

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.32 OF 2023**

Sri Bikram Munda,
S/o- Sri Laxmicharan Munda,
Resident of Purba Ludhua, Ward No.5,
P.S. & P.O.- Sabroom, South Tripura.

.....Appellant(s)

Versus

The State of Tripura,

.....Respondent(s)

For the Appellant(s) : Mr. S. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. R. Datta, Public Prosecutor.

Date of hearing and delivery of
Judgment & Order : 23.07.2024.

Whether fit for reporting : NO.

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

J U D G M E N T & O R D E R(ORAL)

T. AMARNATH GOUD(J)

This present appeal has been filed under Section 374 of Code of Criminal Procedure, 1973 against the Judgment of conviction and Order of Sentence dated 12.04.2023 passed in ST(T-1)02/2022 by the learned Additional Sessions Judge, Sabroom South Tripura sentencing the appellant to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation for committing offence under Section 302 of IPC.

2. The brief fact of this case is that one Pradip Roy i.e., P.W.-1 herein lodged an FIR with the Officer-in-Charge of Sabroom Police Station vide registration No.2021/SBM/021 dated 22.04.2021 under Sections 498A/302 of IPC alleging that the accused-appellant who is the husband of his elder sister Arati Roy(Munda) used to torture her over demand of cash money. On 11.04.2021 at around 9.00. P.M., while serving rice in their kitchen room, the accused-Bikram Munda set her ablaze by pouring kerosene oil on her person. Immediately after such occurrence, she was brought to Sabroom Sub-Division Hospital, and from there, the attending Doctor referred her to Gomati District Hospital, Udaipur. Due to her deteriorating condition, she was again shifted to the AGMC & GBP Hospital, Agartala where on 18.04.2021 at around 12 noon, she succumbed to her injuries under treatment.

3. Based on the said written complaint, the police started investigation. During the investigation, the investigating Officer of the case recorded the statement of witnesses, collected the dying declaration of the victim-deceased, post-mortem report, material objects, arrested the appellant, and filed charge sheet under section 498A/302 IPC.

4. After taking cognizance of the offence by the learned SDJM, Sabroom, South Tripura, the case was committed

to the court of learned Sessions Judge, South Tripura, Belonia for trial according to law. The learned Session Judge, South Tripura framed charges under Section 498A of IPC and under Section 302 of IPC, which the appellant denied and claimed to be tried.

5. During the trial, the prosecution examined as many as 15 witnesses, and relevant documents were also exhibited. The accused-appellant was also examined under Section 313 of Cr.P.C. Thereafter the case was transferred to the Court of learned Additional Sessions Judge, Sabroom, South Tripura.

6. On 14.03.2022, the argument of both the parties was heard, and by a judgment dated 12.04.2023, learned Additional Sessions Judge convicted the appellant and on the same date sentenced the convict-appellant herein as stated here-in-above.

7. Being aggrieved and dissatisfied with the Judgment of conviction and Order of sentence dated 12.04.2023, the convict-appellant has preferred this appeal.

8. Heard Mr. S. Bhattacharjee, learned counsel appearing for the appellant herein as well as Mr. Raju Datta, learned Addl. P.P., appearing for the State-respondent.

9. It is the argument of Mr. S. Bhattacharjee, learned counsel appearing for the appellant that on the strength of the

evidence of P.W.-4, P.W.-10 and Exbt P-4, the dying declaration of the victim deceased, the conviction has been ordered without examining the issue of whether there was any presence of kerosene as alleged. Further, there was no forensic test done to find out whether the cause of death was by pouring kerosene. Learned counsel further argued that on the strength of the dying declaration, the conviction cannot be made.

In this regard, learned counsel relied upon **paras-14 to 17** of the Judgment of the Hon'ble Supreme Court reported in **2021 STPL 4376 SC** titled as **Jayamma and anr., Vs. State of Karnataka**. The same is given here-in-under:-

"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.

