

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.746 of 2016

Arising Out of PS. Case No.-263 Year-2012 Thana- BIHAR District- Nalanda

Vicky Anand, son of Brind Bihar Prasad Singh @ Brind Bihari Prasad Singh,
resident of Village-Utarnama, P.S- Rahui, Dist- Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ganesh Sharma, Advocate Mr. Sudish Kumar, Advocate Mr. Ajay Mukherjee, Advocate Mr. Sunil Prasad, Advocate
For the Respondent-State:	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Rambabu, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 20-09-2023

The present appeal has been filed by the appellant-convict under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 21.06.2016 and order of sentence dated 22.06.2016 rendered by learned 6th Additional District and Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No. 307 of 2013 arising out of Bihar P.S. Case No.263 of 2012, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Sections 302 and 342 of the Indian Penal Code (hereinafter referred to as 'I.P.C.'). He has been sentenced to



undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo imprisonment for three months under Section 302 of the I.P.C. and rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for fifteen days under Section 342 of the I.P.C. However, both the sentences have been ordered to run concurrently.

2. The case of the prosecution, in brief, is as under:-

“On 27.09.2012 at about 12:30 noon, Juli Sen was going for tuition to one Pankaj Sir and in the way, she met one girl, namely, Suman who was known to her and she took her to Professor Colony. She took her in a room where Rakesh Ranjan, Monu, Sonu Vivek and the appellant were sitting. Thereafter, Suman went to another room for making telephone call and after some time, others also went away from room except the appellant. Then appellant asked her to marry. On several occasions, she had also refused. The father of the informant also scolded the appellant on several times. It is further alleged that when the informant refused to marry the appellant, the appellant opened the gas cylinder, went out from room and ignited matchstick, which caught fire and closed the door from outside. The informant raised alarm but, nobody came there for her rescue. Then, she went in bath room and sat



down just below the tap. Thereafter, she was covered with black cloth and brought to hospital by a motorcycle and was treated by the doctor. Thereafter, the parents came and it is alleged that all the accused persons named in the FIR are responsible for the alleged occurrence. It is further alleged that both hands of the informant were burnt, so, she was not in a position to write. Because of that, she put her impression of left leg's toe upon *fardbeyan* in presence of Executive Magistrate.”

3. On the basis of the aforesaid *fardbeyan* given by the injured victim-informant, Bihar P.S. Case No.263 of 2012 was registered on 28.09.2012 at about 11:15 AM for the offences punishable under Sections 341, 342, 307 and 120-B read with 34 of the I.P.C. against all the named accused. The Investigating Officer, thereafter, carried out the investigation and during the course of investigation, recorded the statement of the witnesses and collected the documentary evidence and after the investigation was over, filed charge-sheet against the appellant and other accused before the concerned Magistrate Court. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the concerned Sessions Court where the same was registered as S.Tr. No. 307 of 2013.

4. During the course of trial, the prosecution has



examined altogether twelve witnesses whereas the defence has examined one witness. Thereafter, the statement of the accused was recorded under Section 313 of the Code. After conclusion of the trial, the trial court has passed the impugned judgment whereby the appellant has been convicted for the offences punishable under Sections 302 and 342 of the I.P.C. However, the other accused have been acquitted by the Trial Court due to lack of sufficient evidence.

5. Against the impugned judgment of conviction and order of sentence passed by the Trial Court, the appellant has preferred the present appeal.

6. Heard Mr. Ganesh Sharma, learned Advocate for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the Respondent-State.

