IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ

ON THE 14th July, 2025

CRIMINAL APPEAL NO. 7985 of 2018

SHRI RAM SINGH SENGAR

Versus

THE STATE OF MADHYA PRADESH

***Appearance**:*
Shri Ashok Jain- Advocate for appellant.
Shri Vijay Sundaram- P.P for respondent/State.

JUDGMENT

Per Hirdesh, J:

Today, this case is listed for hearing on IA No.12762 of 2025, third application under Section 389(1) of CrPC moved on behalf of sole appellant- Ram Singh Sengar for suspension of jail sentence and grant of bail.

(2) After withdrawal of aforesaid I.A. No.12762 of 2025, matter was placed at post-lunch session and with the consent of learned counsel for the parties, matter is heard finally.

(3) This criminal appeal under Section 374 (2) of Cr.P.C. has been filed by appellant being aggrieved by the judgment of conviction and order of sentence dated 16.08.2018 passed by 16th Additional Sessions Judge, Gwalior (M.P.) in S.T. No. 181/2016 whereby appellant has been convicted under Section 302 of IPC and sentenced to undergo Life

Imprisonment with fine of Rs. 1000/- and further convicted under Section 201 of IPC and sentenced to undergo three years' Rigorous Imprisonment with fine of Rs.1000/-, with default stipulations. Both the sentences have been directed to run concurrently.

(4) The case of prosecution, in nutshell, is that Usha Sengar was married with appellant on 05.05.1992. On 01.02.2016 at about 08:00 PM, appellant came to the house after taking the liquor and started beating children. When she objected to it, appellant also beat her and thereafter poured kerosene on her and lit match stick and set her ablaze. Due to which, her body caught fire and she got burnt. Children of deceased Bhawana (PW-2) and Mohini (PW-3), who were present on the spot, saved her and called their maternal uncle Manoj Singh (PW-8). She was admitted in a burnt condition in Burn Ward of JA Hospital, Gwalior by her brother where Duty Doctor Devesh Sharma (PW-7) sent an information to PS Bahodapur, Gwalior regarding the incident. MLC Report and case-sheet (Ex.P-12) were prepared. On 02.02.2016, Statment of Smt. Usha under Section 161 of CrPC was recorded *vide* Ex.P-16 by Head Constable Sheikh Shakeel Khan (PW-11). On same day, on information received from the Police Station Kampoo, Gwalior, Shivnandan Singh Kushwah (PW-9), the then Naib Tehsildar reached the Burn Ward of JA Hospital, Gwalior and recorded Dying Declaration of Smt. Usha *vide* Ex.P-14. During treatment, Smt. Usha died on 05.02.2016. The said information of death was given telephonically by Dr. Devesh Sharma to PS Bahodapur. Post-mortem of dead body was conducted *vide* Ex.P-15. On such allegations, PS Bahodapur registered FIR at Crime No.09/2016. During the investigation, *Safina* form was prepared *vide* Ex.P-6 and Naksha Panchayatnama was prepared *vide*

Ex.P-7. Spot map was prepared *vide* Ex.P-1. Accused was arrested *vide* arrest memo Ex.P-17. Relevant seizures were made. Statements of witnesses were recorded. After completion of investigation, Charge Sheet was filed and the case was committed to the Sessions Court for its trial.

(5) Charges were framed. Appellant denied committing the alleged crime and pleaded trial. During trial, appellant in his statement recorded under Section 313 of CrPC pleaded that he has been falsely implicated in the case. The prosecution in order to prove its case examined twelve witnesses, whereas appellant did not examine and produce any witness in order to lead evidence in his defence.

(6) The Trial Court, after evaluating documentary as well as oral evidence and other material available on record, convicted and sentenced present appellant, as aforesaid

(7) The appellant being dissatisfied with the impugned judgment filed this instant appeal on various grounds.

(8) Learned counsel for the appellant submits that the trial Court has committed an error in convicting and sentencing the present appellant without going through the evidence in proper perspective. There are contradictions and inconsistencies in the evidence of prosecution witnesses. The delay in lodging the FIR becomes suspicious because it was not registered as per the requirements under Section 154 of CrPC. The evidence of Dr. Devesh Sharma (PW-7) clearly shows that the information regarding the incident was given by him from the hospital to the police station on the same day i.e. 01.02.2016, but the said information was not recorded by the police on the same day, but the FIR was lodged on 05.02.2016 after the death of deceased Smt. Usha, which appears to be afterthought because the statements of the prosecution were

recorded later on, therefore, on the basis of delayed FIR, the prosecution story appears to be doubtful and the same cannot be taken into consideration in evidence.

(9) Learned counsel further submitted that Dr. H.L. Manjhi (PW-10), who has conducted the post-mortem of deceased Smt. Usha on 06.02.2016 in his evidence noted that 70 per cent body of the deceased was burnt and the cause of death of the deceased is due to complications, which were developed during treatment and it was due to Septicemia and burnt injuries are not a direct result of death of deceased. There is no evidence available on record that the cause of death of the deceased was homicidal in nature. Therefore, the conviction recorded by the trial Court against the appellant for offence under Section 302 of IPC is not just and proper and is unsustainable in the eyes of law.

(10) Learned counsel for appellant also contended that son of deceased Raja @ Arvind (PW-1), daughters of deceased Bhawana (PW-2) and Mohini (PW-3) were turned hostile and did not support the story of prosecution. Further, Feran Singh (PW-5), Jai Singh (PW-6) and Manoj (PW-8), who were relatives of the deceased also turned hostile and did not support the prosecution version, who in their evidence have clearly deposed that the death of deceased was an accidental in nature.

(11) It is further submitted by learned counsel for appellant that although the Executive Magistrate Shivnandan Singh (PW-9) in his evidence deposed that he had recorded the Dying Declaration of the deceased *vide* Ex.P-14 in the presence of treating doctor, but there is no endorsement of doctor to the effect that the treating doctor was present at the time when the Dying Declaration was recorded by the Executive Magistrate. It is not stated by doctor that the deceased was in fit state of mind when her

statement was recorded by the Executive Magistrate. Further, at the time of taking statement of the deceased, her statement was not read over to her. Therefore, because of non-availability of endorsement and non-reading of statement to the deceased, it appears to be the Dying Declaration (Ex.P-14) highly suspicious and doubtful. Head Constable Sheikh Sakil Khan (PW-11), who had recorded the statement of deceased under Section 161 of CrPC, did not certify that the statement was read over to the deceased, therefore, the it also appears to be doubtful. On these grounds, it is prayed that the impugned judgment of conviction and order of sentence deserves to be set aside and appellant deserves acquittal.

(12) While advancing the arguments at length, relying on the judgments passed in the cases of ***B.N. Kavatakar vs State Of Karnataka 1994 SCC, Supl. (1) 304, Harish Kumar Vs. State (Delhi Administration) AIR 1993 SC 973***, ***Premsingh and Another Vs. State of M.P. 2007 (1) MPHT 86 (DB)*** *and* ***Chhabiram and Others Vs. State of M.P. (decided on 18th March, 2009)***, an alternative submission was also put forth by learned counsel for appellant that the alleged incident occurred all of a sudden as a result of quarrel among the children of appellant and deceased and there was no intention on the part of the appellant to kill the deceased. Therefore, offence under Section 302 of IPC is not made out and at the most, the offence falls within the ambit of Section 304 of IPC.

(13) On the contrary, learned counsel for the State vehemently opposed the submissions of learned counsel for appellant and supported the impugned judgment of conviction and order of sentence. It is submitted that considering the nature of offence and the manner in which, the alleged offence was committed by appellant, he is not entitled to get any leniency. There is no infirmity or illegality in the impugned judgment. No

interference is warranted by this Court and the appeal deserves dismissal.

(14) Heard learned counsel for the parties and perused the record.

(15) The present case is based on direct evidence as well as Dying Declaration (Ex.P-14).

(16) On perusal of evidence of children of deceased and appellant, namely, Raja @ Arvind (PW-1), Bhavana (PW-2) and Mohini (PW-3), it was found that these witnesses did not support the story of prosecution and turned hostile. These witnesses are eye-witnesses of the incident, who in their evidence specifically deposed that there is no dispute between their parents and their mother was burnt, when she was inside the house. Father of the deceased Feran Singh (PW-5), brothers of deceased Jai Singh (PW-6) and Manoj Singh (PW-8) also turned hostile and they did not support the story of prosecution.

(17) So far as the statement of the deceased recorded under Section 161 of CrPC *vide* Ex.P-16 and her Dying Declaration *vide* Ex.P-14 is concerned, it is settled principal of law that Dying Declaration is a substantive piece of evidence and it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing upon his imagination while he was making the declaration.

