2026 INSC 223

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.....of 2026
[@Special Leave Petition (Crl.) No. 15378 of 2024]

Sanjay Kumar Sharma

...Appellant

Versus

State of Bihar & Ors.

...Respondents

J U D G M E N T

K. Vinod Chandran, J.

Leave granted.

2. Overzealous investigation is as fatal to prosecution as are the lethargic and the tardy. Framing a case on public perceptions and personal predilections ends up in a mess, often putting to peril an innocent and always letting free the perpetrator. Here, we have a case of gruesome death of a couple when their house was gutted in a fire, with the son and daughter-in-law accused of murder. The entire case is founded on motive; the ill-will the son harbored against the father for not having given him his due share in the ancestral property. The entire village was against the son and the mishap ended in an investigation where truth was sacrificed

at the altar of perceived vengeance, ably assisted by the Investigating Officer's selective but careless pursuits, derailing the entire prosecution.

3. On the early hours of 23.11.2016, a shanty in which a lawyer and his wife were residing was gutted in a fire, killing the old man immediately and his wife after two days in a hospital at Patna. It was alleged that the younger son and daughter-in-law of the couple, due to previous enmity arising from land disputes, torched the hut with the intention to murder the parents. In defense, as is permissible, inconsistent stances were taken; of the neighbour, who was managing the properties of the deceased, and the elder son having colluded to murder the couple and an accidental fire, by reason of the cooking gas cylinder bursting. The Trial Court convicted the accused, while the High Court acquitted him. We are faced with the divergent findings of the Trial Court and the High Court; that of the High Court by its order of acquittal having fortified the presumption of innocence available to the accused.

4. Sri Smarhar Singh, Advocate-on-Record, appearing for the petitioner, the elder son of the deceased, argued that

the High Court has completely lost sight of the evidence in the case and entered an acquittal totally ignoring the dying declarations. In addition to the recorded dying declarations as coming out from the First Information Statement (FIS) and that recorded by PW8, a Block Development Officer (BDO), PWs 1 to 3, 5 and 6 also spoke of the statement made by one of the deceased pinning the dastardly act of setting ablaze the hut and murdering the parents on the accused. There was sufficient evidence to prove the motive, which together with the dying declarations ought to have persuaded the High Court to affirm the conviction ordered by the Trial Court. The Doctor who carried out the post-mortem spoke only of 60% burns and confirmed the mental status of the deceased, who spoke about the cause of her death and that of her husband. A number of decisions are placed before us to put forth the contention that a dying declaration can be solely relied on to enter a conviction. In the present case, there was sufficient corroboration from the medical evidence, the motive proved and the testimony of witnesses who reached the crime spot immediately afterwards. The High Court ought to have ensured that the parricide was not

left unavenged, when egregiously the accused were acquitted without a proper appreciation of the evidence.

5. Sri Amanullah, learned Counsel appearing for the State sought to uphold the conviction of the Trial Court and reverse the order of acquittal especially pointing out the dastardly crime. The testimonies of the witnesses, the dying declaration and the motive proved ought to have convinced the High Court about the culpability of the accused is the contention.

6. Sri Vipin Sanghi, learned Senior Counsel for the accused pointed out the lapses in the investigation and the concerted effort to somehow punish the accused, by manufacturing evidence not only in the form of inconsistent dying declarations but also by way of interested testimony of the witnesses. There was a clear pick and choose employed in bringing witnesses to the trial, all interested and by their testimony validating the defense of a cooked-up prosecution story. The learned counsel for the accused also urged the laxity with which the Trial Court considered the matter. None of the incriminating circumstances were put to the accused under Section 313 of Code of Criminal

Procedure, 1973[1] and the defense set up was given a complete go by. The Trial Court proceeded on merely surmises and conjectures without looking into the relevant aspects in the testimony of the witnesses, which would validate the defense of the accused, either of a motivated accusation having been levelled or an accidental fire having occurred, the defense being entitled to take different pleas.

