

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 862 of 2018

(Against the judgment of conviction dated 06.01.2018 and the order of sentence dated 08.01.2018 passed by the learned Additional Sessions Judge-I, Sahibganj in S. T. No.120 of 2011)

Fagu Tudu, son of late Ramu Tudu, resident of Village Karla, P.O. & P.S.
Mirzachouki, District Sahibganj Appellant

Versus

The State of Jharkhand Respondent

CORAM: SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.

For the Appellant : Ms. Pragati Prasad, Advocate
For the State : Mr. Bholu Nath Ojha, Spl.PP

Order No.14/ Dated: 4th April, 2024

J U D G M E N T

Per: Subhash Chand, J.

1. This Criminal Appeal has been preferred against the judgment of conviction dated 06.01.2018 and the order of sentence dated 08.01.2018 passed by the learned Additional Sessions Judge-I, Sahibganj in S. T. No.120 of 2011, whereby the learned trial Court has convicted the appellant under Sections 302 and 436/ 511 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life along with fine of Rs.20,000/- for the offence under Section 302 of the Indian Penal Code. The appellant was further directed to undergo rigorous imprisonment for five years for the offence under Section 436/ 511 of the Indian Penal Code. In case of default in payment of fine, the appellant was directed to undergo SI for six months. Both the sentences were directed to run concurrently.

2. The brief facts of the prosecution case leading to this Criminal Appeal

are that the informant Marangmai Soren had given the written information with the police station concerned with these allegations that on 08.05.2010 at 02:00 O'clock of the night, she awoke and saw that her thatched roof in front of the door of her house was smouldering and she came out of the door to extinguish the fire. At the same time, Fagu Tudu her brother-in-law shot an arrow in her stomach. She raised alarm. Her husband Kunwar Tudu came out of the house and her brother-in-law Fagu Tudu also shot an arrow in stomach of her husband. Her husband fell down on the ground and died at the same time. On raising alarm, the persons of the locality attracted there. The murderer (her brother-in-law) had fled away from there. Her brother-in-law used to say occasionally that he would commit murder of her and her husband as well and the same was done by him. The arrow was still in her stomach and her brother-in-law had failed in setting her house ablaze. The thumb impression of the informant Marangmai Soren was put and the doctor Ajay Kumar read over the contents of this written information to the informant and the same was accepted to be correct by her. On this very written information, Case Crime No.79 of 2010 was registered under Sections 302, 307, 436/511 of the Indian Penal Code against Fagu Tudu with the Borio Police Station, Sahibganj.

3. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused under Sections 302 and 436/511 of the Indian Penal Code and the cognizance was taken by the Magistrate concerned, who committed the case for trial to the Court of learned Additional Sessions Judge, subsequently, transferred the same to the learned Additional Sessions Judge-I, Sahibganj.

4. The Court of learned Additional Sessions Judge, Sahibganj framed the

charge against the accused under Sections 302, 436/511 of the Indian Penal Code and the same was explained to him, he denied the charge and claimed to face the trial.

5. On behalf of the prosecution to prove the charge against the accused in **oral evidence** examined altogether seven witnesses i.e. **P.W.-1, Patras Murmu; P.W.-2, Bhairo Murmu; P.W.-3, Dr. Ajay Kumar, the Investigating Officer; P.W.-4, Jivan Hembrom; P.W.-5, Mangai Soren; P.W.-6, Dr. Shiv Shankar Bhagat and; P.W.-7, Binod Kumar Jaiswal** and in **documentary evidence** the prosecution has adduced **Exhibit-1, signature of Patras Mumu on the inquest report; Exhibit-1/1, signature of Mangai Soren on the inquest report; Exhibit-2, fardbeyan; Exhibit 2/1, Forwarding for FIR institution; Exhibit-2/2, Formal FIR; Exhibit-3, Signature of I.O. on inquest report; Exhibit-4, Postmortem report of Kunwar Tudu and; Exhibit-5, Postmortem report of Marangmai Soren.**

6. The statement of the accused was recorded under Section 313 of Code of Criminal Procedure, in which, he denied the incriminating circumstances in evidence against him and stated himself to be innocent.

