

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.272 OF 2013

Arjun Uddhav Arbad,
Age-27 years, Occu:Agri.,
R/o-Suralegaon, Tq-Georai,
Dist-Beed.

...APPELLANT
(Orig. Accused No.1)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Satej S. Jadhav Advocate for Appellant.
Mr.M.M. Nerlikar, A.P.P. for Respondent.
...

CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.

DATE OF RESERVING JUDGMENT : 10TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 14TH JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the
Judgment and order dated 26th June, 2013, passed

by the Sessions Judge, Beed in Sessions Case No.174 of 2011 thereby convicting accused No.1/ Appellant - Arjun Uddhav Arbad for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.5000/-, and in default, to suffer further rigorous imprisonment for six months.

2. The prosecution case, in brief, is as under:-

A) Deceased Sarlabai was married with accused No.1 Arjun Arbad prior to about two years before the incident. Soon after the marriage, Saralabai went to reside at matrimonial home at village Suralegaon. For some period, Sarlabai and her husband had gone to Shikrapur for doing labour work. Both of them stayed at Shikrapur and thereafter returned to Suralegaon, as they could not pull on well at Shikrapur. Accused Arjun used

to reside with his mother Sumitrabai in the same house at Suralegaon. It is the case of the prosecution that the accused used to ill-treat Saralabai on the ground that she could not cook food properly, she used to utilize more groundnut oil in the vegetables. The deceased tolerated the ill-treatment and cohabited with the accused.

B) It is the further case of the prosecution that on 1st September, 2011, deceased Saralabai was preparing food inside the house. Her mother-in-law Sumitrabai had gone to the river to wash clothes. Accused Arjun returned home at about 10.00 a.m. and asked Saralabai as to why she did not cook food. Saralabai told him that she had cooked the food but the same was insufficient. On hearing this, accused Arjun assaulted Saralabai. He then took out kerosene Can and poured kerosene on the person of Saralabai and ignited match stick and set her on fire. As Saralabai caught flames, she started running outside the house. The

neighbourers gathered on the spot and and poured water on her person and extinguished the fire. Saralabai was then immediately shifted to Ghati hospital, Aurangabad, where she was admitted as in-door patient from 1st September, 2011 to 9th September, 2011. Saralabai then succumbed to the injuries and expired on 9th September, 2011. In the meanwhile, PW-10 P.S.I. Ingale, who was attached to Chaklamba police station, went to Ghati Hospital, Aurangabad on 3rd September, 2011, and recorded statement of Saralabai in the form of dying declaration. On that basis, offence came to be registered in Chaklamba police station vide Crime No.59 of 2011 under Sections 307, 323, 504 read with Section 34 of the I.P. Code. Subsequently Saralabai expired on 9th September, 2011 and offence was then registered under Section 302 of the I.P. Code.

C) P.S.I. Ingale himself took up the investigation of this crime. He went to the spot

at Suralegaon and in presence of two panchas, he had effected the spot panchnama. The incriminating articles like one Can, burnt pieces of Sari, match box and two burnt match sticks were attached from the spot. He then arrested the accused. He had also requested the Revenue Officer to draw sketch map of the spot. He had recorded statements of various witnesses. The dead body of Saralabai was referred for post-mortem examination after drawing inquest panchnama. The seized muddemal articles were referred for chemical analysis. Post-mortem notes were obtained. C.A. reports were also obtained and on completion of entire investigation, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Georai. Since the alleged offence under Section 302 of the I.P. Code was exclusively triable by the Sessions Court, the Magistrate committed the case to the Court of Sessions.

D) A charge for an offence punishable under

Sections 498-A, 302, 323, 504 read with Section 34 of the I.P. Code was framed against the accused and the same was explained to him. The accused pleaded not guilty and claimed to be tried, with the defence of alibi. According to the accused, he was not at all present at the house when the incident took place. According to him, it is possible that the deceased might have suffered accidental burn injuries or suicidal burn injuries and he is not at all responsible for causing the death of deceased.

3. In the Sessions case, there were two accused i.e. accused No.1 Arjun s/o Uddhav Arbad, i.e. Appellant herein, and his mother, accused No.2 Sumitrabai w/o Uddhv Arbad. After recording the evidence and conducting full fledged trial, the trial Court acquitted accused No.2 - Sumitrabai w/o Uddhav Arbad of all the charges levelled against her. The trial Court also acquitted accused No.1 Arjun uddhav Arbad of the

offence punishable under Sections 498-A, 323 and 504 of the I.P. Code. However, the trial Court convicted accused No.1 Arjun Uddhav Arbad for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer rigorous imprisonment for life and to pay fine, as afore-stated. Hence this Appeal is preferred by the original accused No.1 Arjun Uddhav Arbad challenging the conviction and sentence.

4. Heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The prosecution examined PW-6 Dr. Nitin Subhash Ninal. He deposed that on 10th September, 2011 he was attached to Ghati Hospital,

Aurangabad, as a Post Graduate Student. On that day, he was on post-mortem duty, at Ghati Medical College, Aurangabad. Dead body of Sarla Arjun Arbad was brought by head constable Choudhary of police chowky, Begampura, Aurangabad. He himself conducted the post-mortem examination in between 7.30 a.m. to 8.30 a.m. On examination of the dead body, he found tht there were no signs of decomposition, post-mortem lividity cannot be appreciated due to extensive bur all over the back. Facial features were burnt, eyes open, pupils dilated, cornea clear, mouth closed, tongue inside, oral cavity, there was no oozing. All limbs were extended position.

. PW-6 Dr. Nitin Ninal further deposed that on external examination, he noticed following injuries:-

"92% superficial to deep burn present over body surface area, deep burn seen on chest,

abdomen, back, both lower limbs, right upper limbs which shows greenish yellowish foul smelling discharge at places, evidence of vital reaction present. Rest burns were superficial and showing brownish discolouration with mild smelling at places. The percentage of burn injuries noticed by him is as under:

Head, neck face	5%
Right upper limb	6%
Left upper limb	8%
Chest & abdomen	18%
Back	18%
Right lower limb	18%
Left lower limb	18%
External genitals	1%
Total:	92%

. PW-6 Dr. Nitin Ninal further deposed that Spread area - part of forehead and scalp, right hand, part of dorsum of right forearm with evidence of treatment in the form of intravires mark over dorsum of right hand, reddish. All the above injuries were ante-mortem. He further deposed that in his opinion, cause of death was "septicemia due to burns". He deposed that if kerosene is poured on the person of victim and she is set ablaze, then such type of injuries may occur.

. During the course of cross-examination PW-6 Dr. Nitin Ninal admitted that if there are injuries to vital part, and that too 92% burn injuries then process of dehydration starts immediately. He further admitted that in such cases, and if the water level in the body is not maintained, the patient may go in shock. In such cases due to inhalation of smoke inside the body, patient goes in suffocation. In case of 92% burns,

the patient gets severe pains. He further admits that in such cases if immediate treatment is not given to the patient then he is likely to go in shock.

6. PW-1 Vishwanath Ghansham Bhandare is a panch to the spot panchnama Exhibit-21. During the course of his cross-examination, he stated that he himself and Shivaji (another panch) were passing from the Grampanchayat Office, at that time police called them and asked them to sign the panchnama and obtained their signatures near Grampanchayat office. He further stated that he himself did not go to the house of accused along with police. He further admitted that kerosene can and match box are available at everybody's house. Thus it is clear from the evidence of PW-1 that he was not present on the spot when the spot panchnama was effected and his signature was obtained by the police near Grampanchayat office.

7. The prosecution examined PW-2 Bankat Bhujangrao Kadam. He deposed that he knows accused Arjun Arban who resides near his house. Accused Arjun was married with Saralabai prior to two years and she was carrying at the time of incident. On 1st September, 2011 he came near Maruti temple at about 10.00 to 11.00 a.m. They saw the flames on the road, they then rushed to the spot, they saw Saralabai had caught flames. They tried to extinguish the fire with the help of blanket by covering her. When asked, this witness was unable to say how Saralabai suffered burn injuries. During the course of cross-examination, PW-2 Bankat Kadam stated that he did not see Arjun on the spot. Arjun had gone to Georai.

. It is clear from the evidence of PW-2 Bankat that he reached on the spot of incident after Saralabai sustained burn injuries and he was unable to state how Saralabai suffered burn injuries. During the course of cross-examination,

PW-2 Bankat specifically stated that he did not see Arjun on the spot and that Arjun had gone to Georai.

8. The prosecution examined PW-3 Bhausaheb Shamrao Nalawade. He deposed that the incident took place on the day of "Ganesh Chaturthi". He was at his house. On hearing shouts he rushed towards the spot. He saw that wife of Arjun had caught fire and she was lying on the ground. The fire was extinguished by the adjoining neighbourers. When asked, he was unable to say how Saralabai suffered burn injuries. During his cross-examination, PW-3 Bhausaheb admitted that brother-in-law of Saralabai, mother-in-law as well as Lahurao Laxman Arbad, Hanumant Kisanrao Arbad, Satish Nalawade went in the Jeep when Saralabai was shifted to the hospital.

. Upon careful perusal of the evidence of this witness PW-3 Bhausaheb Nalawade, it is clear

that this witness reached on the spot when the alleged incident was over and he was unable to state how Saralabai suffered burn injuries. This witness does not state that when he reached on the spot, accused Arjun was present on the spot.

9. PW-4 Ankush Santram Kadam deposed that on the day of incident, at about 10.00 a.m. he himself and Shamrao Bhandare were sitting in front of Maruti temple. They saw the flames coming from inside the house of Arjun. They rushed towards the spot. The wife of Arjun had caught flames. They then extinguished the fire. During the course of cross-examination, PW-4 Ankush stated that at the time of incident about 100 persons had gathered on the spot. At that time Sarala was unconscious, so she did not speak anything.

. Upon careful perusal of the evidence of PW-4 Ankush, it is clear that he has also not witnessed the incident and he reached on the spot

of incident when Saralabai sustained burn injuries. During his cross-examination, he stated that at the time of incident about 100 persons had gathered on the spot and at that time Sarala was unconscious, so she did not speak anything.

10. The prosecution examined PW-5 Maharudra Pandurang Arbad. He deposed that accused Arjun is son of his brother Uddhav. On 1st September, 2011, he had gone to Mahakala Sugar Factory, Ambad. He further deposed that he received phone message of Satish Nalawade that Saralabai had set herself on fire. During the course of his cross-examination, PW-5 Maharudra admitted that Saralabai was pregnant and due to insufficient blood supply, there were pains in the stomach. He further admitted that Saralabai was of weak physic and Arjun had given treatment to Sarala at Shikrapur and spent huge amount for treatment. He further admitted that Sarala was hot tampered lady.

. Upon careful perusal of the evidence of this witness PW-5 Maharudra, it reveals that he was not in the village when the incident took place and he further deposed that he received phone message of one Satish Nalawade that Saralabai had set herself on fire. During his cross-examination, he admitted that accused Arjun had given treatment to Sarala at Shikrapur and spent huge amount for treatment, and further admitted that Sarala was not tampered lady.

11. The prosecution examined PW-7 Gajanan Anna Bedre, brother of deceased Sarala. He deposed that the incident took place on 1st September, 2011. He was at Patharwala. His father received phone message that Saralabai had suffered burn injuries and that she was admitted in Ghati Hospital, Aurangabad. Thereafter, he himself, his father Anna and mother Sumanbai went to Ghati Hospital, Aurangabad. They then made enquiry with Sarala. She told them that she was cooking food,

Arjun came back to house and asked her why she did not cook food, she told her husband that the food was insufficient, she told that kerosene Can was kept under Cot. He further deposed that Sarla told them that accused Arjun poured kerosene from the said can on her person and ignited match stick and set her on fire and ran away.

. During the course of cross-examination, PW-7 Gajanan stated that they have not lodged complaint on the day when Sarala was admitted in the hospital. He further stated that they have not lodged complaint on the next day of the incident. He further stated that on 1st September, 2011 when they went to the hospital, on the same day statement of Sarala was recorded. He does not know if her statement was recorded at 10.00 p.m. He denied that on the day of incident in the morning Arjun had left home and had gone to Georai. He denied that Sarala was not in a position to speak when they went to the hospital. He further stated

that at the time of statement, he had informed the police that accused used to harass his sister for demand of money, he had also informed the police that Salara told them that her husband used to assault her under intoxication, he had also stated to police that Sarala was pregnant at the time of incident, he had also stated to police that after seven days of incident, Sarala gave birth to female child. However, he was unable to state why all the above stated facts were not mentioned in his statement recorded by the police.

. Thus upon perusal of the evidence of this witness, it is clear that PW-7 Gajanan has stated in his cross-examination that on 1st September, 2011 itself first dying declaration of Saralabai was recorded. If his version is accepted to be true, then the prosecution has not placed on record the first dying declaration of Saralabai which was recorded on 1st September, 2011. During the course of his cross-examination, several

contradictions and omissions were brought on record by the defence.

