

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 492 OF 2022

Bilal Malang Shaikh
Age:34 years, Occu:
R/at :- Raigad Chawl, L.U. Gadkari Marg,
Vishnu Nagar, Chembur (EAST), Mumbai
(Presently Lodged in Nagpur Central Prison
Nagpur, convict No. 10465)

... Appellant

V/s.

The State of Maharashtra
(at the instance of RCF Police Station,
Mumbai in CR No. 332 of 2015
Subsequently numbered
as Sessions Case No. 296 of 2016

... Respondent

Mr. Sandeep R.Karnik, Appointed Advocate, Through Legal Aid for Appellant.
Mr. Shreekant V. Gavand, A.P.P. for Respondent – State.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 12th SEPTEMBER 2025

PRONOUNCED ON : 24th DECEMBER 2025

JUDGMENT [Per : RANJITSINHA RAJA BHONSALE, J] :-

1) This is an Appeal, against the Order of conviction dated 16th May 2019, passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.296 of 2016, whereby the Appellant (Original Accused

No.1) is convicted under the provisions of Section 235(2) of Criminal Procedure Code, for the offences punishable under Sections 498-A and 302 of the Indian Penal Code, 1860. For the offence punishable under Section 498-A of the Indian Penal Code the Appellant is sentenced to suffer Rigorous Imprisonment for 1 (One) year and pay a fine of Rs.1,000/- (Rupees One Thousand), in default of payment of fine, the Appellant is to suffer Rigorous Imprisonment for further 2 (Two) months. Appellant is sentenced to suffer Life Imprisonment for the offence punishable under Section 302 of the Indian Penal Code.

2) Initially, prosecution was launched against 4 accused i.e. accused No.1 Bilal Malang Shaikh; being the husband of the deceased, accused No.2, Pallavi @ Jainab Irfan Khan; the so-called sister of the accused No.1, accused No.3 Mumtaz Bilal Sayyad Ahmad; first wife of the accused No.1 and the accused No.4 Fida Hussain @ Malang Islamul Shaikh; being the mother of accused No.1.

2.1) The prosecution has examined 8 witnesses to bring home the guilt of the Appellant. The details of the prosecution witnesses examined are; PW-1 Sohail Salik Shaikh, is the brother of the deceased (Exhibit 31); PW-2 Smt Mumtaz Salim Shaikh, is the mother of the deceased (Exhibit 37); PW-3 Mrs. Meharunissa Imtihaz Ahmad Shaikh, is the panch witness of Inquest Panchnama (Exhibit 47); PW-4 Ms Anita Nitin Kamble, working with an NGO, i.e. Coro of Rescores Organization (Exhibit 50); PW-5 Ashwini Shivaji Khambe,

PSI attached to RCF Police Station (Exhibit 60); PW-6 Shankar Sadashiv Dhyagude, the Investigating Officer (Exhibit 70); PW-7 Dr. Sneha Rajeshwar Shreeram, Doctor, who was working at Rajawadi Hospital (Exhibit 74) and PW-8 Shri. Sanjay Maruti More is the second Investigating Officer (Exhibit 77).

2.2) The prosecution has relied upon the following documentary evidence i.e Inquest Panchanama dated 25th December, 2015 (Exhibit 48); Dying Declaration Exhibit 51, Statement dated 24th December, 2015 (Exhibit 71); Endoresment of PW 7 of Statement of deceased (Exhibit 75); Post Mortem Notes (Exhibit 57); Medical papers Exhibit 67 and 67A (coll) and Spot Panchanama (Exhibit 73).

3) The defence of all the accused including Appellant in their statement recorded under Section 313 of Criminal Procedure Code was of total denial. They have stated to have been falsely implicated. All the accused were tried for the offence punishable under Section 498-A read with 34 of Indian Penal Code. The Appellant (Original Accused No.1) was also tried for the offence punishable under Section 302 of Indian Penal Code.

4) The case of the prosecution is in brief as under :-

4.1) Smt. Hayat Bilal Shaikh (Hayat/deceased) was the sister of Mr. Sohail Salim Shaikh i.e. complainant (PW-1). The marriage of Hayat and the Appellant was solemnized in the year 2015. Appellant was residing with Hayat at Vishnunagar, Chembur after marriage. At the time of marriage,

Hayat's family gave Rs.50,000/-, gold ring weighing 6 gram to the Appellant Hayat was gifted with one gold marriage string.

4.2) The Appellant used to harass Hayat and demand money from her and her parents. From 15 days, prior to the lodging of the FIR, the Appellant was not attending his work and persistently demanding that, Hayat gets money from her matrimonial house for house expenses and to purchase a new house. The Appellant abused and assaulted Hayat. These facts, were informed by Hayat, to her brother i.e PW-1. That, Hayat told PW 1 that the mother of the Appellant i.e. Accused No.4 used to abuse the Hayat, demanded money from Hayat and threatened her that she would perform second marriage of the Appellant. From time to time, PW-1 and his family, had given Rs.10,000/- and Rs.15,000/- to the Appellant in the hope that he would stop torturing and harassing Hayat.

4.3) That, the Appellant had hidden the fact of his marriage, to Mumtaz/Accused No.3, from Hayat and her family members. Hayat and her family were not aware that Appellant was already married to Mumtaz/Accused No.3, and that they had one daughter out of said wedlock. The marriage of the Appellant with Hayat was his second marriage. On 22nd December, 2015, Hayat had came to the house of the PW-1 and told him and her family members that the Appellant torturers her, with an intention to get money from her parents.

4.4) On 24th December, 2015, the Appellant by pouring kerosene on

the person of Hayat set her on fire. Hayat was taken to Rajawadi Hospital. At the Hospital, it is alleged that Hayat orally informed her mother Mumtaj Shaikh (PW-2) that the Appellant put kerosene on her, set her on fire by alighting the match stick and left her alone by closing door of the house. According to the prosecution, at the time of the giving the oral dying declaration, Hayat was conscious. That, even at the time of recording Dying Declaration (Exhibit 51), Hayat was conscious, in a position to speak and that the same was recorded in presence of people/persons from NGO and the prosecution witnesses. Hayat expired on 25th December, 2015 at 6.25 am.

4.5) The Inquest Panchanama (Exhibit-48) was drawn on 25th December, 2015 in presence of panch witness Mrs. Mehrunissa Imtiyaj Ahmad Shaikh (PW-3) along with another panch Shakir Shahir Ansari. The body of the victim was in a fully burnt condition. Spot panchanama was drawn. The Post mortem Notes received, the cause of death was mentioned as "Shock due to dermo-epidermal Thermal burns".

5) PW-1 Sohail Salim Shaikh, brother of the deceased Hayat, in his examination-in-chief has stated that, the deceased Hayat was mentally and physically harassed at the hands of Appellant. That, monies were demanded by the Appellant and certain payments i.e. Rs.10,000/- and Rs.15,000/- were made to the Appellant. That, he and his family, got knowledge of the fact that, the Appellant was already married with Accused No.3 about 4 to 5 months after marriage of the deceased Hayat with the Appellant. That on 24th

December, 2015 at about 7.00 p.m i.e. on the date of incident, he received call from his mother PW-2 that Hayat had received burnt injuries and admitted in hospital. That, on reaching the hospital, Doctor informed him that Hayat had received 98% of burn injuries and was set on fire by her husband i.e. Appellant at the instance of Accused Nos. 2 and 3. That, Dying Declaration of Hayat was recorded in his presence and the person from NGO was also present. That Hayat was conscious.

5.1) PW-1 has been cross-examined. In the cross-examination, P.W. No.1 has admitted that deceased Hayat was taken to the Hospital by the Appellant. This witness, showed ignorance of the fact whether both the hands of the Appellant were burnt. He has stated that Accused No.3 Mumtaz was also residing with the deceased after the marriage. PW-1 admits that no complaint was made to police about ill-treatment given to deceased Hayat.

6) PW-2 Mumtaz Salim Shaikh is the mother of the deceased. In her examination in chief, the witness has referred to the demand made by the Appellant at the time of marriage and also the fact that the Appellant used to make monetary demands from the deceased and torture her for the said demands. PW-2 states that, money was given to Appellant on two occasions i.e. Rs.10,000/- and Rs.15,000/- with an object to ensure that the deceased is not ill-treated. PW- 2 states that certain ornaments were given to deceased. That, she and her family were not aware that Appellant was already married to Accused No.3 Mumtaz. This witness specifically states that deceased

informed her that, the Appellant assaulted her, poured kerosene and set her on fire. That, the deceased was conscious and talking with family members from 7.00 am to 5.00 pm.

6.1) In the cross-examination, PW-2 admits that while the incident took place on 24th December, 2015, her statement was recorded on 29th December, 2015. That, she has not given any documentary evidence to police to show that money was paid to the Appellant. That, the Dying Declaration of deceased Hayat was recorded in her presence and in presence of Rameshwari and Suraj.

7) Mrs. Meharunissa Imtihaj Ahmad Shaikh (PW-3) is the panch witness of the Inquest Panchnama (Exh.48) which was drawn on 25th December, 2015. That, the panchanama was drawn in her presence. That, the body of the deceased was in a fully burnt condition. The cross-examination of PW-3 does not bring out any fact or circumstance which favours the Appellant or aids his defence.

8) PW-4 Anita Nitin Kamble is working with NGO Coro of Rescores Organization. PW-4 in Para No. 2 of her examination in chief has stated that "Then I went in Rajawadi Hospital in Police Van, PSI More, one lady constable Khambe was along with me. I went in Burnt female ward. Police took us to burnt lady. She was totally burnt. Her whole body was with bandage. Her mouth was not covered in bandage. Lady Medical Officer was with patient. I asked lady doctor whether I can speak with burnt lady. Doctor answer "Yes".

I asked name of the said lady. She told her name “Hayat Bilal Shaikh”. I asked her where she is residing. She told she residing at Chawl, at Vishnu Nagar. I asked her what happened. How you burnt. She told that, her husband Bilal Shaikh thrown Kerosene on her and lit fire with Matches and he bolted the door from outside and was standing outside.” She also told that she was shouting to help her by knocking door, then her husband removed Kadi (कडी) and put Kambal on her body and extinguish fire. She also told that, her husband removed her burnt clothes and wore another clothes and brought her in Rickshaw in hospital. She told that, when she was brought outside of the room neighbors were gathered. I asked her why he did this, she told that her husband was not going for work from last 15 days. So she asked him if you have not gone for work what we can eat ? She also told that, she asked her husband you are not going for work and there is nothing to eat in house, however, you are going to meet his first wife Mumtaj. On this count her husband quarrel with her and beat her by kicks and hand blows. She told that, her husband used to give beating on account of Mumtaj and her friend Pallavi and due to this quarrel going on and in that time he poured the Kerosene on her and lit her. She also told that, while quarrel was going on neighbours gathered and they resolved quarrel and disbursed and thereafter he again started quarrel and then put Kerosene. She also told that, Mumtaj is first wife of Bilal, however, he concealed his marriage with Mumtaj and performed marriage with her. She told that, account of Mumtaj and Pallavi, her husband

Bilal used to daily quarrel and beat her.”

8.1) PW-4 has stated that she has recorded dying declaration of Hayat in question and answer form. That, while recording the dying declaration, the mother of the deceased, PSI, lady constable and Doctor were present. After writing statement of the Hayat, she put her thumb impression. That, the said dying declaration is at Exh.51.

8.2) A perusal of cross-examination of PW-4, reveals that the relatives of the victim were present and that the victim was having bandage on her body. That, the face and head of deceased was not covered by a bandage. PW-4 has also stated that Appellant was present in the hospital, but was standing outside the room. The witness has denied the suggestion of the defence that, she has signed the statement at the insistence/say of the police.

9) PW-5 Ashwini Shivaji Khambe has stated that, she was attached to RCF Police Station as PSI. On 24th December, 2015, she was on reserved day duty. That, SHO informed her to visit Rajawadi Hospital and record the statement of lady Hayat Bilal Shaikh. That, after reaching the Hospital, the Doctor informed her that victim Hayat was admitted in burnt ward, her condition was critical but she was in a position/able to speak. That, she verified from Dr. Sneha whether victim was in a position to speak. That, Dr. Sneha informed her that victim was in condition to speak and that her statement could be recorded. That, SHO PSI Shankar Dhyagude recorded the statement of victim Hayat in her presence and as per say of victim in question

answer form. The statement also bears the endorsement of Dr. Sneha, who treated victim. That, she has also signed the statement Exh.51 along with SHO PSI Dhyagude. The cross examination of PW-5 has admitted that the signature of PI More, the senior most officer present at the hospital, was not taken.

