

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.128 of 2019

Arising Out of PS. Case No.-141 Year-2017 Thana- MUFFASIL District- West Champaran

SUNIL KUMAR S/o Sri Paras Sharma village-Pokhanbhinda, P.S-Bettiah
Muffasil,

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 196 of 2019

Arising Out of PS. Case No.-141 Year-2017 Thana- MUFFASIL District- West Champaran

NAVNEEL NIRAJ Son of Late Rudal Sharma Resident of Village -
Ghorahiya, P.S.- Srinagar, distt.- West Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 128 of 2019)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Vatsal Verma, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 196 of 2019)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Vatsal Verma, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 17-10-2025

Both the Appeals are filed against the common
judgment passed in Sessions Trial No. 141 of 2017 corresponding
to G.R. No. 1638 of 2017 registered under Section 302/328/120B
of the IPC and Sessions Trial No. 551 of 2017 whereby and



whereunder the appellants were convicted of offences under Section 302/34 of IPC and they were sentenced to suffer imprisonment for life and fine of Rs. 50,000/-, in default of payment of fine further imprisonment for a period of two years.

2. The appellants, namely, Navneel Niraj and Sunil Kumar have filed two separate appeals against the above mentioned common judgment and order of conviction and sentence being Cr. Appeal (DB) No. 196 of 2019 and Cr. Appeal(DB) No. 128 of 2019.

3. We have heard both the appeals together and now proceed to dispose of the appeals by the following judgment.

4. One Bhagmuni Devi made statement before the Inspector of Police cum SHO, Mufassil P.S. of Bettiah in District of West Champaran on 19th April, 2017 at about 11:30 A.M. that there was a marriage ceremony of one of her neighbours, namely, the son of Bahadur Sharma on 19th April, 2017. On the previous night all the male members of the family of the informant attended “Barat” (Marriage party) of the bride-groom and left the village. In the house there were only the female members including the informant, her mother-in-law and her two daughters, namely, Mamta Kumari aged about 24 years and Samta Kumari aged about 15 years. They returned to their house from the house of the



neighbour of the informant at about 11.00 P.M. and went to sleep in their room. At about 2:00 A.M. at night, the informant woke up hearing a cry (बचाओ- बचाओ). She found that the sound was coming from the eastern side room of their house. She rushed to the said room and found both Mamta and Samta burning. The entire room was under fire. She also saw under the flames of fire that appellant Navneel Niraj and five others unknown persons were fleeing away through the entrance door of the house. Then the informant and others douse the fire and admitted them to M.J.K. Hospital, Bettiah. From Bettiah Hospital, both the injured were referred to Motihari Hospital. On the way to Motihari Hospital, Samta Kumari died. Mamta Kumari was admitted to Motihari Hospital. The informant also stated that accused Navneel Niraj wanted to marry the daughter of the informant that is Mamta Kumari. Mamta was not agreeable to marry him. Due to such reason Navneel assaulted both the informant and deceased Mamta Kumari previously with the help of a knife. Over the said issue a criminal case being Bettiah Muffasil P.S. Case No. 71 of 2017 was registered. After registration of the said case Navneel repeatedly threatened the informant and her daughter Mamta and, lastly on 18th April, 2017, threatened the informant and Mamta that if he was arrested in connection with the said case, he would terminate



all of them by burning. Thus, the informant alleged that as a criminal case was registered against Navneel Niraj, he along with his five unknown associates, threw petrol inside the bedroom of Mamta and Samta and set the room on fire, as a result of which both of them received serious burn injury and Samta died. Few days after registration of F.I.R., Mamta also succumbed to her injury at Motihari Hospital.

5. The statement of Bhagmuni Devi was recorded by the S.H.O. Bettiah Muffasil P.S. The said statement was treated as F.I.R. On the basis of the said statement, formal F.I.R. was drawn against Navneel Niraj and other unknown persons under Section 302/120B of the I.P.C. The S.H.O. of the concerned Muffasil P.S. took up the case for investigation. Subsequent to his transfer his successor in office took the charge of the investigation and on conclusion of the investigation submitted chargesheet against four accused persons, namely, Navneel Niraj, Amit @Golu, Shekhar Kumar, Naveen Singh and, Sunil Kumar.

6. Since accused Shekhar Kumar @Vivek Kumar was juvenile on the date of offence, his record was split up and sent to the Juvenile Justice Board for trial. The remaining four accused persons were charged for the offences under Sections 302/34, 326/34, 387/34 506/34 and 120B of the I.P.C. As the accused



persons pleaded not guilty and claimed to be tried when charge was framed and explained to them, prosecution was called upon to produce the witnesses to prove the charge.

7. During the trial, the prosecution examined as many as ten witnesses. Among them, P.W.4 is the de facto complainant; P.W.1 is the grandfather of the deceased; P.W.2 is their father; and P.W.3 is the grandmother of the deceased. P.W.5, Jitendra Prasad, was the SHO of Mufassil P.S., who recorded the initial statement of the informant and treated it as the FIR. He was the first Investigating Officer (I.O.) of the case. P.W.6 is the subsequent SHO of Mufassil P.S. and served as the second I.O. of the case. P.W.7, Dr. Kumar Mukund Prasad Parve, is the autopsy surgeon who conducted the postmortem examination over the dead body of the deceased Mamta. P.W.8, Dr. Vijay Kumar, conducted the autopsy over the dead body of Samta. P.W.9, Ram Babu Sharma, is the son of P.W.1, i.e., Laxman Thakur, and the uncle of the deceased Mamta and Samta. P.W.10, Dr. Ashok Kumar Singh, medically examined the appellant, Navneel Niraj, on 27th April 2017 at about 5:25 PM.

8. Defence case as disclosed from the cross-examination of the witnesses on behalf of the prosecution and examination of the accused under Section 313 of the CrPC appears to be a



complete denial of the prosecution's case. As many as four witnesses including accused Navneel deposed during trial of the case as defence witness. The accused persons took a specific plea to the effect that they were falsely implicated in the case and they were not present in the village on the date of occurrence. They attended the "Barat" of a co-villager. They also took part in the marriage ceremony of the said co-villager and danced with orchestra. They were falsely implicated in this case due to grudge and previous enmity between them and the *de facto* complainant.