7. Learned advocate for the appellant-convict would mainly submit that the case of the prosecution rests on the *fardebayan* given by the victim herself wherein she stated about the manner in which the occurrence took place. The victim died after fourteen days of recording of the *fardebayan* and, therefore, Section 302 of the I.P.C was added. It is further submitted that the doctor, who has conducted the *postmortem* on the dead body of the deceased has not been examined by the



prosecution and, therefore, *postmortem* report of the deceased was not duly exhibited. It is further submitted that from the deposition given by PW-9 Prabha Kumari, who is the Investigating Officer of the case, it is clear that the place of occurrence is different than the place which was stated by the deceased while giving *fardebayan*. It is further submitted that as far the place of occurrence suggested by the victim, there was no sign of burning from gas was found in the room. Learned counsel would further submit that though it is a case of the prosecution that the victim was burnt by igniting gas in the room by throwing the matchstick in the room, the semi-burnt bed-sheet having smell of kerosene oil was found at some different place. It is further submitted that the friend of the deceased namely, Suman whose name is recorded in the *fardebayan* has not been examined by the prosecution and it is revealed from the evidence of the prosecution that though Suman was a friend of the deceased, and is aware where she is residing, she had gone with her to the house of Vicky Anand i.e. the appellant herein. The deceased was also aware that Vicky Anand is residing near her house. In spite of that, she had gone to his house at the instance of Suman where it is alleged that the occurrence in question took place.



7.1. Learned counsel would further contend that though the Executive Magistrate has stated in his deposition that he was present when the victim had given her dying declaration in the form of *fardbeyan*, there is no endorsement of the doctor suggesting that the patient was conscious and was in a fit state of mind to narrate the occurrence in question. Learned counsel, therefore, urged that the story put forward by the prosecution in the form of *fardbeyan* of the deceased is not required to be believed and, therefore, the impugned judgment and order passed by the Trial Court be quashed and set aside.

7.2. Learned counsel for the appellant, thereafter, placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the cases of (i) **Muthu Kutty and Another vs. State By Inspector of Police, T.N.** reported in (2005) 9 SCC 113; (ii) **Laxman vs. State of Maharashtra** reported in (2002) 6 SCC 710; (iii) **Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh**, reported in (1999) 7 SCC 695. Learned counsel has also placed reliance upon the decision rendered by the Division Bench of this Court in the case of **Sallo Singh, Bhutha Singh, Munna Singh vs. State of Bihar** reported in 2007 (1) PLJR 705. He has also placed reliance upon the decision rendered by Jharkhand High Court in the



matter of **Sowam Kisku and Ors. vs. The State of Bihar (now Jharkhand)** reported in **2006 CriL.J. 2526**.

8. On the other hand, learned Additional Public Prosecutor appearing for the Respondent-State has opposed this appeal. He has mainly contended that *fardbeyan* given by the victim herself is in the nature of dying declaration and five witnesses were present at the time of recording the said *fardbeyan*, who have fully supported the case of the prosecution. Therefore, there is no reason to disbelieve the version given by the victim herself. It is further submitted that the *fardbeyan* given by the victim has been videographed by the independent person, who had prepared the CD. The said person has also been examined as PW-12. Learned APP, therefore, urged that when the victim herself has given the *fardbeyan*, which has been supported by the prosecution witnesses, no error is committed by the Trial Court while passing the impugned judgment of conviction and order of sentence and, therefore, the present appeal be dismissed.

9. PW-1 Sanjay Kumar Sinha is maternal uncle (*mausa*) of the deceased. The said witness has stated in his examination-in-chief that he got the information from the father of the deceased i.e. Juli Sen, that she was admitted in PMCH,



Patna. He immediately reached to the said hospital. At that time, Juli Sen was conscious and talked with him. She stated before the said witness that on 27.09.2012 at about 12 O'clock, when she went out for tuition to Pankaj Sir, she met a girl named Suman on the way. She took her to Professor Colony but, instead of Professor Colony, she took her to *Gadhpar* and told that she lives in that house. After reaching there, Vicky Anand, Rakesh Ranjan, Monu, Sony and Vivek were already sitting there. We all sat together when Suman left the room on the pretext of making a telephone call. After sometime, on the request of Vicky Anand, Rakesh Ranjan, Monu, Sonu and Vivek, who were present in the room also left the said room. The said further stated that she does not know Vicky Anand from before. Vicky Anand along with her were the only ones left in the room. Vicky Anand told her that since she had turned 21, she should come with him as he wanted to marry her. On several occasions, she had also refused. The said witness also stated that her father also scolded the appellant on several times. The said witness stated that when she refused to marry the appellant, then the appellant opened the gas cylinder and went out of the room and ignited matchstick, which caught fire and then closed the door from outside. The witness further stated



that she raised alarm but, nobody came there to rescue her. Then, she went to the attached bath room and sat down just below the tap. Thereafter, the only thing she remembers is that she was covered with black cloth and was brought to the hospital on a motorcycle where she was treated by the doctor. Thereafter, her parents came. It is alleged that all the accused persons named in the FIR are responsible for the alleged occurrence. The said witness further stated that both hands of the informant were burnt, so, she was not in a position to write. Therefore, she put her impression of left leg's toe upon *fardbeyan* in presence of the Executive Magistrate.

9.1. During cross-examination, the said witness has specifically stated that distance between the house of the victim and the place of occurrence is 100-200 feet. The said witness has denied the suggestion that when he reached the hospital, Juli was unconscious. The said witness further stated that his village is situated at a distance of 17 kms. from the place of occurrence.

10. PW-2 Neelam Devi, who is the mother of the deceased, has stated in her examination-in-chief that she got information about the incident at around 6:30 PM when she was informed on telephone that her daughter has been burnt. She



further stated that thereafter she immediately reached Buddha Hospital where she saw her daughter lying in the ambulance unattended and crying in pain. The said witness further stated that thereafter she met her daughter who told her that Vicky Anand, Rakesh Ranjan, Vivek, Monu and Soun had allegedly set her on fire. She further stated that the doctor has referred the deceased and, thereafter, she was finally taken to PMCH, Patna wherein the *fardbeyan* of the victim was recorded in front of PW-2 her mother and PW-3 her father.

10.1. During cross-examination, the said witness has stated that when her daughter was giving the statement, she was accompanied by the doctor but, did not remember that the doctor had signed on the said statement made by the victim. She further stated that she also recounts her daughter/victim to be conscious while giving statements to the SHO, namely, Kamaljit and the whole incident was being videographed. The said witness has further stated that she had never visited the place of occurrence/house of incident, which is approximately 125 meters ahead of the victim's house. The witness also deposed that she is not aware of the accused being married and also refutes the claim that PW-3, the father of the accused had approached the family of the appellant to marry her daughter



with the accused. She further stated that before this incident, the accused on several occasions had harassed the victim against which, the father of the victim had chased them away and with a view to maintain the dignity of the family, such scuffle was not reported to the police earlier. She further stated that she neither knew the girl Suman nor did she knew about the teacher who was her mentor. She further stated that she recognizes the accused Vicky Anand, Rakesh Ranjan and Monu from the day of scuffle while chasing them away from her daughter.

11. PW-3 Anuj Prasad, who is the father of the victim, stated in his examination-in-chief that he saw her daughter at Buddha Hospital, lying in ambulance and crying in pain. The said witness further stated that the doctor has referred her daughter, and thereafter, she was brought to PMCH, Patna at 12 O'clock in the midnight. The said witness has further stated that since both the hands of the victim were burnt, she put her impression through her right leg's toe in presence of her mother, the Executive Magistrate and the SHO, who has ascribed the statement.

11.1. During cross-examination, he has stated that the appellant has harassed her daughter 25 days prior to the present occurrence. He further stated that when he got



information about the said incident, he has chased the present accused, namely, Vicky Anand, Rakesh Ranjan and Monu Kumar. He further deposed that the said incident had taken place near '*Garhpar*' while the victim was going to her tuition. He further stated that he has not given information to the police about the said incident because of prestige. The said witness further stated that he has not received any document from the Buddha Hospital and City Government Hospital. The said witness has denied the suggestion that he has deliberately not given the details of bed head ticket. He has stated in cross-examination that he had seen the bed head ticket but does not remember the details thereof. He had brought the medicines but did not see the names thereof and whether they were administered or not. The said witness has denied the defence suggestion that he has knowledge about the details of incident while the victim was taken to PMCH and nothing was told by the victim before it. He has further denied the suggestion that he had given one of his flats to Vicky Anand on rent and had caught her daughter with the appellant in a compromised position and he had beaten his daughter. He has denied the defence suggestion that the victim has given her *fardebayan* after discussion with him during transit from Biharsharif to Patna and



falsely implicated the accused.

12. PW-4 Kamaljeet was working as SHO, Nagarnausa Police Station. He got the information from the Superintendent of Police, Nalanda that one girl of Biharsharif is admitted in PMCH, Patna in burnt condition and, therefore, he has to record the *fardebayan* of the said girl. The said information he got orally. Therefore, necessary entry was made in the station diary. Thereafter, he proceeded to PMCH, Patna and when he reached in the emergency ward on 27.09.2012, the victim was not in a position to give her *fardebayan*. Therefore, on the next date i.e on 28.09.2012 at about 7:15 AM, he had recorded the *fardebayan* of the victim in presence of the Executive Magistrate. The victim had stated her name as Juli Sen. The *fardebayan* of the victim was also videographed. The said witness also signed the said *fardebayan* and he had identified the signature. He further stated that after writing the *fardebayan*, which was read over to Juli Sen and, thereafter, the victim put her impression of right leg's toe on the said *fardebayan*. Signature of the parents of victim was also obtained. The Executive Magistrate also made endorsement/signed on the *fardebayan*.

12.1. During cross-examination, the said witness



stated that on 27.09.2012, he reached at PMCH, Patna during evening hours where nobody has given him instruction to record *fardebayan* of the victim. The information which was received and was recorded in the station diary is not with him and without the order of the court, he cannot produce the said station diary entry. When he reached to emergency ward PMCH, he enquired with the doctor, who was present. The said doctor informed him that the victim is not in a position to give her *fardebayan* and, therefore, he did not record the statement of the victim on 27.09.2012. He further stated that on 28.09.2012 also, the doctor had not informed him in writing that the statement of the victim can be recorded. The doctor gave oral consent for recording the statement of the victim. The said witness further stated that PMCH, Patna came within the jurisdiction of Pirbahore Police Station, which is situated in Patna district. He did not inform to the Superintendent of Police, Patna at the time of recording *fardebayan* of the victim by stating that he got oral information from the Superintendent of Police, Nalanda for recording the *fardebayan* of the victim. The said witness also did not inform to the SHO, Pirbahore Police Station that he has received instruction to record the *fardebayan* of Juli Sen, who has been admitted in PMCH.



13. PW-5 Kishun Mahto, who was working as an Executive Magistrate at the time of occurrence, got telephonic information at about 7:00 AM in the morning that he has to reach PMCH Hospital and, therefore, he went to the emergency ward of the said hospital. At that time, it was informed to him that in a case in Biharsharif, wherein, a girl has sustained burn injuries and, therefore, he has to record her dying declaration. He, therefore, reached at the said place at 7:15 AM, Thereafter, he reached in emergency ward of the said hospital. He got information that the name of the girl is Juli Sen. In his presence, statement of Juli Sen was recorded. The said girl gave her statement in his presence, which was read over to her and, thereafter, the impression of toe of the victim girl was obtained on the said statement, as both the hands were burnt. The said witness has stated that the videography of the said statement was also made and the same was recorded in his presence. While recording the statement of the girl, her father and mother were also present and they have also signed the said statement.

13.1. During cross-examination, the said witness has stated that when he reached emergency ward, one doctor was present. However, while recording the statement of the girl, he did not notice that the doctor was present nor did he notice as



to what percent she was burnt. He had also not obtained the signature of the doctor on the said statement. He further stated that with regard to the consciousness of the victim, he had not obtained any certificate from the doctor.

14. PW-6 Srikrishna Ram @ Krishna Ram is the owner of the house in which the alleged occurrence took place. The said witness had stated that he had given back side of his house on rent. He was not aware about the fact that in the said portion of the house, Juli Sen was burnt and killed. He is not aware about the fact that in the said portion of the house, Vicky Anand, Rakesh Ranjan or any other tenants were residing. He came to know that Juli Sen has sustained burnt injuries and, thereafter, she has been shifted to the hospital for treatment. He is not aware that who has burned the victim Juli.

14.1. During cross-examination, the said witness has stated that he is not aware the manner in which the occurrence took place.

15. PW-7 Ricky Kumar has not supported the case of the prosecution and he was declared hostile.

16. PW-8 Jyotish Kumar @ Jyoti Kumar was working as a compounder in Gautam Buddha Hospital. The said witness in his examination-in-chief stated that the occurrence



took place before 2-3 years back. On that date, at about 4:00 PM, he was in Gautam Buddha Hospital, Kutchhari Road, Biharsharif. At that time, two persons came on motorcycle with a girl, who was burnt. He is not aware about the name of those two persons. He, therefore, informed that the doctor is not present and, therefore, both the persons called ambulance and the girl was taken in the said ambulance. Thereafter, the police inquired with him. At that time, he informed the police that the girl sustained burn injuries. However, he did not give any preliminary treatment to her nor he has asked that how she got the burn injuries. The said witness was declared partly hostile.

16.1. During cross-examination, the said witness has stated that the police had not conducted test identification parade.

17. PW-9 Prabha Kumari is the Investigating Officer of the case, who had carried out the investigation. The said witness stated in her examination-in-chief that the investigation of the said case was handed over to her by SHO. Thereafter, she recorded the *fardebayan* of the victim. She visited PMCH, Patna where the informant was admitted. She reached at 11.25 hour. She recorded the statement of Anuj Prasad and Nilam Devi and, thereafter, she proceeded for examining the



place of occurrence at 17:45 hours and reached at the place of occurrence on 20:55 hours. She examined the said place. In paragraph nos. 2, 3 and 4 of the examination-in-chief, she has narrated in detail about the place of occurrence. It is stated by her that when she entered into the main door, she found staircase in front of the main door of the house and below the staircase, there is a water tank. From the said spot, she found a half-burnt bed-sheet drenched with kerosene. She seized the said bed-sheet. The said witness inspected the room situated on the ground floor of the said house. However, she did not find any sign of burn in any of the rooms. Thereafter, she had described about the room situated on the first floor. The said witness examined the room in which, it is alleged that the deceased was burnt and the said room is having attached latrine bathroom having tap in the said bathroom. However, she did not find sign of any burn. She further stated that the room which is situated on the ground floor, she found one gas cylinder attached with pipe. She had collected the half-burnt cloth from the place of occurrence and also seized small cylinder, regulator, plastic pipe etc. She had further stated that the other items including half-burnt bed-sheet having smell of kerosene oil was also seized and, thereafter, she recorded the statement of witness Krishna



Rai, who is landlord of the house in which the occurrence took place. She has further stated about the *postmortem* report of the first informant, who died after few days of the occurrence. She had further stated that half-burnt bed-sheet was sent to Forensic Science Laboratory. However, through our-sight side, she had not recorded about the same in the case diary.

17.1. During cross-examination, the said witness stated that she reached in the hospital after the videography of statement of the victim was made. She had further admitted that at the place of occurrence, she did not find any sign of burn nor she find any sign of burn in any of the rooms. She also got the information that house of the deceased is situated near to the place of occurrence. However, she did not carry out any investigation at the house of the deceased. She further stated that the accused Vicky Anand has surrendered before the court and after taking permission of the court, the statement of the accused was recorded. She has also stated during cross-examination that after she had handed over the investigation to the new Investigating Officer, mother-in-law of the appellant/accused met her with the photograph of the marriage of the appellant and her daughter. She was also having marriage invitation card and pointed out that her daughter got married



with the accused. However, the said witness informed the mother-in-law of the accused that now she has already handed over the investigation to other officer and, therefore, she has to approach to the said officer. The said witness has also stated in cross-examination that before recording the statement of the victim Juli Sen in emergency ward in PMCH, she had not obtained the certificate of the doctor stating that Juli Sen is conscious or not. The said witness further stated that PW-1 Sanjay Kumar Sinha has not stated before her when the statement of the said witness was recorded during course of investigation that when he enquired with Juli Sen, she had narrated the entire story before him. Similarly, PW-2 Neelam Devi has also not stated before her while giving the statement that her daughter informed that Rakesh Ranjan, Sonu, Monu and Vivek have burnt her.

18. PW-10 Umesh Kumar is also the Investigating Officer, who had carried out the remaining investigation and thereafter filed the charge-sheet against the accused/appellant.

19. PW-11 Brajnandan Singh is a witness, who was working as an advocate clerk. The said witness has been examined by the prosecution with a view to prove the signature



of the doctor, who had conducted the *postmortem* of the deceased. The said witness has stated in his deposition that the *postmortem* report was prepared by Dr. Anil Kumar of Patna Medical College, Patna and the said doctor had signed the said report. He has further stated that he came to know that Dr. Anil Kumar died in road accident.

19.1. During cross-examination, the said witness has stated that he is not a doctor nor is having MBBS degree. He is also not aware about the contents of the *postmortem* report. He is also not having any proof that the doctor died in accident. He further stated that he had never worked with the doctor.

20. PW-12 Dharmendra Kumar @ Chhotu is a witness who has made the videography at PMCH. The said witness stated that he received the information and, therefore, he reached at PMCH in emergency ward. He was informed that the videography of the girl is to be made in presence of Magistrate. The Magistrate recorded the statement of the victim girl, of which, he had made videography. He is not aware about the name of the girl whose statement was recorded. Thereafter, he said that her name was Juli Sen. He further stated that thereafter the CD was prepared and after 6-7 months, the police came at his place and asked for the cassette and, thereafter, he had



handed over the cassette to the police. The CD was played in the court room on laptop and the said witness stated that she is the same girl, who has given the statement and the CD was prepared. The cassette was very old.

20.1. During cross-examination, the said witness has stated that he did not get any written instruction for making videography and he has received the phone call and, therefore, he reached the hospital. The Magistrate did not sign nor there is any signature of Daroga Ji on the CD. He is not having any license of any government institution for making videography. The said witness further stated that the CD which was played in the court only victim is seen. The Magistrate is not seen in the said CD as the CD is not properly in working condition.

21. The defence has also examined one witness i.e. DW-1 Rajita Patel. The said witness has stated that her marriage is solemnized with accused Vicky Anand on 25.04.2012 and the marriage took place at Rajgir Dham. She has produced necessary documents/evidence before the court including the photograph of the husband and wife, invitation card of the marriage was also produced.

21.1. During cross-examination, the said witness has stated that she is not aware about the name of the Pandit Jee,



who had performed the marriage.

22. We have gone through the entire evidence of the prosecution led before the Trial Court. From the evidence produced by the prosecution, it would emerge that it is a case of the prosecution that victim herself has given the *fardebayan* in which she has narrated the details about the manner of occurrence and the role played by the accused/appellant. It is a case of the prosecution that the *fardebayan* given by the victim has been signed by SHO, Executive Magistrate and the parents of the victim and the said *fardebayan* is also videographed. However, from the deposition of the prosecution witnesses, it is revealed that the SHO got the oral instruction from the Superintendent of Police, Biharsharif that one girl sustained burn injuries and she had been admitted in PMCH, Patna and, therefore, he had entered the said information in the station diary. However, the said entry of station diary was not produced before the court. It is also reflected from the record that PMCH, Patna falls within the jurisdiction of Patna district and under the Pirbahore Police Station. Though, the SHO of Nagarnausa Police Station, Biharsharif coming to the jurisdiction of other police station, he had not informed about the same to the concerned police station before recording the statement of the



victim. It is further revealed that on 27.09.2012, the SHO (PW-4) came to PMCH, Patna in emergency ward and inquired from the doctor, who informed the said witness i.e. the SHO that the victim is not in a position to give her statement. Thus, the said witness did not record the statement of the victim on 27.09.2012. It is the case of the prosecution that on the next date i.e. on 28.09.2012 at 7:15 AM, *fardbeyan* of the victim has been recorded. However, the prosecution has failed to produce on record medical papers about the treatment given by doctor in PMCH, Patna after the victim was admitted in the hospital and before her *fardbeyan* was recorded at 7:15 AM on 28.09.2012. Even the doctor, who had given the treatment in the said hospital has not been examined by the prosecution.

