IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.135 of 2019
Arising Out of PS. Case No.-72 Year-2017 Thana- VIDYAPATINAGAR District- Samastipur

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Amit Kumar, Son of Nand Kishore Rai, Resident of Village- Harpur, Bochha, P.S.- Vidyapati Nagar, District- Samastipur.

... ... Appellant.

Versus

The State of Bihar

... ... Respondent.

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Appearance :

For the Appellant/s	:	Mr. S.K. Lal, Sr. Advocate Mr. Pritish Kumar Lal, Advocate
For the Respondent/s	:	Km. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 01-04-2026

This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973, challenges the judgment of conviction dated 10.01.2019 and order of sentence dated 15.01.2019 passed by the learned Presiding Officer, Fast Track Court-I, Samastipur, in Session Trial No. 826 of 2017.

2. By the impugned judgment, the sole appellant, Amit Kumar, has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/- (in default, further rigorous imprisonment for three years). The co-accused Babita Devi, Juhi Kumari, Rahul Kumar and Raushan Kumar

were acquitted of all charges, including Sections 302, 307 and 120B IPC.

3. The prosecution case, as set out in the fardbayan (Ext.3) of the informant Sunil Kumar Rai (PW-14) recorded on 14.06.2017 at 7:00 AM, is that on 13.06.2017 at about 12:00 noon, while the informant was at his medicine shop, he heard commotion and rushed home. He found his 15-year-old daughter, Anshu Kumari @ Akanksha Kumari, lying in the courtyard of his uncle Ashok Rai's house with her mouth and hands tied, body on fire. Neighbours extinguished the fire. The deceased allegedly told the informant that her hands, mouth and legs were tied, kerosene was sprinkled and she was set on fire. She repeatedly pleaded to save her two brothers as the assailants had threatened to burn them too. While being taken to hospital, she allegedly repeated the threat and the phrase "Juhi, your work is done". At Paramount Care Hospital, Patna, on repeated querying in the ICU, she allegedly named only the appellant Amit Kumar (described as Juhi's friend) as the perpetrator. She died during treatment in the intervening night of 13.06.2017 and 14.06.2017. Motive was alleged to be enmity arising from the elopement/kidnapping of Juhi Kumari (daughter of neighbour Sanjay Rai) in which the appellant and his family were

involved; the informant had supported Sanjay Rai, leading to threats from the appellant. FIR (Ext.5) was registered under Sections 341, 342, 307, 302 and 34 IPC. After investigation, charge-sheet was submitted against the appellant and four others under Sections 448, 342, 302 and 120B IPC.

4. The appellant and co-accused pleaded total innocence under Section 313 Cr.P.C., claiming false implication due to family enmity and long incarceration. The defence examined no witnesses but relied on contradictions in the prosecution evidence, the post-mortem report (Ext.2) and the admissions of the Investigating Officer (PW-16).

5. The entire prosecution case rests solely on oral dying declarations alleged to have been made by the deceased to various witnesses. There is no written dying declaration, no statement recorded by a Magistrate, and no independent corroboration. The trial court primarily relied upon the statements attributed to PW-1, PW-2, PW-12, PW-13 and PW-14 to hold that the deceased was conscious and capable of speaking and that her "final" naming of only the appellant in the ICU was reliable. A careful scrutiny of the entire evidence, however, reveals irreconcilable material contradictions, medical impossibility and perverse appreciation.

6. During the trial, the prosecution examined as many as sixteen witnesses. Of these, one witness (PW-3) is an independent witness, having no relation to either party. Four witnesses (PW-5, PW-6, PW-7, and PW-8) were declared hostile; they too are unrelated to the parties and are neighbours. Nine witnesses (PW-4, PW-9, PW-10, PW-11, PW-13, PW-12, PW-1, PW-2, and PW-14) support the prosecution's version that the deceased had named the perpetrators. PW-15 is the medical officer who conducted the post-mortem examination, while PW-16 is the Investigating Officer of the case.

7. PW-3 (Rohit Kumar Sharma), a villager who reached the spot immediately, categorically stated that when he arrived, the deceased was burning and "she was not speaking". PW-5 (Dharmendra Paswan), PW-6 (Rudal Sahni), PW-7 (Shushila Devi) and PW-8 (Chandra Kala Devi) were declared hostile. Each of them reached the scene contemporaneously. PW-5 and PW-6 denied that the deceased named anyone or uttered the phrase "Juhi, your work is done". PW-8 stated that the deceased was speaking but "we could not hear her" and expressly deposed in cross-examination that "Anshu did not mention any names". These independent witnesses, who had no reason to favour the appellant, uniformly contradict the

prosecution's claim that the deceased was making coherent, detailed dying declarations at the scene. Their evidence assumes great significance because oral dying declarations attributed by interested family members require the strongest corroboration when independent witnesses who reached the spot contemporaneously state that the deceased was silent or incoherent.

