



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

CRIMINAL APPEAL NO.675 OF 2021

1. Shahaji Ashruba Falake
Age: 36 yrs., Occu. Labourer
R/o. Pokhari, Tq. & Dist. Beed

2. Baban Ashruba Falake
Age: 42 yrs. Occu. Labourer
R/o. As above

.... Appellants

Versus

The State of Maharashtra
Through Police Inspector
Neknoor Police Station
Tq. & Dist. Beed

.... Respondent

Appearance :-

Mr. Rajendraa Deshmukh [Senior Advocate] a/w Mr. Shashikant E. Shekade, Advocate for the Appellants

Mr. N. S. Tekale, APP for the Respondent - State

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

**Reserved On : 27/02/2025
Pronounced On : 11/03/2025**

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.P.C'] is directed against the Judgment and Order dated 07/12/2021, passed by the learned Additional Sessions Judge, Beed, in Sessions Case No.87/2016. The Appellants are convicted and sentenced as under :-

"A. Accused No.1 Shahaji Ashruba Falake and Accused No.2 Baban Ashruba Falake are convicted for the offence of murder PUS 302 r.w. 34 of IPC and each of them is sentenced to suffer simple imprisonment for life and imposed with fine of Rs.5,000/- [Rs. Five Thousands only]

each. In default of payment of fine, the defaulting accused shall suffer further simple imprisonment of six months.

- B. Their bail-bonds are surrendered.*
- C. Accused No.1 Shahaji Ashruba Falake was in jail from 14.05.2016 to 25.11.2016. Accused No.2 Baban Ashruba Falake was in jail from 22.05.2016 to 17.10.2016. Each of them is entitled to set-off for the periods undergone in the jail. It be given.*
- D.*
- E.*
- F.*
- G.*
- H. "*

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

[I] Manisha Shahaji Falake [hereinafter referred to as 'the Deceased'] was married to Appellant No.1 [Shahaji Ashruba Falake] for last eight [8] years from the date of incident. They were having four [4] daughters from the wedlock. One of the daughter was no more. Appellant No.2 [Baban Ashruba Falake] was the brother of Appellant No.1. Appellant No.2 and the in-laws of Deceased were residing separately. The Deceased was asking for separate share in the agricultural field from the in-laws and Appellant No.2 [Baban Ashruba Falake]. Due to the said demand by the Deceased, Appellant No.1 [Shahaji Ashruba Falake], Appellant No.2 [Baban Ashruba Falake] and mother-in-law of the Deceased used to quarrel with her. In the earlier morning of 13/05/2016, when the Deceased was sleeping with her daughters in her house, Appellant No.1 [Shahaji Ashruba Falake] poured kerosene from Can on the Deceased and Appellant No.2 [Baban Ashruba Falake] ignited the fire. The Deceased shouted for help and the neighbouring persons doused the fire on her person by water. The Deceased was taken to the Government Hospital at Beed for treatment. The Policeman available at the Government Hospital, Beed, recorded the

statement of Deceased on 13/05/2016, wherein, she deposed of the incident. Her said statement was sent to the concerned Police Station and Crime No.68/2016 came to be registered against the Appellants and mother-in-law of the Deceased for the offence punishable under Sections 307, 498-A and 506 read with Section 34 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C.']. After some time, the Executive Magistrate recorded the statement of Deceased, wherein, she deposed of the incident.

[II] The Investigating Officer visited the spot of incident and prepared the Spot Panchnama. The Appellants and acquitted Accused came to be arrested and their clothes were seized. During the treatment, Deceased succumbed to the burn injuries. The Inquest was prepared. The dead body was referred for Postmortem. The Postmortem revealed 96% superficial to deep burns and cause of death as "*due to 96% burn with septicemia*". The statement of witnesses were recorded. The Articles seized during the course of investigation were referred to the Chemical Analyzer. The relevant documents came to be collected and Charge-sheet came to be submitted against the Appellants and mother-in-law of the Deceased for the offence punishable under Sections 498-A, 302 and 506 read with Section 34 of I.P.C.

[III] On committal, the learned Trial Court framed the Charge against the Appellants and acquitted Accused for the offence, for which, the Charge-sheet was filed. The Appellants and acquitted Accused denied the Charge and claimed to be tried. To prove the Charge, Prosecution examined in all nine [9] witnesses and brought on record the relevant documents. After submitting the evidence closure pursis at Exhibit – 116 by the Prosecution, the learned Trial Court recorded the statements of the Appellants and acquitted Accused under Section 313[1][b] of Cr.P.C. Their defence was of

false implication. After hearing both the sides and appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order, convicting the Appellants as referred above in Paragraph No.1 and acquitted the mother-in-law of the Deceased.

3. It is submitted by the learned Senior Advocate for the Appellant that, the father of Deceased and the witness, who carried the Deceased to the Hospital, did not support the case of Prosecution. Though, two daughters of the Deceased were sleeping with her at the time of incident, there is no evidence of kerosene on them. The daughter, who was sleeping with the Deceased, is not examined as the witness, though her statement was recorded on very next day of the incident. The evidence of treating Doctor shows that, the history given at the time of admission of Deceased to the Hospital was, due to stove fire. The evidence of Medical Officer shows that, initially, the patient was not in a condition to give the statement, however, it has further come in the evidence of Medical Officer that, the patient was in a position to give the statement. There is no evidence to show as to how the patient got conscious after sometime to give the statement and therefore, the said evidence of Medical Officer cannot be believed. The Deceased was the resident of a village and the language of Dying Declarations [hereinafter referred to as 'D.D/ D.Ds'] cannot be that of the Deceased. Though the D.Ds show the endorsements by the Doctor in respect of fitness to give the statement, the said endorsements were taken subsequently. Therefore, the first D.D is shrouded with suspicion and the same needs to be discarded.

3.1 It is further submitted by the learned Senior Advocate for the Appellant that, the second D.D was recorded by the Executive Magistrate. He recorded the second D.D in Question Answer form. The Answer to Question No.12 is left blank / unanswered. The medical evidence on record goes to show that, the entire body of the Deceased was burnt and was wrapped in a bandage and therefore, the thumb impression on the D.Ds becomes suspicious. Both the D.Ds are inconsistent with each other in respect of roles attributed to the Accused persons. The seizure of clothes of the Appellants were after eight [8] days from the date of incident and so, the CA reports cannot be taken into consideration, as the possibility of tampering with the Articles cannot be ruled out. The medical evidence do not show as to what the injection given to the Deceased was for and an afterthought, cooked-up story was made by the Prosecution. Hence, the Appeal be allowed and the impugned Judgment and Order be quashed and set aside.

3.2. In support of his submissions, the learned Senior Advocate for the Appellant relied on the Judgment in the case of **Abhishek Sharma Vs. Sate [Govt. of NCT of Delhi], in Criminal Appeal No.1473/2011 dated 18/10/2023.**

4. It is submitted by the leaned A.P.P. that, both the D.Ds were recorded without any delay. There are endorsements by the treating Doctors on both the D.Ds. There is no exaggeration or false implication in the D.Ds. The Executive Magistrate and the Medical Officer were the independent witnesses and had no reason to falsely implicate the Appellants. Both the D.Ds inspire confidence and there is corroboration through the CA reports showing kerosene residues on the clothes of Appellant No.1 [husband]. The Deceased's father was won-over. The learned Trial

Court has rightly appreciated the evidence on record and passed the impugned Judgment and order. Hence, Appeal be dismissed.

