A SUKANTI MOHARANA

v.

STATE OF ORISSA

(Criminal Appeal No. 1349 of 2009)

JULY 29, 2009

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[DALVEER BHANDARI AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – s.302 – Death due to extensive burn C *injuries – Allegedly caused when appellant poured kerosene on deceased and set her on fire with a matchstick – Appellant is wife of deceased's brother-in-law – Two dying declarations, one made before doctor and the other, an oral dying declaration made by deceased before her parents –* D *Conviction of appellant by Courts below – Justification of – Held: On facts, justified – Dying declaration recorded by doctor vividly mentions the manner in which deceased suffered the burn injuries – Description given by deceased in the dying declaration is clear, unambiguous and* E *acceptable – Doctor who recorded the dying declaration categorically stated that deceased was conscious and in a fit mental condition to make such a statement – Further corroboration by oral dying declaration, medical evidence as also the facts contained in the FIR – Evidence Act, 1872 –* F *s.32.*

PW1's daughter died in hospital due to extensive burn injuries allegedly caused when appellant poured kerosene on her and set her on fire with a matchstick. Appellant is wife of deceased's brother-in-law.

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Placing reliance upon the two purported dying declarations made by the deceased, one before the doctor PW10 and the other, an oral dying declaration made before PWs 1 and 3, the courts below convicted the

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appellant under s.302 IPC. A

In appeal to this Court, the conviction was challenged on grounds that there was no eye witness to the occurrence and the entire case rested only on circumstantial evidence; that while one dying declaration B was only oral which was not recorded in writing, the second dying declaration though recorded, suffered from various infirmities viz. it was not certified by the doctor to the effect that the deceased was in a fit condition to make a statement and that the signature and thumb C impression of the deceased was also not present therein.

Dismissing the appeal, the Court

HELD: 1. The endorsements at the time of the admission of the deceased in Hospital indicate that the D cause of injury received by the patient was mentioned to be an accident due to bursting of stove, but the said endorsements do not indicate nor the evidence of DW-4, DW-5 and DW-6 adduced during the course of the trial show that the aforesaid endorsements were recorded on E the basis of the statements made by the deceased. On the other hand it is indicated therefrom that Bed Head Ticket (Ext. 9) proves and establishes that, as per the history given by the deceased herself the treating physician had endorsed that it was a case of homicidal F burn due to ignition caused by spilling of kerosene. Further, though no specific endorsement has been made on the dying declaration but there is contemporaneous evidence which makes it clear that the Doctor recording the dying declaration had recorded that the patient was G oriented to time and place and mentally clear at the time of recording of the dying declaration. [Para 19] [1007-B-F]

2.1. There is no infirmity in the said dying declaration recorded by the doctor as it vividly mentions the manner H

A in which the deceased suffered the burn injuries on pouring kerosene oil on her by the appellant who also lighted the matchstick which caused the fire and burnt the deceased. The appellant not only poured the kerosene oil on the deceased and lit the fire but also B closed the door after going out of the said room where the deceased was left to burn by the fire. The said description given by the deceased in the dying declaration recorded by the doctor is clear, unambiguous and there is no reason why the said dying declaration C should not be accepted as correct and true version of the incident. However, the said dying declaration recorded by the doctor is also corroborated by the oral dying declaration made before PW-1 and PW-3 and the said fact also finds corroboration from the statement of PW-1 and D PW-3 and also from the FIR which were proved through the evidence of PW-1. [Paras 20 and 21] [1008-A-B; 1008-C-D]

2.2. Also, the dying declaration was recorded by a doctor who was most disinterested witness. It was also E categorically stated by the doctor that at the time when she made her dying declaration, she was in a fit state of mind. [Para 28] [1011-G]

2.3. Both the courts were totally justified and also F right in relying upon the two dying declarations one recorded by the doctor (PW-10) and the other i.e. oral dying declaration made to PW-1 and PW-3. The objection raised regarding the doctor's certification and endorsement as to mental fitness of the deceased, is G only a rule of prudence and not the ultimate test as to whether or not the said dying declaration was truthful or voluntary. [Para 31] [1012-F-H; 1012-A]

2.4. The doctor who recorded the dying declaration was examined as a witness and he had in his deposition H categorically stated that the deceased while making the

aforesaid statement was conscious and in a fit mental condition to make such a statement. It is therefore clear that the aforesaid dying declaration could be relied upon as the same was truthfully recorded and the said statement gave a vivid account of the manner in which the incident had taken place. [Para 32] [1013-A-C]

3. The further objection raised regarding the admissibility of the recorded dying declaration on the ground that the signature or the thumb impression of the deceased was not taken thereon, also is without any basis. The deceased had suffered about 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface. The post mortem report also indicates that there was bandage in her thumb as it was burnt. In such a situation, it was not possible to take her signature or LTI on the dying declaration. There is also no reason why a dying declaration which is otherwise found to be true, voluntary and correct should be rejected only because the person who recorded the dying declaration did not or could not take the signature or the Left Thumb Impression of the deceased on the dying declaration. Once it is found that the dying declaration is true and made voluntarily and as also trustworthy, there is no reason why the same should not be believed and relied upon. In this case, the said dying declaration is corroborated by the oral dying declaration made by the deceased before PW-1 and PW-3 which is also corroborated by the medical evidence and the facts contained in the FIR. [Para 33] [1013-D-G]

4. Taking an overall view of all the facts and circumstances of the case and the evidence on record, no ground is found to interfere with the order of conviction and sentence recorded by the trial court and confirmed by the High Court holding the appellant guilty of the offence under Section 302 IPC. [Para 34] [1013-H; 1014-A]

A *Laxman v. State of Maharashtra* **(2002) 6 SCC 710;** *Koli Chunilal Savji v. State of Gujarat* **(1998) 9 SCC 303;** *Vikas and Others v. State of Maharashtra* **(2008) 2 SCC 516;** *Paniben v. State of Gujarat* **(1992) 2 SCC 474;** *Khushal Rao v. State of Gujarat* **AIR 1958 SC 22 and** *Nallapati Sivaiah v.* B *Sub-Divisional Officer, Guntur, A.P.* **AIR 2008 SC 19, referred to.**

Case Law Reference:

(2002) 6 SCC 710	**referred to**	**Para 23**
C **(1998) 9 SCC 303**	**referred to**	**Para 25**
(2008) 2 SCC 516	**referred to**	**Para 26**
(1992) 2 SCC 474	**referred to**	**Para 26**
D **AIR 1958 SC 22**	**referred to**	**Para 27**
AIR 2008 SC 19	**referred to**	**Para 29**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1349 of 2009.

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From the Judgment & Order dated 24.6.2008 of the High Court of Orissa, Cuttack in Criminal Appeal No. 163 of 2005.

Anand (for Abhijit Sengupta) for the Appellants.

F Janaranjan Das for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

G 2. The present appeal is filed against the judgment and order dated 24.06.2008 passed by the Orissa High Court at Cuttack whereby and whereunder the High Court partly allowed the appeal filed by the appellant herein and set aside the conviction of the appellant under Sections 304B, 498A of the

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Indian Penal Code (for short 'the IPC') and Section 4 of the Dowry Prohibition Act, 1961 (for short 'the D.P. Act') but convicted her under Section 302 of the IPC and sentenced her to undergo rigorous imprisonment for life. A

3. In order to appreciate the rival contentions advanced by the parties and issues involved, it is necessary to set out brief facts of the case which gave rise to the present criminal appeal: B

Marriage was solemnized between the deceased Anjali and Benudhar on 15.07.1999. Deceased Anjali died in the hospital on 14.02.2000 while under treatment for burn injuries which she had sustained on 08.02.2000. Sukanti Moharana, the appellant herein is the wife of the brother of Benudhar, the husband of the deceased. Informant Kabindra Ojha (PW-1) and Bharati (PW-3) are the parents of the deceased, Nakafoldi Ojha (PW-4) is the elder brother of PW-1 whereas PW-2 is the wife of PW-4. One Laxmidhar Ojha (PW-5) who was also examined as a witness is acquainted to brother of PW-1. C D

4. The Prosecution case is that at the time of Nirbandha of Benudhar and deceased Anjali, the appellant and Benudhar demanded dowry, a television, cash amounting to Rs. 8,000/- and gold ring etc. In response to the aforesaid demand made, PW-1 gave dowry of cash amounting to Rs. 8,000/-, a portable black and white T.V. and some gold ornaments at the time of marriage. E F

5. It is alleged that Benudhar and appellant demanded a bigger T.V. and subjected the deceased Anjali to torture in that connection after the marriage. It is also alleged by the prosecution that there was illicit relationship between the appellant and Benudhar. The deceased used to complain regarding torture and cruelty meted out towards her by both Benudhar and appellant as well as their illicit relationship before her parents and other relatives. G

6. The deceased Anjali had also written a letter to PW-2 H

A which was exhibited as Ext.2. disclosing her ordeal in the matrimonial home. On 08.02.2000, the parents of the deceased were informed that the deceased with burn injuries was admitted to Head Quarters Hospital, Dhenkanal. On receipt of the aforesaid information, the parents alongwith the brother B of the deceased went there and found that the deceased had sustained extensive burn injuries. Deceased was thereafter shifted to S.C.B. Medical College and Hospital on the same day for treatment. On 09.02.2000, it is alleged that the deceased regained her senses and disclosed before PW-1 C and other relatives that the appellant has poured kerosene on her and set her on fire with a matchstick upon which the informant (PW-1) lodged a first information report (for short 'the FIR) (Ext. 1) before the O.I.C., Sadar Police Station, Dhenkanal, who registered the case for commission of offences under D Sections 498A/307/34 of the IPC and Section 4 of the D.P. Act against the appellant and Benudhar.

7. On receipt of the aforesaid FIR, the case was registered. The investigation of the case was entrusted to the Sub-Inspector of Police (PW-12). PW-12 sent a message to Mangalabag E Police Station, Cuttack for recording the dying declaration of the deceased whereupon a Lecturer in the Surgery Department of S.C.B. Medical College and Hospital, Cuttack (PW-10) recorded the dying declaration of the deceased on 10.02.2000 in presence of other doctors. The said dying declaration was F proved and exhibited as Ext. 8 in the trial. Thereafter, the deceased while under treatment died on 14.02.2000 in the hospital. After her death an inquest was conducted by PW-12 and post mortem examination was done by PW-9. Subsequent to that, PW-13 took charge of the investigation. PW-13 G completed the investigation and thereafter submitted the chargesheet against the appellant and Benudhar for commission of offences under Sections 498A/304B and 302 read with Section 34 of IPC and Section 4 of the D. P. Act.

8. Both the accused namely the present appellant and H

Benudhar denied the charges and claimed to be tried. During the course of the trial number of witnesses were examined and on completion of the same and after hearing the parties the trial court passed its judgment and order on 15.02.2005 whereby it convicted the present appellant under Sections 302, 304B and 498A of IPC and under Section 4 of the D. P. Act whereas Benudhar was convicted and sentenced under Sections 304B and 498A IPC as well as under Section 4 of the D. P. Act. The present appellant Sukanti was sentenced by the trial court to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- and in default to undergo rigorous imprisonment for a period of one years for the offence under Section 302 IPC. Further, she was sentenced to undergo rigorous imprisonment for a period of 10 years under Section 304B IPC and also to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- each in default to undergo rigorous imprisonment for a further period of three months for the offence under Section 498A IPC and also to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs. 500/- each, in default to undergo rigorous imprisonment for a period of one month for the offence under Section 4 of the D. P. Act.

9. Feeling aggrieved, the present appellant as also Benudhar filed an appeal in the High Court of Orissa at Cuttack which was partly allowed by the High Court. The High Court while allowing the said appeal in part, set aside the conviction and sentence of the appellant under Section 304-B and Section 498A of IPC as well as under Section 4 of the D. P. Act, but conviction and sentence under Section 302 of IPC was maintained.

10. So far as Benudhar is concerned his conviction and sentence under Section 304B and 498A of IPC as well as Section 4 of the D. P. Act was set aside and he was acquitted. Consequently, the present appeal was filed by the present appellant on which initially a notice was issued.

A 11. The matter was thereafter ordered to be listed for hearing upon which we heard the learned counsel appearing for the respective parties.

12. The learned counsel appearing for the appellant submitted that both the courts below committed an error of fact B and also of law in convicting the appellant. It was submitted that there is no eye witness to the occurrence and the entire case rests only on the circumstantial evidence and that also on the alleged dying declaration stated to have been made by the deceased. It was submitted that one dying declaration was C allegedly an oral dying declaration which was not recorded in writting whereas the second dying declaration although recorded but the same suffers from many infirmities and therefore, the same should not have been relied upon and should have been rejected as not reliable. He very strenuously D urged that the said dying declaration did not have any certificate of the doctor attached to it certifying that the deceased was in a fit condition to make a statement and also the signature and the thumb impression of the deceased was not there in the said dying declaration.

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13. The learned counsel for the State on the other hand supported the order of conviction and sentence. He submitted that both the courts were correct and justified in relying upon the aforesaid dying declaration which were recorded by the F doctor (PW-10) and also on the oral dying declaration.

14. Having heard the learned counsel appearing for the parties, we now proceed to analyse the entire evidence on record so as to ascertain whether or not the conviction and sentence passed against the appellant would and could be G upheld.

15. The marriage between the deceased Anjali and Benudhar was solemnized on 15.07.1999 and Anjali received the burn injuries on 08.02.2000. Parents of the deceased were H informed of the incident on the same day i.e. 08.02.2000

whereupon they immediately went to the hospital and found that the deceased was admitted to Head Quarters Hospital, Dhenkanal with extensive burn injuries. As the injuries were very extensive and grievous in nature therefore she was shifted to S.C.B. Medical College and Hospital on the same day for treatment. PW-1, the informant and father of the deceased and PW-3, the mother of the deceased stated that on 09.02.2000 the deceased regained her senses and then made a statement before PW-1 and others that appellant Sukanti poured kerosene on her and set her on fire with a matchstick. The Investigation Officer (PW-12) also sent a message to Mangalabag Police Station, Cuttack for recording dying declaration of the deceased whereupon her dying declaration was recorded by a Lecturer of the Surgery Department of the S.C.B. Medical College and Hospital, Cuttack on 10.02.2000 in presence of other doctors.

16. While under treatment in the same hospital, the deceased died on 14.02.2000 and her post-mortem examination was carried out by the doctor namely PW-9. A perusal of the record would also indicate that the conviction of the appellant Sukanti for commission of the offence under Section 302 IPC was ordered on the basis of the dying declarations more particularly relying on the written dying declaration (Ext. 8). The doctor who recorded her dying declaration was examined in the trial as PW-10. He had stated in his deposition that he was attached to S.C.B. Medical College and Hospital, Cuttack as a Lecturer in Surgery and that the deceased was admitted to Surgical Ward (Female) on 08.02.2000 on having suffered 90 per cent burn injuries. He also stated that he was associated with the treatment of the deceased till 14.02.2000 and that on 10.02.2000 at 11.20 a.m., he recorded the dying declaration of the deceased in presence of Professor Amulya Das and two Post Graduate students. He had also stated clearly in his evidence that the deceased was mentally clear and was able to make proper statement while making the dying declaration (Ext. 8) which has been proved

A in the trial. The PW-10 also identified the signatures of Professor Amulya Das as well as Dr. R.N. Mahapatra in whose presence the dying declaration (Ext. 8) was recorded.

17. The High Court while upholding the conviction and sentence of the appellant under Section 302 of the Indian Penal Code also held that the dying declaration (Ext. 8) gets independent corroboration from the oral dying declaration made by the deceased before her parents i.e. PW-1 and PW-3 as well as PW-4, PW-5 and PW-6. The said witnesses have testified in their evidence that on 09.02.2000 at 9 a.m., the deceased got her sense and at about 2 p.m., she was able to talk properly. It was stated that on being asked as to how she sustained burn injuries, the deceased informed PW-1 and PW-3 that the appellant Sukanti gave her rice to eat and while she was eating, appellant Sukanti poured kerosene oil on her back side and thereafter lighted her with a matchstick and when she was engulfed by fire, appellant Sukanti closed the door from outside. Both PW-1 and PW-3 were subjected to extensive cross-examination but the aforesaid part of the evidence pertaining to the oral dying declaration made by the deceased could not be dislodged in any manner in the course of cross-examination. The FIR (Ext. 1) which was lodged on 09.02.2000, by PW-1 itself also materially corroborates the aforesaid facts contained in the dying declarations and the evidence of the informant in the court with regard to the dying declaration made by the deceased implicating appellant Sukanti in causing burn injuries to her.

18. Counsel appearing for the appellant Sukanti strenuously urged before us that both the oral dying declaration allegedly made before PW-1 and PW-3 and recorded dying declaration allegedly made before doctor are not reliable and could not be accepted. In support of the said submission, it was submitted that the dying declaration recorded by the doctor did not contain any certificate given by the doctor that she was in a stable and fit mental and physical condition to make such a

statement and that the said dying declaration also did not contain the signature or thumb impression of the deceased. She also relied upon the evidence of DW-4 and DW-6 who were associated with the treatment of the deceased at the Head Quarters Hospital Dhenkanal and bed head ticket (Ext. A) maintained in that hospital in her attempt to get over the dying declaration.

19. The judgments of the Courts below clearly indicate that endorsements at the time of the admission of the deceased in Dhenkanal Hospital made in Ext. A as well as in Cuttack Hospital made in Ext. 9 indicate that the cause of injury received by the patient was mentioned to be an accident due to bursting of stove, but that the said endorsements do not indicate nor the evidence of DW-4, DW-5 and DW-6 adduced during the course of the trial show that the aforesaid endorsements were recorded on the basis of the statements made by the deceased. On the other hand it is indicated therefrom that Bed Head Ticket (Ext. 9) proves and establishes that on 09.02.2000, as per the history given by the deceased herself the treating physician had endorsed that it was a case of homicidal burn due to ignition caused by spilling of kerosene. Further, though no specific endorsement has been made on the dying declaration but there is contemporaneous evidence in the form of Ext. 9/1 which makes it clear that the Doctor recording the dying declaration had recorded that the patient was oriented to time and place and mentally clear at the time of recording of the dying declaration.

20. We have scrutinized the contents of the recorded dying declaration which was recorded by the doctor of the hospital where the deceased was treated for her burn injuries. On going through the same we find no infirmity in the said dying declaration as the said dying declaration vividly mentions the manner in which the deceased suffered the burn injuries on pouring kerosene oil on her by the appellant who also lighted the matchstick which caused the fire and burnt the deceased.

A The appellant not only poured the kerosene oil on the deceased and lit the fire but also closed the door after going out of the said room where the deceased was left to burn by the fire. The said description given by the deceased in the dying declaration recorded by the doctor is clear, unambiguous and there is no B reason why we should not accept the said dying declaration as correct and true version of the incident.

21. The objections raised by the counsel appearing for the appellant which are of technical nature with regard to recording and admissibility of the aforesaid dying declaration. We are C however, of the considered opinion that the said dying declaration recorded by the doctor is also corroborated by the oral dying declaration made before PW-1 and PW-3 and the said fact also finds corroboration from the statement of PW-1 and PW-3 and also from the FIR which were proved through D the evidence of PW-1.

22. Section 32 of the Indian Evidence Act, 1872 deals with the statement of persons who cannot be called as witnesses as because they are dead or they cannot be found or they have E become incapable of giving evidence or their evidence cannot be procured without an amount of delay or expense. Such statements themselves are relevant facts in certain cases. The aforesaid Section 32 was enacted as an exception to the general rule as reflected in Section 60 of the said Act which F mandates that oral evidence in all cases must be direct i.e. if it refers to a fact which could be seen, it should be the evidence of a witness who says he saw it, whereas if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it or if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the G evidence of a witness who says he perceived it by that sense or in that manner.

23. The question as to admissibility of such a dying declaration came up for consideration before this Court in H several cases. We have considered the Constitution Bench

decision of this Court in *Laxman v. State of Maharashtra* reported in (2002) 6 SCC 710. In the said case also there was a dying declaration and a question regarding the admissibility of the said dying declaration was raised. In that connection this Court held that the Court must decide that the declarant was in a fit state of mind to make the declaration, but where the eye witnesses' evidence including the evidence of a Magistrate who had recorded the dying declaration to that effect was available, mere absence of doctor's certification as to the fitness of the declarant's state of mind, held, would not ipso facto render the dying declaration unacceptable. It was also held that the evidentiary value of such a declaration would depend upon the facts and circumstances of the particular case.

24. In paragraph 3 of the said judgment, this Court discussed the juristic theory recording acceptability of a dying declaration in the following manner:-

> "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 deathed is so solemn and serene, is the reason in law to accept the veracity of his statement....."

25. The Constitution Bench in that case also referred to an earlier decision of this Court in *Koli Chunilal Savji v. State of Gujarat* (1998) 9 SCC 303, wherein it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given and in the said decision it was also held that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to

A make the statement in question. The aforesaid ratio of the said decision was affirmed in the *Laxman* case(supra).