8. The Hon'ble Supreme Court in ***Khushal Rao v. State of Bombay, AIR 1958 SC 22***, laid down guidelines for reliability and expressly noted situations where corroboration becomes necessary as a matter of prudence:

> *16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made ; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and*

has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it-; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. ***Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing. the statement by cross-examination.*** *But once, the court has come to*

the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that the particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.

9. Further, the Apex Court in ***Harbans Singh v. State of Punjab, AIR 1962 SC 439***, explaining the implication of **Khushal Rao (Supra)**, held:

18. In view of this latest pronouncement of this Court - which it should be stated in fairness to the trial judge was made long after he gave his judgment - it must be held that it is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. The evidence furnished by the dying declaration must be considered by the Judge, just as the evidence of any witness, though

undoubtedly some special considerations the assessment of dying declarations which do not arise in the case of assessing the value of a statement made in Court by a person claiming to be a witness of the occurrence. In the first place, the Court has to make sure as to what the statement of the dead man actually was. This itself is often a difficult task, specially where the statement had not been put into writing. In the second place, the court has to be certain about the identity of the persons named in the dying declarations - a difficulty which does not arise where a person gives his depositions in Court and identifies the person who is present in court as the person whom he has named. Other special considerations which arise in assessing the value of dying declarations have been mentioned by this Court in Khushal Rao v. State of Bombay and need not be repeated here.

10. This directly supports the need for strongest corroboration when independent evidence (e.g., witnesses at the spot) contradicts the family's claim that the deceased spoke coherently.

11. In ***Laxman v. State of Maharashtra, (2002) 6 SCC 710***, the Hon'ble Supreme Court, while expounding the "fit state of mind" test held:

3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in

extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. ***The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant.*** *Normally, therefore, 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 eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness*

of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established

otherwise.

12. In the above noted touchstone of judicial pronouncements, let us now independently appreciate the evidence adduced by the witnesses on behalf of the prosecution. We already have classified the witnesses to their nature.

13. PW-4 (Rahul Kumar Sahni), a neighbour, reached while the fire was being extinguished. He stated that after the cloth was removed from the mouth, the deceased only uttered “Rahul Bhaiya, save me”. In cross-examination he admitted he did not see the occurrence and did not know who set the fire. This is the earliest alleged statement on record, and is completely vague and containing no naming of the perpetrator. It directly undermines the prosecution’s claim of immediate specific accusation.

14. PW-9 (Manti Devi) gave the most detailed scene account: someone tied the mouth from behind, poured oil, lit a matchstick saying “Juhi, your work had been done”, threatened to kill the two brothers and asked the father to save them. Yet, in cross-examination, she twice stated that “Anshu didn’t tell me the name of the person who set the fire” and “I do not know who poured oil”. PW-10 (Janki Devi), the grandmother, stated that the deceased said “Juhiya set me on fire” but “she did not disclose the name of the person”. In cross-examination she

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added that when she reached, the deceased was "burnt and unconscious". These two witnesses, who reached early, provide detailed descriptions of the act and the "Juhi" phrase but are completely silent or anonymous on the identity of the actual perpetrator. Their evidence stands in stark contradiction to the "only Amit" version ultimately relied upon by the trial court.

15. PW-11 (Shankar Prasad Rai), the grandfather, narrated the motive (Amit-Juhi love affair, elopement, informant's intervention) but admitted he did not see the occurrence and did not speak to the deceased. PW-13, a professor and neighbour, stated that on query, the deceased said "Juhiya & Juhiya's mother got her killed". In cross-examination he admitted that the fardbayan omitted this crucial claim and that statements were recorded without signatures. Both these witnesses implicate Juhi and her mother but provide no direct evidence against the appellant. The trial court's decision to acquit Juhi and Babita while convicting only the appellant on the strength of the same set of declarations is, on the face of it, perverse.

16. PW-12 (Anita Devi), the mother, stated that after the mouth was opened, the deceased said "Juhi's mother and Amit set me on fire and threatened to kill my two brothers if I

mentioned their names". She fainted immediately thereafter. In cross-examination, she admitted she did not see anyone set the fire, her statement was only what she heard from the deceased, the police statement recorded on 15.06.2017 contained variations, and the Juhi elopement story was hearsay. This version directly implicates Babita (Juhi's mother) along with the appellant. Yet the trial court acquitted Babita while convicting the appellant. This selective reliance on the same body of evidence is impermissible.

17. PW-1 (Rajeev Kumar Rai), the deceased's uncle, stated that the deceased was unconscious at the house and regained sense only in hospital, where she named "Juhi's friend Amitwa" as the person who set her on fire. PW-2, who accompanied the deceased to hospital and has business ties with PW-1, claimed that in the ICU, the deceased said "Juhiya's friend Amitwa tied my hands and mouth and set me on fire". Both are interested witnesses. Their versions are limited to hospital statements and contain no corroboration.

