IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.122 of 2004

(From the judgment and order dated 24.2.2004 passed by learned Sessions Judge, Ganjam-Gajapati, Berhampur in S.C. Case No.228/ 1999)

Laxman Kumar Sahoo

... Appellant

-versus-

State of Odisha **... Respondent**

Advocates appeared in the case through hybrid mode:

For Appellant : Ms.Diptirekha Nanda, Advocate

-versus-

For Respondent : Ms. Subhalaxmi Devi, A.S.C.

CORAM:
THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing:05.03.2026 :: Date of Judgment:12.03.2026

Sashikanta Mishra,J. The appellant faced trial for committing dowry death/murder of his wife in Sessions Case No.228/1999 in the court of learned Sessions Judge, Ganjam-Gajapati at Berhampur and being convicted for the offence punishable under Section 302 I.P.C., he was sentenced to undergo rigorous imprisonment for life vide judgment dated 24.2.2004, which is impugned in the present appeal.

2. Prosecution case, briefly stated, is as follows;

The accused married one Gitanjali Palo, daughter of Prabhasini Palo, as per Hindu rites on 17.1.1999 at Jagannath Temple, Puri. It was agreed to pay Rs.2,00,000/- as dowry as demanded by the bridegroom. Prabhasini, paid Rs.50,000/-, gold ornaments, wearing apparels and several household articles. The accused used the said amount for purchasing articles for his stationary shop. The balance amount was agreed to be paid after marriage. The accused ill-treated his wife by physically and mentally torturing her demanding the balance amount. The couple was staying in a rented accommodation. On 23.3.1999, Prabhasini heard that

the accused had set her daughter ablaze by pouring kerosene on her body. Hearing this, she rushed to the house of her daughter and found her with severe burn injuries all over the body with kerosene smell. Her daughter informed her that the accused had poured kerosene on her and set fire to her using a match stick. Prabhasini took her daughter on a rickshaw to the hospital with the help of others where she was treated in a critical condition. She reported the matter at Mahila P.S., Berhampur on the next date. Basing on such report, P.S. Case No.14 dated 24.3.1999 was registered under Section 498-A/307 I.P.C. and Section 4 of the D.P. Act followed by investigation. In course of investigation, the victim having died, the case turned to Section 304-B/302 of I.P.C. Charge sheet was accordingly submitted.

3. The plea of the accused is of complete denial.

4. To prove its case, prosecution examined 10 witnesses and proved 20 documents. Defence, on the other hand, did not adduce any oral evidence but exhibited two documents.

5. After analyzing the evidence on record, learned Sessions Judge held that the prosecution had well established its case against the accused. The dying declaration of the deceased and the evidence of the other witnesses including the informant were taken into consideration by the learned Sessions Judge in arriving at the above conclusion.

6. Heard Ms. Diptirekha Nanda, learned counsel for the appellant and Ms. Subhalaxmi Devi, learned Addl. Standing counsel for the State.

7. Ms. Nanda assails the impugned judgment of conviction on the ground that the presence of the appellant at the spot has not been proved nor his motive to cause death of the deceased. Reliance on the dying declaration is incorrect as there is no evidence to show that the deceased was in a fit state of mind to make such a statement. Prosecution never proved that the dying declaration was voluntary, truthful and free from tutoring. Though it has been alleged that there was a large gathering of people when the informant reached the

spot, no one has stated about the dying declaration purportedly made by the deceased before her.

8. Per contra, Ms. Subhalaxmi Devi would contend that it is well settled that only because a person sustained 90% burn injuries does not automatically imply that he/she is not in a fit mental state to make a statement. There is no reason to disbelieve the doctor who recorded the dying declaration as he is an independent person having no interest in the case. Once dying declaration is accepted, other considerations such as motive etc. are not material. According to Ms. Subhalaxmi, there is overwhelming evidence to show that the accused had committed the crime.