4.1 In support of his submission, the learned A.P.P. relied on the following Judgments :-

- [a] **Sohan Lal alias Sohan Singh and Ors. Vs. State of Punjab ; [2003] 11 SCC 534 ;**
- [b] **State of Madhya Pradesh Vs. Dal Singh and Others ; [2013] 14 SCC 159 ;**
- [c] **Ramesh and Others Vs. State of Haryana ; [2017] 1 SCC 529 ;**

5. Heard both the sides. Scrutinized the evidence on record.

6. The Appellant No.1 is the husband and Appellant No.2 is the brother-in-law of the Deceased. There is no dispute that, the Deceased died of burn injuries. The evidence of PW – 2 [Mahadeo Prakash Take] shows that, in 2016, he was a Sarpanch of his village. In the morning, on the day of incident at 7:00 a.m., when he was in the house, he heard the chaos and so, he came out of the house. He saw the Deceased [wife of Appellant No.1] in burning condition near the Maruti and Vithal Temples. The people gathered and extinguished the fire by pouring water. The Deceased suffered burn injuries and she was taken to the Civil Hospital, Beed in a Van of village - Limbaganesh. This evidence remained unshaken in the cross-examination.

7. The evidence of PW – 6 [Dr. Kiran Vithalrao Sawase] shows that, on 19/05/2016, he was attached to the Civil Hospital, Beed as a Medical Officer. On that day, he received the dead body of Manisha Shahaji Falake [Deceased] for Postmortem along with the requisition letter at Exhibit - 85 and Inquest at Exhibit - 83. He and Dr. Shinde conducted the Postmortem between 11:00 a.m. to 12:00

noon. The dead body was well nourished and rigor mortis was well marked. There were 96% superficial to deep burns. All the injuries were antemortem. The skulls and brain were intact, pleura was intact. Larynx, trachea and bronchi and soot particles were present in it. Lungs were congested. Heart was filled with blood. Abdomen wall and peritonium were intact. Stomach and intestine were empty. Liver, pancreas, spleen and kidney were congested. Bladder and uterus were empty. The cause of death was '*due to 96% burns with septicemia*'. He prepared the Postmortem Report at Exhibit – 102. As regards the cause of death due to the aforesaid burn injuries is not in dispute.

8. As regards the spot of incident, in which, Deceased suffered burn injuries, was the residence of Deceased. PW – 1 [Ajay Vinayakrao Gujar] was a Public Servant and was directed by his Superior to act as the panch along with one of his colleague named Vilas Gore. Thereafter, they went to the Neknoor Police Station and from there, they both went to the spot of incident with Police. The spot was a house of mud consisting of one [1] room. There was one wooden Cot and other household articles, which were scattered. The white colour kerosene plastic Can with small quantity of kerosene and Matchbox having some half burnt sticks were lying in the house. The articles and soil samples from the house were seized under the Spot Panchnama at Exhibit – 67. His evidence is corroborated by PW – 9 [Rajendra Bhanudas Patil], who was the Investigating Officer. He deposed of visiting the spot along with the panchas, seizure of articles from the spot of incident and preparing the Spot Panchnama at Exhibit – 67. From the tenor of cross-examination, it is clear that, there is no dispute in respect of the spot of incident as the residence of Deceased.

9. The case in hand primarily rests on the D.Ds. The D.Ds are the exceptions to the hearsay evidence and relevant pursuant to the provisions of Section 32[1] of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act']. In the case relied upon by the learned Senior Advocate, by considering the previous Judgments of the Hon'ble Supreme Court of India, it is observed in Paragraph No.9 as under :-

"9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind ;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc. "

10. Coming to the D.Ds, in the case at hand, the first D.D was recorded by PW – 3 [Pandharinath Kisanrao Sasane]. He was a Policeman and was on duty at the Police Outpost, Civil Hospital, Beed on 13/05/2016 from 08:00 a.m. to 08:00 p.m. As he received the MLC vide Exhibit – 78 at 09:30 a.m. in respect of the admission of a burnt lady in Casualty Ward, he issued a

letter at Exhibit – 79 to the Medical Officer to give opinion about the condition of patient to give the statement. He along with Medical Officer went to the Burn Ward where the Deceased was admitted. The Medical Officer examined the Deceased and informed that, she was not in a condition to give statement and an endorsement to that effect was made by the Medical Officer on the letter at Exhibit – 79. After half an hour to 45 minutes, he again went to the Burn Ward with the Medical Officer. The Medical Officer, after examining the Deceased, informed him that, she was in a condition to give statement and made the endorsement to that effect. Thereafter, he put some questions to the Deceased to confirm about her condition to give statement and as he got assured that, the Deceased was in a condition to give the statement, he recorded her statement.

