

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

CRIMINAL APPEAL No.185 OF 2013

Kalabai w/o. Eknath Navle (Nawale),
Age : 55 years, Occ. Household,
r/o. Javkhede Khalsa, Tq.Pathrdi,
Dist. Ahmednagar

..Appellant
(Ori. Accused)

Vs.

The State of Maharashtra

..Respondent

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Mr.V.D.Sapkal, Advocate instructed by Mr.A.B.
Jagtap, Advocate for appellant

Mr.M.M.Nerlikar, A.P.P. for respondent

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CORAM : S.S. SHINDE AND

SANGITRAO S. PATIL, JJ.

RESERVED ON : AUGUST 23, 2016

PRONOUNCED ON : SEPTEMBER 16, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J) :

The appellant (original accused no.2) has challenged the vires of the judgment and order dated 12.03.2013 delivered in Sessions Case No.163 of 2007 by the learned Addl. Sessions Judge, Ahmednagar whereby, she has been convicted for the

offence punishable under Section 302 of the Indian Penal Code ("I.P.C.", for short) and sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for six months.

2. The admitted facts as disclosed from the evidence produced before the Court are that the deceased Lata married to one Adinath Baban Navle, resident of Javkhede Khalsa hutment-area, Tq. Pathardi, Dist. Ahmednagar in the year 2006. The parents of Adinath had expired much prior to his marriage. Accused no.1 Navnath Balaji Navle (since deceased) was the uncle of the said Adinath. The appellant Kalabai is the widow of the deceased accused no.1 Navnath and as such, is aunt of Adinath. Adinath is working as a tempo driver. The deceased Lata and Adinath were residing separate in a house situate to the south of the road running east-west, while the deceased accused

Navnath and the appellant were residing in a room situate to the north of the said road.

3. On 14.03.2007 at about 9.00 a.m., the deceased Lata sustained burn injuries in her house when Adinath had gone to Pathardi in connection with his work as a driver. Lata was admitted in the Civil Hospital at Ahmednagar on the same day by the deceased accused Navnath and others at about 11.30 a.m. The father of the deceased Lata had got her discharged from the Civil Hospital and got her admitted in Garud Hospital in Ahmednagar, where she succumbed to her injuries on 20.04.2007 at about 6.55 p.m.

4. The case of the prosecution, in brief, is that the deceased accused Navnath, the present appellant, their daughter Asha and son namely, Mahadev, who was a juvenile in conflict with law, used to illtreat the deceased Lata frequently on

the some ground or other. On 14.03.2007 at about 9.00 a.m., Mahadev and the appellant caught hold the deceased Lata, the deceased accused Navnath poured kerosene from a drum on her person, the appellant ignited a match-stick and set the deceased Lata on fire. The deceased Lata raised shouts, whereon the neighbors namely, Bilkis and other persons came there. The deceased accused Navnath extinguished the fire of the deceased Lata by throwing water. She sustained injuries to her face, abdomen, chest, hands, back and thigh. The deceased accused Navnath and the husband of the deceased Lata namely, Adinath took her to Civil Hospital at Ahmednagar where, she was admitted for treatment.

5. On that day, the deceased Lata orally stated before her parents, her aunt and other relatives as to how she sustained burn injuries.

6. After receiving a letter from Tophkhana Police Station, Sharad Mandlik, the Naib Tahsildar, Ahmednager, after verifying from the Medical Officer that the deceased Lata was in a fit state of mind to give statement, recorded her statement on 14.03.2007 between 4.55 p.m. and 5.35 p.m. The said statement was sent by him to Pathardi Police Station. After receiving the said statement at about 11.00 p.m. on that day, Crime No.35 of 2007 came to be registered against the deceased Navnath, the present appellant, accused no.3 and Mahadev. Since Mahadev was a juvenile, he was referred to the Juvenile Justice Board.

7. P.S.I. Bhausahab Kadam of Police Station, Pathardi conducted investigation. He visited the Civil Hospital at Ahmednagar on 15.03.2007. He got confirmed from the Medical Officer that the deceased Lata was in a fit condition to give statement. He recorded her statement at 2.45 p.m.

The spot panchnama was prepared. The burnt pieces of the saree of the deceased Lata, a match box and a plastic can of kerosene, came to be seized from the spot of the incident. P.S.I. Kadam recorded the statements of the neighbours and that of the other persons who had been to the spot of the incident after hearing shouts of the deceased Lata.

8. On receiving intimation of the death of Lata from Dr.Prakash Garud of Garud Hospital at Ahmednagar, her dead body was brought from that Hospital and referred to the Medical Officer for post-mortem. Accordingly, the post-mortem of the body of the deceased Lata was conducted by Dr.Pathare and Dr. Sardesai on 21.04.2007 between 12.30 p.m. and 1.30 p.m. They noticed that the deceased Lata had sustained 45.5% burn injuries on various parts of her body. They opined that she died of septicemia due to 45.5% of deep burns.

The seized articles were sent to the Chemical Analyser for examination and report.

9. After completion of investigation, the deceased accused Navnath, the present appellant and accused no.3 came to be charge-sheeted in the Court of the learned Judicial Magistrate F.C. at Pathardi on 18.07.2007 for the offences punishable under Sections 498-A and 302 read with Section 34 of the I.P.C. The case being exclusively triable by the Court of Session, the learned Magistrate committed it to that Court for trial.

10. The learned 5th Addl. Sessions Judge, Ahmednagar framed charges against the deceased accused Navnath, the present appellant and accused no.3 for the above-mentioned offences vide Exhibit 23 on 21.02.2011 and explained the contents thereof to them in vernacular. They pleaded not guilty and claimed to be tried. Their defence is

that of total denial and false implication at the instance of the parents of the deceased Lata.

11. During pendency of the trial, accused Navnath died on 29.10.2011. Therefore, the proceedings stood abated against him.

12. The prosecution examined eight witnesses to bring home the guilt of the appellant and accused no.3. After scrutinizing the said evidence, the learned trial Judge did not find sufficient evidence to establish the guilt of the accused persons for the offence punishable under Section 498-A of the I.P.C. He further did not find sufficient evidence to connect accused no.3 with the offence punishable under Section 302 of the I.P.C. However, he found sufficient evidence to establish the guilt of the appellant for the offence punishable under Section 302 of the I.P.C.

13. In the result, the learned trial Judge acquitted accused no.3 of the offences punishable under Sections 498-A and 302 of the I.P.C. He further acquitted the appellant of the offence punishable under Section 498-A of the I.P.C., however, convicted her for the offence punishable under Section 302 of the I.P.C. and sentenced her, as stated above. The said conviction and sentence have been challenged by the appellant in this appeal.

14. The learned Counsel for the appellant submits that there are two written dying declarations and two oral dying declarations, allegedly given by the deceased Lata. They are inconsistent on material particulars and in respect of the role attributed against the appellant in commission of the alleged offence. Therefore, according to him, independent corroboration was essential to the alleged dying

declarations of the deceased Lata. Though it is the case of the prosecution that one Bilkis, who was neighbour of the deceased Lata, had gone to the spot of the incident immediately after hearing shouts of Lata, she has not been examined by the prosecution. She was the most natural witness who could have noticed as to how the deceased Lata got burnt and what was her reaction after sustaining the burns. She would have been the best witness to hear from the deceased Lata about cause of her injuries, immediately after the incident.

15. He further submits that many other persons had helped the deceased accused Navnath in extinguishing the fire of the deceased Lata, however, none of the said witnesses has been examined by the prosecution as witness. As such, though the independent evidence was available, the prosecution suppressed that evidence.

16. He then submits that the deceased Lata and her husband Adinath were residing separate from the appellant and her husband i.e. the deceased accused Navnath. They were not parents of Adinath. There was no reason for them to go to the house of of Adinath and harass the deceased Lata. The learned Counsel submits that the deceased accused Navnath extinguished the fire and took the deceased Lata to Civil Hospital, Ahmednagar for treatment. He submits that the appellant also accompanied the deceased Lata when she was taken to Civil Hospital, Ahmednagar. Her name was mentioned in the medical case record at the time of admission of the deceased Lata in the hospital, as the near relation of the deceased Lata. These facts indicate innocence of the appellant.