18. The trial court placed decisive reliance on PW-14 (Sunil Kumar Rai), the deceased's father. At the scene he allegedly heard the threat to brothers, the phrase "Juhi, your work is done" and the description of tying and pouring oil, but

the deceased did not name anyone out of fear. In the ICU, after repeated querying, she allegedly named only the appellant. In cross-examination he admitted that even after three asks she named only Amit and not others. He also admitted that the police reached the hospital when the deceased was unconscious and that no one saw the actual occurrence. Critically, his fardbayan (Ext.3) explicitly named both Amit and Sumit as the persons who tied and set her on fire. The shift from "Amit and Sumit" in the earliest document to "only Amit" in trial testimony, combined with the mother's version implicating Babita, renders the dying declaration unreliable.

19. From plain reading of the evidence of the witnesses who are close relatives of the deceased, we find inherent contradictions, wilful exaggeration and unnatural tendency of development of so-called dying declaration rendering it highly suspicious.

20. In this context, while ***Paniben v. State of Gujarat, 1992 (2) SCC 474***, remains a leading authority for the proposition that a dying declaration is not a weak piece of evidence and requires no corroboration if found reliable, the present case stands on an entirely different footing, as the alleged dying declaration is shrouded in serious doubt and fails

to inspire confidence. Relevant paragraph of **Paniben (Supra)** is reproduced below:

> *18. 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 deceased was not as a result of either tutoring, 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 assailants **. 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:*
>
> *(1) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. ((1976) 3 SCC 104 1976 SCC (Cri) 376: (1976) 2 SCR 764])*
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> *(ii) If the Court is satisfied that the dying declaration*

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

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

(IV) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [(1974) 4 SCC 264: 1974 SCC (Cr) 426))

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [1981 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. (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. (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. (Surajdeo Oza v. State of Bihar [1980 Supp SCC 769: 1979 SCC (Cri) 519: AIR 1979 SC 1505])

(ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nonhau 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. (State of U.P. v. Madan Mohan ((1989) 3 SCC 390: 1989 SCC (Cri) 585: AIR 1989 SC 1519])

21. However, the Hon'ble Supreme Court in **Kundula Bala Subrahmanyam v. State of Andhra Pradesh, (1993) 2 SCC 684**, has directly addressed multiple declarations and the requirement of consistency in material particulars:

18. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not

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

also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same. *Having read the evidence of PWs 1-3 with great care and attention, we are of the view that their testimony is based on intrinsic truth. Both the dying declarations are consistent with each other in all material facts and particulars. That the deceased was in a proper mental condition to make the dying declarations, or that they were voluntary has neither been doubted by the defence in the course of cross-examination of the witnesses nor even in the course of arguments, both in the High Court and before us. Both the dying declarations have passed the test of creditworthiness and they suffer from no infirmity whatsoever. We have therefore no hesitation to hold that the prosecution has successfully established a very crucial piece of circumstantial evidence in the case that the deceased had voluntarily made the dying declarations implicating both the appellants and disclosing the manner in which she had been put on fire shortly before her death. This circumstance, therefore, has been established by the prosecution beyond every reasonable doubt by clear and cogent evidence.*

(3) Medical Evidence:

22. The inconsistencies here are material on the

identity of the perpetrator and the number of assailants. There exists no corroboration.

23. The post-mortem conducted on 14.06.2017 at 2:56 PM by Dr. Varun Kumar Kundu (observed by PW-15) revealed 90% ante-mortem burns from face to feet, carbon soot in the trachea mucous membrane, congested viscera, time since death within 36 hours, and cause of death from asphyxia produced by flame of fire. PW-15 admitted that such injuries are possible even in an accidental cooking fire and that no instrument injury was found. The presence of carbon soot in the trachea is conclusive proof of inhalation of superheated gases and smoke during life. This necessarily causes laryngeal and tracheal edema, congestion and damage, rendering coherent speech extremely difficult or impossible shortly after the incident. The trial court completely overlooked this scientific evidence while accepting the oral claims of the deceased speaking coherently for hours.

