

**In Re: Bed Kumar Rai**

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**SooperKanoon Citation :** [sooperkanoon.com/497054](http://sooperkanoon.com/497054)

**Court :** Sikkim

**Decided On :** Sep-01-2000

**Reported in :** 2001CriLJ2683

**Judge :** R. Dayal, C.J. and; A. Deb, J.

**Acts :** Indian Penal Code (IPC) - Sections 302

**Appeal No. :** Cri. Revn. No. 6 of 2000

**Appellant :** In Re: Bed Kumar Rai

**Advocate for Def. :** Bandhan Rai, Adv.

**Advocate for Pet/Ap. :** S.P. Wangdi, P.P. and; Karma Thinlay, Asstt. Govt. Adv.

**Disposition :** Petition allowed

**Judgement :**

R. Dayal, C.J

1. This criminal revision was registered by this Court on its own motion to be satisfied as to the correctness, legality and propriety of the order dated 14th October, 1999 delivered by the Sessions Judge, South and West, Gangtok in Criminal Case No. 12 of 1999. Charge sheet was filed against the respondent Bed Kumar Rai under Section 302, IPC. At the stage of framing the charge, by the order dated 14th October, 1999, the learned Sessions Judge discharged the

accused discarding the second dying declaration recorded at S.T.N.M. Hospital, Gangtok at 21.10 hours and the deceased died within 23 hours on the same day, which means that the second dying declaration was recorded shortly before the death of the deceased. The learned Sessions Judge recorded his opinion that the first dying declaration in which the accused had not been implicated, appeared to be true. While giving reason for discarding the second dying declaration, the learned Sessions Judge stated that, in one part thereof, the victim stated : 'I am very sure that Bed Kr. Rai set me on fire as I know him very well'. The learned Sessions Judge observed that on reading the second dying declaration as a whole, this last sentence was not at all necessary which goes to prove that the deceased wanted to make her declaration very strong which appeared to have been done at the instance of some other person, for otherwise there would not be any reason for two dying declarations. In our view, the reason given by the learned Sessions Judge for discarding the second dying declaration was not valid and it was passed only on conjecture. Expression of opinion that the second dying declaration was not reliable, was not at all warranted at the stage of framing the charge because the question as to whether the first was reliable or the second was reliable or none was reliable was to be considered in the context of the evidence and the circumstances which were to come on record at the trial.

2. In the result, the revision is allowed, the order dated 14th October, 1999 is set aside and the Sessions Judge, South and West is directed to re-register the case and to proceed with the matter in accordance with law, the respondent Bed Kumar Rai who is present in Court is taken into custody. He be produced before the learned Sessions Judge, South and West.