
(2006) 11 JH CK 0048
In the Jharkhand High Court

Ashok Kumar Talpatra and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 313, 391

Evidence Act, 1872 — Section 145, 32

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 1 JCR 369

Hon'ble Judges : Rakesh Ranjan Prasad, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The appellants, above named, were charged with, tried and convicted for the offence under Sections 302/34 of the Indian Penal Code vide impugned judgment of conviction dated 7.9.2000 by the 5th Additional Sessions Judge, Hazaribagh. The sentence for life imprisonment was awarded to each of the appellants by order dated 11.9.2000. The case relates to the death caused by burn injury of the deceased Rina Talpatra, wife of the appellant No. 2 Ashok Kumar Talpatra, aged about 35 years. The injured had suffered burn injury at her matrimonial house at village Kaitha within the police station of Ramgarh. She was admitted to the plaint hospital Dhurwa at Hatia within the district of Ranchi. While she was undergoing medical treatment of her injury at the hospital, she died at the hospital on 14.1.1992. The information regarding the burn injury sustained by the deceased and her admission to the hospital for medical treatment, was conveyed to the mother of the deceased (PW 3).

2. The case was registered on the basis of the fardbeyan of the informant Rita Mukherjee (PW 3), recorded by the police officer at Hazaribagh Sadar Police Station on 15.2.1992, which was forwarded to the Ramgarh police station for registration of the case, and the investigation was taken up by the police officer of Ramgarh police station. The prosecution case introduced by the informant (PW

3) in her fardbeyan and reiterated by her in her evidence is as follows.

The marriage of Rina Talpatra (deceased) was solemnized with Ashok Kumar Talpatra (A-1), resident of village Kaitha in the year 1981. Articles worth Rs. 40,000/- was given to the girl by her mother at the time of the marriage, thereafter the girl went to her matrimonial house at village Kaitha. The informant alleges that soon after the marriage, her son-in-law (A-1) began demanding dowry and used to ill-treat the girl due to which, the girl used to be compelled to leave her husband's house and come to stay at the house of her mother at Dhanbad and later used to be taken back to her matrimonial house by her husband. In the year 1982, a daughter, namely Payal Talpatra (PW 5) was born to the deceased and two years later i.e. in the year 1984, a son namely, Vishal Talpatra (PW 6) was born to her. However, ill treatment and cruelty at the hands of her husband and in-laws continued unabated on account of non-fulfillment of his demand of Rs. 20,000/- by way of dowry. Ultimately, on 18.3.1991, appellant No. 1 brought his wife (deceased) and his two children to the house of the informant at Dhanbad and left them at the house declaring that they would not be taken back until his demand of Rs. 20,000/- is fulfilled. After about eight months, in the month of November 1991, appellant No. I came to the house of the informant (PW 3) and took away his wife (deceased) along with him leaving his children behind. On 7.12.1991 the informant received telegraphic message indicating that her son-in-law (A-1) met with an accident. She came from Dhanbad to Ramgarh where at Ramgarh Bus Stand she met her son-in-law (A-1) who was waiting for her. He asked her whether she had brought the amount of Rs. 20,000/- with her, and on her denial, he asked her to return to her house at Dhanbad and not go to his village at Kaitha to meet her daughter. The informant returned to her house at Dhanbad. Two days later i.e. on 9.12.1991, the informant received a telegraphic message that her daughter Rina Talpatra had sustained burn injury and was admitted to plant hospital, Dhurwa with the district of Ranchi. On the same day, she came alone to the village Kaitha where her son-in-law's father Sudhir Kumar Talpatra told her about the burn injury sustained by the deceased and had also allegedly advised her to forget whatever has happened and not to Inform the police. He had allegedly threatened her also. Being thus intimidated, she remained silent. On the next day i.e. on 10.12.1991 in the early morning, she came to Hatia hospital where she saw her daughter Rina Talpatra lying with serious burn injuries. The informant adds that her daughter Rina Talpatra revealed to her that in the morning of 8.12.1991 her father-in-law Sudhir Kumar Talpatra, husband Ashok Kumar Talpatra, brother-in-laws Tapas Kumar Talpatra and Tarun Kumar Talpatra and mother-in-law Gauri Talpatra had pressed her down on the floor and after gagging her mouth, they set her on fire declaring that after her death, they would arrange second marriage for Ashok Kumar Talpatra (A-1) to fetch more dowry. The informant adds that Rina Talpatra had further told her that on 10.12.1991, her husband (A-1) had obtained her thumb impression two on blank papers. Further contention of the informant is that her son-in-law (A-1) and his two brothers

(A-2) and (A-3) had told her to keep silent over the matter and threatened to kill her and her son if she opened her mouth. On account of the threatening, she remained silent, on 14.1.1992 the injured Rina Talpatra died at the hospital. On her death, appellants left the dead body at the hospital and fled away. After postmortem examination held on the dead body of her deceased daughter, the police handed over the dead body to her. She took the dead body to her house at Dhanbad where she performed the last rites. After completing the funeral, she came to Ramgarh and on being informed that no case was registered against any of the accused persons at the police station, she met the Superintendent of Police, Hazaribagh and on his instruction she went to Sadar police station, Hazaribagh where her fardbeyan was recorded and on the basis of which, the instant case was registered at Ramgarh police station.

Appellants had denied the charges, pleading not guilty to the offences alleged.

3. At the trial, prosecution had examined altogether nine witnesses including the informant, Rita Mukherjee (PW 3), her son Deobrat Mukherjee (PW 4), her elder son Bimal Mazumdar (PW 2), both children of the deceased namely, Payal Talpatra (PW 5) and Vishal Talpatra (PW 6), doctor (PW 9) who had conducted postmortem examination on the dead body of the deceased, the police officer Shambhu Nath Singh Bir (PW 7) who had recorded the fardbeyan of the informant (PW 3) and the investigating officer Gauri Shankar Pathak (PW 8).

4. The trial Court, on considering the evidences on record, had placed reliance on the testimonies of the informant (PW 3) and that of her son (PW 4) and finding support from the evidences of PW 2, PW 5 and PW 6, as well as the evidences of the doctor (PW 9), recorded its finding of guilt against all the accused persons. It needs to be mentioned here that though the case was initially registered also against Sudhir Talpatra, father-in-law of the deceased along with the appellants, but he could not be put on trial on account of his demise. It needs also to be mentioned here that subsequent to the filing of the present appeal, appellant No. 4 Gauri Talpatra had reportedly died on 13.10.2005 and consequently, the instant appeal against the appellant No. 4 stood abated.

5. Assailing the impugned judgment of conviction and sentence, the appellants have raised several grounds prominent amongst them being that the trial Court has committed serious error leading to miscarriage of justice by placing implicit reliance on the testimonies of the informant (PW 3) and that of her son (PW 4), ignoring in the process, several contradictions appearing in the testimonies of both these witnesses elaborating the grounds, learned Counsel explains that the entire allegations, as levelled by the informant (PW 3) in her fardbeyan and repeated in her evidence, are totally false, baseless and motivated and this fact would be evident from the delay of more than 34 days in lodging of the FIR. Learned Counsel explains that though, informant claims that on 10.12.1991 when she had visited her daughter at the hospital, the deceased had made the alleged oral dying declaration accusing the present appellants of causing the burn injuries to her, but the informant did not make any attempt to inform the police