17. He submits that the mother and aunt of the deceased Lata claim to have heard the deceased

Lata narrating the involvement of the appellant in the incident in question, on the day of the incident itself. However, both them did not state about that fact to the police, though the police visited the Civil Hospital in their presence. This unexplained delay shows that these witnesses falsely stated about the so-called oral dying declaration of the deceased Lata by way of afterthought. He submits that these witnesses tutored the deceased Lata for involving the appellant and her family members in the incident in question and accordingly, the dying declarations came to be recorded. He submits that the alleged dying declarations cannot be said to have been given by the deceased Lata voluntarily. The husband of the deceased Lata had no strained relations with her. She would have stated the factual position to him. However, he has not been examined by the prosecution. The parents of the deceased Lata were with her in the hospital. She

gave the dying declarations at their instance and not at her own will. There is no evidence to establish the truthfulness of the said dying declarations. The Naib Tahsildar as well as the P.S.I., who recorded the dying declarations of the deceased Lata, did not satisfy themselves, whether the deceased Lata was in a condition to give statement. The evidence of the Medical Officer, who is alleged to have examined the deceased Lata, is not believable. He submits that there was absolutely no reason for the appellant to think of committing murder of the deceased Lata.

18. He then submits that no burns were noticed on the back of the deceased Lata. All the injuries were on the front portion of her body. This fact indicates that the injuries sustained by the deceased Lata were either suicidal or accidental. He points out to the medical evidence, indicating possibility of accidental death of Lata.

19. He submits that the evidence on record is not cogent, consistent and believable, to come to the conclusion that the appellant committed murder of the deceased Lata. In support of his contentions, he relied on certain judgments, which would be considered in the later part of the judgment. He submits that the learned trial Judge did not consider the evidence on record in its proper perspective and wrongly held the appellant guilty of the offence of committing murder of Lata. He submits that the impugned judgment may be set aside and the appellant may be acquitted.

20. On the other hand, the learned A.P.P. submits that the written dying declarations as well as the oral dying declarations of Lata are quite consistent so far as the role of the appellant is concerned. The said dying declarations were made by the deceased Lata when

she was in fit condition to give statements. There is absolutely no reason to disbelieve the said dying declarations. The said dying declarations clearly establish that the appellant set the deceased Lata on fire by igniting a match stick. He submits that the learned trial Judge has rightly convicted and sentenced the appellant. He, therefore, supports the impugned judgment and order.

21. The case of the prosecution is based on the alleged dying declarations of the deceased Lata. The learned Counsel for the appellant cited the judgment in the case of **Jose and others Vs. State of Kerala, 1994 Supp.(3) SCC 1**, wherein it has been observed that it is well settled that the conviction can be based on the dying declaration itself provided that it is satisfactory and reliable and if there are infirmities of such nature warranting further assurance, then the

courts have to look for corroboration. He further cited the judgment in the case of **Smt. Meerabai Rangnath Shriram Vs. State of Maharashtra, 2006 All.M.R.(Cri.)138**, and particularly paragraph 16 wherein, paragraph 17 of the judgment in the case of **State of Maharashtra Vs. Sanjay D. Rajhans 2005 All MR (Cri) 211 (S.C.)** has been reproduced, which reads as under :-

"Thus, the version of homicide set up by the prosecution as well as the version of suicide set up by the accused appear to be highly improbable and do not inspire confidence in the mind of the Court to believe either version. In this state of things, when two incredible versions confront the Court, the Court has to give benefit of doubt to the accused and it is not safe to sustain the conviction. The contradictions in the two dying declarations coupled with the high degree of improbability of the manner of occurrence as depicted by the prosecution case leaves the Court with no option but to attach little weight to these dying declarations. It is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. It has been repeatedly pointed out that the dying declaration should be of such nature as to

inspire full confidence of the Court in its truthfulness and correctness (vide the observations of Five Judge Bench of Laxman Vs. State of Maharashtra (2002)6 SCC 710). Inasmuch as the correctness of dying declaration cannot be tested by cross-examination of its maker, "great caution must be exercised in considering the weight to be given to this species of evidence." When there is more than one dying declaration genuinely recorded, they must be tested on the touchstone of consistency and probabilities. They must also be tested in the light of other evidence on record."

Keeping in mind the observations made in the above referred judgments, the alleged dying declarations of the deceased Lata will have to be scrutinised in order to see, whether they are made voluntarily, truthful and worth relying.

22. The first dying declaration Exhibit-43 has been recorded by Mandlik (PW 3) (Exh.41), the Naib Tahsildar. He deposes that after receiving the letter (Exh.42) from Tophkhana Police Station, he went to Civil Hospital, Ahmednagar and met the

Medical Officer. He gave a letter to the Medical Officer with a request to ascertain whether the deceased Lata, who was admitted there as an indoor patient, was in a condition to give statement. He states that the Medical Officer examined the deceased Lata and endorsed on a paper that the deceased Lata was in a condition to depose. He himself also verified and found that the deceased Lata was in a position to depose. Accordingly, he recorded the dying declaration of the deceased Lata between 5.00 p.m. and 5.30 p.m. as per her say. After recording the dying declaration, the contents thereof were read over by him to the deceased Lata and she admitted the same to be correct. He again asked the Medical Officer to examine the deceased Lata. Accordingly, the Medical officer examined her and endorsed on the paper at about 5.30 p.m. that she was oriented and conscious. Since both the thumbs of the deceased Lata had got burnt, he obtained her left toe impression on the dying

declaration. The said dying declaration is at Exhibit-43.

23. Dr.Bharti (PW 7) (Exh.68), who was working as a Medical Officer in Civil Hospital, Ahmednagar, states that on 14.03.2007 when she was on her duty, Mandlik (PW 3), gave a letter to her asking whether the deceased Lata was in a condition to state. She then went to the ward concerned with Mandlik (PW 3) and examined the deceased Lata. The deceased Lata was oriented, conscious and was in a condition to give statement. Accordingly, she put her remark on the statement (Exh.43) and signed it. Thereafter, Mandlik (PW 3) started recording statement of the deceased Lata. After her statement was recorded, she again examined the deceased Lata and put her remark with her signature at (Exh.43) that she was conscious and oriented throughout. After completion of recording of statement (Exh.43) of the deceased Lata, Mandlik (PW 3), obtained her left toe

impression thereon since both of her thumbs had got burnt. Dr.Bharti (PW 7), produced the medical case papers of the deceased Lata. She states that she had taken entries in the said case papers about examination of the deceased Lata and about her condition to give statement. The said endorsements are at Exhibit 72.

24. In the dying declaration (Exh.43), the deceased Lata is stated to have said that the appellant – mother-in-law, Navnath – father-in-law, Mahadev – brother-in-law and Asha – sister-in-law used to illtreat and beat her on various grounds. On 13.03.2007, all of them quarreled with her and beat her. On 14.03.2007 at about 9.00 a.m. when she was doing household work inside her house, her father-in-law poured kerosene on her person, the brother-in-law and the mother-in-law caught hold of her and the mother-in-law ignited a match stick and set her on fire. She raised shouts. The neighbours

rushed to her house. At that time, her father-in-law and other villagers extinguished the fire and reached her in the Civil Hospital, Ahmednagar. She stated that at the time of the incident, her husband had gone to Pathardi. She stated that she had no grievance whatsoever against her husband.

25. The letter (Exh.50) as well as the dying declaration (Exh.51) bear endorsements of the Medical Officer under his signatures made on 15.03.2007 on 2.45 p.m. that the deceased Lata was in a condition to give statement. P.S.I. Kadam admits that after completion of recording of the statement, he had not obtained remark of the Medical Officer about the condition of the deceased Lata.

26. The learned Counsel for the appellant submits that recording of the dying declaration (Exh.43) of the deceased Lata between 4.45 p.m. and

5.30 p.m. itself is doubtful. According to him, the endorsement at page 2 of the medical case papers (Exh.71) of the deceased Lata, made by the father of the deceased Lata namely, Kundlik Laxman Bichkul, itself shows that he was apprised by the Doctor that physical condition of the deceased Lata was critical. Furthermore, at page 6 of the case papers (Exh.72), the father of the deceased Lata had made another endorsement on 14.03.2007 at 4.45 p.m. under his signature that he was taking away the deceased Lata at house due to some domestic difficulties at his own risk. He has put the time as 5.10 p.m. under his signature. If that be so, there was no scope for recording the dying declaration (Exh.43) between 4.45 p.m. and 5.30 p.m. on 14.03.2007.

27. We find substance in the above contention. The dying declaration (Exh.43) is shown to have been recorded between 4.45 p.m. and 5.30 p.m. on

14.03.2007, while the endorsement of the even date made by the father of the deceased Lata at page 2 of case papers (Exh.71) clearly shows that the Doctor had apprised him that the physical condition of the deceased Lata was critical. In the circumstances, it is difficult to accept that she would have been in a fit condition to give statement on that day. Moreover, the time of making endorsement by the father of the deceased Lata at page 6 of case papers (Exh.72), is overlapping with the time of recording the dying declaration (Exh.43). When the father of the deceased Lata was completing the formalities of making endorsement under his signature between 4.45 p.m. and 5.10 p.m. on 14.03.2007 for taking away the deceased Lata to his own house, it is difficult to accept the case of the prosecution that at the same time, her dying declaration (Exh.43) was being recorded by Mandlik (PW 3).

28. At page 2 of the case papers (Exh.71), after endorsement dated 14.03.2007 made by the father of the deceased Lata, there is next entry about her state of health made on 15.03.2007. Thus, there was no entry about examination of the deceased Lata by Dr.Bharati (PW 7), on 14.03.2007 below the endorsement made by the father of the deceased Lata and prior to the entry dated 15.03.2007. In the circumstance, the entries taken by Dr.Bharati (PW 7), at page 5 of the same case papers (Exh.72), again showing entry dated 14.03.2007 below entry dated 15.03.2007 at page 2, becomes doubtful. It exhibits that the said entries have been taken subsequently after the entry dated 15.03.2007 was taken. The entries about the state of health of the deceased Lata taken by Dr.Bharati (PW 7) at page 5 of the case papers (Exh.72) should have been in continuation of the entries dated 14.03.2007 prior to the entry dated 15.03.2007 shown at page 2. Thus, the entries which are shown

to have been taken by Dr.Bharati (PW 7) at page 5 of the case papers about fitness of the deceased Lata to give statement between 4.45 p.m. and 5.30 on 14.03.2007 do not inspire confidence.

29. The second dying declaration (Exh.51) of the deceased Lata has been recorded by P.S.I. Kadam (PW 5) (Exh.49) on 15.03.2007 at 2.45 p.m. P.S.I. Kadam (PW 5) states that he gave a letter (Exh.50) to the Medical Officer seeking his opinion as to the fitness of the deceased Lata to give statement. The Medical Officer gave remark on that letter that the deceased Lata was in a condition to give statement. Then he went to the deceased Lata along with the Medical Officer and recorded her statement (Exh.51) as per her say. Thereafter, he obtained left toe impression of the deceased Lata as both of her thumbs were burnt. Then he read over the contents thereof to the deceased Lata wherein she admitted them to be correct. Then he signed it. The

Medical Officer also put his remark under his signature that the deceased Lata was able to speak. In the dying declaration (Exh.51), the deceased Lata is alleged to have stated that her cousin father-in-law Navnath, the appellant and Mahadev used to illtreat her on some ground or other. Her sister-in-law Asha also used to illtreat her whenever she used to come to her maternal home. She then stated that on 14.03.2007 at about 7.00 a.m., her husband Adinath left the house for his job on a tempo. Then, at about 9.00 a.m., when she was inside the house, Mahadev and the appellant caught hold of her hands, her father-in-law – Navnath poured kerosene from a drum on her person and the appellant set her on fire by igniting a match-stick. She raised shouts whereon her neighbour Bilkis, other neighbours and father-in-law – Navnath extinguished the fire. Her father-in-law – Navnath and her husband Adinath reached her to the hospital. In that statement also, she

specifically mentioned that she had no grievance against her husband Adinath.

30. So far as the dying declaration (Exh.51) recorded by the P.S.I. Kadam (PW 5), is concerned, it may be noted that the case papers (Exhs.71 and 72) do not at all show any entry in the handwriting of the Medical Officer concerned that the deceased Lata was examined on 15.03.2007 at 2.55 p.m. and was found fit to give statement. The Medical Officer, who is shown to have given remark about fitness of the deceased Lata on the letter (Exh.50) and the dying declaration (Exh.51) on 15.03.2007 at 2.55 p.m., has not been examined by the prosecution. In the absence of the evidence of the Medical Officer concerned, it is difficult to hold that the Medical Officer actually examined the deceased Lata and found her in a fit state of mind to give statement. Even P.S.I. Kadam (PW 5) does not state that the Medical Officer examined the

deceased Lata and then gave remark that she was in a condition to give statement. He does not state that he himself examined her and got himself satisfied about her fitness to give statement. When the father of the deceased Lata himself was informed on 14.03.2007 about the critical condition of the deceased Lata, it is difficult to accept the version of the P.S.I. Kadam (PW 5), which has remained to be corroborated for want of examination of the Medical Officer concerned, that she was in a condition to give the statement when dying declaration (Exh.51) was said to have been recorded.

31. The prosecution is relying on the oral dying declarations of the deceased Lata made before her mother – Mathura (PW 1) (Exh.37) and aunt – Dwarkabai (PW 4) (Exh.44). From the evidence of both of these witnesses, it is clear that the alleged oral dying declaration was given by the

deceased Lata when both of them were present. Mathura (PW 1), states that the deceased Lata stated that when she was working in the house, the deceased accused Navnath caught hold of her, Kalabai (i.e. the appellant) and Mahadev poured kerosene on her person and set her on fire by means of a match-stick. On the other hand, Dwarkabai (PW 4) states that the deceased Lata stated that her father-in-law poured kerosene on her person, mother-in-law and brother-in-law caught hold of her and then, the mother-in-law set her on fire by a match-stick.

32. The statements of Mathura (PW 1) and Dwarkabai (PW 4) about the roles played by the deceased accused Navnath and the appellant, as to who out of them caught hold and who poured kerosene on the person of the deceased Lata, are not consistent. When the deceased Lata disclosed the cause of her injuries in the presence of both these

witnesses at one and the same time, their evidence should have been consistent as to the roles played by the culprits. Mathura (PW 1) states that the father-in-law had caught hold the deceased Lata, while Dwarkabai (PW 4), attributes that role to the mother-in-law and the brother-in-law of the deceased. Mathura (PW 1), states that the appellant poured kerosene on the person of the deceased Lata, while Dwarkabai (PW 4) states that Navnath (i.e. father-in-law) poured kerosene on her person. There is material inconsistency in the evidence of these witnesses as to the roles attributed to the appellant and the other accused persons. Therefore, it becomes doubtful whether the deceased Lata really gave any dying declaration before these witnesses. This doubt gets strengthened through the conduct of these witnesses. It has come in the cross-examination of Mathura (PW 1), that the deceased Lata disclosed before her about the cause of her injuries at about 1.00 p.m. on the day of

the incident and that her husband was also present at that time. However, she did not feel it necessary to lodge a report against the culprits immediately after knowing the cause of the injuries of the deceased Lata. She further states that the police visited the hospital on 14.03.2007. However, neither her husband nor herself made any grievance before the police on the basis of the statement made by the deceased Lata as to the cause of her injuries. She states that her statement was recorded by the police on the next day of the incident.

33. It has come in the cross-examination of Dwarkabai (PW 4) that when the deceased Lata narrated about the incident, her parents were present there. She was in the hospital for about one hour on that day. She did not advise the father of the deceased Lata to lodge report to the police. The police recorded her statement on the next day

of the incident. She specifically states that she had not stated about the oral dying declaration of the deceased Lata to anybody till recording of her statement by the police.

34. The conduct of the above-named two witnesses in keeping silence, despite the visit of the police to the hospital on 14.03.2007, and disclosing about what the deceased Lata had narrated before them to the police on the next day only, creates doubt about making of any statement by the deceased Lata before them on 14.03.2007 as to the cause of injuries sustained by her as stated by them.

35. As stated above, recording of the dying declarations (Exhs. 42 and 51) by Mandlik (PW 3) and P.S.I. Kadam (PW 5) respectively, itself is doubtful. The evidence of Mathura (PW 1) and Dwarkabai (PW 4) that the deceased Lata narrated before them about the cause of her injuries

involving the appellant in the incident in question, does not inspire any confidence. The written as well as the oral dying declarations cannot be said to be consistent. In the circumstances, in the absence of any independent corroboration, it would not be desirable to rely on the said dying declarations, as held in the case of **Meerabai Rangnath Shriram** (supra).

36. As seen from the statement of the deceased Lata, she had no grievance against her husband Adinath. Her husband Adinath and the cousin father-in-law - Navnath took her to the Civil Hospital at Ahmednagar after the incident. The husband of the deceased Lata would have been the proper person to whom, in all probabilities, the deceased Lata would have disclosed the facts leading her to sustain burn injuries. Adinath would have been the best witness to throw light on the relations between the deceased Lata on one hand and the appellant and her

family members on the other. Had the appellant and her family members been ill-treating the deceased Lata, she certainly would have disclosed it to her husband Adinath, against whom she had no grievance at all. However, the prosecution has not examined Adinath and suppressed his evidence without assigning any reason. Therefore, adverse inference will have to be drawn and accordingly drawn, that had he been examined, he would not have supported the case of the prosecution.

37. Indisputably, the deceased accused Navnath extinguished the fire from the person of the deceased Lata. This fact itself indicates that he had no intention to kill her. If Navnath and the appellant were actually involved in the incident in question, as alleged by the prosecution, they would have certainly tried to make their escape good immediately after the incident and would not have shown the courage to stay at their house, which was just near the house of the deceased Lata.

38. Mathura (PW 1) who is the mother of the deceased Lata, admits in her evidence that when she reached near the deceased Lata in the hospital, her in-laws i.e. the deceased Navnath and the appellant were present there. Page No.1 of the medical case papers (Exh.71) contains the name of the appellant as an immediate relative of the deceased Lata. If the appellant really had tried to set the deceased Lata on fire, she would not have accompanied her while going to the Civil Hospital at Ahmednagar and stayed with her for her treatment.

39. As seen from the evidence of Dwarkabai (PW 4) the deceased accused Navnath was the uncle of Adinath and that the parents of Adinath had expired much prior to the marriage of the deceased Lta with Adinath. In paragraph 4 of her cross-examination, Dwarkabai (PW 4) admits that Adinath was having a separate room in a separate area since before his

marriage. She admits that Adinath and the deceased Lata were staying in that room, while the deceased accused Navnath and the appellant were residing in the room located behind it. It is, thus, clear that the deceased Lata and Adinath were residing separate. The appellant and the deceased accused Navnath were not real in-laws of the deceased Lata. In the circumstances, the story put forth by the prosecution that the appellant and her family members used to ill-treat and beat the deceased Lata on some ground or other and in continuation of that ill-treatment, they set her on fire on the day of the incident, does not stand to reason. There was absolutely no reason for the appellant and her family members to interfere in the family affairs of the deceased Lata and to beat or illtreat her. Thus, the motive to kill the deceased Lata on the part of the appellant and her family members is totally absent.

40. Though one Bilkis is stated to have rushed to the house of the deceased Lata immediately on hearing her shouts, the said Bilkis has not been examined by the prosecution without assigning any reason. She would have been the best witness to state about the first reaction of the deceased Lata. Had the deceased Lata been set on fire by the appellant and her family members, she would have immediately disclosed the said fact to Bilkis or any other person who rushed to the spot of the incident immediately after the incident. The prosecution has not examined any independent witness to prove as to what was the first version of the deceased Lata after the incident.

41. The learned Counsel for the appellant cited the judgments in the cases of (i) **Chandan Debnath Vs. State of Assam, 2015(3)GauLJ 494** and (ii) **State of Rajasthan Vs. Hakam Singh, AIR 2012 SC (Supp) 122**, wherein it is observed that while

the accused himself takes the deceased to the hospital or makes arrangement for medical treatment of the deceased, that fact indicates that he had no intention to commit any crime. In the present case also, the husband of the the appellant i.e. the deceased accused Navnath, tried to extinguish fire on the person of the deceased Lata. The appellant and the deceased accused Navnath were with the deceased Lata while taking her to the Civil Hospital, Ahmednagar and further, they were with her when she was being extended medical treatment. The appellant and the deceased accused Navnath are not the real in-laws of the deceased Lata. The above-mentioned facts clearly indicate that the appellant had no intention to kill the deceased Lata.

42. The learned Counsel for the appellant pointed to the evidence of Dr.Sardesai (PW 8) (Exh.74), who conducted post mortem of the body of

the deceased Lata on 21.03.2007 between 12.30 p.m. and 1.30. p.m. and prepared a memorandum of the post mortem (Exh.75). He found the following external injuries on the body of the deceased Lata, which have been noted in Clause 17 of the memorandum (Exh.75) :-

Right upper limb	:-	9%
Left upper limb	:-	4.5%
Chest	:-	18%
RLL	:-	2.5%
LLL	:-	2.5%
Face	:-	9%

TOTAL BURNS	:-	45.5%

He states that the cause of death of the deceased Lata was septicemia due to 45.50% deep burns. In the cross-examination, he states that there was non-uniformity in the injuries mentioned in Clause 17 of the memorandum (Exh.75) of the post mortem. He accepts that the nature, extent and non-uniformity of the burns of the deceased are suggestive of accidental death. He admits that the

burn injuries are possible in accidental, suicidal or homicidal circumstances. On the strength of this evidence, the learned Counsel for the appellant submits that the possibility of sustaining injuries by the deceased Lata accidentally, cannot be ruled out. He states that there were no injuries on the back of the deceased Lata. He submits that had the kerosene been poured on her person by somebody else, it would have gone even on the back of the deceased Lata. According to him, these facts strengthen the possibility of sustaining accidental burn injuries by the deceased Lata.

43. Considering the injuries sustained by the deceased Lata, which are almost on the front portion of her body and not on her back and the evidence of Dr.Sardesai (PW 8), we are of the opinion that the alternative possibility suggested by the learned Counsel for the appellant about cause of the injuries of the deceased Lata i.e. accidental, cannot be ruled out.

44. As stated above, the evidence produced by the prosecution on the point of giving dying declarations by the deceased Lata involving the appellant in the incident in question, does not inspire confidence. There is no independent corroboration to the contents of the dying declarations involving the appellant in that incident. The prosecution did not produce any independent witness, though available. The prosecution did not examine even the husband of the deceased Lata against whom she had no grievance at all and who would have been the best witness to throw light on the relations between the deceased Lata on one hand and the appellant on the other. The medical evidence suggests possibility of sustaining burns by the deceased Lata accidentally. No motive has been established on the part of the appellant, which would have prompted her to set the deceased Lata on fire. In the circumstances,

it cannot be said that the prosecution established beyond reasonable doubt guilt of the appellant for the offence of committing murder of the deceased Lata. The learned trial Judge did not appreciate the facts of the case as well as the evidence on record in their proper perspective and has wrongly held the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code.

45. For the reasons recorded above, we are not inclined to uphold the findings recorded by the learned trial Judge against the appellant. They are liable to be set aside. The Appeal is liable to be allowed. In the result, we pass the following order:-

(i) The Appeal is allowed.

(ii) The appellant - Kalabai w/o. Eknath Navle is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

(iii) The appellant be set at liberty, if not required in any other case.

(iv) The appellant shall furnish before the trial Court personal bond of Rs.10,000/- (Rs.Ten Thousand) with a surety in the like amount vide Section 437-A of the Code of Criminal Procedure.

(v) The fine amount, if deposited by the appellant, be refunded to her.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]