

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.(J) No.07 of 2023

Sri Sankar Das,
Son of Sri Nibaran Das,
Of Tainani, P.O & P.S. R.K. Pur,
District: Gomati Tripura

-----Convict-Appellant(s)

Versus

The State of Tripura

-----Respondent(s)

For Appellant(s)	:	Mr. Ratan Datta, Adv.
For Respondent(s)	:	Mr. Samrat Ghosh, Addl. P.P.
Date of Hearing	:	05.02.2024
Date of delivery of Judgment and Order	:	12.02.2024
Whether fit for Reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

[B. Palit, JJ]

The convict-appellant Sankar Das has preferred this appeal challenging the judgment and order of conviction and sentence dated 07.12.2021 passed by Learned Addl. Sessions Judge, Gomati District, Udaipur. By the said judgment Learned Trial Court has acquitted the accused appellant from the charge punishable under Section 498A of the IPC but found him guilty under Section 302 of IPC and sentenced him to suffer rigorous imprisonment for life and

with fine of Rs.5,000/- in default to suffer simple imprisonment for three months under Section 302 of IPC.

02. The case of the prosecution before the Learned Trial Court was that on 27.08.2016 one Sajal De, son of Ranjit De of village East Mohanbhog under P.S. Melaghar, District Sepahijala laid an FIR to OC, Natun Bazaar PS, Gomati District alleging inter alia that about three years back his daughter Supriya was given marriage with the accused Sankar Das as per Hindu Marriage Rites and Customs. After six months of the marriage the accused Sankar started causing mental and physical torture upon his daughter at the instance of his mother-in-law and father-in-law i.e. Nibaran Das and Rekha Das. To save his daughter from the torture she sought assistance from the respected person in Tainani village who attempted to resolve their issues on so many occasions and thereafter few days were elapsed peacefully, but again the accused Sankar Das at the instance of his parents started causing pressure upon his daughter to bring Rs.10,000/- (ten thousand) from him. As his daughter expressed her inability so she was severely beaten. He tried to file a complaint in this matter about torture upon his daughter but the accused Sankar Das resisted to that and as they protested the matter for the purpose of well being of his daughter they were physically assaulted by some villagers and in this way the accused persons used to cause assault upon his daughter in various ways every now and then. Around 5/6 months back the

accused Sankar took his daughter to his aunt's house at Jatanbari where all the accused persons continuously assaulted his daughter. After that they sought redress to one Smt. Kalpana Biswas of the Women's Commission of Tainani, but no fruitful decision could be arrived at. On 27.08.2016, at about 8 am there was severe altercation between accused Sankar and his daughter and that time the accused poured kerosene oil on her body and set her on fire for which her body was completely burnt. The accused did not provide any information and took her to Jatanbari Hospital. After that she was brought to Udaipur, Tepania Hospital when also the accused did not inform them and finally his daughter succumbed to her injuries on 27.08.2016 at about 4 pm and after arrival to the hospital they could know the said incident. On receipt of FIR OC, Nutanbazar PS Case No.2016 NTB 026 under Section 498A/304(B) of IPC and the IO after completion of investigation laid chargesheet against the appellant Sankar Das vide Chargesheet No.2/17 under Section 498A/302 of IPC and accordingly Learned SDJM, Amarapur after receipt of chargesheet took cognizance of offence punishable under Section 498A/302 of IPC and transferred the case to the court of the Learned Judicial Magistrate, First Class, Amarapur, Gomati District and thereafter Learned Judicial Magistrate, First Class, Amarapur committed the case to the court of Learned Sessions Judge, Gomati Judicial District, Udaipur for trial of accused. Learned Sessions

Judge thereafter transferred this case to the court of Learned Addl. Sessions Judge, Gomati Judicial District, Udaipur for disposal as per law. Before the Learned trial court charge was framed under Section 498A/302 of IPC and prosecution to substantiate the charge before the Learned trial court has adduced in total 24 numbers of witnesses and the prosecution also relied upon some documentary evidence which were marked as exhibits in this case:

EVIDENCE OF THE PROSECUTION

RANK	NAME	NATURE OF EVIDENCE
PW 1	Smti. Srimati Das	Other witness
PW 2	Miss Shibani Saha	Eye witness
PW 3	Miss Sipra Saha	Eye witness
PW 4	Shri Maran Saha	Other witness
PW 5	Dr. Sourav Bhowmik	Medical witness
PW 6	Smti Manibala Karmakar	Other witness
PW 7	Smt. Soma BarnaSharma	Other witness
PW 8	Shri Priyalal Chakma	Police witness
PW 9	Shri Sajal Dey	Other witness
PW 10	Smti Kalpana Biswas	Other witness
PW 11	Smti Rama Talukdar	Other witness
PW 12	Shri Babul Talukdar	Other witness
PW 13	Shri Mithun Debath	Police witness
PW 14	Dr. Chandan Kumar Tripura	Medical witness
PW 15	Smti Sabita Shil	Police witness
PW 16	Smti Kalpana Acharjee	Medical witness
PW 17	Shri Maran Madraji	Other witness
PW 18	Shri Goutam Dey	Other witness
PW 19	Shri Ranjit Dey	Other witness
PW 20	Shri Bishu Dey	Other witness
PW 21	Shri Bimalendu Saha	Police witness
PW 22	Shri Subhasis Bandhyopadyay	Other witness
PW 23	Smti Sikha Deb	Police witness
PW 24	Shri Souvik Dey	Police witness

EXHIBITS OF THE PROSECUTION

Sl. No.	Exhibit Number	Description
1.	Exhibit P-1 (PW2)	Signature of PW 2 in her statement u/s 164
2.	Exhibit P-2 (PW 3)	Signature of PW 3 in her statement u/s 164
3.	Exhibit P-3 (PW 4)	Signature of PW 4 in the seizure list
4.	Exhibit P-3/1 (PW 21)	Seizure list prepared by PW1
5.	Exhibit P-3/2 (PW 21)	Signature of PW 21 in the seizure list
6.	Exhibit P-4 (PW 5)	Dying declaration of the

		deceased
7.	Exhibit P-4/1 series (PW 5)	RTI and LTI of the deceased
8.	Exhibit P-4/2 (PW 5)	Signature of PW 5 in the dying declaration
9.	Exhibit P-4/3 (PW 6)	Signature of PW 6 in the dying declaration
10.	Exhibit P-5 (PW 8)	Signature of PW 8 in the seizure list
11.	Exhibit P-5/1 (PW 23)	Seizure list prepared by PW 23
12.	Exhibit P-5/2 (PW 23)	Signature of PW 23 in the seizure list
13.	Exhibit- P6 (PW 9)	Signature of PW 9 in the ejahar
14.	Exhibit P-6/1 (PW 18)	The written ejahar
15.	Exhibit P-6/2 (PW 18)	Signature of PW 18 in the ejahar
16.	Exhibit P-6/3 (PW 24) Exhibit P-6/4 (PW 24)	Endorsement of WSI Mina Debbarma in the ejahar. Endorsement of the then O/C Jaharlal Debbarma in the ejahar
17.	Exhibit P-7 (PW 13)	Signature of PW 13 in the seizure list
18.	Exhibit P-7/1 (PW 23)	Signature of PW 23 in the seizure list
19.	Exhibit P-7/3 (PW 24)	Seizure list prepared by PW 24
20.	Exhibit P-7/4 (PW 24)	Signature of PW 24 in the seizure list
21.	Exhibit P-8 (PW 14)	Dying declaration of the deceased
22.	Exhibit P-8/1 (PW 16)	Signature of PW 14 in the dying declaration
23.	Exhibit P-8/2(PW 16)	Signature of PW 16 in the dying declaration
24.	Exhibit P-9(PW 14)	Post mortem report
25.	Exhibit P-9/1(PW 14)	Signature of PW 14 in the post mortem report
26.	Exhibit P-9/2(PW 14)	Signature of Dr. Abhijit Dutta in the post mortem report
27.	Exhibit P-9/3(PW 14)	Signature of PW 14 in the post mortem report
28.	Exhibit P-10(PW 15)	Signature of PW 15 in the seizure list
29.	Exhibit P-10/1 (PW 17)	Signature of PW 17 in the seizure list
30.	Exhibit P-10/2 (PW 23)	Seizure list prepared by PW 23
31.	Exhibit P-10/3 (PW 23)	Signature of PW 23 in the seizure list
32.	Exhibit P-11 (PW 20)	Signature of PW 20 in the inquest report
33.	Exhibit P-11/1 (PW 23)	Inquest report prepared by PW 23
34.	Exhibit P-11/2(PW 23)	Signature of PW 23 in the inquest report
35.	Exhibit P-12(PW 23)	Signature of PW 23 in the inquest report
36.	Exhibit P-12/1 (PW 21)	Signature of PW 21 in the hand sketch map
37.	Exhibit P-13 (PW 21)	Index of hand sketch map of the PO
38.	Exhibit P-13/1(PW 21)	Signature of PW 21 in the index
39.	Exhibit P-15(PW 21)	A portion of statement of PW 1 recorded by IO u/s 161 of

