



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPEAL NO. 871 OF 2023

Dnyaneshwar Kachru Warpe
Age: 37 years, Occu: Labour,
R/o Shivoor Shinde Nala Phata,
Tq. Vaijapur, Dist. Aurangabad

.... Appellant

VERSUS

The State of Maharashtra
Through Police Officer,
Shivoor Police Station,
Tq. Vaijapur, Dist. Aurangabad

.... Respondents

.....

Mr. Avinash R. Borulkar, Advocate for Appellant [Appointed]
Mr. S. J. Salgare, APP for Respondent - State

.....

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved On : 25/09/2024
Pronounced On : 16/10/2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This Criminal Appeal under Section 374[2] of the Criminal Procedure Code, 1973 [hereinafter referred to as 'Cr.PC'], is directed against the Judgment and Order dated 13/10/2021, passed by the learned Additional Sessions Judge, Vaijapur, District Aurangabad, in Sessions Case No.82/2016, convicting the Appellant for the offence punishable under Sections 302 and 498-A of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentencing him to suffer Rigorous Imprisonment for life and fine of Rs.10,000/-, in default to pay the fine, to suffer Simple Imprisonment for six [6] months and Rigorous Imprisonment for three [3] years and fine of Rs.2000/-, in default to pay the fine, to suffer Simple Imprisonment for one [1] month, respectively.

2. The Prosecution's case as revealed from the Police Report is as under:-

[I] The Appellant was married to Shobha [hereinafter referred to as 'Deceased'] twelve [12] to fifteen [15] years prior to the incident. Out of wedlock, they had one son and one daughter. They were residing together at Shivoor, Taluka Vaijapur, District Aurangabad. The Appellant used to earn livelihood by driving a small Tempo. Since last five [5] to six [6] years from the date of incident, the Appellant was addicted to liquor. The Appellant used to beat the Deceased by suspecting her character. On five [5] to six [6] occasions, Deceased had gone to her maternal home due to the beating by the Appellant. However, the Appellant brought her back to the matrimonial home.

[II] On 04/08/2016 in between 5.30 p.m. and 6.00 p.m, the Appellant came home in an inebriated state and beat the children and Deceased. The Deceased did not wake-up early on 05/08/2016. Around 9.00 a.m. to 9.30 a.m., while Deceased was sleeping, the Appellant abused her as she did not getup and put kerosene on her and ignited fire. At that time, both the children were playing outside. Deceased screamed, due to which, her children and relatives came inside and doused the fire with water. Deceased was taken to the Hospital by her brother-in-law, sister and other relatives for treatment. The Medico Legal Case information was sent to the Shivoor Police Station and the Police Sub-Inspector of the said Police Station recorded the statement of Deceased after the Doctor certified that she was in a fit state to give statement. In her statement, Deceased narrated the said incident and Crime No.109/2016

came to be registered with the said Police Station for the offence punishable under Sections 307, 323 and 504 of IPC.

[III] During the investigation, Spot Panchnama was done, statement of witnesses were recorded. On the same day i.e. 05/08/2016, on the request made by the Investigating Officer, the Executive Magistrate recorded the statement of Deceased after the Doctor certified her to be stable and in a fit state of mind to give statement. Deceased narrated the incident in her statement. On 11/08/2016, Deceased succumbed to the burn injuries. Inquest was done and the body was referred for Postmortem. In Postmortem, the cause of death was revealed as "*Septicemia due to burns*". The Articles seized during the course of investigation, were sent for examination by the Chemical Analyzer. The Section 302 of IPC came to be included in the Crime. The Appellant came to be arrested. The relevant documents came to be collected by the Investigating Officer. On completion of investigation, the Appellant came to be Charge-sheeted.

[IV] The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 498-A of IPC vide Exhibit - 10, to which, the Appellant pleaded not guilty and claimed to be tried. To establish the Charge, the Prosecution examined in all twelve [12] witnesses and brought on record the relevant documents. After the Prosecution closed their evidence, the statement of the Appellant came to be recorded under Section 313[1][b] of Cr.PC. The Appellant denied the case and evidence of the Prosecution. The Appellant examined one [1] defence witness to show that, he was not inside the house when the incident had taken place. After

hearing both the sides and appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order.

3. It is submitted by the learned Advocate for the Appellant that, the material witnesses have not supported the case of Prosecution. The case hinges on two [2] Dying Declarations. In second Dying Declaration, the Deceased did not state that, the Appellant came in a drunken state at home on 04/08/2016. The evidence of the brother of Deceased in respect of oral Dying Declaration cannot be believed, as some different version has come on record in his evidence. The second Dying Declaration was recorded in the presence of brother and mother of Deceased. The Prosecution failed to prove the Charge and the learned Trial Court has erred in convicting and sentencing the Appellant. Hence, the Appeal be allowed.

4. It is submitted by the learned APP for the State that, non supporting of the witnesses will not affect the case of Prosecution, as two [2] consistent Dying Declarations are proved by the Prosecution. The evidence on record established that, Deceased was in a fit mental state when both her statements were recorded. The conviction can be based on the Dying Declarations. The oral Dying Declaration is also consistent with the two [2] written Dying Declarations. Though the Appellant examined defence witness, she admitted in the cross-examination that, she did not want that the Appellant should be punished and therefore, no value can be given to the evidence of the said defence witness. The learned Trial Court rightly appreciated the evidence on record and no interference is called for in the impugned Judgment and Order. Hence, the Appeal be dismissed.

5. It is the Prosecution's case that, the Appellant used to suspect the character of Deceased and harass her from last five [5] years from the date of incident. On 05/08/2016, the Appellant poured kerosene and set Deceased on fire in their residence and Deceased succumbed to the burn injuries. From the evidence on record, there is no dispute on the following aspects :-

- [i] Deceased was the wife of Appellant ;
- [ii] Deceased suffered burn injuries and succumbed to the same ;
- [iii] The incident of burning took place in the residential house of Deceased and Appellant ;

6. The Prosecution's case is entirely based on the Dying Declarations. The first Dying Declaration was recorded by PW - 5 [Ravindrakumar Vaijinath Warangule], who was the Police Sub-Inspector at Shivoor Police Station, on 05/08/2016 and the second Dying Declaration was recorded by PW - 7 [Shivanand Shankarappa Bidve], who was the Executive Magistrate at Tahsil Office, on 05/08/2016. The oral Dying Declaration was made to PW - 9 [Kakasaheb Dadasaheb Badhe], who was the brother of Deceased.

7. The evidence of PW - 5 [Ravindrakumar Vaijinath Warangule] shows that, on 05/08/2016, he was attached to the Shivoor Police Station and on that day, the Police Station Officer [PSO] received MLC at Exhibit - 34 and directed him to record the statement of Deceased admitted to GHATI Hospital for burn injuries. He prepared the letter at Exhibit - 35 for taking opinion from the Doctor in respect of the condition of woman. He also prepared the letter at Exhibit - 36 and issued it to the

Executive Magistrate for recording statement of Deceased. On reaching GHATI Hospital, he issued the letter to the concerned Doctor. The Doctor examined the Deceased and gave opinion that, she was fit to give statement. He went to Ward No.22 - 23 where Deceased was admitted. He made inquiry with the Deceased and recorded her statement. While recording the statement, nobody was present near the Deceased. For better understanding, the relevant part of the evidence of this witness is re-produced below :-

“About the incident she told me that on 04.08.2016 her husband came to house in drunken state at 5 to 6.30 pm. She further stated that her husband started beating her and her children. She also stated that her husband was always suspecting on her character and beating her. She further stated that on 05.08.2016 she did not woke early in the morning. She further stated that at about 9 to 9.30 am her husband abused her and poured kerosene on her person and set her ablaze where she was slept. She further stated that at that time her children were playing outside in the courtyard. She also stated that her co-sister, brother-in-law and children of her brother-in-law, extinguished the fire by pouring water on her.”

8. His further evidence shows that, he recorded the statement of Deceased at Exhibit - 37, read over the same to her and the Deceased accepted its correctness. As her hands were burnt, he took thumb impression of right leg of Deceased and put his signature on the statement. He again took endorsement of the Doctor on the said statement. On the basis of the said statement, he registered the Crime and handed over the investigation to PW - 12 [Dhananjay Ramrao Pharate]. The relevant part from the statement at Exhibit - 37 is re-produced below for clarity :-

“ काल दिनांक ०४.०८.२०१६ रोजी सायंकाळी ०५.३० ते ६.०० वाजेचे सुमारास माझे पति ज्ञानेश्वर हे दारु पिवून आले व मुलांना मारहाण करू लागले तसेच ते नेहमी दारु पिवून आल्यानंतर माझे चारित्र्यावर संशय घेवून शिवीगाळ करायचे. सायंकाळी मला मारहाण केल्यामुळे मी आज दिनांक ०५.०८.२०१६ रोजी सकाळी लवकर उठलो नाही. अंदाजे ९.०० ते ९.३२ वाजेचे सुमारास मी उठले नाही म्हणून शिवीगाळ करत त्यांनी माझे अंगावर

रॉकेल ओतले व आग लावून दिली. त्यावेळी माझे दोन्ही मुले बाहेर खेळत होती. माझ्या ओरडण्याच्या आवाजाने माझी मुले, माझी मोठी जाव संगिता वरपे व त्यांच्या मुली तेथे आल्या व त्यांनी पाण्याने आग विझवली. त्यानंतर माझे दिर कैलास वरपे, माझी बहिण लता तुकाराम पगार, माझी नणंद ताई उर्फ उषा बाबासाहेब पगार यांनी मला घाटी दवाखाना औरंगाबाद येथे उपचारासाठी आणून दाखल केले.

माझा वरील जबाब माझे सांगणे प्रमाणे लिहीला व तो मला वाचून दाखविला तो बरोबर व खरा आहे. सदर जबाब रात्री ८.०० ते ८.३० दरम्यान घेतला.

समक्ष

हा जबाब दिली सही/अंगठा

स्वाक्षरीत/-

(उजव्या पायाचा अंगठा)”

(आर.व्ही. वारंगुळे)

परि. पो. उप नि.

9. He denied the suggestion that, the Deceased was not able to speak because of weakness and further denied that, false statement was recorded on the say of her paternal relative. He admitted that, in the statement, he has not mentioned that, nobody was present near the Deceased in the Ward. This would not affect his above discussed evidence. He was recording the statement and what the Deceased stated was material. The cross-examination could not create slightest dent in the evidence of this witness.

10. The evidence of PW - 11 [Dr. Ajinkya Janardhan Kasekar] shows that, on 05/08/2016, he was attached to the GHATI Hospital, Aurangabad. Deceased was admitted in Ward No.22 - 23 in the said Hospital. PW - 5 [Ravindrakumar Vajinath Warangule] recorded the statement of Deceased in his presence. At the time of recording the statement, Deceased was stable, conscious and oriented. After recording the statement, he gave endorsement at Exhibit - 69 on the said statement and put his signature. It was around 8.30 p.m. He admitted that, he did not mention that, he examined the Deceased. This admission will not affect his above referred testimony, which is corroborated

by Exhibit - 69. The cross-examination could not affect his evidence.

11. The evidence of PW - 5 [Ravindrakumar Vaijinath Warangule] and PW - 11 [Dr. Ajinkya Janardhan Kasekar] corroborate each other on the point that statement of Deceased was recorded on 05/08/2016 at GHATI Hospital when the Deceased was in a fit state to give statement and on that basis, Crime was registered.

12. The above substantive evidence and statement established that, Deceased stated that, the Appellant in the morning around 9.00 a.m. to 9.30 a.m. on 05/08/2016 abused her as she did not get-up and poured kerosene on her and ignited fire. She screamed and her children and relative came to rescue her and doused the fire with water and she was shifted to GHATI Hospital, Aurangabad for treatment. As the said statement of Deceased was recorded, on the same day in the evening at the Hospital when she was conscious and in a fit medical condition to give statement and in the absence of her relatives, the said statement can safely be relied upon. Though the Prosecution witnesses were cross-examined by the Appellant, nothing has come to create slightest doubt in respect of the said statement at Exhibit - 37.

13. As regards the second Dying Declaration is concerned, the above discussed evidence of PW - 5 [Ravindrakumar Vaijinath Warangule] shows that, he had issued the letter at Exhibit - 36 to the Executive Magistrate for recording the statement of Deceased. PW - 7 [Shivanand Shankarappa Bidve] was the Naib-Tahsildar with Tahsil Office on 05/08/2016. His evidence shows that, he was called to the Tahsil Office for receiving the

letter at Exhibit - 36 and accordingly, he went and took the said letter. He went to the GHATI Hospital where Deceased was admitted in burn Ward No.22 - 23. He issued letter at Exhibit - 46 to the Doctor for opinion in respect of fitness to give statement. The Doctor took him near the Deceased and examined her and opined that, Deceased was fit to give statement. He asked the relatives of patient to go out of the Ward. He introduced himself to the patient and recorded her statement as per her say. The relevant part of his evidence in respect of statement of Deceased is reproduced for clear understanding :-

"I asked patient her name. I asked the patient as to what has happened to her. On that she told that her husband set her ablaze by pouring kerosene on her person. Patient also told that in the morning at about 9 to 9.15 am her husband came in drunken condition, quarrelled with her and set her ablaze by pouring kerosene on her person and ran away out of the house. She told that at that time nobody was present in the house. The patient told me that she came out of the house by shouting and her co-sister came running and extinguished the fire by putting water on her. Patient further told that she is having complaint against her husband. I started recording statement at 10.26 pm and finished it at 10.55 pm. After recording her statement I took thumb impression of the right leg of the patient as the fingers of her hands were burnt. Before that I had read over the contents of the statement to her, to which she admitted the contents as true and correct. The statement now shown to me bears my signature and thumb mark of the patient. It is correctly recorded by me as stated by the patient. The statement is marked as Exh. 47. While recording the statement doctor was present alongwith me. After finishing the statement doctor again examined the patient and gave his endorsement."

14. The relevant part of the statement of Deceased at Exhibit - 47 recorded by this witness is reproduced below for clear understanding :-

मृत्युपूर्व जबाब

पेशंटच्या नातेवाईकांना वॉर्डच्या बाहेर जाण्यास सांगितले. ते बाहेर गेल्याची खात्री करून जबाब नोंदविण्यास सुरुवात करत आहे.

जबानी

मी शिवानंद बिडवे नायब तहसिलदार (निवडणूक) कार्यकारी दंडाधिकारी

म्हणून आपला जबाब नांदविण्यास आलो आहे याची प्रथम पेशंटला जाणीव करून दिली.

प्रश्न १) तुमचे नाव काय ?

शोभा ज्ञानेश्वर वरपे वय २४ वर्षे रा. शिवूर ता. वैजापूर

२) तुम्हाला काय झाले आहे ?

मला माझ्या नव—याने अंगावर रॉकेल टाकून जाळलं आहे.

३) ही घटना कधी व कशी घडली ? कुणालाही न घाबरता सांगा.

आज सकाळी नऊ—सव्वानऊ वाजता माझा नवरा दारु पिवून घरात आला, आम्ही मळयातल्या घरात राहतो. दारु पिवून आल्यानंतर त्याने माझ्याबरोबर खूप भांडण केल आणि नंतर त्याने घरातील कॅनमधलं रॉकेल माझ्या अंगावर ओतून मला पेटवून दिले आणि तो बाहेर पळून गेला. माझा नवरा सारख दारु पिवून येऊन माझ्याबरोबर खूप भांडण करायचा.

४) त्यावेळी घरात कोण—कोण होते ?

त्यावेळी घरात कोणच नव्हत. माझी मुले बाहेर खेळत होती.

५) तुम्हाला कोणी विझवलं ?

मला पेटवल्यामुळे मी ओरडत बाहेर आले. माझी जाऊ शेजारी राहते. ती पळत आली आणि नंतर माझ्या अंगावर पाणी ओतून विझवलं.

६) तुमची कोणाबद्दल तक्रार आहे का?

मला माझ्या नव—या विरुद्ध तक्रार आहे. त्यानच मला पेटवले.

माझा वरील जबाब मला वाचून दाखविला. तो मला समजला असून ता खरा व बरोबर आहे.

जबाब सुरु झाल्याची वेळ — रात्री १०.२६

जबाब समाप्तीची वेळ — रात्री १०.५५

दिनांक ०५.०८.२०१६

ठिकाण औरंगाबाद

निशाणी उजव्या

पायाचा अंगठा

नामे शोभा रामेश्वर वरपे

(हाताची बोटे अंगठा घेण्याच्या स्थितीत नाहीत, ती जळाली आहेत त्यामुळे पायाचा अंगठा घेतला आहे.)

15. He denied the suggestion that, false statement of Deceased was recorded. He admitted that, he did not see any ink on the thumb on the right leg of the Deceased while taking her thumb impression. That would hardly be of any consequence in view of his substantive evidence, which remained unshaken in the cross-examination. The evidence of PW - 7 [Shivanand Shankarappa Bidve] is corroborated by the documents at Exhibits - 46 and 47.

16. The evidence of PW - 8 [Dr. Prashant Premji Bhanushali] shows that, on 05/08/2016, he was the resident Doctor in Surgery Ward at GHATI Hospital. On that day, he received the letter from Naib Tahsildar [PW - 7] to opine about medical condition of Deceased. He examined the Deceased and found her to be conscious, oriented about time, place and person and he gave endorsement at Exhibit - 49. While recording the statement by Naib Tahsildar, he was present and Deceased was conscious and talking properly. After the statement was recorded, he again examined the Deceased and found her conscious and accordingly, he gave endorsement at Exhibit - 50 on the letter, which was at Exhibit - 46. He clarified that, the date below his endorsement at Exhibit - 50 was wrongly written as 25/08/2016 instead of 05/08/2016.

17. His cross-examination shows that, he had not come with the medical papers to show what treatment was given to the Deceased. His cross-examination nowhere shows that, he was called upon to bring the papers. The patient was provided with oxygen mask and was given trimodal injection for relief from pains. He denied the suggestion that, the said injection would affect the brain function and it would lower down the pitch. His admission that, he had not mentioned in both endorsement that he examined the patient, would not affect his testimony, which is corroborated by his endorsement about fitness of Deceased to give statement. The cross-examination do not affect his testimony.

18. The above discussed evidence of PW - 7 [Shivanand Shankarappa Bidve] and PW - 8 [Dr. Prashant Premji Bhanushali] established that, Deceased was found to be in a fit

condition to give the statement and her fitness was examined by PW - 8 [Dr. Prashant Premji Bhanushali] prior to recording her statement and after the statement was recorded. The evidence of both the witnesses corroborate each other and gets corroboration from the documents. Through the evidence of these two [2] witnesses, the Prosecution proved the Dying Declarations at Exhibit - 47. It is further proved that, the relatives of Deceased were sent out of the ward prior to recording the statement.

19. The Prosecution examined Kakasaheb Dadasaheb Badhe, the brother of Deceased, as PW - 9. His evidence in respect of beating and troubling the Deceased by the Appellant on account of suspecting her character after consuming alcohol was hearsay in nature. His evidence nowhere shows that, he had seen the incident. His evidence shows that, on 05/08/2016, he received phone call in the morning from Tukaram Pagar that, Deceased had suffered burn injuries and was hospitalized. He and his mother went to the GHATI Hospital where Deceased was admitted. On inquiry about the incident, Deceased told them that, in the evening of previous day, the Appellant came drunk and on the point of bringing the food, the Appellant assaulted her. She further told them that, in the next morning she woke-up, the Appellant told her to go to the Government Hospital and the Deceased asked the Appellant to take her to the Hospital on motorcycle as she was unable to walk. She further informed them that, the Appellant caught her legs and made her move and poured kerosene on her and ignited fire by matchstick.

20. He admitted in cross-examination that, he did not lodge the report with the police chowky located in the GHATI Hospital. His evidence nowhere shows that, he took some steps for taking action against the Appellant after the Deceased told him about the incident. The evidence of PW - 12 [Dhananjay Ramrao Pharate], the Investigating Officer, shows that, the statement of this witness was recorded on 18/08/2016. This shows that, his statement was recorded after fourteen [14] days. This evidence in respect of Oral Dying Declaration, in the light of the above evidence of PW - 9 [Kakasaheb Dadasaheb Badhe], do not inspire confidence and is required to be seen with doubt. True it is that, in his cross-examination, it has come that the Doctor did not ask him and his mother to go out of the Ward. His said evidence nowhere shows that he was present at the time of recording the statement of Deceased. There is no suggestion in his cross-examination that, the Deceased was tutored. As seen from the evidence of the witnesses discussed above, who recorded the Dying Declarations that, no relatives were present at the time of recording the statement of Deceased.

21. The evidence of PW - 4 [Dr. Ganesh Dhondiraj Niturkar] shows that, he was attached to the Forensic Department of GHATI Hospital, Aurangabad on 11/08/2016. On that day, he received dead body of Shobha [Deceased] along with Inquest. He performed the Postmortem with Dr. Sk. Arif. Deceased had suffered 79% burns and cause of death was '*Septicemia due to burns*'. He prepared the Postmortem Report at Exhibit - 32. His cross-examination shows that, he had substantial experience in conducting the Postmortem. Non mentioning of the age of burn injuries becomes inconsequential in view of the

above discussed evidence in respect of two [2] Dying Declarations. He denied the suggestion that, the injuries mentioned in the Postmortem Report may be self inflicted burn injuries. His evidence shows that, except burn injuries, there were no injuries on the Deceased. Absence of other injuries will not affect the Dying Declarations as medical evidence, is in the nature of opinion evidence. From the evidence of this witness, the Prosecution proved that, the Deceased succumbed to the burn injuries suffered by her. The evidence of PW - 4 [Dr. Ganesh Dhondiraj Niturkar] is corroborated by Postmortem Report at Exhibit - 32.

22. PW - 6 [Pallavi Dnyaneshwar Warpe], daughter of Deceased, came up with the different version that, her mother i.e. Deceased, poured kerosene and set her ablaze due to beating by the Appellant, who was a drunker. Her evidence shows that, she was not cross-examined by the Prosecution with the contention that, she was not supporting the case of Prosecution. It is strange. Be that as it may. Her said version that, Deceased committed suicide is required to be seen with doubt, for the reason that, her evidence nowhere shows that, she witnessed the actual incident. What her evidence shows is that, on the day of incident, Deceased asked her to bring kerosene for putting in the lamp and so she gave kerosene to her and went out to their agricultural land. Her evidence shows that, on hearing the shouts, she came home. What is seen from the evidence of PW - 10 [Arjun Dnyaneshwar Warpe], who was the son of Deceased is that, the house of Appellant and Deceased was situated in their agricultural land. True it is that, the said version is in favour of the Appellant, however as, she was not the witness to the incident, it will not create any dent which

would affect the evidence in the nature of Dying Declarations.

23. PW - 3 [Lata Tukaram Pagar] was the sister of Deceased. She had visited the Hospital where Deceased was hospitalized. She did not support the case of Prosecution. What her evidence goes to show is that, in the evening of 04/08/2016, when Deceased was removing grass in the field, the Appellant asked her to get the food and accordingly, Deceased brought the food for the Appellant. Deceased informed her that, she was beaten severally by the Appellant. What has come in her cross-examination is that, the Appellant used to always beat the Deceased by suspecting her character. She admitted in the cross-examination done by the Appellant that no complaint was lodged by Deceased on earlier point of time regarding beating by the Appellant and further admitted that, they also did not lodge the complaint against the Appellant. Though she admitted in the cross-examination done by the Appellant that, while going to the hospital, Deceased was not speaking, she denied the suggestion that the Deceased was not able to speak in the GHATI Hospital. The evidence of this witness is not of any assistance to the Prosecution for establishing the Charge.

24. The evidence of PW - 1 [Rohidas Walmik Adhude] who acted as Spot Panch and PW - 2 [Devidas Bhaurao Jadhav], who acted as Inquest Panch show that, they did not support the case of Prosecution.

25. The evidence of PW - 12 [Dhananjay Ramrao Pharate], the Investigating Officer, shows that, he performed the Spot Panchnama on 06/08/2024 and found the plastic Can and matchstick at the spot of incident, which admittedly was the residential house where the Appellant and Deceased were

residing. Absence of written orders for entrusting the investigation of the case would not affect investigation done by him in view of the provisions of Section 156 [2] r/w Section 157 [1] of the Cr.PC. Nothing has come in his cross-examination to doubt the investigation done by him.

26. Though the Appellant examined defence Witness No.1 – Usha Balasaheb Jadhav, who was residing at the distance of 100 feet from the place of incident and deposed that, on the day of incident at 9.30 a.m. while she was washing the clothes, she heard the shout and at that time, the Appellant was cleaning his vehicle. When she called the Appellant as to what happened, the Appellant did not respond and immediately proceeded. She was unable to say what happened thereafter. Her cross-examination shows that, she wanted that the Appellant shall not be punished, therefore, she came forward to give the evidence. Her evidence that, the Appellant did not respond and immediately proceeded, shows the conduct of Appellant, which leans in favour of the Prosecution. This evidence by no means help the Appellant. Further, the version of Appellant in his statement under Section 313[1][b] of Cr.PC that, *‘I have not committed any offence. I left the house at 7.30 a.m. whe I reached Nangaon road Usha Balasaheb Jadhav told me that what happen in your house. As passenge were in my auto, I did turn to my house. It is false case’* [reproduced as it is] goes contrary to the version of defence witness.

27. The evidence available on record is considered and re-appreciated. There are two [2] written Dying Declarations, which are consistent on the point of actual accident. The said Dying Declarations are proved to be voluntary and made by the

Deceased in a fit state. There is no slightest evidence to indicate that Deceased was tutored. Both the Dying Declarations established that, the Appellant set Deceased on fire after pouring the kerosene. The cause of death as per the medical evidence, corroborated by the Postmortem Report was '*Septicemia due to burns*'. It is settled position under the law that, Dying Declarations can form the basis to record conviction provided, if it is established that, it is voluntary and the person giving the statement was in a fit state to give statement. We are satisfied that, essential ingredients for the offence punishable under Section 302 of IPC are established by the Prosecution on the basis of two consistent Dying Declarations. Use of kerosene and igniting fire clearly established that, the Appellant had intention to kill the Deceased. As far as the conviction under Section 498-A of IPC is concerned, the Prosecution's evidence lacks the essential ingredients for the said offence. The quarreling and beating are not sufficient. For the offence punishable under Section 498-A of IPC what is required to be proved is that, the cruelty shall be of such nature as explained in the provisions of said Section, which reads as under :-

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Explanation -

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

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

28. In view of the above discussion, we uphold the conviction and sentence awarded by the learned Trial Court to the

Appellant for the offence punishable under Section 302 of IPC. However, the Appellant is liable to be acquitted for the offence punishable under Section 498-A of IPC. Hence, we proceed to pass the following order:

ORDER

- [a] Criminal Appeal is partly allowed.
- [b] The conviction and sentence awarded by the learned Trial Court against the Appellant for the offence punishable under Section 498-A of IPC, is quashed and set aside.
- [c] The Appellant is acquitted for the offence punishable under Section 498-A of IPC.
- [d] The fine amount imposed by the learned Trial Court on the Appellant towards conviction for the offence punishable under Section 498-A of IPC shall be refunded to the Appellant.
- [e] The conviction and sentence awarded by the learned Trial Court to the Appellant for the offence punishable under Section 302 of IPC is maintained.
- [f] The Record and Proceedings be sent back to the learned Trial Court.
- [g] The fees of Advocate Mr. A. R. Borulkar appointed for the Appellant is quantified at Rs.10,000/- [Rupees Ten Thousand Only] to be paid by the High Court Legal Services Sub - Committee, Aurangabad.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]