

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

CRIMINAL APPEAL NO.239 OF 2001

The State of Maharashtra **APPELLANT**
[Orig. Informant]

VERSUS

1. Gautam Fulchand Shejwal,
Age 26 yrs.,
2. Fulchand Bandu Shejwal
[deceased]
3. Nanubai Fulchand Shejwal,
Age 52 yrs. [Deceased]
4. Bhimjyot Fulchand Shejwal,
Age 24 yrs.,

All residents of Nalandanagar,
Behind 7/8 Police Chowki,
Bhusawal, Dist. Jalgaon.

RESPONDENTS
[Ori. Accused]

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Mr.A.R.Borulkar, Advocate for the appellant –
State.

Mr.D.S.Pawar, Advocate holding for Mr.K.C.
Sant, Advocate for respondent Nos.1 and 4.
Respondent Nos.2 and 3 [died].

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 03.07.2017
Pronounced on : 25.07.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Appeal is filed by the appellant-State, challenging the judgment and order of acquittal passed by the Sessions Judge, Jalgaon, dated 28th February, 2001 in Sessions Case No.321/1994, thereby acquitting the respondent no.1 i.e. accused no.1, for the offence punishable under Section 302 of the Indian Penal Code, and also acquitting the respondent nos.1, 3 and 4 i.e. accused nos.1, 3 and 4, for the offence punishable under Section 498-A r/w. 34 of the Indian Penal Code.

2. The prosecution case in nutshell is as under:

Vandana, daughter of Yamunabai Namdeo Gangawane of Bhusawal, got married with Gautam Fulchand Shejwal of Bhusawal, in the year 1988. During her visit to her

parents' house, Vandana [deceased] used to tell her parents, and relative that her husband and in-laws were ill-treating her as she could not conceive. The parents and the relatives of Vandana used to persuade and console her. On 29th May, 1994, at about 2.00 p.m., one Arunabai Avhad informed Yamunabai, mother of Vandana that Vandana had sustained burn injuries and was admitted in the Municipal Hospital, Bhusawal. When Yamunabai had been to see Vandana at the Municipal Hospital, Vandana told her that since morning husband, father-in-law, mother-in-law, and brother in law of Vandana started ill-treating her and beating her as she could not conceive, and wanted to give her divorce. Vandana refused to put her signature on the divorce papers; as such her husband Gautam poured kerosene on her person and set her on fire.

On 29th May, 1994, at about 1.30

p.m., Pandit Chudaman Patil, A.S.I., City Police Station, Bhusawal, received information from the Medical Officer, Municipal Hospital, Bhusawal that Vandana Gautam Shejawal was admitted in the Hospital as she has sustained burns. Mr.Patil made an enquiry about the information in the station diary, and directed ASI, Chaudhari to record the statement of Vandana. He also wrote a request letter to the Executive Magistrate asking him to record the dying declaration of Vandana.

ASI, Jagannath Tipu Chaudhari, on receipt of the orders in respect of recording of dying declaration of Vandana from the Police Station, went to the Municipal Dispensary, Bhusawal. He contacted to the Medical Officer on duty, and asked him whereabouts of Vandana. The Medical Officer took ASI Chaudhari to Vandana. ASI,

Chaudhari, asked the Medical Officer as to whether Vandana is in a position to give statement. When the Medical Officer answered in the affirmative, ASI Chaudhary recorded the statement of Vandana. Thereafter, he went to the City Police Station and registered Crime No.73/1994.

3. Jagannath Bhirud, an Executive Magistrate, Bhusawal, on receipt of the request letter from the City Police Station, Bhusawal, went to the Municipal Hospital, Bhusawal. He met Dr.Mahajan and informed him that he has come to record the dying declaration of Vandana. Dr.Mahajan took Mr.Jagannath Bhirud to Vandana. The Medical Officer informed Mr.Bhirud that Vandana was conscious, and can give statement. Thereafter, Mr.Bhirud recorded the dying declaration of Vandana.