10) PW-6 Shankar Sadashiv Dhyagude, PSI attached to RCF Police Station, states that when on duty at about 6.20 pm, he received message from Rajawadi Hospital that lady named Hayat was admitted in Hospital due to burn injury sustained by stove blast at her house. The said message was stated to have been received from constable of Tilak Nagar Police Station, who was on duty and maintained EPR register at Rajawadi Hospital. That, the husband of the burnt victim i.e. Appellant/Accused No.1 had given information to the constable and entry has been made in the EPR register of the police station, which is at Exh.68. That, on reaching hospital, PW-6 made inquiry with Dr. Sneha Shreeram about the condition of the patient. Dr. Sneha informed him that patient sustained 95% burn injury and her condition was critical, but her mental condition was stable. PW-6 states that victim Hayat informed him that her husband poured kerosene on her and set her on fire. This witness further states that he did not immediately record the statement, instead contacted PI More and WPSI Khambe. PI More called NGO member Anita Kamble. PI More also inquired with Doctor about the condition of the patient, who informed him that patient was in condition to give statement. Thereafter, statement of patient Hayat was recorded as per her say. The witness states that Doctor was

present with them, when statement of patient was recorded. He read over the statement of Hayat to her in the presence of her sister and mother. The witness states that Doctor has given endorsement on the statement, which is at Exh.71. Even this witness admits the presence of the Appellant at the hospital. It is this witness, who lodged the FIR (Exh.34). This witness also visited spot i.e. house of the accused situated at Raigad Chawl hutments, Vishnu Nagar, L. U. Gadkari Marg, Chembur, Mumbai -74 and prepared the Spot Panchanama (Exh.73). This witness states that during panchanama there was smell of kerosene in the house. That, there was a kitchen platform, on which there was gas cylinder and shegadi. On the floor of said house, there was one chocolaty colour blanket, which was burnt and smelling of kerosene. That, one cream colour top and pink colour salwar was lying there, in a burnt condition and had shrunk due to burning. There was one wet matchstick i.e. Gazani safety matchstick and an empty white colour can at the spot. The floor and roof of the said house was black due to fire. The witness has identified the articles which were seized at the time of the Spot Panchanama. That, the Appellant was present in the Hospital. That the brother of the Hayat, had mentioned of the harassment, the first marriage of the Appellant and demand of money.

10.1) PW-6 has deposed the fact of recording Dying Declaration. That, in the Dying Declaration, there was no allegations against the original accused Nos.2 to 4. That as the victim was in critical condition, he did not call any

other government officer to record the statement. That, he did not ask the complainant to provide the receipt of the money transaction mentioned in the Complaint.

11) PW-7 Dr. Sneha Rajeshwar Shreeram, is the Doctor working at Rajawadi Hospital in whose presence the written Dying Declaration (Exh.51) was recorded. PW-7 has given Medical Certificate/endorsement on the Dying Declaration at Exh.75. That on 24th December, 2015, victim named Hayat Bilal Shaikh brought to Rajawadi Hospital by her husband/Appellant and the history given by the Appellant was, burn by stove. That after being admitted, the victim was shifted to burn ward and treatment was immediately started. That, the police asked her whether victim was in fit condition to give statement, to which she informed the police that, the victim was mentally fit and in a condition to give her statement. That, the statement of the victim was recorded in her presence and the police took her endorsement on the statement (Exh.75). That, the thumb of the victim was not burnt and the thumb impression of the victim was taken. That the casualty papers have been admitted by the all the Accused including the Appellant (Exhibit 67colly).

