SURESH CHANDRA JANA A

v.

THE STATE OF WEST BENGAL & ORS.

(Criminal Appeal No. 31 of 2008)

AUGUST 11, 2017 B

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860:

S.302 – Acid attack – Death due to burn injuries – Earlier, victim had been allegedly raped by accused 'P' – During pendency C *of rape case, 'P' and one 'R' allegedly threw acid at the victim – Her neighbours took her to the hospital – Neither any written complaint was filed to police, nor anyone from the hospital informed the police about the incident – Victim requested PW-7 to write her complaint and send the same to the police by registered post – Victim succumbed* D *to the burn injuries and died – No dying declaration was recorded – Thereafter, case u/s.302 was registered – In rape proceedings, P' was acquitted by trial Court as victim was no more alive to adduce evidence – However, in proceeding u/s.302, trial court convicted both the accused and sentenced 'P' to death and 'R' to R.I. for life – Reference to the High Court for confirmation of death sentence* E *was rejected – Further, conviction of both 'P' and 'R' was set aside – On appeal, held: High Court adopted a casual approach in appreciating the facts, circumstances and evidence of the case – High Court allowed itself to be swayed by the fact that the FIR was delayed by 23 days but failed to appreciate the fact that the victim,* F *had a moron husband and two little kids at home, and none of them were able to go to police station and get FIR recorded – She had to request PW-7 to write down her complaint and sent it to police by registered post – In the circumstances, delay in lodging the FIR is fully explained – Death of the victim on account of burn injuries due to acid attack was well corroborated from the statement of the* G *doctors (PW-6 and PW-8) – Statement given by victim in the FIR scribed by PW-7, should have been treated as her dying declaration – The victim specifically mentioned in her report about the motive part of 'P', who allegedly raped her and that case was pending – It is not correct approach to simply pick up the minor lapses of the* H

A *investigation and acquit accused, particularly when the ring of truth is undisturbed – High Court erred in holding 'P' not guilty – However, 'R' had no motive to commit the crime, nor it can be said that he had common intention with 'P' to cause burn injuries with acid on victim – View of the High Court to hold 'R' not guilty cannot be said to be erroneous – Crime against Women.*

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s.302 – Murder – Two possible views – Accused 'P' contended that where two views are possible and the courts below have taken different views, the view favouring the accused should be accepted – Held: Insofar the view taken by the High Court in not holding accused 'P' guilty is concerned, the same is not reasonably C *possible view, for the reason that it is against the weight of the evidence on record ignoring completely the circumstances in which the victim reported the matter to police, with the help of a stranger and her statement in the FIR is fully corroborated, apart from medical evidence on record.*

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s.302 – Murder – Reasonable doubt – It is not every doubt but only a reasonable doubt of which benefit can be given to the accused – A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt – If the benefits of all kinds of doubts raised on behalf of the accused are E *accepted, it will result in deflecting the course of justice – The cherished principles of golden thread of proof of reasonable doubt which runs through web of law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt.*

Code of Criminal Procedure, 1973 – s.313 – Accused F *contended that the evidence recorded in trial Court was not properly put to the accused u/s.313 – Held: In instant case, the Court has complied with the provisions of s.313 – Sub-section (b) of s.313 requires the court to question the accused generally on the case after prosecution evidence is over – It does not require that each and every sentence of the prosecution evidence has to be* G *re-written and read over once again while examining the accused u/s.313 of Cr.P.C.*

Administration of Justice – Administration of Criminal Justice – Woman allegedly raped by 'P' – During the pendency of the rape case, 'P' and one 'R' threw acid at the victim – Although H *she narrated the incident to the doctor, no written complaint was*

filed to police – Victim passed away due to shock and sepsis caused by the acid attack – No dying declaration was recorded – Trial Court convicted both accused and sentenced 'P' to death and 'R' to R.I. for life – However, High Court dismissed the death reference and acquitted the accused on hyper technical grounds of delay and laches in investigation and prosecution – Held (per N.V. Ramana, J.): A woman was raped and subsequently punished for raising voice which ultimately led to her demise – The criminal justice system has not served the deceased from being victimized – It is admitted by the treating doctor that I.O. had requested for recording a dying declaration, which was not allowed by him and proper case history was also not maintained – The conduct of the doctor needs to be evaluated in light of his utter disregard for professionalism –Another aspect is regarding the defective investigation and prosecution – If a negligent investigation or omissions or lapses due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken – The basic requirement that a trial must be fair is crucial for any civilised criminal justice system – Every stakeholder in this criminal justice system is expected to act with a sense of fairness to bring out the truth so that punishment can be meted to those who deserve – Ethics – Medical – Indian Medical Council (Professional conduct, etiquette and ethics) Regulations, 2002 – Evidence – Dying Declaration.

Disposing of the appeals, the Court

HELD:

Per Prafulla C. Pant, J.:

1. The High Court has allowed itself to be swayed by the fact that the First Information Report in the present case is delayed by twenty three days but it has failed to appreciate the fact that the helpless woman, who was admitted by the neighbours in the hospital, had a moron husband and two little kids at home, and none of them were able to go to police station and get the First Information Report recorded. The record clearly shows that the deceased, in pathetic condition, has taken help of PW-7, who had come in the hospital to see his patient, and she requested him to write down her complaint and send it to police by registered post. The said witness (PW-7) appears to have done only this much

A favour to the victim that he wrote down her complaint, got her L.T.I put on the complaint and sent it by ordinary post to the police, which admittedly was received by the police. PW-2, the neighbour, has further disclosed that when the victim cried and she told that the accused had thrown acid on her, he took the victim to the hospital. He has further stated that on way to hospital, B the victim was first taken to the Police Station but the police advised him to take the victim to the Hospital. It appears from the record that after the victim was admitted in the hospital, neighbours did not bother to see her. In the circumstances, the delay in lodging the First Information Report is fully explained C on the record. [Para 14] [16-D-H; 17-A]

2. It has come in the statement of PW-7, the scribe of the report, and that of PW-11 Inspector who received the written complaint by post and endorsed it to PW-9 Sub Inspector to investigate, that the envelope in which the complaint was received D was not on the record. PW-11 Inspector has further stated that the envelope got misplaced. Merely for said lapse of not producing the envelope on the part of the investigating agency is not sufficient in the present case to create reasonable doubt in the prosecution story. It is almost impossible to come across a single case where the investigation was completely flawless or E absolutely foolproof. The function of the criminal court is to find out the truth and it is not the correct approach to simply pick up the minor lapses of the investigation and acquit the accused, particularly when the ring of truth is undisturbed. [Para 15] [17-B-D]

F 3. It is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man G would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. The administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If the benefits of all kinds of doubts raised on behalf of the

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accused are accepted, it will result in deflecting the course of justice. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. [Para 16] [17-E-H] A

4. Death of the victim on account of burn injuries suffered by her due to acid attack gets corroborated not only from the statement of PW-6 who attended her in the hospital, but also from the statement of PW-8 who conducted post mortem examination and opined that the deceased had died of shock and sepsis. He has further mentioned in his report (Exh. 5) about the ante mortem chemical burn injuries on the body of the deceased. [Para 17] [18-A-B] B C

5. As far as not recording of dying declaration is concerned, the High Court has failed to appreciate the fact that PW-9 Sub Inspector has specifically stated that he did make an attempt to record the dying declaration of the victim, but the Medical Officer of the Hospital advised him that there was no need to record the dying declaration as the patient was recovering. This fact gets corroboration from the statement of PW-6 who has admitted that he opined that there was no need of dying declaration recorded as the patient was responding well to the treatment. The said fact is on the record in Exh. 3. In the circumstances of the case, the statement of the victim, given by her in the First Information Report (Exh. 4) scribed by PW-7 should have been treated as her dying declaration. PW-7 has proved the left thumb impression put by the victim on the complaint before it was sent to the police by post. This witness has underwent cross-examination and nothing has come out which creates doubts in his testimony. The victim has specifically mentioned in her report about the motive on the part of the accused 'P' who had allegedly raped her and case was pending. The prosecution story given in the F.I.R also gets corroboration from the statement of PW-1, nephew of the victim. [Para 18] [18-C-F] D E F G

6. So far as variation in time mentioned in the charge framed is concerned, it is only when prejudice is caused to the accused in defending himself, the benefit of such defect can be given to the accused. Section 215 of the Code of Criminal Procedure H

A provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence of those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The High Court appears to have taken a view which is contrary B to the provision contained in Section 215 read with illustration (d) of that Section and Section 464 of the Code of Criminal Procedure. [Para 20] [19-A-C]

7. In the present case, neither the spirit of Section 313 is forgotten, nor it can be said that the court has not complied with C said provision. Sub-section (b) of Section 313 requires the court to question the accused generally on the case after the prosecution evidence is over. It does not require to re-write hundred pages evidence in another hundred pages to record the statement of the accused under the Section. It should be borne in mind that D entire evidence has been recorded in the presence of the accused or his counsel, and before he enters into his defence, what is required is that he is generally asked on the case, after the prosecution evidence is over, to explain any circumstances in the evidence against him. It does not require that each and every sentence of the prosecution evidence has to be re-written and E read over once again while examining the accused under Section 313 of the Code of Criminal Procedure. [Para 21] [19-D-F]

8. From the evidence on record, the view taken by the High Court so far as it relates to accused 'P' is concerned, the same is not reasonably possible view, for the reason that it is against F the weight of the evidence on record ignoring completely the circumstances in which the victim reported the matter to police, with the help of a stranger and that her statement in the F.I.R is fully corroborated from the statements of PW-1, PW-2 and PW-7, apart from the medical evidence on record. [Para 22] [19-G-H; 20-A]

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9. So far as the conviction of accused 'P' is concerned, the High Court has erred in holding him not guilty. The charge of offence punishable under Section 302 IPC is fully established on the record as against accused 'P' as found by the trial court. So far as 'R' is concerned, undoubtedly he had no motive to commit

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the crime, nor is it found that he was having acid with him, as such, it cannot be said that he had any common intention with accused 'P' to cause burn injuries with acid on the victim. It is possible that he might have accompanied accused 'P' to pressurize the victim to withdraw the rape case against him as he was witness in said case. As such, taking such fact into consideration by the High Court to hold him not guilty beyond reasonable doubt cannot be said to be erroneous. [Para 23] [20-B-D]

10. Insofar as quantum of sentence is concerned, it is settled law that life imprisonment is the rule and the death sentence is an exception, and the death sentence can be imposed only when life imprisonment appears to be altogether inadequate punishment in the relevant circumstances of the crime. In the present case, there is no criminal history of the accused 'P' and there is no evidence that he is a continuing threat to the society. Considering the fact that meanwhile accused 'P' has been acquitted of the rape charge by the trial court, on the charge of murder, awarding sentence of imprisonment for life and direction to pay fine of Rs.10,000/- failing which to undergo rigorous imprisonment for a further period of two years to the accused 'P' would meet the ends of justice. [Para 24] [20-E-G]

Per N. V. Ramana, J. (Concurring):

