

(2013) 07 CAL CK 0067
In the Calcutta High Court
Case No : CRA 740 of 2008

Sanjib Mallick and Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106, 113B, 114, 32, 32(1)
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2013) 07 CAL CK 0067

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Sreeparna Das, Amicus Curiae, for the Appellant; Sonali Das, for the Respondent

Judgement

Toufique Uddin, J.—This appeal arose out of judgment and order of conviction dated 16.09.2008 and 18.09.2008 passed by learned Additional District & Sessions Judge, Fast Track Court, Khatra, Bankura in Sessions Trial No. 2(9)/2005 arising out of Sessions Case No. 14(6)/2010 convicting the appellants under Sections 498A/304B/34 of the Indian Penal Code and sentencing to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5,000/- each, with default clause.

In the background of this appeal, the fact in a nutshell is as follows:-

A FIR was lodged by the complainant, namely Nirmal Kumar Karak, the father of the victim, to the extent that his daughter Siuli married to one Sanjib Mallick on 22nd Aghrayan, 1409 B.S. and a cash of Rs. 1,00,000/-, 6 voris of golden ornaments and other articles were given as dowry in that marriage. After marriage, his son-in-law and the mother of his son-in-law were demanding more dowry of Rs. 1,00,000/- for the purpose of purchasing one "Trekker". The demand could not be fulfilled. So the accused persons inflicted torture upon his

daughter. Hearing the news of such torture, the complainant went to her daughter's house when her daughter cried and told her father that her husband wanted Rs. 1,00,000/- for purchasing a "Trekker". But the complainant expressed his inability. On 22.04.2003 both the accused persons assaulted his daughter and drove her out from their house. At that time she was pregnant and they gave ultimatum that unless she brought the money, she would not be allowed to enter the house. In the meantime, she was treated by Doctor but the child died. After she returned to her in-law's house, torture started upon her and on 23.09.2003, when her "Mama" went to bring her on the eve of "Durga Puja", the accused persons did not send her. On that very particular date i.e. 23.09.2003 at about 06.00/07.00 p.m. her husband and mother-in-law split kerosene oil upon her person and set her on fire. Then her husband Sanjib brought her to Jhargram Hospital. Receiving that information, the complainant and some others went to Jhargram Hospital and saw the victim was almost burnt. Thereafter, she was referred to NRS Medical College and Hospital and on the way to that Hospital, she disclosed that her husband and mother-in-law split kerosene oil upon her and set her on fire. Another allegation brought by the complainant is that without going to NRS Hospital, his son-in-law brought her to "Sherwood" Nursing Home and on 25.09.2003 they again shifted the victim to "Saviour" Nursing Home. Subsequently, she died on 01.10.2003.

2. A complaint was lodged. After investigation police submitted charge-sheet. The case was committed to the Court of Sessions by the learned Magistrate. Thereafter the learned Trial Court on hearing of both sides framed charge under Sections 498A/304B of the Indian Penal Code against the present appellants. The contents of the charges were read over and explained to the accused persons who pleaded not guilty and claimed to be tried.

3. To contest this case, the prosecution examined as many as 20 witnesses while none was examined from the side of the defence.

4. The accused persons were examined u/s 313 of the Code of Criminal Procedure. The defence case as appeared from the trend of cross-examination of the witnesses and the replies given by the accused persons at the time of examination u/s 313 of the Code of Criminal Procedure is denial of offence with a plea of innocence.

5. On conclusion of trial the learned Court below convicted the present appellants/convict by the impugned judgment.

6. Now the point for consideration is if the impugned judgment suffers from any material irregularity and calls for any interference.

7. Section 498A of the Indian Penal Code reads as under:-

498A. Husband or relative of husband or a woman subjecting her to cruelty.-

(1) Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term

which may extend to three years and shall also be liable to fine.

Explanation.-For the purpose of this Section. "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any persons related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

...

Section 304B of the Indian Penal Code reads as under:-

304B. Dowry death.-

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Since none appeared in this case on behalf of the appellants days together, finding no alternative the Court appointed Ms. Sreeparna Das, Learned Advocate, as Amicus Curiae.

8. The learned lawyer of both sides submits written notes of arguments. In addition, they argued mainly on the following points:-

Learned Amicus Curiae amongst others argued that

- i) There was contradiction surfacing in the evidence of the PW-8 and PW-20.
- ii) There is no instigator word used in this case.
- iii) Fact of torture was not disclosed to anybody.
- iv) There is no live link of the incident.
- v) Dr. Majhi and other village people were not examined.
- vi) No medical papers were collected by the PWs.

On the other hand, the learned lawyer of the State contended that the judgment passed by the learned Court below may be sustained.

9. Learned Amicus Curiae put reliance on the following judgments:-

- i) Deepak Vs. State of Madhya Pradesh, -regarding relevancy of facts and admissibility in regard to dying declaration.
- ii) Durga Prasad and Another Vs. State of M.P., -the conviction order was reversed-benefit of doubt given-except bald statements of victim's mother and brother alleging that victim had been subjected to cruelty and harassment prior to her death, no other evidence adduced to prove that she committed suicide on account of demand of dowry.
- iii) Kans Raj Vs. State of Punjab and Others, regarding the ingredients of "proximity or live link" before death.
- iv) Devinder @ Kala Ram and Others Vs. The State of Haryana, - regarding relevancy of statement u/s 32(1) of the Evidence Act.

10. To appreciate this case from a better angle, some relevant pieces of evidence are required to be mentioned here.

11. The complaint is exhibit 3. Therein it was stated by the complainant, namely Nirmal Kumar Karak that his daughter was married to accused Sanjib Mallick of village Melera, PS - Raipur, on 22nd Agrayan, 1409 B.S. according to Hindu Customs. At that time Rs. 1,00,000/- cash, 6 voris of golden ornaments and other articles were given as dowry to the accused persons. But after sometime the accused persons demanded more Rs. 1,00,000/- for purchasing a "Trekker". The complainant could not fulfill the demand. Thereafter, he got the news of torture upon her daughter. When he met her daughter she was crying and disclosed about the further demand of dowry. The complainant expressed that he is a poor man and he is unable to procure such money. Then, he left the house. Thereafter, on 22.04.2003 the accused persons assaulted her daughter and drove her away. She was carrying at that time. After treatment of the victim, was over, she was sent back to her in-law's place. But on 23.09.2003, the maternal uncle of the victim, Sri Sisir Ghosh, went to bring her on the eve of "Durga Puja" but the accused persons did not sent her. On that very day around 06.30/07.00 p.m., the accused persons poured kerosene oil on the victim and set her on fire. Ultimately she succumbs to her injury.

12. PW-1, 2, 3, 4, 5, 6 and 7 were declared hostile.

13. PW-8 is the father of the deceased. He corroborated the prosecution case by echoing what was stated in the FIR. He stated, at the time of "Astamongla", the appellant no. 1 and the victim came to his house and the victim stated that Sanjib demanded Rs. 1 lac but at first he has to pay Rs. 50,000/-. They went away. But after some days his daughter called him and informed that mother of Sanjib demanded money. But PW-8 expressed his inability. According to him the pregnancy of his daughter was miscarried. Then he learnt the incident of burning of his daughter. He went to Jhargram Hospital and therefrom to various other Hospitals/ Nursing Homes where the victim was sent for treatment. His cross-

examination is significant, having touch of ground reality.

14. PW-9 is the Marketing Executive of "Saviour" Nursing Home, Calcutta. He stated that on that day one Police Officer went to Nursing Home and asked something to the patient and recorded the same in his presence. Dr. Dipankar Mondal, on duty, RMO, and Sister, Gita Das were there. At that time, the patient was able to talk. His evidence cannot be thrown away straightway.

15. PW-10 is the "Mama" (Mother's brother) of the victim. He stated that his niece Jhuma told him that Siuli has committed suicide by fire. He went to deceased's in-law's place to bring her but accused Arati told him to send her after "Bijaya Dashami". At that time the deceased was weeping touching his feet in presence of the mother-in-law as accused persons were committing torture for money for purchasing a jeep. Then he got information after returning therefrom that the victim's condition is serious due to burn injury.

16. PW-11 is a paddy businessman. He has no personal knowledge over the incident.

17. PW-12 was declared hostile. He is a riskhaw-puller. He carried the complainant and his daughter from Binpur Chawk to village Kui.

18. PW-13 stated that Siuli told him about the torture and hurling slang words over demand of more money by her husband and mother-in-law. This witness further stated that about 15 days before her death the victim's mother-in-law called him and he went to their house when the victim initially was hesitating to tell in presence of the accused but after she disclosed him about the torture upon her by the accused persons on demand of money. She also told that she would not be able to stay there further. Thereafter, he got information that the victim caught fire by blasting of a stove in her in-law's house.

19. PW-14 is the Sister of the victim. She corroborated the prosecution case. She added that the husband and mother-in-law of the victim were torturing her sister demanding more money. Towards first part of Baisakh, 1410 B.S., Sanjib dropped her sister at Binpur Bus Stand after inflicting physical torture upon her. Her father picked her up therefrom by a rickshaw having information through others. On 26/27th Baisakh 1410 B.S. he came to know from Dr. Majihi of Binpur that her pregnancy of 3/4 months stood terminated due to physical assault inflicted upon her by the accused persons. Siuli expired by putting fire after pouring kerosene oil upon her person at her in-law's house. She stated that her sister disclosed him everything in the Nursing Home. Further she stated that after departure of her maternal uncle from the in-law's place, her husband assaulted her.

20. PW-15 is a Doctor. He performed the post-mortem and found the following injury:-

Infected ulcers resulting from burn injury all over the body except the unburnt areas were (a) head with upper half of face, (b) dorsal aspects of right hand and

(c) both soles. Evidence of burning and singeing of body hairs was present. The floor of ulcers contained healthy and unhealthy granulation tissue with serosanguinous discharge and foul smell and dark red in colour. Evidence of healing was present at places. No other injury could be detected even on careful dissection and examination under a hand lens.

Opinion: Death was due to the effects of septic absorption from the infected ulcers resulting from burn injury as noted anti-mortem in nature.

I find that percentage of burn injury is 90%.

21. PW-16 is a Nursing Staff. She signed the dying declaration. In her presence the dying declaration was taken. Her signature is Ext. 4/2.

22. She has stated that S.I., Biswajit Saha of Raipur P.S. recorded the statement of Siuli Mallick on 28.09.2003 and on that day she was on duty and Dr. Dipankar Mondal and one Office Staff named Santosh Parida were also present at that time. She successfully met the cross-examination.

23. PW-17 is another Doctor. He also examined Siuli Mallick. He also proved the bed-head ticket. He stated that the patient was mentally fit till her death. He performed the dressing work of the patient after admission.

24. PW-18 is another Doctor. He stated that on 28.09.2003, one local Police Officer came to the Nursing Home where he worked and recorded the statement of the patient in their presence. He signed the dying declaration. His signature is ext. 4/3. It is his further evidence that at that time the patient was talking well and she was cooperative enough. He also stated that so far his knowledge goes the patient was telling that there was disturbance, which took place in her in-law's house. She also told that there was a suicidal attempt on her part by putting fire on her person.

25. Nothing to be fished out from his cross-examination.

26. PW-19 is the mother of the victim. She completely corroborated the prosecution case. She has stated that in Kolkata Nursing Home/Hospital the victim disclosed to her that the accused persons were assaulting her demanding money for which she put fire upon her person.

27. It is true that she has stated in cross-examination she did not say anyone that accused persons were demanding money and torturing her daughter mentally and physically. This does not go to establish that no such alleged incident took place. In our society the parents are so reluctant to spread ill relationship or the factum of assault on demand of dowry to protect the future of their daughter.

28. PW-20 is the I.O. He conducted the investigation. Collected the dying declaration in presence of the nursing staff and Doctor after the same being recorded. He stated in his evidence as regards the hospital witnesses, regarding the point of denial made by the hostile witnesses. His cross-examination was

smooth and consistent. No flaw of investigation appears to have surfaced in his evidence.

29. For reasons recorded herein, I am unable to accept the decision submitted by the Learned Amicus Curiae.

30. Unnatural death at in-laws place obviously causes eyebrows. A victim woman may commit suicide by hanging or burning for various reasons. A woman ties the knot of marriage only to find peace and shelter in safe and sound care of her husband. Any departure of such human behavior has to be taken with a grain of salt. It is not expected from parents or relations or acquaintances that they will falsely rope husband and his relations only to wreck vengeance and punish husband or her-in-laws even when the victim dies due to her extra-marital relationship, if any, or mental frustration or depression etc. on account of other reasons. The probative value and intention of witnesses has to be taken with a touch of ground reality keeping in view the fact that their beloved known victim was tortured and that is why the death was propelled.

31. To attract Section 304B of the Indian Penal Code, the following conditions must be fulfilled:

(i) the death of woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with demand of dowry.

32. When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the above-mentioned ingredients are attracted in view of the special provision, the Court shall presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of prosecution witnesses or by adducing evidence on the defence side.

33. Section 113B of the Indian Evidence Act, 1872 speaks about presumption as to dowry death which reads as under:

113B. Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such persons to cruelty or harassment from or in connection with, any demand for dowry, the Court shall presume that

such persons has caused dowry death.

34. In the present case following factual circumstances stand established:

- a) the deceased was married to accused no. 1.
- b) The deceased died at the place of her husband within a span of seven years.
- c) She died of an unnatural death.

35. Therefore, a presumption automatically may arise u/s 113B of the Indian Evidence Act. It is established by the evidence of the prosecution witnesses that the chain is complete suggesting only the fact that the accused persons perpetrated torture soon before her death over demand of dowry and as such the victim died an unnatural death.

36. The accused persons were examined thoroughly u/s 313 of the Code of Criminal Procedure. It is not denied by the accused persons that the v.g. died at their house. They did not say that the deceased did not meet with the incident at their house. This fact established that the onus of rebutting the presumption lies not on the prosecution but on the accused persons who even did not adduce any D.W. The defence in such situation is to prove why and how the victim lady died as their house. No explanation was given by them.

37. Now the question is whether the oral evidence of the prosecution witness can be relied on. In this case, there is no direct eyewitness.

38. I like to put on record that there are divergent opinions propounded by different Courts over admissibility of statements made by victims to her relations prior to her death but what has to be taken up is a matter of question.

39. In *Kans Raj Vs. State of Punjab and Others*, the Hon''ble Apex Court held "the statement made by the deceased wife to her parents, brothers and acquaintances before her death would not be admissible in evidence in view of provisions of Section 32 of the Evidence Act.

40. In *Bhairon Singh Vs. State of Madhya Pradesh*, the Hon''ble Apex Court held that the statement of deceased persons is admissible in law if the statement is as to cause of death or as to any circumstances of transactions which resulting in her death in a case in which cause of death comes to the question in case where the deceased had told the witnesses against the accused persons, about torture and harassment, is inadmissible u/s 32(1) and such evidence cannot be looked into for any purpose.

41. In *Amar Singh Vs. State of Rajasthan*, the Hon''ble Supreme Court held as follows:-

A. Penal Code, 1860-Sections 304B and 498A and Section 113B, Evidence Act, 1872-Presumption as to dowry death - When arises - prosecution proving that soon before her death deceased had been subjected by appellant to taunts in connection with the demand for dowry-Held, once such a fact is established,

Court has to presume that appellant has committed offence u/s 304B - It is for appellant to rebut this presumption - appellant had not examined any defence witness to rebut the presumption and in his examination u/s 313 of the Code of Criminal Procedure had merely denied the allegations - Hence, conviction of appellant sustainable.

B. Evidence Act, 1872-Sections 32(1) and 60 - "circumstances of transaction which resulted in death" - admissibility of statement made by living person u/s 32(1), though not as a dying declaration as such, provided it satisfies one of the two conditions set forth therein - statements made by deceased before PWs 4 and 5 (her mother and brother respectively) that appellant used to taunt and harass her for dowry within couple of months before her death - Held, evidence of PWs with regard to statement made by deceased is no doubt hearsay, but is admissible u/s 32(1) as to "circumstances of transaction which resulted in her death" - criminal trial - Confession - Extra-judicial confession/Hearsay - admissibility

42. Also in *Inderpal v. State of M.P.*, (2001) 10 SCC 736 the Supreme Court held as follows:-

Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstances of the transactions which resulted in her death

43. In *Mustafa Shahadal Shaikh Vs. The State of Maharashtra*, The Hon'ble Apex Court held that "dowry death-suicide by bride within 7 months of marriage by consuming poison-application of evidence - cruelty-proximity test - Soon before her death" - related witnesses only - conviction confirmed.

44. It was held therein in a case of this nature that in matrimonial death, outsiders cannot be expected to come and depose what had happened in family of deceased - time period which can come within term soon before her death is to be determined by courts depending upon facts and circumstances of each case. Though language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments (Section 304B IPC and Section 113B, Evidence Act), accordingly, determination of period which can come within term "soon before her death" is to be determined by Courts, depending upon facts and circumstances of each case. However, the said expression would normally imply that interval should not be much between cruelty or harassment concerned and death in question. There must be existence of a proximity and live link between effect of cruelty based on dowry demand and death concerned. If alleged incident of cruelty is removed in time and has become stale enough not to disturb mental equilibrium of woman concerned, it would be of no consequence.

45. In *Tulshiram Sahadu Suryawanshi and Another Vs. State of Maharashtra*, the Hon'ble Supreme Court held that "A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. Section 106 however, is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference.

46. In *Kashmir Kaur and Another Vs. State of Punjab*, the Hon'ble Apex Court has held that "Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B IPC. Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied. The specific significance to be attached is to the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence."

47. In this case, it transpired that the father-in-law of the victim was a Police personnel. He used to live away from the residence. The father of the victim stated Sanjib and her daughter came to his house in the month of Falgun and at that time her daughter told him that he have to pay Rs. 1,00,000/- to Sanjib and at first he have to pay Rs. 50,000/-. Thereafter, they went. After some days he got the information her daughter called him and she was in thundering mood. He went to her in-laws place when the mother of Sanjib demanded money from him. There is no cross-examination on this point. The incident of putting fire took place on 23.09.2003, FIR was lodged on 27.09.2003, the dying declaration was recorded on 28.09.2003 and the victim died on 01.10.2003. The victim died after 10 months of her marriage.

48. PW-12, the riskhaw van puller admitted that from beneath a coconut tree he

carried the victim and her father to village Kui. He turned hostile and denied that he made statement to police that in Boisakh a quarrel took place between husband and wife near their riskhaw stand. But PW-20, i.e. I.O. stated that PW-12 said so. Therefore, PW-12 does not seem to be a truthful witness. The consistence evidence of the victim's father, PW-7 and Sister, PW-14, shows that accused Sanjib quarreled and assaulted the victim and left her at Bus Stand.

49. From the evidence clearly it appears that Siuli was compelled to put fire on herself due to family trouble. What is family trouble can be gauged from the materials suggesting that over the demand of dowry there was family trouble. At the time of examination u/s 313 of the Code of Criminal Procedure about question no. 9 the accused persons replied they have got nothing to say about the incident of attempting to commit suicide by the victim putting fire on herself. This reply is an evasive answer.

50. The victim girl was not suffering from any disease. She died an unnatural death in her in-law's place soon after her marriage. The prosecution witnesses especially the relations were unlikely to let out the real culprit. They conjointly disclosed the factum of torture. Careful scrutiny says so. So the prosecution covered the theory of presumption by leading evidence.

51. Exhibit 11 clearly reveals that on the date of incident she was mentally tortured by the accused persons. It contents that there was a demand of dowry from her immediately before the incident. The evidence of PWs 8, 10, 13 and 14, soundly proves the demand of dowry. The accused persons also insulted PW-10, who went to bring her niece on the occasion of "Durga Puja". The record also shows that after inflicting torture, her husband dropped her at Binpur Bus Stand wherefrom the father of the victim picked her up and reached home by a Rikshaw.

52. The father of the victim deposed her daughter was tortured when she was pregnant. She was examined at Binpur Hospital by Dr. Majhi. Therefrom, he learnt that the pregnancy of his daughter was miscarried due to assault. Neither Dr. Majhi has been examined nor her injury has been proved but the cross-examination shows that the victim was taken to Dr. Majhi at Binpur. There is no suggestion that the victim was not taken to Dr. Majhi.

53. The evidence of maternal uncle is very important. He stated that after marriage, the husband of the victim was torturing the victim over the demand of more money and Siuli stated him all these things before 15 days of her death. He stated that her mother-in-law called him at their residence when Siuli did not want to disclose all the things in presence of her mother-in-law. But when he talked her personally she disclosed that the accused persons again inflicting torture upon her over demand of money. He came back. Thereafter, the incident took place. The dying declaration shows that after his departure her husband assaulted her.

54. This proves the live link between the cause of death and the death.

55. From the place of occurrence, kerosene jar and some burnt articles and kerosene soaked soil of kitchen were seized.

56. Next comes the question of dying declaration. True it is that dying declaration was recorded by the Police Officer but therein the RMO, another Doctor and an attendant were present. This is sufficient for recording a dying declaration. No prejudice was caused or no infirmity noticed. The dying declaration appears to be fluently and elegantly recorded. RMO, Dr. Dipankar Mondal, signed there, sister Gita Das put her signature. What else is required. It is enough.

58. This document exhibit 4 is sufficient for conviction of the accused persons.

59. Hence the appeal fails.

60. Let the copy of the judgment and the Lower Court Record be sent back to the Lower Court immediately. Urgent Xerox Certified copy of this order be given to the parties, if applied for, upon compliance of necessary formalities.