2025:CGHC:5738-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1558 of 2019

[Arising out of judgment dated 14.10.2019, passed in Sessions Case No.123 of 2018 (State of Chhattisgarh v. Sudhir Mahana & 02 others), by the 5th Additional Sessions Judge, District Raigarh (C.G.)]

1. Sudhir Mahana, Son of Dharnidhar Mahana, aged about 34 years,

2. Dharnidhar Mahana *[died and deleted as per CO dt. 07.01.2025]*,

3. Shakuntla, Wife of Dharnidhar Mahana, aged about 65 years,

[All Resident of Pusour, Police Station Pusour, District Raigarh, (Chhattisgarh)]

---- Appellants
(In Jail)

Versus

State of Chhattisgarh, through the Station House Officer, Police Station Pusour, District Raigarh (Chhattisgarh)

---- Respondent

For Appellants : Mrs. Indira Tripathi, Advocate
For Respondent : Mr. Arvind Dubey, Government Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice and
Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Judgment on Board

***Per*: Ramesh Sinha, CJ**

31.01.2025

(1) In this criminal appeal filed under Section 374(2) of Cr.P.C., the accused-appellants are calling in question the legality, validity and correctness of the impugned judgment of conviction and order of

sentence dated 14.10.2019, passed in Sessions Case No.123 of 2018 (State of Chhattisgarh v. Sudhir Mahana & 02 others), by the 5th Additional Sessions Judge, District Raigarh (C.G.), whereby they all have been convicted for offence under Section 304-B read with Section 34 of IPC and sentenced to undergo imprisonment for life.

(2) Before proceeding further, it would be appropriate to mention here that during the pendency of this appeal, appellant No.02-Dharnidhar Mahana has died and, accordingly, his name has been deleted as per Court order dated 07.01.2025. As such, this appeal stands abated against the appellant No.02 and remained sub judice in respect of the appellants No.01 & 03. Therefore, we consider this appeal only in respect of appellants No.01 & 03.

(3) The case of the prosecution, in a nutshell, is that on 13.09.2018, between 10:00 to 11:00 AM, in the house of the appellant No.1, situated near Jagannath Temple, which comes within the ambit of Police Station Pusour, District Raigarh (CG), the accused-appellants herein firstly shared common intention with each other to commit murder of Pooja (wife of the appellant No.01 and daughter-in-law of the appellant No.03) for or in connection with demand of dowry and, in furtherance thereof, poured kerosene oil over the body of Pooja (hereinafter referred to as the “deceased”) and set her ablaze, due to which, she suffered burn injuries to the extent of 83% and died during the course of her treatment in the hospital within seven years of her marriage, on 17.09.2018 and, thereby, the appellants are said to have committed offences under Sections 304-

B/34 of IPC.

(4) It is further case of the prosecution that immediately after the incident, on 13.09.2018 at about 02:00 PM, the deceased was first escorted to Community Health Centre, Pusour wherein she was medically examined by Dr. Rajni Nayak (PW-17) and, as per her MLC report (Ex.P/12), though she suffered 83% burn injuries, but she was stated to be in conscious state of mind. Thereafter, the deceased was referred to District Hospital, Raigarh for better treatment. During the course of treatment at Raigarh, on 13.09.2018 itself, between 02:50 PM to 03:15 PM, after having been certified by the doctor to be in fit state of mind to give statement vide Ex.P/18, the dying declaration (Ex.P/19) of the deceased was recorded by Executive Magistrate, namely, Leeladhar Chandra (PW-13), wherein she clearly deposed the names of the present appellants to be the authors of the crime by stating that on the date and time of the offence, the accused-appellants herein, with regard to dispute relating to demand of dowry, poured kerosene oil over her body and set her ablaze, due to which, she suffered burn injuries. On the basis of aforesaid information, zero FIR (Ex.P/04) and numbered FIR (Ex.P/03) were registered against the appellants and wheels of investigation started running, in which, spot map was prepared vide Ex.P/05.