Shri Pandit Chudaman Patil, ASI, has

carried the investigation. During his investigation, he went to the Hospital, attached the clothes on the person of Vandana under panchnama. Thereafter, he prepared the spot panchnama. On 29th May, 1994 at about 11.45 p.m. Vandana expired. On 30th May, 1994, he prepared the inquest panchnama and referred the dead body for conducting postmortem examination. Further investigation has been carried out by the Police Inspector Mr.Marathe. During his investigation, he has referred the attached articles to the Chemical Analyzer, Aurangabad. On receipt of the postmortem report, and the report of C.A., and on completion of investigation, he has submitted charge-sheet in the Court.

4. The trial Court framed the charge. Accused no.1 is charged for having committed an offence punishable under Section 302 of the Indian Penal Code. Accused Nos.1, 3 and 4 are charged for having committed an offence

punishable under Section 498-A r/w. 34 of the Indian Penal Code. The accused have denied to have committed any offence and claimed to be tried. Their defence is of total denial. The prosecution examined in all 6 witnesses and relied upon the dying declarations etc.

5. After full-fledged trial, the trial Court acquitted the respondent no.1 i.e. accused no.1, for the offence punishable under Section 302 of the Indian Penal Code, and also acquitted the respondent nos.1, 3 and 4 i.e. accused nos.1, 3 and 4, for the offence punishable under Section 498-A r/w. 34 of the Indian Penal Code. Hence this Appeal filed by the appellant–accused.

6. Heard the learned APP appearing for the appellant–State, and the learned counsel appearing for the respondents–accused. Perused the notes of evidence. The prosecution case rests upon three dying

declaration of Vandana, and one oral dying declaration, which was given by Vandana [deceased] to her mother Yamunabai. The first dying declaration written is at Exh.57. It is the case paper prepared by PW-5 Dr.Mahajan after Vandana was admitted in the Municipal Dispensary, Bhusawal. Upon careful perusal of the contents of dying declaration at Exh.57, it appears that Vandana was admitted in the Municipal Hospital at Bhusawal on 29th May, 1994, at about 1.45 p.m. There is also entry at 1.45 p.m. on the said Exhibit that she expired at 11.45 p.m. on the same day. There is a note in the form of medical history, which reads as under:

*H/O — Beaten and pour kerosene of her husband at about 1 p.m.
O/E 1st to 4 degree burn all over the body. Patient is 100% burn. Abdomen partly 1st degree. Burn 2% superficial. Patient is conscious. Burning pain in body.*

*P/R.82 P/M Police inform for
statement of dying declaration.*

There is also entry at 2.45 p.m. that patient is conscious. The statement recorded by the Police. The patient is restless. Burning pain in body. P/R.80 P/M. There is also entry at 4.50 p.m. that patient is semiconscious. Condition same P/R 80 P/M. There is entry at 8.30 p.m. that patient is unconscious. Condition is poor P/R 72 P/M. Lastly, there is entry at 11.40 p.m. that patient condition is poor. Gassing condition. Pulse not recordable. Body is cold. Patient expired at about 11.45 p.m. In the another column, there is description of prescribed medicine and diet/food.

7. It appears that the aforesaid history, at the time of admission of Vandana, has been treated as written dying declaration [Exh.57]. In order to prove the said dying

declaration, the prosecution examined Pandit Chudaman Patil [PW-3]. He has stated in his evidence that in the year 1993-94 he was attached to the Police Station Bhusawal as Assistant Sub Inspector. On 29th May, 1994, when he was on duty as Thane Amaldar in between 8.00 a.m. to 2.00 p.m. at about 13.50 hours, he received the requisition of the Medical Officer of Municipal Hospital, Bhusawal, informing that one Vandana Gautam Shejwal, resident of Bhusawal, has been admitted in the Hospital for sustaining 100% burns. Accordingly, he recorded the entry of the said information in the station diary. Then he issued memo to the ASI Chaudhari, and he was asked ASI Chaudhari to record the statement of Vandana Shejwal. He further stated that even a requisition was issued to the Executive Magistrate on the same day to record her dying declaration. At about 3.30 p.m. he was entrusted the investigation in

Crime No.73/1994 under Section 498-A, 306 r/w.34 of the IPC. He went to the Hospital. He attached the garments of Vandana before the panchas. He carried out further investigation. He stated that on 29th May, 1994, Vandana succumbed at 23.45 hours, and accordingly, on 30th May, 1994, the inquest panchnama was prepared.

8. The prosecution examined Dr.Sudhakar Maruti Mahajan as PW-5. He stated in his deposition that he is attached to the Municipal Hospital, Bhusawal, since last 25 years. He stated that after patient of burn injuries admitted in the Hospital, he recorded his statement in the form of case history. He made note of the same on the case paper. He further stated that on 29th May, 1994, at about 1.00 p.m. Vandana Gautam Shejwal was brought in his Hospital. She was brought by some persons. He told those

persons, who brought Vandana, to stay outside. He himself, sister, Aaya and patient were only in the room. He asked Vandana as to how she sustained injuries. She told him that she was beaten and kerosene was poured on her person by her husband. Accordingly, he has made a note of it on the case paper. He informed the Police to record the dying declaration of Vandana. Thereafter, the police came and recorded the statement of Vandana in his presence. He himself, Vandana and the Police were in the room when her statement was recorded by the Police. When Vandana gave her statement, she was in a position to talk and was fully conscious. The Police obtained his signature on the statement of Vandana. He further stated that the Executive Magistrate also recorded the dying declaration of Vandana, at that time also Vandana was conscious. He put his endorsement and signed it. Vandana continued

under his treatment after her statement were recorded. Vandana expired on the same day at about 11.45 p.m.

PW-5, Dr.Mahajan, was cross examined by the defence. During his cross examination, he stated that while making a note of case history on the case paper he has written "beaten and poured kerosene by her husband at about 1.00 p.m.". He stated that the portion bracketed as statement given before him by Vandana appearing in Exh.59, does not appear in Exh.57. The original of Exh.59 is in the Dispensary. He will not be in a position to produce the same. He stated that there is difference in Exh.57 and Exh.59. He does not intend to give any explanation as to why there is difference between Exh.57 and Exh. 59. However, he denied that Exh.57 is a fabricated document prepared by him. He further stated that whenever patient in a serious condition is admitted, pulse rate of

patient, heartbeat and anal temperature has to be recorded. He has recorded the same in the instant case [in Exh.57]. He again said that he has not recorded heartbeat and anal temperature on any paper. In Exh.57, it is mentioned that Police recorded the statement of Vandana at 2.45 p.m. but there is no such entry in it to show that the Executive Magistrate recorded her statement. He does not wish to give any explanation in that behalf. He denied that as the Executive Magistrate did not record the statement of Vandana in his presence, there is no entry about the same in Exh.57. He had asked Vandana as to who burn her. In Exh.57, it is not mentioned that Vandana told him that her husband burnt her. He denied that as Vandana did not tell him who burnt her, he did not record it in Exh.57.

9. When Exh.49 was shown to him, he stated that the bracketed timing with red ink

is not in his hand writing. The endorsement at the top of Exh.49 does not mention the time. The time given under the endorsement made at the foot of Exh.49 is in his hand writing. He does not know who has put the timing 2.30 which appears above on his endorsement in Exh.49. He was shown Exh.54. He stated that the time 2.25 appearing under his endorsement on it, is the time when the statement of Vandana was concluded. He did not put any question to Vandana to ascertain as to whether she was mentally alert and fit to give such dying declaration.

It appears from perusal of his statement that even while recording the dying declaration at Exh.57 and Exh.54 also, he had given endorsement. It is also clear from his evidence that in respect of mentioning time of recording of dying declarations there is lot of confusion, and also about the time of

endorsements given by PW-5 Dr.Mahajan on the said dying declaration.

10. Upon conjoint reading of the contents of the dying declarations, and the evidence of PW-5 Dr.Mahajan, it appears that PW-5, Dr.Mahajan, could not produce the original of Exh.59, and also it further appears from reading of contents of dying declaration at Exh.57, that in history it is mentioned as 'beaten and poured kerosene of her husband at 1.00 p.m.'. However, there is no allegation that husband ignited matchstick and set Vandana ablaze. PW-5, Dr.Mahajan, was not able to explain, as to why the entry to the effect that, the Executive Magistrate recorded her statement is absent, in Exh.57.

11. The prosecution examined Jagannath Tipu Chaudhari as PW-4. He was working as ASI at the relevant time. He stated in his evidence that he went to the Municipal

Dispensary Bhusawal at 2.00 p.m. on 29th May, 1994, so as to record the statement of Vandana. He met the Medical Officer and asked him as to whether Vandana is in a position to talk. The Medical Officer told him that Vandana is in a position to talk. Thereafter, he recorded the statement of Vandana. Initially, he asked her name and address etc., and thereafter, he asked her about how the incident had taken place. He recorded the statement of Vandana. The same was read over to her. Thereafter, he obtained her thumb mark on her statement. He stated that the Medical Officer had put endorsement in the margin of the statement. He attested the said statement. Thereafter, he went to the City Police Station and registered Crime No.73/1994.

During his cross examination, he stated that he took about one and half hour

to record the statement of Vandana i.e. from contacting him by the Medical Officer till obtaining the thumb impression of Vandana. He stated that Vandana was talking for about 30 to 45 minutes. She gave statement without taking any pause. He recorded statement of Vandana as it was narrated by her. He stated that he was in the Municipal Dispensary during the period from 2.15 p.m. to 3.15 p.m. Vandana gave her statement during the period from 2.30 p.m. till 3.15 p.m. It did not happen that during the aforesaid period, the Executive Magistrate also recorded statement of Vandana. He cannot remember whether Shri Jagannath Narayan Bhirud was the Executive Magistrate, Bhusawal, in May 1994. He stated that the Medical Officer has made an endorsement on the dying declaration at Exh.54 in his presence. The Medical Officer has made endorsement after the statement of Vandana was recorded. He has put the

endorsement at about 3.30 p.m. It did not happen that the Medical Officer has made his endorsement at 2.25 p.m. The portion "at 1.00 noon" in Exh.54 has been inserted later on. He stated that it did not happen that Vandana did not give the time when the incident has taken place while narrating the incident, she gave the time subsequently, and hence the said portion of mentioning time of recording dying declaration has been written subsequently. Vandana did not utter words '*Navra Gautam*' on four occasions while narrating the incident. In second breath, he again stated that Vandana uttered four times "*Navra Gautam*". He had asked Vandana as to where the incident took place; Vandana told him that the incident had taken place in the house. When he asked Vandana as to which neighbour extinguished fire, Vandana did not give the names of those neighbourers. He did not ask Vandana that, as to whether any other

person has recorded her statement or not. The Medical Officer did not tell him that, the Executive Magistrate had recorded the statement of Vandana. He denied that Exh.54 is not the statement of Vandana and the thumb impression thereon is not that of Vandana. He further stated that the portion 'at 1.00 noon' in Exh.54 was written by him while recording the statement of Vandana.

12. Upon careful perusal of the evidence of PW-4 Jagannath Chaudhari, it is not mentioned that when the recording of the dying declaration was commenced and what time it was concluded. Vandana stated in the said dying declaration that Bhimjyot was in the house, husband Gautam has poured kerosene on her person and had set her ablaze at 1.00 p.m. and then they went out of the house. Then she stated that mother-in-law, father-in-law and husband did not approve her and hence her husband poured kerosene on her

person and burnt her. The endorsement of the Medical Officer at Exh.54 shows that it was made at 2.25 p.m. Time 1.00 p.m. appearing in Exh.54 was inserted subsequently as has been admitted by the ASI Chaudhari. He deposed that he was in the Municipal Dispensary during the period from 2.15 p.m. to 3.15 p.m. According to him, Vandana gave statement during the period from 2.30 p.m. till 3.15 p.m. It was specifically suggested to him as to whether during aforesaid period the Executive Magistrate recorded the statement of Vandana or not, however, he denied the same. He further stated in his cross examination that the Medical Officer has made endorsement after the statement of Vandana was recorded and that the Medical Officer made endorsement at about 3.30 p.m and denied that the Medical Officer made his endorsement at 2.25 p.m.

13. It appears that third dying declaration at Exh.49 was recorded by the PW-2, Executive Magistrate, Jagannath Bhirud. In his evidence, he stated that on 29th May, 1994, he received requisition of the Police Station, Bhusawal, to record a dying declaration of one Vandana Gautam Shejwal. He received the said letter at 2.15 p.m. He then rushed to the Municipal Hospital Bhusawal. He met Dr.Mahajan. He apprised him that, he has come to record dying declaration/statement of Vandana Shejwal. The Medical Officer then took him to Vandana Shejwal, who was lying alone on one cot in special room of the Hospital. PW-2, Mr.Bhirud, asked the Medical Officer whether Vandana is able to speak. The Medical Officer told him that she is conscious and can make a statement. Then he started recording her dying declaration. He first asked her name, occupation and address. She told her name,

age and address. Then he asked her how she got burnt, in turn Vandana started to give statement. Then he read over the contents of the said statement to Vandana and then he put his signature thereon. Dr.Mahajan also put his signature. He stated that the said dying declaration was kept in one sealed envelope and it was kept in almari. On the date of recording of his evidence, he brought the said sealed envelope. The said sealed envelope was open during the course of recording of his evidence before the Court. During his cross examination he stated that the figure '20.30' appearing on the said dying declaration about time of recording of the said dying declaration is in his handwriting, however, he denied those figure. He did not ask her at which place kerosene was poured on her person. However, she told that a can of kerosene was in the latrine. In the end of recording dying declaration, when

he asked Vandana whether she wants to say anything more. She stated that, she has suspicion on her mother-in-law and husband put her on fire.

14. Upon careful perusal of the evidence of PW-2 Mr.Bhirud, it appears that Vandana did express her suspicion that her mother-in-law and her husband burnt her. In fact, if her statement at Exh.57 is perused, she only indicated orally that her husband poured kerosene on her person, however, in dying declaration at Exh.49, she implicated mother-in-law. In fact, there is considerable confusion about recording of three dying declarations from 1.45 p.m. till 3.30 p.m. In respect of the time of recording of dying declarations, and the endorsements put by the Medical Officer, there appears no clarity. It appears that dying declarations at Exh.54 and 49 came to be recorded within a span of 5 to 10 minutes. If the evidence of PW-4

Mr.Chaudhari is perused carefully, he had shown ignorance about the dying declaration recorded by the Special Executive Magistrate. Not only that, it appears that even he was not aware that Jagannath Narayan Bhirud is working as Executive Magistrate at the relevant time. If the contents of the dying declaration at Exh.57 are compared with the dying declaration at Exh.54 and Exh.49, it will have to be held that the versions stated in the three dying declarations are different in material particulars. As already observed, while giving medical history i.e. dying declaration at Exh.57, Vandana stated that her husband beaten and poured kerosene on her person at 1.00 p.m. In Exh.54, she stated that since she was unable to conceive child, her mother-in-law and husband did not like her, and her husband and mother in law continued to ill-treat her. Then she stated that on the date of incident her

father-in-law, mother-in-law and husband and also brother-in-law Bhimjyot quarreled with her, and abused her and expressed that they did not like her, and they were insisting to take divorce. She stated that father-in-law and mother-in-law went outside the house, and inside the house husband in the afternoon at 1.00 p.m. poured kerosene and set her ablaze, and thereafter, brother-in-law Bhimjyot went outside the house. Upon careful perusal of the original dying declaration at Exh.54, it appears that, "दुपारी-१ वाजता" is inserted and added subsequently. However, there are no initials/counter signature of PW-4 Dr.Mahajan after adding such portion. It further appears that there is an endorsement of Dr.Mahajan at 2.25 p.m. In concluding part of the dying declaration, Vandana stated that her mother-in-law, father-in-law, brother-in-law and husband did not like her, and therefore, her husband poured kerosene on her person and set

her ablaze. It appears that there is thumb impression on the said dying declaration, but there is no attestation to the said thumb impression.

15. The dying declaration at Exh.49 was recorded by the Executive Magistrate. We have already discussed about said dying declaration. The time of endorsement given by the Medical Officer is written as 2.45 p.m., however, afterwards some figure is encircled by red ink. It appears that initially time of recording of said dying declaration was mentioned as 20.30 p.m. As already observed, when the dying declaration at Exh.54 was recorded, the Medical Officer has mentioned the time as 2.25 p.m. If the Medical Officer was present while recording the dying declaration at Exh.54, then while recording of the dying declaration at Exh.49, recording of which was begun at 2.30 p.m., there is

serious doubt about the presence of the Medical Officer Dr.Mahajan. In the said dying declaration [Exh.49], Vandana stated that on 29th May, 1994, her mother-in-law Nanubai, father-in-law Fulchand, brother-in-law Bhimjyot, and husband Gautam started abusing her, and were asking to take divorce. It is also mentioned that prior to 7 days of the incident she went to the house of her mother and something was brought and given to the husband. Then she stated that her husband poured kerosene on her person at 1.00 p.m. and set her ablaze and then he ran away from the house. Thereafter, she started shouting and came outside the house. She stated that a Can containing kerosene was kept in the toilet. Then she said that she has doubt on her mother-in-law and husband has burnt her. It appears that the said alleged dying declaration was concluded at 2.45 p.m. Upon careful perusal of the said dying

declaration, there are two thumb impressions; one thumb impression is immediately after concluding the dying declaration, and thereafter, it is mentioned that the statement is read over and the same is correct. Thereafter, another thumb impression is taken. Name of Vandana is written and on the said name itself thumb impression is taken. Upon careful perusal of the contents of the said dying declaration, it is apparent that there is a lot of improvement in her version. She stated that her husband poured kerosene on her person and set her ablaze, and thereafter, she stated that about the said incident she had doubt on her mother-in-law and husband that her mother-in-law and husband burnt her. If the portion of dying declaration at Exh.49 i.e. "सदर घटनेबाबत मला माझी सासू व नवरा यांनी जाळले बददल संशय आहे" read carefully, it indicated the state of mind of Vandana at the relevant time was that, she was not in a

mentally and physically fit condition and conscious, to give such dying declaration.

16. Be that as it may, upon comparison of the contents of three dying declarations and also about timing of recording of the said dying declarations, and the timing of the endorsement made by the Medical Officer, all three dying declarations create serious doubt, whether the said dying declarations were given voluntarily by Vandana, and about it's truthfulness. Therefore, it is not safe to place reliance on the said dying declarations.

17. As per the prosecution case, Vandana orally told Yamunabai PW-1, mother of Vandana, that accused used to ill-treat her as she could not give birth to child, and therefore, they were annoyed. According to prosecution case, PW-1, Yamunabai, persuaded

the accused for better future of her daughter. PW-1, Yamunabai, stated that she went to the Hospital, she saw that Vandana has sustained extensive burn injuries. Vandana told her that, since morning her husband Gautam, father-in-law Fulchand, mother-in-law Nanubai, and brother-in-law Bhimjyot started ill-treating her and beating her as she was not able to conceive child, and wanted her to give divorce. Vandana refused to put her signature on the papers, hence, her husband poured kerosene on her person and put her on fire, and then Vandana succumbed to the burn.

It is relevant to note that in first three dying declarations, it is not mentioned that the accused were asking her signature on paper so as to give divorce, and upon refusal of giving such signature her husband Gautam poured kerosene on her person and put her on fire.

18. During the cross examination of PW-1 Yamunabai, she admitted that at the time of incident, Ravindra, brother of Yamunabai, was the Vice President of the Municipal Council, Bhusawal. He had come in the Hospital at 4.30 to 5.00 p.m. She stated that since beginning Vandana was not leading a happy life, however, she did not take her complaints seriously. She never visited the house of accused. The accused never came to her house. Her husband or son Rahul never used to visit house of the accused. Fulchand died after the incident. Nobody had interrogated Vandana in the Hospital in her presence.

19. We have discussed in detail about the contents of the dying declaration at Exhibits 49, 54 and 57, and also the oral dying declaration given by Vandana to PW-1 Yamunabai. We have discussed in detail about the variance in the version of Vandana in the

aforesaid three dying declarations and one oral dying declaration.

20. The Supreme Court in the case of *State of Punjab Vs. Parveen Kumar*¹, while appreciating the evidence in the form dying declaration held that, while appreciating the credibility of the evidence produced before the Court, the Court must view evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declaration. It may be that if there was any other reliable evidence on record, this Court could

¹ AIR 2005 SC 1277

have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in *Thurukanni Pompiah and another V. State of Mysore*, AIR 1965 SC 939, and *Khushal Rao V. State of Bombay*, 1958 SCR 552. In the case of *Khushal Rao Vs. State of Bombay*² held that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no

² AIR 1958 SC 22 [1]

opportunity of testing the veracity of the statement by cross-examination.

21. It appears that the Court examined Pradeep Sakharam Pawar and Savita Shridhar Shejwal as Court witnesses. Their evidence is at Exhibits 74 and 75 respectively. It appears that their statements were recorded by the Police, however, the prosecution did not examine them, and therefore, the trial Court thought it fit to examine them. It appears that CW-1, Pradeep Pawar, stated that his house is on the backside of the house of the accused. On 29th May, 1994, at about 12.00 or so, he heard shouts coming from the house of accused. He went there. There was crowd. A lady was shouting for help. He took the said lady in a rickshaw. He admitted her in the Municipal Dispensary at Bhusawal. Then he came back to his house. However, during his cross examination, he could not tell the name

of the said lady, who was shouting. He did not enquire with the persons in the crowd as to what was happened. He stated that when the incident had taken place one of the accused namely Fulchand was not alive. Therefore, it appears that though he took Vandana to the Hospital, she did not tell anything to him.

Savita Shridhar Shejwal was examined as CW-2. She stated that the incident took place on 29th May, 1994, in between 1.00 to 1.30 p.m. At that time she was in the house of her grandmother Nanubai. She herself and her brother had gone to the house of her grandmother to watch movie on T.V. Her aunt Vandana and she herself and his brother were in the house. Vandana was inside the kitchen. After a while Vandana came out ablaze from kitchen. When Vandana went out of the house, she herself and his brother followed her. Bhimjyot came with his rickshaw. Bhimjyot

extinguished the fire by pouring water on the person of Vandana. After the fire was extinguished, she was taken to the Dispensary in the rickshaw, and thereafter, she does not know as to what happened thereafter as she was in the house. CW-2, Savita, was cross examined at length by the Public Prosecutor. However, nothing useful to prosecution was elicited from her cross examination.

22. The trial Court, upon appreciation of the entire evidence in its proper perspective, found that it is not safe to rely upon the dying declarations, and other evidence brought on record by the prosecution, and benefit of doubt was given in favour of the accused. We have also discussed in detail the evidence brought on record by the prosecution in the foregoing paragraphs. However, we find that the findings of acquittal recorded by the trial

Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The possible view is taken by the trial Court. The Supreme Court in the case of ***Muralidhar alias Gidda and another Vs. State of Karnataka***³ in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar,

3. 2014 [4] Mh.L.J.[Cri.] 353

[1970] 2 SCC 450, Shivaji Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa Vs. State of

Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the powers of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the

trial Court had an advantage of
seeing the demeanor of the
witnesses. If the trial court
takes a reasonable view of the
facts of the case, interference
by the appellate Court with the
judgment of acquittal is not
justified. Unless, the
conclusions reached by the trial
court are palpably wrong or
based on erroneous view of the
law or if such conclusions are
allowed to stand, they are
likely to result in grave
injustice, the reluctance on the
part of the appellate Court in
interfering with such
conclusions is fully justified;
and (iv) Merely because the
appellate Court on re-
appreciation and re-evaluation
of the evidence is inclined to
take a different view,
interference with the judgment
of acquittal is not justified if
the view taken by the trial
Court is a possible view. The
evenly balanced views of the

evidence must not result in the
interference by the appellate
Court in the judgment of the
trial Court.

[Underlines supplied]

23. In that view of the matter, we are of the opinion that, there is no merit in the appeal, hence appeal stands dismissed. The bail bonds executed by the accused, if any, shall stand cancelled.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE