

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No.147/2011

U/s.304-B/302/34 I.P.C.

G.R. Case No. (DBB) 426/2010

State of Assam

- Vs -

- 1. Hamidur Rahman**
- 2. Hasina Bibi**
- 3. Jabeda Bibi**

Committing Magistrate : Sri S. Khound, Chief Judicial Magistrate,
Dhubri.

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri A.R. Khan, Public Prosecutor, Dhubri for the State.

Sri Abdul Latif, Advocate for the defence.

Date of Evidence : 16-02-2013, 16-11-2013, 18-12-2013, 13-02-2014,
04-03-2014, 30-05-2014, 11-07-2014, 28-10-2014,
& 25-11-2014.

Date of Arguments : 05-11-2014 & 08-12-2014

Date of Judgment : 15-12-2014

J U D G M E N T

One Md. Kobbat Ali vide an ejahar dated 10-08-2010 states before the B.N. College Nagar O.P. under Dhubri Police Station that on 09-08-2010 at about 7-30 p.m. his married daughter namely Kohinur Bibi was set on fire by the help of kerosene oil by accused persons and she was taking treatment at Dhubri Civil Hospital for serious burn injuries.

2. The Dhubri Police Station after registration of a case on the aforesaid ejahar took up the investigation and at the conclusion of the investigation laid the charge-sheet under Section 304-B/34 I.P.C. against the accused persons.

3. After commitment of the case and on the appearance of the accused persons named above, the charges under Section 304-B/302/34 I.P.C. are framed against the accused persons. The charges so framed are read over & explained to the accuseds to which they pleaded not guilty.

4. During trial prosecution side after examining as many as 12 (twelve) P.Ws closed their side. The statements of the accused persons are recorded. I heard the arguments of the case from both the parties.

5. Now the points for determination in this case will be as to:

Whether the materials surfaced in the testimonies of the P.Ws are sufficient to attract the ingredients of Section 304-B I.P.C. and Section 302 I.P.C. or not?

DECISIONS AND REASONS THEREON

6. Here in this case, charges under Section 304-B and 302 I.P.C. are framed against the accused persons. The prosecution side led the evidences of 12 (twelve) P.Ws. It alleged that the accused persons in furtherance of their common intention poured kerosene oil upon the victim Kohinur Bibi and thereby set her on fire and ultimately while she was under treatment, she expired. Her body was inquested vide Ext-2. Thereafter, it was sent for postmortem examination vide dead body challan under Ext-3. During postmortem examination, the concerned Doctor found 65% burn injuries and also found that the aforesaid burn injuries resulted in the death of the victim. The postmortem report was exhibited under Ext-4.

7. Under the aforesaid premises, it is to be seen as to whether the accused persons can be held guilty for pouring kerosene oil upon the person of the victim and thereafter, set her on fire and if so, what were the reasons prompted the accused persons to pour kerosene oil upon the victim and thereafter, to set her on fire.

8. To answer the aforesaid points for determination, let us have a look at the evidences on record.

9. P.W-1 Md. Kobbat Ali states during trial and in his examination-in-chief that deceased Kohinur Bibi is his daughter. He knows the accused persons. Marhum Kohinur Bibi was married to Hamidur Rahman 5 (five) years ago. Accused Jobeda Bibi and Hasina Bibi are the grandmother and mother of Hamidur Rahman. After the marriage his daughter Koninoor Bibi led conjugal life with the accused for a period of two years. During the aforesaid period of married life,

the accused persons harassed and tortured his daughter on demand of money. He also paid money on some occasions. Thereafter, he went to Guwahati to sell his labour and during the period of his stay at Guwahati, he came to know from his nephew Salam that accused persons set his daughter on fire and she was hospitalized. After getting the aforesaid information, he came and went to Dhubri Civil Hospital, wherein he met his daughter Kohinoor and at that time she was in a position to speak. On being asked, deceased Kohinoor told before him that on the date of incident and at the relevant point of time she took out the rice and went to the kitchen for preparation of rice. At that time she got sense that some liquid was pouring on her body. When she turned her head, she found the accused persons were there and immediately thereafter they set fire on her body. After giving the statement before him his daughter expired. Thereafter, he laid the ejahar under Ext-1 wherein Ext-1 (1) is his signature. After the death of his daughter police inquested the dead body vide Ext-2 and obtained his signature therein under Ext-2 (1).