7. The learned trial Court after hearing the rival submissions of the learned counsel for the accused and learned counsel for the State, passed the impugned judgment of conviction dated 06.01.2018 and the order of sentence dated 08.01.2018 holding the accused guilty for the offence under Sections 302 and 436/511 of the Indian Penal Code and sentenced as stated hereinabove.

8. Aggrieved from the impugned judgment of conviction dated 06.01.2018 and the order of sentence dated 08.01.2018, this Criminal Appeal has been preferred on behalf of the appellant on the ground that the

impugned judgment of conviction and the order of sentence is based on the wrong appreciation of evidence. The learned Trial Court has not appreciated the evidence on record in proper perspective and there is also no direct evidence of the occurrence. The impugned judgment of conviction and the order of sentence is based on only hearsay witness. In view of the above, prayed to allow this Criminal Appeal and set aside the impugned judgment of conviction and the order of sentence.

9. Heard the rival submissions of the learned counsel for the appellant and learned Spl.PP for the State and perused the materials available on record.

10. In order to decide the legality and propriety of the impugned judgment of conviction and the order of sentence passed by the learned Trial Court, we scrutinize the evidence oral as well as documentary adduced on behalf of the parties on record, which are reproduced hereinbelow:

10.1 P.W.-1, Patras Murmu, in his examination-in-chief, says that the occurrence was of two years ago. It was 12:00 O'clock of night. They were sleeping in their house. The Pradhan of village and two other persons awoke him and said that Kunwar Tudu and Marangmai Soren both have been murdered by Fagu Tudu having shot the arrow. He reached to the house of Kunwar Tudu and found him dead. Marangmay Soren was alive. It was told by her that Fagu Tudu had shot arrow to both of them separately. There was land dispute between Fagu Tudu and Kunwar Tudu. The inquest report of the deceased Kunwar Tudu was prepared in his presence. He also put his signature thereon, which he identified and marked Exhibit-1 and also identified the signature of Pradhan marked Exhibit-1/1. Marangmai Soren was taken to the hospital in the night. In cross-examination, this witness says

that he reached at the place of occurrence after half an hour of the occurrence. At that time, Pradhan, Marangmai Soren, Lapang Soren, Bhairo Murmu and Jivan Hambrom were also present there. Kunwar Tudu had died and Marangmai Soren was alive and she was in conscious condition. She told how the occurrence had taken place.

10.2 P.W.-2, Bhairo Murmu, in his examination-in-chief, says that the occurrence is of two years ago. Time was 12 O'clock of night. Fagu Tudu had shot arrow to Kunwar Tudu and his wife. Having heard the hue and cry, he also reached there. He saw the arrow in stomach of Kunwar Tudu and his wife as well. The wife of Kunwar Tudu was alive but Kunwar Tudu had died. She was taken for treatment, thereafter, she also died. In cross-examination, this witness says that he reached to the house of Kunwar Tudu and found Kunwar Tudu dead and his wife was in conscious condition and was alive. She had told in regard to the occurrence that it was Fagu Tudu, who had shot arrow to her husband and her also.

10.3 P.W.-3, Ajay Kumar, in his examination-in-chief, says that on 09.05.2010, he was posted as officer-in-charge of Mirzachowki Police Station, Sahibganj. On that day, the written fardbeyan of Marangmai Soren was recorded by him and the same is in his handwriting and signature. He took thumb impression of Marangmai Soren thereon. The forwarding endorsement is also in his handwriting the same is marked Exhibit-2. On the basis of this written statement of Marangmai Soren, the Formal FIR was registered with the Borio Police Station. There is endorsement of the then officer-in-charge of Borio Police Station on this formal FIR marked Exhibit-2/1. This Formal FIR also bears the signature of Girijanand Jha, the then officer-in-charge of the Borio Police Station. He identifies his signature

marked Exhibit-2/2. The investigation of this case was handed-over to him. In the intervening night of 08.05.2010 at 01:30 O'clock, he had received the information in regard to the murder and he reached to the indicated place and found the information to be correct. The informant was alive and her fardebayan was recorded. In the night, the dead body of Kunwar Tudu overnight remained in supervision of Chowkidar. Next day at 07:00 O'clock, he prepared the inquest report of the deceased Kunwar Tudu and the dead body was also sent for postmortem to Sadar Hospital. The Pradhan, Marangmai Soren had also corroborated the FIR case. The witness, Patras Murmu also corroborated the FIR case. He inspected the place of occurrence. During investigation, he also recorded the statement of Chatur Marandi, Bhairo Murmu and Jivan Hembrom under Section 161 of the Code of Criminal Procedure. All corroborated the occurrence. Thereafter, he received the postmortem report of deceased and ultimately filed charge-sheet. In cross-examination, this witness says that he did not take in his possession the burnt thatched. He also did not take in his possession the bloodstained soil from the place of occurrence.

10.4 P.W.-4, Jivan Hembrom, in his examination-in-chief, says that on the date and time of occurrence, he also reached to the place of occurrence after having heard hue and cry and found Kunwar Tudu dead and an arrow was also in his stomach. The wife of Kunwar Tudu, Marangmai Soren was also injured an arrow was also in her stomach. He came to know from the villagers that Fagu Tudu had shot arrow to both of them. In cross-examination, this witness says when he reached to the place of occurrence, Marangmai Soren was also in conscious condition. Police also recorded his statement. She was taken to the hospital and on the very next day, she also

died. He did not see the occurrence from his own eyes.

10.5 P.W.-5, Mangai Soren, who is the Pradhan of the Village, in his examination-in-chief, says that the occurrence was of two years ago. It was 12:00 O'clock of night. He was sleeping in his house and after having heard the hue and cry, he reached to the house of Kunwar Tudu. In the light of torch, he found Kunwar Tudu dead and an arrow was in his stomach. The blood was also lying there. His wife was also injured and an arrow was in her stomach. She was in conscious condition. She told that it was Fagu Tudu, who shot arrow to both of them. She also told that Fagu Tudu was also setting ablaze in the thatched roof of her house. In cross-examination, this witness says that he reached at the place of occurrence and found Kunwar Tudu dead and Marangmai Soren was in conscious condition. He did not see the occurrence from his own eyes.

10.6 P.W.-6, Dr. Shiv Shankar Bhagat, in his examination-in-chief, says that on 09.05.2010, he was posted as a Medical Officer. He conducted the postmortem of Kunwar Tudu and found Lacerated wound 2" below G.P. sternum measuring 1/2" x 1/2" x S.5. On dissection, after opening the wound, arrow was piercing the abdominal cavity. After opening the cavity, stomach was penetrated by arrow and whole abdominal cavity was full of blood. The cause of death to be shock and hemorrhage as result of above injury caused by sharp pointed weapons like arrow, which was sufficient to cause death in the ordinary course of nature. Time elapsed since death was 24 hours.

10.7 P.W.-7, Binod Kumar Jaiswal, in his examination-in-chief, says that on 11.05.2010, he was posted in FMT Department at Jawahar Lal Nehru Medical College, Bhagalpur. On that day at 02:30 pm, he conducted autopsy

on the dead body of Marangmai Soren, wife of Kunwar Tudu and found surgical stitched wound of size 7” present over the interior abdomen, 1” Right Umblicus. On opening the stitched wound, a loop of small intestine was found stitched. Anterior and posterior surface of uterus was found stitched. On opening of Uterine cavity, blood clots were present in the abdomen. All the abdominal solid organs were pale. The cause of death was found to be shock and hemorrhage and the death occurred within 36 hours from the postmortem examination.

11. The written information of the occurrence was given by Marangmai Soren, wife of Kunwar Tudu, who was also the injured and it has been mentioned in the written information that her brother-in-law, Fagu Tudu was attempting to set her thatched roof ablaze. She awoke as she came out, Fagu Tudu shot an arrow to her which hit in her stomach. Her husband also came to rescue and Fagu Tudu also shot an arrow in the stomach of her husband. Her husband died at the spot and in injured condition, she raised alarm. Fagu Tudu fled away from there and persons of the locality came and took her to hospital. This written information is in handwriting and signature of Dr. Ajay Kumar, who is in-charge of the Mirzachowki Police Outpost. This written information also bears the thumb impression of informant Marangmai Soren which was given on 09.05.2010 and the occurrence was of intervening night of 08.05.2010 at 12:00 O’clock in night. Marangmai Soren, the informant also died during treatment on the very next day when she was admitted to the hospital. **This written information has been proved on behalf of prosecution by adducing P.W.-3, Dr. Ajay Kumar.** This witness has proved the contents of this written information and he has stated that this written information was in his

handwriting and signature. He had read over the contents of this written information to the informant Marangmai Soren, who was in injured condition and she accepted the contents of the same to be correct. Thereafter, he took her thumb impression thereon and also put his signature and forwarded the same to register the FIR to the Police Station concerned.

P.W.-3, Dr. Ajay Kumar, in his statement, proved the contents of this written information the same is marked Exhibit-2.

12. The written information, which was given by the injured witness Marangmai Soren, who also died next day of the occurrence during treatment. Consequently, her re-statement could not be recorded by the Investigating Officer during investigation under **Section 161 of the Code of Criminal Procedure. After death of the informant Marangmai Soren, who had given the information in regard to the occurrence caused by Fagu Tudu who had shot an arrow in her stomach and also shot an arrow to the stomach of her husband who had come to rescue her. When she raised alarm, the persons of the locality also attracted there and she had told them how the occurrence had taken place. This written information given by Marangmai Soren which has been proved by P.W.-3, Dr. Ajay Kumar becomes admissible in evidence as a dying declaration under Section 32 of the Indian Evidence Act, 1872.**

13. In order to decide the evidentiary value of this dying declaration, it would be pertinent to consider whether the same was given in fit state of mind. **Though, on the very written information Exhibit-2, there is no certificate of the doctor in regard to fitness of the declarant Marangmai Soren; yet the prosecution witnesses i.e. P.W.-1, Patras Murmu; P.W.-2, Bhairo Murmu; P.W.4, Jivan Hembrom and; P.W.-5, Mangai Soren,**

Pradhan of the village, all these witnesses who had reached to the place of occurrence after having heard the hue and cry, they saw Kunwar Tudu dead and the arrow was in stomach of Kunwar Tudu. They also found Marangmai Soren, wife of Kunwar Tudu in injured condition and the arrow was also in her stomach but Marangmai Soren was alive and she was in conscious condition. She has told them that it was Fagu Tudu, her brother-in-law, who was trying to set ablaze in her thatched roof of the house as she came out, he shot an arrow to her which hit in her stomach and, thereafter, her husband came to rescue, he was also shot an arrow by the accused Fagu Tudu and her husband died at the same time on the spot. **Therefore, mental condition of the declarant Marangmai Soren is well proved from the statement of these prosecution witnesses before whom the informant Marangmai Soren has also made an oral statement how the occurrence had taken place and in what way the assailant Fagu Tudu had shot with the arrow to her husband and to the informant herself. Therefore, the written information Exhibit-2 after death of Marangmai Soren becomes admissible as a dying declaration under Section 32 of the Indian Evidence Act, 1872 and her mental condition while giving her statement to the police officer of the outpost concerned i.e. P.W.-3, Dr. Ajay Kumar, who in his examination-in-chief, also stated that he wrote the written information in his own handwriting and what was told by the informant, the same was written by him and the contents of the same was read over and explained to Marangmai Soren who told the same to be correct. This witness also stated that Marangmai Soren was also in conscious condition and her thumb impression was also taken on the written information.**

13.1 As such, the informant Marangmai Soren was in fit state of mind at the time of giving the written information to P.W.-3, Dr. Ajay Kumar and was also in conscious condition and in fit state of mind soon after the occurrence. The witnesses P.W.-1, Patras Murmu; P.W.-2, Bhairo Murmu; P.W.-4, Jivan Hembrom and; P.W.-5, Mangai Soren also reached there and found Marangmai Soren though in injured condition; yet she was alive and in conscious condition and she told them in regard to the occurrence how Fagu Tudu had committed the said crime.

13.2 The Hon'ble Apex Court in the case of *Laxman Vs. State of Maharashtra* reported in (2002) 6 SCC 710 held that mere absence of doctor certification as to fitness of declarant's state of mind would not *ipso facto* rendered the dying declaration unacceptable. The evidentiary value of such dying declaration depends upon the facts and circumstances of each case. Paragraph No. 5 reads as under:

“5. The Court also in the aforesaid case relied upon the decision of this Court in Harjit Kaur v. State of Punjab wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in Paparambaka Rosamma v. State of A.P. (at SCC p. 701, para 8) to the effect that

“in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration”

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no

certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in Paparambaka Rosamma v. State of A.P. must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat.”

13.3 The The Hon’ble Apex Court in the case of ***Nanahau Ram and another vs State of M.P.*** reported in ***AIR 1988 (SC) 912*** held that where the eyewitness stated that the deceased was in fit and conscious state of mind to make the dying declaration, the medical opinion cannot prevail. Paragraph No. 9 reads as under:

“9.
"Thus the medical opinion could not wipe out the direct testimony of number of witnesses that Dwarka Prasad chanced to live after receiving the injuries and was in a conscious state to make the oral dying declaration."

13.4 The Hon’ble Supreme Court in the case of ***Dharam Pal v. State of U.P.*** reported in ***(2008) 17 SCC 337*** held that the legal position is well settled that the FIR lodged by the deceased would attain character and legal status of dying declaration, if victim dies before his or her examination in the Court. Paragraph Nos.16, 17 and 18 read as under:

“16. *In any view of the matter, the report of occurrence was dictated by the deceased himself and the same was read over to him after which he had put his thumb impression on the same. This report is admissible under Section 32 of the Evidence Act as a dying declaration. It is true that the original document signed by the deceased was not brought on record, but in our view, the FIR has rightly been admitted as a dying declaration. There appears no reason for the police to falsely implicate any one of the accused inasmuch as, initially, the report dictated by the deceased was taken down as a non-cognizable report under Section 323 IPC. If the police were to*

implicate the accused, they would not have taken down the report as a non-cognizable report in the very first place itself.

17. That apart, the report dictated by the deceased fully satisfied all the ingredients for being made admissible as a dying declaration. To ascertain this aspect, we may refer to some of the general propositions relating to a dying declaration. Section 32(1) of the Evidence Act deals with dying declaration and lays down that when a statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, such a statement is relevant in every case or proceeding in which the cause of the person's death comes into question. Further, such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceedings in which the cause of his death comes into question.

18. The principle on which a dying declaration is admissible in evidence is indicated in the maxim "nemo moriturus praesumitur mentire", which means that a man will not meet his maker with a lie in his mouth. Thus, it is clear that a dying declaration may be relating to:

(a) as to the cause of death of the deceased;

(b) as to "any of the circumstances of the transaction" which resulted in the death of the deceased."

13.5 The Hon'ble Supreme Court in the case of *Surajdeo Ojha v. State of Bihar* reported in *AIR 1979 SC 1505* held at paragraph Nos.2 and 3, which reads as under:

"2. The central evidence in this case consists of a dying declaration made by the deceased before the Sub-Inspector which has been treated as FIR. The dying declaration was made within an hour of the assault when the deceased was fully conscious.

3. We have ourselves examined the injuries and we find that there was no injury which may have affected the brain or the heart and the only serious injuries are on the abdomen which will not make the deceased unconscious immediately."

14. This dying declaration is also well corroborated with the testimony of prosecution witnesses i.e. **P.W.-1, Patras Murmu; P.W.-2, Bhairo Murmu;**

P.W.-4. Jivan Hembrom and; P.W.-5, Mangai Soren though all these witnesses had not seen the occurrence; yet after hearing the hue and cry, they immediately reached to the place of occurrence and found Kunwar Tudu dead and his wife was also in injured condition and arrow was in her stomach. She in her conscious state of mind stated that her brother-in-law Fagu Tudu while he was attempting to set ablaze their house, shot an arrow to her which hit in her stomach and also shot an arrow to her husband who had come to rescue, who died on account of sustaining injury at the spot. Therefore, the contents of this written information on the basis of which the Formal FIR was prepared and the same has been proved by **P.W.-3, Dr. Ajay Kumar** is also well corroborated with the testimony of these witnesses.

15. The contents of the written information are also corroborated with the medical evidence. **P.W.-6, Dr. Shiv Nath Bhagat**, who had proved the postmortem report of deceased Kunwar Tudu marked Exhibit-4, has stated that there was only **one lacerated wound 2” below G.P. sternum measuring 1/2” x 1/2” x S.5. On dissection, after opening the wound, arrow was piercing the abdominal cavity. After opening the cavity, stomach was penetrated by arrow and whole abdominal cavity was full of blood. The cause of death to be shock and hemorrhage as result of above injury caused by sharp pointed weapons like arrow.** Likewise, **P.W.-7, Binod Kumar Jaiswal** has also proved the postmortem report of the deceased Marangmai Soren and has stated that **one surgical stitched wound of size 7” was present over the interior abdomen, 1” Right Umblicus. On opening the stitched wound, a loop of small intestine was found stiched. Anterior and posterior surface of uterus was found stitched. On opening of Uterine cavity, blood clots were present in the abdomen. All**

the abdominal solid organs were pale. The cause of death was found to be shock and hemorrhage and the death occurred within 36 hours from the postmortem examination.

16. The sole dying declaration, if found trustworthy and reliable, can also be the basis of the conviction. In the case in hand, the written information which was given by Marangmai Soren on the basis of which the Formal FIR was also prepared. She died on the very next day of lodging the FIR and that FIR becomes admissible as a dying declaration. This dying declaration is not only proved by **P.W.-3, Dr. Ajay Kumar** who recorded the fardbeyan of informant Marangmai Soren but also corroborated by the witnesses i.e. **P.W.-1, Patras Murmu; P.W.-2, Bhairo Murmu; P.W.-4, Jivan Hembrom and; P.W.-5 Mangai Soren.**

16.1 The Hon'ble Supreme Court in the case of *State of Maharashtra v. Hemant Kawadu Chauriwal* reported in (2015) 17 SCC 598 held that the dying declaration can also be the sole basis of conviction requires no corroboration must be judged in the light of surrounding circumstances.

Paragraph No. 8 reads as under:

*“8. In our considered opinion, two main arguments have been advanced before this Court and we shall now examine each and every contention in light of the arguments adduced before us. **It is a settled law that dying declaration can be the sole basis of conviction and it does not require any corroboration.** But it is equally true that dying declaration goes against the cardinal principle of law that “evidence must be direct”. Thus, dying declaration must be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence.”*

16.2 The Hon'ble Supreme Court in the case of *Ramakant Mishra @ Lalu & Ors. Vs. State of Uttar Pradesh* reported in (2015) 8 SCC 299 held at paragraph No.8, which reads as under:

“8. In addition to the dying declaration, which is only one of the species of the genus of Section 32(1), there could be other statements, written or verbal, which would also be encompassed within the sweep of this section, and at this point the Indian law drifts from the English law. This is further evident from the usage of phraseology in the section, embracing not only statements made about “cause of death” but also about “any of the circumstances of the transaction which resulted in the death”, whether or not the person making the statement was under “expectation of death”. These statements could be in the form of a suicide note, a letter, a sign or a signal, or a product of any reliable means of communication; their genuineness and credibility shall, of course, be reckoned by the court entertaining the matter concerned. A dying declaration enjoys a higher level of credence vis-à-vis any other statement abovementioned, which is on account of the former being made in the “contemplation of death”. “Contemplation of death” is the primal factor to segregate dying declarations from other statements. But no hard-and-fast rule can be laid down to confine the contemplation within the circumference of few hours or a few days in which death of the maker of the statement must happen so as to elevate that statement to the level of a dying declaration. Moreover, the state of mind of the maker would also be material in discerning completely as to whether the maker was mentally fit to make the statement and whether the maker actually could have contemplated death.”

17. In view of the critical appraisal of the evidence on record, we are of the considered view that the prosecution has been successful to prove its case beyond reasonable doubt. As such, the judgment of conviction and the order of sentence passed by the learned Trial Court needs no interference and this Criminal Appeal deserves to be dismissed.

18. Accordingly, this Criminal Appeal is **dismissed** and the impugned judgment of conviction dated 06.01.2018 and the order of sentence dated 08.01.2018 passed by the learned Additional Sessions Judge-I, Sahibganj in Sessions Trial No. 120 of 2011 are **affirmed**.

19. The appellant is in jail. He is directed to serve out the rest of the sentence as awarded by the learned Trial Court.

20. Let a copy of this judgment be communicated to the learned Trial Court.

(Ananda Sen, J.)

(Subhash Chand, J.)

Madhav/- A.F.R.