or the attending doctors about any such revelation of the deceased. Her explanation that she was threatened to remain silent by her son-in-law. (A-1) and other accused persons, is most unconvincing and even if the same is considered for the sake of argument, there is no explanation offered by her as to why after the death of the deceased at the hospital she did not lodge any information even when, according to her, all the accused persons had left the dead body of the daughter at the hospital and fled away. Even thereafter, the informant did not lodge any information even at the Ramgarh police station under whose jurisdiction, house of the appellants falls where the deceased had suffered the burn injury on 8.12.1991. Learned Counsel adds further that as per the statement of the informant (PW 3), the police of Hatia Police Station had recorded her statement on 10.12.1991 at the hospital and again on 14.1.1992 after the death of the deceased at the hospital. Her evidence also indicates that the police of Hatia police station had recorded the statement of the deceased, while she was undergoing medical treatment of her injuries at the hospital. The fact that the statements, both of the informant as well as of the injured, was recorded by the police of Hatia police station, has been confirmed by the investigating officer (PW 9) also, but prosecution has suppressed both the statements and the reasons for such suppression, according to the learned counsel, appears in the evidence of the investigating officer (PW 9) who has affirmed that the statement of the deceased as also that of the informant (PW 3) recorded by the police of Hatia Police Station, were in total contradiction to the statement of the informant (PW 3), as contained in her fardbeyan. Inviting attention in this context to the contents of para-40 of the case diary, reference of which was elicited from the investigating officer (PW 9), learned Counsel submits that the contents of the earlier statements, both of the deceased and her mother, indicates that the deceased had suffered burn injury accidentally in the early morning of 8.12.1991 while she was boiling milk. Learned Counsel adds further that it was the husband and members of his family who had brought the injured immediately to the nearest hospital situated at Hatia, Ranchi for the treatment of her burn injury and had even informed the mother of the deceased (PW 3) about the burn injury. It is further submitted that it was on the basis of the statement of the informant (PW 3), recorded by the police at Hatia Police Station after the death of the deceased on 14.1.1992, that a U.D. case for unnatural death, was registered at the police station and the postmortem examination on the dead body was held. Learned Counsel adds further that the information, as given by the injured herself regarding the cause of her burn injuries, ought to have been treated as the FIR, failing which, the information, as given by PW 3 to the police of Hatia Police Station on 14.12.1991 on the death of the deceased, should at least have been treated as the first information report. Learned Counsel adds further that significantly, the inquest report has also not been brought in evidence by the prosecution, though investigating officer (PW 9) admits that the inquest report on the dead body was prepared by the police of Hatia police station and that he (PW 9) had himself seen and read the contents thereof at the Hatia Police Station where he recorded the statement of the concerned police

officers who had recorded the statements of the injured and her mother and had prepared the inquest report. Learned Counsel adds further that the allegation of the informant (PW 3) and her son (PW 4) and her son-in-law (PW 2) that the demand of Rs. 20,000/- used to be persistently made by the husband of the deceased and he (A-1) used to subject the deceased to ill-treatment and cruelty on account of non-fulfillment of their demand, is a deliberate introduction in the prosecution case made at a very belated stage and based entirely on imagination and with intent to unduly harass the appellants. Learned Counsel submits further that no reliance on the testimony of the informant (PW 3) in respect of the allegation made by her against the present appellants, can be placed, as because her evidence is totally untrustworthy. Learned Counsel adds that for the same reason, the evidences of informant (PW 3) and that of the children of the deceased (PW 5 and PW 6) and of the informant's son-in-law (PW 2), should also be discarded. Explaining further, learned Counsel submits that even if from the evidences of these witnesses it is inferred that the relation between the deceased and her husband were strained, it in itself does not lead to the inference that there was nexus between the alleged demand of dowry and the death of the deceased. Referring again to the evidences of PW 3 and PW 4, who had claimed that the deceased had made dying declaration before them, explaining the cause and manner in which she had sustained burn injury allegedly at the hands of her husband and her in laws, learned Counsel submits that the fact that the contents of the first statement, as given to the police and the oral statement made to her mother (PW 3), are totally inconsistent and contradictory to each other, necessitates that the declaration made by the deceased at the earliest point of time namely the statement given to the police, should be treated as the first dying declaration and not the second one which was allegedly given to her mother. Learned counsel adds further that even otherwise, in view of the inconsistent dying declarations, no reliance can be placed in respect of the purported oral dying declaration of the deceased based on the mother's statement. Learned counsel, in this context, has referred to several case laws citations based on the various judgments of the Supreme Court.

6. Learned Counsel for the State, on the other hand, while submitting arguments in support of the impugned judgment of conviction and sentence, has tried to controvert the several grounds advanced by the appellants. Contention of the learned Counsel for the State is that the testimony of the informant (PW 3) cannot be brushed aside merely because of the delay in lodging the FIR. Elaborating his argument, learned Counsel submits that the informant has adequately explained the circumstance in which she could not lodge prompt report to the police regarding the dying declaration of the deceased and has stated in this context that she was intimidated and threatened to silence by her son-in-law (A-1), his father and, his brothers (A-20 and (A-3). Learned Counsel adds further that the appellants had left her alone at the hospital to attend to her injured daughter during the entire period of her medical treatment and while she was away from her home, there was nobody to extend any moral support or

courage to her during her stay at the hospital. Even after death of the deceased at the hospital, she was left alone and helpless with the dead body of her daughter, since the husband and other members of his family had fled away abandoning the dead body and under such circumstance, she had no option, but to carry the dead body to her house at Dhanbad to perform the funeral rites. Learned Counsel adds further that the fact that the relation between the deceased and her husband were extremely strained, appears not only in the evidence of the informant (PW 3), but also in the evidences of her son and son-in-law (PW 4 and PW 2) and above all, in the evidences of the children namely PW 5 and PW 6. The reason for the strained relation was the non-fulfillment of demand for a sum of Rs. 20,000/- by way of dowry, as made by the husband of the deceased. Learned Counsel adds that the telegram which, the informant had received from her son-in-law (A-1) indicates that she was called by the A-1 on false representation of his meeting with an accident, only to insist that the money demanded by him should be brought by her. Learned Counsel adds further that the evidence of the informant (PW 3) read with that of PW 4 clearly indicates that the appellants who had intimidated the informant to silence had also influenced the police officer of Hatia Police Station to treat the case as a case of unnatural death by accepting the plea that the deceased had suffered burn injury accidentally.

7. The prosecution's case apparently rests primarily on the testimony of the informant (PW 3) and also on the purported dying declaration of the deceased claimed to have been made before PW 3. The informant (PW 3) has claimed that on 10.12.1991 when she had visited the hospital where she met her daughter Rina Talpatra in a injured condition, the injured had revealed to her orally that on 8.12.1991, her husband and in laws including the present appellants had pressed her down on the floor and after gagging her mouth, they set her on fire and that on 10.12.1991, prior to the visit of PW 3 to the hospital, her husband (A-1) had obtained thumb impression of the deceased on two blank papers. PW 4 also claims to have heard the same revelations made by the injured at the hospital at the time when he had gone along with her mother (PW 3) to see the injured. As to whether PW 4 had in fact visited the hospital along with his mother (PW 3) and had occasion to hear the statements of his injured sister on 10.12.1991, a genuine controversy has been raised by the appellants by referring to the evidence of PW 4 read with the evidence of the informant (PW 3), since his presence at the hospital along with her on 10.12.1991 has not been affirmed by her. Besides introducing the oral dying declaration of the deceased in her statement, both in her fardbeyan and in her deposition at the trial, the informant (PW 3) had also introduced the allegation that the relation between the deceased and her husband (A-1) were extremely strained " ever since after their marriage on account of non-fulfillment his of demand of Rs. 20,000/- by way of dowry and that the deceased used to be subjected to ill-treatment, neglect and cruelty and even occasional desertion by her husband. Further introduction in her evidence is her allegation that just three days prior to the date when the deceased had

suffered burn injury, the appellant No. I had sent a misleading telegraphic message only to invite the informant (PW 3) and to pressurize her to bring the money demanded by him. As regards the strain in the relation between the deceased and her husband (A-1), the prosecution has led the evidences of PW 2 and PW 4 as also that of the children of the deceased namely (PW 5 and PW 6).

8. From the prosecution's evidences, it appears that the deceased had sustained burn injury on 8.12.1991 and was admitted to the hospital soon thereafter and she survived till her death on 14.2.1992 and was undergoing medical treatment of her injury during this period Dr. Ram Sewak Sao (PW 9) referring to the observation recorded by him in his postmortem report concerning the postmortem examination on the dead body of the deceased Rina Talpatra held on 14.1.1992, informs that he had found dermo epidermal burn involving both upper limbs, front side of chest and abdomen, face and neck; right thigh upper part with evidence of infection at places. The burn injury was ante mortem in nature. Death was due to burns and its complication. Time elapsed since the death was six to thirty six hours prior to the time of postmortem examination. The investigating officer (PW 8) confirms that on his visit to the Hatia Police Station; he had seen and read the statement of the deceased, which was recorded by the police of Hatia Police Station at the Hospital in her injured condition. The informant (PW 3) also confirms that the police officer of Hatia Police Station had recorded the statements of her injured daughter. It is inferred, therefore, that the deceased was conscious and was able to give her statement even in her injured condition at the hospital and that, prior to the statements made by the deceased to her mother, her statements were earlier recorded by the police officer of Hatia Police Station. Thus, the evidences disclose that two separate statements were made by the deceased, first to the police officer soon after she was admitted to the hospital, and the second, purportedly to her mother (PW 3) on 10.12.1991. Both the statements can be treated as the dying declarations of the deceased. It is settled principle of law that where there are two dying declaration, the one, which was made at the earliest point of time, assumes significance and gains precedence over the latter. In the instant case, the statements given by the deceased to the police soon after her admission to the hospital in her injured condition, was the first dying declaration of the deceased made at the earliest point of time. The prosecution has not produced the statements of the deceased recorded by the police officer of Hatia Police Station. The investigating officer (PW 8)" has categorically admitted that on his visit to Hatia Police Station in course of his investigation, he had perused the statements of the deceased recorded by the police officer of Hatia Police Station and had also perused the statements of the informant (PW 3), which was also recorded by the police officer of Hatia Police Station. He had also perused the contents of the inquest report in respect of the dead body of the deceased prepared by the police officer of Hatia Police Station. Strangely enough, he did not choose to collect the aforesaid vital documents and tag the same with the other relevant document pertaining to this case. He does not offer any specific

answer for his aforementioned omission, even though when asked by the defence, he appears to have given some indication in his reply stating that on going through the statements of both the ladies (deceased and the informant) which were earlier recorded by the police officer of Hatia Police Station, he had found substantial contradictions in their statements, as compared to the statements of the informant in her fardbeyan. He concedes that he had recorded his aforesaid observation about the vital contradictions in the statements of the ladies at para-40 of the case diary. He, however, does not elaborate on the exact nature of the contradictions in the statements of the ladies, observed by him. The failure of the prosecution to produce the statements of the deceased recorded at the earliest point of time by the police officer of Hatia Police Station, does amount to suppression of material evidence and in absence of any reasonable explanation for such suppression, adverse inference against the prosecution has necessarily to be drawn.

Learned Counsel for the appellants insists that for the ends of justice and to arrive at the truth, this Court can peruse the specific paragraph of the case diary, particularly paragraph-35 wherein the just of the statements of the deceased and also that of PW 3 made earlier to the police officer of Hatia Police Station, has been recorded by the investigating officer (PW 8). Learned Counsel adds further that the recordings made at paragraph-35 of the case diary would confirm that the deceased, in her statements made before the police officer of Hatia Police Station, had stated the cause of her burn injuries to be accidental which she had sustained on account of flames of gas stove within the kitchen of her house. Learned Counsel adds further that suppression of the vital documents has caused serious prejudice to the defence. It is further argued that in the light of the above circumstance, the alleged oral dying declaration, made by the deceased to her mother (PW 3) becomes at once suspicious and thoroughly unreliable.

9. While cross examining the informant (PW 3), the defence has, by putting specific questions to her, tried to confront her with her previous statements made before the police officer of Hatia Police Station, both on 10.12.1991 and second time on 14.1.1992. This witness has claimed to have given the same statements as appearing in her deposition at the trial. Thus, though actual statements of the deceased and that of the informant, as recorded by the police officer of Hatia Police Officer, have not been brought and introduced in the evidence by the prosecution, yet by affirmation of the investigating officer (PW 8), list of the statements of both the ladies were recorded by him at paragraphs 35 and 40 of the case diary.

