

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.APP(J) 62 of 2019

Smt. Kalyani Deb,
wife of Sri Sukhendu Deb,
resident of Dhaleswar Road No.3,
PS: East Agartala, Dist: West Tripura

-----Appellant(s)

Versus

The State of Tripura

----- Respondent(s)

For Appellant (s)	: Mr. P. K. Biswas, Sr. Adv.
	: Mr. P. Majumder, Adv.
For Respondent(s)	: Mr. S. Ghosh, Addl. PP
Date of hearing	: 23.06.2020
Date of pronouncement	: 22.12.2020
Whether fit for reporting	: YES

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

Judgment & Order

(S. Talapatra, J)

Against the judgment of conviction, the appellant has filed this appeal under section 374(2) of the CrPC. By the judgment dated 23.08.2019 delivered in Case No. S.T 34(T-1) of 2015, the appellant has been convicted for committing murder of her daughter-in-law Pujaita Pal by setting fire on her person on 03.03.2014. She has been sentenced to suffer RI for life with fine of Rs.10,000 with default stipulation for committing the said offence, punishable under section 302 of the IPC.

[2] The genesis of the prosecution against the appellant is rooted in the complaint dated 04.03.2014 (Exbt-1) by which one Chandan Kumar Pal (PW-1) had reported to the officer-in-charge, Agartala Women PS that his daughter namely Pujaita Paul had been married to one Abhijit Deb, resident of Dhaleswar Road No. 2, Agartala. After three months of their marriage her father-in-law, mother-in-law and elder brother-in-law started inflicting torture on her on unlawful demands. On the day of filing the complaint, PW-1 got one telephonic information that his daughter was admitted in the GBP Hospital, Agartala. PW-1 came to the GBP Hospital and found his daughter with severe burn injuries. Thereafter, PW-1 has stated in the complaint that on his asking daughter told him that on 03.03.2014 at night her mother-in-law had set fire her on her by dousing kerosene in presence of her father-in-law and elder brother-in-law. Based on the said complaint (Exbt-1), filed on 04.03.2014 at about 0335 hours, the father of the victim namely Chandan Kumar Pal (PW-1), East Agartala Women PS case No.12/2014 under Sections 498A,307,326/34 of the IPC was registered and taken up for investigation. It may be noted that in the course of treatment Pujaita (the victim) died on 07.03.2014.

[3] On her death, the police took up the investigation under section 302 of the IPC. It is apparent that the allegation of committing the said offence has been made against the appellant and two other persons namely Sukhendu Chandra Deb alias Sukhendu Deb, father-in-law of the victim and Satyajit Deb, elder brother-in-law of the victim.

Initially, one Sub Inspector of Police of that Police Station namely Mamtaaz Hasina (PW-13) was in charge of the investigation. She had partly investigated the matter and thereafter the charge of investigation was taken up by Shri Rajendra Datta, the Sub-Divisional Police Officer (PW-14). The police having completed the investigation, filed the charge sheet in the police case being East Agartala Women PS Case No. 57 of 2014 on 31.08.2014 under Sections 498A/307/304B of the IPC against the accused persons as aforementioned. Since the offences punishable under Section 307/304B of the IPC are exclusively triable by court of Sessions, the police papers were committed to the Court of Sessions Judge, West Tripura. From where, the case was transferred to the court of the Addl. Sessions Judge, Court No.1 for trial in accordance with law. The Addl. Sessions Judge, having perused the materials of the police report framed the charge separately against the accused persons under Sections 498A, 304B read with Section 34 of the IPC and alternatively the charge was framed under Section 302 read with Section 34 of the IPC. The accused persons including the appellant denied the charge by pleading their innocence and claimed to be tried.

[4] In order to substantiate the charge as many as 14 witnesses including the investigating officers were examined by the prosecution. That prosecution has introduced 14 documentary evidence (Exbts-1 to 14) including the post mortem examination report of the victim (Exbt-4), the post mortem examination report of victim-husband (Exbt-5), the dying declaration of the victim (Exbt-6) and the dying

declaration of the victim's husband (Exbt-13). After recording the prosecution's evidence, the accused persons were examined separately under section 313 of the CrPC. Each of them has reiterated their plea of innocence. Further, in order to rebut the prosecution evidence substantively, the four DWs were adduced. On appreciation of the evidence and on hearing the rival pleas, the trial judge returned the finding of conviction by the impugned judgment only against the appellant for committing offence punishable under section 302 of the IPC. The other two accused were acquitted from the charge. Even the appellant has also been acquitted from the charge, as stated under Section 498A and 304B of the IPC. Pursuant to the said finding of conviction the appellant has been sentenced to suffer rigorous imprisonment for life under Section 302 of the IPC and to pay fine of Rs.10,000 with default stipulation with observation that the period of detention, if any, as undergone during the investigation or trial shall be set off from the sentence of imprisonment.

[5] Mr. PK Biswas, learned senior counsel having appeared for the appellant has submitted that the state has preferred no appeal against the order of acquittal. Mr. Biswas, learned senior counsel has seriously contended that similar allegations had been made against the accused persons, but the trial judge has, without any cogent reason, convicted only the appellant. According to Mr. Biswas, learned senior counsel while acquitting the other two accused persons, the trial judge has relied the dying declaration of the victim (Exbt-C) to convict the

appellant. It would be apparent from the records that in culmination of the affair of the victim with Abhijit, she married him, the son of the appellant going against the will of her parents. The parents and other relatives had snapped all relation with her. In this perspective fact, Mr. Biswas, learned senior counsel has succinctly submitted that neither the complainant nor his family members had any knowledge about the occurrence etc. They were completely at dark what happened in the matrimonial home of their daughter. It has been asserted very firmly by the counsel for the appellant that PW-1 (the father of the victim) has falsely stated in the trial that after three months, the victim talked to him and informed him that she was being harassed by the parents in law and the elder brother-in-law on demand of sum of Rs.2,50,000/- along with furniture, washing machine etc and for non-fulfillment of such demand the victim faced harassment at her matrimonial house.

[6] PW-1 had informed his daughter that he did not have cash to give to her matrimonial home but he would give the furniture and other articles. Even the complainant had assured his daughter that he would visit her on 02.11.2013. But, he was not allowed to meet his daughter in the matrimonial home at Dhaleswar. The complainant has further stated that he was told that unless the demand was made, he would not be permitted to meet his daughter. In the cross-examination, he has categorically stated that his daughter (Pujaita) did not visit the house of his brother-in-law and the house of one Sujit Das after she eloped with Abhijit Deb. In the cross examination PW-1 had further

admitted that he did not make any complaint against the parents- in-law and elder brother-in-law of the victim, despite his knowledge of harassment. But when he was resisted to meet this daughter, he had informed that incident to his neighbours namely Badal Saha and others . He has quite strangely stated in the trial that he did not know the names of the 'neighbours'.

[7] Mr. Biswas, learned senior counsel having referred to the testimony of mother of the victim, Smt. Jayanti Pal (PW-2) has submitted that she did not corroborate the narrative of PW-1 as regards the resistance offered by the inmates of the victim in the matrimonial home. She has testified in the trial by stating as well that *"After her marriage I met my daughter first in the hospital when she was admitted in the hospital with burnt injury. According to Mr. Biswas, learned senior counsel both PWs 1 and 2 had narrated the similar occurrence. They admitted that they did not file any complaint to any authority. It has been also asserted by Mr. Biswas learned senior counsel, that there was no communication between two families. In the course of examination, PW-2 has stated that "When the mother-in-law of my daughter set her on fire the accused father-in-law and brother-in-law remained standing there". But such statement she had failed to find out from her statement as recorded under Section 161 of the CrPC.*

[8] According to Mr. Biswas, learned senior counsel that was a case of self-immolation, as the victim was unhappy in her matrimonial life. Even she had developed an extra-marital relation with one Abhijit

Saha. The evidence as led by the appellant at the trial was not appreciated along with the evidence by the prosecution. Such method of appreciation is not acceptable as the trial judge was bound to appreciate the both sets of evidence to find out the truth. He had no business to slight the evidence led by the defence. Hence, the finding of conviction is grossly perverse and cannot sustain the scrutiny of law.

[9] Mr. Biswas, learned senior counsel has criticized the way the dying declaration was recorded of the victim by Dr. Shyamsundar Saha, a medical officer of the GBP Hospital (PW-9) in presence of Dr. Ankit Sandhu (PW-10). According to him, the said dying declaration cannot be relied as there is no certificate separately that at the time of recording the purported dying declaration, the victim was truly conscious. Moreover, the dying declaration has not been recorded in the first person speech of the victim and as such what the exact words the victim had stated in course of making the said declaration are not available. Hence, it cannot be saved under Section 32(1) of the Evidence Act. This cannot be treated as the dying declaration. The compact disk (CD) and the pendrive (sandisk) as admitted in the evidence, according to Mr. Biswas, learned senior counsel has been admitted following the procedure as laid down in Section 65B of the Evidence Act and as such the said evidence can be accepted in law. But the trial judge has failed to direct due consideration of those evidentiary materials. That apart, DW-4 has candidly admitted that he had recorded the conversation of Abhijit Deb when he visited the GBP Hospital on

06.03.2014. He had recorded the statement of Abhijit Deb in the electronic form. Thereafter, he did make the following statement: *"I did not inform police about the fact that I recorded conversation of Abhijit in my mobile at hospital. I prepared only one CD and pendrive containing the conversation in electronic form."* but he has testified that he had informed the police in respect of recording the conversation of Abhijit Deb in the electronic form. Mr. Biswas, learned senior counsel has stated that the integrity of the said evidence cannot be questioned. Thus, the trial judge ought to have appreciated the electronic evidence without discarding the electronic evidence questioning the procedure that was followed in the recording the statement. That apart, Mr. Biswas, learned senior counsel has submitted that PW-10 had also contributed to question the said dying declaration as he had stated in the trial as follows:

"To Court: I cannot recollect exactly whether I was present at the time of recording of the dying declaration but I put my signature as witness in the said dying declaration of Pujaita Deb recorded by Dr. Shyam Sundar Saha. At this stage, the witness stated he could not follow properly the question and corrected himself and stated that he was present at the time of recording of dying declaration."

[10] On showing the dying declaration (Exbvt-6) Mr. Biswas, learned senior counsel has contended that from the evidence relating to the recording of the dying declaration, it is apparent that the dying declaration was not made by the victim in a sound state of mind. That apart, there remained a huge blank space between the end line of the dying declaration and the signature of the witness. It has created a

great doubt in respect of genuineness of the dying declaration (Exbt-6). Mr. Biswas, learned senior counsel has contended that since the purported dying declaration is not recorded verbatim and hence its content cannot be relied on for any purpose. Further, Mr. Biswas, learned senior counsel has referred the dying declaration of Abhijit Deb which was recorded by Deputy Collector and Magistrate (DCM). In the said dying declaration, Abhijit Deb had clearly stated that due to "family problem" his wife (the deceased) set fire on her person and sustained serious burn injuries. Abhijit Deb had tried to extinguish the fire and received serious injuries. Finally, Abhijit Deb died succumbing to those injuries. But the said dying declaration was not read appropriately in the evidence. It would be apparent that the statement recorded by DW-4 (Saikat Kar), a friend of Abhijit Deb is quite similar to the statement recorded by Deputy Collector and Magistrate, Agartala. Even on production of the electronic evidence, the trial judge questioned the role of DW-4. Even though, he did deposit the electronic materials (Exbt-MO1) in the trial. That apart, Mr. Biswas, learned senior counsel has submitted that the victim was more than fifty eight years of age when she was examined under Section 313 of the CrPC. Even the statements of the witnesses are hit by wide divergence in their narratives. In support of his submission, Mr. Biswas, learned senior counsel has placed his reliance on a few decisions of the apex court.

[11] Having relied on **Mayur Panabhai Shah vs. State of Gujarat** reported in **AIR 1983 SC 66**, Mr. Biswas, learned senior counsel has

stated that the apex court has derided the idea that the doctors are witness of truth. The apex court has specifically observed that even where a doctor has deposed in court, his evidence has got to be appreciated like the evidence of any other witnesses and there is no irrebutable presumption that a doctor is always a witness of truth. This statement has been made in respect of not recording of the dying declaration in verbatim but in the words of the doctor, PW-9.

[12] In respect of a dying declaration within the meaning of Section 32(1) Mr. Biswas, learned senior counsel has referred to **Vijay Pal vs. State (Government of NCT of Delhi)** reported in **(2015) 4 SCC 749** where the apex court has observed that the 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 communication is positive and definite. There cannot be any cavil over the proposition that the dying declaration cannot to be mechanically relied upon. Infact, it is the duty of the court to scrutinize the dying declaration to find out whether the same is voluntary, truthful and made in a conscious state of mind and further whether it is without any influence. It has been also observed that the deceased having sustained 99% burn injuries could not be deemed capable enough for the purpose of making dying declaration. In this regard, a decision of the apex court in **Mahavai Nagarvai Raval vs. State of Gurjarat** reported in **(1992) 4 SCC 69** has been restated. The apex court in **Vijay Pal** (supra) has relied on the decisions **Laxman vs. State of Maharashtra (2002) 6 SCC 710**,

Babulal vs. State of M.P.: (2003) 12 SCC 490 and Prakash Vs. State of M.P: (1992) 4 SCC 225.

[13] In **Vijay Pal**, having surveyed those decisions, the apex court has enunciated the law as under:

"18. In the case of Laxman v. State of Maharashtra: (2002) 6 SCC 710 the Constitution Bench has held thus:

"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."

19. The aforesaid judgment makes it absolutely clear that the 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 communication is positive and definite. There cannot be

any cavil over the proposition that a dying declaration cannot be mechanically relied upon. In fact, it is the duty of the Court to examine a dying declaration with studied scrutiny to find out whether the same is voluntary, truthful and made in a conscious state of mind and further it is without any influence.

20. At this juncture, we may quote a passage from Babulal v. State of M.P. : (2003) 12 SCC 490 wherein the value of dying declaration in evidence has been stated:-

"7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (*nemo moriturus praesumitur mentiri*). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations 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 mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

21. Dealing with the oral dying declaration, a two-Judge Bench in Prakash V. State of M.P.: (1992) 4 SCC 225 has stated thus:

"11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with."

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought

on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW-1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect."

[Emphasis added]

[14] Mr. Biswas, learned senior counsel has also relied on a decision of the apex court in **Sampat Babso Kale and Another vs. State of Maharashtra** reported in **(2019) 4 SCC 739** for purpose of showing how the apex court has appreciated the victim's "fit state of mind" to make the statement and also in respect of a general presumption as to the impact of higher degree of burns, particularly, the shock. It has been observed in **Sampat Babso Kale** (supra) as follows:

"14. In our view, though dying declarations stand proved, the issue is whether we can convict the accused only on the basis of these dying declarations. In a case of the present nature where the victim had 98% burns and the doctor has stated from the record that a painkiller was injected at 3.30 a.m. and the dying declaration had been recorded thereafter, there is a serious doubt whether the victim was in a fit state of mind to make the statement. She was suffering from 98% burns. She must have been in great agony and once a sedative had been injected, the possibility of her being in a state of delusion cannot be completely ruled out. It would also be pertinent to mention that the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way round.

15. No doubt, a dying declaration is an extremely important piece of evidence and where the Court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the Court can convict the accused only on the basis of a dying declaration. We need not refer to the entire law but it would be apposite to refer to the judgment of this Court in the case of *Sham Shankar Kankaria v. State of Maharashtra*: (2006) 13 SCC 165 held as follows:

"11. 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 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."

[Emphasis added]

16. In the present case, as we have already held above, there was some doubt as to whether the victim was in a fit state of mind to make the statement. No doubt, the doctor had stated that she was in a fit state of mind but he himself had, in his evidence, admitted that in the case of a victim with 98% burns, the shock may lead to delusion. Furthermore, in our view, the combined effect of the trauma with the administration of painkillers could lead to a case of possible delusion, and therefore, there is a need to look for corroborative evidence in the present case."

[15] Thereafter, Mr. Biswas, learned senior counsel for the appellant has further submitted that having not made any attempt to verify the call details report (CDR) between the deceased and her relatives, the investigating officer has held one important piece of evidence from the trial. Such investigation cannot be stated to be fair investigation. Mr. Biswas, learned senior counsel has submitted that the trial judge did not weigh the testimonies of DWs and their testimonies were relegated unceremoniously and no importance was given during the appreciation. Even though, DW-4 had produced the pendrive and the compact disk containing the video footage of the statement of

Abhijit Deb, the deceased husband of Pujaita who died in the same fire incident. But those were not taken into due consideration. Even though the certificate issued by DW-4 has been marked as Exbt-A and the CD and pendrive were marked collectively as Exbt-MO.A, those were appreciated in the gamut of evidence. In Exbt-A, it was even been stated that DW-4 the owner of mobile phone bearing SIM number 8974555495 and DW4 had taken the videography regarding the conversation held between DW-4 and Abhijit Deb in the GBP Hospital (the male surgical ward) Agartala on 04.03.2014. For preserving the video from get affected, the recorded clip was subsequently transferred to a pendrive (Sandisk) . In the certificate, DW-4 has further stated that the said video footage was recorded by him and the video footage and the voice are the original as recorded.

[16] Mr. Biswas, learned senior counsel in this regard has referred to the finding of the trial judge where it has been observed that for four years that video footage did not come to the light nor even the police was informed about the existence of the said video footage. It has been also observed that neither the mobile set nor the desktop through which the recording was made or transferred to the other electronic format were produced in the trial. In the circumstances, the possibility of editing and tampering with the recording cannot be brushed aside. Moreover, the dying declaration of Abhijit Deb, the deceased husband of Pujaita, was also recorded by Deputy Collector which was proved by PW-13 as Exbt-13. The said declaration of Abhijit

Deb has remained undisputed. From the dying declaration of Abhijit Deb (now deceased) it surfaces that his wife was set in fire, but there is nothing to indicate that the deceased herself set her on fire. Having said so, the trial judge has observed that the authenticity of the recorded clip cannot be approved by this court. On the contrary, the trial judge has in a serious note observed that *"the activities so done by DW-4 is unbecoming of prudent man considering the position as held by him."* DW-4 could not have done it in the discharge of his official duties. The trial judge has further suggested that he could have proposed a departmental action to be taken against DW-4.

[17] Mr. Biswas, learned senior counsel has contended that when the video footage has been proved by the person who took the footage on the mobile owned by him and in this respect, he had produced the certificate given under Section 65B (4) of Indian Evidence Act, the trial judge should have believed the integrity of the electronic evidence. Merely, on surmise the trial judge has questioned authenticity. Mr. Biswas, learned senior counsel has relied on a few decisions of the apex court on that aspect of admitting the electronic evidence. In **Tomaso Bruno and Another vs. State of Uttar Pradesh** reported in **(2015) 7 SCC 178**, where the apex court having referred to **Mohd. Ajmal Amir Kasab vs. State of Maharashtra** reported in **(2012) 9 SCC 1** and **State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC** had occasion to observe that Section 65A provides that the contents of electronic records may be admitted as evidence, if the criteria provided under Section 65B is

complied with. The computer generated electronic evidence in evidence are admissible in trial if proved in manner specified under Section 65B of the Evidence Act. Sub-Section 1 of Section 65B makes a paper print out of electronic record stored in optical or magnetic media produced by media admissible subject to fulfillment of the condition specified by sub-Section 2 of Section 65B. Secondary evidence of content of the document can be made admitted following the prescription under Section 65 of the Evidence Act. Thereafter, it has been observed in Tomaso Bruno (*supra*) as follows:

"25. The production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Mohammad Amir Kasab vs. State of Maharashtra, (2012) 9 SCC 1, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in the case of State (NCT of Delhi) vs. Navjot Sandhu : (2005) 11 SCC 600, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.

26. The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non- production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made."

[Emphasis added]

[18] Mr. Biswas, learned senior counsel, thereafter, has relied on another decision of the apex court in **State By Karnataka Lokayukta, Police Station vs. M.R. Hiremath**, reported in **(2019) 7 SCC 515**, where the apex court was examining the question when the certificate as

contemplated under Section 65B(4) of the Evidence Act is required to be produced. In **M.R. Hiremath** (supra) the apex court had occasion to lay down the law as follows:

"14. The provisions of Section 65B came up for interpretation before a three judge Bench of this Court in Anvar P.V. v P.K. Basheer 5. Interpreting the provision, this Court held :

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer."

15. Section 65B(4) is attracted in any proceedings where it is desired to give a statement in evidence by virtue of this section. Emphasising this facet of sub-section (4) the decision in Anvar holds that the requirement of producing a certificate arises when the electronic record is sought to be used as evidence. This is clarified in the following extract from the judgment:

"16....Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. The same view has been reiterated by a two judge Bench of this Court in Union of India and Others v CDR Ravindra V Desai : (2018) 16 SCC 273. The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu alias Amar v State of Haryana, in which it was held :

"32....The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the

CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency.

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.

[Emphasis added]

[19] To a query by this court Mr. Biswas, learned senior counsel ,however, has fairly submitted the production of certificate under Section 65B(4) was not the issue for discarding the electronic evidence. However, Mr. Biswas, learned senior counsel has also placed his reliance on **Shafhi Mohammad vs. State of Himachal Pradesh** reported in **(2018) 2 SCC 801** which decision of the apex court along with **Tamaso Bruno** (supra) have been declared by a larger bench of the apex court in **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others** (judgment dated 14.07.2020 delivered in Civil Appeal Nos.20825-20826 of 2017) as wholly incorrect exposition of law in the following terms:

"39. Quite apart from the fact the judgment in Shafhi Mohammad (supra) states the law incorrectly and is in the teeth of the judgment in Anwar P.V (supra), following the judgment in Tomaso Bruno (supra) which has been held to be per incuriam hereinabove the underlying reasoning of the difficulty of producing a certificate by a party who is not in possession of an electronic device is also wholly incorrect."

[20] According to Mr. Biswas, learned senior counsel the electronic evidence in the form of the pendrive and CD even though has been admitted in the evidence but the same has been discarded for a

strange reason that the said evidence was not brought to the light before it was produced by DW-4 in the trial. The content is in contrast to the dying declaration of the maker of the statement as copied in the CD and the pendrive. There is no contradiction but elaboration has been made in the statement recorded by DW-4.

[21] Mr. Ghosh, learned Addl. PP having appeared for the state has submitted that the finding of the trial judge cannot be faulted with, inasmuch as the foundation of such finding is laid on the dying declaration (Exbt-6) of the victim where the victim has categorically stated that the appellant who has referred as "She" "has burnt her with fire." From the report of the Tripura State Forensic Science Laboratory (SFSL), certified by the Deputy cum Assistant Examiner, Govt of Tripura, it is found that Exbt-CHEM/18/14 (C-1) containing skin and hair of the deceased Pujaita along with charred cloth pieces were positive for the presence of residue of 'hydrocarbon oil'.

[22] Mr. Ghosh, learned Addl. PP has further submitted that from the dying declaration (Exbt-13) made by Abhijit Deb husband of the deceased, the motive of the fire incidence has surfaced clearly. He has clearly stated that the ground as projected by the counsel for the appellant that the testimonies of DWs were not appreciated with due care would fall flat if the judgment is read a little carefully. The content of the dying declaration has been corroborated by PWs 1 and 2, the testimony of PW-3 that when she had asked the victim (Pujaita) in the hospital in presence of PWs 1, 2, 4 and 5 how she had received burn

injuries the deceased replied that *"Mashi at about 10.30 pm my mother-in-law poured kerosene on me in the kitchen, while my brother-in-law and father-in-law helped my mother-in-law. They set me on fire."*

According to Mr. Ghosh, learned Addl. PP, the testimonies of DWs are not natural and orchestrated. Particularly the testimony DW-4 is not trustworthy inasmuch as he had unauthorisedly recorded the purported declaration of Abhijit Deb. The said declaration of Abhijit Deb, since deceased, is tutored one and its integrity is highly doubtful for the reasons as provided by the trial judge.

[23] Mr. Ghosh, learned Addl. PP has submitted that PW-6 was present when the victim had stated to the police that her mother-in-law set her on fire. On the face of such overwhelming evidence, the finding of the trial judge that the appellant is guilty of murdering of Pujaita Deb cannot be disturbed. Mr. Ghosh, learned Addl. PP has further submitted that when the alternative charge has been proved to the hilt, the motive for torture is irrelevant inasmuch by direct evidence such as the dying declaration, the commission of murder by the appellant has been well established.

[24] In order to buttress his submission, Mr. Ghosh, learned Addl. PP has relied on **Vijay Pal** (supra) that the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased in such a condition could not have made a dying declaration to a witness there, there is no justification to discard the same. The following passages of **Vijay Pal** (supra) is gainfully

reproduced as the same was referred to by Mr. Ghosh, learned Additional Public Prosecutor:

"22. It is contended by the learned counsel for the appellant when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbai Raval v. State of Gujarat : (1992) 4 SCC 69 wherein it has been held a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial Court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of Madhya Pradesh v. Dal Singh and Others : (2013) 14 SCC 159 a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible."

[Emphasis added]

[25] Whether having a certificate as to the mental alert of the declarant, is *sin a qua non* for the credibility of the dying declaration, Mr. Ghosh, learned Addl. PP has placed his reliance on **Laxman** (supra) where it has been observed by the apex court having relied one previous decision in **Harjit Kaur vs. State of Punjab** reported in **(1999) 6 SCC 545**. In that report, Magistrate in his evidence had stated that it was ascertained from the doctor whether the dying person was in fit condition to make a statement or not. However, no endorsement to that effect was obtained. Merely because an endorsement was not made to the declaration, the dying declaration would not render suspicious in any manner. It has been observed in **Laxman** (supra) as follows:

"A dying declaration can be oral or in writing and in 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."

[Emphasis added]

[26] Mr. Ghosh, learned Addl. PP, thereafter, in order to repel the submission made by Mr. Biswas, learned senior counsel in respect of electronic evidence vis-à-vis the Exbt-MO-A and Exbt-MO-B has relied on a decision of the apex court in **Tukaram S. Dighole vs. Manikrao Shivaji Kokate** (judgment dated 05.02.2010 delivered in Civil Appeal No. 2928 of 2008) to contend that such evidence must be received with caution and for that, a strict scrutiny on the aspect of integrity of the evidence has to be observed by the trial judge. The relevant passages from **Tukaram S. Dighole** (supra) are extracted for purpose of reference hereunder:

"It is well settled that tape-records of speeches are "documents" as defined in Section 3 of the Evidence Act and stand on no different footing than photographs. (See: **Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra & Ors.**4). There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first hand information about an event can be gathered and in a given situation may prove

to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore, (1976) 2 SCC 17 such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasised that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence.

21. In *Yusufalli Esmail Nagree Vs. State of Maharashtra*⁵, this Court observed that since the tape-records are prone to tampering, the time, place and accuracy of the recording must be proved by a competent witness. It is necessary that such evidence must be received with caution. The Court must be satisfied, beyond reasonable doubt that the record has not been tampered with.

22. In *R. Vs. Maqsud Ali*, it was said that it would be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded are properly identified. Such evidence should always be regarded with (1967) 3 SCR 720 (1965) 2 ALL E.R. 464 some caution and assessed in the light of all the circumstances of each case.

23. In *Ziyouddin Burhanuddin Bukhari (supra)*, relying on *R. Vs. Maqsud Ali (supra)*, a Bench of three judges of this Court held that the tape-records of speeches were admissible in evidence on satisfying the following conditions:

"(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

[27] Mr. Ghosh, learned Addl. PP has stated that no sympathy deserves to be shown to the appellant. However, the finding of

conviction is well reasoned and based on sound analogy curved out of relevant laws. Therefore, no interference is called for.

[28] In order to appreciate the rival submissions, advanced by the counsel for the parties on the legality of the judgment of conviction, it would be apposite for us to revisit the evidence recorded in the trial.

[29] PW-1, Shri Chandan Kumar Pal filed the complaint (Exbt-1). In the trial, he has brought the episode of unlawful demand of Rs.2,50,000/-, furniture, washing machine, television etc. He was categorical in the trial that he had denied to provide to give the cash money for his inability but he had assured that he would provide the furniture and other articles. He has stated that on 02.11.2013 he had visited the matrimonial home of his daughter, Pujaita who was married to Abhijit Deb. She married Abhijit without consent of the family and for contracting marriage she had fled away from his house. When he visited the matrimonial home of her daughter on 02.11.2013, he was not allowed enter into their house by the parents-in-law and brother-in-law of his daughter. He has testified in the trial that those persons had clearly stated that unless the demand was fulfilled he would not be allowed to meet his daughter. He had wanted to settle the matter but failed. On 04.03.2014, wife of the said brother-in-law namely [Satyajit Deb] informed him over phone at about 12.30 in the mid night that his daughter had been admitted in the hospital. Having received such information, he himself, his wife and his brother namely Ratan Paul

went to GBP hospital and found his daughter admitted there with severe burn injuries. Thereafter, he made the following statement in the trial:

"On being asked she told me that her mother-in-law Kalyani Deb at about 10.30 pm poured kerosene on her body and set her on fire as I could not fulfill their demand of dowry i.e. the articles and cash amount. The husband of my daughter tried to save her, but he also sustained burn injury. He was also admitted in the hospital. At night at about 3.30 am I went to East Agartala Women P.S and submitted a written ejahar narrating the incident."

[30] He has also stated that on the following day of occurrence, his daughter succumbed to the injuries. However, before her death, her statement was recorded. He has denied all the suggestions extended by the defence in the course of cross-examination. However, he has admitted that the police officer did not seize his mobile in connection with the case. In the cross examination, he has further stated as follows:

"My daughter Pujaita Debnath did not visit the house of my brother-in-law and the house of Sujit Das after her elopement from my house till her death. We did not make any complaint to the police or to the women commission or in the Court of law when my daughter complained to me that she was being harassed for dowry and also that when accused persons did not allow me to meet my daughter in her matrimonial house by the accused persons. It is not a fact that the accused persons did never make any harassment to my daughter on demand of dowry or that I did not go to the house of the accused persons to meet my daughter or that the accused persons did not allow me to enter into their house to meet my daughter. When I was refused to meet my daughter and obstructed me to enter into the house of the accused persons, I narrated the same to the neighbour of the accused persons namely, Shri Badal Saha and some others, but I do not know their name."

[31] He has also denied that his daughter was having a relation with one Abhijit Saha, resident of College Tilla Agartala and his daughter approached her husband to get divorce. But later, he has

stated that he did not know if there was any discord between his daughter and her husband, Abhijit Deb due to relationship with Abhijit Saha. But he has denied that due to such discord in the matrimonial relation, his daughter was unhappy and she immolated her with kerosene inside her room after bolting the door. He has further denied that his daughter did not state to him that her mother-in-law set her on fire from backside after dousing kerosene on her body.

[32] PW-2, Smt. Jayanti Pal is the wife of PW-1 and mother of Pujaita (the deceased). She had also narrated that her daughter married Abhitjit Deb after fleeing away from their house and without their consent. She has stated that after three months, she along with her husband went to the house of husband of her daughter, but the accused persons namely Satyajit Deb, Sukhendu Deb and Kalyani Deb, brother-in-law and parents-in-law of her daughter, did not allow them to meet her daughter. They had demanded a sum of Rs.2,50,000/- and other articles from them as dowry. She has replicated in this regard what PW-1 has stated in the trial. On 04.03.2013 at night at about 12.30 in the mid night, they received a telephone call from the wife of Satyajit Deb (the brother-in-law of the deceased Pujaita) that her daughter had been admitted the GBP hospital. They had rushed to the GBP hospital and found her daughter admitted in that hospital with severe burn injuries all over her body. She has stated in the trial as follows:

"On being asked my daughter told us that her mother-in-law set her on fire and at that time parents in

law and brother-in-law Satyajit Deb remained standing there. When my daughter caught with fire her husband tried to save her and he himself sustained burn injury. On the very date at day time she succumbed to her injury in the hospital. Her husband also died. As my mental condition was not good I did not go to see the husband of my daughter. The dwelling house of the accused persons is a pacca building. The police came to the hospital to see my daughter in the early morning at about 04.30 am. After her marriage I met my daughter first in the hospital when she was admitted in the hospital with burn injury."

[33] In the cross-examination, she has given a short narrative how the relation of Abhijit with her daughter had developed but she has denied the suggestions in respect of the dowry demand or their going to meet her daughter after three months of the marriage. She has also denied that her daughter did not state to her that her mother-in-law set her on fire. Her claim in the trial is that she had stated to the investigating officer that when the mother-in-law of her daughter had set her on fire the accused father-in-law and brother-in-law remained passive. there. But when attention of PW2 was drawn to her previous statement, she has stated that the investigating officer did not record such statement. When she was specifically asked whether she did know that her daughter had developed relation with one Abhijit Saha, she has denied such knowledge. She has denied all the suggestions put to her from the defence including that her daughter committed suicide. However, she has admitted that her daughter's husband sustained injury while he tried to save her daughter.

[34] PW-3, Smt. Mina Debnath is an aunt of the deceased Pujaita. Having received the information that Pujaita had been admitted in the GBP hospital from her sister (PW-2), she rushed to the hospital

and found that Pujaita had been admitted there with serious burn injuries on her body. Thereafter she made the following statement which contained the declaration of dying Pujaita:

"Mashi, at about 10.30 pm my mother-in-law poured kerosene on me in the kitchen, while my brother-in-law and father in law helped my mother-in-law. They set me on fire."

[35] Even PW-3 has stated about the demand of dowry and harassment. In the cross-examination, she has categorically stated that after her marriage, Pujaita did not keep contact with them. Before her admission in the GBP Hospital, they did not get any information about her. They did not get any information directly from Pujaita. She has no personal knowledge about the demand and torture. She has heard the said episode from her sister (PW-2), but she has denied the suggestion that there was no demand of dowry and harassment. PW3 has stated categorically in the cross examination that she and her husband never visited the house of husband of Pujaita. PW-3 has failed to show that she made any statement to the investigating officer that Pujaita's brother-in-law, the father-in-law of Pujaita and her mother-in-law i.e Kalyani Deb did set her on fire. She has also not visited the injured husband of Pujaita, but she had categorically denied that Pujaita had any extra marital relation with any person or she had difference with her husband due to such relationship.

[36] PW-4, Shri Supriya Debnath is the maternal uncle of Pujaita. According to him, after Pujaita was being harassed by her parents-in-law for giving Rs.2,50,00/- and other articles. Pujaita had

requested her parents for giving the money and the articles. But PW-1 stated that he would give away the articles but not the money, as (PW1) did not have ability to pay. Sometime in the months of December 2013, they went to the house of Pujaita. At the time of entering the matrimonial home of Pujaita, they were restrained by the parents-in-law. They told them that unless the money and articles were not provided, they would not allow them to meet Pujaita. In the intervening night of 3rd and 4th March 2013 at about 12.30 pm, PW2 informed him that Pujaita had been admitted in the hospital on sustaining the burn injuries and he was asked to come to the hospital. Accordingly, PW-4 and his wife went to the hospital. On reaching hospital, they found Pujaita with severe burn injuries on her whole body and she was crying. Thereafter, PW4 made the following statement in the trial which has serious relevance in the case in hand:

"On being asked she told that at night at about 10.30 pm a quarrel was took place in between her and her mother-in-law with the issue of dowry and cooking and thereafter, her mother-in-law poured kerosene from behind her and set her on fire. Her father-in-law and brother-in-law observed the same standing nearby. She then ran away to her room and her husband extinguished the fire. Her husband also sustained burn injury."

[37] PW-4 has also stated the time when Pujaita succumbed to injuries. He was witness to the inquest procedure, carried out by the police officer and he signed over the inquest report as the witness. He has further stated that in course of investigation, when the police went to the matrimonial house of Pujaita, he had accompanied them. The police had sized some bed sheet and clothes by preparing seizure list

(Exbt-3) and he had put her signature on the said seizure list as the witness. He has admitted in the cross examination that he did not state to the police officer that Pujaita had requested him for impressing her parents to meet the demand. He has also admitted in the cross-examination that he did not state to the investigating officer that he had requested her parents. He had denied the suggestions put to him as regards that in respect of that she was refused to meet Pujaita but he admitted that they did not make any complaint to the police or any other authority. He has denied all the suggestions put to her and contrary to what she has stated in the examination in chief. He had denied the suggestion that Pujaita did not tell him anything that her mother-in-law put kerosene on her person and set her on fire when her father-in-law and brother-in-law observed passively from a close distance. He has, however, admitted that *"The burn clothes and bed sheet were seized from the bedroom of the husband and Pujaita. The bedroom of Pujaita was in a building of matrimonial house. There is a kitchen in the matrimonial house of the victim which is of tin shed."*

Later, he has stated that the kitchen of the accused persons is attached to the building. He has denied the suggestion as regards the extra marital relation.

[38] PW-5 Shri Ratan Paul is an uncle of Pujaita being the younger brother of PW-1. He has stated that Pujaita died after seven months of her marriage. On the day of occurrence at about 12.30 at the mid night, his elder brother (PW-1) got the information that Pujaita

had been admitted in the GBP Hospital with burn injuries. At the request of PW-1, he accompanied him to the hospital. On going to the hospital, they found Pujaita with serious burn injuries on her body and she was crying. In the hospital, Pujaita told them that her mother-in-law poured kerosene on her body in the kitchen and set her on fire with matchstick. At that time her brother-in-law and parents-in-law were standing nearby, but they did stop her. Her husband tried to save her and sustained burn injuries. On the following day, at about 1 pm, she had succumbed to the injuries. He has also stated that Pujaita had fled to marry Abhijit Deb and after that, they did not keep any communication with her. They meet for the first time in the hospital when she was admitted with burn injuries. He had made the following statement in the trial:

"When we talked with Pujaita in the hospital, at that time no medical staff or police were present there. I stated to the police that when Pujaita narrated the incident at that time police, nurse and medical officer were present."

[39] PW-5 has made in the trial a very significant statement that after their reaching the hospital, about after half an hour, Pujaita gave a statement about the incident to them in presence of doctor, nurse, and the police personnel. He has denied the suggestion she in order to commit suicide set herself on fire in the bedroom and her husband tried to save her and sustained burn injuries. He has further stated in the trial that there had been quarrel between the Pujaita [the victim] and her mother-in-law over the issue of cooking. In the trial, he has stated that Pujaita did not tell them that her mother-in-law poured kerosene

on her body in the kitchen and set her on fire with a matchstick or that at that time, her brother-in-law and parents-in-law were standing nearby.

[40] PW-6 Smt. Sunika Roy Barman [a staff nurse of GBP hospital] was on night duty when Pujaita was admitted in the said hospital. According to her, the victim was admitted with "cent percent burn injury. At about 04/4.30 am the police personnel came there and examined the said injured patient and at that time she was present there. The victim had stated to the police that her mother-in-law set her on fire. She has stated in the cross-examination that the police did not examine her in connection with the said case. She has stated that the male surgical ward and the female surgical ward are situated side by side. The victim's husband was admitted in the male surgical ward whereas Pujaita was admitted in the female surgical ward. That she had come to know from the bed-head tickets. In the cross examination, she had made the following statement:

"I found in the hospital the members of the in laws of the victim as well as her parents house. At time of taking statement the victim police had taken her signature on the statement of the victim. She denied that Pujaita did not disclose to the police in front of her that her mother-in-law set her on fire."

[41] PW-7, Dr. Jayanta Sankar Chakraborty carried out the post mortem examination of the decease Pujaita Pal (Deb). Her body was identified by one Smt. Swapna Debbarma, Women Constable. He found during the examination, he had found the rigor mortis was developing . The post mortem lividity could not be appreciated due to the extensive

burn injuries. The right ankle was bandaged and venesection was done near right ankle. Tip of right thumb was stained with ink. After examination, the following external injuries were found on the body.

"Epidermal and dermo-epidermal burn injury was present all over the body sparing some areas of scalp (about 3% of body surface area), left axilia (about 0.5% of body surface area), palmar aspect of fingers of right hand (about 0.5% of body surface area), perineum about 1% of body surface area). There was singeing of scalp hair over vertex, right sided axillary hair, both sides eye brows and eyelashes. Blackening areas of redness, peeling of skin were present on different areas of burn injury.

Above mentioned burn injuries were ante-mortem in nature and was due to flame burn. About 95% of body surface area was affected by that burn injury. Age of injury was about 1 day at the time of death.

On completion of the said post mortem examination we opined that cause of death was shock and due to burn injury. About 95% of body surface area was affected by that burn injury."

[42] PW7 has further stated that the post mortem report (Exbt-4) was prepared by him and signed both by him and Dr. Pranab Choudhury who was the other member of the post-mortem examination. He has stated that on completion of the examination, the cause of death was identified as shock and septicemia due to burn injuries. In the cross-examination, he has admitted the degree of burn injury has not been mentioned in the post mortem examination report.

[43] PW-8, Shri Tapan Debnath wrote the complaint for PW-1 on his dictation. He identified the complaint (Exbt-1)

[44] PW-9, Dr. Shyam Sundar Saha is a vital witness to the prosecution case. He had examined Pujaita and on verbal instruction of the unit in-charge, he had recorded the dying declaration of the injured patient, Pujaita Deb at about 4.45 am in presence of Dr. Ankit Sandho

(PW-10), a sister in-charge, namely Smt. Gita Chakraborty (PW12). After recording the declaration, he obtained the thumb impression of the injured patient. He identified the dying declaration (Exbt-6). At the time of recording her statement, Pujaita was well oriented and conscious to give such statement. In the cross-examination, he has stated that he had confirmed the identification from the bed head ticket. He has admitted that in the course of recording the statement [the dying declaration] in presence of Smt. Gita Chakraborty (PW-12) he did not mention in the dying declaration Smt. Gita Chakraborty (PW-12) had as well identified the victim. He has denied the suggestion that the unit in-charge Dr. Sunil Ghosh did not instruct him to record the dying declaration. He has admitted in the cross examination as follows:

"It is true that a certificate regarding the physical and mental condition of the patient is to be given before recording of dying declaration. It is also true that in the said certificate it is also to be mentioned about the ability of the patient for giving statement. The patient was admitted on 04.03.14 at 12 am. at night and I recorded the dying declaration on the following morning at 10.45 am. Abhijit Deb husband of victim Pujaita Deb was also admitted in the Male surgical ward with serious burn injury. I was one of the attending doctor of said Abhijit Deb. Abhijit Deb also died in the hospital out of burn injury. I did not request my authority for giving permission to record the dying declaration of Abhijit Deb. I did not give any specific certificate that the thumb impression of victim Pujaita was taken by me. I stated to the IO in my statement that victim sustained 100% burn injury. I stated to the IO in my statement that victim sustained 100% burn injury on consultation with the bed head ticket of victim Pujaita. It is not a fact that I took the thumb of any un-identified person in a blank paper and subsequently prepared the dying declaration in the name of Pujaita Deb. The blank space in between the declaration written by me and the thumb impression of deceased was kept for taking signature of the witnesses and also the official seal. I cannot say if the dying declaration is mandatory to be recorded in question and answer part. I did not record the dying declaration in question form. It is a practice in the hospital to give

information to the OC GBP police outpost when any patient admitted with burn injury. In this case also, the information regarding admission of Pujaita with burn injury was given to the GBTOP."

[45] He has further admitted to the query of the court that he did not record blood pressure and pulse beat of the victim when he recorded the dying declaration. He has denied the suggestion that he did record the dying declaration of his own as per request of the police and relatives of the deceased.

[46] PW-10, Dr. Ankit Sandhu was present at the time of recording the dying declaration by Dr. Shyam Sundar Saha on 04.03.2014 at about 10.45 am in the FS1 Ward of the said hospital. But his presence has come under shadow inasmuch to a query to the court he has stated that he cannot exactly recall whether he was present at the time of recording of the dying declaration, but he put his signature as the witness in the said dying declaration of Pujaita Deb as recorded by Dr. Shyam Sundar Saha. Thereafter, he changed his statement by stating that he could not follow the question properly. He had corrected his answer by stating that he was present at the time of recording the dying declaration. He identified the statement (Exbt-6). In the cross-examination again he stated that *"though I was present in the ward but I did not hear what was stated by the victim said to Dr. Shyam Sundar Saha"*.

[47] PW-11 was posted as Deputy Collector cum Assistant Chemical Examiner of SFSL on 19.03.2014. On that day, he received

one sealed packet with two brown-paper envelopes and one poly packet [marked later on Exbts A, B, C]. Exbt-A was containing 0.62 gm of hair and other substances, stated to be skin. Exbt-B contained a burn bed sheet and one red colour bra, whereas Exbt-C did contain skin and hair in two packets, one contained charred cloth pieces and the other contained some hair. Those were examined and subsequently remarked. The examination was carried out from 20.03.2014 to 25.03.2014, Exbt-C1 was found positive of residues of hydrocarbon oil. Exbt- A, B, C2 were negative for residues of hydrocarbon oil. Exbt A and C2 had exhausted during the chemical examination. PW-11 identified the examination report (Exbt-7).

[48] In the cross examination he had stated that as per his reports hair, skin, bed sheet and bra and some hair were negative for hydrocarbon oil. He has stated that he did not mention the procedure of preservation of exhibits during the examination in the laboratory of SFSL. It is not possible for him to identify the origin of charred clothes under Exbt C1. He has admitted that in the sealed Exbts A, B and C were not bearing signatures of the witnesses in whose presence those articles were seized. In the sealed packet of Exbt-C, there was no mention about the charred pieces of cloths.

[49] PW-12, Smt. Gita Chakraborty was the staff nurse of the GBP hospital who has stated in the trial that Dr. Shyam Sundar Saha (PW-9) had recorded the dying declaration of Pujaita Deb in her presence. In her statement Pujaita had stated that "*Her mother-in-law*

was responsible for the incident to her." Dr. Ankit Sandhu of the said hospital was also present when her statement was recorded by PW-9. After recording the statement of Pujaita, her thumb impression was taken by Dr. Shyam Sundar Saha himself. Pujaita was not in a position to put her signature. He identified her signature on the dying declaration (Exbt-6). Her cross examination was of vital importance and the relevant part is therefore reproduced hereunder:

"I have in the service for about 33 years. At present I am posted as AGMC and GBP hospital attached with the female surgical ward. The patient of burn injury admitted in the ward for the patient of burn injury and kept separately from the general patient to protect from infection. In the said ward the patient party is not allowed to visit the patient to save the patient from infection. The patient of burn injury is kept covered by mosquito net. Nobody including the police officer is allowed to visit the patient without permission of the medical officer. In the bed head ticket of the patient the details of treatment including physical and mental condition of the patient are recorded by the medical officer on duty. I cannot say the exact physical condition of the patient without perusal of the bed head ticket.

To Court: But I can say that the patient namely Pujaita Deb was in a position to speak when her statement was recorded."

[Emphasis added]

[50] She (PW12) has denied the suggestions put to her, contrary to what she has stated in the examination in chief. In the cross-examination, she had denied that Pujaita was not in a position to put her thumb impression and thereafter she made the statement that it is true that after the statement was recorded the medical officer (PW-9) and herself (PW-12) put their respective signature and at the bottom of the statement, the thumb impression of the victim was obtained. There remained a black space between thumb impression of Pujaita. She has confirmed that the dying declaration recorded by Shyam Sundar Saha

(PW-9) and the victim was mentally fit. She has also admitted that Sonika was also in Female Surgical ward duty with her. She has also stated that she had put her signature on the statement on the request of Dr. Shyam Sundar Saha (PW-9).

[51] PW-13 Mst. Mamta Hasina had conducted the first part of the investigation. At that time, she was holding the post of Women Sub-Inspector at East Agartala Women PS. After registration, the case was endorsed to her by the officer-in-charge of the police station. Immediately, she visited GBP Hospital and recorded the statement of victim, Pujaita Pal and simultaneously made a prayer for recording her dying declaration. She had recorded the statements of few witnesses namely Jayanta Paul (PW-2), Mina Debnath (PW-3), Sonika Roy (PW-6), Ratan Paul (PW-5) under Section 161 of the CrPC. on the very day i.e. 04.03.2014. She had arrested Kalyani Deb, Sushen Deb alias Sukhendu Deb and Satyajit Deb. Thereafter, she had visited the place of occurrence and prepared the handsketch map with separate index (Exbts-9 and 9/1). She caused seizure of bed sheets and certain burn cloths by preparing the seizure list (Exbt-3). She had examined two other witnesses namely Supriya Debnath (PW-4) and Rakesh Rai [who was not examined in the trial]. She had arranged for the post mortem examination of the body of the deceased. Before that, she had completed the inquest procedure. The inquest report (Exbt-2) has been admitted at her instance. During the course of post mortem, she collected the burn skin as sample for forensic examination. That sample

was seized by the seizure list (Exbt-10). She had also examined two other witnesses namely Kajal Das and Mukul Choudhury. Those witnesses were not examined by the prosecution. On 07.03.2014, as she was asked to hand docket to SDPO, Sadar, she had handed over the investigation record to Shri Rajendra Datta, SDPO (PW-14).

[52] In the cross-examination, she has stated that at 03.40 am at night, she had examined the complainant (PW-1) and the other persons accompanied him. She visited GBP Hospital on 04.05 am. On 04.03.2014, she found the victim was able to speak. At that time, she made requisition to record dying declaration as the condition of the victim was serious and according to her estimate, she might die at any point. She has admitted that there is no entry in the CD about the presence of the doctor and nurse at FS-II at that time. She has candidly admitted that she was completely unaware that the husband of Pujaita was also admitted in that hospital. As such, she did not take any information about his treatment. But she has mentioned that the victim had stated to her that her husband got burn injury while trying to extinguish fire on her person. Even the witness namely Supriya Debnath PW-4 also revealed the same fact. She has stated that she did not investigate how the husband got burn injuries and what was his condition. She was also unaware during her investigation that Abhijit Deb, husband of the victim had died at the hospital. She has further stated that she did collect bed head ticket of Pujaita and the CDR of the mobile phone in respect of the discussion of Pujaita and her parents.

She has admitted that in her hand sketch map A,B,C and D all are shown as POs. She has admitted that she had not seized anything from kitchen. She has not seized the container from POs. She has not arranged for taking photographs of POs. Even she has not examined any neighbouring people during her term of investigation. She has admitted that she did not examine Sunil Ghosh, in charge of the ward where the victim was treated. She has admitted that she did not take any signature of the seizure of witness on the sealed items after seizure. After seizure, the sample of skin etc, in that sealed packet was kept in the police Malkhana, but there is no entry in the case diary.

[53] On her prayer on 06.03.2014, the CJM Agartala granted permission to add section 304B of the IPC. She has admitted that no police officer below the rank Deputy SP competent to investigate an offence punishable under Section 304B of the IPC. She denied the suggestions that Pujaita did not tell her that between 10/10.30 pm, she was cooking food in the kitchen then her mother-in-law poured k oil on her back and set her on fire. Then Pujaita, in order to save her life, embraced her husband and as a result, her husband also got burn injury. At that time her brother-in-law and father-in-law of Pujaita were present there but they did not try to extinguish fire. She has also denied that the victim did not tell her that *after marriage, the brother-in-law and father-in-law have not accepted her and she was tortured for money*. She has denied all other suggestion particularly the suggestion relating to that Pujaita did set her on fire in her bed room by closing the

door from inside in presence of her husband. The court had allowed re-cross-examination by the defence on 02.11.2017. At the re-cross-examination, she made the following statement.

"Witness Smt. Jayanti Paul (PW2) in her previous statement did not disclose that when the mother-in-law of her daughter set her on fire the father-in-law and brother-in-law remain standing there.

It was not specifically stated by witness Smt. Mina Debnath (PW3) in her previous statement that brother-in-law and father-in-law of Pujaita helped her mother-in-law i.e. Kalyani Deb to set her on fire."

[54] PW-14 Rajendra Datta had taken over the charge of investigation when Section 304B of the IPC was added. He had collected the post mortem examination report and requested the Medical Superintendent of AGMC and GBP Hospital to get the dying declaration of the deceased. He had seized the certificate of registration of marriage of Abhijit Deb and Pujaita Pal and on 29.9.2014 he had collected the dying declaration of Pujaita and her bed head ticket. He had examined Badal Shil. Badal Shil was not examined by the prosecution but was examined by the defence as DW-1. He had also examined Shri Ankur Debbamra who was not examined by the prosecution but was examined by the defence as DW3. He had also collected the dying declaration of Abhijit, husband of the victim, and his bed head ticket on 25.04.2014. He had collected the SFSL report. Thereafter, he had been satisfied to file the police report under Section 498A 306, 326, 304B against the accused persons including the appellant. He has admitted that he did not examine Gita Chakraborty and Dr. Ankit Sandhu even though they witnessed the recording of the dying declaration of the deceased. Even,

he did not examine the in-charge of the ward where the victim (Pujaita Deb) was admitted. He had, at his instance, in the course of investigation collected the dying declaration of Abhijit Deb which has been admitted as Exbt-13. The said dying declaration was recorded by one Deputy Collector and Magistrate, Sadar, West Tripura.

[55] On 04.03.2014 DCM namely TakhiRai Debbarma had recorded the said dying declaration at GBP Hospital. The sdadi DCM was not examined in the trial, but the statement as recorded by him has been admitted in the trial as EXbt-13 without opposition at the instance of PW 14. No statement of Abhijit Deb was recorded under Section 161 of the CrPC and the reason has been disclosed by PW 13. PW-14 has admitted that he did not collect the CDR of the mobile phones in order to verify whether there was any call between the victim, Pujaita and her relatives prior to the incident. He has further admitted that he did not seize any container of kerosene oil and inflammable substance from the kitchen. He has denied the suggestion from the defence that Abhijit Deb in his statement to the investigation officer had stated that owing to quarrel between him and his wife the victim set her on fire in the bedroom and both of them got burn injuries. However, PW-14 has denied that he had suppressed that statement as stated to have been recorded under Section 161 of the CrPC. He has also stated in the cross-examination that he examined Badal Shil, Papri Deb and Ankur Debbamra who were close door neighbours of Abhijit Deb. He has submitted that he did not examine the scribe. He has also admitted that

he did not take step to take photographs of the places of occurrence. Even he did not seize any duty roster of FS units No.1 and 2 of AGMC and GBP Hospital for the period from 03.03.2014 to 07.03.2014. He has denied the suggestions as made contrary to the statements he made assertively in the examination-in-chief.

[56] As stated, earlier after recording the prosecution witness when the accused persons were examined under Section 313 of the CRPC they denied their involvement. That apart, the appellant has stated categorically the case as brought against them is grossly untrue. The appellant has categorically stated that she was arrested in the hospital.

[57] The court has noted that the statement of Pujaita Paul has been admitted in the evidence as Exbt-14 being proved by PW-13. The content of the said statement has been proved by PW-13. Since that statement (Exbt-14) is the earliest statement made by the victim, the part is being reproduced for purpose of reference:

"I was working in the kitchen, at that my mother-in-law doused onto me from back and set fire upon me. I immediately raised hue and cry in fire burnt condition [translated]".

She has also stated to PW 13 that she embraced her husband.

[58] As stated earlier four witnesses were examined by the defence. Out of them three witnesses namely Badal Shil, Papri Deb and Ankur Debbarma were examined by PWs-13 and 14 but they were not adduced at the trial by the prosecution. The defence has examined

another witness namely Saikar Kar as DW-4 as he had claimed that he recorded the statement of Abhijit Deb by his mobile phone.

[59] DW-1 Shri Badal Shil is living in the neighbourhood of the house of Abhijit Deb. He has stated in the trial that Satyajit Deb, Sukhendu Deb (the two accused persons who have been acquitted by the trial judge) and Smt. Kalyani Deb are his adjacent neighbours. Thereafter, he has stated that on the alleged night of incidence, wife of Satyajit, Papri (DW-2) called him in their house. It was 11 pm. Thereafter, he made the following statement:

""I rushed to their house and found that smoke was coming out from the building where Abhijit was residing. All other family members were present but the door of that room was closed from inside. We break open the door and entered into the room. I found that wife of Abhijit was lying on the floor in burnt condition. Abhijit was also lying on the cot with burn injuries. There was huge smoke in the room. We called ambulance. However, both of them were shifted to the hospital by their personal vehicle. One drive cum friend of Abhijit Deb was called on telephone. Driver was the son of one Amaresh Debbarma. Abhijit and his wife was living in semi pucca building having tin roof. As they are my close neighbour I often visit their house. They were happy in their life. They were living in a joint mess. In this case I got summon for two times, but my evidence was not taken. Today I have also appeared before the court on receiving summons from the court. After the incident both Abhijit and his wife died at GBP hospital, Agartala. After the incident I was examined by the police of East Agartala P.S."

He has admitted in the cross-examination that he had cordial relation with the family. No further question was asked to him.

[60] DW-2, Smt Papri Deb is the wife of one of the accused persons namely Satyajit Deb who had been acquitted from the charge after the trial. She has stated that after her marriage she has been living in joint family with her parents-in-law and brother-in-law along

with her husband. She has stated in the trial that Abhijit got married to Pujaita in the year 2013 out of their love affairs. There was a reception and they were accepted in their family. Their marriage was duly registered. Initially, the parents and relatives of Pujaita did not accept their marriage. After the social ceremony was over, they had also accepted their marriage. For about six months they lived their marital life. She has also stated in the trial that there are two dwelling huts in the house. One is building and another is half wall with tin-roofing. In the building, Abhijit and his wife were residing and in the semi pucca building, she (DW-2) and her husband used to live in. In another room their parents-in-law were living. Thereafter, she made the following statement:

"Incident took place on the night of 3rd March, 2014. It was around 11 pm. At about 10.30 pm after having our dinner all of us went on sleep in our respective dwelling huts. Suddenly, at about 11 pm on hearing cry from the room of my brother-in-law the door was closed from inside. I called Badal uncle, the close door neighbour. Then on knocking the door it was opened by my brother-in-law Abhijit. We found both Abhijit and his wife in burnt conditions. Immediately we brought out both of them from their room. Subsequently, a driver namely Aunkur Debbarma was called. As the Ambulance was getting late both of them were shifted to GBP hospital by our vehicle. Vehicle was drove by Aunkur Debbarma. Aunkur Debbarma came by his motor bike being informed by my husband. Initially my husband accompanied them to the hospital. After a while my parents in law also visited GBP hospital. I did not visit the hospital as I have a small child. I informed about the incident to the mother of Pujayita at Ranirbazar. On the following day i.e. on 4th March, Pujayita died and on 7th March Abhijit also died in GBP hospital, Agartala. During their married life I never noticed any dispute in between n the husband and wife as well as Pujayita with my parents in law as well. All of us were living peacefully. At the time of incident I had already passed about seven years of my married life. During that period I never felt any mental disturbance of family dispute either from my parents in law or my brother in law. During six months of the married life of

Pujayita, there was no dispute in between the husband and wife as well as parents in law. I had cordial relation with Pujayita and used to share everything of our life to each other. During that period Pujayita never expressed her unhappiness to me. Earlier I had received summons from the court and duly appeared but my evidence was not taken. Today also I have appeared on getting summons from the court. After the incident police visited in 3-4 occasions in our house and I was examined by the police. I also stated to the police what I have deposed today before the court."

[61] In the cross examination, DW-2 has clearly stated that the kitchen is attached with their room where she and her husband used to reside along with her parents in law. Their room was used as dining place. She has also stated that she married her husband, who was accused in that case, out of the love affair but the marriage was arranged socially as agreed by both the families. Her husband is the owner of a vehicle (Indica). There was no driver of the vehicle. Her husband and her brother-in-law (Abhijit) used to drive the vehicle time to time. Her husband has a driving licence. To a question put to her, she has replied in the trial that the house of Ankur Debbarma is situated about 3 km away from their house. Thereafter, she made the following statement in the course of the cross examination:

"We have good family relation with Badal uncle. We called all the nieghbouring people after the incident but only Badal uncle came. Pujayita did not visit in her parents house in 'Phirajatra' (a ceremony of marriage) with her husband. After marriage at least for two times Pujayita visited in her parents house but did not stay there. But before the incident she once visited her parents house and stayed there for about fifteen days. Seven days later, after coming back from her parents house, the incident happened. I never saw Badal uncle to drive the vehicle."

The above statement has not been corroborated by PWs 1 and 2. She has categorically denied that she has made the statement with a view to save the accused persons by concealing the real facts.

[62] DW-3 Shri Ankur Debbarma has stated that on 03.03.2014 at night around 11 pm, Satyajit Deb (husband of DW-2) called him over phone and informed about a fire incident in their house. Within ten minutes, he reached the house of Abhijit Deb and found Abhijit Deb and Pujaita in burnt condition at Varanda as the ambulance was getting late, by their vehicle Abjhijit and Pujaita were shifted to GBP hospital . DW-3 stated that he drove the vehicle. He reached to the house of Abhijit Deb by riding his bike. He has categorically stated *he found both injured in varanda of the building room*. On the following day, on 04.03.2014 he had informed the fact to Saikat, a friend of Satyajit Deb. In the cross-examination, as carried out by the prosecution DW-3 has stated that he had good relation with Satyajit Deb and Saikat Kar DW4. He was informed by Satyajit Deb that there was a fire incident in his house. Around 2 am at night, DW3 returned from hospital and went to the house of Satyajit Deb from there for taking his vehicle he reached home. He has admitted that his house is situated 2 km from the house of Satyajit Deb. He failed to recollect whether he had made any statement to the police or not, he has denied the suggestion that he had concealed the fact. But at the fag end DW3 has clarified that he was examined by the police but he could not recollect when he was examined and in what matter.

[63] DW-4 Saikat Kar is a family friend of one of the accused persons, namely Satyajit Deb. He has stated in the trial on 04.03.2014 that Ankur Debbarma came to him and informed that Abhijit Deb and his wife received serious burn injuries in a fire incident and both of them were under treatment at the GBP Hospital. At about 7 pm on the following day of the incident, he went to GBP Hospital. DW-3 accompanied him. Then he had inquired about parents of Abhijit and elder brother Satyajit Deb. He came to know that all of them were arrested by the police. When he reached the hospital, Pujaita had already expired. He met Abhijit and had recorded his conversation. It appeared to him that the he was in the brink of death. Thereafter, DW-4 has made the following statement in the trial:

"Then recorded his conversation in my mobile bearing No.8974555495 (Samsung). Abhijit told me that on 3.3.14 night his wife Pujayita herself set her ablaze and while trying to save her Abhijit also got burns injury. He also told me that incident happened in their bed room. Abhijit also told me that on that night there was quarrel in between husband and wife on the issue of another person namely 'Abhijit. Ultimately his wife being angered set herself by fire.

Subsequently, to protect the conversation of Abhijit I converted the recording in my Desk top computer and then to a pen-drive and in a CD.

I have experience to convert an electronic record from one device to another device and I was maintaining that computer in my ordinary course of business of personal matters. In this respect I have submitted a certificate. I also signed in the certificate. This is the certificate having declaration that contents of mobile recording/videography was transferred to my pen drive and thereafter into a CD by correctly demonstrating the real videography and voice. The certificate submitted by the defence as issued by this witness is marked as Exbt.A. Signature of witness issuing certificate is marked as Exbt.A/1.

I have brought the CD along with Pen Drive today in the court.

I am able to display the contents of electronics record by dint of projector in a screen."

[64] With the permission of the court, he displayed the content of CD by the projector and identified the voice of Abhijit in displayed CD. At his instance, the CD and pen drive were marked as MO-A and MO-B respectively. In the cross-examination, as carried out by the prosecution, he has disclosed his identity as PA to the Hon'ble Judges in the High Court of Tripura. He had also worked as stenographer in the Sub-Ordinate Courts. He has stated in the cross-examination that Satyajit Deb is his family friend. He did know Ankur Debbama through Satyajit Deb. He had heard of the fire incident only from DW-3. In the cross examination, he has further elaborated about his meeting with Abhijit Deb in the second floor at "MS ward no.1" [probably]. He has stated in the cross examination as under:

"Abhijit was admitted in 2nd Floor at MS ward No.1 (probably). First of all I met with Abhijit. I found 2-3 friends of Ankur. No doctor or nurses were present beside his bed. I recorded the conversation of Abhijit in phone memory of my mobile. I have not deposited the said mobile phone in the court. On 07.03.2014 Abhijit died. After the death of Abhijit as well as his wife did not visit the house of Abhijit. On 06.03.14 evening for the second time I visited GBP hospital, to see Abhijit. In my second visit also I did not find police. I did not inform police about the fact that I recorded conversation of Abhijit in mobile at Hospital. I prepared only one CD and one pen drive containing the conversation in electronic form. After Satyajit and his parents got bail from court, I informed them about the fact that I recorded the conversation of Abhijit in electronic form of my mobile. I have not submitted any experience certificate about transforming of electronic record from one device to another device. In my certificate it was no mentioned in my certificate that it was typed written by me. The issuing date of certificate.

Since 4.03.14 the mobile, computer, CD and Pen drive were lying in my custody."

[65] In sequel, he has categorically stated that it is true that certain parts of the electronic record as displayed was not audible clearly, but he had denied that the voice content of electronic record was not voice of Abhijit Deb. He has also denied in order to save Satyajit [a family friend of his], he took that adventure not approved by law. DW-4 has denied for that reason that he has not produced the device by which recording was made. He has denied the suggestion that the electronic record had been re-calibrated by manipulating the voice. DW-4 did not produce the electronic device by which the recording was made. As such, integrity of the electronic comes under serious suspicion.

[66] The fundamental ground that has been taken in this appeal is that the dying declaration of the victim was recorded without ascertaining her deposing capacity. It has been also stated that the dying declaration has not been recorded in verbatim meaning in the language of the victim. Relying on such dying declaration, no conviction can be returned. That apart, the dying declaration of husband of the victim as recorded by Deputy Collector and Magistrate was unduly slighted at the time appreciation of the evidence. If the dying declaration of the husband was appreciated, it would have surfaced that his wife (the victim) did set fire on her person.

[67] That apart, the said dying declaration [of the husband] has been introduced by PW14, the investigating officer. In addition, another

evidence was totally ignored by the trial court is the statement as recorded by DW4 in his mobile. The dying declaration of husband of the victim and the said statement as recorded by DW4 are in the same tune. Hence, it has been asserted that DW4 should not have been disbelieved. Finally, it has been contended that all the accused persons, including the appellant, has been acquitted from the charge under Section 498A of the IPC and also from the charge of the offence punishable under Section 304B of the IPC. It is the prosecution's case which has scattered, how and where the appellant set fire on the person of the victim inasmuch as at the time of occurrence, the appellant was 57 years of age.

[68] Mr. Biswas, learned counsel has made an elaborate submission. But we would confine our appreciation on analogy of convicting the appellant under Section 302 of the IPC, as there is no appeal by the state or any competent person in view of Proviso to Section 372 of the CrPC against the order of acquittal.

[69] The evidence of PWs 1, 2, 4 and 5 are cardinal for various reasons. According to them, the deceased [Pujaita] stated that about 10.30 pm, her mother-in-law (the appellant) put kerosene on her in the kitchen [the sites of crime] and set her on fire while brother-in-law and father-in-law helped mother-in-law in setting fire. PW 2 has stated that there was monetary demand of Rs.2,50,000/-. Though they have admitted that the victim, after her marriage, did not visit their home and they also did not come to meet her except on one occasion when

they were not allowed to meet their daughter. But they have not taken that denial to a further action which makes that statement quite strange and unreliable. PW2, in particular, propagated that story at around 10.30 pm that a quarrel broke out between the victim and the mother-in-law over the issue of dowry and cooking. Thereafter, her mother-in-law poured kerosene from behind and set her on fire. The deposition of DW2 has been noted before.

[70] Whether the kerosene was poured on the person of the victim in the kitchen or not, it could have been ascertained by the investigating officer inasmuch as the information was lodged in the police station at about 03.50 hours at night, meaning within four hours of the occurrence and the first investigating officer (PW 13) visited the place of occurrence and arrested all the accused person. She had prepared the hand sketch map (Exbt-9). According to the investigating officer, there are two places of occurrence, one at kitchen marked by the letter 'A' and another is marked by the letter 'B'. Even the investigation officer has stated that when she examined the victim in the hospital, the victim told her that she was cooking food in the kitchen, then her mother-in-law doused kerosene upon her from backside and set her on fire. The victim cried out and ran towards the bedroom and there she embraced her husband and as a result her husband also got the burn injuries. The victim has further stated that her father-in-law and brother-in-law were present there, but they did not step forward to extinguish fire. She has stated that she did not

examine the husband of the victim who was admitted in the same hospital. In the cross-examination, she has stated she did not seize anything from that kitchen. She did not seize any container of kerosene oil from the kitchen. She did not arranged for taking photographs of the places of occurrence. She even did not examine any neighbouring people during her tenure of investigation. She stood by her other statements made in the examination-in-chief. But in the re-cross-examination, she did admit that PW2 did not in her previous statement disclose when the appellant did set her daughter on fire or about the role of the father-in-law and brother-in-law.

[71] PW 14, the second investigation officer, has stated that on 04.03.2014 he did collect the dying declaration of Abhijit Deb, husband of the victim, who had also succumbed to the injuries, he suffered from the said incident. The said dying declaration [Exbt 13] that was recorded DCM Sadar, Takhirai Debbarma at the GBP hospital. He has also stated that he did not seize any container of kerosence oil or any inflammable substance from the kitchen. We have already noted the testimony DW1, who has claimed to have present immediately after the occurrence being resident of the neibourhood. He was summoned by DW2, Papri Deb and he saw the wife of Abhijit (the victim) was lying in the floor in the burnt condition and Abhijit was lying in the cot (bed) with burn injuries. According to him (DW-1), the couple was happy. DW2 Papri Deb had also corroborated that statement. According to her, the incident took place around 11 pm. DW3 has stated that he found

the injured couple in the verandah of the dwelling building. By help of the friends like DW 1 the injured couple was shifted to the GBP hospital. DW 4, Saikat Kar had recorded Abhijit's statement on his mobile on 02.03.2014. He told him that Pujaita set her ablaze and while trying to save her, Abhijit got burn injuries. Abhijit also told him that there was a quarrel between the husband and the wife over an issue relating another Abhijit. Out of sudden anger, Abhijit's wife set herself on fire. He transferred that video clip first to his pendrive and thereafter into a CD. That CD was produced with a certificate from DW4. The same was projected in the court. He stood by his version in the cross-examination of the prosecution. As noted already that, in the complaint (Exbt-1), it has been also asserted that the victim stated the appellant set her on fire. In the dying declaration he did not refer to any demand made by the accused persons.

[72] In the trial PW1, the father of the victim and informant, stated the same fact but added that there was demand of dowry. PW1 did state that he could not recall mobile number of her daughter over which he and his wife talked to their daughter. They denied the suggestion regarding the victim's extra marital affair.

[73] PW2 did replicate the statement of PW1 that mother-in-law of the victim did set her on fire but her statement is little different from her husband (PW-1). According to her, than when her daughter was caught fire her husband tried to save her and he sustained burn injuries. She has thereafter categorically stated after her marriage, she

met her daughter for first time in the hospital when she was admitted in the hospital with burn injury. She gave the narrative how her daughter's marriage took place. She has admitted in the cross-examination that her allegation father-in-law and the brother-in-law is not available in her previous statement. But she denied that her daughter intended to commit suicide.

[74] PW 3 is aunt of the victim who also corroborated PW1 and 2 but in the cross examination stated that after the marriage, the victim did not keep any contact with them. But she has admitted that in her previous statement there is no allegation against the brother- in-law and father-in-law.

[75] PW4, another aunt, had introduced the allegation of unlawful demand of dowry. She had also met the victim in the hospital but she did state that over the issue of dowry and cooking, her mother-in-law set the victim on fire. The victim succumbed to the injury on 04.03.2014. In the cross-examination, she has admitted that husband of the victim suffered severe burn injuries. She made the a categorical statement that it is fact that husband of Pujaita sustained burn injuries while he tried to save Pujaita, but denied that Pujaita set herself on fire by closing the door from inside. The husband of Pujaita was inside that room. She had admitted that burn clothes and bed sheet were seized from the bedroom of Pujaita and her husband. She has also stated that the kitchen in the matrimonial home of the victim is a tin-shed room.

She has denied the suggestion that Pujaita was not in a state of speaking.

[76] PW 5, the uncle of the victim has stated that the victim told him that the appellant set her on fire in the kitchen with a burning matchstick. He has admitted that when they had talked to Pujaita at the hospital, at that time there was no medical staff or police. But he has stated to the police that when they talked to Pujaita, at that time the police, nurse and the medical officer were present. He has reiterated that statement in the trial. He has denied the suggestions that the victim did not tell them that following a quarrel, the appellant set the victim on fire on the issue of cooking.

[77] As we have highlighted earlier that PW6, a staff nurse, has stated that the victim stated to the police that her mother-in-law set her on fire. She was on duty throughout the night. PW6 saw the members of the families in the hospital. PW6 has denied that she did hear what the victim had stated to the police. The post-mortem doctor, PW7, has stated how gravely the victim suffered the burn injuries to the extent of 95% .

[78] PW 9 is the prosecution's sterling witness inasmuch as he had recorded the dying declaration of the victim and he has stated categorically as follows:

"This is the said dying declaration recorded by me in my own hand writing along with my signature and signature of witnesses and thumb impression of the victim."

The dying declaration has been marked at the instance of PW9 as Exbt 6. PW9 has also stated that the victim was unknown to him. For purpose of reference, the dying declaration as recorded by PW9 in presence of one Gita Chakraborty a staff nurse (PW-12) and Dr. Ankit Sadhu (PW-10) is reproduced as a whole:

Date 04.03.2014 Time 10-45 AM Place FSE Ward A GBPH. On examination (physical) it is found that patient is conscious, responded verbally with difficulty. When asked how it happened she told that her mother-in-law is responsible i.e. she has burnt her with fire. Time- yesterday night.

[79] Even though, Dr. Ankit Sandhu PW10 was little bit confused about whether he was there at the time recording the dying declaration or not, this will not impact the process of recording the dying declaration and the content as recorded in the dying declaration inasmuch as PW9 is a dispassionate witness. Law in this regard is quite clear. If the dying declaration is absolutely credible and nothing is borne in the record that the dying person in such a condition, could not have made dying declaration to a witness (in the present case PW9), there is no justification to discard the same. In this case, PW 12 (Gita Rani Chakraborty, a staff nurse) has categorically testified in the trial that PW9 recoded the dying declaration of the victim in her presence and the victim stated that her mother-in-law was responsible for the incident. She has also stated that she had signed over her dying declaration after the statement of the victim was recorded. To a query to the court, PW12 has categorically stated that the patient (Pujaita Deb) was in a 'position to speak' when her statement was recorded. That apart, to

assess the deposing capacity, PW9 did examine the victim. PW9 has categorically stated that at the time of recording her statement, the victim was well-oriented and conscious to give her statement.

[80] PW14 introduced the dying declaration of the husband of the victim where the victim's husband has stated as follows:

"Due to family matter fire was set on the body of my wife. When I went to extinguish the fire on the body of my wife, my body burnt too."

The statement as recorded by DW4 is liable to be discarded for not following the process as delineated in Section 65 B of the Evidence Act. When the electronic evidence, as recorded is sought to be used as evidence, a certificate shall accompany the electronic record like computer print out, compact disk (CD) Video Compact Disk (VCD), pendrive pertained in which, a statement has been recorded, all the safeguards are required to be taken in respect of source and authenticity which are the hall marks for introduction of records to evidence. Electronic records are more susceptible to tampering, alteration, transposition, excision etc. Without such safeguards electronic records cannot be treated as the evidence. No observation of prescription under Section 65B of the Evidence Act, may lead to travesty of justice. It is an admitted fact that the defence submitted the said evidence after the prosecution evidence was recorded and it was not in the knowledge of the investigating officers (PWs 13 and 14), as such there had been no forensic verification but admittedly the evidence which was recorded in the mobile phone, was transferred first to a

pendrive and then to a VCD by DW 4. He did not deposit the mobile set in the trial. Thus, the authenticity of the electronic record has not been established beyond manipulation. A larger bench of the apex court in **Arjun Panditrao Khotkar** (supra) has discarded the incorrect disposition of law by taking note of **Anvar PV** (supra). It has been observed that a certificate by a party who is not in possession of the electronic device is not relevant. It clearly means that the primary electronic evidence be produced with the certificate in terms of Section 65B (4) of the Evidence Act. But, in this case the primary electronic evidence though it was producible, was not produced before the trial. As such, the content of the said electronic document cannot be read in the evidence.

[81] Having appreciated the submission made by the counsel for the parties, we are of the view that the dying declarations as made to PWs 1 to 5 are wholly consistent with the dying declaration as recorded by PW9 in presence of PWs 10 and 12. Even PW12 has proved the dying declaration independently alike PW13 (the investigating officer). So far the objection as raised by Mr. Biswas, learned senior counsel for the appellant that the disposing capacity of the victim is under suspicion, is not accepted by us. A competent doctor has recorded the dying declaration though not in the question and answer form and not in verbatim, but in English, the dying declaration recorded in English, is consistent with the dying declaration as heard by PW12. As such, the proposition of **Sampat Babso Kale** (supra) would not help to persuade to coming to an inference that the victim was not in a fit state of mind

to make such statement for obvious impact of higher degree of burns. The fitness can be inferred on the basis of the result of the assessment taken by the competent medical personnel. PW9 has categorically stated that the victim was in a fit state of mind for making the statement and as such we do not find any reason not to rely on the said dying declaration. Even, if no material has been collected from the kitchen (the place of occurrence marked by the letter 'A' in the hand sketch map) but the narration of the victim had dispelled the doubt how she entered the bedroom and how her husband tried to extinguish the fire. In order to save her, the husband also suffered fatal injuries. We have no hesitation to hold that the dying declaration as recorded by PW9 has got substantive corroboration from the statement made by the victim to several witnesses as referred before.

[82] Thus, the dying declaration is an important piece of evidence. Now the question that falls for consideration is that whether the court is satisfied that the dying declaration is truthful, voluntary and not resulted from extraneous influence. If the court is satisfied, then the court can convict the accused only on the basis of dying declaration. We might refer the entire law as developed in this regard, but what has been enunciated in **Sham Shankar Kankaria** (supra) is trite and relevant for the purpose. The said report has held that once the court is satisfied that the dying declaration was true and voluntary and undoubtedly it can base the conviction without any further corroboration.

[83] We do also find adequate corroboration in exclusions of insignificant variations. Even the dying declaration of the husband of the victim does corroborate the dying declaration of the victim. The said dying declaration has been extracted before. Husband of the victim has stated to the Deputy. Collector and Magistrate that due to family matter, fire was set on the body of his wife and he went to extinguish the fire on the body of his wife and got burnt. In the said dying declaration, there is no reference of self- immolation. It is quite understandable why the sentence is passive. Thus, we do not find any reason to interfere with the judgment of conviction or the order of sentence. Hence, the impugned judgment and order dated 23.08.2019 stands affirmed. The appellant shall serve out the sentence as awarded by the trial judge.

In the result, the appeal stands dismissed.

LCRs be sent forthwith.

JUDGE

JUDGE

