

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 825 of 2013

Devnarayan Dhivar S/o Mohan Lal Dhiwar Aged About 24 Years R/o Donga Kohrauda, Thana Pamgarh, Distt. Janjgir-Champa C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through Thana Pamgarh, Distt. Janjgir-Champa C.G. Civil And Rev. Distt. Janjgir-Champa C.G. , Chhattisgarh

---- Respondent

For Appellant : Shri Rakesh Jain, Advocate

For State : Shri Subhash Yadav, Dy. Govt. Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

30/01/2019

Per Manindra Mohan Shrivastava, J.

1. Present appeal is directed against the judgment of conviction and order of sentence dated 15th July 2013 passed by learned Additional Sessions Judge (FTC), Janjgir, District- Janjgir Champa (CG) in ST No. 24 of 2012 whereby the appellant has been held guilty of commission of offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs. 500/- and in default of payment of fine, additional R.I. for one month.
2. According to the prosecution story, as unfolded from the records of the case and the impugned judgment, deceased Nandini was married to appellant- Devnarayan Dhivar in the month of May 2011. It is the case of the prosecution that she was being harassed in connection with the demand of dowry, both mentally and physically and that she was also harassed on the allegation of illicit relation. On 20th August 2011, Nandini sustained burn injury in matrimonial house in suspicious condition and was

taken to Pamgarh hospital. Dr. K.K Dahire (PW7) who treated her, looking to her condition, referred her to higher health centre for better medical treatment and then she was taken first to Apollo Hospital, Bilaspur and then she was brought to Chhattisgarh Institute of Medical Sciences, Bilaspur (Government Medical College). However, her condition worsened and therefore, she was shifted to Sector-9 Hospital at Bhilai. Nandini, however, succumbed to death at 10:50 pm on 24.08.2011. A morgue enquiry was made which was followed by registration of FIR. Thorough investigation was carried out. Dr. Yashwant Rao Tumde (PW19), who conducted postmortem of the deceased, stated in his report that the death was caused due to burn injuries. During investigation, the investigating officer is said to have collected three dying declarations Ex.P-32, Ex.P-11 and EX.P-13. Charge sheet was filed against the appellant/husband and two others namely Subhadra Bai, sister-in-law and Ram Bai Mother-in-law of the deceased. All the accused were charged of having committed offence under Sections 498-A, 304-B, 302 r/w 34 IPC on the allegation that the appellant and other accused subjected the deceased to cruelty in connection with demand of dowry, she was subjected to mental and physical cruelty and that on 20th August 2011 kerosene was poured on her and she was set ablaze with intention to cause death. On such allegations, charges under Sections 498-A, 304-B and 302 r/w 34 IPC were framed. Appellant and the other accused having abjured guilt, were put to trial. The prosecution case rested mainly on dying declarations Ex.-P-32, Ex.-P-11, Ex.-P-13. The evidence of Executive Magistrates who had recorded dying declarations Ex.P-11 and Ex.P-13 as also evidence of oral dying declaration said to be given by the deceased to her family members namely, brother Nandeshwar Dhivar (PW-1), mother Pusai Bai Dhivar (PW2), father Jhulalal Dhivar (PW-3) and uncle Akti Lal Dhivar (PW-4) was also led.

In defence, the appellant came out with a dying declaration (Ex.-D1) dated 20th August 2011 recorded in Pamgarh hospital by the Executive Magistrate R.S. Kanwar (DW5) to establish that the incident of burning was only an accident as was stated by the injured wife Nandini in her dying declaration Ex.D1, recorded by R.S. Kanwar (DW5) and it is only, later on, that at the instance of the family members of the deceased, suspecting that the deceased must have been set ablaze and not a case of accident, in the

background of dispute between the husband and wife and panchayat meetings held, a case of murder is being framed on the basis of dying declarations Ex.-P-32, Ex.-P-11, Ex.-P-13 which are not reliable.

3. The learned trial Court, however, disbelieved the defence version and relying upon the evidence led by the prosecution particularly dying declarations Ex.-P-32, Ex.-P-11 and Ex.-P-13 as also oral dying declarations held that the prosecution succeeded in proving its case beyond reasonable doubt that the present appellant committed murder of his wife by setting her on fire, though, the trial Court found that the prosecution failed to prove beyond reasonable doubt that the other two accused Subhadra Bai and Rama Bai were also involved. Subhadra Bai and Rama Bai were, therefore, acquitted. Present appeal has been filed by the husband Devnarayan.
4. Learned counsel for the appellant would argue in extenso and submit that the conviction of the appellant is liable to be set aside because the prosecution has failed to prove beyond reasonable doubt that the appellant set his wife ablaze. The submission is that even though during investigation it had come out that as soon as Nandini sustained burn injuries, she was brought to the hospital by the persons other than the accused and after her examination of fitness, she had given dying declaration before the Executive Magistrate R.S. Kanwar (DW5), in which, she clearly stated that she sustained injury because of an accident, later on, when she was shifted to higher medical institutions at Bilaspur and Bhilai, after the arrival of the parents and brother of the deceased during her treatment, number of dying declarations, which are otherwise contradictory to each other, were prepared only to falsely implicate the present appellant. He would further contend that as R.S. Kanwar (DW5) the Executive Magistrate has reliably stated regarding dying declaration of Nandini taken on 20th August, 2011 in Pamgarh hospital immediately after the incident and in the presence of her own brother Nandeshwar Dhivar (PW1), duly certified to be fit by Dr. K.K. Dahire (PW7). All subsequent dying declarations, said to be prepared while Nandini's condition went on deteriorating day by day, are rendered doubtful. He would submit that the subsequent dying declarations, for one or the other shortcomings, which

