



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

CRIMINAL APPEAL NO. 501 OF 2019

1] Anteswar Bhanudas Devkate,
Age : 25, Occ : Agricultural,
R/o. Vilegaon, Tq. Ahmedpur,
District : Latur.

2] Bhanudas Sonerao Devkate,
Age : 65, Occ : Agricultural,
R/o. : As above.

...Appellants

Versus

1] The State of Maharashtra

2] Bhagirathibai w/o Narayan Hake,
Age : 50, Occ Housewife,
R/o. Maangdari, Tq : Ahmedpur,
Dist Latur.

...Respondents

.....

Mr.PM. Nagargoje h/f Mr. Vishal P. Kadam – Advocate for the Appellants.

Mr. S. D. Ghayal – Addl. P. P. for respondent no.1/State.

Mr. Ashutosh Kulkarni – Advocate (appointed) for respondent no.2.

.....

AND

CRIMINAL APPLICATION NO. 4164 OF 2019

IN

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R/o. Vilegaon, Tq. Ahmedpur,
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**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 23.01.2024
PRONOUNCED ON: 07.02.2024**

JUDGMENT [Per : Neeraj P. Dhote, J.] : -

1. This is an Appeal under Section 374(2) of the Code of Criminal Procedure against the Judgment and Order dated 16.03.2019 passed by the learned Additional Sessions Judge, Ahmedpur, Dist. Latur in Sessions Case No. 07 of 2016 convicting the Appellants for the offence punishable under Section 302 r/w 34 of the Indian Penal Code (I.P.C.) and sentencing them to suffer imprisonment for life and fine of Rs.25,000/- each, in default, to undergo simple imprisonment for one year and convicting the Appellant no. 2 for the offence punishable under Section 498A of the IPC and sentencing him to suffer rigorous imprisonment for three years and fine of Rs. 5,000/-, in default, to undergo simple imprisonment for three months. The fine amount was directed to be paid to the victim.

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

2.1. Deceased Shivkanta was married to Appellant No. 1 and was residing with him and the co-accused. She was being harassed. Four days before the incident Deceased Shivkanta had come to her matrimonial home from the house of her maternal uncle. In the morning of 23.11.2015, at about 06:00 a.m., when Deceased Shivkanta got up from the bed, the Appellant No. 1 – husband poured kerosene on her person and the Appellant No. 2 – father-in-law set her on fire. She shouted. On hearing the shout, her brother-in-law came running and doused the fire by water. The Deceased Shivkanta was admitted to the Rural Hospital at Ahmedpur and thereafter shifted to the Government Medical College and Hospital at Latur [in short 'GMCH Latur'] for treatment. The Police and the Executive Magistrate recorded her Statement wherein she stated that the Appellants had set her on fire by pouring kerosene. She succumbed to the injuries on 26.11.2015. Crime came to be registered against the Appellants. The body was sent for *post mortem*, the statements of the witnesses were recorded, the necessary panchanamas were drawn, the seized articles were sent for Chemical Analysis and on completion of investigation, the Appellants came to be charge-sheeted.

3. The learned trial Court framed the Charge against the Appellants at Exh. 7 for the offence punishable under Section 302 r/w 34 and under Section 498A r/w 34 of the I.P.C., to which the Appellants pleaded not guilty. To prove the Charge, prosecution examined in all twelve (12) witnesses and brought on record certain documentary evidence. After the prosecution closed its evidence, the Statement of the Appellants under Section 313(1)(b) of the Code of Criminal Procedure [Cr.P.C.] came to be recorded. Thereafter, the Appellants came to be convicted.

4. It is submitted by the learned Advocate for the Appellants that the Dying Declarations are tutored as the evidence on record clearly show that the parental relatives of the Deceased Shivkanta had reached the hospital at Ahmedpur and thereafter they accompanied the Deceased Shivkanta to the GMCH at Latur. It is submitted that the marriage of Deceased Shivkanta with Appellant No. 1 was against her wish and, therefore, she used to visit her parental house frequently and eventually she committed suicide. It is submitted that the evidence on record do not prove the Charge and the Appeal be allowed. In support of his argument, he relied upon the following judgments : -

[i] Irfan alias Naka Versus State of Uttar Pradesh,
2023 SCC OnLine SC 1060

- [ii] Paranagouda and Another Versus State of Karnataka and Another, 2023 SCC OnLine SC 1369
- [iii] Rajendra Versus State of Maharashtra, (2022) 2 Bom CR (Cri) 671
- [iv] Ganpati Sukhdev Kadam v. State of Maharashtra, AIROnline 2023 BOM 2254
- [v] Haridas Kundlik Pokale v. State of Maharashtra, AIROnline 2023 BOM 90
- [vi] Mohammad Zakir Mohammad Bashir Solanki v. State of Maharashtra, AIROnline 2020 Bom 420
- [vii] Nallapati Sivaiah V. Sub-Divisional Officer, Guntur, A.P., AIR 2008 SC 19

5. Learned Addl. P. P. submitted that the evidence available on record establishes the Charge against the Appellants. It is submitted that, no interference is called for in the impugned Judgment and Order and the Appeal be dismissed. It is submitted that there is no inconsistency in the two dying declarations on material aspects and, therefore, cannot be disbelieved. It is submitted that both the dying declarations have been certified by the Doctor and no relatives of the Deceased Shivkanta were present at the time of recording the dying declarations. It is submitted that the Doctor found her fit during recording the statement. It is submitted that had there been falsity in the dying declarations, the victim would also have roped in her mother-in-law as well. It is submitted that the Charge is proved against the Appellants and the learned trial Court has rightly convicted and sentenced them.

6. Admittedly, there are no eye-witnesses to the incident of burning of the victim. The case is primarily based on the dying declarations. The law in respect of the appreciation of evidence in respect of dying declarations is well settled. In the case of Irfan alias Naka (supra), the legal position on the point of dying declarations is enumerated as follows :

43. *The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See: Laxman v. State of Maharashtra, (2002) 6 SCC 710]*
45. *We should also look into the genesis of the occurrence from a different angle. It is not in dispute that the three deceased died on account of severe burn injuries. It is also not in dispute that the room in which they were sleeping caught fire on account of which they suffered severe burn injuries. It is also not in dispute that inflammable substance like kerosene was found from the room which ignited the fire. However, the moot question is who set the room on fire? Could it be said that the prosecution has been able to prove beyond reasonable doubt that it was only and only the appellant-convict who set the room on fire by pouring the inflammable substance?*
49. *One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock reported in (1789) 1 Leach 500 : 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing: -*

"the general principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone: when every motive to falsehood is silent, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice.

- (b) *But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence: but the degree of credit to which they are entitled must always be a matter for the sober consideration of the Jury, under all the circumstances of the case."* (Emphasis supplied)

57. This Court in *Muthu Kutty & Anr. v. State by Inspector of Police, T.N.* reported in (2005) 9 SCC 113, while discussing the decision in *Woodcock (supra)* referred to above had cautioned the courts to ensure that a dying declaration is reliable before relying on it, with the following observations: -

"13. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500 : 168 ER 352). Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'against the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?"

(See King John, Act V, Scene IV)

The principle on which dying declaration is admitted in evidence is indicated in the legal maxim "nemo moriturus praesumitur mentire - a man will not meet his Maker with a lie in his mouth".

14. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination.

The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an 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." (Emphasis supplied)

- 61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.*
- 62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -*

- (i) Whether the person making the statement was in expectation of death?
 - (ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"
 - (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?
 - (iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?
 - (v) Whether the statement was not recorded properly?
 - (vi) Whether, the dying declarant had opportunity to clearly observe the incident?
 - (vii) Whether, the dying declaration has been consistent throughout?
 - (viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?
 - (ix) Whether, the dying declaration was itself voluntary?
 - (x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?
 - (xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?
64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.
65. In *Sujit Biswas v. State of Assam* reported in (2013) 12 SCC 406, this Court, while examining the distinction between "proof beyond reasonable doubt" and "suspicion" in para 13 has held as under:
- "13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that

"may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

7. The evidence on record go to show that the death of victim who was the wife of Appellant No. 1 and daughter-in-law of Appellant No. 2 caused due to burns and it is not disputed. It is also not disputed that incident took place on 23.11.2015 in the matrimonial home of Deceased Shivkanta wherein she was residing with the Appellants and mother-in-law.

8. The evidence of PW1 – Vithal Gyanoba Ghumanwad show that he acted as a panch for the spot panchanama, which was prepared on 25.11.2015 between 11:00 am to 12:45 noon and the pieces of burnt saree, kerosene can, match box were seized under the said panchanama. The said panchanama is brought on record at Exh. 19. The cross-

examination show that the house was situated in a residential locality and all the said articles were found in a room.

9. The evidence of PW10 – Dr. Girish Prakashrao Gutte show that on 26.11.2015, he was attached to the GMCH at Latur and he was qualified doctor holding qualification as MBBS, MD (Forensic Medicine). He received dead body of the Deceased Shivkanta for *post mortem* and he found the following injuries on the dead body.

- (1) *Intravenals puncture mark over right upper thigh at femoral region, margins blood infiltrated, reddish.*
- (2) *Superficial to deep burn injuries present over face, neck, chest, abdomen, back, upper limb and lower limbs. Margins inflamed, floor reddened, covered with yellowish greenish pus pocket at places, deep burn present over face, chest, abdomen, back, upper limbs and lower limb rest burn is superficial distribution of burn is as follows.*

	Part of body involved in burn	Percentage	Area spared involved
(a)	Head, neck, face	7	Spared scalp region of head.
(b)	Chest	9	Whole involved.
(c)	Abdomen	9	Whole involved.
(d)	Right upper limb	9	Whole involved.
(e)	Left upper limb	9	Whole involved.
(f)	Right lower limb	7	Sole spared.
(g)	Left lower limb	17	Spared sole.
(h)	Back	18	Whole involved.
(i)	Perineum	0	Spared.
(j)	Signing of scalp hair seen		
	Total Burn	95% (Ninety Five Percent)	

10. Evidence of PW10 – Dr. Girish Prakashrao Gutte further

show that the aforesaid injuries were *ante mortem* in nature and the cause of death was '**Septicemic shock due to burn**'. *Post mortem* report at Exh. 63 is brought on record in his evidence. The evidence show that the superficial burn injuries means injuries upto the last tissue of the skin. 80% part of the head, neck and face of Deceased Shivkanta was burnt and out of the head, neck and face of Deceased Shivkanta only scalp was present.

11. The evidence of PW2 - Namdeo Baburao Devkate show that he is the resident of the village where the incident in question had taken place. His evidence show that, on knowing about the incident of burning of Deceased Shivkanta, he visited the house of the Appellants which is the place of incident and saw the Deceased Shivkanta in burnt condition. His evidence show that Shivkanta was taken to hospital at Ahmedpur and later she was shifted to GMCH at Latur and he had also gone to the said hospitals. His evidence show that he was in the ambulance and Shivkanta was crying. His evidence show that Shivkanta did not state anything to him about the incident.

12. The evidence of PW3 – Vijaykumar s/o Vithalrao Ghargil show that he was the Police Patil of the village Yelegaon where the incident had taken place and on knowing about the incident he went to the spot of incident and saw Deceased Shivkanta in burnt condition. His

evidence show that Deceased Shivkanta was taken to Rural Hospital at Ahmedpur in Auto-Rickshaw and thereafter she was shifted to GMCH at Latur. His evidence show that Deceased Shivkanta was not in a condition to talk.

13. There is evidence of PW4 – Rangnath Manikrao Shinde, who is related to the victim being the daughter of his brother-in-law. His evidence show that on knowing of the incident he along with his wife went to the hospital at Ahmedpur and saw Deceased Shivkanta in burnt condition. According to him, he asked Deceased Shivkanta about the incident and she told him that at about 06:00 a.m. the Appellant No. 1 poured kerosene on her person and Appellant No. 2 set her ablaze by using match stick.

14. There is evidence of PW5 – Piraji Manik Devkate, who is the maternal uncle of Deceased Shivkanta. His evidence show that on hearing about the incident, he immediately rushed to the hospital at Ahmedpur and saw Shivkanta in burnt condition. According to him, he asked Shivkanta about the incident and she told him that the Appellants insulted her and thereafter Appellant No. 1 poured kerosene on her person and Appellant No. 2 set her on fire by match stick.

15. The evidence of PW11 – Bhagirathibai show that she was

the mother of Deceased Shivkanta and on hearing about the incident in question, she went to the hospital at Ahmedpur where Deceased Shivkanta was hospitalized. According to her, on 23.11.2015, Shivkanta was talking whole day and she informed her that the Appellant No. 1 poured kerosene on her person and Appellant No. 2 set her on fire.

16. The above referred evidence of PW4 – Rangnath Manikrao Shinde, PW5 – Piraji Manik Devkate and PW11 – Bhagirathibai Narayan Hake that they inquired with the Deceased Shivkanta when they reached the hospital in Ahmedpur about the incident and she told that Appellant No. 1 poured kerosene on her person and Appellant No. 2 set her on fire with match stick is required to be seen with doubt, for the reason that the above discussed evidence of PW3 – Vijaykumar Vithalrao Ghargil show that Deceased Shivkanta was not in a condition to talk. Further, there is evidence of PW8 – Dr. Ganesh Radhyesham Aasava, who was the Medical Officer attached to the GMCH at Latur where the Deceased Shivkanta was shifted from the Rural Hospital at Ahmedpur, who deposed that on 23.11.2015, his opinion was sought by Gandhi Chowk Police Station as to whether the patient Shivkanta was in a position to make a statement and whether she was conscious and on very day he examined the patient Shivkanta and gave opinion that she was not in a fit state to make a statement. Thus, the evidence of aforesaid three witnesses in respect of oral dying declarations by the Deceased

Shivkanta gets falsified.

17. Two dying declarations are brought on record by the prosecution by examining PW7 – Sundar G. Dhakne, who was on duty Policeman at GMCH at Latur on 24.11.2015, where the Deceased Shivkanta was admitted and PW9 – Dilip Babarao Mulje, who was the Executive Magistrate at Latur on 24.11.2015. Their evidence show that they recorded the dying declarations of Deceased Shivkanta on 24.11.2015 after ascertaining her fitness for giving statement from PW8 – Dr. Ganesh Radhyesham Aasava. The said dying declarations are at Exh. 38 (recorded by PW7- Sundar G. Dhakne) and Exh. 47 (recorded by PW9-Dilip Babarao Mulje). In both the dying declarations, Deceased Shivkanta has stated that the Appellant No. 1 poured kerosene on her person and Appellant No. 2 set her on fire by match stick.

18. The evidence of PW7 – Sundar Gangaram Dhakne, who recorded the dying declaration at Exh. 38 show that both the hands and legs of patient Shivkanta were burnt. If this was the condition of Deceased Shivkanta, his evidence that he obtained the left thumb impression of Deceased Shivkanta on Dying Declaration is required to be seen with doubt. The Prosecution has not explained as to how the thumb impression could be taken when both the hands were burnt. Further, the evidence of PW9 – Dilip Babarao Mulje, who recorded the

statement of Deceased Shivkanta at Exh. 47 show that as both the hands of Shivkanta were burnt, the left toe impression of Deceased Shivkanta was taken on the Dying Declaration. The cross-examination show that his attention was invited to the toe impression on the dying declaration at Exh. 47 and he accepted that the ink of toe impression was scattered. In addition to above evidence of PW7 – Sundar Gangaram Dhakne, the evidence of PW4 – Rangnath Manikrao Shinde show that the fingers and both the legs of the Deceased Shivkanta were burnt. When both the legs of the patient were burnt, it is strange as to how toe impression was taken on the dying declaration.

19. The evidence of PW8 – Dr. Ganesh Radhyesham Aasava, who was attached to the GMCH at Latur, show that, on 24.11.2015 he examined patient Shivkanta and certified that she was conscious and fit to make a statement. However, his evidence show that, on the previous day i.e. on 23.11.2015, he found patient Shivkanta to be unfit to make the statement. His evidence show that patient Shivkanta had suffered superficial deep burns and was suffering from pains and, therefore, he had injected Painkiller medicines, Diclofenac and Paracetamol injections to her. His evidence go to show that on 24.11.2015, he administered the aforesaid injections to Deceased Shivkanta. His evidence show that the blood pressure of Deceased Shivkanta was low. The evidence of PW8 – Dr. Ganesh Radhyesham Aasava show that he did not hand over the

medical papers to the police as to how the patient Shivkanta regained fitness to make the statement. The evidence of PW4 – Rangnath Manikrao Shinde, who was the relative of the Deceased Shivkanta show that on 24.11.2015, the condition of Deceased Shivkanta was critical and serious. With this evidence on record, it was for the prosecution to show and explain as to how the Deceased Shivkanta, who suffered 95% burn injuries and was not in a fit condition to give statement on 23.11.2015, got improvement in her health on the following day i.e. 24.11.2015 and she became fit to give statement. Therefore, the prosecution's evidence that the Deceased Shivkanta was found fit to make statement on 24.11.2015 is required to be seen with doubt.

20. There is one more aspect which creates doubt about the genuineness of both the Dying Declarations of Deceased Shivkanta. The evidence of PW4 – Rangnath Manikrao Shinde show that on 24.11.2015, he was present in the GMCH at Latur with the Deceased Shivkanta. Likewise, the evidence of PW5 – Piraji Manik Devkate show that, he, PW4 – Rangnath Manikrao Shinde and PW11 – Bhagirathibai were with the Deceased Shivkanta in hospital for three to four days and during the said period the Police came and recorded the statement of Deceased Shivkanta in their presence. The evidence of PW11 – Bhagirathibai show that initially she accompanied the Deceased Shivkanta to the Rural Hospital at Ahmedpur and later to the GMCH at Latur where she was

near the Deceased Shivkanta till her last breath.

21. The above evidence of PW4 - Rangnath Manikrao Shinde, PW5 - Piraji Manik Devkate and PW11 - Bhagirathibai Narayan Hake, who are the parental side relatives of the Deceased Shivkanta clearly show that they were throughout in the company of Deceased Shivkanta in the hospitals at Ahmedpur and Latur till her death. The evidence on record clearly indicate that there was every possibility of tutoring the Deceased Shivkanta by the said witnesses, who were her parental side relatives. The above evidence on record creates reasonable doubt as to the voluntariness of the statements by Deceased Shivkanta. The dying declarations are shrouded with Suspicion. The possibility that the dying declarations were put in the mouth of the Deceased Shivkanta cannot be ruled out.

22. It has come in the evidence of PW4 – Rangnath Manikrao Shinde that he had arranged the marriage of Deceased Shivkanta with the Appellant No. 1 and after the marriage, the Deceased Shivkanta had stayed at her parental home for a period of three months after the marriage and she used to visit her parental home on and often for religious festivals. Whenever Deceased Shivkanta visited her parental home, she used to stay there for two or three days. Even PW11 – Bhagirathibai Narayan Hake, who is the mother of Deceased Shivkanta

in her evidence deposed that, Deceased Shivkanta had stayed with her at Mangdari for a period of two months. The said village Mangdari is the village where her maternal uncle resides. It is confirmed by PW4 – Rangnath Manikrao Shinde that the Deceased Shivkanta stayed at Mangdari, where her maternal uncle's house is situated, instead of Dagadsangvi. Considering this evidence on record, the defence that Deceased Shivkanta was not happy with her marriage with the Appellant No. 1 and, therefore, she set herself on fire, cannot be said to be improbable.

23. On the basis of the above discussed evidence, it is not possible to accept the aforesaid dying declarations and rely upon the same. There is no other evidence with regard to the incident of burning of the Deceased Shivkanta. Therefore, the conviction recorded by the learned trial Court for the offence punishable under Section 302 of the IPC is unsustainable.

24. The learned trial Court has convicted the Appellant No. 2 for the offence punishable under Section 498A of the IPC and acquitted the Appellant No. 1 of the said offence. The aforementioned Section reads as under :-

S.498A. Husband or relative of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, "cruelty means"—

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

(b) harassment of the woman where such harassment is with a view to coercing her or any 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.]

25. It is settled position under the law that every harassment do not constitute the offence under the said section. The amount of cruelty as contemplated under said section needs to be of such magnitude or degree that it would leave no other option for the victim but to put an end to her life.

26. The evidence of PW3 show that the Deceased Shivkanta visited her parents house as she was not treated well. In his evidence, he deposed that for a period of four days the spouses Deceased Shivkanta and Appellant No. 1 resided happily and thereafter for a period of 15 days they were residing unhappily. His further evidence that at the time of Laxmi Festival, Deceased Shivkanta went to bring the fodder in the field and the Appellants abused her and beat her by fist and slaps show that it was an improvement from his statement given to Police.

27. The evidence of PW5 – Piraji Devkate that the appellants used to beat Shivkanta by saying that she was not looking pretty and she was from the family having poor financial condition and they used to taunt her saying her life is of no use, was an improvement from his Police statement.

28. The evidence of PW4 – Rangnath Manikrao Shinde show that the Appellants used to ill-treat Deceased Shivkanta saying that she was looking ugly and she was from the poor family and used to abuse her for trivial reasons and Deceased Shivkanta told that the Appellant No. 2 asked her to bring fodder from the field and Appellant No. 1 used to abuse her and when she asked the reason for abuse, the Appellant No. 2 beat her, torn her clothes and was not allowed to enter the house.

29. In her evidence PW11 – Bhagirathibai Narayan Hake deposed that the Appellants used to subject Shivkanta to cruelty and she informed that when she was sent to bring the fodder from the field by the Appellants, the Appellant No. 2 beat her and torn her clothes.

30. The above discussed evidence in respect of ill-treatment to deceased Shivkanta nowhere show that the aforesaid witnesses were the eye witnesses to the said ill-treatment. The evidence in respect of ill-treatment is not direct in nature. The aforesaid evidence is hearsay in

nature and therefore, not admissible. Thus, the conviction awarded to the Appellant No.2 for the offence punishable under Section 498A of the IPC is liable to be set aside.

31. The conspectus of the above discussion is that the prosecution has utterly failed to prove the Charge against the Appellants. The conviction and sentence recorded by the learned Trial Court is liable to be set aside. The Appellants deserve acquittal and hence, we pass the following order.

ORDER

- [i] The Criminal Appeal is allowed.
- [ii] The Judgment and Order dated 16.03.2019 passed by the learned Additional Sessions Judge, Ahmedpur, Dist. Latur, in Sessions Case No. 07 of 2016, thereby convicting and sentencing both the Appellant Nos. 1 and 2 for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and convicting and sentencing Appellant No. 2 for the offence punishable under Section 498-A of the Indian Penal Code, is quashed and set aside.
- [iii] The Appellant Nos. 1 and 2 are acquitted of the offence punishable under Section 302 r/w 34 of the Indian Penal Code and Appellant No. 2 is acquitted of the offence punishable under Section 498-A of the Indian Penal Code.
- [iv] The Appellants be released forthwith if not required in any other case.

- [v] The fine amount if deposited by the Appellants be refunded to them.
- [vi] The Record and Proceedings be sent back to the learned trial Court.
- [vii] The fees of the learned counsel appointed to espouse the cause of respondent no. 2 – informant is quantified at Rs. 7,000/- (Rupees Seven Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- [viii] The pending Criminal Application for suspension of substantive sentence stands disposed of.

[NEERAJ P DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde