

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.119 of 2009**

1. HARI PRASAD GIRI SON OF DHUM LAL GIRI.  
2. GUNO DEVI WIFE OF HARI PRASAD GIRI.  
3. SACHITA GIRI SON OF LATE BADARI LAL GIRI, ALL ARE  
RESIDENTS OF VILLAGE-GARGAON(LOHA GARA), PS-  
BAHADURGANJ, DISTT-KISHANGANJ. ... .. Appellant/s

Versus

STATE OF BIHAR ... .. Respondent/s

with

**Criminal Appeal (SJ) No. 461 of 2009**

DEV NARAYAN GIRI SON OF HARI PRASAD GIRI, RESIDENTS OF  
VILLAGE-GARGAON(LOHA GARA), PS-BAHADURGANJ, DISTT-  
KISHANGANJ. ... .. Appellant/s

Versus

STATE OF BIHAR ... .. Respondent/s

**Appearance :**

(In Criminal Appeal (SJ) No. 119 + 461 of 2009)

For the Appellant/s : Mr.Bhola Prasad, Adv.

For the Respondent/s : Mr.Binod Bihari Singh, APP  
Mr.Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**CAV JUDGMENT**

24-01-2019

Against judgment of conviction dated 17.12.2008 and  
order of sentence dated 19.12.2008 passed by Additional  
Sessions Judge, (FTC-5), Kishanganj in connection with  
Sessions Trial No. 750/2007/77/2007 whereby and whereunder,  
all the appellants, namely, Hari Prasad Giri, Guno Devi, and  
Sachita Giri (since deceased) (Cr.Appeal (SJ) No. 119/2009), Dev  
Narayan Giri (Cr. Appeal (SJ) No. 461/2009), have been found  
guilty for an offence punishable under Section 304B of the IPC and  
each one has been sentenced to undergo RI for 7 years, has been  
challenged under two different appeals, on account thereof, heard  
analogously and are being disposed of by a common judgment.

2. At the present moment, it looks desirable to divulge  
that one of the appellants, namely, Sachita Giri of Cr.Appeal (SJ)  
No. 119/2009 died and on account thereof, this appeal abated against



him as per order dated 21.12.2018.

3. Kamal Giri, father of deceased Arti Devi filed a written report before the O/C, Bahadurganj PS on 13.03.2017 disclosing the fact that Arti Devi was married with Dev Narayan Giri, Son Of Hari Prasad Giri, Residents Of Village-Gargaon(Loha Gara), Ps-Bahadurganj, Distt-Kishanganj about three years ago whereupon, she began to reside at her Sasural. When he had gone to bring her back on Bidai, at that very time, father-in-law of his daughter, Hari Prasad Giri, mother-in-law, Guno Devi, husband, Dev Narayan Giri, cousin father-in-law, Satya Narayan Giri, cousin brother-in-law, Babri Giri, grand father-in-law, Sachita Giri advanced demand of cash as well as one colour TV. They have also threatened to the extent that in case of non fulfillment of demand, his daughter will have to face its ultimate consequence. They have also threatened that she will have to sacrifice her life. As he resisted, on account thereof, he was manhandled by them and then, ousted therefrom. In order to save life of his daughter as well as expecting that in due course of time, the matter will be pacified after coming to know about his financial condition, he returned back therefrom without taking any recourse leaving his daughter at her Sasural. However, her Sasuralwala continued with their atrocious activity which, he came to know through different sources. On



account of poverty as well as helplessness, he found himself unable to resist. On 08.03.2007 at about 8.30 AM, his co-villager, Raju Mahto who happens to be a cycle mechanic having his repairing shop near MGM Hospital came to him and disclosed that his daughter has been admitted at MGM Hospital in badly burnt condition. He immediately rushed to the hospital where he found his daughter severely burnt. On query, she disclosed that as cash and colour TV have not been provided in lieu of dowry for that, her Sasuralwala was severely torturing her mentally as well as physically. On 07.03.2007 at about 9:00 AM, Hari Pd. Giri, Guno Devi, Satya Narayan Giri, Sachita Giri, Babri Giri came near her and all the family members caught hold of her while her mother-in-law sprinkled K-oil and then lit fire by match box as a result of which, she has been badly burnt.

4. After registration of Bahadurganj PS Case No. 17/2007 investigation commenced, during course thereof, dying declaration of the victim, Arti Devi was recorded who, later on died, statement of witnesses were recorded, post-mortem report was procured and then, after completing investigation charge-sheet has been submitted against these appellants including Sachita Giri (since deceased) keeping investigation pending



against the remaining absconding accused which happens to be the basis for trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that there was no demand of dowry, nor the deceased was tortured with regard thereto. Unfortunately, deceased met with an accidental fire during course of preparing tea whereupon, she was taken to hospital by the appellants themselves. Prosecution party illegally demanded exorbitant amount which was refused at their end, on account thereof, got this case filed putting false and frivolous allegation and in likewise manner, after tutoring the deceased got false, wrong, tutored dying declaration. In support thereof, two DWs DW-1, Mahendra Prasad Giri and DW-2, Nand Kumar Giri have been examined.

6. In order to support its case, prosecution has examined altogether 12 PWs out of whom PW-1, Bhawani Pd. Giri, PW-2, Om Prakash Giri, PW-3 Shiv Lal Giri, PW-4, Mayawati, PW-5, Umesh Kumar, PW-6, Mithilesh Sharan, PW-7, Dr. Nalini Kant Prasad, PW-8, Md. Matiur Rahman, PW-9, Sudan Singh, PW-10, Kharag Giri, PW-11, Kamal Giri and PW-





12, Dayawati Devi as well as has also exhibited Ext-1, Dying Declaration, Ext-2, Postmortem Report, Ext-3, Signature of informant over written report. As stated above two Dws have been examined, DW-1, Mahendra Prasad Giri and DW-2, Nand Kumar Giri.

7. While assailing the judgment impugned, it has been argued at the end of learned counsel for the appellants that the same is untenable in the eye of law in spite of the fact that death of deceased occurred within seven years of marriage by burn.

8. Further to support such plea that there happens to be no positive, conclusive, authentic evidence has been at the end of the prosecution with regard to demand of dowry coupled with the fact that soon before her death, deceased was tortured therefor by the appellants. It has been submitted that on account of inconsistency amongst the PWs coupled with so alleged dying declaration, it would be difficult for the prosecution to retrieve. That being so, the prosecution case is found deficient one.

9. It has also been urged that the dying declaration did not fulfill the legal requirements so prescribed for its admissibility, that being so, it happens to be a case of no



evidence. As such, these two appeals are fit to be allowed.

10. On the other end, the learned APP refuted the submission and submitted that by producing consistent, reliable evidence prosecution has proved its case beyond reasonable doubt, hence, judgment impugned is fit to be confirmed.

11. After hearing rival submissions as well as from the evidence available on the record, it is apparent that death of deceased within seven years of marriage while she was staying at her Sasural by burning, is admitted one. So, the evidence of PW-7 Dr. Nalini Kant Prasad is not referred in detail save and except that he had found cause of death by septic caused on account of burn. That means to say, some of the ingredients of Section 304B that there should be death within seven years of marriage, death by burning is found not denied. So, now the evidences have to be seen in order to trace out whether the prosecution has succeeded in substantiating the remaining ingredients.

12. In *Jagjit Singh v. State of Punjab reported in (2018) 10 SCC 593*, it has been held as follows:-

11. Learned counsel for the appellant drew our attention to the recent judgment of this Court in the case of [Major Singh and Another v. State of Punjab](#) reported in 2015 (5) SCC 201. It was a case of unnatural death. Therein the prosecution witnesses, the complainant-father and brother of the deceased



deposed that they saw the accused dragging the deceased towards the room inside the house and that she was trembling and on seeing the witnesses, all the four accused ran away and the deceased breathed her last. The father had spoken about the information he had given to the village panchayat. The Court proceeded inter alia as follows:

“10. To sustain the conviction under [Section 304-B](#) IPC, the following essential ingredients are to be established:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';
- (ii) such a death should have occurred within seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

The Court also proceeded to hold as follows:

“14. The prosecution has not examined any independent witness or the panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill- treatment. Ordinarily, offences against married woman are being committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. But when PW-3 has specifically stated that the demand of dowry by the accused was informed to the panchayatdars and that panchayat was taken to Village Badiala, the alleged ill-treatment or cruelty of Karamjit Kaur by her husband or relatives could have been proved by the examination of the



panchayatdars. The fact that the deceased was subjected to harassment or cruelty in connection with demand of dowry is not proved by the prosecution. It is also pertinent to note that both the courts below have acquitted all the accused for the offence punishable under [Section 498-A](#) IPC.”

12. We noticed that it was a case where the courts had acquitted all the accused for the offence under [Section 498-A](#) of the IPC. The Court noted that the case of the prosecution is that there is a demand for scooter and proceeded to hold inter alia as follows:

“18. Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment “soon before her death”. Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only be attributed to the husband Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry “soon before her death” by the appellants, the conviction of the appellants under [Section 304-B](#) IPC cannot be sustained. The trial court and the High Court have not analysed the evidence in the light of the essential ingredients of [Section 304-B](#) IPC and the conviction of the appellants under [Section 304-B](#) IPC is liable to be set aside.” (Emphasis supplied)

In this connection it is to be noticed that the appellants in the said case was not the husband, but they were the parents-in-law of the deceased.

13. We have already noticed that the essential ingredients of [Section 304-B](#) IPC as noticed by this Court in [Major Singh & Another vs. State of Punjab](#) (supra). Parliament has inserted [Section 113-B](#) in the [Evidence Act](#). In order that the presumption therein has to be applied it must be established that soon



before her death, such woman must have been subjected by such person to cruelty or harassment for, or in connection with any demand of dowry. Upon this fact being established, undoubtedly, the court is mandated to assume that the person has indeed caused the dowry death as contemplated in [Section 304-B](#) IPC. Therefore, the presumption cannot apply unless it is established that soon before her death, a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry. The words “soon before” her death has also been considered in a large number of cases.

14. We need only to advert to a recent judgment rendered by a Bench consisting of three learned Judges in [Rajinder Singh v. State of Punjab](#) reported in 2015(6) SCC 477 only for the purpose of appreciating the words “soon before” occurring in [Section 304-B](#) IPC. This is what the Court has to see

“24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word “soon” does not mean “immediate”. A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of [Section 304-B](#) would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under [Section 304-B](#).”

13. From the nature of the evidence, it is evident that two kinds of oral evidences have been adduced, the first category statement of the witnesses and the second one, the dying declaration. So far reliability of dying declaration is concerned, in *Madan @ Madhu Patekar v. State of Maharashtra* reported in 2018 CriLJ 2880, it has been held as



follows:-

“9. Before we analyse the case at hand it would be important to note certain aspects of dying declaration. Although we can trace the admissibility of the dying declaration under Sections 6, 7 and 32 of Indian Evidence Act that the rule of admissibility of dying declaration can be traced to *King v. Woodcock, [(1789)168 ER 352]*, which is considered to be the most important case law on the aspect of dying declaration, as in that case the declaration of deceased therein (Silvia) was the only evidence as to what happened to her, came from Silvia herself. The Court therein categorically justified the usage and importance of dying declaration to be *"made in extremity, when the party is at the point of death, and when every hope of this world is gone: when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth."* The court further held that *"a situation so solemn, and so awful, is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice."*

10. The rule of admissibility of dying declaration is no more *res integra*. In the adjudication of a criminal case, dying declaration plays a crucial role. A dying declaration made by a person as to cause of his/her death or as to any of the circumstances which resulted in his/her death, in cases in which cause of death comes in question, is relevant under Section 32 of the Evidence Act. It has been emphasized number of times that dying declaration is an exception to the rule against admissibility of hearsay evidence. The whole development of the notion that the dying declaration, as an exception to the hearsay rule, is based on the formalistic view that the determination of certain classes of evidence as admissible or inadmissible and not on the apparent credibility of particular evidence tendered.



11. We are aware of the fact that the physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence. In order to ameliorate such concerns, this court has cautioned in umpteen number of cases to have a cautious approach when considering a conviction solely based on dying declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [See: ***Ram Bihari Yadav Vs. State of Bihar & Ors. [(1998)4 SCC 517]*** and ***Suresh Chandra Jana & Ors. Vs. State of West Bengal & Ors., [(2017)8 SCALE 697]***].

12. Moreover, this court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and genuineness, it should not be acted upon without corroborative evidence [See Also: ***Atbir Vs. Government of NCT of Delhi, [(2010)9 SCC 1]***, ***Paniben Vs. State of Gujarat, [(1992)2 SCC 474]*** and ***Panneerselvam Vs. State of***



***Tamilnadu, [(2008)17 SCC 190].***

14. PW-1 has stated that the occurrence is about 10 months ago. He was at his house. He heard that Arti Devi sustained burn injury at her Sasural whereupon he had gone there and inquired from Arti who disclosed that during course of cooking she got burnt. Then he was declared hostile. During cross-examination, he has stated at para-2 that Arti used to visit her maika along with her husband on festivals and used to return along with him. He has also stated that there was love and affection amongst the spouse. There was no question of dowry. In para-3, he has further stated that there happens to be no electrification at the village of accused. He has further stated that he had not heard that the victim was put on fire after sprinkling K-oil. He heard that during course of cooking, she got burnt.

15. PW-2 has stated that daughter of his co-villager, Kamal Giri namely, Arti Devi was married at village-Lograha. Arti got burnt at her Sasural. After getting this information he had also gone to see Arti. He had seen Arti in burnt condition. She was completely burnt below her waist. Sari, petticoat were also burnt. Her marriage was solemnized one and a half years earlier than the date of occurrence. Arti used to call him Mama.





As he used to stay out of village, on account thereof, he has got no information with regard to demand of dowry. Identified only the female accused. He had also stated that the aforesaid female accused also used to call him Mama. The female accused disclosed her name as Guno Devi. The other male accused disclosed their names as Hari Pd. Giri, Satya Narayan Giri, Sachita Giri, Babri Giri. During cross-examination, he had stated that he had not seen the victim under flame.

16. PW-3 has stated that he heard about the occurrence. He had come to Lion's Club where he had seen Arti, daughter of his Sarhu in burnt condition. On query, she disclosed that during course of preparation of tea, she sustained burn. Subsequently, she died at hospital. He had not claimed identification of any of the accused. During cross-examination at para-2, he had stated that the victim along with her husband used to visit the village and during course thereof, she had not made any kind of complaint. There was no physical torture to her at any previous occasion. The victim used to visit her Maika.

17. PW-4 has stated that deceased was her cousin daughter-in-law who was married with Dev Narayan about three years ago. She died at her Sasural. She died one year after the marriage. She had seen her dead body at Kishanganj Hospital.



Identified the accused. During cross-examination, she had stated that deceased was her cousin daughter-in-law. She was preparing tea. None was present at the house and during course thereof, her clothe was caught under the flame whereupon, yelled. She rushed and covered her by a jute bag. Then thereafter, fire was extinguished. Then she was taken to Kishanganj Hospital. Accused persons have got cordial relationship with the deceased. In spite of best treatment at Kishanganj Hospital, deceased could not survive.

18. PW-5 is the Magistrate who had recorded the dying declaration of the deceased, Arti Devi at MGM Hospital, Kishanganj on an order of CJM on 14.03.2007 at about 5.45 PM. Before her examination, he inquired from the treating doctor, Dr. Sanjive (so present) who disclosed that patient was fit to make statement. Identification of patient/Arti was made by Dr. Sanjive himself. He also talked with Arti and found her fit for making statement and then thereafter, he recorded her statement and then, read over to her. Finding it correct, she put her RTI. Then he had exhibited the statement as Ext-1. During cross-examination, he had stated that he had not accompanied the FIR along with the case number. He had not mentioned the room no. ward and bed no. At that very time, only patient/Arti



along with Dr. Sanjive was present. She was conscious. Doctor had also affirmed the condition fit for giving statement. He also inquired whereupon, she began to speak. He scribed the same and then her RTI was taken. Thereafter, he returned back.

19. PW-6 is the I.O. who has stated that on 13.03.2007, he was entrusted with an investigation of Bahadurganj PS Case No. 17/2007. He recorded further statement of the victim. He inspected the place of occurrence which happens to be Sasural of victim lying at village-Gargaon. Then had disclosed the topography of the house having two thatched rooms which happen to be habitable. There happens to be courtyard in front of both rooms. At western corner of the courtyard, there happens to be kitchen which is the place of occurrence. Recorded statement of witnesses. Filed application before the learned CJM, for recording of dying declaration of the injured/victim and then, received a copy of dying declaration from the court. Though, he had not prepared inquest report but procured postmortem report and after concluding the investigation, submitted charge-sheet against the accused persons. He has also stated that during course of investigation he had recorded statement of the victim, Arti who had stated that for procurement of dowry, her mother-in-law, grand father-in-



law, Bhainsur (elder brother of husband), cousin father-in-law after sprinkling K-oil attempted to kill. He had also apprehended the accused persons. During cross-examination at para-6, he has stated that he had not found smell of K-oil at the PO. In para-7, he has stated that he had seen the hair of Arti burnt. He had recorded the statement of Arti at MGM Hospital, Kishanganj on 14.03.2007. At that very time, cousin mother-in-law, Mayawati was there. She was admitted at burn ward. He had not disclosed bed no. In para-8, he has stated that at the time of her statement the burnt clothes were not over her bed. He had not inquired from the doctors. At that very time, he only inquired from Mayawati who had supported the prosecution case. In para-9, he has stated that he is not remembering whether her face was burnt or not but both palms were burnt. Her body was covered with wrapper. He has not seen blood spot over wrapper. In para-11, he has stated that he had not gone inside the kitchen. He has further stated that PO was shown by Kamal Giri.

20. PW-8 has stated that he does not know about the occurrence and so was declared hostile. Even then, nothing substantial has been procured. The same happens to be the status of PW-9.

21. PW-10 has stated that deceased Arti was her



Bhagni (sister's daughter). She was married with Dev Narayan. After marriage, she had gone to Sasural where she died on account of burning which she sustained during course of cooking and so was declared hostile.

22. PW-11 is the informant who has stated that he had given Fardbeyan to the police official regarding occurrence and was read over to him and finding it correct, he put his signature (exhibited). Then has stated that Arti (deceased) was his daughter who was married with Dev Narayan about three years ago from the date of occurrence. After marriage, his daughter had gone to her Sasural. She had frequently complained that she was being tortured, victimized relating to dowry. She had also disclosed that her Sasuralwala used to threaten that in case of non fulfillment of demand, she will be murdered. They were demanding one lakh in cash and a colour TV. Guno Devi, Hari Pd. Giri, Satya Narayan Giri, Sachita Giri, Babri Giri were actively involved in demanding dowry. Husband had not demanded. His daughter had disclosed that out of poverty her Naiharwala is unable to fulfill the demand. About 1 and ½ years ago at about 4:00 PM, one cycle mechanic informed that his daughter has been burnt and is admitted at hospital whereupon, they rushed and seen his daughter in badly burnt condition.



Then, the additional P.P. asked what his daughter had spoken whereupon, he kept mum. Then has stated that he had made true statement before the police whereunder he had stated that accused Hari Pd. Giri, Guno Devi, Satya Narayan Giri, Sachita Giri, Babri Giri and others with an intention to kill his daughter sprinkled K-oil and lit fire as their demand of dowry was not fulfilled. Identified the accused. Then has stated that his daughter has died. During cross-examination at para-11, he has stated that this case has been registered after five days of the alleged occurrence. He is not remembering the exact date. In para-12, he has stated that he brought the written report from the village. He is unable to disclose the name of its writer. He had simply directed to prepare application whereupon, he put his signature and handed it over to the police. In para-13, he has stated that police had not recorded his statement. He has further stated that after visiting police station, he had gone to the hospital. In para-14, he has stated that his daughter was sleeping but was talking. He has further stated that his wife has disclosed that on query, his daughter has disclosed that during course of cooking her clothe caught fire which was extinguished by her causin mother-in-law. In para-15, he has stated that he used to go regularly and talked with the deceased. In para-16, he has



stated that Raju, a cycle mechanic had informed regarding the occurrence. In para-17, he has stated that the accused persons actively involved in bringing medicine for the treatment of the deceased. In para-18, he has stated that after 13 days of the occurrence, she died. In para-19, he has stated that house of accused is not electrified. He had gone to Sasural of Arti once prior to the occurrence. In para-21, he has stated that Dev Narayan Giri is his son-in-law. His son-in-law along with his daughter used to visit at his place on festivals. Again said that after six months of marriage, his daughter had disclosed that accused persons are demanding money as well as a colour TV. At that very time, he had stated that as her house is not electrified so, what will be with the TV. He has further stated that he had assured that TV will be given later on. Then has denied the suggestion that on account of wrong information, this case has been instituted. He denied the suggestion that the victim sustained self inflicted burn injury.

23. PW-12 is the mother of the deceased. She has stated that she is very much apprehensive as, she has been threatened. Then has stated that this case has been launched by her husband. Her daughter Arti was married with Dev Narayan Giri son of Hari Pd. Giri about two years prior to the death of



Arti. Her Sasuralwala used to torture her for procurement of Rs. 50,000/- as well as a colour TV. Even after her assurance that they will fulfill the demand gradually on account of financial constraint, they began to threaten that in case of non fulfillment, she will be murdered. Threatening was given by Hari Pd. Giri, Guno Devi, Satya Narayan Giri, Sachita Giri, Babri Giri and Dev Narayan. Lastly, the accused persons after sprinkling K-oil lit fire over the deceased as a result of which, she became badly burnt. On getting information with regard to admission of her daughter at Medical College Hospital, they rushed and found her daughter in burnt condition. At that very time, her statement was being recorded by the Magistrate. She had also heard the statement which her daughter had given that the accused persons conjointly got her burnt after sprinkling K-oil. About 14 days after the occurrence, her daughter died. Identified the accused. During cross-examination, she has stated that her husband will disclose the exact quantum of demand. In para-8, she has stated that police had not recorded her statement but had recorded statement of her daughter. In para-9, she has stated that Sasuralwala of her daughter had not informed regarding the occurrence rather another person informed them. In para-10, she has stated that 10-12 more persons were admitted at the place





where her daughter was. As she was not in a position to identify the doctor, so could not say whether the doctor was present or not. After recording of statement, Magistrate had gone. This case has been instituted on account of burning of her daughter. In para-11, she had stated that she had not gone to the Sasural of her daughter but again corrected, occasionally visited. In para-12, she had stated that about 15 days of marriage, demand of cash of Rs. 50,000/- and a colour TV was advanced by her husband as well as family members. In para-13, she has stated that her son-in-law had not demanded but again corrected that her son-in-law had also demanded. Then had disclosed that what items were given in dowry, she is unable to say. In para-14, she has further stated that she had made statement before the police and her daughter had also made statement before the police. In para-15, she has stated that at about 8:00 AM, Raju Mistri had informed regarding condition of her daughter. Then she has stated that she rushed to the place where she was burnt, again corrected that at hospital. Then has denied the suggestion that during course of cooking her daughter caught fire as a result of which, she got burnt.

24. DW-1 has stated that the accused persons are his co-villagers. Their houses are adjacent to him intervened by a



road. Daughter-in-law of Hari Prasad Giri, namely, Arti was residing at her Sasural after marriage. Occasionally, she used to visit her Maika on festival. She used to visit his house and during course thereof, she had not disclosed anything with regard to demand of dowry as well as torture having been inflicted upon her on that very score. He has further stated that she was duly acknowledged at her Sasural. She died of burning about 1 and a  $\frac{1}{2}$  years ago. She got burnt at about 9-9.30 AM. They have heard that during course of preparing tea, her clothe caught fire as a result of which, she sustained burn injury. Her Chachia Saas extinguished fire. She was taken to Kishanganj Hospital where treatment was at the instance of her Sasuralwala. Unfortunately, she could not survive. During cross-examination, he had stated that she was married 1 and a  $\frac{1}{2}$  years prior to the date of occurrence. He had seen Arti in burnt condition at her Sasural. She was kept covered. S.P. had come to his village and had interrogated. In para-5, he has stated that he had not seen the kitchen. S.P. had seen the kitchen and during course thereof, had not found any sign. In para-6, he has stated that he was not on talking terms with Arti but his family members were.

25. DW-2 has stated that his house lies north to the house of Hari Prasad Giri at a distance of 10-12 hand. He had



not heard sound of Maar-peet or incidence of cruelty. Arit was duly honoured at her Sasural because of the fact that she was the only daughter-in-law. Arti along with her husband occasionally visited her Maika. He had not heard rumour with regard to cruelty having been inflicted upon Arti. After hearing alarm of firing they rushed. Chachia Saas of Arti extinguished the fire. Arti was taken to hospital for treatment. During cross-examination, he has stated that the daughter-in-law does not visit in the village. In likewise manner, daughter-in-law of Hari Prasad Giri had not visited frequently. He is unable to say when and where she had gone. He has further stated that at the verge of death a man always speaks the truth.

26. After going through the record, it is evident that prosecution has conducted the trial carelessly. Before examination of I.O. so many witnesses were declared hostile, but their statement was not at all brought on record through the I.O. nor the witnesses who were examined after the examination of I.O. and were declared hostile, allowed to remain idle, as the I.O. was not recalled. Furthermore, during course of examination-in-chief, I.O. has not spoken that P.O. was shown to him by the informant but during cross-examination narrated like so. So would have been clarified. Apart from this, his



evidence on the point of proper identification of the P.O. is found full of ambiguity. Apart from this, some sort of laches have also been perceived at the end of I.O. during course of conduction of investigation even having discloser at the end of the I.O. that statement of deceased was recorded by him, it could not be exhibited. However, it is settled at rest that on account of lapses of the I.O., the prosecution case would not fail.

27. From the evidence available on the record, it is evident that during course of cross-examination of the Magistrate nothing has been suggested, even challenged with regard to mental condition of the deceased that at the time of so alleged dying declaration, she was not at all mentally fit nor was suggested to the Magistrate that he before examination had not tested with regard to her mental condition in an alternative tutored one. In likewise manner, presence of doctor, Dr. Sanjay as well as staff nurse, Jolly Das (not examined), could not found to be deficient in the aforesaid facts and circumstances of the case. The doctor who had conducted postmortem, (PW-7) was not at all cross-examined nor suggested that on account of sustaining such burn patient could not be in a position to speak. That means to say, no sincere efforts have been taken at the end



of appellants to discredit the dying declaration.

28. Contrary to it, from the evidence of the PW-8, it is evident that they have half heartedly swum towards the appellant which too is evident from the evidence of PW-10, informant as well as PW-11 his wife. However, they are limited to the extent of son-in-law.

29. After going through the dying declaration along with evidence available on record, it is evident that prosecution has been able to substantiate the allegation, whereupon, in terms of Section 113B of the Evidence Act, presumption would lean in favour of prosecution though rebuttable.

30. DW-1 and DW-2 have been examined at the end of appellant along with PW-5, his family member. After going through the evidence, it is crystal clear that they have not been able to discharge the burden properly as none of them disclosed where they have seen the deceased, whether deceased was running, crying for rescue, whether they have seen the kitchen, what kind of furnace whether it was gas, or wooden stove and burning having kettle over the same.

31. Giving anxious consideration, appellant, Deo Narayan Giri is found entitled for benefit of doubt, that being so, is acquitted. The judgment of conviction and sentence



recorded by the learned lower court against him, is hereby, set aside. Consequent thereupon, Cr. Appeal (SJ) No. 461/2009 is allowed.

32. Since appellant, Deo Narayan Giri is on bail, he is discharged from its liability.

33. So far appellants, Hari Prasad Giri and Guno Devi are concerned, considering the materials available on the record along with dying declaration, the prosecution is found succeeded in substantiating the allegation and on account thereof, the judgment of conviction and sentence recorded by the learned lower court to their extent, is hereby, confirmed. Consequent thereupon, Cr. Appeal (SJ) No. 119/2009 is, hereby dismissed.

34. Appellants, Hari Prasad Giri and Guno Devi are on bail, their bail bonds are hereby, cancelled directing them to surrender before the learned lower court within four weeks to serve out the remaining part of sentence failing which, the learned lower court will be at liberty to proceed against them in accordance with law.

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(Aditya Kumar Trivedi, J)