includes non-certification of fitness by doctor, vagueness of the document, failure to examine the medical officer who had given certificate of fitness or who had prepared dying declaration and contradictory statement contained in those dying declarations, render each of them separately and collectively extremely doubtful and could not be relied upon. He would also argue that the oral dying declaration said to be given before Nandeshwar Dhivar (PW1), Pusai Bai Dhivar (PW2), Jhulalal Dhivar (PW3) and Akti Lal Dhivar (PW4) are liable to be rejected not only because it contains contradictory story regarding number of persons involved, the place where incident happened but also because there was no independent witness to support such oral dying declaration and that those oral dying declarations are also contradictory to what was stated in other two dying declarations Ex.P-11 and Ex.P-13. Learned counsel would argue that once the first dying declaration Ex-D1 dated 20.08.2011 is found reliable on all aspects, that by itself renders the defence of the appellant plausible and probable and the accused is entitled to be given benefit of doubt because the prosecution is under an obligation to prove its case beyond reasonable doubt. He would also argue that it is not only the first dying declaration but the statement under Section 161 CrPC, recorded by Investigating Officer Mahendra Tiwari, (PW 16) also contains the same story that Nandini caught fire due to an accident. He would argue that the statement under Section 161 CrPC in so far as it relates to cause of death would be admissible in the evidence as dying declaration. Lastly, it is submitted that the prosecution case becomes doubtful in as much as all through, during the period Nandini was hospitalized, if at all she had given any oral dying declaration, there was no reason why report was not lodged until her death, from 20th August 2011 to 24th August 2011. He would further submit that even thereafter, the morgue enquiry was made and the family members of the deceased came out with all sorts of allegations long thereafter and the FIR came to be lodged only after making enquiry, therefore, for this reason also, it is argued, the oral dying declaration and the entire case of prosecution becomes highly doubtful. In support of his submissions learned counsel for the appellant relied upon the judgment in the case of **Sharda Vs State of Rajasthan**, 2010 SAR (Criminal) 111.

5. On the other hand, learned State counsel supporting the judgment of

conviction and order of sentence would argue that in the background of reliable and trustworthy evidence led by the prosecution that there was a dispute going on between the appellant Devnarayan and deceased Nandini and that Nandini had given number of dying declarations Ex.P-32, Ex.P-11, Ex.P-13 making allegation of she having been set on fire by pouring kerosene on her which were duly proved by the prosecution by not only examining the concerned Executive Magistrates who had recorded Ex.-P-11, Ex.-P-13 but also by the doctor who had given certificate of fitness. He would argue that the first dying declaration could not be relied upon because according to the prosecution, at that time, injured Nandini was under the influence of her husband and in-laws who had brought her to the hospital and were present when the first dying declaration was recorded. It was only when the influence was removed that, later on, her dying declaration was recorded at CIMS, Bilaspur (Medical College) and hospital at Bhilai by two independent Executive Magistrates. He would further argue that as there is corroboration of the dying declarations Ex-P-32, Ex.P-11, Ex.P-13 by the oral dying declaration as stated by Nandeshwar Dhivar (PW1), Pusai Bai Dhivar (PW2), Jhulalal Dhivar(PW3), Akti Lal Dhivar (PW4), the prosecution has succeeded in proving its case beyond reasonable doubt that it is the appellant who had set his wife ablaze with an intention to murder. Learned counsel for the State, relying upon the Supreme Court decisions dealing with similar situation where the Court was faced with more than one dying declarations, in **Shudhakar Vs State of Madhya Pradesh**, (2012) 7 SCC 569 and **Raju Devade Vs State of Maharashtra** (2016) 11 SCC 673, would canvass that in such cases, merely because there was dying declaration favouring the accused, other dying declaration could not be discarded but the dying declaration which appears to be more probable and reliable ought to be made basis to decide whether or not it is a case of murder.

6. We have given our anxious consideration to the detailed and lengthy submissions made by learned counsel for both the parties, decisions relied upon by them and the records of the case perused by us.
7. Present is a case where the records of the case presents before us, as many as five dying declarations. Chronologically the first dying declaration

Ex.D1 is said to be recorded on 20th August, 2011 by Executive Magistrate R.S. Kanwar (DW-5) as soon as Nandini caught fire and brought to the hospital at Pamgarh. We will be treating Nandini's statement under Section 161 CrPC recorded by Mahendra Tiwari (PW-16), to the extent it deals with the cause of death, as dying declaration because later on, Nandini died on 24th August, 2011. The third dying declaration Ex.-P-32 is said to have been prepared on 20th August, 2011 at 09:00 pm by Dr. S.P. Kujur at the time when Nandini was admitted in CIMS (Medical College) Bilaspur after having been shifted from hospital at Pamgarh. Fourth dying declaration Ex.-P-11 is said to have been recorded on 21st August, 2011 by G.R. Mahilange (PW-8), the Executive Magistrate while Nandini remained admitted in CIMS, Bilaspur. The fifth and the last dying declaration (Ex-P-13) is said to have been recorded by C.P. Mishra (PW10), Executive Magistrate on 24.08.2011 while Nandini remained admitted in Sector 9 hospital at Bhilai, approximately 6 hours before her death. It is not in dispute that Nandini died at 10:50 pm on 24.08.2011 in Sector 9 hospital, Bhilai.

8. Dr. Yashwant Rao Tumde (PW-19) who conducted postmortem and prepared postmortem report in Ex-P-31 has proved from his evidence that he had conducted the postmortem of deceased Nandini and found that she had sustained 80-85% deep burn alongwith inhalational burn. The burn infection were apparent on the entire body and there was smell of kerosene coming out from the body. He opined that cause of death was burn injuries including inhalational burn, infections and connected complications. In his cross-examination, doctor expressed inability to say whether deceased was set on fire or she sustained burn injuries of her own. He has also stated that he cannot say whether the deceased could be in a position to give the statement because of the burn injuries sustained by her.

From the evidence of Dr. Yashwant Rao Tumde (PW-19), there is no doubt that Nandini died of burn injuries which also included inhalational burn.

9. Before we proceed to deal with the material on record, we consider it appropriate to refer to judgments of the Supreme Court wherein the Supreme Court dealt with the cases involving more than one dying

declarations, laying down the principles governing appreciation of prosecution and defence evidence with regard to the multiple dying declarations.

10. In the case of **Sudhakar** (supra), Their Lordships in the Supreme Court, while dealing with the case of more than one dying declarations, referring to its earlier decision in number of cases, observed thus:-

“20. The ‘dying declaration’ is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the Court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant

circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters.”

11. Referring to its earlier decision in the case of **Lakhan Vs State of M.P.** (2010) 8 SCC 514 dealing with law of dying declarations as also the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is charged, taking note of the facts in the case of **Lakhan** (supra) that there were two dying declarations which were mutually at variance, it was observed:-

“22. In *Lakhan*, this Court provided clarity, not only to the law of dying declaration, but also to the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is charged. The facts of that case were quite similar, if not identical to the facts of the present case. In that case also, the deceased was burnt by pouring kerosene oil and was brought to the hospital by the accused therein and his family members. The deceased had made two different dying declarations, which were mutually at variance. The Court held as under :

“9. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means “a man will not meet his Maker with a lie in his mouth”. The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as “the Evidence Act”) as an exception to the general rule contained in Section 60 of the

Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal

Rao v. State of Bombay¹, Rasheed Beg v. State of M.P., K. Ramachandra Reddy v. Public Prosecutor, State of Maharashtra v. Krishnamurti Laxmipati Naidu, Uka Ram v. State of Rajasthan, Babulal v. State of M.P., Muthu Kutty v. State, State of Rajasthan v. Wakteng and Sharda v. State of Rajasthan.)

*

*

*

23. The second dying declaration was recorded by Shri Damodar Prasad Mahure, Assistant Sub-Inspector of Police (PW 19). He was directed by the Superintendent of Police on telephone to record the statement of the deceased, who had been admitted in the hospital. In that statement, she had stated as under:

“On Sunday, in the morning, at about 5.30 a.m., my husband Lakhan poured the kerosene oil from a container on my head as a result of which kerosene oil spread over my entire body and that he (Lakhan) put my sari afire with the help of a chimney, due to which I got burnt.”

She had also deposed that she had written a letter to her parents requesting them to fetch her from the matrimonial home as her husband and in-laws were harassing her. The said dying declaration was recorded after getting a certificate from the doctor stating that she was in a fit physical and mental condition to give the statement.

24. As per the injury report and the medical evidence it remains fully proved that the deceased had the injuries on the upper part of her body. The doctor, who had examined her at the time of admission in hospital, deposed that she had burn injuries on her head, face, chest, neck, back, abdomen, left arm, hand, right arm, part of buttocks and some part of both the

thighs. The deceased was 65% burnt. At the time of admission, the smell of kerosene was coming from her body.

* * *

26. Undoubtedly, the first dying declaration had been recorded by the Executive Magistrate, Smt Madhu Nahar (DW 1), immediately after admission of the deceased Savita in the hospital and the doctor had certified that she was in a fit condition of health to make the declaration. However, as she had been brought to the hospital by her father-in-law and mother-in-law and the medical report does not support her first dying declaration, the trial court and the High Court have rightly discarded the same.

* * *

30. Thus, in view of the above, we reach the following inescapable conclusions on the questions of fact:

(c) The second dying declaration was recorded by a police officer on the instruction of the Superintendent of Police after getting a certificate of fitness from the doctor, which is corroborated by the medical evidence and is free from any suspicious circumstances. More so, it stands corroborated by the oral declaration made by the deceased to her parents, Phool Singh (PW 1), father and Sushila (PW 3), mother."

12. Referring to another decision in the case of **Nallam Veera Satyanandan Vs. Public Prosecutor** (2004) 10 SCC 769, the Supreme Court also laid down as to how a case involving multiple dying declarations has to be examined and the evidence to be assessed, as below:-

"23. In the case of Nallam Veera Stayanandam and Others v. Public Prosecutor, High Court of A.P. [(2004) 10 SCC 769], this Court, while declining to except the

findings of the Trial Court, held that the Trial Court had erred because in the case of multiple dying declarations, each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is more than one dying declaration, it is the duty of the court to consider each one of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.”

13. From the aforesaid observations made by the Supreme Court, referring to number of its earlier decisions, referred to hereinabove, it has to be held that wherever the Court is faced with multiple dying declarations, each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. It has been authoritatively pronounced that where there is more than one dying declarations, it is the duty of the Court to consider each one of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.
14. As observed in the aforesaid decisions, ‘dying declaration’ is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. It is, therefore, expected that the person will speak the truth and only the truth. Normally in such situations, the Courts attach intrinsic value of truthfulness to such statement and once it is found to have been made voluntarily, it could be relied upon if it is found that it is not an attempt by the deceased to cover up the truth to falsely implicate a person. Further more, where version given by the deceased is supported and corroborated by other prosecution evidence, the Courts can safely rely upon such dying declarations.
15. In the case of **Sher Singh Vs State of Punjab** (2008) 4 SCC 265, the Supreme Court also cautioned and laid down necessity of cautious approach to ensure that the statement was not as a result of tutoring or prompting or a product of imagination, in following words:-

“16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross-examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise.

17. In the present case, the first dying declaration was recorded on 18-7-1994 by ASI Hakim Singh (DW 1). The victim did not name any of the accused persons and said that it was a case of an accident. However, in the statement before the court, Hakim Singh (DW 1) specifically deposed that he noted that the declarant was under pressure and at the time of recording of the dying declaration, her mother-in-law was present with her. In the subsequent dying declaration recorded by the Executive Magistrate Rajiv Prashar (PW 7) on 20-7-1994, she stated that she was taken to the hospital by the accused only on the condition that she would make a wrong statement. This was reiterated by her in her oral dying declaration and also in the written dying declaration recorded by SI Arvind Puri (PW 8) on 22-7-1994. The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was under threat and duress that she would be admitted in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural to us. Although it does not contain the certificate of the doctor that she was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue. The oral dying declaration made to the uncle is consistent with the second dying declaration implicating the accused persons stating about their involvement in the commission of crime. The third

dying declaration recorded by the SI on the direction of his superior officer is consistent with the second dying declaration and the oral dying declaration made to her uncle though with some minor inconsistencies. The third dying declaration was recorded after the doctor certified that she was in a fit state of mind to give the statement."

16. In a more recent decision **Raju Devade** (supra), while adumbrating the legal position stated in earlier decisions including the decision in the case of **Sudhakar** (supra), again dealing with the case where there were more than one dying declarations, the Supreme Court reiterated the judicial approach required to be followed in such cases as below:

"22. This court had clearly laid down that the each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is more than one dying declaration, it is the duty of the court to consider the each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs.

"23. It is also relevant to refer to judgment of this court in *Ranjit Singh and others versus State of Punjab*, 2006 (13) SCC 130 wherein this court has clearly laid down that the conviction can be recorded on the basis of the dying declaration alone if the same is wholly reliable. In the event, if there are suspicions as regards to the said dying declaration, the court should look for some corroborating evidences. Court has further observed that in the event of inconsistencies in the dying declarations the court should lean towards the first dying declaration. Following was observed in para 13:

“13. It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards correctness or otherwise of the said dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the court shall lean more towards the first dying declaration than the second one.”

17. In the case of **Sharada** (supra), wherein the Court was dealing with multiple dying declarations, having dealt with every dying declaration independently, found that the dying declaration involving the accused was not found reliable but the other dying declaration which did not involve the accused were found to be having greater degree of reliability. The Court, therefore, preferred the dying declarations with greater probability and acquitted the accused. The legal principles applicable in the matter of dying declaration were stated thus:-

33. It is indicative of the fact that a man who is on CrI.A.No. 699/08 a death bed would not tell a lie to falsely implicate an innocent person. This is the reason in law to accept the veracity of her statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Besides, if the dying declaration is to be completely excluded in a given case, it may even amount to miscarriage of justice as the victim alone being the eye-witness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

34. Though a dying declaration is entitled and is still recognized by law to be given greater weightage but it has also to be kept in mind that accused had no chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of

oath. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It is not 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.

In this regard, we may profitably quote the following para from (1985) 4 SCC 476 titled State (Delhi Administration) Vs Laxman Kumar & Ors :

"40. We have also come to the conclusion that the High Court failed to take into account one material aspect while appreciating the evidence of the prosecution witnesses. It is a fact that Sudha had been burnt and according to the medical opinion that was to the extent of 70%. As the evidence shows, Sudha was in her senses and was capable of talking at the time when she was being removed to the hospital or even after she had been admitted as an indoor patient. The two sisters or their respective husbands had no apprehension that Sudha would not live. In case Sudha came round, she was to have lived in the family of her husband. No one interested in the welfare of Sudha was, therefore, prepared to make a statement which might prejudice the accused persons and lead to the straining of relationship in an irreparable way. Therefore, Crl.A.No. 699/08 the silence or avoidance to make a true disclosure about the cause of fire particularly so long as Sudha was alive, cannot be over-

emphasised an adverse inference drawn by the High Court from the conduct of the sisters was indeed not warranted in the facts of the case.

18. From the aforesaid judicial pronouncements, the general principle which emerges is that where there are more than one dying declarations, the Court is under a duty to independently examine and analyze each dying declaration in its proper perspective and surrounding circumstantial evidence and then only come to conclusion as to which of the dying declarations is reliable. Each case will have its own peculiar facts and circumstances and therefore, the conclusion will depend upon the facts of the every case and there is no straitjacket formula as to which of the dying declaration should be accepted or which should be rejected. Moreover, the law propounded is also to the effect that though conviction can be ordered solely on the basis of dying declaration, since the accused has no power of cross-examination, the Courts should insist that the dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness and that the Court must ensure that it is not tutored or false implications or result of imagination. Keeping in forefront the aforesaid settled principles, we shall now advert to the material on record.

19. Before going through various dying declarations, we notice from the evidence led by prosecution that everything was not going fine between the appellant-husband and the deceased-wife Nandini. Nandeshwar (PW1) the brother of the deceased, Pusai Bai (PW2) the mother of the deceased, Jhulalal Dhivar (PW3) the father of the deceased, as also Shivani Dhivar (DW1), Maniram Patel (DW2), Radheshyam Dhivar (DW3) have stated that the married life of the appellant and the deceased was not happy and the village panchayat was also organized. However, the reason behind strained relations are differently stated. According to the brother and the other relations of the deceased, Nandini was being harassed by saying that sufficient dowry was not given. According to the defence witnesses, Nandini did not like Devnarayan and she was not inclined to live with him.

20. The evidence led by the prosecution and the defence side comes out with

an admitted position that Nandini sustained burn injury in her matrimonial house sometimes in the morning of 20th August 2011 and immediately thereafter she was admitted in the local hospital at Pamgarh. This fact has been stated in the evidence of number of witnesses and on this aspect, there is no dispute.

21. The first dying declaration (Ex.D1) is sought to be relied upon by the defence. We find that during the course of investigation, the investigating officer had seized the first dying declaration (Ex.D1) said to be recorded by the Executive Magistrate R.S. Kanwar (DW.5). The defence side, heavily relying upon the first dying declaration, examined the concerned Executive Magistrate R.S. Kanwar (DW5). He deposed in his evidence that when he was posted as Executive Magistrate at Pamgarh, upon receiving information from Government Hospital, Pamgarh, he went there to record dying declaration of Nandini. He further deposed that when he asked Nandini as to how she sustained burn, she stated that when she was about to start *chulha* (earthen stove) and for which purpose she picked up kerosene oil container, the oil in the container accidentally fell upon burning chimney kept there because the container slipped out of her hands and then, she caught fire. She stated that she was not set on fire by anybody and she further stated that she was not making this statement under anybody's pressure. The dying declaration (Ex.D1) prepared by R.S. Kanwar (DW5) has been proved by him. In his cross-examination, what has been elicited is that though he knew that before taking such statement, the doctor's opinion is to be taken, he himself had not taken opinion of any doctor as to whether the deceased was in a fit state or not. It has also been elicited that at that time, no doctor was present but the police officials and the staff of the hospital were present. It has also been elicited that when the statement was being taken, relatives from maternal side and those from her in-laws were present. He has stated that she does not recognize them and he cannot say whether at the time of recording statement, anyone from maternal side were present or not. The suggestion that the dying declaration was recorded in collusion with the accused has been denied.

22. While R.S. Kanwar (DW5), the Executive Magistrate admits in his cross-examination that he himself had not taken opinion of the doctor, the

prosecution itself has led evidence to prove that before R.S. Kanwar (DW5), the Executive Magistrate had taken dying declaration, the patient was declared fit for giving statement by the treating Dr. K.K. Dahire (PW7). This doctor deposes that he was posted in Primary Health Centre, Pamgarh and while he was posted in PHC Pamgarh as Medical Officer, Nandini was brought for examination before him by Constable Ganesh Kaushik. He has deposed that the injured had sustained burn injury all over the body and there was smell of kerosene oil. According to him, her breast, upper part of the hands, abdomen and back were burnt and blisters were seen. According to him, it was a case of 60% burn. He has stated that during her examination, she was not only fully conscious but she was also cooperating and was competent to give statement. He has further deposed that looking to her condition, he referred her for better treatment to higher centers vide his report Ex.P-7 on which he has proved his signature. He has further deposed that on opinion being sought by the Assistant Sub Inspector as to whether Nandini was in a position to give statement, he had given his opinion in Ex.P-8 and he has also proved his signature. He has also stated that when Nandini was brought for examination before him, he had informed this incident to police vide Ex.P-9 on which he has proved his signature.

23. We have perused three documents Ex.P-7, Ex.P-8 and Ex.P-9. Ex.P-8 is a letter written by Mahendra Tiwari (PW16), ASI Pamgarh. Mahendra Tiwari, a prosecution witness, has deposed in his evidence that he had sent letter to the Medical Officer vide Ex.P-8 on 20.8.2011 for recording dying declaration. Ex.P-8 contains an endorsement of Dr.K.K. Dahire (PW7) that the patient is in a fit condition to give statement which has been duly proved by him. Ex.P-9 is the information given by Dr. K.K. Dahire (PW7) to the Police Station- Pamgarh regarding MLC of Nandini who was brought as a burnt patient in the hospital on 20.8.2011. This memo of information given by Dr. K. K. Dahire (PW7) shows that Nandni was brought at 9:20 in the morning. There is endorsement of receipt of same at 9:40 AM on the same date.

The report prepared by Dr. K.K. Dahire (PW7) in Ex.P-7 contains details of examination and referral note on 20.8.2011 at 10:20 AM.

24. The concerned police officer Mahendra Tiwari (PW16), Dr. K.K. Dahire (PW7) are prosecution witnesses and from their evidence, it is proved that Nandini was brought to the hospital at Pamgarh which was a nearer place and there she admitted and then examined by the doctor. Doctor's evidence is that she was fully conscious and cooperating and was fit to give statement and this certificate was given by the doctor on the request made by Mahendra Tiwari (PW16), the police officer of Police Station – Pamgarh on 20.8.2011 itself, in the morning and thereafter, the patient was referred by the doctor to higher centre for treatment. This lends supports and corroboration to the first dying declaration recorded by R.S. Kanwar (DW5), the Executive Magistrate, Pamgarh. He is also a Govt. servant and unless it is proved from the evidence on record that he was acting under undue influence of the accused, there is no reason why the first statement should be disbelieved particularly when he recorded dying declaration, earliest in point of time, within couple of hours of the incident of burning. Reliable evidence of Dr. K.K. Dahire (PW7) certifying fitness also lends support and reliability to the first dying declaration. The first dying declaration states that Nandini sustained injury by accident when she was trying to start *chulha* (earthen stove) in which process the container held by her in her hands which was filled with kerosene oil fell on the burning chimney which caught fire and she sustained burn injury. Merely because the concerned Executive Magistrate (DW5) was examined by the defence side, is no reason to disbelieve his testimony. It is also to be noticed that in the first dying declaration (Ex.D-1), Nandini had also put her signature, as deposed by R.S. Kanwar (DW5). The time when Nandini was brought to the hospital at Pamgarh and examined by Dr. K.K. Dahire is important because that was the time when Nandini had sustained injury only couple of hours before and not at the time long after sustaining burn injury when condition had deteriorated.

25. Nandeshwar Dhivar (PW1), the brother of the deceased, admits in paragraph -14 of his cross-examination that his sister Nandini was taken to Pamgarh hospital by the neighbours. He has also stated that upon receiving a call from one of the neighbours of the appellant on 20.8.2011, he reached Pamgarh hospital where his sister was admitted. He has further admitted in his evidence that when he reached Pamgarh hospital, the neighbour

informed that they have brought Nandini for treatment because there was no one found in the house of the appellant. He further admits that Devnarayan had reached Pamgarh hospital later. Dhaniram (PW6) who is one of the seizure witnesses of village Pamgarh has stated in his cross-examination that he had gone to Pamgarh hospital where Nandini's brother had also reached and by that time Devnarayan had not reached the hospital. He further states that his brother brought Nandini to hospital.

26. According to Dr. K.K. Dahire (PW7), Nandini was presented before him for examination by Constable Ganesh Kaushik. Mahendra (PW16), ASI, admits in his cross-examination that when he reached hospital, Dhaniram Patel (PW6) was present and large number of persons were also present. He has further deposed that there was a crowd when statement of Nandini was being recorded. Maniram Patel (DW2) deposed that he resides in front of house of the appellant and on the date of incident, Nandini came out from her house crying for help, whereafter, he along with other, had extinguished fire and they had taken Nandini to the hospital at Pamgarh. He also deposed that the Tahsildar and police people had taken the statement of Nandini at Pamgarh hospital in his presence and except Nandini's brother, nobody was there.

27. From the aforesaid evidence of the prosecution as well as defence what is proved is that Nandini was taken to hospital by the neighbours because according to the evidence, the appellant was not present in the house and when she was brought to the hospital, she was treated by the doctor. Information was given to the police station, Pamgarh and then police officer Mahendra Tiwari (PW16) sought opinion of Dr.K.K. Dahire (PW7) and upon receipt of certificate, R.S. Kanwar (DW5), the Executive Magistrate was informed who came and recorded dying declaration. What is important to notice is that when Nandini was brought and when her dying declaration was recorded, at that time, the husband or relatives were not present in the hospital. The brother of the deceased Nandeshwar (PW1) and neighbour were present and according to the evidence of the prosecution, Devnarayan, the appellant, reached the hospital after some time. From the evidence of these witnesses, there is nothing elicited to draw inference that at the time when Nandini gave her first dying declaration immediately after

the incident, at Pamgarh hospital, she was surrounded by the appellant or in-laws or that some kind of pressure was exerted on her not to state truth.

The only submission on which the State counsel seeks to raise a doubt on the first dying declaration is that the dying declaration, Ex.D-1, does not record any specific time. In our opinion, it does not affect the credibility because the dying declaration is found credible on the basis of reliable testimony of R.S. Kanwar (DW5) evidence of Dr. K.K.Dahire (PW7) and that of Mahendra Tiwari (PW16) as also other prosecution witnesses who say that dying declaration of Nandini was recorded in Pamgarh hospital. Even her own brother Nandeshwar (PW1) has also stated that when he reached the hospital, the statement of his sister was being recorded though he says that such statement was being recorded by the police people. He has not stated that when he reached the hospital, his sister was not in a position to speak and not in a fit state, though, he himself states that when he reached the hospital, she was in agony because of burning injury and was crying. From the referral memo Ex.P-7 and from information memo Ex.P-9, intrinsic evidence is available to prove that dying declaration was taken between 9:40 AM to 10:20 AM in the morning of 20.8.2011 when Nandini was admitted in the Pamgarh hospital.

28. Mahendra Tiwari (PW16) the police officer has said that he had also recorded statement under Section 161 Cr.P.C. of Nandini. We find that this statement under Section 161 Cr.P.C. as well as the first dying declaration both have been marked as Ex.D-1 by the trial Court. Though statement under Section 161 Cr.P.C. is not admissible in evidence, considering that later on Nandini died, the said statement, to the extent it relates to cause of death, can be read as dying declaration.

29. In the said statement, Ex.D-1 also, it has been recorded as to how Nandini sustained burn injury because of the accident, in the same manner as was stated in her first dying declaration. Learned State counsel, however, doubted the same by submitting that according to police officer Mahendra Tiwari (PW16) he had recorded this statement during morgue enquiry and therefore according to him, this is a concocted document. Though in para-5 of his evidence, Mahendra Tiwari (PW16) states that he had recorded statement of Nandini during morgue enquiry, this is impossible because

there could be no occasion of recording statement of Nandini after her death and this only appears to be a mistake. In his cross-examination and in response to the question put to him by the Court, he stated that he did not remember that after he reached the hospital, Nandeshwar, brother of Nandini came or not and that he had recorded her statement in Ex.D-1 according to what was disclosed to him by Nandini. This recording of statement by Mahendra Tiwari (PW16) is corroborated from the evidence of Nandeshwar Dhivar (PW1), the brother of the deceased who clearly stated that when he reached police station, the police officer was recording statement of his sister. Therefore, the reason stated by learned counsel for the State to disbelieve recording of statement under Section 161 Cr.P.C. of Nandini is not acceptable and it has to be held that on the basis of evidence of the prosecution, it is proved that Mahendra Tiwari (PW16), ASI, had recorded 161 Cr.P.C. statement as soon as she was brought in the Pamgarh Hospital for treatment.

30. The third dying declaration (Ex.P-32) is said to be prepared on 20.8.2011 after Nandini was shifted from Pamgarh hospital to CIMS (Medical College) Bilaspur. This dying declaration has not been proved by the prosecution. It is said to be prepared by one Dr. S.P. Kujur who has not been examined as witness by the prosecution. Interestingly, this dying declaration is a proforma prepared in English and all the questions have already been printed to which answer has been recorded in English. The information given are quite vague. Moreover, out of two witnesses of this document namely Naresh, the cousin of the deceased and Jhulalal, father of the deceased, Naresh has not been examined by the prosecution. Jhulalal (PW3) the father of the deceased nowhere mentions regarding preparation of said dying declaration by any doctor of CIMS (Medical College) nor he has proved his signature. Moreover, the doctor who prepared after recording his satisfaction regarding fitness namely Dr.S.P Kujur has not been examined. Therefore, on both ground of fitness and actual recording of the dying declaration, the prosecution has failed to prove the same and the document is not at all reliable.

31. As far as dying declaration in Ex.P-11 is concerned, it is said to have been recorded by the Executive Magistrate G.R. Mahilange (PW8) on 21.8.2011 at

8:25 AM after the patient was shifted from Pamgarh hospital to CIMS and is said to have been prepared subsequent to Ex.P-32. This dying declaration is said to have been recorded by G.R. Mahilange (PW8) the Executive Magistrate. He has deposed that he had recorded dying declaration of deceased- Nandini and that on query (Ex.P-10) , the doctor had certified that the patient was in a fit condition to give statement. According to him, the patient was in a fit condition and he had recorded her statement. He states that she was not in a position to put her signature. In cross-examination, he states that the deceased was not in a condition to put her signature.

32. Punit Ram Rajak (PW14), the police officer, states that he had sent a memo on 20.8.2011 to the Sub Divisional Officer, Bilaspur vide Ex.P-10 for recording dying declaration. From this, it would be clear that memo for recording dying declaration was sent on 20.8.2011. An endorsement is said to have been given by one Dr. S.P. Kujur on that date itself i.e. 20.8.2011 but Dr. S.P. Kujur has not been examined by the prosecution. Moreover, the fitness certificate is said to have been given on 20.8.2011 whereas the Executive Magistrate G.R. Mahilange (PW8) claims to have taken the statement on the next date i.e. 21.8.2011 and there is no certificate of the doctor given on that day that the patient was in a fit condition to give statement. This dying declaration neither contains thumb impression nor signature of the deceased. Even in the dying declaration, there is no endorsement that at the time of recording the same, the patient was in a fit condition to give dying declaration. This assumes importance because the fitness certificate is said to have been given a day before by one doctor S.P. Kujur and it is not a case where soon after giving certificate of fitness, proved by the doctor giving fitness certificate, the Executive Magistrate recorded statement. What renders this dying declaration more doubtful is that the Investigating Officer Mahendra Tiwari (PW16) has not whispered regarding recording of this dying declaration (Ex.P-11). Even Punit Ram Rajak (PW14) the police officer who sent memo (Ex.P-10) does not state regarding recording of dying declaration. Nandeshwar Dhiwar (PW1) the brother, Pusuai Bai (PW2) the mother, Jhulalal (PW3) the father and Aktlal (PW4) the uncle, respectively of the deceased have not uttered a single word regarding any such dying declaration (Ex.P-11) recorded on 21.8.2011

at CIMS (Medical College), Bilaspur.

33. Nandni had sustained burn injury on 20th August 2011 and she died on 24th August 2011 at 10:50 pm. She was initially brought to Pamgarh hospital immediately after the incident of burning from where she was shifted to Chhattisgarh Institute of Medical Sciences (Medical College), Bilaspur on that very date. On 22nd August 2011, she was shifted to Hospital at Bhilai. These undisputed facts are borne out from the evidence led by the prosecution. Nandini's condition after having sustained burn injury on 20th August 2011 was deteriorating and it was for this reason she was being shifted from one centre of treatment to another health centre for better treatment.

34. The last dying declaration (Ex.P-13) is said to have been recorded at about 4:35 pm on 24.8.2011. That means about 6 hrs. before her death at 10:50 pm. The very fact that Nandini finally succumbed to death shows that her condition was deteriorating and not that she was improving. Initial assessment of Nandini by the doctor of hospital at Bhilai when she was admitted there at 6:00 pm on 22.8.2011, contained in Ex.P-19 reveals that upon general examination, her pulse, temperature, respiratory rates, blood pressure were not recordable due to due burns. The papers relating to her treatment after her admission in Bhilai hospital on 22nd August 2011 as contained in Ex.P-16 & 17, do not indicate that there was any improvement in her condition. It would thus be seen that the condition of the deceased when she was admitted in Bhilai hospital on 22nd August 2011, had become extremely critical. She had sustained inhalational injury also. In such a critical condition of health, she is said to have given another dying declaration (Ex.P-13) few hours before her death, said to have been recorded by another Executive Magistrate C.P. Mishra (PW10) on the certificate of fitness given by Dr. B. Sree Harsha (PW12). According to the Executive Magistrate C.P. Mishra (PW10), he recorded dying declaration and also taken thumb impression. According to Dr. B. Shree Harsha (PW12) when Nandini was brought to Sector – 9 hospital at Bhilai on 22.8.2011, she had sustained 70 – 75 % of burn and she was brought in a condition where her wind pipe was found burnt and later on she succumbed to death.

35. While in dying declaration (Ex.P-11), it has been recorded that she was set

on fire by her husband while she was working in the earthen stove, in dying declaration (Ex.P-13) it has been recorded that she was set on fire by her husband and the mother-in-law. Moreover, in dying declaration (Ex.P-11 & P-13), the place of incident are also different. In one dying declaration (Ex. P-11), incident is said to have taken place near earthen stove, that means in the kitchen, in the other dying declaration (Ex.P-13), the incident is said to have happened in the courtyard. While G.R. Mahilange (PW8), the Executive Magistrate, who had taken dying declaration (Ex.P-11), says that patient was not in a condition to sign or to put her thumb impression, the Executive Magistrate C.P. Mishra (PW10) who is said to have recorded dying declaration (Ex.P-13) claims to have taken thumb impression of the deceased. In dying declaration (Ex.P-13), signature of her brother namely Nandeshwar (PW1) is also seen but Nandeshwar does not talk of any such dying declaration recorded on 24.8.2011 in his presence much less he endorsing his signature on the said dying declaration. Nandewhar (PW1), the brother, Pusai Bai (PW2) the mother, Jhulalal (PW3) the father and Akti Lal Dhivar(PW4) the uncle, respectively of the deceased, have not stated regarding any such dying declaration given by the deceased on 24.8.2011 at 4:20 pm, 6 hrs. before the death.

36. While the aforesaid four witnesses, who are the relatives of the deceased, do not whisper regarding dying declarations of Ex.P-32, Ex.P-11 and Ex.P-13, each of them says that the deceased had given oral dying declaration before them. However, their evidence regarding oral dying declaration and the dying declaration in Ex.P-32, Ex.P-11 and Ex.P-13 are contradictory to each other. While brother Nandeshwar (PW1) says that the deceased had given dying declaration that when she was preparing tea over earthen stove, kerosene was poured on her by her husband and she was set on fire, Pusai Bai (PW2), mother of the deceased says that all the accused had set her ablaze when she was caught by mother-in-law, sister-in-law and husband poured kerosene. Jhulalal (PW3) father of the deceased also states that she was set on fire by husband, mother-in-law and sister-in-law. Akti Lal (PW4) uncle of the deceased states that in the dying declaration the deceased stated that she was set on fire by her husband in the presence of the other accused. According to his evidence, the appellant, mother-in-law and sister-in-law all of them poured kerosene and set her on fire.

37. There is one more reason why dying declaration, Ex.P-13, becomes doubtful. There is endorsement in Ex.P-12 i.e. application sent by police officer for recording statement. Endorsement is marked as "0/11". Such endorsement is made only when there is morgue enquiry i.e. enquiry after death. The last dying declaration Ex.P-13, few hrs. before death is said to have been recorded on the basis of this morgue (Ex.P-12) and, therefore, we find considerable force in the submission of learned counsel for the appellant that all these documents, must have been prepared only after death of Nandini in Bhilai hospital.
38. Dr. Yashwant Rao Tumde (PW19) who conducted postmortem has stated that death was caused due to burn along with kerosene and inhalational burn and in his cross-examination, he says that he cannot give an opinion whether it was a case of she having been set on fire or she of her own having sustained injury.
39. From the evidence led by the prosecution particularly the medical evidence, the opinion of the doctors and the evidence of doctors namely Dr. K.K. Dahire (PW7), Dr. B.Sree Harsha (PW12), Dr. Uday Kumar (PW13) and Dr. Yashwant Rao Tumde (PW19), there is nothing to show that the nature and pattern of burning render more probable that kerosene oil must have been poured on her from behind.
40. Ramesh Pandey (PW18) Additional Superintendent of Police who had recorded statement of Nandeshwar, Jhulalal, Pusai Bai, Aktilal, Narayan Prasad, Bhagirithi Patel, Ganga Maiya and Maniram Patel had admitted in his cross-examination that he had recorded statement during morgue enquiry in Ex.P-11. He states that Nandeshwar did not inform that he was told by his sister that she was set on fire by her husband. He states that had this fact been disclosed, he would have certainly recorded those facts.
41. After having carried out meticulous and close scrutiny of various dying declarations and the testimony of the prosecution witnesses, we find that the first dying declaration (Ex.D-1) which was recorded by R.S. Kanwar (DW5), the Executive Magistrate in Pamgarh hospital where Nandini was immediately brought after she sustained burn injury and certified to be in a fit condition to give statement by Dr. K.K. Dahire (PW7), said to have been

prepared when the brother of the deceased Nandeshwar (PW1) was present and when the appellant or his family members are not proved to be present and in the background that Nandini was brought to hospital by neighbour, appears to be far more reliable and trustworthy as compared to other document of dying declaration dealt with hereinabove. Therefore, the defence story that Nandini had sustained burn injury due to accident and it was only, later on, that when her relative arrived, on suspicion, a case was registered renders defence much more probable and plausible as compared to the prosecution evidence of deceased having been set on fire by the appellant. We are, therefore, inclined to give the appellant, benefit of doubt.

42. The appeal is accordingly allowed. The impugned judgment of conviction and order of sentence is set aside. The appellant be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge