PRADEEP BISOI @ RANJIT BISOI

v.

THE STATE OF ODISHA

(Criminal Appeal No.1192 of 2018)

OCTOBER 10, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Code of Criminal Procedure, 1973 – s.161 – Statement of injured under, if can be treated as dying declaration after death – Brother of PW-1, informant attacked by the appellant-accused and later died in hospital – Appellant convicted u/s.304 Part II, IPC – Plea of appellant that the statement of the injured-deceased recorded u/s.161 cannot be treated as dying declaration since his death occurred after more than three months – Held: s.32 of the 1872 Act deals with cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant – Statement recorded by police u/s.161, CrPC falling within the provisions of Clause(1) of s.32, 1872 Act is relevant and admissible – Trial Court rightly held that the statement of the injured-deceased was admissible u/s.32, 1872 Act because it was regarding his cause of death and how he was injured – Further, the statement made by the injured-deceased found corroboration from the injuries on his body and the sequences of the events as claimed by the prosecution – No error in the judgment of the trial court as well as of the High Court in relying on the statement of the injured-deceased recorded by the IO – Evidence Act, 1872 – s.32 – Penal Code, 1860 – s.304, Part II.

Dismissing the appeal, the Court

HELD: 1.1 Section 32 of the Evidence Act, 1872 deals with cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant. Section 161, CrPC deals with examination of witnesses by police. Section 162, CrPC deals with "statements to police not to be signed– Use of Statements in evidence". [Paras 8, 9] [951-D; 952-C]

1.2 Sub-section (2) to Section 162, CrPC incorporates a clear exception to what has been laid down in sub-section (1). The statement recorded by police under Section 161, falling within

A **the provisions of clause(1) of Section 32 of Indian Evidence Act, thus, is clearly relevant and admissible. Present is a case where a statement was recorded by I.O. under Section 161 of the victim on 05.12.1990. Both the trial court and the High Court held the statement relevant and placed reliance on the said statement.**
B **No error is found in the judgment of the trial court as well as of the High Court in relying on the statement of the injured recorded by the I.O. on 05.12.1990. The trial court after appreciation of evidence recorded the findings that deceased had acid injuries as well as bomb blast injuries. In the acid attack, he lost his eye-sight and also lost his right foot. The trial court rightly held that**
C **statement of deceased made on 05.12.1990 is admissible under Section 32 because it is regarding his cause of death and how he was injured. [Paras 10, 15-17] [953-C; 960-E-F; 961-F]**

1.3 The injuries on the body of deceased fully support the prosecution case. The statement made by the deceased on
D **05.12.1990, thus, finds corroboration from the injuries on the body of deceased and the sequences of the events and manner of incidents as claimed by the prosecution. PW1, the informant fully supported the prosecution case. [Para 18] [962-C]**

Mukeshbhai Gopalbhai Barot v. State of Gujarat **(2010) 8 SCALE 477 ;** *Sri Bhagwan v. State of Uttar*
E *Pradesh* **(2013) 12 SCC 137 : [2012] 12 SCR 774 ;** *Najjam Faraghi @ Nijjam Faruqui v. State of West Bengal* **(1998) 2 SCC 45 : [1997] 5 Suppl. SCR 148 – relied on.**

F *Laxman v. State of Maharashtra* **(2002) 6 SCC 710 ;** *Paparambaka Rosamma and Others v. State of A.P.* **(1999) 7 SCC 695 : [1999] 2 Suppl. SCR 328 ;** *Koli Chunilal Savji and Another v. State of Gujarat* **(1999) 9 SCC 562 : [1999] 3 Suppl. SCR 284 – referred to.**

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Case Law Reference

(2002) 6 SCC 710	**referred to**	**Para 4**
(2010) 8 SCALE 477	**relied on**	**Para 5**
[2012] 12 SCR 774	**relied on**	**Para 5**

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[1997] 5 Suppl. SCR 148	**relied on**	**Para 12**	A
[1999] 2 Suppl. SCR 328	**referred to**	**Para 13**	
[1999] 3 Suppl. SCR 284	**referred to**	**Para 13**	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal B
No. 1192 of 2018.

From the Judgment and Order dated 25.01.2017 of the High Court of Orissa, Cuttack in Criminal Appeal No. 311 of 1992.

Yasobant Das, Sr. Adv., B. B. Pradhan, M. A. Aleem Majid, Kedar C
Nath Tripathy, Advs. for the Appellant.

Sibo Sankar Mishra, Niranjan Sahu, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. This appeal has been filed by the D
accused against the judgment of Orissa High Court dated 25.01.2017. The Orissa High Court vide the impugned judgment has dismissed the criminal appeal filed by the appellant questioning his conviction under Section 304 Part II of the Indian Penal Code and sentence of five years rigorous imprisonment awarded by the trial court.

2. The prosecution case as is revealed from the record is that E
Bhaskar Sahu (deceased) on 28.11.1990 in the morning at 7.00 A.M. was going near Belapada by a bicycle. Near the Belapada bridge, the accused threw a bomb towards the deceased, which hit the right leg of Bhaskar Sahu, the deceased, due to which he fell down on the road. Bhaskar Sahu when started running to save his life, accused came running F
before the deceased and dealt a kati blow on right shoulder of Bhaskar Sahu on which he fell down thereafter the accused poured acid on head, face and chest of Bhaskar Sahu. Thereafter the accused and his friends left that place. One Khalia Pati belonging to the village of Bhaskar Sahu took the deceased with the help of bicycle. Thereafter brother of Bhaskar Sahu – Surendra Nath Sahu after receiving the news of assault came G
with Tarini Sahu, KasinathBisoi and BidyadharBabu belonging to the village and got admitted Bhaskar Sahu in Berhampur Medical College. Suurendra Nath Sahu, the brother of Bhaskar Sahu lodged a First Information Report naming the accused. First Information Report was

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A lodged under Sections 324/326/286/34 IPC. The I.O. visited the spot on 30.11.1990 and seized one blood stained stone and sample stone and one yellow colour banian with smell of acid and prepared the seizure list. Some sample earth, one towel with smell of acid was also noticed. Thereafter the I.O. examined the witnesses. The I.O. on 05.12.1990 showed arrest of the accused. On 05.12.1990 the I.O. recorded the B statement of Bhaskar Sahu under Section 161 Cr.P.c. in which statement Bhaskar Sahu named the accused, the persons, who has thrown the bomb, hit with kati and thrown acid on his face and head. The accused was challaned and PW1, the informant, PW2 – Dandopani Dass and PW3 – Prafulla Leuman Sahu were examined by the prosecution. I.O. C (PW4) – Prithandhi Moghi also appeared in the witness box. The deceased while still in hospital died on 25.03.1991. Defence examined two witnesses namely DW1 – Ramesh Chandra Sahu and DW2 – Bidyadhar Sahu.

3. The trial court after analyzing the evidence on record and D hearing the counsel for the parties convicted the accused under Section 304 Part II of the I.P.C. and awarded five years rigorous imprisonment. Aggrieved by the judgment of the trial court, the appeal was filed by the accused in the High Court, which has been dismissed by the High Court by the impugned judgment.

E 4. Learned counsel for the appellant contends that there is contradiction in the evidence of PW1 with other witnesses. There is contradiction as to who took the injured to the hospital. The victim became unconscious and it is unbelievable that he informed the PW1 that it was accused, who attacked him. The statement of injured recorded under Section 161 Cr.P.C. cannot be treated as a dying declaration in F view of the well settled principle of law enunciated by a Constitution Bench judgment of this Court in **Laxman Vs. State of Maharashtra, (2002) 6 SCC 710**, as to who is the author of the crime, both the Courts below arrived at the findings based on surmises and conjectures and not on evidence on record.

G 5. Learned counsel for the State refuting the submission of counsel for the appellant contends that on the basis of evidence on record, both the Courts have rightly held the charge proved against the accused. No error has been committed by the Courts below relying on the statement made by the injured on 05.12.1990 recorded by the I.O. Further, evidence H of PW1, to whom deceased had informed that it was accused, who

threw bomb and made kati attack and threw acid, has rightly been believed by the Courts below. It is submitted that the statement made by the injured on 05.12.1990 was fully admissible and no error has been committed by the Courts below in relying the same. Learned counsel for the State has placed reliance on judgment of this Court in **Mukeshbhai Gopalbhai Barot Vs. State of Gujarat, (2010) 8 SCALE 477** and **Sri Bhagwan Vs. State of Uttar Pradesh, (2013) 12 SCC 137.**

6. We have considered the submissions of the learned counsel for the parties and have perused the records.

7. The main thrust of submission of the learned counsel for the appellant is that statement recorded by I.O. on 05.12.1990 of the victim cannot be treated as dying declaration since death occurred after more than three months. He submits that both Courts committed error in treating the said statement as dying declaration.

8. Section 32 of the Evidence Act deals with cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant. Section 32 in so far as relevant in the present case is as follows:-

> **S.32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. ––** Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —
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> **(1) When it relates to cause of death.** — 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.
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> 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.
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A Illustrations:

(a) The question is, whether A was murdered by B; or

A died of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

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The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

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9. Other provisions relevant to be noticed are Section 161 and Section 162 of the Code of Criminal Procedure. Section 161 deals with examination of witnesses by police. Section 162 deals with "statements to police not to be signed – Use of Statements in evidence". Section 162 Cr.P.C. is as follows:-

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162. Statements to police not to be signed: Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

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Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

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(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

10. Sub-section (2) to Section 162 incorporate a clear exception to what has been laid down in sub-section (1). The statement recorded by police under Section 161, falling within the provisions of clause(1) of Section 32 of Indian Evidence Act, thus, is clearly relevant and admissible. In **Mukeshbhai Gopalbhai Barot (supra),** this Court had occasion to consider Sections 161 and 162 of Cr.P.C. and Section 32 of the Evidence Act. In the above case, the victim, who received burn injuries on 14.09.1993 was admitted to Civil Hospital. Her statement was recorded by Executive Magistrate and by the Police. The statement recorded by police under Section 161 Cr.P.C. was discarded by the High Court taking the view that it had no evidentiary value. The view of the High Court was not accepted by this Court. In paragraph Nos. 4 and 5, this Court held that the statement of persons recorded under Section 161 can be treated as dying declaration after death. In paragraph Nos. 4 and 5, following has been laid down:-

"4. We have considered the arguments advanced by the learned counsel for the parties. At the very outset, we must deal with the observations of the High Court that the dying declarations Ex.44 and 48 could not be taken as evidence in view of the provisions of Section 161 and 162 of the Cr.P.C. when read cumulatively. These findings are, however, erroneous. Sub-Section (1) of Section 32 of the Indian Evidence Act, 1872 deals with several situations including the relevance of a statement made by a person who is dead. The provision reads as under:

Sec.32. Cases in which statements of relevant fact by person who is dead or cannot be found, etc., is relevant. -

A Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

B (1) When it relates to cause of death. - 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.

C 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."

D We see that the aforesaid dying declarations are relevant in view of the above provision. Even otherwise, Section 161 and 162 of the Cr.P.C. admittedly provide for a restrictive use of the statements recorded during the course of the investigation but sub-Section (2) of Section 162 deals with a situation where the maker

E of the statement dies and reads as under:

"(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act."

F **5.** A bare perusal of the aforesaid provision when read with Section 32 of the Indian Evidence Act would reveal that a statement of a person recorded under Section 161 would be treated as a dying declaration after his death. The observation of the High Court that the dying declarations Ex.44 and 48 had no evidentiary

G value, therefore, is erroneous. In this view of the matter, the first dying declaration made to the Magistrate on 14th September 1993 would, in fact, be the First Information Report in this case."

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11. A similar view has been expressed by this Court in **Sri Bhagwan (supra)**, where this Court had occasion to consider Section 161 Cr.P.C .and Section 32 of the Indian Evidence Act. This Court dealt with a statement under Section 161 Cr.P.C. subsequent to death of the victim. In Para 20 to 24, following has been held:-

> **"20.** While keeping the above prescription in mind, when we test the submission of the learned counsel for the appellant in the case on hand at the time when Section 161 CrPC statement of the deceased was recorded, the offence registered was under Section 326 IPC having regard to the grievous injuries sustained by the victim. PW 4 was not contemplating to record the dying declaration of the victim inasmuch as the victim was seriously injured and immediately needed medical aid. Before sending him to the hospital for proper treatment PW 4 thought it fit to get the version about the occurrence recorded from the victim himself that had taken place and that is how Exhibit Ka-2 came to be recorded. Undoubtedly, the statement was recorded as one under Section 161 CrPC. Subsequent development resulted in the death of the victim on the next day and the law empowered the prosecution to rely on the said statement by treating it as a dying declaration, the question for consideration is whether the submission put forth on behalf of the respondent counsel merits acceptance.
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> **21.** Mr Ratnakar Dash, learned Senior Counsel made a specific reference to Section 162(2) CrPC in support of his submission that the said section carves out an exception and credence that can be given to a Section 161 CrPC statement by leaving it like a declaration under Section 32(1) of the Evidence Act under certain exceptional circumstances. Section 162(2) CrPC reads as under:
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> > "**162. (2)** Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act."
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> **22.** Under Section 32(1) of the Evidence Act it has been provided as under:
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> > "**32.** ***Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant***.—

A Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

B **(1)** ***When it relates to cause of death***.—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.

C 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."

D **23.** Going by Section 32(1) of the Evidence Act, it is quite clear that such statement would be relevant even if the person who made the statement was or was not at the time when he made it was under the expectation of death. Having regard to the extraordinary credence attached to such statement falling under Section 32(1) of the Evidence Act, time and again this Court has cautioned as to the extreme care and caution to be taken while relying upon such evidence recorded as a dying declaration.

24. As far as the implication of Section 162(2) CrPC is concerned, as a proposition of law, unlike the excepted circumstances under which Section 161 CrPC statement could be relied upon, as rightly contended by the learned Senior Counsel for the respondent, once the said statement though recorded under Section 161 CrPC assumes the character of dying declaration falling within the four corners of Section 32(1) of the Evidence Act, then whatever credence that would apply to a declaration governed by Section 32(1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 CrPC. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting

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authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such."

12. It is relevant to refer to judgment of this Court in **Najjam Faraghi @ Nijjam Faruqui Vs. State of West Bengal, (1998) 2 SCC 45**. In the above case, the kerosene oil was poured on the victim and she was put on fire on 13.06.1985. She lived for about a month and died on 31.07.1985. This Court referring to Section 32(1) held that mere fact that victim died long after making the dying declaration, the statement does not looses its value. In Para 9, following has been held:-

> **"9.** There is no merit in the contention that the appellant's wife died long after making the dying declarations and therefore those statements have no value. The contention overlooks the express provision in Section 32 of the Evidence Act. The second paragraph of sub-section (1) reads as follows:
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> > "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."
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> No doubt it has been pointed out that when a person is expecting his death to take place shortly he would not be indulging in falsehood. But that does not mean that such a statement loses its value if the person lives for a longer time than expected. The question has to be considered in each case on the facts and circumstances established therein. If there is nothing on record to show that the statement could not have been true or if the other evidence on record corroborates the contents of the statements, the court can certainly accept the same and act upon it. In the present case both courts have discussed the entire evidence on record and found that two dying declarations contained in Exs. 5 and 6 are acceptable."

13. Much emphasis has been given by the learned counsel for the appellant on Constitution Bench judgment of this Court in **Laxman Vs. State of Maharashtra (supra).** The above constitution Bench was constituted to resolve the conflict between two Three-Judge Bench

judgment of this Court, i.e. **Paparambaka Rosamma and Others Vs. State of A.P. (1999) 7 SCC 695** and **Koli Chunilal Savji and Another Vs. State of Gujarat, (1999) 9 SCC 562.** The facts of the case and conflicting views expressed in the above two cases has been noticed in Paragraph Nos. 1 and 2, which are to the following effect:-

> "In this criminal appeal, the conviction of the accused-appellant is based upon the dying declaration of the deceased which was recorded by the Judicial Magistrate (PW 4). The learned Sessions Judge as well as the High Court held the dying declaration made by the deceased to be truthful, voluntary and trustworthy. The Magistrate in his evidence had stated that he had contacted the patient through the medical officer on duty and after putting some questions to the patient to find out whether she was able to make the statement; whether she was set on fire; whether she was conscious and able to make the statement and on being satisfied he recorded the statement of the deceased. There was a certificate of the doctor which indicates that the patient was conscious. The High Court on consideration of the evidence of the Magistrate as well as on the certificate of the doctor on the dying declaration recorded by the Magistrate together with other circumstances on record came to the conclusion that the deceased Chandrakala was physically and mentally fit and as such the dying declaration can be relied upon. When the appeal against the judgment of the Aurangabad Bench of the Bombay High Court was placed before a three-Judge Bench of this Court, the counsel for the appellant relied upon the decision of this Court in the case of *Paparambaka Rosamma* v. *State of A.P., (1999) 7 SCC 695* and contended that since the certification of the doctor was not to the effect that the patient was in a fit state of mind to make the statement, the dying declaration could not have been accepted by the Court to form the sole basis of conviction. On behalf of the counsel appearing for the State another three-Judge Bench decision of this Court in the case of *Koli Chunilal Savji* v. *State of Gujarat (1999) 9 SCCC 562* was relied upon wherein this Court has held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that

the deceased was in a fit state of mind to make the statement in question. Since the two aforesaid decisions expressed by two Benches of three learned Judges was somewhat contradictory the Bench by order dated 27-7-2002 referred the question to the Constitution Bench.

2. At the outset we make it clear that we are only resolving the so-called conflict between the aforesaid three-Judge Bench decision of this Court, whereafter the criminal appeal will be placed before the Bench presided over by Justice M.B. Shah who had referred the matter to the Constitution Bench. We are, therefore, refraining from examining the evidence on record to come to a conclusion one way or the other and we are restricting our considerations to the correctness of the two decisions referred to *supra."*

14. The Constitution Bench approved the view taken by later judgment in **Koli Chunilal Savji (supra).** In Paragraph No. 5, following has been laid down:-

"5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur* v. *State of Punjab*[4] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma* v. *State of A.P. (1999) 7 SCC 695* (at SCC p. 701, para 8) to the effect that

> "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper technical view that the certification of the doctor was to the effect that the patient is conscious and

there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P. (1999) 7 SCC 695* must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat (1999) 9 SCC 562*."

15. The view expressed by Three-Judge Bench in **Paparambaka Rosamma (supra)** that in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration, does not lay down a correct law. Thus, the Constitution bench was only considering the question of nature of medical certification regarding fitness of victim to make a dying declaration. The proposition laid down in the above case does not in any manner support the contention raised by the counsel for the appellant in the present case. Present is a case where a statement was recorded by I.O. under Section 161 of the victim on 05.12.1990. Both the trial court and the High Court held the statement relevant and placed reliance on the said statement.

16. We have noticed that this Court has laid down that statement under Section 161 Cr.P.C., which is covered under Section 32(1) is relevant and admissible. Thus, we do not find any error in the judgment of the trial court as well as of the High Court in relying on the statement of the injured recorded by the I.O. on 05.12.1990. It is also relevant to notice that I.O. in his cross-examination has stated that he went on the night of 30.11.1990 to the Medical College to record the statement but as his condition was serious, he was not examined. Thus, reliance on the statement made on 05.12.1990 to the I.O. does not lead to any suspicious circumstances so as to discard the value of such statement. The statement, which was made by the victim on 05.12.1990 was to the following effect:-

"My name is Bhaskar Sahu, S/o. Kaibalya Sahu, present/permanent Resident of Village - Langal Dei, P.S. Digapahandi Dist. Gangnam,

Today, i.e. on 05.12.1920, being at the Medical College ward I hereby give my verbal statement that, I was going to Belapada from our Village Langal Del on 28.11.1990 at about 6:30 to 7:00 O'clock on my bi-cycle. On my way near the bridge of Belapada Village, inhabitant of our village namely Pradeep Bisoi, S/o. Madhab Bisoi and some of his friends were waiting to kill me. They had come by a Scoter. I don't know others. Near the Belapada Bridge, all of a sudden Pradeep Bisoi threw aBomb towards me which was defused after hitting my right leg for which I fell down on the road. When I started running, trying to save my life, at that time Pradeep Bisoi came running after me and dealt a kati blow on my right solder, for which I fell down bloodstained. Thereafter from a bottle carried by him, he poured acid on my head, face, chest and also on my entire body To save my life. I threw away my black color vest from my body. Looking at my critical condition, Pradeep Bisoi and his friends left that place. After that, the son of Khalia Pati of our village saw me, and while taking me by the help of a cycle, my brother Surendar Sahu got that news and Tarini Sahu, and Kishnath Bisoi and Bidhyadhara Babu of our village reached to me and my brother immediately admitted me in the Berhampur Medical Collage. Otherwise I would have died on the spot. Because of our previous enmity, Pradeep Bisoi was trying to kill me. But I was just saved. There is no chance of my survival."

17. The trial court after appreciation of evidence recorded the findings that deceased had acid injuries as well as bomb blast injuries. In the acid attack, he has lost his eye-sight and also lost his right foot. The trial court has rightly held that statement of deceased made on 05.12.1990 is admissible under Section 32 because it is regarding his cause of death and how he was injured. In para 8 of the judgment, trial court has recorded as follows:-

"8. From the medical report it is clear that the deceased was having acid injury and bomb blasting injury and during the treatment he died in the hospital. Now it is to be seen who has caused those acid and bomb blast injuries on the person of the deceased. There is no eye witness to the occurrence. The deceased had given information to the P.W.1 and also to the I.O. P.W.1 says that he

A learnt from the deceased that accused assaulted him and threw acid on his face, and other parts of his body and he reported the matter to the police, after knowing the fact from the deceased, vide Ext. 12. It is also clear from the evidence of P.W.3 that he carried the deceased to the hospital, who had sustained injuries. The statement of the deceased to P.W.1 is admissible under 32 of the Evidence Act. Because, it gives regarding his cause of death and how he was injured."

18. The injuries on the body of deceased fully support the prosecution case. The statement made by the deceased on 05.12.1990, thus, finds corroboration from the injuries on the body of deceased and the sequences of the events and manner of incidents as claimed by the prosecution. The PW1, the informant has fully supported the prosecution case.

19. The High Court while dismissing the appeal has also made observation that conviction and sentence of the accused was for a lesser offence and lenient one.

20. We having gone through the evidence on record are fully satisfied that the trial court did not commit any error in convicting the appellant. High Court while deciding the appeal has also analysed the evidence on record and has rightly dismissed the appeal. We, thus, do not find any merit in this appeal, which is dismissed.

Divya Pandey Appeal dismissed.