

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.135 of 2015**

Arising Out of PS.Case No. -27 Year- 2013 Thana -MAHILA P.S. District- BHOJPUR

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Dhananjay Srivastava, son of Vinay Chandra Akhauri, resident of Village-Kaitha Kori, P.S.- Sandesh , District- Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Satish Chandra-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 5-09-2017

Appellant, Dhananjay Srivastava has been found guilty for an offence punishable under Section 304B of the I.P.C. and sentenced to undergo rigorous imprisonment for 10 years vide judgment of conviction dated 22.01.2015 and order of sentence dated 30.01.2015 passed by the Adhoc Additional Sessions Judge-8th, Bhojpur at Ara in Sessions Trial No.440 of 2013.

2. Deceased, Babli Devi furnished written report disclosing therein that she happens to be two brothers and a sister. She is resident of Farahanpur. Marriage of her elder brother took place in the Year 2010 with the eldest daughter of Binay Chandra Akhauri of village-Kaithakori, P.S.-Sandesh. Since thereafter, cousin brother-in-law (Chachera Sala) of her brother namely Dhananjay Srivastava



began to visit her place frequently and during aforesaid event, under deceitful manner, advancing proposal to marry, took her at Trikaal Temple where he put vermilion and then, accompanied her to Delhi. Her family members became perplexed. She also suffered from anxiety, whereunder pressed Dhananjay Srivastava to bring back to her place as a result of which, he took her to Ara. After their arrival, she informed her mother, whereupon she came. She disclosed the intermediary event. Her mother took her to her place. Dhananjay Srivastava also accompanied. Then thereafter, the family members of Dhananjay Srivastava were also informed. Parents of Dhananjay Srivastava came at her place. During conversation, they demanded Rs.1,00,000/- in cash, one motorcycle, ornaments, utensils and further, after solemnization of marriage at temple, they assured to accompany her to her sasural. Anyhow, her parents paid Rs.80,000/- cash, Rs.51,000/- against motorcycle as well as also provided ornaments, ear-ring, chain, Bangle, television, utensils etc. Thereafter, marriage was solemnized at Koilwar Temple as per Hindu Rites & Rituals. Then thereafter, she had gone to her sasural. Just after staying for 4-5 days at her sasural, her sasuralwala advanced demand of Rs.1,00,000/- cash. Two days thereafter, her father-in-law Binay Chandra Akhauri intruded in her room and molested her, whereupon she raised alarm and on that very pretext, she was brutally assaulted.



On 19.12.2012, her sister-in-law Anku Kumari sprinkled kerosene oil over her after having her hand as well as leg tied by her father-in-law Binay Chandra Akhauri and then, her mother-in-law lit fire over her. At that very time, her younger sister-in-law Anku Kumari closed the door and was standing with another bucket of kerosene. Her husband enticed them to burn. Flour mill is installed in her courtyard where some villagers came, who raised alarm as a result of which, other villagers came, rescued her by extinguishing the fire. Uncle of her husband is a quack, who was entrusted with the treatment. The accused persons snatched away her mobile. Her parents were not informed. In due course of time, some of the villagers might have informed her parents whereupon, her parents came, took her to Sadar Hospital, Bhojpur at Ara where her treatment is going on. She had further disclosed that her husband came to her Naihar and has threatened that if case is registered, then in that event, he will commit suicide at her place and will implicate the whole family. So, out of fear, no information was given at an earlier occasion.

3. On the basis of the aforesaid written report, Ara Sadar Mahila P. S. Case No.27 of 2013 was registered, followed with investigation during course of which, statement of witnesses including further statement of informant were recorded. However, deceased died whereupon, Section 304B of I.P.C. was added and after completing



investigation, chargesheet was submitted as a result of which, the trial commenced before the Court of Sessions, which ultimately culminated in a manner, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that the deceased had caught accidental fire during course of cooking and was being properly cared by way of providing adequate medical facility. The prosecution party, with ulterior motive, took her away and as the deceased became deficient of proper medical facility on account thereof, she developed septicemia, which happens to be the cause of death. However, neither any DW nor any chit of paper has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether twelve PWs, out of whom, PW-1, Vinay Chandra Akhauri, PW-2 Usha Devi, PW-3 Ainul Alam, PW-4 Saira Khatoon, PW-5 Umran Begam, PW-6 Ramji Choudhary, PW-7 Bam Paswan @ Rameshwar Paswan, PW-8 Ajay Kumar Sinha, PW-9 Dr. Kishun, PW-10 Abhinash Kumar, I.O., PW-11 Punam Kumar, I/c Mahila P.S. and PW-12 Amit Kumar. Side by side, had also exhibited signature of informant over petition dated 06.06.2013, Exhibit-1, signature of



deceased over written report Exhibit-2, post mortem report Exhibit-3, chargesheet Exhibit-4, Para-12 of case diary (further statement of informant (deceased) Babli Kumari) Exhibit-5, endorsement of Punam Kumar (I/c Mahila P.S.) over written report Exhibit-6, signature of Punam Kumari over formal F.I.R. Exhibit-7, inquest report Exhibit-8.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that the learned lower Court in mechanical manner convicted and sentenced the appellant. It has also been submitted that learned lower Court should have considered the conduct of the appellant, the conduct of the prosecution party, nature of evidence having available on the record and then, ought to have analyzed the same in accordance with law, which if properly done, lent only one conclusion that prosecution failed to substantiate its case. In this regard, it has been submitted that it happens to be unfortunate for the appellant that deceased while was engaged in cooking, came under flame, which the appellant and his family members extinguished by their active involvement and subsequently thereof, began to treat the victim by way of providing best medical facility as a result of which, there was lot of improvement in her condition, which deteriorated on account of own lapses of the prosecution party which ultimately cost her life and for



that, the appellant could not be held responsible.

7. It has also been submitted that aforesaid event is found duly substantiated by the prosecution witnesses themselves and so, the event of burn happens to be accidental, might be within seven years of marriage and for that, appellant would not have been held responsible.

8. Furthermore, it has also been submitted that neither any demand of dowry nor torture on that very pretext, has been substantiated whereupon the major ingredients of Section 304B of the I.P.C. is found lacking and that being so, conviction and sentence recorded therefor, would not be sustainable.

9. Now, coming to another aspect, it has been submitted that instant prosecution has been brought up on account of malafide, dishonest, ulterior motive. From the written report, it is apparent that it does not happen to be in pen of deceased Babli Kumari nor her signature happens to be. Further elaborating the same, it has been submitted that none of the PWs had deposed that the same was scribed in their presence and if so, by whom, and was at the dictation of the deceased, and in likewise manner, deceased had put her signature in their presence. In likewise manner, none had deposed by whom aforesaid written report was placed at Mahila P. S. Apart from aforesaid mysterious activity of the prosecution, it is apparent that



initially, there was no allegation against the appellant, which is apparent from the written report itself wherein there happens to be interpolation at relevant place and so, false implication of appellant is found duly exposed. The learned lower Court, as it appears, failed to clout over the same, properly.

10. It has also been submitted that because of the fact that deceased herself is not an author of the written report and prosecution lacks with positive evidence on that very score, therefore, the written report could not be treated as dying declaration and in likewise manner, Para-12 of the case diary, which has been accepted as Exhibit-5 would be, because of the fact that there happens to be absence of opinion of the doctor that victim was in fit mental condition to make any statement nor the I.O. had deposed over the same showing fit mental condition at the time of recording statement. So, the cumulative effect of aforesaid deficiencies not only demolished the reliability of the written report as well as further statement of deceased Babli Kumari rather the evidence on record also discerp applicability of Section 304B of the I.P.C. On account of non-fulfilment of major ingredients for attracting the same. Simultaneously, the conduct of the appellant also disproves the allegation. That being so, the judgment of conviction and sentence recorded by the learned lower Court is not at all supported with the



legal proposition nor on the factual aspect, whereupon is fit to be set aside.

11. On the other hand, learned Additional Public Prosecutor while controverting the submission made on behalf of appellant has submitted that there happens to be consistent evidence including that of family members of appellant that deceased had sustained burn injuries and for that, no reasonable explanation has been flashed. At the other end, keeping the deceased secretly under treatment of PW-1, a quack, without even informing her Naiharwala is a circumstance, which creates doubt over conduct of appellant. After having come to know about the condition of deceased at the end of others, the Naiharwala of deceased, facilitated their presence till then, condition of deceased became worsen, whereupon lifted to Ara where treated at Sadar Hospital and during course thereof, she died. So, death otherwise than normal circumstance within seven years of her marriage, is found duly substantiated. With regard to demand of dowry and torture, on that very score, there happens to be ample material having adduced by the prosecution, and that being so, the judgment of conviction and sentence is found legally maintainable and should be affirmed.

12. PW-1, Vijay Chandra Akhauri, is the uncle of Dhananjay Srivastava. He had deposed that occurrence is dated



19.12.2012. Appellant, Dhananjay Srivastava is his nephew, who was married with Babli Devi according to Hindu Rites and Customs in the Year 2012 itself. After marriage, Dhananjay Srivastava began to reside along with his wife at his home. At the time of occurrence, he was in village. When he came to his house, he came to know that fire has broken in the house of his elder brother Binay Chandra Akhauri. He had gone there and seen Babli Devi in burnt condition. Her hand as well as upper portion of chest was burnt. He is not remembering the time of occurrence. He had treated for 8-10 days. She was treated for one and half month-two months keeping her at his house. Then thereafter, parents of Babli Devi took her away. After sometime, her condition deteriorated, whereupon her parents admitted her at Sadar Hospital where after sometime, she died. During cross-examination, he had stated that he came to know that during course of removing milk from stove, she caught fire in her Aanchal. Parents of Babli Devi had come after occurrence. Again, said that they came one and half-two months thereafter. He had further stated that mother of Babli Devi remained there after the occurrence. It was summer season. While the deceased was under his treatment, wounds began to heal up.

13. PW-2 is Usha Devi, who happens to be mother of the victim. She had deposed that marriage of her daughter was solemnized on 12.03.2011 at Koilwar Temple according to Hindu



Rites and Customs. At the time of marriage, there was demand of one lac against which she had paid Rs.80,000/-. Rs.51,000/- was paid for motorcycle. After marriage, her daughter went to her sasural along with her family members. Thereafter, her son-in-law directed her daughter to procure Rs.1,00,000/- from her Naihar for opening medicine shop at Kori Bazar, which she failed to pay as a result of which, her daughter was even refused to talk with them on phone. In the month of December, 2012, her daughter burned for which, no information was given to them. Villagers informed them, whereupon they gone to Sasural of her daughter and took her away. On query, her daughter had disclosed that her mother-in-law, sister-in-law and father-in-law conjointly, after sprinkling kerosene oil, set her ablaze. Her husband was present there, but did not say anything nor protested. She got her daughter treated by Dr. Vikas Kumar and then thereafter, admitted her to Sadar Hospital. None of family members of her sasural visited nor cared. On 28.04.2013, her daughter died at Sadar Hospital. After post mortem, she took the dead body. Even after information given to her sasural, none came. Then thereafter, funeral was conducted. She identified the accused in dock. During cross-examination, she had stated that Dhananjay Srivastava happens to be cousin brother of her daughter-in-law and on account thereof, he began to visit her place. In Para-4, he had stated that her son was



married in the 2010 and within a year, Dhananjay took away her daughter Babli to Delhi, on account of love affair whereupon they have not instituted any case. After a week, Dhananjay returned back along with her daughter from Delhi and then thereafter, they were informed. They had gone and then, Dhananjay and Babli disclosed the whole event. She brought both of them to her place. She also informed parents of Dhananjay and then thereafter, marriage was solemnized at Koilwar Temple. Thereafter, her daughter gone to the sasural. In Para-5, she had stated that police recorded fard-bayan of Babli in her presence. Babli had stated in her further statement that on the pretext of marriage, accused took her to Trikaal Temple where put vermilion. At Para-6, she had stated that at the time of death of Babli, her son was one year old. At Para-7, she had further stated that even after coming to know about birth of grand children (Nati), they had not gone as they were not invited. In Para-8, she had stated that they were on visiting term for sometime at the sasural of her daughter, but on account of non-fulfilment of demand, they were not allowed. In Para-9, she had stated that Babli burned on 19.12.2012 and she received information after two months. She had gone there. During midst thereof, she was treated at her sasural. They took Babli to Ara for better treatment. Her Sasuralwala had not protested. She took away Babli on 17.02.2013 and 18.02.2013, she was shown to Dr.



Vikas Kumar, who had seen and prescribed certain medicine. There was improvement, but her neck as well as chin got affixed. Doctor had said that due to paucity of blood, surgery will not be possible. Even after treatment her condition deteriorated, then in the month of April, she was admitted at Sadar Hospital where she remained alive for 18-19 days and then, she died. As they were financially weak on account thereof, they were not in a position to take her for specialized treatment. She denied the suggestion that as Babli was not properly treated on account thereof, she died. In Para-14, she had stated that Babli on her own instituted the case. Neither she nor her husband had advised her to institute a case. They did as per wish of Babli. In Para-15, she had stated that her husband had filed compromise petition. In Para-16, she had denied the suggestion that Babli had married with Dhananjay out of love. She had further denied the suggestion that she accidentally caught fire and for that her sausralwala had given best medical facility. She had also denied the suggestion that after taking Babli to their place, they failed to provide proper treatment on account thereof, her condition deteriorated and lastly, she was admitted to Sadar Hospital. She had further denied the suggestion that for squeezing money from the accused, instant case has been filed.

14. PW-3 is Ainul Alam the co-villager of appellant, who had completely denied the occurrence on account thereof, he was



declared hostile.

15. PW-4 is Saiyra Khatoon, who had deposed that she identifies her co-villager Dhananjay Srivastava. His wife died of burn injury about a year ago. Sasuralwala as well as Naiharwala have had provided treatment to her. During cross-examination, she had stated that wife of Dhananjay caught fire in the kitchen. Her treatment was done at the village. After two months, she was taken to Naihar. Two months thereafter, she came to know regarding her death.

16. PW-5 is Umaram Begam, another co-villager of the appellant. She had stated that occurrence took place about a year ago. Babli Devi wife of Dhananjay burnt. Her house lies by the side of Dhananjay. Babli was treated at Hospital, but at whose instance she is unable to say. During cross-examination, she had deposed that Dr. Vijay Chandra Akhauri had treated the victim in the village itself. After two months, father of Babli took her away. After two-two and half months, she came to know about death of Babli.

17. PW-6 is Ramji Choudhary, who had shown ignorance about the occurrence. He had further stated that he knew his co-villager Ajay Kumar Sinha, but unable to say where his daughter was married and so, he was declared hostile.

18. PW-7 is Bam Paswan @ Rameshwar Ram, who also



had shown ignorance with regard to occurrence and so, was declared hostile.

19. PW-8 is Ajay Kumar Sinha, the father of the victim. During his examination-in-chief, he had stated that deceased Babli was his daughter, who was married with Dhananjay Srivastava on 12.03.2012 at Koilwar Temple as per Hindu Rites and Rituals. After marriage, his daughter gone to her sasural. He had gifted utensils, ornaments etc. along with cash Rs.51,000/- for purchase of motorcycle at the time of marriage. He used to go to sasural of his daughter. He talked with his daughter. She never complained. She was residing in congenial, harmonious atmosphere. One day, he came to know that his daughter burnt. Her treatment was being cared by Vijay Chandra Akhauri, who happens to be uncle of Dhananjay Srivastava. After two months, they took her to their place for better treatment. They got her admitted to Sadar Hospital where during course of occurrence, she died. He had filed application on 06.06.2013 before the Chief Judicial Magistrate (exhibited). He had also identified the signature of Babli over written report (Exhibit-2). During cross-examination, he had stated that his daughter as well as Dhananjay Srivastava slipped to Delhi where they got married. Later on, marriage was solemnized according to Hindu Rites and Customs at Koilwar Temple in presence of both the parties. He had further stated



that he was informed regarding burning of Babli. In Para-7, he had further stated that Babli was treated for a month by Dr. Vikas Kumar and then, she was admitted at Sadar Hospital on account of development of the breathing problem. In Para-8, he had further stated that she died of heart attack.

20. PW-9 is Dr. Kishun Singh, who had performed post mortem over the dead body of Babli Devi on 24.04.2013 and found the following:-

i) Rigor mortis present, mouth open eye close.

ii) Injuries old scalp of dermaphi dermal burn over interior abdomen and deep derma epidermal over the internal chest.

iii) Contracture over the external neck of deep burn.

iv) Deep scar over the back.

v) Anterior and posterior dermo epidermal on both hand.