14.1. In P.V. Radhakrishna. v. State of Karnataka¹¹, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

14.2. In Chacko v. State of Kerala¹², this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

14.3. In *Sham Shankar Kankaria v. State of Maharashtra*¹³, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in *Paniben v. State of Gujarat*¹⁴ wherein this Court summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria (Supra)* reiterated::

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

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

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

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

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

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

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455]);

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

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

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

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

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 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.

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 burn 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.

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*¹⁵. 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 "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."

[emphasis supplied]"

Stating thus, learned counsel urged this Court to set aside the impugned Order of the Court below.

10. Per contra, learned P.P., placed reliance on the evidence on P.W.-4, P.W.-10, and P.W.-11, the Doctor who had initially given first aid to the victim-deceased. P.W.11 stated that he smelled kerosene from the body and wearing apparels of the

victim. Learned P.P., also indicated that it is evident from the dying declaration of the victim-deceased that the accused-appellant poured kerosene on the person of the victim and set her ablaze.

To support his argument, learned P.P., relied upon **para-6** of the Judgment of the Hon'ble Supreme Court reported in **(1998) 9 SCC 303** titled as **Ravi Chander and ors., Vs. State of Punjab**. The same is given here-in-under:-

"6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the

offence under Sections 498A and 304B IPC could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted. Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.

Learned P.P., also relied upon **para-14** of the Judgment of the Hon'ble Supreme Court reported in **2024 SCC Online SC 237** titled as **Naeem Vs. State of Uttar Pradesh**.

The same produced here-in-under:-

"14 It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

Stating thus, learned P.P., urged this Court to dismiss this appeal and uphold the impugned Judgment and Order of conviction.

11. Heard both sides and perused the evidence on record.

12. To adjudicate the case in hand, let us examine some important witnesses and evidence.

13. P.W.-1, Sri Pradip Roy is the brother of the deceased-victim. Being the informant he deposed that the accused-appellant entered into marital knot with his deceased sister about 20 years ago. Initially, they were leading a peaceful conjugal life for about 10-15 years of their marriage. Thereafter, the accused started torturing her on illegal demand for money. It is also asserted that the accused is an addicted person and used to demand money from her so that he could expend to gratify his addicted life. On being demanded, sometimes she gave money to the accused. His sister shared with them such difficulties happening in her life whenever she comes to their house. Further, he went on to testify that on 11.04.2021, the accused poured kerosene oil on his sister and set her ablaze. After the incident his nephew P.W.-4 Joy Munda, son of his deceased sister rushed to his house and informed him about the incident that the accused caused burn injuries to his sister by setting fire on her and during such incident, PW-4 tried to save his mother by throwing water on her burning body. It is also found in the deposition of P.W.-1 that he along with his nephew P.W.-4 immediately shifted his injured sister to a nearby hospital of Sabroom by ambulance. Due to grave burn injuries, his sister

was referred to Gomati District Hospital, Gomati, and again, she was taken to GBP Hospital for better treatment; but after about a week on 18.04.2021, his victim sister succumbed to burn injuries. P.W.-1 also added to his deposition stating the incriminating fact that his sister told him in the presence of P.W.-4 and other P.W.s that the accused deliberately set fire on her by pouring kerosene oil. Based on such incident, he lodged FIR with Sabroom Police Station written by one Sri Dipankar Debbarma P.W.-12 as per his versions.

In the cross-examination of P.W.-1, nothing is found relevant except suggestions and denial made on behalf of the accused.

14. P.W.-4 Sri Joy Munda who is the son of the deceased and accused-Bikram Munda deposed that on the date of the incident at around 9 pm he was sleeping in a separate room of their dwelling house and his parents i.e. accused father and deceased mother were in another room and at that relevant time, all on a sudden, his mother cried out sharply and telling 'fire and fire'. On hearing this, he hurriedly entered into the room where his mother was screaming and he threw water on his mother to stop burning. His mother told him that the accused father poured kerosene oil on her and ignited the fire. Later on, he, being accompanied by his maternal uncle (P.W.-1) and

neighbour (P.W.-5) shifted his injured mother immediately to Sabroom Sub-Divisional Hospital where from, she was referred to Gomati District Hospital and again was taken to GBP Hospital, Agartala. His relatives visited the injured mother during treatment to see her condition and after four days of treatment his mother was incapable of speaking, and on 18.04.2021, she succumbed to burn injuries. On the specific question of the Court below about the reason for setting fire on his mother, the witness replied that at the relevant time of the incident, the accused father was picking up quarrel with his mother.

