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daughter of the defacto complainant took place with accused Md Sahil on 21/3/2022. At the time of the marriage he gave Rs1 lakh along with other articles as per demand of the accused persons. After marriage the accused persons continued to torture her on demand of further dowries. On 3/7/2024 his daughter informed her from the mobile phone of another people informing that the accused persons again started to torture her and asked him to come to her house. After getting information when they went to her matrimonial house they heard that his daughter sustained burn injury and from the neighbour he heard that the accused persons set fire on her body and subsequently she was admitted in the hospital.

On the basis of the written complaint, initially the case was started vide Md. Bazar P.S Case No. 215/24 dated 04.07.24 u/s 118(2)/109/351(2)/103/3(5) of BNS and Section 3/4 of D.P. Act against the accused persons, namely, Md. Sahil (Rana), Piya, Rina, Usha, Raja, Raju and Abbas.

After taking charge of investigation, the I.O. visited the PO, prepared rough Sketch Map along with Index and examined available witnesses and recorded their statements under Section 161 Cr.P.C. He arrested three accused persons, namely, Rina Khatun, Md. Sahil @ Rana and Priya @ Sahanahaj Khatun. Thereafter, he seized burnt wearing apparels and other articles from the P.O of the deceased and prepared the seizure list He seized one DVD and prepared the seizure list. He collected the dying declaration of the deceased. He seized plastic jar containing viscera and other articles and prepared the seizure list. He seized marriage proof kabilnama of the deceased and prepared the seizure list. He sent the mother of the deceased Selima Bibi for recording her statement u/s-183 BNSS and collected the statement. He sent the seized articles to FSL for chemical examination. He sent the viscera to FSL for chemical examination. He collected the Magisterial inquest report. He collected the P.M. report. He collected the injury report. He collected the FSL report regarding viscera.

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Thereafter, on completion of investigation he submitted charge sheet against the accused persons keeping the provision to file the supplementary charge sheet after obtaining another FSL report. Thereafter, on completion of the investigation he submitted charge sheet against the accused person namely, Md. Sahil @ Rana, Piya @ Sahanaz Khatun, Rina khatun, Usha Begam, Raja Sk, Raju Sk and Abbas Sk u/s 85/103/3(5) of BNS and u/s 3 and 4 D.P.Act.

Hence, the case proceeded against the present accused persons.

After receiving the case record, charge has been framed against the accused persons, namely, Md. Sahil @ Rana, Piya @ Sahanaz Khatun, Rina khatun, Usha Begam, Raja Sk, Raju Sk and Abbas Sk U/S 85/103/3(5) of BNS.

The charge, so framed, were read over and explained to the accused persons in their own language, to which they pleaded not guilty and claimed to be tried.

Hence, this trial.

In support of the case of the prosecution, prosecution has examined as many as 18 witnesses and has also exhibited several documents, such as, written complaint (Ext-1), statement u/s-164 Cr.P.C of P.W-2 (Ext-2), signature of P.W-4 on the seizure list regarding several articles (Ext-3/1), signature of P.W-5 on the seizure list regarding several articles (Ext-3/2), signature of P.W-7 on the seizure list regarding seizure of DVD (Ext-4/1), medical report (Ext-5), endorsement on the written complaint (Ext-1/1), rough sketch map with index (Ext-7 collectively), seizure list regarding seizure of burnt of wearing apparels and other articles (Ext-3), seizure list regarding seizure of DVD (Ext-4), seizure list regarding seizure of plastic jar containing viscera and other articles (Ext-8), seizure list regarding seizure of marriage proof kabilnama of the deceased (Ext-9), requisition for FSL (Ext-10 collectively), inquest report (Ext-12), P.M. report (Ext-13), injury report (Ext-14) and FSL

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report regarding viscera (Ext-15).

After closure of the prosecution evidence, the accused persons have been examined u/s 313 Cr.P.C. From the trend of cross-examination of the prosecution witnesses and answers, given by the accused persons in their examination U/S. 313 Cr. P.C., it appears that the defence case is purely denial of the allegation of the prosecution and they are innocent and have been falsely implicated in this case. No witness has been examined on behalf of the defence.

Heard argument of both sides.

Perused the materials on record.