2. External finding:-

a) Skull-Brain tissue are pale and congested.

b) Lungs- Pale and congested.

c) Heart- Right chamber empty and left chamber



small eminent of

d) Abdomen-Lower pail and intact.

e) Kidney are pale and intact.

f) spleen pale and intact.

g) Urinary bladder contain 30 ml of urine present.

h) Uterus pale and non-grand.

3. Cause of death- due to secondary infection leading to septicemia due to heart failure and respiratory failure and death due to extensive dermo epidermal burn.

4. Time since death within 6 to 48 hours.

5. Due to burn secondly infection is sufficient to cause of the death.

21. PW-10 is Abhinash Kumar, who is I.O. of the case. He had deposed that after registration of Mahila P. S. Case No.27 of 2013, he was entrusted with the investigation. He had inspected the place of occurrence, which happens to be house of sasural of informant/ deceased. Then had given topography of the house, boundaries of the house. In Para-6, he had further stated that he reached at Sadar Hospital where informant was admitted over Bed NO.38 Ward No.4. He recorded further statement of the victim



wherein the victim had substantiated the allegation. He had recorded statement of Ajay Kumar Sinha, Usha Devi, Ram Udar Singh, Ramji Choudhary, Rajeshwar Singh, Bam Paswan, Ainul Mian and others. Father of informant had informed on 29.04.2013 that informant had died. Accordingly, her post mortem was conducted, funeral was also done. He received inquest from Mahila P. S. He received post mortem report from Hospital. He also examined Gopal Prakash, Khaira Khatoon, Umaran Begum, Vijay Chandra Akhuri. After completing investigation, he submitted chargesheet against Dhananjay Srivastava keeping investigation pending against others. Then his attention has been drawn relating to statement of respective witnesses, who were declared hostile. He had exhibited further statement of the victim as Exhibit-5. During cross-examination, he had stated that he happens to be unaware, who had scribed the written report. He had received the same from Mahila P. S. During investigation, none had claimed to have scribed the application. He had further stated that there happens to be difference in between writing of the written report as well as signature of the victim. He had further stated that none of the witnesses claimed to have seen the occurrence. Then had stated that he had not mentioned in the case diary, who had identified the victim. He had further stated that he had not examined any document at Sadar Hospital. He had not mentioned in the case diary regarding wound.



22. PW-11 is Punam Kumari, the O/c of Mahila P. S. She had deposed that she received written report of Babli Devi, which she had identified, on the basis of which, Mahila P. S. Case No.27 of 2013 has been registered. Then thereafter, she entrusted investigation to Abhinash Kumar, the S.I. She had exhibited the formal F.I.R. She had further stated that after completing investigation, chargesheet was submitted against Dhananjay Srivastava keeping investigation pending against remaining. In Para-6, she deposed that on 29.04.2012, she received information regarding death of Babli whereupon inquest was prepared in presence of witness Ajay Kumar Sinha and Ashok Kumar Sinha, then dead body was sent for post mortem. In Para-9 of his cross-examination, she had stated that she had not written anywhere that Babli Devi had signed in her presence. In Para-8, she had stated that there happens to be difference in between handwriting of written report as well as signature of Babli.

23. PW-12 Anil Kumar, who had exhibited the inquest report.

24. From the evidence available on the record as stated above, it is evident that prosecution party that means to say, Naiharwala got consoled themselves by efflux of time and on account thereof, the father of the victim (PW-8) had completely demolished



the evidence of mother of the victim, PW-2. Be that as it may, after filtering the evidence, the following salient features surfaced:-

a) Brother of deceased was married with cousin sister of the accused in the Year 2010 and in the aforesaid background, the appellant was on visiting term and during midst thereof, got affectionate towards the victim, who had responded positively as a result of which, they both eloped, b) After their return, family of both the parties got their marriage as per Hindu Rites and Rituals at Koilwar Temple on 12.03.2011, c) It is also an admitted fact that on 19.12.2012 deceased came under flame, d) It is also an admitted fact that deceased was treated at her Sasural by PW-1, who happens to be her cousin father in-law for two months and then thereafter, she was taken away by her Naiharwala, e) Though narrated, but there happens to be no corroborative evidence whether deceased was treated by Dr. Vikas Kumar, however, was admitted at Sadar Hospital where she was treated and during course of treatment, she died, f) There happens to be no evidence regarding demand of dowry, though PW-2 had deposed that Rs.1,00,000/- was demanded for opening of the medicine shop, which did not find support by PW-8, father. Though the victim died within one year of her marriage, but from the evidence on record, it is not at all substantiated that she was treated with cruelty soon



before her death on the score of demand of dowry.

25. The other kind of evidence available on the record is dying declaration. It is found bifurcated in two parts. The first one written report and the second one further statement recorded under Section 161 Cr.P.C. It is evident that written report containing signature of deceased was filed before the PW-11, but prosecution is silent over, who had scribed and whether the same was scribed at the dictation of deceased. Had there been positive evidence on that very score, then in that event, it would have been a dying declaration of the deceased, but in absence thereof, it appears difficult to accept that it happens to be the script of deceased. Moreover, PW-2, mother had deposed that fard-bayan was recorded in her presence, while PW-11 had deposed that written report was filed before her. This inconsistency is sufficient to cast doubt over authenticity of the document.

26. Now, coming to statement of deceased marked as Exhibit-5 by PW-10, the I.O., it appears that proviso so prescribed under Section 162 of the Cr.P.C. permits the same to be treated as dying declaration, which the Apex Court in ***Mukeshbhai Gopalbhai Barot vs. State of Gujarat reported in A.I.R. 2010 SC 3692***, also considered and held as follows:-



“4. We have considered the arguments advanced by the learned counsel for the parties. At the very outset, we must deal with the observations of the High Court that the dying declarations Ex.44 and 48 could not be taken as evidence in view of the provisions of [Section 161](#) and [162](#) of the Cr.P.C. when read cumulatively. These findings are, however, erroneous. Sub-Section (1) of [Section 32](#) of the Indian Evidence Act, 1872 deals with several situations including the relevance of a statement made by a person who is dead. The provision reads as under:

Sec.32. Cases in which statements 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."

We see that the aforesaid dying declarations are relevant in view of the above provision. Even otherwise, [Section 161](#) and [162](#) of the Cr.P.C. admittedly provide for a restrictive use of the statements recorded during the course of the investigation but sub-Section (2) of [Section 162](#) deals with a situation where the maker of the statement dies and reads as under:

"(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of [Section 32](#) of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of [section 27](#) of that Act."

5. A bare perusal of the aforesaid provision when read with [Section 32](#) of the Indian Evidence Act would reveal that a statement of a person recorded under [Section 161](#) would be treated as a dying declaration after his death. The observation of the High Court that the dying declarations Ex.44 and 48 had no evidentiary value, therefore, is erroneous. In this view of the matter, the first dying declaration made to the Magistrate on 14th September 1993 would, in fact, be the First Information Report in this case."



27. But the aforesaid privilege is not going to advance any kind of bonanza in favour of prosecution, because of the fact that I.O. (PW-10) had not stated that during course of recording of further statement of the victim, she was mentally sound nor there happens to be evidence on that very score. Furthermore, from Exhibit-5, it is apparent that it happens to be inconsistent with the written report wherein mother-in-law was alleged to have lit fire, while in further statement, it happens to be against sister-in-law, Ansu. Furthermore, it is evident from both the statement that there happens to be no disclosure that soon before her death, she met with cruelty on account of demand of dowry. Apart from this, the casual treatment by PW-10 while investigating the case is another circumstance. Either PW-11 or PW-10, whoever may be, ought to have taken proper step in getting dying declaration recorded by a Judicial Magistrate after approaching the same, in the facts and circumstances of the case, which they never cared. Moreover, PW-8, father of deceased had completely ruined the prosecution case as did not support factum of further statement having recorded by the I.O. Not only this, there happens to be inordinate delay in launching prosecution and for that, no explanation has been furnished at the end of prosecution. As per evidence, it is apparent that till the victim being admitted to Sadar Hospital, no step was taken to register a case, and in likewise manner, there happens to be no



explanation how, and by whom, the written report was scribed that too, on which date. Non-presence of attesting witness over the written report is another circumstance, which cast doubt over its authenticity.

28. Having minute scrutiny of overhaul situation so prevailing, it is found and held that prosecution miserably failed to substantiate its case, whereupon conviction and sentence recorded by the learned lower Court would not survive. Consequent thereupon, the same is set aside. Appeal is allowed. Appellant is under custody, hence is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	04.08.2017
Uploading Date	05.09.2017
Transmission Date	05.09.2017

