

Form No. J(1)

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

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta**

C.R.A. 246 of 2017
Mansura Bagum
Versus
The State of West Bengal

For the Appellant: Mr. Samim Ahammed,
Mr. Nazimuddin Siddique,
Mr. Arka Ranjan Bhattacharya,
Ms. Gulsanwara Pervin,
Ms. Saloni Bhattacharjee.

For the State: Mr. Sanjoy Banerjee,
Ms. Nandini Chatterjee.

Heard on: 13.02.2025, 09.09.2025, 25.09.2025 and
18.11.2025.

Judgment on: November 18, 2025.

Rajasekhar Mantha, J.:

1. The subject appeals are directed against the judgment and order of conviction dated 27th February, 2017 and sentence dated 28th February, 2017 passed by the learned Additional Sessions Judge, Chandannagore in Sessions Trial No. 61/2014 arising out of the Sessions Case No. 41/2014.
2. The appellant in the instant appeal was convicted under Section 302 of the Indian Penal Code.

THE PROSECUTION CASE:

3. The prosecution case in brief is that the victim, who was the daughter-in-law of the appellant, married to her son, Sk. Maidul Islam. Within four months of marriage, the victim is stated to have informed PW-1, Sk. Badruddoza, her father, that her in-laws demanded additional cash of Rs. 1 lakh as part of dowry which was not given. Admittedly, the victim's father at the time of marriage gave several articles including steel almirah, bedding, drawing table including gold chain, ear rings, tiara and gold ring to the husband of the victim.

4. Upon failure of the victim to crop up the cash of Rs. 1 lakh, repeated torture was inflicted by her in-laws primarily including the appellant, father-in-law, brothers-in-law and sister-in-law. The husband of the victim was working in Uttar Pradesh most of the time. The torture increased when the husband came to live in his home town with wife and family. The victim often informed her father over the telephone of the torture and her inability to bear the same.

5. As many as nine persons of the family of the in-laws of the victim were named in the complaint after the incident. On the fateful day, i.e., 5th July, 2012 around 3.00 p.m. when the victim was lying on the cot of a mattress in the ground floor of the house to her in-laws, it is alleged by the complainant PW-1 that several of her in-laws poured kerosene on the victim and

set her on fire. The PW-1, victim's father was informed over the telephone by the father-in-law of the victim that his daughter was burning in fire. He and his two brothers, namely, PW-2, Sk. Altab Hossain and PW-3, Sk. Bani Isriel, rushed to the house of the victim and found her lying in a burnt condition on the floor. The victim is stated to have cried out to her father to save her and also asked for water.

6. Upon PW-1 enquiring from the in-laws of the victim as to why she was not taken to a hospital, there was no answer forthcoming. PW Nos. 1, 2 and 3 thereafter rushed the victim to Haripal Rural Hospital. In the said hospital, the victim is stated to have informed the treating doctor PW-13, Ram Krishna Mukherjee, in the presence of five witnesses that her mother-in-law poured kerosene on her and set her on fire. At the relevant point of time, the victim stated that her husband was sleeping in an upper floor of the house.

7. The statement was made before PW-13 and was signed by PW-1 and PW-2. The latter also deposed that the said statement recorded in the bed head ticket at Haripal Rural Hospital, was signed by Haimanti Kar, Dipali Adak and Jyotsna Desmuk, were nurses. The said statement was also witnessed by Group-D staff, namely, Anima Chakraborty and Maya Hela.

8. Considering the precarious condition of the victim, the Haripal Rural Hospital directed her to be referred to Chinsurah

Sadar Hospital. At that Chinsurah Sadar Hospital, the initial Medical Officer recommended administering of a pain killer called "Diazepam". She was thereafter treated by PW- 20, Dr. Prakash Chandra Samanta. Before the said doctor Samanta, in the presence of a staff nurse called Mrs. Chhadashree Burman, the victim once again reiterated that she was burnt by her mother-in-law who poured kerosene on her on the same day at 3.00 p.m. 96% third degree burnt injuries was found on the entire body including face of the victim by PW-20.

9. In chief and in cross-examination, however, PW-20 has in no uncertain term stated that the victim was conscious and oriented at the time of recording her statement. The victim died on 7th July, 2012. Complaint was registered with the Haripal Police Station being FIR No. 135/2012. Investigation was completed and charge sheet was submitted. Charges were framed against the appellant and ten others who were primarily family members of the victim's in-laws.

10. PW-1 to PW-10 were either family members or local villagers and seizure witnesses. PW-11, Paresh Ball, was the seizure witness of the bed head ticket at Haripal Rural Hospital. The most important witnesses are PW-12, Jyotsna Desmuk, staff nurse, PW-13, Dr. Ram Krishna Mukherjee, the doctor who treated the victim at Haripal Rural Hospital. PW-20, Dr. Prakash Chandra Samanta, the Medical Officer at Chinsurah

Sadar Hospital and PW-21, O.C., Sudipto Sadhukhan, the Investigating Officer.

11. PW-12, Jyotsna Desmuk has categorically stated that the victim was conscious enough and had stated that her mother-in-law poured kerosene on her and set her fire. She further deposed that the same statement was made the victim in the presence of Haimanti Kar, Dipali Adak and herself who were staff nurses at the Haripal Rural Hospital. Anima Chakraborty and Maya Hela were Group-D staff of the Hospital were also present and had signed along with the aforesaid three staff nurses, alongside the statement of the victim.

12. There is an overwriting on the word "Dead" by PW-13, Dr. Ram Krishna Mukherjee and duly initialed. The bed head ticket did not record that the said patient was either delirious or not conscious enough to make the statement. This coupled with the evidence of PW-12 has clearly established that the victim had made her statement accusing her mother-in-law of pouring kerosene and setting her on fire.

13. PW-12 has clearly stated that the patient was conscious and mentally capable of making the statement. The cross-examination of PW-13 where he admits that he had not formally determined whether the patient was in a proper state of mind to make a statement or was delirious, cannot be given much weigh

by this Court. The Trial Judge has rightly not given any such credence.

14. The above has also to be considered in the light of the evidence of PW-20, the second Medical Officer at Chinsurah Sadar Hospital. He has clearly recorded in the bed head ticket of the hospital as narrated by the victim herself. The victim has clearly stated that her mother-in-law poured kerosene over her and set on fire at 3 pm on the fateful day.

15. This couple with the evidence of PW-12 and 13 unequivocally established the prosecution case against the appellant.

16. Mr. Shamim, learned counsel for the appellant has firstly relied upon the decision of the Supreme Court in the case of Paparambika Rosamma and Ors. Vs. State of A.P. reported in (1999) 7 SCC 695. In the said decision the dying declaration was recorded before a Magistrate.

17. The Magistrate did not obtain any medical opinion as regards whether the victim was in a proper set of mind to make such declaration. It is in that context that the Hon'ble Supreme Court in the said decision did not place reliance upon the dying declaration in the said case.

18. Mr. Shamim next relied upon the case of **Koli Chunilal Savji and Anr. Vs. State of Gujarat** reported in (1999) 9 SCC 562. In the said case the Supreme Court found that the

Executive Magistrate before whom the dying declaration of the victim was recorded. Had firstly no reason to doubt the medical condition of the victim. The two successive dying declarations in the said case were found reliable by the Supreme Court in the context of the fact that the victim was not found to have been tortured. The absence of a certification by a doctor as regards the consciousness of the victim was found irrelevant in the facts and circumstances of the case given that there were two successive dying declarations without any contradictions consistent with one another.

19. The third decision relied upon by Mr. Shamim was the case of **Naresh Kumar Vs. Kalawati and Ors.** reported in **(2021) 16 SCC 158**. In the said decision at paragraphs 10, 12, 13 and 15 it was held that there cannot be any regent standard or yardstick for acceptance or rejection of dying declaration. Each case would have depended on the facts and circumstances of the case. In the said case the dying declaration was recorded by an ASI of the police. The said ASI did not obtain any medical opinion or record for that matter in the declaration that the victim was conscious and capable now for making such declaration. The said case was, therefore, distinguishable in the facts and circumstances of the case. In so far as the decision of the *Rajendra Vs. State of Maharashtra* reported in 2024 SCC OnLine SC 941 is concerned the principles to be followed while

and assessing veracity of a dying declaration is enunciated in the case of Kushal Rao Vs. State of Bombay were reported in AIR 1958 Page 22. However, in the said decision two propositions were stand out for consideration of the Court, firstly that there is no strait jacket formula or yardstick that can be laid down for the assistance and acceptance of a dying declaration. Each case has to be determined on its own facts and circumstances. Emphasis, however, laid down that the Court must be satisfied that the dying declaration is true and voluntary. In such event a conviction can be based solely on such dying declaration.

20. In the instant case, it is seen that the victim has given two successive statements before two medical officers at two different hospitals. The first declaration was not only made before Medical Officer but also assessed and signed by three staff nurses and two hospital Group-D staff. The fist medical officer and the staff nurses are indeed fully qualified to assess as to whether a patient is delirious and was not consciously making a true and fair declaration. The bed head ticket duly exhibited before the Trial Court unequivocally indicates the statement of the victim that mother-in-law poured kerosene on her and set on fire. In addition thereto the victim has also clearly stated that her husband was sleeping in upper floor of

the residence. This statement was duly corroborated by the second Medical Officer at Chinsurah Sadar Hospital.

21. The Medical Officer as well as the staff nurse, PW-12 have clearly and unequivocally stated in both examination-in-chief and cross-examination that the victim was fully conscious albeit pain. She was administered a pain killer at the Chinsurah Sadar Hospital at the time of admission. The admission of PW-12 and 13 duly corroborated by the PW-20. Therefore, present an unequivocal case before this Court. The prosecution case, therefore, has been able to establish the guilt of the appellant.

22. This Court has no reason to doubt the statements of the victim made before the two successive Medical Officers and medical staff.

23. In addition thereto the appellant in her examination under Section 313 of the Cr.P.C. has nowhere denied the occurrence of the incident in the matrimonial house.

24. In view of the above, this Court is of the view that the findings of the Trial Judge against the appellant cannot be doubted and the impugned order of conviction and sentence calls for no interference.

25. Accordingly, the instant appeal is dismissed. Consequently, pending application, if any, is also dismissed.

26. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

27. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)