

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.285 of 2016

Arising Out of PS. Case No.-5 Year-2014 Thana- LAURIA District- West Champaran

1. Manjan Mahto, Son of Ramuna Mahto
2. Samtola Devi @ Sripati Devi, Wife of Ramuna Mahto
Both Residents of village- Nankar, PS Lauriya, District West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shakil Ahmad Khan, Advocate Mr. Upendra Kumar Chaubey, Advocate
For the Respondent/s	:	Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 16-10-2025

Heard learned counsel Mr. Shakil Ahmad Khan, for the appellants assisted by Mr. Upendra Kumar Chaubey, learned Advocate and Mr. S. A. Ahmad, learned A.P.P. for the respondent-State.

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the Judgment of conviction dated 2nd of March, 2016 and the order of sentence dated 5th March, 2016 passed by the learned 2nd Additional Sessions Judge, West Champaran, Bettiah, in Sessions Trial No. 555 of



2014 arising out of Lauriya P.S. Case No. 05 of 2014 corresponding to G.R. Case No. 139 of 2004 holding the appellants guilty under section 302/34 of the Indian Penal Code and they were convicted and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/- each under Section 302/34 of the Indian Penal Code and in default of payment of fine, to undergo further simple imprisonment of six months.

3. The factual matrix of the present case is as under : -

As per the written statement of the informant, Lalan Mahato, his sister, Samtola Devi alias Munni Devi, had been married to the son of Ramuna Mahato in Nanhkar Belwa village, located in the Lauriya police station area, approximately three years ago. It is stated that she was repeatedly subjected to physical abuse by her husband and in-laws, who blamed her for being unable to bear children. On the morning of January 12, 2014, at around 8:00 AM, Lalan received a call informing him that his sister had been set on fire and was severely burned by her husband, Manjan Mahato, along with Ramuna Mahato. At the time, Samtola Devi was being treated at Lauriya hospital. Upon arriving at the hospital, the informant observed that his sister had sustained serious burns, and the attending doctor



referred her to M.J.K. Hospital in Bettiah for further treatment. Lalan Mahto subsequently took his sister to Bettiah, but tragically, she succumbed to her injuries and passed away in the car on the way there.

4. Based on the informant's written report, Lauriya Police Station Case No. 5/2014 was registered under Sections 302/34 of the Indian Penal Code. Upon completion of the investigation, chargesheet was filed under Section 306 of the Indian Penal Code against the accused named in the FIR, namely Manjan Mahato and Samtola Devi. The investigation against the other accused, Ramuna Mahato, remained ongoing.

5. On 18.06.2014, the then Chief Judicial Magistrate took cognizance of the offence under Section 302 of the Indian Penal Code against the accused and transferred the case to the Judicial Magistrate. Thereafter, by an order dated 05.08.2014, the Judicial Magistrate committed the case to the Court of Sessions. The case was received in the Court of the Sessions Judge on 19.08.2014, who passed an order transferring it to the Court of Additional Sessions Judge-VI.

6. On 19.08.2014, charges were framed against the aforementioned accused under Sections 302 and 34 of the Indian Penal Code. After the prosecution concluded its evidence



on 10.12.2015, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure. No defence evidence was presented by either party in the case. After conclusion of the trial, the learned Sessions Court passed the judgment of conviction and sentenced the appellants to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each under Section 302/34 of the Indian Penal Code, and in default of payment of fine, to further undergo simple imprisonment for a period of six months.

7. In this case, a total of 14 witnesses have been presented by the prosecution. The prosecution's post-mortem examination is Exhibit 1, Lauria Police Station Case No. 5/14's Fardbeyan is Exhibit 2, dying declaration of Samtola Devi is Exhibit 3, handwriting and signature of the written report is Exhibit 4, formal FIR of Lauriya police station case no. 5/14 is Exhibit 5, inquest report is Exhibit 6, Station Diary Entry No. 298 dated 12.1.14 is Exhibit 7, S.D. Entry No.300 dated 12.1.14 is page 7/a, para 9 of the case diary is marked as exhibit 8, Paragraph No.11 of the case diary is marked as Exhibit 8/a, para 27 of the case diary is marked as 8/b, paragraph no.28 of the case diary is marked as 8/c, paragraph No.66 of the case diary is marked as Exhibit 8/d, Paragraph No. 4 of the case diary is



marked as Exhibit 8/e, Paragraph No. 13 of the case diary is marked as Exhibit 8f, Paragraph No.7 of the case diary is Exhibit 8/g, signature of seizure list is Exhibit 1, Signature on seizure-list is Exhibit 1/a, Signature on self statement of Informant is Exhibit-2, Pagination on self statement is Exhibit 2/a and signature on formal FIR is Exhibit-3. After conclusion of the trial, the Trial Court convicted the appellants, as stated hereinabove