(5) However, during the course of treatment, the deceased succumbed to the injuries and died on 17.09.2018, pursuant to which, information with regard to sudden and unnatural death was sent by the hospital to the police. Thereafter, merg intimation

(Ex.P/01 & Ex.P/02) were recorded. Summons under Section 175 of CrPC were sent vide Ex.P/15 and inquest proceedings were also conducted vide Ex.P/16. The dead-body of the deceased was sent for postmortem examination and, in the postmortem report (Ex.P/14), conducted by Dr. Naveen Agrawal (PW-16), it has been opined that cause of death of the deceased is syncope as a result of hypovolemia due to burn. Thereafter, the accused-appellants were arrested vide Ex.P/20 & Ex.P/22 respectively. Certain articles were seized from the spot and sent for chemical analysis and, as per FSL report (Ex.P/26) smell and particles of kerosene oil were found in Articles A, B, C, D, & G, which were seized from the spot. Thereafter, statements of witnesses were recorded and, after due investigation, the police filed charge-sheet against the appellants in the competent court of criminal jurisdiction and, ultimately, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellants/accused abjured their guilt and entered into defence by stating that they are innocent and have been falsely implicated.

(6) The prosecution in order to prove its case examined as many as 18 witnesses and exhibited 27 documents apart from Article A1 to A6, whereas the appellants-accused in support of their defence, though not examined any witness, but exhibited 01 document.

(7) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict all the appellants herein for offence under Section 304B/34 of IPC and

sentenced them as mentioned in the opening paragraph of this judgment, against which this appeal has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence.

(8) Mrs. Indira Tripathi, learned counsel appearing for the appellant submits that the learned trial Court is absolutely unjustified in convicting the appellants for offence under Section 304B/34 of IPC, as the prosecution has failed to prove the same beyond reasonable doubt. She further submits that there is no evidence available on record against the appellants to connect them with the crime in question except the dying declaration (Ex.P/19). Though the dying declaration (Ex.P/19) has been made basis to convict the appellants herein, however, a bare perusal of the said dying declaration would show that neither the treating doctor nor any other medical officer has clearly certified the deceased to be in fit mental and physical condition to give said dying declaration. Even, Executive Magistrate, namely, Leeladhar Chandra (PW-13), who has recorded the dying declaration of the deceased (Ex.P/19) has not proved the same. As such, the dying declaration (Ex.P/19) is not trustworthy, as it does not inspire confidence and cannot be relied upon to convict the appellants for the offence in question. Learned counsel relied upon the decisions of: (i) the Supreme Court in **Paranagouda v. State of Karnataka**[1]; (ii) the Allahabad High Court

1 2023 SCC Online SC 1369

in **Satyawan v. State of UP**[2] and (iii) the Coordinate Bench of this Court in **Jaiprakash Sahu and another vs. State of Chhattisgarh**[3] to bolster her submissions. Hence, the impugned judgment of conviction and order of sentence passed by the learned trial Court is liable to be set aside and the appellants deserves to be acquitted from the said charge on the basis of benefit of doubt. Alternatively, learned counsel submits that considering the facts and circumstances of the case, it is a fit case where the minimum sentence of 7 years RI can be awarded to appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** for offence under Section 304-B read with Section 34 of the IPC.

(9) *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submits that in view of dying declaration (Ex.P/19), wherein the deceased has clearly stated the names of the appellants herein to be authors of the crime coupled with other evidence available on record, the conviction and sentence passed by the learned trial Court against appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** is well merited and, therefore, present appeal deserves to be dismissed.

(10) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records

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2 2022 SCC Online All 443

3 CRA-147-2012 dt. 12.12.2022

with utmost circumspection.

(11) Now the question for consideration before us would be whether appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** are the authors of the crime in question or not ?

(12) In the instant case, the case of the prosecution is solely based on dying declaration (Ex.P/19) recorded by Executive Magistrate, namely, Leeladhar Chandra (PW-13), therefore, it would be appropriate to notice the principles governing the dying declaration.

(13) At this stage, it is relevant to notice Section 32(1) of the Indian Evidence Act, 1872, which reads thus:

> "**32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant**.—Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—
> **(1) when it relates to cause of death**.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.
>
> Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.
>
> xxx xxx xxx"

(14) The general ground of admissibility of the evidence mentioned in Section 32(1) is that in the matter in question, no better evidence is to

be had. The provisions in Section 32(1) constitute further exceptions to the rule which exclude hearsay. As a general rule, oral evidence must be direct (Section 60). The eight clauses of Section 32 may be regarded as exceptions to it, which are mainly based on two conditions: a necessity for the evidence and a circumstantial guarantee of trustworthiness. Hearsay is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence, namely, the oath and cross-examination. But where there are special circumstances which gives a guarantee of trustworthiness to the testimony, it is admitted even though it comes from a second-hand source. The Supreme Court emphasized on the principle enumerated in the famous legal maxim of the Law of Evidence, i.e., *nemo moriturus praesumitur mentire* which means a man will not meet his Maker with a lie in his mouth. Our Indian Law also recognizes this fact that "a dying man seldom lies" or in other words "truth sits upon the lips of a dying man". The relevance of this very fact, is an exception to the rule of hearsay evidence.

(15) Section 32(1) of the Evidence Act is famously referred to as the "dying declaration" section, although the said phrase itself does not find mention under the Evidence Act. Their Lordships of the Supreme Court have considered the scope and ambit of Section 32 of the Evidence Act, particularly, Section 32(1) on various occasions including in the matter of **Sharad Birdhichand Sarda v. State of**

Maharashtra[4] in which their Lordships have summarised the principles enumerated in Section 32(1) of the Evidence Act, including relating to "circumstances of the transaction":

> "21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:-
>
> (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.
>
> (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

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4 (1984) 4 SCC 116

> (3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.
>
> (4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.
>
> (5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

(16) Section 32(1) of the Indian Evidence Act, 1872 makes it clear that when a statement, written or verbal, is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, such statement is relevant. The Supreme Court in **Sharad Birdhichand Sarda** (supra) clearly held that Section 32 is an exception to the rule of hearsay and makes admissible, the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death or deals with circumstances leading to the death. The decision of the Supreme Court in **Sharad Birdhichand Sarda** (supra)

has further been followed by the Supreme Court in the matter of **Kans Raj v. State of Punjab**[5] reviewing the earlier authorities.

(17) Thereafter, in the matter of **Devinder alias Kala Ram and others v. State of Haryana**[6], wherein the deceased, who sustained burn injuries while cooking meals on stove, had made a statement to the doctor, their Lordships of the Supreme Court held that statement of the deceased recorded by the doctor is relevant under Section 32 of the Evidence Act and observed as under: -

> "14. In the facts of the present case, we find that PW 7, the Medical Officer of the Civil Hospital, examined the case of the deceased on 6-8-1992 at 6.30 a.m. and he has clearly stated in his evidence that on examination she was conscious and that there were superficial to deep burns all over the body except some areas on feet, face and perineum and there was smell of kerosene on her body. He also stated in his evidence that the deceased was brought to the hospital by her husband Kala Ram (Appellant 1). He has proved the bed-head ticket pertaining to the deceased in the hospital (Ext. DD) as well as his endorsement at Point 'A' on Ext. DD, from which it is clear that he was told by the patient herself that she sustained burns while cooking meals on a stove. This statement of the deceased recorded by PW 7 is relevant under Section 32 of the Evidence Act, 1872 which provides that statements, written or verbal, of relevant facts made by a person who is dead, are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

(18) In the matter of **Purshottam Chopra and another v. State**

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5 AIR 2000 SC 2324

6 (2012) 10 SCC 763

(Government of NCT of Delhi)[7], principles relating to recording of dying declaration and its admissibility and reliability were summed up in paragraph 21 as under: -

> "21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:-
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> 21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.
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> 21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.
>
> 21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.
>
> 21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.
>
> 21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.
>
> 21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present

7 (2020) 11 SCC 489

> at the time of recording the dying declaration.
>
> 21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.
>
> 21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration."

(19) Further, in the matter of **Irfan @ Naka v. State of Uttar Pradesh**[8] the Supreme Court has held that the dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind and observed in Para-63 as under:

> "**63.** It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant."

(20) Recently, the Supreme Court in the matter of **Rajendra v. State of Maharashtra**[9] has clearly held that once a dying declaration is found to be authentic inspiring confidence of the court, then the

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8 2023 SCC Online SC 1060

9 2024 SCC Online SC 941

same can be relied upon and can be the sole basis for conviction without any corroboration and observed in Para-25 as under:

> "**25.** The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction."

(21) Bearing in mind the aforesaid principles of law laid down by their Lordships of the Supreme Court in the above-mentioned judgments, it is quite vivid that in the instant case as the prosecution's case is projected totally on dying declaration (Ex.P/19), which is recorded by Executive Magistrate, namely, Leeladhar Chandra (PW-13), wherein the deceased has clearly narrated the incident and implicated the appellants herein to be the authors of the crime in question by stating that on the date and time of the offence owing to dispute relating to demand of dowry the accused-appellants herein, being her husband and mother-in-law, poured kerosene oil over her body and set her ablaze, due to which, she suffered burn injuries. The authenticity of said statement of the deceased can be adjudged vide Ex.P/18, whereby before recording the said dying declaration (Ex.P/19), the doctor has duly certified the deceased to be conscious oriented and in fit state of mind to give statement. Further, Executive Magistrate, namely, Leeladhar Chandra (PW-13), who has

recorded the said dying declaration has also recorded his satisfaction in it that the doctors have certified the deceased to be in fit state of mind to give statement before recording the dying declaration. Executive Magistrate, namely, Leeladhar Chandra (PW-13), in his statement before the Court has also duly proved and supported the dying declaration/statement of the deceased whereby she implicated the appellants herein to be the authors of the crime in question and has also proved the factum of fitness of the deceased while recording her statement. Moreover, as per MLC report (Ex.P/12) of the deceased, Dr. Rajni Nayak (PW-17), who firstly medically examined the deceased has also opined that though the deceased suffered 83% burn injuries but she was in conscious state. As such, on the basis of aforesaid evidence/material available on record, it is quite established beyond reasonable doubt that the deceased was in fit state of mind at the time of recording of dying declaration (Ex.P/19), which was necessary in light of the decision of the Supreme Court in the matter of **Irfan @ Naka** (supra). Therefore, it cannot be said that the dying declaration (Ex.P/19) is not true and voluntary and, consequently, argument putforth in this regard is liable to be and is hereby rejected.

(22) Accordingly, in view of afore-mentioned reasons, since the dying declaration (Ex.P/19) inspires confidence, as the same is voluntary and trustworthy, therefore, the learned trial Court has rightly convicted appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** for offence under Section 304B/34 of IPC on the basis of

said dying declaration more particularly when the deceased in the present case died within 02 years of her marriage and as per her PM report (Ex.P/14), it has clearly been opined that the cause of death of the deceased is syncope as result of hypovolemia due to burn. Consequently, in view of the *dicta* of the Supreme Court rendered in the matter of **Rajendra** (supra), we hereby affirm the conviction and sentence of appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla**, as awarded by the learned trial Court, and they are not liable to be acquitted of the said charge on the basis of benefit of doubt. However, the judgments relied upon by the learned counsel for the appellants in the matters of **Paranagouda (supra), Satyawan (supra) and Jaiprakash Sahu** (supra) are clearly distinguishable under the facts and circumstances of the present case.

(23) In **Paranagouda (supra)**, the Supreme Court has acquitted the appellants therein for the offences punishable under Section 304B IPC and Section 3 and 4 of Dowry Prohibition Act and convicted for the offence punishable under Section 306 and Section 498A read with Section 34 IPC, but in the present case, the prosecution has proved that on the date and time of the offence owing to dispute relating to demand of dowry the accused-appellants herein, being her husband and mother-in-law, poured kerosene oil over her body and set her ablaze, due to which, she suffered burn injuries. In the present case, the trial Court considering the dying declaration (Ex.P/19) of the deceased recorded by Executive Magistrate Leeladhar Chandra (PW-13), wherein she clearly deposed the names of the

present appellants to the authors of the crime has rightly convicted them for offence under Section 304-B read with Section 34 of the IPC, which warrants no interference by this Court.

(24) For the foregoing reasons, the criminal appeal being devoid of merit is liable to be and is hereby **dismissed**. Appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** are in jail. They shall serve out the sentence as awarded by the trial Court.

(25) The Registry of this Court is directed to sent a copy of this judgment to the concerned Superintendent of Jail where appellant No.1-**Sudhir Mahana** and appellant No.3-**Shakuntla** are languishing, informing them that they are at liberty to assail this judgment before the Supreme Court by preferring an appeal under Article 136 of the Constitution of India with the aid and assistance of the Chhattisgarh High Court Legal Services Committee or that of the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

s@if/*Bablu*

Once a dying declaration is found to be authentic inspiring confidence of the Court, then the same can be relied upon and can be the sole basis for conviction without any corroboration.

एक बार जब मृत्यु पूर्व दिया गया बयान न्यायालय के प्रामाणिक प्रेरक विश्वास के रूप में पाया जाता है, तो उस पर भरोसा किया जा सकता है और यह बिना किसी पुष्टि के दोषसिद्धि का एकमात्र आधार हो सकता है।