11. The further evidence of PW – 3 [Pandharinath Kisanrao Sasane] shows that, the Deceased stated before him that, she and her husband i.e. Appellant No.1, were demanding partition of land, which was in the name of her father-in-law. On 13/05/2016, as there was a quarrel between her and Appellant No.1 – husband, the Appellant No.1 slept outside the house and she slept with her daughters. At 04:00 a.m., both the Appellants came in the house and Appellant No.1 asked her as to why she was demanding the partition in the land and poured kerosene from a Can on her and Appellant No.2 ignited the Matchstick and set her ablaze. She suffered burn injuries. When she shouted, five [5] to six [6] people from the Maroti Temple came there and extinguished the fire by pouring the water on her. Thereafter, in one Auto from village Limbaganesh, she was taken to the Civil Hospital at Beed. He read over the statement to the Deceased and she confirmed it

to be true and correct and thereafter, he took her right thumb impression and attested by his signature. The said statement was brought on record at Exhibit – 80. After recording the statement, the Medical Officer examined the Deceased and endorsed that, she was in conscious state while giving the statement. The MLC and statement were forwarded to the Neknoor Police Station vide letter at Exhibit – 81. On the same day, he issued a letter at Exhibit – 82 to the Executive Magistrate, Beed with a request to record the statement of Deceased.

12. The second D.D of the Deceased was recorded by PW – 5 [Vilas Vithalrao Telang], who was the Taluka Executive Magistrate, Tahsil Office, Beed. On 13/05/2016 at about 12:30 p.m., he received letter at Exhibit - 82 from the Police requesting him to record the statement of Deceased admitted in the Civil Hospital, Beed. He went to the Civil Hospital, Beed at 12:55 p.m. and went to the Burn Ward and inquired with the Medical Officer about the Deceased. On his request, the Medical Officer examined the Deceased and informed him that, she was in a position to give the statement and an endorsement to that effect was made on the paper. He asked the name and place of residence to the Deceased to confirm whether she was in condition to give the statement. After he got assured that, the Deceased was in a condition to give the statement, he recorded her statement.

12.1 His evidence shows that, the Deceased stated before him that, her husband i.e. Appellant No.1, used to beat her under intoxication. On 12/05/2016, Appellant No.1 assaulted her in the night under intoxication. She slept with her

children. At about 4:00 a.m., Appellant No.1 poured kerosene on her from a Can and Appellant No.2 set her blaze with the Matchstick. She got fire and came out of the house by shouting. Hearing her shouts, the people, who were sleeping in the Maroti Temple, came there and poured water on her person and extinguished the fire. In the meanwhile, both the Appellants fled, however, they both were caught by the villagers. The Sarpanch of village - Limbaganesh and Bibhishan admitted her in the Hospital. She stated that, both the Appellants and her mother-in-law were responsible for the incident. He read over the statement to the Deceased, who admitted the same to be true and correct. He took the right hand thumb impression of the Deceased on the statement. The Medical Officer again examined the Deceased and made the endorsement to that effect on the statement. He signed on the statement and the said statement was brought on record at Exhibit – 96. At Exhibit – 97, a photocopy of the page from the register showing the entry in respect of the said statement is brought on record.