1. Usually *vitriolage* or acid attack has transformed itself as a gender based violence. Acid attacks not only cause damage to the physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development. Although acknowledging the seriousness of the acid attack laws were amended in 2013, yet the number of acid attacks are on the rise. Moreover this Court has been passing various orders to restrict the availability of corrosive substance in the market which is an effort to nip this social evil in the bud. It must be recognized that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society. [Para 5] [22-E-G]

2. The deceased was admitted to the hospital on 27.10.1998 and she died on 23.11.1998. For 26 days she was struggling between life and death in the hospital and there was no dying

A declaration recorded. It is specifically admitted by the treating doctor that the I.O. had requested for recording a dying declaration which was not allowed by him as he thought that she was responding well to the treatment but at the same time he admits that the general condition of the patient was very poor. Further he admits that she was not examined before tendering such B opinion and proper case history was also not maintained. Therefore the conduct of the doctor (PW 6) needs to be evaluated in light of his utter disregard for professionalism. In criminal cases, doctors inevitably play a very important role, they have a bounden duty to maintain professionalism in assessing situation C and arranging for a dying declaration to be recorded. Moreover he should have strictly maintained the case record which is very crucial for successful prosecution. Such good practice, of maintenance of record, is made part of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. [Para 6] [22-G; 23-A-C]

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3. Every stakeholder in this criminal justice system is expected to act with a sense of fairness to bring out the truth so that punishment can be meted to those who deserve. Although courts are provided with the duty to dispense justice, it cannot E be denied that effective dispensation of justice by the courts in this country requires support of all the stakeholders. In light of the above, every stakeholder is expected to be aware of their responsibility and work towards achieving ends of the criminal justice system. [Para 8] [24-B-C]

F 4. If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness. [Para 9] [24-D]

G 5. The basic requirement that a trial must be fair is crucial for any civilized criminal justice system. It is essential in a society which recognizes human rights and is based on values such as freedoms, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time

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to protect the innocent. In this process courts should always be in search of the truth and should come to the conclusion, based on the facts and circumstances of each case, without defeating the very purpose of justice. [Para 10] [24-E-F]

Paniben (Smt.) v. State of Gujarat **(1992) 2 SCC 474 : [1992] 2 SCR 197** ; *Munnu Raja and Anr. v. State of Madhya Pradesh* **(1976) 3 SCC 104 : [1976] 2 SCR 764** ; *State of U.P. v. Ram Sagar Yadav and Ors.* **(1985) 1 SCC 552 : [1985] 2 SCR 621** ; *Ramawati Devi v. State of Bihar* **(1983) 1 SCC 211** ; *Gajula Surya Prakasrao v. State of Andhra Pradesh* **(2010) 1 SCC 88 : [2009] 15 SCR 789** ; *State of Gujarat v. Hasmukh @ Bhikha Gova Harijan* **(1996) 1 GLR 292** ; *Muniammal v. The Superintendent of Police, Kancheepuram District, Kancheepuram, (Decision of Madras High Court in* **Criminal Original Petition No. 12582 of 2007)** ; *Dr. Indrajit Khandekar v. Union of India and Ors.*(**Decision of High Court of Judicature at Bombay : Nagpur bench) in W.P. No. 4974 of 2012)** ; *Ram Bihari Yadav v. State of Bihar & Ors.*(**1998) 4 SCC 517 : [1998] 2 SCR 1097 – referred to.**

Case Law Reference

[1992] 2 SCR 197	**referred to**	**Para 7**
[1976] 2 SCR 764	**referred to**	**Para 7**
[1985] 2 SCR 621	**referred to**	**Para 7**
(1983) 1 SCC 211	**referred to**	**Para 7**
[2009] 15 SCR 789	**referred to**	**Para 7**
(1996) 1 GLR 292	**referred to**	**Para 8**
[1998] 2 SCR 1097	**referred to**	**Para 9**

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 31 of 2008.

From the Judgment and Order dated 16.02.2006 of the High Court of Judicature at Calcutta in Death Reference No.4 of 2005 with C.R.A. No.599 of 2005

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Criminal Appeal No. 32 of 2008.

Rana Mukherjee, Sr. Adv., S. K. Bhattacharya, Niraj Bobby Paonam, Tomthinnganbi Koijam, Raja Chatterjee, Chanchal Kumar C Ganguli, R. Bhunya, Adeel Ahmed, Anip Sachthey, Parijat Sinha, V. N. Raghupathy, Dipak Kumar Jena, Ms. Minakshi Ghosh, Manish Kumar, J. Das, Advs. for the appearing parties.

The Judgments of the Court were delivered by

PRAFULLA C. PANT, J. 1. These appeals are directed against D judgment and order dated 16.02.2006, passed by the High Court at Calcutta in Death Reference No. 4 of 2005 and Criminal Appeal No. 599 of 2005 whereby the Death Reference was rejected, and the appeal of the convicts was allowed, their conviction and sentence recorded by the Additional Sessions Judge, Fast Track (1st Court), Contai, against E accused respondents in Sessions Case No. LV/March/2004 in respect of offence punishable under Section 302 of Indian Penal Code (IPC) was set aside, and they were acquitted of the charge.

2. Before the incident in question, the hapless woman (deceased in the present case) had complained that she was raped by accused- F respondent Purnendu Kumar Patra on 28.04.1997. She complained the matter to Panchayat, and when no action was taken, on 26.09.1997 she lodged a First Information Report against the aforesaid accused person, and a case in respect of offence punishable under Section 376 IPC was registered against him. The victim got her statement recorded under Section 164 of Code of Criminal Procedure before the Judicial Magistrate, G Third Court, Contai.

3. In order to teach lesson to the victim, in the intervening night of 26.09.1998 and 27.09.1998, two persons including the aforesaid accused Purnendu Kumar Patra knocked her door and when she came out, acid was thrown at her. She cried for help. Her husband was moron who

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was of little help. She had two little kids in the house. The neighbours, who rushed to the spot, stated to have taken the victim first to the police station and thereafter took the deceased to Sub Divisional Hospital, Contai, where she was admitted for the treatment. No written complaint appears to have been given to the police at that point of time. At the time of her admission in the hospital, she said to have disclosed to the attending doctor PW-6 B. Debroy the names of the two accused, namely Purnendu Kumar Patra and Rabin Jana as the two persons who came to her house. It appears that no one from the hospital bothered to inform to the police about the incident. Since there was no relative of hers in the hospital, on 31.10.1998 she requested PW-7 Joyram Jana (who used to live nearby Contai Sub Divisional Hospital and happened to have come to the hospital to see some other patient), to write her complaint and send the same to the police by registered post. English translation of her written complaint (original in Bangla), which is Exh. 4, is reproduced below: -

"To
The O/c,
Contai P.S.
District: Midnapore.

Sir,

This is my humble submission that I, Smt. Saraswati Guchhait W/o Sri Niranjan Guchhait, am resident of Karalda Nimakbarh, P.S. Kanthi (Contai), Dist. Midnapore.

On 27.10.1998 (English equivalent) when I was injured with acid, hurled at me by under mentioned two miscreants, I went to your Police Station and thereafter as instructed at the Police Station I am now admitted to bed no. 33 (female) at Kanthi Sub-Divisional Hospital. My husband is mentally a very nitwit person, in a sense almost mentally handicapped. The miscreant no. 1 had raped me, and the case no. G.R. 756/97 against him is pending. As these two persons are very terrorizing in nature, due to fear, none of my relatives and neighbours are ready to go to the police station. On Thursday, 29.10.1998 (English equivalent) at 7.00 p.m. the under mentioned two miscreants brought another person unknown to me to my bed (in the hospital), got identified me to him. They said which I heard - 'we are talking about this Maal (slang). Can you do it?' Then those three persons immediately went out of the room.

A Now, I am much frightened, these persons may cause me harm at any time. As I am bed ridden, I could not inform the police station about this. As I am illiterate, I requested a person to write this complaint and send it to you through registered post (sic.) According to my request he wrote this, read it to me and made me put down my L.T.I.

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God knows whether this complaint would reach you or not. If you receive this statement, then for God's sake, kindly take at least some steps against these miscreants so that life of a helpless woman could be saved from these terrible miscreants and great justice done to me. It is humbly submitted.

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Dated: 31.10.1998

THE NAMES OF THE MISCREANTS

Purnendu Kumar Patra s/o Late Bankim Chandra Patra of P.O. Karalda, Nimakbarh, P.S. Kanthi. District: Midnapore

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Rabin Jana s/o Sri Satyananda Jana of Karalda Nich, P.O. Karalda Nimakbarh, P.S. Kanthi, District: Midnapore.

I read out the entire description to the applicant and made her understand

Yours humbly seeking favour L.T.I. of

Smt. Saraswati Guchhait by pen of Sri Joyram Jana

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Sd/- Sri Joyram Jana"

4. The aforesaid report was sent by ordinary post by PW-7 Joyram Jana, who scribed it. The same reached at the Police Station, Contai on 07.11.1998. The following endorsement was made by the PW-11 Inspector Alok Kumar Ghosh, at the end of the complaint after it is received: -

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"Received through postal Dak today (7.11.98)
At 22.00 hrs. and initiated Contai P.S. case no. 227/98 dt. 7.11.1998 u/s. 326/307 IPC

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Sd/- Illegible
O/c. Contai P.S. 7.11.98 Officer-In-charge Contai P.S., Midnapore."

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5. PW-11 Inspector Alok Kumar Ghosh who made above endorsement on the complaint, deputed PW-9 Sub- inspector Dibakar Bhattacharjee to investigate the matter. GR No. 798 of 1998 was registered. Shockingly no dying declaration of the victim was got recorded, as PW-6 Dr. B. Debroy, who was attending the victim, advised to the Investigating Officer that there was no need for the dying declaration as the patient was responding well to the treatment. But the victim succumbed to the burn injuries and died on 23.11.1998, i.e. 26 days after the incident. As such, the case appears to have been converted from offences punishable under Sections 326, 307 IPC to one under Section 302 IPC. The post mortem examination on the dead body was conducted by PW-8 Dr. Tapas Kumar Chatterjee who prepared the autopsy report (Exh. 5) and opined that the deceased had died due to shock and sepsis. After investigation, the Investigating Officer submitted charge-sheet against accused-respondents namely Purnendu Kumar Patra and Rabin Jana for their trial in respect of offence punishable under Section 302 IPC.

6. The proceedings relating to earlier incident dated 26.09.1997 in respect of offence of rape, arisen out of G.R. No. 756 of 1997, were pending at the time of death of the deceased. In said case which gave rise to S.T. No. 41 of 2004, accused-respondent Purnendu Kumar Patra was acquitted during the pendency of this case on 07.02.2012 by the trial court as the victim was no more alive to adduce evidence, and witness of said case namely - Rabindra Nath Jana, (one of accused respondents in the present case) and few others turned hostile. Copy of said order is annexed with the affidavit (Annexure R1) filed before this Court on behalf of accused-respondent Purnendu Kumar Patra.

7. In the present case (arising out of G.R. No. 798 of 1998 relating to murder) when the charge framed and accused Purnendu Kumar Patra and Rabin Jana pleaded not guilty and claimed to be tried, the prosecution got examined PW-1 Dipak Kumar Guchhait (uncle of the deceased), PW-2 Sudha Krishna Jana (neighbour of the deceased), PW-3 Shambhu Ram Das, PW-4 Niranjan Guchhait, husband of the deceased (unable to understand questions and give answers), PW-5 Sudhir Ch. Maity, PW-6 Dr. B. Debroy (who admitted the victim in the hospital), PW-7 Joyram Jana (scribe of the complaint), PW-8 Dr. Tapas Kumar Chatterjee (who conducted post mortem examination), PW-9 Sub Inspector Dibakar Bhattacharjee (Investigating Officer), PW-10 Sub Inspector Gopal

A Chakraborty (who prepared the inquest report) and PW-11 Inspector Alok Kumar Ghosh. The evidence was put to the accused under Section 313 of Code of Criminal Procedure, in reply to which they stated the same to be false. No evidence in defence appears to have been adduced on behalf of the accused persons. The trial court after hearing the parties found both the accused guilty of charge of offence punishable B under Section 302 IPC and after hearing on sentence, accused-respondent Purnendu Kumar Patra was sentenced to death by directing him to be hanged by neck until his death subject to confirmation by the High Court of Calcutta, and co-accused Rabin Jana was sentenced to rigorous imprisonment for life and directed to pay fine of Rs.25,000/-, in C default to suffer further rigorous imprisonment for a period of five years. Reference was made by the trial court to the High Court for confirmation of death sentence. Both the convicts preferred criminal appeal against the order passed by the trial court. The High Court disposed of the Reference and the appeal filed by the convicts by a common order, impugned before us, by which the Death Reference was rejected and D the accused were acquitted. Aggrieved by the judgment of the High Court, appellant (brother of the deceased) filed Criminal Appeal No. 31 of 2008 and the State of West Bengal has filed Criminal Appeal No. 32 of 2008 before this Court, through the Special Leave Petitions.

8. We have heard learned counsel for the parties and perused the E entire record.

9. The High Court has acquitted the accused with the following observations: -

> ".....It is claimed on behalf of the prosecution that there was F strong motive behind the murder of Saraswati Guchait. Since she filed a case alleging commission of rape on her by the appellant namely Purnendu Kumar Patra, the appellants were biding for an opportune moment to get rid of the principal witness. In this connection it may be mentioned that the other appellant Rabin Jana was cited just as a witness in that case. There was apparently G no reason whatsoever for the witness to pour acid on Saraswati Guchait. The house in question wedged between the several houses. Her husband and sons were also inside her house at the time of the alleged incident. It is doubtful as to whether she was actually called at late hours in the night. It is equally doubtful as H to whether she opened the door on receiving the call of a person

who was alleged to have committed rape on her earlier. The story presented through P.W.1, P.W. 2, P.W. 3 and P.W. 5 is not believable. The statement of the principal witness are not consistent. Too much importance should not have been placed on the contradictory statements of the witnesses. Indifferent and nonchalance on part of the near relations, neighbours police officers and the doctors were not properly taken note of. Effort was made to entangle the appellants long after the alleged incident. No enquiry was conducted for ascertaining the reasons for her sustaining injury. The statement of the injured was not recorded either. There should not have been conviction and sentence on such unsatisfactory materials before the court. Added to it, were the defects in framing charges and examination of the appellants under section 313 of the Code of Criminal Procedure. The conviction and sentence is thus found not sustainable."

10. On behalf of the appellant Suresh Chandra Jana, brother of the deceased, Shri S.K. Bhattacharya, Advocate, submitted before us that it is a case of total apathy coupled with the erroneous appreciation of evidence by the High Court resulting in acquittal of perpetrators of heinous crime of which a hapless poor lady, who had earlier been raped, made to die by throwing acid on her. It is further submitted that the accused-respondent Purnendu Kumar Patra, who had political patronage, has been allowed by the High Court to get emboldened with little regard for human dignity and honour. It is argued that a fault finding approach adopted by the High Court is against the principles of doing justice to the victim. The statements of witnesses were read over before us.

11. Learned counsel for the State also argued on the same lines in the separate appeal filed against the impugned order passed by the High Court.

12. On the other hand, Shri Rana Mukherjee, learned senior counsel appearing on behalf of the accused-respondents, contended that where two views are possible and the courts below have taken different views, the view favouring the accused should be accepted. He further pointed out that in the present case the First Information Report is delayed by twenty three days, and no dying declaration was got recorded though the victim died after twenty six days of the incident, as such the High Court did not err in rejecting the Death Reference made by the trial court, and rightly acquitted the accused. It is also pointed out before us

A that even the envelope in which the complaint said to have been sent by post to the police, was not placed on record by the Investigating Officer. It is submitted on behalf of the accused-respondents that the time given in the charge framed was different than what is alleged by the prosecution. It is further submitted by Shri Mukherjee that the evidence recorded by the trial court was not properly put to the accused under B Section 313 of the Code of Criminal Procedure. Lastly, it is argued that accused-respondent Rabin Jana had no motive to commit the murder of the deceased.

13. Having heard the submissions of learned counsel for the parties and going through the record of the case, we are of the view that the C present case is an example of complete insensitiveness on the part of the police, the doctors and the system towards the victim. The High Court appears to have adopted a casual approach in appreciating the facts, circumstances and evidence of the case, particularly, in a case where the trial court has awarded capital punishment in a sensitive matter.