26. There is another very recent decision of this Court in *Vikas and Others v. State of Maharashtra* reported in (2008) 2 SCC 516 wherein all the earlier relevant decisions on the point have been indexed and referred to and relied upon. The said decision specifically reiterates the principle governing the dying declaration which was stated in the case of *Paniben v. State of Gujarat* reported in (1992) 2 SCC 474. In paragraph 45 of the said judgment, it was stated thus:-

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> **"45.** The Court, referring to earlier case law, summed up principles governing dying declaration as under: (Paniben case4, SCC pp. 480-81, para 18)
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> D "18. *(i)* There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
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> *(ii)* If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without E corroboration.
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> *(iii)* This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased F had opportunity to observe and identify the assailants and was in a fit state to make the declaration.
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> *(iv)* Where dying declaration is suspicious it should not be acted upon without corroborative evidence.
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> G *(v)* Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
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> *(vi)* A dying declaration which suffers from infirmity H cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. A

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. B

(ix) Normally 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 eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. C

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon." D

27. After referring to the decision of this Court in *Khushal Rao v. State of Gujarat* reported in AIR 1958 SC 22, the principle formulated earlier was reiterated that where a dying declaration is recorded by a competent Magistrate, it would stand on a much higher footing inasmuch as a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the court. E F

28. The aforesaid principles which are laid down are fully applicable to the facts of the present case as in this case the dying declaration was recorded by a doctor who was most disinterested witness. It was also categorically stated by the doctor that at the time when she made her dying declaration, she was in a fit state of mind. G

29. In the case of *Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, A.P.* reported in AIR 2008 SC 19, in paragraph 18 it was stated thus; H

A "18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration in as much as there could be any number B of circumstances which may affect the truth. This Court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the C deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion."

30. In the said decision this Court also referred to a D decision of the aforesaid Constitution Bench and reiterated that there is no requirement of law that the dying declaration must necessarily contain a certification by the doctor that the patient was in a fit state of mind especially when the dying declaration was recorded by a Magistrate. It was also held in the said E decision that it is the testimony of the Magistrate that the declarant was fit to make statement gains importance and that reliance can be placed upon such a declaration even in the absence of the doctor provided the court ultimately holds the same to be voluntary and truthful.

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31. When we apply the aforesaid principles to the facts of the present case we are of the considered opinion that both the courts were totally justified and also right in relying upon the two dying declarations one recorded by the doctor (PW-10) and the other i.e. oral dying declaration made to PW-1 and PW-3. G The two technical objections which were raised by the counsel for the appellant, one regarding the doctor's certification and endorsement as to mental fitness of the deceased, the same was held by this Court to be a rule of prudence and not the ultimate test as to whether or not the said dying declaration was

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truthful or voluntary. A

32. The doctor who recorded the dying declaration was examined as a witness and he had in his deposition categorically stated that the deceased while making the aforesaid statement was conscious and in a fit mental condition B to make such a statement. The aforesaid position makes it therefore clear that the aforesaid dying declaration could be relied upon as the same was truthfully recorded and the said statement gave a vivid account of the manner in which the incident had taken place. C

33. There was another objection raised by the counsel appearing for the appellant regarding the admissibility of the aforesaid recorded dying declaration contending inter alia that the signature or the thumb impression of the deceased was not taken on the said dying declaration. The said objection D according to us also is without any basis. The deceased had suffered about 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface. The post mortem report also indicates that there was bandage in her thumb as it was burnt. In such a situation, it was not possible to take her signature or E LTI on the dying declaration. There is also no reason why a dying declaration which is otherwise found to be true, voluntary and correct should be rejected only because the person who recorded the dying declaration did not or could not take the signature or the Left Thumb Impression of the deceased on the F dying declaration. Once it is found that the dying declaration is true and made voluntarily and as also trustworthy, there is no reason why the same should not be believed and relied upon. In this case, the said dying declaration is corroborated by the oral dying declaration made by the deceased before PW-1 and G PW-3 which is also corroborated by the medical evidence and the facts contained in the FIR.

34. Therefore, taking an overall view of all the facts and circumstances of the case and the evidence on record, we find H

A no ground to interfere with the order of conviction and sentence recorded by the trial court and confirmed by the High Court holding the appellant guilty of the offence under Section 302 IPC. The present appeal therefore deserves to be dismissed which we hereby do. The order of conviction and sentence
B recorded against the appellant is therefore upheld.

B.B.B. Appeal dismissed.