11.1) PW-7 in her cross-examination has stated that when the deceased was brought to the hospital, she was in a critical condition, but not unconscious. PW-7 admits that she has not mentioned in the medical papers the history as narrated by the victim. That, she asked the question to the victim and her relatives and recorded the answers. That, burn injuries to the

deceased were superficial deep burn injuries and that at the time of recording statement of victim, Appellant was present. Certain relatives of the victim also present, but she did not remember their names. That, in the Dying Declaration (Exh.51), the time of recording the statement is not mentioned.

12) The Investigating Officer (IO), PW-8 Shri. Sanjay Maruti More, was Police Inspector, attached to the RCF Police Station. The Investigating Officer has stated that, PSI Shankar Dhyagude went to Rajawadi Hospital, and he informed that, one lady Hayat was burned. On receiving information, PW-8 went to Rajawadi Hospital. At that time, WPSI Ashwini Khambe, PSI Dhyagude, one NGO member Kamble and Doctor were present. PSI Ashwini Khambe was recording the statement of injured Hayat. This witness states that at that time, he came to know that, husband of Hayat i.e. Appellant set her on fire after some time, he helped her and brought to hospital. That, on 26th December, 2015, investigation of the present crime was handed over to him. That, he received copy of FIR, spot panchanama, inquest panchanama, all the indoor medical paper of the deceased Hayat. That, he recorded the statement of witnesses, arrested the accused. That, arrest panchanama is proved (Exh.78, Exh.79 & Exh.80). That, vide Exh.81, articles seized under the spot panchanama and kit samples of the deceased received from Rajawadi Hospital.

12.1) In the cross-examination, this witness states that, when he went to Rajawadi Hospital at about 6.00 to 7.00 pm, relatives of the deceased

Hayat were present and the bandage was put on the victim Hayat on her entire body. This witness admits that Doctor was treating her and that he was present when Dying Declaration of the deceased was recorded. Witness admits that, he had called Anita from NGO at the hospital. Witness admits that, when he reached hospital, Appellant was present at the hospital and the hands of the Appellant were burnt. The witness has further admitted that, in Dying Declaration (Exh.51), there were no allegations against original Accused Nos.2 to 4.

13) The learned Advocate appearing for the Appellant submitted that:-

13.1) The Dying Declaration given by the deceased Hayat to her mother, PW-2 Smt. Mumtaj Salim Shaikh and PW-4 Ms. Anita Kamble do not inspire confidence. That, the investigating authority ought to have followed the proper procedure and the safeguards for recording the Dying Declaration.

13.2) The Dying Declaration ought to have been recorded by the Tahsildar or the Judicial Magistrate.

13.3) The deceased had suffered more than 90% burn injury, which are superficial to deep burn injuries and considering the nature of the burn injuries, she would not have been in a position to make any Dying Declaration.

13.4) PW-1 Sohel Salik Shaikh is the brother and PW-2 Smt. Mumtaj Salim Shaikh is the mother of the deceased. Both witnesses are relatives and

therefore interested witnesses. It is not safe to place reliance on their evidence.

13.5) The inconsistencies and improvements in the evidence, make their evidence doubtful.

13.6) The deceased has met with an accident due to blast of the stove and it was the Appellant, who extinguished the fire, put a blanket around the Hayat in order to save her and took her to the Hospital and admitted her for medical treatment.

13.7) After admitting the victim, the Appellant was present in the hospital. The Appellant sustained burn injuries on his forearm and feet at the time when he attempted to save the victim. The injuries of the Appellant are evident from the medical notes dated 25th December, 2015 (Exh.85). The Appellant was present in the Hospital and gave his consent for all the required treatment.

13.8) In the alternative, he submitted that considering the overall facts and circumstances, evidence in the case and the conduct of the Appellant No.1 in attempting to douse of the fire, attempt to save the deceased and taking her to the Hospital, are all mitigating facts and circumstances. That the argument/quarrel had taken place when the Appellant had objected, the victims visit to her mother house. That, the Appellant was outside the house when the accident occurred and on realizing the situation immediately took steps to put off the fire and took the victim to the Hospital. That he received

burn injuries. That, the PW 1 and 2 have deposed false as they were at all times opposed to the love marriage between the victim and the Appellant. That the victim had a severe back/spine related medical issue, so she used to be in an irritated state of mind. In view thereof the learned Advocate for the Appellant submits that the Appellants conviction under Section 302 of the Indian Penal Code be altered by invoking Exception IV of Section 300 of the Indian Penal Code as the act has occurred without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and without the Appellant having taken undue advantage or acted in a cruel or unusual manner.

14) Per contra, Mr. Shreekant Gavand, learned APP appearing for the Respondent State submitted that:

14.1) The deceased Hayat has given consistent Dying Declaration first to her mother i.e. PW-2 Smt. Mumtaj Salim Shaikh and then to PW-4 Ms. Anita Kamble, independent person/employee of the NGO.

14.2) There is nothing brought on record by the defence in the cross-examination of PW-1 Sohel Salik Shaikh and PW-2 Smt. Mumtaj Salim Shaikh to disbelieve the said witnesses. The evidence of PW-1 and PW-2 in respect of ill-treatment/cruelty is consistent. There is no reason to make up a false story against the Appellant.

14.3) There is nothing brought out in the cross-examination of prosecution witnesses to disbelieve the oral Dying Declaration or Dying

Declaration at Exh.51.

14.4) The purported defence of the Appellant that there was blast of the stove due to which the deceased accidentally caught fire, is totally false, concocted and clear after thought as there is no reference or mention of the stove in the spot panchanama.

14.5) It is come in the evidence of prosecution witnesses that the victim Hayat was conscious and was able to speak/talk with the witnesses. From the evidence of PW-1, PW-2, PW-4 and PW-6 it is clearly established that victim Hayat was conscious and able to speak/talk.

14.6) The Dying Declaration (Exh.51) recorded in presence of PW-4 Ms. Anita Kamble and PW-6 Shankar Sadashiv Dhyagude, bears the endorsement of the Doctor, which records that the victim is fit and mentally stable to give a statement. The statement was recorded in the doctors presence. The Dying Declaration is reliable and trustworthy.

14.7) PW-4 Ms. Anita Kamble in her evidence has stated that, she had enquired with the lady Doctor whether she can speak to the victim and the Doctor answered in the affirmative. PW-4 Ms. Anita Kamble made inquiry with the victim as to her name and place of resident, which was answered by her. She questioned the victim and asked her what has happened and how she sustained burn injuries. In respect to the question, the victim stated that her husband Bilal had thrown kerosene on her and lit fire by a match stick and bolted the door from outside and was standing outside.

14.8) PW No.4 states that the victim told her that she was shouting for help by knocking door, then Appellant removed Kadi and put Kambal on her body and extinguish fire. The victim further told PW No.4 that her husband removed burnt clothes and made her wear another clothes and brought her in Rickshaw to the Hospital.

14.9) The reason for the acts of the Appellant as informed by the victim to PW No.4 are that, the Appellant was not going to work for last 15 days, victim made inquiry with him regarding his work and source of livelihood. The victim stated that she told the Appellant that if you are not going for work, there is nothing in the house to eat. The victim further stated that she told her husband that he was not going for work, but going to meet his first wife Mumtaz. On this, Appellant quarreled with her and due to said quarrel, he poured kerosene and lit her.

14.10) PW No.4 has recorded Dying Declaration (Exhibit 51) in question and answer form in presence of PW-2 , PSI, lady constable and Doctor and bears endorsement (Exh.75) by PW-7 Dr. Sneha Rajeshwar Shreeram.

14.11) PW-7 has stated that victim to be in a fit mental condition to give statement. The defence has declined to cross-examine the said prosecution witness thereby admitting the fit mental state of the victim.

14.12) The death of the victim is within 7 years of the marriage and therefore, presumption under Section 113A of the Evidence Act is applicable.

15) We have considered the submissions of the learned Advocate appearing for the Appellant as well as learned APP for the State. On perusal of the evidence led by the prosecution, it is clear that the Dying Declaration (Exh.51) has been proved. We find no discrepancy or reason to doubt the Prosecution Witness No.4 Anita Kamble, who is independent witness from a NGO, the Investigating Officer PW-6 Shankar Sadashiv Dhyagude and PW-7 Dr. Sneha Rajeshwar Shreeram. They, in our opinion are reliable and trustworthy witnesses. A cumulative and conjoint reading of evidence of PW-4 Ms. Anita Kamble, PW-6 Shankar Sadashiv Dhyagude and PW-7 Dr. Sneha Rajeshwar Shreeram clearly prove the Dying Declaration beyond all doubt. We note that the Dying Declaration has been given to independent third party, in presence of Investigating Officer and the Doctor and also bears medical certificate of the Doctor evidencing mental fitness of the victim. Perusal of the prosecution evidence in respect of the Dying Declaration reflects the subjective satisfaction as to the mental health of the victim. We do not have the slightest doubt, in our minds in respect of the genuineness and truthfulness of the Dying Declaration nor do we carry any doubts regarding the mental condition/mental fitness of the victim at the time of giving the Dying Declaration. There is no reason to doubt the same. The evidence of the PW 1 and PW 2 also corroborate the contents of the Dying Declaration at Exhibit 51.

16) As regards to the charge of Section 498-A of the Indian Penal Code, we find that there is no reference to the ill-treatment and harassment

meted out by the Appellant on the ground of demand of money. Further, it has come in the evidence that, no complaint of ill-treatment or otherwise filed by the deceased or PW-1 and/or PW-2 in respect of illegal demands of money nor is any proof produced on record to prove the alleged payments made by the PW No1 and or PW No. 2 to the Appellant. There is no evidence on record to support the charge of cruelty. It is also come in the evidence of Prosecution Witnesses that there has been no reference to the allegations of cruelty as against the Appellant. The evidence of the PW 1 and PW 2, in respect of the allegations of cruelty does not inspire confidence. The charge of cruelty, in our opinion does not stand substantiated.

17) According to us, charge of Section 498-A of Indian Penal Code has not been proved by the prosecution. PW-1 and PW-2 both have admitted that they have not filed any complaint in respect of the alleged cruelty meted out by the Appellant, nor they have able to give any proof in respect of alleged money of Rs.10,000/- and Rs.15,000/- by PW-1 and PW-2 or their family to the Appellant. Considering the evidence on record we find that, the offence under section 498A of the Indian Penal Code is not substantiated. In view thereof, we are inclined to hold that prosecution has failed to bring home the guilt of the Appellant for the charge under Section 498-A of the Indian Penal Code.

18) For Exception 4 of section 300, to apply and a culpable homicide would not be murder if the act which is committed by a accused is committed

without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. The Explanation to exception 4 clearly states that it is immaterial as to which party offered the provocation or commits the first assault. A bare reading of the provision, indicate that for exception 4 to apply/be invoked it is necessary that:

- (i) the act is committed without premeditation;
- (ii) in a sudden fight in the heat of passion upon a sudden quarrel and
- (iii) without the offender having taken undue advantage or acted in a cruel or unusual manner.

19) In the facts of the present case, we are of the opinion that, the requirements for invoking exception 4 of section 300, are available and if invoked would be satisfied. From the Dying Declaration (Exh.51) and from the evidence of prosecution witnesses, it is clear that the Appellant did not have any premeditated plan or intention to commit any act to harm the deceased. It is not even the case of the prosecution that the Appellant had a design or plan to commit the murder of the deceased or cause any harm to her. There is no evidence to show or even indicate the same. The incident and the acts of the Appellant were not premeditated and/or preplanned. Further, from the Dying Declaration, it is clear that, it is was only when the deceased started questioning the Appellant about his non-employment that a quarrel had started between the deceased and the Appellant. It appears that the

statement of the deceased that the Appellant is not working/going for work for the past 15 days and further the statement of the deceased that the Appellant did not go for work, but instead goes to meet Mumtaj, resulted in the sudden quarrel, at that moment, which resulted into the act of throwing kerosene. A perusal of the dying declaration indicates that, the statement that the Appellant instead of working and earning a livelihood, goes to meet Mumtaj, his ex-wife, seems to have triggered the unfortunate incident. There was no plan or premeditation. The Appellant had not made any preparation nor did his conduct indicate any preparation or pre meditated design. We have also noted that, a perusal of the Dying declaration, makes it clear that the can of kerosene was also in the house itself and stored under the bed in the normal course. Though the Appellant has uttered the words “ you die” and allegedly bolted the door from outside, but the immediate repentance of the Appellant, is clear from his conduct, in as much as, he unbolted the door, went in the room/house and tried to extinguish the fire. The Appellant further, helped the deceased to change her clothes, immediately called rickshaw and took her and admitted her to the Hospital, and ensured medical treatment and care is administered. The acts and conduct of the Appellant, are indicative of the fact that the Appellant immediately realized the after effects of his acts. The aforesaid facts and conduct also clearly indicate that the Appellant had no intention to kill the victim nor has he taken any due advantage nor acted in a cruel manner or unusual manner. We have also noted the fact that, the

Appellant was all along present at the hospital, and was also treated for his own burn injuries.

20) We have noted, the conduct of the Appellant. Amongst other things, the prosecution witnesses have admitted that, it was the Appellant who had brought the victim to the hospital. That the Appellant had suffered burn injuries and he was present throughout, at the hospital when the treatment to deceased was going on. The Appellant did not flee from the hospital. This conduct and other acts of the Appellant are indicative of the fact that the Appellant repented for his actions and that he at no point of time had the intention to commit the murder of the deceased. One can also not lose sight of the fact that, even the victim herself in her Dying Declaration (Exh.51), had stated that, her husband/Appellant put blanket on her, tried to extinguish the fire, and helped her change her clothes and took her to Hospital. The efforts of the Appellant in trying to extinguish the fire, also borne out the fact that the Appellant has sustained burn injuries on his hands. The same is evident from the medical papers. The presence of the Appellant at the Hospital, is also clear from the evidence of PW-6, who admits that, the husband of the deceased given information of the incident to the police constable, who was present at the hospital. Entry of the said information was taken in EPR register. PW-7 also admits the presence of the Appellant in the hospital. The prosecution evidence, is clear that the Appellant tried to extinguish the fire, save the deceased, got her to the hospital and in the said

process suffered burn injuries.

21) As regards to the charge under Section 302 of the Indian Penal Code, after considering the overall facts and circumstances of the case, the evidence on record and the conduct of the accused as noted hereinabove demonstrate that Appellant had no intention to commit murder of the deceased. From the Dying Declaration itself and the evidence of PW-4 Anita Kamble, it is evident that entire unfortunate incident had taken place due to the sudden quarrel/fight which took place at the spur of the moment. The sudden quarrel/fight has taken place when the deceased questioned or made the statement that the Appellant does not work, instead goes to meet Mumtaj. This questioning/statement of the victim, to our mind, appears to be the trigger for the sudden quarrel.

22) Considering the above facts and the conduct of the Appellant, we are of the opinion that the act of the Appellant would fall within the scope of Exception 4 of section 300 of the Indian Penal Code. After applying Exception IV of Section 300 of the Indian Penal Code to the present crime, we are of the opinion that, the Appellant is guilty for an offence under Section 304 (Part II) and not for an offence punishable under section 302 of the Indian Penal Code.

23) We accordingly set aside the conviction and sentence of the Appellant under section 302 of the Indian Penal Code and hold him guilty and convict him for an offence punishable under section 304 (Part II) of the Indian Penal Code. We modify the conviction of the Appellant from section 302 to

section 304(Part II) of the Indian Penal Code.

24) Hence the Following Order:-

(i) The conviction and sentence of the Appellant under Section 302 of the Indian Penal Code imposed by the learned Additional Sessions Judge, Greater Bombay, is set aside and the Appellant is held guilty and convicted for the offence punishable under Section 304 (part II) of the Indian Penal Code. Appellant is sentenced to suffer rigorous imprisonment for the period already undergone till the uploading of this Order on the official website of the High Court of Bombay.

(ii) The Conviction and sentence of the Appellant under Section 498-A of the Indian penal Code by the impugned Judgment and Order is set aside and the Appellant is acquitted for the offence under Section 498-A of the Indian Penal Code.

(iii) Appeal is partly allowed in the aforesaid terms.

25) Before parting with the Judgment, we place on record our appreciation towards the efforts put in by Mr. Karnik, learned Advocate appointed by Legal Aid, to espouse the cause of the Appellant. He was thoroughly prepared in the matter and assisted this Court in arriving at the aforenoted conclusion.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)