D 14. The High Court has allowed itself to be swayed by the fact that the First Information Report in the present case is delayed by twenty three days but it has failed to appreciate the fact that the helpless woman, who was admitted by the neighbours in the hospital, had moron husband and two little kids at home, and none of them were able to go to police E station and get the First Information Report recorded. Observations of the trial court while examining PW-4 Niranjan Gucchait that he is incapable to understand questions and answers, and he could not be examined, has been completely ignored by the High Court. It has come on the record in the evidence of PW-2 Sudha Krishna Jana as to how when neighbours rushed, he took the victim to the Hospital and got her F admitted there. The record clearly shows that the deceased, in pathetic condition, has taken help of PW-7 Joyram Jana, who had come in the hospital to see his patient, and she requested him to right down her complaint and send it to police by registered post. The said witness (PW-7) appears to have done only this much favour to the victim that he wrote down her complaint, got her L.T.I put on the complaint and sent it G by ordinary post to the police, which admittedly was received by the police only on 07.11.1998. PW-2 Sudha Krishna Jana, the neighbour, has further disclosed that when the victim cried – "Moregalam" (I am dying) and she told that the accused had thrown acid on her, he took the victim to the hospital. He has further stated that on way to hospital, the H victim was first taken to Contai Police Station but the police advised him

to take the victim to Contai Sub Divisional Hospital. It appears from the record that after the victim was admitted in the hospital, neighbours did not bother to see her. In the circumstances, we find that the delay in lodging the First Information Report is fully explained on the record and is fatal for the prosecution case. A

15. No doubt, it has come in the statement of PW-7 Joyram Jana, the scribe of the report, and that of PW-11 Inspector Alok Kumar Ghosh, who received the written complaint by post and endorsed it to PW-9 Sub Inspector Dibakar Bhattacharjee to investigate, that the envelope in which the complaint was received was not on the record. PW-11 Inspector Alok Kumar Ghosh has further stated that the envelope got misplaced. In our opinion, merely for said lapse of not producing the envelope on the part of the investigating agency is not sufficient in the present case to create reasonable doubt in the prosecution story. In our opinion, it is almost impossible to come across a single case where the investigation was completely flawless or absolutely foolproof. The function of the criminal court is to find out the truth and it is not the correct approach to simply pick up the minor lapses of the investigation and acquit the accused, particularly when the ring of truth is undisturbed. B C D

16. It may be mentioned that it is not every doubt but only a reasonable doubt of which benefit can be given to the accused. A doubt of a timid mind which is afraid of logical consequences, cannot be said to be reasonable doubt. The experienced, able and astute defence lawyers do raise doubts and uncertainties in respect of evidence adduced against the accused by marshalling the evidence, but what is to be borne in mind is - whether testimony of the witnesses before the court is natural, truthful in substance or not. The accused is entitled to get benefit of only reasonable doubt, i.e. the doubt which rational thinking man would reasonably, honestly and conscientiously entertain and not the doubt of a vacillating mind that has no moral courage and prefers to take shelter itself in a vain and idle scepticism. The administration of justice has to protect the society and it cannot ignore the victim altogether who has died and cannot cry before it. If the benefits of all kinds of doubts raised on behalf of the accused are accepted, it will result in deflecting the course of justice. The cherished principles of golden thread of proof of reasonable doubt which runs through web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. E F G H

17. Death of the victim on account of burn injuries suffered by her due to acid attack gets corroborated not only from the statement of PW-6 Dr. B. Debroy, who attended her in the hospital, but also from the statement of PW-8 Dr. Tapas Kumar Chatterjee, who conducted post mortem examination on 23.11.1998 and opined that the deceased had died of shock and sepsis. He has further mentioned in his report (Exh. 5) about the ante mortem chemical burn injuries on the body of the deceased.

18. As far as not recording of dying declaration is concerned, the High Court has failed to appreciate the fact that PW-9 Sub Inspector Dibakar Bhattacharjee has specifically stated that he did make an attempt to record the dying declaration of the victim, but the Medical Officer of Contai Sub Divisional Hospital advised him that there was no need to record the dying declaration as the patient was recovering. This fact gets corroboration from the statement of PW-6 Dr. B. Debroy who has admitted that he opined that there was no need of dying declaration recorded as the patient was responding well to the treatment. The said fact is on the record in Exh. 3. In the circumstances of the case, the statement of the victim, given by her in the First Information Report (Exh. 4) scribed by PW-7 Joyram Jana, should have been treated as her dying declaration. PW-7 Joyram Jana has proved the left thumb impression put by the victim on the complaint before it was sent to the police by post. This witness has underwent cross-examination and nothing has come out which creates doubts in his testimony. The victim has specifically mentioned in her report about the motive on the part of the accused-respondent Purnendu Kumar Patra, who had allegedly raped her and case with G.R. No. 756 of 1997 was pending. The prosecution story given in the F.I.R also gets corroboration from the statement of PW-1 Dipak Kumar Guchhait, nephew of the victim.

19. The victim has further stated in her complaint, which can be treated as dying declaration, that she did go to the police station after she was injured with acid hurled at her and police instructed that she be taken to the hospital where she was admitted in bed No. 33 (female ward). However, in her complaint Exh.4, the deceased has not given any specific role to accused-respondent Rabin Jana, nor any motive appears to be on his part to take life of the victim. He was said to be a member of the Panchayat and the Panchayat had taken no action against Purnendu Kumar Patra in connection with the earlier incident of alleged rape whereafter she got lodged the report of said case.

20. So far as variation in time mentioned in the charge framed is concerned, we are of the view that it is only when prejudice is caused to the accused in defending himself, the benefit of such defect can be given to the accused. Section 215 of the Code of Criminal Procedure provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence of those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The High Court appears to have taken a view which is contrary to the provision contained in Section 215 read with illustration (d) of that Section and Section 464 of the Code of Criminal Procedure.

21. We have also perused the questions put under Section 313 of the Code of Criminal Procedure and answers given by the accused which are on the record. We do not find that in the present case spirit of Section 313 is forgotten, nor it can be said that the court has not complied with said provision. Sub-section (b) of Section 313 requires the court to question the accused generally on the case after the prosecution evidence is over. It does not require to re-write hundred pages evidence in another hundred pages to record the statement of the accused under the Section. It should be borne in mind that entire evidence has been recorded in the presence of the accused or his counsel, and before he enters into his defence, what is required is that he is generally asked on the case, after the prosecution evidence is over, to explain any circumstances in the evidence against him. It does not require that each and every sentence of the prosecution evidence has to be re-written and read over once again while examining the accused under Section 313 of the Code of Criminal Procedure.

22. So far as argument that when two views are possible, the view favouring the accused should be accepted, is concerned, we have carefully gone through the detailed judgment of the trial court discussing every bit of evidence, and the one passed by the High Court, impugned before us. In our considered opinion from the evidence on record, the view taken by the High Court so far as it relates to accused Purnendu Kumar Patra is concerned, the same is not reasonably possible view, for the reason that it is against the weight of the evidence on record ignoring completely the circumstances in which the victim reported the matter to police, with the help of a stranger and that her statement in the F.I.R is

A fully corroborated from the statements of PW-1 Dipak Guchhait, PW-2 Sudha Krishna Jana and PW-7 Joyram Jana, apart from the medical evidence on record.

23. In view of the above discussion, we are of the opinion that so far as the conviction of accused-respondent Purnendu Kumar Patra is B concerned, the High Court has erred in holding him not guilty. In our opinion, the charge of offence punishable under Section 302 IPC is fully established on the record as against accused-respondent Purnendu Kumar Patra as found by the trial court. So far as accused-respondent Rabin Jana is concerned, undoubtedly he had no motive to commit the crime, nor is it found that he was having acid with him, as such, it cannot be C said that he had any common intention with accused-respondent Purnendu Kumar Patra to cause burn injuries with acid on the victim. It is possible that he might have accompanied Purnendu Kumar Patra to pressurize the victim to withdraw the rape case against him as he was witness in said case. As such, taking such fact into consideration by the D High Court to hold him not guilty beyond reasonable doubt, cannot be said to be erroneous.

24. Now we have to examine the question relating to quantum of sentence. The trial court has awarded the extreme penalty of death sentence against Purnendu Kumar Patra and the Death Reference has E been rejected by the High Court. It is settled law that life imprisonment is the rule and the death sentence is an exception, and the death sentence can be imposed only when life imprisonment appears to be altogether inadequate punishment in the relevant circumstances of the crime. In the present case, there is no criminal history of the accused Purnendu Kumar Patra and there is no evidence that he is a continuing threat to F the society. Considering the fact that meanwhile Purnendu Kumar Patra has been acquitted of the rape charge by the trial court, as is evident from Annexure R1 with the application filed on behalf of the accused, we are of the view that on the charge of murder, awarding sentence of imprisonment for life and direction to pay fine of Rs.10,000/- failing which G to undergo rigorous imprisonment for a further period of two years to the accused Purnendu Kumar Patra would meet the ends of justice.

25. Accordingly, both the appeals are partly allowed, and acquittal of accused-respondent Purnendu Kumar Patra by the High Court is set aside. The conviction of said accused under Section 302 IPC, recorded H by the Additional Sessions Judge, Fast Track, 1st Court, Contai, is affirmed.

He is sentenced to imprisonment for life with fine of Rs.10,000/-, in default of payment of which he shall undergo rigorous imprisonment for a period of two years. Said accused- respondent Purnendu Kumar Patra shall surrender forthwith before the trial court. The Registrar of the High Court of Calcutta shall ensure compliance of this order. The appeal as against accused-respondent Rabin Jana is dismissed and to that extent impugned judgment passed by the High Court stands affirmed.

N. V. RAMANA, J. 1. I have had the privilege of reading the draft judgment of my learned brother, who has dealt with all the aspects of this case in a meticulous manner. Though I agree with the findings and conclusions arrived at, by my brother, in light of the emergent facts, it would be appropriate to pen down my separate concurring opinion in this case.

2. A word on criminal justice system before we deal with other aspects of this case. Criminal justice system is not only about infrastructure or surveillance, rather it is how we protect our country-men, it is how we recuperate after loss, it is how we show faith in our constitution and how we uphold the values of justice, fairness and equality. There is no dispute that our criminal justice system is a complex one, administered at various levels of government and fashioned by a range of actors. When such complicated system is in place, there is a requirement for higher discipline at every level. I am of the opinion that traditional roles played by the stake-holders in criminal justice system would revolutionize, if there is an increased awareness of the victim rights. Emphasis on the victim rights would bring about public trust in our criminal justice system.

3. A brief reference to the facts, as put forth by the prosecution, would be necessary to dispose of this case. The accused (Purnendu Kumar Patra) is alleged to have raped the deceased (Saraswati Guchhait) on 28.04.1997. It is to be noted that the prosecution of the rape case was pending at the time of the incident (On 27.10.1998), when the accused have thrown acid at the deceased which caused severe burn injuries to the body of the deceased. Thereafter she was shifted to a local hospital on the very same day. Although she had narrated the incident to the doctor i.e. PW6, there was no written complaint filed with the police. Moreover the deceased alleged that she was threatened by some miscreants on 29.10.1998 in the hospital. On 23.11.1998, she passed away due to shock and sepsis caused by the acid attack. These

A facts lament a story of a helpless woman who was raped and subsequently punished for raising her voice which ultimately led to her demise. The trial court after a full fledged trial had convicted the accused/respondent (Purnendu Kumar Patra) under Section 302 of Indian Penal Code, 1860 [*hereinafter* '**IPC**' *for brevity*] and sentenced him with death penalty whereas the co-accused (Rabin Jana) was sentenced to suffer rigorous imprisonment for life under Section 302 of IPC and imposed fine of Rs 25,000/-, in default thereof, to undergo further imprisonment for a period of five years.

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4. Being dissatisfied, the accused approached the High Court on appeal in Death Ref. No. 4 of 2005 and CRA No. 599 of 2005. The High Court while allowing appeal and dismissing the death reference, acquitted the accused on hyper technical grounds of delay and laches in the investigation and prosecution. Aggrieved by the acquittal, complainant as well as the State has filed these appeals. As we decide these instant criminal appeals, our duty is to apply and uphold the rule of law. As judges we are trained to do so. We are required to adjudicate on the basis of letter and spirit of law uninfluenced by any external circumstances. Having done all that, we feel that the criminal justice system has not served the deceased from being victimized.

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5. At the outset certain aspects on the acid attack needs to be observed. Usually *vitriolage* or acid attack has transformed itself as a gender based violence. Acid attacks not only cause damage to the physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development. Although we have acknowledged the seriousness of the acid attack when we amended our laws in 2013[1], yet the number of acid attacks are on the rise. Moreover this Court has been passing various orders to restrict the availability of corrosive substance in the market which is an effort to nip this social evil in the bud.[2] It must be recognized that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society.

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6. Next aspect which needs immediate attention is that the deceased was admitted to the hospital on 27.10.1998 and she died on 23.11.1998. For 26 days she was struggling between life and death in the hospital. Interestingly, there was no dying declaration recorded. It is

[1] The Criminal Law (Amendment) Act, 2013, No. XIII of 2013.

H [2] Parivartan Kendra v. Union of India and Ors., (2016) 3 SCC 571.

specifically admitted by the treating doctor that the I.O. had requested for recording a dying declaration on 07.11.1998, which was not allowed by him as he thought that she was responding well to the treatment but at the same time he admits that the general condition of the patient was very poor. Further he admits that she was not examined before tendering such opinion and proper case history was also not maintained. Therefore the conduct of the doctor (PW 6) needs to be evaluated in light of his utter disregard for professionalism. In criminal cases, doctors inevitably play a very important role, they have a bounden duty to maintain professionalism in assessing situation and arranging for a dying declaration to be recorded. Moreover he should have strictly maintained the case record which is very crucial for successful prosecution. Such good practice, of maintenance of record, is made part of the Indian Medical Council (Professional conduct, etiquette and ethics) Regulations, 2002.

7. It would not be out of place to discuss the importance of dying declaration under Section 32 of the Indian Evidence Act. The principle underlying Section 32 of the Indian Evidence Act is '*Nemo moriturus praesumitur mentire*' i.e., man will not meet his maker with a lie in his mouth. Dying declaration is one of the exceptions to the rule of hearsay. It is well settled that there is no absolute rule of law 'that the dying declaration cannot form the sole basis of conviction unless it is corroborated'. The rule requiring corroboration is merely a rule of prudence [*refer* ***Paniben (Smt.) v. State of Gujarat***, (1992) 2 SCC 474; ***Munnu Raja and Anr. v. State of Madhya Pradesh***, (1976) 3 SCC 104; ***State of U.P. v. Ram Sagar Yadav and Ors.***, (1985) 1 SCC 552; ***Ramawati Devi v. State of Bihar***, (1983) 1 SCC 211]. Moreover, if the person making the dying declaration survives, then such statement would not be admissible under Section 32 of the Indian Evidence Act, rather such Statements may be admissible under Section 157 of the Indian Evidence Act [*refer* ***Gajula Surya Prakasrao v. State of Andhra Pradesh***, (2010) 1 SCC 88]

8. In light of the importance the dying declaration holds in a criminal trial, the dereliction of duty in recording the dying declaration and the doctor's ignorance of medico-legal jurisprudence is apparent from the material placed before us. My attention has been drawn to various judgments, which have addressed the aspects of dereliction of duty by the doctors and importance of medico-legal aspect in medical jurisprudence [*refer* ***State of Gujarat v. Hasmukh @ Bhikha Gova***

A ***Harijan***, (1996) 1 GLR 292, ***Muniammal v. The Superintendent of Police, Kancheepuram District, Kancheepuram***, Criminal Original Petition No. 12582 of 2007 (The High Court of judicature Madras) and ***Dr. Indrajit Khandekar v. Union of India and Ors.***, W.P. No. 4974 of 2012 (High Court of judicature at Bombay: Nagpur bench)]. It has to be remembered that every stakeholder in this criminal justice system is B expected to act with a sense of fairness to bring out the truth so that punishment can be meted to those who deserve. Although courts are provided with the duty to dispense justice, it cannot be denied that effective dispensation of justice by the courts in this country requires support of all the stakeholders. In light of the above, every stakeholder is C expected to be aware of their responsibility and work towards achieving ends of the criminal justice system.

9. The last aspect is regarding the defective investigation and prosecution. If a negligent investigation or omissions or lapses, due to perfunctory investigation, are not effectively rectified, the faith and D confidence of the people in the law enforcing agency would be shaken. Therefore the police have to demonstrate utmost diligence, seriousness and promptness. [*refer* ***Ram Bihari Yadav v. State of Bihar & Ors.***, (1998) 4 SCC 517].

10. The basic requirement that a trial must be fair is crucial for E any civilized criminal justice system. It is essential in a society which recognizes human rights and is based on values such as freedoms, the rule of law, democracy and openness. The whole purpose of the trial is to convict the guilty and at the same time to protect the innocent. In this process courts should always be in search of the truth and should come to the conclusion, based on the facts and circumstances of each case, F without defeating the very purpose of justice.

Ankit Gyan Appeals disposed of.