

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.488 of 2018

[Against the judgment of conviction and sentence dated 08.03.2018 passed by the learned Additional Sessions Judge-VII, Dhanbad, in Sessions Trial Case No.352 of 2016]

Khagen Rajwar, Aged about 30 Years, S/o-Gokul Rajwar,
Resident of – Huchuk Tar, Pradhan Khanta, P.O + P.S-Baliapur,
District-Dhanbad **Appellant**

Versus

The State Jharkhand **Opp. Party**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Pratiush Lala, Advocate
For the State : Mrs. Priya Shrestha, Spl. P.P.

C.A.V. on 13/07/2026

Pronounced on 06/08/2026

Per Sujit Narayan Prasad, J.:

1. The instant appeal, filed under Sections 374 (2) of the Code of Criminal Procedure, is directed against the judgment of conviction and sentence dated 08.03.2018 passed by the learned Additional Sessions Judge-VII, Dhanbad, in Sessions Trial Case No.352 of 2016, whereby and whereunder, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life along with fine of Rs.5,000/- and in default of payment of fine, he has further been directed to undergo R.I. for a period of six months with a direction that the period of detention already undergone by the

convict, during investigation, inquiry or trial may be set off against the sentence awarded to the appellant in the case.

Prosecution case

2. The case of prosecution, in brief, as per *fardbeyan* of informant/deceased Sarita Devi recorded by ASI Ashok Kumar Tiwari(PW-7)of Saraidhela P.S. on 22.03.2016 at 3:00 hours (3:00 a.m.), in the Emergency Ward of PMCH, Dhanbad, is that on 22.03.2016 at about 3:00 hours in the Emergency Ward of PMCH, Dhanbad, the informant/deceased Sarita Devi gave her fardbeyan during her consciousness without any fear that her husband Khagen Rajwar(appellant herein) used to assault and quarrel to her regularly after drinking wine. In the night of 21.03.2016 her husband Khagen Rajwar came after drinking wine and when informant/deceased Sarita Devi advised him for not drinking wine then Khagen Rajwar assaulted her and poured kerosene oil on her body and ablaze her on fire as a result she sustained burn injury. She further stated that her husband fled away from the house after ablazing her to fire and on hearing *halla* the people of the vicinity came and they brought her to PMCH, Dhanbad, for treatment. She has also alleged in her fardbeyan that later on her husband Khagen Rajwar also came to extinguish fire with people of the vicinity.
3. It is the further case of the prosecution that the aforesaid fardbeyan of informant Sarita Devi (deceased) was recorded by ASI Ashok Kumar Tiwary (PW-7) of Saraidhela P.S. on

22.03.2016 at 3:00 hours in the Emergency Ward of PMCH, Dhanbad in presence of Dr. Laxmi Narayan, Senior Resident, Department of Surgery, PMCH, Dhanbad. After recording the fardbeyan of informant Sarita Devi(deceased), ASI Ashok Kumar Tiwari (PW-7), forwarded the same to the officer-in-charge of Baliapur P.S. after making station diary entry no. 07/2016 dated 22.03.2016. Thereafter, the officer-in-charge of Baliapur P.S. registered Baliapur P.S. Case No. 25/2016 on 22.03.2016, U/s 341/323/307/498 (A) IPC against Khagen Rajwar and deputed S.I. Jugu Perti (PW-8) for investigation of the case.

4. During the course of investigation informant Sarita Devi died in PMCH, Dhanbad, during her treatment.

5. Charge-sheet against accused Khagen Rajwar was submitted for the offence punishable U/s 341/323/498 (A)/304 (B)/307/302 IPC and the cognizance of the said offence was taken and the case was committed to the Court of Sessions.

6. The charge against accused/appellant Khagen Rajwar was framed for the offence punishable under Section 302, for which, he pleaded not guilty and claimed to be tried.

7. In course of trial, the prosecution had examined altogether 8 witnesses. P.W-1 Gajadhar Rajwar @ Gaju Rajwar, is *bhaisur* of deceased and brother of appellant; P.W-2 Binod Rajwar, is another *bhaisur* of deceased and P.W.3 Gokul Rajwar is the father-in-law of deceased and both P.W-2 and P.W.3 were declared hostile by prosecution; P.W.-4

Jogeshwar Rajwar; is neighbor of the deceased, P.W.-5 Dr. Shailendra Kumar, who conducted the post-mortem examination over the dead body of deceased; P.W.- 6 Dr. Laxmi Narayan, in whose presence ASI Ashok Kumar Tiwari recorded the fardbeyan of informant/deceased Sarita Devi; P.W.-7 is ASI Ashok Kumar Tiwary, who had recorded the fardbeyan of deceased Sarita Devi and P.W.-8 Jagu Purti, is the Investigating Officer of the case.

8. Apart from the aforesaid oral evidence of prosecution witnesses following documentary evidence has been adduced by prosecution as exhibit-

Ext.-1-Signature of Binod Rajwar on the inquest report,

Ext.- 1/1 Carbon copy of inquest report,

Ext.-2 Postmortem examination report of deceased Sarita Devi,

Ext.-3 Fardbeyan of informant/deceased Sarita Devi,

Ext.-4 Endorsement on the fardbeyan,

Ext.-5 Station Diary Entry No. 7 dated 22.03.2016,

Ext.-6 Application for deputation of Magistrate for recording the dying declaration of informant/deceased Sarita Devi.

9. On the other hand, the defence has adduced a xerox of endorsement of Dr. M.N Sinha, R.M.O, PMCH, Dhanbad which has been marked as "X" for identification.

10. Accordingly, the trial court after considering the material available on record and the testimonies of the witnesses found the accused/appellant guilty for the offence

under section 302 of I.P.C and as such, convicted and sentenced vide impugned judgment of conviction and sentence dated 08.03.2018, which is the subject matter of instant appeal.

Submission of the learned counsel for the appellant

11. Mr. Pratiush Lala, learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence suffers from infirmity on the following grounds:

- i. It has been contended by the learned counsel for the appellant that the prosecution has miserably failed to establish the charge said to have been proved beyond all reasonable doubts as also no independent witness has supported the case of the prosecution.
- ii. It has been submitted that the learned court ought to have considered that the prosecution witnesses found to be given contradictory statement against each other and as such, the judgment impugned suffers from patent illegality.
- iii. The learned trial Court has failed to appreciate the Xerox Copy of endorsement of Dr. M.N.Sinha, R.M.O., PMCH, Dhanbad which was adduced by the defense and marked as 'X' for identification wherein the Doctor mentioned that victim Sarita was not in condition to give her statement.

- iv. PW-5, Dr. Shailendra Kumar who had conducted postmortem examination, had stated that cause of death was as a result of 100% burn injury and therefore submission has been made that under such circumstances deceased could not have made her statement to the police.
- v. The learned trial Court has also not appreciated the fact that the victim was not in condition to give her statement and the same fact has also been corroborated by P.W.5 Dr. Shailendra Kumar who had stated that deceased was died as a result of 100% burn injury, which creates the case of the prosecution doubtful.
- vi. The learned trial Court has not taken into consideration the deposition of P.W.1 and P.W.4 that the appellant started making an attempt of extinguishing the fire and in this occurrence, the appellant Khagen Rajwar also sustained burn injury which clearly suggests that the appellant was making every possible attempt to save the life of the deceased.
- vii. It has also been submitted that learned court has also not taken into consideration that the prosecution has not examined the two sons and daughter of the deceased.

viii. Learned counsel for the appellant has relied on judgment delivered by the Hon'ble Apex Court in case of ***Jayamma & Anr. versus State of Karnataka (Criminal Appeal No. 758 of 2010)*** and ***Irfan @ Naka versus the State of Uttar Pradesh (Criminal Appeal Nos. 825-826 of 2022)***.

14. Learned counsel for the appellant, on the aforesaid premise, has submitted that the impugned judgment needs to be interfered with.

Submission of the learned Spl. P.P. for the State

15. *Per Contra*, Mrs. Priya Shrestha, learned Spl. Public Prosecutor appearing for the respondent-State has taken the following grounds in defending the impugned judgment of conviction/sentence: -

- (i) It has been contended that it is incorrect to say that the prosecution has miserably failed to establish the charge said to have been proved beyond all reasonable doubts.
- (ii) It has been submitted that on the night of 21.03.2016, the victim's husband Khagen Rajwar came at the house in drunken condition then she made protest for drinking wine and in the meantime, Khagen Rajwar, the present appellant poured Kerosene oil in course of assaulting her and set her on fire. She has also stated in her

fardbeyan that after ablazing her to fire by her husband Khagen Rajwar, her husband fled away.

(iii) It has been contended that the fardbeyan can be treated as dying declaration of deceased because it relates to cause of her death.

(iv) The reliability of the fardbeyan of the informant/deceased as dying declaration is found satisfactory without any embellishment.

(v) It has been contended that the P.W.5, the doctor who had conducted the post-mortem over the dead body of deceased opined that the cause of death of deceased was caused due to shock as a result of 100 per cent kerosene oil burn injury and the death of deceased under the fact and circumstances is homicidal.

(vi) The fardbeyan of the informant/deceased possess all the requirements of dying declaration which has been found voluntarily and truthful as also creates no doubt and embellishment in the case of the prosecution.

(vii) In order to buttress this limb of argument learned counsel for the state has relied on judgment delivered by the Hon'ble Apex Court in case of ***KankSingh RaiSingh Raw versus State of Gujarat, (2003)1 SCC 73; Ongole Ravikanth versus State of Andhra Pradesh, (2009)13 SCC***

647; C.V. Govindappa And Others versus State of Karnataka, (1998)2 SCC 763; Kulwant Singh and Others versus State of Punjab, (2004)9 SCC 257 and Najjam Faraghi @ Nijjam Faruqui, (1998)2 SCC 45.

16. Learned counsel for the state based upon the aforesaid submission, has submitted that the learned trial Court after taking into consideration the testimony of the prosecution witnesses has passed the impugned judgment of conviction, therefore, the same requires no interference.

17. We have heard learned counsel for the parties, perused the material available on record more particularly the testimony of the witnesses and the finding recorded by learned trial Court.

18. This Court, before going into the legality and propriety of the impugned judgment of conviction and sentence, deems it fit and proper to refer the testimony of prosecution witnesses.

19. PW 1 Gajadhar Rajwar @ Gaju Rajwar is *bhaisur* of deceased and elder brother of accused Khagen Rajwar. He had stated in his evidence that in the night of relevant day of occurrence, he woke up hearing *halla* and went there and saw Sarita Devi was burning and her whole body was burnt but he has no knowledge how Sarita Devi sustained burn injury. Sarita Devi died in hospital after five days.

20. P.W.-1 in his cross-examination stated that when he saw Sarita Devi burning, in her house, at that time accused Khagen

Rajwar, came running from *Kulhi*. The Accused Khagen Rajwar had come at the place of occurrence on *halla* and he made an attempt to extinguish the fire and, in the occurrence, Khagen Rajwar also sustained burn injury. This witness further deposed that he also made an attempt to extinguish fire and during which he also sustained some burn injury. Sarita Devi become unconscious due to burn injury. They along with Khagen Rajwar brought Sarita Devi to PMCH, Dhanbad for treatment. He has further deposed that the statement of Sarita was not recorded in his presence and the food was being provided to Sarita through her nose. There was only one room in which Sarita and Khagen Rajwar were residing and in that room the food was also cooked.

21. PW 2 Binod Rajwar who has been declared hostile by the prosecution, is the another *bhaisur* of informant/deceased Sarita Devi and elder brother of accused Khagen Rajwar. He had stated in his evidence that Sarita Devi died in the month of March 2016 due to burn by fire and he saw the dead body of Sarita which was entirely burn injury. When he had seen Sarita devi P.M.C.H., her whole body was burnt and at that time she was alive. Sarita Devi was treated in hospital for one month and Sarita Devi died in the hospital during treatment. He had identified his signature on the inquest report which was marked as Ext.-1.

22. P.W.- 3 Gokul Rajwar, is the father-in-law of deceased and father of accused Khagen Rajwar has also been declared

hostile. He had stated in his evidence that Sarita Devi died on March 2016 due to burn and at the time of occurrence he was sleeping. On hearing *halla* he came there and saw Sarita Devi was burning and Khagen Rajwar was making an attempt to save her. Khagen Rajwar also sustained burn injury while extinguishing the fire.

23. P.W-4 Jogeshwar Rajwar, neighbour of accused. He had stated in his evidence that Sarita Devi was married with Khagen Rajwar about 10 years ago. After marriage Sarita Devi was living at her matrimonial home and she was blessed with two sons and one daughter. He further deposed, on hearing *halla*, he went to the house of Khagen Rajwar and saw the whole body of Sarita Devi was badly burnt and Khagen Rajwar was also on the place occurrence in burn condition. The incident occurred in the mid night. He did not know how Sarita Devi, was burnt. When he had reached at the place of occurrence, accused Khagen Rajwar, was present at the place of occurrence and he had also burn injury. Sarita Devi was sent to hospital for treatment where she died after three days.

In his cross-examination, he stated that when he reached at the place of occurrence at that time Sarita Devi was badly in burnt condition and she was not in condition to talk.

24. P.W-5 Dr. Shailendra Kumar, had conducted the postmortem examination on the dead body of deceased Sarita Devi, female aged about 30 years, W/o Khagen Rajwar, R/o

Pradhan Khanta, Huchuk Tanr P.S. Baliapur, Distt- Dhanbad.

He found following on the person of deceased Sarita Devi:

Dermo-epidermal ante-mortem burn injury found all over of the body of the deceased except both of the soles. Most of the scalp's hairs were also burnt. The remnant hairs were emitting light smell of kerosene oil. Carbon soot was found all over of the body of the deceased. Sample of the scalp's hairs were sealed and labeled and handed over to the Chowkidar for exhibit. Foul smelling pus were found here and there in the body of deceased. Burn injuries were about 5 to 7 days old.

On dissection: - heart, Stomach and bladder were found empty. All internal organ were found congested.

Time elapsed since death: - 18 to 24 hours.

Cause of death: - death was due to shock as a result of 100 % kerosene oil burn injury.

P.W.-5 had proved the postmortem report, which was written by him in Hindi and it bears his signature. The post mortem report was marked as Ext.-2.

25. In his cross-examination P.W.-5 stated that no injury other than burn injury was found on the person of deceased. In case of burn injury sense prevail since death. If person is unconscious he/she cannot be able to give statement. He cannot say whether the sample of scalps hairs were sent for further examination or not. These injuries are not accidental. If any person tried to save burning victim, he may also sustain

burn injuries. Whole body of deceased found bandaged below the neck. He did not find any cloth on the person of deceased.

26. PW 6 Dr. Laxmi Narayan, had stated in his evidence that on 22.03.2016, he was posted as Senior Resident in the Department of Surgery, PMCH, Dhanbad. On that day at 03:00 hours (03:00 AM) in PMCH emergency ward ASI Ashok Kumar Tiwari, of Saraidhela P.S., had recorded the fardbeyan of deceased Sarita Devi in his presence. Sarita Devi was in burn condition and admitted in emergency ward PMCH Dhanbad and she was in position to give her statement. On the saying Sarita Devi, he gave information to Police of Saraidhela P.S. Sarita Devi gave her statement in his presence and ASI Ashok Kumar Tiwari of Saraidhela P.S. recorded the statement and Sarita Devi had put her RTI over her statement. He had also put his signature over the aforesaid fardbeyan of Sarita Devi. P.W.-6 had identified his signature over the fardbeyan, the entire fardbeyan was marked as Ext.-3.

27. P.W.-6 in his cross-examination, had stated that a Xerox copy of a letter which bears the endorsement of Dr. M.N. Sinha, regarding the condition of victim Sarita Devi for giving her dying declaration on 22.03.2016 at 5:56 PM in which it is mentioned that victim Sarita Devi was not in condition to give her statement and the said endorsement of Dr. M.N. Singh, RMO, of PMCH has been marked 'X' for identification. He had not mentioned the time when fardbeyan was recorded.

28. P.W.-7 Ashok Kumar Tiwary, is the then ASI of Saraidhela P.S., had stated in his evidence that on 22.03.2016. he was posted as ASI in Saraidhela P.S. and on that day at 3:00 hours, he had recorded the fardbeyan of informant Sarita Devi in Emergency Ward of PMCH, Dhanbad in presence of Dr. Laxmi Narayan. He identified the fardbeyan of informant/deceased which is in his writing and signature and bears the RTI of Sarita Devi which has already been marked as Ext.-3. He further deposed that after recording the fardbeyan of informant Sarita Devi, he returned to Saraidhela P.S. and made Station Diary entry no. 07/2016 dated 22.03.2016, in the Station diary of Saraidhela P.S. and thereafter, forwarded the fardbeyan of informant Sarita Devi to Baliapur P.S. for registering a case. This witness proved the Station Diary Entry no. 07/2016 dated 22.03.2016 of Saraidhela P.S. which is in the writing of Bharat Mandal, writer constable of Saraidhela P.S. which has been marked as Ext.-5.

29. P.W.-7 in his cross-examination, had stated that he had recorded the fardbeyan of Sarita Devi in PMCH, Dhanbad on 22.03.2016 at 3:00 AM in the morning in the presence of doctor and Videography was done and at that time she was crying due to burn injury. He has further stated that at the time of recording the fardbeyan of Sarita Devi, no any family members of Sarita Devi were present. He has further deposed that Sarita Devi was speaking at time.

30. P.W-8 Jugu Purti, Investigating Officer of this case had stated in his evidence that on 22.03.2016, he got the charge of investigation of this case from the then officer-in-charge of Baliapur P.S. and after taking the charge of investigation he perused the fardbyan of informant Sarita Devi. Thereafter, he went to PMCH, Dhanbad where he recorded the re-statement of Sarita Devi at PMCH, Dhanbad on 22.03.2016 at 11 am, in which informant Sarita Devi supported the contents of her fardbeyan.

31. Investigating Officer further stated that the place of occurrence is the mud tiled house of accused Khagen Rajwar situated at village Pradhan Khanta, Tola Huchuk Tanr, containing one room which opens towards south direction and in that room the informant/deceased was ablazed to fire after pouring kerosene oil. He further deposed that he gave an application on 22.03.2016 before the court of Md. Umar, the then Judicial Magistrate for the deputation of Magistrate for recording the dying declaration of Sarita Devi and thereafter the said application was forwarded to CJM, Dhanbad for deputing Magistrate. By the order of the then CJM, Dhanbad Sri Pratap Chandra, the then judicial magistrate, Dhanbad was deputed for recording the dying declaration of Sarita Devi. This petition has been identified and marked as Ext. 6.

32. Investigating Officer further stated that during investigation he came to know that deceased Sarita Devi died on 27.03.2016 at PMCH, Dhanbad during the course of

treatment then he came to PMCH, Dhanbad and prepared inquest report of dead body of deceased in presence of two witnesses Binod Rajwar and Jogeshwar Rajwar which has been marked as Ext. 1/1 and the dead body of deceased was sent for post-mortem examination. He recorded the statement of witnesses Gokul Rajwar, Charia Devi, Ganju Rajwar, Binod Rajwar, Jogeshwar Rajwar and Mahadeo Rajwar who have supported about the occurrence during their statement. He submitted charge against accused Khagen Rajwar for the offence punishable U/s 341/323/498 (A)/304 (B)/307/302 IPC.

33. Investigating Officer in his cross-examination, had stated that he along with Sri Pratap Chandra, Judicial Magistrate, Dhanbad came to PMCH, Dhanbad for recording dying declaration of informant Sarita Devi and he made contact with Sr. Resident Medical Officer of PMCH who told that informant Sarita Devi is not in position to give her statement so the dying of declaration of Sarita Devi could not be recorded by Sri Pratap Chandra, Judicial Magistrate, Dhanbad. Investigating Officer further deposed that informant had stated during her fardbeyan that later on her husband also came with other people for extinguishing fire.

34. In the backdrop of the aforesaid discussions, this Court in the instant case is to consider following issues:

- I. Whether the deceased was conscious and in fit state to give her statement?*
- II. Whether deceased in 100% burn injuries could have made statement to the police (P.W.-7)?*

III. Whether the medical opinion of the Doctor, marked as Exhibit 'X', who has not been examined, and wherein it is categorically recorded that the deceased was not in a condition to make her statement, casts a shadow of doubt upon the prosecution case.

IV. Whether dying declaration of the deceased Sarita Devi is truthful, voluntary and trustworthy and sufficient enough to convict the appellant?

V. Whether conviction of the appellant is based on cogent evidence?

Re: issue no.(i), (ii) and (iii)

35. Since all the aforesaid issues are inextricably interlinked, they are accordingly taken up together for discussion and adjudication hereinbelow.

36. The core issues for determination are whether the deceased, having sustained 100% burn injuries, was conscious and in a fit state to make a statement and whether in such condition she could have given a statement to the police (P.W.-7); and whether the medical opinion of the Doctor, marked as Exhibit 'X' but not tested by examination, wherein it is categorically recorded that the deceased was not in a condition to make her statement, casts a shadow of doubt upon the prosecution case.

37. But before delving into these instant issues, it would be apt to refer herein the judgment of Hon'ble Apex Court in the cases of dying declaration involving burn injuries.

38. The Hon'ble Apex Court, in ***Vijay Pal v. State (Govt. of NCT of Delhi)***, (2015) 4 SCC 749, after referring to its earlier pronouncements, held that a person suffering 99% burn injuries

could still be deemed capable of making a dying declaration. It was further observed that even in cases of 100% burn injuries, reliance may be placed upon the dying declaration of such a person, provided the declaration is found to be credible. Paragraph-23 and 24 of the aforesaid judgment are quoted herein below-

“23. It is contended by the learned counsel for the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

39. Further, the Hon'ble Apex Court in ***Purshottam Chopra and Another v. State (Government of NCT of Delhi)*** reported in **(2020) 11 SCC 489**, has summarized the principles relating to recording of dying declaration and its admissibility and reliability at paragraph-21.7 of the judgment had laid down that as regards 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. For ready reference Paragraph-21 of the said judgement is quoted herein below -

“21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained

from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.”

40. Hence, in cases of dying declaration involving burn injuries Hon'ble Apex Court has laid down that 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 and victim suffering 99% or 100% burns injuries are also capable of giving dying declaration, if dying declaration is credible.

41. Learned counsel for the appellant has submitted that the learned trial Court has failed to appreciate endorsement of Dr. M.N.Sinha, R.M.O., PMCH, Dhanbad, in the letter marked 'x', which was adduced by the defense wherein the Doctor had given medical opinion that victim Sarita was not in condition to give her statement.

42. Hence, learned counsel for the appellant has raised the ground that as per the medical opinion of the Doctor, deceased Sarita, was not in a fit mental condition to make the dying declaration and hence, the alleged fardbeyan/ dying declaration Ext.-3 of the deceased is not acceptable.

43. To examine the contention advanced by the learned counsel for the appellant, this Court has perused the *fardbeyan* (Ext-3) of the informant Sarita Devi (deceased). From the said *fardbeyan*, it emerges that Sarita Devi (deceased) categorically stated that in the intervening night of 21/22.03.2016, her husband Khagen Rajwar (the appellant herein) assaulted her, poured kerosene oil over her body, and set her ablaze, as a consequence of which she sustained burn injuries.

44. It is pertinent to note herein that P.W.-1, Gajadhar Rajwar @ Gaju Rajwar, the *bhaisur* (elder brother-in-law) of the deceased, stated in his evidence that during the night he saw Sarita Devi burning and thereafter she was admitted to PMCH, Dhanbad for treatment. Likewise, P.W.-4, Jogeshwar Rajwar, the neighbour of the accused, deposed that the incident occurred at midnight, and he too witnessed Sarita Devi in a badly burnt condition, following which she was taken to the hospital for medical care.

45. Hence, PW-1 Gajadhar Rajwar and PW-4 Jogeshwar Rajwar, both have deposed that, in the night of 21/22.03.2016, they had seen Sarita Devi(deceased), in burnt condition and she was taken to Hospital i.e. PMCH, Dhanbad for treatment.

46. At this juncture, it would be pertinent to travel into to the testimony of PW-6 Dr. Laxmi Narayan, in whose presence fardbeyan of the Sarita Devi (deceased) was recorded and the testimony of PW-7 ASI Ashok Kumar Tiwary, who had recorded the fardbeyan Ext.-3 of the Sarita Devi (deceased).

47. PW-6 Dr. Laxmi Narayan, was posted as Senior Resident in the Department of Surgery, PMCH, Dhanbad, on 22.03.2016. He had deposed that Sarita Devi(deceased), in burn condition, was admitted in emergency ward of PMCH, Dhanbad, and she was in position to give her statement. On the saying Sarita Devi, he gave information to Police of Saraidhela Police Station. On that day (i.e. on 22.03.2016) at 03:00 hours (03:00 AM), in PMCH emergency ward, ASI Ashok Kumar Tiwari (PW-7), of Saraidhela P.S., had recorded the fardbeyan of deceased Sarita Devi in his presence. For ready reference the relevant paragraphs of the testimony of the P.W.6 is being quoted as under:

“2. Sarita Devi was in burn condition and admitted in emergency ward PMCH Dhanbad and she was in position to give her statement. On the saying Sarita Devi I gave information to Police of Saraidhela P.S.

3. Sarita Devi gave her statement in my presence and ASI Ashok Kumar Tiwari of Saraidhela PS recorded the same and Sartia Devi put her RTI over the same and I also put my signature over the aforesaid fardbeyan of Sarita Devi. This witness has identified the Fard Bayan of Sarita Devi which is written by ASI Ashok Tiwari in his presence and Sarita Devi put her RTI over the same and he also put his signature over the same and identified as Ext.- 3 (entire fardbeyan of Sarita Devi)”

48. Further, P.W.-7 ASI Ashok Kumar Tiwary, in his evidence had stated that on 22.03.2016, he was posted as ASI in Saraidhela Police Station and on that day at 3:00 hours, he had recorded the fardbyan of informant Sarita Devi in Emergency Ward of PMCH, Dhanbad in presence of Dr. Laxmi Narayan. He further deposed that after recording the fardbeyan of informant Sarita Devi, he returned to Saraidhela P.S. and made Station Diary entry no. 07/2016 dated 22.03.2016, in the Station diary of Saraidhela P.S. and thereafter, forwarded the fardbeyan of informant Sarita Devi to Baliapur P.S. for registering a case. For ready reference the relevant paragraphs are being quoted as under:

1. दिनांक 22.03.16 में मैं सरायढेला थाना में ए.एस. आई. के रूप में पदस्थापित था, उक्त तिथि को 03.00 बजे सुबह मेरे द्वारा पाटलिपुत्र मेडिकल कॉलेज के आकस्मिक वार्ड में सूचिका सरीता देवी उम्र करीब 30 वर्ष, पति खगेन रजवार का फर्दबयान पाटलिपुत्र मेडिकल कॉलेज के चिकित्सक डाक्टर लक्ष्मी नारायण के समक्ष लेखबद्ध किया गया। यही वह सूचिका सरीता देदी का फर्दबयान है जो मेरे द्वारा लिखा गया सरीता के दाहिने हाथ के अंगुहे का निशान है, इस पर मेरा हस्ताक्षर भी है, इस प्रदर्श 03 गया है इस पर सूचिका अंकित किया गया।

2. पाटलिपुत्र मेडिकल कॉलेज से वापस आकर सरीता देवी के फर्दबयान के आधार पर सरायढेला थाना में सनहा नम्बर 07/2016 दिनांक 22.03.2016 अंकित किया और सूचिका सरीता देवी के बयान को बलियापुर थाना में। मेरे द्वारा अग्रसारित कर दिया गया। यही वह ८ सूचिका सरीता देवी के फर्दबयान पर मेरे द्वारा इस आशय का अग्रसारण सारण किड किया गया है जो मेरे लिखावट एवं हस्ताक्षर में है, जिसे मैं पहचानता हूँ, इसे 04/

अंकित किया गया। यही वह सरायढेला थाना का सनहा नं. 07/2016 दिनांक 22.03.2016 है जो तत्कालीन थाना लेखक भरत मण्डल के लिखावट में है जिसे मैं पहचानता हूँ, इसे प्रदर्श 05 अंकित किया गया।।

49. In his cross-examination at paragraph 4 this witness had reiterated that he had recorded the fardbeyan of Sarita Devi(deceased) in PMCH, Dhanbad on 22.03.2016 at 3:00 AM in the morning in the presence of doctor and Sarita Devi (deceased) was speaking at that time.

50. Hence, both PW-6 Dr. Laxmi Narayan and P.W.-7 ASI Ashok Kumar Tiwari, who had recorded the fardbeyan of Sarita Devi (deceased), have stated in their evidence that in the night of 22.03.2016, when Sarita Devi (deceased), was admitted in the Hospital for her treatment, Sarita Devi (deceased), was speaking at that time.

51. Now this Court is proceeding to examine the Xerox Copy of endorsement of Dr. M.N.Sinha, R.M.O., PMCH, Dhanbad, produced by the defence marked as 'x', wherein R.M.O.,had mentioned that victim Sarita was not in condition to give her statement.

52. On going through contents of Xerox Copy marked as 'x', this court finds that this letter was written by the Investigating Officer P.W-8 Jugu Purti, which was addressed to the Head of Department, Surgery, PMCH, Dhanbad. This letter bears the endorsement of the R.M.O. wherein R.M.O. had noted that 'patient is not in condition to give statement' and the R.M.O.,

had signed on it which bears the date 22.03.2016 and time 5.56 PM.

53. Hence, in the said letter marked 'x', the endorsement of R.M.O., is dated 22.03.2016 and time is mentioned as 5.56 PM, meaning thereby that at 5.56 PM on 22.03.2016, R.M.O., found that victim Sarita Devi, was not in condition to give statement.

54. At this juncture on going to the evidence of PW-1 Gajadhar Rajwar and PW-4 Jogeshwar Rajbari, this Court finds that in the evidence of PW-1 Gajadhar Rajwar and PW-4 Jogeshwar Rajbari, it has come that occurrence of burning of Sarita Devi (deceased) is of night of 21/22.03.2016, and immediately, thereafter, she was taken to PMCH, Dhanbad, and admitted in the Hospital and in the Hospital, fardbeyan of Sarita Devi (deceased) was recorded by P.W.-7 ASI Ashok Kumar Tiwari at 3:00 a.m., in presence of PW-6 Dr. Laxmi Narayan, Senior Resident, Department of Surgery, PMCH, Dhanbad and both P.W.-7 ASI Ashok Kumar Tiwari and PW-6 Dr. Laxmi Narayan, had deposed that at that time Sarita Devi was able to speak.

55. Hence, fact emerges that fardbeyan of Sarita Devi (deceased), was recorded at 3:00 a.m., on 22.03.2016, when Sarita Devi (deceased), was immediately brought to the Hospital after burn injuries and as per the evidence of the PW-6 Dr. Laxmi Narayan and P.W.-7 ASI Ashok Kumar Tiwari, at that time she was able to speak and therefore, fardbeyan of Sarita

Devi (deceased), was recorded by P.W.-7 ASI Ashok Kumar Tiwari.

56. From perusal of the evidence PW-6 Dr. Laxmi Narayan and P.W.-7 ASI Ashok Kumar Tiwari, this Court comes to the conclusion that in the night of 21/22.03.2016, when, Sarita Devi (deceased), was immediately admitted in hospital and when her fardbeyan was recorded by P.W.-7 ASI Ashok Kumar Tiwari at 3:00 a.m., on 22.03.2016, in presence of Dr. Laxmi Narayan (PW-6), she was able to speak and she was conscious at that time.

57. Hence, this Court is of the view that after passage of time, condition of Sarita Devi (deceased), may have been deteriorated. Hence, after recording of fardbeyan at 3:00 a.m. on 22.03.2016, after passage of 14 hours, when R.M.O., had put his endorsement on the letter marked 'X' on 22.03.2016 at 5.56 PM, R.M.O. found that patient was not in condition to give statement.

58. In the present case, from the foregoing discussion, the question that arises is whether the medical opinion of the R.M.O., contained in the letter marked as Exhibit 'X' dated 22.03.2016 at 5:56 P.M., wherein it was opined that the patient was not in a condition to give her statement, should prevail, or whether greater weight is to be accorded to the evidence of P.W.-6 Dr. Laxmi Narayan, in whose presence the *fardbeyan* (Ext.-3) of Sarita Devi (deceased) was recorded by P.W.-7

A.S.I. Ashok Kumar Tiwari, both of whom have deposed that at the time of recording the *fardbeyan*, Sarita Devi was able to speak and render her statement.

59. At this juncture, it would be apt to refer herein the judgment of the Constitutional Bench of the Hon'ble Apex Court rendered in case of ***Laxman v. State of Maharashtra*** reported in **(2002) 6 SCC 710**. In this case Apex court at paragraph-3 has laid down that normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail. Paragraph-3 of Laxman(supra) case is quoted herein below for ready reference-

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination.

*The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. **Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail,** nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”*

(emphasis supplied)

60. In the present case, statement Ext.-3 of Sarita Devi (deceased), was recorded by the Police (PW-7), in presence of PW-6 Dr. Laxmi Narayan and PW-6 Dr. Laxmi Narayan had

stated in his evidence that on 22.03.2016, Sarita Devi(deceased) was in burn condition and admitted in emergency ward of PMCH Dhanbad and she was in position to give her statement. On the saying of Sarita Devi, he gave information to Police of Saraidhela Police Station and her statement was recorded by ASI Ashok Kumar Tiwari (PW-7), at 3. AM on 22.03.2016, in his presence.

61. Hence, from the testimony of PW-6 Dr. Laxmi Narayan and ASI Ashok Kumar Tiwari (PW-7), it leaves no room for doubt that Sarita Devi(deceased) was in position to speak and relying on ratio rendered by the Hon'ble Apex Court in the case of ***Laxman v. State of Maharashtra(supra)***, in the present case, medical opinion given by the R.M.O, in the letter marked 'X' date 22.03.2016 at 5.56 PM, will not prevail.

62. Therefore, the contention of the learned counsel for the appellant that dying declaration is not possible due to the medical situation of the Sarita Devi(deceased), is not tenable. Rather, this court is of the view that the deceased Sarita Devi(deceased) was in a position to speak and was in fit state to give her dying declaration.

63. Accordingly, issue nos.(i), (ii) and (iii), have been answered.

Re: issue no.(iv)

64. The issue no. (iv) is whether dying declaration of the deceased Sarita Devi is truthful, voluntary and trustworthy?

65. Before proceeding further, it would be fruitful to refer judgments delivered by the Hon'ble Apex Court in regard to the admissibility and evidentiary value of a dying declaration.

66. The Hon'ble Apex Court in case of ***Paniben v. State of Gujarat, (1992) 2 SCC 474***, had examined the several judgments governing the law on the principles governing dying declaration. Paragraph -18 of this judgment is quoted herein below-

“18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] ; Ramawati Devi v. State of

Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164]).

(iii) This 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 opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994]).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617])

(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. (Surajdeo Oza v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505])

(ix) Normally the court in order to satisfy itself 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 this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be

acted upon. (State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519]).”

67. Further, Hon'ble Apex Court in the case of ***Dharampal and others vs. State of U.P*** reported in **(2008) 17 SCC 337** has held that the FIR lodged by deceased would attain the character and legal status of dying declaration, if the victim dies before his examination in the Court. Paragraph-16 of the aforesaid judgment is quoted herein below-

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

(emphasis supplied)

68. In case of ***Bhajju v. State of M.P., (2012) 4 SCC 327***, Hon'ble Apex Court laid down that 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of Section 32 makes the statement of the deceased admissible, which is generally described as a "dying declaration". A dying declaration, if found reliable, can form the basis of a conviction. Relevant paragraph of this judgment is quoted herein below-

"22. The law is very clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the court and could form the sole piece of evidence resulting in the conviction of the accused. This Court has clearly stated the principle that Section 32 of the Evidence Act, 1872 (for short "the Act") is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of Section 32 makes the statement of the deceased admissible, which is generally described as a "dying declaration".

23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.

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24. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring any further corroboration. 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 by other evidence.

25. There is a clear distinction between the principles governing the evaluation of a dying declaration under the English law and the Indian law. Under the English law, credence and relevancy of a dying declaration is only when the person making such a statement is in hopeless condition and expecting an imminent death. So under the English law, for its admissibility, the declaration should have been made when in the actual danger of death and that the declarant should have had a full apprehension that his death would ensue. However, under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration. The dying declaration is admissible not only in the case of homicide but also in civil suits. The admissibility of a dying declaration rests upon the principle of nemo moriturus praesumitur mentire (a man will not meet his Maker with a lie in his mouth).

26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the

principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the court, the same may be refused to be accepted as forming basis of the conviction.”

27. Another consideration that may weigh with the court, of course with reference to the facts of a given case, is whether the dying declaration has been able to bring a confidence thereupon or not, is it trustworthy or is merely an attempt to cover up the laches of investigation. It must allure the satisfaction of the court that reliance ought to be placed thereon rather than distrust.

69. Again, in the case of ***Shudhakar v. State of M.P., (2012) 7 SCC 569***, the Hon’ble Apex Court held that “dying declaration” is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Paragraoh-20 of this judgment is quoted here in below-

“20. The “dying declaration” is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.”

70. Further, the Hon'ble Apex Court in case of ***State of Gujarat v. Jayrajbhai Punjabhai Varu, (2016) 14 SCC 151***, had laid down that the courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. Paragraph-15 of this judgment is quoted herein below-

“15. The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.”

71. Hence, in the aforesaid judgments Hon'ble Apex Court has laid down that “dying declaration” is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the

truth and only the truth. Courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person.

72. Reverting to the facts of the present case, this Court finds that A.S.I. Ashok Kumar Tiwari (P.W.-7) of Saraidhela Police Station and Dr. Laxmi Narayan (P.W.-6) are material witnesses insofar as their participation in the recording of the dying declaration of the deceased Sarita Devi is concerned.

73. Prosecution has relied upon the dying declarations of the deceased Sarita Devi, which was recorded by ASI Ashok Kumar Tiwary (PW-7) of Saraidhela P.S. on 22.03.2016 at 3:00 AM, in the Emergency Ward of PMCH, Dhanbad, in presence of Dr. Laxmi Narayan (PW-6), who was posted as Senior Resident in the Department of Surgery, PMCH, Dhanbad.

74. Dr. Laxmi Narayan (PW 6), had stated in his evidence that on 22.03.2016, Sarita Devi (deceased), in burn condition, was admitted in the emergency ward PMCH, Dhanbad and she was in position to give her statement and on the saying of Sarita Devi, he gave information to Police of Saraidhela Police Station. Thereafter, ASI Ashok Kumar Tiwari (PW-7) of Saraidhela Police Station had recorded the statement of Sartia Devi and Sartia Devi had put her RTI over her fardbeyan, in his presence.

75. At the cost of repetition it requires to refer herein that ASI Ashok Kumar Tiwari (P.W.-7), had deposed that on 22.03.2016

at 3:00 hours, he had recorded the fardbeyan Ext.-3 of informant Sarita Devi(deceased) in Emergency Ward of PMCH, Dhanbad in presence of Dr. Laxmi Narayan(PW-6) and after recording the fardbeyan of informant Sarita Devi, he returned to Saraidhela P.S. and made Station Diary entry no. 07/2016 dated 22.03.2016 Ext.-5., in the Station diary of Saraidhela P.S. and thereafter, forwarded the fardbeyan of informant Sarita Devi to Baliapur P.S. for registering a case.

76. Further, ASI Ashok Kumar Tiwari (P.W.-7), in his cross-examination, had reiterated that he had recorded the fardbeyan of Sarita Devi in PMCH, Dhanbad on 22.03.2016 at 3:00 AM in the morning in the presence of doctor(i.e.PW-6) and at that time she was groaning due to burn injury.

77. Again, from the evidence of PW-1 and PW-4, who are the *bhaisur* of the deceased and neighbour respectively and both have deposed that they saw Sarita Devi(deceased), in burnt condition in the night of 21/22.03.2016, and immediately, thereafter, she was taken to PMCH, Dhanbad, and admitted in the Hospital.

78. Hence, from the evidence of PW-1, PW-4, PW-6 and PW-7, it is proved that Sarita Devi(deceased), in burn condition was admitted in the night of 21/22.03.2016, at PMCH, Dhanbad, and in the presence of Dr. Laxmi Narayan (PW-6), the ASI Ashok Kumar Tiwari (P.W.-7), had recorded the fardbeyan Ext.-3 of Sarita Devi at 3 AM on 22.03.2016.

79. This Court has gone into the fardbeyan Ext.-3 of the Sarita Devi(deceased) and on perusal of the fardbeyan, this Court finds that fardbeyan Ext.-3 bears the thumb impression of Sarita Devi(deceased) and also bears the signature of Dr. Laxmi Narayan (PW-6), in whose presence fardbeyan was recorded by the ASI Ashok Kumar Tiwari (P.W.-7).

80. At this juncture it would be pertinent to note the judgment delivered by the Hon'ble Apex Court in the case of ***Dharampal and others vs. State of UP (supra)*** wherein Apex Court has laid down that the FIR lodged by deceased would attain the character and legal status of dying declaration, if the victim dies before his examination in the Court.

81. In the instant case, upon consideration of the foregoing discussion, this Court is satisfied that the prosecution has duly established that the *fardbeyan* (Ext.-3) of the deceased Sarita Devi constitutes a dying declaration, and accordingly, the said *fardbeyan* is admissible under Section 32 of the Evidence Act.

82. Therefore, from the discussion made in the preceding paragraph, this Court is of the view that dying declaration, which is the fardbeyan Ext.-3, of the deceased Sarita Devi is truthful, voluntary and trustworthy.

83. It needs to refer herein that the learned counsel for the appellant has relied on the judgment of Hon'ble Apex Court delivered in case of ***Jayamma & Anr. versus State of Karnataka (Criminal Appeal No. 758 of 2010)***, wherein the allegation on the appellants was that appellants allegedly

doused the deceased Jayamma, in kerosene and set her on fire. The statement of Jayamma was recorded by the police; however, she succumbed to her injuries during her treatment in hospital. The statement of the deceased which was treated as dying declaration. But Hon'ble Apex Court had doubted the dying declaration of the deceased and noted that injured victim was an illiterate old person, but, her dying declaration was so accurate, that even a witness in the normal state of mind, cannot be expected to depose with such precision.

84. In the case at hand, the factual matrix is distinguishable. The deceased Sarita Devi was immediately rushed to the hospital, where her statement was recorded within a very short interval of the incident by P.W.-7 in the presence of Dr. Laxmi Narayan (P.W.-6). The *fardbeyan* (Ext.-3), which has been treated as her dying declaration, is brief, wherein she stated that on the night in question her husband, Khagen Rajwar (the appellant herein), came home in an intoxicated condition, assaulted her, poured kerosene oil upon her body, and set her ablaze, as a result of which she sustained burn injuries, and that thereafter her husband fled from the house.

85. Hence, the decision in ***Jayamma & Anr. v. State of Karnataka (supra)***, relied upon by the learned counsel for the appellant, is not applicable to the facts and circumstances of the present case.

86. Accordingly, issue no.(iv) has been answered.

Re: issue no.(v)

87. The issue no. (v) is whether conviction of the appellant is based on cogent evidence?

88. In this regard, this Court finds from the *fardbeyan* (Ext.-3) of the deceased Sarita Devi that, in the night of 21.03.2016, her husband Khagen Rajwar (the appellant herein) came home in an intoxicated condition, and when she advised him against drinking, he assaulted her, poured kerosene oil upon her body, and set her ablaze, as a result of which she sustained burn injuries.

89. She further stated that her husband fled from the house after setting her on fire, and upon hearing her cries, the people of the vicinity arrived and took her to PMCH, Dhanbad, for treatment. She also alleged that subsequently her husband returned along with the neighbours to extinguish the fire.

90. Thus, it is the specific statement of the deceased that her husband, Khagen Rajwar, assaulted her, poured kerosene oil, and set her ablaze, thereafter fleeing from the house.

91. To corroborate this aspect of her statement, particularly that the appellant fled after ablazing her, this Court has examined the evidence of P.W.-1 Gajadhar Rajwar, the *bhaisur* of the deceased and elder brother of the accused. PW-1 Gajadhar Rajwar had stated in his cross-examination that when he saw Sarita Devi burning, in her house, at that time accused Khagen Rajwar, came running from *Kulhi* and accused Khagen Rajwar had come at the place of occurrence on *halla* and he made an attempt to extinguish the fire.

92. The statement given by the deceased Sarita Devi in her fardbeyan Ext.-3 that her husband (i.e. appellant) fled away from the house after ablazing her finds support from the testimony of PW-1 Gajadhar Rajwar, who is *bhaisur* of deceased and elder brother of appellant.

93. Hence, on the basis of fardbeyan Ext.-3, which is the dying declaration, of the deceased Sarita Devi and testimony of PW-1 Gajadhar Rajwar, who is *bhaisur* of deceased and elder brother of appellant, this Court comes to the conclusion that appellant had fled away from the house after ablazing his wife Sarita Devi (deceased).

94. Further, to test the veracity of the statement of deceased Sarita Devi given in her fardbeyan Ext.-3 and the testimony of PW-1 Gajadhar Rajwar, that appellant had fled away from the house after ablazing her to fire, this Court has gone through the statement of the appellant recorded under Section 313 of Cr.P.C., wherein also question was put to the appellant that in the night of 21.03.2016, he came drinking wine and when his wife Sarita Devi(deceased) advised him for not drinking wine then appellant assaulted her and poured kerosene oil on her body and ablaze her on fire as a result she sustained burn injury and after ablazing her to fire and fled away from his house.

95. To this question, the appellant merely denied and stated that he had sustained burn injuries in the process of attempting to save his wife. It is, therefore, evident that in his

statement under Section 313 of the Cr.P.C., the appellant did not categorically deny the allegation that he fled from his house after setting his wife ablaze.

96. Thus, on the basis of discussion made hereinabove it is evident that the conviction of the appellant is based on the trustworthy dying declaration of the Sarita Devi(deceased), which is substantiated by Dr. Laxmi Narayan (P.W.-6) and ASI Ashok Kumar Tiwari (P.W.-7) in whose presence the fardbeyan of the Sarita devi (deceased) was recorded.

97. Accordingly, issue no.(v) has been answered.

98. This Court, after having discussed the factual aspect and legal position as discussed hereinabove is of the view that the prosecution has proved the charges under Section 302 IPC against the appellant Khagen Rajwar, beyond all reasonable doubt, as such, the impugned judgment of conviction and order of sentence requires no interference by this Court.

99. Accordingly, the impugned judgment of conviction and sentence dated 08.03.2018 passed by the learned Additional Sessions Judge-VII, Dhanbad, in Sessions Trial Case No.352 of 2016, is hereby sustained and upheld.

100. In consequence thereof, the instant appeal stands dismissed.

101. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

102. Pending Interlocutory Applications, if any, stand disposed of.

I Agree.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

High Court of Jharkhand, Ranchi

Dated: 6th August, 2026.

Rohit/-A.F.R.

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