



2026:CGHC:6222-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1233 of 2019

Dhaneshwar Sahu S/o Shiv Ram Sahu Aged About 25
Years R/o Village Khajhri, P.S. Sarangarh, District
Raigarh Chhattisgarh.

----Appellant (in Jail)

Versus

State Of Chhattisgarh Through Police Station, Janakpur
District - Korla Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant :- Mr. Basant Dewangan, Advocate

For Respondent/State:- Mr. Ashish Shukla, Addl. A.G.;

Mr. Rahul Tamaskar, G.A.;

Mr. H.A.P.S. Bhatia, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Arvind Kumar Verma

Judgment on Board

04/02/2026

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant against impugned judgment of conviction and order of sentence dated 29/06/2019 passed by learned 2nd Additional Sessions

Judge, Manendragarh, District Korla in Sessions Case No. 105/2017 whereby the appellant has been convicted for offence punishable under Section 302 (two times) and 309 of IPC and sentenced to undergo life imprisonment with fine of Rs. 1,000/- and in default of payment of fine, additional R.I. for three months and to undergo S.I. for 3 months, respectively, with a direction to run both the sentences concurrently.

2. Case of the prosecution, in brief, is that on 11/05/2017 at about 12:30 PM at Village Shivtola within the ambit of Police Station Janakpur, the appellant herein, knowing fully well that jumping into the well would inevitably lead to death, after tying her two minor sons namely Bharat, aged about 4 years, and Shatrughan, aged about 4 months, from her waist, jumped into the well which led to the death of both of her sons and also attempted to commit suicide and thereby, committed the aforesaid offence.

3. Further case of the prosecution is that on 11/05/2017, at about 6.00–7.00 AM, the husband of the appellant namely Shailendra Panika (PW-1), along with his family members, had gone to the forest and at that time, the appellant was present at home along with her two minor sons namely Bharat and Shatrughan. At about 12.30 PM, Shailendra Panika (PW-1) returned home and found the door of the house locked. Upon not finding his wife and children in the house, he went towards the nearby

well, where he noticed the appellant lying on her side in the water. On raising an alarm, villagers including Ramchandra Panika (PW-3) and others gathered at the spot and the appellant was pulled out of the well in an unconscious condition. It was further noticed that the younger son Shatrughan was tied around the waist of the accused and was taken out of the well in a dead condition. Thereafter, the elder son Bharat was also taken out of the same well, who was also found dead. On receiving information regarding the incident, Inspector T.S. Paikra (PW-7) of Police Station Janakpur reached the spot and after making preliminary inquiry from the husband of the appellant, recorded merger intimation (Ex. P/1). Separate inquest proceedings of both the deceased children were conducted on the spot vide Ex. P/3 and P/4 in the presence of witnesses. Thereafter, the dead bodies were sent to the Community Health Centre, Janakpur, where Dr. Abhaya Gupta (PW-9) conducted the postmortem examinations and prepared separate postmortem reports of Bharat and Shatrughan vide Ex. P/9A and Ex. P/10A, respectively. The appellant was referred to the Community Health Centre, Janakpur, for medical treatment. On the same date, the spot map (Ex. P/5) was also prepared. On returning to the police station on 11.05.2017, Inspector T.S. Paikra (PW-7) registered Merger Case No. 14-15/2017 (Ex. P/12). After receiving the postmortem

reports and considering the facts revealed during the inquest proceedings, FIR No. 54/2017 against the appellant was registered for offences punishable under Sections 302 and 309 of the IPC vide Ex. P/13. During the course of investigation, after obtaining the medical fitness report of the appellant, the Naib Tehsildar/Executive Magistrate, T.K. Das (PW-10) recorded the dying declaration of the accused (Ex. P/20) in the presence of witnesses. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. The Patwari spot map (Ex. P/8) was obtained. After due investigation, the appellant herein was charge-sheeted for offence punishable under Sections 302 (two times) and 309 of IPC which was committed to the Court of Sessions for trial in accordance with law. The appellant abjured her guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 11 witnesses and brought on record 3020 documents. Statement of the appellant was recorded under Section 313 of CrPC wherein she denied guilt, however, she neither examined any witness nor brought any document on record.
5. Learned trial Court, after appreciation of oral and documentary evidence on record, convicted the appellant for offence punishable under Section 302 (two times) and 309 of IPC and sentenced her as aforesaid.

6. Mr. Basant Dewangan, learned counsel for the appellant, would submit that there is no eye-witness to the incident who has seen the appellant jumping into the well along with her two minor sons and moreover, the dying declaration (Ex. P/20) given by the appellant is not admissible in evidence as she has survived, as such, she is entitled for acquittal.
7. Per contra, Mr. Ashish Shukla, learned State counsel, would support the impugned judgment of conviction and order of sentence and submit that the trial Court has rightly convicted the appellant for the aforesaid offence, as such, the instant appeal is liable to be dismissed.
8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. The case of the prosecution is not based on direct evidence rather it is based entirely on the dying declaration (Ex. P/20) given by the appellant (who has survived) to the Executive Magistrate, T.K. Das (PW-10) on 11/05/2017. As such, the question for consideration in this appeal would be, “whether the trial Court is justified in convicting the appellant for the aforesaid offences on the basis of her dying declaration (Ex. P/20) even though she has survived ?”

10. It is well-settled that when a person who has made a statement, may be in expectation of death, is not dead, it is not a dying declaration and is not admissible under Section 32(1) of the Indian Evidence Act, 1872 (hereinafter, “the Evidence Act”). It is further well-settled that when the makers of the statement also depose in the case, their statements are not admissible under Section 32 of the Evidence Act, but their statements however, are admissible under Section 157 of the Evidence Act as former statements made by them in order to corroborate their testimony in Court.

11. In the matter of **Maqsoodan and Others v. State of Uttar Pradesh**¹, it has been held by the Supreme Court that the statement, written or verbal, of relevant facts made by a person who is dead, is called a dying declaration, however, when a person who has made a statement, maybe in expectation of death, is not dead, it is not a dying declaration and is not admissible under Section 32 of the Evidence Act, but his statement is admissible under Section 157 of the Evidence Act as a former statement made by him in order to corroborate his testimony in Court. It has been observed in paragraph 11 as under :-

“11. When a person who has made a statement, maybe in expectation of death, is not dead, it is not a dying declaration and is not admissible under Section 32 of the Evidence Act. In the instant case, the makers of the statements Exs. Ka-22 and Ka-23, are

¹ (1983) 1 SCC 218

not only alive but they deposed in the case. Their statements, therefore, are not admissible under Section 32; but their statements however are admissible under Section 157 of the Evidence Act as former statements made by them in order to corroborate their testimony in court. In the instant case, Exs. Ka-22 and Ka-23 respectively corroborate the testimony in court of PW 3 and CW 1 respectively.”

12. Thereafter, in the matter of **Gentela Vijayavardhan Rao**

v. State of A.P.², their Lordships of the Supreme Court have held that the statement given to a Magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of the Evidence Act if the maker thereof does not die, however, such a statement can be used to corroborate their testimony in Court under Section 157 of the Evidence Act. Paragraph 17 of the report states as under :-

“17. Though the statement given to a magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of the Evidence Act if the maker thereof did not die, such a statement has, nevertheless, some utility in trials. It can be used to corroborate this testimony in court under Section 157 of the Evidence Act which permits such use, being a statement made by the witness "before any authority legally competent to investigate" . The word "investigate" has been used in the section in a broader sense. Similarly the words "legally competent" denote a person vested with the authority by law to collect facts. A magistrate is legally competent to record dying declaration "in the course of an investigation" as provided in Chapter XII of the Code of Criminal Procedure, 1973. The contours provided in Section 164(1) would cover such a statement also. Vide *Maqsoodan v. State of UP.*(*supra*), However, such a statement, so

long as its maker-remains alive, cannot be used as substantive evidence. Its user is limited to corroboration or contradiction of the testimony of its maker. ”

13. In the matter of **Ramprasad v. State of Maharashtra**³, it has similarly been held by their Lordships of the Supreme Court, relying upon the principle of law laid down in **Maqsoodan** (supra), that if a statement is made to a Magistrate under expectation of death but maker thereof survives, his statement would not be admissible under Section 32 of the Evidence Act, however, it can be used to corroborate him as provided under Section 157 of the Evidence Act or to contradict him as provided under Section 155 of CrPC. It has been held in paragraphs 14 and 15 as under :-

“14. We are in full agreement with the contention of the learned counsel that Ext.52 cannot be used as evidence under Section 32 of the Evidence Act though it was recorded as a dying declaration. At the time when PW.1 gave the statement he would have been under expectation of death but that is not sufficient to wiggle it into the cassette of Section 32. As long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation.

“15. Be that as it may, the question is whether the court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before any authority legally competent to investigate the fact but its use is limited to corroboration of the testimony of such witness. Though a police officer is legally competent to investigate, any statement made to him during such investigation cannot be used to corroborate the testimony of a

witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a magistrate is not affected by the prohibition contained in the said Section. A magistrate can record the statement of a person as provided in Section 164 of the Code and such statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.”

14. Furthermore, in the matter of **State of U.P. v. Veer Singh and Others**⁴, in line with the decisions rendered in **Ramprasad** (supra) and **Gentela Vijayvardhan Rao** (supra), their Lordships of the Supreme Court have held that when the maker of a purported dying declaration survives, the same is not a statement under Section 32 of the Evidence Act but is a statement in terms of Section 164 of the CrPC. It can be used under Section 157 of the Evidence Act for the purpose of corroboration and under Section 155 for the purpose of contradiction.
15. Likewise, in the matter of **Ranjit Singh and Others v. State of Madhya Pradesh**⁵, their Lordships of the Supreme Court, relying upon their earlier decisions rendered in the matters of **Maqsoodan** (supra), **Ramprasad** (supra) and **Gentela Vijayvardhan Rao** (supra), have held in paragraph 32 of the report as under :-

4 (2004) 10 SCC 117

5 (2011) 4 SCC 336

“32. Thus, in view of the above, it can safely be held that in such an eventuality the statement so recorded has to be treated as of a superior quality/high degree than that of a statement recorded under Section 161 CrPC and can be used as provided under Section 157 of the 1872 Act.”

16. Lastly, in the matter of **Suresh Chandra Jana v. State of West Bengal and Others**⁶, it has been held by the Supreme Court that if the person making dying declaration survives, then such statement would not be admissible under Section 32 of the Evidence Act, rather such statements may be admissible under Section 157 of the Evidence Act and observed in paragraph 32 as under :-

“32. It would not be out of place to discuss the importance of dying declaration under Section 32 of the Evidence Act. The principle underlying Section 32 of the Evidence Act is *nemo moriturus praesumitur mentire* i.e. man will not meet his maker with a lie in his mouth. Dying declaration is one of the exceptions to the rule of hearsay. It is well settled that there is no 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 (refer *Paniben v. State of Gujarat*⁷; *Munnu Raja v. State of M.P.*⁸; *State of U.P. v. Ram Sagar Yadav*⁹; *Ramawati Devi v. State of Bihar*¹⁰). Moreover, if the person making dying declaration survives, then such statement would not be admissible under Section 32 of the Evidence Act, rather such statements may be admissible under Section 157 of the Evidence Act (refer *Gajula Surya Prakasarao v. State of A.P.*¹¹)”

6 (2017) 16 SCC 466

7 (1992) 2 SCC 474

8 (1976) 3 SCC 104

9 (1985) 1 SCC 552

10 (1983) 1 SCC 211

11 (2010) 1 SCC 88

17. Thus, in view of the aforesaid decisions rendered by the Supreme Court (supra), it is quite vivid that the statement made by the appellant vide Ex. P/20 before the Executive Magistrate T.K. Das (PW-10) would not be considered as dying declaration as she has survived in the incident and it would not have evidentiary value under Section 32 of the Evidence Act. However, her statement has to be treated as of a superior quality/high degree than that of a statement recorded under Section 164 of CrPC.
18. Now, the question for consideration would be, “whether the conviction of the appellant can be based upon her statement Ex.P/20, which cannot be treated as dying declaration, but can be used under Section 155 and 157 of the Evidence Act” ?
19. Admittedly, the appellant herein survived in the incident and therefore, her statement (Ex. P/20) cannot be taken as dying declaration, however, it has to be treated as of a superior quality/higher degree than that of a statement recorded under Section 164 of CrPC, but even then statement under Section 164 of CrPC is not a substantive evidence to be rendered in the Court, as has been held by a three-judges Bench of the Supreme Court in the matter of **Somasundaram v. State represented by the Deputy Commissioner of Police**¹² and the appellant cannot be convicted on the basis of statement

recorded under Section 164 of CrPC in absence of other piece of evidence and, wherein, it has been observed as under :-

“84. Thus, in a case where a witness, in his statement under Section 164 CrPC, makes culpability of the accused beyond doubt but when he is put on the witness stand in the trial, he does a complete somersault, as the statement under Section 164 is not substantial evidence then what would be the position ? The substantive evidence is the evidence rendered in the court. Should there be no other evidence against the accused, it would be impermissible to convict the accused on the basis of the statement under Section 164.”

20. In view of the aforesaid legal proposition of law, it can safely be held that even if the statement of the appellant is taken as more than the statement under Section 164 of CrPC, yet it would not be substantive evidence in absence of other corroborative evidence available on record.

21. In the instant case, so far as availability of other evidence is concerned, the prosecution has alleged that appellant's husband namely Shailendra Panika (PW-1) and Ramchandra Panika (PW-3) have stated that appellant had burning sensations in both her legs, however, such a small ailment cannot be considered to hold that appellant must have jumped inside the well along with her two minor sons to whom she has given birth, being a mother. Apart from that, the trial Court has though convicted the appellant for offence punishable under Section 302 of IPC (two times) but it

has not been held by the trial Court that the death of deceased Bharat and Shatrughan was homicidal in nature. Even in their postmortem reports (Ex. P/9A and Ex. P/10A) only the cause of death has been mentioned as drowning in water and there is no mention at all with regard to the nature of their death. It is well-settled that for convicting an accused under Section 302 of IPC, the death of deceased must be proved to be homicidal in nature, which the prosecution has miserably failed to prove in the instant case. In that view of the matter, we do not have any other option except to set aside the impugned judgment of conviction and order of sentence passed against the appellant. Accordingly, the impugned judgment and order are hereby set aside and appellant is acquitted from the charges levelled against her. Since the appellant is already on bail, she need not surrender, however, her bail bonds shall remain in operation for a period of six months in view of the provisions contained under Section 437A of CrPC.

22. Accordingly, this criminal appeal stands allowed.

23. Office is directed to transmit the lower court record along with the certified copy of this judgment to the court concerned forthwith for necessary information and compliance.

Harneet

sd/-

(Sanjay K. Agrawal)
Judge

sd/-

(Arvind Kumar Verma)
Judge