9. Before delving into the merits of the rival contentions, we feel it proper to examine the evidence on record independently. The mother of the deceased, who is the informant, was examined as P.W.2. Though she mentioned in the F.I.R. that it was agreed to pay Rs.2 lakhs on the demand of the accused as dowry, she stated before the Court that prior to the marriage there was no demand either from the accused or from any of his

relations and that they had decided to give cash of Rs.2 lakhs to the accused. On the date of occurrence, her daughter had come to her house for the tonsure ceremony of her granddaughter. At about 7 to 8 P.M., the accused came to their house and on his arrival the deceased offered him some tiffin but he refused and left their house. The deceased went to her house thereafter. After some hours, the Sahi people came and informed that the accused had set fire to Gitanjali hearing which, they rushed to his house. P.W.2 further stated that she found that her daughter was already brought out from the room and kept on the verandah and that she had severe burn injuries, but she was conscious and talking. She told that the accused had burnt her by pouring kerosene on her body. P.W.2 took her to the MKCG Medical College and Hospital but she died two days after. P.W.2 was cross-examined extensively. We find nothing in the cross-examination so as to even remotely shake her testimony.

10. Surprisingly, the brother of the deceased (son of P.W.2) did not entirely support the prosecution case

against the accused though he corroborated the version of P.W.2 regarding residence of the deceased in a rented house at Sashtri Nagar and that on the date of the occurrence the tonsure Ceremony was in progress in their house and that the accused and the deceased had come to their house and left after the feast. He did not whisper a word about the oral dying declaration of the deceased before P.W.2 for which he was declared hostile.

11. No other witness has stated anything to incriminate the accused other than P.W.2.

12. P.W.8 is the doctor who recorded the dying declaration of the deceased as her treating doctor. He stated as follows:

> *"On 24.3.99, at 7-30 A.M. as the attending Doctor of the patient, I recorded the dying declaration of the patient, namely, Gitanjali Palo. The patient was then conscious. I examined her condition and then I recorded her dying declarations in my own hand in presence of two P.G. Students, who have also signed on the dying declaration statement. In the bed-head ticket, I have clearly recorded about the condition of the patient to the effect that the patient was conscious and well oriented. This is my endorsement to that effect marked as Ext.7/2. I could not take the L.T.I. or R.T.I. of the patient as her both hands were severely burnt. I have also recorded this fact in the dying declaration statement. This is the dying declaration recorded by me marked as Ext.7/3. This is my endorsement with signature below it marked as Ext.7/4. This is my signature at the foot of the dying declaration marked as Ext.7/5. Both the P.G. students in whose presence, I recorded the dying*

declaration also signed on the dying declaration in my presence. These are the signatures of the P.G. Students, namely, Dr. Benu Panigrahi and Dr. Rajesh Dora, marked as axts.7/6 and 7/7 respectively. I have recorded the dying declaration in question and answer form.
I did not requisition the services of any Magistrate for recording the dying declaration of the patient."

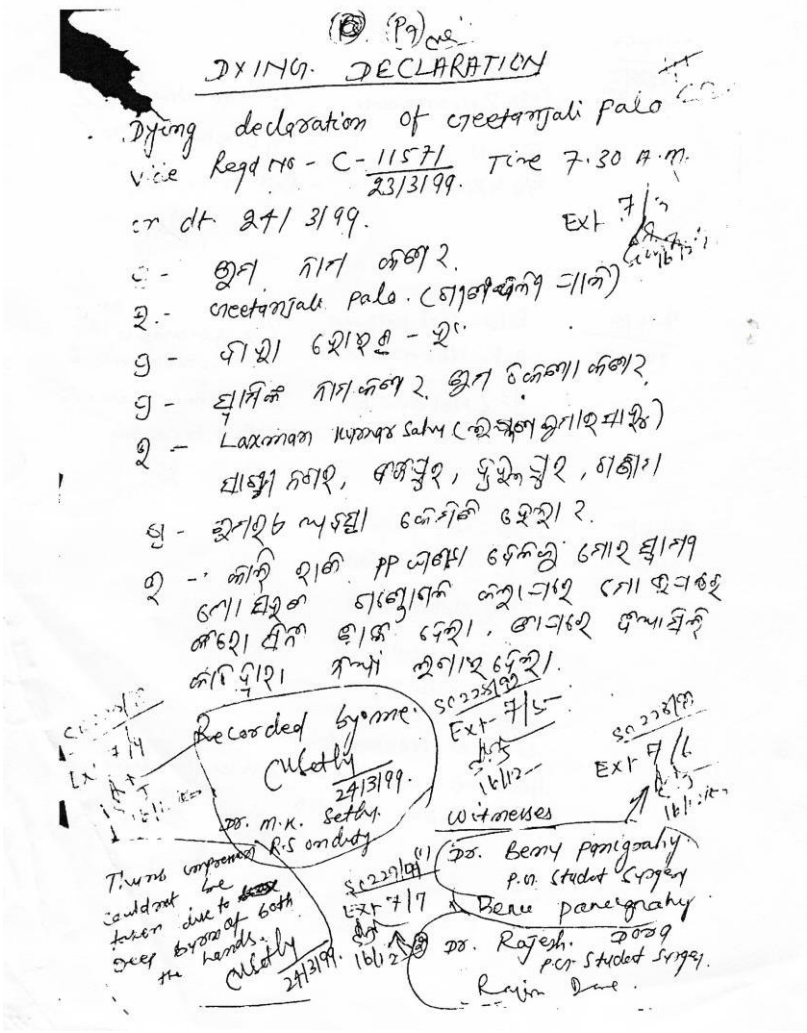
P.W.8 was also extensively cross-examined and he admitted to not having endorsed any certificate that the patient was conscious and that he examined her and recorded her dying declaration.

13. P.W.9 is the autopsy surgeon, who found the following injuries;

"Superficial burn injuries involving almost all the parts of the body except (1) both sole, (2) an area of 44 c.m X 12 c.m involving outer lateral surface of right upper lip staring just below the lateral end of clavicle extending downwards. (3) an area of 42 c.m X 10 c.m involing the outer lateral aspect of right thigh starting 10 c.m below the iliac crest ante-mortem showing line of redness at the junction of burnt and unbrunt areas looking black covered by medicaments and amounting to 90 to 95 percent of body surface."

He opined that the deceased died due to shock as a result of the injuries.

The dying declaration was marked Ext.7/3. It is recorded in question-answer form and is reproduced below;


DYING DECLARATION

Dying declaration of Geetanjali Palo vide Regd No - C-11571/23/3/99. Time 7.30 A.M. on dt 24/3/99.

Ext 7/3

Recorded by me. Ccletly 24/3/99. Dr. M.K. Sethy. R.S. on duty

Ext 7/5

Ext 7/6

Witnesses (1) Dr. Bemy Panigrahy P.G. Studet Surgery

Ext 7/7 Bemy Panigrahy

Dr. Rajesh. P.G. Studet Surgy. Rajesh Dave.

Thumb impression could not be taken due to deep burns of both the hands. Ccletly 24/3/99.

We think it proper to render an English translation of the dying declaration as follows-

> “ DYING DECLARATION
> *Dying declaration of Geetanjali Palo vide Regd. No.-C-11571/23.03.99, Time 7.30 am on dt. 24.03.99*
> *Q. What is your name?*
> *A. Gitanjali Palo.*
> *Q. Are your married – Yes*
> *Q. What is the name of your husband? What is your address?*
> *A. Laxman Kumar Sahu, Sashtrinagar, Bijipur, Berhampur, Ganjam.*
> *Q. What caused your present situation?*
> *A. Yesterday night at 11 P.M. my husband quarreled with me and poured kerosene on me and then set fire by lighting match stick.”*

14. From the above narration, we find that there are no eye witnesses to the occurrence. P.W.2 is the only witness who has directly implicated the accused. That apart, the oral dying declaration of the deceased made before P.W.2 and the recorded dying declaration marked Ext.7 also directly implicate the accused. The trial Court, while not accepting the prosecution case of dowry death, has held it to be a case of murder basing on the above referred evidence. *Ex-facie,* we find no infirmity much less illegality in the judgment of the trial Court.

15. Having held as above, we shall now consider the grounds raised by the accused-appellant to question the correctness of the judgment.

16. It is urged that there is no evidence that the accused was present at the spot. Admittedly, no evidence is adduced in this regard. But in a question put to him during his examination under Section 313 of Cr.P.C., the accused admitted that the deceased was inside the house. Since there is otherwise evidence on record to show that the accused had visited his in-laws' house for the tonsure ceremony and had returned with his wife

following him shortly thereafter, there is no reason to hold that the accused had gone somewhere else and not to his house. In fact, in his examination under Section 313 Cr.P.C., the accused admitted that he had gone to bring his wife from his in-laws' house. Nothing has been suggested to the prosecution witnesses, particularly P.W.2 as to the presence of the accused elsewhere if not at his home. Since the deceased clearly stated that her husband poured kerosene on her body and set fire to her, there can be no other conclusion that he was present at home with the deceased. Prosecution cannot be expected to lead evidence as to what had transpired inside the house, but an inference can be drawn based on the surrounding circumstances and the other evidence adduced in this regard.

17. Coming to the dying declaration, prosecution relies upon two such declarations- one made before P.W.2 at the spot and the other recorded by the doctor at the hospital. We may leave aside the oral dying declaration for a moment and focus on the recorded declaration vide Ext.7. Ms. Nanda has vehemently argued that in the

absence of any endorsement by the doctor that the deceased was in a fit mental condition to give a statement, Ext.7 cannot be accepted. She further argues that the deceased having admittedly sustained 90% burn injuries cannot be expected to be conscious or mentally oriented enough to give a clear statement.

We have given our anxious consideration to the above argument, but are unable to accept the same. We say so for the reason that the doctor recording the dying declaration is an entirely independent person having no interest in the case. In fact, nothing was suggested to him that he was actuated by malafides. The dying declaration is in question-answer form. As can be seen from its bare perusal, she clearly stated that on the previous night her husband, after quarrelling with her, poured kerosene and set fire using matchstick. The dying declaration was recorded in presence of two P.G. students but they were not examined. Law relating to use of dying declaration is no longer *res integra*. In the case of ***P.V. Radhakrishna v. State of Karnataka***[1], it was held that there is no hard and fast rule that percentage of

[1] *(2003) 6 SCC 443*

burns is determinative factor to affect the credibility of dying declaration and probability of its recording. Percentage of burns alone will not determine the probability or otherwise of making the dying declaration. Even in a case of 100% burns, the Supreme Court has held that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement. Reference in this regard may be had to the judgment of the Supreme Court in the case of, ***Purshottam Chopra v. State (NCT of Delhi)***[2]. Therefore, only because the deceased sustained 90% burn does not, *ipso facto,* render her incapable of giving a statement. As regards the absence of a certificate showing her fit mental condition, it has been held in the case of ***State of Madhya Pradesh vs. Dal Singh and others***[3], the Supreme Court held that-

> *"20. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a doctor in respect of such state of the deceased, is not essential in every case."*

[2] *(2020) 11 SCC 489*
[3] *(2013) Supreme Court Cases 159*

18. As already stated, P.W.8 stated that he had recorded in the bed-head ticket at the time of admission of the deceased that she was conscious and well oriented. The dying declaration was recorded within two hours thereafter. P.W.8 has categorically stated that the patient was then conscious, he examined her condition and then recorded her dying declaration. We find no reason to disbelieve the version of the doctor who, as already stated, is an independent person and a medical professional having no personal interest in the case other than treating the patient. So, leaving aside all other evidence, the dying declaration is enough to show the complicity of the accused.

19. As regards the question whether it can form the sole basis of conviction, the Supreme Court in the case of ***Kamla v. State of Punjab***[4]**,** referring to the oft quoted judgment in ***Khushal Rao v. State of Bombay***[5]**,** held that if a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon even without any corroboration. The deceased made

[4] *(1993) 1 SCC 1*
[5] *1957 SCC OnLine SC 20*

an oral dying declaration before her mother P.W.2, wherein she also stated the same thing as she stated before the Doctor. There is no inconsistency whatsoever. Moreover, there is no reason why a person facing imminent death would falsely implicate her husband. The grounds raised by the appellant are therefore untenable.

20. Thus, from a conspectus of the analysis of the evidence, reasoning of the trial Court and its findings, the contentions raised and the discussions made, we are left with no doubt that the accused was rightly convicted for the offence of murder. We, therefore, find no reason to interfere with the impugned order.

21. In the result, the appeal fails and is therefore, dismissed. The accused-appellant being on bail, his bail bonds be cancelled and he be taken to custody forthwith to serve the remaining part of the sentence.

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Sashikanta Mishra, J.

Manash Ranjan Pathak, J. I agree.

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Manash Ranjan Pathak, J.