10. The use of statements of any witness recorded by the police officer in course of investigation can be made for the limited purpose of contradicting the witness in the manner provided u/s 145 of the Indian Evidence Act. Such statements cannot be used in evidence, The prohibition contained in Section 162, CrPC in respect of the use of the statements recorded by the investigating officer u/s 161, Cr.P.C. except for the limited purposes of eliciting contradiction in the

statements of the witnesses, does not however apply to the statements of persons which may constitute relevant evidence and usable u/s 32(1) of the Indian Evidence Act, particularly the statement of a person as to the cause of his or her death or any of the circumstance which resulted in his death. Furthermore, the prohibition u/s 162, CrPC applies only to the parties to the proceedings before the Court and does not impair the powers of the trial Court to peruse such statements made to the police, and which have not been introduced and proved in evidence. Where circumstance brought on record suggests inconsistency in the statement of the witnesses, the Court can look into the police diary to find out discrepancy, and the nature of inconsistency, appearing in the statements of the witnesses. The Court is not divested of such powers by the prohibition contained in Section 162, CrPC and for obtaining assistance for arriving at the truth, the powers of the Court is not fettered by the restrictions u/s 162, CrPC.

11. Since specific attention of the investigating officer appears to have been invited in his cross-examination to the paragraphs of the case diary recorded by him and since the said paragraphs of the case diary contain admittedly the substance of the statements of the deceased in particular and that of the informant (PW 3) recorded at the earliest point of time, this Court can very well refer to the aforesaid two paragraphs of the case diary for the purpose of ascertaining as to whether there are inconsistencies and contradictions in the evidence of the informant (PW 3), as compared to her earlier statements and also, whether there are inconsistencies and contradictions in the two dying declarations of the deceased one made to the police and the other, which PW 3 claims to have been made before her by the deceased.

At paragraph-35 of the case diary, the investigating officer (PW 8) recorded the statements of ASI R.P. Paswan of Hatia Police Station and has noted that the witness had stated before him that on 9.12.1991 at about 22.15 hrs, on receipt of a O.D. slip from the plant hospital, Dhurwa regarding patient Rina Talpatra, wife of Ashok Kumar Talpatra, he had visited the hospital, but found the injured lying unconscious. On the following day i.e. 10.12.1991, he went to the hospital again where he had recorded the statements of Rina Talpatra as her fardbeyan. He had also entered the statements of Rina Talpatra in the police station diary as station diary No. 287, dated 10.12.1991 and had forwarded the original fardbeyan of the deceased to Ramgarh police station for registration of appropriate case and later, on 14.1.1992 on receipt of the information regarding the death of Rina Talpatra, ASI C.P. Yadav had visited the hospital and had recorded the statement of Rita Mukherjee (PW 3) at the hospital on 14.1.1992 at 00.45 Ill's. The aforementioned statements of Rina Talpatra as well as that of Rita Mukherjee (PW 3) as recorded by the above named police officer of Hatia Police Station, finds reproduced at paragraph-35 of the case diary in the handwriting of PW 8.

At paragraph-40 of the case diary, the investigating officer (PW 8) has recorded

that on going through the statements contained in the FIR and the statements of the deceased, he had found many contradictions and had felt necessary to obtain further evidence before arriving at any definite conclusion. The fact that PW 8 had admitted to have recorded his observation at paragraph 40 of the case diary that there were substantial contradictions in the evidence of the informant, as compared to her fardbeyan and the statements of the deceased recorded by the police officer of Hatia Police Station, it gives definite right to the defence to know and be informed about the nature of contradiction and the non-availability of such information tends to cause definite prejudice to the defence. It is also within the domain of the Court to obtain the aforesaid information regarding the details of contradiction referred to by the investigating officer and in absence of assistance from the prosecution, to look into the relevant paragraphs of the case diary, which contains information regarding the contradiction. On perusal of the recorded fardbeyan of Rina Talpatra (deceased), as appearing at paragraph-35 of the case diary, it appears that the cause of her burn injuries has been explained by her stating that on 8.12.1991 while she was preparing tea on the heater, her saari had caught fire upon which, she raised alarm. Her husband and sister-in-law came running and tried to douse the fire and, for treatment of her injuries, they had brought her to Ramgarh and on being referred to Ranchi by Dr. T. Mishra, she was brought to Ranchi and admitted to the Plant Hospital, Dhurwa.

Likewise, the statement of Rita Mukherjee (PW 3) recorded on 14.1.1992 at 00.45 hrs is that on 10.12.1991 her daughter was admitted to the Plant Hospital, Dhurwa with burn injuries and in course of her treatment, she had died on 1.4.1.1992. The aforesaid statement of Rita Mukherjee (PW 3) does not contain any allegation or aspersion either against the husband or against the in-laws of the deceased. It also does not indicate the presence of any person other than the mother of the deceased at the hospital at the time when the statements of the mother were recorded by the police officer of Hatia Police Station.

From the above, it appears that from the earlier statements of the deceased, cause of her burn injuries was purely accidental.

12. The second dying declaration of the deceased, as introduced by the prosecution through the evidence of the informant (PW 3), is the purported oral statements given to her by the deceased on 10.1.1992. As noted above, the oral dying declaration of the deceased, as stated by the informant (PW 3), is totally inconsistent with the statements of the deceased given earlier to the police officer.

Despite the apparent contradiction in both dying declarations of the deceased, the need to scrutinize and examine the truthfulness of the oral dying declarations of the deceased needs to be made in the context of the informant's claim that she was prevented by the husband and in-laws of the deceased from speaking out the truth before the police. The scrutiny of the oral dying declaration necessarily involves scrutiny of the evidence of PW 3 who has introduced the dying declaration of the deceased for the first time in her fardbeyan recorded on

5.2.1992 i.e. after a gap of more than 34 days from the date on which this witness claims to have heard the dying declaration of her deceased daughter on 10.12.1991.

13. The claim of the informant that she was threatened and intimidated by the husband and in-laws of her deceased daughter from making any adverse statement to the police, does not appear to be convincing. She has not affirmed the presence of any of the accused persons at the hospital at the time when her daughter spoke to her or at the time of the visit of the police officer of Hatia Police Station on 10.12.1991 when her statements were recorded. Even if she had suffered any intimidation or fear complex on account of the presence of the accused persons at the hospital in course of medical treatment of her injured daughter, there appears no reason as to why she should continue to suffer any fear complex even after death of her daughter when according to her own admission, none of the accused persons were present at the hospital when the police officer of Hatia Police Station had visited and recorded her statements. It may be noted that, as per recordings at paragraph-35 of the case diary, her statements were recorded at 00.45 hrs on 14.1.1992 by the police officer of Hatia Police Station.

It is a natural expectation by way of normal human conduct for any parent to strongly react on being told by her own daughter that her husband and in-laws had intestinally caused her burn injury with intent to kill her. Under such circumstance, natural expectation is that the mother would immediately lodge her complaint to the police officer who was promptly available to her at the hospital. These are circumstances, which militate against the trustworthiness of the statements of the informant.

Strangely enough, the investigating officer (PW 8), despite observing vital contradiction and inconsistency in the aforementioned two separate statements of the informant (PW 3), preferred to ignore the previous statement as also the inquest report and had proceeded with the investigation on the basis of the contents of the fardbeyan of the informant (PW 3). The reason as to why he did not try to obtain any explanation from the informant (PW 3) regarding the inconsistency and contradiction appearing in her earlier version, is apparently on account of his consciousness that it was the Superintendent of Police, Hazaribagh who had not only directed institution of the FIR on the basis of the statement of the informant (PW 3), but also to conduct investigation and submit charge sheet against the accused.

The inference that the statement of the informant (PW 3) recorded in her fardbeyan and repeated by her in her deposition at the trial is tainted and does not represent the truth, is also inferred from the delay of more than 34 days in lodging the FIR. The informant has tried to explain the reason for the delay in lodging the FIR by claiming that she was threatened and intimidated by the accused/appellants from lodging any complaint to the police; this explanation does not appear to be convincing enough. As pointed out, it is in the evidence of

the informant (PW 3) that during the entire period commencing from the date when she had visited the hospital on 10.12.1991 till the date of the death of the deceased on 14.1.1992 she was all alone at the hospital with her injured daughter. This indicates that she had enough time and opportunity during this period to speak to the police or even to the doctor attending the injured at the hospital informing them about the purported oral dying declaration of the deceased regarding the cause of burn injury sustained by her. Even if she was expecting her injured daughter to survive by positively responding to the medical treatment given to her, choosing therefore to remain silent, the ultimate death of the injured should have been a strong circumstance to embolden her to open her mouth before the police without any fear since, according to her, none of the accused/appellants were present at the hospital.

14. The testimony of the informant (PW 3) regarding the purported strain in the relation between the deceased and her husband on account of non-fulfillment of demand of dowry, also does not inspire confidence. It may be noted that according to the informant, the marriage between the deceased and her husband (A-1) was solemnized way back in the year 1981 i.e. more than 10 years prior to the date of the death of the deceased. The couple i.e. the deceased and her husband had apparently lived together for 10 years after their marriage and relation between them were conducive enough for the deceased to bear two children from her husband at the interval of two years. Even if, there was some reason for the husband to quarrel with his wife (deceased) and to bring and leave her at her mother's house occasionally, but it is in the evidence of the informant (PW 3) and that of her son (PW 4) that the husband of the deceased used to revisit the house of his mother-in-law and take back his wife to his own house. Furthermore, no complaint whatsoever was lodged against the husband and in-laws for the alleged ill-treatment of the deceased over demand for dowry, either by the deceased herself or by her mother or brother during the entire period of 10 years. Secondly, on the last occasion i.e. in the month of November 1991 when the husband of the deceased (A-1) had come to fetch his wife from the house of her mother, the informant (PW 3) had herself accompanied her daughter to the house of the appellants. These circumstances, if considered in proper perspective, do not indicate that the husband of the deceased (A-1), by his conduct, gave any occasion to the deceased or her mother or brother to apprehend or believe that her stay in the house and company of her husband is fraught with danger to her life and person.

The above facts and circumstance needs also to be seen together with the conduct of the appellants. It is the appellants who had promptly taken the deceased to the hospital for the treatment of her burn injury and had also informed the mother of the deceased about the burn injury sustained by the deceased.

15. Learned Counsel for the appellants has expressed that the appellants have been seriously prejudiced on account of the failure of the trial Court to put

material circumstance appearing in the evidence of the witnesses which were relied upon by the trial Court at the time of recording their evidences u/s 313, CrPC. Learned Counsel explains that the trial Court has relied upon the testimonies of PW 3 and PW 4 that the deceased had made dying declaration accusing the present appellants of causing burn injury to her, but this material piece of evidence was not put to the appellant to enable them to offer their explanation.

There is substance in the argument of the learned Counsel for the appellants. It appears from the impugned judgment that the trial Court has placed reliance entirely on the testimonies of PW 3 and PW 4 regarding the oral dying declaration made by the deceased. The trial Court has also relied upon the testimonies of the aforesaid witnesses as well as the evidences of the two children of the deceased regarding the purported strain in relation between the deceased and her husband. These are the material pieces of evidence and it was essentially required of the trial Court to put the same to the accused/appellants to elicit explanation from them. The trial Court has failed on this issue. Learned Counsel for the State submits that even though, there appears to be lapse on the part of the trial Court which had failed to put the material evidences to the accused persons at the time of their examination u/s 313, CrPC, but the same can be rectified by this Court in exercise of its power in appeal u/s 391, CrPC by putting the relevant questions to the appellant even at this stage. It is to be noted that the instant case is of the year 1993 and since then, the appellants have undergone the rigours of protracted trial for the past 13 years and in the light of the discussions of the evidences made herein-above, no fruitful purpose would be served by remitting the material back to the trial Court for re-recording the statements of the accused/appellants u/s 313, CrPC.

16. Considering the facts and circumstances of the case, we find merit in this appeal and accordingly, the same is allowed. The impugned judgment of conviction and sentence, as passed by the Trial Court against the accused/appellants, is hereby set aside and the appellants are acquitted from the charges u/s 302/34, IPC.

It is informed at the Bar that the two appellants namely appellant No. 2 Tarun Kumar Talpatra and appellant No. 3 Tapas Kumar Talpatra are on bail. Accordingly, they are absolved from liability of their respective bail bonds. The appellant No. 1 Ashok Kumar Talpatra, who is in custody, is directed to be released forthwith, if not wanted in connection with any other case.

R.R. Prasad, J.

17. I agree.