

(2023) 04 PAT CK 0049

Patna High Court

Case No: Criminal Appeal (DB) No. 1132 Of 2018

Dharmendra Paswan

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: April 20, 2023

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 173(2), 207, 313
- Indian Penal Code, 1860 - Section 34, 302, 307, 324, 497
- Evidence Act, 1872 - Section 32, 32(1)

Hon'ble Judges: A. M. Badar, J; Chandra Shekhar Jha, J

Bench: Division Bench

Advocate: Arun Kumar Singh, Rajni Ranjan Pd. Singh, Bipin Kumar

Final Decision: Allowed

Judgement

1. This appeal is directed against the impugned judgment of conviction dated 19.07.2018 and order of sentence dated 24.07.2018 passed by the learned Additional Sessions Judge-VI, Ara, Bhojpur (hereinafter referred to as the 'Trial Court') in Sessions Trial No.15 of 2018 arising out of Piro P.S. Case No.155 of 2017 whereby and whereunder the sole appellant has been convicted for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code (for short 'IPC') and consequently, sentenced the appellant to undergo imprisonment for life.

2. The case of the prosecution, which is based upon the statement of injured/deceased, namely, Sandhya Devi, who died during the course of her treatment, while she was admitted in Primary Health Centre, Piro on 21.06.2017 at about 7:15 A.M., recorded by the Assistant Sub-Inspector of Police, Dilip Kumar Gupta. The crux of her statement reveals that her marriage was solemnized before one and a half month of the occurrence with Dharmendra Paswan (appellant/convict), son of Shiv Kumar Paswan, resident of village-Dushadhi, which falls under P.S.-Piro, District-Ara as per Hindu Rites and Rituals. It is further stated thereof that, when she joined her matrimonial home after the marriage, the things was normal but, after seven or five days, her husband found usually engaged in loose and vulgar talk with his sister-in-law (bhabhi), Lalita Devi. It was objected by deceased, resultantly she was assaulted by her gotni and husband (appellant) saying that they are in relations and she must have accepted that. It is further stated that when occurrence was reported to her in-laws, they also assaulted her and locked inside a room, where on the intervening night of 13/14.06.2017, her husband (appellant/convict) along with Lalita Devi entered inside her room and thrown a burning matchstick on her causing spreading of fire inside the room and thereafter both of them ran away after locking the room from outside. It is

also stated thereof that on her alarm, neighbours and father-in-law namely, Shiv Kumar Paswan arrived, who opened the door and extinguished her fire, where her father-in-law also received burn injuries. The occurrence was reported to the local police station by the villagers and on so police officer of Piro Police Station arrived and brought her to Primary Health Center, Piro for treatment where her statement was recorded by the police. While concluding her statement, it was stated that her husband Dharmendra Paswan & Lalita Devi (sister-in-law/gotni), wife of Lakshman Paswan and mother-in-law Laljhari Devi, wife of Shiv Kumar Paswan under common intention threw burning matchstick upon her with intention to cause her death.

3. After ascertaining the truthfulness of statement, when it was read over to her by ascriber of the statement, she put her right thumb impression upon the same for future purpose, as her condition was very serious having no chance to survive.

4. On the basis of the aforesaid statement of the deceased Sandhya Devi, the Station House Officer of Piro, Police Station registered Piro P.S. Case No.155 of 2017 dated 21.06.2017 at 9:00 A.M. under Sections 497, 324 and 307/34 of the Indian Penal Code and, later on, vide order dated 26.08.2017 Section 302 was also added in the F.I.R. Investigation of the case was handed over to the Assistant Sub-Inspector of Police, Mr. Vashishtha Chaudhary (P.W. 7), the Investigating Officer of the case.

5. On completion of investigation, the Investigating Officer submitted charge-sheet against the appellant/convict, Dharmendra Paswan vide Charge-sheet No.170 of 2017 dated 24.10.2017 under Sections 497, 324, 307 and 302 of the Indian Penal Code read with 34 of the Indian Penal Code, where investigation of the case was kept open against two FIR named accused persons, namely, Lalita Devi and Laljhari Devi.

6. On receipt of the police report submitted under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC'), the learned Chief Judicial Magistrate, Ara took cognizance of the offences under which the charge-sheet was submitted vide order dated 09.11.2017.

7. After complying with the statutory requirements of Section 207 of the CrPC, the learned Chief Judicial Magistrate, Ara committed the case to the Court of Sessions vide order dated 19.01.2018.

8. The learned Sessions Judge, Ara transferred the case of the appellant to the court of learned 6th Additional Sessions Judge, Ara, who framed charges for the offences punishable under Sections 497 and 302 read with 34 of the Indian Penal Code against the accused persons including the appellant-convict, who upon "not plead guilty", put on trial, acquitted appellant/convict from the charge of Section 497 of the Indian Penal Code, but convicted under Section 302 with aid of Section 34 of the Indian Penal Code and accordingly, sentenced for imprisonment for life, without imposing any fine though judgment under challenge.

9. Hence, the present appeal.

10. To substantiate it's case, the prosecution examined altogether seven witnesses. They are Sita Devi (P.W.1), Ajay Kumar @ Ajay Singh (P.W.2), Mithlesh Paswan (P.W.3), Shankar Paswan (P.W.4), Jitendra Paswan (P.W.5), Dr. Krishnanand Sinha (P.W.6) and Mr. Vashishtha Chaudhary (P.W.7), who investigated this case.

11. Apart from the oral evidence, the prosecution proved the following documents in order to prove the charges:-

1.	1	Postmortem report of the deceased.
2.	2	Fardbeyan of the deceased.
3.	3	Formal FIR.
4.	4	Application dated 19.08.2017 for addition of Section 302 IPC in the FIR
5.	5	Charge-sheet

12. Sita Devi (P.W.1), is mother of the deceased Sandhaya Devi. She was declared hostile by the prosecution at the instance of the prosecution. She was cross-examined by the prosecution after being declared hostile but, nothing relevant transpired in her cross-examination.

13. Sri Ajay Kumar Singh @ Ajay Singh (P.W.2) and Sri Mithlesh Paswan (P.W.3) are resident of the same village. They have categorically stated in their deposition that their statement was never recorded by the police. They were also declared hostile by the prosecution at the instance of the prosecution. They were cross-examined by the prosecution after being declared hostile, but nothing relevant transpired in their cross-examination.

14. Sri Shankar Paswan @ Shankar Ram (P.W.4) and Sri Jitendra Paswan @ Jitendra Kumar (P.W.5) are father and brother of the deceased Sandhaya Devi. They were also declared hostile by the Trial Court at the instance of the prosecution. They were cross-examined by the prosecution after being hostile but, nothing relevant transpired in their cross-examination.

15. Dr. Krishnanand Sinha (P.W.6) is the doctor, who conducted the postmortem examination upon deceased Sandhaya Devi. He had deposed in his examination-in-chief that on 21.06.2017, he was posted at Ara Sadar Hospital as a Medical Officer. He further deposed that he conducted postmortem upon the dead body of Sandhya Devi (since deceased) and found the following injuries on her person:-

“External examination:-

Whole body about 90% burn with deep injury and blisters and redness. Froth from mouth.

Internal examination:-

Skull-brain congested

Chest- lungs, heart congested. Abdomen- Stomach with 150 ml semi-digested food material stomach, intestine, liver, spleen and kidney all congested. Uterus- Non-gravid congested

Bladder-100 ml urine.”

He disclosed that the cause of death was due to extensive burn injury leading to cardio respiratory failure. According to him, the time elapsed since death was 6-12 hours. He identified his handwriting and signature on the postmortem report, which was marked as Exhibit 1.

In cross-examination, he admitted that he found 90% burn injury including mouth on the dead body of the deceased. He further admitted that in such condition, the burnt

person do not in a position to say something. He stated that according to Modi Jurisprudence, person with 90% burn injuries cannot speak but, it may vary, depending upon the condition of burn that in which position burn injuries was received. He further deposed that he found semi-digested food material inside body of the deceased and it is expected that she would have been taken meal before two hours of her death. He had also deposed in cross-examination that he mentioned the time of death of the deceased in his report prior to 6-12 hours from conducting autopsy, which was on the basis of rigor mortis found upon her body. He further deposed that he did not mention in his postmortem report about development and disappearance of rigor mortis on the dead body. He denied the defence suggestion that in that situation anyone can speak.

16. Mr. Vashishtha Choudhary (P.W.7) is the Investigating Officer of the case. He deposed in his examination-in-chief that on 21.06.2017, he was posted as an Assistant Sub Inspector of Police in Piro Police Station. On that day, he took over the charge of investigation of the case. After taking charge, he has observed the fardbeyan of this case. This is the same fardbeyan which was recorded at Piro PHC camp by the then ASI, Dilip Kumar Gupta. He also stated that he recognized the signature and writing of ASI, Dilip Kumar Gupta and this is the same fardbeyan which was recorded in the writing and signature of Dilip Kumar Gupta, which upon his identification before the court exhibited as Exhibit 2. He has further deposed that at the time when ASI, Dilip Kumar Gupta recorded the fardbeyan of Sandhya Devi (since deceased), he was also present there as per order of Jai Prakash, Incharge of Piro Police Station. He further stated that Sandhya Devi had made her statement to ASI, Dilip Kumar Gupta before him and on the basis of said fardbeyan, the then Munshi Asha Kumari lodged a formal FIR, which was signed by Mr. Jai Prakash, the then Incharge of Piro Police Station. He had identified the signature of the then Munshi Asha Kumari on the formal FIR and also signature of Mr. Jai Prakash, Incharge of Police Station on it, which was marked as Exhibit-3. He further stated that after taking charge of investigation, he re-recorded the statement of deceased. He stated that at that time deceased was in full consciousness and had given her statement in a fit condition. He deposed to inspect the place of occurrence of this case which was in village-Chhotki Dusadhi Badhar, where he found main door of the room with the crime scene was north facing in which door was painted in green colour. He further stated that there was a room after going inside, facing to the west side, where occurrence took place. He also deposed to prepare the inquest report of deceased Sandhya Devi, which was prepared by A.S.I. Kavindra Kumar for the purpose of supplementary investigation and was available with supplementary diary. He further stated that on 21.06.2017, he had recorded the statement of Sita Devi, mother of deceased Sandhya Devi in Sadar Hospital and made entry in the diary. He had also recorded the statement of witness Shankar Paswan and after death of the deceased Sandhya Devi, submitted an application in the court for addition of Section 302 IPC on 19.08.2017. He further stated that he has identified his writing and signature on the application, which on his identification marked as Exhibit-4. He had also taken the statements of witnesses, namely, Jitendra Paswan, Ajay Singh, Shiv Kumar Paswan, Sarbjeet Paswan and Sujeet Kumar Paswan. He further stated that on the basis of the direction of the senior police officer and materials collected during the course of investigation, keeping the supplementary investigation open against the named accused persons, namely, Lalita Devi and Laljhari Devi submitted chargesheet against appellant/convict Dharmendra Paswan, under Sections 497, 324, 307 and 302 read with 34 of the Indian Penal Code through Charge-sheet No.170 of 2017 dated 24.10.2017 in the court. He further stated that this is the same charge-sheet, which was in his handwriting and signature which on his identification before the court marked as Exhibit-5.

In cross-examination, he stated that during the course of investigation, he has not taken statement of the then A.S.I., Dilip Kumar Gupta, who had recorded the statement of deceased. He also deposed that he had not mentioned in the case diary that Dilip Kumar Gupta had recorded the statement of deceased before him. He further stated that during the course of investigation, he had not written in the diary that he went to hospital under order of Jai Prakash, Incharge of Piro Police Station. He further stated that witnesses of this case are not known to him in personal capacity and he did not take evidence of Mukhiya or Sarpanch or other person reside near to place of occurrence. He further stated that no burn marks were found at the scene. He further stated that he had not attached inquest report of the deceased with this record and as supplementary investigation was under progress against two other accused persons he kept inquest report with himself. He further stated that he had recorded re-statement of informant on 21.06.2017 at 7:15 p.m. which is also the time and date for recording the fardbeyan of the deceased Sandhya Devi. He further stated that he did not ascertain the cause of death of the deceased from his level. He denied the defence suggestion that his investigation was faulty and wrote statement of witnesses sitting at the police station, and also denied the suggestion that Dilip Kumar Gupta had not taken statement of deceased before him.

17. After the closure of the prosecution case, the Trial Court recorded the statement of the appellant under Section 313 of the CrPC in which he has pleaded his innocence by denying the incriminating evidence/circumstances.

18. Since the defence did not lead any evidence, the Trial Court closed the defence case, heard the arguments advanced on behalf of the parties and pass the impugned judgment convicting the appellant and sentencing him in the manner stated hereinabove.

ARGUMENT ON BEHALF OF APPELLANT/CONVICT

19. Assailing the impugned judgment, Mr. Rajni Ranjan Prasad Singh, learned counsel appearing on behalf of the appellant submitted that the Trial Court has erred in law as well as on facts in the present case. He submitted that out of seven prosecution witnesses, P.Ws. 1, 2, 3, 4 and 5 were declared hostile by the prosecution where, on their cross-examination, nothing substantial appears which may use as corroborative piece of evidence to find out the guilt of appellant/convict. He has further submitted that even the ascriber of the statement of injured Sandhya Devi (since deceased) namely, Dilip Kumar Gupta was not examined before the court and merely on the identification of his hand-writing and signature, as same was identified by Basishta Chaudhary (P.W. 7), who is investigating officer of the case, it cannot be said that the contents of the statement, which is appearing dying declaration in nature, was proved before the Trial Court and on the basis of same, the finding of conviction of appellant/convict is not appearing within the accepted frame of law. It is further submitted by learned counsel that it is also highly unbelievable that only by throwing a single burning matchstick, this type of burn injuries may receive because the case of prosecution is not suggesting that prior to throwing burning matchstick, kerosene oil or any such inflammable materials were sprinkled over the deceased. In support of his submission, he relied on the legal reports of Hon'ble Supreme Court in the matter of Jayamma and Another vs. State of Karnataka [(2021) 6 SCC 219].

ARGUMENT ON BEHALF OF THE STATE

20. Per contra, Mr. Bipin Kumar, learned Additional Public Prosecutor, while arguing the case submitted that the statement of deceased was just recorded soon before her death and it is in nature of dying declaration and the same was rightly accepted by the

learned Trial Court under Section 32(1) of the Indian Evidence Act while convicting the appellant. He has also submitted that the burn injuries, as stated by deceased while recording her statement, is appearing in full corroboration in terms of testimony of Dr. Krishnanand Sinha (P.W.6). He also submitted that dying declaration of the deceased can be the sole basis of conviction, where there is no suspicious circumstances to disbelieve the same. As in the present case, immediately after the occurrence, the deceased was taken to the Primary Health Center, Piro where her statement was recorded and this fact was deposed before the Trial Court by the Investigating Officer of this case, who is P.W.7 Bashistha Chaudhary. In support of his submissions, learned Additional Public Prosecutor relied upon the report of the Hon'ble Supreme Court as reported in the matter of Lakhan Lal vs. State of M.P. [(2010) 8 SCC 514].

CONCLUSION:

21. We have carefully heard the argument as advanced on behalf of learned counsel appearing on behalf of appellant/convict and also learned APP on behalf of the State. We have also carefully perused the available materials and evidence along with trial court's proceedings.

22. It would be appropriate to reproduce paragraph 15 of the legal report of Jayamma case (supra) for better understanding of evidentiary value of Section 32(1) of the Evidence Act, the same is as under:-

"15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a "dying declaration" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction."

23. It would also be appropriate to reproduce paragraph 14.3 of Jayamma case (supra) for better understanding of legal position and the same is as under:-

"14.3. In Sham Shankar Kankaria v. State of Maharashtra [(2006) 13 SCC 165], it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in Paniben v. State of Gujarat [(1992) 2 SCC 474] wherein this Court (at SCC pp. 480-81, para 18) summed up several previous judgments governing dying declaration, the Court in Sham Shankar Kankaria [(2006) 13 SCC 165] reiterated: (Sham Shankar Kankaria [(2006) 13 SCC 165, paras 10 and 11].

"11. ... (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P [(1976) 3 SCC 104];

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

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

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

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

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

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455] ;

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

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

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

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

24. The litmus test, as such, is whether the victim Sandhya Devi made her statement in fit statement of her mind and if so, such statement can be the solitary foundation for conviction of the appellant?

25. From perusal of record, it appears that P.W.1, namely, Sita Devi, who is the mother of the deceased, P.W. 2, Ajay Kumar @ Ajay Singh, who is co-villager, P.W. 3, namely, Mithlesh Paswan, who is also co-villager of the deceased, P.W. 4 Shankar Paswan @ Shankar Ram, who is the father and P.W.5 Jitendera Paswan, who is the brother of the deceased have resiled and not supported the prosecution case. The conviction of the appellant/convict is based upon evidence of P.W.6 Dr. Krishnanand Sinha, who conducted postmortem upon the deceased and P.W.7 Mr. Basishta Chaudhary, who is Investigating Officer of the case.

26. Admittedly, the dying declaration of the deceased Sandhya Devi was not recorded by Executive Magistrate or Judicial Magistrate rather the same was recorded by Mr.

Dilip Kumar Gupta, the then A.S.I., Piro Police Station while she was admitted in Emergency Ward of Primary Health Center, Piro. It appears that the said Dilip Kumar Gupta was not examined before the learned Trial Court so as to prove the contents of dying declaration of the deceased Sandhya Devi. It is also not appearing that said dying declaration was recorded in presence of P.W. 7, who is the investigating officer of this case. P.W. 7 only identified the signature of Dilip Kumar Gupta, the then A.S.I. of Piro Police Station and his handwriting in which dying declaration was recorded, which was exhibited before the court as Exhibit 2. He also identified the signature of the then SHO of Piro Police Station, namely, Jai Prakash regarding the endorsement on the FIR, which was exhibited as Exhibit 3. P.W. 7 in para 2 of his cross-examination deposed that he was present in Emergency Ward of Primary Health Center, Piro when dying declaration of the deceased Sandhya Devi was recorded by the then A.S.I. Dilip Kumar Gupta but, that dying declaration is not even signed by P.W. 7 and not even his name was mentioned elsewhere in fardbeyan suggesting that he was present thereof.

27. It also appears from para-3 of cross-examination of P.W. 7 that he recorded the re-statement of deceased Sandhya Devi and by that time, she was also in fit state of her mind. In his cross-examination, he disclosed that he never recorded the statement of the then A.S.I. Dilip Kumar Gupta during the course of investigation and that re-statement of deceased was recorded on 21.06.2017 at about 7:15 a.m., which is the same time qua recording of statement of deceased Sandhya Devi by the then A.S.I. Dilip Kumar Gupta.

28. Having this much evidence in hand, it can be safely arrived on the conclusion that the contents of dying declaration in absence of examination of the author of said dying declaration, namely, Dilip Kumar Gupta, cannot be said proved during the trial so as to read as evidence.

29. P.W. 6 is Dr. Krishnanand Sinha, who conducted postmortem upon the deceased Sandhya Devi and found 90 % burn injuries on her person. He deposed in para 3 of his cross-examination that generally as per Modi Jurisprudence, person who received 90% burn injuries were not remains in fit condition to give statement, which creates also a doubt over the recording of dying declaration.

30. Having thoughtful consideration of dying declaration of deceased Sandhya Devi to the possible extent, and other available evidence and materials, we do not find it totally safe to convict appellant on the basis of dying declaration of deceased along with its corroboration qua testimony of P.W. 6 and P.W. 7 for the several reasons noted herebelow:-

30.1. Firstly, the narration of events as mentioned in the dying declaration is so accurate, that even a witness in the normal state of mind cannot be expected to depose with such precision. In present case, deceased was with 90% burn injuries including mouth. Although, it is stated that the deceased was questioned by the police officer, the deceased was not examined in "questions and answers" format, leaving a room for direct or indirect dominance of the police officer influencing the answers in one direction.

30.2. Secondly, Dilip Kumar Gupta, who appears to be the author of dying declaration of deceased Sandhya Devi was not examined before the court during the trial and, as such, contents of statement of the deceased, who appears to be a dying declaration cannot be said to be proved.

30.3. Thirdly, the statement of deceased Sandhya Devi was recorded in a hospital without obtaining a certificate regarding her fit state of mind by the doctor to record her statement by the police officer.

30.4. Fourthly, the presence of P.W.7 is doubtful at the time of recording the statement, as it was deposed. Moreover, the alleged deposition to record re-statement of the deceased is of same date and time on which dying declaration of deceased Sandhya Devi was recorded by Dilip Kumar Gupta, the then A.S.I. Piro Police Station.

30.5. Fifthly, which makes us reluctant to accept the conviction which is based upon dying declaration is the fact that deceased Sandhya Devi was brought to the Emergency Ward of Primary Health Center, Piro at about 7:15 a.m. of 21.06.2017 whereas postmortem was conducted by P.W. 6, namely, Dr. Krishnanand Sinha on 21.06.2017 (time not specified), the formal FIR was registered at about 9:00 a.m. without adding Section 302 IPC suggesting that the injured was not died by that time. The deceased was alive for a sufficient time to enable the investigating agency to call an Executive Magistrate or Judicial Magistrate to record the dying declaration, who are judicially trained to record dying declaration after complying with the mandatory provisions including certification or endorsement from the medical officer that the victim was in a fit state of mind to make statement. We are alive of the position of law that law does not compulsorily requires of presence of a Judicial or Executive Magistrate to record a dying declaration or show to make it unreliable on that score but only as a rule of prudence if the facts and circumstances so permitted, dying declaration may preferably be recorded by Judicial or Executive Magistrate to muster additional strength to the prosecution case.

31. In view of above made discussions, the present appeal is allowed. The impugned judgment of conviction dated 19.07.2018 and order of sentence dated 24.07.2018 passed by the learned Additional Sessions Judge-VI, Ara, Bhojpur (hereinafter referred to as the 'Trial Court') in Sessions Trial No.15 of 2018 arising out of Piro P.S. Case No.155 of 2017 are, accordingly, set aside.

32. Accordingly, Appellant Dharmendra Paswan, who is in custody, is acquitted of the charges levelled against him. He is directed to be released from custody forthwith, if he is not required in any other case.

33. It is further directed that fine, if any, paid in terms of order of sentence be returned to the appellant immediately.