IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.587 of 2011

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RAJ KUMAR MAHTO Son Of Late Shivji Mahto Resident Fo Village - Kalhara, Police Station - Hathuri, District - Samastipur.

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

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Appearance :
For the Appellant/s : Mrs. Shubhangi Pandey, Amicus curiae
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date :09-04-2026

Heard Mrs. Shubhangi Pandey learned *Amicus curiae* and Mr. Abhay Kumar learned APP for the State.

2. This criminal appeal has been preferred against the judgment and order of conviction and sentence dated 06.05.2011 passed in Sessions Trial No. 413 of 2008 arising out of Hathauri (Shivarji Nagar O.P.) P.S. Case No. 35 of 2007 by Additional Sessions Judge, Rosera, District, Samastipur whereby the learned trial court convicted the appellant under Section 304 Part-II of the Indian Penal Code and sentenced him to undergo 10 years of rigorous imprisonment.

3. The prosecution case, in brief, is that on 28.08.2007 at night, a *Jhula Puja* was being performed at the temple of Bajrang Bali, where the informant had gone to offer *prasad*, and after the *puja* concluded at about 11:00 P.M., while he was washing his hands at a hand-pump situated near the temple, the

accused Raj Kumar Mahto (appellant) allegedly came there and assaulted him by pushing him on the ground and had twisted his neck, as a result of which, he sustained serious injuries on his head and neck and became unconscious. Due to non-availability of any vehicle during the night, the injured was taken to *Baheri* Hospital on the following day by his family members, and upon regaining consciousness, he made his statement before the police, alleging that several villagers had witnessed the occurrence. On the basis of the said *fardbeyan*, a formal case was instituted on 03.09.2007 for offences under Sections 341, 323 and 307 of the I.P.C., however, during the course of treatment, the informant succumbed to his injuries on 01.10.2007 at Safdarjung Hospital, New Delhi, whereupon Section 302 I.P.C. was added to the case *vide* order dated 23.05.2008 passed by the learned A.C.J.M., Rosera.

4. After institution of the FIR, the police proceeded with the investigation and after completion of the investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellant and the case was committed to the Court of Sessions for trial in which the appellant has been convicted for the offence under Section 304 Part-II of the Indian Penal Code and sentenced him to undergo 10 years of rigorous

imprisonment.

ARGUMENT OF THE *Amicus Curiae*

5. Learned *Amicus curiae* submitted that the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Rosera is wholly illegal and unsustainable in the eyes of law, having the evidences into the realm of conjectures and speculation. She contended that the prosecution has failed to prove its case beyond reasonable doubt, as there are material contradictions and inconsistencies in the testimonies of the prosecution witnesses, and none of the alleged eyewitnesses have supported the prosecution case in a cogent and reliable manner. She further submitted that the FIR was lodged after considerable delay, which creates serious doubt about the authenticity of the prosecution story and leaves room for embellishment and false implication.

6. Learned counsel further submitted that even if the prosecution case is taken at its face value, the alleged act does not disclose any intention or knowledge on the part of the appellant to cause death, and the occurrence appears to be a sudden act without premeditation during a village gathering. It is also argued that the informant survived for a considerable period after the alleged occurrence and the prosecution has

failed to establish a clear and proximate nexus between the alleged assault and the subsequent death.

7. Learned counsel next submitted that the medical evidence don't support the prosecution story as alleged. The doctor at DMCH while the informant/deceased was alive and admitted had opined that the injury on the head was due to alleged physical assault upon him, while the doctor of Safdarjang Hospital, New Delhi, where the postmortem of the deceased/informant, was conducted had opined that the cause of death is cerebral damage due to blunt force impact diverted upon the head by the other party. All the injuries are ante-mortem in nature and old in duration. Head injury, as mentioned above, is fatal, caused by hard blunt object and sufficient to cause death, in the ordinary course of nature.

8. Learned counsel in above backgrounds submitted that in absence of both oral and documentary evidence, the learned trial court failed to properly appreciate both the prosecution and defence evidence in its correct perspective and erroneously convicted the appellant under Section 304 Part-II of the Indian Penal Code; hence, the impugned judgment and order of sentence are liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

9. *Per Contra*, learned State counsel has submitted that the learned District Court has discussed at length in paragraphs no.30 that evidences of P.W. 7 Ramrati Devi, who is wife of the deceased and she is the eyewitness of the occurrence and P.W. 8, who is son of the deceased are reliable and trustworthy. Learned counsel further submitted that the informant of this case is late Khubsurat Mukhiya and based on his dying declaration given before the Sub-Inspector of Police, B.P. Sharma on 30.08.2007 at Primary Health Centre, Baheri, three days after the alleged incidence has taken place, once he came back to his normal sense, FIR was lodged and said *fardebyan* of the deceased Khubsurat Mukhiya is treated to be dying declaration having ultimately died on 01.10.2007, therefore, the conviction of the appellant under Section 304 II of IPC is error of record, as well as, the evidence as the appellant should have convicted by the learned trial Court for the offences under Section 302 of IPC. On these grounds, he seeks interference of this Court.

ANALYSIS AND CONCLUSION

10. Heard the parties.

11. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by

learned counsel appearing on behalf of the parties. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal.

12. During the trial, the prosecution has examined altogether fourteen witnesses, namely:

1. P.W.1 – Ram Bahadur Mukhiya (Hostile)
2. P.W.2 – Jitendra Kumar (Hostile)
3. P.W.3 – Dukhan Mahto (Hostile)
4. P.W.4 – Shambhu Mukhiya
5. P.W.5 – Ganesh Mukhiya
6. P.W.6 – Sanjit Kumar Mahto (Hostile)
7. P.W.7 – Ramrati Devi
8. P.W.8 – Jagdish Mukhiya
9. P.W.9 – Sukunari Devi (Hostile)
10. P.W.10 – Jai Narain Mahto
11. P.W.11 – Biranchi Yadav
12. P.W.12 – Sanjeev Kumar
13. P.W. 13- Suresh Paswan
14. P.W. 14 – Kusho Singh

13. The prosecution has also relied upon following

documents exhibited during the course of trial:-

(i) Signature of P.W.-4 on fardbeyan (Exhibit-1),

(ii) Signature of P.W.-5 on fardbeyan (Exhibit-1/1),

(iii) Post-mortem Report (Exhibit-2),

(iv) Death Report (Exhibit-3).

(v) Formal FIR (Exhibit-4)

(vi) Fardbeyan of informant (Exhibit-5)

14. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be summarised as follows:

(i) P.W.1 Ram Bahadur Mukhiya- This witness has deposed that he does not know anything regarding the occurrence and stated that the police did not record his statement. He has not supported the prosecution case and was declared hostile. Despite being confronted with his earlier statement, he resiled from the same.

(ii) P.W.2 Jitendra Kumar- He has stated that the occurrence took place about one year prior, but he was not present in the village on that day and has no knowledge of the incident. He was declared hostile and denied his earlier statement made before the police. His evidence does not support the prosecution case.

(iii) P.W.3 Dukhan Mahto- This witness has stated that he has no knowledge about the occurrence and that the police did not record his statement. He has been declared hostile and has not supported any part of the prosecution story, resiling from his earlier statement.

(iv) P.W.4 Shambhu Mukhiya- He has deposed that the fardbeyan of the deceased Khubsurat Mukhiya was recorded in his presence and that he signed the same, which has been marked as Ext.1. However, in cross-examination, he stated that he has no knowledge of the occurrence. His evidence proves the recording of the fardbeyan but not the occurrence.

(v) P.W.5 Ganesh Mukhiya- This witness has stated that upon receiving information, he went to Baheri Hospital where the deceased was admitted, and the police obtained his signature on the fardbeyan, marked as Ext.1/1. He has further stated that he has no knowledge of the occurrence.

