

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.430 of 2017

Arising Out of PS. Case No.-68 Year-2011 Thana- SHAHKUND District- Bhagalpur

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1. Pachiya Devi, Wife of Mano Yadav @ Manohar Yadav
2. Vijay Yadav Son of Late Prasadi Yadav Both Resident of Village-Sajour P.s.-
Sajour District Bhagalpur

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 533 of 2017

Arising Out of PS. Case No.-68 Year-2011 Thana- SHAHKUND District- Bhagalpur

=====

Mano Yadav @ Manohar Yadav Son of Prasadi Yadav Resident of Village- Sajour,
P.S. Sajour, District Bhagalpur.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Acts/Sections/Rules:

- Sections 341, 447, 341, 307, 327, 329, 379, 504 and 302/34 of the Indian Penal Code

Cases referred:

- Sham Shankar Kankaria vs. State of Maharashtra (2006) 13 SCC 165
- Surinder Kumar vs. State of Haryana, (2011) 10 SCC 173
- Sampat Babso Kale vs. State of Maharashtra, (2019) 4 SCC 739
- P.V. Radhakrishna vs. State of Karnataka, (2003) 6 SCC 443
- Chacko vs. State of Kerala, (2003) 1 SCC 112

Appeal - filed against judgement of conviction for the offence under Sections 341, 447, 504 and 302/34 of the Indian Penal Code

Victim is said to have been burnt to death.

Dying declarations have intrinsic assurances of trustworthiness making any cross-examination unnecessary. A dying person will be truthful. - However, since the accused would not get any opportunity to cross-examine a dead man, therefore the Courts insists that such statements must inspire confidence. (Para 55)

There has not even been any consistency in the fardbeyan and the dying declaration recorded on very next day. (Para 62)

There was an attempt of the police administration to anyhow add colour to the prosecution case and make it look full-proof. (Para 63)

The multiplicity of dying declarations do not prove the prosecution case. It is not the number but the quality of the declaration which is important. (Para 70)

There is complete inconsistency between the first statement and the second declaration recorded on the next day of the hospitalization of the victim. The post-mortem report clearly indicates that the victim, in all possibility, would not have been in a position to speak all this while.

Appeal is allowed. (Para 80)

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CRIMINAL APPEAL (DB) No. 533 of 2017

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Mano Yadav @ Manohar Yadav Son of Prasadi Yadav Resident of Village-
Sajour, P.S. Sajour, District Bhagalpur,.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 430 of 2017)

For the Appellant/s : Mr. Pravin Kumar Adv.
Mr.Shiwesh Chandra Mishra, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 533 of 2017)

For the Appellant/s : Mr. Pravin Kumar Adv.
Mr.Shiwesh Chandra Mishra, Adv.

For the Respondent/s : Mr.Sri Abhimanyu Sharma, APP



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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-05-2024

1. Both the appeals have been heard together and are being disposed of by this common judgment.
2. We have heard Shri Pravin Kumar, the learned Advocate for the appellants and Mr. Abhimanyu Sharma, the learned APP for the State.
3. The three appellants have been convicted for the offence under Sections 341, 447, 504 and 302/34 of the Indian Penal Code vide judgment dated 07.03.2017 passed by the learned Sessions Judge, Bhagalpur in Sessions Trial No. 07/2013/13/2015 arising out of Shahkund (Sajour) P.S. Case No. 68/2011. By order dated 09.03.2017, they have been sentenced to undergo R.I. for one month separately under each of the counts, namely, Sections 341, 447 and 504 of the IPC.



For the offence under Section 302/34 IPC, the appellants have been directed to undergo imprisonment for life, to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further suffer simple imprisonment for two months. The sentences have been ordered to run concurrently.

4. One Kali Devi is said to have been burnt to death.

5. The F.I.R. was lodged on the fardbeyan of the deceased which was recorded by S.I. M. Rahman (PW15) on 20.04.2011 at about 9.45 A.M. at Jawahar Lal Nehru Medical College and Hospital, Mayaganj, Bhagalpur. A detailed statement was given by the deceased in the fardbeyan giving complete family tree and the relationship between the family members. She had alleged that the appellants always fought with her and such disputes had to be settled by villagers. Her husband was away from home for earning his



livelihood at Ludhiana. Few days ago, her husband had remitted Rs. 5,000/-. which the appellants wanted her to part with for some special work, which was refused by her. This was the grudge against her. The appellants had threatened her of dire consequences. In the night of 19.04.2011, while she along with her children was asleep, the appellants arrived at her house at about 12.30 P.M. and set her on fire. Appellants/ Pachiya Devi, Ajay and Vijay, the sister-in-law and brothers-in-law respectively, caught her and appellant /Mano Yadav sprinkled kerosene oil and set her on fire. She raised alarm which awakened her children as well. One of her sons informed her cousin, who is married in the same village, about the occurrence. That cousin immediately informed the father of the deceased. On such information, her father, brother and uncles came and took her to Mayaganj Hospital, where she was being treated when the



fardbeyan was recorded. Her son later informed her that after she was set on fire, all four persons including the three appellants entered her house and took away her belongings.