7. In the context of the divergent findings and the peculiar circumstance of a son (A1) and daughter-in-law (A2) being accused of murdering A1's parents we have examined the records and the evidence with a hawk's eye. Since the learned counsel for the appellant had relied primarily on the dying declarations, with reference to various decisions we will have to first look at the decisions placed before us. ***Laxman v. State of Maharashtra***[2] was a Constitution Bench decision examining a reference based on two conflicting decisions. The conflict was insofar as the certification of the doctor regarding the condition of the patient who makes the dying declaration. While one of the decisions held that the certification should be to the effect

[1] For brevity, 'the Cr.P.C.'
[2] (2002) 6 SCC 710

that the person making that declaration is in a fit state of mind, another coordinate Bench held that if the materials on record indicate the deceased to be fully conscious, the declaration made immediately prior to death cannot be ignored, merely for reason of the absence of a certification by a doctor that the deceased was in a fit state of mind to make such a declaration. The Constitution Bench without relying on the moral premise that '*no man would like to meet his maker with a lie in his mouth*', based itself on more practical grounds. Their Lordships relied on the juristic theory of such declaration being made in extremity, at the time of imminent death, when every hope in life is gone, every motive to falsehood is silenced and the only inducement is the desire to speak truth. However, it was observed that great caution has to be exercised in considering the weight to be given to this species of evidence on account of existence of many circumstances which may affect the truthfulness and correctness of a statement made, the author of which cannot be cross-examined. There is always the possibility of tutoring or prompting or a product of imagination, which the Court

should be satisfied, does not exist. The Court also should be satisfied as to the situation the injured is placed in to take stock of the incident and identify the assailant as also the fitness of mind & body to subsequently speak about it. Normally, Courts look for medical evidence to assess the mental condition of the deceased while making a dying declaration, but it is not a rigid rule. Where, from the attendant circumstances, as spoken of by the witnesses and brought out by valid evidence if the Court is able to satisfy itself that the declaration was made in a fit and conscious state, then a contrary medical opinion cannot prevail and even its total absence would be inconsequential. The declaration made by a three Judge Bench that in the absence of medical certification that the injured was in a fit state of mind, it would be risky to accept the subjective satisfaction of a Magistrate as to the state of mind was held to be too broadly stated and not the correct enunciation of law; deprecated as a hyper-technical view especially in that case where there was available, certification of the doctor to the effect that the patient was conscious, but without the injured being expressly stated to be in a fit state of mind.

8. The law as elaborated in the Constitution Bench decision would be sufficient to evaluate the dying declaration in the present case. However, on the insistence made by the appellant, who had lost both his parents in a fire, an alleged murder which the Trial Court found established and the High Court reversed on reasonable doubt expressed, we would look at the other decisions also.

9. ***Sher Singh and Another v. State of Punjab***[3] was a case of bride-burning with multiple dying declarations, the first exonerating the accused, and then more, in one voice implicating them. The first dying declaration recorded by a police officer was in the presence of the mother-in-law, which was resiled from in the declaration recorded by the Executive Magistrate after two days. The earlier statement was stated to be due to a threat that she would not be taken to the hospital unless she spoke of an accidental fire. This was repeated in the subsequent oral dying declarations, to her uncle, and a Sub-Inspector which were believed by this Court.

[3] (2008) 4 SCC 265

10. ***Atbir v. Government of NCT of Delhi***[4] was a murder by a lady and her son of the second wife and two children. The conviction was on the sole basis of the dying declaration made by the stepdaughter who was admitted to the hospital with grievous injuries in the nature of stab wounds. On an analysis of various decisions of this Court, the principles were encapsulated in paragraph 22 which reads as under:

> *"22. The analysis of the above decisions clearly shows that:*
>
> *(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.*
>
> *(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
>
> *(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
>
> *(iv) 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. The rule requiring corroboration is merely a rule of prudence.*

[4] (2010) 9 SCC 1

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

Therein the dying declaration, which was the FIS was recorded by an Inspector in the presence of a doctor and then registered as an FIR, signed also by the doctor certifying her fit mental state.

11. ***Bhajju @ Karan Singh v. State of Madhya Pradesh***[5] was again concerned whether a death by burning in the marital house, was accidental or homicidal. After the dying declaration recorded by the Executive Magistrate within two hours of the incident, an affidavit was sworn to by the deceased exonerating the in-laws. Death having occurred a month after the incident, the first declaration was held truthful, which stood corroborated by PW2 and PW3 who took the deceased with 60% burns to the hospital. The dying declaration by the injured; burnt at only the lower part of the body was found to be reliable since it gave a cogent and possible scenario of the occurrence further corroborated by stab wounds.

12. ***Ashabai v. State of Maharashtra***[6] dealt with four dying declarations which consistently spoke about the role played by the mother-in-law and the sister-in-law in torching the injured. The mere fact that in one of the statements, two others were implicated was found to be not sufficient to discard the role of the in-laws. ***Satish Chandra***

[5] (2012) 4 SCC 327
[6] (2013) 2 SCC 224

v. State of M.P.[7] dealt with a suicide in which the dying declaration was made as a continuous narrative. It was held that though this Court had found that statements in the form of question and answer would be more appropriate, a credible declaration should not be eschewed on the grounds of existence of more details or presence of family members, when there is no indication of tutoring by the family. ***Amol Singh v. State of M.P.***[8] and ***Lakhan v. State of M.P.***[9] clarified that it is not the plurality of dying declarations that matter, but the reliability, which is the significant aspect. Any inconsistency would only compel the Court to examine it carefully, as to whether those are material or not.

13. From a conspectus of the above decisions, it is clear: That, a dying declaration is a very important species of evidence capable of proving the crime proper and identifying the accused, an exception to hearsay having been provided by Section 32 of the Indian Evidence Act. That, a dying declaration, for reliance should inspire

[7] (2014) 6 SCC 723
[8] (2008) 5 SCC 468
[9] (2010) 8 SCC 514

confidence in the Court as to its credibility. That, the Court should be satisfied it is made by the deceased without any prompting or tutoring or coercion or is a mere figment of imagination. That, then conviction can be based solely on the dying declaration and there is no requirement of any corroboration. That, it can be reduced to writing or can be oral, as testified by reliable witnesses. That, it can be one or numerous and if more than one; exculpatory and inculpatory, it is for the Court to find out which is believable. That, it can be a lengthy one or a short one, so far as the crime is spoken of and identification of the perpetrator comes through. That, it can be a single narrative or in a question and answer form. That, it can either have a history of the rancour between the perpetrator and the victim or can be merely the brief statement of the incident. That, the capacity of the injured to make the statement, both physical and mental, need not be necessarily certified by a doctor and would rest again on the satisfaction of the Court on an analysis of the testimony of the various witnesses and the other evidence coming forth in trial. That, if the Court is satisfied of the fit state of mind of the injured from the

evidence on record, a contrary medical opinion or an absence of it will be inconsequential. That, it can be made before a Magistrate; Executive or Judicial, a Doctor, a Police Officer, a relative or a third party whose presence is not doubtful. That, the desire of the declarant to live, through the truth despite fear of imminent death cannot be easily brushed aside. The decisions also caution us that if the statement is doubtful then one or more of the above aspects could result in the dying declaration being eschewed completely; based on the facts of each case.

14. As a corollary, it also has to observed: That, if there is an iota of suspicion the Court has to look for corroboration. That, the medical certification as to the physical and mental state always aids in arriving at a satisfaction. That, in the wake of multiple grievous injuries or a higher percentage of burns, the declaration could be in question and answer form, lending more credence as actually spoken of by the injured as opposed to a long drawn out narrative, which could be mistook as supplied by interested related parties. That, a dying declaration recorded by the Judicial Magistrate, adds credence since they are trained to record

such declarations. That, as far as possible, the recording is to be done in the presence of the Doctor and definitely not in the presence of numerous bystanders; which could lead to a defence being raised of prompting and tutoring. That, the veracity of the declaration has to come forth from the attendant circumstances as brought out in evidence.

15. We cannot but notice that in the present case, there is a plethora of dying declarations which we will examine one by one. There are two dying declarations reduced to writing and quite a few oral ones, testified by the witnesses, the written ones being examined first. The FIS itself is by the victim recorded by PW7, PSI of the jurisdictional Police Station, in the presence of PW1, the witness who came to the crime scene on hearing a shout and saw the villagers trying to put out the fire. The evidence of PW7 indicates that he was informed of the fire in the village Mahadeopur by the SHO of Banmankhi Police Station. PW7 immediately rushed to the crime scene with the SHO and a Sub-Inspector and found the house of the deceased completely gutted. The body of Sarangdhar Singh was found burnt and his wife, Kamala

Devi, as informed by the villagers, was taken to the hospital for treatment.

16. Neither is evidence led of a diary entry made in the police station, of the phone call to the SHO nor is the SHO examined to speak on the phone call received. Strangely, despite the SHO, the Sub-Inspector and the PSI; PW7, having reached the scene there is no FIS recorded from any of the persons who were at the spot, including the witnesses paraded before Court, PW2, PW4 and PW5 who had not accompanied the injured lady to the hospital. PW1 is said to have taken the injured lady to the hospital along with his brother Nirmal, Nirdhan and Ajay Yadav. PW7 deposed that he went to the hospital, after carrying out the inquest of Sarangdhar Singh, where the FIS was recorded as the statement of the injured victim, Kamla Devi. The FIR narrates about the details of her family, the enmity with the younger son, and the crime, alleged on the younger son and the daughter-in-law at 1.30 am. PW7, Investigating Officer (I.O) took the thumb impression of PW1 and the deceased in the FIS.

17. Interestingly, the FIR was registered at 9.00 am on 23.11.2016 while the police party had been to the scene of occurrence where the villagers including the close relatives of the deceased were gathered, when the fire was raging. Even at the hospital where Kamala Devi was under treatment the villagers and relatives had gathered and there was no valid cause to record an FIS from the victim, who was grievously scorched. If it had to be done, then it was expedient that a medical certification was taken. The FIS has a long narrative of the history of the family dispute, highly improbable from a lady burned seriously. The FIS was admittedly recorded when the villagers and relatives of the deceased were standing around. These aspects considered in the given circumstances puts to peril the veracity of the FIS. Admittedly the deceased were inside the house and presumably sleeping, given the time of the incident. There is little possibility of the inmates of the house having seen the crime proper and the possibility is more that the villagers who gathered there could present a better picture, especially the woman whose shouts woke the neighbours. The attempt of the prosecution to give the FIS an elevated

status of a dying declaration hence falls flat on that count too as it does not inspire confidence.

18. We then come to the statement recorded by the BDO, PW8 at 11.30 am on the same day at Sadar Hospital, Araria. There, the narration about the history/motive was far lesser but as earlier, the crime proper is said to have been perpetrated by the younger son who came along with his wife and two other unknown persons and set fire to the residential house. PW7, I.O in his testimony before Court, on questioning by the Court, stated that the dying declaration is in his handwriting and the BDO signed it. PW7 & PW8, the BDO, an Executive Magistrate spoke of the villagers and relatives of the injured being present when the statement was recorded and that PW8 read over the statement to the persons present. No invalidity *perse* comes forth from that, but it raises questions, with reference to the overall circumstances and the lurking suspicion of a false accusation in the form of a declaration made by another person or through prompting. The BDO also spoke of having taken down the statement himself quite contrary to the statement of the IO. It was deposed that a doctor was taking

care of the injured in which circumstance a certification could have been obtained about the fit state or at least the consciousness of the injured. Neither was such a medical certification taken nor does PW8 speak of the doctor having informed him about the physical and mental condition of the injured. The circumstances as coming out from the testimony of PW7 and PW8 persuade us to disbelieve the second dying declaration also for that too inspires no confidence.

19. Now, we come to the testimonies of the witnesses as to the incident itself. PW1 testified that he came out of his house on hearing the shouts of the wife of Vido Yadav, at his door steps and saw the house burning down. The husband had died and the wife, Kamla Devi was alive but *"burnt little"*. The dying declaration made by Kamla Devi to PW1 was that Soni, her daughter-in-law had poured hot water on her body and A1 having put their house on fire. PW2 testifies that he woke up on hearing Anmol Yadav's wife shout and on coming out of his house witnessed the burning down of the house. It was his deposition that Kamla Devi was inside the house and he along with PW1 and Ajay Kumar tore the

window and took Kamla Devi out, not spoken of by PW1. PW2's deposition is that Kamla Devi told them that "*you people should immediately go and save Dadaji, Mukul and his wife will kill him"* (sic-as available from the translation from the records). PW1 and PW2 testified that they along with Ajay took Kamla Devi to the hospital in a tempo. PW3 spoke of coming out of the house when Munnar Yadav's daughter-in-law started shouting. His testimony was that *"the old lady said that Mukul and his wife set the house on fire"* (sic deposition of PW3).

20. PW4 came out of his house on hearing a commotion and tried to douse the fire. He spoke of many villagers having gathered at the scene. He also spoke of Kamla Devi having been burnt badly and found mumbling in a weak state. Contrary to his statement under Section 161, Cr. PC, he denied Kamla Devi having made a dying declaration. PW5 was the brother of Sarangdhar Singh, who spoke of Kamla Devi having come out after breaking the latch, with the help of the villagers. He also spoke of a dying declaration made by the injured, that Saurabh Kumar alias Mukul and his wife Soni burned herself and her husband.

PW6, the elder son of the deceased also deposed that when he saw his mother at the hospital she made a statement about the culpability of his brother and sister-in-law. PW7, I.O however stated that no such statement was recorded from PW6 under Section 161, in his cross-examination.

21. We would not discard the oral dying declarations for reason of the inconsistency in narration. There cannot be any insistence that the exact words of the victim should come out from the witnesses. What has been narrated conveys the culpability, if it can be believed. That being said we cannot but notice that all the witnesses arrayed before the Trial Court spoke of the villagers having reached the spot before them. Three witnesses specifically spoke of the shouts of a lady having woken them up. They described the lady, differently, as Vido Yadav's wife, Anmol Yadav's wife and the daughter-in-law of Munnar Yadav, from which we can infer that there were at least two persons who saw the fire, before the witnesses paraded before Court. Even if it is assumed that the lady spoken of by the three witnesses was the very same person, she was the best witness who could have been examined with respect to the first

indication of the crime. In fact, PW2 and PW3 specifically speak of that lady having been engaged in threshing paddy. There was every possibility of her having witnessed the fire breaking out and could have better explained the causation. The non examination of the crucial witness, spoken of by the witnesses who reached the place later, on hearing her shouts, is a very serious lacuna in prosecution.

22. In this context, we have to specifically notice the defence; that PW1, who was managing the properties of the deceased had an eye on it and he, in collusion with PW6 had connived to exclude A1 from his due share. PW5, the brother of the deceased husband also is alleged to have aligned with the other son to exclude A1 from his inheritance. PW1, PW5 & PW6, hence, according to the accused are interested witnesses. PW2 is the nephew of PW1 and PW3 is the brother of PW1 again disclosing an interest against the accused . PW4, the grandnephew of the deceased husband spoke only of having witnessed the fire and the death of his granduncle and denied the dying declaration, quite contrary to the version of the other witnesses. All the witnesses spoke of a motive of the

accused which was the exclusion of due share in the properties of the deceased. PW6, the other son of the deceased in answer to a question put by the Court categorically stated that he and his brother will have 50% share in the property and that he is willing to give the due share of the property to the accused, which he had obtained through a partition suit; thus demolishing the motive projected by the prosecution. In the totality of the circumstances, we are unable to find that the dying declarations alleged to have been made to the witnesses are credible or even probable, especially considering the fact that the deceased is alleged to have made the statement immediately after sustaining grievous burn injuries.

23. The postmortem report of the deceased husband indicates that he sustained 100% burns. The degree of the burn injuries suffered by the deceased wife is not mentioned in the report prepared by PW10, the doctor who carried out the postmortem. However, he stated that she had sustained 60% injuries, which is stated for the first time before Court and without the same being recorded in the report. Surprisingly, PW10 also stated, on a specific query

made by the Court that looking at the postmortem report, the victim would have been in a fit state of mind to make the dying declaration. We are unable to find any credence to the said certification which a pathologist cannot discern by merely looking at the postmortem report. The burn injuries, pertinently are not confined to the lower body. The injuries *interalia* are stated to be:

> *"Epidermal to Dermo Epidermal burn injury over both lower thigh and lower limb upto ankle, both upper limb, back of chest, abdomen, part of pelvis, right side face and neck with line of redness, hyperemia and areas of hyper coagulated tissues and blister formation at place."*

The injuries thus were not confined to the lower body and even a medical expert examining the cadaver cannot come to the conclusion that, when alive the deceased was in a fit state of mind to give a dying declaration.

24. PW6 attempted to establish the enmity between his father and brother by production of Exhibit P4 to P10, complaints made by his deceased father and mother against his brother. Exhibit P4 to P9 which were partially burnt were said to have been obtained from the crime scene. It is

pertinent here to notice that PW7, the I.O. did not think it fit to even draw up a scene *mahazar* of the crime scene. From the evidence, it is clear that the house was thatched and had bamboo doors, good tinder for fire. The witnesses had spoken of a gas connection in the house and the defence was also that the fire was caused when the gas cylinder burst. There was no investigation on that count and the I.O. did not even carry out a forensic examination of the site to find out the cause of fire, whether it was arson or accidental. In fact the I.O in his evidence as PW7 stated that there were no half-burnt items found in the crime scene which he had visited four times. PW5, the brother of the deceased husband had also stated in response to the query made by Court that the entire goods of the house were burnt. It was stated that the police had made a list of the goods that were saved from burning and that the list was prepared in his presence. The witness also deposed that since the goods were burnt, the police had left them as such.

25. Exhibit P4 to P9, partially burnt complaints, according to PW6 were recovered from the crime scene which he did not think fit to handover to the I.O. The reliance placed by

the trial court on the documents produced by PW6 cannot be accepted, for its genuineness being suspect and the same having been not produced before Court as required in a criminal trial, after drawing up a seizure mahazar, as recovered from the crime scene or even handed over by one of the witnesses and the same being made a part of the record of incriminating documents handed over to the accused.

26. In the totality of the circumstances as coming out from the evidence, we are convinced that the High Court was perfectly correct in acquitting the accused. Rather than providing a complete chain of circumstances, with the connecting links establishing the guilt of the accused and bringing forth no hypothesis other than the guilt of the accused, here the circumstances bring out a conscious effort to nail the accused with the crime of arson and pre-meditated murder. Except PW4, the other witnesses spoke of bitterness between the father and the son due to property disputes. PW6, the son of the deceased and the brother of A1 though spoke of the bitterness between his father and brother, in the same breath deposed that he was willing to

give 50% share of the properties to his brother; in which event, there is no cause for enmity between the father and the son. The testimonies of the witnesses paraded before Court was that the entire village was against the conduct of the younger son of the deceased. However, this was spoken of by the interested witnesses as alleged by the defence. PW1 was alleged to be interested in the properties of the deceased and PW1, PW2 and PW3 were closely related. PW5 is said to have aligned himself with PW6, the other son of the deceased. PW4, another close relative did not speak of enmity between the father and the son of such a gravity to motivate the son to kill his father.

27. Further, PW1 himself stated that the second accused and the children stayed at the house of the deceased for 20 days before the incident. It is also deposed that 17 days prior to the incident the police took the deceased husband and his son to the police station for counselling, not spoken of by the I.O who was a PSI in the jurisdictional Police Station. Pertinent is the fact that none of the witness spoke of the presence of the accused in the village at any time contemporaneous to the incident, especially when

admittedly the accused along with their children were staying at a different location. The memo of arrest is not available in the records and the I.O makes a casual reference to the arrest having been made on the road going from Purnia to Banmankhi, near village Dhima. The accused were alleged to have resided in the house of one Lali @ Lalwa, two weeks back when they came to the village, who was not examined by the police or arrayed as a witness in the prosecution launched.

28. The entire village had gathered at the scene of occurrence and the witnesses paraded were not the persons who reached there first. The lady spoken of by PW1 to PW3 whose shouts woke them up, had not been examined. PW2, PW4 and PW5 also spoke of the deceased Kamla Devi having been removed to the hospital by PW1 along with one Nirdhan Yadav and Ajay Yadav, both of whom were not examined before Court. There was a concerted effort by the I.O not to bring any independent witnesses to the stand. The investigation, according to us was a sham and was pre-meditated, throwing to the winds every tenet of criminal jurisprudence informed by due procedure. The

prosecution, hence, was a farce, parading witnesses whose testimonies fell flat. The investigation and the prosecution was premised on the motive alleged and nothing more.

29. We would also notice with some anguish the manner in which the trial court examined the accused under Section 313, Cr. PC. There were only four questions put to both the accused. Question No.1 was with respect to the allegation that on 23.11.2006 at around 1:30 in the night, the accused together went to the house of the father of the first accused with common intention and killed them by putting the house to fire. The second question was about the allegation of the house of Sarangdhar Singh having been torched and the dying declaration made by Kamla Devi that the accused, together with two unknown persons put the house on fire and thus murdered Sarangdhar Singh. Question No.3 was with respect to the allegation that 15 days before the incident, the accused had gone to Mahadeopur village and stayed in the house of Lali @ Lalwa and that four days before the incident they went to their parents' house. Question No.4 was as to the defence. Both the accused replied in the negative to the first three questions and the first accused in

defence stated that PW1, the one who managed his father's properties, his elder brother PW6 and his uncle PW5, were attempting to grab his property after excluding him from the same.

30. We cannot but notice that none of the incriminating circumstances including that of the motive, the complaints filed by the deceased against A1, the various dying declarations and the medical evidence were put to the accused. We had, in the very same context in Criminal Appeal No.860 of 2026, Sanjay Kumar & Anr. v. State of Bihar & Ors. dated 12.02.2026 (authored by one of us, Sanjay Kumar, J.) with respect to the scanty questioning under Section 313, Cr. PC without putting all the incriminating circumstances to the accused, held as under:-

> *"Needless to state, the afore stated casual examination of the accused falls woefully short of the required standard, as stipulated by law. This Court has emphasized this point, time and again. We may refer to the recent judgment of this Court on this point in "Ashok vs. State of Uttar Pradesh" (2025) 2 SCC 385. Therein, a 3-Judge Bench of this Court observed that it is the duty of the public prosecutor to assist the trial court in recording the statement of the accused*

under Section 313 of the Code; if the court omits to put any material circumstances brought on record against the accused, the public prosecutor must bring it to the notice of the court while the examination of the accused is being recorded; he must assist the court in framing the questions to be put to the accused; and as it is the duty of the public prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial, which will cause prejudice to the accused.

We may also note the earlier decision of another 3-Judge Bench of this Court in "Shivaji Sahabrao Bobade vs. State of Maharashtra" (1973) 2 SCC 793 , wherein the in pari materia provision in the erstwhile Code was under consideration and it was observed that great care is expected of Sessions Judges, who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of the long trial, the judge may be a little fagged out.

In the light of the aforestated settled legal principle, we are of the opinion that incurable injustice was done to the appellants in the course of their examination under Sections 313 of the Code, as no specific questions were put to them apropos each piece of incriminating evidence adduced against

> *them. The judgments of the trial court based on such inadequate examination of the accused, therefore, cannot be sustained.*

In the cited case, we had remanded the matter and restored it to the files for resuming the trial from the stage of questioning under Section 313, Cr.P.C. However, in this case, we do not think such a measure is warranted, especially when the evidence falls short of the standard required in a criminal trial which is not a mere suspicion, a 'maybe true' but a 'must be true', evidently a long distance to travel, the whole of this distance being paved with legal, reliable and unimpeachable evidence resulting in a finding of guilt beyond all reasonable doubt, as held in ***Sarwan Singh v. State of Punjab***[10].

31. We have found that the investigation carried out is grossly deficient. The scene *mahazar* was not drawn up, no forensic examination was carried out at the scene of crime and no independent witnesses were arrayed. The causation of fire not investigated, the presence of the accused in the vicinity of the crime scene not established. The delay in

[10] AIR 1957 SC 637

registration of FIR despite the information having been received at the police station earlier, and the police personnel including the I.O having visited the scene of occurrence where a number of villagers were present was a serious lapse. The delay caused and the manner in which the FIS was recorded in the present case throws suspicion on the very conduct of the I.O. The dying declarations should have been recorded with more caution and when taken inside the hospital it should have ideally been recorded in the presence of a Doctor, whose certification also ought to have been obtained. The incriminating circumstances that come out in a trial are to be put to the accused in its entirety, a solemn duty enjoined both on the Court and the Prosecutor equally, failing which the entire prosecution may fail for that sole reason. We reiterate these aspects only to point out the lapses in investigation, which could have been avoided, to provide some guidance at least in the future.

32. A couple, at the fag end of their lives were burnt to death and the cause, whether it's a homicide or accidental death, eludes civil society and throws a pall of suspicion on

their own son and his family, who will always carry the yoke of dishonour. The son and daughter-in-law were accused of parricide and were convicted by the trial court, later acquitted by the High Court, which acquittal is now affirmed by us. The trauma of arrest, incarceration and trial will always scar the couple and more so their children who were left orphaned, during the time when their parents were imprisoned. We cannot but caution the investigators and the Courts to strive to do better and follow accepted practises and procedural rules to the hilt, when lives are lost or taken and there is a possibility of false accusations being made, putting to peril the reputations of the living.

33. The appeal is dismissed.

34. Pending applications, if any, shall stand disposed of.

..... J.
(SANJAY KUMAR)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
MARCH 11, 2026.