12. The prosecution examined PW-8 Dr. Abhijit Kashinath Chinchole. He deposed that on 1st September, 2011 he was working as Junior Resident at Ghati Hospital, Aurangabad. On that day Sarala Arjun Arbad was admitted in Ghati Hospital on account of burn injuries. On 3rd September, 2011 police inspector from Chaklamba police station came to Ghati Hospital. The police inspector had requested him to examine the patient Sarala with a view to find out whether she was conscious and oriented to give statement. He then examined Sarala and found that she was conscious and oriented to give statement. Police Inspector Ingale then recorded statement of Sarala. Below the statement he has given his endorsement that patient was conscious and oriented. After the statement was completed again he examined Sarala and found that she was conscious. Accordingly he

had made endorsement below the statement. On 6th September, 2011 there was abortion of Sarala. Due to burn injuries suffered by patient, child was aborted. He further deposed that Saralabai expired on 9th September, 2011.

. During the course of cross-examination, PW-8 Dr. Abjijit admitted that in case of 90 to 92% burn injuries there is dehydration. Due to the dehydration water level in the body is reduced. The burn patients get severe pains and to minimize the pains, pain killers are administered to such patients. He further admitted that in case of 90 to 92% burn injuries, if immediate treatment is not received by the patient, then he may go in shock. He further admitted that if patient goes in shock, he becomes unconscious. He stated that he has not mentioned in the case papers that he has examined the patient. He stated that he has not mentioned in the endorsement that patient was physically and mentally fit to give statement. He

has stated that he has not specifically mentioned that patient was physically and mentally fit throughout the statement. He stated that patient was admitted by her husband. He admitted that the relatives of the patient had arrived in the hospital. He admitted that there was dressing to the hands and legs of the patient.

13. PW-9 Sudhakar Lalasaheb Choudhary, police head constable deposed that on 9th September, 2011 he was posted at police chowki, at Ghati Hospital, Aurangabad. On that day Sarala Arjun Arbd expired due to burn injuries and accordingly he gave report to Begampura police station and on the basis of his report, Accidental Death was registered.

14. The prosecution examined PW-10 Eknath Kashinath Ingale, P.S.I. Beed City police station. He is investigating officer in this case. He deposed that on 3rd September, 2011 he was

attached to Chaklamba police station as P.S.I. On 3rd September, 2011 he went to Ghati Hospital, Aurangabad for recording the statement of burn patient Sarala Arjun Arbad. After going to Ghati Hospital, he issued letter to Medical Officer requesting him to examine the patient to find out if she was able to give statement. Doctor examined the patient and gave endorsement that she was fit to give statement. Thereafter he had recorded statement of Sarala Arbad as per her version. He deposed that she had disclosed that on 1st September, 2011 she was cooking food in the kitchen, her mother-in-law had gone for washing clothes on the river, her husband returned back to home, she told her husband that the prepared food was less and so she was cooking the food, thereupon her husband poured kerosene and set her ablaze by igniting match stick. He further deposed about the manner in which he has carried out the investigation.

. During the course of cross-examination, PW-10 Eknath Ingale admitted that while issuing any letter from the police station, entry is recorded in inward and outward register. He admitted that on the letter issued to doctor for examination of patient, inward outward number is not mentioned. He further stated that he has not recorded any separate noting regarding the fact that he himself has verified from the patient about her physical and mental condition. He admitted that the endorsement of the doctor was not obtained at the beginning of the statement. He further admitted that below the dying declaration, on the right side portion there is complete thumb impression and on the left side portion there is half thumb impression. He denied that both the thumb impressions are of different persons. He denied that Sarala was in unconscious condition and was unable to speak. He further admitted that he did not take any efforts to get the dying declaration recorded from the Executive

Magistrate.

15. Upon careful perusal of the dying declaration Exhibit-48, recorded by the Investigating Officer PW-10 Eknath Ingale, it is stated by Saralabai that her marriage was solemnized with Arjun two years prior to the incident. She stated that she was carrying pregnancy of seven months. She further stated about the earlier quarrel took place between herself and her husband on the day of Pola festival. About the alleged incident, she stated that, on 1st September, 2011 at about 10.00 to 11.00 a.m. she was cooking the food. Her mother-in-law Sumitrabai had gone to the river for washing clothes. At that time her husband Arjun came in the house and asked her why she has not cooked the food. She replied that she had already cooked the food but the same was not sufficient and therefore she was again cooking the food. Her husband got annoyed and started beating her.

