

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 357 OF 2021

Amit Naskar

VS.

State of West Bengal

For the Appellant : Mr. Partha Pratim Das

For the State : Ms. Anasuya Sinha
Ms. Subasree Patel

Heard on : January 30, 2023, March 14, 2023 and March 15, 2023.

Judgment on : March 15, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment of conviction dated February 20, 2020 and the order of sentence dated February 24, 2020 passed by the learned Additional Sessions Judge, Fast Track Court No.1, North 24-Parganas in Sessions Trial No.5(7) of 2017 arising out of Sessions Case No.347 of 2017.

2. By the impugned judgment of conviction, the appellant was found guilty under Section 302 of the Indian Penal Code, 1860. The appellant was found not guilty of the charges

under Sections 498A/304B/326/307/201 of the Indian Penal Code, 1860. By the impugned order of sentence, the appellant was sentenced to suffer imprisonment for life and to pay a fine of Rs.50,000/- and in default to suffer further rigorous imprisonment for two years, if the fine remained unpaid. Both the sentences were directed run concurrently.

3. A written complaint was lodged by prosecution witness (PW) No.1 on December 7, 2016 relating to the death of three persons. P.W.1 in the written complaint claimed that he got news that the appellant poured petrol on his sister and the parents of the appellant, and thereafter put them on fire. As a result, his sister and the parents of the appellant were burnt so severely that they were admitted to R.G. Kar Hospital.

4. On the basis of the written complaint, police registered a formal First Information Report being Baguiati Police Station Case No.1449/2016 dated December 7, 2016, initially under Section 307 of the Indian Penal Code, 1860 and thereafter added Sections 302/304 of the Indian Penal Code, 1860.

5. Three persons died in the incident. Mina Naskar died on December 8, 2016. Purnima Naskar died on December 8,

2016 and Arun Naskar died on December 9, 2016. Purnima and Arun are the parents of the appellant. Mina is the wife of the appellant.

6. On completion of the investigations, police submitted the charge sheet. The Court framed charges as against the appellant on July 31, 2017. The appellant claimed to be not guilty and was tried.

7. At the trial, prosecution examined fifteen witnesses to bring home the charges. The prosecution also relied upon various documentary and material exhibits.

8. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure, where the appellant claimed to be not guilty and falsely implicated. The appellant claimed that, the death was due to an accident happening out of burst of a gas cylinder.

9. Learned Advocate appearing for the appellant submits that, the prosecution relied upon oral dying declarations allegedly made by the deceased prior to their deaths. He refers to the so-called dying declarations. He submits that, none of

the dying declarations are admissible in evidence. He submits that, the scribe of the three dying declarations, namely, the Sub-Inspector of Police was not examined by the prosecution. The three dying declarations of the three victims were not marked as exhibits as a whole.

10. Learned Advocate appearing for the appellant submits that, there was a delay in the lodgment of the First Information Report. He submits that, the incident occurred on December 5, 2016 while the First Information Report was lodged on December 7, 2016. He contrasts the written complaint with the so-called dying declarations and submits that, the oral dying declarations were claimed to be made on the date of the incident. Therefore, on the basis of such oral dying declarations, a complaint to the police was required to be lodged, which was not done. In such circumstances, according to him, the delay in the lodgment of the First Information Report negates the existence of any oral dying declarations.

11. Learned Advocate appearing for the appellant submits that, the prosecution did not examine any person claiming to

be an eye-witness to the incident. Therefore, the prosecution is relying upon circumstantial evidence to bring home the charges. He contends that, the prosecution could not prove the charges beyond reasonable doubt, as against the appellant. In particular, he submits that, apart from the charge under Section 302 of the Indian Penal Code, 1860, the appellant was acquitted from all other charges including those under Section 498A of the Indian Penal Code, 1860, consequently, he submits that, the charges as against the appellant was not proved beyond reasonable doubt by the prosecution.

12. Learned Advocate appearing for the appellant submits that, where the prosecution relies upon the dying declarations, it was incumbent upon the prosecution to prove the contents of such alleged dying declarations in accordance with law. Since the prosecution could not prove the dying declarations in accordingly with law, the same cannot be treated as a dying declaration of the victims. Consequently, no conviction can be based upon such so-called dying declarations.

