(2024) 07 OHC CK 0003

Orissa High Court

Case No: Jail Criminal Appeal No. 82 Of 2009

Sidheswar Pradhan		APPELLANT
	Vs	
State Of Odisha		RESPONDENT

Date of Decision: July 4, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 161
- Indian Penal Code, 1860 - Section 302
- Evidence Act, 1872 - Section 32, 32(1), 60

Hon'ble Judges: S.K. Sahoo, J; Chittaranjan Dash, J

Bench: Division Bench

Advocate: Himanshu Bhusan Das, Arupananda Das

Final Decision: Dismissed

Judgement

Chittaranjan Dash, J.

1. The Appellant, namely Sidheswar Pradhan faced the trial on the charges under Section 302 of the Indian Penal Code (in short, hereinafter referred to “IPC”) before the learned Ad-hoc Addl. Session Judge, Fast Track Court, Phulbani for committing murder of his wife the deceased (hereinafter referred as “the deceased”) by setting her on fire by pouring kerosene over her body wherein, the learned court found him guilty in the offence charged as above, convicted and sentenced the Appellant to undergo Rigorous Imprisonment for life and to pay a fine of ₹5000/- (Rupees five thousand), in default to undergo further Rigorous Imprisonment for six months.

2. The prosecution case, in brief, is that a written report was lodged with the Officer-in-Charge of Sarangada Police Station by Raji Pradhan, the father of the deceased, on February 26, 2009, at 4:30 p.m. The report alleged that the deceased had

married the Appellant approximately five years' prior, according to the customs of their community. While they initially lived together peacefully, marital discord eventually arose. On February 26, 2009, Raji Pradhan received information from one Sukanta Pradhan, his grandson and residents of the same village that the Appellant killed the deceased. Following the incident, the deceased was taken to Sarangada for treatment by her sister Mashyafulla, her husband Saiba, and some co-villagers. The Medical Officer provided treatment and referred her to the District Headquarters Hospital in Phulbani. Since the accompanying persons had no money with them to carry the injured to the District Headquarters Hospital, Phulbani, they returned to the village to arrange funds, but she succumbed to her burn injuries on the way at around 4 a.m. Upon hearing this, the Informant immediately went to the village of the Appellant, confirmed his daughter's death, and subsequently lodged the written report at the police station. Upon receiving the FIR, the Officer-in-Charge of Sarangada Police Station registered the case vide Sarangada P.S. Case No. 10 dt. 26.02.2009 and commenced investigation.

3. In the course of the investigation, the Investigating Officer (I.O.) examined the informant and the scribe of the FIR (P.W.9). He instructed a constable to guard the spot where the deceased's body was kept. The I.O. visited the spot, examined witnesses, recorded their statements under Section 161 of the Cr.P.C., and seized incriminating articles including a piece of burnt saree, a plastic jerrycan containing kerosene, a broken matchbox, and half-burnt matchsticks found in the kitchen of the Accused-Appellant's house. The I.O searched for the Appellant but he couldn't be traced. Due to darkness, the I.O. could not conduct the inquest over the deceased's body that night.

4. The following morning, the I.O. conducted the inquest in the presence of witnesses and the Executive Magistrate, preliminarily determining that the deceased had sustained 90% burn, which resulted in her death. He recorded this opinion in the inquest report under Ext. 3 sent the dead body of the deceased for post-mortem examination. He continued to search for the Accused-Appellant but could not apprehend him that day. Subsequently, the I.O. seized the dying declaration recorded by the Medical Officer on the day of the incident, including the OPD register vide Ext. 9. He examined the Medical Officer (P.W.11) and the attendant (P.W.7) present during the recording of the dying declaration. After the autopsy, he seized the deceased's clothing. The I.O. apprehended the Accused-Appellant on February 28, 2009, and after his medical examination, he was forwarded to the court. The I.O. also examined additional witnesses connected to the case and recorded their statements. Later he handed over the charge of investigation to the Officer-in-Charge of the police station on his transfer, who forwarded the seized materials for chemical examination. After completion of the investigation, the Final form was submitted against the Accused-Appellant to face trial

in court.