During cross-examination the P.W-1 admitted that he did not mention in the ejahar that during married life the accused persons harassed and tortured his deceased daughter on demand of money nor he stated the aforesaid facts during his statement before the I.O. Further, during investigation he did not state before the police that he got information from his nephew Salam that the accused persons set fire on the persons of his deceased daughter. Also from the deposition of I.O. (P.W-10) it is found that the P.W-1 did not state before him that on being asked his deceased daughter told before him that on the date of incident and at the relevant point of time she went to kitchen and took out rice then she got sense that some liquid was pouring upon her and after turning her head she noticed that the accused persons were standing there and immediately thereafter, they set fire on her person. The aforesaid witness did not state before the I.O. that after getting the news of said fire on the body of his deceased daughter by the accused persons, he came from Guwahati.

From a perusal of the deposition of P.W-1, it appears that the P.W-1 embellished the prosecution story during trial.

10. P.W-2 Mosstt. Sokitan Bibi states during trial and in her examination-in-chief that the deceased Koninoor Bibi is her niece. She was married to accused, Hamidur Rahman. She knows the accused persons. The incident had taken place 3 (three) years back from today. After the marriage her niece led peaceful conjugal life for a period of two years and thereafter, trouble started and quarrel took place on demand of money. On the date of incident and at the relevant point of time, she got the information that her niece sustained burn injuries and she was hospitalized. After getting the aforesaid information, she came to the hospital. At that time deceased Kohinoor Bibi was in a position to speak and on being asked she told before her that that accused persons set her on fire. During her stay at the hospital, Magistrate came and recorded statement. Magistrate also took her thumb impression in the aforesaid statement. After six days from the aforesaid date Koninoor Bibi expired.

From a perusal of the cross-examination of P.W-2, it is found that the witness has implicated the accused persons with the offence alleged of. The defence side cross-examined the P.W-2 but could not demolish her story as to the declaration regarding causes of death made by the deceased before her.

11. P.W-3 Mosstt. Taziron Bibi states during trial and in her examination-in-chief that deceased Kohinoor is her daughter. She was married to Hamidur Rahman. She knows the accuseds. After the marriage her deceased daughter was harassed and tortured. She also used to visit her house and finally accused persons committed the offence. On the date at about 7 p.m. we got the information that my daughter Koninoor sustained burn injury. Getting the aforesaid information, she came to the hospital wherein she met her daughter. On being asked, she told before her that her mother-in-law and grandmother-in-law set her on fire and at that time the accused Hamidur Rahman told her *mar mar* Thereafter, Magistrate came at 7 a.m. and recorded the statement of her daughter. At that time she was present and she put thumb impression on the aforesaid statement. After 7 days, her daughter expired.

From a perusal of the cross-examination of P.W-2, it is found that the witness has implicated the accused persons with the offence alleged of. The defence side cross examined the P.W-2 but could not demolish her story as to the declaration regarding causes of death made by the deceased before her.

12. P.W-4 Md. Abdur Rahman states during trial that he knows the accused persons. He knows the deceased Kohinur Bibi, who is hailing from his village. The deceased expired due to the sustainment of burn injuries. He could not say as to the circumstances leading to the sustainment of the burn injuries by the deceased. He was declared hostile by the Prosecution.

13. P.W-5 Md. Golzar Ali states during trial that he knows the accused persons. He knows the deceased Kohinur Bibi, they are hailing from the same village. The deceased expired due to sustainment of burn injuries. He could not say as to the circumstances leading to the sustainment of the burn injuries by the deceased. He was declared hostile by the Prosecution.

14. P.W-6 Md. Abu Bakkar Siddique states during trial that he knows the accused persons. The deceased Kohinur Bibi is known to him. When the dead body was inquested at the hospital by the Magistrate, then he was present and accordingly he put his signature in the inquest report under Ext-2 (2). He cannot say as to the circumstances leading to the death of the deceased.

15. P.W-7 Mahammad Ali states during trial that he knows the accused persons. The deceased Kohinur Bibi is known to him. When the dead body was inquested at the hospital by the Magistrate, then he was present and accordingly he put his signature in the inquest report under Ext-2 (3). He cannot say as to the circumstances leading to the death of the deceased.

16. P.W-8 Dr. Tapas Mazumdar states during trial that on 16-08-2010 while he was working in the Dhubri Civil Hospital in the capacity of Sr. Medical & Health Officer, he received the dead body of one Kohinur Bibi, Female, 18 years for conducting autopsy vide dead body Challan under Ext-3 wherein Ext-3 (1) is his signature. He conducted the postmortem on the dead body and found the following:

1. An average built dead body of a female is examined.
2. Rigor mortis present.
3. Eyes are closed. Multiple niddle pricks are seen at his usual I.V and injection sites.
4. There is surgically dressed burn injury seen on the back, upper abdomen, both the hands, left thigh anteriorly right ankle, whole of the back, buttocks and left breast. The approx. burn surface is about 65%. The margins are red.
5. Organ of generation, extena and interna are healthy and uterus is small in size and the cavity is empty

The burn injuries are all ante mortem in nature. In his opinion the cause of death is due to shock as a result of burn injuries sustained by the deceased. Ext-4 is his post mortem report wherein Ext-4 (1) is his signature and Ext-4 (2) is the signature of the then Joint Director of Health Services, Dhubri which is known to him from long association. During post-mortem examination he did not get the smell of kerosene oil. He did not get any smell of kerosene oil from the root of the hair.

17. P.W-9 Smti Bithika Das states during trial that on the fateful day and at the relevant point of time he was working in the Nursing Section of Dhubri Civil Hospital in the capacity of Nurse I/c. in the male ward. On that day the Executive Magistrate recorded the statement of one patient namely Kohinur Bibi in her presence. Ext-5 is the said statement wherein Ext-5 (1) is her signature.

The P.W-9 states during cross-examination as follows:

“The aforesaid statement was of patient belonging to burnt unit. She cannot remember the number of patients of burn unit on that day. There are as many as 6 (six) numbers of seats in the burn unit. One attendant is permissible with the patient of the burn unit. She cannot remember the date and time as to when the Executive Magistrate recorded statement of the patient nor can she remember the name and the face of the Executive Magistrate, who recorded statement of the patient. As many as 8 (eight) numbers of rooms are adjacent to the burn unit, which were used as the surgical unit. In between burn unit and surgical unit, there is a corridor and on the corridor, patients were also kept on the said corridor. The hospital remains busy at any moment and more particularly in between 9 a.m. to 1 p.m. She did not talk to the patient on the relevant date. She cannot say as to how much burn injuries sustained by the patient. Normally medicines namely Fortwin, Pethidine and Sedalive are administered on the patient of burn injuries and the influence of the aforesaid drugs remains upon the patient up to 12 hours and aforesaid medicines are administered for a period of 7 (seven) days. She cannot remember the names of persons, who were present at the time of recording of the aforesaid statement of the patient. She cannot remember the names of the Doctor, who treated the aforesaid patient. She cannot say the name of the in-charge Nurse of the burn unit, who performed the duty in the night shift. She has not brought any documents to show that she was the in-charge of Nurse of the burn unit of the relevant day.”

18. P.W-10 S.I. Prodip Kr. Sarkar states during trial that on 10-08-2010 he was posted at College Nagar TOP under Dhubri Police Station in the capacity of i/c. On that day at about 11 a.m. one Md. Kobbat Ali appeared before him and informed that his daughter Kohinur Bibi was married to Hamidur Islam and in the presence of Hamidur Islam his mother and granddaughter poured kerosene oil on Kohinur Bibi and set her on fire. Md. Kobbat Ali also laid one written ejahar. He sent the aforesaid ejahar to the Dhubri Police Station for registration of a case and also got entered about the aforesaid incident in the General Diary vide No.175 dated 10-08-2010. He examined the informant and from him I came to know that his daughter Kohinur Bibi had already been admitted into the Dhubri Civil Hospital. He arrived at the hospital and he came to know that the Dying Declaration of the victim had already been recorded. Thereafter, he visited the place of occurrence and prepared the sketch map. Ext-6 is the sketch map wherein Ext-6 (1) is his signature. Thereafter, he also examined the neighbouring persons of the place of occurrence. Thereafter, in the event of his transfer, he handed over the Case Diary to his successor I.O. During investigation of this case, the victim expired and her dead body was inquested vide Ext-2 wherein Ext-2 (4) is his signature.

During re-examination S.I. Prodip Kr. Sarkar (P.W-10) states that earlier he deposed in connection with his case. He is the I.O. of this case. On 10-08-2010 he was posted at B.N. College T.O.P. in the capacity of i/c. Ext-8 is the extract copy of the said G.D. Entry No.175 dated 10-08-2010.

19. P.W-11 S.I. Bhabesh Ch. Biswas states during trial that on 12-11-2010 he was posted at Dhubri Police Station. On that day on being entrusted with the investigation of this case, he perused the C.D. On perusal of the C.D, he found that his previous I.O. Prodip Kr. Sarkar had investigated into the case and he found that only charge sheet was remained to be submitted. Thereafter, he collected the postmortem report, dying declaration and submitted charge sheet. Ext-7 is the charge sheet wherein Ext-7 (1) is his signature.

20. P.W-12 Sri Mrigesh Narayan Barua states during trial that on 10-08-2010 he was posted at Dhubri in the capacity of Circle Officer and Executive Magistrate. On that day on being directed by the then D.M, Dhubri, he recorded the dying declaration of Mosstt.

Kohinur Bibi in the Burn Unit-I of Dhubri Civil Hospital. Ext-5 is the said dying declaration wherein Ext-5 (2) is his signature.

P.W-12 during cross-examination states as follows:

“He did not find the written direction issued by the then D.M, Dhubri in the case record. At about 11-40 a.m. on 10-08-2010 he recorded the dying declaration of the deceased. He did not obtain any certificate from the Doctor about the fitness of the declarant to speak about the incident. He cannot say about the name of the Doctor, who examined the deceased. He did not mention about the name of any co-patient, if any, in the burn unit in question. The witnesses of Ext-5 were not personally known to him nor were they patient of the hospital. He did not cite any patient of the burn unit or any patient nearing to other units of the hospital as the witness. He did not record the dying declaration in the question and answer form. He did not certify that the declarant / deceased was mentally and physically fit to speak about the incident nor did he obtain the signature or R.T.I. of the declarant in his report. He did not read over the statement to the declarant nor did he certify that the dying declaration of the declarant was voluntary. He did not mention the name of the identifier of the declarant in the Ext-8. Before recording of the dying declaration, he did not administer oath of the declarant.”

So these are all about the evidences on record.

21. Here in this case charge under Sections 304-B and 302 I.P.C. are framed against the accuseds. The accused persons during trial faced the aforesaid charges and the prosecution side also led evidences to prove the said charges. To appreciate the entire evidences, let us have a look at the evidences and the ingredients of Section 304-B which are narrated herein below:

Essential Ingredients – *Ingredients for a dowry death are (a) there is a married lady; (b) she has died an unnatural death including death by burn or by bodily injury or by poisoning etc. (c) that such death has occurred within seven years of the marriage; (d) it must be found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives.*

Evidences – *To prove a dowry death prosecution is to prove the following (a) there was a unnatural death of a woman, (b) that woman had been married within seven years preceding her aforesaid unnatural death; (c) soon before her death she was subjected to cruelty or harassment – (i) such cruelty or harassment had been caused to her by her husband or husbands other relative; (ii) that such cruelty or harassment was for or in connection with any demand for dowry.*

In all dowry death cases, the standard of appreciation of evidence has to be in the light of the provisions contained in Section 113-A, Evidence Act.

22. I have carefully gone through the material particulars surfaced in the testimonies of the P.Ws. Altogether twelve P.Ws are examined by the prosecution. P.W-1 Kobbat Ali is the father of the deceased whereas the P.W-2 Sakiton Bibi and P.W-3 Toziron Bibi are the aunty and mother of the deceased respectively. P.W-4 & P.W-5 were declared hostile by the prosecution. P.W-6 and P.W-7 could not bring anything in support of the prosecution story. P.W-8 is the Medical Officer, who conducted the postmortem examination of the dead body of the deceased. P.W-9 is the Nurse belonging to Dhubri Civil Hospital, who deposed that Executive Magistrate recorded the statement of the deceased Kohinur Bibi in her presence and Ext-5 is the said statement of the deceased. P.W-10 is the I.O. of the case S.I. Prodip Kr. Sarkar. P.W-11 is another I.O. S.I. Bhabesh Biswas and P.W-12 is Mrigesh Barua the then Executive Magistrate, who recorded the dying declaration of the deceased.

23. From the aforesaid testimonies of the aforesaid P.Ws, it is found that the victim before her death stated about the causes of her death before the P.W-2 and P.W-3 and according to them the said dying declaration was reduced into writing by one Executive Magistrate. The Executive Magistrate had himself admitted the aforesaid factum and proved the same during trial under Ext-5. P.W-9 who happens to be the Nurse of Dhubri Civil Hospital, was working at the relevant point of time therein also confirmed the recording of dying declaration by the Executive Magistrate and she has also proved the dying declaration under Ext-5 wherein Ext-5 (1) is her signature. From the materials surfaced during trial, it is clear that no P.Ws noticed the accused pouring kerosene oil on the persons of the deceased and setting her on fire. Thus, here in this case there are no direct evidences in support of the allegation under Section 302 I.P.C. but there is dying declaration made by the victim.

24. Now, it is to be seen as to how far aforesaid dying declaration made by the victim before the P.W-2, P.W-3, P.W-9 and P.W-12 can be acted upon.

25. From the testimonies of the P.W-2, it is revealed that on the date of incident and at the relevant point of time and after getting the information of sustainment of burn injuries by the deceased and

about her hospitalization, P.W-2 came to the hospital. At that time the deceased Kohinor Bibi was in a position to speak and on being asked she told before the P.W-2 that the accused persons set her on fire and during her stay at the hospital the Executive Magistrate came and recorded her statement. Magistrate also took her thumb impression in the aforesaid statement. The P.W was not cross-examined on the aforesaid factum save and except giving suggestion to her which he denied and accordingly the aforesaid story stated by the P.W-2 has remained undisputed and was not demolished. Likewise P.W-2 had also deposed during trial in the same tune and manner as that of P.W-2 and also the story set forth by her remains undisputed and un-demolished. From the aforesaid stories of P.W-2 and P.W-3, it appears that on the date of incident and at the relevant point of time, accused persons set the deceased on fire. From their testimonies, it is also revealed that P.W-12 recorded the dying declaration of the deceased and was confirmed by the P.W-9.

26. During written argument, learned defence counsel submits that the prosecution has failed to bring the ingredients of Section 304 (B) I.P.c. and as such no presumption can be drawn against the accused under Section 113 (B) of evidence Act in the instant case. Further, learned defence counsel in the written argument narrated the following infirmities of the written dying declaration under Ext-5 and as such according to learned defence counsel the said written dying declaration under Ext-5 cannot be acted upon.

27. The infirmities of the dying declaration under Ext-5 according to the learned defence counsel are as follows:

- (a) The P.W-12, Executive Magistrate had no authority to record the dying declaration. The Prosecution has failed to prove any written documents, if issued, by the D.M. to record the dying declaration of the deceased.*
- (b) The dying declaration does not contain the signature of the declarant and there is no explanation offered as to why the signature was not obtained.*
- (c) The fitness certificate was not taken before recording dying declaration from the concerning doctor, who treated the deceased, regarding the fitness of the deceased to make the declaration.*

- (d) *The Executive Magistrate himself did not furnish any endorsement that the declarant was in a fit state of mind to make the declaration.*
- (e) *After recording dying declaration, it was not read over to the declarant. No endorsement is there for the same at the bottom of Ext-5.*
- (f) *The name of the identifier is also not there in the dying declaration.*
- (g) *Dying declaration was not recorded in question and answer form, which is essential for the trial court to ascertain if any leading question was asked to the deceased to illicit the answer.*
- (h) *No oath was administered before recording dying declaration.*
- (i) *Dying declaration was not recorded in the language of the deceased. It was recorded in Assamese although the deceased's belongs to Goalparia language and there was no indication in the Ext-5 that after recording the statements it was translated to the deceased.*
- (j) *Dying declaration was not recorded in presence of independent witness although at the relevant point of time there was rash of patient and attendants in the hospital.*
- (k) *Dying declaration was not recorded in the presence of the doctor, who treated the deceased.*
- (l) *No co-patient was shown as witness of dying declaration.*
- (m) *Dying declaration was shown to be recorded in the presence of the mother and aunt of the deceased, although other persons were present in and around the burn unit of the hospital. So, the possibility of tutoring before recording dying declaration cannot be ruled out.*
- (n) *No precaution was taken by the Magistrate to avoid tutoring by the relatives before recording dying declaration.*
- (o) *The presence of P.W-9, Smti Bithika Das, In-charge Nurse of Male Ward in the burn Unit of the hospital at the relevant point of time of recording dying declaration is very much doubtful.*
- (p) *Dying declaration was not recorded in presence of the Nurse who was in duty in the burin Unit in the relevant time.*

- (q) *P.W-9, Smti Bithika Das did not talk to the deceased at the relevant time and she could not say how much burn injury was sustained by the deceased. She cannot say the names of the persons who were present at the time of recording dying declaration. She also could not say name of the doctor who treated the decease. So, the presence of P.W-9 at the relevant point of time is very much doubtful.*
- (r) *Mother of the victim Taziron Bibi stated that the dying declaration was recorded at 7 A.M. contradicting the statements of P.W-12, Executive Magistrate, who said that it was recorded at 11-40 A.M.*

28. In support of the aforesaid submissions, learned defence counsel has relied the following decided case laws:

- (i) *CRLJ 2013 (SC) 3655.*
- (ii) *CRLJ 2012 (SC) 1043*
- (iii) *CRLJ 2006 (Bombay) 3128*
- (iv) *CRLJ 2012 (Bombay) 3277*
- (v) *CRLJ 2013(Bombay) 972*
- (vi) *CRLJ 2014 (Uttarakhand) 292*
- (vii) *CRLJ 1990 (Gau) 1333*

29. I have carefully gone through the aforesaid judicial authorities in the light of the submissions rendered by learned defence counsel. It needs to be mentioned here that Hon'ble Apex Court of the Country has laid some of the principles, which are reproduced herein below:

- (i) *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [Munnu Raja V. State of M.P. MANU/SC/0174/1975 : 1976 Cri LJ 1718]*
- (ii) *If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [State of U.P. V. Ram Sagar Yadav MANU/SC/0118/1985 : 1986 Cri LJ 836 and Ramawati Devi v. State of Bihar MANU/SC/0135/1983 : 1983 Cri LJ 221]*
- (iii) *The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [K. Ramachandra*

- Reddy V. Public Prosecutor MANU/SC/0127/1976 : 1976 CriLJ 1548]*
- (iv) *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [Rasheed Beg V. state of Madhya Pradesh MANU/SC/0160/1973 : 1974 Cri LJ 361]*
 - (v) *Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [Kake Singh V. State of M.P. MANU/SC/0160/1981 : 1982 Cri LJ 986.]*
 - (vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. [Ram Manorath V. State of U.P. MANU/SC/0207/1981 : [1981] 3SCR195]*
 - (vii) *Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [State of Maharashtra V. Krishnamurthi Laxmipati Naidu 1980 Supp. SCC 455]*
 - (viii) *Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees true. [Surajdeo Oza V. State of Bihar MANU/SC/0269/1979 : 1979 Cri LJ1122.]*
 - (ix) *Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail [Nanahau Ram V State of M.P. 1988 Supp. SCC 152]*
 - (x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [State of U.P. V. Madan Mohan MANU/SC/0565/1989 : 1989 Cri LJ 1485].*
 - (xi) *Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [Mohanlal Gangaram Gehani V. State of Maharashtra MANU/SC/0090/1982 : [1982] 3 SCR 277]*
 - (xii) *The declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what was stated therein is the truth and that is safe to act upon it. If after careful scrutiny, court is satisfied that it is true and free from any effort to induce the victim to make a false statement and if it is coherent and consistent, there shall be not legal impediment to make it the basis of conviction even if there is not corroboration.[K. Ramachandra Reddy v. Public Prosecutor, AIR 1976 SC 1994 : (1076) 3 SCC 618 : 1976 SCC (Cri) 473]*

- (xiii) *Even a person not named in the declaration can be found guilty e.g. where the eyewitnesses clearly implicate him and such evidence is found to be credible.*{Dilip Premnarayan Tiwari V. State of Maharashtra, AIR 2010 SC 361 : 2010 Cr LJ 905 : (2010) 1 SCC 775}
- (xiv) *Certificate from a doctor is only a rule of caution. Absence of such a certificate does not mean that the declaration is unreliable. That the dying declaration is not in question and answer form does not render it unreliable. There is no reason to disbelieve a declaration recorded by a Tahasildar which is candid, coherent and consistent and when the Tahasildar stated that the declarant was in a fit state of mind. [Babu Lal V. State of Madhya Pradesh, AIR 2004 SC 846 : 2003 AIR SCW 7074 : (2003) 12 SCC 490]*

30. Now, after a careful perusal of the entire facts and circumstances, in the light of the Judicial Authorities as narrated here in before, it can be concluded that here in this case, dying declaration was made by the deceased before the P.W-2 & P.W-3 and the same was reduced into writing by P.W-12 in the presence of P.W-2, P.W-3 and P.W-9. The dying declaration made before the P.W-2 and P.W-3 shows that accused persons caused burn injuries to the victim by setting her on fire. According to P.W-2 and P.W-3, the victim in the said dying declaration did not at all mention about the demand of dowry or about the torture and harassment. According to P.W-2 and P.W-3 the said dying declaration was reduced into writing. The recording officer, the P.W-12 did not obtain the physical fitness certificate from the Doctor about the fitness of the victim to speak about the incident. The P.W-12 also did not record the dying declaration in the question and answer form nor did he (P.W-12) certify that the declarant/deceased was mentally and physically fit to speak about the incident and he did not obtain the signature or thumb impression in the dying declaration under Ext-5. The P.W-12 also did not read over the statement of the declarant nor did he certify that the dying declaration of the declarant was voluntary.

31. From the aforesaid admission of the P.W-12 it can be observed that the Ext-5 has suffered from some infirmities but for the said reasons only it cannot be ignored that the deceased before her death narrated the causes of sustainment of burn injuries by her before P.W-2 and P.W-3. Therefore, it can now be concluded that the deceased before her death mentioned the causes of death before P.W-2 and P.W-3 and the same can be deemed to be the oral dying declaration and the same can be the sole basis of the decision of the case in hand. The

aforesaid dying declaration would abundantly establish that on the date of incident and at the relevant point of time, accused persons being in common intention set the victim on fire whereby she sustained burn injuries and ultimately she died of the burn injuries which is very much explicit from postmortem examination. Also it has been established that the material P.Ws have recorded failure to generate the ingredients of Section 304(B) I.P.C.

32. Therefore, considering entire circumstances from all angles, it can be held that the offence of Section 302 I.P.C has been established beyond all reasonable doubts against the accused persons and as such they cannot evade the liability of the Section 302/34 I.P.C.

33. In the result, the accused persons are convicted under Section 302/34 I.P.C. and acquitted from the offence under Section 304 (B)/34 I.P.C.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

34. Heard the accused on sentence. Accused Hamidur Rahman states that he is the only bread earner of his family. His family shall have to suffer acute inconvenience, if he is sent to jail. Accused Hasina Bibi and Jabeda Bibi states that they are innocent. Under these circumstances, they prayed for leniency in sentence.

35. Considering the evidences surfaced during trial against the accused convict and the manner of commission of the crime, I feel that the ends of justice would meet if the accuseds are sentenced to suffer R.I. for life and to pay fine. Thus, accused are hereby sentenced R.I. for life and to pay fine of Rs.2,000/-(Rupees two thousand only) each, in default to suffer S.I. for 2 (two) months each.

36. Here in this case, the P.W-1 & P.W-3 being the parents of the deceased lost their daughter. Therefore, the P.W-1 and P.W-3 can be awarded compensation under Victim Compensation Scheme and accordingly the said compensation is recommended.

37. Let a copy of the judgment be furnished to the accused persons free of cost. Let another copy of the judgment be furnished to the D.M, Dhubri and another copy of the judgment be forwarded to the Chairman, District Legal Services Authorities, Dhubri.

Judgment is pronounced in the open Court.

Given under my hand and seal of the Court on this 15th day of December, 2014.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.