13. Learned Advocate appearing for the State submits that, apart from the dying declarations of the victims recorded, the victims made oral dying declarations which also came on record. She submits that, the dying declarations made by the victims were so made on the way to the hospital and at the hospital in a conscious state of mind of the victims. The version of the dying declarations of each of the victims that, the appellant poured the petrol and set them on fire was supported by the post-mortem report of the victims. She also refers to the depositions of the doctor being P.W.7, in Court, where P.W.7 stated that, a Police Officer recorded statements of the three victims in his presence and that he gave remark that, the patients were conscious and made the statements in his presence. The doctor also signed on the dying declarations.

14. Learned Advocate appearing for the State refers to the *modus operandi* employed by the appellant. She submits that, the deaths were caused by burning after the victims were put petrol over their bodies. Such claim was corroborated by the dying declarations made by the victims. P.W.2, the sister of

Mina Naskar, deposed that on hearing a hue and cry from the place of occurrence she rushed to the spot and found them with burn injuries with a smell of petrol. The First Investigating Officer found the appellant just outside the place of occurrence and detained him there.

15. Learned Advocate appearing for the State submits that, apart from the dying declarations written down by police personnel in presence of P.W.7, a doctor, there are oral dying declarations made to various prosecution witnesses. She refers to the depositions of P.W.2, P.W.3, P.W.8 and P.W.10 in this regard. She submits that, such oral dying declarations are valid. She refers to the deposition of the Investigating Officer and submits, contemporaneously the prosecution witnesses stated that, the victims made the oral dying declarations to the police.

16. Referring to the *mens rea* behind the commission of the crime, learned Advocate appearing for the State submits that, all the three victims, stated in unison that, the appellant was after the immovable property belonging to the father of the appellant and that, the appellant poured petrol over the three

victims and set them ablaze after the father of the appellant refusing to make over the immovable property to the appellant.

17. Learned Advocate appearing for the State submits that, incriminating materials were seized from the possession of the appellant on his leading statement. In his regard, she refers to the seizure of the gas lighter and the container containing the petrol on the leading statement made by the appellant.

18. Learned Advocate appearing for the State submits that, there are sufficient evidence to convict the appellant on the charge of murder.

19. P.W.1 is the de facto complainant. He is the elder brother of one of the victims Mina Naskar. He stated in his deposition that, the appellant used petrol to burn the three victims. The incident happened on December 5, 2016 between 10 to 10:15 at night. He lodged a complaint on December 7, 2016. The incident happened in the matrimonial home of Mina Naskar. There was a family dispute between appellant and the parents of the appellant as also his sister Mina with regard to money.

He identified the written complaint which was tendered in evidence and marked as Exhibit-1.

20. P.W.2, is the sister of one of the victims, Mina Naskar.

She stated that, the appellant murdered Mina, Arun and Purnima by using petrol and by burning them. She also stated

that incident happened on December 5, 2016 in between 10 to

10:30 p.m. at the matrimonial home of Mina Naskar. She

heard a hue and cry from the matrimonial home of Mina

Naskar on that day. The matrimonial home of Mina Naskar

was situated at two minutes walking distance from her house.

On hearing the hue and cry, she rushed to the spot and found

the three victims with burn injuries and the neighbours

pouring water on their body. She found a smell of petrol on the

body of the victims.

21. P.W.8 and other neighbours took the victims to Uma

Nursing Home by amulance. Thereafter, the victims were

taken to R.G. Kar Medical College and Hospital. There all the three victims were admitted. She stated that Mina and Purnima died on December 8, 2016, while Arun died on December 9, 2016. She stated that while at the ambulance, Mina and Purnima told her that, the appellant poured petrol on them and set them on fire. She stated that, since marriage of Mina, the appellant used to inflict physical torture on Mina on demand of ornaments and money. Paternal family of Mina gave some ornaments but could not arrange money for which, the appellant put petrol on Mina and burnt her. She also stated that, as the parents of victim did not transfer the property in favour of the appellant, he put petrol on their body. She stated such facts before the police officer as also before the learned Magistrate. She identified statements recorded under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit-2. She

identified the appellant in court.

22. P.W.3 is the brother-in-law of Mina. He stated that, the appellant burnt three victims alive by pouring petrol on them. He stated that, on December 5, 2016 at about 10:30 in the night, he received information from a relative that there was a fire in the house of Mina and that, the victims got burnt and so they were hospitalized. He was asked to come to Uma Nursing Home. He along with his wife arranged a taxi and went to the Uma Nursing Home and did not find the victims there. They learnt that victims were taken to R.G. Kar Hospital and they moved the R. G. Kar Hospital and reached there at 11:30 night. There, he met Mina and asked her the reason to which, Mina explained that the appellant put petrol on the three victims and put them on fire.

23. P.W.3 stated that the appellant used to inflict physical torture upon Mina on demand for money. As Mina did not

bring money, the appellant put petrol on her and lit her with fire. He assisted Mina by paying money as per direction of the appellant. Appellant also requested his parents to transfer the landed property in his favour. When the parents failed to do so the appellant put petrol on them and put them on fire. He identified the appellant in the Court.

24. P.W.3 stated that, he narrated such facts before police as also before the learned Magistrate. He identified his statement recorded under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as Exhibit-3. He also tendered the inquest report dated December 9, 2016, which was marked as Exhibit-4.

25. P.W.4 is a Doctor who treated one of the victims namely, Arun Kumar Naskar on December 5, 2016. He stated that victim was brought by his brother Prosenjit Naskar. He stated that the patient party gave history of accidental burn from gas

cylinder burst and that that the time of accident was at about 10 p.m. of the date. He stated that the patient was with 100% burn and that he admitted the patient at the Male Burn Ward of R.G. Kar Medical College and Hospital. He tendered the medical report of the victim, which was marked as Exhibit-5. In cross-examination, he stated that, he did not note that there was a smell of any inflammable article like kerosine from the body of the patient in the medical report of the victims.

26. P.W.5 is another Doctor posted at R.G.Kar Medical College and Hospital. He treated Purnima Naskar on December 5, 2016. He stated that, patient party gave history of accidental burn from gas cylinder burst at the time of accident. Purnima Naskar was brought by Prasenjit Naskar. He stated that the patient was conscious and alert with 75% burn injury seen. Patient was admitted at the General Surgery Ward Unit-I. He tendered the medical report of such patient

which was marked as Exhibit-6. He also treated Mina Naskar. He stated that Mina Naskar was brought by Amit Naskar. Patient party gave history of accidental burn of gas cylinder burst. He saw burn injury on both hands, leg, back, abdomen and face near about 90% on Mina Naskar. The patient was sent to Casualty Block Operating Theater. The patient was admitted at General Surgery Ward Unit-I. He tendered the medical report of Mina Naskar which was marked as Exhibit-7.

27. In cross-examination, P.W.5 stated that, he did not remember that he found the smell of any inflammable article like kerosene or petrol from the body of the patient and that the same was also not written on the documents being Exhibits-6 and 7.

28. P.W.6 is another Doctor posted at R.G. Kar Medical College and Hospital as Resident Medical Officer, department

of Plastic Surgery on December 8, 2016. He countersigned the death certificate of Purnima Naskar on December 8, 2016. Such death certificate was tendered and marked as Exhibit-8. He also countersigned the death certificate of Mina Naskar which was tendered in evidence and marked as Exhibit.9.

29. P.W.7 is a Doctor posted at R.G. Kar Medical College and Hospital on December 8, 2016 and December 9, 2016. He identified the death certificates that he issued in respect of Purnima and Mina Naskar on December 8, 2016. He also identified the death certificate of Arun Naskar issued on December 9, 2016 and it was tendered in evidence and marked as Exhibit-10.

30. P.W.7 stated that, on December 7, 2016, a police officer from Tala Police Station recorded the statement of the three victims in his presence. He gave the remark that the patients were conscious and that the patients gave the statements in

his presence. He signed all the three documents. All three patients were suffering from burn injury and were unable to sign so left thumb impression were put on such documents. He identified his handwriting on each of the three documents which were marked as Exhibits-11/1, 12/1 and 13/1 respectively.

31. All three dying declarations, portions of which were marked as Exhibits 11/1, 12/1 and 13/1 respectively of the three patients were shown to P.W.7 on behalf of the defence.

32. P.W.8 is the elder brother of one of the victims, Arun Naskar. He identified the appellant in the Court. He stated that, the victims were murdered by the appellant by putting them on fire after pouring petrol on their bodies. He stated that the incident happened on December 5, 2016 between 9:45 p.m. to 10 p.m.. He stated that, on December 5, 2016, he was at his shop at Tehgoria. His wife informed him over

phone. All members of the house of the appellant were burnt and he was asked to come sharp. He closed his shop and went to the spot. He found the three victims with burn injuries. Local people and people from Meena Residency came and doused the flames by collecting water from Meena Residency. The appellant was standing there. He asked the appellant how all this happened, when the appellant told him that incident occurred out of gas cylinder burst. Thereafter, he along with others, took the victims to the hospital. He asked the victim as to how the incident happened when the victim told him that they were put on fire after pouring petrol on them by the appellant.

33. P.W.8 stated that, the appellant used to torture his parents for money. The appellant used to create pressure upon Mina demanding money from her. The family of Mina was poor and so could not satisfy the demand. He stated such fact

before the Investigating Officer as also before the learned Magistrate. He tendered his evidence recorded under Section 164 of the Criminal Procedure Code as Exhibit.14/1. He stated that his house is situated just behind the house of Arun Naskar.

34. P.W. 9 is a police personnel who prepared the inquest report with regard to the dead body of Arun Naskar. The inquest report was tendered in evidence and marked as exhibit 15.

35. P.W. 10 is the daughter of Arun Naskar and Purnima Naskar. She stated that the appellant poured petrol on the bodies of the victims and set them on fire. The incident happened on December 5, 2016 around 10 to 10.30 p.m. in the night. On that date, there was a general talk between her and her mother Purnima as also with Mina Naskar. At around 10 p.m. of the night, a neighbour gave her information that her parents and Mina sustained severe burn injuries. She rushed to R.G. Kar Hospital directly where she found that all three of them were admitted at Burn Unit. On the next date,

i.e. on December 6, 2016, she talked with them. All of them stated to her that the appellant poured petrol on each of them and put them on fire.

36. P.W. 10 stated that, the appellant sought sanction from Arun Naskar to raise structure to induct tenant, in the vacant portion of the house. Arun rejected such prayer. Immediately the appellant poured petrol on the body of Arun and put him on fire. Simultaneously the appellant poured the petrol on the body of Purnima and Mina and put them on fire also. The appellant was lazy and was without any avocation. Arun and the father-in-law of the appellant and the other in-laws of the appellant maintained the family of the appellant. The appellant was with the intention to earn money by inducting tenants on the structure raised upon vacant portion of the house and her parents, Arun and Purnima resisted. So the appellant committed the crime. The appellant used to draw money from his parents and used to threaten them with murder by putting petrol on them and setting them on fire. Mina used to protest so he also burnt his wife. Mina always supported Arun and Purnima when the appellant used to

assault his parents for which the appellant got furious with his wife Mina. Appellant used to put pressure on his wife to bring money from her parents. On one occasion, she saw the appellant attempting to throttle Mina when the parents of Mina failed to provide money. She identified the appellant in Court. She stated that, she informed the police and also recorded a statement before the Magistrate. She identified her statement recorded under Section 164 of the Code of Criminal Procedure, which was tendered in evidence and marked as exhibits 16/1 and 16/2.

37. The doctor who held the post mortem of the dead body of the three victims deposed as P.W. 11. She stated that, in her opinion, all the three victims died due to the effects of ante mortem burn injury. She described the burn injuries that she found on the three individual victims. She tendered the post mortem reports of the three victims in evidence. Post mortem report of Arun Naskar was tendered in evidence and marked as exhibit 16/A as a whole. Post mortem report of Purnima Naskar was tendered in evidence and marked as exhibit 17 as

a whole. Post mortem report of Mina was tendered in evidence and marked as exhibit 18 as a whole.

38. A police personnel who submitted the supplementary charge-sheet bearing no. 9/2019 dated September 9, 2019 deposed as P.W. 12. Such charge-sheet was tendered in evidence and marked as exhibit 19. The forensic laboratory report was tendered in evidence and marked as exhibit 20.

39. The police personnel who received the first responsibility of investigation deposed as P.W. 13. He stated that, when he reached the place of occurrence, he found the appellant sitting near the place of occurrence and detained him there. He stated that, he examined Prosenjit Naskar, P.W. 8, and recorded his statement. He arrested the appellant on the spot. He collected the dying declarations of the three victims. He stated about the conduct of the investigations. He tendered the statement of the appellant recorded under Section 161 of the Code of Criminal Procedure, which led to the seizure of, inter alia, the container containing petrol as well as the gas lighter. The statement of the appellant was marked as exhibit

24. He tendered the seizure list prepared on December 9, 2016, which was marked as exhibit 23.

40. P.W. 13 was cross-examined on behalf of the appellant. In such cross-examination, he stated that, the prosecution witnesses, who claimed the victims made oral dying declarations to such prosecution witnesses narrated about such oral dying declarations during investigations.

41. P.W. 14 is another Investigating Officer. He was entrusted with the responsibility of further investigation. He stated that, on receiving such responsibility on March 4, 2017, he issued requisition for report of viscera of three deceased from the Forensic Science Laboratory. He received the report on December 7, 2017. He tendered such reports in evidence, which is marked as exhibits 30, 30/1 and 30/2. He stated that, he submitted supplementary charge-sheet on December 7, 2017.

42. P.W 15 is the Forensic Science Laboratory expert. He identified such report and his signature thereon. He stated that, presence of inflammable product like petrol, diesel and kerosene would be detected in the contents of exhibit marked

as A to L. He also stated that, on examination, it is opined that the oily liquid contained in the plastic bottle marked as exhibit N was detected as petrol. The gas lighter marked as exhibit M was detected in active condition.

43. As noted above, in his examination under Section 313 of the Code of Criminal Procedure, on completion of the evidence of the prosecution, the appellant claimed that, he was innocent and falsely implicated.

44. Exhibit-16, Exhibit-17 and Exhibit-18 are postmortem reports of the three victims. All the three victims suffered burn injuries. The postmortem Doctor, being P.W.-11, opined that, the death of the victim was due to effects of ante-mortem burn injuries.

45. The victims were initially taken to a nursing home and, thereafter, admitted at the R.G. Kar Medical College and Hospital. The Doctors who treated the victims at such hospital, deposed that, the victims were admitted for burn injuries.

46. Prosecution at the trial, produced three writings claimed to be dying declarations of the three victims. The three dying

declarations were recorded by a Sub-Inspector of Police, who was not examined at the trial. The dying declarations were recorded in presence of a Doctor treating the three victims, being P.W.-7. P.W.-7, deposed that, on December 7, 2016, a police officer from Tala police station recorded statements of the three victims in his presence and that he gave a remark that the patients were conscious and that they recorded their statements in his presence.

47. Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1 are the handwriting of P.W.-7, which were tendered in evidence. Those handwriting are of P.W.-7 on the so-called dying declaration of the three victims. Only the hand writing portions of P.W.-7 were tendered in evidence at the trial and marked as Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1. Other portions of the document, i.e., the statement of the three victims, were not tendered in evidence on behalf of the prosecution. The hand writing of the Sub-Inspector of Police, was not identified by any of the three police personnel coming to depose on behalf of the prosecution. Prosecution did not take any steps for the purpose of identifying the handwriting

of the Sub-Inspector of Police, who took down the dying declaration of the three victims, at the trial. As noted above, the Sub-Inspector of Police himself was not examined at the trial.

48. However, a question was put to P.W.-7, in cross-examination, on behalf of the defence referring to Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1. Even thereafter, the learned Judge did not mark the documents containing Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1 as exhibits at the trial.

49. In absence of relevant portion of the document, containing Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1, being marked as exhibits, we are not supposed to take into consideration the so-called dying declaration made by the three victims and contained in such documents.

50. Before the three dying declarations, claimed to be recorded by the Sub-Inspector of Police, as noted above, the three victims, at different stages, while they were alive, made dying declarations orally to several prosecution witnesses.

51. Significantly, P.W-7, who was present on December 7, 2016, when the Sub-Inspector of Police was recording the dying declaration, certified that, all the three victims were conscious and were in a position to record their statements. This fact was not dislodged on behalf of the defence, despite cross-examination of P.W.-7.

52. The incident of burn occurred on December 5, 2016 at the residence of the three victims. They were initially shifted to a nursing home and, thereafter, admitted at R.G. Kar Medical College and Hospital.

53. The victims were conscious and were in a state of health, so as to make oral dying declarations. This is established by the deposition of P.W.-7 and his endorsements made on December 7, 2016, being Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1.

54. P.W.-2, a sister of Mina, deposed that, she went to the place of occurrence and accompanied the victims first to the Uma Nursing Home and, thereafter, to R.G. Kar Medical College and Hospital where, the victims were admitted. She stated that, while in the Ambulance, Mina and Purnima told

her that, the appellant poured petrol on their bodies as the parents of the appellant did not transfer the property in favour of the appellant. P.W.-2 was not cross-examined on such aspect at the trial, on behalf of the defence.

55. P.W.-3, in her deposition stated that, she asked Mina when she visited at the R.G. Kar Medical College and Hospital, as to the reason for the injury whereupon, Mina explained that appellant poured petrol on all the three victims and put them on fire. P.W-3 was cross-examined at length on behalf of the prosecution. Again, P.W.-3 was not cross-examined on the aspect of the oral dying declaration made by Mina to him.

56. P.W.-8, is one of the first responders to the incident. He stated in his deposition that, he asked the three victims, in the Ambulance as to how the incident happened when the victims told him that they were put on fire by the appellant after petrol was poured on them. P.W.8 was also not cross-examined on such aspect.

57. P.W.-10, who is the sister of the appellant, stated in her deposition that, she went to R.G. Kar Medical College and Hospital whereupon, when she visited the victims, all of them

stated to her that, the appellant poured petrol on them and put them on fire. Again, she was not cross-examined on the aspect of oral dying declaration.

58. Therefore, there are two prosecution witnesses, being P.W.-2 and P.W.-8, who stated that, they heard the oral dying declaration, in the Ambulance, made by the victims and two prosecution witnesses, namely, P.W.-3 and P.W.-10, who heard the oral dying declaration at R.G. Kar Medical College and Hospital.

59. As noted above, till December 7, 2016, all the three victims were conscious and capable of recording a statement as appearing from Exhibit-11/1, Exhibit-12/1 and Exhibit-13/1, being the certificate of the Doctor attending them.

60. Dying declarations, that too, oral dying declaration can be relied upon to convict an accused, should the Court be of the view that such dying declarations were truthful and that they were not tainted. There are no materials on record to suggest that, the dying declarations as claimed by four prosecution witnesses, were tainted. Two of the prosecution witnesses are near relatives of the appellant. There is no

reason as to why, the near relatives of the appellant will falsely implicate the appellant. One of the near relatives of the appellant, is not a natural successor to the estate of any of the victims. Therefore, no motive to falsely implicate the appellant is apparent from the materials on record.

61. It is the contention of the appellant that, the death was accidental in nature and due to a gas cylinder burst. This stand was taken by the appellant during his examination under Section 313 of the Criminal Procedure Code.

62. This defence of the appellant is sought to be canvassed on the basis of the oral testimony of the prosecution witnesses, namely, the Doctor attending the three victims.

63. Two of the Doctors, attending the victims, stated that, the patient party told them that, the incident occurred due to a gas cylinder burst. Two Doctors, who treated those victims and made those statements in their oral depositions, also stated that, victims were brought either by the appellant or by the uncle of the appellant, being P.W.-8. P.W.-8, in his deposition stated that, he heard that the victim suffered the burn injuries due to gas cylinder burst from the appellant.

64. Therefore, the source of information of the two prosecution witnesses attending the three victims, to the effect that the patient party claimed that the victim suffered gas cylinder burst, was the information supplied by the appellant.

65. Police undertook a seizure subsequent to the arrest of the appellant. In the seizure, amongst others, a container containing petrol and a gas lighter in a functional order were seized. The articles so seized were sent for forensic examination. The forensic examiner, deposed at the trial and stated that, the container was containing petrol and that the gas lighter was functional. The seizure was made pursuant to the leading statement made by the appellant.

66. Significantly, despite the appellant making a statement leading to recovery of articles as noted above, the appellant did not lead the police to recover any burst gas cylinder at the place of occurrence. Independent of the leading statement of the appellant, police did not seize any burst gas cylinder at the place of occurrence. No prosecution witness came forward to state that there was bursting of a gas cylinder at the place of occurrence.

67. Therefore, the theory sought to be canvassed on behalf of the appellant that, the burn injuries suffered by the victims were accidental in nature and occurred due to bursting of a gas cylinder remains unsubstantiated.

68. The incident occurred on December 5, 2016 with the written complaint being lodged on December 7, 2016. It is contended on behalf of the appellant that, there was a delay in the lodgment of First Information Report.

69. The incident occurred on December 5, 2016 around 10 P.M. in the night. The victims were initially rushed to a nursing home, being Uma Nursing Home and, thereafter, to R. G. Kar Medical College and Hospital. The victims survived till December 7, 2016. P.W.- 1 lodged the written complaint on December 7, 2016. In the facts and circumstances of the present case, we do not find any delay in the lodgment of the First Information Report with the police.

70. In view of the discussions above, we find no ground to interfere with the impugned judgment of conviction dated February 20, 2020 and the impugned order of sentence dated February 24, 2020.

71. We find no merit in the present appeal.

72. CRA 357 of 2021 is **dismissed**.

73. Copy of this judgment and order along with the trial court records be transmitted to the appropriate Court forthwith.

74. Period of detention suffered during the trial and post conviction be set off against the sentences imposed.

75. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

76. I Agree.

(Md. Shabbar Rashidi, J.)