5. The case of the defence is one of complete denial and false implication. Further case of the defence is that he was not present in his house at the time of the incident and stated in his examination U/s. 313 Cr.P.C that he arrived at the scene of occurrence only after hearing about the deceased's burning from Mashyafulla (P.W.8) and while attempting to douse the fire on the deceased received burn injuries to his person.

6. To bring home the charge, the Prosecution examined 13 witnesses in all. P.W.1 being the husband of Mashyafulla (P.W.8), who arrived at the spot immediately after the occurrence; P.W.2 is Sunil Pradhan, who arrived at the spot upon hearing the cry of the deceased and helped dousing the fire on her body by sprinkling water; P.W.3 is the scribe of the FIR; P.W.4 is Amar Pradhan, a cousin of the Accused, who is a post-occurrence witness and deposed about the dying declaration recorded by the Medical Officer; P.W.5 is a seizure witness; P.W.6 is the Medical Officer who conducted the autopsy on the dead body of the deceased as per police requisition; P.W.7 is Tipusultan Bisoyi, a medical attendant who witnessed the dying declaration recorded by the Medical Officer (P.W.11); P.W.8 is Mashyafulla Pradhan, the sister of the deceased, who arrived at the spot upon hearing the screams of the deceased and helped dousing the fire on her body by sprinkling water; P.W.9 is the informant in this case; P.W.10 is Sukanta Pradhan, the grandson of the informant (son of Mashyafulla); P.W.11 is the Medical Officer who recorded the dying declaration; P.W.12 is the investigating officer who carried out a part of the investigation; P.W.13 is the investigating officer who carried out other part of the investigation and submitted the charge-sheet in the case.
In his defence, the Accused-Appellant examined himself as D.W.1 to prove his plea. However, he did not prove any document in support of his plea.

7. The learned trial court, having believed the evidence of the prosecution witnesses, found the prosecution to have proved its case beyond all reasonable doubt and held the Appellant guilty and convicted him, awarding sentence as described above.

8. Mr. Das, the learned counsel for the Accused-Appellant submits that the impugned judgement suffers from several infirmities going to the root of the case as the learned court did not adhere to the basic principles of law enumerated to appreciate the circumstantial evidence more particularly in connection to the dying declaration believing on the witnesses interested in favour of the deceased and the flaws lies in convicting the Accused-Appellant solely on the basis of circumstantial evidence, concerning the conduct of the Accused-Appellant after the occurrence and the alleged dying declaration allegedly made before the witnesses and the doctor (P.W.11) in the presence of other witnesses such as P.Ws. 1, 2, 4, and 8, without certifying the mental state of the deceased. He further submits that the prosecution has neither proved any

motive nor established any previous marital discord between the Accused-Appellant and the deceased and the learned trial court has convicted the Accused-Appellant merely on surmise and conjecture.

He also contends that the Appellant was not present at the scene of occurrence and only arrived to rescue the deceased upon hearing about the incident from P.W.8, during which he sustained injuries on his thigh and hand which was not duly considered by the learned trial court. According to learned counsel, this is significant particularly in light of the evidence from P.W.8, who admitted during cross-examination that she did not have good relations with the Appellant and they had no visiting terms, especially after the death of her brother's daughter reared in their house who was staying with the family of the deceased. He further submitted that, given that the body of the deceased was nearly 90% burnt, she could not have provided any cogent statement implicating him in the crime and her version could be shaky given the fact that she would be in shock from the fire. He states that the learned trial court remained oblivious to the vital fact appearing in the evidence to rule out any possibility of connecting the Appellant to be the author of the crime in absence of a link in the chain of circumstances that would unerringly point guilt on the Appellant and as such the impugned order deserves to be set aside according an order of acquittal in favour of the Appellant.

9. Mr. Das, the learned AGA, on the other hand submitted that the learned trial court has perspicaciously appreciated the evidence laid by the parties before it, more so the prosecution and believing the testimonies of the witnesses to be truthful and natural besides the circumstances appearing in the case to be consistent and coherent that links the chain unerringly pointing guilt on the Accused-Appellant found him to be the perpetrator of the murder and convicted him and as such the impugned judgement requires no interference. Answering the contentions raised by the learned counsel for the Appellant attributing criticism to the appreciation of evidence with regard to the various circumstances, Mr. Das, argued first on the point of the dying declaration made before the Medical Officer (P.W.11), so also, the oral dying declaration made by the deceased before the witnesses. According to the learned AGA, the said dying declaration brought in the evidence through P.W.2 and P.W.8, holds significance having probative value and can be the sole basis for conviction in as much as the same finds well corroborated to the earlier statement of the witnesses recorded u/s 161 CrPC and found no contradiction despite the fact being confronted to the witnesses during their cross-examination. The aforesaid evidence, therefore, is found to be truthful and voluntary. Further, the evidence with regard to the Medical Officer who deposed to have recorded the dying declaration in presence of witnesses and proved the same being an impartial and competent person, as recorded in presence of P.Ws. 1, 2, 4, and 8 lends further credibility to it. It is also argued by the learned AGA that although the

mental state of the deceased was not explicitly certified by the Medical Officer, his firmness in deposing before the court on oath keeping in view his experience give assurance of the victim's capacity to speak and to reveal the cause of death.

Furthermore, the circumstantial evidence as regards the burn injuries suffered by the Accused-Appellant, his post-occurrence conduct of his failure to take steps in taking the deceased to the hospital and even to accompany her to the medical in spite of P.W.8's requests, more so his absconding from the house for three days strongly pitted against him and adding to his peril to be the perpetrator of the crime. According to the counsel, it is a well-settled principle that circumstantial evidence, when forming a complete chain pointing unequivocally to the guilt of the Accused, is sufficient for conviction. While the Appellant argues that no motive or prior marital discord was proven, it is important to note that the absence of motive does not necessarily exonerate the Accused.

The learned AGA, further submits that the prosecution has provided enough evidence of the discord between the deceased and the Accused through witness testimonies. The defence plea of the Appellant is unsubstantiated and contradicted by the evidence on record. The Appellant's claim that he arrived at the scene only after hearing about the incident and sustained injuries while attempting to rescue the deceased is not credible. Additionally, the Appellant's conduct of not accompanying the deceased to the medical due to fear is not a reasonable justification and rather indicates consciousness of guilt. In conclusion, the learned AGA, submitted that the prosecution has successfully proved its case beyond all reasonable doubt and the learned trial court has correctly appreciated the evidence and circumstances surrounding the case holding the Appellant guilty.

10. Having regard to the arguments advanced by the learned counsel of the respective parties, it is incumbent to deal with the testimonies of the relevant witnesses for better appreciation of the case.

P.W.1, the husband of the deceased's sister, in his sworn testimony, has stated that he heard about the deceased burning from P.W.10, his son and they both immediately rushed to the house of the deceased and found her completely burnt but still was able to speak. According to P.W.1, the deceased explicitly stated that her husband had asked her for money, and when she refused, he poured kerosene on her and set her on fire with a matchstick. This statement was made in presence of several witnesses, including P.W.1's wife – Mashyafulla (P.W.8) and other villagers. P.W.1 also noted that the Accused-Appellant did not take any action to help the deceased or take her to the hospital, as he was present in the house during the incident but did nothing to assist.

P.W.2, a co-villager working at a nearby brick kiln, corroborated P.W.1's narration. According to him, he heard the screams of the deceased and rushed to her house

along with Mashyafulla (P.W.8). They found the deceased on fire and managed to douse the flames by sprinkling water on her. P.W.2 further stated that the deceased disclosed before them that her husband poured kerosene on her and set her on fire. P.W.2 also confirmed that the Accused-Appellant was present at the house during the incident but refused to take the deceased to the hospital, even when P.W.2 suggested it.

P.W.4, corroborated the statements of P.W.1 and P.W.2. He arrived at the scene and saw the deceased with severe burn injuries. He confirmed that the Accused-Appellant was sitting at the back of the house during the incident and did not attempt to help the deceased. He also accompanied the deceased to the hospital, where she repeated her narration of how she was set on fire. The doctor recorded this statement, and he signed it along with P.Ws. 1, 2 and 8.

P.W.8, the deceased's sister, provided a similar narration. She heard her sister's screams while working at the brick kiln and rushed to her house with P.W.2. They found the deceased on fire and managed to douse it. The deceased told them that her husband had demanded money, and when she refused, he poured kerosene on her and set her on fire. P.W.8 confirmed that the Accused-Appellant was present at the house and did nothing to help. She also accompanied the deceased to the hospital, where the doctor recorded the deceased's statement in their presence.

P.W.10, the deceased's nephew and son of P.Ws.1 and 8, also corroborated the testimonies of the previous witnesses. He arrived at the scene and found the deceased in a semi-conscious state with severe burns. His parents took the deceased to the hospital, where she later died. P.W.10 also informed his maternal grandfather, the informant, about the incident.

P.W.11, the Medical Officer who attended to the deceased at Sarangada Hospital, states that the deceased arrived with severe burn injuries. He recorded her statement, in which she stated that her husband had poured kerosene over her and set her on fire with a matchstick while she was cleaning her eyes. This statement was recorded in the presence of the attendant and the accompanying persons, who signed it. P.W.11 confirmed that the mental condition of the deceased was stable enough to give a coherent statement, although her fingers trembled due to the pain.

P.W.12, the investigating officer, further corroborated the sequence of events. He testified that he received a written report from the informant about the incident and conducted the investigation. He confirmed that the deceased had sustained 90% burn injuries and noted this in the inquest report. He also stated that the Accused-Appellant was apprehended from his house and had burn injuries on his body, which were examined by the Medical Officer. P.W.12's investigation revealed that the Accused-Appellant and the deceased were alone in their house at the time of the

incident, and the Accused-Appellant was present when the deceased was set on fire.

P.W.13, another investigating officer who took over charge from P.W.12, re-examined some witnesses and the complainant. He sent the seized items for chemical examination and received the post-mortem report, which supported the prosecution's case. P.W.13 confirmed that based on the strong evidence found during the investigation, a charge sheet was submitted against the Accused-Appellant.

11. Keeping in view the evidence brought by the respective parties through the witnesses and the arguments advanced, the issues in the instant case hinges in the admissibility, evidentiary value and reliability of the dying declaration made by the deceased orally before the witnesses P.Ws. 2 and 8 and the dying declaration recorded by the Medical Officer, P.W.11 besides other direct and circumstantial evidence.

12. In the matter of **Kundula Bala Subrahmanyam and Another Vs. State of Andhra Pradesh reported in (1993) 2 SCC 684**, the Hon'ble Supreme Court had highlighted the significance of a dying declaration in the following words –

"18. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration..."

In the matter of **Paniben (Smt.) Vs. State of Gujarat** reported in **(1992) 2 SCC 474**, on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus –

“18. ……. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. (1976) 3 SCC 104)

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

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

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

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

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

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

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar 1980 Suppl. SCC 769).

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. (1988) Suppl. SCC 152)

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

The Apex Court in the recent decision in the matter of **Purshottam Chopra & Anr. Vs. State (Govt. of NCT Delhi)** reported in **AIR 2020 SC 476**, has reiterated the principles of admissibility and reliability of the dying declarations as follows–

“25.2. Another emphasis laid on behalf of the Appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in Vijay Pal’s case and reiterated in Bhagwan’s case (supra), the extent of burn injuries – going beyond 92% and even to 100% -would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the Appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.”

In **Lakhan Vs. State of Madhya Pradesh** reported in **(2010) 8 SCC 514**, where the deceased was also burnt by pouring kerosene oil on her and was brought to the hospital by the Accused and his family members, the Court noticed that she had made two varying dying declarations and held thus -

“9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means “a man will not meet his Maker with a lie in his mouth”. The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as “the Evidence Act”) as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon."

13. From the above discussion, the parameters set for the acceptability of dying declaration whether oral or recorded is that it must be complete, voluntary and uninfluenced. The cause of death must be explained by the declarant or at least the circumstances which resulted in the death must be explained. The declarant who makes the dying declaration must be conscious and coherent.

