



2026:CGHC:1145-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 153 of 2020

[Arising out impugned judgment of conviction and order of sentence dated 24.05.2017, passed in Session Trial No.05/2017 (State of Chhattisgarh v. Sankra Yadav) by the 5th Addl. Sessions Judge, Raigarh (CG)]

Sankra Yadav, S/o Ganesh Yadav, aged about 25 years, R/o Village Aamapal, P.S. Chakradharnagar, District Raigarh (Chhattisgarh)

... **Appellant**
(On Bail)

Versus

State of Chhattisgarh, through P.S. Chakradharnagar, District Raigarh (Chhattisgarh)

... **Respondent**

[Cause-title taken from Case Information System (CIS)]

For Appellant : Mr. MPS Bhatia, Advocate
For Respondent-State : Mr. Pankaj Singh, Panel Lawyer

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board
(08.01.2026)

Sanjay K. Agrawal, J

(1) Invoking criminal appellate jurisdiction of this Court, the sole appellant herein has preferred this criminal appeal under Section 374(2) of Cr.P.C., calling in question the legality, validity and



correctness of the impugned judgment of conviction and order of sentence dated 24.05.2017, passed in Session Trial No.05/2017 (State of Chhattisgarh v. Sankra Yadav) by the 5th Addl. Sessions Judge, Raigarh (CG), whereby he has been convicted for offence under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.1,000/- and, in default of payment of fine, sentenced to undergo additional rigorous imprisonment for 06 months.

(2) The case of the prosecution, in short, is that on 17.07.2016, at about 4-5 PM, in the house of the appellant, situated at Village Aamapal, which comes within the ambit of Police Station Chakradharnagar, District Raigarh (Chhattisgarh), the accused-appellant herein firstly demanded money from his wife, namely, Samrin Bai (hereinafter referred to as the “deceased”) and when she refused to give money, the appellant poured kerosene oil over her body and set her ablaze by lighting matchstick and, due to which, deceased suffered burn injuries and died later on during the course of treatment at hospital on 24.07.2016 and, thereby, said to have committed offences under Sections 304-B & 302 of IPC.

(3) It is further case of the prosecution that immediately after the incident, the deceased was escorted to Kirodimal District Hospital, Raigarh, where on the next day (i.e. 18.07.2016), after having been certified to be in fit state of mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R.



Meshram (PW-12), Executive Magistrate, namely, Shivnandan Sahu (PW-14) recorded her dying declaration vide Ex.P/06 in presence of deceased's sister, namely, Bund Kunwar (PW-03), wherein the deceased stated that on the date of incident, while preparing tea, she came into the contact of fire and suffered burn injuries and did not implicated her husband (accused-appellant) to be author of the crime. Thereafter, during the course of treatment in the hospital, on 24.07.2016, the deceased succumbed to the injuries and died and, pursuant to which, information was given to the police. Thereafter, merg intimation and FIR were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/01 and inquest proceedings were conducted vide Ex.P/02. Spot map was also prepared. The dead-body of the deceased was sent for postmortem examination, which was conducted by Dr. Prakash Kumar Chetwani (PW-08) and, as per PM report (Ex.P/12), it has been opined that cause of death is septic shock and septicemia due to infected burn wound. The appellant-accused was arrested vide Ex.P/33. After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellants and other acquitted accused persons in the competent criminal court having jurisdiction and, thereafter, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellant/accused abjured his guilt and entered into defence by stating that he is innocent and has

been falsely implicated.

(4) The prosecution in order to prove its case examined as many as 19 witnesses and exhibited 35 documents, whereas the appellant-accused in support of his defence neither examined any witness nor exhibited any documents.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record, though acquitted the appellant for offence under Section 304-B of IPC, but proceeded to convict him for offence under Section 302 of IPC and sentenced him as mentioned in the opening paragraph of this judgment, against which this appeal has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence.

(6) Mr. MPS Bhatia, learned counsel appearing for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 302 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submits that the dying declaration (Ex.P/06), which was recorded after her hospitalization on 18.07.2016 by Executive Magistrate, namely, Shivnandan Sahu (PW-14) duly establishes the fact that the deceased on the date of incident met with an accident and suffered burn injuries by her own, as she clearly stated that while preparing tea she came into to the contact of fire via stove. As



such, there is no evidence on record to connect the appellant herein with the offence in question. So far as the evidence in shape of deceased giving oral dying declaration to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06) is concerned, the same cannot be considered to be reliable piece of evidence, for the simple reasons that all three aforesaid witnesses are close relative of the deceased being her sister, brother and mother respectively and the said oral dying declaration has alleged to have been given by the deceased on 24.07.2016 i.e. the date of her death, which is later in time to that of her dying declaration (Ex.P/06) recorded after her hospitalization on 18.07.2016 by Executive Magistrate, namely, Shivnandan Sahu (PW-14) that too after having been certified to be in fit state of mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12). As such, the present appeal deserves to be allowed and the appellant is liable to be acquitted of the said charge on the basis of benefit of doubt.

(7) *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellant for offence under Section 302 of IPC. Thus, the present appeal deserves

to be dismissed.

(8) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(9) The first and foremost question is as to whether the death of the deceased was homicidal in nature or not, which the learned trial Court has recorded in affirmative by taking into consideration the postmortem report (Ex.P/12), wherein it has been opined that cause of death is septic shock and septicemia due to infected burn wound, which is duly proved by the statement of Dr. Prakash Kumar Chetwani (PW-08). Accordingly, taking into consideration the postmortem report (Ex.P/12) and the statement of Dr. Prakash Kumar Chetwani (PW-08), who has conducted the postmortem of the dead-body of the deceased, we are of the considered opinion that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. We hereby affirm the said finding.

(10) Now, the next question would be whether the accused-appellant herein is the author of the crime in question or not?

(11) In the case at hand, according to the case of the prosecution, immediately after the incident on 17.07.2016, the deceased was escorted to Kirodimal District Hospital, Raigarh, where on the next day (i.e. 18.07.2016), after having been certified to be in fit state of



mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12), Executive Magistrate, namely, Shivnandan Sahu (PW-14) recorded her dying declaration vide Ex.P/06 in presence of deceased's sister, namely, Bund Kunwar (PW-03), wherein the deceased stated that on the date of incident, while preparing tea, she came into the contact of fire and suffered burn injuries and did not implicate her husband (accused-appellant) to be author of the crime. Thereafter, on 24.07.2016, just before her death, the deceased is said to have given oral dying declaration to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06) whereby she named the present appellant to be the author of the crime in question. However, the learned trial Court relied upon the factum of deceased giving oral dying declaration to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06) on 24.07.2016 in order to hold the appellant herein guilty for the offence in question and discarded the evidence of deceased giving dying declaration (Ex.P/06), which was recorded after her hospitalization on 18.07.2016 by Executive Magistrate, namely, Shivnandan Sahu (PW-14) that too after having been certified to be in fit state of mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12).

(12) Now, the question is as to whether the learned trial Court is justified in relying upon the oral dying declaration given by the deceased to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and



Jagarmati (PW-06) on 24.07.2016, whereby she named the present appellant to be the author of the crime in question, by disbelieving her dying declaration (Ex.P/06) recorded on 18.07.2016, which is first in time ?

(13) Before entering into the merits of the case, it would be profitable to notice the principle of law laid down with regard to the controversy involved qua dying declaration. The Supreme Court in the matter of Khushal Rao v. State of Bombay¹ has held that a dying declaration which has been recorded by a competent Magistrate in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character and observed in Para-16 as under:

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions -and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character,”

(14) Similarly, in the matter of Lakhan v. State of MP², their

1 AIR 1958 SC 22

2 (2010) 8 SCC 514



Lordships of the Supreme Court observed in the fact of that case that in the first dying declaration before the Magistrate, the deceased stated that when she was cooking, kerosene oil has been put behind her back and in the next dying declaration, it was stated that the appellant-accused brought a metal container full of kerosene and poured it on her body and the fire was lit by him and she was burnt and held in Para-21 as under:

“21. In view of the above, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. *In such an eventuality no corroboration is required. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.*”

(15) The ratio *decidendi* of Lakhan (supra) has further been followed with approval in the matter of Jagbir Singh v. State (NCT of Delhi)³.

(16) Coming back to the facts of the present case in light of the

3 (2019) 8 SCC 779



above principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that in the present case incident took place on 17.07.2016 at about 04-05 PM and, immediately thereafter, the deceased was escorted to Kirodimal District Hospital, Raigarh, where on 18.07.2016, after having been certified to be in fit state of mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12), Executive Magistrate, namely, Shivnandan Sahu (PW-14) recorded her dying declaration vide Ex.P/06 in presence of deceased's sister, namely, Bund Kunwar (PW-03), wherein the deceased stated that on the date of incident, while preparing tea, she came into the contact of fire and suffered burn injuries and did not implicate her husband (accused-appellant) to be author of the crime. The aforesaid dying declaration (Ex.P/06) has not only been proved by Executive Magistrate- Shivnandan Sahu (PW-14), but has also been proved by deceased's sister, namely, Bund Kunwar (PW-03), whereby in Para-10 she has clearly stated that Executive Magistrate- Shivnandan Sahu (PW-14) has recorded dying declaration of her sister (deceased) in the hospital vide Ex.P/06 and further admitted in Para-15 that she was a witness in the said dying declaration (Ex.P/06). Even otherwise, before making said dying declaration (Ex.P/06), the deceased was certified to be in fit mental and physical state of mind to give statement vide Ex.P/22 by Dr. S. Lakra (not examined), which was duly proved by Dr. R. Meshram (PW-12). As such, the dying



declaration (Ex.P/06) completely fulfills/meet all the yardsticks of a valid and trustworthy dying declaration and the prosecution miserably failed to establish at any point of time that the dying declaration (Ex.P/06) is not trustworthy and unsustainable in law and, therefore, there is no reasons to disbelieve the same. However, the learned trial Court has disbelieved the said dying declaration (Ex.P/06) in Para-45 of the impugned judgment on the ground that the appellant herein was also present at the time of recording of said dying declaration (Ex.P/06) and he must have exerted undue influence and pressure on the deceased to give statement in his favour and thereby making the said dying declaration (Ex.P/06) doubtful.

(17) In this regard, the statement of Bund Kunwar (PW-03) [sister of the deceased] may be noticed, as she was also present at the time of recording of dying declaration (Ex.P/06) and she was also a witness to the same. Bund Kunwar (PW-03) has not where stated that any undue influence or pressure was exerted by the appellant herein upon the deceased to make statement in his favour at the time of recording of the dying declaration (Ex.P/06). Bund Kunwar has not been declared hostile by the prosecution and, therefore, her statement to the extent that she was present and time to recording of dying declaration (Ex.P/06) and was also a witness to the same is binding upon the prosecution. Therefore, in absence of any valid and legal evidence available on record, the learned trial Court could not



have come to the conclusion that any undue influence or pressure must have been exerted by the appellant herein upon the deceased to make statement in his favour at the time of recording of the dying declaration (Ex.P/06). As such, the findings recorded by the learned trial Court in this regard while disbelieving the dying declaration (Ex.P/06) is liable to be and is hereby set aside being perverse and contrary to the material available on record. It is held accordingly.

(18) Apart from this, in the present case, the first dying declaration (Ex.P/06) of the deceased was recorded after her hospitalization on 18.07.2016 by Executive Magistrate, namely, Shivnandan Sahu (PW-14) that too after having been certified to be in fit state of mind to give dying declaration vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12) and in presence of her sister- Bund Knuwar (PW-03), in which, she clearly stated that on the date of incident, while preparing tea, she came into the contact of fire and suffered burn injuries and did not implicated her husband (accused-appellant) to be author of the crime. Whereas, the second dying declaration, which is oral in nature, is alleged to have been given by the deceased to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06), who are her close relatives being sister, brother and mother respectively, on 24.07.2016, soon before her death, and same the same is later and subsequent in time to that of her dying declaration recorded on 18.07.2016 vide Ex.P/06, whereby the deceased is said to have implicated the same of the



appellant herein to be the author of the crime in question. Even, if the aforesaid oral dying declaration is considered to be true, Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06) could have reported the matter to the police from 17.07.2016 till 24.07.2016.

(19) In this regard, the decision of Mohanlal Gangaram Gehani vs. State of Maharashtra⁴ may be noticed herein, whereby their Lordships of the Supreme Court has clearly held that where there are more than one statement in the nature of dying declaration made by the accused, one first in time must be preferred.

(20) Similarly, in the judgment rendered by their Lordships of Supreme Court in the case of Makhan Singh vs. State of Haryana⁵ while considering the issue of multiple dying declaration has held as under:

“9. It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its

⁴ AIR 1982 SC 839

⁵ AIR 2022 SC 3793 : 2022 SCC Online SC 1019



truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance..

20. We therefore find that in the facts and circumstances of the present case, the first dying declaration (Ex. DO/C) will have to be considered to be more reliable and trustworthy as against the second one (Ex. PE). In any case, the benefit of doubt which has been given to the other accused by the trial court, ought to have been equally given to the present appellant when the evidence was totally identical against all the three accused.”

(21) Considering the aforesaid proposition of law, it is quite vivid that in the dying declaration recorded vide Ex.P/06 the deceased has clearly stated that on the date of incident, while preparing tea, she came into the contact of fire and suffered burn injuries and did not implicated her husband (accused-appellant) to be author of the crime and said dying declaration has been recorded after deceased having been certified to be in fit state of mind to give statement vide Ex.P/22 by Dr. S. Lakra (not examined), duly proved by Dr. R. Meshram (PW-12) and in presence of witness- Bund Kunwar (PW-03) [deceased's sister] and same has been recorded by Executive Magistrate, namely, Shivnandan Sahu (PW-14), who is a competent officer to record the same, therefore, in light of the decisions of **Khushal Rao** (supra) and **Lakhan** (supra), the dying declaration (Ex.P/06) stands on a much higher footing than a dying declaration



which depends upon oral testimony which may suffer from all the infirmities of human memory and human character i.e. the oral dying declaration alleged to have been given by the deceased to Bund Kunwar (PW-03), Dilkhush Yadav (PW-04) and Jagarmati (PW-06). As such, the learned trial Court committed grave legal error in relying upon the oral dying declaration by disbelieving the first dying declaration recorded vide Ex.P/06 on 18.07.2016, in light of the decision of Mohanlal Gangaram Gehani (supra), as the same has been made on 24.07.2016, soon before the death of the deceased, on a later/subsequent point of time qua declaration recorded vide Ex.P/06 on 18.07.2016. It is held accordingly.

(22) In view of the aforesaid discussion, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable doubt and, in absence of which, the appellant is entitled to get benefit of doubt. The learned trial Court is unjustified in convicting the appellant for offence under Section 302 of IPC in light of the aforesaid evidence available on record. Accordingly, the conviction and sentence of the appellant for offence punishable under Section 302 of IPC, as imposed upon him by the learned trial Court, is hereby set aside. He is acquitted of the said charge on the basis of benefit of doubt. Since the appellant is already on bail, he need not to surrender. However, his bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.



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(23) Consequently, this criminal appeal is **allowed** to the extent indicated herein-above.

(24) Let a certified copy of this order alongwith original record be transmitted to the trial Court for necessary information and action, if any.

sd/-
(Sanjay K. Agrawal)
Judge

sd/-
(Sanjay Kumar Jaiswal)
Judge

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