9. During trial of the case, the inquest report and *postmortem* report of the deceased were marked as exhibits which we propose to refer subsequently at the time of appreciation of evidence of autopsy surgeon. The learned Sessions Judge, Bettiah on due consideration of evidence on record held that charge under Section 302/34 of the IPC was proved against the present appellants and they were accordingly convicted and sentenced to suffer imprisonment for life with fine and default clause.

10. Under the above background and premises, the above-mentioned two appeals were filed.

11. Only point for consideration in these appeals is as to whether the learned Sessions Judge, Bettiah was right in holding



appellants guilty for committing offence under Section 302/34 of the IPC on proper appreciation of evidence.

Evidence on Record.

12. PW-1, namely, Lakhan Thakur is the grand father of deceased Mamta and Samta. He stated in his examination-in-chief that on 19th April 2017 at night, he was present in the “Barat” of a co-villager at village Varvatika. At that time, one Bhadur Rai received information over his mobile phone that his granddaughters, namely, Mamta and Samta received burn injuries and they were taken to hospital. The witness along with other villagers rushed to the hospital. In the hospital, the SHO of Mufassil P.S. recorded a statement of Mamta in his presence. Mamta told the police officer that she woke up from her sleep immediately after some liquid material spilled upon her body. She saw Navneel sitting on छज्जा (Sunshade). She tried to raise hue and cry but Navneel set the room on fire. As a result, both Mamta and Samta received severe burn injuries. Samta died of burn injuries. PW-1 put his signature as a witness to the statement of Mamta recorded by the I.O. on 19.04.2017 at 04:30 PM in Mani Hospital, Motihari. The witness was cross-examined on behalf of the accused persons. Cross-examination of PW-1 made on behalf of the Navneel Niraj is important and deemed to be recorded here.



It appears from the cross-examination of PW-1 on behalf of the Navneel that the witness attended the marriage party of the son of one Bahadur Sharma of their village. The information regarding the incident was received over phone by Bahadur Sharma, he informed the same to PW-1. PW-1 immediately rushed to the hospital by the motorcycle of his elder son. It is also stated by PW-1 that the statement of Mamta was recorded in the Hospital at about 3:30 AM at night. At that time, she was suffering with pain and she was screaming. The witness also stated during his cross-examination that police recorded the statement of victim Mamta in presence of Medical Officer. He could not recollect whether the statement of the victim was recorded on a white paper or a paper having printed lines. Signature of PW-1 on the statement of the deceased Mamta is marked as Exhibit-1. The witness also stated that Mamta stated to police that accused Navneel was sitting on the sun shade. It is also revealed from the cross-examination of PW-1 that marriage of Mamta was settled with the son of one Vidyarthi Thakur of village Manuawa and after settlement of marriage a puja was performed in the house of PW-1. After settlement of marriage, Navneel threatened Vidyarthi Thakur saying that if Mamta's marriage was solemnized with his son, he would kill all of them. The witness denied that he and his son



proposed Mamta's marriage with Navneel, but Navneel declined her to marriage. Out of grudge, a false case was registered against Navneel.

13. PW-2 Ram Pravesh Thakur is the father of deceased girls. It is found from his evidence that he also went to Manuapul with the marriage party of a co-villager. At about 01:45 a.m. his uncle Bahadur Thakur, received a phone call and informed him that Mamta and Samta received burn injuries. PW-2 immediately rushed to the hospital with his father and found his daughters in burnt conditions on hospital bed. PW-2 stated that Navneel set them on fire. Both the patients were referred to Motihari Hospital. On the way to Motihari, Samta died. Police recorded the statement of Mamta who told the police officer that Navneel sprinkled petrol through the ventilator of the room where Mamta and Samta were sleeping and set the room on fire. Mamta was subsequently referred to Patna Medical College and Hospital, Patna and on the way to Patna she also died. The witness stated that statement of Mamta was recorded by the police in his presence. From his cross-examination, it is ascertained that PW-2 came to know from the police that his daughter received 80% burn injury on their persons. He saw his daughters in injured condition in the hospital. He came to know the names of the accused persons from his wife over



mobile phone when he was in the marriage party. When his daughters were examined medically, the doctor found them in senses. In cross-examination, PW-2 also stated that his daughter Mamta put her Right Thumb Impression (RTI) on her statement. Her statement contained 10/12 lines. The witness read out the said statement. It is further ascertained from cross-examination of PW-2 that his daughters used to learn computer at Lal Bhadur Computer Training Institute. Mamta used to go to the said institute alone. She had no training of Judo and Karate. With regard to knowledge of Mamta in Judo and Karate, PW-2 had no knowledge. Mamta used to take training of sewing at Harivatika Chowk. PW-2 also stated during his cross-examination that his younger daughter Samta had no love relation with any boy of their village. PW-2 did not resist Samta from mixing with any boy of the village. From the cross-examination of PW-2, we get the topography of the place of occurrence. It is a room measuring about 10 ft. x 10ft. with a verandah on the southern side. The room was set on fire by the miscreants and his daughters received injury being ablaze by fire. It is also found that the household articles like trunk and other materials and a cot placed against the eastern side wall were in the room. The cot was fully burnt and other articles of the room was partly burnt. The witness stated that there was no



container of kerosene oil or earthen pot in the said room. He also stated that a fire was doused by water and the room became muddy while dousing the fire.

14. P.W. 3 Tara Devi is the grand-mother of the deceased girls. She stated in her evidence that the incident took place about six months before the date when she deposed. At the time of incident, she was sleeping. She heard cries of her grand daughters for help. She went to their room and found that the whole room was burnt. She also found both the appellants sitting on the terrace. Seeing the witness, they jumped from the terrace and ran away. While running away, Navneel Niraj covered his body by a towel. The witness and others rescued the victims who were burning. They doused the fire from their body and they were sent to Bettiah hospital. On the way to hospital, Samta died. Mamta was medically treated. She gave her statement to the police. Due to extensive burn Mamta could not put her signature on the statement but she put her thumb impression. It is also ascertained from the examination in chief of P.W. 3 that during investigation, police conducted T.I.P of the suspects and the witnesses identified the appellants in TIP. From the cross-examination of P.W. 3, it is found that she and her grand daughters attended a marriage ritual named *Parchavan* in the house of one of his neighbours on the date of