14. In the instant case, the statement of the witnesses viz P.Ws.2 and 8 is clear and candid that the victim, having faced the burn injuries, came out in the open and raised a scream for help. Hearing the scream both P.Ws.2 and 8 who were engaged in the brick kiln near the house of the victim that apparently shows to be at the call's distance arrived at the spot and attempted to douse the fire by sprinkling water. In the above circumstances, it can very well be taken judicial notice of the fact that the victim was well oriented and conscious to disclose the fact relating to the cause of fire and as such her version is not only voluntary but uninfluenced and revealed the cause of the fire that ultimately led to her death. The evidence of these witnesses therefore, proved to be natural and worthy of credence.

15. As far as the evidence of P.W.11, the Medical Officer is concerned, it reveals that he recorded the statement of the victim in a paper in the presence of the witnesses finds that immense corroboration from that of the statement of P.Ws. 1, 2, 4 and 8. Most importantly, the version of P.W.7 who supported the testimony of P.W.11 is an attendant engaged in the hospital and has no axe to grind against the Appellant to implicate him and as such to disbelieve his version who in a clear and unambiguous manner stated the deceased to have disclosed before P.W.11, the cause of the fire and its perpetrator. All the witnesses being signatory to the declaration recorder by P.W.11

who having corroborated their versions prove the respective signatures consistently and coherently, reassures the version of P.W.11 as to the factum of dying declaration. Such declaration, once again being voluntary, cannot be discarded merely on the criticism of the defence to the effect that the Medical Officer failed to mention with regard to the state of mental fitness of the victim at the time of the incident. This is because the deceased's dying declaration, recorded by P.W.11 and corroborated by multiple witnesses, unequivocally points to the Accused-Appellant as the perpetrator. The consistent narrative across these testimonies establishes a strong case against the Accused-Appellant, demonstrating his presence at the scene and his unwillingness to help his wife in any manner.

16. According to Section 32(1) of the Indian Evidence Act, 1872, statements made by a person as to the cause of their death or the circumstances of the transaction resulting in their death are admissible in court, irrespective of whether the person making them was under the expectation of death at the time.

This provision affirms the relevance and admissibility of the deceased's statements, given their direct relevance to the cause of her death. Moreover, the deceased's declaration was not a solitary narration; she recounted the events first to P.Ws. 2 and 8 immediately after the incident, and subsequently to the Medical Officer, P.W.11. The Medical Officer, in his sworn testimony, affirmed her mental stability at the time of recording the declaration, stating that despite her pain from severe burns, she was able to answer questions and was coherent enough to narrate the sequence of events clearly. P.W.11 further testified that he recorded the declaration in the presence of witnesses, including P.W.2, P.W.4, and P.W.8, thereby corroborating the circumstances and enhancing its evidentiary weight. In addition, although the deceased's physical condition prevented her from fully signing the declaration, P.W.11 clarified that her partial signature was sufficient to indicate her acknowledgment and understanding of the contents. This detail is significant considering that nearly 90% of her body had sustained burn injuries, highlights the extreme physical and mental trauma she endured.

17. The deceased's declarations about her husband pouring kerosene on her and setting her on fire, made first to P.W.2 and 8 and later to the Medical Officer, underscore that the statements were consistent and compelling, as the deceased repeatedly narrated the same sequence of events to different individuals. The Medical Officer, P.W.11, corroborated that the deceased was in a stable mental condition when she made her declaration, further enhancing its reliability. Despite her severe injuries, which included 90% burns, the deceased's ability to articulate the cause of her suffering underscores the veracity of her statement. The legal sanctity of a dying declaration stems from the belief that a person on the verge of death is unlikely to fabricate a statement, given the solemnity and gravity of their situation. The proximity to death

itself serves as a powerful guarantee of the truthfulness of the statement regarding the causes or circumstances leading to the person's demise. Thus, the dying declarations made by the deceased can be accorded a sacrosanct status as a piece of evidence.

18. Moreover, in response to the counsel for the Appellant's argument that the deceased could not have given a true declaration due to shock from her severe burns, it is essential to examine the principles established in the context of dying declarations and their admissibility under law. The defence's contention hinges on the assumption that the physical condition of the deceased, with approximately 90% burns, rendered her incapable of providing a coherent statement. However, it is well-established in jurisprudence that the admissibility and reliability of a dying declaration do not hinge on the physical condition alone but rather on the mental faculties of the declarant at the time of making the statement. The Apex Court has consistently held that the mental state of the deceased must be assessed based on whether they were in a fit condition to make a statement, regardless of their physical injuries (**Laxman Vs. State of Maharashtra, AIR 2002 SC 297; Koli Chunilal Savji Vs. State of Gujarat, AIR 1999 SC 1445**).

19. In the present case, the dying declaration of the deceased was recorded by the Medical Officer (P.W.11) at Sarangada Area Hospital. P.W.11 testified that he recorded the statement after ensuring that the deceased was stable enough to communicate, despite her severe burns. He further affirmed that he read out the contents of the declaration to the deceased and that she comprehended and confirmed its accuracy before signing it partially due to her physical condition. Moreover, the corroborative evidence provided by witnesses (P.W.2, P.W.4,

P.W.8, and others) supports the consistency of the deceased's statement regarding the events leading to her injuries. They testified that she narrated the incident in a coherent manner immediately after the incident, consistent with her statement to the Medical Officer.

20. The contention of the Appellant that shock would prevent a truthful declaration overlooks the legal principle that shock or physical pain, while relevant to the conditions under which a declaration is made, does not necessarily invalidate its truthfulness. The trial court meticulously examined these aspects and found the dying declaration to be credible and trustworthy, considering the circumstances under which it was made and the corroborative evidence provided. Furthermore, the defence's failure to challenge the Medical Officer, or the investigating officer on the specific issue of the deceased's mental and physical state at the time of recording the declaration weakens their argument. No evidence or suggestion was brought forth to discredit the testimony of Medical Officer who recorded the dying declaration, nor was any alternative explanation provided for why the deceased would falsely implicate her

husband.

21. Despite the legal principle that a dying declaration does not require corroboration, the evidence presented in this case completes the chain of circumstances required to establish the offence under Section 302 IPC. The testimonies of P.W.2, P.W.4, and P.W.8, along with the Medical Officer's version, collectively form a robust evidentiary framework that leaves no room for alternative explanations. The legal principle that at the point of death, every motive to falsehood is silenced, further supports the reliability of the deceased's declaration. The theory behind accepting dying declarations is grounded in the belief that a person on the verge of death is unlikely to lie. This principle was emphasized in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 11**6, where the court noted that a dying person is in a situation where the solemnity of impending death removes any incentive to speak falsely. This analogy, coupled with the five golden principles necessary to establish a case based on circumstantial evidence, known as the panchsheel of proof, is enough to establish the guilt of the Appellant. The chain of evidence is so comprehensive and unbroken that it irrefutably points to the guilt of the Accused, thereby satisfying the stringent criteria set forth

i) **Circumstances from which the conclusion of guilt is to be drawn should be fully established:**

The circumstances leading to the deceased's death are clearly established through the consistent testimonies of P.W.2, P.W.4, P.W.8, and the Medical Officer (P.W.11). Each of these witnesses corroborates that the deceased accused her husband of pouring kerosene and setting her on fire, both immediately after the incident and later in her dying declaration.

ii) **Facts so established should not be explainable on any other hypothesis except that the Accused is guilty:**

The Appellant's defence that the deceased went to the jungle and accidentally set herself on fire is implausible given the direct accusations made by the deceased herself. There is no evidence to support an accidental cause or the involvement of any other person, which firmly points to the Appellant's guilt.

iii) The facts should be of a conclusive nature:

The facts of this case are conclusive and point unerringly to the guilt of the Appellant. The deceased's consistent statements to multiple witnesses and the Medical Officer, coupled with the absence of any contradictory evidence, make a compelling case against the Appellant.

iv) **The facts should exclude every possible hypothesis except the one to be proved:**

The Appellant's attempt to suggest an accidental cause fails to exclude the hypothesis of his guilt. The dying declaration and corroborative testimonies eliminate any reasonable doubt and support the conclusion that the Appellant is the perpetrator.

v) **There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by the Accused:**

The chain of evidence in this case is complete. From the immediate aftermath of the incident, where witnesses saw the deceased on fire and heard accusing her husband, to the Medical Officer's recording of her dying declaration, all evidence points consistently and conclusively to the Appellant's guilt. There is no break in the chain that would allow for an alternative explanation.

22. Furthermore, the prosecution has adeptly established through the testimonies of P.W.1 and P.W.8 regarding a history of frequent quarrels between the Appellant and the deceased, primarily revolving around monetary disputes. Such evidence of domestic discord is not merely incidental but central to establishing motive in cases of this nature. The deceased's dying declaration, a cornerstone of this trial, as recorded by P.W.11, the Medical Officer, explicitly states that the Appellant demanded money from her. Upon her refusal, he resorted to the heinous act of pouring kerosene over her and setting her ablaze. This sequence of events crystallises a clear motive for the Appellant's reprehensible actions.

23. The Accused-Appellant, in his sworn testimony, attempts to present an alternate narrative to the events leading to the tragic death of his wife. The Accused-Appellant knew his wife to have gone to the nearby jungle to collect mahua on the day of occurrence. He claims that he was informed by Mashyafulla (P.W.8) about the incident by screaming "podigala, podigala," in urgency. He states that he rushed to his house and found his wife on fire. This narration conflicts with the testimonies of multiple witnesses (P.W.1, P.W.2, P.W.4, P.W.8, P.W.10) who testified that the Accused-Appellant was present at his house, sitting at the back when they arrived, with the deceased already on fire. Their consistent testimonies establish that Accused-Appellant was not arriving after being informed, but was already present at the time of the incident. He further submits to have attempted to douse the fire himself, sustaining injuries to his thigh and hand in the process, and damaging his lungi and towel. This self-defence contradicts the witnesses' narrations, particularly P.W.2 and P.W.8, who testified that the Accused-Appellant did not actively attempt to douse the fire or show any exigency in assisting his burning wife. Instead, the witnesses sprinkled water to the deceased themselves and testified to his passive response and refusal to help. Furthermore,

Accused-Appellant's assertion that he did not accompany his wife to the medical out of fear is unsubstantiated and contradicted by the testimonies of witnesses who attested to his refusal to assist or accompany the deceased to seek medical treatment. This conduct aligns with the prosecution's narrative that the Accused-Appellant showed indifference and did not act in a manner consistent with an innocent bystander witnessing his wife in distress. With regard to the strained relationship with his in-laws, Accused-Appellant alleges animosity stemming from an earlier incident involving the accidental death of his niece. This claim attempts to cast doubt on the motives of his in-laws in implicating him falsely. However, there is no evidence presented to substantiate this alleged vendetta, and it remains conjectural.

24. The absence of a police report from Accused-Appellant following his wife's death and his failure to call for assistance or report the incident weaken his defence and it is also significant to note that he was found absconding after the demise of his wife, which further casts serious doubt on his claims. These omissions are inconsistent with the conduct expected of an innocent husband witnessing a tragic accident involving his wife.

25. Therefore, combining the principle that a dying person speaks the truth, free from any motive to lie, with the five golden principles of circumstantial evidence, there is a strong and unassailable case made out against the Appellant. This combination of direct and circumstantial evidence conclusively establishes the guilt of the Appellant. Besides, his statement also fails to provide a plausible alternative explanation for the circumstances surrounding the death of his wife. The testimonies of witnesses, the dying declaration of the deceased, and the circumstantial evidence presented by the prosecution collectively paint a coherent narrative of guilt. The Accused-Appellant's assertions are riddled with inconsistencies and lack corroboration, further reinforcing his culpability in the offense.

26. From the discussions as above, the findings recorded by the learned trial court is found to be legal and justified and the conviction of the Accused-Appellant is confirmed. Since the sentence awarded is absolutely in accordance with law, there nothing to interfere therewith.

As a result, the Appeal stands dismissed being devoid of merit.

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