23. Thus, the prosecution has failed to point out that when the victim was not in a position to give her statement even as per the case of one of the witnesses, during evening hours of 27.09.2012, how she was in a position to give her statement on 28.09.2012 at 7:15 AM. Further, admittedly, the endorsement of the doctor was not obtained on the *fardbeyan*/alleged dying declaration given by the victim before the Executive Magistrate. Thus, whether the patient was conscious or not or whether the patient was in a fit state of mind



as to give her statement before the SHO or the Executive Magistrate is not reflected from the evidence of the prosecution witnesses.

24. Now, it is the case of the prosecution that the videography of the *fardebayan*/dying declaration of the victim was made. However, from the deposition of the concerned witness of the prosecution i.e. the person who has prepared the CD/Cassette, it is revealed that the said cassette was very old and it was not properly played in the court room.

25. We are conscious about the fact that if the version given by the victim/deceased in her *fardebayan* is trustworthy and same is to be believed, the conviction can be recorded only on the basis of the same and no further corroboration is required. However, if the evidence of the prosecution is carefully scrutinized/examined, it is revealed that the Investigating Officer has herself stated in her examination-in-chief that as far the place of occurrence suggested by the victim, no sign of burn was found at the said place i.e. the place of occurrence.

26. At this stage, once again, the *fardebayan* given by the victim is carefully seen, it is revealed that the victim has stated when she refused to marry the accused, he opened the gas



cylinder, went out from the room and ignited matchstick which caused fire and, thereafter, closed the door from outside. She raised alarm but, nobody came at the said place for her rescue and then she went to the bathroom attached with the said room and sat down just below the tap. However, from the evidence of the I.O., it is revealed that the place of occurrence suggested by the victim is the first floor of the house in which no sign of burn or fire was found. Half-burnt cloth was also not found at the first floor of the house. In fact, one half-burnt bed-sheet drenched with kerosene was found from the ground floor.

27. Thus, from the deposition of the prosecution witness itself, it is clear that the place of occurrence suggested by the victim is totally different and there is no reference of bed-sheet or kerosene in the so-called *fardbeyan* given by the victim herself.

28. It is pertinent to note that the Investigating Officer seized certain articles including the half-burnt bed-sheet drenched with kerosene and sent to F.S.L. and other materials collected from the place of occurrence, the report of F.S.L. has not been produced before the court.

29. It is further pertinent to note that as per the *fardbeyan* of the victim, when she was going for tuition at 12:30



noon to one Pankaj Sir, in the way, she met one girl namely, Suman who was known to her. She took her in the room where the accused and other persons were sitting. However, it is pertinent to note that the prosecution has not examined Suman. Further, from the deposition of PW-1, it is revealed that there is distance of 100-150 feet between the house of the victim and the place of occurrence i.e. the house in which the accused-appellant was residing as a tenant. Further, the victim was aware that accused is residing in said house, in spite of that, she went along with Suman in the house of the accused.

30. Thus, from the aforesaid evidence also, it can be said that the version given by the victim in the form of *fardbeyan* is doubtful.

31. It has also come on record that while recording the *fardbeyan* of victim which is in the form of dying declaration before the Executive Magistrate, surprisingly, the parents of the victim were kept present and, in fact, they have signed the *fardbeyan*. It is further revealed from the evidence of the prosecution that though the doctor was present, his signature/endorsement was not obtained on the so-called dying declaration of the victim.

