



2025:CGHC:2432-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1126 of 2021

Rajkumar Banjare S/o Shankar Banjare Aged About 24 Years R/o Village Nawapara
Acharideeh, Thana Tumgaon, District Mahasamund Chhattisgarh ... **Appellant**

versus

State Of Chhattisgarh Through Station House Officer, Tumgaon, District Mahasamund
Chhattisgarh ... **Respondent**

(Cause-title taken from Case Information System)

For Appellant : Shri NK Malviya, Advocate
For Respondent/State : Shri Hari Om Rai, PL

Hon'ble Shri Justice Ramesh Sinha, Chief Justice
& Hon'ble Shri Justice Ravindra Kumar Agrawal
Judgment on Board

Per Ravindra Kumar Agrawal, J.

15.01.2025

1. Present appeal under Section 374(2) of the CrPC, 1973 is filed by the appellant against the impugned judgment of conviction and order of sentence dated 31.12.2020, passed by the learned Sessions Judge, Mahasamund, in Sessions Case No.33 of 2017, whereby the appellant has been convicted for the offence under Section 302 of the IPC, and sentenced R.I. for life with fine of Rs.1,000/-, in default of payment of fine, further R.I. for six months.

2. Brief facts of the case are that the deceased- Ombai was married to the appellant since six years back. Out of their wedlock, they were having two children. After some time of the marriage, their relationship started deteriorating, as the appellant used to harass Ombai for demand of money, and asked her to bring money from her parents. The community meeting was convened on various occasions, and on all the occasions, the appellant assured that he would keep his wife in good condition and would not beat her.

On 18.12.2016, the appellant again started beating his wife, and on 19.12.2016, her in-laws had gone to her sister-in-law's house, and the deceased, along with her husband, were alone in their house. At that time, her husband again started harassing her and beating her, and he poured Kerosene Oil on her body and set her ablaze. When she started shouting, he tried to extinguish the fire with a jute bag. At that time, persons in the vicinity gathered there and took her to the hospital. PW27 Dr Manprit Gurudutta sent an intimation to the Police Station- Mahasamund vide memo Ex.P33. She was being treated at the Government Hospital by PW27, who gave the MLC report Ex.P34, in which he opined that the deceased received 85% 2nd-degree burn injuries. He referred her to the Burn Unit of Medical College Hospital, Raipur, for further treatment. On the same day, on 19.12.2016, after obtaining her fitness certificate, Dying Declaration Ex.P1 was recorded by the Police at about **11.20** am. On the same day, PW16 Dikeshwar

Kumar Sahu, Naib Tahsildar also recorded the Dying Declaration of the deceased, marked as Ex.P24, at the District Hospital, Mahasamund, at about 11.25 am. On 23.12.2016, PW-23 Lal Singh, uncle of the deceased, made a complaint to the Police Station-Tumgaon that the in-laws of the deceased may tamper with the evidence collected by the Police during the investigation and may change the statement of the deceased. When the deceased was referred to the Burn Unit of Medical College Hospital, Raipur, another (3rd) Dying Declaration Ex.P32 was recorded on 24.12.2016 at about 4.05 pm, by one Anubhav Sharma (PW25), Additional Tahsildar, Raipur, at Dr BR Ambedkar Hospital, Raipur.

During the treatment, Ombai died on 05.01.2017 at Dr BR Ambedkar Hospital, Raipur, and her death intimation Ex.P25 was sent by the doctor to the Police Station- Moudhapara, Raipur, where Merg Intimation Ex.P26 was recorded, and Inquest of the dead-body was prepared by the Executive Magistrate vide Ex.P3 in presence of the witnesses. The body was sent for its postmortem, and PW29 Dr GM Nirala conducted the postmortem of the dead body of the deceased and gave his report vide Ex.P28A. After conducting the postmortem, the doctor found 88%, 2nd-3rd degree burn injuries on the dead body of the deceased, and opined that death was due to Cardio-respiratory failure as a result of burn injuries, and their complications. Merg intimation recorded at Moudhapara Police Station was transferred to the

jurisdictional Police Station- Tumgaon, District-Mahasamund, where, numbered Merg intimation Ex.P29 was recorded on 22.01.2017.

On 25.12.2016, Dehati Nalishi Ex.P36 was recorded on the instance of deceased-Ombai at the Burn unit of Dr BR Ambedkar Hospital, Raipur, her statement under Section 161 CrPC was also recorded by the Police vide Ex.P37, and FIR Ex.P38 was registered on the same day against the appellant for commission of the offence under Section 307 of the IPC. One half-burnt sari, blouse, salwar and full pant, broken pieces of bangles, one jute bag, one plastic jerry can having the smell of kerosene oil and one match-box having match sticks have been seized from the spot vide seizure memo Ex.P5. Spot Map Ex.P16 was prepared by the Patwari, and Spot Map Ex.P39 was prepared by the Police. The appellant was arrested on 27.12.2016, and his memorandum statement Ex.P7, was recorded. Based on his memorandum statement, his full pant, and full shirt, having the smell of kerosene oil were seized vide seizure memo Ex.P8.

3. During the investigation, the statement of witnesses under Section 161 of the CrPC, have been recorded, and after completion of the usual investigation, charge-sheet was filed against the appellant before the learned Chief Judicial Magistrate, Mahasamund for the offence under Sections 302 and 304B of the IPC. The case was committed to the Court of Learned Sessions Judge, Mahasamund, for its trial.

4. The learned trial court has framed charge against the appellant for the offence under Section 304-B of the IPC, in alternative, Section 302 of the IPC. The appellant abjured his guilt and claimed trial.

5. In order to bring home the charge against the appellant, the prosecution has examined as many as 29 witnesses. Statement under section 313 of CrPC of the appellant was also recorded in which he denied the material appearing against him and pleaded innocence and submitted that he has been falsely implicated in the offence. One defence witness has also been examined by the prosecution in support of the appellant.

6. After appreciation of oral, as well as documentary evidence led by the prosecution, the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence this appeal by the accused/appellant.

7. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond any reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses. There is no evidence that “soon before her death” deceased was subjected to cruelty for the demand of dowry, and there is no reason for causing her death. In the 1st Dying Declaration Ex.P1, recorded on the date of the incident, itself recorded after obtaining the certificate from the treating doctor, in which there is no allegation against the appellant

that he committed her murder by pouring kerosene oil and set her ablaze. Rather, in both the Dying Declarations Ex.P1 and Ex.P24, the victim specifically stated that during the process of igniting the earthen stove for cooking food, she caught on fire, and no one set her on fire, whereas, after a considerable period, i.e. on 24.12.2016, at Dr BR Ambedkar Hospital, Raipur, her another (3rd) Dying Declaration was recorded, in which she raised allegation against the appellant, that he set her ablaze, after pouring kerosene oil on her body. Although in Dehati Nalishi (Ex.P36), and in her 161 CrPC statement, recorded on 25.12.2022, prepared after recording of her 3rd Dying Declaration on 24.12.2016, and in such circumstances of multiple Dying Declarations recorded at different points of time, the benefit goes to the appellant. Since the deceased died due to burn injuries in unnatural circumstances, her parents stated against the appellant that he committed the murder of the deceased, but there is no sufficient evidence on record to hold the appellant guilty under the alleged offence. It also comes in the evidence that when the deceased caught on fire, the appellant tried to extinguish the fire with a jute bag, which has been stated by the witnesses, which also shows the conduct of the appellant, that he did not intend or even he has not set the deceased on fire, rather, he tried to extinguish the fire, and therefore, the evidence available in the case against the appellant is insufficient, and conviction cannot be made based on such insufficient evidence, therefore, appellant is entitled for acquittal.

8. Per contra, learned State counsel opposed the submissions made by learned counsel for the appellant, and would submit that prosecution has proved its case beyond any reasonable doubt. There is overwhelming evidence against the appellant that he committed the murder of the deceased by pouring kerosene oil upon her and set her ablaze. The uncle of the deceased made a complaint on 23.12.2016 that relation between the deceased and her husband was not going well, and her husband/appellant was harassing her regularly for which, a community meeting was convened and proceedings were also drawn. He came to know that her statement had already been recorded by the Police but he raised suspicion upon the activity of the Police that they may change the statement to save the appellant from the alleged offence. He would further submit that in the 3rd Dying Declaration recorded by the Additional Tahsildar, Raipur at Dr BR Ambedkar Hospital, Raipur, the victim disclosed about the incident that the appellant committed her murder by pouring kerosene oil, and set her ablaze. Dehati Nalishi Ex.P36 and the statement of the deceased recorded under Section 161 of the CrPC, in which she disclosed the incident in detail, which can also be treated as a Dying Declaration of the deceased as the person who made the statement is no more. The family members of the deceased have also deposed against the appellant that he used to harass the deceased regularly, and committed *marpit* with her on a number of occasions. The community meeting was also convened, and every time, he assured them that he would not repeat the same again. Therefore,

there is overwhelming evidence against the appellant, to hold him guilty for the commission of the offence, and the appeal is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the record of the case with utmost circumspection.

10. It is not in dispute in the present case that the deceased Ombai died in unnatural circumstances due to burn injuries. The unnatural death of the deceased has been proved by PW27, Dr Manprit Gurudutta, who stated in his evidence that on 19.12.2016, the victim was brought to the Government Hospital, Mahasamund, in burn condition. He sent the MLC intimation to the Police Station-Mahasamund through Ex.P33 and gave first-aid to her. He medically examined her and found that she was conscious/alert. The person who came along with the victim informed him that she was burnt due to kerosene oil. The smell of kerosene oil was coming from her whole body and clothes, and superficial burn injuries were there, she suffered 85% second-degree burn injuries, and he found derma epidermal burns present, her condition was deteriorating and therefore, she was referred to the Medical College Hospital, Raipur burn unit. His MLC Report is Ex.P34.

11. The unnatural death of the deceased was further corroborated by the evidence of PW1- Santu Banjare, uncle of the appellant. He stated in his evidence that the deceased died due to burn injuries. When he

received information about the incident, he took her to the District Hospital, Mahasamund by Ambulance, and thereafter, she was referred to the Dr. BR Ambedkar Hospital, Raipur, and he got her admitted there, and returned to his village. He was also present at the time of inquest Ex.P3 and he proved the death intimation sent by the hospital to the Moudhapara Police Station, in which it has been informed that the deceased died due to burn injuries. Further, the unnatural death of the deceased has been proved by PW29 Dr GM Nirala, who conducted the postmortem of the dead body of the deceased. He stated in his evidence that on 06.01.2017, at 12.55 pm, he conducted the postmortem of the dead body of the deceased, who was identified by her father-in-law, Shankar Banjare, and found that she received total 88% of 2nd-3rd degree burn injuries, and opined that she died due to Cardio respiratory failure due to burn injuries and their complications. In his cross-examination, nothing could be extracted from the defence that the deceased died due to some other reason.

12. From the evidence led by the prosecution, learned trial Court has considered and held that death of deceased is unnatural due to burn injures received by her, in which we find no infirmity or illegality and the same is based on proper appreciation of evidence available on record.

13. So far as the involvement of the appellant in the alleged offence in question, the case of the prosecution based on the 1st Dying Declaration Ex.P1, recorded on 19.12.2016 by the Police, Ex.P24, 2nd Dying

Declaration, recorded by the Naib Tahsildar, Mahasamund on the same day, at the District Hospital, Mahasamund, and another Dying Declaration, being the 3rd one, recorded on 24.12.2016 by the Tahsildar, at Dr BR Ambedkar Hospital, Raipur, which is Ex.P32. The case of the prosecution is further based on Dehati Nalishi, Ex.P36, recorded on 25.12.2016 on the instance of the deceased-Ombai, and further, on her 161 CrPC statement Ex.P37.

14. As there are multiple Dying Declarations in the case, we examine the evidence produced by the prosecution, as to which one of the dying declarations on record is acceptable in the facts and circumstances of the case.

15. The 1st Dying Declaration Ex.P1 was allegedly recorded by the Police on 19.12.2016 at 11 am, in which it was mentioned that while igniting the earthen stove, she caught fire on her body, and she got burnt. The relevant part of Ex.P1 is reproduced here below for ready reference. This Dying Declaration was recorded at the District Hospital, Mahasamund when she was taken for treatment.

“आग कैसे लगी—चूल्हा मे आग जलाते समय आग साडी में
लग जाने, साडी जलने से शरीर जल गई।
कोई आग लगाया है— कोई नहीं
क्या तुमने स्वयम आग लगाई—नहीं”

16. 2nd Dying Declaration Ex.P24 was recorded on the same day at 11.25 am by the Naib Tahsildar, Mahasamund, and the relevant part of which is also reproduced here below for ready reference:

प्रश्न 6—यह घटना कैसे हुआ

उत्तर— चूल्हा में आग जलाते समय, आग साडी मे लग जाने से, साडी जलने से शरीर जल गई।

प्रश्न 7— कोई जलाया तो नहीं।

उत्तर— नहीं”

17. The 1st Dying Declaration was recorded on 19.12.2016 at 11.20 am, and the 2nd one was recorded at 11.25 am, just after 05 minutes of the 1st Dying Declaration. Both these Dying Declarations were recorded at the District Hospital, Mahasamund when she was taken to the hospital for treatment.

18. In the 1st Dying Declaration, Ex.P1, certification of the doctor was taken on the left side middle of the document, whereas, in the 2nd Dying Declaration, Ex.P24, only the signature of the doctor is there, and the mental and physical condition of the deceased was recorded in the handwriting of the person, who recorded the said Dying Declaration. The mental and physical condition of the deceased is written in the handwriting of the person, who wrote the Dying Declaration, i.e. Naib Tahsildar, Mahasamund. In the 2nd Dying Declaration also, the same statement was written that while igniting the earthen stove, she caught fire and got burn injuries.

19. If we see the evidence of Dr Manprit Gurudutta, PW27, who was posted at the District Hospital, Mahasamund, and gave first-aid to the deceased, and gave MLC report Ex.P34, it appears that on 19.12.2016, he medically examined the victim at 10.30 am at the District Hospital, Mahasamund. At that time, he mentioned in his MLC report about kerosene burns. He also wrote in the report that the kerosene smell was coming from the whole body and clothes of the victim, and superficial burns involving the epidermis & Dermis of the skin of the whole body, about 85% burn injuries present on the body of the deceased.

20. From these pieces of evidence, it is very difficult to accept that while igniting the earthen stove, her sari caught fire and she got burnt. It is quite obvious that if any person is in the process of igniting the stove, the smell of kerosene oil is certainly not to be there on the whole body and clothes. There was no occasion to spread kerosene oil on her whole body by herself, and also on her sari unless it was poured by someone else. Even if we presume that she tried to ignite the stove with the help of kerosene oil, for that purpose, a small quantity of kerosene oil was required and in that condition, the smell of kerosene oil cannot be found on her whole body and clothes. Further, the jerrycan of kerosene oil seized from the spot was empty, so it cannot be said that she poured the entire kerosene oil jerrycan into the earthen stove and tried to ignite the stove. Had she been burnt while igniting the earthen stove, one can expect that the smell of kerosene oil may come from her fingers or from

one part of her body due to the spread of kerosene oil but certainly, it could not be possible from all of her body.

21. One more important aspect is that when the victim was admitted to the District Hospital, Mahasamund by her relatives, they informed the doctor PW27 that she had been burnt by kerosene oil. It has been written by the doctor in his report Ex.P34 also, but surprisingly, in her two Dying Declarations, immediately recorded after admission in the District Hospital by the Police authority and the Naib Tahsildar within a time gap of 05 minutes, it was disclosed by the deceased that she got burnt while igniting the earthen stove in the house. Although the doctor, PW27 has stated that both these Dying Declarations, Ex.P1 and Ex.P24 were recorded in his presence, and he properly replied to the questions asked and recorded her Dying Declaration but in the facts and circumstances of the present case, it is suspicious as to whether her Dying Declaration was actually recorded on 19.12.2016 by the Police Officers, and the Naib Tahsildar, or not.

22. On 23.12.2016, when the uncle of the deceased, Lal Singh made a complaint to the Police Station Tumgaon that the in-laws of the deceased may try to tamper with the evidence of witnesses, and in connivance with the Police persons by keeping her children as scapegoats, they may change her statement, therefore, the statement of the victim may be recorded in presence of her parents. By considering suspicion raised by the uncle of the deceased that the appellant and his family members may

tamper with the witnesses or evidence during the investigation, **SDM was requested by the Station House Officer, Tumgaon to record Dying Declaration of the deceased-Ombai.** In furtherance thereof, the SDM Raipur has instructed PW25, Anubhav Sharma, Additional Tahsildar, Raipur to record Dying Declaration of the deceased.

23. When the deceased was shifted to Dr BR Ambedkar Hospital, Raipur, another Dying Declaration (3rd) was recorded by the Additional Tahsildar, Raipur, on 24.12.2016 at about 4.05 pm vide Ex.P32. This dying declaration was recorded after obtaining due certification of the mental and physical condition of the deceased from the concerned doctor, in which she disclosed the entire incident and the manner in which she got burn injuries, caused by the appellant. It is also necessary to reproduce the contents of the 3rd Dying Declaration Ex.P32 here below:

प्र 01 तुम्हारा क्या नाम है ।
उत्तर— ओम बाई बंजारे ।

प्र02 ये घटना कब हुई
उत्तर— मंगलवार को हुई है ।

प्र03 आग लगाने की घटना कहाँ पर हुई थी ।
उत्तर— नयापारा में मेरे घर में हुई ।

प्र04 घर में उस समय कौन कौन था ।
उत्तर— सास ससुर, मोर आदमी और दो बच्चा थे और मेरी ननद थी ।

प्र05 जब आग लगी तब तुम क्या कर रही थी ।
उत्तर— चाय मढा रही थी ।

प्र06 आग कैसे लगी—?
उत्तर— मिट्टी तेल में डालकर आग लगाई

प्र07 आग किसने लगाई

उत्तर— मोर सास ससुर और मोर आदमी

प्र08 उस समय वहाँ पर कौन कौन था

उत्तर— आग परछी में लगी तब वहाँ पर मेरे सास ससुर और मोर आदमी था।

प्र09 आग कैसे लगाई

उत्तर— मेरे सास ससुर और आदमी ने माटी तेल छिड़क कर आग लगाई

प्र0 10 आग क्यों लगाई थी।

उत्तर— लड़ई झगड़ा हुए करके तोर मइके वाला को चोरा चोरा के देती है कर झगड़ा किए।

प्र011 आग लगने से पहले झगड़ा लडाई क्यों हुआ था।

उत्तर— बेटी के आपरेशन मे खर्चा हुआ तो खेत बेचे थे इसलिए लड़ई करते थे।

प्र012 उस दिन लड़ाई झगडा के बाद क्या हुआ

उत्तर— मारपीट किए। मै भाग कर मायके जा रही थी। बिरकोनी में पति और ससुर मेरे को रोक कर वापस लाए, घर में लाकर मारपीट किए और माटी तेल छिड़क कर आग लगाए।

प्र0 13 आग को कौन बुझाया

उत्तर— जब मै चिल्लाई तो मेरा आदमी आग को बुताया फिर मै बेहोश हो गई

प्र0 14 अस्पताल कौन लाया

उत्तर— बेहोश हो गई थी, याद नहीं है।

प्र015 और कुछ कहना चाहती हो

उत्तर— नहीं

प्र016 ये बयान दबाव मे तो नही दे रही मेरी स्थिति अतना पान है मैं किसी के दबाव में बयान नहीं दे रही हूँ।

24. PW-25 Anubhav Sharma, Additional Tahsildar, Raipur has proved the recording of the 3rd Dying Declaration, Ex.P32. Nothing could be

extracted from this evidence in his cross-examination, to disbelieve his evidence that he had not recorded the said dying declaration, as mentioned in it. He duly proved the recording of Ex.P-32 and also denied any influence upon him. Ex.P32 is also supported by Dehati Nalishi Ex.P36, which has been recorded on 25.12.2016 by PW28, Rajiv Nahar, who is the Investigating Officer in the case. He recorded the said Dehati Nalishi on 25.12.2016 at 15.30 hours at the burn unit of Dr BR Ambedkar Hospital, Raipur, in which the entire incident was disclosed by the deceased in the same manner as she narrated in her 3rd Dying Declaration, Ex.P32. On the same day, her statement under Section 161 of the CrPC, Ex.P37 was also recorded by the same Officer, and these documents have also been proved by the Investigating Officer Rajiv Nahar, that he recorded the 3rd Dying Declaration and her statement.

25. PW28 Rajiv Nahar, Investigating Officer stated in his evidence that on 23.12.2016, when uncle of the deceased made a complaint that in-laws of the deceased may tamper with the witnesses and evidence, he, under the instructions of the Station House Officer, Police Station - Tumgaon, had gone to the hospital, and gave an application in writing to the doctor concerned asking permission to record Dying Declaration of the deceased, which is Ex.P35. Permission was granted by the treating doctor, who also certified the mental and physical condition of the victim on 25.12.2016 at about 2.10. pm. Thereafter, he recorded the Dehati Nalishi Ex.P36, and her 161 CrPC statement Ex.P37.

In his cross-examination, he remained firm in recording the statement of the deceased on her instance and also explained that the name of the parents of the appellant was not reflected in Dehati Nalishi as the offender, therefore, he has not made them as accused in the case. He admitted that the witnesses had disclosed that the appellant was trying to extinguish the fire, and none of the witnesses had disclosed who ignited the fire. He explained that since the application was submitted by the uncle of the deceased, therefore, under the instructions of the Station House Officer, he recorded Dehati Nalishi on the instance of the victim, and then, investigated the matter when he received the case diary for investigation, and he came to know about the other Dying Declarations recorded earlier.

26. Other important aspect is also there that in Dehati Nalishi, the signature of the deceased was taken by PW28, Rajiv Nahar, and he remained firm in saying that he obtained the signature of the deceased in her statement.

27. In the matter of **Dharam Pal and others Vs State of Uttar Pradesh**, (2008) 17 SCC 337, Hon'ble Supreme Court has held that Dehati Nalishi lodged by the deceased can also be treated as Dying Declaration, and in paras-16 and 17 of its judgment, it is held thus:

16. The learned Counsel for the appellants further argued before us that the alleged dying declaration which was given

the shape of an FIR could not be made the basis of conviction when the original document signed by the deceased was not brought on record. The learned counsel for the appellants tried to prove before us that the deceased was not in a position to speak and which becomes apparent from the testimony of his father. However, it would not be correct to say so. The evidence of PW 7 Dr. R.P. Goel shows that the condition of the deceased was good and that he was in a position to speak. It would not be appropriate for us to read between the lines by giving unnecessary meanings to the testimony of Raghu. It cannot be left out of sight that Raghu also said that the deceased dictated the FIR to the police. In any view of the matter, the report of occurrence was dictated by the deceased himself and the same was read over to him after which he had put his thumb impression on the same. This report is admissible under [Section 32](#) of the Evidence Act as a dying declaration. It is true that the original document signed by the deceased was not brought on record, but in our view, the FIR has rightly been admitted as a dying declaration. There appears no reason for the police to falsely implicate any one of the accused inasmuch as, initially, the report dictated by the deceased was taken down as a non- cognizable report under [section 323](#) of the IPC. If the police were to implicate

the accused, they would have not taken down the report as a non-cognizable report in the very first place itself.

17. That apart, the report dictated by the deceased fully satisfied all the ingredients for being made admissible as a dying declaration. To ascertain this aspect, we may refer to some of the general propositions relating to a dying declaration. [Section 32\(1\)](#) of the Indian Evidence Act deals with dying declaration and lays down that when a 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, such a statement is relevant in every case or proceeding in which the cause of the persons death comes into question. Further, 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 proceedings in which the cause of his death comes into question.

28. Relevancy and admissibility of the Dying Declaration is defined under Section 32 of the Indian Evidence Act, 1872, which provides the admissibility of the statement of the person, who is not found or his presence could not be secured without any delay. Provisions of Section 32 are reproduced here under for ready reference :

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

(2) **Or is made in course of business.** —When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or

of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3) **or against interest of maker.**— When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him to a criminal prosecution or to a suit for damages.

(4) **or gives opinion as to public right or custom, or matters of general interest.** —When the statement gives the opinion of any person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) **or relates to existence of relationship.**— When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the

statement was made before the question in dispute was raised.

(6) or is made in will or deed relating to family affairs.—

When the statement relates to the existence of any relationship [by blood, marriage or adoption] [Inserted by Act 18 of 1872, Section 2.] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) or in document relating to transaction mentioned in section 13, clause (a).—

When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) or is made by several persons and expresses feelings relevant to matter in question.—

When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

29. In normal circumstance, where there is more than one statement in nature of Dying Declaration, the one recorded at the first point of time must be preferred. But of course, if the plurality of the Dying Declaration,

then, the Dying Declaration which could be held trustworthy in view of other corroborating circumstances of the case can be relied upon to decide the involvement of the accused in the offence.

30. In the present case, the credibility of two Dying Declarations Ex.P1 and Ex.P24, which are allegedly recorded by the Police Authority, and the Naib Tahsildar, on the date of the incident itself, found to be suspicious on the ground aforementioned and discussed, but the 3rd Dying Declaration Ex.P32 is found corroborated with the Dehati Nalishi, Ex.P36 and also with the statement of deceased Ex.P37. Therefore, the 3rd Dying Declaration, Ex.P32 can be taken as the relevant piece of evidence to decide the guilt of the appellant. In both the earlier Dying Declarations, Ex.P1 and Ex.P24, thumb impression of the deceased was present, whereas, in the 3rd Dying Declaration, Ex.P32, her signature, and also in Dehati Nalishi Ex.P36, her signature was taken, which is duly proved by the other witnesses, who recorded those documents.

31. PW1, Santu Banjare is uncle of the appellant, who stated in his evidence that when he received information about burn injuries to the deceased, he went to her house, and took the deceased to the District Hospital, Mahasamund. There, her Dying Declaration was recorded by the Police, in which she disclosed that while igniting the earthen stove, she caught fire. In her Dying Declaration ExP1, her signature is there. He was also the witness of inquest Ex.P3. When the leading question was asked to him, this witness did not support the prosecution case on

some point, the prosecution cross-examined and then he denied the seizure of burnt clothes of the deceased, full pant, and broken pieces of bangles, plastic jerrycan, jute bag, and match box from the spot. But he admitted his ignorance on the seizure memo Ex.P5 in his cross-examination.

He denied the suggestion in his cross-examination that the deceased had not given any dying declaration in his presence. He further admitted that the parents of the appellant were not on the spot at the time of incident, and then had gone to the village Saradih. PW2- Chudamani Banjare is the witness of memorandum Ex.P7 and seizure memo Ex.P8 another seizure memo. He too was declared hostile, and not supported the prosecution case.

32. PW3 is the sister of the appellant. She stated in her evidence that when she received information about the incident, she also had gone to the District Hospital Mahasamund. After giving first-aid to the victim, she was referred to the Dr BR Ambedkar Hospital, Raipur. She is the witness of inquest Ex.P3.

In her cross-examination, she stated that the deceased had disclosed to her that while preparing tea, the deceased caught fire on her sari. She was a short-tempered lady and used to go to her parents' house regularly, for which quarrel used to take place in her house.

33. PW4 Shankar Banjare is the father of the appellant, who stated in his evidence that when he was returning from village Saradih, on the way he met with his daughter Puja, where she was informed that Ombai got burn injuries, and she was taken to the District Hospital, Mahasamund. Thereafter, he returned back to his village Acharidih, and during treatment, she died at Dr BR Ambedkar Hospital, Raipur. He is also the witness of inquest Ex.P3. This witness has also turned hostile and has not supported the case of the prosecution.

In his cross-examination, he stated that when he asked his son about the incident, he disclosed that while igniting the earthen stove for cooking food, the victim caught fire, by which she received burn injuries, and he tried to extinguish the fire.

34. PW5 Raghunath Banjare is resident of the same vicinity, where the deceased and appellant were residing. When he heard the noise of people, he also went to the spot, where he saw the deceased in injured condition, struggling for life. He took the Tata Magic vehicle, in which the deceased was taken to the Hospital. Subsequently, he came to know that the deceased died in the hospital at Raipur. He also became a hostile witness, and not supported the prosecution's case.

35. PW6 Smt Kunti Bai is one of the relatives, who turned hostile and not supported the case of the prosecution.

36. PW7 Bena Bai is the mother of the deceased. She stated in her evidence that after marriage, the appellant used to demand money from her daughter, and used to beat her. With respect to the quarrel between them, they made a complaint to Pariwar Paramarsh Kendra, Mahasamund, where her daughter was made convinced, and was sent back to her matrimonial house. On 19.12.2016, brother-in-law of the appellant informed her that her daughter had burn injuries. When she went to the hospital, she saw her daughter in injured condition, and thereafter, she was referred to Dr BR Ambedkar Hospital, Raipur. Although, at some point in her evidence, she declared hostile, but she admitted that her son-in-law/present appellant used to beat her daughter, and threw her out of his house after demanding money from her. Community meeting was convened on various occasions in the village, and every time appellant assured her that he would not repeat the same, and took her with him. She also admitted that on 03.12.2016, the appellant demanded money from her to pay the installment of his vehicle, and when she refused to give him the money, he scolded her daughter and took her back.

In her cross-examination, she admitted that the appellant has regularly demanded money from her on the ground of treatment of her daughter, or payment of installment of his vehicle. Even they had given the money to him at the time of delivery of the deceased. This witness has remained firm in saying that the relation between them was not good,

and the deceased was being harassed by the appellant on various occasions and regularly, demanding money, and beating her.

37. PW9 Luv Dhidhi also turned hostile, not supported the prosecution case.

38. PW10 Smt Rambai is neighbour of the appellant. She stated in her evidence that after hearing the noise, when she came out from her house, she saw smoke fumes coming out of the house of the appellant, people gathered there, and the deceased Ombai was lying in burn condition asking for help. Appellant was trying to extinguish the fire. Thereafter, they took her to the hospital but she did not know how she got burnt. This witness also turned hostile, and not supported the prosecution case.

39. PW11, Bharat Nishad, PW12-Akhilesh Kumar Wanse, PW13-Kartik Banjare, and PW14 Bugala Bai are hostile witnesses and did not support the prosecution case.

40. PW16 is the Naib Tahsildar Dikeshwar Kumar Sahu, who recorded the 2nd Dying Declaration, Ex.P24. He stated in his evidence that after receiving the request from the Station House Officer, he recorded the Dying Declaration of the deceased Ombai. On 19.12.2016, the Station House Officer, Mahasamund sent a request to the SDM Mahasamund to record the Dying Declaration of the victim Ombai, who was admitted to the District Hospital, Mahasamund at about 10 am, on the same day in

burn condition. Thereafter, under the instruction of the SDM, he recorded her Dying Declaration on 19.12.2016 at 11.25 am, which is Ex.P24. He obtained her left thumb impression in the Dying Declaration. He also obtained the certification of Dr Manprit Gurudutta, PW27 about the fitness of her mental condition, and the said doctor was also present there. In the Dying Declaration, the victim disclosed that while igniting the earthen stove, her sari caught fire, by which she got burnt.

In his cross-examination, he stated that at the time when he recorded her Dying Declaration, her family members were not there, and they were standing at a certain distance. He further admitted that the victim told him that she was not in a position to hold the pen, and to make her signature on the document, therefore, her thumb impression was taken, and she specifically stated that no one had burnt her.

41. PW17, Purtej Thakur, Ward boy, took the death intimation of the deceased from the hospital to Moudhapara Police Station, where merg intimation Ex.P26 was recorded.

42. PW19, Dharmendra Gendle, has taken the merg intimation Ex.P26 recorded at Moudhapara Police Station to Tumgaon Police Station, where Merg Intimation Ex.P29 was recorded.

43. PW20, Sunita Sendriya, is Patwari, who prepared the spot map Ex.P16. PW21, Fateh Bahadur Singh, Assistant Sub-Inspector, and he recorded the Merg Intimation at Tumgaon.

44. PW22 Chandrakumar Chelak is the father of the deceased, who stated in his evidence that the victim was his daughter. She married the appellant 5-6 years back. Out of their wedlock, two children were born. After about 2-3 years of their marriage, dispute started between them, and they used to quarrel. Whenever his daughter comes to his house, she informed him about the quarrel raised by the appellant. When the quarrel between them was aggravated, she was burnt by the appellant after pouring kerosene oil on her. When he received information about the burning of his daughter, he went to the hospital in Raipur, and after 4-5 days, she died in the hospital due to burn injuries. Ex.P3 Inquest was prepared in his presence.

In his cross-examination, he has shown his ignorance about the reason of the quarrel that used to take place between the appellant and the deceased. He admitted that the appellant used to take money from him, and he gave him 1-2 thousand occasionally. He denied that his daughter has died with burn injuries, while she was cooking food. He also denied that his daughter gave statement that she caught fire and got burn injuries.

45. PW23 Lal Singh, uncle of the deceased made the written complaint Ex.P30, on 23.12.2016, wherein it was stated that after 2-3 years of the marriage, the appellant started harassing his niece (deceased) and demanded money from her. The appellant started beating her and the deceased used to come to her parents' house and stay for 3-4 months. A

village meeting was convened, and even after that, the appellant took his niece along with him. At that time, the appellant also gave them assurance that he will not repeat any act of cruelty. When the appellant again started beating her, they made a complaint to the Pariwar Paramarsh Kendra, Mahasamund. There also, the appellant was convinced, and they asked him not to repeat his act. When his father died, the appellant along with the deceased and children came to his village Saradih, and after about 5-6 days, he again quarreled. On 18-19 December 2016, brother-in-law of the appellant informed him that Ombai received burn injuries. After receiving the information, they immediately rushed to the hospital at Mahasamund, then they came to know that she was in the process of being shifted to Dr BR Ambedkar Hospital, Raipur. He talked with her at the hospital in Raipur, where she disclosed to him and her parents that the appellant has set her ablaze by pouring kerosene oil. Thereafter, he made a complaint to the Superintendent of Police, Raipur, which is Ex.P30. After making the complaint by him, the Dying Declaration was recorded by the Officers. During treatment, she died at Dr BR Ambedkar Hospital, Raipur, and the inquest was prepared in his presence.

In cross-examination, he stated that the quarrel between the appellant and the deceased was for the demand of cash amount made by the appellant from her. The appellant demanded cash amount from her father, therefore, her brother-in-law Chandra Kumar Chelak has given

him money 2-3 times. He admitted that in the village meeting, the appellant has admitted and ensured that he will not repeat his act of cruelty and will keep his wife in good condition.

In further cross-examination, he stated that Tahsildar, Mahasamund, and the Police have also recorded her Dying Declaration, and thereafter, he made his application to the Superintendent of Police and requested him to get her Dying Declaration recorded in the presence of her parents. He further admitted that Tahsildar, Raipur, had recorded her Dying Declaration at Raipur in the presence of her parents. He voluntarily stated that her parents were out of the room. He further admitted that Tahsildar has kept them outside the room, and they were not present at the time her Dying Declaration was recorded, and his signature was taken later on. He submitted that on both the hands and fingers of the deceased, there was a bandage, and after 2-3 days of recording her Dying Declaration, she died. He also denied that due to burn injuries, she was not able to make her signature.

46. PW25, Anubhav Sharma was working as Tahsildar, Raipur. On the instruction of the SDM, Raipur, he recorded the Dying Declaration of the deceased Ombai on 24.12.2016 at 4.05 pm at the burn ward of Dr BR Ambedkar Hospital, Raipur. Dr Ramesh Kumar was also present in the said burn unit, and he obtained a certificate from him with respect to the physical and mental condition of the deceased, after obtaining the same, wherein he opined that the victim was in a fit condition to give her

statement, and then he recorded her Dying Declaration Ex.P32. After recording the said Dying Declaration, he obtained the signature of the deceased Ombai. At the time of recording of her Dying Declaration, he asked questions, to which she replied properly, and stated that she was burnt by her father-in-law, mother-in-law and husband, after pouring kerosene oil upon her.

In his cross-examination, he admitted that the Station House Officer, Tumgaon had requested the SDM, Raipur to record the Dying Declaration of the deceased vide request letter Ex.P31. He went to the burn unit to record the Dying Declaration of the victim, who was in conscious condition. At the time when he was recording the Dying Declaration Ex.P32, no one was present there as witness. He did not know as to whether her Dying Declaration was recorded at the earlier point of time, or not. He denied that the deceased Ombai was not in a condition to hold a pen to make signature, and it is in the signature of the deceased, Ex.P32. He also denied the influence of politicians upon him for recording her dying declaration.

47. PW26 Ramesh Mehta, is the witness of inquest, Ex.P3. He stated in his evidence that there is his signature in the inquest.

48. PW27 is the doctor, who gave First Aid to the deceased at the District Hospital, Mahasamund, and he sent his MLC intimation Ex.P33 to the City Kotwali, Mahasamund. He stated in his evidence that on

19.12.2016 he examined the deceased-Ombai at about 10.30 am. He stated that the deceased was in conscious condition, and she as well as the attendant who brought her to the hospital, have disclosed that she died due to kerosene oil. The smell of kerosene oil was coming out from her whole body, as well as from her clothes, and she received superficial burn injuries. Her face and head were not burnt but other parts of the body were burnt. He found total of 85% 2nd degree burn injuries of derma epidermal burns. Her condition was deteriorating, and therefore, he referred her to the Medical College Hospital, Raipur (Dr BR Ambedkar Hospital), and his report is Ex.P34. On the same day at about 11.20 am, Ex.P1 was recorded in which he certified that the patient was fit to give her statement. On the same day, at about 11.30 am, another statement was recorded by Naib Tahsildar, which is Ex.P24. In the document Ex.P24, Naib Tahsildar has made an endorsement that at the time of giving the statement, the victim was in conscious condition, and was able to give her statement, and below that, he made his signature.

He admitted in his cross-examination that when Police persons have asked Ombai, she disclosed that at the time of igniting the earthen stove, her sari caught fire, by which she got burn injuries, and no one got her burnt. The same statement she gave while recording her 2nd Dying Declaration Ex.P24 on 19.12.2016.

49. PW28-Rajiv Nahar is the Sub-Inspector of Police and Investigating Officer of the case. He stated in his evidence that on 23.12.2016, one

Lalji Chelak made a written complaint to him that his niece had got 90% burn injuries, and her statement may be recorded in the presence of her parents. He also made a complaint that the victim was being harassed by her in-laws and husband. The proceeding of Pariwar Paramarsh Kendra, Mahasamund, was also drawn and he disclosed the earlier dispute between them. Considering the reasons mentioned in the application, he was sent to the hospital at Raipur by the Station House Officer, Tumgaon Police Station, Mahasamund. He made an application to the In-charge doctor at the Dr BR Ambedkar Hospital, Raipur, which is Ex.P35, and the doctor Dr Ramesh has certified that the patient was conscious, and is able to give her statement. Thereafter, on 25.12.2016 at 3.30 pm, when he enquired from her, she disclosed the entire incident that after drinking tea, her husband started quarrelling, insisted her for bringing money from her parents, and beat her. Thereafter, he poured kerosene oil upon her and set her ablaze with a match stick. When she started shouting, he tried to extinguish the fire with a jute bag, and thereafter, people gathered there. He stated in his evidence about the statement given by the deceased, and thereafter, he recorded Dehati Nalishi, Ex.P36 on her instance. Her 161 CrPC Statement Ex.P37 was also recorded by him, in which she disclosed the entire details of the incident, which she suffered. He further stated that on the basis of Dehati Nalishi, Ex.P36, the FIR, for the offence under Section 307 of the IPC is registered against the appellant which is Ex.P38. Thereafter, the appellant was taken into custody, and his memorandum statement Ex.P7

was recorded, his full pant, and shirt, were also seized vide seizure memo Ex.P8, and from his full pant and shirt, kerosene oil smell was coming out He arrested him, and arrest memo Ex.P9 was prepared. He also seized the plain soil, soil having kerosene oil, burnt sari, blouse, Salwar, burnt pieces of full pant, jute bag, plastic jerrycan, having smell of kerosene oil, and match box from the spot vide seizure memo Ex.P5. He also made a request letter Ex.P31 to the SDM for recording her dying Declaration, and he also recorded Spot Map Ex.P39.

In cross-examination, he stated that he had gone to the hospital at Raipur on the instruction of the SHO, Police Station Mahasamund, and after recording Dehati Nalishi, Ex.P36, he conducted the investigation. He denied the suggestion that the deceased was not in a fit condition to speak. He proved the process of investigation, and whatever he has done during the investigation on his part.

50. PW29, Dr GM Nirala, who conducted the postmortem of dead-body of the deceased, found 88% burn injuries on the body of the deceased, and after the postmortem, he opined that the burn injuries are anti-mortem burn injuries and death of the deceased was due to cardio arrest and burn injuries, as a result of burn injuries and their complications, which is Ex.P28A. Death of the deceased by burn injuries and its complications have not been specifically challenged by the defence.

51. Hon'ble Supreme Court in the matter of **Kamla (Smt) Vs State of Punjab (1993) 1 SCC 1** decided that conviction can be made on the sole basis of Dying Declaration, if it is found to be free from infirmities, and satisfies the requirement. In para-5 of its judgment, it is held that:

5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide *Khushal Rao v. State of Bombay* [AIR 1958 SC 22 : 1958 SCR 552 : 1958 Cri LJ 106]). The ratio laid down in this case has been referred to in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

52. In the matter of *Ashabai v. State of Maharashtra, (2013) 2 SCC 224*, the Hon'ble Apex Court has laid down the law on the field that when there are multiple Dying Declarations, each Dying Declaration has to be separately assessed and evaluated. In para-15 of its judgment, it has been held that:

Evidentiary value of the dying declaration

15. About the evidentiary value of the dying declaration of the deceased, it is relevant to refer to Section 32(1) of the Evidence Act, 1872, which reads 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.

(2)-(8)*”**

It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32(1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor is it required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the

dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other.

53. Further, in the matter of *State of Punjab v. Parveen Kumar*, (2005) 9 SCC 769, the Hon'ble Supreme Court in para-10 of its judgment has held that:

10. While appreciating the credibility of the evidence produced before the court, the court must view the evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying

declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in *Thurukanni Pompiah v. State of Mysore* [AIR 1965 SC 939 : (1965) 2 Cri LJ 31] and *Khushal Rao v. State of Bombay* [1958 SCR 552 : 1958 Cri LJ 106] .

54. In case of *Amol Singh v. State of M.P.*, (2008) 5 SCC 468, at para-13 of its judgment, it has been held by the Hon'ble Supreme Court that:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement

should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See *Kundula Bala Subrahmanyam v. State of A.P.* [(1993) 2 SCC 684 : 1993 SCC (Cri) 655]) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

55. The issue of multiple dying declarations has been further considered by the Hon'ble Supreme Court in the case of *Makhan Singh v. State of Haryana, (2023) 13 SCC 760*, and it is held thus:

12. The law with regard to dying declaration has been summarised by this Court in *Lakhan [Lakhan v. State of M.P., (2010) 8 SCC 514 : (2010) 3 SCC (Cri) 942]*, wherein the Court considered various oral judgments on the issue and observed thus : (SCC pp. 521-22, para 21)

“21. In view of the above, the law on the issue of dying declaration can be summarised to the effect that in case the court comes to the conclusion that the dying declaration is true

and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”

13. It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are

multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

56. Further, in the matter of *Jagbir Singh v. State (NCT of Delhi)*, (2019) 8 SCC 779, it has been held that :

31. A survey of the decisions would show that the principles can be culled out as follows:

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31.6.(vi) However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.

31.7.(vii) In such cases, where the inconsistencies go to some matter of detail or description but are incriminatory in nature as far as the accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

31.8 (viii) The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In one dying declaration, the accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two.

57. In case of *Uttam v. State of Maharashtra, (2022) 8 SCC 576*, in para-15 of its judgment it is held that:

15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the

court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion.

58. Hon'ble Supreme Court in case of *Abhishek Sharma v. State (NCT of Delhi), 2023 SCC OnLine SC 1358*, has further considering the various pronouncements, has laid down certain principles for the Court to consider, when dealing with the cases involved in multiple Dying Declarations. In para-9 of its judgment, it is held that :

9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken.

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each 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.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

59. The general ground of admissibility of the evidence mentioned in Section 32(1) is that in the matter in question, no better evidence is to be

had. The provisions in Section 32(1) constitute further exceptions to the rule which exclude hearsay. As a general rule, oral evidence must be direct (Section 60). The eight clauses of Section 32 may be regarded as exceptions to it, which are mainly based on two conditions: a necessity for the evidence and a circumstantial guarantee of trustworthiness. Hearsay is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence, namely, the oath and cross-examination. But where there are special circumstances which gives a guarantee of trustworthiness to the testimony, it is admitted even though it comes from a second-hand source. The Supreme Court emphasized on the principle enumerated in the famous legal maxim of the Law of Evidence, i.e., *nemo moriturus praesumitur mentire* which means a man will not meet his Maker with a lie in his mouth. Our Indian Law also recognizes this fact that “a dying man seldom lies” or in other words “truth sits upon the lips of a dying man”. The relevance of this very fact, is an exception to the rule of hearsay evidence.

60. 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**, 1984 4 SCC 116

in which their Lordships have summarised the principles enumerated in Section 32(1) of the Evidence Act, including relating to “circumstances of the transaction” as under:

“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.

(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.”

61. In the matter of **Purshottam Chopra and another v. State (Government of NCT of Delhi)** (2020) 11 SCC 489 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:-

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.”

62. In view of the aforementioned cases and the law laid down by the Hon'ble Supreme Court, there may be Dying Declarations where inconsistencies are found between them the extent of inconsistencies is to be considered by the Court. It depends upon the availability of evidence as to which Dying Declaration to be relied upon, and which to be excluded from the case.

63. In the present case, from perusal of the 1st Dying Declaration, recorded on 19.12.2016 there is no certification of the doctor that she was able to give her statement before recording of her Dying Declaration

but it has been mentioned in the left middle side of her Dying Declaration. This 1st Dying Declaration Ex.P1 has been recorded at the District Hospital, Mahasamund at 11.20 am. Immediately after 5 minutes, her 2nd Dying Declaration Ex.P24 was recorded by Naib Tahsildar, Mahasamund. In the 2nd Dying Declaration, same statement as in the 1st one was made by the victim, and before recording the 2nd Dying Declaration, no certification of the doctor was obtained, and at bottom of this document, Naib Tahsildar himself has inserted the word that **'victim was in conscious state, and in fit state of mind, to give her statement'**, and the doctor has only made his signature, which has also been proved by the doctor that Tahsildar himself has made endorsement about the fitness of the victim to give her statement and he only made his signature.

64. From the perusal of the 1st and 2nd Dying Declarations, Ex.P1 and Ex.P24 respectively, it is clear that both these documents are made in the same format, and the question and answer are also almost similar. In both these documents, there is no mention of the fact that the victim got burn injuries from kerosene oil. From the evidence of PW27 Dr Manprit Gurudutta, who gave the victim first-aid, and medically examined her on 19.12.2016, at about 10.30 am i.e. prior to recording her 1st and 2nd Dying Declarations, it is clear that when he medically examined the victim, the smell of kerosene oil was coming out from the whole of her body, and her sari, whereas, not a single word came in her two Dying Declarations with respect to the presence of kerosene oil, either on her body or on her sari.

The plastic jerry can having kerosene smell, matchbox, half burnt sari, full pant, and kerosene smell soil seized from the spot clearly substantiated the fact that the victim burnt due to kerosene oil, and not while igniting the earthen stove. The process of igniting an earthen stove is very commonly known to everybody in villages. No one can receive the smell of kerosene oil on the whole of their body or clothes while igniting the earthen stove.

65. From perusal of MLC report Ex.P34, which was given by Dr. Manprit Gurudutta PW27, it reveals that he has mentioned the fact that kerosene oil smells coming from the whole body and clothes. Further, from the MLC intimation, sent by the said doctor, Ex.P33 also, he has given the intimation that the victim was taken to the hospital in burnt condition by kerosene oil.

66. When there is a discrepancy in the circumstances, as well as the evidence of the doctor, and the person who recorded the Dying Declarations, these two Dying Declarations Ex.P1, and Ex.P24 cannot be taken into consideration on the grounds that the same is not corroborated with the facts and evidence available in the case.

67. The 3rd Dying Declaration Ex.P32, recorded on 24.12.2016 at 4.05 pm, by the Tahsildar, Raipur at Dr BR Ambedkar Hospital, in the Burn Unit, has duly been proved by him, in which the doctor has certified that the patient is conscious and able to give her oral statement. Thereafter,

the Dying Declaration was recorded, and he obtained her signature on it. This document is corroborated by Dehati Nalishi Ex.P36, and her statement recorded under Section 161 of the CrPC, recorded by PW28, Rajiv Nahar. He duly proved the recording of Dehati Nalishi, and the statement of the victim recorded under Section 161 CrPC. The said three documents, Ex.P32- the 3rd Dying Declaration, recorded on 24.12.2016; Ex.P36-Dehati Nalishi, recorded on 25.12.2016; and the 161 CrPC statement of the victim recorded on 25.12.2016, are completely corroborated with each other, and other evidence available on record.

68. Considering the aforementioned factors, and the law laid down by the Hon'ble Supreme Court, the Dying Declaration recorded on 24.12.2016 by the Tahsildar Raipur, PW25 Anubhav Sharma and Dehati Nalishi Ex.P36, recorded by Rajiv Nahar, are acceptable, in view of corroborated evidence available in the case, in which the deceased described that she received burn injuries by kerosene oil.

69. Further considering the other evidence, it is clear that the deceased was set ablaze by the present appellant, and there is sufficient evidence on record to hold him guilty for the alleged commission of the offence, and we find no good ground to take a different view than that of learned trial Court.

70. In view of the above consideration, we do not find any good ground to interfere with the appeal, and the impugned judgment of conviction

and sentence, passed against the appellant. **The appeal filed by the appellant, therefore, is dismissed.** He shall undergo the entire jail sentence as imposed upon him by the learned trial Court.

71. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

72. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head Note

- Where there is plurality of Dying Declaration, each of them has to be separately assessed, and evaluated, and the one which is found to be voluntary, reliable, and made in fit mental condition under the surrounding facts and circumstances of the case, it can be relied upon without any corroboration.
- The report of the occurrence was dictated by the deceased herself with respect to the transaction which resulted in her death is admissible under Section 32 of the Indian Evidence Act, 1972 as a Dying Declaration.