

Abdul Rahim Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-11-2017

Appellant : Abdul Rahim

Respondent : State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (DB) No. 724 of 2007 (Against the Judgment of conviction dated 17.4.2007 and Order of sentence dated 18.4.2007 passed by the 1st Additional Sessions Judge, Jamtara, in Sessions Case Nos. 30 of 2005 / 47 of 2006) Abdul Rahim @ Fagu Mian ... Appellant Versus The State of Jharkhand ... Respondent ----- CORAM : THE HONBLE MR. JUSTICE H. C. MISHRA THE HONBLE MR. JUSTICE ANANDA SEN ----- For the Appellant : Mr. Kailash Prasad Deo, Advocate. For the State : Mr. Satish Kumar Keshri, A.P.P. ----- CAV On :- 17.08.2017 Pronounced On :- 11.09.2017 H.C. Mishra, J.:- Heard learned counsel for the appellant and the learned counsel for the State.

2. This appeal arises out of the Judgment of conviction dated 17th April 2007 and Order of sentence dated 18 th April 2007, passed by the learned 1st Additional Sessions Judge, Jamtara, in Sessions Case Nos.30 of 2005 / 47 of 2006, whereby, the sole appellant, who is the husband of the deceased, has been found guilty and convicted for the offences under Sections 302 and 498-A of the Indian Penal Code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo R.I for life for the offence under Section 302 of the Indian

Penal Code and R.I for three years for the offence under Section 498- A of the Indian Penal Code and both the sentences were directed to run concurrently. Besides, fine of Rs.5,000/- was also imposed upon the appellant.

3. The prosecution case was instituted on the basis of the fardbeyan of one Md. Islam, who is the father of the deceased, recorded on 5.8.2004 at 22:30 hours at Popular Nursing Home, Jamtara, which is a private nursing home. According to the fardbeyan of the father of the informant, the deceased was married to the appellant, Abdul Rahim @ Fagu Mian, about 8-9 years ago and they had two sons and one daughter out of the wedlock. It is stated in the FIR that the relationship between them was not proper and wife was being subjected to cruelty for the demand of money for purchasing motorcycle, and for that demand, she was also being subjected to assaults. On 5.8.2004 at about 7.00 P.M, while the informant was talking to his neighbour, he heard the alarm raised by the villagers, whereupon he along-with his sons Yasin Mian and Sikandar as also other persons rushed towards the in-laws' place of his daughter, which was at a distance of about 500 yards, and saw his daughter burning. The villagers were trying to put off the fire and the informant also along-with his sons joined them in putting off the fire. It is stated in the fardbeyan that his daughter informed him that her husband had assaulted her, on which, she had become unconscious and again, she felt that her body was burning, whereupon she raised the alarm. At the place of occurrence, the spots of kerosene oil were also found. The villagers assembled there, had informed that upon the alarm raised by his daughter, they assembled and found the door closed. When they tried to get the door opened, the husband of the deceased opened the door and fled away. The injured daughter was brought to Popular Nursing Home, Jamtara, with the help of the villagers where she was undergoing treatment and she was unconscious. Alleging that the accused, Abdul Rahim @ Fagu Mian had assaulted her with an intention to cause her death and put her to fire, the fardbeyan was given by the father of the victim lady, on the basis of which, Jamtara P.S. Case No.110 of 2004, corresponding to G.R Case No.227 of 2004, was instituted for the offence under Sections 342, 498-A, 324 and 307 of the Indian Penal Code and investigation was taken up. After the death of the victim lady, Section 302 of the I.P.C was also added.

4. In course of investigation, on the next day, the fardbeyan of the victim lady was also recorded by the police on 6.8.2004 at 18:00 hours in the said Popular Nursing Home, Jamtara, in the presence of her treating Doctor, namely Dr. S.K. Gutgutia, wherein she stated that her husband Abdul Rahim @ Fagu Mian was entangled with another girl, which she was objecting. On 5.8.2004 at about 7.30 P.M, she had opposed the affairs of her husband, whereupon her husband assaulted her badly, due to which, she became semi unconscious, whereupon her husband poured kerosene oil upon her and put her to fire. She raised alarm, whereupon, the neighbouring persons and her father and brothers came at the place of occurrence and brought her to Popular Nursing Home for her treatment, where she was undergoing treatment. In this fardbeyan, the impression of the right hand thumb is said to be taken, but as she was in burnt condition and her fingers were also burnt, the thumb impression only appears as a blurt spot of ink. On the said fardbeyan of the deceased, Dr. S.K. Gutgutia has also made an endorsement that the statement was taken in his presence.

5. The statement of the victim lady was also recorded by the Judicial Magistrate of Jamtara, namely, Sri Sanjay Kumar Singh, on 7.8.2004 at 1.00 P.M, in Popular Nursing Home, Jamtara, in presence of Dr. S.K. Gutgutia. The Judicial Magistrate has recorded that Dr. S.K. Gutgutia, under whom, the victim lady was undergoing treatment, had certified that the lady was in a fit mental condition to give her statement and thereafter, her statement was recorded in presence of the Doctor and also in presence of Md. Sikandar, the brother of the victim lady. The Magistrate asked the victim lady about the occurrence, whereupon she stated that her husband, Adbul Rahim @ Fagu Mian had burnt her after pouring kerosene oil on her. She stated that only her husband had burnt her 3 and before that, he had also assaulted her and thereafter, he burnt her. She also stated that her husband did not like her and he was after another lady (wah dusri aurat ke fere mein tha). The Magistrate has also recorded that according to Dr. S.K. Gutguita, the lady had suffered 70-80 % burn injuries, as such, she was not in a position to put her signature and as her thumbs were also burnt, her thumb impression also could not be taken. The said statement also contains the certificate of the treating Doctor, to the effect that the victim lady was in full sense and in position to give her statement before the Magistrate, and that her signature or thumb impression was

not possible to be taken due to her burn injuries.

6. After completing the investigation, the police submitted the charge-sheet against the accused, Abdul Rahim @ Fagu Mian. After commitment of the case to the Court of Session, the charge was framed against the accused for the offence under Sections 302 and 498-A of the Indian Penal Code, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial.

7. In course of trial, twelve witnesses were examined by the prosecution and this is a case, in which, all the material witnesses, including the father and the brothers of the deceased have either turned hostile, or have not supported the prosecution case. The conviction of the accused appellant has been made solely on the basis of the two dying declarations of the deceased. The defence has also examined one witness, who is the daughter of the deceased and she has stated that her mother had committed suicide.

8. P.W.-6 Md. Islam, is the informant of the case, who has stated that he had given his fardbeyan to the police in Dr. S.K. Gutguita's Nursing Home, and has identified his signature on the fardbeyan, which was marked Exhibit-2. He has stated that his daughter was burnt, but he has turned hostile, stating that she did not inform as to how she was burnt. P.W.-4 Md. Sikandar Ansari and P.W.-9 Riyasat Ansari, who are the brothers of the deceased, though have supported the fact that their sister was burnt, but they also have turned hostile and have not supported the prosecution case. P.W.-4 Md. Sikandar Ansari also admitted that the statement of his sister was recorded by the Magistrate in his presence, but he has denied his signature on the said statement and in his cross-examination by the defence, he has stated that he does not know what is a Magistrate and he was not present when that statement was recorded. The other brother, P.W.-9 Riyasat Ansari, has stated that his sister had not given any statement in the hospital.

9. The other witnesses P.W.-1 Manjoor Alam, P.W.-3 Latu Mian and P.W.-5 Yasin Ansari have also turned hostile, though they have also stated that the deceased was burning and upon the alarm raised by her, they went there and 4 opened the door and found her burning. They have also stated that she had committed suicide. P.W.-2 Akbar Ansari has also stated that the deceased was burning and

upon the alarm raised by her, he also went there and opened the door and found her burning, and she died after eight days in the Nursing Home. In his cross-examination, he has also stated that she had committed suicide. P.W.-8 Sultan Ansari has stated that house of the accused was burning, and he has stated that he had no knowledge about the occurrence. He is the witness to the seizure list and he has identified his signature and the signature of the other witnesses in the seizure list, which were marked Exhibit-7.

10. P.W.-7 is Dr. Sudarshan Kumar Gutgutia, in whose nursing home, the deceased was admitted and he had treated the deceased. This witness has stated that on 5.8.2004, he had examined Noorjahan Khatoon, the wife of Abdul Rahim and found the following injuries on her :- 1. She had one (sic - should be burn) injury mostly deep area, face all over and back also hair partly.

2. Both upper extremity full length.

3. Chest all over in front and back.

4. Abdomen upper part 5. Pelvic partly.

6. Right buttock upper and lateral aspect 7. Also scattered burnt on both legs. Most of the burnt are deep, area approx. 70% of body surface. He has stated that the nature of injuries were grievous and the cause of burn was suspected homicidal. He has identified the injury report to be in his pen and signature and also bearing the seal of his nursing home, namely, Popular Nursing Home, Jamtara, which was marked Exhibit-3. He has also stated that the statement of the victim lady was recorded by Sidhanath Singh, A.S.I of Jamtara Police Station, in his presence, and he has identified his endorsement with signature on that statement, which was marked Exhibit -4. He has further stated that the statement of Noorjahan Khatoon was recorded by the Magistrate and on page-2 of the statement, he has identified his endorsement and his signature, which was marked Exhibit-5. He has also stated that he had also given the certificate on that statement with his signature and seal at page 3, which on his identification, was marked Exhibit-6. In his cross-examination, this witness has stated that he had examined the injured at 9.30 P.M and thereafter, he had informed the police, but

he had not kept any record for the same. He has also stated that the statement of Noorjahan Khatoon was taken by A.S.I, Sidhanath Singh in his presence. Though the fardbeyan was not written in his presence, but before signing the fardbeyan, he had gone through the entire statements whether the A.S.I had written the same statement or not. This witness also stated in his cross-examination that after the treatment, the patient Noorjahan Khatoon had improved, but he could not say whether after recording the statement, she remained conscious or later, she became unconscious. He has stated that the condition of the patient was recorded on her bed head ticket, which was available with the nursing home. He has denied the suggestion that Exhibits-4, 5 and 6 were written by him on police pressure and they are not correct.

11. P.W.-12 Dr. Sanjay Kumar Paswan had conducted the post-mortem examination on the dead body of the deceased on 15.8.2004 and had found the following injuries on her :- i) Burn injuries over face, chest and abdomen right thigh both upper limb below left side back side of the leg upper part of right thigh and buttock. Approximately 80% burn injury. In the area of upper part of left thigh, occipital region, below the right thigh, below right buttock, left buttock in front of both legs (no) burn injury. ii) Secondary, infection noted in the anterior and posterior aspect of the chest. The burn injury superficial in nature, except chest and both upper limb, where burn injury was deep in nature. All the injuries were ante-mortem. iii) In heart both chamber were partially filled. The cause of death was shock and septicemia due to said burn injuries. Time of death within 24 hours. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-9. In his cross-examination, he has stated that septicemia could be prevented if better treatment was provided, and generally, Morphin is provided to the patient in burn cases, due to which, the patient starts to sleep. He has also stated that these types of injuries may be caused due to suicidal burning.

12. P.W.-10 Jagat Narayan Singh, is the S.I. of Police, who had only submitted the charge-sheet in the case. He has identified the formal FIR, which was marked Exhibit-8 and he has also identified the fardbeyan of the informant, to be in the handwriting of ASI, Sidhnath Singh, which was marked Exhibit-8A. He has identified the inquest report also, to be in the handwriting of A.S.I Sidhnath Singh,

which was marked Exhibit-8B.

13. P.W.-11 is Sidhnath Singh, A.S.I of Police, who is the main I.O of the case. This witness has stated that on 5.8.2004, he had recorded the fardbeyan of Md. Islam. He has also identified the formal FIR which was marked exhibit. He has stated that he was handed over the charge of the investigation and he recorded the re-statement of the informant. He also visited the place of 6 occurrence and he found the smell of kerosene oil and also some spots of kerosene oil. He also recovered some burnt articles from the house of the accused and prepared the seizure list, which on his identification was marked Exhibit-7A. This witness stated that he could not find any burnt marks on the walls etc., and it appeared to him that the victim might have been burnt at some other place. This witness has stated that he recorded the statements of the other witnesses and he also recorded the fardbeyan of the victim lady, which was in his pen and signature and he has identified the same which was marked exhibit-4A. He has stated that the said fardbeyan was recorded in presence of Dr. S.K. Gutgutia, who had also put his signature on the said statement, which was earlier marked Exhibit-4. He also got the statement of the victim, recorded before the Judicial Magistrate Sri S.K. Singh in the hospital, which also this witness identified and the same was marked Exhibit-6A with objection. He stated that in course of treatment, the deceased died and he prepared the inquest report of the dead body, which he proved and was earlier marked Exhibit-8B. His attention was drawn towards the statements of the hostile witnesses, which he has contradicted, stating in detail of the statements made by the hostile witnesses before him. In his cross-examination, this witness has stated that he had also prepared the memo of injury of the deceased and the same was identified by him, which was marked Exhibit-A. He has stated that in the said injury memo, he had mentioned that the entire body was burnt, but there is no mention separately about the burning of the hand. He has stated that on the statement of the victim recorded by him, he had taken the thumb impression. He has also stated that he had not recorded the statement of the other girl, as she was an unmarried girl. He has denied the suggestion that the statement of the victim was forged.

14. The statement of the accused was recorded under Section 313 of the Cr.P.C., in which, he has denied the evidence against him. One defence witness was examined, who is D.W.-1 Salma Khatoon, the daughter of the deceased and the accused, aged about 6 years, and she has stated that her mother had put herself to fire.

15. Learned counsel for the appellant has submitted that this is a case, in which, all the material prosecution witnesses, including the father and brothers of the deceased, have turned hostile and they have not supported the prosecution case. It is submitted by the learned counsel that the conviction of the appellant has been made only on the basis of the dying declarations of the deceased, one made before the police which was recorded in the form of fardbeyan, and the other recorded by the Judicial Magistrate, but the said Judicial Magistrate has not been examined. Learned counsel further submitted that though in the dying declaration recorded by the Judicial Magistrate, it is stated that the deceased was 7 not in a position to put her signature and due to burn injuries and her thumb impression also could not be taken, but the statement of the deceased recorded by the police, bears the thumb impression of the deceased. Learned counsel also submitted that even though the father of the deceased has not supported the prosecution case, but according to his fardbeyan, the deceased was being subjected to cruelty and torture for the demand of money for purchasing motorcycle, whereas in her dying declaration recorded by the Police, she stated that her husband was entangled with another girl, which was being objected, due to which, she was assaulted and burnt, whereas in her dying declaration recorded by the Magistrate, she has stated that her husband was after another lady (wah dusri aurat ke fere mein tha). Learned counsel accordingly, submitted that there are material contradictions in the fardbeyan of the informant and both the dying declarations of the deceased, and accordingly, the dying declarations of the deceased could not be relied upon by the Trial Court below. It is further submitted that according to the medical evidence, the deceased had suffered 70-80% burn injuries and the witnesses have stated that the deceased was unconscious and on this score also, the dying declarations are not believable. Indeed, even D.W.-1 Salma Khatoon, the daughter of the deceased, who is a child witness, aged about 6 years and who was present at the time of occurrence, has stated that the deceased herself had put her to fire.

Learned counsel submitted that due to these discrepancies, the dying declarations could not be taken into consideration. Learned counsel has placed reliance upon the decisions of the Hon'ble Supreme Court of India in Uka Ram Vs. State of Rajasthan, reported in (2001) 5 SCC254 as also in Smt. Batool & Ors. Vs. State of Rajasthan, reported in 2003 Cr. L. J.

3286, in support of his contention that where the circumstance of recording the dying declaration is doubtful, the same cannot form the basis of conviction of the accused. Placing reliance on these decisions, learned counsel submitted that the impugned Judgment cannot be sustained in the eyes of law.

16. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that both the dying declarations are absolutely reliable and were recorded in presence of the treating Doctor, who had certified that the victim lady was in a fit mental condition to get her statement recorded. Learned counsel submitted that the treating Doctor has stated in his evidence that after the treatment, her condition had improved, which fact has been taken in his cross-examination, and as such, the dying declarations cannot be disbelieved. Learned counsel submitted that the dying declarations given by the deceased are also fully corroborated by the medical evidence, inasmuch as 70-80% burn injuries were found on the deceased and almost the entire body was burnt, including both her upper limbs, as proved by the Medical Officer, P.W.-12 Dr. Sanjay Kumar Paswan, who had conducted the post-mortem examination on the dead body of the deceased. It is submitted that on the dying declaration recorded by the Judicial Magistrate, which has been proved as Exhibit-6A, it has been rightly mentioned by the Judicial Magistrate that even her thumb impression could not be taken, which fact is also supported by the medical evidence of P.W.-12, Dr. Sanjay Kumar Paswan, as he had found both the upper limbs of the deceased, burnt. Learned counsel accordingly, submitted that both the dying declarations are admissible in evidence and since they are reliable documents, the conviction of the accused could be secured on the basis of these dying declarations only, excluding all other evidences on record. In support of his contention, learned counsel for the State has placed reliance upon the decision of the Hon'ble Supreme Court of India, in Bhajju @ Karan Singh Vs. State of Madhya Pradesh, reported in (2012) 4 SCC327

wherein the law has laid down as follows :-

"4. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring any further corroboration. 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 by other evidence." Placing reliance on this decision, learned counsel for the State submitted that there is no illegality in the impugned Judgment of conviction and Order of sentence passed by the Court below.

