

(2021) 07 TEL CK 0010
In the Telangana High Court
Case No : Criminal Petition No. 2246 Of 2021

Manasa Alias Jwala

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 05-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 174, 482
Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 32, 32(1)

Citation : (2021) 07 TEL CK 0010

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Brahmadandi Ramesh

Final Decision : Dismissed

Judgement

1. Â The present Criminal Petition is filed to quash the proceedings in Crime No.231 of 2019 of Bhongir Town Police Station, Rachkonda

Commissionerate. The petitioner herein is sole accused in the said Crime. The offence alleged against her is under Section 302 of IPC.

2. On the complaint lodged by respondent No.2, the police of Bhongir Town, have registered a case in Crime No.231 of 2019, initially under Section -

174 of Cr.P.C. A perusal of the record would reveal that deceased - Bandaru Shiva Kumar got married to Mrs. Uma Maheshwari on 16.03.2015, and

out of their wedlock, they have blessed with a male child, named Bandaru Koushik. Thereafter, matrimonial disputes arose between them and the first

wife of the deceased left his company stating in written that she is not interested to lead matrimonial life with the deceased. Then, the deceased had

decided to marry the petitioner, for which, the parents of petitioner asked him to

give an undertaking with certain terms and conditions. Accordingly, the deceased had given a written undertaking on 05.05.2017. Pursuant to the said undertaking, their marriage was performed on 07.05.2017.

Thereafter, matrimonial disputes even arose between the petitioner and the deceased and the petitioner left the company of the deceased.

4. As per the complaint, dated 15.09.2019 given by respondent No.2, sister of the deceased, on 13.09.2019 at about 11.00 a.m., the deceased went to

the house of parents of the petitioner to take her to his house so as to lead matrimonial life, but the deceased poured kerosene himself and lit fire. He

was shifted to Government Hospital, Bhongir and thereafter to Gandhi Hospital, Secunderabad for better treatment, but he died on 15.09.2019. On

14.09.2019 his dying declaration was recorded.

5. On the complaint lodged by respondent No.2, the police, Bhongir Town have registered a case in Crime No.231 of 2019 initially under Section - 174

of Cr.P.C. on 15.09.2019. The incident took place on 13.09.2019. The dying declaration was recorded on 14.09.2019 at Gandhi Hospital. Statements

of witnesses under Section - 161 of Cr.P.C. were recorded on 15.09.2019, 16.09.2019, 17.09.2019 and 18.09.2019 itself. The alteration memo was

filed on 06.03.2021 altering the section of law from Section - 174 of Cr.P.C. to Section - 302 of IPC. Since there is abnormal delay of 1½ year in

filing the alteration memo, this Court vide order dated 22.03.2021 directed the learned Public Prosecutor to get specific instructions in the matter. On

23.03.2021, the learned Public Prosecutor, on instructions, has submitted that the Investigating Officer in Crime No.231 of 2019 has obtained

certified copy of dying declaration on 15.11.2019 from Gandhi Hospital. There is a delay of 2 months in obtaining dying declaration. On 28.01.2020,

the Investigating Officer has addressed a letter to the learned Public Prosecutor seeking his opinion. Thus, there is a delay of about 2½ months from

obtaining the certified copy of dying declaration. The learned Public Prosecutor did not furnish his opinion. He has not permitted either the

Investigating Officer or any police to his office due to COVID-19 pandemic. Thereafter, the Investigating Officer, who has conducted investigation at

the initial stage, retired and in his place, new Investigating Officer took place and he has addressed another letter dated 30.08.2020 to the learned

Public Prosecutor seeking his opinion. Due to rains, the entire file got damaged in

the Public Prosecutor's office. The same was re-constructed on 18.02.2021. Thereafter, the Investigating Officer has filed alteration memo on 06.03.2021. Thus, there is delay at every stage and there is abnormal delay in filing the alteration memo. Therefore, this Court vide order dated 23.03.2021, directed the Commissioner of Police, Rachakonda Commissionerate to cause an enquiry in the matter, more particularly, with regard to delay caused in filing the alteration memo and the manner in which the investigation was conducted by the Investigating Officer and file a report before this Court. Accordingly, an enquiry was caused and a report was filed. As per the said report, the Commissioner of Police, Rachakonda Commissionerate, has initiated disciplinary action against erring officials who are responsible for the said entire delay in altering the section of law.

