AFR

Reserved on:- 25.11.2025

Delivered on:- 09.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No.1633 of 2022

Sujeet .....Appellant

Versus

State of U.P. Thru. Prin. Secy. Home, Lucknow .....Respondents(s)

Counsel for Appellant	:	Atul Verma, Akhilendra Pratap Singh
Counsel for Respondent(s)	:	Ravish Chandra Mishra, A.G.A.

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.

(Per: Rajeev Bharti, J)

1. The present criminal appeal under Section 374 (2) Cr.P.C. has been filed by the accused/appellant, namely, Sujeet s/o Nanhke, r/o Mohalla Haniya Tola, Police Station- Kheri, District- Lakhimpur Kheri challenging the judgment and order 06.05.2022 passed by the learned Sessions Judge, Lakhimpur Kheri in S.T. No.15 of 2019, arising out of Crime No.198 of 2018, Police Station- Kheri, District- Lakhimpur Kheri, convicting and sentencing the appellant to undergo life imprisonment under Section 302 I.P.C. with a fine of Rs.5,000/-. In default of payment

of fine to further undergo one month simple imprisonment. The accused/appellant was acquitted from the charges under Sections 498-A, 304-B I.P.C. and Section 4 of D.P. Act. The alternate charge under Section 302 I.P.C. was found proved. The appellant is in jail. He remained incarcerated for 8 years, 01 month and 08 days with remission as per Report dated 18.11.2025.

Factual Matrix of the case

2. Prosecution story, in brief, is that the deceased Hema, wife of the appellant, was subjected to cruelty for dowry and was set on fire on 16.06.2018, as a result she succumbed to her burn injuries on 05.07.2018. The complainant, father of the deceased, Raju (P.W.1), lodged a police report on 16.06.2018 stating that he had solemnized marriage of his daughter Hema about three years ago with Sujeet s/o Nanhke, r/o Haniya Tola, Kheri. On 16.06.2018 at about 8:00 P.M. he heard some noise and came in the locality and when he went towards that place, he saw that there was chaos in the house where his daughter was married, when he reached near the house, he found his daughter Hema was burning with fire outside the door of the house. There was no person present inside the house, as all had fled. Raju-PW-1, in his statement, has stated that when the deceased was taken to hospital by the accused, he also went along. He has further stated that his daughter (deceased) was suffering from mental illness and, on account of the same, she poured oil on herself and set herself ablaze. He has also stated that

accused Sujeet had got Hema treated. According to the complainant, his son-in-law, Sujeet s/o Nanhke along with mother-in-law-Arjunia and sisters-in-law, namely, Rekha, Shakuntala and Rinki, set his daughter ablaze. He (the complainant) had made every possible efforts to save his daughter, but she had already sustained severe burn injuries. He immediately took his daughter to the District Hospital where her condition was stated to be extremely serious.

3. On the basis of the aforesaid report, FIR under Sections 147, 307 I.P.C. came to be lodged on 17.06.2018 at 12:05 P.M. and was registered by Shri Umesh Pratap Singh (P.W.8), Constable at Nighasan Police Station, who deposed that he was present at the Kheri Police Station on that date and at about 12:05 P.M., the complainant, Raju s/o Thakur Prasad, r/o Bukhari Tola, Kheri town and police station, came to the police station and submitted a written complaint. He deposed that investigation of the case was assigned to Sub-Inspector Shri Vishambhar Dayal Singh. During cross-examination, Shri Umesh Pratap Singh (P.W.8) deposed that the informant reached alone at the police station at 12:05 P.M. to lodge the complaint and informed that the victim/deceased was hospitalized.

4. Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9), who was initially appointed as Investigating Officer in the case, deposed that in the year 2018, he was posted as In-charge of Kheri Police

Station. FIR No.198/2018, under Sections 307 and 147 of I.P.C. was registered at the police station and the investigation was assigned to him. He further deposed that on the same date, i.e. 27.07.2018, Section 147 of I.P.C. was dropped, and Sections 498-A, 304-B of IPC and Sections 3/4 of the Dowry Prohibition Act were added (after she died), and investigation was handed over to the Circle Officer, Sadar. He further deposed that he inspected the incident site on 18.06.2018, and prepared a sketch map of the incident.

5. During cross-examination, Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9) deposed that he took charge of the case on 17.06.2018, though he could not recall the exact time. He further deposed that he got information that the victim/deceased was admitted to the District Hospital, Kheri, but, he visited the hospital only on 18.06.2018 due to other works. He further deposed that he did not examine the bedhead ticket despite knowing the ticket contained crucial treatment details, nor record statements of the attending doctors or nurses. He further deposed that he visited site of the incident before going to hospital, accompanied by the informant, and prepared a site map (Exhibit A-5). He further deposed that he could not recall the starting or ending time of his investigation on 18.06.2018 and admitted to not marking these time on the case diary slips. He further deposed that while he got

information that the victim/deceased was burnt with kerosene, he did not record medical statements regarding the same.

6. Shri R.K. Verma, Investigating Officer (P.W.10) deposed that on 28.07.2018, he was posted as Circle Officer Sadar, Lakhimpur Kheri. He was assigned the investigation of Case No.198/2018 under Sections 498-A, 304-B of I.P.C. and Sections 3/4 of the Dowry Prohibition Act, Police Station Kheri, District Kheri, from Shri Vishambhar Dayal Singh- Sub Inspector (P.W.9). He further deposed that on 28.07.2018, he prepared memo no.9 and took over the investigation, reviewed the previously prepared memos, and examined the inquest report and post-mortem report.

7. During cross-examination, Shri R.K. Verma, Investigating Officer (P.W.10) deposed that the case was initially registered under Sections 307/147 I.P.C., but it was subsequently converted to Sections 498A/304B I.P.C. and Sections 3/4 of the Dowry Prohibition Act. He further deposed that initial medical examination of the victim/deceased on 16.06.2018, recorded the smell of kerosene, though he could not verify the duration of her (victim) stay at the District Hospital. He further deposed that he did not examine the bed head tickets or record the statements of the doctors who had treated the victim at either the District Hospital, Lakhimpur Kheri or Dr. Shyama Prasad Mukherjee Civil Hospital, Lucknow, where the victim/deceased succumbed to her injuries.

8. As per medical reports, the victim/deceased was got admitted at District Hospital, Lakhimpur Kheri by father of the deceased. The victim/deceased remained admitted in hospital as per the bed head ticket, which was submitted before the learned trial court by Dr. Rajesh Kumar -D.W.1. In his examination-in-chief, Dr. Rajesh Kumar-D.W.1 stated that on 18.06.2018 at 12:40 P.M. father of the deceased, namely, Raju (P.W.1) made the following endorsements *"my patient was referred to Lucknow and Ambulance-108 had arrived, but I did not take my patient to Lucknow and I sent the ambulance back.*" Treatment of the deceased continued at District Hospital, Kheri from 17.06.2018 till 27.06.2018. Subsequently, when condition of the deceased started deteriorating, she was got admitted to Dr. Shyama Prasad Mukherjee Civil Hospital at Lucknow on 27.06.2018 where her dying declaration was recorded on the same day.

9. The deceased was medically examined at District Hospital, Lakhimpur Kheri at 10:10 P.M. on 16.06.2018 and Dr. Rajesh Kumar- P.W.12 recorded approximately 80% burn injuries and specifically noted smell of kerosene oil coming out from the body and clothes of the victim.

10. The prosecution examined Dr. Rajesh Kumar as P.W.-12 before the Court. Subsequently, the defence examined the said witness as D.W.-1 and sought to prove the bed-head ticket and further attempted to establish that the deceased had also made a dying

declaration on 17.06.2018, though the same was not made in the presence of this witness.

11. On 06.07.2018 at 3:25 P.M. Dr. Girish Kumar Sharma-P.W.7, Consultant at Balrampur Hospital, Lucknow, conducted post-mortem examination of the deceased, Mrs. Hema Pandey, aged 22 years. Video-recording of the same was done by one Amitabh Singh. During post-mortem examination, post-mortem staining was found on the body of deceased in the areas that were not burnt. Rigor-mortis was present throughout the body. There were 90% ante mortem injuries on body of deceased and the cause of death was shown as septicemia. The following ante-mortem injuries were found on the body of deceased:-

"Injury no.1: A septic burn wound, extending from the surface to the deeper tissues, was present all over the body, except on the top and back of the head.

Injury no.2: The genital area was not burned.

Injury no.3: The areas below both knees and the back of the hips (buttocks), the soles and toes of the feet were not burned. Thick pus was present in the burn wounds. Upon opening and sectioning, pus spots were present in both lungs, liver, spleen and both kidneys."

12. On the basis of the grounds urged in the memorandum of appeal and submissions advanced, the following point arises for determination.

(i) Whether the charge of murder against the appellant has been proved by the prosecution beyond reasonable doubt?

13. In this appeal, it is noteworthy to mention here that Raju- P.W.1, Uma Devi– P.W.2, Kasturi- P.W.3, Pramod Kumar -P.W.4 and Manohar Lal- P.W.5, who are father, maternal aunt, mother and close relatives of the deceased, have turned hostile.

14. Raju– P.W.1 has categorically stated that the deceased was mentally ill and had poured kerosene oil on herself and that the complaint was lodged under the pressure of relatives. Although he did not see her pouring kerosene oil. From the medical evidence it is proved that death was not natural. Question is was it a murder? If so, whether appellant/husband has committed it.

15. Raju-P.W.1, in his statement, has stated that when the victim/deceased was taken to the hospital by the accused, he also went along. He further stated that his daughter (deceased) was suffering from mental illness and, on account of the same, she poured oil on herself and set herself ablaze. He has also stated that accused Sujeet had got Hema treated.

16. The prosecution rests its case entirely on the dying declaration recorded on 27.06.2018 at Dr. Shyama Prasad Mukherjee Civil Hospital in Lucknow. The dying declaration dated 27.06.2018 reads as under.

"प्रमाणित किया जाता है कि हेमा पाण्डेय उम्र लगभग 22 years पत्नी सुजीत पाण्डेय निवासी ग्राम हनिया टोला पो०-खीरी जिला-लखीमपुर जो इस चि० में Old Burn Injury के कारण दि० 27/6/18 समय 1:22 PM पर भर्ती हुई थी जो आज दि० 27/6/18 समय 5:20 PM पर मृत्यु पूर्व बयान के समय **पूरी तरह से होशोहवाश में है**।

Dr. Sandhya Chaudhary
27/6/18
दि० 27/6/18 समय 5:47 PM

"मेरा नाम हेमा पाण्डेय है। मेरे पति का नाम सुजीत पाण्डेय है। मेरी उम्र 22 वर्ष है। मैं ग्राम हनिया टोला पो० खेरी खेरी जिला लखीमपुर खीरी की रहने वाली हूँ। सुबह 7, 8 बजे 16 जून को हमारे पति और सास में लड़ाई हो रही थी। हमारे पति को गुस्सा आ गया उसने **घर में खड़ी मोटर साइकिल में से पेट्रोल निकाल कर मेरे ऊपर डाल दिया** और **मुझे कमरे में बंद करके मेरे उपर माचिस फेंक कर जला कर कमरे से भाग गया और कमरा बंद कर दिया।** हम कमरे में जलने लगे। मैंने भाग के कमरा खोला फिर हम बाहर भागे। बाहर टोले वालों की भीड़ आ गयी थी वो हमारे उपर लगी आग को बुझाये मैं बेहोश हो गयी। **मेरी सास, मेरी नंदे सब बहुत बदमाश है।** हमको परेशान करती रहती है। मैं यह बयान किसी दबाव में नही दे रही हूँ। भगवान कसम हम सही बोल रहे है"।

बयान मेरे द्वारा लिया अंकित किया गया।

ह० अपठनीय

ह० अपठनीय
27/6/2018
ACM VI

प्रमाणित किया जाता है, हेमा पाण्डेय उम्र लगभग 22 years पत्नी सुजीत पाण्डेय जो आज दि० 27/6/18 समय 5:47 PM पर मृत्यु पूर्व बयान के समय **पूरी तरह से होशोहवास में थी।**"

Dr. Sandhya Chaudhary
27/6/18

17. The trial court on the basis of evidence referred above, convicted the accused/appellant and sentenced as mentioned above.

18. Heard Shri Atul Verma, learned counsel for the appellant, Shri Ravish Chandra Mishra, learned A.G.A. for the State and perused the record.

Submission made by learned counsel for the appellant

19. Learned counsel for the appellant-accused argues that the dying declaration is not reliable and has incorrectly been treated to be a fair piece of evidence by the trial court. In support of his submission, learned counsel for the appellant has primarily urged that no satisfaction has been recorded by the doctor with regard to "fit mental state" of the victim and, therefore, it is alleged that in

absence of any certification by the doctor with regard to the "fit mental state" of the victim, the dying declaration cannot be relied upon. It is also urged that the dying declaration cannot be otherwise looked into as the contents of the dying declaration was not put up to the accused while recording his statement under Section 313 Cr.P.C.

20. In support of its case, learned counsel for the appellant has relied upon the following judgments :-

(i) Paparambaka Rosamma and others Vs. State of A.P. reported in (1999) 7 SCC 695;

(ii) Aejaz Ahmad Sheikh Vs. State of Uttar Pradesh & another, 2025 (2) ACR 804;

(iii) Irfan @ Naka Vs. The State of U.P., 2023 AIR SC 4129;

(iv) Lokesh and Ors. Vs. State of U.P. (Criminal Appeal No.1371 of 2015, decided on 28.01.2023), reported in 2023 (3) ADJ 47;

(v) Naresh Kumar Vs. Kalawati and others, reported in (2021) (16) SCC 158;

(vi) Rameshwar Lal Chauhan Vs. State of U.P. : 2023 SCC OnLine All 1127;

(vii) Radhey Jaiswal and others Vs. State of U.P. : 2024 SCC OnLine All 2649;

(viii) Dilawar Singh Vs. State of U.P. (Criminal Appeal No. 5591 of 2019, decided on 09.08.2024) and

(ix) Samsul Haque Vs. State of Assam : (2019) 18 SCC 161.

<u>Submission made by learned A.G.A.</u>

21. Learned A.G.A., on the other hand, submits that the judgment and order of conviction dated 06.05.2022 passed by the learned Sessions Judge, Lakhimpur Kheri, is well reasoned, based on

proper appreciation of evidence and does not suffer from any illegality, perversity or material irregularity warranting interference by this Court in Appellate Jurisdiction. He further submits that law is well settled that a conviction can be based solely on the dying declaration if it is found to be voluntary, truthful and reliable and no corroboration is required as a matter of rule.

22. With respect to the alleged earlier dying declaration dated 17.06.2018, learned A.G.A. submits that no contents of such statements have been proved on record and, therefore, mere reference to its existence does not dilute the evidentiary value of the later dying declaration dated 27.06.2018, which has been duly proved.

23. Learned A.G.A. lastly submits that even if certain lapses are pointed out in investigation, a defective investigation by itself is not a ground for acquittal, especially when there is other reliable evidence on record clearly pointing towards the guilt of the accused.

Analysis

24. We have noticed that the prosecution's case rests primarily on the dying declaration of the deceased and, therefore, it is to be seen whether the dying declaration can be relied upon in support of the

prosecution case on the specific contention urged by the appellant questioning it?

25. The dying declaration has already been extracted hereinabove. We find that the certification made by the doctor does not record conscious satisfaction with regard to fit mental state of the victim, wherein alone the victim could have made a valid dying declaration. The reasons for the same are apparent on the face of the record. In the present case, the victim had sustained 90% burn injuries. In such physical state, the victim would be traumatized and the doctors usually administer various medication to relieve pain etc., but the effect of such medication would have to be examined. Some medications may cause drowsiness or the traumatized condition of the victim may cause hallucinations, etc. Doubt would arise with regard to mental state of the victim and unless the doctor certifies the mental fitness of the victim, the Court usually would be reluctant in relying upon such dying declaration. It is in this context that we find substance in the argument of learned counsel for the appellant that, in the absence of any recording of satisfaction with regard to mental fitness of the victim, factually, at the time of making dying declaration, it does not appear to be entirely safe to rely upon such dying declaration to convict the appellant for committing murder.

26. In this regard the learned counsel for the accused-appellant has placed reliance upon a judgment of this Court in **Lokesh and Ors.**

(supra), wherein this Court has made following observations in para-45 to 50:

> *"45. It has therefore to be seen as to whether the victim was in a position to make her dying declaration and whether necessary precaution had been taken by the prosecution to ensure that victim was in a proper mental shape to make a declaration.*
>
> *46. The primary evidence that the victim was in a fit mental state to make a dying declaration is of the attending doctor who has been produced as P.W.-13. We have noticed that this witness in his statement has mentioned the critical situation of the victim.* ***There is no satisfaction recorded by the doctor on the dying declaration that victim was in a fit mental state to give a voluntary statement.*** *P.W.1 has otherwise admitted that the victim was unconscious when she was brought to the S.N. Medical College at around 6:00 pm. He has also admitted that only after administering of first aid, the condition of the victim improved and she became conscious. It is not clear as to what kind of first aid was given to the injured victim but considering her serious condition, it is logical to expect that some short of pain killer may have been given to her.* ***In such circumstances, mere recording of satisfaction by the doctor that patient was conscious, was not sufficient. A specific satisfaction was warranted regarding fit metal state of the victim. No such satisfaction has been recorded by the doctor. Merely stating that the patient is clinically fit does not amount to a satisfaction with regard to fit mental state of the patient.*** *The ability of the victim to speak was severely compromised as per the prosecution evidence itself.*
>
> *47. We are therefore doubtful of the victim being in a proper mental shape to have given a conscious voluntarily statement which could qualify to be a dying declaration. The Magistrate/Deputy Collector who has recorded the dying declaration of the victim has also admitted that no questions were put to the victim regarding her fit mental state.*
>
> *48. At this juncture, we would like to refer to the observation of the Supreme Court in* ***Paparambaka Rosamma & Others Vs State of Andhra Pradesh reported in (1999) 7 SC 695****, wherein the* ***Court while referring to the dying declaration observed that mere statement that patient is conscious while recording the statement is not sufficient. In a case where injured had sustained 90% burn injuries, it was necessary to ascertain the fit mental state of the injured***

before accepting the dying declaration. *Paragraph- 9 of the judgment is reproduced hereunder:-*

> *"9. It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10)* ***at the end of the dying declaration had certified patient is conscious while recording the statement****. It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post mortem* ***stated that injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind.*** *In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration.* ***The certificate of the said expert at the end only says that patient is conscious while recording the statement.*** *In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and was made when the injured was in a fit state of mind.* ***In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below."***
>
> *(Emphasis supplied by us)*

49. The observation made in the case of ***Paparambaka Rosamma (supra)*** *has been reiterated in a subsequent decision of the Supreme Court in the case of* ***Naresh Kumar Vs. Kalawati & Others*** *reported in* ***(2021) (16) SCC 158****, wherein the Supreme Court after referring to the above quoted paragraph no.9 observed as under in para-13:-*

> *"13. In the facts and circumstances of the present case, considering that the statements of the deceased have vacillated, there is no evidence about the fitness of mind of the deceased to make the dying declaration*

> *including the presence of the Doctor, the veracity and truthfulness of the dying declaration remains suspect. It would not be safe to simply reject the probable defence of suicide, to reverse the acquittal and convict the respondents."*
>
> *(Emphasis supplied by us)*

50. The statement of the Magistrate/Deputy Collector is categorical that the contents of the dying declaration were not read out to the victim and no satisfaction in that regard is otherwise recorded in the dying declaration. In ***Suriender Kumar Vs. State of Haryana*** *reported in* ***(2011) 10 SCC 173****, the Supreme Court questioned the dying declaration also on the ground that such a satisfaction about the contents of the dying declaration having read out to the victim was missing. In paragraph no. 25 of the judgment, the Supreme Court observed as under:-*

> *"25. As per the prosecution, the incident took place at 2 a.m. on 26.06.1991 and as per her statement, the occurrence of burning was in the evening of 25.06.1991, that is, the previous day.* ***The dying declaration did not carry a certificate by the Executive Magistrate to the effect that it was a voluntary statement made by the deceased and that he had read over the statement to her.*** *The dying declaration was not even attested by the doctor. As stated earlier, though the Magistrate had stated that the statement had been made in mixed dialect of Hindi and Punjabi and the statement was recorded only in Hindi. Another important aspect is that there was evidence that Kamlesh Rani was under the influence of Fortwin and Pethidine injections and was not supposed to be having normal alertness. In our view, the trial Court rightly rejected the dying declaration altogether shrouded by suspicious circumstances and contrary to the story of prosecution and acquitted the appellant."*
>
> *(Emphasis supplied by us)*

27. In **Paparambaka Rosamma (supra)**, which has been relied in the above noted judgment in **Lokesh (supra)**, it has been categorically held that *in medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind.*

28. The certification of the dying declaration dated 27.06.2018 only reports that the victim (deceased) was "conscious". Dr. Sandhya Chaudhary – P.W.11 admitted that burn patients are administered sedative drugs and she did not verify what drugs were given to the victim (deceased). The distinction between "consciousness" and "fit mental state" has been authoritatively explained by Hon'ble the Supreme Court in **Paparambaka Rosamma and others (supra)** holding that absence of certification regarding mental fitness renders the dying declaration unreliable.

29. The above view has been followed consistently by Co-ordinate Benches of this Court in **Rameshwar Lal Chauhan (supra), Radhey Jaiswal and others (supra)** and **Dilawar Singh (supra)**.

30. The certification by the Doctor Sandhya Chaudhary (P.W.11) put before recording of the alleged dying declaration was only to the effect that the victim was of fully conscious and not that she was in a fit state of mind to make such statement.

31. It is noteworthy that while recording the dying declaration, the Magistrate has to satisfy himself before recording the dying declaration regarding fit state of mind of the victim. Shri Abhishek Pathak- P.W.6, Sub-Divisional Magistrate, who recorded the dying declaration in the present case, has stated in his cross-examination- *"that at the time he was recording the statement, the deceased was in a fit mental state to give a statement, and he could not tell to what extent the deceased was burnt"*. It is

questionable how Shri Abhishek Pathak-P.W.6 came to the conclusion that the victim was in a "fit state of mind". It is also not clear from the record whether he put forth certain questionnaire to the victim to ascertain that she was in a 'fit state of mind', as, Hon'ble Apex Court in the case of **Laxman Vs. State of Maharashtra** reported in **(2002) 6 SCC 710** while considering such a factual situation has observed that *"it is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration."* In the case at hand, not only the doctor merely says that the victim was conscious, the Magistrate does not give the basis for his satisfaction as to her mental fitness. He did not put any question to her to satisfy himself in this regard.

32. Further, it is also pertinent to mention here the decision of Hon'ble Apex Court in the case of **Kanchy Komuramma Vs. State of A.P. reported in 1996 SCC (Cri) 31** wherein it has been held that *the dying declaration has been recorded by a Judicial Magistrate, by itself is not a proof of truthfulness of the dying declaration, which, in order to earn acceptability, has still to pass the test of scrutiny of the court. There are certain safeguards that must be*

observed by a Magistrate when requested to record a dying declaration. The Magistrate, before recording the dying declaration, must satisfy himself that the deceased is in a proper mental state to make the statement. He must record that satisfaction before recording the dying declaration and he should also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement, and the prosecution must prove that opinion at the trial in the manner known to the law.

33. No such exercise was done by the Magistrate in this case. We may also refer to the case of **Khushal Rao Vs. State of Bombay reported in AIR 1958 SC 22**, decided by a three Judges Bench of Hon'ble Supreme Court, where the law regarding evidentiary value of dying declaration has been discussed and it has been observed as follows :-

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

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

34. Tested on anvil of the above mentioned law, the dying declaration being relied by the prosecution does not pass the test and is not reliable. In addition to above, we also find substance in the argument of learned counsel for the appellant, questioning the dying declaration. The following circumstances in this regard are noticeable. The dying declaration taken on 27.06.2018 speaks altogether differently from the prosecution story, by alleging that petrol was extracted from motorcycle and poured upon the deceased and that the incident occurred in the morning between 7:00 to 8:00 A.M. The Investigating Officer has admitted during cross-examination that the medical examination recorded kerosene smell while the dying declaration speaks of petrol. The father of the deceased, namely, Raju, who is also the informant, in his

testimony has categorically stated that the incident occurred in the evening hours and the kerosene oil was used, which version finds support from the contents of the FIR as well as contemporaneous medical examination conducted by the doctor at District Hospital, Lakhimpur Kheri. Dr. Rajesh Kumar, P.W.12, who medically examined the deceased at 10:10 P.M. on 16.06.2018 has specifically deposed that there was a distinct smell of kerosene emanating from the clothes and body of the deceased. He has further clarified in his cross-examination that petrol and kerosene have different odours and that kerosene oil is ordinarily detectable. But the dying declaration speaks of petrol being taken from the motorcycle and being used to set the victim on fire which is incongruous with the prosecution case. No explanation whatsoever has been offered by the prosecution for this fundamental discrepancy in the victim's narrative, either through the Investigating Officer or through medical evidence.

35. Further the time of incident as mentioned in the FIR and statement of witnesses, is different from that mentioned in dying declaration, about which there is no satisfactory explanation by the prosecution thereby creating doubts about veracity and reliability of the dying declaration.

36. Before placing reliance upon the dying declaration, the Court is required to be fully satisfied that since declaration inspires complete confidence and has been recorded strictly in accordance

with the principles consistently laid down by Hon'ble the Supreme Court.

37. It is also well settled that mere consciousness of the deceased is not sufficient; the court must be satisfied that the deceased was in a fit state of mind to make the statement. The declaration must be complete and made under circumstances that leave no doubt as to its voluntary and truthful. Ordinarily, such satisfaction should be recorded by the medical expert and the certificate of fitness must receive so as to affirm the dying declaration voluntarily. The recording authority must ensure that dying declaration is complete and made voluntarily, i.e., it should not be the result of tutoring, prompting, or imagination. The statement must reflect the deceased's mental alertness and clarity. Further contents of such dying declaration must be specifically put to the accused during his examination under Section 313 Cr.P.C. to afford them a proper opportunity for an explanation which has not been done in this case.

38. The trial court, while convicting the accused mainly relied upon the dying declaration. However, the contents of dying declaration were not put to the accused during 313 Cr.P.C. statement. It is really a matter of concern that the trial court did not frame the question specifically putting the incriminating material stated by deceased in her dying declaration. Thereby, a very important circumstance was lost. The deceased in her statement (dying

declaration) stated that the accused had poured petrol on her person and set her on fire. Particularly, this incriminating part of dying declaration was not put to the accused to get his explanation. Although, the dying declaration was treated to be the sole basis to convict the accused, contents of the same were not put to the accused in his statement recorded under Section 313 Cr.P.C. Apparently, the accused was not given opportunity to explain this vital circumstance. Recording of statement under Section 313 of Cr.P.C. is not an empty formality during trial. Section 313 Cr.P.C. prescribes the procedure to safeguard the interest of the accused. Obviously, in the absence of seeking explanation on this vital point, prejudice is caused to the accused.

39. It is undisputed that the contents of the dying declaration was not put to the appellant while recording under Section 313 Cr.P.C. It is also well settled that unless the contents of such dying declaration are confronted to the accused, the prosecution cannot be allowed to place reliance upon the contents of such dying declaration. The Hon'ble Apex Court in the case of **Samsul Haque (supra)**, the Hon'ble Apex Court has observed in para nos.21 and 22 as under:

> *"21. The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused, and the statement recorded under Section 313 of the Cr.P.C. To say the least it is perfunctory.*
>
> *22. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid, the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the*

principles of audi alteram partem. Apart from the judgments referred to aforesaid by the learned Senior Counsel, we may usefully refer to the judgment of this Court in Asraf Ali v. State of Assam : (2008) 16 SCC 328. The relevant observations are in the following paragraphs:

> *21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.*
>
> *22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S. Harnam Singh v. The State (AIR 1976 SC 2140), while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non- indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."*

23. While making the aforesaid observations, this Court also referred to its earlier judgment of the three Judge Bench in Shivaji Sahabrao Bobade v. State of Maharashtra : (1973) 2 SCC 793, which considered the fall out of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement that the accused attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under Section 313 Cr.P.C., the matter is capable of being remitted to the trial

court, with the direction to retry from the stage at which the prosecution was closed [(1973) 2 SCC 793].

40. In the case of **Aejaz Ahmad Sheikh Vs. State of U.P. & Another (supra)**, the Hon'ble Apex Court has held as under.

> *"28. Before parting with the judgment, Before we part with this judgment, we have a suggestion to make. There are several criminal appeals which come to this Court where we find that vital prosecution evidence is not put to the accused in statement under Section 313 of the Cr.PC. The Court becomes helpless, as due to the long lapse of time, the defect cannot be cured by passing an order of remand. In the case of Raj Kumar Vs. State (NCT of Delhi), this Court dealt with this issue. In paragraphs 29 and 30, this Court held thus:*
>
> > *"29. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the court and not as mouthpieces of their respective clients. While recording the statement under Section 313CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of sub-section (5) of Section 313 Cr.P.C., which will ensure that the chances of committing errors and omissions are minimised."*

41. Court finds that the investigation conducted in the present case is vitiated by serious lapses and unexplained omissions which strikes at the root of the prosecution case. Despite the fact that the deceased was initially treated at the District Hospital, Lakhimpur