17. Having heard learned counsels for both sides and upon going through the record, we find that the present case is based only on the two dying declarations of the deceased. All the material witnesses, including the father and the brothers of the deceased have either turned hostile, or have not supported the prosecution case, except to the extent that the deceased had died due to burning. The first dying declaration is recorded in the form of fardbeyan by the Police Officer in presence of the treating Doctor, Dr. S.K. Gututia. On this dying declaration, there is an endorsement by the Doctor that the statement was taken in his presence. In this dying declaration, the deceased had specifically stated that her husband, Abdul Rahim @ Fagu Mian was entangled with another girl, which was being objected by her, due to which, she had been assaulted and thereafter, she was put to fire. Though this dying declaration contains the right hand thumb impression of the deceased, but it is apparent from the document that the thumb impression is not very clear due to the burn injuries on the thumb, and this thumb impression appears only as a blurt spot of ink. In the second dying declaration, which was recorded by the Judicial Magistrate, the Judicial Magistrate has stated that the doctor certified before him that the deceased was in a fit mental condition to give her statement and then her statement was recorded, in which, again she stated that her husband was after another lady, due to which, he had assaulted her and she was put to fire. The Judicial Magistrate has also made an endorsement that according to the Doctor, there were 70-80% burn injuries and she was not in a condition to put her thumb impression. This endorsement appears to be absolutely correct, in view of the blurt thumb impression available on her statement recorded by the police. The treating Doctor has also given a certificate that the deceased

was in full sense and in position to give her statement before the Magistrate, and that her signature or thumb impression was not possible to be taken due to her burn injuries. In his evidence the treating Doctor, P.W.-7 Dr. S.K. Gutgutia, has proved this certificate as Ext.-6. It has also come in his evidence that both the statements were recorded in his presence and he has also proved his endorsements and signatures on both the dying declarations. In his cross-examination, it was taken by the defence, that during her treatment, her condition had improved. Though, P.W.-4 Md. Sikandar Ansari, the brother of the deceased, has turned hostile and has denied his signature on the said statement, but it was admitted by him that the statement of his sister was recorded by the Magistrate in his presence. His statement that he does not know what is a Magistrate and he was not present when that statement was recorded, just cannot be believed.

18. We do not find any material contradictions in the two dying declarations made by the deceased, inasmuch as in one dying declaration, she has stated that her husband was entangled with another girl and in the other dying declaration, she has stated that her husband was after another lady (wah dusri aurat ke fere mein tha). Both the expressions used by the deceased were carrying the same meaning.

19. In that view of the matter, we are of the considered view that both the dying declarations are reliable pieces of evidence, and even though, the other material witnesses, including the father and brothers of the deceased had turned hostile, but the conviction of the appellant could safely be made solely on the basis of both these dying declarations. The case of the appellant is fully covered by the decision of the Hon'ble Apex Court in Bhajju @ Karan Singh's case (supra), relied upon by the learned counsel for the State.

20. In a very recent decision, the Hon'ble Supreme Court of India in Ramesh and Ors. Vs. the State of Haryana, reported in (2017) 1 SCC529 has taken note of the fact that it is now become a common phenomena and almost regular feature that in criminal cases, the witnesses are turning hostile. In this case also, though the accused appellants who were the husband and the other in-laws of the deceased, who had faced the trial for the offences under Sections 10 302 / 34 and 498A / 34

of the Indian Penal Code, had been acquitted by the Trial Court, as the witnesses had turned hostile, they were convicted by the High Court in appeal filed by the State, solely on the basis of the dying declaration of the deceased. In that case, the deceased had suffered 100% burn injuries and the Judicial Magistrate had stated during his cross-examination that he could not say that the deceased was semi conscious, when he recorded her statement and he had proceeded to record her statement because the Doctor had given his opinion that she was in a fit state of mind to give her statement. The brother of the deceased had stated that the accused husband was with him and when they received the information about the deceased catching fire, he along-with the husband had gone to Rohtak, where the deceased was already lying admitted in hospital, and the Trial Court had recorded that since the husband was with his brother at the time of incident, he had been falsely implicated in the case. The conducts of the other in-laws, who had taken the deceased to the hospital, were also taken into consideration by the Trial Court, commenting that had they poured kerosene oil on the deceased and set her to fire, they would not have taken her to hospital for treatment. The Trial Court had also stated that the dying declaration of the deceased was intrinsically weak and not trustworthy.

21. Taking into consideration of these discrepancies, the Hon'ble Supreme Court of India has upheld the decision of the High Court, laying down the law as follows :-

"1. Law on the admissibility of the dying declarations is well settled. In *Jai Karan v. State (NCT of Delhi)*, this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence

cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard-and-fast rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement (see *Rambai v. State of Chhattisgarh*).

32. It is immaterial to whom the declaration is made. The declaration may be made to a Magistrate, to a police officer, a public servant or a private person. It may be made before the doctor; indeed, he would be the best person to opine about the fitness of the dying man to make the statement, and to record the statement, where he found that life was fast ebbing out of the dying man and there was no time to call the police or the Magistrate. In such a situation the doctor would be justified, rather duty-bound, to record the dying declaration of the dying man. At the same time, it also needs to be emphasised that in the instant case, dying declaration is recorded by a competent Magistrate who was having no animus with the accused persons. As held in *Khushal Rao v. State of Bombay*, this kind of dying declaration would stand on a much higher footing. After all, a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the court (see *Vikas v. State of Maharashtra*).

33. No doubt, the victim has been brought with 100% burn injuries. Notwithstanding, the doctor found that she was in a conscious state of mind and was competent to give her statement. Thus, the Magistrate had taken due precautions and, in fact, the medical officer remained present when the dying declaration was being recorded. Therefore, this dying declaration cannot be dis-

carded merely going by the extent of burns with which she was suffering, particularly, when the defence has not been able to elicit anything from the cross-examination of the doctor that her mental faculties had totally impaired rendering her incapable of giving a statement.

34. Keeping in view the aforesaid considerations, we feel that the High Court rightly observed that the manner in which the trial court proceeded with the matter was legally unsustainable. It was necessary for the trial court, in the first instance, to see as to whether due precautions were taken before recording the statement of the deceased, which became dying declaration as she died within few hours thereafter. In this context, what is relevant is that the moment the deceased was admitted in PGIMS, Rohtak, without any loss of time and immediately thereafter the doctor at the said hospital sent the information to the police post about her admission in the hospital with burns. On receipt of that information, Sub-Inspector visited the hospital and collected medical report of the deceased. He immediately moved an application before the medical officer concerned seeking his opinion with regard to the fitness of the patient. On that application itself (Ext. PG), the doctor made an endorsement (Ext. PG-1) that she was fit to make statement. The Sub-Inspector did not record the statement of the deceased himself. Rather, he took due precaution by approaching the Chief Judicial Magistrate, Rohtak with an application (Ext. PH) requesting him to depute an officer to record the statement of the deceased. On this application, orders were passed (Ext. PH-1) directing Bhupinder Nath, Judicial Magistrate, First Class, Rohtak to go to the hospital and record the statement. Armed with this order, the Magistrate reached the hospital and recorded the statement of the deceased. This recording was done in the presence of the doctor who again certified that she had given the statement in a fit state of mind." (Emphasis supplied). The Hon'ble Supreme Court of India, in this case, even finding that the case appeared to have been stung by the 'culture of compromise', upheld the decision of the High Court, convicting the accused persons solely on the basis of the dying declaration of the deceased.

22. In the present case also, though we find that this case also is stung by the 'culture of compromise' and unfortunately, even the father and brothers of the deceased have turned hostile, but the facts of the present case, and the manner of

recording the dying declarations of the deceased are almost exactly the same as in Ramesh's case (supra). We are of the considered view that the dying declarations of the deceased recorded by the police, as also by the Judicial Magistrate, are such reliable pieces of evidence that the conviction of the accused could be secured only on the basis of these dying declarations, irrespective of the otherwise evidences of the hostile witnesses on record.

23. For the foregoing reasons, we do not find any illegality in the impugned Judgment of conviction dated 17.4.2007 and Order of sentence dated 18.4.2007, passed by the learned 1st Additional Sessions Judge, Jamtara, in Sessions Case Nos. 30 of 2005 / 47 of 2006, convicting and sentencing the appellant Abdul Rahim @ Fagu Mian, for the offences under Sections 302 and 498-A of the Indian Penal Code, which we hereby, affirm. The appellant is already in custody and is undergoing the sentence.

24. There is no merit in this appeal and the same is accordingly, dismissed. Let the Lower Court Record be sent back forthwith to the Court concerned, along with a copy of this Judgment. (H. C. Mishra, J.) Ananda Sen, J.:- (Ananda Sen, J.) Jharkhand High Court, Ranchi Dated:

11. 09.2017 N.A.F.R-BS/-

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