

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

CRA 512 of 2017
Avijit Chatterjee @ Abhijit Chatterjee @ Ramu
Vs.
The State of West Bengal

Before: The Hon'ble Justice Rajarshi Bharadwaj
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant	: Mr. Soubhik Mitter, Adv. Mr. Avishek Sinha, Adv. Ms. Madhusree Banerjee, Adv.
For the State	: Mr. Debashish Ray, Ld. P.P Mr. P.P. Das, Adv. Ms. Manasi Ray, Adv.
CAV On	: 04.07.2025
Judgment On	: 14.08.2025

Apurba Sinha Ray, J. :-

1. The instant appeal has been preferred by the appellant against the judgment and order dated 31.07.2017 passed by the Learned Additional Sessions Judge, FTC-I, Sealdah, South 24 Parganas in Sessions Trial No. 1(1)2014 arising out of Sessions Case No. 5(7) of 2013 under Sections 302/34 of I.P.C on the grounds, inter alia, that the Learned Trial Judge did

not consider the evidences of the prosecution witnesses in its proper perspective and/or has failed to take into account the evidence of the vital witnesses before convicting the appellant under Sections 302/34 of I.P.C.

2. The learned counsel Mr. Mitter has submitted that conviction of the appellant was pronounced only on the basis of a dying declaration of the deceased. In fact that is the only evidence in support of the prosecution case. However, there are certain essential rules to accept a dying declaration as a coherent statement of the victim. First, whether such a dying declaration was made voluntarily. Secondly, the declarant was conscious and mentally alert to give a coherent dying declaration. The declarant must be aware that he is about to die. Moreover, the statement must be consistent with other evidence in the case. The statement must not have been made through tutoring or prompting. Mr. Mitter has also submitted that in cases of multiple dying declarations, the court should see that they are consistent with each other. A dying declaration gains more weight when it is recorded before a Magistrate.

3. According to Mr. Mitter, in the case in hand, the deceased evidently lacked physical and mental competence to give a coherent statement since he suffered 98% burn injury all over his body. There is no certificate from the doctor that the deceased was mentally alert. There was no application made by the I.O. to the Learned Additional Chief Judicial Magistrate

Sealdah or before the Superintendent of NRS Medical College for recording the dying declaration.

4. It is also submitted by the learned counsel that the relevant dying declaration of the deceased is not corroborated by substantial evidence of any other prosecution witness. Even the wife and son of the deceased did not support the prosecution case. According to them, the deceased was a habitual drunkard and was unconscious during the relevant time. Therefore, it is unbelievable that the deceased can give a coherent dying declaration. It is also pointed out by Mr. Mitter that the earliest declaration does not name any assailant though the appellant was known as the landlord. In the last declaration, allegedly recorded by the police officer, all the names of assailants were transpired. It is a trite law that in case of multiple dying declarations, all must be consistent to one another. In this case all the declarations allegedly made at different times were contradictory. PWs 14, 15 the two police constables who were on patrolling duty reached the place of occurrence at the earliest and arranged for shifting the patient to the hospital. Curiously enough they had not spoken a single line about any dying declaration given by the deceased. At 10:48pm, the doctor noted in the hospital records that he had been inflicted burn injury by pouring inflammable oil by "some persons". At 11pm the victim incriminated Appellant and others when the police recorded it. Prior to the incident there is no evidence whatsoever that any witness saw the appellant and the other co-accused were carrying the kerosene jar. Admittedly the

place of occurrence remains as a busy thoroughfare in the heart of the city. In spite of the alleged incident occurring at 8:30 pm, not a single witness had seen the incident. There is no evidence whatsoever about what happened immediately after the incident occurred rather it is elicited from the deposition of prosecution witnesses that after the victim suffered burn injury, the appellant actually accompanied the deceased and his family members to the hospital and was later on apprehended from his residence.

5. It is also contended by the appellant that the PW7, the wife of the deceased in her cross-examination has admitted that the present appellant accompanied them to the hospital which showcases his bonafide intention and absence of guilty mind. In her cross-examination PW7 acknowledged that the deceased was a habitual drunkard and owing to the same, various altercations took place between the deceased and her. In the post mortem examination the doctor being the PW13 reported that the stomach of the deceased was found to contain 200 gms of dark fluid which was of alcoholic nature. In her further cross-examination the PW7 stated that the deceased even threatened his sons that he would commit suicide if needed. Even a few months prior to the incident the deceased tried to commit suicide by pouring kerosene oil on his body.

6. The learned counsel Mr. Mitter has also submitted that the learned Judge overlooked the specific averment by PW9 a neighbor, being an eye witness to the incident, deposed that he had seen the deceased coming

towards his spot after setting himself on fire and thereafter jumped into the water body. According to him, such deposition of PW9 is substantive evidence and can be taken into consideration as the same was made before he was declared hostile.

7. It is also contended that no inflammable petroleum product was detected in the contents of exhibit – B and C which relates to the wearing apparels of the deceased. The PWs 5, 6, 9, 10 and 18 supported the event of suicide as they contended that the deceased being intoxicated set fire on himself and succumbed to the burn injury. The seizure was made at the police station and contents were never read to PW4 and PW6 who were shown to be the witness to the seizure of the kerosene jar. The star witness namely the wife (PW7) and two sons of the deceased PW8 and PW11 did not support the prosecution story since they deposed that there was no dispute with the appellant who was their landlord. According to the written complaint, one phuchka lit the match and put fire on the deceased and he was never apprehended. The learned counsel further submitted that framing of charge of the appellant alone under Section 302/34 IPC is bad in law. The kerosene jar was seized from the place of occurrence which is accessible to all and further arrest of the appellant from his residence proves the innocence of the appellant.

8. It is settled law that where a dying declaration is suspicious it should not be acted upon without corroborative evidence. In this regard, the learned

counsel Mr. Mitter has relied upon the case of **State of Rajasthan Vs. Shravan Ram and Anr.** reported in **(2013) 12 SCC 255, para 12,13,16, 18-24 and Uttam Vs. State of Maharashtra, reported in (2022) 8 SCC 576, para 14, 15, 18, 19, 22, 24, 25, 28, 38 – 40.** According to Mr. Mitter, it has been time and again held by the Hon'ble Apex Court that common intention implies acting in concert and existence of a pre-arranged plan and pre-supposes prior concert. Therefore, there must be prior meeting of minds. In this regard, he has relied on **Ramashish Yadav and Ors. Vs. State of Bihar, reported in (1999) 8 SCC 555 para 3** and also **Arun Vs. State by Inspector of Police, Tamil Nadu reported in (2008) 15 SCC 501 paragraph 23 to 30, 35 and 39.** Mr. Mitter has concluded his argument by saying that as the deceased committed suicide by pouring kerosene oil and set himself on fire on the fateful night when he was in an inebriated condition under the influence of alcohol, the present appellant being falsely implicated in this case should be acquitted from the charge.

9. The learned counsel Mr. Das, appearing for the State, has submitted that the prosecution has been able to prove the case against the present appellant beyond all sorts of reasonable doubt. According to him, this case was started with a written complaint dictated by the victim and reduced into writing by the investigating officer on the date of incident i.e. 21.01.2013 wherein not only the name of the appellant was mentioned but a vivid description was given as to how he was set on fire after pouring kerosene oil by the appellant and two others. Mr. Das has further submitted that the

motive of the commission of the offence was that the appellant being the landlord asked the deceased to vacate his house but as the victim did not do so, such incident occurred. In the earliest opportunity, the victim disclosed the name of the appellant as one of his assailants. At the time of admission in the hospital, non-mentioning of the assailant's name is not very important. The victim clearly stated that he was set on fire by some persons and that is sufficient. Even the doctor recorded in the medical document that the dying declaration of the victim was taken by the duty officer. Dr. Kinkar Kumar Bhowmick who has been examined as PW12 has deposed that he examined the victim who reiterated the name of the appellant as one of his assailants and also mentioned the mode and manner in which he suffered burn injury. Such statements are consistent with the version of the victim in the FIR. The doctor has also deposed that the patient was conscious and his pulse was 80 per minute. There were no anomalies detected in the chest, heart and lung. The PW13 Dr. Molly Banerjee who conducted the post mortem report opined that death was due to the effects of burn injuries.

10. Mr. Das, has also submitted that it is well settled that if a charge is framed against several persons for commission of offences along with the common intention under Section 34 of the IPC in the absence of some other accused, the person/persons who is/are actually facing the trial can be convicted under Section 302/34 of IPC. In this case all the accused persons including the present accused participated and acted in furtherance to the

common intention to kill the victim. Therefore, from the evidence of all the materials on record including the dying declaration of the victim it was clearly established that there was a prior concert among accused in committing the murder of the deceased. The other two accused persons were absconding immediately after the incident and could not be arrested till date despite raids by the police authorities. There is no reason to interfere with the judgment of conviction and sentence since it is clear that the present appellant along with others in furtherance of their common intention had committed the offence of murder of one Sanjay Halder and as the charges have been well established against the present appellant, the instant appeal should be dismissed.

11. We have considered the rival submissions of the learned counsel and also for the State. We have also taken into consideration the relevant judicial decisions submitted on behalf of the appellants. According to the appellant the case is of self-immolation of the deceased due to frustration, quarrel and unhappiness in his house since he was addicted to liquor. The deposition of the wife and sons of the deceased, according to the appellant, have supported such a plea of the defence. The post mortem report shows that the deceased had 200 gms of alcohol in his stomach. There are several prosecution witnesses who supported the defence case that the deceased committed suicide by pouring kerosene oil on his body due to family dispute. On the other hand the State has denied such submission of the defence counsel on the ground that dying declaration of the deceased

recorded by the concerned investigating officer was free from blemishes and was rightly relied upon by the learned trial judge in convicting the appellant who along with others committed such ghastly manslaughter.

12. Brushing aside the unnecessary details, this court has hastened to conclude that not only the wife and sons of the deceased had deposed that they had good relations with appellant being their landlord but also other local witnesses refused to support the prosecution case in this regard. According to defence, the dying declarations are not corroborated with substantial pieces of evidence and therefore cannot be relied upon.

13. After considering the relevant judicial decisions it appears to us that there is no hard and fast rule that a dying declaration of a victim cannot be relied upon without corroboration. In fact, the settled principles of law is that a dying declaration which is consistent, free from blemishes can be relied upon without further corroboration. Moreover, it is a duty cast upon the court to ascertain the correctness, authenticity, mental alertness and fitness of the victim at the time of recording his dying declaration from the recorded evidence.

14. In **State of Rajasthan Vs. Shravan Ram & Anr. Reported in (2013) 12 SCC 255** the Hon'ble Supreme Court has been pleased to discuss the principles of accepting a dying declaration as a vital piece of evidence. In this case, the Hon'ble Court quoted the observation of an earlier Bench in

connection with **Sharda Vs. State of Rajasthan reported in (2010) 2 SCC**

85. In the said judicial decision it has been laid down as hereunder:-

“23. In Sharda v. State of Rajasthan this Court has dealt with three dying declarations. Noticing inconsistencies between the dying declarations, this Court set aside the sentence ordered by the Sessions Judge as well as the High Court and held as follows: (SCC p. 90, para 25)

“25. Though a dying declaration is entitled and is still recognised by law to be given greater weightage but it has also to be kept in mind that the accused had no chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of both. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of the deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its

conviction without any further corroboration."

15. In Uttam Vs. State of Maharashtra reported in (2022) 8 SCC 576 the Hon'ble Supreme Court has discussed the case law reported in **(1992) 2 SCC 474 Paniben Vs. State of Gujarat**. In the aforesaid decision several guidelines have been given and they are quoted herein below:-

"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 reported in (1976) 3 SCC 104)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of UP v. Ram Sagar Yadav reported in (1985) 1 SCC 552; Ramawati Devi v. State of Bihar reported in (1983) 1 SCC 211)

(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 reported in (1976) 3 SCC 618)

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative

evidence. (*Rasheed Beg v. State of M.P.* reported in (1974) 4 SCC 264)

(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.* reported in (1981) Supp SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction, (*Ram Manorath v. State of U.P.* reported in (1981) 2 SCC 654)

(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* reported in (1980) Supp SCC 455)

(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* reported in (1980) Supp SCC 769)

(ix) Normally the court in order to satisfy whether the 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 reported in (1988) Supp SCC 152)

(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 reported in (1989) 3 SCC 390)".

16. In paragraph 24, the Hon'ble Apex Court in the above decision observed as follows:-

"24. The principles governing the circumstances where the courts can accept a dying declaration without corroboration, have been dealt with extensively in Khushal Rao V. State of Bombay , AIR 1958 SC 22 and for ready reference, reproduced as under: (AIR pp. 28-29, para 16)

"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court (Guruswamy Tevar, In re, 1939 SCC OnLine Mad 411), aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is

corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances

beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

17. Therefore, even if there are multiple dying declarations the court should consider whether they are consistent with each other and if they are inconsistent then the rule of prudence suggests that the court should ask for corroboration. Otherwise, if the dying declarations themselves, due to their coherence and unblemished nature, can inspire confidence in the contents of the said declarations, the same can be relied upon by the court without any further corroboration.

18. In this case, it appears that the most vital witnesses namely, Jharna Halder, wife of the deceased being PW7, and Suvojite Halder, the youngest son of the deceased being PW8 have been declared hostile. The defence has relied upon their version in cross-examination. In her cross-examination PW7, Jharna Halder has stated that her husband was a habitual drunkard and over his such habit, altercations used to take place often between herself and her husband. Her sons, having grown up, also used to scold her husband. She has also deposed in her cross-examination that her husband used to threaten her sons that he would commit suicide if so scolded.

19. The PW8 Suvojite, who was declared hostile, was not cross-examined by the defence. Now let us see whether the submission of the defence that the deceased committed suicide due to his habit of drinking and consequent family resentment is reliable or not. It is true that in the post mortem report the deceased's stomach contained liquor of alcoholic nature. But that does not mean that due to his consumption of such liquor on the fateful night there was a quarrel between the members of his family and himself. However, the examination-in-chief of Jharna Halder is to be looked into to ascertain whether there was any scope of quarrel between Jharna Halder and the deceased at the relevant point of time. She has categorically stated that the incident took place on 21.01.2013. She was at her work place at Oriya Bagan which is about half an hours' walk from her house. After returning to her house at about 8:45 p.m. she found her husband was standing in a pond in front of her house. He was burnt. She took her husband to hospital. Her husband was not conscious at that time. This goes to show that when the incident of pouring kerosene oil on the body of the deceased, either by himself or by the present appellant along with others took place, the PW7 was not present. In other words, before reaching her house on the fateful night, the PW7 found that the incident already occurred. Therefore there was no scope of quarrel between herself and the deceased. Now let us turn to the deposition of PW8 Suvojite Halder being the younger son of the deceased. According to PW8 his father used to sell toys at the footpath near B. Sarkar Bazar. He used to assist his father in his business. After the demise of his father, he is carrying on that business. His

elder brother works in a shoe shop and mother works as a caretaker in a house. On 21.01.2013 at about 8:45 p.m. he got information that his father was lying in a pond. He became tense and after wrapping his business he rushed to his house. Arriving at the place of occurrence he saw that his father was standing in the pond in knee deep water in a fully burnt condition. He could not talk with his father as he was unconscious. This also goes to show that there was no scope of quarrel between the deceased and PW8 since PW8 was not present at the place of occurrence when the incident occurred. He was one of the post occurrence witnesses. Therefore, there was no scope either for the PW7 or PW8 to scold the deceased for consuming liquor and as a result the deceased committed suicide. The PW7 and PW8 appear to be won over witnesses and, therefore, this court cannot give much reliance on their deposition not only because they had turned hostile but also due to the fact that they were not present at the relevant time on the fateful night when the incident occurred.

20. The defence has categorically stated that the deposition of PW7 and PW8 disclosed that the victim was unconscious at the relevant point of time and therefore, the victim's alleged dying declaration is nothing but a creature of the investigating officer in connivance with the doctor. I have already mentioned that the PW7 and PW8 were won over witnesses and therefore, it is very difficult to rely upon the deposition of PW7 and PW8. Moreover, it appears to me that the deposition of PW7 and PW8 are internally weak and cannot be relied upon. The PW7 and PW8 claimed that

the victim was unconscious when they found him in the pond. It is categorical statements of PW7 and PW8 that when they reached the place of occurrence they found that the deceased was standing in the pond and he was completely burnt. It is further deposed by the PW8 that he found his father was standing in the pond in knee deep water in a fully burnt condition. He could not talk with his father as he was unconscious. The defence has relied heavily upon these statements of the witnesses being PW7 and PW8. But in our view if a person were unconscious he cannot remain standing in the pond. This is unbelievable and accordingly, cannot be acceptable.

21. The defence also took the plea that from the deposition of PW7, wife of the deceased it is found that the present appellant went to the hospital for the treatment of the deceased. He was subsequently arrested by the police from his house. This, according to the learned defence counsel, shows the innocence of the appellant. Had he committed such an offence he would not have accompanied the PW7 and PW8 to the hospital for the treatment of the victim. This plea also cannot be acceptable since there is no documentary evidence showing that the appellant accompanied the victim's relatives to the hospital at the relevant point of time. Even for the sake of argument, if it is considered that he accompanied the victim's relatives to the hospital that does not prove his innocence since in many a cases it is found that a person who attended the funeral of a deceased suffering an unnatural death, was turned out to be the principal accused in the relevant matter subsequently.

Therefore, mere presence of the appellant along with the victim's relatives in the hospital at the relevant point of time does not ipso facto prove the innocence of the appellant.

22. Therefore, it is rightly submitted by both the counsel of the parties that the dying declarations are the actual evidence in this case and the fate of the appellant is dependent upon the fact how such multiple dying declarations can be construed by the court.

23. According to learned counsel Mr. Mitter there are at least two dying declarations in this case. In the first dying declaration before the doctor who recorded the same in the bed head ticket, the names of the assailants were not mentioned but in the last dying declaration allegedly by the police officer the names of the assailants of the deceased were transpired.

24. Now let us examine the two dying declarations of the deceased to ascertain whether there is any incongruity or inconsistency between the said declarations. The first dying declaration was recorded by Dr. Joyanta Biswas on 21.01.2013 at 10:46 P.M. which has been marked as exhibit-14. It has been recorded as follows:-

“Patient had been admitted directly from ER through ER Slip by on duty SROD at about 10:30 p.m. on 21.01.2013.

History taken as per patient's own statement.

The patient had been inflicted burn injuries by pouring inflammable oil by some other persons as a homicidal attempt.

Date/time of incident:- 21/01/2013 at about 8:30 p.m.,

Place of Injury :- Thakurbagan Beliaghata, P.S.

O/E:- Conscious/cooperative /oriented to time/place and person.

P-100/per min feeble,

BP 100/70....

External Injury:- Burn injury of approximately 98% of the total body surface area of varying depth including face and genital area.”

25. This first dying declaration shows that the patient had categorically stated that he had suffered burn injury as some persons poured inflammable oil upon him as a homicidal attempt. It is true that there is no record of names of the persons who committed such offence but it appears that the patient had clearly stated that there were some persons who poured the inflammable oil upon him. Such history was taken from the patient's own statement and the doctor had recorded that at the time of giving such statement the victim was conscious, cooperative, oriented to time, place and person. Therefore, the physical and mental condition of the patient was assessed by doctor Joyanta Biswas. It appears from the record that Dr. Joyanta Biswas has been examined as PW21 and he has categorically proved such a dying declaration before the court. Now, it appears to me that the said dying declaration was in tune with the prosecution case apart from disclosure of the names of the assailants. It is clear from the said dying

declaration that it was alleged by the victim that there were some persons who committed such burn injuries on the person of the victim by pouring inflammable oil. Apart from not naming the assailants the entire dying declaration recorded on the bed head ticked on 21.01.2013 at 10:45 p.m. was in conformity with the prosecution allegations.

26. Now let us examine the second dying declaration of the deceased Sanjoy Halder recorded by SI R.P. Maity on 21.01.2013. The said dying declaration shows that the victim was asked some preliminary questions and answers are recorded as hereunder:-

“My name is Sanjoy Halder

My father’s name is Late Kundupada Halder

My age is 46 years at present residing at 33/1A/11 Barwaritala Road, P.S. Beliaghata, Kolkata – 700010.

I have a gift item shop in footpath at B. Sarkar Bazar near Phoolbagan, Kali Mandir”

27. After this initial statement, the I.O. has recorded further statement of the victim:-

“Today I came back home at about 8:30 p.m. from my shop and after returning, I found that some members of Bright Athletic Club were consuming liquor and ganja in front of my house. The names of those persons are Madhu, Phuchka and Avijit Chatterjee @ Ramu. At my protest an altercation took place between us. Thereafter, Phuchka, Madhu and

Avijit forcibly poured kerosene oil on my body and head. Thereafter, Phuchka lit a match stick and threw it to my body. As a result fire caught upon me and my whole body was burnt. Finding me in this condition they fled away. Being unable to bear the severe burning sensation I jumped in the pond in front of my house. Within a few minutes police came to the spot and recovered me from the pond and thereafter being accompanied by my wife and son Suvojit Halder the police brought me to NRS Hospital for treatment. My landlord Ramu @ Avijit Chatterjee repeatedly asked me to vacate the tenanted room but as I did not agree, he tried to cause my death by setting me on fire with the help of Phuchka and Madhu”.

28. This has been marked as exhibit-13. The said dying declaration shows that the same was recorded by R.P. Maity and thereafter the same was read over and explained to the victim and further the same was admitted to be correct by the victim. There was a certificate of Dr. Joyanta Biswas to the effect that the statement was recorded in his presence at about 11:00 p.m. on 21/01/2013. The LTI was not marked as an exhibit due to objections. However, it is found that the words ‘LTI of Sanjoy Halder’ was mentioned by the side of the said LTI. It is true by whose pen the words “LTI of Sanjoy Halder” were written, has not been mentioned.

29. Now let us consider whether the second dying declaration is in conformity with the first dying declaration or not. It goes to show that both the dying declarations have categorically pointed out that Sanjoy Halder, the

victim, did not commit suicide by pouring kerosene oil by himself. On the other hand, they indicated that there were persons “who poured inflammable oil on his body and thereafter set him on fire”. In the first declaration the names of the assailants were not there but in the second declaration not only specific names but also the manner in which such offences were committed were vividly described.

30. To rely upon a dying declaration, the duty of the court is to ascertain whether the victim was mentally fit and alert to make such a statement. In the first dying declaration the doctor has categorically mentioned that the patient was conscious and oriented to time, place and person. This goes to show that at the relevant time the victim was mentally alert. The second dying declaration was taken immediately after recording of the first FIR in presence of the said Dr. Joyanta Biswas. It is true that there is no certificate in the second declaration that the victim was conscious and mentally alert to make such statement but as the said doctor a few minutes back in the medical record noted the condition of the patient regarding his mental alertness, non-recording of the same mental condition of the maker of the dying declaration once again in the second declaration, we think, that cannot be treated as serious lacuna in the prosecution case. Apart from that, the court has a duty to ascertain from the dying declaration itself whether or not the patient was conscious and alert to make such a statement. If we go through the initial statement of the victim in his second dying declaration we shall find that he correctly uttered his name and

father's name. He has also correctly mentioned his age. Further, he has also correctly mentioned the residential address along with pin code. This goes to show that he was mentally alert to make such a statement. To fortify such observation we again peruse the said dying declaration once again. He has categorically stated the location of his gift shop in the footpath of B. Sarkar Bazar near Phoolbagan, Kali Mandir. He has not only mentioned that he has a gift shop, he has specifically mentioned the area and address where his gift shop was located. From such initial statements we find that the victim was mentally alert to make such statements.

31. It is also found that after recording such statements by the police officer he had read over and explained the same to the victim, and the victim admitted that the same was correctly recorded. Moreover, the said statement was recorded in presence of the doctor who examined the victim and recorded the victim's mental alertness in the hospital records immediately before the recording of the second dying declaration and the said doctor also supported the second dying declaration before the court as a witness. Now it is true that one LTI was taken in the said second dying declaration but the same was not marked as an exhibit since there is no signature of the identifier of the alleged LTI of the victim and for that reason alleged LTI of the victim was not marked as exhibit. However, in his deposition the I.O. SI R.P. Maity has categorically stated that the words 'LTI' of Sanjoy Halder by the side of the alleged LTI of the victim in the exhibit-13 was written by him. As he has stated on oath that he was the identifier of the LTI of the victim in

the exhibit-13 we do not find any legal predicament to accept the said LTI as the LTI of the victim Sanjoy Halder.

32. Therefore, after making a comparison of two dying declarations as stated above we do not find any internal incongruity between their contents. However, the defence has submitted that no other local people have supported the prosecution case.

33. The defence has stated though all other local witnesses turned hostile, one of the witness namely PW9, Kalachand Das @ Chotka has deposed that he saw the victim to commit suicide. After scanning his deposition, we do not find any whisper in his deposition that he saw the victim to pour kerosene oil on his body and thereafter to light a match stick. Such deposition is also not acceptable and reliable since if the victim himself poured kerosene oil and lit a match stick to commit suicide, then, in all probability, there would have been not only the kerosene jar but also the match box. Had the victim poured kerosene oil on his body then after lighting the match he will certainly leave the match box or the lighter on the spot since in that case he would not have the opportunity to keep the said match box or lighter in his pocket, but had the victim was set ablaze by other persons they had the opportunity to flee away with such match box or lighter by which the victim was set ablaze. In fact, though the kerosene jar was found in the vicinity of the place of occurrence, neither any match box nor any lighter was found in the place of occurrence signifying that the

accused who ignited the body of the victim left with such a match box or lighter. Therefore, in view of such deposition of the prosecution witness as stated above, the defence plea is not acceptable.

34. It is alleged that the concerned police personnel being the I.O. did not make any prayer to the Learned Additional Chief Judicial Magistrate or any other Magistrate for deputing any Magistrate to record the dying declaration of the victim. Therefore, the police have shown excessive enthusiasm to record the dying declaration by themselves. From the record it is revealed that the victims sustained 98% burn injury and there was every possibility for the deceased to collapse. In such a situation, if the concerned police personnel recorded the dying declaration in anticipation of the death of the victim, we do not find any illegality or irregularity in doing the same. It is also found from the record that the victim died within 17 hours of his admission into the hospital and therefore the I.O. has rightly recorded such dying declarations in compliance with the relevant Regulation under Police Regulation of Calcutta 1968:-

“72. Dying declaration. [S. 3, Bengal Act II of 1866, S. 9, Bengal Act IV of 1866.] -

(a) If it is not possible to have the statement of a person whose evidence is required and who is in imminent danger of death recorded by a Magistrate and it becomes necessary for some other person to record a dying

declaration, this shall be done, whenever possible, in the presence of the accused or of attesting witnesses. A dying declaration made to a police officer shall be signed by the person making it.

(b) If a seriously injured person, not in imminent danger of death, is sent to hospital the investigating officer shall warn the medical officer about having the persons' statement recorded by a Magistrate, should be the necessity for such a course arise.

(c) In case of doubt whether action under clause (a) or under clause (b) should be taken the investigating officer shall act in accordance with clause (a)"

35. We have also taken into consideration the judicial decision of **Ramashish Yadav and Ors. (supra)** wherein it has been held by the Hon'ble Apex Court that two accused persons came and caught hold of the deceased where after other two accused came with gandasa and gave blows, it cannot be said that the accused who had held the deceased shared any common intention with the accused who inflicted the blows which resulted in the death of the deceased. In our opinion, the above case law does not apply to our case since if a person holds the victim tightly and another person

assaulted the victim by a blunt instrument it can be said that the former might not have the intention of killing the victim. But in our case, it is seen that the appellant and other absconding accused poured kerosene oil and another absconding accused Phuchka lit the fire and set the deceased ablaze. Law does not prescribe the time required for meeting the minds of the culprits. It may be one month or it may be a minute. Law, therefore, does not prescribe any time period. When two persons poured kerosene oil on the body of a person it is presumed that they had already prepared their mind to set the victim ablaze because pouring of kerosene oil only on a human body does not kill the victim unless fire is set on the body which is drenched with kerosene oil. In this case, when the appellant and other absconding accused poured kerosene oil and thereafter another accused lit the fire, we consider that pouring of kerosene oil by two accused and to throw a lighted match stick towards such body of the victim which was drenched with kerosene oil were part of the same transaction. The appellant along with others had the requisite meeting of minds and therefore provisions of Section 34 of IPC relating to common intention has been rightly framed against the appellant and he has been rightly convicted in this regard.

36. It is true that a kerosene jar was recovered from the public place and the seizure list witnesses have stated that their signatures were obtained in the police station compound. From the medical document and also from the dying declaration it has come to light that the victim died out of burn

injuries which were ante mortem in nature. The PW4 Ajoy Kundu was declared hostile and another seizure list witness was also a hostile witness. However, the said seizure of kerosene jar from public places has been doubted from the side of the defence. Even the seizure list was not proved beyond reasonable doubt but from the dying declaration and medical papers it is found that the victim died of burn injuries and the same was done by pouring kerosene oil. Even, if such seizure was not proved beyond reasonable doubt, from the conspectus of the circumstances, we find that the prosecution case does not fail. The chemical examiner's report was also doubted from the side of the defence but it appears that the incident occurred on 21.01.2013 and the chemical examiner received the article on 05.02.2013 and he examined the articles on 16.07.2014. Though, the relevant chemical examiner's report has disclosed that there was kerosene oil in the relevant jar but he did not find the element of kerosene or petroleum in any other articles. Such observation is acceptable since such examination took place almost one and half years after the incident.

37. Considering all aspects of the matter, we find that the relevant judgment of conviction and sentence cannot be interfered with and the prosecution had been able to prove the case against the present appellant beyond all sorts of reasonable doubt and accordingly the impugned judgment and order dated 31.07.2017 passed by the Learned Additional Sessions Judge FTC-I, Sealdah, South 24 Parganas in Sessions Trial No. 1(1)2014 arising out of Sessions case No. 5(7) of 2013 under Sections

302/34 of I.P.C is hereby affirmed. The present appeal thus fails. No order as to costs. The trial court record be sent to the concerned court immediately.

38. Accordingly, CRA 512 of 2017 is disposed of.

39. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)