



**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 26 of 2025

Smti. Parul Barman, age-62 years, wife of Sri Surja Barman resident of Durganagar, Ramcharra, P.S. Bishalgarh, District: Sepahijala.

.....Appellant

-V E R S U S-

The State of Tripura

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For Appellant(s)	:	Ms. V. Poddar, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing	:	18.08.2026
Date of delivery of judgment and order	:	16.09.2026
Whether fit for reporting	:	YES

JUDGMENT & ORDER

[Dr. T. Amarnath Goud, J]

Heard Ms. V. Poddar, learned counsel appearing for the appellant. Also heard Mr. R. Datta, learned P.P. appearing for the respondent-State. As Mr. Ratan Datta, learned counsel was involved earlier in this litigation, opportunity was given to him being heard.

[2] This is an appeal filed under Section-374(2) of Code of the Criminal Procedure, 1973 against the judgment of conviction dated 07.09.2024 passed by the learned Additional Sessions Judge, Sepahijala district, Bishalgarh in connection with case No. ST (T-I) 07 of 2018 convicting the accused Smti. Parul Barman for commission of offence punishable under Section-302 of the Indian Penal Code, 1860.

[3] The factual backdrop of the present case is that four years back from the date of lodging of the FIR marriage of Iti Saha the daughter of the informant was solemnized with Dhananjay Barman of Durganagar,



Ramchhera under Bishalgarh PS as per Hindu Social rites. After 4/5 months of her marriage she was subjected to torture by the accused persons on various issues. Before 10/15 days of the incident in laws of the victim sent her to her parental house to bring Rs.20,000/- but, the victim raised objection on such demand due to which she was tortured by her in laws. On 21.05.2015 at 1100 hours victim's mother in law tied up the mouth of the victim with a piece of cloth (gamcha) and set fire on her body with intention to kill her after pouring kerosene oil. At that time, the victim was pregnant for 10 months.

[4] On the basis of written FIR, SI Ashalata Debnath of BLG WPS registered the present case and self took up the investigation. On completion of investigation, the I/O filed charge sheet vide No.17 of 2015 dated 26.10.2015 under Sections-498-A/302 of IPC in this case against the accused persons namely, Dhananjay Barman, the husband of the deceased and Parul Barman, the mother-in-law of the deceased.

[5] Subsequently, the case was committed to Addl. Sessions Judge as the case was exclusively triable by the Court of Sessions. Thereafter, the charges were framed under Section-498A of IPC against the husband of the deceased and under Section-498-A/302 of IPC against the accused Parul Barman and it was read over and explained to them to which they pleaded not guilty and claimed to be tried.

[6] To prove the case, prosecution has examined as many as 22 (twenty-two) witnesses and also exhibited some documents. After prosecution evidence, the accused person was examined under Section-313 of Cr. P.C. with reference to the incriminating circumstances which were elicited from the evidence on record.

[6] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

“In the result, the convict, namely, Smt. Parul Barman is sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.50,000/- in default of



payment she shall suffer R.I. for further one year for commission of offence punishable U/S 302 of IPC.

The period of custody already undergone during investigation, inquiry or trial (from 24.05.2015 to till 28.10.2015 i.e. 158 days) shall be set off U/S 428 of Cr.P.C. against the substantive punishment.

A copy of the Judgment shall be supplied to the convict free of cost immediately.

The convict is also apprised of her right to prefer appeal against the Judgment and Order of sentence passed by this Court, if she is so advised.

The seized alamats shall be disposed of as per law after expiry of appeal period if Appeal is not preferred.

Inform the CTSI Bishalgarh Police Court accordingly.

Send a copy of the whole Judgment along with order of sentence to the District Magistrate & Collector of Sepahijala District for information in compliance with Section 365 of Cr.P.C.

Fine money if deposited shall be handed over to the father of the victim to fix the amount in the name of first child of the deceased Iti Saha.