		Cr.P.C.
40.	Exhibit P-15 (PW 22)	Inquest report prepared by PW 22
41.	Exhibit P-15/1 to 15/4(PW 22)	Signatures of PW 22 in the inquest report
42.	Exhibit P-16(PW 24)	A portion of statement of PW 4 recorded by PW 24 u/s 161 of Cr.P.C.
43.	Exhibit P-17 (PW 24)	Filled up printed form of FIR
44.	Exhibit P-17/1 (PW 24)	Signature of the then O/C Jaharlal Debbarma

03. Thereafter the accused was examined and on conclusion of trial after hearing arguments of both the sides Learned trial court found the appellant guilty of offence for the charge framed and convicted him accordingly and imposed punishment for which this present appeal is preferred.

04. Heard Mr. Ratan Datta, Learned counsel appearing for the appellant and also heard Mr. S. Ghosh, Learned Addl. P.P. representing the state respondent. At the time of hearing of arguments Learned counsel for the appellant submitted that the prosecution has failed to prove the charge beyond reasonable doubt against the appellant but the Learned court below did not appreciate the evidence on record properly and ultimately gave an erroneous finding. Learned counsel further submitted that in the case at hand the prosecution adduced two sets of witnesses because PWs 2 and 3 who were present to the PO at the time of alleged occurrence did not support the prosecution story. But Learned court below ignoring the evidence on record of those witnesses simply on the basis of dying declaration of the deceased which were also not recorded in accordance with law found the appellant guilty. Learned

counsel in course of hearing drawn the attention of the court referring the evidence of the prosecution witnesses and submitted that the evidence of the prosecution suffers from various infirmities which Learned Court below failed to appreciate at the time of delivery of judgment. Learned counsel also failed to rely upon the inquest report prepared by W/ASI Sikha Deb on 27.08.2016 wherein it was specifically stated that the deceased had sustained injuries by setting fire to her own body but the Learned Trial Court below ignoring that part and came to a wrong conclusion that the appellant committed the offence. Furthermore, according to the Learned counsel the deceased according to PM report sustained 90-95% burn injuries. So situated thus, it was not possible on her part to give dying declaration and also to put any thumb impression which Learned court below did not consider. Learned counsel also referred the evidence of PW-5, Dr. Sourav Bhowmik who during his cross-examination very specifically stated that at the time of recording of the dying declaration of the deceased he did not try to ascertain as to whether the deceased was willing to make any statement or not or she was tutored. Further in the dying declaration form the place of recording the same was not mentioned and also the said witness could not say about the name of medicines which he prescribed to the patient on that relevant point of time. So according to the Learned counsel for the appellant the alleged dying declaration was a defective one. No reliance can be placed

upon it and furthermore it was not made in presence of any Magistrate as required by law and finally Learned counsel for the appellant also relied upon some citations and submitted that in view of the principles laid down in the said citations there was no scope on the part of the Learned court below to convict the appellant and submitted for acquittal of the accused-appellant from the charge of the case in view of the contradictory evidence on record of the prosecution. Learned counsel for the appellant also drawn the attention of the court that prosecution failed to prove that the alleged accused-appellant caused fire by pouring kerosene oil on the dead body of deceased and no evidence in this regard could be proved by the prosecution before the Learned Trial Court.

05. On the other hand, Mr. S. Ghosh, Learned Addl. P.P. representing the prosecution submitted that in this case the prosecution has been able to prove the charge beyond reasonable doubt against the appellant. According to the Learned Addl. P.P. all the witnesses of the prosecution very categorically stated that the present appellant caused murder of his wife by pouring kerosene oil on her body. In respect of evidence of PWs 2 and 3 who are the cousin sisters of the accused appellant he submitted that although those witnesses are the witnesses of the prosecution but no reliance could be placed upon the evidence of said two witnesses and furthermore since the prosecution has been able to prove the two recorded dying declaration of the

deceased, so there is no scope to disbelieve those dying declaration and furthermore according to Learned Addl. P.P. her first dying declaration was recorded on 27.08.2016 at about 9.20 a.m. but the present appellant in his examination under Section 313 of Cr.P.C. took the plea that he was not at home at the time of alleged incident rather he went for his masonry work and returned back to home at about 11.30 a.m., after receipt of a phone call which shows that the present accused-appellant suppressed the real fact and tried to build up a new story of his defence. But according to Learned counsel for the prosecution that the Learned court below after considering the evidence on record and also after hearing both the sides has rightly and reasonably delivered the judgment and convicted the appellant and also relied upon some citations which would be discussed later on.

06. To appreciate the arguments made by the Learned counsel of both the sides let us revisit the evidence on record of the prosecution adduced before the trial court. PW-9 is the informant Shri Sajal Dey. He deposed on oath that about 3 years 5 months back he gave marriage of his daughter with accused Sankar Das of Tainani as per Hindu Marriage Rites and Customs. For a period of three months after the marriage his daughter was happy at her matrimonial home but thereafter on different occasions the accused used to assault her physically and mentally and drove her out from her matrimonial home when she came to

his residence. He informed the matter to the relatives as well as to the local villagers of Mohanbhog. Thereafter his father-in-law Shri Babul Talukdar and his wife intervened in the matter and mitigated the same and the accused again took back his daughter to his home. Later on, also his daughter was assaulted by accused and driven her out from her matrimonial home on different occasions with a demand of money from their side. Accordingly his father paid some money to the accused party and during this period whenever he visited his daughter's matrimonial home he was ill-treated by the family members of the accused. He informed the matter to one Amar Das, the Pradhan of Tainani village and a meeting was convened but his daughter did not get any relief. Thereafter, accused took his daughter to Nutanbazar and started residing therein. About one and half year back Shri Nibaran Das, father of Sankar informed him that his daughter died out of burn injuries and was at Tepania Hospital. Accordingly, he went to the hospital and saw the dead body of his daughter and on the same day he lodged the ejahar against his son-in-law at Women P.S. Udaipur which was reduced to writing by one person and he put his signature therein. He identified his signature on the ejahar marked Exbt.-6.

During cross-examination he deposed that after the death of mother of Supriya he married another lady namely Rama Dey and have been residing at Taninani and his daughter used to visit his house at Mohanbhog where his

father resides but did not visit Tainani. He further deposed that he did not say to police that Sankar drove out his daughter from her matrimonial home after assaulting her. He also did not say to police that he was ill-treated by the family members of Sankar when he visited his daughter. He also did not say to the IO that his father-in-law Babul Talukdar and his wife intervened in the matter and mitigated the same and his son-in-law took back his daughter. He could not say the exact date when his son-in-law assaulted his daughter on demand of money.

07. PW-1, Srimati Das (Saha) is the relative of the accused. However, she deposed that about 3 to 4 years back Sankar Das was married to Supriya das and resided at Garji, Tainani. In the last part of Chaitra Sankar visited her house along with Supriya and their son. They stayed therein for three days and during that period Sankar requested her to allot a piece of land to him so that he could reside therein with his wife and son. Then she advised Sankar to take up the matter with his father. After few days his father came and requested to allot some land to his son. Accordingly, she allotted a piece of land and Sankar started residing therein after constructing a hut. Both Sankar and his wife led a peaceful life for some days but thereafter there was a quarrel between husband and wife and she heard that Sankar abusing his wife. In the month of following Sharavana one day at about 2.30 to 3.00 p.m. Supriya came to her and complained that Sankar had ousted her

and Supriya also informed the matter to a member of Nari Samiti namely Soma Barna Sharma but the matter was not resolved. Thereafter on 27th day of English calendar corresponding to the month of Bhadra she was working in her field when her daughter Shipra aged about 12 years came to her and informed that there was a fire in her house and she rushed to the home and found Supriya lying on the ground with severe burn injuries on her body. Immediately she sent Sankar to the Fire Service and after some time Fire Service personnel came and shifted Supriya to the Nutan Bazar Hospital from where she was referred to Tepania District Hospital, Udaipur. She along with her husband and Sankar accompanied Supriya to Tepania District Hospital where her statement was recorded by one Doctor in her presence as well as Sankar. In the statement Supriya stated that Sankar had set her on fire after pouring kerosene oil and on the same day at about 2.00 p.m. Supriya succumbed to the injuries.

During cross-examination she stated that did not say specifically to the police that Sankar abused his wife. She did not witness any physical torture by Sankar on his wife and after the incident Supriya did not tell her anything with regard to setting fire on her by Sankar. Nothing more relevant came out from her cross-examination.

08. PW-2 Sibani Das deposed that accused Sankar is her cousin. Few months back before the date of death of Supriya, Sankar came to their house and started residing

with Supriya and his son by constructing a hut. She further stated that frequently there used to be quarrel between husband and wife. On the alleged day of incident she along with her two sisters was cooking food in the kitchen when she heard some noise of quarrel. That time Sankar gave a push to his wife Supriya and she fell down on the ground. Immediately she got up and rushed to their kitchen and picked up a burning fire wood from the oven and tried to self immolate her, but failed. Thereafter she picked up another file of burning wood and set fire upon her and seeing all these they become frightened and could not do anything. In the meanwhile her mother reached and shortly thereafter Fire Service came and shifted Supriya to Hospital. Same day Supriya succumbed to her injury at Tepania District Hospital, Udaipur. After 2/3 days the police produced her before the SDJM Court at Amarpur where her statement was recorded. The witness identified her signature on the statement marked Exbt.1.

During cross-examination she stated that she did not say to the Magistrate that there used to be quarrel between Sankar and his wife Supriya since they started residing at their residence.

09. PW-3, Sipra Saha deposed in the same manner like PW-2 and also deposed that relation between Sankar and Supriya was not good and there used to be quarrel between them. On the day of incident in the morning at about 8.00 a.m. she along with her two sisters was cooking

in the kitchen when she heard noise of quarrel and noticed that Sankar gave a push to Supriya and she fell down on the ground. Immediately thereafter she got up and rushed to their kitchen and picked up a pile of burning fire wood from the oven and self immolated her. Seeing that she rushed to her mother and informed the matter and after some time Fire Service came and shifted Supriya to the hospital where she succumbed to her injuries at Tepania District Hospital on the same date. She produced before the Magistrate for recording her statement and identified her signature marked as Exbt.2.

During cross-examination by the defence she stated that she did not say to Magistrate that relation between Sankar and his wife was not good as they used to quarrel with them and she also did not say that on the alleged day she heard the noise of quarrel and noticed Sankar giving a push to Supriya due to which she fell down on the ground.

10. PW-4 Maran Saha deposed that accused Sankar Das is the son of his wife's brother. Further he deposed that about 5/6 months back prior to the death of Supriya, Sankar started residing at his house constructing a hut. On the day of incident he was not present at his home as he had gone for his work. There one Panchayet member Shyamal Sarkar asked him to reach his home immediately. Accordingly, he came where his daughter informed that his wife had gone to Nutanbazar Hospital accompanying Supriya who had sustained burn injuries. He was about

reach to the hospital that time police came and restrained him and searched his house and seized one drum containing kerosene oil, burnt pieces of cloths and a file of burnt fire wood by preparing a seizure list marked Exbt.3 and identified the seized alamats marked Exbt.-MO.1 series. He went to Nutanbazar Hospital and found Supriya with burn injuries and she was continuously asking for water. Immediately thereafter she was referred to the District Hospital, Tepania and he along with his wife Sankar accompanied to the District Hospital where she succumbed to her injuries on the same day at about 1.30 to 2.00 p.m and when the dead body was shifted to morgue, he returned back to his home. He was declared hostile by the prosecution.

During cross-examination by the prosecution he stated that he did not say to police that Sankar used to quarrel with his wife on frequent basis and he had tried to settle the matter and his portion of statement was marked in red ink, subject to approve by IO. In cross-examination nothing came out relevant.

11. PW-5, Dr. Sourav Bhowmik deposed that on 27.08.2016 he was posted as MO at Nutanbazar Rural Hospital. On that day he recorded the dying declaration of one female patient. In the said dying declaration she stated that her husband had set her on fire after pouring kerosene oil. That time the patient was well oriented and conscious with regard to the time and place but he did not give any

clear finding with regard to this observation. After recording the dying declaration he obtained the RTI and LTI of the patient. That time one staff nurse Krishna Mani Chakma and Manibala Karmakar, GDA were present and in their presence the statement was recorded. The witness identified the dying declaration recorded by him marked as Exbt.4 and he identified RTI and LTI of deceased obtained by him marked as Exbt.4/1 series and the signature of the witness on the bottom of the declaration marked as Exbt.4/2.

During cross-examination he stated that he did not record the dying declaration in question and answer form and also he did not say to the IO that at the time of recording dying declaration the patient was well oriented and conscious with time and place and in the dying declaration he did not mention that he obtain the thumb impression of the deceased and also in the dying declaration the place of recording was not reflected. He further stated that at the time of recording dying declaration except the patient and two witnesses and himself none were present. Nothing more came out relevant from his cross-examination.

12. PW-6, Manibala Karmakar, deposed that on 27.08.2016 he was posted as GDA at Nutanbazar Rural Hospital. That day Dr. Sourav Bhowmik recorded the dying declaration of a female patient when she stated that her husband had set her on fire after pouring kerosene oil. He further stated that at the time recording dying declaration

she herself, patient, Dr. Sourav Bhowmik and one Krishna Mani Chakma were present. She put her signature on dying declaration and identified the same marked as Exbt.4/2. During cross-examination nothing came out relevant.

13. PW-7, Soma Barna Sharma deposed that accused Sankar Das along with his wife and his son started residing in the house of Shrimati Das by constructing a hut. On 27.08.2016 wife of Sankar died of burn injury. That day at around 8.00 to 9.00 a.m. on hearing hue and cry he rushed to the spot and found Supriya lying on the ground with burn injuries. Immediately she informed the matter to Jatanbari police outpost through mobile. Meanwhile the Fire Service came and shifted Supriya to Nutan Bazar Rural Hospital from where Supriya was referred to District Hospital, Tepania. About two weeks back before the incident one day Supriya came and stated that Sankar had assaulted her. Hearing this, she along with few neighbours went to the house of Sankar and tried to persuade him not to commit such type of acts and to lead a peaceful conjugal life.

