhury recorded the dying declaration of the victim Rubi Pandit. She was also present at the time of recording her statement. She put her signature as witness in the said dying declaration. Ext.-4 is the said dying declaration and Ext.-4(4) is her signature as witness. At the time of recording dying declaration, victim Rubi Pandit was in talking condition. She stated that, the accused entered into her house and poured kerosene oil upon her and burned her.

37. PW-11, S.I. Nripen Saikia, the I/O, had stated in his evidence that on 18/08/14 he was working as I/C at Jugijan P.P. On that day, informant Sanjay Pandit lodged an Ejahar against the accused Mohan Biswas, Shyamalii Biswas and Moni Mazumder about setting

ablaze of Rubi Pandit. After receiving the FIR, he made a G.D. Entry vide Jugijan P.P. G.D.Entry No. 309 dated 18/08/14 at 4 P.M. and forwarded to O/C Hojai to register the case. Accordingly, the said case was registered as Hojai P.S. Case No. 400/14 and he was endorsed to investigate the case. He recorded the statement of informant. A.S.I. Subarna Kr. Das before filing the FIR, he made another G.D. Entry No. 304 dated (9) S.C. 16(N)/2017 18/08/14 after getting verbal information regarding the occurrence and visited the place of occurrence and sent the victim to Jugijan P.H.C. The dying declaration of the victim was recorded by doctor and sent the victim to G.M.C.H. for better treatment. He also recorded the statement of victim and witnesses and thereafter, he arrested and brought the accused persons to Hojai P.S. He interrogated the accused Shyamoli Biswas, Mohan Biswas and Champa Mazumder @ Moni and recorded their statements. Accused Shyamoli Biswas had confessed the guilt at the time of examination. He forwarded all the accused to jail custody and collected the dying declaration of the victim. On 19/08/14, he got the information about the death of the victim Rubi Pandit at Guwahati. He recorded the statement of witnesses namely, Pijus Pandit, Smt. Sikha Pandit, UBC Ajit Barman and GNM Gita Devi who were present at the time of dying declaration of the victim and he collected the copy of dying declaration as well as the P.M. report. After completion of investigation, he filed the charge sheet against the accused persons u/s 448/302/34 IPC. Ext—5 is the charge sheet and Ext—5(1) is his signature. Ext—6 is the C.D., Ext—6(1) is the 161 statement of the accused Shyamoli Biswas and Ext—6(2) is his signature. Ext—6(3) is the 161 statement of Smt. Champa Mazumder @ Moni and Ext—6(4) is his signature. He also collected the inquest report from G.M.C.H. Guwahati. In the cross, P.W.-11, deposed that on that day, he was busy with another case. For that reason, A.S.I. Subarna Das went to the place of occurrence for doing the investigation. At that time, he was not present at P.S. The G.D. Entry was made vide G.D. Entry No. 304 dated 18/08/14 by A.S.I. Subarna Das. He visited the place of occurrence, took the injured person to Jugijan Hospital and the victim was referred to G.M.C.H. Guwahati for better treatment. After referring the victim to Guwahati, an FIR was lodged at 5 P.M. on 18/08/14 by the brother-in-law of the victim. The statement of the informant was recorded by him. At the time of recording the dying declaration he was not present there. On 02/10/2014, he recorded the statement of Pijus Pandit, the husband of the deceased. He cannot say when the husband of the deceased, Pijus Pandit went out from his

house. He has submitted the charge sheet based on the investigation of A.S.I. Subarna Das and partly of his own. The burning of the victim was committed inside the house of her husband Pijus Pandit. At the time of committing the offence, victim's husband and her children were not at home.

38. PW-12, A.S.I. Subarna Kr. Das, other I/O, had deposed that on 18/08/14 he was working as A.S.I. at Jugijan P.P. On that day at 9:30 A.M., one VDP Secretary of Radhanagar, Sri Madhu Chakroborty informed over phone that a lady was set fire by two women by pouring kerosene due to which she was totally burnt and in critical condition. Accordingly, he made a G.D. Entry vide Jugijan P.P. G.D. Entry No. 304 dated 18/08/14 and informed the matter to higher officer and thereafter he proceeded to the place of occurrence along with staff. On that day, at about 10 A.M. he arrived at the place of occurrence and found that the victim Rubi Pandit was in critical condition and he arranged to send the victim to Jugijan P.H.C. for her treatment. He also prayed the Doctor of Jugijan P.H.C. to record the dying declaration of the victim as the victim was in very critical condition. Thereafter, he again appeared at the P.O. at 11 A.M. and drawn a rough sketch map of the P.O. and seized some articles like a gallon of kerosene, a bed sheet partially burnt etc. He prepared a seizure list after seizing the articles in presence of witness available there and recorded the statement of some witness namely Debasish Roy, Moni Pandit and Sanjay Pandit. He also recorded the statement of witness Nritinda Bhowmik, Biren Hira, Totis Sarkar, Bikas Sarkar, Madhu Chakroborty, Gautam Chakroborty. He searched the house of suspected accused to arrest them. In the mean time, he came to know that, the accused Shyamoli Biswas, Moni @ Champa and Mohan Biswas were detained by local public when they were trying to flee away. After getting this information, he along with lady constable apprehended them and sent them to Hojai P.S. for preliminary interrogation. In the mean time, he was informed by the victim's relatives that the victim was taken to G.M.C.H. and where she died. Immediately he sent the W.T. message to O/C Bhangagarh P.S. to conduct the P.M. by Doctor. On the same day, an FIR was lodged and (11) S.C. 16(N)/2017 the same was forwarded to O/C Hojai P.S. by I/C Jugijan P.P. and entrusted the I/C Nripen Saikia to investigate the case for further investigation. He handed over his C.D. to I/C Jugijan P.P. He recorded the statement of witness Nitendra Bhowmik and in his statement, he stated that the victim was making outcry

by shouting that, "*jolale, jolale, muk Shyamoli, Mohan Aru Moni Jalale*". He also recorded the statement of Biren Hira who told him that, after recovery of victim from water, she was screaming and telling that, Mohan, Shyamoli and Moni burned her. He exhibited i.e. Ext—6 is the C.D., Ext—6(5) is the 161 statement of witness Nitinda Bhowmik recorded by him and Ext—6(6) is his signature. Ext—6(7) is the statement of witness Biren Hira recorded by him and Ext—6(8) is his signature. Ext—7 is the extract copy of G.D. Entry No. 304 dated 18/08/14 and Ext—7(1) is his signature. Ext—2 is the seizure list and Ext—2(2) is his signature. Ext— 8 is the rough sketch map and Ext—8(1) is his signature. Ext—6(9) is the carbon copy of prayer for recording the dying declaration of victim and Ext—6(10) is his signature. In the cross, he deposed that the occurrence took place at about 9:30 A.M. on the relevant day and the In-charge of Jugijan P.P. was returned at 4:45 P.M. from S.P. office. He has taken necessary step of the case in between 9:30 A.M. to 4:45 P.M. and he found the injured person inside a Auto Rikshaw in front of the house of the deceased on the road at a distance of 100 to 150 meters from the house of the deceased. The injured was taken to Jugijan P.H.C. and he also went there. Two constables were with him namely Dipak Das and Ajit Barman. He has taken the signature of Debashish Roy, Moni Pandit and Sanjay Pandit as seizure witness in the seizure list. He also recorded the statement of Nitinda Bhowmik and Biren Hira.

39. On consideration of the depositions/evidence, we find that prosecution case is primarily based on the dying declaration made by the deceased which was recorded by the Doctor (PW.4) and we find the same to be credible, reliable and trustworthy. We notice that the victim had also made oral dying declaration before the PW-1 and PW-8. The victim had stated in her dying declaration which is reproduced herein under:-

"I, Rubi Pandit, want to say on my own will that around 8:00 AM today, i.e, on 18/08/2014, Shyamala Biswas (wife of Mohan Biswas), Mohan Biswas and Moni Mazumdar (daughter of Surjya Mazumder) entered my house and set me on fire by pouring Kerosene oil on my person, Later, they told me jump in the pond if I wanted to save myself. Being helpless I dipped into the pond. At that time they called people by shouting that I myself caught fire. Our neighbours lifted me from the pond and took here. They have left the place before the arrival of the Public"

40. On scrutiny of the evidence, we find that the victim clearly mentioned the name of all the accused persons to be the perpetrators of crime in her dying declaration, the veracity

of which cannot be doubted. We are of the view that the dying declaration recorded by the Doctor, who has no interest/enmity with any of the parties but to disclose the truth inspires the confidence of Court and is corroborated by the PW-7, 8 and PW-10. As submitted by learned Addl. PP, it is not a case of defence that the victim was tutored by any of the witnesses.

41. It is held by the Hon'ble Supreme Court that a dying declaration which does not contain a certificate of the doctor cannot be rejected on that sole ground so long as the person recording the dying declaration was aware of the fact as of the condition of the declarant to make such dying declaration. If the person recording such dying declaration is satisfied that the declarant is in a fit mental condition to make the dying declaration then such dying declaration will not be invalid solely on the ground that the same is not certified by the doctor as to the condition of the declarant to make the dying declaration. In the present case, the PW-4, the Doctor, has clearly stated that the victim was in a fit state of mind to make the dying declaration.

42. The dying declaration can be the sole basis for conviction, if it inspires the confidence of the Court. Nothing is discernable as to why the dying declaration made by the victim, just prior to her death, cannot be taken into account on which conviction can be based on. On careful scrutiny, we find that the dying declaration has been recorded after observing all the requirements under the law.

43. The defence plea that there was no eye-witness to the occurrence; the chain of circumstances is not complete; the accused and the victim's residences are situated at a distance place; there is no previous enmity as to the cause of burning and that accused persons, after hearing the scream, went to the place of occurrence are not perpetrators of crime; such pleas are considered to be rejected as we find the dying declaration of the victim worth acceptance.

44. The submission that that Ajit Barman (PW.7) was not at the place of occurrence is not based on material on record as PW-12 had deposed that he was accompanied by constable Dipak Das and Ajit Barman. Further PW-4 has also deposed that the injured person was escorted by constable Ajit Barman.

45. We are also of the view that non-examination of one Sikha Pandit, who is one of the witnesses of the dying declaration, is not fatal to the prosecution case. The Hon'ble Supreme Court has held that neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. We further finds that no plea was taken in 313 Cr.PC statement by the accused persons regarding the plea taken by the defence counsel that after hearing the hue and cry the accused persons went there and they are not perpetrators of crime.

46. In the case of **Rambai vs. State of Chhattisgarh**, reported in **(2002) 8 SCC 83**, the Hon'ble Supreme Court has held which is reproduced here-in-under:

“6. So far as the position of law in regard to the admissibility of the dying declaration which is not certified by the doctor, the same is now settled by a Constitution Bench judgment of this Court reported in [Laxman vs. State of Maharashtra](#), (JT 2002 (6) 313) wherein overruling the judgment of this Court in [Laxmi\(Smt.\) vs. Om Prakash and ors.](#), (2001 (6) SCC 118), it is held that a dying declaration which does not contain a certificate of the doctor cannot be rejected on that sole ground so long as the person recording the dying declaration was aware of the fact as of the condition of the declarant to make such dying declaration. If the person recording such dying declaration is satisfied that the declarant is in a fit mental condition to make the dying declaration then such dying declaration will not be invalid solely on the ground that the same is not certified by the doctor as to the condition of the declarant to make the dying declaration. Be that as it may, so far as this case is concerned, that question does not arise because in the instant case PW.19, Dr. Ashok Sharma though not a doctor who treated the deceased but being the duty doctor when summoned came and examined the deceased and noted in the dying declaration itself as to the capacity of the deceased to make a dying declaration. That apart from the narration of the questions and answers in the dying declaration it is clear that the deceased was in a fit state of mind to make the statement. But the learned counsel for the appellant contended that we should examine the contents of the dying declaration in the background of the fact that the deceased had

suffered nearly 85% burns and ever since her admission to the hospital she was alternating between consciousness and unconsciousness, as also earlier attempts to record her dying declaration had failed. Therefore the learned counsel contends that it is not safe to place reliance on the dying declaration. We have carefully perused the evidence of PWs.12 and 19 who recorded the dying declaration and PW.19 who is the doctor who certified the condition of Vidya Bai from their evidence. We are satisfied that the deceased at the time she made the dying declaration was in a fit condition of mind to make such statement. Having found no discrepancy in the statement of the deceased we are inclined to accept the same as held by the courts below. Learned counsel then contended that from the evidence of the husband, DW.2 himself, it is clear that the deceased must have suffered burn injuries while she was cooking lunch, therefore, it is not safe to rely upon the prosecution evidence to convict the appellant. We notice the courts below have considered this argument and taking the preponderance of evidence and also the factum that the husband of the deceased had resiled from his statement made before the investigating officer have held that it is not safe to rely upon DW.2. In such a situation we are unable to take a contra view from the one taken by the courts below”.

47. In the case of **Muthu Kutty and another vs. State by Inspector of Police, Tamil Nadu**, reported in **(2005) 9 SCC 113**, the Hon'ble Supreme Court has held which is reproduced here-in-under:

“13. At this Juncture, it is relevant to take note of [Section 32](#) of the Indian Evidence Act, 1872 (in short 'the [Evidence Act](#)') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which" could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in [Section 60](#). The eight clauses of [Section 32](#) are exceptions to the general rule against hearsay just stated. Clause (1) of [Section 32](#) makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are : firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends

of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made extremity, when the party 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 is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of "Justice. These aspects have been eloquently stated by Lyre LCR in R. v. Wood Cock, [1789] 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain :

*"Have I met hideous death within my view,
Retaining but a quantity of life,
Which bleeds away even as a form of wax,
Resolveth from his figure 'gainst the fire?
What is the world should make me now deceive,
Since I must lose the use of all deceit?
Why should I then be false since it is true
That I must die here and live hence by truth?"*

(See King John, Act V, Sect.IV)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri - a man will not meet his maker with a lie in his mouth."

14. *This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.*

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 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 [Smt. Panjben v. State of Gujarat](#), AIR(1992) SC 1817:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. ([See Munnu Raja & Anr. v. The State of Madhya Pradesh](#), [1976] 2 SCR 764)

(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 Uttar Pradesh v. Ram Sagar Yadav and Ors.](#), AIR (1985) SC 416 and [Ramavati Devi v. State of Bihar](#), AIR (1983) SC 164)

(iii) The Court has to scrutinize 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 and Anr. v. The Public Prosecutor](#), AIR (1976) SC 1994].

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See [Rasheed Beg. v. State of Madhya Pradesh](#), [1974] 4 SCC 264).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See [Kaka Singh v. State of M.P.](#), AIR (1982) SC 1021].

(vi) A dying declaration with suffers from infirmity cannot form the basis of conviction. ([See Ram Manorath and Ors v. State of U.P.](#), [1981] 2 SCC 654)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [[See State of Maharashtra v. Krishnamurthi Laxmipati Naidu](#), AIR (1981) SC 617].

(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 Oza and Ors v. State of Bihar](#), AIR (1979) SC 1505].

(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 eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [[See Nanahau Ram and Anr. v. State of Madhya Pradesh](#), AIR (1988) SC 912].

(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. Medan Mohan and Ors.](#), AIR (1989) SC 1519].

(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, AIR (1982) SC 839].”

48. In the case of **Sree Vijaykumar and another vs. State by Inspector of Police, Kanyakumari**, reported in **(2005) 10 SCC 737**, the Hon'ble Supreme Court has held which is reproduced here-in-under:

“14. The dying declaration recorded by the Judicial Magistrate cannot be assailed on any germane ground. We cannot accept the contention of the learned counsel for the appellants that the deceased would not have been in a position to sustain his consciousness and give a statement narrating the details of the incident. The evidence of the Magistrate, PW 2 is unequivocal that the deceased was conscious and was able to answer the questions. The certificate of the doctor (Dr. Lalita Kumari) who was with him was also obtained on the dying declaration. If some persons other than the accused attacked and burnt him there is no reason why the deceased should have thought of implicating the accused while leaving out the real culprits.”

49. In the case of **Yanob Sheikh alias Gagu vs. State of West Bengal**, reported in **(2013) 6 SCC 428**, the Hon'ble Supreme Court has held which is reproduced here-in-under:

“20. We must notice at this stage that it is not always the quantity but the quality of the prosecution evidence that weighs with the Court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. In the case of [Namdeo v. State of Maharashtra](#) [(2007) 14 SCC 150], the Court held as under:

“28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature ([Section 134](#) of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.”

22. The facts of the present case, seen in light of the above principles, makes it clear that the Court is primarily concerned and has to satisfy itself with regard to the

evidence being reliable, trustworthy and of a definite evidentiary value in accordance with law. PW1, PW5 and PW6 have clearly supported the case of the prosecution. Their statements, examined in conjunction with the statement of PW11, the doctor and the Investigating Officer, PW14, clearly establish the case of the prosecution beyond any reasonable doubt.”

50. In the case of **Poonam Bai vs The State Of Chhattisgarh**, reported in **(2019) 6 SCC 145**, the Hon’ble Supreme Court has held which is reproduced here-in-under:

“10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires the full confidence of the court. In the matter on hand, since Exh. P2, the dying declaration is the only circumstance relied upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the well established principles regarding the acceptability of dying declarations.”

51. In the case of **Hatti Singh vs State Of Haryana**, reported in **(2007) 12 SCC 471**, the Hon’ble Supreme Court has held which is reproduced here-in-under:

“28. There cannot be any doubt that conviction can be based on circumstantial evidence, but therefore the prosecution must establish that the chain of circumstances only consistently point to the guilt of the accused and is inconsistent with his innocence. Circumstances, as is well known, from which an inference of guilt is sought to be drawn are required to be cogently and firmly established. They have to be taken into consideration cumulatively. They must be able to conclude that within all human probability the accused committed the crime”.

52. In the case of **Jayamma & Anr Vs. State of Karnataka**, reported in **(2021) 6 SCC 213**, the

Hon'ble Supreme Court has held which is reproduced here-in-under:

“28 It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a “dying declaration” is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction”.

”.

53. In the present case, it transpires that conviction is based on circumstantial evidence and dying declaration. No doubt there is no eye witness that the accused persons have set ablaze the victim by pouring kerosene oil on her body as the prosecution witness arrived just after the occurrence and saw the victim in the pond who was screaming and struggling to save her life from burnt injuries. However, the conviction can be based on dying declaration which is corroborated by the evidence of PW- 7, 8 and 10. Thus, we are of the view that the evidences are reliable, trustworthy and have definite evidentiary value.

54. From the analysis of the evidence on record in its entirety and law laid down by the Hon'ble Supreme Court, we are of the view that the prosecution has been able to establish the guilt of the accused persons and the accused persons have been rightly convicted by the learned trial court based on dying declaration.

55. On the careful examination and scrutiny of the testimony of PWs- 1, 4, 6, 7, 10, 11 and 12 and in the light of law laid down as referred to above, we are of the view that evidences of these witnesses unerringly pointed guilt towards the accused persons which corroborated the dying declaration of the deceased for which no interference is called for in conviction of accused persons. The dying declaration is credible, reliable and trustworthy. We have, therefore, no incertitude in holding that prosecution has been able to establish the charges brought against the accused persons.

56. Consequently, conviction and sentence of the accused persons by the learned Additional Sessions Judge, Fast Track Court, Hojai in Session Case No. 6 (N)/2017 vide the Judgment dated 10.06.2019 is upheld.

57. Accordingly, criminal appeal stands dismissed.

58. We extend our appreciation to the learned counsel for the parties for their able assistance.

LCR be sent back.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant