



2025:CGHC:27197-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1281 of 2024**

**1** - Dhaneshwar Yadav S/o. Late Nankidau Yadav Aged About 26 Years  
R/o. Village- Dhimani, Chouki-Adhabhar, P.S.- Malkhorada, District-  
Janjgir-Champa (C.G.)

**2** - Mangli Bai Yadav W/o. Late Nankidau Yadav Aged About 63 Years  
R/o. Village- Dhimani, Chouki-Adhabhar, P.S.- Malkhorada, District-  
Janjgir-Champa (C.G.)

... Appellants

versus

State of Chhattisgarh, through Police Station- Malkhorada, District-  
Janjgir-Champa (C.G.)

... Respondent

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For Appellants : Mr. Ashok Kumar Swarnakar, Advocate

For Respondent/State : Mr. Shakib Ahmed, Panel Lawyer  
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**Hon'ble Mr. Ramesh Sinha, Chief Justice and**  
**Hon'ble Mr. Bibhu Datta Guru, Judge**

**Judgment on Board****Per Ramesh Sinha, CJ****24.06.2025**

1. In this criminal appeal filed under Section 374(2) of Cr.P.C., the accused-appellants are calling in question the legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 09.05.2024, passed in Sessions Case No.27 of

2022 (State of Chhattisgarh v. Dhaneshwar Yadav & Another), by the 1<sup>st</sup> Additional Sessions Judge, Sakti, District Janjgir-Champa (C.G.), whereby they both have been convicted for offence under Section 302 read with Section 34 of IPC and sentenced to undergo imprisonment for life and fine of Rs. 1,000/-, in default of payment of fine, additional RI for six months.

2. The prosecution case in brief is that deceased Radha Bai was married to accused Dhaneshwar on 16 April 2015. The accused used to harass the deceased by abusing and beating her over petty matters and they used to ask her to bring money from her parents' house. On 01.09.2021, the accused together poured kerosene on the body of the deceased Radha Bai and set her on fire, due to which she died on 06.09.2021 in the hospital during treatment. On the information of Omprakash Verma (PW13), ward boy of DKS Super Specialty Hospital Raipur, a case number 0/762/2021 (Ex.P-21) was registered in relation to the death of the deceased in Golbazar Police Station, Raipur, and the body was post-mortemed and the PM report (Ex.P-22) was obtained. Thereafter, a First Information Report (Ex.P-34) bearing Crime No. 15/2022 was registered against the accused in Malkharoda Police Station under Sections 304B, 302, 34 IPC and investigation was carried out. A matchbox with four sticks was seized from accused Dhaneshwar Yadav as per seizure memo (Ex.P-4). A square blanket, a half burnt pant, a half burnt saree, a plastic sprite bottle were seized from the crime scene as per seizure

memo (Ex.P-5). A wedding card with an envelope was seized from Rajeshwar Prasad Yadav as per seizure memo (Ex.P-6). The dying declaration of the deceased (Ex.P-17) was recorded by the Executive Magistrate and memorandum statement of accused Dhaneshwar (Ex.P-7) was recorded. FSL report (Ex.P-31) was obtained after chemical test of the seized property and the sight map (Exs.P-8 & 9) and site panchnama (Ex.P-10) of the crime scene were obtained from the Patwari. The accused were arrested as per the arrest slip (Exs.P 26 & 27). After complete investigation, a charge sheet was presented against the accused under Sections 304 B, 302, 34 IPC and as per the surrender order passed by the Court of Judicial Magistrate First Class Malkharoda, the case was received for session trial to the Court of 1<sup>st</sup> Additional Sessions Judge, Sakti, District – Janjgir-Champa

3. When charges were framed against the accused under Section 302 read with Section 34 of IPC and in the alternative Section 304B read with Section 34 and were read out to them, they denied the crime and claimed trial.
4. When the accused were examined under Section 313 of the Code of Criminal Procedure, they stated that Radha Bai died by pouring kerosene on herself and setting herself on fire because she was adamant to go to her parent's house and that they were innocent. On behalf of the accused, witnesses Narayan Das Mahant (DW-1) and Rathram alias Littu (DW-2) were examined in their defence.

5. In support of their case on behalf of the prosecution, PW-1 Gopiram, PW-2 Dayamati, PW-3 Rajeshwar Prasad Yadav, PW-4 Mahadev Yadav, PW-5 Sharankunwar Yadav, PW-6 Hariram Yadav, PW-7 Kamlesh Gabel, PW-8 Sumitra Yadav, PW-9 Rajendra Yadav, PW-10 Assistant Sub-Inspector Narayan Sen, PW-11 Dr. Azim Alam, PW-12 Naib Tehsildar Umang Jain, PW-13 Ward Vyaya Omprakash, PW-14 Dr. Shivnarayan Manjhi, PW-15 Dr. Anil Chaudhary, PW-16 Patwari Vimlesh Kumar, PW-17 Assistant Sub-Inspector Mohd. Tasleem Arif, PW-18 Sub-Inspector Naveen Patel, PW-19 Sub-Inspector S.C. Chauhan, PW-20 Executive Magistrate Rakesh Kumar Devangan, PW-21 Constable Virendra Kumar Sandilya have been examined. Beside the aforesaid ocular evidence, prosecution has also produced as many as 35 documents (Ex.P-1 to Ex.P-35) and copy of wedding card as Article 1.
6. The learned trial Court after appreciating the oral and documentary evidence available on record, acquitted the accused-appellants from the charges under Section 304B of IPC, however, convicted them for offence under Section 302 read with Section 34 of IPC and sentenced them as mentioned in the opening paragraph of this judgment, against which this appeal has been preferred by the appellants-accused questioning the impugned judgment of conviction and order of sentence.
7. Mr. Ashok Kumar Swarnakar, learned counsel appearing for the appellants submitted that the learned trial Court is absolutely

unjustified in convicting the appellants for offence under Section 302/34 of IPC, as the prosecution has failed to prove the same beyond reasonable doubt. He further submitted as per case of prosecution, the incident took place on 01.09.2021 and the deceased died in D.K.S. Hospital, Raipur on 06.09.2021, but the FIR has been lodged on 15.01.2022 i.e. almost after delay of more than three months only on the basis of Merg Intimation, though the alleged dying declaration was record 02.09.2021 itself. There is no incriminating seizure from the appellants and there is no direct evidence in this case as per the prosecution and the person see the commission of crime and has been not supported the whole prosecution story. He also submitted that the case of the prosecution rests entirely on the testimony of P.W.-1 Gopiram (mama of deceased), P.W.-2 Dayamati (Mami of deceased) P.W.-3 Rajeshwar Prasad Yadav (brother of deceased) PW-4 Mahadeo Yadav (Father of deceased), P.W.-12-Nayab Tahsildar Umang Jain PW-14 Dr. Shivanarayan Manjhi PW-15 Dr. Anil Choudhari, PW-8 Sumintra Yadav, PW-9 Rajendra Yadav, PW-18 S.I.Navin Patel, PW-19 S.I. S.C.Chouhan, but some of the witness contradicted their story as well as whole prosecution story and most of the material witness have been hostile including memorandum and seizure also, hence the prosecution story is doubtful and benefit of doubt be given to the appellants.

8. It has been argued by Mr. Swarnakar that there is no evidence available on record against the appellants to connect them with

the crime in question except the dying declaration (Ex.P/17). PW-7 Kamlesh Gabel, Sarpanch of the village has specifically stated that on the date of incident accused Dhaneshwar and his wife Radhabai, the deceased, were fighting and on being asked the reason for the dispute from Radhabai, wife of Dhaneshwar, she said that her husband fights over small things, so she will not stay here, she will go to her mother's house. This witness further stated that Radhabai was roaming around with kerosene oil on herself since morning, then he made Radhabai's talk with her father on his mobile, then her father said that there is no bus right now, he will come later. Then they came to their respective homes after convincing both the parties. After about 15-20 minutes, accused Dhaneshwar came to him and told that the deceased has set herself on fire and has locked the door. In his cross-examination, this witness further stated that when he made Radhabai talk to her parents on his mobile phone, she told her parents that if Dhaneshwar does not take her to her maternal home, she will set herself on fire. This witness has further stated that in Sakti Hospital, Radhabai told the police that since her in-law did not let her to go to her parent's house, so she poured kerosene on herself and set herself on fire. As such, the dying declaration (Ex.P/17) is not trustworthy, as it does not inspire confidence and cannot be relied upon to convict the appellants for the offence in question. Learned counsel relied upon the decisions of: (i) the Supreme Court in **Paranagouda v. State of**

**Karnataka**<sup>1</sup>; (ii) the Allahabad High Court in **Satyawan v. State of UP**<sup>2</sup> and (iii) the Coordinate Bench of this Court in **Jaiprakash Sahu and another vs. State of Chhattisgarh**<sup>3</sup> to bolster his submissions. Hence, the impugned judgment of conviction and order of sentence passed by the learned trial Court is liable to be set aside and the appellants deserves to be acquitted from the said charge on the basis of benefit of doubt.

9. *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submitted that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submitted that in view of dying declaration (Ex.P/17), wherein the deceased has clearly stated the name of the appellants herein to be authors of the crime coupled with other evidence available on record, the conviction and sentence passed by the learned trial Court against appellants is well merited and, therefore, present appeal deserves to be dismissed.
10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection and carefully as well.

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1 2023 SCC Online SC 1369

2 2022 SCC Online All 443

3 CRA-147-2012 dt. 12.12.2022

11. The conviction of the appellants have been substantially based on the dying declaration (Ex.P-17), supported by the evidence of Dr.Ajeem Alam (PW-11), who has certified that 'the patient is fit for statement', evidence of Executive Magistrate Umang Jain (PW-11), who has recorded the same and evidence of Gopiram (PW-1), Dayamati (PW-2), Rajeshwar Prasad Yadav (PW-3), who have specifically stated that the deceased had told them that accused had set her ablaze by pouring kerosene on her and on the basis of memorandum statement of accused Dhaneshwar Yadav (Ex.P-7), though the same has not been supported by the evidence of memorandum and seizure witnesses Rajeshwar Prasad Yadav (PW-3) and Rajendra Prasad Yadav (PW-9).
12. The first question for consideration would be, whether the trial Court was justified in holding that death of the deceased was homicidal in nature ?
13. The trial Court after appreciating oral and documentary evidence available on record, particularly, relying upon the statement of Dr. Shivnarayan Manjhi (PW-14), who has conducted postmortem of the dead body of the deceased and opined that cause of death was due to cardio-respiratory failure as a result of burn injuries and their complications and duration of death was within 24 hours prior to postmortem examination, has clearly come to the conclusion that death of deceased was homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor



contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

14. 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”

15. The general ground of admissibility of the evidence mentioned in Section 32(1) of the Evidence Act 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. 12. 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***, reported in ***(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”, which are 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.”

16. In the matter of ***Purshottam Chopra and another v. State (Government of NCT of Delhi), reported in (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.”

17. Where several dying declarations are made the test is whether the version of the deceased is proved to be false in respect of the integral part of the case. A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declarations they should be consistent particularly in material particulars [See: ***Kamla v. State of Punjab, (1993) 1 SCC 1***]
18. In the matter of ***Mohanlal Gangaram Gehani v. State of Maharashtra***, reported in ***AIR 1982 SC 839***, their Lordships of the Supreme Court held that where there are more than one statement in the nature of dying declaration made by the accused, one first in time must be preferred.
19. In a recent judgment rendered by their Lordships of the Supreme Court in the matter of ***Makhan Singh v. State of Haryana***, reported in ***AIR 2022 SC 3793 : 2022 SCC Online SC 1019***, while considering the issue of multiple dying declarations, their Lordships have held as under:-

“9. 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 scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

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20. We therefore find that in the facts and circumstances of the present case, the first dying declaration (Ex. DO/C) will have to be considered to be more reliable and trustworthy as against the second one (Ex. PE). In any case, the benefit of doubt which has been given to the other accused by the trial court, ought to have been equally given to the present appellant when the evidence was totally identical against all the three accused.”

20. In addition to this, a Constitution Bench of the Supreme Court in the matter of ***Laxman v. State of Maharashtra***, reported in (2002) 6 SCC 710 has clearly held that a certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. Their Lordships held in paragraph 5 of the report as under: -

“5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur v. State of Punjab* [(1999) 6 SCC 545] wherein the Magistrate in



his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma v. State of A.P.* [(1999) 7 SCC 695] (at SCC p. 701, para 8) to the effect that "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in *Paparambaka Rosamma* (supra) must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat* [(1999) 9 SCC 562].

21. The Supreme Court in the matter of ***Jagbir Singh v. State (NCT of Delhi)***, reported in **(2019) 8 SCC 779** following the principle of

law laid down in ***Laxman*** (supra) has clearly held that even absence of the certificate by a doctor is not fatal to act upon a dying declaration, however, the requirement remains that the person who records dying declaration must ensure that the patient was in a fit condition, both mentally and physically, to give the declaration.

22. Returning to the facts of the present case in the light of principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that before recording the dying declaration of deceased Radhabai, she was certified by Dr.Ajeem Alam (PW-11) that the patient is fit for statement, thereafter, deceased dying declaration (Ex.P-17) has been recorded by the Executive Magistrate Umang Jain (PW-12) in which the deceased has clearly stated that at 1 pm, here mother-in-law (Mangali Bai) and husband (Dhaneshwar Yadav) poured kerosene on her and set her on fire. The fight has been going on for a long time, she has held her husband and mother-in-law respondent in her dying declaration. While examination of Dr.Ajeem Alam (PW-11) before the trial Court, neither the prosecution nor the defence has put any question to this witness regarding whether the deceased Radhabai was in a fit condition to give statement or not. Further, from perusal of the dying declaration, it is apparently clear that there is signature of the said Doctor which is indicative of the fact that he was present when the dying declaration was recorded and he had given her opinion that

the deceased was fit to give her dying declaration. Nothing has been extracted from the statements of Dr. Ajeem Alam (PW-11) and Executive Magistrate Umang Jain (PW-12) to hold that the deceased was not in fit physical and mental state of mind to give dying declaration and she (deceased) had not given any dying declaration. The statement given by the Executive Magistrate cannot be disbelieved as he is a Government Officer and has no vested interest in either of the parties. Even there is no suggestion as to why the Executive Magistrate would have deposed falsely against the appellant. As such, there is sufficient evidence available on record to believe that the dying declaration has been given by Radhabai (deceased) and her dying declaration (Ex.P-17) is true and voluntary.

23. Kamlesh Gabel (PW-7), who was Sarpanch of the village, has stated that the incident is of September 2021. Accused Dhaneshwar and his wife Radhabai, deceased, were fighting, so Radhabai brought village Kotwar Narayan Das along with her to his house and told him that her husband is fighting with her, so she will not stay here, she asked him to get it written down. Then he and Ratharam Bareth, Nankidau Bareth and Kotwar of the village together went to the house of the accused and asked the reason for the dispute from Dhaneshwar's wife Radhabai, she said that her husband fights over small things, so she will not stay here, she said she will go to her maternal home. Radhabai was roaming around with kerosene oil on herself since morning, then

he made Radhabai talk to her father on his mobile, then her father said that he is not here right now, he will come later. Then they came to their respective homes after convincing both the parties. After about 15-20 minutes, accused Dhaneshwar came to him and told him that the deceased had set herself on fire and had locked the door. Then he asked accused Dhaneshwar to call the ambulance, then he said that accused Dhaneshwar had already called the ambulance. Dhaneshwar brought his wife to Sakti Hospital in an ambulance, later they went to Sakti Hospital on a motorcycle to see her.

24. This witness was declared hostile by the prosecution and on being asked the leading questions, he stated that on 01.09.2021 in the morning, there was a fight between Radhabai and Dhaneshwar Yadav. On receiving the information, he went to the house of the accused and after advising Dhaneshwar Yadav and his wife Radhabai to not fight or quarrel, he came back. When he went to the house of the accused and looked inside the room, Radhabai was lying in a burnt state.
25. In cross-examination, this witness has stated that Radhabai never came to him or the Panchayat with any complaint regarding dowry. Even on the date of the incident, she had not made any complaint regarding dowry. When he asked the reason for the dispute, Radhabai kept telling him the same thing again and again that get her paperwork done and she will go to her maternal home. He came to know that Radhabai was having a love affair

with a person from Korba. When he made Radhabai talk to her parents from her maternal home over phone, she had told her parents that if Dhaneshwar did not send her to her maternal home, she would set herself on fire. When he went to Radhabai's house to counsel her, even then she was in a condition where kerosene was poured on herself. In Sakti Hospital, Radhabai had told the police that her in-laws did not allow her to go to her maternal home, so she poured kerosene on herself and set herself on fire, but his statement is not supported by the doctor of Sakti Hospital, the parents of the deceased and the deceased at the time of her death and there is no evidence that who told him that with whom the deceased had a love affair, due to which the statement of this witness is not reliable as it is doubtful.

26. Defence witness Narayan Das Mahant (DW-1) has stated that the incident is of September 2021. Dhaneshwar had come to him. He said that there was a dispute between husband and wife in his house. Then he, Sarpanch Kamlesh Gabel and Littu Bareth went to Dhaneshwar's house. At that time Mangali Bai had gone to a neighbour's house with the children. When they went to Dhaneshwar's house, Dhaneshwar's wife Radha Bai was sitting with kerosene oil poured on her. When they asked why kerosene was poured, she said that she does not want to live with him anymore. Get her leave papers done. After that, Sarpanch Kamlesh Gabel called Radha Bai's father, kept the phone on speaker and spoke to Radha Bai's father in front of them.

Sarpanch Kamlesh Gabel told Radha Bai's father that Radha Bai does not want to live here anymore, you people come, then Radha Bai's father told Radha Bai over the phone that he is busy at work right now, he cannot come today, he will come the day after tomorrow, then Radha Bai said that decide today itself or else she will set herself on fire. After that they convinced Radha Bai and left from there. He, Sarpanch Kamlesh Gabel and other people of the village went to their respective homes. Littu Bareth stayed with Dhaneshwar outside his house while talking with him. After some time, about 15-20 minutes later, a boy from the village came to tell that Radha Bai has set herself on fire, then he went to Dhaneshwar's house. After some time, the police came. Radha Bai was taken to Sakti Hospital, after which he came home. Radha Bai poured kerosene on herself and set herself on fire due to which she died. In cross-examination, he has stated that the deceased Radha Bai used to work as an Anganwadi Sahayika and used to maintain her house. Accused Dhaneshwar Yadav drinks alcohol and does not do any work. Accused Dhaneshwar Yadav used to fight with his wife after drinking alcohol. I have heard that he used to do it at any opportunity but I have not seen it. Thus, this witness has not stated in his statement that he saw Radhabai pouring kerosene on herself and setting herself on fire and his statement is not supported by the statement of the deceased's father Mahadev Yadav (PW-4), due to which his statement is not reliable as it is doubtful.

27. Another defence witness, Ratharam alias Littu (DW-2) has stated that the incident date was 01 September 2021. Radha Bai was fighting with her husband to go to her mother's house. Dhaneshwar had come to call them that they will counsel his wife, then he, Sarpanch Kamlesh Gabel, Kotwar Narayan Das went to Dhaneshwar's house. When they went to Dhaneshwar's house, Radha Bai was sitting with kerosene oil on her. They counselled her and Dhaneshwar had no money in his mobile, so they called Radha Bai's father from Kamlesh Gabel's mobile, when they called, the phone was on speaker, so they heard Radha Bai's father's conversation. They told her father that Radha Bai is sitting with kerosene oil on her because she is adamant on going to her maternal home, then her father counselled Radha Bai not to do any such wrong thing, then Radha Bai said that take her away today itself or else she will set herself on fire, then her father said that I will come to take her tomorrow, don't take any wrong step. After that they explained to Radha Bai and Kamlesh Gabel and Kotwar went to their house. He and Dhaneshwar were talking outside Dhaneshwar's house and told Radha Bai to go and take a bath. After some time Radha Bai shouted loudly. The door of the house was locked. Hearing the shouting sound, he and Dhaneshwar went towards the room. Dhaneshwar kicked the door and opened it. The latch was locked and it opened. Dhaneshwar was trying to put out the fire on Radhabai by pouring water on it. He refused and told her to put it out by covering her with a sheet.

After that Dhaneshwar called the ambulance and the people of the village gathered. Radhabai was brought to Sakti Hospital in an ambulance. Dhaneshwar brought Radhabai in an ambulance. Some people followed her to Sakti Hospital. Radhabai's treatment started in Sakti Hospital and the police reached there. Radhabai told the doctor and the policeman that she was not allowed to go to her maternal home, so she poured kerosene on herself and set herself on fire. In cross-examination, she has stated that the deceased used to cook in the school and the household expenses were met from her earnings. The information about the deceased pouring kerosene on herself and sitting was not given by her, the Kotwar, or the Sarpanch to the police station. Thus, this witness has also not stated in his statement that he saw Radhabai pouring kerosene on herself and setting herself on fire and his statement is not supported by the statement of the deceased's father Mahadev Yadav (PW-4). He has stated that the information about the deceased pouring kerosene on herself and sitting was not given by him, the Kotwar, or the Sarpanch to the police station, due to which his statement is doubtful and is not reliable.

28. It is clear from the statements of the prosecution witnesses and the investigation done that Gopiram (PW-1) has stated in his statement that when he asked Radhabai what happened to her and how she got burnt, Radhabai told him that her husband had burnt her by pouring kerosene on her. Dayamati (PW-2) has stated in her statement that when they had questioned Radhabai



in the Government Hospital Sakti, she had told that both her husband Dhaneshwar Yadav and mother-in-law Mangali Bai, saying that she was not bringing money from her parents' house, snatched her child, poured kerosene oil over her and set her on fire and closed the door of the room. Rajeshwar Prasad Yadav (PW-3) has also stated in his statement that he had talked to his sister, the deceased, and her sister had told her that her husband and mother-in-law had poured kerosene oil on her and set her on fire.

29. The deceased's father Mahadev Yadav (PW-4) has stated in his statement that they met the deceased in the hospital in Sakti, her body was completely burnt, she was talking, her daughter had told him that her husband and mother-in-law had burnt her, saying that she should bring money from her maternal home. The deceased's mother Sharan Kunwar Yadav (PW-5) has stated in her statement that they met the deceased in the hospital in Sakti, her body was completely burnt, she was talking, her daughter had told her that her husband and mother-in-law had burnt her, saying that she should bring money from her maternal home. Sumitra Yadav (PW-8) has stated in her statement that when Radhabai was being treated in Raipur, she had gone to Raipur to meet Radhabai. On asking Radhabai, she had told that her husband had burnt her and had locked the door of the room.
30. On the basis of the memorandum of the accused in the case, recovery of the matchstick used in the incident is an important

circumstance against the accused for his involvement in the incident. It is proved that a half burnt square printed blanket, a half burnt square printed blanket, a half burnt muddy coloured pant, a half burnt piece of green coloured sari, a green coloured plastic sprite bottle smelling of kerosene oil were seized from the room of the accused's house at the place of incident. In FSL report Ex.P.31, traces of kerosene oil have been found in the seized blanket Exhibit A, blanket Exhibit B, full paint Exhibit C, half burnt sari Exhibit D, green coloured plastic sprite bottle Exhibit E.

31. In this case, it is proved that kerosene-scented Sprite bottle and matchbox were seized from the place of incident at the house of the accused, which proves that the accused had formed a common intention to commit the crime and in furtherance of it, they intentionally killed the deceased. Thus, the charge against the accused under Section 302 read with Section 34 IPC is proved beyond doubt.
32. In view of the above discussion, this Court is of the considered opinion that the judgment passed by learned trial Court is based on proper appreciation of evidence which is neither perverse nor contrary to the record as well as law laid down by the Hon'ble Supreme Court and the same needs no interference as such, the judgment of conviction and order of sentence awarded to the appellants **Dhaneshwar Yadav and Mangali Bai** is hereby affirmed.

33. In the result, the instant criminal appeal is hereby **dismissed**. The appellants are reported to be in jail. They shall serve the remaining period of jail sentence as has been awarded to them by the learned trial Court.
34. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are 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.
35. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-  
**(Bibhu Datta Guru)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice

**Head-Note**

Once a dying declaration is found to be authentic inspiring confidence of the Court, then the same can be relied upon and can be the sole basis for conviction without any corroboration.