32. At this stage, we would like to refer the



decisions upon which the reliance is placed. In the case of **Paparambaka Rosamma & Ors. Vs. State of Andhra Pradesh** reported in (1999) 7 SCC 695, the Hon'ble Supreme Court has observed in paragraph '8' as under:

“8. The main question is as to whether she was conscious and was in a fit mental condition to make a voluntary disclosure of the incident. Dr K. Vishnupriya Devi (PW 10) who was attached to Tenali Government Hospital examined Smt Venkata Ramana on 4-3-1994 at 1.30 p.m. She then sent a requisition (Ex. P-9) to the Magistrate Shri K. Lakshmana Rao (PW 13) to record the dying declaration of the injured. All that Dr K. Vishnupriya Devi has stated is that the injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It has come on record that Smt Venkata Ramana had sustained 90% burn injuries. K. Lakshmana Rao (PW 13) who recorded the dying declaration has made a note in Ex. P-14 — the dying declaration after putting some preliminary questions to the injured and it reads as under:

“On the basis of answers elicited from the declarant to the above questions I am satisfied that she is in a fit disposing state of mind to make a declaration.”

Thereafter, the learned Magistrate proceeded to record the dying declaration. At the end, Dr K. Vishnupriya Devi (PW 10) has appended a certificate saying “patient is conscious while recording the statement”. The question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to make a declaration in the absence of a certificate by the doctor certifying the state of mind that existed before



recording the dying declaration. In our opinion, in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. It is a case of circumstantial evidence and the only circumstances relied upon by the prosecution is the dying declaration.”

33. In the case of **Muthu Kutty and Another Vs. State by Inspector of Police, T.N.** reported in **(2005) 9 SCC 113**, the Hon’ble Supreme Court has observed in paragraph ‘15’ as under:

“15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles



governing dying declaration, which could be summed up as under as indicated in *Paniben v. State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] : (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])

(vi) A dying declaration which suffers from infirmity



cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha v. State of Bihar* [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(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 eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram v. State of M.P.* [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P. v. Madan Mohan* [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani v. State of Maharashtra* [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] ”



34. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. Further, the court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. It is further held that where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

35. Keeping in view of the aforesaid decisions rendered by the Hon'ble Supreme Court, the facts as discussed hereinabove are carefully examined, we are of the view that the prosecution version differs from the version given in the dying declaration. We have already discussed about the deposition given by the Investigating Officer, namely, Prabha Kumari at the place of occurrence, there is no sign of fire or burn. Further, there is no explanation coming out about the half-burnt bed-sheet drenched with kerosene, the distance between the house of the victim and the place of occurrence only 100-150 feet, whether the victim was conscious and/or was in a fit state of



mind to give dying declaration was also not clear, whereas the doctor has not been examined nor any endorsement was obtained, parents of the victim were kept present while recording the *fardbeyan*/dying declaration, S.H.O. has stated in the examination-in-chief itself that on 27.09.2012 when he reached to the hospital during evening hours, the victim was not conscious, further on 28.09.2012 at 7:15 A.M. how the victim became conscious is not known in absence of any medical paper of the treatment given to the victim and in absence of examination of the concerned doctor, who had provided the treatment to her. Thus, we are not satisfied that the dying declaration is true and voluntary even if the victim was conscious and had given the statement before the S.H.O. and the witnesses, it can be said that the same was as a result of tutoring, prompting of her parents, who were kept present.

36. Looking to the overall facts and circumstances of the present case, we are of the view that the conviction of the appellant recorded by the trial court simply relying upon the version given by the victim in the form of dying declaration and, therefore, the conviction recorded by the trial court is required to be interfered with. It is also relevant to note that when the prosecution has failed to prove the case beyond reasonable



doubt, the accused-appellant is required to be acquitted.

37. In view of the aforesaid discussions, the impugned judgment of conviction dated 21.06.2016 and order of sentence dated 22.06.2016 passed by learned 6th Additional District and Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No. 307 of 2013 arising out of Bihar P.S. Case No.263 of 2012 is quashed and set aside. The appellant, namely, Vicky Anand is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released from jail forthwith, if his presence is not required in any other case.

38. The appeal stands allowed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjeet/-

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