24. In ***Jayamma v. State of Karnataka, Criminal Appeal No. 1456 of 2005***, the deceased suffered 90% burn injuries, and gave conflicting oral statements (to neighbours saying suicide) and a recorded statement to police hours later (implicating accused). The doctor who endorsed “fit to make

statement" for the recorded version did not testify. The Hon'ble Supreme Court reversed the conviction, holding that without independent medical evidence proving the deceased's condition hours later, the declaration could not sustain conviction. The relevant paragraph of the same judgment is reproduced below:

> *3. We have also gone through the evidence of PW 1 who could be said have to some extent supported the theory of murder. We find that except for the fact that she stated that her daughter was being ill-treated even by appellant Jayamma she has not said a word about any dying declaration being made to her or as to how the deceased had suffered the injuries though as per her own showing, she had reached the hospital at about 9:30a.m.. We are, therefore, left with the solitary statement of PW 14 and the Report Exhibit P8. In this connection, it must be noted that Dr. Anil Kumar who had given the endorsement that the deceased had been fit to make a statement did not come to give evidence despite being served twice over. We are unable to fathom as to why coercive steps were not taken by Court as his evidence would have been relevant in proving the condition of the deceased at the time when her statement had been recorded at 2:30p.m., on the 6th January, 1995. In the light of the fact that the trial court had on a consideration of the evidence recorded an acquittal in favour of the accused and taken a view which was clearly possible on the evidence, we feel that the High Court should*

not have interfered in this matter.

25. The Court restored acquittal, expressly noting the absence of medical corroboration of the deceased's ability to speak coherently hours after the incident.

26. Here, no doctor from Paramount Care Hospital was examined, the PM doctor was not produced for cross-examination, and no fitness certificate exists. The time-since-death discrepancy ("within 36 hours") further casts doubt on the prosecution timeline. The medical evidence thus renders the entire edifice of oral dying declarations unreliable.

27. PW-16, the I.O., made several damaging admissions: no witness stated that he saw the appellant set the fire or even present at the scene; the initial fleeing claim in the fardbayan was dropped in subsequent statements; CD para 57 records that the informant told the police that Amit had been falsely implicated; Anita Devi's statement was hearsay; Sumit Kumar was investigated but dropped without explanation; recoveries (rope, gamchha, kerosene can, matchbox—Ext.7) were completely neutral and did not connect the appellant; and the investigation suffered from delays and procedural lapses (statements without signatures, no soil seized, etc.). These admissions completely demolish the prosecution case.

28. The law on dying declarations, particularly

multiple oral ones in burn cases, has been authoritatively laid down by the Supreme Court. In **Kundula Bala Subrahmanyam (Supra)**, the Court held that where multiple declarations exist and are inconsistent on material particulars, they must be discarded unless strongly corroborated.

29. In ***Mohanlal Gangaram Gehani v. State of Maharashtra, (1982) 1 SCC 700***, the Apex Court emphasised that the earliest declaration carries greater weight and that improvements or changes after prompting are suspect. The relevant paragraph of the same judgment is reproduced below:

> *17. Thus, the reason given by the High Court for distrusting the evidence of Dr Heena is wholly unsustainable. Moreover, the statement of the injured to Dr Heena being the first statement in point of time must be preferred to any subsequent statement that Shetty may have made. In fact, the admitted position is that Shetty did not know the appellant before the occurrence nor did he know his name which was disclosed to him by one Salim. Therefore, Salim who is now dead, being the source of information of Shetty would be of doubtful admissibility as it is not covered by Section 32 of the Evidence Act. And, once we believe the evidence of PW 11, as we must, then the entire bottom out of the prosecution case is knocked out.*

30. The medical aspect has been dealt with in

Jayamma (supra), where the Supreme Court set aside the conviction and acquitted the accused, holding it unsafe to rely on the dying declaration.

31. The trial court's selective reliance on one version while ignoring contradictions and acquitting co-accused despite motive and declarations implicating them constitutes perverse appreciation. The Hon'ble Supreme Court in ***Kali Ram v. State of H.P.,*** reported in ***(1973) 2 SCC 808***, propounded the "golden thread" principle of criminal jurisprudence, where if two views are possible the view favouring the accused must prevail. The relevant paragraph of the same judgment is reproduced below:

> *25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused It is also an accepted rule that in case the*

Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion of so timid that is is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh ((1974) 3 SCC 227: 1973 SCC (Cri) 886) a criminal that is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

32. The prosecution has utterly failed to prove the

charge beyond reasonable doubt. The multiple oral dying declarations are materially inconsistent on the most vital aspect of the identity of the perpetrator. The post-mortem evidence of asphyxia with carbon soot in the trachea and 90% burns renders coherent speech improbable. There is no eye-witness, no independent corroboration, and the investigation is perfunctory. The trial court's appreciation is selective and perverse. The appellant is entitled to the benefit of doubt.

33. The appeal is allowed.

34. The judgment of conviction dated 10.01.2019 and order of sentence dated 15.01.2019 passed in Session Trial No. 826 of 2017 are set aside.

35. The appellant Amit Kumar is acquitted of all charges. He shall be released forthwith unless required in any other case.

(Bibek Chaudhuri, J)

I agree.

(Chandra Shekhar Jha, J)

mdrashid/-

AFR/NAFR	
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