In cross-examination, he replied in response to a query that when he was throwing water on the person of her mother, at that time, his father also went to bring water.

15. PW-10, Shri Samit Kumar Das is an Executive Magistrate of the office of SDM, Sadar Sub-Division Agartala. He deposed that, on 12.04.2021 on being endorsed as per requisition received from the Police Out Post, GBT, Agartala, he recorded the dying declaration of deceased Arati Munda. Before recording, he consulted with one available attending doctor who examined the victim lady, and finding her to be in a conscious and sound/fit state of mind on her consent, the declaration was recorded. He stated that the name of the attending doctor is

Sovik Majumder. The witness identified the recorded dying declaration marked as Exhibit-P-4.

In cross-examination P.W.-10 deposed that he noticed burn injuries on the person of injured Arati Munda; but he did not cite the percentage of such burn injuries in his recording.

16. P.W.-11, Dr. Tamal Roy is a Medical Officer of Sabroom Sub- Divisional Hospital. From his testimony, it reveals that on 11.04.2021 at 10:10 p.m. he examined one patient named Arati Munda who came to the Hospital with a history of homicidal burn injuries caused by kerosene pertaining to Sabroom PS case No.21/21 under Section 498A/302 of IPC. On examination, he found smell of kerosene from the wearing apparel as well as from the body of the victim woman. She sustained around 90% burn covering the whole upper and lower limbs, front and back trunk, blackening of burn areas and such burn injuries are serious in nature. After examination, the patient was referred to Gomati District Hospital, Udaipur for further treatment. Based on his examination, he prepared injury report dated 28.04.2021 marked as exhibit P-5 on identification and the same was sent to the O/C of Sabroom PS.

In cross-examination of P.W.-11 indicated that the patient Arati Munda was conscious when she was brought to the Hospital.

17. The dying declaration of the victim-deceased i.e., Exbt-P-4 is a crucial piece of evidence and the same is produced herein:-

"I, Arati Munda, in sound health do state that, on 11-04-2021 AD, last Sunday, I returned home from work at 6 pm. After returning home I found that my husband i.e. Bikram Munda, is in drunken state. My husband habitually indulges in alcohol and does not do any work. I have to work to shoulder the burden of our family's expenses. That evening after returning home from work, upon confronting him about his drinking and remaining idle without work, a heated argument ensued between us. Subsequently, he poured 2 litre of kerosene on my body. When I ran out of the room, he ignited a broom and set fire on my body. My son rushed to me and doused the fire by pouring water on my body. I was subsequently taken to Sabroom hospital. Currently, I am undergoing treatment at GBP Hospital."

18. The evidence of the eye-witness i.e. P.W.-4, who is none other than the son of the accused-appellant and the victim-deceased has not been shaken in the initial stage or before the Court. The evidence of P.W.-4 is corroborated and reiterated by P.W.-1, the complainant who stated that it was P.W.-4 who informed them about the action of his father in burning his mother. Further, P.W-11 the Doctor who had provided First Aid to the victim-deceased categorically stated that he smelled kerosene from the body and wearing apparels of the victim, when she was brought to the hospital. When the evidence of P.Ws-1, 4, 10, and 11, are coupled with the dying declaration i.e. Exbt P-4, this Court is convinced with the argument of the

learned Public Prosecutor. Accordingly, this present appeal stands dismissed and the impugned Judgment and Order dated 12.04.2023 is confirmed.

19. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

Send down the LCRs.

B. PALIT, J

T. AMARNATH GOUD, J



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