District Legal Services Authority, Sepahijala District shall decide the quantum of compensation to be awarded to the dependents of deceased and shall release the same in view of Section-357A of Cr. P.C.

Let a copy of this judgment to the learned Member Secretary, District Legal Services Authority, Sepahijala District, Sonamura.”

[8] Being aggrieved by and dissatisfied with the same, the present appeal has been preferred by the convict appellant before this Court for ends of justice.

[9] Ms. Poddar, learned counsel appearing for the appellant at the outset has submitted that PWs.4, 5, 6, 8, 9, 12 and 13 are the residents of the same locality whereby the couple along with other family members resided and they all are independent witness, thereby the aforesaid witnesses deposed independently before the Court in the same tune in their examination-in-chief and also in their cross examination. All the witnesses said that when the incident happened at around 9 AM, they all heard hue and cry from the house of Dhananjay Barman and they all rushed to their house and saw that the deceased wife Iti Saha Barman caught fire, but none of the witnesses mentioned that when they rushed to the place where they saw the wife lying on the ground while she was caught in fire, they neither saw the convict appellant at the very same place where the deceased was ablaze nor



they saw the husband Dhananjay Barman at that place. This very point makes it crystal clear that neither the convict appellant Parul Barman nor the husband of the deceased Dhananjay Barman have any complicity or any kind of overt act to set the victim ablaze.

[10] They have stated that there was a cordial relationship amongst Iti Saha Barman, her husband Dhananjay Barman and the mother-in-law, Parul Barman, the appellant herein. They did not ever see Dhananjay Barman or his mother Parul Barman committing any kind of mental or physical torture on the deceased wife, also the deceased Iti Saha Barman during her life time never told any of them about any kind of mental or physical torture on her by her husband and mother-in-law, also, about the allegation of the family members of the deceased that there was any kind of monetary demand is also false because they never heard about any kind of monetary demand by Dhananjay Barman or his mother, Parul Barman. This aforesaid evidence of the witnesses was also not considered by the learned Court below while appraising the facts of the case and came to a wrong conclusion that there was any kind of dispute amongst the family members whereby, they would even want to take the life of Iti Saha Barman.

[11] All of the PWs deposed before the court in their cross examination that they heard that Iti Saha Barman while she was cooking, she wasn't able to cook because there was not sufficient flame and therefore, she poured kerosene oil to get sufficient flame and because of that, fire flared up and surrounded her, eventually engulfing her completely.

[12] When the victim was cooking in the kitchen, she noticed that she required some more flame to cook the food and thereby poured some more kerosene oil which ultimately resulted into increase of flame, fire surrounded her whole body, engulfed her and as a result she got burnt. So, for the fact of argument, even if we take that she was gagged by Gamcha that is a towel before she was set on fire by the alleged convict appellant, so it means only her mouth was gagged, her hands and legs were totally free and she could have removed the towel with the help of her hands and run away from that situation. Also, in all the prosecution evidences, it is clear



that neither the convict appellant Parul Barman, nor the accused husband Dhananjay Barman ran away from the situation after she was caught on fire because they were very much present at their house and even informed the family members of the deceased about the unfortunate incident and also took her to the hospital for the further treatment which makes it very clear that they are not the ones to be blamed for this unfortunate incident whereby the victim died after she was caught on fire while she was cooking and the fact that she caught on fire while she was cooking has been acknowledged by most of the nearby residents of their house and also in the above point as it has been clear that there was a cordial relationship amongst all the matrimonial family members of the deceased.

[13] It has been further contended that the dying declaration has not been discussed in the judgment given by the learned Court below. It has to be discussed in the judgment as to what has been disclosed by the deceased in the dying declaration. Simply declaring without reasonable explanation that dying declaration can be a sole basis of conviction in the case is not sufficient. The judgment, whereby, it stated that the oral declaration given by the deceased to PW-3, who is the father of the deceased cannot be taken on the face of it as the written dying declaration has not been discussed.

[14] When it is mentioned in the judgment that the doctor already gave a certificate as to whereby the deceased was fit to give the dying declaration it is to be noticed that dying declaration is recorded when there are chances that the victim is about to die or will die in the near future. So, in this case when she was already pregnant and she was about to deliver the child in a few days, the doctor could have made arrangements to save the child at least even if the victim was about to die, one of the life could have been saved in this process, which signifies the point that there has been a grave medical negligence on the part of the doctor. It was the paramount duty of the doctor to decide whose chances of survival were more if it was the child then the child could have been birthed in this process, even if there was a risk of the death of the deceased. But the doctor did not take any such initiative in this regard and also there has been no explanation by the doctor



in his examination-in-chief or in the cross examination as to why he did not take the initiative to save the baby in the womb.

[15] The allegation by the complainant that there has been mental and physical torture towards the wife by the in-laws after a few months of their marriage is also false, as there has been no evidence given by the prosecution witnesses, which shows that there was any such torture and even if there was any kind of torture, then the complainant could have lodged a complaint earlier that there was such kind of torture towards his daughter, but there has been no such kind of complaint or FIR given to the police.

[16] It has been stated by PW.18, Sri Dilip Saha in his cross examination that his name is not mentioned in the FIR as a scribe and also there is no certificate with the statement that the contents of the FIR was written as per the dictation given by his father-in-law. Also, the date of incident has not been mentioned in the FIR. These are grave lapses on the part of the prosecution which should have been taken into consideration while passing this impugned judgment. All the witnesses who are deposing against the convict apparent, and the husband of the deceased are interested witnesses in this case as they are either the family members or the relatives of the deceased. The prosecution could not arrange for an independent witness, supporting the story of the complainant which also shows a grave lapse on the part of the investigating agency.

[17] On perusal of the impugned judgment and order would show that the learned Court below has not appreciated, considered and construed the submission advanced on behalf of the appellant and at various stages in the judgment and order the learned Court has left the point without coming to the conclusion and therefore, has arrived at an erroneous finding and conclusion.

[18] Mr. Ratan Datta, learned counsel has supported the arguments of Ms. V. Poddar and submitted that there was a cordial relation between the victim and her in laws and thus, the evidence of the relative witnesses cannot be relied upon. The dying



declaration did not bear any case number or GD number nor proper format has been followed in recording the same and so the dying declaration recorded by PW-7 cannot be relied upon. He further in support of his has placed some judgments of the Hon'ble Apex Court viz. in *Jayamma and Another v. State of Karnataka* reported in (2021) 6 SCC 213, *Indrakunwar v. The State of Chhattisgarh*, reported in (2023) 14 SCR 959 and *Mallappa and Others v. State of Karnataka*, reported in (2024) 3 SCC 544.

[19] In *Jayamma and Another v. State of Karnataka* reported in (2021) 6 SCC 213, the Hon'ble Apex Court has observed as under:

“14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P5), it will be beneficial to brace ourselves of the caselaw on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

14.1. In *P.V. Radhakrishna. v. State of Karnataka*¹¹, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

14.2. In *Chacko v. State of Kerala*¹², this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded “patient conscious, talking” in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

In *Sham Shankar Kankaria v. State of Maharashtra*¹³, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in *Paniben v. State of* (2006) 13 SCC 165 ¶ 10, 11.



Gujarat¹⁴ wherein this Court summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria* (Supra) reiterated:: “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104]);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552 and *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211]);

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618]);

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264]);

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* [1981 Supp SCC 25]);

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654]);

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State* (1992) 2 SCC 474 ¶ 18.

of *Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455]);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha v. State of Bihar* [1980 Supp SCC 769]);

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram v. State of M.P.* [1988 Supp SCC 152]);

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P. v. Madan Mohan* [(1989) 3 SCC 390]);

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani v. State of Maharashtra* [(1982) 1 SCC 700])”

[20] In *Indrakunwar v. The State of Chhattisgarh*, reported in (2023) 14 SCR 959, the Hon’ble Apex Court has observed as under:



“34. A perusal of various judgments¹⁵ rendered by this Court reveals the following principles, as evolved over time when considering such statements.

34.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

34.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

34.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

34.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

34.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

34.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case. 34.8 This statement is to be read as a whole. One part cannot be read in isolation.

34.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

34.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

34.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

34.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.”

[21] In ***Mallappa and Others v. State of Karnataka***, reported in **(2024) 3 SCC 544**, it has been discussed as follows:

“27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The ‘two-views theory’ has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally



plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law.

42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play 9 AIR 1961 SC 715 while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

[22] Mr. Raju Datta, learned Public Prosecutor in support of his case has submitted that the evidence of PWs 3, 15 & 16 are clear about the motive of the accused Parul Barman to commit murder of the victim of this case. It is further submitted that dying declaration of the victim has been recorded by PW-7 who was an Executive Magistrate and the said dying declaration has been supported by the oral dying declaration made before PWs 3, 14, 15, 16, 18 & 19 and the evidence adduced by those witnesses are consistent and supportive of the dying declaration recorded by PW-7 and so dying declaration of this case should be relied upon by this Court. It is also submitted that the story of having kerosene oven on the place of occurrence is nothing but a blatant lie as from the evidence from the I/O as well as from the hand sketch map it is clear that there was no kerosene oven on the place



of occurrence and there was only a gas oven available there. It is also submitted by learned PP that the independent public witnesses being the neighbours of the accused supported the story and so their evidence cannot be relied upon.

[23] Mr. Datta, learned PP has argued about her consciousness and draws attention of the Court to the deposition made by PW13 wherein, he has stated that Dhananjay came to him for taking her auto rickshaw to shift the victim to the GB Hospital. On the way the wife of Dhananjay i.e. the victim herein, wanted to drink. PW-20, the investigating officer in his deposition has deposed that he has recorded statement under Section-161 of Cr. P.C. and seized some burnt out sari, hair, one white coloured drum containing kerosene oil, one match box with some sticks went by kerosene oil, piece of cemented floor where kerosene oil was poured and one torn bag pack in presence of witnesses. During his deposition, the IO has submitted that no kerosene oven has been found in the place of occurrence, however one gas oven was found.

[24] From the post mortem report it reveals that the whole body, except a portion on the lower part of face including upper and lower lips, both side and back of the neck like a band having a width of 04cm. Whole body was burnt and kerosene like smell was emitted from the whole body. The cause of death is shock resulting from 97% total body surface area burn injury which is caused by flame.

[25] Mr. Datta, learned PP in support of his case has placed some judgments of the Hon'ble Apex Court in Ravi Chander and Others reported in (1998) 9 SCC 303, in Purshottam Chopra and Another v. State (Government) of NCT of Delhi, reported in (2020) 11 SCC 489, in Rajkumer v. State of Madhya Pradesh, reported in (2014) 5 SCC 353, in Indrakunwar v. The State of Chhattisgarh, reported in (2023) 14 SCR 959 and in Naeem v. State of Uttar Pradesh, reported in (2024) SCC online SC 237.



[26] In ***Ravi Chander and Others*** reported in ***(1998) 9 SCC 303***, the Hon'ble Apex Court has observed as under:

“4. Mr Roy, the learned Senior Counsel appearing for the appellants, has submitted that although it was alleged by the brother of the deceased that the deceased used to be harassed on account of dowry demand, asking her to bring money to purchase a refrigerator, the case of dowry demand has not been accepted by the courts below and the accused have been acquitted of the charges under Section 304B and Section 498A IPC. In view of the said facts, Mr Roy has submitted that there was no reason why Santa would be set on fire by the accused. In the absence of a case of torture and dowry demand, there was no motive established by the prosecution which would impel the accused to resort to the offence of setting the deceased on fire. Mr Roy has submitted that in the instant case, there is no other material for passing the conviction against the accused excepting the dying declaration recorded by the Executive Magistrate and the alleged oral dying declaration stated to have been made by the deceased to the brother of the deceased. Mr Roy has submitted that so far as the dying declaration recorded by the Executive Magistrate at 2.45 p.m. in the hospital is concerned, there are some suspicious circumstances which raise serious doubt about the genuineness of such dying declaration. It has been contended by Mr Roy that at one or two places the initial writing has been scored out and after Question No. 6, the thumb impression of the deceased was taken. But after such thumb impression, other writings were found in the said dying declaration. It is not unlikely that later on the other portions were recorded on the reverse of the first leaf. No thumb impression of the deceased was taken on the reverse side but on the second leaf such thumb impression of the deceased appears. Mr Roy has submitted that although the Executive Magistrate has deposed to the effect that after ascertaining from the doctor that the deceased was in a fit condition to make a statement, he had recorded the dying declaration, the prosecution has failed to examine any doctor to support such statement. Mr Roy has also submitted that such dying declaration recorded by the Executive Magistrate was not immediately sent to the Judicial Magistrate and it was sent to the Investigating Officer only after 14 days. Such inordinate delay in sending the dying declaration has not at all been explained. Mr Roy has also submitted that it is the specific case of the prosecution that on the basis of the application made by the brother of the deceased to the DC, the services of the Executive Magistrate were requisitioned for recording the dying declaration, but the alleged application said to have been made by the brother of the deceased has not been produced by the prosecution in support of such case. It is mysterious how and under what circumstance the Executive Magistrate had been to the hospital to record the dying declaration. Mr Roy has also submitted that it is revealed from the deposition of PW 4 Prem Chand, the brother of the deceased, that he did not meet the deceased in the hospital prior to 5.00 p.m. In such circumstances, there was no occasion for the said Prem Chand to entertain any suspicion about any foul play in the deceased getting burnt. Accordingly, there was no reason for the brother to go to the DC and to make a prayer for getting the dying declaration recorded by a Magistrate. Mr Roy has also submitted that according to the prosecution case, a number of neighbours assembled when the deceased was shifted after getting burnt. PW 6 Bhola was one such passer-by who had come after hearing shouts of the mother-in-law and also found that a number of passers-by had collected in front of the house of the deceased. But no such person has been examined.



PW 6 Bhola has stated in cross-examination that the accused Lachhmi was shouting that somebody should inform the brother of the deceased Sarita.

6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the offence under Sections 498A and 304B IPC could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted.



Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.”

[27] In Purshottam **Chopra and Another v. State (Government) of NCT of Delhi**, reported in (2020) 11 SCC 489, the Hon’ble Apex Court has discussed *ad-infra*:

“25.2. Another emphasis laid on behalf of the appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in Vijay Pal’s case and reiterated in Bhagwan’s case (supra), the extent of burn injuries – going beyond 92% and even to 100% - would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect 4 for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.

25.3. The suggestions have also been made that the victim was in 100% burnt condition and therefore, the alleged statements Ex. PW-8/A and PW- 16/B are manipulated and manufactured. We find nothing of substance in such suggestions for there had not been shown any reason for which PW-8 Dr.Sushma and PW-16 SI Rajesh Kumar would manufacture any such document. Interestingly, certain suggestions were made to PW-19 Inspector Om Prakash in his cross-examination about his previous exchange of hot words or altercation with the accused persons. However, there was no such suggestion to PW-16 or to PW-8. For the same reason, the doubts sought to be suggested about availability of thumb impression of the victim on the statement Ex. PW-16/B deserve to be rejected. In the case of Dal Singh (supra), this Court has pointed out that in the case of burns, the skin of a small 4 As had been in Dalip Singh’s case (supra).



[28] In ***Rajkumer v. State of Madhya Pradesh***, reported in (2014) 5 SCC 353, the Hon'ble Apex Court has observed thus:

“21. Admittedly, the appellant did not take any defence while making his statement under Section 313 Cr.P.C., rather boldly alleged that the family of the deceased had roped him falsely at the instance of the police. However, appellant could not reveal as for what reasons the police was by any means inimical to him.

22. The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide: Ramnaresh & Ors. v. State of Chhattisgarh, AIR 2012 SC 1357; Munish Mubar v. State of Haryana, AIR 2013 SC 912; and Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan, AIR 2013 SC 3150).

[29] In ***Indrakunwar v. The State of Chhattisgarh***, reported in (2023) 14 SCR 959, the Hon'ble Apex Court observed as under:

“34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.”

[30] In ***Naeem v. State of Uttar Pradesh***, reported in (2024) SCC online SC 237, it has been observed thus:

“13. Undisputedly, in the present case, the conviction is based solely on the dying declaration (Ext. Ka-6). The law with regard to conviction on the sole basis of dying declaration has been considered by this Court in a catena of judgments. After considering the earlier judgments, this Court, in the case of Atbir v. Government of NCT of Delhi¹, has laid down certain factors to be taken into consideration while resting the conviction on the basis of dying declaration. It will be apposite to refer to para (22) of the said judgment, which reads thus:

“22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.



(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

14. It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

[31] Thus, the learned PP has prayed to impose maximum punishment to the convict as she murdered a pregnant woman brutally and virtually she committed murder of two persons, one is the victim of this case and another is the unborn child about to take birth within a few days.

[32] Having heard the learned counsel appearing for both the parties and also gone through material evidences on record, we are of the opinion that to come to a definite conclusion, it would be apposite to revisit the evidence once again.

[33] The father of the victim has been examined as PW-3 who deposed that the victim was his daughter and on 13.08.2011 she was married with Dhananjay Barman of Bishalgarh Ramchhera as per Hindu rites and customs and after the marriage the mother in law namely Parul Barman and



sister in law Shilpi Barman started blaming his daughter on the plea that she used to eat lots of food and she was subjected to torture by her husband, mother in law and sister in law and they used to commit physical torture on his daughter, and they did not provide sufficient food to her. He also deposed that they used to commit torture on his daughter to fulfill their monetary demand and they also used to commit torture on the ground that his daughter did not use to do house hold works and on 3 occasions his daughter took Rs.5000/- in total Rs.15,000/- from him as her husband wanted to purchase a plot of land and later his daughter returned to him Rs.10,000/-. PW-3 further deposed that one son was born from the wedlock of the victim and the accused Dhananjoy Barman and when his daughter died the age of her son was around 3 years and his daughter was 9 months pregnant when she died and on 21.05.2015 his daughter died and the date of delivery was fixed on 25.05.2015.

[34] During cross-examination of PW-20, the investigating officer of this case, wherein, it has been deposed that during investigation no kerosene oven has been found in the place of occurrence, however one gas oven was found. Said version of the IO has not been rebutted by the prosecution at any point of time during cross-examination or by adducing evidence of any witnesses. This version has further been corroborated by Exbt.P-9/PW-20 i.e. the hand sketch map of the place of occurrence and its index. Index A5 of the hand sketch map has been shown as gas stove with match box and cylinder. No existence of any kerosene oven has been found in the hand sketch map of the place of occurrence. So there is no doubt in holding that the victim was not cooking in any kerosene oven and so question of pouring of kerosene for getting high flame by the victim does not arise.

[35] PW-1 Dr. Pradipta Narayan Chakraborty who conducted PM examination on the dead body of deceased and deposed that during post mortem examination they found kerosene like smell emitted from the whole body of the deceased and there were ante mortem and epidermal and dermoepidermal burn injuries present over the whole body of the victim



except a portion on the lower part of the face including upper and lower lips, both sides and back of neck having a width of 4cm.

[36] PW-7 Smti. Emilia Reang recorded the dying declaration of deceased at AGMC & GBP Hospital. PW-7 deposed before this Court that on 21.05.2015 she was posted as Deputy Collector SDM Office, Sadar West Tripura and on that day SDM Sadar instructed her to record the dying declaration of one Iti Saha (Barman) and the patient was suffering from burn injuries and the department of surgery gave a certificate regarding fitness of the patient. It has been further deposed that she recorded the dying declaration as per version of Iti Saha (Barman) and also took LTI of the patient after recording the statement and also signed on the dying declaration with her official seal and PW-7 has identified the dying declaration and her signature on it and same had been marked as Exbt.4 and 4/1.

[37] PW-3 deposed that he went to GB Hospital and there his daughter told him that her mother-in-law tied a cloth around her mouth and poured kerosene oil on her and set her on fire.

[38] PW-14 also deposed that in the GBP Hospital before death of Iti Saha she had told them when the bother in law of PW-14 asked about the victim as to why there was no burn spot on the portion of her cheek, then she answered that when she was cooking in the house, her mother in law tied her mouth by a gamchha and set her on fire after pouring kerosene oil. PW-14 further deposed that she made such statement to them in front of doctor, nurse and journalists and the victim also gave her statement to a Magistrate.

[39] As per FIR, inquest report supported by the post mortem examination report the mouth of the victim was tied up with a piece of cloth (gamcha) due to which the portions which were covered by the cloth sustained no burn injuries. So it is proved that the mouth of the victim was tied up with a cloth as mentioned in the FIR and inquest report. It is mentionable that ganchha is one kind of towel manufactured with thick



cloth due to which the fire could not touch the skin covered by the said piece of cloth.

[40] As per version of PW-7 being an Executive Magistrate she was endorsed with the duty to record the dying declaration of the victim Iti Saha and accordingly, she recorded the same and that part has not been discarded. It is also mentioned in the evidence of PW-7 that Dr. Kumar Bkram, Medical Officer of AGMC, Agartala gave a certificate regarding fitness of Iti Saha (Barman) to give the statement and on such fitness certificate the statement was recorded. It has been revealed from the record that the said certificate has been exhibited on admission as Exbt.C-1 as reflected in the order dated 01.08.2023. Thus, as the said certificate has been admitted, there is no scope for them to deny the fact that the victim was in a fit state of mind to give her statement.

[41] Signature of the recording officer i.e. PW-7 and the thumb impression of the victim were also exhibited without any objection from the side of the prosecution as Exbt.4, Exbt.4/1 and Exbt.4/2 respectively. As per dying declaration, the mother in law of the victim set her ablaze by pouring kerosene oil on her after tying her mouth. Before relying upon a dying declaration, a Court must reach to the conclusion that the dying declaration was the true and voluntarily statement of the victim and once it is proved that the version of the victim was true and voluntary one, a Court should not look into what procedure adopted by the recording officer in recording the dying declaration. In this regard, the Hon'ble Apex Court in ***Purshottam Chopra and Another v. State (Govt. Of NCT Delhi) in Criminal Appeal Nos.194-195 of 2012*** held thus:

- i. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.
- ii. 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.
- iii. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant corroborative evidence.
- iv. When the eye-witnesses affirm that the deceased as not in a fit and conscious state of making the statement, the medical opinion cannot prevail.



v) 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.

vi) 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.

vii) 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.

viii) If after careful scrutiny, the Court finds the statement aplaced 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.”

[42] Thus in view of the above guidelines of Hon'ble Apex Court a dying declaration can be the sole basis of conviction of the accused if the dying declaration inspires confidence that it was the true and voluntary version of the victim. The above case law also clarifies the law that there is no prescribed formula or format of recording of dying declaration and the only thing which is to be considered whether the victim was in fit state of mind or not. In the present case, it is admitted that the victim was in fit state of mind when the same was recorded by PW-7.

[43] PWs-15, 16, 18 and 19 also made the same statement that her mother in law tied her mouth by a gamchha and set her on fire after pouring kerosene oil. They also deposed in a same voice that the victim made oral dying declaration in the GBP Hospital in their presence that her mother in law tied her mouth with a piece of cloth and set her on fire after pouring kerosene oil on her body. There was no denial on the part of the prosecution that above mentioned witnesses did not visit the victim at GBP Hospital. Though contradiction in the nature of omission of the above mentioned statement of PW-14 was drawn, but such omission does not make the evidence of PW-14 unreliable as evidence of all the above mentioned witnesses are consistent with each other providing no scope of any contradiction on the point of exaggeration.



[44] Such oral dying declaration of the victim made in presence of PWs.3, 14, 15, 16, 18 and 19 also supported and corroborated the written dying declaration of the victim recorded by PW-7. Hence, there is no hesitation in the mind of this Court in relying upon the oral as well as written dying declaration made by the victim and to warrant conviction against the accused of this case on the basis of the said evidence. It is settled principle of law that on the uncorroborated dying declaration also conviction can be warranted against he accused, if it is found reliable.

[45] Regarding the evidences of neighbouring witnesses as argued during the course of hearing, we are of the view that matrimonial offences including bride burning cases are being taken place inside the four walls of the matrimonial home of the victim and so there is no scope to have any independent witness of such cases. The perpetrators obviously shall not forward evidence against them. The neighbours of the perpetrators also in most of the cases do not depose against the perpetrators. The only persons who can be the witness of those cases are the relatives of the victim with whom the victim time to time shared the incidents took place against her and so the evidence of the relative witnesses must not be discarded only on the ground that they are the interested witnesses. It is also not the case that any independent witness visited the victim prior to her death in the hospital and so there remains no ground to disbelieve the evidence of the relative witnesses on the fact that the victim made oral dying declaration in presence of them and in her dying declaration she stated that the accused being the mother-in-law of the victim tied her mouth with a piece of cloth and set her on fire after pouring kerosene oil on her body.

[46] In the present case from the oral evidence as well as from the post mortem report it is clear that the victim was pregnant when she was killed. Weight of the unborn child was 2.8 kg and was about to take birth within a few days i.e. she died i.e. on 21.05.2015 and the date of delivery was fixed on 25.05.2015 and so, virtually two lives have been assassinated by the accused of this case. In the present case admittedly the fire incident took place inside the house of the accused persons. There was no plea on the



part of the accused person that at the time of incident she was not in the house or anything explained by her while she was examined under Section-313 of Cr. P.C. As it is not disputed that the accused was in the house when the fire incident took place, she has special knowledge about the cause and effect of the incident in view of Section-7 of the Indian Evidence Act so, it is the burden of the accused to explain the situation of fire incident under Section-106 of the Indian Evidence Act.

[47] A criminal trial is nothing but a process to find out the truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd.

[48] Most of the witnesses are not the eye witness and they do not give any reason or justification to say that the deceased was cooking. Only person to speak about the crime is the victim herself and that is also cleared from her dying declaration. But the very person who was inside the house is the mother in law but she did not say anything in her 313 deposition. She was 9 months pregnant when she died i.e. on 21.05.2015 his daughter died and the date of delivery was fixed on 25.05.2015.

[49] One Srirup Sarkar in his statement recorded under Section-161 has deposed that on 21.05.2015 hearing outcry “save save” he went to the house and found that wife of Dhananjay was on sitting condition with burn injuries and other women standing beside her. At that time he saw a half burnt gamchha on the mount of wife of Dhananjay. It was tied up from back. Then, he with the help of his own ganchha, untied it and asked the whereabouts of other inmates of their house. This version of the witness is completely corroborating with the dying declaration and with other witnesses.



[50] In view of above discussions and having gone through the observations as made out by the learned Court below and more particularly, the observations made by the Hon'ble Apex Court, we are of the opinion that the crime against the convict, the appellant herein is proved beyond shadow of doubt and needs no interference. Accordingly, the findings as arrived at by the learned Court below are just and proper. Thus, the present appeal stands dismissed. However, reliance as placed on the judgments by the learned counsel appearing for the appellant have no relevance in the facts and circumstances of the present case.

[51] Accordingly, the present appeal stands dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A.Ghash