(vi) P.W.6 Sanjit Kumar Mahto- He has deposed that he does not know anything about the occurrence and that the police did not record his statement. He was declared hostile and has not supported the prosecution case, resiling from his earlier statement.

(vii) P.W.7 Ramrati Devi (Wife of the deceased)- She

has supported the prosecution case and stated that the accused Raj Kumar Mahto assaulted her husband Khubsurat Mukhiya by thrashing and twisting his neck, due to which he sustained injuries and later died during treatment at Safdarjung Hospital, New Delhi. Her evidence forms the main basis of the prosecution case.

(viii) P.W.8 Jagdish Mukhiya- This witness, who is the son of the deceased, has corroborated the testimony of P.W.7 Ramrati Devi regarding the assault committed by the accused upon the deceased.

(ix) P.W.9 Sukunari Devi - She has deposed that she was not present at the time of occurrence and later heard about a quarrel involving the accused, but does not know with whom the quarrel took place. She was declared hostile and resiled from her earlier statement. Her evidence does not support the prosecution case.

(x) P.W.10 Jai Narain Mahto- He has stated that on the day of occurrence, the deceased along with his wife visited the temple and offered Prasad. He distributed the Prasad among the public. He later came to know that the deceased died at Delhi. He has clearly stated that he did not witness the occurrence. His evidence only establishes the presence of the

deceased at the temple prior to the incident.

(xi) P.W.11 Biranchi Yadav (Formal Witness)- He has proved the Post-Mortem Report (Ext.2) of the deceased. As per the report, the cause of death was cerebral damage due to blunt force impact on the head, and the injuries were ante-mortem in nature. He has not deposed anything regarding the occurrence.

(xii) P.W.12 Sanjiv Kumar (Formal Witness)- He has proved the death report and inquest report (Ext.3). The inquest report notes head injury on the deceased. He has not stated anything about the occurrence.

(xiii) P.W.13 Suresh Paswan (Formal Witness)- He has proved the formal F.I.R. (Ext.4). He has not deposed anything regarding the occurrence.

(xiv) P.W.14 Kusho Singh (Formal Witness)- He has proved the fardbeyan of the deceased (Ext.5). He has not stated anything regarding the occurrence.

(XV) PW.15. (Doctor who conducted the postmortem) - He has stated that he found that the general observation of the dead body shows bed sore over sacral area. Cloths were changed many times since assault and hence could not be preserved. RM present in limbs. Rm stating over the

back". He has opined that "the cause of death is cerebral damage due to blunt force impact diverted upon the head by the other party. All the injuries are ante-mortem in nature and old in duration.

15. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and showed his complete innocence.

16. It would be appropriate to reproduce the provisions of Sections 299 and 304 Part-II of the IPC and Section 32 of the Indian Evidence Act, for the sake of convenience and better understanding of the facts, which are as under:-

> ***"299. Culpable homicide.—***
> *Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Illustrations(a)A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.(b)A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.(c)A, by shooting at a fowl*

with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.Explanation 3.— The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. *— Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance*

cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) or is made in course of business.—When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) or against interest of maker.—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) or gives opinion as to public right or custom, or matters of general interest.—When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) or relates to existence of relationship.—When the statement relates to the existence of any relationship 1 [by blood, marriage or adoption] between persons as to whose relationship 1 [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) or is made in will or deed relating to family affairs.—When the statement relates to the

existence of any relationship 1 [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) or in document relating to transaction mentioned in section 13, clause (a).— When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) or is made by several persons and expresses feelings relevant to matter in question.— When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question"

17. The record reveals that P.W.-1 P.W.-2, P.W.-3, P.W.- 6 and P.W.-9 were declared hostile during the trial as nothing transpired from their testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who supported the crime in question during the trial. Therefore, the testimony of these witnesses are not relevant qua establishing guilt of the accused/appellant.

FINDING ON THE INJURY

18. It will be pertinent to refer to the medical examination of the deceased when he was alive and admitted at the Public Health Centre, Baheri and DMCH, and thereafter to the postmortem conducted at Safdargunj Hospital, New Delhi. It

will be pertinent to first refer to the postmortem examination conducted by the doctor. The findings are as follows:

(i) General observation of the dead body shows bed sore over sacral area.

(ii) Clothes were changed many times since the assault and hence could not be preserved.

(iii) Rigor mortis (RM) present in limbs.

(iv) Rigor mortis starting over the back.

(v) Cause of death opined as cerebral damage due to blunt force impact inflicted upon the head by the other party.

(vi) All injuries are ante-mortem in nature and old in duration.

19. Doctor who conducted the postmortem found that “the general observation of the dead body shows bed sore over sacral area. Cloths were changed many times since assault and hence could not be preserved. RM present in limbs. Rm stating over the back”. The doctor has opined that “the cause of death is cerebral damage due to blunt force impact diverted upon the head by the other party. All the injuries are ante-mortem in nature and old in duration”.

20. The investigating officer has referred two injury

reports in the case diary in course of investigation. As per the opinion of the doctor, there is head injury caused due to *altered sensorium* but it is not mentioned that the same was caused due to alleged twisting of the neck. The doctor was examined as PW-15 and in his deposition he has given reason that rotation of neck will cause any external injury as mentioned in above paragraph.

21. Undoubtedly, the Investigating officer and the doctor are material witnesses, the former being essential to explain the manner in which the investigation was conducted and the steps taken during investigation, and the latter to prove the medical evidence relating to the nature and cause of injuries. Their examination also affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination.

NON-EXAMINATION OF INVESTIGATING OFFICER

22. In the present case, the Investigating Officer has not been examined. Question arises, whether the same will *ipso facto* vitiate the prosecution case?

23. The Apex Court is of consistent view that effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice

has been caused to the accused and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand*****,** reported in ***(2013) 3 SCC 791*** which is reproduced hereinafter:

> ***"18.*** *Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."*

24. To analyze whether in the facts and circumstances of the case, the learned trial court has come to the correct finding, I find that same can be determined in the background

of the chronology of the events which is summarized as under:-

(i) The occurrence took place on 28.08.2007;

(ii) Hospitlaized on 29.08.2007;

(iii) FIR was instituted on the basis of fardebyan of the deceased recorded on 30.08.2007 had found head injury.

(iv) Referred to DMCH on 30.08.2007 and undergone treatment at DMCH.

(v) The deceased was admitted at Safdarganj hospital on 08.09.2007 and he was treated there till 16.09.2007 and was discharged.

(vi) He was again examined at OPD On 25.09.2007 and went home;

(vii) He was again brought at Safdarganj Hospital on 01.10.2007 and about 03:15 a.m., he was declared dead.

25. In absence of any adverse inference in respect of the examination of the investigating officer, I don't find that no adverse interference can be drawn just because the prosecution has failed to produce the Investigating officer.

26. The next question which falls for consideration before this Court is whether the First Information Report lodged by the deceased, at a stage when the case was registered under Sections 307 and 323 of the IPC, can be treated as a dying

declaration?

27. The Apex Court has discussed the said issue in the judgment of ***Munnu Raja v. State of MP1976 AIR 2199*** wherein, the Honorable Supreme court observed that the law pertaining to the admissibility of dying declaration should be applied and understood with caution because the declarant making such a statement shall not be cross-examined by the accused. In addition to this, the court also stated the requirement of corroboration for admissibility of dying declaration is not a rule of law but a rule of prudence. Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted.

28. In the case of ***Prem Chand v. State of U.P AIR 1994 SC 1534,*** the Apex Court held that such declaration was recorded by the Special Executive Magistrate, who acknowledged that the declarant has the physical and mental competence to record the dying declaration which was also supported by the Police Officer. In such cases dying declarations were held to be valid despite the lack of evidence of a certificate

from the medical professional.

29. The Constitution Bench of the Apex court in the case of ***LAXMA .v. STATE OF MAHARASHTRA reported in AIR 2002 SC 2973***, held that medical certification is not a *sine qua non* for accepting the Dying Declaration which is *inter alia* as follows:

> *4 "For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in Paparambaka Rosamma and Others .v. State of Andhra Pradesh (MAU/SC/0558/1999) to the effect that '... in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the inured was in a fit state of mind at the time of making a declaration' has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper- technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma and Others .v. State of Andhra Pradesh (MA U/SC/0558/1999) must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji and another .v. State of Gujarat (MA U/SC/0624/1999) case."*

30. The Apex Court in case of ***Irfan alias Naka Versus State of Uttar Pradesh, 2023 SCC OnLine SC 1060*** dealing with the bounden duty of the Court to prove the case beyond reasonable doubt, held that the prosecution cannot derive advantage merely from the naming of the accused in the

dying declaration, particularly, where the surrounding circumstances render such statement doubtful. The Apex Court conclusively held that the benefit of doubt must necessarily ensure to the accused. The discussion in this regard, particularly made by the Apex Court in para nos. 60 to 62 are reproduced hereinafter:

> ***"60.*** *Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.*
>
> ***61.*** *In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.*
>
> ***62.*** *There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—*
>
> *(i) Whether the person making the statement was in expectation of death?*
>
> *(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"*
>
> *(iii) Whether there is any reasonable suspicion*

to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?"

31. Now question arises, whether, in the facts of the present case and on the basis of the material available on record, serious doubts arise regarding the veracity and reliability of the alleged dying declaration, thereby rendering it unsafe to place implicit reliance upon it and whether the said statement was the result of tutoring, prompting, or improper recording, and further, whether the deceased declarant was in a fit condition to make such a statement?

32. Taking into consideration the surrounding circumstances, consistency of the statement and the incident as

observed by the declarant or his declaration appears to be a product of imagination or external influence, and if such factors create doubt, the declaration cannot be treated as wholly trustworthy. In such circumstances, the dying declaration can at best be treated as a piece of evidence requiring corroboration, and it would be unsafe to base conviction solely upon it.

33. It is undisputed that the FIR was recorded at the instance of the injured himself, who subsequently succumbed to his injuries, thus the statement assumes substantial evidentiary value under Section 32(1) of the Indian Evidence Act, which renders admissible statements made by a person as to the cause of his death or the circumstances resulting in his death. In the present case, the FIR was lodged promptly after the occurrence when the deceased was conscious and capable of giving a coherent account of the incident, and there is no material on record to indicate that the statement was vitiated by tutoring, coercion, or undue influence, the contents of the FIR directly relate to the injuries that ultimately proved fatal, and the mere fact that the case was initially registered under Section 307 IPC does not detract from the evidentiary value of the statement upon the death of the informant, as such a statement, if found voluntary and truthful, assumes the character of a dying

declaration and can be relied upon even without corroboration, subject to careful scrutiny. Moreover, being a contemporaneous document, the FIR carries inherent assurance and absence of premeditation**,** minimizes the possibility of embellishment, and therefore, this Court is of the considered view that the FIR lodged by the deceased is admissible as a dying declaration and can be relied upon if it inspires confidence and is found to be credible and trustworthy.

34. Keeping in mind the above principle of law, I now analyze the statement of the prosecution witness. The P.W.7 Ramrati Devi who is Wife of the deceased has stated that the accused Raj Kumar Mahto (appellant) assaulted her husband Khubsurat Mukhiya by thrashing and twisting his neck, due to which he sustained injuries and later died during treatment at Safdargunj Hospital, New Delhi. Her evidence forms the main basis of the prosecution case but I don't find her her testimony, though alleging that the accused assaulted the deceased by thrashing and twisting his neck, remains uncorroborated by any independent witness despite the alleged occurrence having taken place in a public view. Further, her evidence does not dispel the possibility of embellishment or external influence, particularly when the prosecution case itself suffers from infirmities relating

to the manner of occurrence and absence of consistent supporting material. In such circumstances, and having regard to the caution mandated in cases resting substantially on statements akin to dying declarations, this Court finds that the testimony of P.W.7 cannot be treated as wholly reliable or of such sterling quality so as to form the sole basis of conviction, in the absence of credible and independent corroboration.

35. Now coming to section 304 Part -II, the essential ingredients required to attract Section 304 Part-II IPC, specifically the existence of knowledge that the act was likely to cause death, whether in the facts of the present case, it has been proved beyond reasonable doubt?

36. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 12 in the case of ***Yuvraj Laxmilal Kanther and Another versus State of Maharashtra*****,** reported in ***2025 SCC OnLine SC 520*****,** which is reproduced hereinafter:

> ***12.*** *We have noted above that the appellant have been charged for committing offence under Section 304 Part II IPC read with Section 34 IPC. Since Section 34 IPC covers common intention, the substantive charge against the appellant is under Section 304 Part II IPC which reads as under:*
>
> *Punishment for culpable homicide not amounting to murder -*
>
> *Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term*

which may extend to ten years or with fine or with both, if the act is done with the knowledge that it is likely to cause death; but without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.1. *The ingredients constituting an offence under Section 304 Part II IPC are as follows:*

(i) he must commit culpable homicide not amounting to murder;

(ii) the act must be done with the knowledge that it is likely to cause death;

(iii) but such act is done without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.2. *Therefore, the first important expression is 'culpable homicide not amounting to murder'. Culpable homicide is defined in Section 299 IPC. It says that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

12.3. *All culpable homicides are murders except in the cases excepted under Section 300 IPC. Thus, except the cases specifically exempted under Section 300 IPC, all other acts within the meaning of Section 299 IPC would amount to committing the offence of culpable homicide. However, what is important to note is that for committing the offence of culpable homicide, a positive act must be done by the doer with the intention that such act would cause death or cause such bodily injury as is likely to cause death or he having the knowledge that by such an act, death may be caused. What, therefore, is significant is that the doer of the act must have the intention of causing death or the intention of causing such bodily injury as is likely to cause death or has the knowledge that by doing such an act he is likely to cause death. Therefore, to commit the offence of culpable homicide, intention or knowledge is of crucial importance.*

12.4. *Coming back to Section 304 Part II IPC, we find that the said section would be attracted if anyone commits culpable homicide not amounting to murder if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause*

> *such bodily injury as is likely to cause death. Therefore, the requirement of Section 304 Part II IPC is that the doer must have the knowledge that the act performed is likely to cause death or to cause such bodily injury as is likely to cause death but without any intention to cause death. Thus, the basic ingredient of Section 304 Part II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc but there should not be any intention to cause death.*

37. The legal position governing the applicability of Section 304 Part-II IPC makes it clear that the prosecution must establish that the act in question amounts to culpable homicide not amounting to murder and that such act was committed with the knowledge that it was likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death. Thus, the essential distinction lies in the absence of intention coupled with the presence of knowledge. Culpable homicide, as defined under Section 299 IPC, necessarily postulates a positive act done either with intention or with knowledge of the likelihood of causing death, and while all culpable homicides may not amount to murder, the applicability of Section 304 Part II arises only when the element of intention is clearly ruled out. In the present case, upon an overall appreciation of the materials on record, it becomes imperative to examine whether the accused possessed the requisite knowledge that his act was likely to cause death, and at the same time

lacked any intention to either cause death or inflict such bodily injury as was likely to result in death, unless such foundational ingredients are clearly established, the offence cannot be brought within the ambit of Section 304 Part II IPC. Therefore, the presence of knowledge and the absence of intention being *sine qua non* for invoking the said provision, any ambiguity or deficiency in proving these elements would necessarily enure to the benefit of the accused. The circumstances indicate the possibility of a sudden incident without premeditation, thereby negating the requisite *mens rea*. It is a settled principle of criminal law that suspicion, however strong, cannot take the place of proof, and the benefit of doubt must be extended to the accused. In view of the aforesaid deficiencies and the failure of the prosecution to establish its case beyond reasonable doubt, this Court is of the considered opinion that the impugned judgment of conviction and order of sentence is unsustainable in law.

38. It is also a settled principle of law that no doubt motive assumes significance, particularly in cases based on circumstantial evidence. However, where there is direct and reliable evidence in the form of a credible and trustworthy dying declaration, the absence of strong or conclusive proof of motive

is not fatal to the prosecution case. It is further well settled that the prosecution is not required to establish motive with mathematical precision, and any failure to conclusively prove motive does not dilute or weaken an otherwise cogent, reliable and trustworthy case. Law in this regard is well settled by the Apex Court in the case of ***State of Himachal Pradesh vs Chaman Lal*** reported in ***2026LiveLaw (SC) 48***, which is reproduced hereinafter:

> *"23. Motive assumes significance, primarily in cases based on circumstantial evidence. Where there is direct evidence in the form of a credible and trustworthy dying declaration, the absence of strong proof of motive is not fatal to the prosecution case. This position has been consistently affirmed by this Court in State of Andhra Pradesh v. Bogam Chandraiah and another17, Dasin Bai @ Shanti Bai v. State of Chhattisgarh18, and Purshottam Chopra v. State (NCT of Delhi)19. In the present case, the evidence on record discloses that the respondent subjected the deceased to frequent quarrels, humiliation and verbal abuse, including branding her a "Kanjri" and repeatedly asking her to leave the matrimonial home. The dying declaration itself refers to persistent matrimonial discord and ill-treatment thereby furnishing a plausible background for the commission of the offence. In any event, the prosecution is not required to establish motive with mathematical precision and failure to conclusively prove motive does not weaken an otherwise reliable and cogent case."*

39. Upon a careful and comprehensive

consideration of the entire evidence on record and law laid down by the Apex Court as referred hereinabove, this Court finds that the prosecution case is riddled with material inconsistencies and lacks reliable corroboration. The age of the deceased at the time of occurrence was about 70 years. A majority of the prosecution witnesses, including those projected as eyewitnesses, have turned hostile and failed to support the prosecution version on material particulars. The conviction of the appellant rests primarily upon the testimony of P.W.7, the wife of the deceased, with limited support from P.W.8. However, their evidence does not inspire full confidence when tested against the overall circumstances of the case. The alleged dying declaration in the form of the fardbeyan, though admissible in evidence, appears doubtful in its reliability due to the delay in its recording, absence of independent corroboration, and uncertainty regarding the mental and physical condition of the deceased at the time of making such statement. Additionally, the prosecution has failed to establish a clear and proximate nexus between the alleged act of the appellant and the death of the deceased, particularly in light of the intervening period of medical treatment.

40. The FIR creates doubt about the prosecution

case, inasmuch as, the alleged occurrence is stated to have taken place suddenly at about 11:00 P.M. near a temple during a Jhula Puja gathering. From the statement of the material witnesses, particularly PW 7, who is the wife of the deceased has not stated that there was any prior enmity or premeditation, suggesting an act on the spur of the moment. Further, despite the claim that several villagers had witnessed the incident, no independent witness has been examined to corroborate the allegation, thereby undermining its credibility. Moreover, the injured was not taken for immediate medical treatment during the night and his statement was recorded only on the following day after regaining consciousness. The unexplained delay further weakens the reliability of the prosecution version.

41. In facts of the case, this Court don't find any reason to interfere with the conviction of the appellant which is upheld but the sentence to undergo rigorous imprisonment for 10 years is modified to the period already undergone by the appellant in custody i.e. three and half years. Since the appellant is on bail, as such, he is discharged from the liability of his bail bonds. The fine deposited by the appellant, if any, shall be refunded to him.

42. The appeal stands partly allowed.

43. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand) to Ms. Shubhangi Pandey, learned *Amicus Curiae,* as consolidated fee, for rendering her valuable professional service for disposal of the present appeal.

44. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Sanjay/-

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