



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

CRIMINAL APPEAL NO. 2 OF 2023

1. Dnyaneshwar Bhagwan Gaddime
Age- 35 years, Occupation- Labour,
R/o. Talikhed, Tq. Nilanga,
Dist. Latur.
2. Bhagwan Vyankat Gaddime
Age- 70 years, Occupation- Agriculturist,
R/o. Talikhed Tq. Nilanga,
Dist. Latur

...APPELLANTS

VERSUS

The State Of Maharashtra

...RESPONDENT

...

Mr. S.J. Salunke, Advocate for the appellants
Mr. S.R. Wakle, APP for State

.....

**CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL JADHAV, JJ.**

DATE : 08th APRIL, 2026

JUDGMENT: [Per Nitin B. Suryawanshi, J.]

1. Appellants are convicted by learned Additional Sessions Judge, Nilanga, Dist. Latur under Section 302 and 498-A of Indian Penal Code in Sessions Case No. 21 of 2017 by judgment and order dated 22.11.2022 and sentenced to suffer rigorous imprisonment for life. By this appeal, appellants challenge their conviction.

2. The prosecution case in short is that;

Deceased Mahadevi married with accused/Appellant No. 1 prior to more than 7 years. Initially, they were residing jointly with in-laws i.e. Accused No. 2- Bhagwan Gaddime and acquitted accused No. 3 Wandabai Gaddime. Accused No. 1 was having vices of consuming liquor and used to ill treat her and demand money for liquor. On 29.04.2017 at about 5.30 a.m., accused No. 1 went to labour work in the morning and at 6.00 p.m., he came home under the influence of liquor and asked the deceased for money. He started abusing and assaulting her. Her in-laws accused No. 2 and 3 also came there and started abusing her. Accused No. 1 then took kerosene can and poured kerosene on her person and accused No. 2- father-in-law threw lamp on her person and set her ablaze. Thereafter, they went away. Deceased poured water on her person and extinguished the fire. By that time, neighbors came and they informed her father. Her father and relatives took her to the hospital. However, while taking treatment on 10.05.2017 Mahadevi expired due to burn injuries.

3. While the deceased was admitted in the hospital PW-6 PSI Sneha Pimparkhede, recorded her dying declaration (Exhibit-65) on 30.04.2017, which was treated as FIR. Accordingly, on 01.05.2017 Crime No. 114 of 2017 was registered against three accused persons

for offences punishable under Sections 307, 323, 504 read with 34 of Indian Penal Code.

4. The second dying declaration (Exhibit-95) was recorded by PW-8 Naib Tahsildar Shivaji Palepad. After the death of Mahadevi Section 302 was added in the crime. On completion of investigation, charge sheet was filed and the case was committed to the Sessions Court. All the accused were charged under Section 302, 498-A, 323, 504 r/w 34 of IPC. In support its case prosecution has examined 12 witnesses. Though, parents, close relatives and neighbors of the deceased did not support the prosecution case, learned Trial Judge, by relying on dying declarations convicted accused No. 1 and 2 and acquitted accused No. 3. Hence, the appeal.

5. Heard learned advocate for the accused and learned APP for the State.

6. Learned advocate for the accused assailed the impugned judgment and order of conviction submitting that there is delay of 18 hours in recording the first dying declaration. Both the dying declarations are not reliable and they are result of tutoring and prompting. The dying declarations are not recorded in the words of the deceased. In support of said submission he relied on *Imran Bashir*

Pathan Vs. The State of Maharashtra¹ and ***Kailash Pandurang Yedmewar Vs. State of Maharashtra***². He submitted that though palms and fingers of deceased were intact, yet the great toe impression of the left foot was taken on both the dying declarations. In the second dying declaration there was no endorsement that it was read over to the deceased and she admitted it to be correct, which is a mandatory requirement in view of decision in ***Paikujji S/o. Shankar Ataram Vs. State of Maharashtra***³.

7. Further submission is that the incident has taken place on 29.04.2017 at 6.00 p.m. whereas the accused was arrested 02.05.2017 at 21.19 hrs. Though, clothes of accused No. 1 were seized after four days, still according to the prosecution, there was smell of kerosene to the clothes of accused No. 1, which is not believable. The articles were not seized while conducting panchnama. In view of decision in ***Sanjay Devaji Ramteke Vs. State of Maharashtra***⁴, said panchnama cannot be relied upon. He further submitted that adverse inference needs to be drawn as the person who recorded the MLC was not examined and the MLC is not exhibited. According to him, deliberately the prosecution has suppressed the medical documents as

1 1998 Bom.C.R. (Cri) 556

2 2017 (1) ABR (CRI) 19

3 2012 ALL MR (Cri) 2453

4 AIROnline 2020 Bom 239

no history was written in the same. In the MLC letter the role of setting the deceased on fire is attributed only to accused No. 1. Therefore, according to him, the same is inconsistent with the two dying declarations brought on record by the prosecution. He submitted that though the prosecution has collected medical documents during the investigation, they were not exhibited during the trial, still those can be relied upon in view of decision in ***Satish Sushilkumar Shukla Vs. State of Maharashtra***⁵. Considering the inconsistencies in the oral and written dying declaration the benefit needs to be given to the accused. In support of this submission he relied on ***Subhash Ratan Chavan & Another Vs. State of Maharashtra***⁶.

8. Per contra, learned APP supported the impugned judgment and order of conviction. He submitted that the prosecution in support of its case has examined 12 witnesses and though PW2, PW3, PW4, PW5 and PW7 i.e. relatives and neighbors of the deceased have turned hostile, the Trial Court is justified in convicting the accused by relying on two dying declarations, which are consistent on the point of happening of incident and role attributed to both the accused. He submitted that in the panchnama in clause No. 12 it is specifically typed that the articles were sealed and the pancha's have not stated it,

5 2018 (2) ABR (Cri) 927

6 2016 (2) Bom.C.R. (Cri) 412

the investigating officer has stated it in the evidence. Even in the Chemical Analyzer's report it is mentioned that two sealed parcels were received to forensic lab. According to him, since the dorsum aspect of the hand was burnt, it was not possible to obtain thumb impression of the deceased and therefore, the great toe impression of the left foot was rightly taken on both the dying declarations. He submitted that the doctor who has witnessed the dying declaration has certified the fitness of the deceased and therefore, the prosecution has proved both the dying declarations and conviction of the accused is sustainable on the basis of the dying declarations. He further submitted that CA reports confirm the presence of kerosene on the clothes of accused No. 1. According to him, the conduct of the accused is also required to be taken into consideration as accused did not admit the deceased in the hospital and her parents have admitted her. By relying on *Madan alias Madhu Patekar Vs. State of Maharashtra*⁷, *Gopal Vs. State of Karnataka*⁸ and *Vishnu Nagesh Malpathak Vs. State of Bombay*⁹ he submitted that conviction can be based even on the sole dying declaration of the deceased. He therefore submitted that there is no merit in the appeal and same deserves to be dismissed.

9. With the assistance of learned advocate for the accused and

7 (2019) 13 SCC 464

8 (2011) 14 SCC 396

9 (1952) 1 SCC 346

learned APP we have perused the record.

10. It is well settled in catena of decisions of the Apex Court as well as of this Court that, before basing conviction solely on the dying declaration, Court must come to a conclusion that dying declaration is trustworthy, reliable and one which inspires confidence. Probability of any doubt regarding mental fitness of dying declarant has to be considered in the facts of each case.

11. The Trial Court has convicted the accused by relying on two dying declarations Exhibit-65 and Exhibit-95. The first dying declaration Exhibit-65 was recorded by PW6 PSI Sneha Pimparkhede after 18 hours of the admission of Mahadevi in the hospital. The prosecution has not brought MLC letters on record. PW6 has deposed that on 30.04.2017 on receipt of letter Exhibit-63 from her superior, for recording dying declaration of the deceased at Civil Hospital, Latur, she went to burn ward No. 20 room No. 11 and called the doctor on duty. The relatives who were staying near the patient were asked to leave that room. The doctor was asked about the fitness of the patient vide letter Exhibit-64. On examination, doctor put endorsement over letter and the dying declaration. The deceased told her name and also disclosed that she was residing with family along with her husband and two children. She was residing separately from her in-laws since last

one year. Her husband was addicted to liquor and to satisfy the said addiction he used to ask money. On the date of incident, Accused No. 1 came and asked her money, for liquor. Her in-laws also came to the house and abused her. In between, Accused No. 1 poured kerosene on her and Accused No. 2 threw burning lamp on her person and she was set ablaze. All the accused then went away from the spot. She tried to pour water on her person and extinguish the fire. She called her nieghbours. Neighbors have contacted her parents and then parents took her to the hospital. She also said that accused be punished as per law, for setting her ablaze. The statement was read over to the deceased. She agreed to it and her left feet toe impression was taken. The doctor's endorsement was also taken. PW6 also put her signature on the dying declaration Exhibit-65. Again, she issued one letter Exhibit-66 to the Executive Magistrate, for recording the dying declaration.

12. In the cross examination, she deposed that, MLC number is. 224/2017. On receipt of letter by hospital police chowky she went there with her writer. The handwriting on the dying declaration is of her writer. There are one Head Constable and one Naik in the police chowky of the hospital. Generally, police chowky officer used to record the statement. She went there to record the dying declaration as the

deceased was female. The incident took place in summer days and sunset used to be at 7.00 pm in those days. She did not ask whether the electricity facility is available in the house or not. She did not ask as to why lamp was put on. She found the deceased under stress as her husband was addicted to liquor. She tried to douse fire within the house itself, by that time, none have seen her. She denied that hands of the deceased were burned up to the wrist. She denied that her fingers were intact. She admitted that she did not certify specifically the endorsement of reading over the dying declaration to the deceased.

13. On perusal of dying declaration Exhibit-65 it is clear that the same is not recorded in the exact words of the deceased, but it is recorded as per the dictation given by PW6 to the writer. The deceased who had sustained 46% burn injuries is not expected to state ward number and room number in which she was admitted. She had no occasion to know these things.

In similar facts in Kailash Yedemewar (supra) this Court has held that, *"it would also be relevant to mention that in the said statement, it has been mentioned by Shubhangi that she had suffered ninety-five per cent burns and that her neighbours and relatives had brought her to Medical College and she was undergoing treatment in Ward No. 4,*

Bed No. 31 on 29th March, 2013. This narration appears to be highly improbable, as a patient of ninety-five burns cannot be expected to give the details of the ward number or bed number where she is undergoing treatment."

14. In Imam Bashir Pathan (supra) this Court held:

"6. There are some more circumstances which render impugned dying declaration as doubtful. We find that the language of Exh. 17 and Exh.33 is similar in many respects. As was directed by the Supreme Court the dying declaration should have been in the question answer form or at least it should represent the manner in which the incident was narrated by the deponent. In the dying declaration the very first sentence is indicative of the normal practice of the Police to record a statement U/s 162. The sentence is (In Marathi Script) Me Samaksha Davakhanyat Aaushad Upchar Ghet Asatana Javab Lihun Dete Ki ..." Many identical sentences find place in both these documents. Since it is not reduced in question-answer form it becomes doubtful as to what were exact words which deponent uttered. It has come in evidence that one Shamrao Nagargoje, police head-constable who is examined as defence witness No.1 had recorded dying declaration which is at Exh.50. Shafiya had stated in this dying declaration that she was fast asleep and woke up finding that her Sari has caught fire. Probable reason given by her is accidental fall of a kerosene lamp. This dying declaration has an endorsement by the medical Officer of the Primary Health Center, Ashti that while recording her statement, Shaifya was

medically fit to depose. In the light of this statement coupled with the fact that the alleged dying declaration Exh. 33 was recorded 24 hours after the admission of the Shafiya in Ahmednagar Hospital impugned dying declaration Exh. 33 becomes doubtful.”

15. The aforesaid observations are squarely applicable to the facts of the present case. Fact remains that writer of PW6 is not examined to prove the dying declaration. Therefore, we are of the view that dying declaration Exhibit-65 cannot be relied upon to sustain the conviction of the accused.

16. Coming to the second dying declaration Exhibit-95, recorded by PW8 Naib Tahsildar, on the same day i.e. on 30.04.2017 at 9.45 pm, it is clear that after recording this dying declaration, there is no endorsement stating that the dying declaration was read over to the deceased and she confirmed it to be correctly recorded.

In Paikuji Ataram (supra) this Court has held that, when the statement was not read over to the deceased and not admitted by the deceased to be correct and recorded according to her say, such dying declaration cannot be a foundation for sustaining the conviction.

17. There is one more reason for disbelieving dying declarations Exhibit-65 and Exhibit-95 i.e. in letter dated 30.04.2017 addressed by

Police Station Officer Gandhi Chowk Police Station to Police Inspector informing him to record the statement of deceased it is stated that "on inquiry with the patient, she told that, her husband poured kerosene on her and set her on fire (आम्ही सदर जळीत महिलेकडे जावुन घटनेबाबत विचारपुस केली असता ती तिचे नवऱ्याने अंगावर रॉकेल टाकुन जाळले)." The entry of the said letter is taken in the station diary at 18.52 hrs. Said letter, therefore, attributes role of setting the deceased on fire only to her husband/accused No. 1. Thus, there is inconsistency in the written dying declaration and oral dying declaration of the deceased.

It is well settled that if there is inconsistency in two dying declarations, the benefit has to be given to the accused [Vide ***Suresh Shrirang Mandawgane Vs. State of Maharashtra***¹⁰].

18. It is necessary to note here that, PW2-father and PW3- cousin brother of the deceased have deposed that deceased set herself on fire due to quarrel with accused No. 1 because of his habit of consuming liquor. It is a matter of record that PW 2 and PW 3 had taken deceased to the hospital. Therefore, though they are declared hostile, this part of evidence, which supports the case of the accused and creates doubt about the prosecution case can be taken into consideration. As per the medical record, deceased was admitted in the hospital by her relatives on 30.04.2017 at about 1.15 a.m. The history of burns is recorded in

10 2010 ALLMR (Cri) 147

the case papers on 29.04.2017 at 7.30 p.m. If really the deceased was set ablaze by the accused, then in the history same would have been mentioned by her maternal relatives. This creates serious doubt about the prosecution version that accused are responsible for the burn injuries of the deceased.

19. PW 4 and PW 5 neighbors of the deceased had immediately reached the spot of incident and informed about the same to PW2. However, they have not supported the prosecution case. Hence, the dying declarations cannot be made sole basis of conviction in absence of corroboration. Fact remains that there is absolutely no evidence on record to sustain the conviction of accused under 498-A of IPC.

20. All the aforementioned serious flaws in the present case are ignored by the Trial Court while convicting the accused. The Trial Court has failed to appreciate the evidence by applying principles of appreciation of evidence of dying declarations and thereby committed an error in convicting the accused. In the result, following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned Judgment and Order of Conviction dated 22.11.2022 passed by Additional Sessions Judge, Nilanga, Dist. Latur in Sessions Case No. 21 of 2017 thereby convicting the Appellants under section 302 and 498A of the Indian Penal Code, is hereby

quashed and set aside.

- (iii) Appellants be released forthwith, if not required in any other case.
- (iv) Appellants shall execute bond in the sum of Rs. 15,000/- each under section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
- (v) Fine amount, if paid by the Appellants, be refunded to them after the Appeal period is over.
- (vi) Muddemal property be dealt with in accordance with law.

(VAISHALI PATIL JADHAV, J.)

(NITIN B. SURYAWANSHI, J.)