8. PW 1 Bantu Sah, PW 2 Rajdeo Mahato, PW 3 Hridayalal Sah, PW 4 Jantri Mian, and PW 5 Prabhu Mahato expressed ignorance regarding the incident during their respective examinations-in-chief. They also stated that their statements had not been recorded by the police in connection with this case. Upon the request of the prosecution, these witnesses were declared hostile. Although the prosecution conducted their cross-examination, no material facts emerged during the same that would support the prosecution's case.

9. PW 6, Hridaya Mahato (witness on inquest report), during his examination-in-chief, stated that Samtola Devi passed away six months ago. He mentioned that he arrived at the hospital with three or four other people and found that Samtola Devi was already dead. He further stated that the police



had prepared the inquest report, and his signature was affixed to it in his presence. However, during cross-examination, this witness admitted that he was not aware of any personal details related to the incident.

10. PW 7, Gaya Mahato (father of deceased), in his examination-in-chief, testified in the first part of his deposition that Samtola Devi alias Munni Devi was his daughter and that she had been married to Manjan Mahato three years ago. About ten months prior to his testimony, he came to know that his daughter had been burnt. He went to Lauriya hospital, where he saw her in a severely burnt condition. He was transporting her from Lauriya to Bettiah at around 3:00 AM when she succumbed to her injuries on the way. They then returned her body to Lauriya, where the police arrived and took necessary action. However, this witness has further stated that he had no information regarding how the fire had started. He was declared hostile at the prosecution's request.

In his cross-examination, the witness testified that the fire had started accidentally while his daughter was cooking, and that her in-laws had not set her on fire. Furthermore, he clarified that his daughter had never complained of any harassment and had been living peacefully in her in-laws'



house.

11. PW 8, Purnima Devi, in her testimony, stated that she had no knowledge of the incident. As a result, this witness was declared hostile by the prosecution. During cross-examination, nothing emerged to support the prosecution's case.

12. PW 9, Asharfi Yadav, in his examination-in-chief, stated that Samtola Devi, the wife of Manjan Mahato, had passed away four to five months ago. He mentioned that he had been at the mill at the time and, upon his return, heard that she had died due to a fire. He further stated that the Sub-Inspector had not taken his statement. This witness was also declared hostile by the prosecution and cross-examined. However, no facts came to light during cross-examination that would support the prosecution's case.

13. PW 10, Kanhaiya Yadav, was also declared hostile by the prosecution. In his examination-in-chief, he expressed ignorance about the incident. During cross-examination, this witness stated in paragraph 3 that Manjan Mahato had a good relationship with his wife.

14. PW 11, Dr. Shashikant Dubey, in his examination-in-chief, testified that on 31.01.2014, he was posted as a Medical Officer at M.J.K. Hospital, Bettiah, West Champaran.



On that day, the body of Munni Devi alias Samtola Devi, aged approximately 22 years, wife of Manjan Mahato from Nankar Delwa village, Police Station Lauriya, District West Champaran, was brought to the hospital for post - mortem by Jagdish Manjhi, Chowkidar 1/2 of PHC Lauriya. In paragraph 2, the witness stated that the post-mortem examination was conducted at M.J.K. Hospital, Bettiah, at 12:15 p.m. on 13.01.2014. It was observed that rigor mortis was present in all parts of the body. In paragraph 3, the witness noted that the body had sustained second-degree burns, including burns to the face, scalp, both upper limbs, back, and chest. In paragraph 4, the witness testified that smoke particles were found in the trachea and lungs. The heart appeared pale, and the intestines were also pale. The approximate percentage of burns was 50%. In paragraph 5, this witness opined that the cause of death was hypovolemic shock, and that the burn wounds were ante-mortem in nature. He estimated the time of death to be between 6 to 24 hours prior to the post-mortem.

During cross-examination, in paragraph 7, the witness clarified that a 50% burn is considered life-threatening. In paragraph 8, he further stated that he did not know the victim prior to the post-mortem examination.



15. PW 12, Lalan Mahato, the informant in this case, stated in his examination-in-chief that Samtola Devi, also known as Munni Devi, was his sister and that she had been married to Manjan Mahato three years prior. In paragraph 2, this witness testified that on January 12, 2014, he received a call on his mobile phone informing him that his sister was being treated for burns at Lauriya Hospital. Upon arriving at the hospital, he found his sister suffering from burns and undergoing treatment. The doctor advised him to take her to Bettiah for further treatment. While on route from Lauriya to Bettiah by jeep, his sister succumbed to her injuries. He then returned to Lauriya Hospital with her body, where the police arrived. He subsequently had an application written by Devendra Anand and submitted it to the police. In paragraph 3, this witness stated that, during the journey to Bettiah, his sister had told him that Manjan Mahato, Ramuna Mahato, and Samtola Devi had attempted to kill her by setting her on fire. In paragraph 5, this witness identified the accused.

During cross-examination, in paragraph 6, he admitted that he did not witness the fire himself. He further testified that his sister was not happy in her marital home and had frequently complained about the situation. However, in



paragraph 7, he stated that he had visited his sister's in-laws' house 4-5 times after her marriage and found her to be happy during those visits. In paragraph 8, the witness revealed that when he inquired with the person who had informed him via mobile, he was told that his sister had been burnt in a stove fire. In paragraph 9, he stated that during the journey from Lauriya to Bettiah, his sister had reiterated that she was burnt due to a stove fire. In paragraph 10, he acknowledged that he was unaware of the contents of the application he had submitted, as the Sub-Inspector did not read it to him.

16. PW 13, Bhrigunath Singh, the Investigating Officer (I.O.) in this case, testified in his examination-in-chief that on January 12, 2014, he was posted at Lauriya Police Station. On that date, Chowkidar 1/2 Jagdish Manjhi informed him through phone that Manjan Mahato's wife had died in Nanhkar village, and that her family members had fled, with no villagers offering assistance in taking her for treatment. Based on this information, FIR No. 308, dated 12-01-14, was registered, and the I.O. proceeded to Nanhkar for further action. Upon arrival, he found Samtola Devi alias Munni Devi severely burnt in her house and groaning in pain. She was loaded into the police jeep and taken to the government hospital in Lauriya.



During transit, the SDPO, Narkatiyaganj, was informed, and on his direction, the Block Development Officer (BDO), Lauriya, was requested to record her dying declaration. In paragraph 2, the witness stated that the dying declaration of Samtola Devi alias Munni Devi was recorded by Magistrate (Block Agriculture Officer) Tarkeshwar Ram, which was later marked as Exhibit 3. In paragraph 4, the I.O. testified that the deceased's brother, Lalan Mahato, submitted a report based on which Lauriya Police Station Case No. 514/14, dated 12.01.14, was registered under Sections 302/34 of the Indian Penal Code. The I.O. identified the handwriting and signature of the witness on the written report, marked as Exhibit 4. In paragraph 7, the I.O. described the location of the incident. Samtola Devi alias Munni Devi was found injured in the courtyard of her ancestral house in Nanhkar village. The room had a brick roof, and the latch on the inner door, made of wood, was broken. However, no article inside the house was burnt, and there were no signs of any fire inside the room. In paragraph 13, the I.O. detailed the statement given by Bandhu Sah, who stated that upon seeing smoke coming from Ramuna Mahato's house, he went there and found Ramuna Mahato's daughter-in-law (the victim) crying in the courtyard, severely burnt. Efforts were made to extinguish the



fire, but the victim succumbed to her burn injuries. The I.O. also noted that Manjan Mahato had a history of abusing and assaulting his wife.

In paragraph 21 of the cross-examination, the I.O. explained that after receiving the information, he visited the incident site, as described in paragraph 7. It was mentioned that the door was locked from inside, and after the latch was broken, the door opened. Villagers then arrived and provided information regarding the scene. In paragraph 22, the I.O. confirmed that the door of the room was found broken in his presence. In paragraph 28, the I.O. testified that the deceased was almost 100% burnt from bottom to top. In paragraph 31, the I.O. stated that the statement of the deceased's mother-in-law was recorded in paragraph 2 of the case diary. According to the mother-in-law's statement, Manjan Mahato had beaten his wife and, in a fit of rage, she set herself on fire, then the door was broken and she was taken out. In paragraph 34, the I.O. noted that the statement of the treating doctor had not been recorded. In paragraph 35, the I.O. stated that statements taken by the officer from the Block Development Office were not recorded.