6. On the basis of the afore-noted fardbeyan of the deceased, a case vide Shahkund (Sajour) P.S. Case No. 68/2011 dated 23.04.2011 was registered for the offences under Sections 447, 341, 307, 327, 329, 379, 504/34 of the IPC. Later, with the death of the deceased on 30.04.2011, Section 302 of the IPC also was added.
7. It appears that Ajay Yadav was not put on trial as investigation was kept pending against him.
8. The learned Advocate for the appellant on information has submitted that he too is facing trial separately.
9. After the fardbeyan of the deceased was recorded, another dying declaration was also



recorded on 21st of April, 2011 which was scribed by one Saket Kumar, Probationer I.A.S. Officer (PW18) in presence of Navin Chandra Jha, a Probationer IPS Officer (PW17) and the Doctor R.K. Prasad (PW19). In the afore-noted dying declaration, said to have been written by PW18, a somewhat different story was brought forth.

10. According to the afore-noted dying declaration, while the deceased was sleeping on bed, appellant /Pachiya Devi along with her daughter/Reena Devi and appellant/Mano Yadav @ Manohar Yadav along with appellant/Vijay Yadav came. Appellant / Pachiya Devi poured kerosene oil on her body and Reena Devi, who hitherto had not been named anywhere, lighted the fire.

11. Both the documents, namely, the fardbeyan and the dying declaration recorded on the next day, bear the toe impression of the deceased. The deceased, died as noted above, on 30.04.2011.



12. Doctor Yogesh Prasad Sah (PW14) conducted the postmortem on the deceased on 30.04.2011 only. The whole body of the deceased was found to be bandaged. After removal of the bandage, PW14 found the face, neck, chest and both upper and lower limbs to be totally burnt. The face and hair was found to be partially burnt. The upper part of the abdomen was also burnt. The entire burnt area was full of puss and there were granulations. The extent of burn was found to be 90%. The cause of death was opined to be septicemia, toxemia and shock as a result of such burns by fire.
13. The fact that the deceased died of burn injuries is beyond question.
14. Before addressing the issue of the two dying declarations; one being the fardbeyan, it would be relevant first to refer to the deposition of the witnesses.



15. Out of 21 witnesses examined on behalf of the prosecution, PWs 2, 8, 9, 10 and 11 have been declared hostile. Rest all other witnesses except Beni Yadav (PW16), who is the father of the deceased and Bimla (PW20), who is the mother of the deceased, nobody has supported the prosecution case.
16. The husband, son and the mother-in-law of the deceased, who have been examined as PWs. 9, 10 and 11 respectively are amongst the persons who have been declared hostile.
17. The effort of the defence was, it appears, to bust the whole prosecution theory of the deceased having been put to fire by the appellants. In fact, as the evidence stands, the learned counsel for the appellant has submitted that there are innumerable materials through the mouth of the witnesses, which would only indicate that the deceased has set herself on fire and the appellants and their



family had done their best to save her but to no avail.

18. Upendra Yadav (PW1), a neighbour of the deceased and the appellants has testified that on the day of the occurrence, he found the deceased running on the road, completely naked. He covered her body with his *dhoti*. He has stated before the Trial Court that one Vinay and Ajay took her to hospital. The father of the deceased had not come to the house when the deceased had caught fire.
19. Sitaram Yadav (PW3) had no idea about the occurrence but he knew it for certain that the deceased and the appellants resided separately and had no contact amongst themselves.
20. Feku Lal Rai (PW4) stated before the Trial Court that the brothers-in-law of the deceased had taken her to hospital.
21. Surya Narayana Yadav (PW5) was not present in the village in the night of the



occurrence. In fact, he was at Delhi and learnt about the occurrence only when he came back to his village home.

22. One of the agnates of the deceased, namely, Sunita (PW6) is the wife of a person, who also had gone to Ludhiana to earn his livelihood along with husband of the deceased. She was very specific in her statement that the deceased set herself on fire. The mess and business of the appellant and the deceased was completely separate. The brothers had partitioned long time ago. But when the occurrence had taken place, everyone of the family had attempted to douse the fire and had helped the deceased to be taken to hospital for treatment.

23. What is relevant to note in her deposition and in the deposition of other witnesses is that while some local treatment was given to the deceased, the deceased had become unconscious and remained unconscious all through till she died. In



fact, even the husband of the deceased (PW9) had come only after the deceased had died after eight to nine days of her treatment in the hospital.

24. One Vijay Yadav (PW7) saw Pankaj, one of the brothers in law of the deceased applying *ghee* on the body of the deceased perhaps to douse the fire and also as an emollient. P.W.-7 had informed the paternal family of the deceased about the occurrence. According to him also, the deceased remained unconscious all through.

25. We have also noted that the father, son and brother in law of the deceased who have been examined as P.Ws. 9, 10 and 11 respectively have been declared hostile. However, in their cross-examination, they have testified to the fact that every attempt was made to save the deceased. This was specifically said by Mithun (P.W.-10), a young son of the deceased.

26. Pankaj, the unmarried brother in law of the



deceased (P.W-12) confirmed that she had attempted to extinguish the fire. The deceased remained unconscious all through i.e. shortly after the incident till the time she was admitted in hospital and later, when she died.

27. Fortunately for us to have an idea as to what had happened, the prosecution has examined Dr. Suresh Prasad Singh (P.W.-13) as one of the prosecution witnesses, who had first treated the deceased on 20.04.2011. He had found burn injuries over her face and both the upper limbs in front of chest and abdomen. The entire back portion of her body and both the thighs were severely burnt. The injuries in the first instance were found to be grievous in nature. However, he had no idea as to who had accompanied the victim/deceased. On being specially questioned, he stated that he had found 82% burnt injury and a person with such extensive burn injury can remain



conscious also.

28. What is evident from the deposition of P.W.-

13 is that the victim/deceased was immediately offered medical aid. The victim/deceased had suffered extensive burn injuries on all parts of the body.

29. There is nothing in his deposition which would indicate that the victim was speaking at the time when she was treated by P.W.-13. The absence of any such fact about the victim being unconscious or conscious in his deposition is very conspicuous.

30. If this deposition is seen juxtaposed with the evidence of the doctor who had conducted the postmortem examination, it would appear that the deceased had received burn injury on her face which also was very extensive in nature. The entire body including the face was found to be bandaged. The doctor who conducted the postmortem



examination, namely, Dr. Yogesh Prasad Sah, P.W.-14 had to remove the bandage to perform the postmortem examination. The wounds had suppurated. The kind of ante-mortem injuries found on the person of the deceased made it almost certain that the deceased could not have spoken or would have been conscious all through. Within 8-9 days of treatment, septicemia and toxemia had also intervened.

31. In order to test whether the fardbeyan which contained a detailed statement could have been given by the deceased after about 8-9 hours of her having received such burn injuries, we need to refer to the statement of the person who had recorded the fardbeyan namely, M. Rahman (P.W.-15) Sub-Inspector of Police. He has stated that on 20.04.2011, he was posted as S.I. at Barari Police Station. He had recorded the fardbeyan of the deceased who was accompanied by her father,



Beni Yadav (P.W.-16) and the uncle of the deceased. The toe impression of the deceased was taken on the fardbeyan (exhibit-3). A dying declaration was also recorded. From 20.04.2011 to 30.04.2011, no officer of Sahkund Police Station ever established any contact with him.

32. On being cross-examined, he has stated that even though the face and body of the deceased was burnt but she was speaking. He had no idea about the matrimonial family of the deceased. He had denied the suggestion that the fardbeyan was recorded at the instance of the father of the deceased (P.W.-16)

33. Beni Yadav, the father in his cross examination has stated that that he came to learn from her daughter, while on way to the hospital, that the appellants had set her on fire.

34. He had not stated such fact before the Investigator.



35. Rajendra Prasad Sah (PW21), he knew about 90% burn injuries on the body of the deceased.
36. The effort of the defence appears to be that the fardbeyan was recorded at the instance of PW16 only.
37. On a careful examination of the deposition of PW21, there appears to be some substance in the assertion of the appellants that neither the fardbeyan nor the dying declaration which was recorded on the next day, were reliable materials for bringing home the charge of murder against the appellants.
38. PW22 had taken over the investigation on 22.04.2011. He had visited the house of the deceased and had found that some burnt pieces of clothes in the courtyard. He had recorded the statement of most of the witnesses. Before him, the son of the deceased, namely, Mithun Kumar (PW10) had stated that the appellants after setting



the deceased on fire, ran away.

39. The afore-noted PW10 has not supported the prosecution case and has been declared hostile. The husband of the deceased had also spoken about the appellants having killed the deceased by putting her on fire, which was not confirmed by him before the Trial Court. He has also been declared hostile.

40. What is relevant to note is that from the night of 19.04.2011 till 20.04.2011 i.e. before the F.I.R. was registered, neither the father of the deceased nor the brother of the deceased had informed the police station about the occurrence.

41. Upendra Yadav (PW1) on the contrary had told him that he had seen the deceased in flames without any clothing. She was running on the road and crying for help.

42. Similar statements were made by Vijay Yadav, Surya Narayan Yadav, Sitaram Yadav etc.



43. In paragraph -39 of his cross-examination, the Investigator has clearly stated that Beni Yadav (PW16) had not told him that he was informed by his wife about the occurrence. He has also not disclosed before him that Reena, the daughter of appellant / Pachiya Devi was involved in the occurrence.

44. That PW16 learnt about the names of the appellants from the deceased while she was conscious and was being taken to hospital, was also never told to the Investigator.

45. The supervision note of the Dy. S.P., however, which was referred to by PW21, indicated that because of the aggressive and violent behaviour of the parents of the deceased, the matrimonial family members did not go to the hospital.

46. With these background facts in mind, we have examined the second dying declaration of the



deceased recorded by Saket Kumar (PW18) in presence of one Probationer I.A.S. Officer (PW17) and a Doctor (PW19). We are surprised at the detailed statement made in the fardbeyan at 9.45 A.M. on 20.4.2011. The occurrence had taken place at about 12.30 in the night intervening between 19th and 20th of April, 2011. There was a gap of about 8-9 hours. Almost all the witnesses had never seen the deceased conscious all the while.

47. Could she have made such a detailed statements speaking about her brothers-in-law, the partition in the family and regular disputes that she had with the appellants? In any view of the matter, she in her fardbeyan is said to have named the appellants and one Ajay Yadav. There is no reference of Reena Devi. However, only on the second day i.e. on 21.4.2011, in her so called dying declaration, the entire sequence appeared to



have been changed. Reena was named as an active participant in the crime. Reena has not been put on trial.

48. Could she have made such a statement ?

49. If a dying declaration is believed as a reliable piece of evidence, it would require no corroboration. After referring to the evidence of PWs 17, 18 and 19, before whom the second dying declaration was recorded, we need to brace ourselves with the law on the above-noted subject, specially when there is a huge wealth of case law on the issue of dying declaration and multiple dying declarations.

50. **In Sham Shankar Kankaria vs. State of Maharashtra (2006) 13 SCC 165**, the Supreme Court has listed a host of circumstances where a dying declaration could be accepted. It would only be appropriate to refer to those circumstances:-

(A) There is neither rule of law nor of



prudence that dying declaration cannot be acted upon without corroboration.

(B) If the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration.

(C) The Court has to scrutinize the dying declaration carefully to ensure that the declaration is not the result of tutoring, prompting or imagination of the police or of interested persons.

(D) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(E) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it need be rejected. (refer to **Kake Singh Alias Surendra Singh vs. State of M.P. 1981 (Suppl.) SCC 25**).

(F) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(G) Normally, the court in order to satisfy whether the deceased was in a fit mental



condition to make the dying declaration looks up to the medical opinion but where the eye-witnesses account are different, the medical opinion cannot prevail.

51. In **Surinder Kumar vs. State of Haryana, (2011) 10 SCC 173**, where a victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate, the Supreme Court had doubted whether the victim could have given her thumb impression when she had suffered 97 percent burn injuries. In that case, there was no endorsement of the doctor about her position to make such statement. It was for this reason that the certificate of the doctor given after recording of the dying declaration that she was fit to give statement did not inspire confidence.

52. Consistent with the afore-noted principles, the Supreme Court did not uphold the conviction in **Sampat Babso Kale vs. State of Maharashtra;**



(2019) 4 SCC 739, where the victim had made a declaration after having suffered 98 percent burn injuries. In that case, sedatives were administered to the victim.

53. A residuary question has always arisen in courts of law as to what percentage of burn suffered by a victim could be a determinative factor to affect the credibility of a dying declaration and the probability of its recording. The consistent of the Supreme Court in this regard has been that there is no hard and fast rule of universal application and much would depend upon the nature of the burns; part of the body affected; impact of burns on the faculties to think and other relevant factors. Each case would be required to be seen in its perspective. (refer to **P.V. Radhakrishna vs. State of Karnataka; (2003) 6 SCC 443**).

54. It would be profitable to remind ourselves



that the Supreme Court in **Chacko vs. State of Kerala; (2003) 1 SCC 112** did not accept the prosecution case based on the dying declaration of the deceased who was 70 years of age and had suffered 80 percent burns. The Supreme Court did not consider it probable that such a person could make a detailed dying declaration.

55. Dying declarations have intrinsic assurances of trustworthiness making any cross-examination unnecessary. A dying person will be truthful. This proposition is based on the legal maxim *nemo moriturus praesumitur*. For this reason, it has a great evidentiary weight. However, since the accused would not get any opportunity to cross-examine a dead man, therefore the Courts insists that such statements must inspire confidence. Consistently, the courts have been on guard to find out whether such projected dying declarations are prompted, tutored or a product of imagination of



the police or interested persons. One of the essential pre-requisites is that the maker of such statement must be in a position physically and mentally to make such statement. The circumstances in each of the case has to be seen for coming to any definite conclusion. The checks before a Court are many viz., that such statement is being made in expectation of death; in the first instance such statement was made (rule of first opportunity) there should be no suspicion that the statement was put in the mouth of the maker; whether such statement is fictional; whether it is voluntary; and in cases of many dying declarations; whether the first is consistent with the other and lastly whether it was possible for the maker to give out such statement.

56. In the case in hand, the first doubt has arisen in our minds because of a detailed fardbeyan after 8 to 9 hours of the deceased suffering severe burn



injuries. Most of the witnesses, who were not related to either side, spoke about the deceased having remained unconscious all thorough. When one of the witnesses, a lady went to meet the deceased, she did not state anything about the occurrence. Under such circumstances, could she have given such a detailed statement ?

57. This initially sent us doubting that perhaps such statement was at the instance of PW16, the father of the deceased. The father of the deceased was present when the fardbeyan was recorded. He was but not present in the house when the deceased had caught fire. He claims to have heard from the deceased while she was alive and was being taken to hospital that the appellants had set her on fire. PW16 but had not made such statement before the Investigator.

58. Do we need to go any further for doubting that the fardbeyan was not by the deceased but



words were put in her mouth ?

59. For the afore-noted reason, we cannot place complete reliance on the deposition of S.I. M. Rahman (PW15), who had recorded the fardbeyan.

60. With such burn injuries, there was no necessity of any second dying declaration. Only on the next day, another statement was recorded. Perhaps the senior police officers were aware of the law and the procedure as to how such dying declarations are recorded. One I.A.S. Probationer and an I.P.S. Probationer were deputed for the task. Neither the investigator nor PW15 had any idea about it. The statement is said to have been recorded in presence of a doctor (PW19). There was no emergent necessity for the second dying declaration to be recorded. That apart, the second dying declaration pitched in one Reena who was never named in the detailed fardbeyan. Even the sequence in which the deceased was put on fire is



different.

61. The second declaration, referred to above, was scribed by an I.A.S. Probationer. What interest he had to be a part of such machination ? We can only say that he had no experience. Both, him and Navin Chandra Jha, a trainee I.P.S. Officer were present in the hospital for the aforesaid purpose. They had no written instructions from any senior police officer or administrative officer. One may not take this to be a serious issue but seen in the background of the eye-witness account of so many of the witnesses that the deceased, after being burnt was unconscious, the second dying declaration by the deceased does not appear to be reliable.

62. There has not even been any consistency in the fardbeyan and the dying declaration recorded on very next day.

63. A look at the depositions of PWs 17, 18 and



19 would indicate that there was an attempt of the police administration to anyhow add colour to the prosecution case and make it look full-proof. However, such efforts do not appear to have bore fruit.

64. Navin Chandra Jha (PW17) has deposed that when he had gone to the hospital, the condition of the victim was serious. However, she gave her declaration which was noted by PW18. In his presence, the victim's toe impression was taken on the afore-noted document. He had never been part of recording of any dying declaration before. He had come to the hospital only on the oral orders of Senior Superintendent of Police. He knew that the victim had suffered 90 percent burn injuries but he did not find her unconscious. She was able to speak. There was no test which could have been conducted, according to him, to ascertain whether the victim was conscious or unconscious. His



statement was never recorded by the Investigating Officer. He did not know the background of the victim. He had only asked the name from one of the sons of the victim. On being questioned whether in his opinion, the declaration was recorded with due care and caution and following the procedure prescribed, he could give no opinion because he was absolutely novice in this field.

65. There is no definite statement that he had heard the victim speak. The deceased, as we have seen, was bandaged in her face and in her entire body.

66. The doctor who was present during the declaration also does not appear to be truthful. He was posted as Senior Resident in the department of Surgery in J.L.N.M.C.H. He never had any opportunity to interact with PW17 or PW18, who had scribed the statement. He was on duty from 2 'O' Clock in the day. On being specifically



questioned, he admitted that he had taken no measures to ensure and ascertain that the victim was conscious and that she could speak. No fitness certificate was also given by him.

67. We do not say that such fitness certificate is a must and in the absence of such fitness certificate, the document would never be looked into; but then he was a special invitee as a medical professional. He ought to have confirmed that the victim was in a position to make such statement. He has further disclosed that he had no talk with the victim. In fact, he arrived late as both PW17 and 18 were there before the victim from before. He has confirmed that the victim had 90 percent of burn injuries and with such extensive burns, the patient is required to be sedated. He had no idea whether any sedative was given to the victim. Neither PW17 or 18 discussed with him whether the victim before making her dying declaration was



conscious.

68. It is difficult to believe that PW19 has discharged his duties as a medical professional. He has just gone along the attempt of the prosecution to bring on record a document, which would have closed the prosecution case.

69. But to what avail and why? Had they known the background facts, they would have surely checked whether the victim was conscious and fit enough to make that statement.

70. The multiplicity of dying declarations do not prove the prosecution case. It is not the number but the quality of the declaration which is important.

71. We have noted that there is complete inconsistency between the first statement and the second declaration recorded on the next day of the hospitalization of the victim. The postmortem report clearly indicates that the victim, in all



possibility, would not have been in a position to speak all this while. The wounds had developed puss. The face and hairs were completely burnt. The face also was bandaged. The assessment of the doctor conducting postmortem was that the deceased had suffered 90 percent burn injuries. In this background, it is difficult to accept the version of PWs 17, 18 and 19, the two responsible officers and a medical professional. We cannot place any reliance on their deposition.

72. We are conscious of the fact that the rule of benefit of reasonable doubt does not imply that any departure from the due procedure would justify rendering the prosecution case to be totally doubtful and unacceptable; but then such principle cannot be used in all cases. To quote the words of Krishna Iyer "*reasonable doubt does not imply a frail willow bending to every whiff of hesitancy*". According to him, judges are made of sterner stuff,



who are required to take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying those principles, there remains a lingering doubt in our minds whether the victim/deceased was in a position to make her fardbeyan and her dying declaration within 24 hours. There is no way in which we can accept the statements of PWs 17, 18 and 19 to be correct.

73. We are not in a position to assign any reason for their not being truthful but placing reliance on them would lead to grave injustice.

74. We are absolutely constrained to find from the records that appellant /Vijay Yadav was released on bail after remaining in jail for 10 years and appellants/Mano Yadav and Pachiya Devi are still in jail for the last 12 years.

75. The entire set of evidence cry out that the deceased had immolated herself. Her mother-in-



law had recounted an earlier incident also where she had tried to harm herself by immolation. The mess and business of the brothers was absolutely separate. In fact, there is consistency in the deposition of the witnesses about the matarimomial family members making all attempts to douse the fire and save the deceased. We, therefore, are of the considered opinion that the fardbeyan is the brain-child of PW16/the father of the deceased.

76. For the afore-noted reasons, we have to give benefit of doubt to the appellants.

77. The appellants are acquitted of all the charges.

78. Since the appellant /Vijay Yadav in Cr. Appeal (DB) No. 430/2017 is on bail, he is discharged from the liabilities of bail bonds.

79. The appellants/Pachiya Devi in Cr. Appeal (DB) No. 430/2017 and Mano Yadav @ Manohar Yadav in Cr. Appeal (DB) No. 533 of



2017 are in jail. They are directed to be released forthwith unless their detention is required in any other case.

80. Both the appeals stand allowed.
81. The Interlocutory Application/s, if any, also stands disposed of.
82. Let a copy of this judgment be communicated to Superintendent of concerned jail for compliance and record.
83. The records of this case be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11.05.2023
Transmission Date	11.05.2023