6. The petitioner herein sought to quash the proceedings in Crime No.231 of 2019 on the following grounds:

(i) Statements of witnesses viz., LW.1, respondent No.2 and sister of the deceased, LW.2, brother-in-law of the deceased, LW.3, nephew of deceased, cousin of respondent No.2 as LW.4, neighbours of petitioner as LW.5 and 8, sister of petitioner as LW.6 and cousin of the deceased as LW.7 do not speak about pouring of kerosene on the deceased by the sister and mother of the petitioner and that the petitioner lit the fire.

(ii) In the statements of witnesses, there is no allegation, much less specific allegation against the petitioner herein;

(iii) Even in the counter filed by the Station House Officer and Inspector of Police, Bhongir Town Police Station, Rachakonda Commissionerate, the deceased poured kerosene himself on him and lit fire;

(iv) It is also specifically mentioned in paragraph No.8 of the counter that the statement of kith and kin, eye-witnesses and scene of offence go to show that the deceased himself set fire; and

(v) Except the dying declaration, there is no other evidence against the petitioner herein;

7. Mr. Brahmadandi Ramesh, learned counsel for the petitioner, would submit that dying declaration is not conclusive evidence and it is not direct evidence and, therefore, it cannot be relied upon to lay charge sheet against the petitioner. Investigating Officer is having power to go through the

statements of all witnesses and also the documentary evidence collected by him. Though the incident took place on 13.09.2019, dying declaration was recorded on 14.09.2019, the deceased died on 15.09.2019, statements of witnesses were recorded in September, 2019 itself, Investigating Officer has filed the alteration memo almost after one and half year i.e., on 06.03.2021. Thus, there is abnormal delay in filing the alteration memo. Even in the alteration memo, it is specifically referred to the statements of LWs.1 to 4, LWs.5 and 8, neighbours. As per the said statements, the deceased himself poured kerosene and lit fire, and there is no allegation against the petitioner. Only basing on the dying declaration, the police altered the section of law from Section - 174 of Cr.P.C. to Section - 302 of IPC.

i) The learned counsel for the petitioner, referring to the contents of the statements, complaint and the alteration memo, would submit that the Investigating Officer cannot lay charge sheet only basing on the dying declaration. He has to consider the statements of other witnesses including the de facto complainant, kith and kin of the deceased and also eye witnesses. None of them spoke about the role played by the petitioner in commission of offence, more over, all of them have categorically stated that the deceased himself poured kerosene on him and lit fire. He has also placed reliance on the judgments of the Honâ??ble Supreme Court and this Court and would contend that relying on the dying declaration, conviction cannot be recorded. According to him, this Court is having power under Section - 482 of Cr.P.C. to quash the proceedings to prevent abuse of process of law.

8. On the other hand, the learned Public Prosecutor would submit that dying declaration is an important piece of evidence and it is admissible in evidence. It is a crucial piece of evidence. Veracity of the dying declaration has to be considered during trial by the trial Court, but not by the Investigating Officer. The reliability, or otherwise of the dying declaration will be considered by the trial Court. If the trial Court, on consideration of other evidence, comes to a conclusion, then, the trial Court can discard it by giving specific reasons. He would further submit that burden of proving dying declaration lies on the prosecution. Opportunity of cross-examination would be given to the accused to disprove the dying declaration. The petitioner has to avail the said opportunity before the trial Court. Instead of doing so, she has filed the present petition to quash the proceedings in the

aforesaid crime. With the said contentions, he sought to dismiss the present criminal petition.

9. Section - 32 of the Indian Evidence Act deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc., is

relevant, and sub-section (1) deals with such statements relating to cause of death, and as per which, when the statement is made by a person as to

the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's

death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made,

under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

i) The statement made by the deceased person will be treated as an evidence and admissible in a Court of law. The reason behind the same can be

followed by a latin maxim *Nemo Mariturus Presumuntur Mentri* which means that man will not meet his maker with lying on his mouth.

Statement written or verbal of relevant facts made by a person, who is dead. It is a statement of a person died explaining the

circumstances of his death. It is the fact that dying man can never lie or truth sits on the lips of dying man. Thus, a man about to die, does

not lie. Therefore, the dying declaration is admissible and considered as evidence in Court and it is a crucial piece of evidence.

ii) The procedure to record dying declaration etc., are specifically mentioned in Section - 32 of the Indian Evidence Act. The burden to prove dying

declaration lies on the prosecution. Prosecution is put to strict proof of dying declaration. If the Court is satisfied that the dying declaration is true and

voluntary, it can basis conviction on it without corroboration. Court can reject suspicious dying declaration in criminal cases. In one of the judgments,

the Honable Supreme Court categorically held that it is not proper for trial Courts to look for loopholes in dying declarations. An incomplete dying

declaration is also admissible. A dying person does not lie. Although there is neither a rule of law, nor of prudence that the dying declaration cannot be

acted upon without corroboration, the Court must satisfy itself that the said dying declaration is true and voluntary and only then could it be the sole

basis for conviction without corroboration.

iii) In *Umakant v. State of Chhattisgarh* 2014 CrL.L.J. 4078 (SC), the Apex Court held that though a dying declaration is not recorded in the Court in

the presence of accused nor it is put to strict proof of cross-examination by the accused, still it is admitted in evidence against the general rule that

hearsay evidence is not admissible in evidence. The dying declaration does not even require any corroboration as long as it inspires confidence in the

mind of the Court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of

surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of

evidence is that such declaration is made by the victim when he/she is on the verge of death.

iv) In *Bhagwan Tukaram Dange v. State of Maharashtra* 2014 CrL.L.J. 1875 (SC), the Apex Court held that dying declaration is a statement made by

a dying person as to the injuries culminated in his death or the circumstances under which the injuries were inflicted.

v) In *Harbans Singh v. State of Punjab* AIR 1962 SC 439, the Apex Court held that it is neither a rule of law nor of prudence that a dying declaration

requires to be corroborated by other evidence before a conviction can be based thereon.

vi) In *State of Uttar Pradesh v. Suresh alias Chhavan* (1981) 3 SCC 635, the Apex Court held that minor incoherence in the statement with regard to

the facts and circumstances would not be sufficient ground for not relying upon statement which was otherwise found to be genuine. Hence, as a rule

of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon.

vii) In *M. Sarvana alias K.D. Saravana v. State of Karnataka* 2012 CrL.L.J. 3877 (SC), the Apex Court held that the dying declaration is the last

statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival. At such time, it is

expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such

statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate

a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the

deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

viii) In *Bhajju alias Karan Singh v. State of M.P.* 2012 CrL.L.J. 3877 (SC), the Apex Court held that declaration is admissible in evidence and the

admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction.

ix) In *State of M.P. v. Vishweshwar Kol* 2011 CrL.L.J. 2172 (SC), the Apex Court held that a dying declaration cannot be analyzed as if it were a

statute and it was only if the Court was to find that the injured was not in a fit condition to make a statement or the possibility that it was tutored or

motivated or the story given was completely unacceptable could be some of the reasons for discarding it.

x) In *Vijay Pal v. State (GNCT) of Delhi* 2015 CrL.L.J. 2041 (SC), the Apex Court held that if the dying declaration is absolutely credible and nothing

is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification

to discard the same.

xi) In *Waikhom Yaima Singh v. State of Manipur* 2011 CrL.L.J. 2673 (SC), the Apex Court held that there can be no dispute that dying declaration can

be the sole basis for conviction, however, such a dying declaration has to be proved to be wholly reliable, voluntary, and truthful and further that the

maker thereof must be in a fit medical condition to make it. The oral dying declaration is a weak kind of evidence, where the exact words uttered by

the deceased are not available, particularly because of the failure of memory of the witnesses who are said to have heard it.

xii) In *Balbir v. Vazir* 2014 CrL.L.J. 3697 (SC), the Apex Court held that an oral dying declaration can form basis of conviction if the deponent is in a

fit condition to make the declaration and if it is found to be truthful. The courts as a matter of prudence look for corroboration to oral dying declaration.

xiii) In *K. Ramachandra Reddy v. Public Prosecutor* (1976) 3 SCC 618, the Apex Court held that the evidentiary value of dying declaration made by

the deceased:

â??There is no doubt that the dying declaration is admissible in court under section 32(1) of the Indian Evidence Act, and there is no compulsion while

making of dying declaration to take an oath, but the truth of the statement can be determined by the cross-examination. The court has to ascertain

necessary measures to check the sanctity of the statement made by the deceased. As in India law, it was presumed that the man who is going to die,

not meet his maker with a lie on his lips this is because, when the person is at his bed end all the desire and greed of person come to an end so

probably there is no motive to lie. After that, the court must be satisfied with the condition that the deceased must be in a fit state of mind while

making the statement. After all the measures assured by the court and satisfied that the statement is made voluntarily and true then it will be sufficient

to accept the statement to finding conviction even without the corroboration.â??

xiv) In *Khushal Rao v. State of Bombay* 1958 AIR 22, the Apex Court laid down the following principles relating to dying declaration:

â??(i) There is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. A true & voluntary

declaration needs no corroboration.

Â (ii) A dying declaration is not a weaker kind of evidence than any other piece of evidence;

(iii) Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made.

(iv) A dying declaration stands on the same footing as other pieces of evidence & has to be judged in the light of surrounding circumstances & with

reference to the principle governing the weight of evidence.

(v) A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers,

&, as far as practicable in the words of the maker of the declaration stands on a much higher footing than a dying declaration which depends upon

oral testimony which may suffer from all the infirmities of human memory & human character.â??

xv) There are many circumstances in which the statement made by the dying person is not admissible in a court of law. The said conditions are:

(i) If there is no question for consideration about the cause of death of the deceased. For example, if a person in his declaration state anything which is

not remote or having a connection with the cause of death than the statement is not relevant and hence not be admissible;

(ii) the declarant must be competent to give a dying declaration, if the declaration is made by the child then the statement will not be admissible in

court as it was observed by the High Court of Madhya Pradesh in Amar Singh v. State of M.P. M.Cr.C. No.30972/2019, decided on 29.07.2019 that

without the proof of mental fitness and physical fitness the statement would not be considered reliable;

(iii) the statement which is inconsistent has no value and can not be considered as evidentiary in nature;

(iv) the statement made by the deceased should be free from any influential pressure and should be made spontaneous;

(v) It is perfectly allowed to the court if they reject any untrue statement which contradicting in nature;

(vi) if the statement is incomplete in the sense which means it can not answer the relevant questions which are necessary to found guilty, and on the

counterpart, statement deliver nothing so it will not be deemed to consider;

(vii) doctor's opinion and the medical certificate should with the statement and support that the deceased is capable of understanding what

statement he makes; and

(viii) If the statement is not according to the prosecution. In this regard, the following points should be taken into consideration by the apex court;

xvi) Further, while making the statement deceased must be in fit mind of the state. Should be recorded by the magistrate or by a police officer and

person in a case when deceased was so precarious.

A dying declaration should be recorded in question-answer form and written in words of the persons exactly who gives the statement. Dying

declaration due to compulsion or pressure not be relied upon whereas dying declaration free from any biased relied upon. As it was held in the case of

Krishna Lal v. Jagun Nath (1990) 3 SCC 45 that the wife was burnt by the husbands-in-law and in her dying declaration she held that she was not

burnt by her husband's-in-law and she was believed.

xvii) In Chirra Shivraj v. State of A.P (2010) 14 SCC 444, the Apex Court held that a mechanical approach in relying upon a dying declaration just

because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the

dying declaration is voluntary, truthful, made in a conscious state of mind and

without being influenced by other persons and where these ingredients are satisfied, the Court expressed the view that it cannot be said that on the sole basis of a dying declaration, the order of conviction could not be passed.

xviii) In *Govindaraju @ Govinda v. State of Srirampuram P.S.* (2012) 4 SCC 722, the Apex Court held as under:

23. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance

cannot be placed upon the sole testimony of the police witness (eye-witness). It is a settled proposition of law of evidence that it is not the number of

witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the

guilt of the accused even with a limited number of witnesses. In the case of *Lallu Manjhi and Anr. vs. State of Jharkhand* (2003) 2 SCC 401, this

Court had classified the oral testimony of the witnesses into three categories:-

- a. Wholly reliable;
- b. Wholly unreliable; and
- c. Neither wholly reliable nor wholly unreliable.

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other

witnesses or by other documentary or expert evidence.

xix) The above mentioned authoritative principle of law laid down by the Apex Court, dying declaration is admissible in evidence. It is a crucial piece

of evidence. It is an exception to hear-say evidence. Oral dying declaration is also admissible in evidence. If the dying declaration is absolutely

credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness

there is no justification to discard the same. Thus, the genuineness, reliability, credibility or otherwise has to be decided by the trial Court. As stated

above, burden of proof and relevancy of the dying declaration always lies on the prosecution. It is put to strict proof. It is for the trial Court to discard

or disbelieve the dying declaration on the analysis of the entire evidence available on record including oral and documentary. The trial Court will

analyze the reliability of dying declaration and its admissibility basing on the

depositions of witnesses. Therefore, according to this Court, Investigating Officer is not having power to come to a conclusion that dying declaration is not reliable or genuine. The Investigating Officer is not having power to suspect the dying declaration and he cannot analyze the statements of witnesses and come to a conclusion that it was recorded in suspicious manner and on tutoring by others.

10. Now, coming to the case on hand, as already stated above, the incident in the present case took place on 13.09.2019. The dying declaration was recorded on 14.09.2019 at Gandhi Hospital. Statements of witnesses under Section - 161 of Cr.P.C. were recorded on 15.09.2019, 16.09.2019, 17.09.2019 and 18.09.2019 respectively. The alteration memo was filed on 06.03.2021 altering the section of law from Section - 174 of Cr.P.C. to Section - 302 of IPC. In the dying declaration, the deceased stated that the petitioner poured kerosene on the deceased and lit fire. The relevant portion of dying declaration is extracted below:

Q1: How you received these burn injuries, when and where?

Ans: My wife Manasa went to her parent-home two months back. Despite my asking, she has not been returning. Everyday I have been visiting her house, and asked her to come back. My wife Manasa, her mother and others live at Shrutinagar, Bhongir. Yester morning at 9-00 hours I went to my in-laws' house. I asked my wife to return, and she refused. Again I asked her to start. She asked me to go (sic. go) and said that she will come later. At that time, after pouring kerosene my wife lit it. My younger sister-in-law Anusha came and poured water. I rang up to my elder brother-in-law. My brother-in-law took me to Government Hospital at Bhongir and they asked us to go to Gandhi Hospital.

Q2: What is the name of your mother-in-law? Who else were present at that time in the house of your in-laws?

Ans: My mother-in-law Laxmi. At the time of my wife pouring kerosene, my mother-in-law, my wife, her elder sister Radha, and my younger sister-in-law Anusha were present. My younger sister-in-law poured water, and called an ambulance. After that I phoned to my elder brother-in-law and asked him to come.

11. Learned counsel for the petitioner in support of his contentions, relied upon the following decisions:

i) In *P. Mani v. State of Tamil Nadu* (2006) 3 SCC 161, the Apex Court had an occasion to deal with conviction recorded against the accused therein

solely on the dying declaration and held that conviction cannot be recorded solely relying on the dying declaration. Referring to the facts of the said

case, where son and daughter of the deceased categorically stated that she had been suffering from depression and she had made an attempt to

commit suicide a week prior to the date of occurrence, the Apex Court held that that recording conviction solely relying on the dying declaration is not

proper. It further held that in a case where suspicion can be raised as regard the correctness of the dying declaration, the court before convicting an

accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on

records suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event

conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon

several factors; physical and mental condition of the deceased is one of them.

ii) In *Chacko v. State of Kerala* Crl.Appeal No.1230 of 2001, decided on 22.11.2002, the Apex Court examining the conviction judgment recorded by

the trial Court confirmed by the High Court solely relying on the dying declaration, held that the Courts below i.e., trial Courts have solely relied on the

dying declaration without noticing the doubtful circumstances noted by it and there being no other evidence in support of the prosecution case, it is

unsafe to place reliance on the evidence adduced by the prosecution to base a conviction.

iii) In *Paparambaka Rosamma v. State of Andhra Pradesh* (1999) 7 SCC 695, a Three-Judge Bench of the Apex Court considering that there were

infirmities in the dying declaration held that recording conviction basing only on the dying declaration is not safe.

iv) In *Smt. Bhagwati Devi v. State of Uttarakhand* Crl.Appeal No.266 of 2007, decided on 17.01.2008, a Division Bench of Uttarakhand High Court,

on consideration of the facts of the said case, held that if the dying declaration is natural, true and trustworthy, the conviction can be based on such

dying declaration without further corroboration of the same. If the dying declaration appears to be tutored or exaggerated or suspicious one, the same

requires to be, corroborated from the other evidence on record, before the conviction is based on such statement before death made by the deceased

in this regard. To examine whether the dying declaration is true or not, contents of the dying declaration and other circumstances have to be

considered. In the said case, on the face of it, the Division Bench held that there appears reasonable doubt as to the truthfulness of the story narrated

by the deceased and there is strong possibility of false implication of accused due to the uncordial relations of the deceased with her.

v) In State of Andhra Pradesh v. P.V. Pavithran AIR 1990 SC 1266)

Â , the Apex Court had an occasion to deal with the inordinate delay in initiating criminal proceedings and completion of investigation under the

provisions of P.C. Act, held that there is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes

an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear

psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of

the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the

protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such

investigation. In the present case, the delay is on the part of Investigating Officer as stated above. Therefore, the said principle is not applicable to the

facts of the present case.

vi) In Gurcharan v. State CrI.A. Nos.643, 638, 845 & 596 of 2003 and 123 of 2004, decided on 08.01.2010, a Division Bench of Delhi High Court held

that dying declaration which inspires confidence is sufficient, on proof of same being made, to sustain a conviction. But, where a doubt arises in the

mind of the Court with respect to the contents of a dying declaration or where the dying declaration does not inspire confidence and especially where

there is evidence of a motive to falsely implicate the accused persons, it would be unsafe to return a finding of guilt on the basis of such dying

declarations, and in such cases, it would be the duty of the Court to look to some corroborative evidence and if none is found, to give benefit of doubt

to the accused.

vii) In *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692, the Apex Court held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

12. As stated above, the aforesaid judgments rendered by the Honâ??ble Supreme Court and various other High Courts relied upon by the learned counsel for the petitioner are while examining recording of conviction by the trial Court or High Court solely basing on dying declaration, whereas, in the present case, the matter is at crime stage. The learned Magistrate has recorded the dying declaration of the deceased on 14.09.2019. A perusal of the dying declaration would reveal that the mother of petitioner and the petitioner poured kerosene on the deceased and the petitioner lit fire. The petitionerâ??s younger sister poured water on the deceased. Thus, the deceased categorically stated the role played by the petitioner, her mother in commission of offence. In the said declaration, it is also mentioned by the doctor that the patient was conscious, coherent and in fit state of mind through out his making statement.

13. As stated above, genuineness, reliability or otherwise of the dying declaration will be tested by the trial Court on consideration of entire evidence, both oral and documentary. The Investigating Officer is not having power to discard the said dying declaration during the course of investigation. As stated above, the matter is at crime stage. The Investigating Officer has to file charge sheet. Alteration memo was filed altering section of law from Section - 174 of Cr.P.C. to Section - 302 of IPC. As stated above, the Investigating Officer has already recorded statements of witnesses in September, 2019. He has obtained certified copy of dying declaration on

15.11.2019 itself and inquest report etc. are available with him. He has to file charge sheet. In view of the same, it is not proper for this Court to interdict the investigation at this stage, more particularly, where dying declaration of the deceased was recorded which is a crucial piece of evidence.

14. The Apex Court has laid down certain parameters in *State of Haryana v. Bhajan Lal* 1992 Supp. (1) SCC 335, which are as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act concerned, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. The Apex Court in *Kamal Shivaji Pokarnekar v. The State of Maharashtra* AIR 2019 SC 847 has categorically held that quashing criminal

proceedings was called for only in a case where complaint did not disclose any offence, or was frivolous, vexatious, or oppressive. If allegations set

out in complaint did not constitute offence of which cognizance had been taken by Magistrate, it was open to High Court to quash same. It was not

necessary that, a meticulous analysis of case should be done before trial to find out whether case would end in conviction or acquittal. If it appeared

on a reading of complaint and consideration of allegations therein, in light of the statement made on oath that the ingredients of the offence are

disclosed, there would be no justification for High Court to interfere. The defences that might be available, or facts/aspects which when established

during trial, might lead to acquittal, were not grounds for quashing complaint at threshold. At that stage, only question relevant was whether averments

in complaint spell out ingredients of a criminal offence or not. The Court has to consider whether complaint discloses that prima facie, offences that

were alleged against Respondents. Correctness or otherwise of said allegations had to be decided only in trial. At initial stage of issuance of process, it

was not open to Courts to stifle proceedings by entering into merits of the contentions made on behalf of Accused. Criminal complaints could not be

quashed only on ground that, allegations made therein appear to be of a civil nature. If ingredients of offence alleged against Accused were prima

facie made out in complaint, criminal proceeding shall not be interdicted.

16. In *Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh* AIR 2021 SC 931, the Apex Court referring to the earlier

judgments rendered by it has categorically held that the High Courts in exercise of its inherent powers under Section - 482 of Cr.P.C has to quash the

proceedings in criminal cases in rarest of rare cases with extreme caution.

17. In *M/s. Neeharika Infrastructure Private Limited v. State of Maharashtra* AIR 2021 SC 191, a Three-judge Bench of the Apex Court laid certain

conclusions, for the purpose of exercising powers by High Courts under Section - 482 of Cr.P.C and also Article - 226 of the Constitution of India,

which are as under:

â??â?|.

iv) The power of quashing should be exercised sparingly with circumspection, in

the ‘‘rarest of rare cases’’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities.

The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the

investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the

investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or

that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application

made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by

the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide

power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.â??

18. In view of the above authoritative pronouncement of law, according to this Court, the petitioner failed to make out any ground to quash the proceedings in Crime No.231 of 2019 and, therefore, the criminal petition is liable to be dismissed.

19. The present Criminal Petition is accordingly dismissed.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.