occurrence. From his cross-examination topography of the P.O is ascertained. On the north of the house of the deceased, there is a house and land of one Dhruv Pandey, to its south is the house of a blacksmith, to the east there is a house of appellant Sunil Kumar and to the west is the house of one Pappu Thakur. She also stated in her evidence that her house is constructed on one *khatha* of land. There is no courtyard in her house. There are nine rooms in the house. The witness was sleeping in north eastern room and her grand daughters were sleeping in another room situated in the opposite direction of the room of the witness. She stated in her cross-examination that she heard sound of screaming for about half an hour and came to the PO. The door of the room of her daughters-in-law was closed from inside. She kicked the door of the room for about five times and the door was opened. Then she found the entire room ablaze. She tried to extinguish the fire with water. After the fire was extinguished, she and her daughter-in-law, P.W. 1 entered into the room. She found her grand-daughters lying in a burnt condition. Their books and other reading materials were also burnt. Their dress materials were burnt, the electric wires in the room were also burnt and entire bed and mosquitoes net were burnt by fire. From further cross-examination, it is ascertained that there is a ventilator in the room where the victims received burn



injury. The circumference of the ventilator is six fingers wide. During cross-examination, she also stated that her daughter-in-law Mamta was not unconscious when she was taken to hospital by a tractor driven by his father Ramprawesh Thakur. It is also learnt from the cross-examination of P.W. 3 that marriage of Mamta was fixed with a boy of a neighbouring village but the accused Navneel got the said marriage cancelled.

15. P.W. 4 is the informant of the case. She corroborated her statement which she made before the police in her examination in chief. She stated that when she heard the scream of her girls, she rushed to their room and saw that both her daughters were burning. They received severe burn. Their cloths were completely ablaze. Her mother-in-law and sister-in-law extinguished the fire placing dry cloths on the body of the victims. Both the girls were talking at the time. They were taken to Motihari in an ambulance. Samta died on the way to hospital. She identified her signature in the fardebyan which is marked as Exhibit 2 during trial.

16. This Court finds from the cross-examination that her daughters' statement was recorded in Motihari by the police. Initially she stated that she was not in Motihari when her daughter gave statement but subsequently she amended her statement and stated that she was present in Motihari. She also stated that her



daughter told the names of two accused persons and did not mention the names of Navin Singh and Amit Kumar as her assailants. From her cross-examination, it is further ascertained that at around 2:00 A.M. at night when she was sleeping, she heard a scream “Help Help”. She heard a scream of her daughters, Mamta and Samta seeking for help. Within two to four minutes, she rushed to the southern side of room where Mamta and Samta were sleeping. The door of the room of their daughters were closed from inside. It was opened while they kicked on the door from outside. Her mother-in-law and sister-in-law were also with her. When she tried to extinguish the fire, her *Saree* and a little part of her body also received burn injury. As soon as the door was opened, both the girls came out their room while burning on the southern side of the *Baranda*. Fire was doused from their body by pouring water. The witness could not say who poured water on their body. At that time, the girls were not unconscious. Her husband took both the girls to the hospital by a tractor, then said they were taken to the hospital by an ambulance. From her evidence, it is also learnt that Mamta was a student of B.A. Class. P.W. 4 and other family members forbid her from meeting anyone outside. Mamta used to take training of martial arts and karate. She used to go to Lal Bahadur Computer Centre to learn computer.



After B.A. Part-1 examination her studies were stopped. Both the girls was learning sewing during their life time. The Mukhiya of the village named Umakant visited the house of the de facto complainant on his own after the incident along with the police officer on the following day of her return from Motihari.

17. P.W. 5 Jitendra Prasad was the SHO of Muffasil P.S., Bettiah on 19th of April, 2017. He recorded the fardebyan of Bhagmuni Devi on 19th of April, 2017 at 11:30 A.M and accepted the same as FIR. On the basis of the said statement made by P.W. 4, he registered Muffasil P.S. Case No. 141 of 2017 dated 19th of April, 2017 under Sections 302, 328 and 120B of the IPC. The fardebyan was marked as Exhibit 2 during trial of the case. Formal FIR was recorded by one Firoz Ahmad which was marked as Exhibit 4. P.W. 5 took the charge of investigation himself. After recording fardebyan and considering the serious nature of offence, he sent PSI Lal Kishore Gupta to the City Hospital for proper medical treatment of both the injured girls. He came to know that one of the daughters of the de facto complainant, namely, Samta died. He prepared an inquest report over the dead body of Samta which was marked as Exhibit 5.

18. From the cross-examination of P.W. 6, we get a clear picture of the place of occurrence. The room where the above-



named two girls were burnt is situated on the north eastern side. The said room was having two windows – one on the north side and another on the eastern side. Above the windows there is a cemented terrace “Sunshade / छज्जा”. Above the छज्जा / cemented terrace, there was an open ventilator at a height of 3 feet from the terrace / sunshade / छज्जा. The said ventilator was not covered by any material. Thus, any person can reach not only upto but above the level of ventilator riding on the cemented terrace / sunshade / छज्जा constructed over the windows. It was also affirmatively taken during cross-examination of P.W. 6 that after climbing on the terrace, the petrol kept in the bottle was thrown in the room through the ventilator and the fire was lit with a matchstick, because of which both the both the sisters sleeping in the room received burn injury and the serious incident happened. An empty bottle, money and remains of burnt articles were seized from inside the house under the instruction of the I.O by PSI Lal Kishore Gupta in presence of witnesses, namely, Rambabu Sharma and Pintu Sharma. The said seizure list is marked Exhibit 6. Another empty bottle having little bent/curved was found on the terrace. The said bottle was also seized by police. Carbon-copy of another seizure list in respect of other burnt household articles was marked as Exhibit 6/1. P.W. 6 recorded the statement of the



witnesses as well as the statement of Mamta before her death. PSI Lal Kishore Gupta recorded the statement of Mamta under the instruction of P.W. 6. The said statement was marked as Exhibit 7. It is also found from evidence that in course of investigation, officers and members of staff of FSL examined the place of occurrence. Nothing important is revealed from the cross-examination of P.W. 5. P.W. 6 Ramesh Chandra Upadhyay is the second Investigating Officer. He took up further investigation of the case on 21st of April, 2017. In course of his part of investigation, he first arrested accused Sunil Kumar on the basis of his mobile tower location. From the possession of Sunil Kumar, the mobile phone of accused Navneel Niraj was recovered. The seizure list in respect of the mobile phone which was recovered from Sunil Kumar was proved by P.W. 6 but it was not marked Exhibit by the learned Trial Judge, for the reasons best known to him. The investigating officer also ascertained from the accused persons that they went to Reliance Petrol Pump and purchased petrol in water bottles. After procurement of petrol, Shekhar and Navneel rode a motorcycle to reach village Pokhar Bhinda. Accused Nanvin road the motorcycle of accused Golu. They reached village Pokhar Bhinda to execute the crime. P.W. 6 collected CCTV footage recorded at the petrol pump and on



perusal of which he ascertained that Golu, Navneel Niraj, Navin and Shekhar went to Reliance Petrol Pump to purchase petrol. He seized the motorcycle of Navneel Niraj which was allegedly used for committing crime. The said seizure list is marked as Exhibit 6/3. After being arrested the accused Navneel Niraj was medically examined, and the Medical Officer found burn injury also on the body of Navneel Niraj. The Investigating Officer also collected CCTV footage of the date of occurrence of Reliance Petrol Pump and from the said CCTV footage presence of the accused persons in the Petrol Pump for purchasing petrol was ascertained. It is pertinent to note here that though the Investigating Officer collected the CDR between Sunil Kumar and Navneel Niraj and CCTV footage, no certification under Section 65 B of the Indian Evidence Act was obtained by the I.O. Therefore, in the absence of such certification, the above-mentioned pieces of evidence ought not to have been considered by the Trial Court. From cross-examination of P.W. 6, it appears that accused Navneel Niraj was arrested on 26th of April, 2017 at about 12:35 P.M. from the Nepal border. It was suggested during cross-examination that the victims committed suicide by burning. The said suggestion was stoutly denied by P.W. 6.



19. P.W. 7 Kumar Mukund Prasad Parve held P.M. examination over the dead body of deceased Mamta, aged about 24 years, daughter of Ramprawesh Sharma, Village Pokhar Bhinda on 23rd of April, 2017 at 9:01 P.M. The following injuries were observed on the body of the deceased:

“During PM examination the following anti mortem burn injuries were detected on the body of the deceased external examination Foley Catheter was empty.

In cannula left femoral present and two removed

(i) Superficial burn involving face and singeing of hairs, chest back of right leg, left leg lower part, perenial region and buttocks was burnt about 80%.

On dissection- Brain matter congested

Chest-Lungs congested.

Heart-Right chamber full, left- empty

Abdomen- All abdominal viscera like liver, spleen and kidney were congested.

Stomach- Nil

Uterus and grand urinary bladder empty

Urinary bladder- Empty

Time elapsed-Since death and PM. held within 24 hours.

In my opinion- the cause of death was due to above noted bur injuries, leading to shock caused by fire.”

20. In his opinion, the cause of death was due to burn injuries as a result of shock. In cross-examination the autopsy surgeon admitted that generally no post mortem was done at night. It is only done in broad day light. However, in the instant case, *post mortem* was done at night under the special order of the District Magistrate.



21. P.W. 8 Dr. Vijay Kumar conducted the autopsy over the dead body of Samta, Daughter of Ramprawesh Sharma, Village Pokhar Bhinda on 19th of April, 2017 at about 11:20 A.M. On examination, he found the following injuries on the person of the deceased:-

“Dermo epidermal burn with blackening present all over the body, except back, chest of illegible 6”x6’ area.

Red inflamed area present at several places of the body. Scalp, axillary and pubic hair were partly.. sized.

On dissection-Trachea and lungs found congested. Heart- Left side contained blood. Right side empty.

Abdominal Vessels- Like Hair, Spleen – Kidney congested.

The above noted injuries are ante mortem caused by fire

Death was due to asphyxia and shock as a result of death time since death – within 12 hours from PM examination.”

22. From his cross-examination, we find that the deceased was brought and identified with P.W. 8 by the Chowkidar of the village. The medical officer stated that he did not find any smell of kerosene oil or petrol over the dead body of Samta. According to the medical officer, the injuries received by Samta was ante mortem in nature, caused by fire and she died due to asphyxia and shock as a result of the injuries she received.



23. P.W. 9 Rambabu Sharma is the son of P.W. 1 Laxman Thakur. Thus, he is the uncle of deceased Mamta and Samta. He deposed on oath that on 19th of April, 2017, at about 2:30 A.M., at night when he was attending a marriage party at *Manuapul*, at that point in time Bahadur Sharma received a phone call on his mobile regarding the incident. Immediately, he and one Shriram Sharma returned to their house by a motorcycle and saw that Mamta or Samta were being taken on a tractor on the way to hospital. Both of them were burnt. Mamta told him that Navneel Niraj and his four/five associates sprinkled petrol over their body and set them in fire. They were subsequently referred to Motihari hospital. On the way to the hospital Samta died. Mamta was being treated at Motihari hospital but after three days of the occurrence she succumbed to her injury. The witness also stated that the incident took place because of the fact that Navneel wanted to marry Mamta but she denied. Over the said incident, mother of Mamta told Navneel not to disturb her daughter but Navneel assaulted her. Bhagmuni Devi, the mother of Mamta lodged a complaint in the local police station against Navneel Niraj. The witness stated during the cross-examination that Mamta for the first time stated the name of Navneel as the perpetrator of crime.



On 19th of April, 2017 at about 4:00 A.M., she also made the same statement implicating Navneel in the hospital.

24. P.W. 10 Dr. Ashok Kumar Singh, medically examined accused Navneel on 27th of April, 2017 at about 5:25 P.M. He found the following burn injuries on his person:-

“(i) Dorsal & fractal aspect of on left forearm.

(ii) Dorsal aspect of left hand and finger illegible

(iii) Left side of face & left side of neck.

(iv) Rt forearm flexed aspect.

(v) Minial aspect of both eyes.

(vi) Beltoyed area of left arm and posterior aspect of lower left arm.

(vii) Left scapular area percentage of burn 18%”

25. According to the medical officer, all the injuries in the person of accused Navneel Niraj was caused due to burn, superficial and simple in nature.

26. The accused persons were examined under Section 330 of the Cr.P.C. They denied their involvement in the alleged occurrence. Accused Navneel Niraj also stated that he would adduce evidence in support of his defence.