Kheri, and thereafter remained under treatment at Dr. Shyama Prasad Mukherjee Civil Hospital, Lucknow, till her death, the Investigating Officer failed to collect or place on record the bed head tickets from the said hospitals. Furthermore, the statements of the treating doctors at Lucknow, where the deceased ultimately succumbed, were not recorded. More importantly, the evidence of Dr. Rajesh Kumar- P.W.12 that the hospital records clearly indicate an earlier dying declaration/statement of the victim/deceased was recorded on 17.06.2018. The prosecution has neither produced the said statement nor offered any explanation for its non-production. The existence of such an earlier dying declaration is of great significance, particularly as the later dying declaration of 27.06.2018 contains material contradictions with both the medical evidence and the FIR version. The failure of the Investigating Officer to explain these vital points reflects a casual and perfunctory approach to the investigation. In this regard, learned counsel for the accused-appellant has placed reliance upon a judgment of Hon'ble Apex Court in the case of **Irfan @ Naka Vs. State of U.P. (supra)** wherein the Hon'ble Apex Court has made following observations:-

> *"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.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion.

65. In ***Sujit Biswas v. State of Assam*** *reported in* ***(2013) 12 SCC 406****, this Court, while examining the distinction between "proof beyond reasonable doubt" and "suspicion" in para 13 has held as under:*

> *"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."*

> *66. It may be true as observed by Hon'ble the Supreme Court in the case of* ***Dharm Das Wadhwani vs. State of Uttar Pradesh****, reported in* ***(1974) 4 SCC 267****, that the rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime."*

42. The evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon. In the present case, it is difficult to rest the conviction solely based on the dying declaration. As discussed above, the evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon. We are not satisfied that the prosecution has proved its case against the appellant-convict beyond reasonable doubt.

43. The crime is said to have been committed on 16.06.2018, dying declaration is said to have been recorded on 27.06.2018 and victim is said to have died on 05.07.2018. Cause of death is mentioned as septicemia. In this context testimony of father (P.W.1) itself to the effect *"my patient was referred to Lucknow and Ambulance-108 had arrived, but I did not take my patient to Lucknow and I sent the ambulance back*" is relevant. In spite of doctors having referred the patient for treatment at Lucknow, Raju (P.W.1) did not take her there and her treatment continued at District Hospital, Kheri. It is only when her condition deteriorated she was taken to Lucknow on 27.06.2018 where she died. The time-lapse and conduct of Raju (P.W.1) speak volumes. In these

circumstances and evidence before us, it is not possible to hold the appellant guilty of the charge of murder.

44. It is also well settled that where an investigation is tainted, unfair, or conducted in a haphazard manner, and the prosecution evidence otherwise fails to establish the case beyond reasonable doubt, the accused is entitled to the benefit of doubt. The defective investigation in the present case further reinforces the conclusion that the appellant's conviction cannot be sustained. The prosecution has failed to prove the charge of murder against the appellant beyond reasonable doubt.

45. Learned trial court has erred in appreciating evidentiary value of the dying declaration which is the only evidence relied for conviction of the appellant and has not kept in mind the law on the subject as discussed hereinabove. It has also brushed aside the discrepancy in the time of commission of crime as mentioned in the F.I.R. and statement of the witnesses vis-a-vis with the dying declaration, cursorily, on surmises, ignoring the material impact which it had on the prosecution case. Learned trial court has thus erred in convicting the appellant and sentencing him to life imprisonment for the charge of having committed an offence punishable under Section 302 I.P.C.

46. In view of the above, the appeal stands **allowed.** The judgment and order of conviction dated 06.05.2022 passed by Ld. Session's

Judge, Lakhimpur Kheri in S.T. No.15/2019, Case Crime No.198/2018, under Section 302 I.P.C. Police Station-Kheri, District- Lakhimpur Kheri is quashed. The accused-appellant, Sujeet, is acquitted of the offence punishable under Section 302 of the IPC. He shall be released from jail forthwith, if not required in any other offence. The amount of fine, if deposited, shall be refunded to the accused.

47. The accused-appellant, namely, Sujeet would be released forthwith unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C.

48. Trial court record along with copy of this judgment and order be transmitted to the court concerned forthwith.

49. Let a copy of this judgment be sent to the Jail Authorities concerned and the court concerned for compliance.

(Rajeev Bharti, J.) **(Rajan Roy, J)**

Order Date :- 09.02.2026
Anand