



2026:CGHC:3196-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1016 of 2022

1 - Tabarak Ali S/o Gaffar Ali Aged About 27 Years R/o Subhash Market, Behind Om Lodge, Khursipar, Police Staton Khursipar, District : Durg, Chhattisgarh

2 - Smt. Fatima Begum W/o Gaffar Ali Aged About 42 Years R/o Subhash Market, Behind Om Lodge, Khursipar, Police Station Khursipar, District : Durg, Chhattisgarh

... Appellants

versus

State Of Chhattisgarh Through The Station House Officer, Police Station Khursipar, District : Durg, Chhattisgarh

... Respondent

(Cause title taken from Case Information System)

For Appellants	:	Mr. Rishi Rahul Soni, Advocate
For Respondent/State	:	Mr. Nitansh Kumar Jaiswal, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

20/01/2026

1. The present appeal has been filed by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 against impugned judgment of conviction and sentence dated 04.06.2022, passed by learned 8th Additional Sessions Judge, Durg, in Sessions Case No. 161 of 2019, whereby the appellants have been convicted for the



offence under Sections 302/34 of IPC and sentenced for life imprisonment with fine of Rs. 500/-, in default of payment of fine additional R.I. for one year.

2. The brief facts of the case are that, on 12.03.2019, at about 19:35 Hrs. the complainant Ramkamal/PW-1 lodged a unnumbered Dehati Merg Intimation (exhibit P-1) to the Police Station Khursipar, District Durg that, at about 2:30 PM, he was being informed by a boy that his daughter Nidhi has got burnt at Subhash Market, Zone-2. When he came on the spot, he saw his daughter in burnt condition. When he asked her, she disclosed that Tabarak Ali and his mother Fatima Begum burnt her after pouring petrol. She was being taken to Government Hospital, Supela from where she was referred to District Hospital, Durg. She also disclosed to the doctor that, there was a quarrel with Tabarak Ali and then, they burnt her after pouring petrol. During treatment, she died at about 6:25 PM during treatment. The police registered Dehati Nalishi (exhibit P-2) and recorded FIR (exhibit P-3) against the appellants for the offence under Section 302/34 of IPC. Inquest (exhibit P-5) of the dead body of the deceased was prepared in presence of the witnesses and the dead body was sent for its postmortem to Government Hospital, Durg, where Dr. Smt. Rimpal Bhatia/PW-14 conducted postmortem of the dead body of the deceased and gave the postmortem report (exhibit P-31). While conducting the postmortem, the doctor noticed 95% burnt over entire body, which was of superficial first degree burnt. She opined that the cause of death may be due to shock caused by



Asphyxia and burn. Spot map (exhibit P-7) was prepared by the police.

3. Initially, the deceased was being taken to Government Hospital, Supela, where she was being treated by Dr. Smt. Rachna Dave/PW-3, who gave primary treatment and referred to surgeon, District Hospital, Durg for further treatment. Her MLC report is (exhibit P-10). In the MLC report, the doctor has mentioned the history of the incident given by the deceased Nidhi that 'burnt by petrol by Tamarak'. Her OPD slip at Government Hospital, Supela is exhibit P-11. When she was admitted to District Hospital, Durg, her indoor patient slip was prepared, which is exhibit P-20 and she was being treated by Dr. Smt. Kunti Thakur/PW-11. During her treatment, she gave a certification (exhibit P-21) that the patient is able to give her statement, but speech is not clear now. She recorded dying declaration of the deceased on 12.03.2019 (exhibit P-8) and another dying declaration (exhibit P-24), which is in format of dying declaration and recorded on 12.03.2019, at 4:15 PM. When the deceased died at 16:25 PM, she gave the death intimation to the police, which is exhibit P-22. The numbered merg intimation (exhibit P-32) was recorded at police station Khursipar on 12.03.2019 itself. The burn remains, one plastic chappal, match box, one plastic bottle having smell of petrol and cap of the bottle, soil from the spot have been seized vide seizure memo (exhibit P-14). The seized articles were sent for chemical examination to FSL Raipur. The CDR of the mobile phones of the deceased as well as the appellant Tabarak Ali were seized vide seizure memo (exhibit P-48). The appellants have



been arrested on 13.03.2019 and from the appellant Tabarak Ali, his mobile phone, jeans pant and T-shirt having petrol smell have been seized vide seizure memo (exhibit P-13). Statement under Section 161 of CRPC of the witnesses have been recorded and after completion of usual investigation, charge sheet was filed before the learned Judicial Magistrate First Class, Durg against the appellants for the offence under Section 302/34 of IPC.

4. The case was committed to the learned trial Court for its trial. The learned trial Court has framed charges against the appellants for the offence under Section 302/34 of IPC. They denied the charge and claimed trial.
5. In order to prove the charge against the appellants, the prosecution has examined as many as 15 witnesses. Statement of the appellants under Section 313 of CRPC have also been recorded, in which they denied the circumstances that appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence. 04 defence witnesses have also been examined by the appellants in their defence.
6. After appreciation of oral as well as documentary evidence led by the prosecution, learned trial Court has convicted the appellants for the offence under Section 302/34 of IPC and sentenced them as mentioned in the earlier part of this judgment. Hence this appeal.
7. Learned counsel appearing for the appellants would submit that, the prosecution has failed to prove its case beyond reasonable doubt.



There are material omissions and contradictions in the evidence of prosecution witnesses. The evidence of the witnesses are inconsistent and not sufficient to hold the appellants guilty for the alleged offence. He would also submit that the learned trial Court failed to appreciate that the disclosure in the dying declaration (exhibit P-8 and P-24) and the thumb impression put in the said dying declaration are highly doubtful, as according to the MLC and postmortem report, she suffered 90-95% burn all over body. As per the evidence of the doctor, her speech was not clear and there are variation in two dying declaration (exhibit P-8 and P-24) that, in exhibit P-8, there is no allegation against the appellant No.2- Smt. Fatima Begum, whereas in exhibit P-24, which is recorded by the same doctor and at the same time, the allegation against appellant No.2 is also there, which are self-contradictory. Learned counsel for the appellants would also submit that, there is no reliable evidence on record that the deceased was the wife of the appellant Tabarak Ali and from the evidence of her father Ramkamal/PW-1, it clearly reveals that, he too was not having any knowledge that his daughter is wife of Tabarak Ali. He would also submit that the prosecution has failed to prove that on the date of recording dying declaration, the deceased was in fit mental condition, therefore, the dying declarations are highly doubtful and liable to be discarded. he would further submit that the learned trial Court has also considered the call details record (exhibit P-28) by holding conviction of the appellants that the deceased was having conversation with the appellant Tabarak Ali. The electronic evidence of CDR is inadmissible in



evidence in absence of any sufficient evidence to prove it in accordance with law. Therefore, the impugned judgment of the learned trial Court is erroneous and liable to be set aside.

8. Per contra, learned counsel appearing for the State opposes the submissions made by learned counsel for the appellants and has submitted that the case of the prosecution is based on the dying declaration (exhibit P-8 and P-24), which is true and voluntarily and duly recorded by the treating doctor. The doctor, who recorded the dying declaration, also gave her certification that the patient was in fit mental condition to give her statement, though her speech was not clear. He would further submit that the dying declaration (exhibit P-8) was not in format and therefore, the doctor immediately recorded another dying declaration (exhibit P-24), which is in format, in which she alleged that, the appellants have burnt her after pouring petrol. Recording of the dying declaration has been proved by Dr. Smt. Kunti Thakur/PW-11. The CDR (exhibit P-28) proves that the deceased was having conversation with the appellant Tabarak Ali and she alleged that she is his wife. He would further submit that, when the deceased was being taken to Government Hospital, Supela, she was medically examined by PW-3/Dr. Smt. Rachna Dave and the deceased gave her the history of the incident that, she was being burnt by petrol by Tamarak (correct name is Tabarak), which clearly reflected from MLC report (exhibit P-10). But for minor omissions or contradictions, the evidence of the witnesses are reliable and corroborative and upon proper appreciation of their evidence, the learned trial Court has convicted and sentenced the appellants,



which is justified and the appeal of the appellants is liable to be dismissed.

9. We have heard learned counsel for the parties and considered their rival submissions made herein above and also gone through the records of the trial court with utmost circumspection.
10. The first and foremost question for consideration would be, whether the death of the deceased was homicidal in nature or not?
11. PW-1, Ramkamal, who is the father of the deceased has stated in his evidence that, when he received information about the incident, he went on the spot and saw his daughter in burnt condition and she disclosed him that the appellants Tabarak Ali and his mother Fatima Begum set her ablaze after pouring petrol. He took her to hospital.
12. PW-2, Dinesh Kumar Soni, who is the neighbour of Ramkamal, stated that, when he had gone to hospital, he saw the deceased in completely burnt condition. PW-9/Sanjay Yadav, who is the police constable has also stated that, when he received information about the incident, they went on the spot and saw the deceased in burnt condition. Thereafter, they with the help of her father took the deceased to Government Hospital, Supela. On the way, the deceased disclosed to her father that the accused Tabarak Ali has burnt her after pouring petrol.
13. PW-3, Dr. Smt. Rachna Dave has also stated in her evidence that, on 12.03.2019, the deceased was brought before her for treatment and she disclosed her that, at about 2:30 PM, she was being burnt by



Tamarak by petrol at Subhash Nagar, Khursipar. On medically examining her, she found 95-99% superficial to deep burnt on all over body. After primary treatment, she referred her to District Hospital, Durg and her MLC report is exhibit P-10.

14. PW-11, Dr. Smt. Kunti Thakur, who treated the deceased at District Hospital, Durg has stated in her evidence that, on 12.03.2019, the deceased was brought before her for treatment. She was referred from Government Hospital, Supela. She too has found that, the deceased received 90-95% burn injuries on all over the body. She admitted her in casualty and recorded her dying declaration (exhibit P-8 and P-24. During treatment, she died at 6:15 PM and she gave her death information.
15. PW-14, Dr. Smt. Rimpal Bhatia, who conducted the postmortem of the dead body of the deceased has proved the postmortem report (exhibit P-31) and has stated in her evidence that, she conducted the postmortem of the dead body of the deceased Nidhi Kumari on 13.03.2019 and found 95% burn injuries on all over body and opined that the cause of death may be due to shock caused by Asphyxia and burn. She conducted the postmortem along with another doctor namely Dr. S. Surendra Kumar, whose signature is also there in the postmortem report. Nothing in the cross-examination of these witnesses that the death of the deceased was not due to burn injuries, but for some other reasons. Relying upon the medical evidence, it can safely be hold that the death of the deceased was homicidal in nature and the learned trial Court has also rightly



appreciated the evidence, while holding the nature of death of the deceased as homicidal.

16. Now, the question comes that, who is the author of the crime. The case of the prosecution is mainly based upon the dying declarations (exhibit P-8 and P-24), which was recorded by PW-11/Dr. Smt. Kunti Thakur. Before considering the evidence available on record with respect to dying declaration, the provisions of Section 32 of the Indian Evidence Act, 1872 and some of the law laid down by the Hon'ble Supreme Court with respect to consideration of the dying declaration are necessary to be noticed here, which reads as under:-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.



Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) or is made in course of business.—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) or against interest of maker.—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) or gives opinion as to public right or custom, or matters of general interest.—When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made



before any controversy as to such right, custom or matter had arisen.

(5) or relates to existence of relationship.—

When the statement relates to the existence of any relationship 1[by blood, marriage or adoption] between persons as to whose relationship 1[by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) or is made in will or deed relating to family

affairs.—When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) or in document relating to transaction mentioned in section 13, clause (a).—

When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) or is made by several persons and expresses feelings relevant to matter in question.—When the statement was made by a



number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

17. The general ground of admissibility of the evidence mentioned in Section 32(1) of the Evidence Act is that in the matter in question, no better evidence is to be had. The provisions in Section 32(1) constitute further exceptions to the rule which exclude hearsay. As a general rule, oral evidence must be direct (Section 60). The eight clauses of Section 32 may be regarded as exceptions to it, which are mainly based on two conditions: a necessity for the evidence and a circumstantial guarantee of trustworthiness. Hearsay is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence, namely, the oath and cross-examination. But where there are special circumstances which gives a guarantee of trustworthiness to the testimony, it is admitted even though it comes from a second-hand source. The Supreme Court emphasized on the principle enumerated in the famous legal maxim of the Law of Evidence, i.e. *nemo moriturus praesumitur mentire* which means a man will not meet his Maker with a lie in his mouth. Our Indian Law also recognizes this fact that “a dying man seldom lies” or in other words “truth sits upon the lips of a dying man”. The relevance of this very fact, is an exception to the rule of hearsay evidence. 12. Section 32(1) of the Evidence Act is famously referred to as the “dying declaration” section, although the said phrase itself does not find mention under the Evidence Act. Their Lordships of the Supreme Court have



considered the scope and ambit of Section 32 of the Evidence Act, particularly, Section 32(1) on various occasions including in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**, reported in (1984) 4 SCC 116 in which their Lordships have summarised the principles enumerated in Section 32(1) of the Evidence Act, including relating to “circumstances of the transaction”, which are as under: -

“21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:-

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

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a



logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.



(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.”

18. In the matter of Purshottam Chopra and another v. State (Government of NCT of Delhi), reported in (2020) 11 SCC 489, principles relating to recording of dying declaration and its admissibility and reliability were summed up in paragraph 21 as under: -

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

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



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

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

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

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

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying 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.”

19. Where several dying declarations are made the test is whether the version of the deceased is proved to be false in respect of the integral part of the case. A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declarations they should be consistent particularly in material particulars [See: **Kamla v. State of Punjab**, (1993) 1 SCC 1]
20. In the matter of **Mohanlal Gangaram Gehani v. State of Maharashtra**, reported in AIR 1982 SC 839, their Lordships of the Supreme Court 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.
21. In a recent judgment rendered by their Lordships of the Supreme Court in the matter of **Makhan Singh v. State of Haryana**, reported



in AIR 2022 SC 3793 : 2022 SCC Online SC 1019, while considering the issue of multiple dying declarations, their Lordships have 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 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.

xxx xxx xxx

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.”

22. In addition to this, a Constitution Bench of the Supreme Court in the matter of **Laxman v. State of Maharashtra**, reported in (2002) 6 SCC 710 has clearly held that 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. Their Lordships held in paragraph 5 of the report as under: -

“5. The Court also in the aforesaid case relied upon the decision of this Court in **Harjit Kaur v. State of Punjab** [(1999) 6 SCC 545] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in **Paparambika Rosamma v. State of A.P.** [(1999) 7 SCC 695] (at SCC p. 701, para 8) to the effect that

"in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined



that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma (supra) must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562].

23. The Supreme Court in the matter of **Jagbir Singh v. State (NCT of Delhi)**, reported in (2019) 8 SCC 779 following the principle of law laid down in Laxman (supra) has clearly held that even absence of the certificate by a doctor is not fatal to act upon a dying declaration, however, the requirement remains that the person who records dying declaration must ensure that the patient was in a fit condition, both mentally and physically, to give the declaration.
24. Reverting to the facts of the present case, we again gone through the evidence of the witnesses.
25. PW-3, Dr. Smt. Rachna Dave, who is the doctor treated the deceased first time at Government Hospital, Supela before whom the



deceased disclosed that, she was being burnt by Tamarak by pouring petrol. This fact has also been mentioned in MLC report (exhibit P-10). In cross-examination, she stated that, the history of the incident was voluntarily disclosed by the deceased to her and she gave her primary treatment. The defence could not rebut the said evidence that, the deceased disclosed the history that she was being burnt by Tamarak after pouring petrol upon her.

26. PW-11, who is the treating doctor of the deceased and recorded dying declaration (exhibit P-8 and P-24) has stated in her evidence that, on 12.03.2019, the deceased was brought before her for treatment. She was referred from Supela hospital having 90-95% burn injuries. She was in conscious but her condition was very serious. She immediately started her treatment and admitted in casualty ward. Looking to her serious condition, she recorded her dying declaration (exhibit P-8), in which she disclosed that she was being burnt by her husband Tabarak Ali. She disclosed the reasons for the incident that, he was not willing to accept her. The said dying declaration was recorded in presence of her father Ramkamal and uncle Ashok Kumar. Since, her both hands were burnt, the thumb impression of left leg was taken in the said dying declaration. She further stated that, since the dying declaration (exhibit P-8) was not in format, after receiving the format, she again recorded another dying declaration (exhibit P-24) and again obtained thumb impression of the left leg of the deceased. The said dying declaration (exhibit P-24) was recoded on 12.03.2019, at 4:15 PM. In cross-examination, she admitted that in the dying declaration (exhibit P-8) the time was not



mentioned. She voluntarily stated that, in absence of the format, she recorded the dying declaration in rough and subsequently, recorded in the format. She further admitted that, exhibit P-8 is in handwriting of the staff nurse. She denied that the dying declaration (exhibit P-24) is prepared on the basis of the dying declaration (exhibit P-8). The said dying declaration (exhibit P-24) is in her handwriting and the format was provided by the police. She also stated that, by mistake she mentioned the word "Nanad" and after realizing her mistake, she deleted the word "Nanad". She further stated that, with respect to the fit mental condition of the injured, she gave her certification in the document (exhibit P-21). She further admitted that, in the dying declaration (exhibit P-8), there is no mention that the deceased was in fit mental condition to record her statement. She voluntarily stated that since she is a doctor, and being a doctor she can state that, the deceased was in fit condition to give statement or not. She further stated that, the deceased was in a condition to speak, though she was 100% burnt. She denied that, she recorded the dying declaration on assumption.

27. In the evidence of this doctor, there is sufficient corroboration with the evidence of other doctors as well as other evidences that the deceased has made dying declaration before the doctor (PW-11). Even, there is no mention of any certification in the dying declaration (exhibit P-8 and P-24), there is another document (exhibit P-21), in which there is certification that the injured was in fit mental state to give statement, which has been given by PW-11 and proved during her evidence. Even otherwise, she being the doctor can very well



considered the mental condition of the injured while recording her statement, as she did in the present case. Therefore, recording of the dying declaration by the doctor cannot be doubted, as she is an independent witness. Nothing substantial could be extracted by the defence from the evidence of Dr. Smt. Kunti Thakur/PW-11 to hold that the deceased was not in fit state of mind to give dying declaration and she had not given any dying declaration. The evidence given by Dr. Smt. Kunti Thakur/PW-11 cannot be disbelieved, as she is a government officer and has no vested interest in either of the parties.

28. When we examined these two dying declarations, we find that in the dying declaration (exhibit P-8), the deceased made allegation only against the appellant Tabarak, whereas in the other dying declaration (exhibit P-24), she made allegations against both the appellants Tabarak and Fatima Begum. When we examined the evidence of PW-3/Dr. Smt. Rachna Dave before whom the deceased was firstly brought for treatment, the deceased disclosed the history that Tamarak (correct name is Tabarak) has set her ablaze after pouring petrol, which reflected from the document (exhibit P-10). From the evidence of PW-11/Dr. Smt. Kunti Thakur it further transpires that the dying declaration (exhibit P-8) was recorded in presence of Ramkamal and Ashok Kumar, whose signatures are also there in the said dying declaration (exhibit P-8). From perusal of the said dying declaration, it also transpires that there is no mention of the name of appellant No.2- Smt. Fatima Begum and there is no allegation



against her. It is necessary to take note of the said dying declaration (exhibit P-8):-

नाम— निधि कुमारी
उम्र— 20 वर्ष
पिता/पति का नाम— तबारक अली
किसी से झगड़ा हुआ क्या ?—
कैसे जली— पति ने जलाया पेट्रोल डालकर
किसने जलाया ? — पति ने जलाया
क्यों— नहीं अपनाउंगा
किसी के कहने से जला/जली है क्या — नहीं
कहां जला/जली? — पति के घर के पास
कब जला/जला? — 12.3.19 2:30 पी.एम.
किसने बचाया— किसी ने नहीं बचाया
पति का घर कहां है— सुभाष मार्केट, 30 सेक्टर 11, खुर्सीपार, भिलाई

29. When the another dying declaration (exhibit P-24) was recorded by PW-11/Dr. Smt. Kunti Thakur, the allegation against the appellant No.2 Smt. Fatima Begum is also leveled. The relevant part of the dying declaration (exhibit P-24) is as under:-

6. यह घटना कैसे घटी— पति ने मारा पेट्रोल डालकर, आग जलाना बताती है
7. किसी से लड़ाई—झगड़ा तो नहीं हुआ— पति से लड़ाई हुई थी कि मैं.....
8. घटना के समय कौन—कौन उपस्थित थे— पति, पति की मां (फातिमा बेगम)
9. किसी ने आपको मारा/जलाया/जहर पिलाया— पति ने पेट्रोल डालकर जलाया
10. इस घटना के लिए कौन जिम्मेदार है— पति तबारक अली, पति का मां फातिमा बेगम

30. From these two dying declarations and in view of the evidence of PW-1/Ramkamal, though he stated in his evidence that, his daughter has informed him that she was being burnt by Tabarak Ali and Fatima Begum, but from the dying declaration (exhibit P-8), which has been made in presence of PW-1/Ramkamal, the allegation appears only



against Tabarak Ali. On 13.03.2019, the clothes of the appellant Tabarak Ali have been seized vide seizure memo (exhibit P-13) and the smell of petrol was coming out from the clothes of the appellant Tabarak Ali, which has been mentioned in the said seizure memo. Had the appellant No.2 Smt. Fatima Begum also involved in the offence, her clothes may have also been seized by the police and smell of petrol might have also been come from her clothes, but it is not there. The alleged incident is occurred on the road and as per the spot map (exhibit P-7) there are number of houses adjacent to the road and the time of incident is 2:30 PM, but there is no evidence that the appellant No.2 Fatima Begum was also present there along with the appellant Tabarak Ali. Considering the evidence produced by the prosecution with respect to the involvement of appellant No.2 Smt. Fatima Begum, the dying declaration (exhibit P-8) and other evidence available on record, there are sufficient grounds to discard the evidence of the witnesses against the appellant No.2 Smt. Fatima Begum, however, there are sufficient evidence against the appellant No.1 Tabarak Ali to conclude that on the date and time of the incident, he set the deceased ablaze after pouring petrol upon her. From the dying declarations (exhibit P-8 and P-24) recorded by PW-11/Dr. Smt. Kunti Thakur as well as from the MLC report (exhibit P-10) given by PW-3/Dr. Smt. Rachna Dave, in which history of incident given by the deceased Nidhi is recorded, the prosecution has proved the involvement of the appellant Tabarak Ali for committing murder of the deceased Nidhi Kumari. Further, from the evidence of PW-9/Sanjay Yadav, who is the constable, who took the deceased to



the hospital along with her father, stated in his evidence that, on the way, he deceased disclosed her father that Tabarak Ali has set her ablaze after pouring petrol.

31. The learned trial Court has also considered the CDR of the mobile number of the deceased as well as the appellant Tabarak Ali and concluded that the deceased was having conversation with the appellant Tabarak Ali. The CDR has been proved by PW-13/Chandrashekhar Banjir, who is the Cyber Cell Incharge at Police Station Bhilai Bhatti. There is no substantively challenged the CDR by the defence and the consideration of the learned trial Court is also appears to be proper in view of the evidence available on the record to that respect.
32. Though, from the evidence of the witnesses, it also comes that the deceased made oral dying declaration to PW-1/Ramkamal (father), PW-2/Dinesh Kumar Soni (neighbor), PW-9/Sanjay Yadav, but in their cross-examination, there are material contradictions brought by the defence and in view of the dying declaration (exhibit P-8), the evidence of oral dying declaration can be discarded.
33. Accordingly, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt against the appellant No.1 Tabarak Ali, but has failed to prove the case against the appellant No.2 Fatima Begum and she is entitled for benefit of doubt.
34. Accordingly, the appeal with respect to the appellant No.2 Smt. Fatima Begum is allowed and she has been **acquitted** from the



alleged offence under Section 302/34 of IPC and the judgment of conviction and sentence with respect to her is **set aside**. The appeal with respect to the appellant No.1 Tabarak Ali is **dismissed**.

35. Keeping in view the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant No.2- **Smt. Fatima Begum** is directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety in the like amount before the Court concerned, which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
36. The appellant No.1 Tabarak Ali is reported to be in jail since 13.03.2019. He shall serve the entire sentence as awarded by the learned trial Court.
37. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail, where the appellant No.1 Tabarak Ali is undergoing his jail sentence to serve the same on the appellant Tabarak Ali, informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.



38. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

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