During cross-examination she stated that she did not say to IO that exactly two weeks before the incident Supriya came to her and stated that Sankar had assaulted her. She also stated that when she reached to the PO that time twin daughters of Shrimati were present.

14. PW-8, Priya Lal Chakma deposed that on 07.09.2016 he was posted at Nutanbazar PS as a Constable

of Police. On that day SDPO, Amarpur seized one silver colour 5 liters plastic drum containing approximately 1 lts K. oil, some burnt pieces of wooden file and some burnt pieces of cloths being produced by SI Bimalendu Saha at PS in his presence and he put his signature on the seizure list as witness marked Exbt.5 and identified seized alamats marked as Exbt. MO.1 series.

During cross-examination he stated that he was unable to say as to how the seized alamats were brought to police station.

15. PW-10, Kalpana Biswas deposed that Sankar married to Supriya in the year 2015 and their marital life was satisfactory but after few months some differences cropped up between husband and wife on account of triffle family matters and this witness declared hostile by the prosecution and during cross-examination by the prosecution she stated that she said to police that from the side of Nari Samiti and Panchayet an effort was made to resolve the dispute between Sankar and his wife and that time Supriya told that Sankar used to inflict physical torture upon her. Later on, she could know that Supriya died.

During cross-examination by the defence she stated that she had no knowledge with regard to their dispute during their stay at Jatanbari and again stated that at the time of negotiation Supriya stated with regard to the infliction of physical torture upon her by Sankar.

16. PW-11, Rama Talukdar deposed that Supriya was her step daughter. About three years back Supriya was married to Sankar of Taninani and about three to four months after the marriage Sankar started torturing her on the allegation that she was not following his commands. Subsequently Sankar along with Supriya shifted to his house at Jatanbari and started residing therein and about one and half year back she received information that Supriya died due to burn injuries.

During cross by the defence she stated that she did not say to IO that Supriya told her that Sankar was torturing her on the allegation that she was not following his command.

17. PW-12, Babul Talukdar deposed that for a period of 5/6 months after the marriage her grand-daughter led a happy marital life. Thereafter some differences cropped up between husband and wife on account of some family matters and it led to physical violence upon Supriya with regard to that matter. The matter was taken up by the family members and a meeting was organized wherein both were advised to lead a peaceful conjugal life with mutual respect to each other. But things did not improve. Thereafter Supriya took shelter in the residence of one person belonging to Reang community. Again the matter was taken up and Supriya persuaded to live with her husband. Even thereafter a dispute arose between Supriya and her husband and then they shifted to Nutanbazar and

started residing there and about one year back one day he received information that Supriya had died of burn injuries as she was set on fire by her husband.

During cross-examination he stated that he could not remember whether he stated to the IO that Sankar had set Supriya on fire or not and again stated that he did not say to IO that Sankar assaulted Supriya on the matter relating to not preparing food in time and not following his command as she used to remain busy in taking care of her baby.

18. PW-13, Mithun Debnath, Constable of Police posted in the office of the SDPO, Amarapur deposed that on 11.09.2016 he accompanied Souvik Dey, the then SDPO, Amarapur and came to RK Pur Women P.S., Udaipur where he seized the viscera samples of stomach, liver, kidney and samples of skin and hair of deceased Supriya Das by preparing a seizure list and he put his signature on the seizure list as a witness marked as Exbt.7.

19. PW-14, Dr. Chandan Kumar Tripura who recorded the second dying declaration of the deceased. He deposed that on 27.08.2016 he was posted as Medical Officer in Gomati District Hospital, Tepania. That day he recorded the dying declaration of one Supriya Das when she stated that on 27.08.2016 in the morning at about 8.00 to 8.30 a.m. an altercation took place between her and her husband and during the period of altercation her husband shut the door of the room from inside and brutally assaulted her and then poured kerosene oil on her body and lighted

the match sticks. Resultantly she sustained burn injuries. He further deposed that at the time of recording the statement two staff nurse namely Maneka Begam and Kalpana Acharjee were present. He further deposed that as per his observation on that relevant point of time the patient was in fit mental condition for the purpose of making the statement. He identified the statement recorded by him in his own handwriting which was marked Exbt.8 and the signature of witness on the statement marked Exbt-8/1. He also obtained the RTI of patient on the bottom of the recorded statement. Subsequently the patient succumbed to her injuries. On 28.08.2016 he along with other two doctors of the hospital namely Dr. Abhijit Datta and Dr. Rituparna Dey conducted postmortem examination on her dead body. The examination revealed that the body was totally burnt except palm (both sides), sole (both sides) and top of the head and it constituted about 90 to 95% of the total body surface area (TBSA). The base of the burn was reddish and blackish in colour. Burn involves the epidermis and dermis layer of skin. Stomach, liver, kidneys were congested. Heart, lungs also found congested. Soot particles were found inside the larynx and trachea. He further deposed that the opinion as to cause of death was ante-mortem burn due to shock following 90 to 95% burn of TBSA and the probable age of the death was 6 to 12 hours prior to holding of postmortem examination. He identified the PM examination report as Exbt.9 and his signature marked

Exbt.9/1 series and he further identified the signatures of another two Doctors namely Dr. Abhijit Datta and Dr. Rituparna Dey marked as Exbt-9/2 and Exbt.9/3.

During cross-examination he deposed that against the column No.3 of the dying declaration form reflecting the mental status only the word 'Conscious' was mentioned. Further deposed that in the Postmortem examination report it was not reflected and as to what basis the said report was prepared on 08.09.2016. Although said postmortem examination was conducted on 28.08.2016. Nothing more came out relevant.

20. PW-15, Sabita Shil deposed that on 28.08.2016 she was posted as Women Constable of Police at RK Pur Women PS. That day she accompanied WSI Smt. Sikha Deb to the morgue at District Hospital, Tepania where she seized the viscera samples of kidneys, liver, stomach and samples of skin and hair belonging to deceased Supriya Das by preparing a seizure list and put her signature as a witness and identified the signature marked as Exbt.10.

21. PW-16, Smt. Kalpana Acharjee deposed that on 27.08.2016 she was posted as Staff Nurse at Gomati District Hospital, Tepania. That day one Supriya Das was admitted into the hospital with history of burn injuries and as per the practice the statement of a patient with burn injuries are recorded and same was done by Dr. Chandan Tripura who recorded the statement of the victim patient Supriya Das in her presence. That time another staff nurse

namely Maneka Begam was also present. She further stated that the patient stated that on the same day in the morning her husband assaulted her in the room and thereafter closed the doors from inside, poured kerosene oil and set fire on her. She put her signature on the recorded statement and identified her signature marked Exbt-8/2.

During cross-examination she deposed that she was not examined by police in connection with the case and for the first time she was deposing that accused Sankar Das had set fire upon Supriya after assaulting her.

22. PW-17, Maran Madrajee deposed that on 28.08.2016 he was posted as a Dom in Tepania District Hospital. On that day Dr. Chandan Kr. Tripura conducted PM examination over the dead body of Supriya Das. Thereafter he collected viscera of stomach, liver, kidney, skin, hair in separate jars and the aforesaid jars were handed over to the police by him which were seized by police in his presence by preparing seizure list and he put his signature on the seizure list as witness marked Exbt.10/1.

23. PW-18, Gautam Dey deposed that on 27.08.2016 as a para legal volunteer of DSLA Gomati, Tripura he wrote an ejahar as per instruction of Sajal Dey, son of late Ranjit Dey and thereafter the contents of the same was read over to him and after accepting the same as correct he put his signature over the ejahar marked Exbt.6/1 and his signature marked as Exbt.6/2. During cross-examination nothing came out relevant.

24. PW-19, Ranjit Dey deposed that deceased Supriya was his grand-daughter who was given marriage with Sankar and after the marriage Sankar used to inflict torture upon his grand-daughter Supriya and also used to tie her neck by Gamcha. Thereafter Supriya was taken back to their house from the house of the accused at Tainani. Subsequently accused Sankar came to their house and told them some money for the purpose of construction of residential house at Jatanbari. Accordingly he paid Rs.1800/- (eighteen hundred) and thereafter accused took Supriya with him. About two years back when he reached the house of his son at Tainani he could learnt that his grand-daughter Supriya Dey died of burn injury and in the hospital from the nurse he could know that her husband Sankar Das set her on fire. He also deposed that as the dead body of Supriya was not taken by the accused or his family so they performed her funeral.

During cross-examination he stated that he did not say to the IO that he paid Rs.1800/- to the accused for the purpose of construction of residential hut at Jatanbari and also he did not say to the IO that one nurse of the Hospital informed him that the deceased set fire by her husband Sankar Das.

25. PW-20, Bishu Dey deposed that since after three years of marriage of Sankar and Supriya, he heard from his son that Supriya died and thereafter he rushed to Hospital where he found the dead body of Supriya. His son Bapan

told him that Sankar caused the death of Supriya by setting fire after pouring kerosene oil and in the Hospital police conducted in quest over the dead body of Supriya where he signed as witness and identified his signature marked Exbt.11.

During cross by the defence he stated that his son told that Sankar caused the death of Supriya by setting fire after pouring kerosene oil.

26. PW-21, Bimalendu Saha deposed that on 27.08.2016 he was posted as SI of Police in the Nutanbazar Police Station. On that day in the morning at about 9.40 a.m. one requisition was sent to the Nutanbazar police station from the rural hospital, Nutanbazar with information that one patient with burn injuries had been admitted in the hospital. Accordingly he entered the same in the GDE vide No.13 dated 27.08.2016 and visited hospital. He went to hospital and found the victim Supriya Das was admitted with burn injuries. On consultation, the Doctor informed that the condition of the patient was very serious and accordingly he was informed that the dying declaration of the patient was already been recorded by Dr. Sourav Bhowmik before his arrival in the hospital. Thereafter the patient was referred to the Tepania District Hospital and on the same date on the basis of said GDE he visited PO and seized one 5 liter silver colour plastic K. oil drum containing about 1 liter of K. oil, one half burnt piece of wood, partially burnt a piece of cloth by preparing seizure list and identified

the seizure list marked Exbt.3/1 and his signature marked Exbt.3/2. On the same day Sajal Dey, father of the victim lodged an ejahar to the OC, RK Pur Women PS alleging the death of his daughter involving the accused person Sankar Das, Nibaran Das and Rekha Das addressed to OC, Nutanbazar PS and on the same day the said ejahar was sent to the Nutanbazar P.S. and OC Nutanbazar PS accordingly registered Nutanbazar PS Case No.026/2016 under Sections 498A/304B of IPC. On receipt of case docket he was satisfied that the information of GDE correlated with the ejahar and accordingly after registration of the case by OC Nutanbazar a requisition was sent to the SP, Gomati for allowing the IO to conduct preliminary investigation. On 28.08.2016 he again visited the PO where he examined and recorded the statement of Srimati Das(Saha), Shibani Saha and Shipra Saha and thereafter he prepared hand sketch map of PO with index. He identified the hand sketch map marked Exbt.12 and identified his signature marked Exbt.12/1, also identified the index of hand sketch map marked Exbt.13 and his signature marked Exbt.13/1. He also recorded the statement of Maran Saha and Swapan Barna Sharma. On the same day he arrested the accused Sankar Das from his house and produced before the Court. On 29.08.2016 he arranged recording the statement of Shibani Saha and Shipra Saha under Section 164(5) of Cr.P.C. before the Magistrate and after that on 31.08.2016 SP, Gomati directed him to hand over the case docket to the

SDPO Amarpur and accordingly he handed over the case docket on 01.09.2016 to the SDPO Souvik Dey. During cross-examination nothing came out relevant.

27. PW-22 Subhasis Bandopadhyaya deposed that on 28.08.2016 he was posted as SDM, Udaipur Sub-Division. On that day he received one requisition from OC RK Pur for conducting inquest over the dead body of Supriya Das. Accordingly he conducted inquest over the dead body of Supriya Das at the morgue of District Hospital, Udaipur on 28.08.2016 being identified by one Smt. Sikha Deb, WSI RK Pur PS and after conducting the inquest he prepared a report in four sheets and identified the report marked Exbt.15 and the signature of witness in four numbers marked as Exbt.15/1 to 15/4.

28. PW-23 Smt. Sikha Deb deposed that on 27.08.2016 she was posted at RK Pur Women PS as an ASI of Police. As per requisition of OC, RK Pur Women PS she went to Tepania District hospital and she conducted inquest over the dead body of Supriya Das being identified by one Sabita Shil and Abhima Mog, both are Constables and prepared the inquest report and identified the same marked as Exbt.11/1 and 11/2. On 28.08.2016 Maran Madrasi produced a white plastic bag containing three jars full of viscera of the deceased Supriya in Tepania District Hospital morgue and the same was also seized by her by preparing seizure list in connection with RK Pur PS GD Entry No.21/16 dated 27.08.2016. She identified the seizure list marked

Exbt.10/2 and her signature marked Exbt.10/3. On 11.09.2016, SDPO, Amarpur on her production seized three jars containing the viscera by preparing seizure list wherein he put her signature and identified her signature marked Exbt.7/1. During cross-examination nothing came out relevant.

29. PW-24, Souvik De is the IO who laid chargesheet against the accused appellant. He deposed that as an IO he took up the investigation of the case and during the part of his investigation he found that his predecessor already visited PO and prepared hand sketch map with index and during the part of investigation he examined and recorded the statements of Shibani Saha, Shipra Saha, Arati Saha, Soma Rani Banik, Mani Bala Karmakar and Dr. Sourav Bhowmik who recorded the dying declaration of the deceased. He also examined and recorded the statements of Shyamal Debnath, Priyalal Chakma, Srimati Das, Krishnamani Chakma, Sajal Dey, Rama Talukdar, Kalpana Biswas, Amar Das, Babul Talukdar, Ramesh Chakraborty, WSI Sikha Dey, Mithun Debnath, Biswajit Banik, Sabita Shil, Abhima Mog, Dr. Chandan Kumar Tripura, Menaka Begam, Kalpana Acharjee, Ranjit Dey, Bishu Dey, Subhash Banerjee, Subasish Bandapadhyay, Dr. Abhijit Datta, Dr. Rituparna Dey and Miss Shibani Acharjee. He further deposed that on 07.09.2016 he collected the first dying declaration of deceased from Dr. Sourav Bhowmik, MOIC of Nutanbazar Hospital. He received SCD on 11.09.2016 and

also obtained the second dying declaration of deceased from WSI Sikha Dey. On 07.09.2016 he seized one 5 ltrs. Silver colour plastic container with mark Veta with red colour cap containing 1 ltrs of liquid substance appeared to be kerosene, one half burnt file of wood of length approximately 15 inch and some burnt pieces of cloths which were already seized by the previous IO and reseized by him by preparing seizure list from SI Bimalendu Saha. He identified the seizure list marked Exbt.5/1 and his signature of the seizure list marked Exbt.5/2. On 11.09.2016 he seized three plastic jars marked A, B and C containing viscera of the deceased and identified the seizure list marked as Exbt.7/3 and the signature marked as Exbt.7/4. He further deposed that he arranged for sending the viscera, i.e. skin and hair of deceased for forensic examination and on 10.10.2016 he received the SFSL report. He also arranged for recording of judicial statement of witnesses Shibani Saha and Shipra Saha and he caused the arrest of accused on 28.08.2016 and forwarded him before the court on 29.08.2016 and on completion of investigation he laid chargesheet against accused Sankar Das for having commission of offence punishable under Section 498A/302 of IPC. He identified Exbt.16, the statement of witness Maran Saha (PW-4). He identified the drum containing K. oil, burnt pieces of cloths and a file of burnt fire wood marked as Exbt.MO.1 series. He identified the endorsement of WSI Mina Debbarma on the ejahar

marked Exbt.6/3 and identified the endorsement regarding receipt and registration of FIR by the then OC Jaharlal Debbarma marked Exbt.6/4. He identified the printed FIR form marked as Exbt.17 and the signature of the then OC Jaharlal Debbarma marked as Exbt.17/1.

During cross-examination he deposed that the occurrence took place on 27.08.2016 at about 8.00 a.m. The first dying declaration was recorded on 27.08.2016 but the same was collected on 07.09.2016 as the concerned Doctor made delay in delivering the same. The second dying declaration was received by him on 11.09.2016. He further deposed that although the second dying declaration was recorded on 27.08.2016 but the same was procured on 10.09.2016 but he could not say the reason for delay. He further deposed that he did not find any certificate of Doctor showing that the deceased was fit for giving dying declaration. At the time of seizure, kerosene drum was closed. He identified the portion of statement of witness Srimati Saha marked Exbt.A. He also deposed that during investigation he did not seize the bed head ticket of deceased and also during investigation it was not revealed to him that there was any demand of dowry on the part of the accused before the occurrence.

30. We have heard detailed argument of both the sides and also gone through the evidence on record of the prosecution adduced before the Learned Trial Court, during trial of the present appellant and also the citations as

referred by Learned counsel of both the sides. In the case at hand there is no dispute on record in respect of the fact that the deceased of this case was the wife of the present accused appellant. It is on record that after the marriage, both the parties resumed conjugal life for a certain period peacefully. After that their family discord started. Although in the case Learned Trial court framed charge against the appellant under Section 498A read with Section 302 of IPC. But after conclusion of trial Learned court below acquitted the appellant from the charge levelled against him under Section 498A of IPC but found him guilty for the charge of punishable under Section 302 of IPC. In course of hearing Learned Addl. PP representing the state respondent/prosecution also could not satisfy the court regarding acquittal of the appellant from the charge framed under Section 498A of IPC. So after going through the evidence on record we also concur with the finding of Learned Trial Court that the prosecution has failed to bring whom the charge against the accused appellant under Section 498A of IPC. Now in respect of charge framed under Section 302 of IPC it appears to us that there were two sets of evidence adduced before the Learned Trial Court by the prosecution and at the time of delivery of judgment Learned Trial Court did not consider the evidence of PW-2, Miss Sibani Saha aged about 14 years and PW-3, Miss Sipra Saha aged 14 years and ultimately relied upon the dying declaration of the deceased victim. We have also gone through the evidence of PWs 2

and 3. PW-2, Sibani Saha in course of her examination before the court stated that on that relevant point of time a quarrel was going on and at that time the present appellant gave a push to his wife i.e. the deceased and she fell down on the earth and thereafter she got up and rushed to the kitchen and took up a file of burning fire wood and set fire upon her. Similarly PW-3 Sipra Saha also deposed in the same manner that on that relevant point of time she heard noise of quarrel amongst the accused and the deceased. When the appellant gave a push to Supriya, she fell down on the ground and thereafter she got up and rushed to their kitchen and picked up a file of burning fire wood from the oven and self immolated her. These part of evidence cannot appears to be trustworthy and it appears to us that Learned Trial Court below rightly discarded their evidences made before the court. In a criminal prosecution it is not possible that every witnesses of the prosecution in *toto* would support the version of each other and from the evidence of those two witnesses it appears to us that just only for pushing by the appellant the deceased victim could not have taken such step to vanish/destroy her life and there was also no evidence on record that the deceased victim was suffering from any mental disorder earlier to commit such offence by self immolating her. So after gone through the evidence on record we stand agree with the findings of the Learned Trial court below that the evidence of PWs 2 and 3

were not sufficient to justify conviction against the present appellant of this case.

31. Now to substantiate the charge we have also gone through the other evidence on record including the evidence of Medical Officers who recorded the dying declaration of the deceased as already stated. The dying declaration of the deceased was recorded twice, one at Nutanbazar Hospital just after the initial admission of deceased of the alleged incident and thereafter at Udaipur District Hospital, Tepania when she was referred from Nutanbazar Rural Hospital to Udaipur for better treatment on the ground of her severe condition. Excepting the Medical Officers other witnesses were also supported the version of the prosecution that the death of the deceased was caused due to pouring of Kerosene oil by the accused appellant on the alleged date. The appellant accused by the trend of cross-examination could not shaken the evidence of prosecution witnesses in this regard. Now if we go through the evidence of PW-5 Dr. Sourav Bhowmik who in course of his examination specifically stated that on 27.08.2016 as an MO of Nutanbazar Rural Hospital he recorded the dying declaration of the deceased when she stated that her husband i.e. the present appellant has set fire on her after pouring K. oil. This witness further stated that the deceased victim was well oriented and conscious with regard to the time and place, although he did not give any specific certificate with regard to the observation. He also identified

his report which was duly marked and from his evidence it appears that at the time of recording dying declaration one staff nurse Krishnamani Chakma and one GDA Manibala Karmakar were present and the witness also obtained the RTI and LTI of the deceased victim on the body of same dying declaration which was marked as Exbt.4 and he identified the thumb impression of the deceased marked Exbt.4/1 series and his signature on the body of dying declaration marked Exbt.4/2. The accused by the trend of cross-examination could not raise any doubt to disbelieve his evidence. Furthermore, from his evidence it also appears to us at the time of recording dying declaration apart from himself, the patient and two witnesses Krishna Mani Chakma and Manibala Karmakar were present and in their presence the statement was recorded. Now if we go through the evidence of PW-6 Manibala Karmakar she also supported the version of PW-5, Dr. Sourav Bhowmik and from her evidence it also appears that at the time of recording dying declaration the victim stated that her husband had set fire on her after pouring kerosene oil and she also identified her signature on the body of dying declaration marked Exbt.4/3. The accused appellant could not discredit the evidence of said witness Manibala Karmakar and the other witness Krishna Mani Chakma was not tendered for examination by the prosecution.

32. Now if we go through the evidence of Dr. Chandan Kumar Tripura, PW-14 who recorded the second

dying declaration of the deceased victim. It appears that on 27.08.2016 he was posted as Medical Officer of Gomati District Hospital, Tepania and on that day he recorded the dying declaration of one Supriya Das (deceased) when she stated that on 27.08.2016 in the morning at about 8.00 to 8.30 a.m. a hot altercation took place in between the deceased and her husband and during the said hot altercation her husband shut the door from inside and brutally assaulted her and then poured kerosene oil on her body and lighted the match sticks. Resultantly, she sustained the burn injuries and at the time of recording the statement two staff of their hospital namely Maneka Begam and Kalpana Acharjee were present. He further stated that as per his observation on that relevant point of time the deceased victim was in fit mental condition for the purpose of making the statement and identified the dying declaration recorded by him marked Exbt-8 and also identified his signature on the body of dying declaration marked Exbt.8/1. He further stated that on the bottom of the recorded statement he also obtained the RTI and subsequently same day the victim succumbed to her injuries and on 28.08.2016 he along with two other Doctors namely Abhijit Datta and Rituparna Dey conducted Postmortem over the dead body of the deceased and according to him the cause of death was ante-mortem burn due to shock following 90 to 95% burn of TBSA and the probable age of the death was 6 to 12 hours prior to holding of postmortem examination. He identified

the postmortem report marked Exbt.9 and his signature marked Exbt-9/1 and the signatures of two other Doctors marked as Exbt.9/2 and Exbt.9/3. During cross-examination nothing came out relevant.

33. Now if we go through the evidence of PW-16, Kalpana Acharjee it appears to us that on 27.08.2016 she was posted as Staff Nurse of Gomati District Hospital, Tepania and on that day one Supriya Das was admitted in the hospital with burn injuries and accordingly the statement of the deceased victim was recorded by Dr. Chandra Kumar Tripura in her presence. That time another staff namely Maneka Begam was also present. She further stated that on that relevant point of time the victim stated that on that day in the morning her husband assaulted her in the room and thereafter closed the door from inside, poured kerosene oil and set fire on her. She put her signature on the recorded statement and identified the same marked as Exbt.8/2. Thus it appears that this witness PW-16 also supported the version of PW-14, Dr. Chandan Kumar Tripura. During cross-examination nothing came out relevant.

34. At the time of argument Learned counsel for the appellant relied upon few citations and submitted that since the victim according to postmortem examination report sustained 90-95% burn injuries, so according to law she was not in a position to make any statement and she was also not in a position to put her thumb impression on the

body of dying declaration. But the Learned court below did not consider those aspects and ultimately found the appellant guilty of the offence charged. It was further submitted that the dying declaration was not recorded in presence of any Magistrate as required by law and furthermore that was not taken in the shape of question answer forms. So according to Learned counsel there was no scope to place any reliance on the alleged dying declarations recorded by the concerned Medical Officers PWs 5 and 14. In **Nirmala Devi alias Ghunghera Devi vs. State of Uttaranchal** reported in **2005 CRI.L.J. 625**, Hon'ble Uttaranchal High Court in para Nos.30 and 32 observed as under:

"30. It also need repetition that the so called dying declaration (Ext. Ka.7) clearly appear to be a detailed, perfectly prepared and full of facts statement which could not be at any rate expected to have been given by Smt. Urmila Devi considering her precarious condition due to almost 100% burns and as also referred above.

32. The learned counsel for the appellant also drew attention to the fact that there is nothing on record to show that the Medical Officer attending to the deceased in the hospital sent any memo to the police station to send some officer to record the dying declaration of the deceased. Had it been so Dr. Rajesh Singh (P. W. 4) would have given evidence to this effect also. There is also nothing to show that from the police station a reference was sent to the Sub Divisional Magistrate to record the dying declaration. No G. D. report to this effect was brought on record. Nothing has also been said about this by the Investigating officers S. I. Digambar Singh Rawat (P.W.8) and Dy. S. P. Jagat Ram Joshi (P.W.9). As regards the statement of Tehsildar Pratap Singh Sah (P. W. 7) is concerned he merely gave out that he was deputed by the Sub Divisional Magistrate to record the dying declaration of the deceased but no written order to this effect was brought on record. In these circumstances the suggestion given to this witness that no statement was given by the deceased and that the so called dying declaration was got prepared by him fictitiously at the instance of the informant of the case cannot said to be without any substance despite the suggestion having been denied by this witness."

Referring the same Learned counsel for the appellant submitted that in this case from the inquest report

[Exbt.11] it is clear that the deceased had sustained injuries by setting fire to her own body, but that part of statement of the recording officer was not considered by Learned Trial Court and further submitted that the alleged dying declaration was not recorded by Magistrate so no reliance could be placed upon those dying declarations.

35. In **Sampat Babso Kale and Another vs. State of Maharashtra** reported in **AIR 2019 SC 1852**, Hon'ble the Supreme Court in paras 14, 15 and 19 has further observed as under:

"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. 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 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.....

15. In the present case, as we have already held above, there was some doubt as to whether the victim was in a fit state of mind to make the statement. No doubt, the doctor had stated that she was in a fit state of mind but he himself had, in his evidence, admitted that in the case of a victim with 98% burns, the shock may lead to delusion. Furthermore, in our view, the combined effect of the trauma with the administration of painkillers could lead to a case of possible delusion, and therefore, there is a need to look for corroborative evidence in the present case.

19. Another factor which needs to be taken into consideration is that none of the witnesses from the neighbourhood have been examined. Even as per the prosecution case it was the neighbours who first raised an alarm. There is no explanation why none of them have been examined. It is also the prosecution case that the accused husband along with another neighbour went to the hospital to arrange for an ambulance. This person has not been examined. The non-examination of these important witnesses leads to no corroboration of the dying declaration. The best witnesses would have been the neighbours who reached the spot immediately after the occurrence. They would have been the best persons to state as to whether the victim told them anything about the occurrence or not."

Referring the same Learned counsel for the appellant submitted that since the victim sustained burn injuries and from the evidence on record it transpires that administration of pain killers could lead to a case of possible delusion, so no reliance could be placed upon the alleged dying declaration as relied upon by the prosecution in proving the charge against the accused appellant, but the Learned court below did not consider the same and from the evidence of PWs 2 and 3 and their mother it was crystal clear that there was no fault on the part of the accused appellant but the victim herself by a piece of burnt fire wood immolated her and set fire on her body. But those part of evidence were overlooked by the Learned court below and urged for setting aside the judgment of the Learned Trial court.

36. Learned counsel for the appellant further referred another citation of the Hon'ble Supreme Court in **Jayamma and Another vs. State of Karnataka** reported in **(2021) 6 SCC 213**. In para Nos. 17, 21, 23 and 24 Hon'ble the Supreme Court observed as under:

17. Consistent with the cited principles, this Court refused to uphold the conviction in the case of Sampat Babso Kale and Another v.State of Maharashtra: (2019) 4 SCC 739. The dying declaration in that case was made by a victim who had suffered 98 percent burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that

14.the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around.

21. The litmus test, therefore, is whether the victim made the statement (Ex.P5)and if so, whether such statement can be the solitary foundation for conviction of the appellants?

23. The other important reason to depart from the High Court's view re conviction of the appellants is that the power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a 'possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact.

24. If the case in hand is evaluated on these parameters, it may be seen from paragraphs 4 and 6 of its order that the High Court dealt with the appeal against acquittal summarily and did not even discuss the ocular evidence, especially of the son and daughter-in-law of the deceased, who have, to some extent, belied the version of the doctor(PW-16) or the investigating officer (PW-11). We say so for the reason time when she was rushed to the hospital in a bullock cart arranged by Kumaranaika (PW-3). Without discarding or disbelieving such statement(s), it is difficult to accept that injured — Jayamma was in a fit state of mind at 1:15 a.m. when the alleged dying declaration was recorded. Her state of mind can be well imagined due to the combined effect of the trauma and the administration of painkillers. that according to Ravi Kumar (PW-2), son of the deceased, the victim Jayamma had lost consciousness and was unable to speak at the The High Court, on the other hand, relied upon the dying declaration(Ex.P-5) as the same was purportedly corroborated by the statements of doctor (PW-16), and the police official (PW-11) who authored the document (Ex.P-5). Such a conclusion, in our considered opinion, is totally erroneous and based upon misreading of the evidence on record. It has already been noticed that according to the doctor (PW-16), the victim had suffered 80% injuries including on her hands. As

against it, the Police Officer (PW-11) claims that there were no burn injuries on the hand of the victim, hence she could put her left thumb impression on the dying declaration (Ex.P-5). These glaring contradictions should not have gone unnoticed by the High Court.”

Referring the same Learned counsel for the appellant submitted that since the victim had suffered 90-95% burn injuries and the statement of the victim was recorded after the victim was injected with painkillers and from the evidence of the Medical Officers it was not clearly explained by the prosecution that the victim was a fit state of mind to make the statement. So according to Learned counsel the possibility of the victim being in a state of delusion could not be completely rule out. But the Learned court below did not consider these aspects and came to the conclusion of finding guilty of the appellant in this case and furthermore, Learned counsel drawn the attention of the court that the prosecution before the Learned Court failed to prove that the present appellant caused death of the victim by pouring K. oil and no such expert evidence was led by the prosecution to prove the charge against the appellant. Furthermore, no Magistrate who recorded the statement of the witnesses under Section 164(5) of Cr.P.C. was adduced by the prosecution to substantiate the charge leveled against the appellant and furthermore there was delay in delivering the dying declaration recorded by the concerned Medical Officers. There was also no explanation in this regard from the side of the prosecution.

37. Finally Learned counsel appearing for the appellant referring the PM examination report submitted that in the PM report nowhere it is found that at the time of

examination of the deceased victim they found the smell of kerosene on the body of the deceased victim. There was also no explanation from the side of prosecution in this regard and finally urged for acquittal of the appellant from the charge of the case by setting aside the judgment.

38. On the other hand Learned Addl. P.P. Mr. S. Ghosh at the very outset referring the evidence of the prosecution witnesses and specifically referring the dying declarations of the victim recorded by PW-5, Dr. Sourav Bhowmik and PW-14, Dr. Chandan Kumar Tripura and the connected evidence submitted that the Learned court below after proper appreciation of the evidence on record rightly and reasonably delivered the judgment holding the appellant to be guilty of offence and submitted that there is no scope to interfere with the judgment passed by the Learned Trial court and he also submitted that the Learned court below rightly and reasonably discarded the evidence of PWs 2 and 3 and further submitted that the evidence of PWs 5 and 14 are so trustworthy and convincing that there was no room to disbelieve their evidence and in support of the prosecution case Learned Addl. P.P. relied upon one citation. In **Ashabai and Another vs. State of Maharashtra** reported in **(2013) 2 SCC 224** in para No.15 Hon'ble the Apex court observed as under:

"15) About the evidentiary value of dying declaration of the deceased, it is relevant to refer Section 32(1) of the Evidence Act, 1872, which reads 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.

(2)-(8) * * *

It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32(1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other."

[Emphasis supplied]

Referring the same Learned counsel for the state-respondent submitted that as per law there is no particular form/procedure prescribed for recording a dying declaration nor it is required to be recorded by a Magistrate. In the given case the concerned two Medical Officers PWs 5 and 14 recorded the dying declaration of the deceased and

both the Doctors opined that the deceased was in a fit state of mind and conscious to made the statement and accordingly the statement of the deceased victim was recorded in presence of the witnesses and relying upon the judgment Learned Addl. P.P. further submitted that since the appellant by way of his defence could not discard the evidence on record of the prosecution and furthermore the appellant during his examination under Section 313 of Cr.P.C. stated that on that relevant day he returned back to home at about 11.30 a.m. which was a dire falsehood. As because the victim was admitted in the hospital on that day in the morning at about 9.00 a.m. and at about 9.20 a.m. the first dying declaration was recorded by PW-5 in presence of witnesses and the appellant was present in the hospital along with PW-1 that time. So the stand taken by the appellant during his examination under Section 313 of Cr.P.C. cannot be relied upon and finally Learned counsel for the state-respondent urged for upholding the conviction returned by Learned Trial court.

39. We have also gone through the citations referred by Learned counsel of both the sides and also discussed the evidence on record in detail. From the evidence on record it appears to us that Learned court below based on the dying declaration recorded by PW-5 and PW-14 rightly convicted the appellant in the given case. The appellant by way of cross-examination could not discard the evidence of said Medical Officers and also the corroborating evidences. In this regard we would like to rely upon another citation of

the Hon'ble Supreme court in **Purshottam Chopra and Another vs. State (Government of NCT of Delhi)** reported in **(2020) 11 SCC 489** wherein the Hon'ble Supreme Court observed as under:

19.1. In Bhagwan: (2019) 8 SCC 95, this Court accepted the dying declaration made by a person having suffered 92% burn injury and whose continued consciousness was certified by the doctor. This Court referred to the decision in Vijay Pal v. State (Government of NCT of Delhi): (2015) 4 SCC 749, where the statement made by the victim having suffered 100% burn injury was also accepted. This Court said :-

(B) Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration?

24. This question is also no longer res integra. In Vijay Pal v. State (NCT of Delhi): 2015 (4) SCC 749, we notice the following discussion: (SCC p. 759, paras 23-24).

23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat: (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh: (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.

25. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable.

20.3. In the case of Thurukanni Pompiah: AIR 1965 SC 939, this Court held that while a truthful and reliable dying declaration may form the sole basis of conviction, even without corroboration but the Court must be satisfied about its truthfulness and reliability; and if the Court finds that the declaration is not wholly reliable and a material portion of the deceased's version of the occurrence is untrue, the Court may, in the circumstances of a

given case, may consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. This Court observed, *inter alia*, as under:-

9. Under clause (1) of Section 32 of the Indian Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that 'it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

20.4. In *Uka Ram*: (2001) 5 SCC 254, this Court again emphasised on the requirement that the Court should be satisfied about trustworthiness of the dying declaration, its voluntary nature and fitness of the mind of the deceased and it was held that:

6. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.

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 eye-witnesses 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.

22. Applying the relevant principles to the facts of the present case, we have not an iota of doubt that the appellants have rightly been convicted on the basis of the statements of the victim Sher Singh, as recorded by PW-8 Dr. Sushma and PW-16 SI Rajesh Kumar.

25.2. Another emphasis laid on behalf of the appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in Vijay Pal's case: (2015) 4 SCC 749 and reiterated in Bhagwan's case: (2019) 8 SCC 95 the extent of burn injuries – going beyond 92% and even to 100% – would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded.

25.3. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As

noticed, there could still be some inherent defect for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.

28. For what has been discussed hereinabove, we are clearly of the view that the appellants have rightly been held guilty of causing death of Sher Singh by putting him on fire and have also rightly been convicted for the offence under Section 302/34 IPC. No case for interference is made out. Accordingly, and in view of the above, these appeals fail and are, therefore, dismissed."

[Emphasis supplied]

40. In another judgment **Bhagwan vs. State of Maharashtra** reported in **(2019) 8 SCC 95** Hon'ble the Apex court in para Nos. 24 and 25 observed as under:

"(B) Can a person who has suffered 92% burn injuries be in a condition to give a dying declaration?

24. This question is also no longer res integra. In *Vijay Pal v. State (Government of NCT of Delhi)*: (2015) 4 SCC 749, we notice the following discussion:

23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval v. State of Gujarat*; (1992) 4 SCC 69: wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In *State of M.P. v. Dal Singh*; (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.

25. Therefore, the mere fact that the patient suffered 92% burn injuries as in this case would not stand in the way of patient giving a dying declaration which otherwise inspires the confidence of the Court and is free from tutoring, and can be found reliable."

41. From the aforesaid citations it appears to us that here in the case at hand there was no contrary evidence on record that the deceased victim did not make the statement voluntarily and her statement was not coherent and consistent and considering the nature of injury sustained by her she was not in a position to make any such statement. So after going through the entire evidence on record and hearing both the sides and also after going through the principle of citations as referred above, we are of the considered opinion that the Learned court below rightly and reasonably found the appellant to be guilty for the offence charged punishable under Section 302 of the IPC and as such we do not find any cogent ground to interfere with the judgment passed by Learned Trial Court.

42. In the result, the appeal filed by the appellant is hereby dismissed being bereft of merit and accordingly, it stands dismissed. The judgment and order of conviction and sentence passed by the Learned court below is hereby upheld and accordingly it is affirmed. Pending application, if any, stands disposed of.

Send down the LCRs along with a copy of this order.

JUDGE

JUDGE

**MOUMITA
DATTA**

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