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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 114 of 2021

Arjun Singh Rajput, S/o Baijnath Singh, Aged About 23 Years, R/o Village Sirsa Khas, Police Station Sirsaganj, District Firojabad, Uttar Pradesh.

... Appellant

versus

State of Chhattisgarh Through Station House Officer of Police Station - Ajak, Surajpur, District Surajpur, Chhattisgarh.

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Pawan Shrivastava, Advocate
For Respondent	:	Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

03.02.2025

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 11.12.2020 passed by the Special Judge (S.C./S.T. Act), Surajpur, District Surajpur (C.G.) in

Sessions Trial No.42 of 2018, whereby learned Special Judge has convicted and sentenced the appellant as follows:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 449 of Indian Penal Code, 1860	: Rigorous imprisonment for 10 years and fine of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 1 month
Under Section 436 of Indian Penal Code, 1860	: Rigorous imprisonment for 10 years and fine of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 1 month
Under Section 302 of Indian Penal Code, 1860	: Life imprisonment and fine of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 1 month
Under Section 307 of Indian Penal Code, 1860 (2 times)	: Rigorous imprisonment for 7 years and fine of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 1 month
Under Section 3(2)(v) of the Scheduled Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989	: Life imprisonment and fine of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 1 month

(All the sentences were directed to run concurrently)

2. The prosecution case as unfolded during the course of trial is that the accused set fire to the house of Mona Singh, in which Mona Singh (since deceased), Shankar Kumar Ravi (PW-1) and Lado alias Samriddhi (PW-3) were injured. Mona Singh died during the

course of treatment. Merg intimation (Ex.P/16) was registered stating that Mona Singh, wife of Shankar Kumar Ravi, was burnt in fire in her house on 03.05.2018, who was admitted to the hospital by her brother-in-law Besahu (PW-5) and sister Reshma, who died during the course of treatment. In this regard, accidental death was recorded in the register vide Ex.P/15 by the Lady Constable Bholi Rajwade. On the basis of the said death information (Ex.P/14), First Information Report was registered vide Ex.P/18. Crime details form was prepared vide Ex.P/2 and summons under Section 175 of the Cr.P.C. was given to the witnesses vide Ex.P/5. Inquest report was prepared vide Ex.P/6 and Nuksani Panchnama was prepared vide Ex.P/8. The spot map of the place of incident was prepared vide Ex.P/20. In this regard, when the statement of injured Lado alias Samriddhi (PW-3) was taken, she told that at the time of setting the fire, she was in the house with her sister and brother-in-law and Arjun poured kerosene and set the fire with a matchstick. The statement of injured Shankar Kumar Ravi (PW-1) was also taken, he told about the incident of setting the fire and also told that Lado alias Samriddhi had heard the voice of accused at the time of setting the fire. He further stated that his brother closed the gate and sprinkled kerosene and lit it on fire with a matchstick. They broke the gate and came out. His brother's name is Arjun Singh Rajput, who lives in Agra Sirsaganj. He wants to usurp her property and he had tried to kill her 2-3 times and when she had gone to Agra,

he had also fired a bullet at her once. Dying declaration of the deceased Mona Singh was recorded vide Ex.P/9 by Kishore Kumar Verma, Naib Tahsildar (PW-13). After the Panchnama proceedings, dead body of Mona Singh was subjected to postmortem examination, which was conducted by Dr. Mithlesh Minj (PW-23), who opined in the postmortem report (Ex.P/26) that the cause of death seems to be cardio-respiratory failure due to burn complications. Injured Shankar Kumar Ravi (PW-1) and Lado alias Samriddhi (PW-3) were subjected to medically examined by Dr. Rachna Aurthor (PW-14), who found simple burn injuries over their persons and gave reports vide Ex.P/10 and Ex.P/12, respectively. The appellant was arrested on 07.07.2018 at about 01.45 PM by the Police Station Surajpur vide arrest memo Ex.P/24.

3. Statements under Section 161 of the Cr.P.C. of the witnesses were recorded by the police. After completing the entire investigation, charge-sheet was filed before the Special Judge (Atrocities Act), Surajpur, for the commission of offence punishable under Sections 302, 307, 342, 449 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") as well as Section 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1898 (hereinafter referred to as "Atrocities Act").
4. The trial Court has framed charges under Sections 449, 436, 302, 307 (2 times) of the IPC as well as Section 3(2)(v) of the Atrocities

Act. In order to bring home the offence, the prosecution examined as many as 26 witnesses PW-1 to PW-26 and exhibited 28 documents Exs.P/1 to P/28. Statement of the accused / appellant was recorded under Section 313 of the Cr.P.C./ in which he denied the allegations levelled against him and abjured the guilt and pleaded innocence and false implication as also claimed to be tried. However, he examined only one witness in his defence.

5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 11.12.2020 convicted the appellant for offence under Sections 449, 436, 302, 307 (2 times) of the IPC as well as Section 3(2)(v) of the Atrocities Act and sentenced him as mentioned in the opening paragraph of this judgment which is sought to be challenged in this criminal appeal preferred under Section 374(2) of the Cr.P.C. by the appellant.
6. Mr. Pawan Shrivastava, learned counsel for the appellant submits that the learned trial Court while passing the impugned judgment has failed to appreciate that the prosecution has not proved its case beyond reasonable doubts. The motive and intention which is the essential ingredient to prove an offence under Section 302 IPC has not been proved by the prosecution and are missing. There is no direct evidence against the appellant and the entire prosecution case is based on the dying declaration given by the deceased namely Mona Singh that too not supported by the certification of medical expert as to whether the deceased was in

a fit state of mind to give such statement as well as statements of two injured witnesses namely Shankar Kumar Ravi (PW-1) and Lado alias Samriddhi (PW-3). Merely on the basis of dying declaration and in absence of any direct evidence, conviction of the appellant under the aforementioned Sections cannot be sustained. It has been contended that dying declaration was recorded on 04.05.2018, in which she has stated that her brother had locked the door, poured kerosene oil and set fire with the matchstick and ran away from the spot, but the said version is not supported by any of the witnesses. As such, conviction solely on the ground of dying declaration cannot be sustained that too when the dying declaration suffers from infirmity and is inconclusive. He contended that in the instant case, before dying declaration was recorded, there was not a single piece of evidence gathered by the investigating agency to show from where and what did the fire started. The dying declaration is highly suspicious and untrustworthy. For believing in the oral dying declaration, it must be blemishless, voluntary and reliable. In the present case, the doctor has not certified that she was mentally fit state of mind. Therefore, the judgment of conviction recorded and sentence awarded deserves to be set aside being contrary to the material available on record.

7. Mr. Shailendra Sharma, learned Panel Lawyer appearing for the State/ respondent, would support the impugned judgment and

submit that the prosecution has been able to bring home the offence and there is sufficient evidence available on record to hold him guilty and he has rightly been convicted by the Special Judge (Atrocities Act), Surajpur. He would further submit that the dying declaration (Ex.P/9) is true and voluntary, it was given by deceased Mona Singh in a fit mental state, therefore, it is a reliable document and the appeal deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
9. The appellant has solely been convicted on the basis of dying declaration Ex.P/9 and there is no other piece of evidence, no legal evidence much less oral and circumstantial evidence to convict the appellant except the aforesaid dying declaration. Therefore, it would be appropriate to consider the dying declaration recorded by the Naib Tahsildar Kishord Kumar Verma (PW-13).
10. At this stage, it would be appropriate to notice Section 32 (1) of the Evidence Act which states as under: -

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—Statements, written or verbal, of relevant facts made by a

person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) when it relates to cause of death.—

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

xxx xxx xxx”

- 11.** Section 32(1) of the Evidence Act is famously referred to as the “dying declaration” section, although the said phrase itself does not find mention under the Evidence Act. Their Lordships of

the Supreme Court have considered the scope and ambit of Section 32 of the Evidence Act, particularly, Section 32(1) on various occasions including in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ in which their Lordships have summarised the principles enumerated in Section 32(1) of the Evidence Act, including relating to “circumstances of the transaction”:

“21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:-

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

1 (1984) 4 SCC 116

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section

32 and, therefore,admissible. The distance of time alone in such cases would not make the statement irrelevant.”

12. Thereafter, in the matter of **Devinder alias Kala Ram and others v. State of Haryana**², wherein the deceased, who sustained burn injuries while cooking meals on stove, had made a statement to the doctor, their Lordships of the Supreme Court held that statement of the deceased recorded by the doctor is relevant under Section 32of the Evidence Act and observed as under: -

“14. In the facts of the present case, we find that PW 7, the Medical Officer of the Civil Hospital, examined the case of the deceased on 6-8-1992 at 6.30 a.m. and he has clearly stated in his evidence that on examination she was conscious and that there were superficial to deep burns all over the body except some areas on feet,face and perineum and there was smell of kerosene on her body. He also stated in his evidence that the deceased was brought to the hospital by her husband Kala Ram (Appellant 1). He has proved the bed-head ticket pertaining to the deceased in the hospital (Ext. DD) as well as his endorsement at Point ‘A’ on Ext. DD, from

² (2012) 10 SCC 763

which it is clear that he was told by the patient herself that she sustained burns while cooking meals on a stove. This statement of the deceased recorded by PW 7 is relevant under Section 32 of the Evidence Act, 1872 which provides that statements, written or verbal, of relevant facts made by a person who is dead, are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

13. In the matter of **Purshottam Chopra and another v. State (Government of NCT of Delhi)**³, principles relating to recording of dying declaration and its admissibility and reliability were summed up in paragraph 21 as under: -

"21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:-

3 (2020) 11 SCC 489

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the

maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.”

14. The question for consideration is, whether the statement of the deceased recorded by the Naib Tahsildar Kishore Kumar Verma (PW-13) during the course of treatment is relevant under Section 32 of the Evidence Act or not?
15. Section 32(1) of the Indian Evidence Act, 1872 makes it clear that when a statement, written or verbal, is made by a person as to the cause of her death, or as to any of the circumstances of the transaction which resulted in her death, in cases in which the cause of that person's death comes into question, such statement is relevant. The Supreme Court in **Sharad Birdhichand Sarda** (supra) clearly held that Section 32 is an exception to the rule of hearsay and makes admissible, the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death or deals with circumstances leading to the death. The decision of the Supreme Court in **Sharad Birdhichand Sarda** (supra) has further been followed by the Supreme Court in the matter of **Kans Raj v. State of Punjab**⁴ reviewing the earlier authorities.
16. Before considering the submission raised on behalf of the appellant, it would be appropriate to notice few facts which are apparent on the face of record.
17. The dying declaration (Ex.P/9) was recorded on 04.05.2018 in presence of Kishore Kumar Verma (PW-13) who is Naib Tahsildar.

4 AIR 2000 SC 2324

Deceased Mona Singh suffered burn injuries in the night of 02.05.2018 and she was immediately taken to the Holy Cross Hospital, Ambikapur at about 05.15 AM on 03.05.2018 where she was examined by Dr. Rachna Aurthor (PW-14), who vide Ex.P/11 found that the general condition of the deceased was poor, but she was conscious and she has suffered 80% – 85% burn injuries. Thereafter, on 04.05.2018 at about 01.20 PM, her dying declaration was recorded which states as under: -

“ मरणासन्न कथन

दिनांक 04/05/2018

समय:- 01.20 पीएम

आहिता का नाम:- मोना पति शंकर उम्र 20 वर्ष

निवास:- विश्रामपुर; थाना विश्रामपुर जिला – सूरजपूर(छ0ग0)

कारण :- जलने से आई चोटें

स्थान :- मिशन अस्पताल, अंबिकापुर

प्र0 मोनाजी आपके पति का नाम क्या हैं ?

उ0 शंकर।

प्र0 क्या हो गया था ?

उ0 जहाँ तक हम लोगों को लगता है कि घर में लाईट पंखा कूलर चल रहा था दरवाजा बंद था।

प्र0 आग कब लगी ?

उ0 रात में।

प्र0 कैसे लगी आग?

उ0 मेरा भाई गेट को बंद कर दिया था, मिट्टी तेल छिड़क दिया था और माचिस मार दिया और वहाँ से भाग गया।

प्र0 आग को पहले किसने देखा?

उ0 हम लोग गेट को तोड़कर बाहर निकले सब लोग बोल रहे थे गैस लीक हो गया है जबकि हम लोग गैस का इस्तेमाल नहीं करते।

- प्र० गेट क्या बाहर से बंद था?
- उ० हॉ। अंदर से बंद होता तो इतना थोड़े ना जलते हम लोग।
- प्र० आपके भाई का क्या नाम हैं? कहाँ रहता हैं?
- उ० अर्जून सिंह राजपूत, आगरा, सिरसागंज।
- प्र० कोई विवाद हैं भाई से ?
- उ० हॉ वह मेरा प्रापर्टी हड़पना चाहता था मेरे पापा वाला। घर का पैसा खा लिया खेत का पैसा नहीं खाने दी।
- प्र० और कुछ बताना चाहेंगी?
- उ० दो तीन बार मुझे जान से मारने की कोशिश कर चुका हैं, एक बार आगरा गये थे तो उसने मेरे उपर गोली चलवाई थी।

हाथ जला होने से हस्ताक्षर/अंगूठा
निशान नहीं लिया गया

गवाह— 1 प्रभु

हस्ताक्षर

2 कुश्मी

किशोर कुमार वर्मा

नायब तहसीलदार

जिला—सरगुजा 3/5/18”

- 18.** A careful perusal of the dying declaration would show that she admitted that her brother closed the gate of the house, poured kerosene oil, fire with a matchstick and fled from the spot. She further deposed that they broken the gate and came out from the room. She further admitted that her brother wanted to grab the property of her father, as such, he set fire upon her. She also deposed that her brother earlier also tried to kill her 2-3 times.
- 19.** Now, the question would be, whether the dying declaration given by her was true and voluntary and conviction can be based upon it without corroboration?

20. The Supreme Court in the matter of **Jayamma and another v. State of Karnataka**⁵ has considered the case of **Chacko v. State of Kerala**⁶ and held as under: -

*“14.2. In **Chacko v. State of Kerala** , this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded*

5 (2021) 6 SCC 213

6 (2003) 1 SCC 112, paras 3 and 4

“patient conscious, talking” in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.”

21. Recently, the Supreme Court in the matter of **Irfan @ Naka v. The State of Uttar Pradesh**⁷ has considered certain parameters to trust whether a dying declaration could be acted upon solely for securing conviction or not. It was observed as under:-

“62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

- (i) Whether the person making the statement was in expectation of death?*

7 2023 SCC OnLine SC 1060

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.”

- 22.** The next question for consideration is whether the dying declaration (Ex.P/9) which is alleged to be given by deceased Mona Singh before the Naib Tahsildar Kishore Kumar Verma (PW-13) is true and voluntary and it was given by the deceased in a fit mental state or it was tutored one.

23. Kishore Kumar Verma (PW-13) has stated that before taking the dying declaration he had obtained the certification of the doctor regarding the consciousness of Mona Singh, however, no separate certification regarding her fitness of state of mind in order to make dying declaration had been obtained. He has stated that the thumb of Mona Singh was burnt, therefore, under no occasion of Kishore Kumar Verma (PW-13) could have obtained thumb impression.
24. With regard to the absence of separate certificate regarding fit state of mind of victim Priya Deep before making dying declaration, relying on the judgment, the Supreme Court in the matter of **Paparambaka Rosamma and others v. State of A.P.**⁸ has held as under:-

“9. It is true that the medical officer Dr. K. Vishnupriya Devi (PW 10) at the end of the dying declaration had certified “patient is conscious while recording the statement”. It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P.Koteswara Rao (PW 9) who performed the post-mortem stated that injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying

8 (1999) 7 SCC 695

declaration. It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that "patient is conscious while recording the statement". In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and as made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly they erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and as made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of

mind are distinct and are not synonymous.

One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below.”

25. Applying the principle of law laid down by the Supreme Court in **Paparambaka Rosamma** (supra) to the facts of the present case, it is quite vivid that the dying declaration suffers from infirmity where the victim has suffered more than 72% extensive burns and still there is no certificate of the doctor declaring that the victim was in a fit state of mind to give the dying declaration.
26. Now, reverting to the facts of the case in light of the principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that except the dying declaration and the evidence of injured witnesses, namely Shankar Kumar Ravi (PW-1) and Lado alias Samriddhi (PW-3), there is no evidence available on record brought by the prosecution to prove the guilt against the present appellant.
27. Shankar Kumar Ravi (PW-1) has deposed in his evidence that the incident took place on 02.05.2018 at around 2:00-2:30 in the night. He was sleeping in the house of Mona Singh where Mona Singh and Lado alias Samriddhi were also sleeping on the same bed. At night, he woke up due to smoke in the room of the house and felt suffocated. Then, he saw that there was a fire inside the room. He stated that when they were sleeping, the door of the

room was open, but when he saw the fire, the door of the room was closed from outside. After waking up, Mona Singh and he went together to extinguish the fire on the door. When he went to extinguish the fire, her foot hit a box in which some liquid like petrol or diesel was kept, due to which, the box fell on the ground and spread, on account of which, his both legs were burnt. Thereafter, he broke the door and after breaking the door, he, Mona Singh and Lado alias Samridhi came out of the said room. They started shouting but no one heard the voice. He opened the door to get out of the house and shouted. Thereafter, Wahid, Baleshwar and Baishakhu came and they took them to the Government Hospital at Bishrampur, thereafter, they were shifted to Holy Cross Hospital at Ambikapur. He deposed in paragraph-4 of his evidence that when Mona Singh was admitted in the hospital, the Magistrate had questioned her. After taking the statement of Mona Singh, his statement was also recorded. Thereafter, he went to Mona Singh and asked her what statement she had given. Then Mona Singh told him that when he opened the door of the house, he came out, at that relevant time, Mona Singh as well as Lado alias Samriddhi were in the verandah, at that time, he saw Arjun Singh Rajput (accused) running away from the spot. He further deposed in paragraph-5 of his evidence that Mona Singh died on 11.05.2018, eight days after the incident. Mona Singh has no parents and her father's property at Agra. Accused Arjun Singh is the cousin of Mona Singh and he wanted

to sell the property of father of Mona Singh. Mona Singh also agreed to sell the property in her father's name. Mona Singh told that she and Arjun Singh had sold a plot from her father's property at Agra, for which Arjun Singh had not given her the money, due to which, there was a dispute between Mona Singh and Arjun Singh.

- 28.** Lado alias Samriddhi (PW-3) is a child injured witness of the incident, who deposed in her statement that she knew the accused Arjun Singh, who is her brother. The deceased Mona Singh was her elder sister and Shankar Ravi is her brother-in-law. She further deposed that the incident happened at night, at that time she, her elder sister Mona Singh and her brother-in-law Shankar Ravi were sleeping in the house. While we were sleeping, Arjun Singh poured kerosene and lit a matchstick and after locking the door from outside, ran away from the spot. At that relevant time, she was awake and she saw that Arjun Singh running away from the spot. In cross-examination, she admitted that when the fire broke out, the door of the room was closed and they were inside the room. She further admitted that when she came out of the room into the veranda, the light of the veranda was off. This witness herself stated that the light of veranda was on and the room was filled with smoke. She also admitted that when she came out from the room, she could not see anything.
- 29.** Reverting finally to the facts of the case, it is quite vivid that when the dying declaration was recorded by Kishore Kumar Verma ,

Naib Tahsildar (PW-13) on 04.05.2018 at about 01.20 PM, the deceased was suffering from 72% burns. In the dying declaration, she has stated that her brother locked the gate of the house, poured kerosene oil, set fire on a matchstick and fled from the spot. Likewise, Shankar Kumar Ravi (PW-1) and Lado alias Samriddhi (PW-3) have stated in their evidence that the incident took place on 02.05.2018 at around 2:00-2:30 in the night. They saw that there was a fire inside the room. Shankar Kumar Ravi (PW-1) has stated that when he went to extinguish the fire, his foot hit a box in which some liquid like petrol or diesel was kept, due to which, the box fell on the ground and spread. Likewise, Lado alias Samriddhi (PW-3) has stated in her evidence that while they were sleeping, Arjun Singh poured kerosene and lit a matchstick and after locking the door from outside, ran away from the spot. But in her cross-examination, she admitted that when she came out of the room into the veranda, the light of the veranda was off and the room was filled with smoke. She also admitted that when she came out from the room, she could not see anything.

- 30.** From perusal of the record, it is apparent that both the injured witnesses have deposed that they have broke out the door of the room, but there is no panchnama of breaking the door, which creates suspicion on the prosecution story. It also creates suspicion on the liquid whether it is petrol, diesel or kerosene, because nowhere in the MLC or postmortem report, it has been

mentioned that there were smell of any of the liquid, i.e. petrol, diesel or kerosene in the clothes or body of the injured as well as deceased.

31. From the aforementioned facts and circumstances of the case, we are of the opinion that there is no corroborative evidence to the dying declaration and there is no other evidence led by the prosecution to connect the appellant with the offence in question. Therefore, it would be unsafe to convict the appellant on the basis of dying declaration and evidence of injured witnesses.
32. In view of the aforesaid analysis, we are of the opinion that the conviction recorded by the trial Court on the basis of dying declaration (Ex.P/9) cannot be sustained. As such, conviction and sentence imposed upon the appellant under Section 302 is liable to be quashed and is hereby quashed.
33. Considering the facts relating to recording of dying declaration and after duly testing the authenticity on the basis of parameters laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned trial Court while convicting the appellant-accused for offence under Sections 449, 436, 302, 307 (2 counts) of the IPC and Section 3(2)(v) of the Atrocities Act, has committed grave legal error as the prosecution has failed to prove its case its beyond reasonable doubt.
34. For the foregoing reasons, criminal appeal filed on behalf of appellant-**Arjun Singh Rajput** is **allowed** and his conviction &

sentence under Sections 449, 436, 302, 307 (2 times) of the IPC as well as Section 3(2)(v) of the Atrocities Act are hereby set aside. The accused / appellant is acquitted of the said charges levelled against him. He is in jail since 07.07.2018. He shall be set at liberty forthwith if no longer required in any other criminal case.

- 35.** Keeping in view the provisions of Section 437-A of the Cr.P.C. (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the accused-appellant, namely, **Arjun Singh Rajput** is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
- 36.** The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head Note

In case of serious doubt as to whether victim / deceased was in fit state of mind to make dying declaration and in absence of certificate of doctor, it would be unsafe to convict an accused on the basis of dying declaration for offence under Section 302 of the IPC.