
Sudip Dey alias Chottu and Another Vs State of West Bengal

Criminal Appeal No. 74 of 1994

Court: Calcutta High Court

Date of Decision: July 7, 1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Evidence Act, 1872 â€” Section 32(1)#Penal Code, 1860 (IPC) â€” Section 109, 114, 302, 307, 34

Citation: (1999) CriLJ 4139 : 2 CWN 532 : (2001) 1 ILR (Cal) 336

Hon'ble Judges: Sujit Barman Roy, J; Ranjan Kumar Mazumder, J

Bench: Division Bench

Advocate: D.K. Dutta, for the Appellant;M.P. Kukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Ranjan Kumar Mazumder, J.

This Criminal Appeal is directed against the Judgment and order of conviction and sentence passed by the

learned Additional Sessions Judge (14th Court) Alipore on 11-2-94 in Sessions Trial No. 1(2) 93. By the impugned Judgment and order of

conviction, Id. Court below found both the appellants 1 and 2 to be guilty and sentenced appellant No. 1 to suffer imprisonment for life for the

offence punishable u/s 302, IPC and also sentenced appellant No. 2 to suffer imprisonment for life for the offence u/s 302 read with Section 109,

IPC. Being aggrieved by the said order of conviction and sentence, both the appellants being son and mother respectively have preferred the

instant appeal.

2. Prosecution case in brief was that the deceased-girl Toton alias Subhasini Roy, aged about 22 years and appellant No. 1 Chottu alias Sudip

Dey were in love with each other. Appellant No. 1 had an Egg Roll Shop at the crossing of Rashbehari Avenue and Satish Mukherjee Road,

Calcutta. He wanted to marry the deceased and for the said purpose visited the house of the deceased's father and wanted some time for the said

purpose from the father of the deceased-girl. Subsequently appellant No. 1 demanded a sum of Rs. 5,000.00 from the father through the deceased

and it was arranged that a friend of the father of the deceased would pay the said sum of Rs. 5,000.00 to appellant No. 1 at the time of marriage

of appellant No. 1 with the deceased by registration. On a Chaitra Sankranti Day (13-4-90), the deceased left her home telling her mother that she

would visit the Egg Roll Shop of the appellant No. 1 for the purpose of cleaning the said shop as the following day was 1st Baisakh, an auspicious

day. The deceased, however, told her mother that she would come back to her father's place on that day itself (13-4-90) in the night. But

unfortunately the deceased did not come back to her father's house in the night on that date. On 14-4-90 the deceased was admitted with severe

burn injuries on her person in the Sambhu Nath Pandit Hospital, Calcutta. In the Hospital the deceased made a dying declaration to the police to

the effect that on that date itself (14-4-90) at about 12-30 A.M. appellant No. 1 poured kerosene oil on her body and set her on fire. In the dying

declaration it was also stated by her that appellant No. 2 being the mother of appellant No. 1 asked appellant No. 1 to set the deceased on fire. At

that time the deceased was in front of Satish Mukherjee Road and Rashbehari Avenue Junction. The said dying declaration was treated by the

police as FIR and accordingly Tollygunj Police Station Case No. 192, dated 14-4-90 u/s 307/34, IPC was registered against both the appellants.

Unfortunately on 14-4-90 at 8.50 hours in the morning the deceased breathed her last at Sambhu Nath Pandit Hospital Calcutta. After

investigation of the case the police submitted a charge-sheet against both the appellant Nos. 1 and 2 u/s 302/34, IPC. At the time of trial, learned

Sessions Judge framed charge u/s 302, IPC against appellant No. 1 and u/s 302 read with Section 114, IPC against appellant No. 2. After

conclusion of trial, Additional Sessions Judge, Alipore convicted and sentenced appellant No. 1 to suffer imprisonment for life for an offence u/s

302, IPC but sentenced appellant No. 2 to suffer imprisonment for life for the offence u/s 302/109, IPC instead of u/s 302/114, IPC.