(18) The Hon'ble Supreme Court in the matter of ***Munnu Raja and Others Vs. State of Madhya Pradesh (1976) 3 SCC 104*** has observed that although if the Dying Declaration recorded under Section 32(1) of Evidence Act is not corroborated by testimony of hostile witnesses, but FIR or statement under Section 161 of CrPC is recorded by deceased

himself just before succumbing to injuries, then same is admissible in evidence treating the same to be a "Dying Declaration". If a Dying Declaration is found to be voluntary and maker was in fit physical and mental condition to make such statement, then it can be relied upon with even any corroboration and on the basis of such Dying Declaration, conviction can be recorded. Further, in the case of ***Sarif Khan Vs. State of Madhya Pradesh 2006 (4) MPLJ 236*** it was held by this Court that statement recorded under Section 161 of CrPC of deceased must come under the “Dying Declaration”. Similarly, in the case of ***State of Punjab Vs. Amarjit Singh AIR 1988 SC 2013*****,** the Hon'ble Supreme Court has observed that Dying Declaration recorded by the Investigation Officer in the absence of Magistrate could not be rejected.

(19) Regarding Dying Declaration, the Hon'ble Apex Court further in the case of ***Sri Bhagwan Vs. State of Uttar Pradesh, (2013) 12 SCC 137*** has observed as under:-

> **"24.**As far as the implication of 162 (2) of Cr.P.C. is concerned, as a proposition of law, unlike the excepted circumstances under which 161 statement could be relied upon, as rightly contended by learned senior counsel for the respondent, once the said statement though recorded under Section 161 Cr.P.C. assumes the character of dying declaration falling within the four corners of Section 32(1) of Evidence Act, then whatever credence that would apply to a declaration governed by Section 32 (1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 Cr.P.C. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such.
>
> **25.** Keeping the above principle in mind, it can be stated without any scope for contradiction that when we examine the claim made on the

> statement recorded by PW-4 of the deceased by applying Section 162 (2), we have no hesitation in holding that the said statement as relied upon by the trial Court as an acceptable dying declaration in all force was perfectly justified. We say so because no other conflicting circumstance was either pointed out or demonstrated before the trial Court or the High Court or before us in order to exclude the said document from being relied upon as a dying declaration of the deceased. We reiterate that having regard to the manner in which the said statement was recorded at the time when the crime was registered originally under Section 326 IPC within the shortest time possible within which it could be recorded by PW-4 in order to provide proper medical treatment to the deceased by sending him to the hospital, with no other intention pointed out at the instance of the appellant to discredit contents of the said statement, we hold that the reliance placed upon the said statement as the dying declaration of the deceased was perfectly justified. Having regard to our above conclusion, the said submission of the learned counsel for the appellant also stands rejected."

(20) The Hon'ble Apex Court in the matter of ***Naeem Vs. State of U.P. 2024 SCC Online SC 237*** has laid down certain factors to be taken into consideration while resting the conviction of the accused on the basis of Dying Declaration as under:-

> "**22.**(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
>
> (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
>
> (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
>
> (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
>
> (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
>
> (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

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

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

(21) In the case of *K* ***Ramachandra Reddy Vs. Public Prosecutor 1976 (3) SCC 618,*** the Hon'ble Supreme Court as observed as under:

"The dying declaration is undoubtedly admissible under s. 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of has imagination. The Court must be satisfied that the deceased was in a fit slate of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration."

(22) In the case of ***Samadhan Dhudaka Koli vs State Of Maharashtra 2008 (16) SCC 705,*** the Hon'ble Supreme Court has held that a judgment of conviction can be recorded on the basis of Dying Declaration alone but the court must have been satisfied that the same was true and voluntary. In this regard, in Paragraphs 12 and 13 has observed as under:-

"**12.** A dying declaration made before a Judicial Magistrate has a higher evidentiary value. The Judicial Magistrate is presumed to know how to record a dying declaration. He is a neutral person. Why the prosecution had suppressed the dying declaration recorded by the Judicial Magistrate is not known. Prosecution must also be fair to the accused. Fairness in

> investigation as also trial is a human right of an accused. The State cannot suppress any vital document from the court only because the same would support the case of the accused.
>
> **13.**The learned Sessions Judge as also the High Court, in our opinion, committed a serious illegality in refusing to consider the said question in its proper perspective. The prosecution did not explain as to why the said dying declaration was not brought before the court. The learned Sessions Judge as also the High Court surmised about the contents thereof. Not only the contents of a dying declaration, but also the manner in which it is recorded and the details thereof play a significant role in the matter of appreciation of evidence."

(23) In the present case, Head Constable Shiekh Sakil Khan (PW-11) deposed in his cross-examination-in-chief that on 02.02.2016 when he was posted at Bahodapur Police Station, Gwalior, he took the statement of deceased and she stated that:-

> "कल शाम लगभग 8-9 बजे भवन लक्ष्मी के पप मेरे पति शराब पीकर आये मेरी व बच्चें की मारपीट करने लगे ते मैंने मना किया ते और लोग हमारी मारपीट करने लगे तथ मेरे ऊपर मिट्टी का तेल डालकर माचिस से आग लगायी ते मेरी बच्ची चंपे ने मुझे बताय उस समय मेनी और भवन घर पर थी। तीनें नेहे आग बुझायी थी।"

(24) Shivnandan Singh (PW-9), who was posted on 02.02.2016 as Naib Tehsildar in Tehsil Gwalior in his cross examination-in-chief deposed that on receipt of information from PS Kampoo, he reached Burn Ward JA Hospital, Gwalior and thereafter, he recorded Dying Declaration of deceased Smt. Usha on the basis of statement given by the deceased. Doctor certified that she was fit for giving her statement. Deceased in her statement stated that:-

> "पति द्वारा शराब पीकर बच्चें की मारपीट कर रहा था मेरे द्वारा मना करने पर मेरी मारपीट करने लगा था मेरे ऊपर मिट्टी का तेल डालकर माचिस से आग लगा दी। आग लगा कर वह भाग गया। बच्चियें ने 108 गाड़ी मंगाकर मुझे उपचार के लिये अस्पताल ले आई।"

(25) Dr. Devesh Sharma (PW-7), who was posted as RSO on 02.02.2016

in Surgery Department in Para 5 of his cross examination-in-chief deposed that he had certified that the deceased was able to give her statement. His signature has been mentioned in "B to B" of Dying Declaration (Ex.P-14).

(26) So far as the requirement of certificate of doctor before recording the statement of deceased is concerned, the Hon'ble Apex Court in the case of ***Nallapati Sivaiah Vs. Sub Divisional Officer, Guntur, Andra Pradesh (2007) 15 SCC 465*** observed in Para 37 as under:-

> "The Constitution of Bench in Laxman Vs. State of Maharashtra (2002) 6 SCC 710 resolved the difference of opinion between the decisions expressed by the two Benches of three learned Judges in *Paparambaka Rosamma Vs. State of A.P., (2002) 6 SCC 710 and Koli Chunilal Savji Vs. State of Gujarat, (1999) 9 Scc 562* and accordingly held that there is no requirement of law that there should be always a medical certification that the injured was in a fit state of mind at the time of making a declaration and such certification by the doctor is essentially a rule of caution and even in the absence of such a certification, the voluntary and truthful nature of the declaration can be established otherwise."

(27) On going through the Dying Declaration (ExP-14), it was found that there is a certificate of doctor therein that the deceased was conscious and able to give her statement at the time of Dying Declaration. Therefore, trial Court did not commit any error in relying Dying Declaration as well as testimony of Naib Tehsildar Shivnandan Singh (PW-9).

(28) The contention of learned Counsel for appellant is that although Naib Tehsildar Shivnandan Singh (PW-9) and Shiekh Sakil Khan, Head Constable (PW-11) took the statement of deceased and it was certified that Dying Declaration was read over to the deceased, but they did not ask any preliminary question from deceased and there is no endorsement , therefore, such Dying Declaration appears to be doubtful and the same is discarded in the light of judgment passed by in the case of ***Kanti Lal vs.***

State of Rajasthan reported in 2009 (12) SCC 498.

(29) In the present case, it was not found that certificate was given by Dr. Devesh Sharma (PW-7) about the statement of deceased while recording Dying Declaration is not only in the beginning, but also in the end of it. Deceased had appended her thumb impression after closure of Dying Declaration, which indicates that she was satisfied with it and, therefore, she appended her thumb impression. Hence, it cannot be presumed that her Dying Declaration was not read over to her. Therefore, if in absence of any formal endorsement the statement of deceased was read over to the deceased and she admitted it to be correct one and her thumb-impression was taken, then it makes no difference. The factual position of this case is quite different from case of **Kanti Lal *(supra)***.

(30) Naib Tehsildar Shivnandan Singh (PW-9) and Shiekh Sakil Khan, Head Constable (PW-11) are public servants and there is no enmity between these witnesses with appellant. In the case of ***Latora Vs. State of Madhya Pradesh ILR 2007 (M.P) 1675***, it was held that appellant was unable to prove that doctor and Executive Magistrate have enmity with him and they are doing their public work with malicious intention. Therefore, there is no reason to discard their evidence because they are doing their public work.

(31) There is no reason to disbelieve the Dying Declaration (Ex.P-14) recorded by the Executive Magistrate Naib Tehsildar Shivnandan Singh (PW-9) and statement of deceased recorded under Section 161 of CrPC by Head Constable Shiekh Sakil Khan (PW-11) which falls within the scope of "Dying Declaration". It is clear that the deceased had stated about the incident that the appellant poured kerosene and set ablaze her. Hence, from such evidence, it is established that the death of the deceased was

homicidal in nature and appellant was the person, who poured kerosene and set ablaze her.

(32) On the basis of aforesaid discussion, in considered opinion of this Court, Dying Declaration (Ex.P-14) and statement of deceased recorded under Section 161 of CrPC *vide* Ex.P16 are reliable and there is no reason to disbelieve them.

(33) On the basis of the above discussion, trial Court has rightly believed the Dying Declaration as well as statement of deceased recorded under Section 161 of CrPC and held the appellant guilty that he poured kerosene and set ablaze the deceased.

(34) Relying on various judgments as cited above, learned counsel for the appellant made an alternative submission that the incident occurred all of a sudden on account of quarrel among the children and the appellant has not any intention to kill the deceased. The alleged incident occurred on 01.02.2016 between 08:00 to 09:00 PM and deceased was succumbed on 05.02.2016. Doctor in his evidence deposed that deceased was burnt 55 to 60% and due to this, infection occurred in the body of deceased as a result of which, due to cardio respiratory failure, deceased was died. Therefore, no offence under Section 302 of IPC is not made out against the appellant and at the most, offence falls under Section 304 of IPC. It is further contended that the appellant has suffered almost nine years and four months. Hence, it is prayed that a leniency may be adopted by reducing the jail sentence of Life Imprisonment to the period already undergone by him.

(35) The Supreme Court in the case of ***Lavghanbhai Devjibhai Vasava Vs. State of Gujarat, reported in (2018) 4 SCC 329*** has held as under:

> **7.** This Court in has laid down the par*Dhirendra Kumar v. State of Uttarakhand* ameters which are to

> be taken into consideration while deciding the question as to whether a case falls under Section 302 IPC or Section 304 IPC, which are the following:
> (a) The circumstances in which the incident took place;
> (b) The nature of weapon used;
> (c) Whether the weapon was carried or was taken from the spot;
> (d) Whether the assault was aimed on vital part of body;
> (e) The amount of the force used.
> (f) Whether the deceased participated in the sudden fight;
> (g) Whether there was any previous enmity;
> (h) Whether there was any sudden provocation.
> (i) Whether the attack was in the heat of passion; and
> (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner

(36) Considering the medical evidence available on record, it was found that the alleged incident occurred on 02.02.2016 in the night and the deceased was died on 05.02.2016 during treatment in JA Hospital, Gwalior. On perusal of material available on record, this Court does not find any laxity or negligence in the treatment of deceased. So in the considered opinion of this Court, it is not a case where the appellant is entitled to alteration of sentence from Section 302 of IPC to Section 304 Part II of IPC. The trial Court has rightly convicted the appellant guilty of offence punishable under Section 302 of IPC and this Court does not find any infirmity or illegality in the impugned judgment passed by the Trial Court.

(37) In view of above discussion, the instant appeal being devoid of merits, is hereby **dismissed**. The impugned judgment of conviction and order of sentence dated 16.08.2018 passed by the 16th Additional Sessions

Judge, Gwalior in S.T. No. 181/2016 is hereby **affirmed**. The appellant is already in jail. He is directed to serve the remaining part of jail sentence, as awarded by trial Court.

(38) A copy of this judgment along with record be sent to the Trial Court concerned as well as concerned Jail Authority for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

Avi*