27. In all four witnesses were examined on behalf of the defence. D.W. 1 Birendra Rao spoke of non-involvement of Golu



and Navin Singh in the alleged incident. It is needless to say that Golu and Navin Singh were acquitted and the State has not preferred any appeal against the order of acquittal. Therefore, evidence of D.W. 1 Birendra Rao, D.W. 2 Ambika Chaudhary do not require to be discussed by us.

28. D.W. 3 Gulshan Kumar Sharma stated in his evidence that on 18th of April, 2017, the accused Sunil Kumar went to *Manuapul* in a marriage party with him. They stayed in the said marriage ceremony till 4:00 A.M. They enjoyed songs and dance in the said marriage.

29. D.W. 4 is Navneel Niraj himself. He stated in his evidence that the mother of Mamta talked to him and his parents at *Hajarimal Dharmasalla* and proposed to give Mamta in marriage to Navneel. Navneel used to work as a trainer in the institute of martial arts on the second floor of *Tulsi Vastralay* at *Lal Bazar*. Mamta used to come to the said institute after her mother proposed to give her in marriage to Navneel. Police described Mamta as his student and tarnished his image in the profession and the pious relationship “*Guru* and *Sisya*”. The accused stated on oath that Mamta was never her student. The accused also stated that Bhagmuni Devi and her family members started visiting the institute of the accused very often after the proposal of marriage of



the accused with Mamta was given. In course of time, a love relationship was developed between Navneel and Mamta. Subsequently, however, the mother of Mamta decided otherwise and refused to give Navneel's marriage to Mamta. She also tried to commit murder of Navneel by offering him poisonous food. On 2nd of December, 2017, Navneel was admitted to M.J.K. hospital, Bettiah. On 19th of January, 2017, Navneel was assaulted with the help of a knife by Ramprawesh Sharma. All such offences were committed to separate Mamta from Navneel. They also filed a false case against the accused which was registered as Muffasil P.S. Case No. 71 of 2017.

30. This is all about the evidence adduced by the parties in the Trial Court.

31. Mr. Ramakant Sharma, learned Senior Advocate for the appellant Navneel Niraj, at the outset, submits that in the instant appeal, identification of the accused / appellant is absolutely doubtful. The incident took place at dead hours of night on 19th of April, 2017. The deceased Mamta allegedly made a statement after she received an 80 % burn injury that she woke up from her sleep when some liquid was being sprinkled upon her body through the ventilator and saw the accused Navneel Niraj standing on the sunshade above the window and sprinkling some



watery material on the body of her and her sister through the ventilator which remained open. She could identify Navneel through the said ventilator and immediately thereafter Navneel set fire in the room where the deceased were sleeping with the help of matchstick.

32. It is vehemently contended by Mr. Sharma that at dead hours of the night it was not possible for deceased Mamta to identify the appellant. It is ascertained from the evidence of Tara Devi, P.W. 3 who is the grand-mother of the deceased girl that she heard the scream of the said two girls while they were burning for half an hour and came to the P.O and found that Navneel and other four persons were sitting on the sunshade above the window.

33. Mr. Sharma raised a pertinent question as to whether it is possible for the miscreants to sit and wait for about half an hour after setting the room, where the deceased were sleeping, on fire. No prudent person shall believe that the accused persons, after committing the offence, would wait at the place of occurrence for half an hour only for the purpose of their identification.

34. Thus, prosecution hopelessly failed to prove identification of the appellants in committing the offence.

35. Therefore in the absence of identification, this is a case purely of circumstantial evidence.



36. The learned Senior Advocate on behalf of the appellants submits that a case based on circumstantial evidence can only be proved on legal inferences. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. In a case of circumstantial evidence, it is the duty of the prosecution to prove that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proof circumstances must be consistent with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

37. Coming to the instant case, it is submitted by the learned Senior Counsel on behalf of the appellant Navneel that in the background of the fact that there is no direct evidence against the appellants committing offence for which they were charged. Prosecution was under obligation to prove the chain of circumstances which is consistent with the guilt of the accused and fully inconsistent with the claim of their innocence.

38. In the instant appeal, it has been pointed out by the learned Senior Counsel that a gruesome incident involving the



committing murder of two girls by burning, when they were sleeping took place in a village on 19th of April, 2017 but the Investigating Officer failed to produce any independent witness who corroborated the evidence of the witnesses on behalf of the prosecution.

39. Secondly, it is pointed out by the learned Senior Counsel that all the witnesses on behalf of the prosecution, beside the Medical Officers and two numbers of I.Os, are close relatives of the deceased.

40. Thirdly, it is established from the statement of the informant as well as the evidence of the witnesses that the relation between accused Navneel and the family members of the deceased were inimical. The informant previously registered a case against the appellant alleging assault to her and her daughter Mamta against the appellant.

41. In view of such circumstances, false implication of the appellants cannot be ruled out.

42. The learned Senior Counsel on behalf of the appellant submits the basic cannon of criminal administration of justice saying that the accused persons were not under obligation to prove their innocence in a criminal trial. It is for the prosecution to prove beyond any shadow of doubt the charge against the



accused persons. The appellant himself deposed during trial of the case as D.W. 4. He stated that mother of Mamta proposed his marriage with Mamta. After such proposal, Mamta used to come to his martial art training institute. A love relation was established between them. Subsequently the mother of Mamta did not want her daughter's marriage with the accused. Under such backdrop, it may also be a fact that Mamta was not agreeable to break her relation with Navneel and she and her sister were victims of honour killing.

43. The learned Senior Counsel on behalf of the appellant next submits that in order to prove involvement of the appellants, the Investigating Officer submitted a Compact Disc (C.D) and Call Details Report (CDR) to show that the principal accused purchased petrol from Reliance Petrol Pump on the date of occurrence and a conspiracy was hatched over mobile phone among the accused persons. However, the electronic records of CCTV footage and CDR are not admissible in evidence in the absence of proper certification under Sub-Section 4 to Section 65B of the Indian Evidence Act.

44. It is further pointed out by the learned Senior Counsel on behalf of the appellant that the salesman of Reliance Petrol Pump was also not examined by the I.O. to ascertain the fact



as to whether the appellants purchased petrol from the said petrol pump on 18th of April, 2017. The I.O. stated in his evidence that one PSI, namely, Lal Kishore Gupta recorded the statement of Mamta Kumari on 19th of April, 2017 at 4:30 P.M. PSI L.K Gupta had not been examined during trial. It is pointed out by the learned Senior Counsel for the appellant that the Trial Court committed a grave error in relying on the statement of Mamta Kumari because of the fact that firstly it was written by a police officer and not by a Judicial or Executive Magistrate. The I.O. did not make any requisition for appointment of a Judicial or Executive Magistrate for recording dying declaration of the victim. Secondly, it was recorded in presence of the grand-father and father of the victim and there was chance of tutoring by them and thirdly and most importantly no certification was taken from the Medical Officer to show that the victim was physically fit and mentally alert and orientated to make such statement.

45. Under such circumstances, it is the consistent view of the Hon'ble Apex Court that such statement cannot be accepted as voluntarily dying declaration of the victim and the on the basis of such statement, a person cannot be held guilty.

46. It is also submitted by the learned Senior Counsel for the appellant that the Investigating Authority did not collect the



initial injury report of Mamta Kumari. In the absence of such document, it is not possible to ascertain as to whether either the victim or the patient party made any statement before the Medical Officer regarding history of assault.

47. The evidence of P.W. 5 and P.W. 6 suggests that the place of occurrence was investigated by a team from the Forensic Science Laboratory (FSL). No FSL report is produced to prove as to whether the room where the victim was sleeping was set on fire by petrol or any other inflammable object. According to the I.O., the FSL team seized two empty bottles of water in which petrol was brought. But the said bottle or the seized matchbox was not examined to ascertain as to whether there was any impression of fingers on the bottle or the matchbox.

48. Learned senior counsel appearing on behalf of the appellants has raised serious doubts regarding the statement which the prosecution sought to treat as the dying declaration of Mamta Kumari. It is submitted that Mamta's statement was recorded both in Bettiah and Motihari. The statement at Motihari was recorded three days after the occurrence. During this period, the victim had the opportunity to meet her family members, creating every possibility of tutoring.



49. Moreover, the said statement was recorded by a police officer in the presence of the victim's grandfather and father, further increasing the likelihood of tutoring. From the alleged statement, it appears that a medical officer was present at the time of recording. However, the police officer who recorded the statement did not obtain a certificate from the medical officer to ascertain whether the victim was physically fit and mentally oriented to give such a long and coherent statement.

50. In support of his contention, Mr. Sharma, learned senior counsel for the appellants refers to an unreported decision of this Court dated 30th August, 2024, in Criminal Appeal (DB) No. 1271 of 2017, titled as ***Saurav Sharma and Anr. v. State of Bihar.***

51. In the aforesaid decision, there was no eyewitness to the incident, and the prosecution's case rested on two dying declarations given by the deceased. Upon examination of the dying declarations, it was revealed to the Court that Kamla Devi (the deceased) told each of the witnesses a different version of the incident with regard to the manner of occurrence. The said witnesses did not see the appellants at the place of occurrence or fleeing from it.



52. In that decision, there was also no certification from the medical officer who was allegedly present at the time of recording the so-called dying declaration of deceased. Thus, from the evidence produced by the prosecution, it does not appear on record whether the deceased was in a fit state of mind to make a declaration. Moreover, there is no endorsement from the doctor that the patient was conscious when her statement was recorded by the police.

53. Learned senior counsel for the appellants submits that in the case of *Uttam v. State of Maharashtra*, reported in *(2022) 8 SCC 576*, the Hon'ble Supreme Court laid down certain principles that the Court must consider while dealing with a case based on a dying declaration. Paragraph 14 of the said judgment is relevant and is quoted below:

“14. In Paniben v. State of Gujarat [Paniben v. State of Gujarat, (1992) 2 SCC 474 : 1992 SCC (Cri) 403] , on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus : (SCC pp. 480-81, para 18)

“18. ... (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of



M.P. [Munnu Raja v. State of M.P., (1976) 3 SCC 104 : 1976 SCC (Cri) 376])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [State of U.P. v. Ram Sagar Yadav, (1985) 1 SCC 552 : 1985 SCC (Cri) 127] ; Ramawati Devi v. State of Bihar [Ramawati Devi v. State of Bihar, (1983) 1 SCC 211 : 1983 SCC (Cri) 169] .

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618 : 1976 SCC (Cri) 473] .)

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [Rasheed Beg v. State of M.P., (1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [Kake Singh v. State of M.P., 1981 Supp SCC 25 : 1981 SCC (Cri) 645])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [Ram Manorath v. State of U.P., (1981) 2 SCC 654 : 1981 SCC (Cri) 581])



(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455 : 1981 SCC (Cri) 364] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Ojha v. State of Bihar [Surajdeo Ojha v. State of Bihar, 1980 Supp SCC 769 : 1979 SCC (Cri) 519] .)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P. [Nanhau Ram v. State of M.P., 1988 Supp SCC 152 : 1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [State of U.P. v. Madan Mohan, (1989) 3 SCC 390 : 1989 SCC (Cri) 585] .)”

54. In ***Sardar v. State of U.P.***, reported in ***(1954) 2 SCC 214***, the Hon’ble Supreme Court has cautioned on the question of appreciation of dying declaration in the following paragraph: -

“15. It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on



oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration ”

55. In ***Jan Mohammad and Anr. Vs. State of Bihar*** reported in ***1953(1) SCC 5***, the Hon’ble Supreme Court observed in paragraph 11 as under:-

“11. The other statement was recorded by Sub-Inspector Bikram Singh. We do not agree with the appellants' counsel that it is not admissible in evidence, for, in our opinion, it clearly comes under Section 32(1) of the Evidence Act. But its value as a piece of evidence is a different matter altogether. While we are far from suggesting that a police officer is disqualified by any rules of law from recording a dying declaration in exceptional circumstances where resort to a Magistrate or other responsible officer would mean such delay as might prevent the declaration being taken down at all, we are not satisfied why in this case, if reasonable efforts had been made, a Magistrate in the town of Gaya could not have been secured to record the dying declaration. There are other infirmities besides. The declaration was not recorded in the language of the deceased, and apparently not taken down as it was given. It was elicited in answer to questions, but the questions put have not been noted. The learned Judges say that the Sub-Inspector might have been in a hurry to hear the full statement of Nizamuddin, who was nearing his end. But that is precisely the reason why he should have immediately proceeded to write down to the dictation of Nizamuddin without lengthy interrogations. Indeed, it would have taken less time if the statement had been



recorded verbatim. Nizamuddin, it must be remembered, did not die till an hour or so later. Gobind Singh, the only other witness to the declaration is not a man of any status. He was a nurse getting Rs 28, and he states that he arrived when Nizamuddin had already started making the statement.”

56. Almost similar observation was made by the Hon’ble Supreme Court in paragraph no. 3 of ***Laxman v. State of Maharashtra***, reported in ***(2002) 6 SCC 710***.

57. It is needless to say that wounds of Burns of the body’s surface have complex pathological effects which can influence numerous body functions even shortly after the accident and which may have severe consequences for the affected patients. The expression "burn disease" describes the pathophysiological condition which patients develop, even when only small areas of the body are affected by burns. The body is subject to multifactorial damage, as a result of the sudden release of vasoactive mediators from the burned body parts, including kinins, prostaglandins, catecholamines, and glucocorticoids. Loss of skin integrity leads to loss of body temperature and in turn to increased energy consumption. Disorders of capillary integrity ("capillary leak syndrome") lead to volume displacement into the extravascular space. These changes can result in immune deficiency. Systematic complications like hypovolemia shocks,



organ failure (specially, lungs, kidneys and liver) sepsis and hypermetabolic state. Though, the learned senior counsel on behalf of the appellants submits that so-called dying declaration of deceased Mamta Kumari was taken after three days of occurrence, but it was actually recorded on 19th April 2017 at 4:30 PM in the CCU of Mani Hospital, Motihari. In such medical condition, the deceased would not be in physical and mental condition to make such coherent statement as produced by the prosecution in Exhibit-7.

58. It is no longer *res integra* that the actual statement of the patient is required to be recorded. PW-1, Laxman Thakur, who was present at the time of recording the dying declaration, stated in his evidence that his granddaughter, Mamta, was screaming in pain and continuously talking. Under such circumstances, no coherent statement like Exhibit-7 could have been made by the victim. Therefore, we are not in a position to rely on the so-called dying declaration of Mamta Kumari.

59. Learned Advocate on behalf of the State, on the other hand, submits that the prosecution has been able to prove the charge against the appellants beyond any shadow of doubt. Even if the dying declaration is discarded, the chain of circumstances is so



closely interlinked that it leads only to the hypothesis of the appellants' guilt and is inconsistent with their innocence.

60. Let us now consider the circumstantial evidence adduced during trial of the case by the witnesses on behalf of the prosecution.

61. According to the prosecution, the incident took place on 19th April, 2017, at about 2:00 a.m. at night. It is also not in dispute that the unmarried daughters of the informant were sleeping in a room. The said room was set on fire which caught the daughters of the informant. They received severe burn injuries. Younger daughter, namely, Samta Kumari died on the way to the hospital, while Mamta Kumari died at Motihari Hospital after three days of the occurrence.

62. The informant gave her statement on 19th April 2017 at 12:15 PM. On the basis of the said statement, formal FIR was lodged by Jitendra Prasad. The FIR has been marked as Exhibit-2. The informant narrated the incident in her statement. She also stated that accused Navneel wanted to marry her daughter Mamta Kumari but she did not agree to marry her. Over the said dispute, the appellant Navneel assaulted the informant and her daughter Mamta. He also threatened to kill them. Over the said incident, the informant made a complaint and on the basis of her complaint,



Bettiah Mufassil P.S. Case No. 71 of 2017 was registered. On 18th April, 2018, Navneel threatened the informant and her daughter saying that if he was arrested, he would burn them alive. The said fact was corroborated by the informant in her evidence.

63. Learned counsel on behalf of the appellant, Navneel, vehemently argued that the informant and her mother-in-law reached the place of occurrence half an hour after hearing the scream of the deceased. The said argument seems to have no basis because, in cross-examination itself, PW-4 stated she was sleeping in her room at about 2:00 o'clock at night when she heard a voice saying "help-help" coming from her daughters' room. Within two to four minutes, she reached in front of the room and their daughters. Her mother-in-law and sister-in-law also followed her. All of them kicked the door of her daughters' room; the lock of the room from inside was broken, and they found that the entire room was burning, including her daughters.

64. I have stated that PW-3 came to the place of occurrence with PW-4. PW-3 is the grandmother of the deceased. While she was proceeding towards the room of the deceased, she saw Navneel and Sunil jump to the ground from the sunshade (छज्जा) and flee from their house. Navneel covered his body with the help of a "Gamchha" (towel). While she was describing the



said fact, the witness was crying. Thus, while considering the evidence of PW-3 and PW-4 together, the argument of the learned senior counsel for the appellants that other members of the house reached the place of occurrence after half an hour falls flat.

65. It was taken during cross-examination on behalf of Navneel that he wanted to marry Mamta. PW-4 did not accept such a proposal from Navneel. For that reason, Navneel had previously assaulted PW-4 and Mamta. She lodged a complaint at the local police station, and a case was registered against him. As a result of such grudge and the institution of a criminal case against Navneel, he sprinkled petrol in the room where PW-4's daughters were sleeping and set the room on fire. Thus, the motive of the appellant, namely Navneel, was not challenged but rather affirmed during cross-examination, and we have no hesitation in holding that the motive of the appellant to commit such an offence was proved.

66. In a case based on circumstantial evidence, motive is one of the important circumstances which the prosecution is obliged to prove. That Navneel wanted to marry Mamta was also proved from his own evidence. He stated that he fell in love with Mamta. PW-4 and her family members tried to separate them, so she allegedly tried to kill Navneel by offering sweets mixed with



poison. After taking the sweets, Navneel became ill and was hospitalized. However, no documents were produced by the appellant in support of such evidence regarding his hospitalization. On the contrary, he admitted in his examination-in-chief that PW-4 made a complaint against him at the local police station, on the basis of which Mufassil P.S. Case No. 71 of 2017 was registered. Thus, the motive of the appellant to commit the crime was proved.

67. We have already noted that PW-9, Ram Babu Sharma, is the uncle of the deceased. On 19th April, 2017, he attended the marriage party of a co-villager. At the party, he learned from Bahadur Sharma that Mamta and Samata had received burn injuries while they were sleeping in their room. He and one Sri Ram Sharma immediately rushed to their village. Upon reaching his house, he saw that Mamta and Samata were lying on a tractor, about to be taken to the hospital. At that time, Mamta told him that Navneel and his 4/5 associates had sprinkled petrol on them and thrown a lighted matchstick over their bodies, resulting in severe burn injuries. This part of the evidence was not challenged during the cross-examination of PW-9, Ram Babu Sharma. Even if this statement is not recorded as a dying declaration, it is relevant under Section 6 of the Evidence Act.



68. In the instant case, the effective issue is as to whether the appellant committed the murder of the daughters of PW-4 by burning. The test of the admissibility of evidence as part of the *res gestae* is:

(a). Whether the act, declaration, or exclamation is so interwoven or connected with the principal fact or event, which it characterizes, as to be regarded as a part of the transaction itself; and

(b). Also, whether it clearly negates any principal motive or purpose to manufacture testimony. When the above evidence of PW-9 was not challenged in cross-examination, the question of manufacturing testimony by a severely injured person does not arise. Therefore, the evidence of PW-9 that Mamta told him the name of the appellant, Navneel, as her assailant, is admissible on the principle of *res gestae*, though PW-9 did not witness the incident.

69. During the cross-examination of PW-1, namely Laxman Thakur, it was suggested that Mamta had a love relationship with a boy from the village, which he denied. In cross-examination, it was again affirmed that he had talked to one Vidyarthi Thakur of Village Manuawa regarding the marriage of Mamta with his son. However, Navneel threatened Vidyarthi



Thakur and his family members with death by firing if his son tried to marry Mamta. Thereafter, Vidyarthi Thakur refused to marry his son to Mamta.

70. The above piece of evidence revealed during the cross-examination of PW-1 is another circumstance against the appellant, Navneel.

71. We are not unmindful of the fact that the prosecution failed to produce the CCTV footage of the Reliance Petrol Pump and the Call Detail Records between Navneel and other persons. The prosecution also failed to submit the FSL report of the seized bottles and matchbox. These are serious lapses on the part of the prosecution.

72. Though the learned senior counsel for the appellants did not specifically argue, we are of the view that we shall be failing to discharge our duty if we do not mention that all the witnesses to the incident are close relatives of the deceased; not a single villager or neighboring person from the place of occurrence came forward to depose in support of the prosecution's case. In this regard, one should remember that, indisputably, the residents of the locality were not in the village as they attended the marriage party of a co-villager. Therefore, the female relatives are the most natural witnesses who deposed in this case about the incident. PW-



1, PW-2, and PW-9 are the grandfather, father, and uncle of the deceased girls, respectively, who came subsequent to the incident from village Manuawa. Naturally, they deposed about what had happened prior and subsequent to the deceased girls being burnt by fire.

73. It is consistently held by the Hon'ble Apex Court that merely because the witnesses are relatives, it cannot be a ground to discard the testimony of such witnesses. The only requirement is that the testimonies of such witnesses have to be scrutinized with greater caution and circumspection.

74. Perusal of the above-named witnesses would reveal that, though they have been thoroughly cross-examined, their evidence in examination-in-chief remained unshaken. In that view of the matter, relying on a very recent decision in the case of ***Hare Ram Yadav v. State of Bihar***, reported in ***(2025) 1 SCC 339***, we do not find any reason to discard the testimony of such witnesses. On the same point, we may refer to another judgment of the Hon'ble Apex Court in the case of ***State of A.P. v. S. Rayappa***, reported in ***(2006) 4 SCC 512***.

75. Now, the question that arises for consideration is whether, due to the lapses in investigation, the accused persons are



entitled to get the benefit of doubt. From the above discussion, we find the following circumstances:

- (i) Navneel had a crush over Mamta
- (ii) Mamta's marriage was settled with the son of one Vidyarthi Thakur.
- (iii) Navneel threatened Vidyarthi Thakur and his family members asking them not to fix his son's marriage with Mamta.
- (iv) Mamta did not want to marry Navneel.
- (v) Over the same issue, Mamta and her mother was also assaulted by Navneel and Muffasil P.S. Case No. 71 of 2017 was registered against him.
- (vi) On 19th April, 2017 most of the villagers of village Pokhar Bhinda went to another village to attend a marriage party.
- (vii) All male members of the house of Mamta also attended the said marriage party.
- (viii) The room where Mamta and Samata were sleeping was set on fire at about 2:00 a.m. in the night.
- (ix) Mamta woke up as soon as some watery liquid fell on her body. She saw Navneel through the ventilator.
- (x) After the room was set on fire, both the girls started screaming. Hearing their cries for help, PW-4 (Bhagmuni Devi), PW-3 (Tara Devi), and the sister-in-law of Bhagmuni Devi rushed



to the place of occurrence within 2–4 minutes. Tara Devi saw Navneel and some other persons fleeing from their house.

(xi) Navneel was arrested on 26th April, 2017, from the Indo-Nepal Border

(xii) No explanation has been offered by Navneel as to why he was at the Indo-Nepal Border on 26th April, 2017.

(xiii) From the autopsy surgeon's report, it is proved that both Mamta and Samata died due to shock resulting from severe burn injuries.

(xiv) Navneel was medically examined on 27th April, 2017, and the medical officer found old, healed superficial burn injuries on different parts of his body. The medical officer opined that the said injuries were about five days old. The time of the injuries found on Navneel's body almost tallies with the date of the incident.

76. Taking together the above-mentioned circumstances, we arrive at an irresistible conclusion that the appellant, Navneel, is the person who committed the murder of two innocent unmarried girls by setting them on fire. We do not find sufficient evidence against the appellant, Sunil Kumar.

77. As a result, the order of conviction and sentence passed against the appellant, Navneel Niraj, is affirmed.



Accordingly, Cr. Appeal (DB) No. 196 of 2019 is dismissed on contest.

78. As we do not find sufficient material against Sunil Kumar in Criminal Appeal (DB) No. 128 of 2019, the order of conviction and sentence passed against him for the offence under Section 302/34 of the IPC is hereby set aside. The appellant, Sunil Kumar, is acquitted of the charges and shall be set at liberty. The appellant, namely Sunil Kumar, is discharged from the liabilities of the bail bond and sureties. Accordingly, Criminal Appeal (DB) No. 128 of 2019 is allowed on contest.

(Bibek Chaudhuri, J)

I agree.
Dr. Anshuman, J :

(Dr. Anshuman, J)

suraj/uttam/-

AFR/NAFR	NAFR
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