17. PW 14, Shri Tarakeshwar Ram, testified in his



examination-in-chief that on January 12, 2014, he was posted as the Block Agriculture Officer in Lauriya Block. On that day, he recorded the dying declaration of Samtola Devi alias Munni Devi at the Lauriya Primary Health Centre. He wrote the statement in his own handwriting as narrated by Samtola Devi. While recording the dying declaration, Sub-Inspector Bhrigunath Singh was present. He read out the dying declaration to Samtola Devi and made her affix her thumb impression on it. Both his signature and Sub-Inspector Bhrigunath Singh's signature appear on the document, which has been marked as Exhibit 3.

In paragraph 2 of his cross-examination, the witness admitted that he had written in the last line of the statement that the victim could not narrate the entire incident. He also stated that he did not remember whether a doctor was present at the time of recording the statement. In paragraph 3, the witness clarified that he did not obtain any certificate from a doctor regarding the victim's mental condition to confirm her fitness to give a statement. He further stated that he took the statement based on the oral order of the Block Development Officer (BDO), Lauriya Block, and that he did not receive a formal order for recording the statement. In paragraph 5, the witness



stated that the victim had sustained 90 percent burns and was lying on her back with very little hair left on her face. He asked the victim whether she was in a fit state to give a statement but did not mention this in the recorded statement. The witness also stated that it was incorrect to claim that he took the victim's dying declaration without authority, and he denied that he wrote the statement at the behest of the police. He further denied the allegation that the victim was not fit to give a statement at the time.

18. It is contended on behalf of the appellants that the impugned judgment of conviction and sentence is unsustainable either in law or on facts. The learned trial court failed to properly appreciate, assess, and evaluate the evidence available on record. A proper consideration of the same would have led to the acquittal of the appellants. It has been submitted that out of fourteen prosecution witnesses examined in the case, P.Ws. 1 to 10 have turned hostile and have not supported the prosecution version. The informant, P.W.-12, Lalan Mahto, himself stated that the deceased appeared happy in her matrimonial home, and that he was informed she had died of burn injuries caused by a stove. The evidence further discloses that the deceased herself stated that she sustained burn injuries from the stove.



19. Learned counsel for the appellants further submits that P.W.-13, the Investigating Officer, deposed that appellant no. 2 had stated the deceased burnt herself following a quarrel with her husband and that she was rescued by villagers after breaking open the door. The treating doctor was not examined, nor was the officer who allegedly recorded the dying declaration. It is well settled that conviction cannot rest upon an uncorroborated and shaky dying declaration. The Investigating Officer also noted in paragraph 7 of the case diary that the door of the room in which the deceased was found injured had been broken open by villagers to save her, further supporting the possibility of suicide rather than homicide.

20. Learned counsel further submits that P.W.-14, the Block Agriculture Officer, who purportedly recorded the dying declaration, admitted that no doctor was present at the time, nor was any medical certificate obtained regarding the fitness of the deceased to make such a statement. He was not authorized by any competent authority to record it, nor did he follow the questionnaire method. The authenticity and reliability of such a statement are therefore doubtful.

21. Learned counsel further submits that the investigation initially found the case true under Section 306



IPC. However, without proper appreciation of the factual circumstances suggesting suicide due to domestic discord, cognizance was erroneously taken under Sections 302/34 IPC. Even the evidence recorded during trial supports the inference that the deceased committed suicide after bolting herself inside the room, from where she was later rescued by breaking open the door. There is no eyewitness to the alleged occurrence, and the circumstantial evidence on record does not unerringly point to the guilt of the appellants. The evidence of the prosecution witnesses suffers from material contradictions and inconsistencies, rendering their testimony unreliable.

22. At the time of conclusion of his arguments, learned counsel for the appellants placed reliance upon a judgment rendered by a Division Bench of this Court in the case of ***Saurav Sharma @ Saurav Kumar Sharma @ Saurabha Kumar Sharma @ Mukul Sharma and Anr. vs. The State of Bihar***, in ***Criminal Appeal (DB) No. 1271 of 2017***, decided on 13.08.2024. Learned counsel further submitted that paragraph 12 of the said judgment contains a list of the decisions discussed therein, which are reproduced as under:

(i) ***Abhishek Sharma Vs. State (Govt. of NCT of Delhi)***, reported in ***AIR 2023 SC 5271***;



(ii) *Uttam Vs. The State of Maharashtra*,
reported in (2022) 8 SCC 576;

(iii) *Naresh Kumar Vs. State of Delhi*,
reported in 2024 SCC OnLine SC 1641;

(iv) *Sardar Vs. State of Uttar Pradesh*,
reported in (1954) 2 SCC 214;

(v) *Jan Mohammad and Another Vs. State of Bihar*, reported in (1953) 1 SCC 5;

(vi) *Laxman Vs. State of Maharashtra*,
reported in (2002) 6 SCC 710;

(vii) *Koli Chunilal Savji & Anr. Vs. State of Gujarat*, reported in (1999) 9 SCC 562;

(viii) *P.V. Radhakrishna Vs. State of Karnataka*, reported in (2003) 6 SCC 443.

23. Paragraph 41 of the aforesaid judgment contains the findings and extracts from various decisions wherein the fundamental principles applicable to dying declarations have been discussed.

24. Learned counsel for the appellants further submits that the alleged dying declaration cannot be treated as a genuine dying declaration, as it suffers from several defects. In particular, it has not been recorded as a statement of the injured who subsequently died, as is evident from the record of the alleged dying declaration, which is marked as Exhibit-3.

25. On the contrary, the learned Additional Public



Prosecutor (APP) for the State submits that a total of 14 witnesses have been examined on behalf of the prosecution. PW 1, Gaya Mahato, the father of the deceased, has testified regarding the death of his daughter due to burns. The informant, Lalan Mahato (PW 12), has fully supported the incident in his examination-in-chief. In paragraph 3 of his testimony, he stated that, during transport, his sister made a statement indicating that Manjan Mahato, Ramuna Mahato, and Samtola Devi attempted to kill her by setting her on fire. This fact was also corroborated by the testimony of this witness during cross-examination at paragraph -6, that his sister did not live happily with her husband and frequently complained about the conditions at her in-laws' house. The learned APP also highlighted that the dying declaration of the deceased, Munni Devi alias Samtola Devi, was recorded by the Block Agriculture Officer. It is evident from the dying declaration that the victim clearly stated before her death that her husband, mother-in-law, and father-in-law have set her on fire.

26. The learned APP further contends that the doctor's certificate on the dying declaration, which attests to the victim being in a sound mental state before her death, is not tenable. The learned APP also argues that the fact that the dying



declaration was not written in response to a supporting reply does not render it inadmissible. In this case, the formal FIR was filed under Sections 302/34 of the IPC, but after investigation, the charge sheet was submitted under Section 306 of the IPC. Despite this, charges have been framed against the accused under Section 302/34 of the IPC. The investigating officer, PW 13, has testified that the latch inside the house was made of wood and was found broken, though no evidence has been presented by the prosecution to corroborate this statement. Thus, the judgment of conviction and the order of sentence are well-founded and do not warrant any interference.

27. Upon hearing the parties and after perusal of the records, we have observed that in the present appeal, a total of 14 witnesses were produced by the prosecution and 8 exhibits were brought on record. Among these, the most important is Exhibit-2, the alleged dying declaration of the victim, which has been made the sole basis for the conviction and sentence in the present case, against which this appeal has been preferred.

28. From the record, it transpires that PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, PW-9 and PW-10 have turned hostile. PW 6 is an inquest witness, but in his cross-examination, he deposed that he had no knowledge of the



incident. PW 11 is the doctor of MJK Hospital, Bettiah, who conducted the post-mortem examination and opined that the death had occurred due to hypovolemic shock. He further opined that the burn injuries were ante-mortem in nature and that death had occurred within 6 to 24 hours prior to the post-mortem examination. PW 12, the brother of the deceased, in his cross-examination (paragraph 8), deposed that he had received information that his sister died due to a stove fire. In paragraph 7, he stated that after his sister's marriage, whenever he visited her matrimonial home, she appeared to be happy. In paragraph 9, he further stated that while he was carrying his sister from Lauriya to Bettiah, she disclosed to him that she had sustained burn injuries due to a stove fire. PW 13 is the Investigating Officer in whose presence the dying declaration was recorded, and he is also one of the witnesses to it. The said dying declaration was recorded by PW 14, Tarkeshwar Ram, Block Agriculture Officer, Lauriya. In paragraph 6 of his deposition, PW 13 deposed that he did not witness the incident of fire himself. In paragraph 7, he stated that the room had a brick roof and that the inner wooden latch of the door was broken. In paragraph 21 of his cross-examination, it emerged that the door was locked from inside, and after the latch was broken, the door



opened, whereupon the villagers arrived and informed him about the occurrence. In paragraph 22, the Investigating Officer confirmed that the door of the room was found broken in his presence and that the deceased had sustained almost 100% burn injuries from head to toe. In paragraph 34 of his cross-examination, it was revealed that the statement of the treating doctor was not recorded, and in paragraph 35, he admitted that the statement of the Block Agriculture Officer was also not recorded during investigation.

29. Upon further perusal of the evidence of PW 14, Tarkeshwar Ram, Block Agriculture Officer, Lauriya, who recorded the dying declaration of the deceased Samtola Devi at Lauriya Primary Health Centre, it appears that he deposed that the dying declaration was written by him in his own handwriting as narrated by Samtola Devi. He also stated that Sub-Inspector Bhrigunath Singh (PW 13) was present at that time. He further deposed that he read over the dying declaration to Samtola Devi and obtained her thumb impression thereon, after which both PW 14 and PW 13 signed the document, which has been marked as Exhibit-3. However, in his cross-examination, PW 14 stated that the victim could not narrate the entire incident. He also admitted that he did not remember



whether any doctor was present at the time of recording the statement. Furthermore, as per paragraph 3 of his deposition, he did not obtain any certificate from the doctor regarding the victim's mental condition to confirm her fitness to give the statement.

30. Upon perusal of the judgment rendered in the case of ***Saurav Sharma (supra)***, relied upon by the appellants, it transpires to this Court that paragraph 41 of the said judgment contains the findings and extracts from various decisions mentioned in paragraph 12 wherein the fundamental principles applicable to dying declarations have been discussed, as under :

(1) Each dying declaration must be scrutinized on its own merits. The Court has to examine upon which of the statements reliance can be placed in order for the case to proceed further. Medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as possibility of tutoring by the relatives etc.;

(2) If the Court is satisfied that the dying declaration is true and trustworthy, it can base conviction upon it without corroboration.;

(3) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring,



prompting or imagination and the declarant was in a fit state to make the declaration.;

(4) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.;

(5) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.;

(6) 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 eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail.

(7) The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested in fabricating a dying declaration, question of doubt in declaration recorded by the Magistrate does not arise.”

Subsequently, the finding has been recorded in paragraph 41, 43 to 45 of the said judgement, which reads as



under :-

“41. Keeping in view the aforesaid decisions and the principles laid down by the Hon’ble Supreme Court in various decisions, if the facts as discussed hereinabove are examined, it would reveal that, in the present case, the prosecution-witnesses have deposed before the Court with regard to the version of Kamala Devi (deceased) stated before them immediately after the occurrence took place. One of the witnesses stated that appellant No.2 poured boiling water on Kamala Devi and thereafter appellant No.1 Mukul set the house on fire. There is no evidence from where appellant No.2 brought the boiling water. When it was a foggy cold night, at about 1- 1:30 a.m., when the incident took place, what was the source of light to identify the accused is also not brought on record. Further, the incident took place in the 1-2 room house and when Sarang Dhar died on the spot in the incident Kamala Devi also sustained serious burn injuries and, therefore, when she was taken to the hospital whether she was conscious or not. The dying declaration, in the form of fardbeyan contains minute details, including the dispute with regard to land as well as the incident which took place 15-20 days prior to the incident. In the fardbeyan Kamala Devi said that when she tried to save her husband, she also sustained burn injuries whereas the witnesses have stated a



different story. Dying declaration given by Kamala Devi before the Executive Magistrate contains the exactly similar details which is not possible when the person has sustained serious burn injuries. From the deposition of the Executive Magistrate, it is revealed that when he reached to the hospital, the Investigating Officer narrated the entire story to him and while recording the dying declaration of the injured Kamala Devi, villagers were also present. Therefore also, there are all chances of tutoring.

43. Surprisingly, the dying declaration of the deceased was recorded by the Investigating Officer and the Executive Magistrate has merely signed the same. Even there are two versions with regard to the recording of dying declaration. At one place it is stated that the Investigating Officer has recorded the dying declaration whereas at another place the Executive Magistrate has stated that the dying declaration is in his handwriting. Thus, it raises serious doubt. The dying declarations recorded by the Executive Magistrate is not in question-answer format. Ordinarily it should be in the question-answer format.

44. It is the specific defence of the accused (appellant No.1) in the statement under Section-313 of Cr.P.C. that he has been falsely implicated by his brother, uncle and Najo Yadav because of the land-dispute and they wanted to



grab the land. Admittedly, after the death of the parents, the aforesaid three persons have taken over the possession of the land.

45. Thus, looking to the aforesaid facts and circumstances of the present case and the evidence led by the prosecution, we are of the view that we cannot simply rely upon the dying declarations given by the deceased Kamala Devi to the police as well as to the Executive Magistrate. 46. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions, inconsistencies and improvements in the deposition of the prosecution-witnesses. 47. Thus, the prosecution has failed to prove its case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the judgment of conviction and order of sentence which require to be quashed and set aside.”

31. Keeping in view the aforesaid decisions and the principles laid down by the Hon’ble Supreme Court of India in various judgments mentioned above, as well as from the facts discussed in the present appeal, it is revealed that in this case, there are in total 14 prosecution witnesses, out of which the evidence of 10 prosecution witnesses is of no value as they have turned hostile. The evidence of the doctor who conducted the post-mortem has only indicated the cause of death, while the



evidence of the Investigating Officer (PW-13) and the recorder of the alleged dying declaration (PW-14) is most relevant. The recorder of the dying declaration, in his cross-examination, has deposed that the victim could not narrate the entire incident, and he did not obtain any certificate from the doctor regarding the victim's mental condition to confirm her fitness to give a statement. He further stated that he did not remember whether the doctor was present at the time of recording the statement or not. Although he claimed to have asked the victim whether she was in a fit state to give a statement, though this fact was not mentioned in the recorded statement.

32. On the other hand, the brother of the victim, who is also the informant in this case, has deposed in his cross-examination that while he was carrying his sister from Lauriya to Bettiah, she disclosed to him that she was burnt by a stove.

33. Surprisingly, the dying declaration of the deceased was recorded by the Block Agriculture Officer and signed by the Investigating Officer, yet contradictions are apparent in their testimonies before the Court. The Investigating Officer deposed that the room in which the dead body was found was locked from inside and had to be broken open in the presence of villagers. PW-14, the Block Agriculture Officer



who recorded the dying declaration, admitted that no doctor was present at the time of recording, nor was any medical certificate obtained regarding the fitness of the deceased to make such a statement either by a doctor or by himself. Therefore, it raises serious doubt about the genuineness of the dying declaration. Furthermore, the dying declaration was not recorded in a question-and-answer format, which ordinarily should have been the case.

34. On the basis of the discussions made above and the evidence led by the prosecution, we are of the view that there exist major contradictions, inconsistencies, and improvements in the depositions of the prosecution witnesses particularly PW 13 and PW 14. Thus, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Despite this, the learned Trial Court recorded the judgment of conviction and order of sentence, which are unsustainable in law and, therefore, are liable to be quashed and set aside.

35. Accordingly, the impugned Judgment of Conviction dated 2nd March, 2016, and the Order of Sentence dated 5th March, 2016, passed by the learned 2nd Additional Sessions Judge, West Champaran, Bettiah, in Sessions Trial No.



555 of 2014 arising out of Lauriya P.S. Case No. 05 of 2014 corresponding to G.R. Case No. 139 of 2004, are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

36. Since appellant no. 1, Manjan Mahto, is presently in judicial custody, he is directed to be released forthwith from jail, if not required in connection with any other case. So far as appellant no. 2, Samtola Devi, wife of Ramuna Mahto, is concerned, since she is on bail, her bail bond stands cancelled and the sureties are hereby discharged from their liabilities.

37. In result, the appeal stands allowed. Accordingly, Interlocutory Application No. 01/2024 also stands disposed of, having become infructuous.

Bibek Chaudhuri, J :- I agree.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	09.10.2025
Uploading Date	16/10/2025
Transmission Date	16/10/2025