3. In this case, prosecution examined as many as 18 (eighteen) witnesses in support of its case. Defence, however, did not examine any witness on

its side at the time of trial.

4. Both the appellant Nos. 1 and 2 were examined at length by the Court below u/s 313, Cr.P.C. and both of them pleaded not guilty and claimed

to be tried.

5. The defence case was a denial of the entire episode as projected by the prosecution. The specific defence case was that while appellant No. 1

was in his home, he got an information on the night of occurrence that a girl was burning a bit away from his Egg Roll Shop situated at Rashbehari

Avenue. On getting such information, he immediately rushed to the place of occurrence and found a girl burning on the Tram line in front of

premises No. 45A, Rashebehari Avenue. In a bid to save the life of the said burning girl, appellant No. 1 embraced her- for extinguishing fire but

unfortunately he himself suffered burn injuries and had to be hospitalised.

6. P.Ws. 3 and 4 are important witnesses of the present case being respectively the father and mother of the deceased-girl. According to P.W. 3,

the father, his daughter Toton reported to him that a boy loved her and wanted to marry her. On the query of P. W. 3, Toton informed him that the

said boy was having an Egg Roll Shop at the crossing of Rashbehari Avenue and that the said boy wanted to meet P.W. 3. The said boy Sudip

alias Chottu Dey actually came to the residence of P.W. 3 being accompanied by the girl Toton. At that time Sudip asked for one year's time from

P.W. 3 for marrying Toton. After about 6/7 months from the time of the said meeting. Toton reported to P.W. 3 that the boy Chottu has asked for

Rs. 5,000.00 from Toton. At that time one of the friends of P.W. 3 agreed to pay the said sum of Rs. 5,000.00 to Chottu at the time of marriage

between Toton and Chottu by registration. The evidence of P.W. 3 also disclosed that both the families of the appellants and victim were on

visiting terms with each other. On 13-4-90 in morning Toton left the house of her parents intimating that she was going to clean the Egg Roll Shop

of Chottu since the next day was 1st Baisakh. But in fact, Toton did not return on that date to the house of P.W. 3. Instead on 14-4-90 at about

12-30 hours in the night P.W. 3 received a message from Tollygunj P.S. asking him to go to Sambhu Nath Pandit Hospital as his daughter Toton

suffered burn injuries. Accordingly P.W. 3 rushed to the said Hospital where the nurse informed him that his daughter expired at about 8.00 A.M.

on that date.

7. P.W. 4 Tapasi Roy is the mother of the deceased-Toton. Her evidence indicated that her daughter Toton brought appellant No. 1 Chottu to

their house for acquainting Chottu with her husband, P.W. 3. She also gave evidence to say that once her husband told her that appellant No. 1

Chottu would marry Toton and this was reported by Toton to P.W. 3. Her evidence also disclosed that she learnt from P.W. 3 that the appellant

Chottu asked for Rs. 5,000.00 from P.W. 3 through their daughter and one of the friends of P.W. 3 agreed to pay the said sum of Rs. 5,000.00 to

appellant No. 1 Chottu after registration of marriage. On the question of in-slant incident, P.W. 4, the mother of deceased, stated that on 13r4-90

her daughter went out of the house intimating that she would clean Egg Roll Shop of appellant No. 1 Chottu at the crossing of Rashbehari Avenue

on the eve of 1st Baisakh and she would return home at night. But the daughter actually did not return on that night. At about 12-00 hours in the

mid-night on the following day, P.W. 3 received information from police station that his daughter Toton sustained burn injuries. Accordingly P.W.

3 went out of the house but without giving any information in that regard to P.W. 4 as P.W. 4 was sick at that time. P.W. 3 returned home and

informed P.W. 4 that their daughter sustained burn injuries. Thereafter, both P.W. 3 and P.W. 4 rushed to police station. In this backdrop, it is

necessary to examine the evidence of P.Ws. 1 and 2 and other material witnesses.

8. It is in the evidence of P.W. 1, who resided near the P.O. in an abandoned Milk Booth that on the night of 13/14-4-90 at about 2.00 a.m., he

woke up on getting alarm raised by his wife and came out of the Milk Booth and found that a lady was burning at the crossing of Rashbehari

Avenue. P.W. 1 stated that he extinguished the fire and found the victim lying like a dead person. He reported the matter to the police station. His

further evidence disclosed that the appellant No. 1 Chottu had an Egg Roll Shop and this witness used to see the deceased-girl coming to the Egg

Roll Shop of the appellant No. 1 for taking Egg-roll.

9. P.W. 2 is the wife of P.W. 1 and she deposed to say that about three years back (P.W. 2 deposed on 25-8-93) she woke up for urination at

about 1.30/2 A.M. when she found that something was burning at the crossing of Rashbehari Avenue and Satish Mukherjee Road. On her call, her

husband P.W. 1 woke up and both of them rushed to the place of occurrence and found that a lady was burning. According to P.W. 2, they

extinguished the fire and then went to the police station. That P.Ws. 1 and 2 extinguished the fire was not challenged by defence in the cross-

examination of these two witnesses.

10. P.W. 15, a Night Guard, deposed to say that on 14-4-90 at about 00-30/1-00 hours he heard an alarm ""more gelam, more gelam"" at the

crossing of Rashbehari Avenue and Satish Mukherjee Road. This witness rushed to the place of occurrence and found that a girl was burning and

she cried that son and mother were killing her and thereafter she fell down.

11. P.W. 7 is the elder brother of appellant No. 1. His evidence disclosed that on the night of occurrence he removed the victim-girl at about 1-

45/2-00 a.m. from the footpath located near their Snacks Bar to Sambhunath Pandit Hospital, Calcutta by a taxi. His evidence in cross-

examination divulged that the said Snacks Bar was run by appellant No. 1.

12. P.W. 8 Dr. Sankar Malik is a star witness for prosecution. He was the Medical Officer, who was attached to the Emergency Department of

Sambhu Nath Pandit Hospital at the relevant time. According to him on 14-4-90 at about 3-05 A.M. one Toton alias Subhasini Roy, aged 22

years, was brought to the Emergency Department of the said Hospital with superficial burn injuries affecting her whole body about cent percent.

The patient was admitted in the Female" Surgical Ward of the Hospital under Dr. A. W. Laiq. It is in his evidence that the patient reported to him

that she was in love with a boy named Sudip Dey (Chottu Dey) for a few years and that the said Sudip and his mother poured kerosene oil on her

body and set her on fire at Sudip's Shop near Rashbehari Avenue and Satish Mukherjee Road on 14-4-90 at about 00-30 hours.
The declaration

made by the deceased to P.W. 8, the Medical Officer has been reduced into writing and marked Ext. 2. According to P.W. 8, the said patient

also made a statement to the police (Ext. 3) in his presence.

13. P.W. 13 Dr. Abdul Wazer Laiq is the other Medical Officer. He was a Surgeon at Sambhu Nath Pandit Hospital, Calcutta at the relevant

time. He deposed to say that on 14-4-90 at about 3-05 A.M., one Toton alias Subhasini Roy, aged about 22 years was admitted in the said

Hospital under the care of this witness with cent percent burn injuries. According to P.W. 13 the said patient died on the same day at about 8-50

a.m. in the Hospital. Ext. 7 is the Bed-head ticket regarding the treatment of the victim-girl. According to this witness, the said patient was in a

semi-conscious condition but nonetheless it could be possible on her part to speak as she was of younger age.

14. P.W. 16 is a Sub-Inspector of Police, who was attached to Tollygunj P. S. at the relevant time. According to him on 14-4-90 at about 3-00

A.M. when he returned to police station from night round, he came to know from ASI on duty S. D. Jha that an incident took place at the crossing

of Rashbehari Avenue and Satish Mukherjee Road., This witness immediately rushed to the P.O., he examined the persons, who were present at

the P.O. and seized several articles-from the P.O. viz. one yellow coloured container plastic Jar with 2 1/2 litres of kerosene oil, a match box (Ship

Brand), a white coloured empty container of kerosene oil and some burnt pieces of saree (Material Ext. viii collectively) under a seizure list Ext. 9.

This witness then rushed to Sambhu Nath Pandit Hospital and on the identification by the doctor on emergency duty, he recorded the dying

declaration of the victim-girl in the presence of P.W. 8 Dr. S. Malik, He also proved the dying declaration of the victim, Ext. 3. On the basis of the

dying declaration of the victim-girl and under order of O.C. Tollygunj P. S. this witness started Tollygunj P.S. case No. 192, dated 14-4-90 u/s

307/34, IPC against both the appellants. This witness also informed the father of the victim about the instant incident. He also made investigation

into this case and finally submitted a charge-sheet against both the appellants u/s 302/34, IPC.

15. At the time of hearing the instant appeal Mr. Dilip Dutta Id. Counsel for the appellant Nos. 1 and 2 raised the question as to veracity,

genuineness and legality of the dying declaration alleged to have been made by the deceased-girl Toton. It was submitted by Mr. Dutta that the

alleged dying declaration, Exts. 2 and 3 are not admissible in evidence inasmuch as the victim-girl after having suffered burn injuries all over her

body, was not in a physical and mental capacity to make any declaration as to the cause of her death or as to the circumstances resulting in her

death.

16. Needless to mention that dying declaration is a statement made by a person as to the cause of his/her death or as to any of the circumstances

resulting in his/her death and it becomes relevant u/s 32(1) of the Indian Evidence Act. A dying declaration is not a deposition in Court and is

neither made on oath nor in the presence of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule

against admissibility of hearsay evidence on the principle of necessity. But the law casts a duty on the Court to test the reliability of a dying

declaration by closely scrutinizing all relevant attendant circumstances. It is thus true that before acceptance of a dying declaration, the Court must

be satisfied that the deceased was in a fit state, both physically and mentally, to make the declaration. Once the Court is satisfied about the truth

and voluntary nature of a dying declaration, it has got the bounden duty to accept the same.

17. In the instant case there are two dying declarations, one recorded by P.W. 8 Dr. S. Malik, Ext. 2 and the other recorded by the Police Officer

(P.W. 16) Ext. 3. Both these dying declarations were recorded in the Sambhu Nath Pandit Hospital, Calcutta. Ext. 2 was recorded by the doctor

on 14-4-90 at 3-05 A.M. in English language, while the other dying declaration, Ext. 3 was recorded by the Police Officer (P.W. 16) on 14-4-90

at 4-45 A.M. in the mother tongue of the deceased, viz. in Bengali language. The dying declaration, Ext. 2, is a bit long, but the other dying

declaration recorded by P.W. 16 in Bengali is a bit short. But both these dying declarations, Exts. 2 and 3 are specific and the deceased, girl made

serious allegations therein against both the appellants being son and mother. It appears that when both the dying declarations were recorded by the

doctor and the Police Officer respectively, neither the parents of the deceased-girl (P.Ws. 3 and 4) nor any other relation of the deceased was

present in the hospital and hence there was no scope for any imagination that the version recorded in these dying declarations were given by any

other person of the deceased's family other than the deceased herself. On the other hand, it was the specific evidence of the doctor (P.W.8) that

the declaration was made by the patient to him only. The dying declaration, Ext. 2, as recorded by P.W. 8, made it also amply clear that the

version was given ""by the patient herself. It is true that in his evidence the doctor (P.W.8) mentioned that the patient was brought to the hospital

with superficial burn injuries affecting the whole body, about cent percent, of the patient. But it is equally true that a doctor is the best person to say

whether an injured patient is physically and mentally fit to make a dying declaration. In the instant case since the dying declaration was recorded by

the doctor himself, the only natural and reasonable inference was that the doctor (P.W.8) recorded the said dying declaration, Ext.2, only on being

satisfied that the injured patient Toton was in a fit state of mind and body to make a conscious declaration. This declaration was recorded by

P.W.8 at 3.05 A.M. on 14-4-90. As already stated no relation of the deceased was present at that time in the Hospital. Hence the question of

tutoring or prompting by any interested party is ruled out. That apart, it appears that no suggestion was ever given by the defence to the doctor

(P.W.8) to the effect that the patient was unable to make any declaration at the relevant time. The doctor (P.W.8) was a disinterested witness and

it was never the case of the defence that the doctor ever bore any grudge or malice against the appellants or that there was any strained

relationship between the doctor and the appellants. No suggestion on that point was also given to the doctor in his cross-examination by the

defence. Again, the evidence on record disclosed that P.W.8 recorded the dying declaration of the girl immediately after her admission in the

hospital.

18. As regards the other dying declaration recorded by the Police Officer (P.W.16), it appears that the said declaration was recorded by P.W.16

at the Hospital on 14-4-90 at 4-45 A.M. in the presence of the doctor (P.W.8). This declaration was more specific and it mentioned that on 14-

4-90 at 12-30 hours appellant No. 1 poured kerosene oil on the body of the deceased and the other appellant No. 2 being mother asked

appellant No. 1 to set fire. It appears that P.W.16 was subjected to a lengthy cross-examination. But it appears that not a single suggestion was

given to this witness to the effect that the deceased was not in a position to make any declaration at the relevant time having suffered severe burn

injuries on her body cent percent. Again it was also never the case of the defence that the police officer (P.W.16), who recorded the dying

declaration bore any animosity against them at any point of time. No suggestion was also given on that point to P.W. 16. It appears that the

evidence of P.W. 16 remained unshaken even after his threadbare cross-examination. P.W. 16 is a Police Officer and there cannot be any logic to

discard the evidence of P.W. 16 simply on the ground that he is a Police Officer. However, no final conclusion need be drawn about the genuineness

or otherwise of the two dying declarations (Exts. 2 and 3) without considering some other aspects of the matter and some other surrounding facts

and circumstances.

19. It appears from the evidence of P.W. 13 Dr. Abdul Wazed Laiq that the patient was found to be in a semi-conscious condition but it could still

be possible on her part to speak as she was of younger age. But from the evidence of this doctor in the cross-examination, it appears that this

doctor did not himself examine the patient. Therefore, his evidence that the patient was found to be in a semi-conscious condition cannot be

accepted. But his other evidence that it could be possible on the part of the patient to speak as she was of younger age deserved consideration.

The evidence on record showed that the deceased was only 22 years old at the relevant time and that she was strongly built. In other words, she

was young and physically strong. There is nothing on record to show that the patient was gasping at the relevant time when the two dying

declarations were recorded. There is again nothing on record to show that there was failure of the brain of the patient at the relevant time or that

she was out of her senses completely. In this case the second and last dying declaration of the deceased was recorded by P.W. 16 on 14-4-90 at

4-45 A.M. The evidence on record revealed that she died on that date itself at 8-50 A.M. This indicated that the patient survived for more than

four hours after the second and last dying declaration was re-corded. This indicated that she struggled for life even after getting severe burn injuries

for several hours being a young and stout girl,

20. Both the dying declarations Exts. 2 and 3, were again challenged by the learned Counsel for the appellants on the ground that the same did not

bear the signature of any nurse or house staff of the Female Ward of Sambhunath Pandit Hospital, Calcutta. It is true that both the dying

declarations, Exts. 2 and 3 do not bear the signature of any sister or house staff of the Ward of the Hospital. It appears that such a question was

raised at the time of trial also before the learned Court below. But on that crucial question it was the evidence of the doctor (P.W. 8) in cross-

examination that the sisters normally refused to sign to avoid Court, police etc. In that context, P.W. 8 made it clear in cross-examination itself that

since he was present in the Hospital and the "liability" of the patient rested on him as a Medical Officer, he himself made the endorsement with his

own signature on the dying declaration recorded by the police. In our view, a dying declaration should not be discarded merely on the ground that

the same did not bear the signature of a sister or house staff of the hospital particularly when the doctor himself recorded the dying declaration or

when he made an endorsement on a dying declaration recorded by the Police Officer in his presence.

21. Again at the time of hearing of the instant appeal, Id. Counsel for the appellants submitted that after the intake of so many medicines including

campose and pathedene, it was not possible on the part of the patient to speak and give a dying declaration. We have already indicated that a

doctor is the best person to say whether a patient was fit enough to make a dying declaration. In this case the dying declaration, Ext. 2 was

recorded by doctor (P.W. 8) himself. Similarly the other dying declaration which was recorded by the Police Officer (P.W. 16) was reduced into

writing in the Hospital by the Police Officer himself in the presence of the doctor (P.W. 8). Had the patient made any incoherent statement in the

two dying declarations, the same would have been reflected in the documents, Exts. 2 and 3. Such is not the case here. Similarly, as already stated,

the background of the case being not known either to the doctor or to the Police Officer, it would not have been possible on their part to

manufacture dying declarations as in Exts. 2 and 3. In our view the doctor's certificate about ability of a patient to speak is not indispensable

particularly when the doctor himself was available in the Ward and he himself recorded the dying declaration. As regards the other dying

declaration, Ext. 3 we have already indicated that the same was reduced into writing by the Police Officer in the presence of the doctor. Hence

mere absence of doctor's certificate on both the dying declarations does not affect the truthfulness or credibility of the said declarations. Hence

defence objection in that regard is overruled.

22. Again at the time of hearing the appeal, a point was raised by defence that appellant No. 1 was not at all at fault as he suffered burn injuries on

his person on the night of occurrence when he made an attempt to save the burning girl by embracing her. We find from the evidence of P.W. 10

Dr. Gobinda Lal Mondal, a Medical Officer of S. S.K.M. Hospital that appellant No. 1 was removed to S.S. M.M. Hospital, Calcutta on the

night of occurrence by his mother being appellant No. 2. At the Hospital it was detected by the doctor (P.W. 10) at 1.30 A.M. that appellant No.

1 suffered on the night of occurrence only two blister injuries in his left three middle fingers. On that night of occurrence appellant No. 1 did not

disclose that he suffered other injuries also inasmuch as it appears from the evidence of P.W. 14 Dr. P. B. Das, an Assistant to C.M.O.H.,

Medico Legal, 24-Parganas (South), who examined the appellant No. 1 on 25-4-90, i.e. after a lapse of ten days from the night of occurrence that

appellant No. 1 suffered many more injuries on his person, as in Ext. 8. The reasons for non-disclosure of such other injuries by appellant No. 1 to

P.W. 10 Dr. Gobinda Lal Mondal, who examined him on the night of occurrence itself at S.S.K.M. Hospital are best known to appellant No. 1

himself. Be that as it may, the evidence of P.Ws. 1 and 2 showed that on the night of occurrence when they found that a lady was burning at the

crossing of Rashbehari Avenue and Satish Mukherjee Road, they rushed to that place and extinguished the fire. This evidence of P.Ws. 1 and 2

about their extinguishing the fire was not challenged by defence in their respective cross-examination. Therefore, the defence version that appellant

No. 1 rushed to the place of occurrence from his house on the night of occurrence on hearing that a girl was burning at the crossing of Rashbehari

Avenue and that thereupon appellant No. 1 embraced the said girl for extinguishing fire and in that process suffered injuries on his person appears

to us to be nothing but a myth. On the other hand, from the facts and circumstances of the case, it was only probable that in course of setting the

deceased on fire on the night of occurrence, appellant No. 1 himself caught fire and suffered burn injuries on his person. Hence, the defence plea

that appellant No. 1 caught fire on the night of occurrence when he embraced the deceased is rejected.

23. Again as already stated, it appears from the evidence on record that on the night of occurrence appellant No. 1 was removed to S.S.K.M.

Hospital, Calcutta from the place of occurrence by his mother being appellant No. 2. Had the intention of both the appellants been good, they

would not have left any stone unturned for removing the deceased-girl from the place of occurrence to that Hospital also along with appellant No.

1. But this was not done and this is a mute circumstance, which spoke eloquently against both the appellants about their ill-motive and foul design.

24. Again the evidence of P.W. 9 Dr. Biswanath Kahali, who held post-mortem examination over the dead body of the deceased showed that the

death of the girl was due to the effects of burn injuries noted in the post-mortem report, ante mortem in nature. The evidence of this doctor

disclosed that the deceased was pregnant approximately for a period between six and eight weeks at the relevant time. Appellant No. 1 was in

need of money and the evidence of P.Ws. 3 and 4 disclosed that he wanted a sum of Rs. 5,000.00 through the deceased in connection with his

business. He also wanted time from P.W. 3 for marrying the deceased. In a situation like this it seems that he was not ready to shoulder

responsibility of a further burden of a child who was in the womb of the deceased. Probably it was the intention of appellant No. 1 to get rid of the

deceased and the child in her womb by way of eliminating them from this world by setting the deceased ablaze. In this context the seizure of some

articles from the Egg Roll Shop of appellant No. 1 like a match (Ship brand), container for keeping kerosene oil, container with kerosene oil etc.

by the I.O. (P.W. 16) deserves special mention. The evidence on record indicated that the place of occurrence was the Egg Roll Shop of appellant

No. 1 located near the crossing of Rashbehari Avenue and Satish Mukherjee Road and its nearby surrounding areas extending up to the Tram line

of that junction. The smell of kerosene oil as used was also detected by the doctor (P.W. 8) on the body of the deceased while examining her in

the Hospital. These were all incriminating circumstances which spoke a volume against both the appellants.

25. Considering the facts and circumstances of the case and having regard to the entire materials on record, we are convinced that the dying

declarations, Exts. 2 and 3 of the deceased girl as recorded by the doctor (P.W. 8) and the Police Officer (P.W. 16) were all voluntary, truthful,

conscious and satisfactory and, therefore, the same should be accepted without any hesitation. We find that on 14-4-90 at about 12-30 A.M.

appellant No. 1 poured kerosene oil on the body of the deceased-girl at the place of occurrence and on the asking of appellant No. 2, appellant

No. 1 set the deceased on fire and ultimately the deceased succumbed to her injuries and thus met with an agonizing death. Thus we hold that the

appellant No. 1 committed the offence of murder punishable u/s 302, IPC and that appellant No. 2 committed an offence of abetment as

punishable u/s 302 read with Section 109 IPC. We, therefore, find no cogent reason to interfere with the order of conviction and sentence passed

by the learned Court below.

26. In the above circumstances the instant appeal is dismissed.

27. In this connection, it appears from record that appellant No. 2 was granted bail by a Division Bench of this Court subject to the satisfaction of

Chief Judicial Magistrate, South 24-parganas, Alipore vide order dated 4-4-94. Since we have upheld the order of conviction and sentence

passed by the Ld. Court below, the order for bail as granted in favour of appellant No. 2 is hereby cancelled. Appellant No. 2 is hereby directed

to surrender before the Chief Judicial Magistrate, South 24-parganas, Alipore within a fortnight from today positively and upon such surrender, the

Court below shall take her in custody and send her to prison forthwith so as to enable her to serve out the sentence passed against her. In the

event of appellant No. 2's failure to surrender within the time limit as directed above, Ld. Chief Judicial Magistrate, Alipore will issue warrant of

arrest against appellant No. 2 and exhaust all necessary processes for apprehension of the said appellant and after such apprehension shall commit

her to prison forthwith to serve out the sentence passed against her.

28. Let a copy of this order be sent to the Chief Judicial Magistrate, South 24-parganas, Alipore, for necessary action in this regard.

Sujit Barman Roy, J.

29. I agree.