:- POINTS FOR CONSIDERATION :-

- 1 Whether the accused persons tortured upon the daughter of the defacto complainant and murdered her by burning ?
- 2 What quantum of punishment, if any, has to be inflicted upon the accused persons, if they are found guilty ?

:- DECISION WITH REASONS :-

Both the points are taken up together for the sake of convenience of discussion and in order to avoid repetition.

PW 01 Sk. Mujibar Rahaman said that he lodged the complaint against Md. Sahil, Priya Khatun, Rina Bibi, Usha Bibi, Md. Raja, Md. Raju, Md. Abbas. Accused Md. Sahil, Priya Khatun, Rina Bibi are present in the Court room that day (identified). If the other accused persons be present in the Court room he can identify them. Amina Khatun was his only daughter. She was married with Md. Sahil @ Rana of Md. Bazar about 3 years 4 months ago. It was a negotiation marriage. At the time of the marriage he gifted Rs.1,00,000/-, one motor cycle of Apachi Company along with other articles to the accused persons. After marriage his daughter used to stay in her matrimonial home. After marriage she resides peacefully in her matrimonial house. The incident took place on 03.07.2024

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at 7:00 p.m. in her material house. At the time of cooking she set fire on her body accidentally from the stove. The accused persons informed him regarding such incident to him by telephone mentioning that at the time of cooking his daughter sustained burn injury from stove. After getting information they came to Suri hospital and found that his daughter in death bed. He talked with his daughter in the hospital and his daughter told to him that she sustained burn injury at the time of the cooking. She was admitted in the Suri hospital for two days. Thereafter, she was referred to Bangur hospital. At that time his daughter has no capacity to speak. His daughter expired on 08.07.2024 in the morning. Thereafter, he lodged the complaint in Md. Bazar P.S. He identified the written complaint (marked as Ext-1).

After getting the dead body they caused the cremation work of the deceased.

In cross-examination he said that when he met his daughter for the first time in the hospital then she told him that she caught burnt injury at the time of cooking from the stove. Thereafter, her condition gradually deteriorated. After getting information the local people and his relatives came to the hospital. At that he was mentally disturbed. The written complaint was drafted by his relatives and thereafter, he puts his signature. His relatives used to love his daughter from her childhood. His relatives insisted his daughter to say against the accused persons. His relatives also went to the Bangur hospital when his daughter was admitted there. His relatives talked with the doctor due to his mental condition for such incident. At the time of marriage of his daughter there was the widow mother of the husband and the husband of his daughter used to reside. Other accused persons used to stay in separate house. Usha is the aunt-in-law who is also widow. Priya is suffering from thalassemia and used to stay separately with her husband. Raja is the brother-in-law of his daughter. They used to stay separately. He gifted the articles at the time of the marriage of his daughter. The accused persons did not

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demand any amount. After marriage there was no quarrel between his daughter and her matrimonial family members.

PW. 02 Selima Bibi said that the defacto complainant is his husband. His husband lodged the complaint against Md. Sahil, Priya Khatun, Rina Bibi, Usha Bibi, Md. Raja, Md. Raju, Md. Abbas. Accused Md. Sahil, Priya Khatun, Rina Bibi are present in the Court room thatday (identified). If the other accused persons be present in the Court room he can identify them. Amina Khatun was his only daughter. She was married with Md. Sahil @ Rana of Md. Bazar about 4 years 3 months ago. It was a negotiation marriage. At the time of the marriage she gifted Rs.1,00,000/-, one motor cycle of Apachi Company along with other articles to the accused persons. After marriage her daughter used to stay in her matrimonial home. After marriage she resides peacefully in her matrimonial house. The incident took place one year and three months ago at 7:00 p.m. in her material house. At the time of cooking she set fire on her body accidentally from the stove. The accused persons informed them regarding such incident to them by telephone mentioning that at the time of cooking his daughter sustained burn injury from stove. After getting information they came to Suri hospital and found that her daughter in death bed. She talked with her daughter in the hospital and her daughter told to her that she sustained burn injury at the time of the cooking. She was admitted in the Suri hospital for one day. Thereafter, she was referred to Bangur hospital. Her daughter expired after five days. Thereafter, her husband lodged the complaint in Md. Bazar P.S. Thereafter police brought her to the Court for recording her statement u/s-164 Cr.P.C. She identified her statement u/s-164 Cr.P.C (marked as Ext-2).

In cross-examination she said that when she met her daughter for the first time in the hospital then she told her that she caught burnt injury at the time of cooking from the stove. Thereafter, her condition gradually deteriorated. After death of her daughter when she came to the Court then one lady police

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accompanied her. She cannot remember what she told before the Magistrate. She gifted the articles at the time of the marriage of her daughter. The accused persons did not demand any amount.

PW 03 Hasan Sk. said that he does not know the defacto complainant. He knows the accused persons. They are present in the Court today (identified). He knows Amina Khatun, S/o-Md. Sahil @ Rana. After marriage she used to stay in the house of the accused persons. The relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. About 4 to 6 months ago when he was in the Md. Bazar bus stand then he heard that when Amina Khatun was cooking in the kitchen then she caught fire. After getting such information he went to the house of the accused person. He found that accused Md. Sahil @ Rana was carrying Amina Khatun in burnt condition from the house towards outside. Thereafter, they rode on his bike and he went to Suri Sadar Hospital with them. After admission of Amina Khatun in the hospital he went away. Subsequently he heard that Amina Khatun expired after 5 to 6 days.

In cross -examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. When he was driving his bike then after himself, Amina was riding thereafter her husband was sitting by catching hold her. Sahil used to stay with her mother who was suffering from cancer in his house along with the deceased and other accused persons used to stay in different places. Police did not interrogate him.

PW 04 Jinna Chowdhury said that he knows the defacto complainant. He knows Amina Khatun. He knows the accused persons. They are present in the Court that day (identified).

He knows Amina Khatun, S/o-Md. Sahil @ Rana. After marriage she used to stay in the house of the accused

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persons. The relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. About one year ago the incident took place and at that time he was not present in his house. When he was returning back to his house he heard that when Amina Khatun was cooking in the kitchen then she caught fire. Subsequently, he heard that Amina Khatun expired. When police seized several articles then he puts his signature on the seizure list (marked as Ext-3/1).

In cross examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. Sahil used to stay with her mother who was suffering from cancer in his house along with the deceased and other accused persons used to stay in different places. Police did not interrogate him.

PW05 Jainuddin Sk. said that he knows the defacto complainant. He knows Amina Khatun. He knows the accused persons. They are present in the Court that day (identified).

He knows Amina Khatun, S/o-Md. Sahil @ Rana. After marriage she used to stay in the house of the accused persons. The relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. He heard that when Amina Khatun was cooking in the kitchen then she caught fire. About one year ago the incident took place and at that time he went to the house of the accused persons and at that time she was alive and Md. Sahil brought her to Suri Sadar Hospital. Subsequently, he heard that Amina Khatun expired after 3 to 4 days. When police seized several articles then he puts his signature on the seizure list (marked as Ext-3/2).

In cross examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of

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cooking. Sahil used to stay with her mother who was suffering from cancer in his house along with the deceased and other accused persons used to stay in different places. Police did not interrogate him.

PW 06 Sk. Babul said that he does not know the defacto complainant. He knows Amina Khatun. He knows the accused persons. They are present in the Court that day (identified).

He knows Amina Khatun, S/o-Md. Sahil @ Rana. After marriage she used to stay in the house of the accused persons. The relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. He heard that when Amina Khatun was cooking in the kitchen then she caught fire. About one year ago the incident took place and at that time Subsequently, he heard that Amina Khatun expired after 3 to 4 days.

In cross -examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. Sahil used to stay with her mother who was suffering from cancer in his house along with the deceased and other accused persons used to stay in different places. Police did not interrogate him.

PW 07 C-1179, Budhan Ch. Mardi said that he is C-1179 of Md. Bazar P.S. On 04.07.2024 he was posted Md. Bazar P.S. On that date I.O seized one DVD and prepared the seizure list and he signed on the seizure list. He identified his signature on the seizure list (marked as Ext-4/1).

In cross examination he said that he cannot remember from whom he collected the DVD. He did not produce any certificate of authentication to I.O along with DVD.

PW. 08 Dr. D.K. Mukhopadhyay said that he is M.O., now attached to Suri Sadar Hospital. On 03.07.2024 he was posted at the same place and in the same capacity. On that date he examined one Amina Bibi, 22 years female who is identified by her husband. The patient told to him that the

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husband, mother-in-law and aunt-in-law set fire on her body of the patient at 9:30 p.m that night after pouring kerosene. On examination he found the patient was alert. He found smell of kerosene on her body.He found whole body was burnt, superficial deep in nature. There is sneezing of hair. Only scalp and part of the both palms are speared.There are 95% burnt approximately.

Patient gave him the dying declaration that at 10:30 p.m on 3rd July, 2024 mentioning that “aamar swamir sange aamar praye jhamela hoto, aamar sasuri, aamar masi sasurirao jhamale korto, aaj aamar swami jhagrar par aamake mar-dhor kore, pore aamar swami Md. Sahil o aamar sasuri, Rina Begam o masi sasuri, Usha aamar gaye kerosene tel-dhele aagun lagiye dei. Aamar swami amake hospital-e niye ese vorti kore.” The declaration was taken in front of StaffNurse Rojvel Saren and there was no other person. The patient was conscious and mental alert at that time. After primary treatment of the patient he referred the patient to BMCH/Bangur Hospital or any State related Medical College. He identified the report prepared by him and it contains his signature (marked as Ext-5).The patient was taken referral on 04.07.2024 at 11:55 a.m.

In cross -examination he said that in the treatment it is mentioned that the urine of the patient is not passed. Due to fluid loss of the patient in case of severe burn the urine of the patient was stopped due to acute renal failure. The patient was admitted in their hospital at 10:08 p.m. The husband of the patient admitted her in the hospital. Prior to giving dying declaration by the patient after admission the patient was received in the Ward at 10:30 p.m. After recording of the dying declaration the sedative injuction and antibiotic etc. was given but between the admission and the dying declaration no sedative was given. He mentioned the time of issuing fitness certificate as 10:35 p.m .He denied that he gave the certificate at 10:36 p.m. When any serious patient has been admitted in the hospital his prime duty to take necessary

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steps to save his or her life. He denied that he failed to discharge his prime duty. There is no system to verify the identity of the patient in their hospital. The LTI in the dying declaration is not in proper manner but it was smudged. He denied that the statement mentioned in the dying declaration is not of the patient as mentioned by him. He denied that the patient having 95% burn injury has no capacity to give such dying declaration.

PW 09 Kudrat Sk. said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say whether the wife of Sahil is alive or not. He cannot say how the accused persons behaved with the wife of Sahil.

PW10 Sk. Sakir said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He does not hear any torture by the accused persons towards wife of Sahil. He heard that the wife of Sahil caused burn injury at the time of cooking which resulted in her death.

PW 11 Abdul Khair Momin said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He does not hear any torture by the accused persons towards wife of Sahil. He heard that the wife of Sahil caused burn injury at the time of cooking which resulted in her death.

PW 12 Buddhadeb Sadhu said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say whether the wife of Sahil is alive or not. He cannot say how the accused persons behaved with the wife of Sahil.

PW 13 S.I Abdul Alim said that now, he is posted at Md. Bazar P.S as S.I. of police. On 04.07.2024 he was posted at the same place and in the same capacity. On that date S.I Dibakar Saren was the then Duty Officer of Md. Bazar P.S. He received the complaint from Sk. Mujibar Rahaman and started the case vide Md. Bazar P.S Case No. 215/24 dated 04.07.2024 u/s-

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85/118(2)/109/351(2)/3(5) of BNS and 3/4 D.P. Act. He identified the endorsement (marked as Ext-1/1). Thereafter, he filled up the formal F.I.R (marked as Ext-6.) Thereafter, the then O.C handed over the charge of investigation to him and after taking charge of investigation he visited the P.O. He examined the available witnesses and recorded their statement u/s-161 Cr.P.C. He prepared rough sketch map with index (marked as Ext-7) (collectively). He arrested three accused persons, namely, Rina Khatun, Md. Sahil @ Rana and Priya @ Sahanahaj Khatun. Thereafter, he seized burnt wearing apparels and other articles from the P.O of the deceased and prepared the seizure list (marked as Ext-3). He seized one DVD and prepared the seizure list. He identified the seizure list (marked as Ext-4). He collected the dying declaration of the deceased. He seized plastic jar containing viscera and other articles and prepared the seizure list. He identified the seizure list (marked as Ext-8). He seized marriage proof kabilnama of the deceased and prepared the seizure list. He identified the seizure list (marked as Ext-9). He sent the mother of the deceased Selima Bibi for recording her statement u/s-183 BNSS and collected the statement. He sent the seized articles to FSL for chemical examination. He identified the requisition (marked as Ext-10)(collectively). He sent the viscera to FSL for chemical examination. He identified the requisition (marked as Ext-11)(collectively). He collected the Magisterial inquest report. He identified the inquest report (marked as Ext-12). He collected the P.M. report. He identified the P.M. report (marked as Ext-13). He collected the injury report. He identified the injury report (marked as Ext-14). He collected the FSL report regarding viscera. He identified the report (marked as Ext-15). Thereafter, on completion of investigation he submitted charge sheet against the accused persons keeping the provision to file the supplementary charge sheet after obtaining another FSL report.

In cross -examination he said that he did not ascertain the mobile tower location of all the accused persons at the time of

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the incident. He did not make any arrangement for recording of the dying declaration of the deceased prior to her death by the Magistrate. He denied that all the seizure lists are prepared in the P.S without following the procedure or that he submitted the charge sheet without examining the witnesses or that he tutored the witness before examination by the Magistrate u/s-183 BNSS. He denied that he submitted the charge sheet without proper investigation.

PW14 Nasim Sk said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say the wife of Sk. Sahil already expired. He cannot say how the accused persons behaved with the wife of Sahil.

PW 15 Nausad Sk. said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say the wife of Sk. Sahil already expired. He heard that the wife of Sahil expired at the time of cooking.

PW 16 Sukur Uddin Momin said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say the wife of Sk. Sahil already expired. He heard that the wife of Sahil expired at the time of cooking.

PW 17 Ratan Sk said that he does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say the wife of Sk. Sahil already expired. He heard that the wife of Sahil expired at the time of cooking.

PW 18 Bablu Sk. He does not know the defacto complainant. He knows the accused person and he knows the wife of Sk. Sahil. He cannot say the wife of Sk. Sahil already expired. He heard that the wife of Sahil expired at the time of cooking.

Now we have to consider the ingredients of the offence charged against the accused persons are applicable in this case or not.

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To bring home the charge u/s 498A, cruelty is the necessary ingredient which is needed to be proved. Cruelty means harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or on account of a failure by her or any person related to her to meet such demand. Intent to injure is the most important element of cruelty u/s 498A I.P.C. Wife harassed, tortured, assaulted, never appreciated, loved or allowed to be happy. Continuous incessant harassment led her to commit suicide. All these clearly constituted cruelty within the meaning of sec.498A. Mere harassment or mere demand for property etc. is not cruelty. The harassment has to be with a definite object namely, to coerce the woman or any person related to her to meet any unlawful demand. Mere demand for property by itself is not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty, which is made punishable u/s 498A.

In this case the prosecution claimed that the deceased gave the dying declaration prior to her death but the accused persons dispute the validity of the dying declaration.

Now we have to consider whether the dying declaration can be accepted in the facts and circumstances or not.

Dying declaration is a statement by a person as to the cause of his death or as to any circumstances resulting in his death. It is the statement by the deceased before his death a) as to the cause of his death, or b) any circumstances of the transactions which resulted in his death. It is of course not necessary that the declarant should be under expectation of death at the time of making the statement. Conviction can be based solely on a dying declaration which inspires confidence of the court and fitness of the declarant has been certified by the doctor.

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when

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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 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.

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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 evidentiary 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 provided 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.

One of the important tests of the credibility of the dying declaration is that the person who recorded it, must be satisfied that the deceased was in a fit state of mind. For placing implicit reliance on dying declaration, court must be satisfied that the deceased was in a fit state of mind to narrate the correct facts of occurrence. If the capacity of the maker of the statement to narrate the correct facts is found to be impaired, such dying declaration should be rejected, as it is highly unsafe to place reliance on it. The dying declaration should be voluntary and should not be prompted and physical as well as mental fitness of the maker is to be proved by the prosecution.

The Hon'ble Supreme court has laid down in several judgments the principles governing dying declaration which could be summed up as under :-1) There is neither rule of law nor prudence that dying declaration cannot be acted upon without corroboration. 2) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. 3) The court has to scrutinise the dying declaration carefully and must ensure that the declaration is

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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.4) Where a dying declaration is suspicious , it should not be acted upon without corroborative evidence.5) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is be rejected.6) A dying declaration which suffers from infirmity cannot form the basis of conviction.7) Merely because a dying declaration does not contain the details as to the occurrence it is not to be rejected.8)Equally the shortness of the statement itself guarantees truth.9)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 said that the deceased was in a fit and conscious state to make the dying declaration the medical opinion cannot prevail.10) Where the prosecution version differs from the version as given in the dying declaration , the said declaration cannot be acted upon.11) Where there are more than one statement in the nature of dying declaration , the one first in point of time must be preferred. Of course ,if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. A dying declaration is entitled to great weight since the accused has no power to cross examine the dying declaration should be of such nature as to inspire full confidence of the court in its correctness.

Dying declaration must be dealt with caution although there is no rule of prudence that a dying declaration cannot be established satisfactorily, it is not at all safe to convict the accused relying solely on the alleged dying declaration.

When the deceased suffered 95% burns and was not in a state to make a dying declaration and she died within short period making declaration then the dying declaration cannot be accepted. In the absence of medical certification that the injured was in a fit state of mind at the time of making the

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declaration, it would be risky to accept satisfaction as to the fitness of the mind at the time of making a declaration. Dying declaration is only a piece of untested evidence. There is no scope of cross examination. So the court must be satisfied that what is stated is an unalloyed truth. Corroboration of dying declaration is of course not necessary. Nevertheless corroboration strengthens evidentiary value of dying declaration. There should be proper care and caution in the matter of acceptance of dying declaration.

The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to the court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures.

It is also settled principles of law that dying declaration is a substantive evidence and an order of conviction can be safely recorded on the basis of dying declaration provided the court is fully satisfied that the dying declaration made by the deceased was voluntary and reliable and the author recorded the dying declaration as stated by the deceased. For relying upon the dying declaration the court must be conscious that the dying declaration was voluntary and further it was recorded correctly.

Account of eyewitness to the occurrence is better than a dying declaration. It is unsafe to base conviction on an uncorroborated dying declaration. Conviction can be founded solely on uncorroborated dying declaration. Court may of course as a matter of prudence look for corroboration. Corroboration is necessary if the dying declaration suffers from any inherent infirmity. If the deceased was unconscious and could never make any declaration the evidence with regard to it is to be rejected. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

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In this case PW. 08 Dr. D.K. Mukhopadhyay said that on 03.07.2024 he examined one Amina Bibi, 22 years female who is identified by her husband. The patient told to him that the husband, mother-in-law and aunt-in-law set fire on her body of the patient at 9:30 p.m that night after pouring kerosene. On examination he found the patient was alert. He found smell of kerosene on her body. He found whole body was burnt, superficial deep in nature. There is sneezing of hair. Only scalp and part of the both palms are spared. There are 95% burnt approximately. Patient gave him the dying declaration that at 10:30 p.m on 3rd July, 2024 mentioning that “aamar swami sange aamar praye jhamela hoto, aamar sasuri, aamar masi sasurirao jhamale korto, aaj aamar swami jhagarar par aamake mar-dhor kore, pore aamar swami Md. Sahil o aamar sasuri, Rina Begam o masi sasuri, Usha aamar gaye kerosene tel-dhele aagun lagiye dei. Aamar swami amake hospital-e niye ese vorti kore.” The declaration was taken in front of Staff Nurse Rojvel Saren and there was no other person. The patient was conscious and mental alert at that time. In cross - examination he said that in the treatment it is mentioned that the urine of the patient is not passed. Due to fluid loss of the patient in case of severe burn the urine of the patient was stopped due to acute renal failure. After recording of the dying declaration the sedative injunction and antibiotic etc. was given but between the admission and the dying declaration no sedative was given. He mentioned the time of issuing fitness certificate as 10:35 p.m . There is no system to verify the identity of the patient in their hospital. The LTI in the dying declaration is not in proper manner but it was smudged.

Though the doctor claimed that the deceased gave the dying declaration against her husband and other accused persons but some of the prosecution witnesses said that after the incident her husband brought the deceased to the hospital and identified her. Now the question arises that if her husband and other accused persons actually set fire on her body to kill her then why her husband without fleeing away from that

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place brought her to the hospital to save her life. The prosecution witnesses including the parents of the deceased said that the deceased told them that she sustained burnt injury at the time of cooking from the stove. They also claimed that their relatives insisted her daughter to give statement against the accused persons. The prosecution witnesses also claimed that after marriage the accused persons behaved cordially with her. So only on the basis of the dying declaration the evidence of the parents and other prosecution witnesses cannot be disbelieved. So there is doubt regarding the voluntariness of the dying declaration where without taking signature of the patient only the LTI was taken.

Now we have to consider as to whether the prosecution proved the case by oral and documentary evidence or not.

The defacto complainant lodged the complaint to the effect the marriage of the daughter of the defacto complainant took place with accused Md Sahil on 21/3/2022. At the time of the marriage he gave Rs1 lakh along with other articles as per demand of the accused persons. After marriage the accused persons continued to torture her on demand of further dowries. On 3/7/2024 his daughter informed her from the mobile phone of another people informing that the accused persons again started to torture her and asked him to come to her house. After getting information when they went to her matrimonial house they heard that his daughter sustained burn injury and from the neighbour he heard that the accused persons set fire on her body and subsequently she was admitted in the hospital.

From Exbt.1 it appears that the defacto complainant lodged the complaint to the effect that the marriage of the daughter of the defacto complainant took place with accused Md Sahil on 21/3/2022. At the time of the marriage he gave Rs1 lakh along with other articles as per demand of the accused persons. After marriage the accused persons continued to torture her on demand of further dowries. On

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3/7/2024 his daughter informed her from the mobile phone of another people informing that the accused persons again started to torture her and asked him to come to her house. After getting information when they went to her matrimonial house they heard that his daughter sustained burn injury and from the neighbour he heard that the accused persons set fire on her body and subsequently she was admitted in the hospital.

Exbt. 2 is the 164 statement of the witness Selima Bibi where she mentioned that the marriage of her daughter Amina Khatun took place with Md Sahil @ Rana .At the time of her marriage they gifted gold ornaments and Rs 1 lakh. On 3/7/2024 they got the information that the accused persons are torturing her daughter. Her daughter from the mobile phone of other person informed her that the accused persons are torturing her on demand of further dowry. Considering their financial condition her daughter did not say anything to them and she bears the torture So the accused persons increased the degree of torture upon her and asked them to go to her house. After reaching the house of the accused persons they heard from the para people that the accused persons set fire on her body and she was admitted in the hospital and ultimately she died.

Exbt 3 is the seizure list of the seized burn articles .

Exbt 4 is the seizure list of DVD.

Exbt5 is the medical reports with dying declaration of the deceased.

Exbt 8 is the seizure list of vicera.

Exbt 9 is the seizure list of marriage proof of the deceased.

Exbt 10 and 11 are the requisition of FSL of the seized articles. Exbt 12 is the Magisterial Inquest report of the deceased wherefrom it appears that there is 95% burn injury.

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Exbt13 is the PM report wherefrom it appears that the death was due to anti mortem burn injury.

Exbt 14 is the medical report of the deceased.

Exbt 15 is the FSL report wherefrom it appears that no poison was detected.

In this case the defacto complainant lodged the complaint against the accused persons mentioning that the accused persons caused the death of his daughter by setting fire of her body. But when he was examined as PW1 he said that after marriage his daughter used to stay in her matrimonial home. After marriage she resides peacefully in her matrimonial house. The incident took place on 03.07.2024 at 7:00 p.m. in her material house. At the time of cooking she set fire on her body accidentally from the stove. The accused persons informed him regarding such incident to him by telephone mentioning that at the time of cooking his daughter sustained burn injury from stove. After getting information they came to Suri hospital and found that his daughter in death bed. He talked with his daughter in the hospital and his daughter told to him that she sustained burn injury at the time of the cooking. She was admitted in the Suri hospital for two days. Thereafter, she was referred to Bangur hospital. At that time his daughter has no capacity to speak. In cross-examination he said that when he met his daughter for the first time in the hospital then she told him that she caught burnt injury at the time of cooking from the stove. Thereafter, her condition gradually deteriorated. After getting information the local people and his relatives came to the hospital. At that he was mentally disturbed. The written complaint was drafted by his relatives and thereafter, he puts his signature. His relatives used to love his daughter from her childhood. His relatives insisted his daughter to say against the accused persons. His relatives also went to the Bangur hospital when his daughter was admitted there. His relatives talked with the doctor due to his mental condition for such incident. After

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marriage there was no quarrel between his daughter and her matrimonial family members.

PW. 02 Selima Bibi said that after marriage her daughter used to stay in her matrimonial home. After marriage she resides peacefully in her matrimonial house. The incident took place one year and three months ago at 7:00 p.m. in her matrimonial house. At the time of cooking she set fire on her body accidentally from the stove. The accused persons informed them regarding such incident to them by telephone mentioning that at the time of cooking his daughter sustained burn injury from stove. After getting information they came to Suri hospital and found that her daughter in death bed. She talked with her daughter in the hospital and her daughter told to her that she sustained burn injury at the time of the cooking. In cross-examination she said that when she met her daughter for the first time in the hospital then she told her that she caught burnt injury at the time of cooking from the stove. Thereafter, her condition gradually deteriorated.

PW 03 Hasan Sk. said that the relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. About 4 to 6 months ago when he was in the Md. Bazar bus stand then he heard that when Amina Khatun was cooking in the kitchen then she caught fire. After getting such information he went to the house of the accused person. He found that accused Md. Sahil @ Rana was carrying Amina Khatun in burnt condition from the house towards outside. Thereafter, they rode on his bike and he went to Suri Sadar Hospital with them. After admission of Amina Khatun in the hospital he went away. In cross-examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. When he was driving his bike then after himself, Amina was riding thereafter her husband was sitting by catching hold her.

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PW. 04 Jinna Chowdhury said that the relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. About one year ago the incident took place and at that time he was not present in his house. When he was returning back to his house he heard that when Amina Khatun was cooking in the kitchen then she caught fire. Subsequently, he heard that Amina Khatun expired. In cross examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. PW05 Jainuddin Sk. said that the relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. He heard that when Amina Khatun was cooking in the kitchen then she caught fire. About one year ago the incident took place and at that time he went to the house of the accused persons and at that time she was alive and Md. Sahil brought her to Suri Sadar Hospital. In cross examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking. PW 06 Sk. Babul said the relation between the accused persons and Amina Khatun was cordial. He did not hear any type of dispute between Amina Khatun and the accused persons. Amina Khatun is no more. He heard that when Amina Khatun was cooking in the kitchen then she caught fire. About one year ago the incident took place and at that time Subsequently, he heard that Amina Khatun expired after 3 to 4 days. In cross -examination he said that the deceased during her life time used to live peacefully in the house of the accused persons. She caught fire due to negligence at the time of cooking.

Though the defacto complainant raised the allegation against the accused persons that they caused the death of his

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daughter by burning but the prosecution witnesses including he himself did not corroborate the allegation.

On the basis of the above observation, I am of the view that the prosecution has failed to prove the case by producing oral and documentary evidences beyond the shadow of reasonable doubts. So, the accused persons are liable to be acquitted.

Hence it is,

ORDERED

that the accused persons namely, Md. Sahil @ Rana, Piya @ Sahanaz Khatun, Rina khatun, Usha Begam, Raja Sk, Raju Sk and Abbas Sk are found not guilty for the offence charged against them under Section u/s 5/103/3(5) of BNS and they are acquitted under Section 258 of BNSS and they will be discharged from their respective bail bonds after expiry of six months as per provision of 481 of BNSS.

The seized articles, if any, be destroyed after the period of limitation.

Dictated & Corrected by me.

Addl. Sessions Judge,
2nd Court, Suri, Birbhum.

Additional Sessions Judge,
2nd Court, Suri, Birbhum.
07.04.2026