



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 155 of 2016

1. Pramod s/o Anurath Gaikwad,
Age : 28 years, Occu : Labour,
R/o Talkhed, Taluka Majalgaon,
District Beed.
2. Madhu d/o Anurath Gaikwad,
Age : 21 years, Occu : Labour,
R/o Talkhed, Taluka Majalgaon,
District Beed.

... Appellants
[Orig. Accused Nos. 1&2]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Sudarshan J. Salunke, Advocate for the Appellants.
Mrs. A. S. Mantri, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 02.09.2026

Pronounced on : 04.09.2026

JUDGMENT :

1. Both appellants challenge the judgment and order of conviction dated 05.03.2016 passed by learned Additional Sessions Judge, Majalgaon in Sessions Case No. 09 of 2015, convicting them for offence under Section 452 r/w 34 and Section 304 Part-II of IPC.

2. Case of prosecution in trial court was that, appellants-original accused, who are neighbours of deceased Nita, entered her house on 05.10.2014 at 7.00 p.m. while she was alone and accusing her for indulging in black magic, it is alleged that, accused Pramod poured kerosene and accused Madhu incinerated her, causing her 88% burns to which she ultimately succumbed. Based on her dying declaration, crime was registered and finally investigated by PW8 who gathered sufficient evidence and chargesheeted accused for offence under Sections 302, 452 r/w 34 of IPC. In all five persons, including present appellants were tried.

At trial, prosecution adduced evidence of in all 8 witnesses and relied on documentary evidence like dying declarations, FIR, spot panchanama etc. Defence also adduced evidence of two witnesses i.e. DW1 and DW2. After hearing both sides and on appreciating respective evidence adduced by the parties, learned trial Judge acquitted accused nos. 3, 4 and 5 from all charges, but convicted accused nos. 1 and 2, that too for offence under Section 304 Part-II and 452 of IPC. Hence, the instant appeal.

APPRECIATION OF EVIDENCE

Status of the Prosecution Witnesses :

3. **PW1**-pancha to spot panchanama Exhibit 20, **PW2**-Special Executive Magistrate, **PW3**-autopsy surgeon, **PW4**-Father-in-law of deceased, **PW5**-Carrier, **PW6**-neighbour, **PW7**-Police Constable and **PW8**-Investigating Officer.

Evidence can be categorized into **dying declaration** Exhibits 25 and 42 and **oral evidence** of PW4, PW6 and PW7.

Dying Declarations :

4. There are two dying declarations, one recorded by PW7 Police Head Constable which is at Exhibit 42 and second dying declaration is recorded by PW2 which is at Exhibit 25. Both dying declarations are held by trial court to be consistent, inspiring confidence and worthy of credence. Both dying declarations are now put to minute scrutiny.

First Dying Declaration

5. **The first dying declaration** is at Exhibit 42 and it is authored by PW7. On bare look of the statement, it is noticed that prior to recording dying declaration, there is certification by Medical Officer

about patient to be conscious, oriented for giving valid consent. In initial part of dying declaration, after introducing herself, deceased informed the names of five accused to be residing in her neighbourhood and they questioning her for conducting black magic and burning sari of Sushma and abusing her. Regarding the occurrence dated 05.10.2014, she informed that, around 07.00 p.m. while she was alone in the house, Pramod Gaikwad and Madhu Gaikwad entered her house saying that she has done black magic and thereafter, Pramod Gaikwad lifted kerosene can from her house, abused her, poured kerosene on her and his sister Madhu threw a burning match stick on her, as a result of which she caught fire and they both ran away. Her dying declaration carries her thumb impression followed by its identification and again certification of Doctor on the point of fitness till conclusion of dying declaration.

6. **PW7**, who noted the above dying declaration, is examined at Exhibit 41 and after stating that he received MLC paper Exhibit 28, he immediately went to Burns Ward of Civil Hospital, Beed and approached and requested In-charge Doctor to examine deceased for ascertaining whether she is conscious and able to make statement or not. He then deposed that accordingly In-charge Doctor examined deceased and opined that she was conscious and able to make

statement and accordingly made endorsement on the paper on which he recorded dying declaration. He further deposed that, he also himself got confirmed whether patient was conscious and able to make statement and recorded dying declaration as per her say wherein she stated that, since last one month, accused namely Pramod, Madhu, Devinanda, Sushma and mother of Sushma were harassing her on the count of doing black magic. He deposed that, she stated that on 05.10.2014 at around 7.00 p.m. when she was present in the house, accused Pramod and Madhu came in her house, questioned her for doing black magic, abused her and then accused Pramod took can of kerosene from her house, poured kerosene on her person whereas accused Madhu set her on fire and they both ran away.

Above witness is subjected to extensive cross and in the initial cross he admitted that MLC refers to the incident as accidental burn, but he is unable to state which Doctor sent the MLC paper. He admitted about not seeing admission papers, not issuing written communication to the In-charge Doctor. But he named **Dr. Raut** for putting endorsement on dying declaration Exhibit 42. He denied relatives of deceased to be present at the time of recording dying declaration and denied that, he obtained endorsement of Doctor by

going to his cabin. He answered that, he did not mention timing of recording dying declaration. He also denied that she was unconscious and not in position to speak and that he falsely deposed about it. He also denied about he not reading over statement to the deceased after it was recorded. Rest all suggestions are denied.

Second Dying Declaration

7. Second dying declaration Exhibit 25 is recorded by PW2 and it is in question-answer form. It is shown to be recorded on 06.10.2014 at around 12.00 hours. It carries certification that patient is conscious, oriented and able to give statement. Regarding the occurrence, while answering question to that extent, she stated that on 05.10.2014 around 7.00 p.m. while she was alone in the house and her parents-in-law had been to drop her parents at bus stand, her neighbour who continuously quarreled with her and whom she named, entered in the house and questioned her for the episode of burns to sari of Sushma. She stated that, Pramod and his sister Madhu abused her. Pramod poured kerosene from the can in her house and they both ignited her.

8. Witness **PW2** who recorded this dying declaration is examined at Exhibit 23, who testified that on receipt of letter from Police Chowki of Civil Hospital, Beed, she went to Civil Hospital and claims

to have requested Medical Officer who examined the burnt lady Nita to ascertain whether she is conscious and able to make statement or not, and accordingly Medical Officer examined Nita and opined that patient is conscious and able to make statement and Medical Officer also made endorsement on the proforma on which her statement was recorded. She further deposed that **she also got confirmed whether patient is conscious and able to make statement and thereafter recorded dying declaration in question answer form.** Witness has stated that, statement was given that she was married and having good relations with the family, she had twins aged 7 months and her husband to be a rickshaw driver whereas her parents-in-law to be agricultural worker and labour respectively. Witness deposed that when she asked about the incident, it was narrated that, always there was quarrel between her and her adjacent householders, namely, Pramod Gaikwad and his sister Madhu. She also stated that, both these accused entered her house saying that she is doing black magic and thereafter accused no.1 poured kerosene and accused no.2 Madhu set her on fire and at that time, her parents-in-law had been to the bus stand to see off her parents. When they returned, she was taken to hospital at Talkhed and Medical Officer there directed her to be shifted to Civil Hospital, Beed. Witness also deposed that at the time of recording the dying declaration, she noticed her both hands,

legs, stomach, chest were burnt and after completion of statement, **she read over contents of the statement to her and she admitted the contents to be true and correct** and thereafter she obtained right toe impression on her statement and witness identified dying declaration at Exhibit 25 and its carbon copy at Exhibit 27.

Above witness is also subjected to cross, during which witness is unable to remember the name of the Constable who handed over letter Exhibit 24. She answered that Tahsildar issued order in her favour for recording dying declaration but she not carrying the said order in the Court. She answered that, on the same day of recording dying declaration, she handed over original dying declaration at Police Chowki at Civil Hospital but she is unable to give name of the Constable to whom it was handed over. **She admitted not recording time of starting dying declaration and the time at which it ended.** She answered that, patient was admitted in burn ward no.7 and that she met in his chamber, who made endorsement on the statement. Rest is all denial.

Law on Evidentiary Value of Dying Declarations :

9. Before appreciating the credibility of above dying declarations, it would be profitable to throw light on settled judicial precedent on

the aspect of evidentiary value of dying declaration and the manner of its appreciation. Since the judgment of ***Khushal Rao v. State of Bombay; AIR 1958 SC 22***, on numerous occasions law on this aspect has been propounded and certain principles have been culled out from plethora of judgments by the Hon'ble Apex Court. Very recently the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Veerpal and Another; (2022) 4 Supreme Court Cases 741***, while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as follows :

“(1) It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and

6) In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

Other celebrated and water-shedding judgments on above aspects are (i) ***Laxman v. State of Maharashtra; (2002) 6 SCC 710*** (ii) ***Jagbir Singh v. State (NCT of Delhi); (2019) 8 SCC 779.***

10. Here, there are two dying declarations, i.e. more than one, at Exhibit 25 and Exhibit 42 respectively. On the point of two or multiple dying declarations, law is also crystallized in the judgments of Hon'ble Apex Court in the case of ***State of Punjab v. Parveen Kumar*** AIR 2005 SC 1277; ***Amol Singh v. State of M.P.*** (2008) 5 SCC 468, ***Jagbir Singh v. State (NCT OF Delhi)*** 2019 (8) SCC 779 and ***Makhan Singh v. State of Haryana*** (2022) SCC OnLine SC 1019.

11. In ***Smt. Paniben v. State of Gujarat*** 1992 SCC OnLine SC 355, the Hon'ble Apex Court has summarized the principles governing the circumstances under which a dying declaration may be accepted without corroboration, as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. [(1976) 3 SCC 1041])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552])

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had

opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence (Rasheed Beg v. State of M.P. [(1974) 4 SCC 264])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [1981 Supp SCC 251])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [(1981) 2 SCC 654])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455])

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar [1980 Supp SCC 769])

(ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying

declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P. [1988 Supp SCC 152])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [(1989) 3 SCC 390])”

In the recent judgment of ***Uttam v. State of Maharashtra*** (2022) 8 SCC 576, in para 9, the principles that are culled out are reproduced as under :

“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.”

12. Keeping above settled position in mind, Exhibit 25 and Exhibit 42 are visited. As stated above, both dying declarations carry certification of fitness. First dying declaration Exhibit 42 carries certificate of fitness before recording and even at the conclusion. Doctor's signature also carries timing of recording dying declaration. Both certificates of fitness are about consciousness and orientation. Similarly, Exhibit 25 which is in question-answer form, also carries

timing of commencement of dying declaration, certification of fitness at the beginning and even certification of fitness at the conclusion. Both dying declarations bear thumb and toe impression respectively. The translated version of both dying declarations are that, accused neighbours picking up quarrel suspecting black magic by deceased. In both dying declarations it is reported that on 05.10.2014 around 7.00 p.m. while victim was alone and her parents-in-law had been to see off her own parents at bus stand, accused Pramod and accused Madhu entered her house, abused her on above count and after accused no.1 poured kerosene from can in the house, accused no.2 ignited her. Therefore, on the point of overt act of appellants, both dying declarations are apparently consistent.

13. Learned counsel for the appellants questioned the credibility and reliability of dying declarations on the count that, firstly, there is no time over the dying declarations. Secondly, both versions to be inconsistent. Thirdly, Doctor issuing certification of fitness not being examined.

14. As stated above, on both, Exhibit 25 and Exhibit 42, time of recording dying declaration is noted. Both dying declarations carry certification of fitness at the inception as well as at the conclusion

regarding patient to be conscious and oriented and in a position to give statement. Both carry toe and thumb impression respectively. Both witnesses, i.e. PW2 and PW7 have narrated whatever they have heard from deceased while recording respective dying declarations and it is also noticed that they both have deposed about they personally verifying condition of deceased to give statement and thereafter her statements were recorded. Therefore, mere failure of prosecution to examine certifying doctor is no good ground to discard the consistent dying declarations. Moreover, witness PW7 has named Dr. Raut for examining and certifying fitness.

15. Law is fairly settled that, examining certifying doctor is just a rule of prudence and not a mandate. When there are more than one dying declarations, once the court is convinced on its appreciation that they are consistent and inspiring confidence and appearing to be truthful version of deceased, there should be no hesitation to not only accept the same, but also to rely on the same.

16. Resultantly, both dying declarations which are reproduced above in translated form, are inspiring confidence and are thus worthy of reliance. There is no patent infirmity or lacuna or any suspicion so as to discard the same.

Oral Evidence

17. Apart from above dying declarations before the trial court, prosecution has also examined oral evidence of PW4 father-in-law and independent witness PW6. They are at Exhibits 34 and 38 respectively.

18. **PW4** Father-in-law deposed about receiving oral dying declaration from deceased about accused no.1 pouring kerosene and accused no.2 igniting her and she being taken to hospital in a jeep. While under cross, he is asked about the geographical location of the house, its surrounding, set up in the house, neighbourhood and position of their houses, distance between his house and house of his sister. He also answered that after the incident when he reached the house, at that time 20 to 25 persons had gathered in front of their house and prior to their reaching, fire on the person of deceased to be already doused. He admitted that, deceased laid in the house of Sakharam Kamble and he also suffered burns. He denied taking deceased to PHC of Talkhed by ambulance. He answered that at the time of admission in Civil Hospital, Nikita was conscious. Rest all suggestions are denied.

19. **PW6** seems to be acquaintance of both, accused and deceased, and he deposed that, incident took place at 7.00 p.m. in the house of deceased. On the day of incident, along with parents of deceased, he went to Talkhed to take Nita and there, accused no.1 telling him that deceased was indulging in black magic and on such count accused no.1 opposed taking her and so he himself and parents of deceased left the house to return back to their village but immediately there was quarrel between deceased and accused persons and shortly thereafter they heard shouting from the house of deceased and so they returned and when asked, she gave oral dying declaration that accused no.1 poured kerosene and his sister set her on fire.

Above witness is also subjected to cross wherein he admitted that father of deceased was his distant relative. He is asked at what spot he heard shouting. He answered that when they returned back to her house, accused persons and other adjacent householders had gathered there. Omission is brought in his cross to the extent of incident taking place at 7.00 p.m., accused no.1 informing him about deceased doing black magic and burning clothes, after they leaving the house, quarrel taking place between accused and deceased and he hearing shouts. Rest is all denial.

20. Therefore, here, there is oral evidence of father-in-law as well as an acquaintance and his distant relative. They both deposed about the oral dying declaration received by them. They both are consistently stating about hearing from deceased that accused no.1 poured kerosene and accused no.2 ignited her. Nothing damaging is brought in the testimony of PW4 father-in-law, though some omissions are brought in the cross of PW6. However, his testimony on the point of receiving oral dying declaration has remained unshaken.

21. Admittedly, cause of death is “shock due to 85-90% superficial to deep burns”. There is no dispute to this extent. The occurrence seems to have taken place all of a sudden and both accused did not carry fuel when they entered the house of victim. The kerosene available in the house of victim was said to be put to use. Therefore, occurrence is in the rage of anger and sudden, after quarrel and abuse. Hence, offence of culpable homicide not amounting to murder would be attracted and is rightly held and dealt by the learned trial court.

22. Learned counsel for the appellants also emphasized that deceased was initially taken to Talkhed and admitted to Primary Health Center but no dying declaration was recorded there. That,

defence witnesses, who are medical experts of said hospital, have been examined to that extent. He would submit that, subsequently, victim was taken to Beed, where her dying declaration was shown to be recorded but the same could be tutored.

23. Indeed, immediately after the occurrence, victim was taken to Talkhed Rural Hospital, but there is nothing on record to show that she was admitted there. Rather, she seems to be referred to higher center at Beed, her condition being serious. Therefore, when she was not admitted at Talkhed Rural Hospital, there was no question of recording her dying declaration. On her admission at Civil Hospital Beed, two authorities i.e. Police Head Constable and Nayab Tahsildar recorded dying declarations. Both witnesses speak about approaching In-charge Medical Officer and requesting for examination to ascertain fitness to give statement. Name of the Medical Expert Dr. Raut is also stated by PW7. Only on due satisfaction, as stated above, dying declarations seem to have been recorded. Therefore, mere failure to record dying declaration at Talkhed is no good ground to cast doubt on prosecution story, more particularly on the point of dying declaration.

24. Yet another ground raised in appeal is that, witness namely Sakharam Kamble, who allegedly also suffered burns, is not examined by prosecution for the best reasons known to it. Indeed, it has come in the cross of PW8 Investigating Officer and PW4 father-in-law about Sakharam Kamble also suffering burns, but merely because there is failure to examine this witness, the trustworthy, reliable dying declarations and evidence of PW4 would not get eclipsed.

25. Learned counsel vociferously and vehemently submitted that, in the hospital papers i.e. MLC, occurrence was reported as accidental, and therefore, there was no episode of burning or setting to fire, as alleged by prosecution. Though there is communication from Police Station Beed, regarding admission of victim due to accidental burn, it was the mere information, but its source is not known. Resultantly, only on the strength of said document, it cannot be said that occurrence was not of setting ablaze and that, it was accidental. There are two consistent dying declarations attributing role to both accused. Hence even the said ground has no force.

26. To sum up, here, on the strength of consistent dying declarations as well as oral evidence, prosecution has indeed proved the charges. Learned trial court correctly appreciated the available

evidence in correct spirit, applied the settled law and then rendered the judgment by accepting the case of prosecution on the point of offence under Sections 452 and 304 Part-II of IPC as proved beyond reasonable doubt. There is no infirmity or illegality in the findings and conclusion so as to interfere. Hence, the following order :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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