13. The evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh] shows that, she was attached to the Civil Hospital, Beed as a Medical Officer from July – 2015. On 13/05/2016 while she was on duty as a Casualty Medical Officer from 09:00 to 03:00 p.m., the Deceased was brought in burn condition to the Hospital at 08:40 a.m. An intimation of her admission was given to the Medical Officer vide Exhibit – 78. At about 10:00 a.m., the Policemen came to the Hospital for recording the statement of Deceased and issued a letter to her at Exhibit – 79. She went to the Burn Ward and examined the Deceased and found her not conscious and not able to give the statement. She made an endorsement to that effect at Exhibit – 79. She

informed the Policemen to come after sometimes, so the Policemen came again to the Hospital. She again examined the Deceased and found her to be conscious, oriented and able to give the statement. She made the endorsement to that effect at Exhibit – 80. Thereafter, the Police recorded the statement of Deceased and she again examined the Deceased after recording her statement and found her to be conscious and oriented and accordingly, she gave the endorsement to that effect at Exhibit – 92.

13.1 The further evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh] shows that, on the same day i.e. 13/05/2016, the Executive Magistrate came to the Hospital at 01:00 p.m. for recording the statement of Deceased. On his request, she went to the Burn Ward and examined the Deceased and found her to be conscious, oriented and able to give her statement and so, she gave the endorsement to that effect at Exhibit – 98. In her presence, the Executive Magistrate put some questions to the Deceased and recorded her statement. After recording the statement, she again examined the Deceased and found her to be conscious, oriented while giving the statement and accordingly, she gave the endorsement at Exhibit – 99.

14. From the above evidence of witnesses, who recorded the D.Ds and from the D.Ds brought on record in their evidence, it is clear that, in both the D.Ds, the Deceased gave the time of incident as early morning at 4:00 a.m. However, the evidence of PW – 2 [Mahadeo Prakash Take], considered above, before the evidence in respect of D.Ds, the time of incident given by him was 7:00 a.m. The above evidence of PW – 4 [Dr. Poonam

Rameshwarsingh Lodh] shows that, the Deceased was brought and admitted to the Hospital at 08:40 a.m. Her said evidence in respect of the timing of bringing and admitting the Deceased to the Civil Hospital Beed is fully corroborated by the MLC at Exhibit – 78. The father of Deceased named Haribhau Patilbuwa Disle was examined as PW – 7. His evidence shows that, the distance between the village - Limbaganesh and the village i.e. the house where the incident had taken place, was two [2] kms. and the distance between the village i.e. house of Deceased where the incident took place, and Beed was 25 kms. From the above evidence of PW – 2 [Mahadeo Prakash Take] and the D.Ds, it seen that, after the fire was doused, a pickup Van was called from village - Limbaganesh and she was taken to the Hospital. If the incident was of 04:00 a.m. and considering the distance between the place of incident i.e. the village of incident and the Hospital, the Hospital admission should have to be by 05:30 to 06:00 a.m., if full latitude of time is considered. Though, in her second D.D., it is stated that, she was taken to the Hospital at 08:00 a.m., there is no evidence that, after the incident, the Deceased was in the village for a long time. In the light of the evidence of PW – 2 [Mahadeo Prakash Take] and the evidence regarding time of admission of Deceased to the Hospital, the version in the D.Ds that, the incident took place at 04:00 a.m. is required to be seen with doubt.

15. Secondly, in the first D.D, it is stated by the Deceased that, after dousing the fire, she was taken to the Hospital by PW – 2 [Mahadeo Prakash Take], Bibhishan Mulik and *others*. Whereas, in the second D.D, she stated that, after dousing the fire, she was taken to the Hospital by PW – 2 [Mahadeo Prakash

Take], Bibhishan Mulik and her *husband* i.e. Appellant No.1 [Shahaji Ashruba Falake]. The evidence of PW – 2 [Mahadeo Prakash Take] shows that, the Deceased was taken to the Hospital by Appellant No.1 [Shahaji Ashruba Falake], he and one Laxman Zanjurne. There is no reference in the first D.D that, one of the persons, who shifted her to the Hospital, was her husband and on this aspect, there is inconsistency in both the D.Ds.

16. Thirdly, in the first D.D, it is stated by the Deceased that, due to the night quarrel between her and Appellant No.1, the Appellant No.1 slept outside the house. Whereas, in the second D.D, she stated that, Appellant No.1 came in a drunken condition and beat her during the night time. It is, thus, clear that, there is inconsistency in both the D.Ds.

17. Fourthly, in the first D.D, the Deceased stated that, Appellant No.1 poured kerosene on her and Appellant No.2 ignited the fire by Matchstick. Whereas, in the second D.D, she nowhere stated that, Appellant No.1 poured the kerosene on her. What she has stated is that, Appellant No.1 came in the drunken condition, beaten her the whole night and after she went to sleep with the daughter, in the early morning at 04:00 a.m., the kerosene was poured on her person from the Can and Appellant No.2 ignited the fire by Matchstick on her towards her legs. This is a major inconsistency in both the D.Ds.

18. Fifthly, in both the D.Ds, the Deceased stated that, she had grievance / complaint also against her mother-in-law, who was arraigned as Accused No.3. In none of the D.Ds, any role is attributed to the mother-in-law in the incident, however, she stated of grievance / complaint against the mother-in-law.

19. Sixthly, in both the D.Ds, the Deceased has stated that, the incident of pouring kerosene and igniting the fire took place in the early morning at 04:00 a.m. while she was sleeping with her daughter. There is no iota of evidence on record and it is nobody's case that, the daughter/s of Deceased suffered any burn injuries as she / they were sleeping with the Deceased. Usually, the sleep at early hours of morning is profound. It is highly improbable that, the daughter/s, who was / were sleeping with the Deceased when the kerosene from the Can was poured and fire was ignited, the daughter/s will go unhurt. The daughter of Deceased is not examined by the Prosecution. This vital aspect makes the D.Ds to be seen with doubt.

20. Seventhly, in the first D.D, it is stated by the Deceased that, her in-laws were residing separately. Whereas, in the second D.D, she has stated that, she was residing with Appellant No.1 and three [3] daughters, aged six [6] years, five [5] years and one [1] year. The evidence of PW – 7 [Haribhau Patilbuwa Disle], the father of Deceased, shows that, Appellant No.1 and Appellant No.2 were residing separately and their houses were at the distance. If that was so, the presence of Appellant No.2 at the place of incident in the early morning at 04:00 a.m. was not natural and the same appears to be improbable.

21. Eighthly, the evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh], who was attached to the Civil Hospital, where the Deceased was taken after the incident, shows that, in IPD / admission papers of the Hospital, the history of burns was given due to stove fire. The said Doctor volunteered that, the history was given by the relatives of Patient. Though PW – 7 [Haribhau Patilbuwa Disle], the father of Deceased, in his evidence deposed that, after coming to know of the incident,

he and his nephew straight away went to the Civil Hospital, Beed and when they reached, the admission process was going on and at the time of admission, the Deceased stated to the Doctor that, she caught fire when she tried to take sugar and tea, kept on the plank and caught fire as the kerosene fell on her person. The scrutiny of the evidence of PW – 7 [Haribhau Patilbuwa Disle] shows that, he has given contrary versions in his examination-in-chief and the cross-examination. His evidence is very shaky. However, the fact remains that, according to the evidence of Doctor, the history mentioned in the Medical Case Papers was burns, due to stove fire.

22. Ninethly, from the evidence of PW – 3 [Pandharinath Kisanrao Sasane] and PW – 4 [Dr. Poonam Rameshwarsingh Lodh], it is clear that, when they went to the Deceased around 10:00 a.m. after her admission, to record her statement, the Deceased was not in a condition to give the statement. Undisputedly, the Deceased suffered 96% burn injuries. It has come in the evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh] as to what treatment was provided to the Deceased and other relevant aspects. For the sake of clarity, we re-produce the relevant Paragraph from the evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh] as under :-

“05. In case of 96% burn patient there is always dehydration. Due to dehydration the water level in the body of the patient decrease rapidly. Burnt patient suffer more pains in the summer season. Such patient generally make loud shouts or murmuring. To reduce the pains generally pain killer are given. Pethidine, morphin and fortwin, such sedatives are given to the burnt patient. Manisha was given Tramadol. Tramadol affects nervous system of the patient. Due to Tramadol, patient may suffer dizziness. Fluid level decrease due to dehydration. The level of sodium and potassium also imbalance. Function of kidney may become weak. In case of damage to the kidney, it affect discharge of urine output. Due to this, some time patient may become unconscious. It is true that on administration of sedative/pain killer to the patient, its effect starts after about 15 minutes. Its effect remain for 6 to 7 hours.

Not true to say that during the said period patient remains unconscious. In case the patient having burn of 96% do not get treatment in time, the patient may went in shock. It is not true to say that if the burnt patient become unconscious had take 6 to 7 hours to regain conscious. The patient was wrapped in a bandage. In the case paper it is mentioned that patient had burn injuries over right hand, left hand, right leg, left leg, back, chest, thorax, head, neck, face and perineum. I am not able to state whether the fingers of hands and legs were wrapped in bandage. The patient's internal vital organ may or may not be damaged. I am not able to state interest vital organ of patient Manisha were completely damaged."

22.1 The further evidence of PW – 6 [Dr. Kiran Vithalrao Sawase], who performed the Postmortem, shows that, prior to his working at the Civil Hospital, Beed, he was qualified as M.D [General Medicines]. Though his evidence shows that, he was not the Burn Specialist nor the Surgeon, the relevant aspects in respect of the condition of Patient suffering from the burn injuries are brought in the cross-examination. For the sake of clarity, we re-produce the said relevant evidence as under :-

"02. I completed MD in 2014. I am not a burn specialist nor surgeon. Lungs, heart, brain, plura, kidney, spleen, liver, pancrea, suprarenals become congested in case of burn injury. In case of congestion of brain, the the working capacity of the brain may reduce. Due to congestion in liver and kidney, it may affect the working condition of brain. I have not mentioned the description of burn wound. I say that the burns were extensive, hence, description is not provided. It is not mentioned in the report the location of superficial and deep burn injuries. In case of 96% burn injuries, the condition of the patient since inception become serious and critical. Sometimes burn patient may become unconscious or feel shock. In case of burn injuries, patient may feel difficulty in breathing due to flame of fire/smoke. Burn patient may start infection at any time. Such infection speedily increase. Due to infection, there may be pus formation and foul smell. There may be swelling. In postmortem report, it is not required to mention a kind of infection. Not true to say that I had not conducted postmortem and just signed the postmortem notes. The deceased had sustained burn injuries to her fingers."

23. The further evidence of PW – 3 [Pandharinath Kisanrao Sasane] and PW – 4 [Dr. Poonam Rameshwarsingh Lodh] shows that, after sometimes, they again went to the Deceased and

found her to be in a condition to give the statement and her D.Ds were recorded. It is, thus, clear from the evidence of these two witnesses that, firstly, around 10:00 a.m., the Deceased was not in a condition to give the statement and after some time i.e. within one [1] hour, the Deceased was found to be in a position to give the statement. In light of the above referred evidence depicting the extent of burn injuries suffered by the Deceased and medical condition of such Patient, the Prosecution evidence that, while recording both the D.Ds, the Deceased was in a fit condition to give the statement does not inspire confidence. It is true that, it is the satisfaction of person, who records the D.D., whether the Patient is in a fit condition to give statement, the above medical evidence gives a clear picture of the extent of burns suffered by Deceased and effect of such burns. In the first D.D, the Deceased even stated of the body parts where she suffered the burn injuries and in the second D.D, she stated that, after setting her ablaze, Appellant No.1 and Appellant No.2 ran away and they both were apprehended by the villagers and thereafter, she was taken to Hospital at 08:00 a.m. by Appellant No.1, Bibhishan Mulik and PW – 2 [Mahadeo Prakash Take]. Looking to the above discussed medical evidence, showing the extent of burns and condition of such Patient, giving such an elaborate statement in the nature of D.Ds appears strange and thus required to be seen with doubt.

24. The further evidence of PW – 3 [Pandharinath Kisanrao Sasane], who recorded the first D.D, shows that, the Deceased received burns on stomach, chest, neck, hands, legs, back and fingers of hands and legs, though, he denied the suggestion that, the palm of hands and legs were burnt. The medical evidence of PW – 4 [Dr. Poonam Rameshwarsingh Lodh] shows that, the Deceased had burn injuries over right hand, left hand,

right leg, left leg, back, chest, thorax, head, neck, face and perineum and the Deceased was wrapped in bandage. Considering this clear evidence in respect of the extent of burns suffered by the Deceased and the fact that, the body was wrapped in bandage, the evidence of PW – 3 [Pandharinath Kisanrao Sasane] and PW – 5 [Vilas Vithalrao Telang] that they took the right hand thumb impression of the Deceased on the statement is required to be seen with doubt. Further, PW – 5 [Vilas Vithalrao Telang], who recorded the second D.D, admits that, he did not attest the thumb impression on the statement.

25. Considering the above aspects as emerged from the D.Ds and the evidence available on record, evidence in the nature of D.Ds do not inspire confidence. Both the D.Ds are not only inconsistent with each other on material aspects, they speak of certain improbabilities, discussed above. It is true that, the principle on which D.D 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*", it is equally settled position under the law that, the D.D should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness before relying on them. As both the D.Ds do not inspire confidence, they cannot form the basis to convict the Appellants. It can only be considered as a mere piece of evidence.

26. The other corroborative evidence brought on record by the Prosecution is the Report of Forensic Laboratory showing kerosene residues on the clothes of Appellants. The evidence of PW – 9 [Rajendra Bhanudas Patil], the Investigating Officer, shows that, Appellant No.1 was arrested on 14/05/2016 and

Appellant No.2 was arrested on 22/05/2016 and their clothes were seized after their arrest. His evidence is silent in respect of sealing the clothes. The evidence of PW – 8 [Raghunath Govardhan Aatule] shows that, he was a Police Constable, attached to the Neknoor Police Station from 2009 to 2016. On 06/06/2016, he was directed to deposit seized Muddemal in the Crime, with Forensic Laboratory at Aurangabad and on 07/06/2016, he received the Muddemal from Mohrir with forwarding letter and he deposited the same with the Forensic Laboratory at Aurangabad. His evidence goes to show that, after seizure of clothes of both the Appellants, they were with the Police Station Mohrir for substantial days before depositing with the Forensic Laboratory. Under such circumstances, the said CA Report indicating kerosene residues on the clothes of Appellants loses its significance.

27. Perusal of the Judgments relied by the learned A.P.P show that, the said decisions were based on the facts, circumstances and evidence available on record in the respective cases. Considering the facts, circumstances and the evidence available on record in the case in hand do not inspire confidence and cannot lead to form the basis to hold that, the Charge is established. When the D.Ds fall short of inspiring confidence, the other evidence takes the case of Prosecution no further. On re-appreciation of the evidence available on record, as discussed above, it is not possible to confirm the conviction and sentence awarded by the learned Trial Court against the Appellants and the same is liable to be quashed and set aside. Hence, we proceed to pass the following order :-

ORDER

- [I] Criminal Appeal is allowed.
- [II] The Judgment and Order dated 07/12/2021, passed by the learned Additional Sessions Judge, Beed, in Sessions Case No.87/2016, convicting the Appellants for the offence punishable under Section 302 r/w Section 34 of I.P.C and sentencing them to suffer simple Imprisonment for life with fine of Rs.5,000/-, in default, to suffer simple Imprisonment for six [6] months, is quashed and set aside.
- [III] The Appellants stand acquitted for the offence punishable under Section 302 read with Section 34 of I.P.C.
- [IV] The Appellants are behind the bars. They be released, if not required in any other offence.
- [V] Record and Proceedings be sent back to the learned Trial Court.

28. Criminal Appeal is disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer