



2026:CGHC:15519-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 206 of 2022

Santosh @ Golu Srivas S/o Bharat Srivas Aged About 35 Years R/o Village- Dilwapara Pandatarai, Presently residing at Rabeli, P.S.- Pipariya, District- Kabirdham, Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through P.S.- Pipariya, District : Kawardha, Chhattisgarh

... Respondent

For Appellants : Mr. Saurabh Dangi, Advocate

For Respondent/State : Mr. Priyank Rathi, Govt. Advocate

**Hon'ble Mr. Ramesh Sinha, Chief Justice and
Hon'ble Mr. Ravindra Kumar Agrawal, Judge**

Judgment on Board

Per Ramesh Sinha, CJ

06.04.2026

1. In this criminal appeal filed under Section 374(2) of Cr.P.C., the accused-appellant is calling in question the legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 27.12.2021, passed in Sessions Case No.06 of 2020 (State of Chhattisgarh v. Santosh @ Golu Shrivias), by the Sessions Judge, Kabirdham (Kawardha), Chhattisgarh, whereby the appellant has been convicted for offence under Section 302 of

IPC and sentenced to undergo imprisonment for life and fine of Rs. 500/-, in default of payment of fine, additional RI for one month.

2. The prosecution case, in brief, is that on 18.11.2019, in village Rabeli, the husband of Lata Shrivasa (the accused) had been consuming alcohol since morning. He was suspicious of his wife, Lata Shrivasa. Due to poverty, Lata Shrivasa used to work as a labourer. The accused quarrelled with her, closed the door of the house, poured kerosene on her, and set her on fire with a matchstick. While in a burning condition, Lata Shrivasa opened the door, ran outside, and extinguished the fire in a nearby pond. She was then taken to the District Hospital, Kawardha, by Vehicle 112. On the same day, Head Constable Krishnakumar Chandravanshi (PW-9), who was on duty at the Police Assistance Centre at the District Hospital, prepared an application (Ex.P-14) for her medical treatment and submitted it to the District Hospital, Kabirdham. Dr. Anjubala (PW-10) sent an intimation (Ex.P-16) to the Station House Officer, Kawardha, and after conducting a medical examination of Lata Shrivasa, provided a medical report (Ex.P-14).
3. On 18.11.2019, Head Constable Krishnakumar Chandravanshi (PW-9) also submitted an application (Ex.P-15) to the SDM, Kawardha, for recording the dying declaration of Lata Shrivasa. On the instructions of the SDM, Kawardha, B. Chauhan (PW-11) reached the District Hospital, Kawardha, and recorded the dying

declaration (Ex.P-17) of Lata Shrivastava. On 20.11.2019, Inspector Mukesh Som (PW-12) registered a rural complaint (Ex.P-18) at the District Hospital, Kawardha, based on the statement of Lata Shrivastava. On the basis of this complaint, a case under Section 307 of the IPC was registered against the accused vide Ex.P-19 on 21.11.2019. On the same day, a site map (Ex.P-02) was prepared. A 5-litre jerrycan, a matchbox, and a piece of burnt saree were seized from the place of occurrence vide seizure memo (Ex.P-08), and a sealed panchnama (Ex.P-20) was prepared. On 04.12.2019, an application (Ex.P-21) was sent to the Naib Tehsildar, Pipariya, for preparation of a site map by the Patwari. Thereafter, Patwari Deepak Kaushik (PW-7) prepared the site map and panchnamas (Ex.P-03 and Ex.P-04).

4. On 09.12.2019, information regarding the death of Lata Shrivastava during treatment at the District Hospital, Kawardha, was received from Dr. Keshav Dhruv (PW-8) vide Ex.P-13. Thereafter, Inspector Mukesh Som (PW-12) issued notice (Ex.P-11) to the panch witnesses for preparation of the inquest panchnama. In the presence of five witnesses, the inquest of the dead body of Lata Shrivastava was conducted, and the inquest report (Ex.P-12) was prepared (though due to a typographical error, it has been mentioned as Ex.P-11). An application (Ex.P-22) was sent to the District Hospital, Kawardha, for conducting the post-mortem examination. A rural intimation was registered (Ex.P-24), and an entry of unnatural death was recorded (Ex.P-23). On 09.12.2019,

Dr. Dharmendra Kumar (PW-13) conducted the post-mortem examination after receiving the body along with application Ex.P-22, and submitted the post-mortem report (Ex.P-29).

5. On 10.12.2019, Inspector Mukesh Som (PW-12) took the accused into custody and, after interrogation, recorded his memorandum statement (Ex.P-06). At the instance of the accused, a T-shirt was seized vide seizure memo (Ex.P-07). The accused was formally arrested vide Ex.P-24, and information regarding his arrest was given to his family members (Ex.P-25). The seized articles were sent to the State Forensic Science Laboratory, Raipur, for chemical examination along with a forwarding letter (Ex.P-26) issued by the Superintendent of Police. The receipt of dispatch is Ex.P-27, and the FSL report is Ex.P-28.
6. Statements of witnesses were recorded, and upon completion of the investigation, a charge-sheet was filed against the accused before the Court of the Chief Judicial Magistrate, Kawardha. The case was thereafter committed to the Court of the Sessions Judge for trial. When charges under Section 302 of the IPC were framed against the accused and read over to him, he denied the allegations and claimed trial.
7. In support of its case, the prosecution examined Savitri (PW-1), Sushila (PW-2), Tribhuvan (PW-3), Prabha (PW-4), Manoj (PW-5), Arjun (PW-6), Patwari Deepak Kaushik (PW-7), Dr. Keshav Dhruv (PW-8), Head Constable Krishnakumar Chandravanshi (PW-9),

Dr. Anjubala (PW-10), B. Chauhan (PW-11), Inspector Mukesh Som (PW-12), and Dr. Dharmendra Kumar (PW-13). The statement of the accused was recorded under Section 313 of the CrPC, in which he denied his guilt. However, he did not examine any witness in his defence.

8. The learned trial Court, after appreciating the oral and documentary evidence on record, convicted and sentenced the accused as mentioned in the opening paragraph of the judgment. Aggrieved by the said judgment of conviction and order of sentence, the accused/appellant has preferred the present appeal.
9. Mr. Saurabh Dangi, learned counsel appearing for the appellant submitted that the impugned judgment of conviction and order of sentence passed by the learned trial Court is contrary to law and evidence on record and is therefore liable to be set aside. He further submitted that although the prosecution has examined PW-1 and PW-2 as eyewitnesses, their testimonies are not reliable and suffer from material contradictions and inconsistencies, rendering them unworthy of credence. Their presence at the scene of occurrence is doubtful, and their statements do not inspire confidence to sustain a conviction. He also submitted that the prosecution has further relied upon the alleged dying declaration of the deceased, which is also doubtful due to non-compliance with proper procedure and absence of clear evidence regarding the mental fitness of the deceased at the

time of making such statement. There is no independent corroboration of either the alleged eyewitness accounts or the dying declaration. Moreover, the alleged motive has not been conclusively proved, and the seizure and forensic evidence do not firmly establish the involvement of the appellant. Hence, the prosecution has failed to prove its case beyond reasonable doubt. He contended that without prejudice to the above submissions, even if the prosecution case is taken at its highest, the incident appears to have occurred in the course of a sudden quarrel without any premeditation or intention to cause death. The facts and circumstances indicate, at best, an offence falling under culpable homicide not amounting to murder under Section 304 IPC, and not under Section 302 IPC. It is a settled principle that where the evidence is doubtful or two views are possible, the one favourable to the accused must be adopted. Therefore, it is most respectfully prayed that this Hon'ble Court may be pleased to set aside the conviction and sentence and acquit the appellant, or in the alternative, convert the conviction to a lesser offence under Section 304 IPC and reduce the sentence accordingly, in the interest of justice.

10. *Per-contra*, learned State counsel submitted that the impugned judgment of conviction and sentence passed by the learned trial Court is well-reasoned, legally sound, and based on proper appreciation of oral as well as documentary evidence on record, and therefore calls for no interference. He further submitted that

conviction has been rightfully rests on the dying declaration (Ex. P-17) of the deceased Lata Shriwas recorded by an Executive Magistrate (PW-11) shortly after the incident and certified for mental fitness by the attending medical officer (PW-10), the declaration is clear, unambiguous, and free from any tutoring and the deceased specifically named the accused as the perpetrator who poured kerosene on her and set her ablaze. He further submitted that the sequence of events detailed in the dying declaration is materially corroborated by independent witnesses neighbours Savitri Bai (PW-1) and Sushila Bai (PW-2) witnessed the deceased running out and jumping into the pond to extinguish the flames, precisely matching the victim's account. He also submitted that the medical testimony of Dr. Dharmendra Kumar (PW-13) validates the nature of the homicidal death, confirming 50-55% burn injuries. Furthermore, the FSL report (Ex. P-28) conclusively established the presence of kerosene oil on the seized burnt saree piece found at the crime scene and on the T-shirt recovered at the instance of the accused. The prosecution firmly established the motive of the accused, who suspected his wife's character, leading to a fatal altercation. His guilty mind and culpable conduct were further highlighted by PW-1, who testified that the accused stood idle outside his home while his wife was burning in the pond, making zero attempts to save her. It is further submitted that the act of the accused was deliberate and brutal, clearly demonstrating intention to cause death, thereby

attracting the offence under Section 302 IPC. The manner in which the accused confined the deceased, poured kerosene, and set her ablaze leaves no scope for any inference other than that of culpable intent. The defence has failed to create any reasonable doubt or discredit the prosecution evidence in any substantial manner. The plea of sudden quarrel or absence of intention is wholly untenable in light of the gravity and nature of the act committed.

11. 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.
12. The conviction of the appellants have been substantially based on the dying declaration (Ex.P-17), supported by the evidence of Dr. Dr. Anjubala (PW-8), who has certified that 'the patient is fit for statement', evidence of Naib Tehsildar B. Couhan (PW-11), who has recorded the same and evidence of Smt. Savitri Bai (PW-1) and Smt. Sushila Bai (PW-2), who were the eyewitnesses of the incident.
13. 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.

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14. 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. 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.”

15. 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.”

16. 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***]
17. 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.

18. 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.”

19. 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].

20. 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.
21. 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 aforestated judgments, it is quite vivid that before recording the

dying declaration of deceased Lata Shrivasa, she was certified by Dr. Anjubala (PW-10) that the patient is fit for giving statement, thereafter, deceased dying declaration (Ex.P-17) has been recorded by the Executive Magistrate B. Couhan (PW-11) in which the deceased has clearly stated that her husband (the accused) had been consumed alcohol since morning. He was suspecting about her character, she was poor and due to poverty, she used to work as a labourer and as such, her husband used to suspect upon her character. The accused quarrelled with her, closed the door of the house, poured kerosene on her, and set her on fire with a matchstick. She opened the door on burning condition, ran outside, and extinguished the fire in a nearby pond. While examination of Dr. Anjubala (PW-10) before the trial Court, neither the prosecution nor the defence has put any question to this witness regarding whether the deceased Lata Shrivasa 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 she was present when the dying declaration was recorded and she had given her opinion that the deceased was fit to give her dying declaration. Nothing has been extracted from the statements of Dr. Anjubala (PW-10) and Executive Magistrate B. Chouhan (PW-11) 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 interested 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 Lata Shrivvas (deceased) and her dying declaration (Ex.P-17) is true and voluntary.

22. Further, FSL Report Ex.P. 28 revealed the presence of traces of kerosene oil in the half-burnt sari and matchbox seized from the scene of crime, and in a T-shirt seized from the accused. Lata Shrivvas died on 09.12.2019 due to kerosene burns sustained on 18.11.2019. According to Dr. Dharmendra (PW-13), Lata Shrivvas died due to septic shock in the burnt parts. Consequently, it is plausible to conclude that the nature of Lata Shrivvas's death was homicidal.
23. At the time of the incident in question, the accused and the deceased, Lata Shrivvas, were present in the house. The accused closed the door, doused Lata Shrivvas with kerosene, and then set her on fire with a matchstick. This clearly indicates that the accused intended to cause Lata Shrivvas's death.
24. 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 appellant **Santosh @ Golu Shrivastava** is hereby affirmed.

25. In the result, the instant criminal appeal is hereby **dismissed**. The appellant is reported to be in jail. He shall serve the remaining period of jail sentence as has been awarded to him by the learned trial Court.
26. Registry is directed to send a copy of this judgment and transmit the original records to the trial Court concerned forthwith for necessary information and compliance and further 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.

Sd/-
(Ravindra Kumar Agrawal)
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.