Thereafter her husband Arjun took out the kerosene can and poured the kerosene on her person and set her ablaze by igniting match stick. Due to burn injuries she started shouting and came out of the house and fell on the road. Her relatives extinguished the fire by pouring water on her person. She further stated that her mother-in-law used to ill-treat and abuse her on trifle grounds. She has complaint against her husband Arjun Uddhav Arbad and mother-in-law Sumitra Uddhav Arbad.

. Upon careful perusal of the dying declaration, it appears that there are two thumb impressions on the same. One full thumb impression is at right side of the dying declaration, and another half thumb impression is at the left side of the dying declaration.

16. The defence has examined DW-1 Bhausaheb s/o Bhagwantrao Londhe. He deposed that there was Ganesh Chaturthi on 1st September, 2011. On that

day accused Arjun came to his house at 6.45 a.m. He himself and Arjun wanted to visit Georai to bring money from one Kumbhar. He himself and Arjun then started for Georai on his motorcycle bearing registration No.MH-12-4361. They both started from Suralegaon at 7.00 a.m. and reached Georai at 9.00 a.m. He then gave his motorcycle for servicing. At 10.00 a.m. servicing was completed. Thereafter he had called Kumbhar on phone from his Mobile No.9764013719. Kumbhar then came to Hotel at Kolher road. They met Kumbhar at about 11.00 a.m. He then received phone call from Suhas Kadam from Suralegaon informing him that wife of Arjun had suffered burn injuries. He then informed accused Arjun about the incident. Said Kumbhar then paid Rs.4000/- to them. He again received phone call from Bhagwan Arbad, who told them to come to Pachond and also told him that they were taking wife of Arjun to Aurangabad for treatment. He himself and Arjun then went to Pachod on motorcycle. They saw that wife of Arjun had

suffered burn injuries. They saw Lahurao Arbad, Bhagwan Arbad, Hamumantrao Arbad, Satish Nalawade and Sumitrabai Arbad were in the Jeep. He further deposed that from Pachod Arjun went to Aurangabad in the same Jeep and he then returned back to Suregaon. This witness was extensively cross-examined by the prosecution but his version was not at all shattered and nothing contrary has been brought on record during his cross-examination by the prosecution.

17. We have discussed the evidence of all the witnesses in detail. PW-2 Bankat is an independent witness, who immediately rushed to the spot when the victim caught fire. He specifically admitted in his cross-examination that he did not see Appellant Arjun on the spot and that the Appellant had gone to Georai. He further deposed in his examination-in-chief that he cannot say how Saralabai suffered burn injuries. PW-3 Bhausahab, another independent eye witness, also deposed in

his examination-in-chief that he cannot say how Saralabai suffered burn injuries. PW-3 Bhausahab has admitted in his cross-examination that after the incident the victim did not talk anything to anybody. PW-4 Ankush, another independent eye witness admitted in his cross-examination that the victim was unconscious and she did not speak anything and further stated that about 100 persons immediately gathered on the spot. PW-5 Maharudra stated in his examination-in-chief that one Satish Nalawade informed him that the victim Saralabai set herself on fire. In cross-examination he admitted that the victim was pregnant and due to insufficient blood and weakness there were pains and the Appellant had spent huge amount for her treatment. He also admitted that the victim was not tampered lady. Upon careful perusal of the oral testimony of the Medical Officer PW-6 Dr. Nitin Ninal, he stated that victim suffered 92% burn with evidence of vital reaction due to deep burns. The area of the body spared from the fire

is forehead scalp, right hand and forearm, and therefore the possibility of suicidal burns cannot be ruled out. He further admitted that patient was admitted by her husband. PW-7 Gajanan is brother of deceased Saralabai. According to him, the statement of deceased was recorded on 1st September, 2011 itself in the hospital. However the said statement is not placed on record by the prosecution. There is force in the argument of the learned counsel appearing for the Appellant that the first statement of the deceased which was recorded on 1st September, 2011 itself, has been suppressed by the prosecution being not favourable to the prosecution. Learned counsel appearing for the Appellant has rightly argued that, all the above circumstances point out towards a possibility of the deceased sustaining suicidal or even accidental burns.

18. No doubt the dying declaration Exhibit-48 is corroborated by the oral testimony of PW-7

Gajanan. He deposed that when he visited the hospital when Saralabai was admitted in hospital, she has given oral dying declaration to him. Still it is not safe to rely upon the dying declaration Exhibit-48. The prosecution has not convincingly brought on record that while giving dying declaration, Saralabai was in a fit mental condition. The medical evidence brought on record clearly reveals that she sustained 92% burn injuries. During the course of cross-examination, PW-8 Dr. Abjijit admitted that in case of 90 to 92% burn injuries there is dehydration and due to the dehydration water level in the body is reduced. He further admits that the burn patients get severe pains and to minimize the pains, pain killers are administered to such patients. He further admitted that in case of 90 to 92% burn injuries, if immediate treatment is not received by the patient, then he may go in shock, and if patient goes in shock, he becomes unconscious. The eye witnesses who rushed to the spot after the

incident, categorically stated that Saralabai was not in a condition to speak and she was unconscious after sustaining burn injuries. The possibility of tutoring also cannot be ruled out as Saralabai was admitted in the hospital on 1st September, 2011 and her dying declaration was recorded on 3rd September, 2011 and during the intervening period, her brother and parents were present in the hospital. After careful perusal of the dying declaration at Exhibit-48, it appears that there are two thumb impressions of the deceased, one full thumb impression is at right side of the dying declaration and another half thumb impression is at left side. The prosecution has not satisfactorily explained why two thumb impressions of the deceased were taken on the said dying declaration. Further during the course of cross-examination, PW-8 Dr. Abjijit admitted that there was dressing to the hands and legs of the patient. Thus, there is force in the argument of the counsel appearing for the Appellant that there

is interpolation in the dying declaration Exhibit-48 and there is every possibility that the thumb impressions are not of the deceased.

19. Admittedly there is no eye witness to the incident and the prosecution case is based only on the circumstantial evidence and the sole dying declaration of deceased Saralabai, that too, recorded by the Investigating Officer. Investigating Officer PW-10 Eknath Ingale, categorically admitted in his cross-examination that, he did not take any efforts to get the dying declaration recorded from the Executive Magistrate. In view of the exposition of law by the Supreme Court in the case of Khushal Rao vs. State of Bombay¹, the dying declaration 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

¹ A.I.R. 1958 S.C. 22 (V 45 C 4)

footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character.

20. The defence taken by the accused is of alibi. In support of his defence, the accused examined DW-1 Bhausahab Londhe. DW-1 Bhausahab has categorically stated that on the day of incident since morning hours till they came to know about the incident in noon hours, he was with the accused Arjun and they both had gone to Georai on his motorcycle. At Georai he received phone call from one Suhas Kadam who informed that wife of Arjun suffered burn injuries. The trial Court has wrongly discarded the evidence of the defence witness DW-1 Bhausahab on the surmises and conjectures. The trial Court has observed that even if it is accepted that Arjun was accompanied by Bhausahab in the morning to Georai, it is probable that Arjun might have returned back home

at about 10.00 a.m. as stated by deceased Saralabai in her dying declaration. The reasoning given by the trial Court is not proper. The defence of alibi taken by the accused also appears to be probable.

21. The trial Court has not appreciated the entire evidence brought on record in its proper perspective and reached to a wrong conclusion. The findings recorded by the trial Court are not in consonance with the evidence brought on record. The trial Court has not believed the oral testimony of the prosecution witnesses so far as the charge under Section 302, 498-A, 323, 504 of the I.P. Code as against accused No.2 Sumitrabai and acquitted her from the said offences. Even the Appellant is acquitted from the offence punishable under Section 498-A of the I.P. Code. However, on the same set of evidence convicted the accused for the offence punishable under Section 302 of the I.P. Code. Since the Appellant is acquitted from

the offence punishable under Section 498-A of the I.P. Code, the motive as per the prosecution case, for the commission of alleged offence by the Appellant punishable under Section 302 of the I.P. Code, is not at all established.

22. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that the Appellant is entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 26th June, 2013, passed by the Sessions Judge, Beed in Sessions Case No.174 of 2011, to the extent of convicting and sentencing the accused - Arjun Uddhav Arbad for the offence punishable under Section 302 of the Indian Penal Code, is quashed and set aside.

(III) The Appellant - Arjun Uddhav Arbad is acquitted of the offence punishable under Section 302 of the Indian Penal Code. Fine amount if deposited as per impugned Judgment and order, be refunded to the Appellant.

(IV) The Appellant - Arjun Uddhav Arbad is in jail, he be set at liberty forthwith, if not required in any other case.

[S.M. GAVHANE, J.]

asb/JUL17

[S.S. SHINDE, J.]