2025:CGHC:39422-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 499 of 2025

Sitaram Ravi S/o Jeetan Ravi Aged About 40 Years R/o Village Adhoura P.S. Balrampur District - Balrampur - Ramanujganj (C.G.)

... Appellant(s)

versus

State Of Chhattisgarh Through Police Station Balrampur District - Balrampur- Ramanujganj (C.G.)

... Respondent(s)

For Appellant(s)	:	Mr. Ashok Kumar Swarnkar, Advocate
For Respondent(s)	:	Mr. Shashank Thakur, Dy. A.G.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

07.08.2025

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 27.11.2024 passed by the Additional Sessions Judge, Ramanujganj, District- Balrampur-Ramanujganj (C.G.) in Sessions Trial No.89/2019, whereby learned Additional

Sessions Judge has convicted the appellant for offence under Sections 498A of the IPC and sentenced him to undergo RI for 02 years and fine of Rs. 500/-, in default of payment of fine to further undergo RI for one month and under Sections 302 of the IPC and sentenced him to undergo RI for life and fine of Rs. 1000/-, in default of payment of fine to further undergo RI for three months.

2. The prosecution story in brief is that a report was lodged by Smt. Savita (PW-3) at the police post Manipur, Police Station Ambikapur that her daughter Sunita was married to Sitaram in the year 2007. Since the marriage, Sitaram used to quarrel and beat his wife Sunita saying that he would not give anything in dowry. On 02.05.2019, his son-in-law Sitaram returned home after attending a marriage ceremony in village Jabar and beat his wife Sunita over dowry issue and poured kerosene on her and set her on fire with the intention of killing her. When Sunita somehow ran out of the house to extinguish the fire, her elder brother-in-law Krishna Ravi and his wife Shanti, who live in the neighborhood, heard the noise and admitted her to Balrampur Hospital for treatment, where Sunita's condition did not improve and she was admitted to the District Hospital Ambikapur.

3. On the report of Smt. Savita (PW-3) at Manipur Police Outpost, Head Constable Anil Singh (PW-7) at Ambikapur Police Station, crime under Sections 498K and 307 of the Indian Penal Code was registered on zero by the police, the FIR registered on zero is Ex.P-34. When the diary of the crime without number was brought

to the Balrampur police station for registering the crime on number, Sub-Inspector of Balrampur Police Station Sampat Potai (PW 21) registered the First Information Report (Ex.P-37) for the crime under Sections 498K and 307 of the Indian Penal Code in Crime No. 112/2019.

4. Inspector Umesh Baghel (PW-14) prepared the map of the incident site (Ex.P-26) and gave written complaint (Ex.P-18) to Tehsildar Balrampur regarding preparation of Patwari map of the incident site. Assistant Sub-Inspector Nirmala Kashyap (PW-17) sent written complaint (Ex.P-33) to Executive Magistrate Ambikapur regarding appointment of Magistrate to record the dying statement of Sunita Ravi. Deputy Tehsildar Kishore Kumar Verma (PW-20) recorded Sunita's dying statement (Ex.P-36). Dr. V.C. Paikara (PW-16) advised to admit Sunita in Burn Ward due to her burns, OPD slip Exhibit is P-32.

5. After Sunita's treatment in Ambikapur, she was discharged on 28/05/2019 and her treatment continued at home and she died on 10/07/2019. On receiving the information of Sunita's death, an unnumbered FIR (Ex.P-29) was registered at Chalgali Police Station. On receipt of FIR No. 08/19 for numbering from Chalgali Police Station by Sub-Inspector Shantilal Kujur (PW-13), he registered FIR No. 34/2019 at Balrampur Police Station, which is Ex.P-15.

6. After Inspector Pradyuman Tiwari (PW-15) gave the written complaint (Ex.P-30) to the Executive Magistrate for the proceedings of the body panchanama, the Tehsildar Shabad Khan (PW-19) issued a notice (Ex.P-4) to the witnesses for the map panchayatnama and the map panchayatnama of the deceased (Ex.P-7) was prepared in front of the witnesses.

7. After the post-mortem examination of the dead body, an application was given as Ex.P-31. The initial treatment of the deceased was done by Dr. Arun Kumar (PW-12) as per Ex.P-14 and the body was examined by Dr. Bhaiyalal Rajwade after conducting the postmortem examination of the deceased, test report (Ex.P-35) was prepared and the postmortem report was presented. Later, the body was handed over to the deceased's brother Jagdish for cremation as per Ex.P-8. Inspector Umesh Baghel (PW-14) gave written complaint (Ex.P-27) to Medical Officer Balrampur for obtaining Sunita Ravi's bed head ticket and gave written complaint (Ex.P-28) to Chief Medical Officer Ambikapur for obtaining Sunita Ravi's bed head ticket.

8. In the course of investigation, the disclosure statement of accused Sitaram Ravi was recorded as Ex.P-1 and as per the seizure Ex.P-3, one plastic 5 litre oil can filled with half litre oil was seized and the panchanama of the seized can (Ex.P-02) was prepared.

9. On finding sufficient evidence of crime against accused Sitaram, he was arrested as per arrest sheet Ex.P-16 and accused Krishna

Ravi, Shravan Ravi, Jitan Ravi, Smt. Bhagmania Ravi, Smt. Dasaiya Ravi and Prabha Ravi were arrested as per arrest sheet Ex.P-19, 20, 21, 22, 23 and 24 and their family members were arrested as per arrest information Ex.P-17 and Ex.P-25. After investigation, a charge-sheet under Sections 498-A and 302 of the Indian Penal Code was presented against the accused in the court of Judicial Magistrate First Class Ramanujganj, Series Court Balrampur. Where Criminal Case No. 288/2019, (***Government vs. Sitaram Ravi and others***) was registered and surrendered by surrender order dated 04.09.2019.

10. Charges were framed against the accused under Sections 498-A, 302 of the Indian Penal Code, 1860. The accused denied the charges levelled against them and claimed trial. In their trial under Section 313 of the Code of Criminal Procedure, 1973 (Section 351 of the Indian Civil Defence Code, 2023), the accused did not produce any witness in their defence, claiming innocence and being falsely implicated.

11. In order to bring home the offence, the prosecution examined as many as 10 witnesses and exhibited 18 documents Exs.P-1 to P-18. Statement of the accused under Section 313 of the CrPC was recorded in which he denied guilt. However, he examined none in his defence.

12. The learned trial Court observing that it has not been proved from the available evidence that the accused Krishna Ravi, Shravan

Ravi, Jeetan Ravi, Smt. Dashaiya Ravi, Smt. Bhagmaniya Ravi and Smt. Prabha Ravi alias Gudiya beat the deceased Sunita for dowry demand, harassed her physically and mentally and behaved cruelly with her and killed the deceased Sunita Ravi by pouring kerosene over her and setting her on fire. Consequently, the accused Krishna Ravi, Shravan Ravi, Jeetan Ravi, Smt. Dashaiya Ravi, Smt. Bhagmaniya Ravi and Smt. Prabha Ravi alias Gudiya were given the benefit of doubt and were acquitted of the charges under Section 498K and 302 of the Indian Penal Code.

13. Thereafter, the trial Court after appreciating oral and documentary evidence available on record and relying upon evidence of Mohan (PW-1) father of the deceased, Shivdayal Sinha (PW-2) and Rajeshwari (PW-3) sister of the deceased, convicted the appellant for offence under Sections 498A and 302 of the IPC and sentenced him as mentioned in opening paragraph of this judgment.

14. Mr. Ashok Kumar Swarnkar, learned counsel appearing for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 302 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submits that there is no evidence available on record against the appellant to connect him with the crime in question. There is no incriminating seizure from

the appellant and there is no direct evidence in this case as per the prosecution and the person who is said to have seen the commission of crime has not supported the whole prosecution story. Further, the case of the prosecution rests entirely on the testimony of (P.W.-3) Smt. Savita Ravi (mother of deceased), (P.W.-1) Sukhsai Kodaku, PW-2 Rajmaniya Singh, PW-4 Jagdish Ravi, PW-20 Kishor Kumar Verma, PW-7 Amir Chand and PW-12 Dr. Arun, (PW-16) Dr V.C. Paikra, but some of the witnesses contradicted their story as well as whole prosecution story and PW-8 Neha Ravi (daughter of deceased), PW-9 Aniket Ravi (son of deceased), PW-6 Ravi Tirky, PW-10 Shanti Devi stated different story, hence the prosecution story appears to be doubtful and the benefit of doubt ought to have given to the appellant.

15. Learned counsel for the appellant further submits that the learned trial Court is erred in convicting the appellant and has not appreciated the evidence on record properly and has misread the evidence of P.W.-3 Smt. Savita Ravi (mother of deceased), P.W.-1 Sikhsai Kodaku, PW-2 Rajmaniya Singh, PW-4 Jagdu Ravi, PW-20 Kishor Kumar Verma, PW-7 Anil Singh, PW-12 Dr.Arun V.C. Paikra, but some of the witnesses contradicted their story as well as whole prosecution story and PW-8 Neha Ravi (daughter of deceased), PW-9 Aniket Ravi (son of deceased), PW-6 Ravi Tirky, PW-10 Shanti Devi stated different story but the same was ignored by the learned trial Court and considered it from prejudice

in his mind and has thereby came to an inaccurate and grossly perverse finding as to the statement of the witnesses. Further, the discrepancies in testimonies of witnesses regarding place, time becomes highly doubtful, totality of circumstances and evidence on record raising doubt regarding involvement of the accused in alleged commission of offence and entitled to benefit of doubt. Also, the evidence of the witnesses have been completely misread by the learned trial Court and the appellant's side was not considered at all and the appreciation of evidence by the learned trial Court was not correct. This case is based on ground where the material evidence has been overlooked by the learned trial Court and conviction of the appellant under Sections 498A and 302 of the I.P.C., without there being any legal evidence. Therefore it is submitted that there is no evidence at all that would corroborate the statements of P.W.-1, PW-2, PW-3, PW-4, PW-20, and the chain of circumstances are not completed. Therefore, the impugned judgment is liable to be quashed and set-aside. Further, the main witness Dr. Ajeet Lakra, who is said to have recorded the dying declaration of the deceased has also not been examined by the trial Court and Deputy Tehsildar Kishore Kumar Verma (PW-20) who is said to have recorded the dying declaration has admitted in his cross-examination that the time of starting the statement as 07.35 PM, but on the last page, 07.20 PM is written. He has also admitted that the date of taking the statement is written as 21.05.2019, though below his signature, the date

22.05.2019 is written. As such, the statement of this witness i.e. PW-20 as well as dying declaration (Ex.P-36) does not inspire confidence and cannot be relied upon to convict the appellant. Therefore, in light of the decision of the Supreme Court in the matter of ***Gopal Singh another vs. The State of Madhya Pradesh and another***[1] and in absence of any further corroboration, the said dying declaration (Ex.P/36) pales into insignificance. As such, for the afore-stated reasons, the dying declaration (Ex.P/36) is not trustworthy, as it does not inspire confidence and cannot be relied upon to convict the appellant and more particularly when the date of incident is 02.05.2019 and deceased died on 10.07.2019, i.e. after almost two months from the date of incident, that too on account of septicemia. Hence, the impugned judgment of conviction and order of sentence passed by the learned trial Court is liable to be set aside and the appellant deserves to be acquitted from the said charge by giving the benefit of doubt.

16. *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submits that in view of dying declaration (Ex.P/36), wherein the deceased has clearly stated the name of the appellant herein to be author of the crime coupled with other evidence available on record, the

1 AIR 1972 SC 1557

conviction and sentence passed by the learned trial Court against the appellant is well merited and, therefore, present appeal deserves to be dismissed.

17. Now the questions for consideration would be whether the death of the deceased was homicidal in nature and whether the appellant is the author of the crime, which we will consider together considering the nature of evidence brought on record.

18. According to the prosecution, on the date of the incident, when the accused beat Sunita and burnt her with kerosene, she was taken to Balrampur Hospital in a semi-burnt condition for treatment where Dr. Arun Kumar (PW-12) gave initial treatment to Sunita as per Ex.P-14. As Sunita's condition did not improve, she was sent to District Hospital Ambikapur. Sunita's mother Savita (PW-3) informed the police station about her daughter being burnt. Confirming this, Assistant Sub-Inspector Anil Kumar Singh (PW-18), then posted as Head Constable at Outpost Manipur, has stated that on the complaint of the informant, he had registered an unnumbered First Information Report (Ex.P-34) under Sections 498A and 307 IPC under Crime No. 0/2019.

19. The FIR was registered at Balrampur Police Station. In this regard, Sub-Inspector Sampat Potai (PW-21) has stated that he had registered a case under Sections 498A and Section 307 of the Indian Penal Code in Crime No. 112/2019 of Balrampur Police Station.

20. Due to Sunita's burn injuries, she was admitted to the burn ward. During this time, Sunita Ravi's deathbed statement was taken. Regarding which Assistant Sub-Inspector Nirmala Kashyap (PW-17) has stated that she had sent a written complaint (Ex.P-33) to the Executive Magistrate, Ambikapur regarding appointing a Magistrate to record Sunita Ravi's dying statement, on which Naib Tehsildar Kishore Kumar Verma (PW-20) had recorded Sunita Ravi's dying statement (Ex.P-36). This witness has stated in his testimony that while recording the dying statement, when asked by him, Sunita had told that her husband had set her on fire, so he should be punished. Sunita had also told that her children are also beaten a lot and they have tried to kill her two-three times earlier also.

21. After the death of Sunita Ravi, on the information of Jagdish Ravi (PW-4), a case of untimely and accidental death was registered at zero in police station Chalgali (Ex.P-29) and a case was registered at number in Balrampur. In this regard, Inspector Pradyuman Tiwari (PW-15) has stated that on receiving information about Sunita Ravi's death, he registered the intimation on zero and gave a written complaint (Ex.P-30) to the Executive Magistrate for the proceedings of the body panchnama and gave an application (Ex.P-31) for conducting the examination of the body. Similarly, Sub-Inspector Shantilal Kujur (PW-13) has stated in his testimony that on receiving the inquest No. 08/19 from the police station Chalgali, he registered inquest No. 34/2019 (Ex.P-

15).

22. According to Inspector Umesh Baghel (PW-14), he reached the spot on 14.05.2019 and prepared the map of the spot (Ex.P-26). Sub-Divisional Magistrate Shabad Khan (PW-19) has stated in his deposition that during his tenure as Tehsildar Balrampur, he had issued notice (Ex.P-4) to the witnesses for the map panchayatnama after the death of Sunita Ravi on 10/07/2019 and prepared the map panchayatnama of the deceased (Ex.P-7) in front of the witnesses.

23. The initial treatment of the deceased was done by Dr. Arun Kumar (PW-12) as per Ex.P-14 and after conducting the postmortem examination of the deceased, Ex.P-35 was produced. The postmortem of the deceased was done by Dr. Bhaiyalal Rajwade. In his absence, Dr. Arun Kumar (PW-12), who had worked with him, conducted the postmortem, whose statement is that the postmortem of the deceased was done by Dr. Bhaiyalal Rajwade on 10.07.2009.

24. According to the postmortem report, there was no cloth present on the body of the deceased and the body of the deceased was covered with a white cloth. There was no stiffness or swelling in the body. There was a foul smell coming from the body of the deceased, there was no burn mark on the face, front part of the chest, stomach of the deceased. Full thickness burn was present on the right leg, back part of the neck, back, back part of the

head, back part of the left leg of the dead body.

25. According to Dr. Arun Kumar (PW-12) the skull and spinal cord were normal. The thoracic membrane, ribs and soft ribs were visible. The lungs, larynx, windpipe, right and left lungs, perineum percussion, heart, large vessels were normal. The abdominal membrane, intestinal membrane, mouth and pharynx were normal. Food inside the stomach not present. There was undigested food inside the small intestine and feces were present in the large intestine. Liver, spleen, kidney, urinary bladder, internal and external genitals were normal. Muscles and bones were normal. Third degree burn was full thickness burn which was less than two months old.

According to them, 60% of the body of the deceased was burnt.

26. According to the postmortem report (Ex.P-35), cause of death was septicemia due to excessive blood loss due to burn injuries, and cardio respiratory arrest due to failure of major organs of the body. The Doctor has not clearly stated whether the nature of death was homicidal or suicidal. According to the postmortem report, the time of death is said to be within 8-10 hours of the postmortem. Thus, it is clear from the statement of the medical witness and other witnesses that Sunita died due to burn injuries.

27. Now it remains to be seen in this case whether the accused behaved cruelly with Sunita by torturing her mentally and

physically and caused her death by pouring kerosene oil on her and setting her on fire?

28. In this regard, learned counsel for the appellant submits that the mother of the deceased, Savita Ravi (PW-3) had lodged a report that accused Sitaram had burnt her daughter Sunita by pouring oil on her with the intention of killing her, but she has stated in her judicial statement that she does not know how her daughter died. She also denied that her statement was recorded by the police and a site map was prepared. Similarly, Sukhsai Kodaku (PW-1) and Rajmania Singh (PW-2) have denied having any knowledge regarding the incident.

29. Learned counsel for the appellant further submits that according to the statement of the deceased's brother Jagdish Ravi (PW-4), he has no knowledge of the incident and he did not receive any information for the postmortem examination. Notice was not given to him nor the proceedings of the body panchanama were conducted in his presence. Similarly Amit Tirkey (PW-5), Ravi Tirkey (PW-6), Amir Chand (PW-7) and Bhadai (PW-11) have also not supported the prosecution case.

30. Learned counsel for the appellant also argued that according to the statement of Neha Ravi (PW-8), daughter of the deceased, her parents lived well and her mother's saree caught fire while cooking food. Similarly, Aniket (PW-9), son of the deceased, has also stated in his deposition that on the date of the incident, he

and his sister Neha were playing away from home, when he came to know that his mother was cooking food and her saree caught fire. While Shanti Devi (PW-10), denying having any knowledge about the incident, has stated that at the time of the incident she had gone to the jungle and later she came to know that Sunita was burnt while cooking food.

31. Inspector Umesh Baghel (PW-14) has stated that the disclosure statement of accused Sitaram Ravi (Ex.P-1), was prepared by him in the presence of witnesses and on the indication of the accused, yellow coloured box was seized as per the seizure memo (Ex.P-3) and the panchanama of the seized box (Ex.P-2) was prepared. Further, witnesses Sukhsai Kodaku (PW-1) and Bhadai (PW-11) are witnesses to the disclosure statement and seizure, but both these witnesses have denied that the disclosure statement was recorded and the seizure proceedings were carried out in their presence.

32. Learned counsel for the appellant further submits that the appellant has been charged on the ground that he killed Sunita by demanding dowry from her, beating her, pouring kerosene on her and burning her. Witnesses have stated that there was no dispute between the accused and Sunita. As far as the informant of the incident Savita (PW-3), the mother of the deceased, is concerned, she has denied having any knowledge of the incident.

33. In the instant case, the case of the prosecution is solely based on

dying declaration (Ex.P/36) recorded by Deputy Tehsildar Kishore Kumar Verma (PW-20), therefore, it would be appropriate to notice the principles governing the dying declaration and examination of the Doctor while recording the dying declaration.

34. At this stage, it is relevant to notice Section 32(1) of the Indian Evidence Act, 1872, which reads thus:

> "**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"

35. 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.

36. 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[2] in which their Lordships have summarised the principles enumerated in Section 32(1) of the Evidence Act, including relating to "circumstances of the transaction":

> "21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:-
>
> (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.
>
> (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.

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2 (1984) 4 SCC 116

(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."

37. Section 32(1) of the Indian Evidence Act, 1872 makes it clear that when a statement, written or verbal, is made by a person as to the cause of 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 statement is relevant. The Supreme Court in **Sharad Birdhichand Sarda** (supra) clearly held that Section 32 is an exception to the rule of hearsay and makes admissible, the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death or deals with

circumstances leading to the death. The decision of the Supreme Court in **Sharad Birdhichand Sarda** (supra) has further been followed by the Supreme Court in the matter of **Kans Raj v. State of Punjab**[3] reviewing the earlier authorities.

38. Thereafter, in the matter of **Devinder alias Kala Ram and others v. State of Haryana**[4], wherein the deceased, who sustained burn injuries while cooking meals on stove, had made a statement to the Doctor, their Lordships of the Supreme Court held that statement of the deceased recorded by the Doctor is relevant under Section 32 of the Evidence Act and observed as under: -

> "14. In the facts of the present case, we find that PW 7, the Medical Officer of the Civil Hospital, examined the case of the deceased on 6-8-1992 at 6.30 a.m. and he has clearly stated in his evidence that on examination she was conscious and that there were superficial to deep burns all over the body except some areas on feet, face and perineum and there was smell of kerosene on her body. He also stated in his evidence that the deceased was brought to the hospital by her husband Kala Ram (Appellant 1). He has proved the bed-head ticket pertaining to the deceased in the hospital (Ext. DD) as well as his endorsement at Point 'A' on Ext. DD, from which it is clear that he was told by the patient herself that she sustained burns while cooking meals on a stove. This statement of the deceased recorded by PW 7 is relevant under Section 32 of the Evidence Act, 1872 which provides that statements, written or verbal, of relevant facts made by a person who is dead, are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's

3 AIR 2000 SC 2324

4 (2012) 10 SCC 763

death comes into question."

39. In the matter of **Purshottam Chopra and another v. State (Government of NCT of Delhi)**[5], 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

5 (2020) 11 SCC 489

> 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."

40. Recently, in the matter of **Irfan @ Naka v. State of Uttar Pradesh**[6] the Supreme Court has held that the dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind and observed in Para-63 as under:

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

41. Furthermore, the Supreme Court in the matter of **Gopal Singh** (supra) has clearly held with reference to Section 32 of the Indian

6 2023 SCC Online SC 1060

Evidence Act, 1872 that a dying declaration which does not contain complete names and addresses of the persons charged with the offence, even though may help to establish their identity, is not of such a nature on which conviction can be based and it cannot be accepted without corroboration and observed in Para-07 & 08 as under:

> "**7.** We have already referred to the fact that the learned Sessions Judge was not prepared to accept the evidence of Umraodas, P.W. 1 and Chhotulal, P.W. 7, that deceased Modsingh had named the appellants as assailants when they met him in the morning at 8.00 a.m. on the roadside. Detailed reasons have been given by the learned Sessions Judge why he considered their evidence unsatisfactory. The High Court, however, in one sentence expressed its opinion that the evidence of these two witnesses, amongst others, corroborated the dying declaration in respect of the identity of the appellants without giving any reasons why it differed on the point from the learned Sessions Judge. It is obvious that the High Court was so well satisfied by the written dying declaration as establishing the identity of the appellants that it ignored to consider the evidence of Umraodas, PW 1 and Chhotulal, PW 7 independently to see how far they were reliable. In an appeal against acquittal we think the High Court ought to have expressed itself more fully why it considered that the learned Sessions Judges' conclusion was unreasonable. In our opinion that conclusion is unexceptionable.
>
> **8.** But even if we assume that the High Court was right in concluding that the dying declaration established the identity of the appellants, it was certainly not of that character as would warrant its acceptance without corroboration. It is settled law that a court is entitled to convict on the sole basis of a dying declaration if it is such that in the

> circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required. See: *Kushal Rao v. State of Bombay*[7]. In this case, it must be first remembered that though the names of the appellants' fathers were known to Modsingh and others who accompanied him to the Police Station, their fathers' names and present residence have not been mentioned. It is rather unusual for Police Officers not to enquire and record in the first information the full name and address of the persons complained against……..”

42. Bearing in mind the aforesaid principles of law laid down by their Lordships of the Supreme Court in the above-mentioned judgments, it is quite vivid that in the instant case the prosecution’s case is totally based on dying declaration (Ex.P/36), which is alleged to have been recorded by Deputy Tehsildar Kishore Kumar Verma (PW-20).

43. In this regard, learned counsel for the appellant argued that the time of recording the dying declaration of the deceased is written as 7:30 pm, whereas Deputy Tehsildar Kishore Kumar Verma (PW-20) has further stated in his evidence that time of dying declaration is 7:20 pm. Similarly, the date of recording the dying declaration is 21.05.2019, but the date 22.05.2019 is mentioned below the signature of the Deputy Tehsildar Kishore Kumar Verma (PW-20). The statement of the Doctor who had written that the deceased is in a fit state of mind to give statement has not been recorded and the time mentioned in it is 7:34 pm. It has not been

7 AIR 1958 SC 22

proved that the Doctor was present at the time of recording the dying declaration. No prosecution witness has said that the dying declaration of the deceased was recorded.

44. So far as the statement of Naib Tehsildar Kishore Kumar Verma (PW-20), who recorded the dying declaration of the deceased, is concerned, he has admitted in his cross-examination that in the answer to the last question in Ex.P-36, it has not been told as to who killed her and who had tried to kill her two-three times earlier also and in Ex.P-36, the time of starting of the statement is written as 7.35 p.m. and the time of ending is written as 7.20 p.m. and the date of taking dying declaration is mentioned as 21/05/2019 and under his signature date is mentioned as 22/05/2019.

45. Now, the fact remains that neither the treating Doctor nor any competent medical officer has certified the deceased to be in a fit state of mind to give statement before recording the said dying declaration (Ex.P/36) and further the Doctor (Ajeet lakra) who had written that the deceased is in a fit state of mind to give statement has not been recorded by the trial Court. Even, Deputy Tehsildar Kishore Kumar Verma (PW-20) has stated that there was no Doctor present during recording the dying declaration and has not recorded his satisfaction in it or stated before the Court that the deceased was in fit mental and physical condition to give statement while recording her dying declaration (Ex.P/36). Even otherwise, the deceased died on 10.07.2019 i.e. after two months

from the date of incident, that too on account of septicemia. As such, in view of the above, following facts emerges in the instant case, which are apparent from the face of the record:

(a) that on 21.05.2019 though dying declaration (Ex.P/36) of the deceased was recorded by Deputy Tehsildar Kishore Kumar Verma (PW-20), but neither the treating Doctor nor any competent medical officer has certified the deceased to be in a fit mental and physical condition to give statement before recording the said dying declaration, which was *sine qua non* for making a dying declaration voluntary and trustworthy in light of the decision of the Supreme Court in the matter of **Irfan @ Naka** (supra) and even Deputy Tehsildar Kishore Kumar Verma (PW-20), who has recorded the dying declaration of the deceased, did not record his satisfaction in it or has stated before the Court that the deceased was in a fit state of mind at the time of recording the dying declaration;

(b) even other particulars of the appellant like father's name or address etc. are also not mentioned in the dying declaration (Ex.P-36), which is absolutely necessary in light of decision of the Supreme Court in the matter of **Gopal Singh** (supra), indeed thereof, it has only been stated that deceased's 'husband' is the author of the crime and same cannot be relied upon in absence of any further corroboration;

(c) also, the medical officer Dr. Ajeet Lakra, whose name is

mentioned in the dying declaration and who has stated on 21.05.2019 at 7:34 PM that the patient is able to give her statement, his statement was not recorded by the trial Court nor the Deputy Tehsildar Kishore Kumar Verma (PW-20), who is said to have recorded the dying declaration (Ex.P-36) of the deceased has stated that there was a Doctor to certify the deceased to be in a fit mental and physical condition to give statement before recording the said dying declaration;

(d) furthermore, as per prosecution case itself, the date of incident is 02.05.2019 and the deceased though was discharged on 28.05.2019, but she died on 10.07.2019 on account of septicemia, therefore, it cannot be held that the injuries caused by the appellant herein, if any, were sufficient in ordinary course of nature to cause death of the deceased (See: **B.N. Kavatakar and another v. State of Karnataka**[8] and **Sanjay v. State of U.P.**[9]);

(e) Further, the son and daughter of the deceased, Aniket (PW-9) and Neha Ravi (PW-8) have denied any fight between their parents and have stated that their parents lived happily and their mother's saree caught fire while cooking food. Ravi Tirkey (PW-6) and Shanti Devi (PW-10) have also stated that the deceased's clothes caught fire while cooking food and the remaining witnesses Sukhsai Kodaku (PW-1), Rajmania Singh (PW-2), Savita Ravi (PW-3), Jagdish Ravi (PW-4), Amit Tirkey (PW-5),

8 1994 Supp (1) SCC 304

9 (2016) 3 SCC 62

Amir Chand (PW-7) and Bhadai (PW-11) have denied having any knowledge regarding the incident.

46. Accordingly, in view of afore-mentioned reasons, the dying declaration (Ex.P/36) does not inspire confidence, as the same is not voluntary and trustworthy and, therefore, the learned trial Court has committed grave legal error in relying upon the dying declaration (Ex.P/36) to convict the appellant herein. Consequently, we are unable to uphold the conviction and sentence of the appellant, as awarded by the learned trial Court, and the appellant is liable to be acquitted of the said charge on the basis of benefit of doubt.

47. In view of the foregoing analysis, the appellant is entitled to get the benefit of doubt, as the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 498A and 302 of IPC. Thus, the conviction and sentence of the appellant for offence punishable under Sections 498A and 302 of the IPC imposed by the learned trial Court, are hereby set aside. He is acquitted of the said charge on the basis of benefit of doubt. He is reported to be in jail from 27.05.2019, therefore, we direct that he be released from jail forthwith, if not required in any other matter/case.

48. This criminal appeal is **allowed**.

49. The appellant shall be set at liberty forthwith if no longer required in any other criminal case. However, keeping in view the

provisions of Section 437-A of the Code of Criminal Procedure, 1973 (Now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

50. Let a certified copy of this judgment alongwith original record be transmitted to the trial Court concerned, for necessary information and action, if any.

51. Before parting with the case, a note of caution is necessary to be issued to the prosecution agencies well as the learned trial Courts.

52. In the present case, despite the recording of a dying declaration (Ex.P-36), a thorough examination of the records reveal significant flaws that undermine its credibility. Notably, there is lack of proper evidence to corroborate the statements, which would have otherwise lent it substantial weight. The appellant's conviction, primarily based on the dying declaration, was under scrutiny in this appeal. Upon careful consideration of the arguments presented by both parties, this Court, with a heavy heart is constrained to allow this appeal and further to observe

that while the dying declaration could have formed the basis for conviction under Section 302 of the IPC, various discrepancies involving crucial witnesses, including medical officer and government officials, severely erode its reliability. Specifically, the Doctor responsible for certifying the deceased's mental and physical fitness to make the declaration was not examined by the trial Court, nor were any efforts made to summon this important witness during the trial proceedings by the trial Court as court witness. Furthermore, the Deputy Tehsildar, who recorded the dying declaration, made mistake in wrongly mentioning the date in his evidence, further diminishing the declaration's credibility. Given these significant lapses, this Court is compelled to observe that the discrepancies exhibited by key witnesses and the trial Court's oversights not only undermines the integrity of the judicial process but also result in a miscarriage of justice, leaving the victims without the justice they deserve.

53. The Supreme Court in the matter of **Chhotan Sao and another v. State of Bihar**[10] has held as under:-

> "16. Before parting with the appeal, we wish to place on record our anguish regarding the inadequacy of investigation, the failure to discharge the responsibility on the part of the public prosecutor and the Magistrate who took cognizance of the offence under Section 304B. The Investigating Officer who submitted the charge sheet ought not to have done it without securing the viscera report from the forensic lab and placing it before the Court. Having regard to the nature of the crime, it is a very vital document more particularly in the absence of any direct evidence regarding the consumption of poison by the deceased Babita Devi.

10 (2014) 4 SCC 54

> Equally the public prosecutor failed in his responsibility to guide the investigating officer in that regard. Coming to the magistrate who committed the matter to the Sessions Court, he failed to apply his mind and mechanically committed the matter for trial. Public prosecutors and judicial officers owe a greater responsibility to ensure compliance with law in a criminal case. Any lapse on their part such as the one which occurred in the instant case is bound to jeopardise the prosecution case resulting in avoidable acquittals. Inefficiency and callousness on their part is bound to shake the faith of the society in the system of administration of criminal justice in this country which, in our opinion, has reached considerably lower level than desirable."

54. The Supreme Court in the matter of **State of Gujarat v. Kishanbhai and others**[11] has held as under:-

> "23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and

11 (2014) 5 SCC 108

prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

55. In view of above, it is directed that a copy of this judgment be sent to the Chief Secretary as well as Director General of Police, State of Chhattisgarh, who shall further circulate the same to all the stake holders with a direction that they shall strictly follow the mandatory provisions of law so that the accused may not take benefit of such lapses as the offence like the present one. Such offence has to be dealt strictly in accordance with law with heavy hand in order to maintain rule of law in the State and the guilty should not be allowed to escape from the clutches of law. The trial Courts shall also oversee the actions of prosecution and investigating agencies as indicated by the Supreme Court in **Chhotan Sao** (supra) and **Kishanbhai** (supra).

56. The Registrar (Judicial) of this Court is directed to send a copy of this judgment to the Chief Secretary, State of Chhattisgarh, the Director General of Police, State of Chhattisgarh as also the Principal District & Sessions Judges of the State of Chhattisgarh to circulate a copy of this judgment to all the trial Courts forthwith, for necessary information and follow up action as may be required.

Sd/- Sd/-

(Bibhu Datta Guru)
Judge

(Ramesh Sinha)
Chief Justice

Manpreet

Headnote

"Gross discrepancies and lapses by prosecuting agency deemed wholly unacceptable; Trial Courts mandated to exercise vigilant oversight over actions of prosecution and Investigating Agencies to prevent accused from deriving undue benefit from prosecutorial derelictions, ensuring a fair and impartial trial, and upholding the sanctity of Rule of Law and due process."

Headnote (Hindi)

अभियोजन एजेंसी द्वारा घोर विसंगतियाँ और चूकें पूरी तरह से अस्वीकार्य हैं; विचारण न्यायालय को अभियोजन और जांच एजेंसियों की कार्रवाइयों पर सावधानीपूर्वक निगरानी रखने का निर्देश दिया जाता है ताकि आरोपी को अभियोजन की चूकों से अनुचित लाभ न मिले, एक निष्पक्ष विचारण सुनिश्चित हो, और विधि के शासन और उचित प्रक्रिया की गरिमा को बनाए रखा जा सके।